



# The Ombudsman's Clare CASEBOOK

Office of the Ombudsman, Ireland.

Clare Special Edition 2019

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## Learning from complaints

When my Office examines complaints, we are looking to see whether the person complaining has received a poor service, or not received a service they were entitled to. If this is the case, and the person has suffered an injustice as a consequence, we aim to put things right for them.

Where possible, we try to put them back into the position they would have been in had nothing gone wrong. However, that is only part of our work. As well as looking to put things right for individuals, we are also looking to make sure that mistakes are not repeated.

We help public services to improve through learning from mistakes and from good practice. In some complaints, the cause of any failure is just a one off – it is unlikely to happen again. In others, it can become clear that the failures were because of issues that could cause the same failure to be experienced by others.

This can be because of poorly trained staff, poor management, inadequate systems or procedures or on occasions, problems with legislation. Often, we resolve matters without the need for a full investigation. This can get matters resolved for the individual, but can mean that the learning is limited.

To help tackle this issue, we introduced quarterly Ombudsman Casebooks which include summaries of cases we have closed. These Casebooks are aimed at service providers. The cases are divided into categories so that public service providers in each sector can readily learn from our findings. There are also cases where we find no failures, and this illustrates that the work of the Office is to consider cases objectively.

This is the first Clare Casebook we



Ombudsman Peter Tyndall

have produced. It is being published on the occasion of our visit to Clare to raise the profile of the Office with potential complainants. It forms part of an extensive outreach programme which my Office undertakes throughout the year. During the visit, we will:

- meet with key public service providers
- provide a seminar for local elected representatives and public bodies
- provide an information session for Citizens Information Centre staff
- have staff available to take complaints from members of the public.

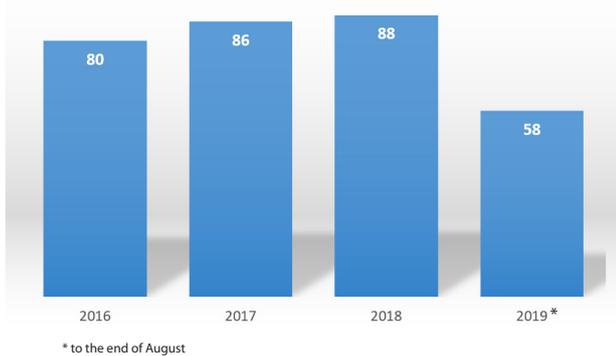
We hope that the Casebook will prove of benefit to service providers in Clare and that it will contribute to the delivery of better public services in the future.

Peter Tyndall September 2019

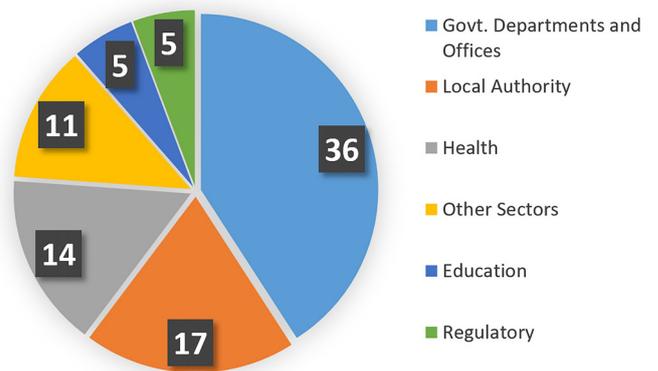
# Statistics

## Complaints received from people in Clare in 2018

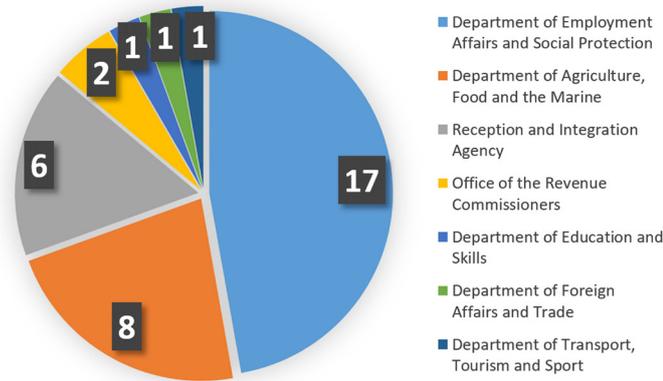
### Complaints received in last 4 years



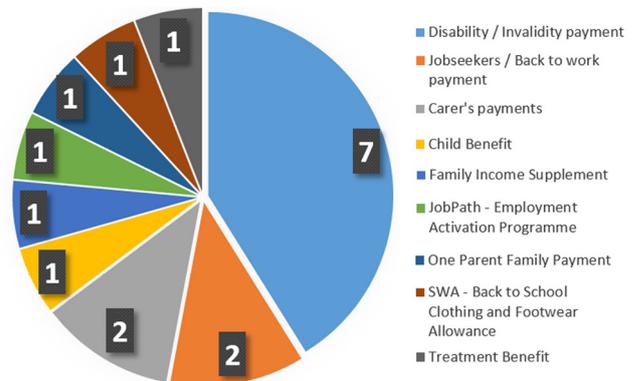
### Complaints received by sector - 88



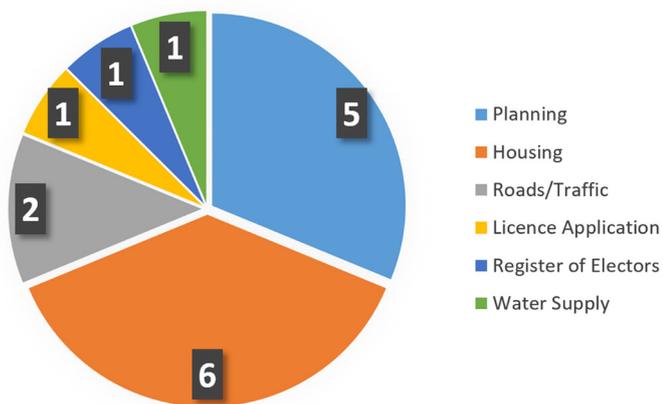
### Government Department/Office - 36



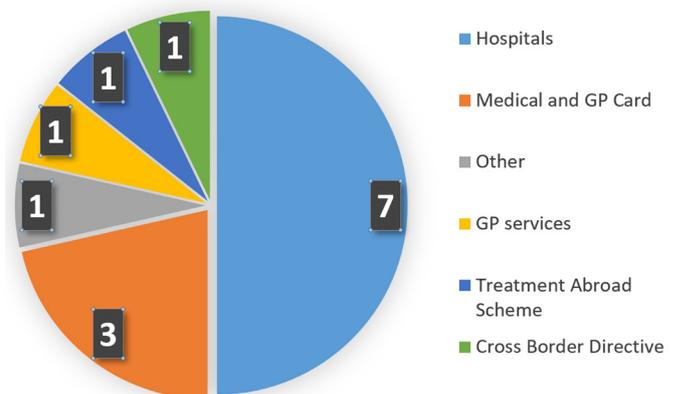
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# Cases from Clare

This is a selection of just some of the cases we received from people in Clare or involving Clare public service providers.

## Department of Employment Affairs and Social Protection

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### Household Benefits Package

OMB-19872-M6P5Q8

# *Upheld*

#### Background

The Ombudsman received a complaint from a woman on behalf of her elderly mother who was living in Clare. Her father died in 2013. He had been in receipt of the Household Benefits Package and his spouse was named a dependant. After her husband's death the elderly woman contacted the Department of Employment Affairs and Social Protection and was granted her Widows Pension, Living Alone Allowance, Fuel Allowance and Bereavement Grant. It appears she had not been advised by the Department that on the death of her husband she was required to reapply for the Household Benefits Package. After her daughter's intervention the woman received her Household Benefits Package and, after appeal, the Department backdated it by six months. The woman's daughter was not satisfied with this as she felt her mother should have been notified about her entitlement to the Household Benefits Package, and the payment should be backdated to 2013 - the time of her husband's death.

#### Examination

The Ombudsman questioned what efforts were made to advise surviving spouses of their rights when making pension applications. He also asked if the application process highlighted possible entitlement to the Household Benefits Package. The Department said that it had revised its information and pension applications now include information about possible entitlement to the Household Benefits Package.

#### Outcome

As it did not provide this information in 2013, the Department agreed to backdate the payment to 2013 in this case.

# Department of Employment Affairs and Social Protection

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## Jobseeker's Allowance

OMB-36484-K7S8F4

# *Partially Upheld*

### Background

A public representative made a complaint on behalf of a Clare man against the Department of Employment Affairs and Social Protection about the recovery of an overpayment of €55,000 it made to the man in respect of Jobseeker's Allowance (JSA).

### Examination

The man had failed to declare his means and his ownership of a second property for a number of years. As a result, the Department decided that he was not entitled to JSA at a higher rate and that the overpayment stood. The Social Welfare Appeals Office upheld the Department's decision. The man claimed that he asked his employer to continue paying his contributions only. The man said that his employer was not in a position to pay his wages.

The relevant legislation, Statutory Instrument 312/96, does not permit an employer to pay contributions without paying wages.

The Department reviewed its file and discovered that it had mistakenly used an incorrect date to assess the second property. This resulted in a reduction in the overpayment by €19,000.

### Outcome

The man was not entitled to Jobseeker's Allowance at the higher rate as he had not declared his means or his second property. The Department remedied its error and reduced the overpayment by €19,000.

# Health Service Executive

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## Medical card delay

### # Upheld

#### Background

A man complained that the HSE refused to process his wife's application for a medical card. The HSE did not register or process her application as she was not resident in Ireland. The couple, who were both Irish citizens, had moved to America in 1999 but had planned to retire to their home in Clare. However, in June 2016 the man's wife was diagnosed with cancer and given 12 months to live. The couple were anxious to return to Clare where they could spend time with family and friends. The woman needed a medical card as she had no private medical insurance in Ireland and there were significant costs for treatment of her cancer.

In October 2016, she applied, through her hospital in Ireland, to the HSE for a medical card. The HSE told the hospital that the woman would have to live in Ireland and have proof of residency in order to apply for a medical card.

The woman made a second application, again through her hospital, in November 2016, enclosing a social worker's letter setting out the complexities of her case. Again, the HSE did not communicate directly with her. Nor did it register or process her application.

In December 2016, the woman told the HSE she intended to return home to Ireland the following month. The HSE told the woman that she would be assessed on her means and would need to provide evidence of residency, including evidence that she would be residing in Ireland for more than 12 months.

The woman's health deteriorated and the woman moved back to Clare in April 2017. Two days later the HSE issued her with an Emergency Medical Card. However, the following day the woman died at her home in Ireland.

#### Examination

Emergency Medical Cards are granted to people who are certified as terminally ill and who are receiving end-of-life care. These cards are not generally subject to an assessment of financial means. Eligibility is normally granted to such people within 24 hours of receipt of an application. All applicants must satisfy the HSE that they are "ordinarily resident". That means that they are living in Ireland for at least a year and / or they intend to live here for at least one year.

The Ombudsman was concerned that the HSE did not communicate directly with the woman, as the applicant, but rather communicated with her hospital.

The Ombudsman also believed there was sufficient evidence that the woman intended to live in Ireland particularly given that:

- She was an Irish citizen

- She had maintained a home here and visited regularly
- She had been diagnosed as terminally ill and wanted to spend her remaining time with
- family and friends, and
- She had a bank account in Clare.

The Ombudsman asked the HSE to review its handling of the case.

#### Outcome

The HSE acknowledged that it should have communicated more clearly, and directly, with the family in relation to the earlier applications. It apologised for the stress and upset it caused to the woman and her family at a very challenging period in their life.

As a result of this complaint, the National Medical Card Unit (NMCU) updated its business procedures. It now ensures that all applications are logged and assigned a reference number when they are received. It will now process all medical card applications to a decision. This decision will now be communicated in writing directly to the applicant.

## University Hospital Galway

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### Care and treatment

OMB-22943-Q7V7W2

# *Not Upheld*

#### Background

A man from Clare made a complaint about the way he was treated by various members of staff in a hospital. He also complained that his medication was not returned to him when he left the hospital.

#### Examination

After the man complained to the Ombudsman the hospital returned the medication and apologised for its mistake. The hospital investigated the man's concerns and, as a result, changed its patient care plan documentation to help ensure that it did not happen again.

A number of issues in this case involved disputes over conversations with members of hospital staff including nurses, receptionists, catering staff and security. There was no independent recordings, notes or witnesses to the incidents.

#### Outcome

Without any independent evidence it was not possible to determine what actually took place and the Ombudsman did not uphold the complaint.

# Ennis Hospital

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## Delay in reviewing treatment

OMB 13026 CON8QT

# *Upheld*

### Background

A woman complained to the HSE about the care and treatment received by her late mother at Ennis Hospital in June 2016. She was unhappy with the hospital's response following her complaint and she requested a review of the response in December 2016. She contacted the Ombudsman a year later as the HSE had not fully responded to her request.

### Examination

Following contact from the Ombudsman, the HSE wrote to the woman and it apologised for not dealing with the review. A review officer was assigned to deal with her complaints and a response issued in July 2018.

### Outcome

The Ombudsman found that the delay in dealing with this complaint was unreasonable. While he accepted that it is not always possible to complete an examination or a review of a complaint within the timescales set out under the Your Service Your Say procedures, he said it is important that the process and timelines are followed as closely as possible. The Ombudsman asked that the hospital and HSE staff be reminded of the importance of adhering to the deadlines set out in its procedures for carrying out investigations and reviews.

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## Delay in provision of ultrasound results

OMB-12183-C6H0F8

# *Assistance Provided*

### Background

A woman complained about a six-month delay in providing copies of her ultrasound results to her GP. Although she had received an apology from the hospital she had not received any details of why the delay had occurred or any information about the changes the hospital or the hospital group had made to prevent a delay happening again.

### Examination

When the University of Limerick hospital group was contacted by the Ombudsman it provided more detail on what had caused the delay. The group had established that the delay occurred due to how workloads in the section concerned were being organised. Following the complaint, the group reviewed those workloads and reorganised staff in that section.

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It also put in place new Standard Operating Procedures that flagged any delays to ensure orderly and timely processing of administrative duties. There is now ongoing monitoring of administrative workloads and clear escalation procedures outlined in the event of a backlog developing. Finally, UL hospital group staff received training on both the importance of processing all requests promptly and the repercussions for patients if that processing does not occur.

#### Outcome

The woman was happy with the additional information provided to her.

## Student Universal Support Ireland (SUSI)

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### Miscalculation of grant entitlement

OMB-41062-M4T6T7

#### # Upheld

#### Background

A woman from Clare contacted the Ombudsman as she was unhappy with a decision made by Student Universal Support Ireland (SUSI) in relation to her entitlement to a 'special rate' of grant in respect of previous years.

The woman applied for a SUSI grant for the academic year 2018/19 and was awarded a grant. However, she was not awarded the higher 'special rate' which is aimed at people on low incomes. Her household income had been miscalculated as farm grants were added to the income. These grants had already been included in the farming accounts and should not have been added to the income. Therefore, the grants had been included twice in her assessment.

The error put the woman over the income threshold for the 'special rate'. She appealed the decision to SUSI and she was awarded the special rate for the academic year 2018/19. She discovered that this error had occurred in two other grant years and she was not awarded the special rate at that time. She wrote to appeal these decisions. However, her appeal was turned down as she was outside the time limit for making an appeal.

#### Examination

The time limit for making an appeal is 30 days. However, the error came to light only during her 2018/19 application process and therefore the woman had no reason to appeal the decision at the time.

#### Outcome

SUSI reviewed the woman's previous grant awards entitlement. The woman was awarded the special rate of grant for 2016/17 and received an additional payment of €2,890. In relation to 2017/18 academic year SUSI requested documentation to allow them carry out a review of her entitlement.

## Higher Education Grants

OMB-10789-C7L9D0

# *Not upheld*

### Background

The Ombudsman received a complaint from a student in Clare against SUSI. The student said that she was originally assessed as a dependent on the occasion of her first application to SUSI in the academic year 2016/2017. At that time, she was assessed as a dependent of her parents. However, the student secured the tenancy of a local authority house for herself and her daughter in December 2016. She was no longer a dependent of her parents and wished to be assessed as an independent mature student. In effect, her circumstances had changed. Her application and appeal were unsuccessful. SUSI is governed by the Department of Education and Skills.

### Examination

In Article 13(2) of the Student Grant Scheme, a student's circumstances are classified when they first enter their studies. There is no legislative provision to allow re-classification unless a student has a break in studies for at least three years. The Department confirmed that there are no plans to amend the legislation. It also explained that the break in studies increased from one year to three years because some students used the one year break as a 'gap year' in instances where their parents income was too high to qualify for a grant and those students simply resumed their studies at post graduate level, which meant that they qualified for support based on their own income. The increase to three years was to focus resources on genuine mature students.

### Outcome

The Ombudsman was satisfied that the Department's explanation about a re-classification following a three year break in studies was reasonable. However, there is some discretionary funding available to students who are experiencing financial hardship.

# Clare County Council

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## Planning Enforcement - Noise

OMB-36792-D8K1S4

# *Not Upheld*

### Background

A man complained that Clare County Council was not pursuing enforcement action against a developer in relation to 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 required 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 that neither the EIS, nor conditions of the planning permission, specified working hours at the site. Therefore, the Council's decision not to pursue enforcement action was reasonable in the circumstances.

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## Derelict Sites

L05/13/1565

# *Assistance Provided*

### Background

A man complained to the Ombudsman about the Council's failure to tackle health and safety issues at an alleged derelict and dangerous property beside his mother's property. The man wanted the Council to make the site safe and manage the health and safety risks from it.

### Examination

The Council explained that its Building Control section had examined the site and although the property was derelict it was not a dangerous structure. The Ombudsman was satisfied that the Derelict Sites Act 1990, did not cover matters such as burst pipes, attic partitioning and lack of heating, which the man had complained about.

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## Outcome

The Council told the property owners they had to replace broken window panes, fix outside doors and paint parts of the property. The Council also promised to monitor the situation by inspecting the property every six months. The Council later told the Ombudsman that the property was taken off the Derelict Sites Register as the work promised by the owners had been completed.

The Ombudsman also noted that people who own land at the side of roads are responsible for cutting hedges on the road under Section 70 of Roads Act 1993.

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## Planning

L05/13/0938

# *Not Upheld*

### Background

A man complained about the delay by the Council in pursuing enforcement action against a developer. The man said the developer had not completed all works on his housing estate. The man was also unhappy that the Council had not taken the estate in charge. Furthermore, the man said the water mains were not completed to a minimum standard and one of the conditions of planning permission (the erection of a stop/yield sign at the entrance to the estate) had not been met.

### Examination

Given the works that were still required to be completed, the estate did not meet the minimum criteria to have it taken in charge. The Council had decided not to complete the works itself until the outcome of enforcement proceedings against the developer through the Courts had been concluded, i.e. exhausting all avenues open to it to secure completion of the estate.

In relation to the water mains, the Council supplied a report from the Fire Officer explaining that the flows were sufficient for fire-fighting purposes in domestic dwellings. It said it also repaired some leaks in the estate. The Council also explained that the general low water pressure in the area was due to a lack of upgrade works to the existing infrastructure.

### Outcome

As factors outside the Council's control were causing the poor water pressure the Ombudsman did not uphold this part of the complaint.

The Council said that the erection of the stop sign was being pursued under the enforcement notice. However, the Ombudsman requested that it review the situation with a view to erecting the sign on safety grounds. The Council agreed and installed the stop sign.

## Motor Tax

L05/15/1717

# *Not Upheld*

### Background

A man complained that he had been given incorrect information during a telephone call with an official of Clare County Council which he said resulted in him making a late application for a refund of motor tax. He also complained about the delay in making a decision on his refund application.

### Examination

While calls are not recorded, the Council said that it would appear from the notes made after the phone call that the man's query was about the car being off the road and not about a refund of motor tax. However, the Council accepted that a delay had occurred and it provided an explanation and apologised for the delay. It said that it had updated its administrative processes for dealing with similar motor tax refunds.

### Outcome

The Ombudsman did not uphold the complaint with regard to the telephone call as there was insufficient evidence in the case to make a finding. The Ombudsman was satisfied that the Council had applied the relevant legislation correctly with regard to the motor tax refund. He was also satisfied that the Council had taken action to ensure this type of delay would not happen again and that the delay had not affected the man financially.

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## Burial Grounds

L05/16/3750

# *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 from the 1870s was examined. The graveyard is a Recorded Archaeological 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 two existing headstones. On this basis it had refused the man's application.

### Outcome

The Ombudsman was satisfied that the Council had acted correctly and in line with its obligations to preserve the graveyard.

# Department of Justice and Equality/RIA

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## Transfer

OMB-10895-K5T4T0

### # Upheld

#### Background

A man in direct provision accommodation in Clare complained to the Ombudsman about being refused a transfer by the Reception and Integration Agency (RIA). According to the man, he submitted several transfer requests to RIA but neither he nor his advocates received a response from RIA. The man requested a transfer to an accommodation centre closer to the centre where his children live with his ex-wife in order to have easier access to his children. At the time of the complaint the man lived on the other side of the country to his children.

#### Examination

According to the man's doctor, the lack of access to his children was causing the man stress in an already very stressful situation. The man feared that he may lose any right of access to, or custody of his children because he was unable to see them. The man travelled to their accommodation centre to visit them on a regular basis, at great expense given the cost of travel, which was also putting a financial strain on him.

#### Outcome

Given the exceptional needs arising in these circumstances the Ombudsman asked RIA to review its decision to refuse the man's request for a transfer. RIA reviewed its decision and offered the man accommodation closer to his children.

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## Direct Provision complaint

OMB-22118-V4Z6K5

### # Assistance Provided

#### Background

A man living in a Direct Provision accommodation centre in Clare complained to the Ombudsman about the decision by the Reception and Integration Agency (RIA) of the Department of Justice and Equality to issue him with a letter asking him to vacate the centre. The man was issued with a Deportation Order in 2011 but he had not been removed from the State.

### Examination

The man believed that he was told to vacate the accommodation as he had complained about the centre. He also wanted to return to his home country and told RIA this, but it had not enforced the Deportation Order. He said that if RIA evicted him from the accommodation centre then he would have nowhere else to go in Ireland.

Following contact from the Ombudsman, RIA told the man that in order to create capacity for new people in the direct provision system, letters had been issued to those people living in direct provision who no longer qualify for RIA accommodation as they are no longer considered to be in the protection process. RIA explained that it is working on assisting persons to comply with Deportation Orders and the letter in this instance was in no way connected to the man's other complaint about the centre.

### Outcome

RIA provided an assurance to the Ombudsman that it would not remove anyone from direct provision centres against their will. The Ombudsman passed on this assurance to the man and put him in contact with Irish Naturalisation and Immigration Service (INIS). INIS can arrange for voluntary deportation of people whose application for asylum has failed and are willing to return home but do not have the means to do so.

## Law Society of Ireland

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### Compensation Fund

OMB-07385-N1B0K1

# *Not Upheld*

### Background

A woman from Clare complained that the Law Society had refused to make her a payment from its Compensation Fund. The woman said that she had lost money as a result of the dishonesty of her solicitor. The Law Society was of the view that, while the solicitor had been engaged in dishonest practices, there was not enough evidence to show that the woman had lost money as a result.

### Examination

The Law Society can make a payment from its Compensation Fund to members of the public if it is proved that they have lost money as a result of the dishonesty of their solicitor. However, the person requesting the payment is required to prove that they have lost money. It appeared that the Law Society had given the woman a number of opportunities to provide evidence but she had not done so.

### Outcome

The Ombudsman was satisfied that the Law Society's decision was fair, reasonable and in accordance with its rules regarding making payments from the Compensation Fund.



# 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: [info@ombudsman.ie](mailto:info@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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