



# The Ombudsman's CASEBOOK

Office of the Ombudsman, Ireland

Summer 2021

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## Learning from the times when things go wrong

Welcome to the summer edition of the Casebook. As usual, it contains a mixture of cases drawn from the work of my Office which we hope prove useful to you in developing your services.

Complaint numbers reaching my Office have returned to pre-pandemic levels, and this is despite the fact that our usual outreach programmes to Direct Provision centres and to CICs in Cork, Galway and Limerick have not yet been able to re-commence. Like most public services, we have become used to working remotely and most of our complaint handling is unaffected by this.

We have seen some trends in pandemic related complaints, including those about the various financial supports available to individuals and companies. Generally speaking, while there have been some teething problems with the various schemes, these have been resolved and there is little evidence of widespread, systemic issues.

While my office deals with people who are dissatisfied with their engagement with public services, we have seen considerable evidence of the ways in which public servants have adapted to the challenges of the pandemic and continued to deliver service as usual while also finding innovative and imaginative responses to the strange times in which we find ourselves.



Ombudsman Peter Tyndall

I suspect that most people are by now tiring of life in the virtual world and the endless Zoom calls, and looking forward to getting back towards normal as the vaccines continue to help us defeat COVID-19.

The pandemic has demonstrated to us how vital public services are to us all. Our thanks are due to those who run them, and in promoting learning from those occasions when things unfortunately go wrong, I hope that we will continue to contribute to improvement for the future.

Peter Tyndall July 2021

# Agriculture

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## Department of Agriculture, Food and the Marine

Organics Scheme - Penalties

OMB-60578-L7C2D4

# *Partially Upheld*

### Background

A farmer made a complaint that the Department had imposed incorrect penalties on his Organic Farming Scheme payment following an inspection of his farm. The penalties were:

- 20% penalty for cattle housed with no additional bedding
- 50% penalty for sheep being fed non-organic nuts.

He sought a review of the penalties. The Department found that the 50% penalty for sheep being fed non-organic nuts had been incorrectly applied. The penalty was therefore reduced to 20%. However, the farmer said that he received no apology from the Department for the mistake, it had taken over six months to correct the error, he had been charged interest on money he had never owed.

### Examination

There was no dispute that the terms and conditions of the Organic Farming Scheme had been breached. However, the farmer was claiming that *force majeure* applied. He said that his supplier did not have any organic feed at the time and he had found it difficult to obtain straw and so used peat as an alternative.

In order for *force majeure* to apply, it would need to be shown that the situation was unforeseeable and that there was no alternative source of organic feed or straw available anywhere at all. In this instance, the farmer would have been aware that he was running out of feed and straw for a period of time, so the shortage was not unforeseeable. There were also other sources of supplies apart from his usual supplier.

The Department acknowledged that it had erred in imposing the wrong penalty for the feeding violation. Due to problems arising with the IT system, there was a delay in amending the penalty on the Department's computer system. This had resulted in higher repayments being made by the farmer for a period of time. However, there was no evidence that the Department had recouped more money than was due or that excessive interest was charged.

### Outcome

The Department issued an apology to the farmer for the delay in amending its computer records. However, the Ombudsman could not uphold the claim of **force majeure** in respect of the penalties being imposed.

## Department of Agriculture, Food and the Marine

Time for appeal expired

OMB-38234-G5N2V4

### # *Assistance Provided*

#### Background

A man had been part of a Department of Agriculture programme but was removed in the second year when he made a return which contained an incorrect herd number.

#### Examination

The man had missed the deadline to appeal the decision to the Agriculture Appeals Office as he had been dealing directly with an individual in the Department. He was under the impression that his complaint was being considered by the Department. When the matter was not resolved the man's time to appeal had expired. When the Ombudsman contacted the Department it said that the man could make an application for an extension of time to appeal by setting out the circumstances of his case to the Director of Agriculture Appeals.

#### Outcome

As the man still had the option to have his appeal heard by the Department the Ombudsman closed his investigation.

# Direct Provision

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## International Protection Accommodation Service (IPAS)

Failure to reply/Carry out an assessment

OMB-57343-T4J7D2

# *Upheld*

### Background

A woman complained about the International Protection Accommodation Service's (IPAS) failure to reply to correspondence and to oversee the carrying out of a Vulnerability Assessment to gauge the woman's adult son's specific health needs.

### Examination

Following contact from the Ombudsman, IPAS issued the woman with a response to her complaint and an apology for the delay. IPAS said that the woman's son was now fully linked-in with the health services in their accommodation centre through the HSE, and that the centre management had provided the woman with an assurance that they would continue to give her and her son their full support. IPAS also said that the centre manager met with the woman on several occasions since the incident and that the woman had informed him that the situation had settled down.

### Outcome

The woman was satisfied with the apology from IPAS, its response to her complaint and the assurance she received in relation to the ongoing support that would be provided to her and her son. The woman said that her son is now in a position to access appropriate services. The Ombudsman pursued the issue in relation to the carrying out of vulnerability assessments and IPAS' Vulnerability Assessment Policy.

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# Education

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## Solas

Reasons for decisions on applications

OMB-55769-V9K5G2

### # *Assistance Provided*

#### Background

A man complained to the Ombudsman about Solas when his application to become a Safe-Pass Tutor was refused. He said he was unfairly excluded from the Safe-Pass Tutor Panel. He said that Solas refused to clarify why his application documents were not valid.

#### Examination

The 'Ombudsman's Guide to Standards of Best Practice for Public Servants' provides that people should be given full information on the reasons for a decision that adversely affects them, including details of any findings of fact made in the course of the decision. Following a review of the complaint, the Ombudsman asked Solas to provide clear rationale for the refusal of the man's application to become a safe pass tutor.

#### Outcome

The Ombudsman raised awareness in Solas of the need to give people full information on the reasons for a decision that adversely affects them. Solas provided the man with more comprehensive reasons for the decision in this case and the Ombudsman was satisfied that Solas had acted correctly in refusing the man's application.

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## State Examinations Commission

Revision of exam results

OMB-61069-S5P6T9

### # *Not Upheld*

#### Background

A young man complained about the State Examinations Commission (SEC). He felt that his Leaving Certificate 2019 Higher Level Business paper had been not marked accurately or adequately and that the (first) examiner of his paper showed an 'inability to think critically and be elastic' with the marking scheme. He was awarded a H2 but felt he should have been awarded a H1. This meant he missed out on his preferred third level course by 1 point.

### Examination

The Ombudsman was not in a position to consider the portion of the man's complaint that related to the exercise of academic judgement (this included how marks were awarded) by the various examiners involved in the SEC's appeals process. The man's business script had been re-marked in full by three different examiners. The SEC issued LC 2019 Appeal Examiners (that is, 'second examiners') with a comprehensive set of instructions. These instructions do not permit Appeal Examiners much scope to award marks for answers outside of those set out in the 2019 marking scheme.

### Outcome

The SEC's Independent Appeals Scrutineer arranged for the Chief Examiner for Business to respond to the individual comments/issues the young man raised as part of his appeal. In addition, the Ombudsman also provided the man with additional information on the SEC's appeals system and processes.

After examining the relevant documentation, the Ombudsman said that the SEC had dealt with the young man's Business appeal in a fair manner in line with its stated procedures.

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## University College Cork

### Course Fees

OMB-40241-X4P3R3

# *Not Upheld*

### Background

A student made a complaint about the payment of the capitation fee for his course. He considered that his failure to pay the fee on time should not result in restricted access to library and emails.

### Examination

The college had introduced restrictions on those who had failed to pay their fees on time. This approach was adopted in partnership with the College's Student Union to reduce the level of outstanding fees. It was also clear that Students had been informed before registering for their courses that the capitation fee had to be paid to allow access to email and library services.

### Outcome

As the college had told students in advance of the need to pay the capitation fee it could not reasonably be argued that asking for payment was unreasonable. The Ombudsman also considered that the fee was an integral part of the contract entered into by the student and college.

## University of Limerick

Failure to reply/Classification of student

OMB-12342-W0Z9G0

# *Upheld*

### Background

A woman complained about a number of issues in relation to her daughter's education at University of Limerick (UL) including:

- the failure of UL to fully respond to a number of queries raised by the woman. The woman felt she had to engage a solicitor to obtain a comprehensive response to her queries but UL failed to send a comprehensive response.
- the practice of UL to describe her daughter as a 'repeat student' when, in fact she was an IGrade student. An IGrade student is a student who is not in a position to do annual examinations at the customary times, and effectively has some options but can do the examinations at another time. The failure to describe her daughter correctly resulted in difficulties with Student Universal Support Ireland (SUSI) as it was relying on information from UL.
- the difficulty with what the woman saw as a lack of clarity in the Handbook of Academic Regulations and Procedures. The woman had taken the matter up with UL several times.

### Examination

UL said that IGrade students are classed as 'repeat students' because those students have to register twice and that students cannot progress to the next semester until the required academic marks are achieved. The Ombudsman pointed out that having to register twice does not equate to doing a repeat examination. There is a clear distinction between an IGrade Student and a repeat student and the incorrect description of the student led to UL giving incorrect information to SUSI. The incorrect information caused confusion for SUSI in relation to the appropriate grant and fee structure for the student.

### Outcome

Following the Ombudsman's intervention UL:

- apologised to the woman and thanked her for her feedback
- agreed to reimburse the woman's legal fees
- decided to amend its Handbook of Academic Regulations and Procedures
- agreed to clarify the description of 'repeat' students and IGrade students.

## University College Dublin

Course Delivery

OMB-23358-T3C5M9

# *Partially Upheld*

### Background

A woman complained about the quality of a degree course in the Smurfit Business School of UCD. She said that the course had been incorrectly advertised in the Prospectus and that aspects of course had not been delivered. She considered that the college was in breach of the Sale of Goods and Supply of Services Act, 1980.

### Examination

The Ombudsman examined the information provided by all parties, including the course Prospectus, the investigation of her complaint by the College's Investigation Officer, and UCD's complaint handling procedures. It was clear from the Ombudsman's examination and the Investigation Officer's report that there were discrepancies between the description of the course and its delivery.

The course literature gave an impression that internships would be available to all students and that there would be supervisory supports for summer projects, including research projects. In fact, only 28 of the 50 students were able to complete an internship and many of those had been sourced by the students themselves rather than being supplied by the college as had been expected. Furthermore, after her relationship with the course tutor broke down, there was no one else available to supervise the woman's research project. The Investigating Officer in UCD had accepted these discrepancies and made recommendations to UCD and the Smurfit Business School to improve the situation for future students.

### Outcome

The Ombudsman partially upheld the complaint due to the misleading information about internships in the Course Prospectus and the inability to provide the woman with an alternative Research Project Supervisor. However, the Ombudsman acknowledged that remedial action had already been taken by the college in relation to these issues so no further action was warranted. The Ombudsman said that any issue in relation to compensation under the Sale of Goods and Supply of Services Act, 1980, was a matter for the courts and that QQI was the appropriate body to investigate the quality and operation of the Course.

# Health

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## Health Service Executive

Response to complaint

OMB-37188-D6Z1C7

# *Assistance Provided*

Background

A man complained to the HSE regarding the outcome of its investigation into an allegation he had made. The letter he received closing his complaint was one line explaining that the incidents complained of could not have happened in the manner described.

Examination

The HSE provided a copy of the preliminary screening documentation into the man's complaint. It also set out in detail the procedures it had followed in investigating the man's complaint. The HSE accepted that the letter was lacking in detail.

The HSE agreed to meet the man to better explain the complaints process and how it conducted its investigation. Following that meeting the HSE also wrote to the man to provide additional detail.

Outcome

The Ombudsman did not uphold the complaint as the HSE had followed guidelines when conducting its investigation and, following the complaint to the Ombudsman, it took further steps to help the man fully understand the complaints process and its investigation.

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## Health Service Executive

Nursing Home Support Scheme: Delay in accepting application

OMB-38044-Q8R6B4

# *Upheld*

Background

A woman contacted the Ombudsman concerning a disagreement with the Health Service Executive (HSE) regarding the date on which information was submitted in order to process her mother's Nursing Home Support Scheme (or 'Fair Deal') application. She felt that the HSE had treated herself and her family unfairly.

Her mother had dementia and was living in a nursing home. Herself and her siblings were all living aboard at the time they applied for the Fair Deal Scheme on their mother's behalf. Her brother had emailed the HSE regarding the application and all documentation except a house valuation on his mother's house had been provided. On the date the house was valued, (21 August) her brother emailed the valuation certificate to the HSE, he had email records

to support this. Some time later in October when the Nursing Home said that they had not received the application, her brother emailed the HSE again to see what was the delay as he understood he had submitted everything. He was informed that the HSE had not received the house valuation.

He explained that he had already sent it and then tried to resend the house valuation a number of times without success. When he sent the valuation from a different email address the HSE finally confirmed receipt on 2 November, some four months after the original application. He felt that the HSE's decision to accept the application from the 2 November and not the initial date he had sent the house valuation unfair. He appealed the decision and it was refused on the grounds that under legislation the HSE cannot issue a decision without receiving all the documentation.

#### Examination

It was unclear why the HSE did not receive the earlier emails with the house valuation as the same email address had been used throughout the process. It appeared from the email chain that while some emails were received by the HSE the emails with attachments were not. Therefore it may have been a technical error. While the Ombudsman understands that under legislation the HSE cannot issue a decision without receiving all supporting documentation, he felt that the HSE's decision not to backdate the approval date to 21 August was incorrect, particularly given the documented attempts for the house valuation to be sent.

#### Outcome

The Ombudsman asked the HSE to review the case. The HSE, decided that to pay four months arrears for the period 21 August (date of email) to 2 November (date of decision).

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## Health Service Executive

Primary & Community Care - Transport

OMB-44179-J7Z6Q5

### # *Not Upheld*

#### Background

A woman complained about a decision of the HSE to refuse her continued access to transport under the Patient Transport Services Policy (PTSP). The HSE had been providing transport to the woman to attend her hospital appointments for a number of years but from February 2019 it stopped this service for her. The HSE said that there is no statutory requirement to provide transport to hospital appointments and it does so on a discretionary basis. Due to financial constraints, it was not in a position to consider the woman's application from February 2019.

#### Examination

While the Ombudsman has no role to play in decisions in relation to the allocation of resources and funding, he examined whether all facts had been considered by the HSE in reaching its decision. The HSE said that it considers all applications based on the criteria in

the PTSP and the limited funding available to it for this purpose. Given the limited budget, it said it had to prioritise patients attending acute outpatient appointments. The HSE prioritised patients receiving cancer and dialysis treatment. Each application is considered individually and unfortunately, other applications were prioritised as having a greater need and therefore, during this time the woman's transport request was not approved. The HSE also said that, should the woman wish to be considered for future transport under the PTSP, she may resubmit a patient transport application. Given funding available to it, the HSE would then consider her application in line with the PTSP.

#### Outcome

The Ombudsman was satisfied that the HSE had dealt with the matter reasonably and in line with the PTSP.

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### Health Service Executive

#### Medical & GP Card

OMB-23022-R3W8M2

#### # *Not Upheld*

#### Background

The Ombudsman received a complaint from a man whose application for an Emergency Medical Card (EMC) had been refused by the HSE. The man said that the Department of Health website said that an EMC was for 18 months, whereas the HSE said the EMC was for 6 months only, after which time a financial review was conducted. The man did not accept that an EMC should be reviewed if an applicant had been diagnosed with a terminal illness.

#### Examination

The HSE confirmed that it awarded the man an EMC for 18 months. The Department also amended its website. The HSE explained that the legislation governing eligibility for medical cards provides that a person is eligible for a medical card if that person is unable to pay for general practitioner medical and surgical services without undue hardship. The legislation also provides for means-testing to determine eligibility. The HSE detailed the various types of medical cards that are available and the circumstances under which it uses its discretion to ensure that its resources are used appropriately to best serve the community. In the man's case, the HSE awarded him an EMC for 18 months, after which time, a financial review will be conducted. In relation to the man's illness being terminal, the HSE confirmed that Terminal Illness Cards are issued to people whose life expectancy is less than 12 months and whose clinicians confirm this in writing. The HSE confirmed that it has guidelines in place.

#### Outcome

The Department of Health amended its website. The HSE remedied an error caused by the incorrect information on the Department's website and issued the man with an EMC for 18 months. The HSE decision to award an EMC for six months only is correct and that there is no basis to award an EMC without periodic financial reviews

## Health Service Executive

Nursing Home Support Scheme

OMB-38812-X5N2X4

# *Not Upheld*

Background

A solicitor made a complaint on behalf of his client when the HSE made a claim for €21,700 against the estate of a deceased person, in relation to payments under the Nursing Home Support Scheme. The claim was based on the valuation of the deceased's assets in 2011 when an application was made under the Scheme. The solicitor said that the auctioneer who valued the deceased's house and lands at the time was not aware that the land was a Designated Area for the Protection of the Hen Harrier. The solicitor claimed that the land, which he valued at €104,000, should have been valued at substantially less than this sum. The client contested the claim on the basis of the erroneous property valuation, and submitted revised valuations in support of his case. He appealed the matter to the National Appeals Office who rejected the appeal.

Examination

The Nursing Homes Support Scheme Act 2009 states that the "estimated market value" means the price the asset concerned would fetch on the open market on the date on which the application for State support is made, subject to such conditions as might reasonably be calculated to obtain for the vendor of the asset the best price of the asset'. There is no provision under the Scheme to change the value of a relevant asset from the value declared at the date of application for the Scheme. With regard to the man's appeal to the HSE, the Ombudsman noted that the HSE took all relevant factors into consideration when reaching its decision. The HSE provided detailed reasons for the decision to refuse the appeal and the Ombudsman was satisfied that the HSE'S position was reasonable.

Outcome

The Ombudsman was satisfied that the HSE made its decision in accordance with the legislation and that there were no grounds on which to have the decision changed.

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## Health Service Executive

National Ambulance Service - Delay in response to complaint

OMB-40196-G3C2X7

# *Upheld*

Background

A woman complained to the Ombudsman about the delay by the National Ambulance Service in responding to her complaint about the care provided to her father. The woman said she did not receive a final response until two years later. She was also unhappy with the response as she felt it did not provide an explanation for why her father was treated as he was.

### Examination

The Ombudsman agreed that the response to the complaint was inadequate. He contacted the National Ambulance Service (NAS) who then provided more information to the woman.

The Ombudsman was concerned about the delay by the NAS in responding to the woman's complaint. The original response was not dated, it had typographical errors and it did not provide an explanation for what occurred.

The NAS acknowledged the shortcomings in its complaint management and commissioned an internal review of the handling of the case. The review identified a number of reasons for the delay, including a delay in the complaint being forwarded to relevant personnel. It also recommended that a Steering group be established under the auspices of the National Quality Safety and Risk Manager to review the management of complaints. Further training for staff was also recommended.

### Outcome

The NAS has now put together a plan for the implementation of the recommendations which should lead to improvements in its complaint management.

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## Health Service Executive

Medical & GP Card

OMB-41292-N3J3S2

# *Upheld*

### Background

A man applied for a medical card based on his medical condition. However, the man had not included details of his wife's income with his initial application. After the HSE received details of his wife's income, it refused the application as he was over the financial threshold for eligibility.

### Examination

If an applicant is married, cohabiting or in a civil partnership, a joint application must be made. The financial assessment is completed first to see if an applicant qualifies by means for eligibility. If the weekly income and means are above the qualifying threshold, and they have outlined medical conditions which would impact on their income, the application is then referred for a discretionary review by a Medical Officer and a Deciding Officer.

In this case, a discretionary review of the application was conducted by a Medical Officer and a Deciding Officer. The outcome of the review was that the family did not face undue financial hardship in managing their medical needs.

The man had provided details of household income and outgoings, and mentioned that he had two sons at college full-time which were his biggest expense. However he had not included an amount under the heading of 'Allowances for Dependents over 16'. The Ombudsman asked the HSE to review its decision.

#### Outcome

The HSE said that the man would have been entitled to claim this expense against his income. The Medical Officer subsequently granted the man a Medical Card based on his medical condition. The HSE also said that the man could apply for refunds of medical expenses which he incurred while he did not hold eligibility to a Medical Card from the date in which he referred to his dependents.

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## Health Service Executive

Portiuncula University Hospital

Patient care and treatment

OMB-43472-Z1C0Y5

# *Partially Upheld*

#### Background

A man complained to the Ombudsman about the care and treatment of his late mother during the first four days of her admission to Portiuncula University Hospital.

He complained that:

- she was not prescribed enough medication to manage her pain and make her comfortable.
- she was left alone in her room for four hours during the night and was unable to reach the call bell.
- the on-call team reviewed the woman over the weekend but she was not referred to the palliative care team, despite the fact she continued to be in severe pain.

#### Examination

The Ombudsman noted from his investigation that on one occasion there was a 30-minute delay in administering the woman's medication. The hospital said that the Unit was at capacity at the time and was extremely busy. The hospital apologised for the distress caused as a result of this delay.

The woman was left alone for four hours during the night and was unable to reach the call bell. The hospital policy proves that staff are required to check patients in their rooms half-hourly at night and ensure that the call bell is within reach of patients should they require assistance in the interim. While the hospital apologised for the deviation from routine practice in this case, the Ombudsman was concerned with the seriousness of this situation, and the fact that the hospital did not have a documented policy in place for the care of patients during the night.

With regard to referring a patient to the Specialist Palliative Care Service, the HSE confirmed that the hospital uses the National Guidelines for referral to Palliative Care Services.

The Palliative Care referral form and referral criteria used in the hospital is based on this guideline. As the decision to refer a patient to SPC services is a matter of clinical judgement, the Ombudsman could not examine this aspect of the complaint. However, the hospital's investigation concluded that it would have been appropriate for the locum consultant on call to contact the on-call Palliative Service. The hospital apologised for its failure to do so.

#### Outcome

The Ombudsman asked the hospital to put a documented policy in place for the care of patients during the night. He also asked the hospital to remind staff of the need to check patients every 30 minutes during the night and to ensure they have access to the call bell.

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### Cappagh National Orthopaedic Hospital

#### Hospital waiting lists

OMB-43549-D2P8S9

#### # Assistance Provided

#### Background

A woman complained about Cappagh National Orthopaedic Hospital and the length of time she has been waiting for a hip replacement operation. She said that she has been waiting for a number of years for this operation and during this time, her mobility has greatly reduced.

#### Examination

While the Ombudsman's role is limited with regard to the allocation of resources within a hospital and the administration of waiting lists, he clarified the time the woman has been on the list and how the list is managed. Waiting lists for hospital treatment are managed by consultants, using their clinical expertise, to determine the urgency of a patient's need to receive treatment. This is usually done in association with the patient's GP. The hospital's waiting list is managed in chronological order based on the length of time waiting, that is, the person with the longest waiting time is placed top of the list. Within this chronological order, urgent cases and routine cases are considered separately to prevent urgent cases waiting the same amount of time as routine cases. In the woman's case, she was listed as urgent on the waiting list.

#### Outcome

The Ombudsman was satisfied that the hospital's waiting list was being managed appropriately and that that the woman was dealt with fairly.

## Connolly Hospital Blanchardstown

Hospital charges

OMB-38917-D1J2Y8

# *Not Upheld*

Background

A man attended the Emergency Department of Connolly Hospital with a severe blood infection. When he was admitted for treatment he was asked to sign a Private Insurance Patient Form. He said he was delirious with the infection, and did not understand what he was signing for. He subsequently received a bill for nearly €7,000. He was in a public ward and said he would have demanded a private room if he had understood the circumstances.

Examination

As the VHI paid the hospital bill of €7,000, the Ombudsman could not establish adverse affect on this point. With regard to the fact that the man was in a public ward, the Ombudsman noted that if a single room is available and you are a private patient, you will be offered this room. However the single rooms may be required for patients with a greater clinical need. There was no evidence to suggest that the hospital did not act in accordance with this policy. The hospital acknowledged the shortcomings in communication and apologised to the man.

Outcome

The complaint led to improvements in communication at the hospital ensuring that a similar situation does not arise in the future.

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## St. Colmcille's Hospital, Loughlinstown

Hospitals - Treatment Abroad Scheme

OMB-42052-S5F9W2

# *Upheld*

Background

A man complained to the Ombudsman about the delay in approving his application for treatment under the Treatment Abroad Scheme. An initial application was rejected by the HSE because an incorrect medical centre had been entered by the consultant who completed the application. The man said that despite sending numerous emails over a period of 5 years, the consultant had not completed the relevant application form.

Examination and Outcome

In response to the Ombudsman's examination, the HSE confirmed that the consultant signed the application and had contacted a medical professional in the country where the procedure will be carried out. St. Colmcille's Hospital also issued an apology to the man for the inexcusable delay.

## Mater Misericordiae University Hospital

Hospitals - General

OMB-39217-S9S9X3

# *Partially Upheld*

### Background

A woman, whose son suffered from Multiple Sclerosis, complained to the Ombudsman after they turned up for the appointment but the hospital could find no record of it. When a record of the appointment was located the hospital told the woman it had been cancelled as there was no anaesthesiologist available on that day. The appointment for a scan was then not rescheduled until two and a half months later, but sadly by this time, the woman's son had passed away.

### Examination

The hospital said that the mistake was down to a communication error between the various hospital staff involved in organising the appointment. An initial date was identified for the scan but this had to be changed due to the lack of availability of an anaesthesiologist. However, while the 'patient flow' and anaesthetics departments were made aware of the new date, the radiology unit was not, and proceeded with an appointment date for the original day.

In relation to the rescheduling of the appointment, the limited availability of anaesthesiologists, and the fact that the appointment was being rebooked over the busiest winter/Christmas period, meant that a suitable date could not be found until two and a half months later.

### Outcome

The hospital identified the cause of the problem and apologised to the woman on a number of occasions. It has also taken steps to ensure the error does not happen again.

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## University Hospital Limerick

Hospital - Charges

OMB-41191-D8J1W1

# *Upheld*

### Background

A woman complained about a hospital bill she received for a stay in University Hospital Limerick. She was unaware of the bill until she received a letter four years later. She never received an original invoice for the hospital stay. She also received two 'final notices' after she had complained to the hospital, even though the hospital said that a hold would be put on the account while her case was being examined.

### Examination

At the time of her hospital stay, the woman said she had private health insurance but it turned out that she did not as she had been taken off her mother's policy. The woman felt it was unfair to charge her for the stay as she did not receive any private care, she was a medical card holder and because of the delay and administrative errors of the hospital.

The hospital explained that the insurance company did not notify it of its rejection of the woman's claim. This fact only came to light four years later following a hospital review of submitted unpaid claims. To ensure this does not happen again, the hospital explained that all pending and rejected claims are now collated and gone through individually. The hospital acknowledged that the woman was unaware of the bill until four years after her care. It apologised to the woman for the subsequent administrative errors which occurred.

### Outcome

The hospital agreed to adjust the hospital invoice so there was no longer any outstanding charge on this account. The Ombudsman was satisfied that the hospital dealt with the complaint reasonably and that it accepted the woman was no longer liable for the hospital charge.

# Justice

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## Department of Justice

Magdalen Laundry Restorative Justice Scheme - Application refused

OMB-60411-W3L5S1

# *Partially Upheld*

### Background

A woman's application for redress under the Magdalen Laundry Restorative Justice Scheme was refused by the Department of Justice on the basis that a High Court case she had taken had been struck out and she was refused leave to appeal. The woman said this was not a reason to refuse her application. She also complained that the lack of a formal hearing process meant the application process was insufficient.

### Examination

The State Claims Agency handled the Court proceedings on behalf of Department. It confirmed that the matter was struck out for failure to make discovery. The State Claims Agency also confirmed that the issue of the complainant's residency in the Magdalen institution had not been discussed in court and was not the subject of any ruling or order. In addition, correspondence on the Department's file showed that the State Claims Agency had confirmed that, following the conclusion of the court proceedings, the application could be processed as usual and judged on its merits.

In relation to the woman's complaint about the application process, the Department provides for discussions to take place with applicants but the scheme, which was approved by Government, does not provide for a formal oral hearing that results in a finding of fact. The Department's files show that it had a written account of the work the woman claims to have undertaken. The file also shows that the Department made enquiries with the religious order, the Department of Education and the Department of Social Protection while considering the woman's application.

### Outcome

The complaint that the application should not have been refused based on the dismissal of the Court proceedings was upheld. The Department agreed to take the application back and make a decision based on the merits of the woman's application. The complaint that there was no formal oral hearing and the examination was inadequate was not upheld. The scheme is approved by Government and the Department was acting in accordance with the scheme.

# Legal

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## Legal Services Regulatory Authority

Examination of complaint

OMB-67767-D6L4M5

# *Not Upheld*

Background

A man complained that his complaint about a solicitor to the Legal Services Regulatory Authority (LSRA) had been deemed inadmissible as the LSRA found that the matter was “without substance or foundation”.

Examination

The Ombudsman examination of the LSRA’s documents showed that the LSRA had followed the process as set out in the Legal Services Regulatory Act 2015. It began a preliminary examination as prescribed in the Act and contacted the solicitor for her response. After examination of the response the LSRA provided a copy to the complainant and asked if he wished to make further comment. Following receipt of the complainant’s further comments the LSRA found the complaint inadmissible under section 58(2)(b) as it was “was without substance or foundation”.

Outcome

The LSRA had correctly followed the procedures for preliminary examinations as set out in the Act. Although the man did not agree with the LSRA’s decision, the Ombudsman’s remit does not allow examination of the actions of the individual solicitor and there was no maladministration in relation to the processes followed by the LSRA.

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## Legal Services Regulatory Authority

Entitlement to make a complaint

OMB-67775-W6W7P2

# *Not Upheld*

Background

A woman was a ‘residual beneficiary’ under a will and sought to make a complaint of inadequate services about the solicitor who administered the will. A ‘residuary beneficiary’ receives the “residue” of an estate or trust – that is, all of the property that’s left after specific gifts are distributed. The Legal Services Regulatory Authority said the case was inadmissible as the woman was not a client of the solicitor.

## Examination

When the Law Society previously handled complaints of inadequate services the Solicitors (Amendment) Act 1994 expressly stated that ‘residual beneficiaries’ were clients and therefore allowed to make such complaints. However, when the LSRA came into being the legislation omitted this provision and therefore, ‘residual beneficiaries’ are no longer allowed to make such complaints. The LSRA clarified that this was an oversight and not the intention of the LSRA.

## Outcome

The LSRA is seeking to have legislation enacted which would allow ‘residual beneficiaries’ to make complaints of inadequate professional services.

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## Legal Aid Board

### Waiving of contribution fee

OMB-44597-S0B6Y8

### # *Not Upheld*

### Background

A man complained to the Ombudsman about the Legal Aid Board (LAB) when it refused to refund his €30 advice consultation fee. He complained that the LAB could have told him by email prior to the advice consultation that he did not have a case.

### Examination

Under Section 37 of the Civil Legal Act, 1995 the LAB may prescribe the conditions under which legal aid and advice shall be available. The LAB clearly outlined its conditions to the man which say that:

- “Civil legal aid and advice is not usually free ...”
- “In most cases, you will have to make a payment that we call a contribution. The minimum advice contribution is €30. Depending on your income, you might have to pay up to €150.”
- “If you cannot afford to pay the contribution, you can apply to the Board to have it waived.”

The man applied to have the €30 contribution fee waived prior to his consultation. The application was refused. However, he decided to go ahead with the advice consultation and paid the €30 consultation fee.

### Outcome

There is no provision under the Act to refund the contribution fee if the advice is that there is no legal case to pursue. The LAB explained that it could not advise the man about his case through email. The purpose of having an advice consultation is to determine whether the case fulfils the criteria for obtaining legal aid.

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# Local Authorities

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## Carlow County Council

Housing Loans & Grants

OMB-38108-T5D8V5

# *Upheld*

Background

A man contacted the Ombudsman as he was unhappy with a decision made by Carlow County Council in relation to his application for a home construction loan. The man had applied for a loan with the Council to build an extension onto his house. He was approved for a loan of €38,000. However, the Council subsequently said his loan was not approved.

Examination

The Council had sent the loan approval documentation to its solicitors, who said that there was a significant risk attached to the loan as there was a mortgage on the property and the lender would have the first legal charge on the property in the event of a loan repayment default. The Council withdrew its loan offer two months later. The man appealed the Council's decision. After seeking legal advice the Council offered him an unsecured loan of up to €15,000, but this did not cover the cost of the build.

Outcome

After examining the relevant records, the Ombudsman believed that the man could comply with the conditions set out by the Council and should be approved for the loan. He asked the Council to review its decision. The Council approved the full loan subject to certain terms and conditions.

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## South Dublin County Council

Housing - Transfer list

OMB-43724-H5L5L3

# *Upheld*

Background

A woman applied for a housing transfer in 2012 as her current accommodation was overcrowded. The Council removed her name from the transfer list due to rent arrears in 2015. When her arrears were cleared, the Council put her to the bottom of the transfer list in 2017. The woman complained to the Ombudsman that it was unfair of the Council to remove her from the transfer list in the first place and that this resulted in her and her family living in grossly overcrowded accommodation. The Council said the application for a transfer was not accepted in 2012 due to arrears and that the woman has only been on the transfer list since 2017.

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### Examination

The Council's Allocation Scheme at the time stated that:

“any transfer will take account of rent arrears but allowances may be made where an agreement is in place and being adhered to by the tenant to address any such arrears over an agreed period of time”.

There was no provision in the Council's Allocations Scheme to remove an applicant for rent arrears. The Ombudsman considered that the woman should have remained on the transfer list and her arrears, if any, should be considered prior to the allocation of alternative accommodation. Having examined the relevant documentation he also considered that the woman's application for a transfer to alternative accommodation was accepted by the Council in 2012.

### Outcome

The Ombudsman upheld the complaint. The Council reviewed its decision and made the woman an offer of a transfer to alternative accommodation which she accepted.

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## Laois County Council

Housing - Allocation

OMB-40044-D6T8S5

### # Assistance Provided

#### Background

A woman applied for housing to Laois County Council. Her application was refused because she had voluntarily given up a council house in another county. The Council's Housing Policy provided that applicants in the woman's situation would have to wait a period of twelve months before being accepted on to the housing list.

#### Examination

The woman had a number of health issues and that there had been issues with anti-social behaviour which forced her to move from her previous home. Furthermore, she was receiving treatment in Portlaoise Hospital and her family support network was in Portlaoise. She and her children were staying with her sister's family and there were eight people living together in overcrowded conditions. Following the Ombudsman's intervention, the Council agreed to place the woman on the housing list. She then qualified for Housing Assistance Payment (HAP). However, despite the fact that she qualified for an enhanced HAP payment of €732, she was unable to obtain private rented accommodation in Portlaoise for less than €1,000 and she couldn't afford this on a disability payment. After contacting the Council, it was agreed that the HAP Assistance Officer would contact her to assist her in obtaining accommodation.

#### Outcome

The Council agreed to place her on the housing list and would provide her with assistance to secure private rented accommodation pending being allocated a Council property.

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## Limerick City and County Council

Planning Enforcement

OMB-54237-B1L5P3

# *Partially Upheld*

### Background

A couple made a complaint to the Council about what it believed was an unauthorised development but did not receive a copy of the Warning Letter that issued to the developer, which is required under the planning legislation. The couple were also not happy that the Council:

- had uploaded a submission from the developer to the online planning file in response to the Warning Letter that contained negative information about them and,
- had not pursued enforcement action regarding the developer raising the height of a site adjacent to them.

The couple wanted an apology from the Council for uploading personal information and wanted it to take enforcement action regarding the site being raised.

### Examination

The Council removed the portion of the developer's submission that contained information about the couple from the online planning file after the couple's complaint. It also issued a letter of apology to the couple after their complaint to the Ombudsman.

In relation to the failure to copy the couple with a the Warning Letter, the Council said that new procedures had been put in place to ensure a similar situation did not occur in future, that is, two people now check the file. Regarding enforcement action, the Council said that following its site inspection it was satisfied that the site had not been raised by more than one metre and, therefore, it was exempt from the requirement to obtain planning permission.

### Outcome

The Ombudsman was satisfied that the Council's apology and its review of procedures was a reasonable response to the complaint. The Council had also provided reasonable evidence to support its decision not to pursue enforcement action regarding the height of the site being raised.

## Kildare County Council

Planning Administration - Statutory consultation

OMB-55149-N3N3N2

# *Not Upheld*

### Background

A man complained that a developer had constructed a five metre 'bridge' on behalf of Kildare County Council without the required public consultation process taking place. The man also said that the development was on an Architectural Conservation Area but the relevant statutory bodies had not been notified during the planning process.

### Examination

The Council said that what was constructed was a small pedestrian crossing over a culvert and the works were not undertaken by or on its behalf. Therefore, the public consultation process did not apply in this case. The Council also said the area on which the works took place was not a protected structure or a heritage site and so there was no requirement to notify statutory consultees during the planning process.

### Outcome

The Ombudsman examined the documentation relating to the development and the planning process. There was no evidence of any contract between the developer and the Council, so it was clear the works were not carried out on the Council's behalf. It was also clear that the development could not be reasonably described as a 'bridge'. The relevant development plan did not list the area as a heritage site. Therefore, there was no requirement to notify certain parties such as the relevant Minister.

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## Cork City Council

Parking Fine

OMB-39181-G7J9W8

# *Upheld*

### Background

A man complained that he was issued a parking fine by Cork City Council, despite having paid for parking. The man paid for parking on a mobile phone app and mistakenly omitted a digit from his car's registration number when entering his details on the app. The man said that the app should not have accepted payment for an incorrect registration number as it would not have accepted an incorrect credit card number.

### Examination

The man had submitted two appeals against the parking fine to the Council. The first appeal had been dismissed because the Council could not determine whether the man had paid for parking through the app. The second appeal was dismissed because the man had paid

the parking fine before the appeal had been decided and the Council took the payment as confirmation that an offence had been committed. When the Ombudsman contacted the Council, it checked the records again and could then confirm that the man had paid for parking.

#### Outcome

The Council agreed to refund the man the parking fine. However, the Ombudsman had concerns over the handling of the appeals. The Ombudsman queried why it could not be confirmed if the man had paid for parking on his first appeal and why his second appeal was dismissed after he had paid the fine. The Council said that parking app is operated by a third party and it had initially told the Council that it could not confirm that the payment was made. The Council later checked with the app operator again and at that stage it confirmed that parking had been paid. The Council also said that in the past it had found that payment of a fine was an indication that an offence had been committed. The Ombudsman pointed out that that the failure to pay a parking fine by a set date can result in court action so it is entirely possible that an appellant could pay the fine to avoid incurring late payment penalties or going to court without necessarily admitting an offence was committed. The Ombudsman said that it would be better administrative practice to ask an appellant who has paid their fine if they wish to withdraw their appeal before dismissing it on the basis that the fine has been paid. The Council accepted this point.

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# Private Nursing Homes

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## Private Nursing Home

Notice to leave

OMB-57887-W9W3N0

# *Upheld*

Background

A woman complained to the Ombudsman that her 90-year-old mother, who had a diagnosis of dementia, had been informed by her nursing home that her contract was to be terminated within one month. This followed a number of disputes between the woman and the nursing home. According to the woman's daughter, she had raised a number of concerns with the home and had also raised some of the concerns with HIQA. She was subsequently told by the home that she had four weeks to locate a new home for her mother.

Examination

Due to the nature of the complaint and the fact that there was only a short time remaining when the resident would have to leave the home, the Ombudsman's Early Resolution Team contacted the home immediately by telephone to discuss the complaint. The Ombudsman then requested a detailed report from the home. The woman's daughter subsequently contacted the Ombudsman's office to say that her mother and her family had been called into a meeting with the nursing home management.

Outcome

Following this meeting, her mother was told that the nursing home was withdrawing the termination of contract notice. The resident and her family were very happy with the outcome and thanked the office for its assistance.

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## Private Nursing Home

Care and treatment

OMB-23243-S0D5M9

# *Not Upheld*

Background

A woman complained about the care provided to her husband in a nursing home. She believed that her husband was neglected and not treated for a lung infection, dehydration, pressure sores and weight loss. She acknowledged that staff did their best to care for her husband but felt that the nursing home did not have the necessary staff numbers or expertise to care for people with dementia.

### Examination

The Ombudsman examined records of the man's care and treatment. The man's condition and the home's responses to it were well-documented. There was no evidence to support the contention that he was neglected.

As well as being cared for by staff in the nursing home and the GP, he was also reviewed by the Department of Medicine for the Elderly in Connolly Hospital, a dietician, a physiotherapist and a consultant psychiatrist in the Mental Health Services. While the standard of care may not have been what the woman expected, the Ombudsman was satisfied that all due care and attention was provided to her husband.

### Outcome

The Ombudsman was satisfied that the nursing home had cared for the man and that there was no evidence of neglect.

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## Private Nursing Home

### Additional charges

OMB-55381-K3R1P7

### # Upheld

### Background

A man complained to the Ombudsman, on behalf of his mother, when the nursing home introduced an additional charge of €7 per day (€212.91 per month) for additional services such as dental, GP, optical, physiotherapy and recreational services. His mother was a resident at the nursing home under the Fair Deal Scheme and her contribution was calculated at 80% of her income. The additional charge meant that his mother's total monthly bill exceeded her income. Furthermore, the woman was incapacitated so she was not in a position to avail of many of the services.

### Examination

Some of the additional services, listed by the nursing home, such as GP services and pastoral care, were already included in his mother's contract of care. The contract with the nursing home also said: 'Arrangements can be made for services as required such as Dental, Optical, Chiropody, Physiotherapy, Rehabilitation exercises, Hairdressing and Newspapers. These and other appropriate services may be arranged through the Person in Charge. A fee will be charged for such services'.

In the circumstances, the Ombudsman asked the nursing home to reimburse the additional charge to the man's mother and said that any additional services provided to her should be charged in accordance with her contract of care.

### Outcome

The nursing home waived the €7 per day additional service charge and refunded the amount the man's mother had paid since the introduction of the additional fee.

## Private Nursing Home

### Charges

OMB-43652-W0C6Y1

# *Partially Upheld*

### Background

A man complained to the Ombudsman in relation to fees charged for his stay at a private nursing home. The man stayed at the nursing home for 13 nights (two weeks) following a request from the Mater Misericordiae Hospital for two weeks of convalescence. He left €1,400 in the residents' safe. He complained that this money was taken from the safe without his permission, as a contribution towards the cost of his stay at the nursing home. It was his understanding that it was free respite care.

### Examination

The Ombudsman was satisfied that the man was admitted to the nursing home as a private patient. He noted that the medical team at the hospital tried to get publicly-funded respite care for him and when it could not, the man provided them with the name and number of the nursing home in question. He had stayed there previously on two occasions as a private patient. The Ombudsman established that it is a private nursing home with no agreed funding arrangement for respite beds with the Mater Misericordiae hospital. He noted that the man signed a VHI Claim Form (non-direct payment), on the basis that he was going to make a claim under his policy for respite/convalescence care. His entitlements under his medical card were also outlined to him in a letter from the National Medical Card Unit, Primary Care Reimbursement Service. While the man was liable for the fees in respect of his stay at the nursing home, the Ombudsman considered that the €1,400 should not have been taken from the residents' safe without his permission and that it was taken without proper authority.

### Outcome

The Ombudsman was satisfied that the man was admitted to the nursing home as a private patient. However, he found that the nursing home acted without proper authority in taking €1,400 from the safe without his permission. The nursing home apologised to the man for this action.

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## Private Nursing Home

### Care and Treatment

OMB-38571-V6Y4Z8

# *Not Upheld*

### Background

A man complained about the care provided to his father in a nursing home. He believed that his father was neglected and not treated for a sore on his heel. He said that his father was left for over 10 weeks in the nursing home before any action was taken to transfer him to hospital

and the lack of occupational therapy or physiotherapy impacted on the development of the sore on his father's heel.

#### Examination

The Ombudsman could not examine the clinical aspects of the man's father's care as these are outside his remit. However, he was satisfied that all reasonable care was provided to the man's father. There was no evidence in the records, which were well documented, to support the contention that he was neglected. The man was monitored closely throughout his stay and he was seen regularly by the GP and a physiotherapist. There was no evidence to show that the lack of occupational and/or physiotherapy impacted on the development of the sore.

#### Outcome

The Ombudsman was satisfied that the nursing home had provided appropriate care for the man and that there was no evidence of neglect.

# Social Protection

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## Department of Social Protection

Invalidity Pension - overpayment

OMB-57458-W7G1K9

# *Not Upheld*

### Background

The Department of Social Protection notified a man that he had incorrectly received over €77,000 in social protection payments over a number of years. The man disputed this saying that he was entitled to an Invalidity Pension (IP) backdated to the mid 1990's. The man said that he suffered a brain injury as a result of an accident. He said that his injury did not change from the mid 1990's and that he was entitled to an IP from the time of the accident. The man said he found work that was of a rehabilitative nature.

### Examination

An Invalidity Pension is a payment for those who are permanently incapable of work and who satisfy a number of other contribution conditions. The man's application for IP was refused because he was not **permanently** incapable of work and had secured paid employment. One of the conditions for entitlement to IP is that the person must not engage in work. A person in receipt of IP can engage in training, education studies and/or voluntary work of a light nature for which there is no salary. In this case the man was in receipt of payment for work he carried out and the work could not be described as being of a rehabilitative nature. The man was not entitled to Disability Allowance as his means exceeded the statutory limit for entitlement to DA.

### Outcome

The Department was acting in accordance with the relevant legislation and schemes, and its decision to refuse his retrospective application for IP was also correct. The Ombudsman explained the conditions of the various schemes to the man, and noted that he had not provided the Department with all the relevant information relating to his income.

## Department of Social Protection

Jobseeker's Allowance - overpayment

OMB-56638-S3X8W0

# *Upheld*

### Background

A woman complained to the Ombudsman when she was notified by the Department of Social Protection that she had to repay €7,500 in social welfare payments that had been made to her over a four-year period. She had received a number of social welfare payments at different stages over the four years but said she had notified the Department of her change in circumstances at every stage.

### Examination

The woman was awarded Jobseekers Allowance (JSA) when she was 18. After that she was awarded the Back to Education Allowance (BTEA) which was paid at the full rate. After she became ill she was then in receipt of Supplementary Welfare Allowance (SWA). When she recovered, she returned to education and was again receiving the Back to Education Allowance. After completion of her education, she went back to receiving JSA. She was subsequently notified about the overpayment.

The Department confirmed that it put the woman on an incorrect rate of payment at various periods during the four-year period. As the woman was under 26 at the time, a Reduced Rate Allowance of €100 should have been paid to her, but she was paid the full weekly allowance of €188. The Department also failed to follow the correct procedures in assessing and processing the overpayment. It accepted that it did not issue a 'revised decision' to the woman and did not inform her of her right to appeal the decision even though she told the Department that she wished to appeal.

### Outcome

The Department accepted that the overpayment arose as a result of its error. The Department cancelled the overpayment and repaid the amount it had recovered from the woman. Following discussion with the Ombudsman, the Department confirmed that its staff had undergone extensive training and that it was fully committed to eliminating these type of errors

## Department of Social Protection

Carer's Allowance - refused

OMB-61275-Y8Y9R6

# *Upheld*

### Background

A woman applied for Carer's Allowance in respect of her brother-in-law. The application was refused by the Department of Social Protection, as was a subsequent appeal, on the grounds that the woman's brother-in-law was capable of living independently.

### Examination

The woman proved letters from a GP, a social worker and a consultant psychiatrist confirming that the man would not be capable of independent living without the care he was being given by the woman.

Having examined the documentation and the Department's file, the Ombudsman asked the Department to review the woman's claim for Carer's Allowance. The Department said that the new medical evidence had not been seen by its Medical Assessors.

### Outcome

Based on the opinion of its Medical Assessors, the Department awarded the claim for Carer's Allowance with effect from the date the woman applied. The woman received arrears of €7,948.

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## Department of Social Protection

Jobseeker's Allowance - overpayment

OMB-38597-Q5Q4Z1

# *Upheld*

### Background

A woman received a letter from the Department of Social Protection in May 2015 saying that it had overpaid her over €4,000 in relation to Jobseeker's Allowance. The woman said that she had given all the correct information to the Department at the time of her application. She contacted the Department and it informed her that there were different rates of payment of Jobseeker's Allowance depending on her age. The woman said that she was unaware of the different rates of pay. She also said the Department was responsible for the error and that it did not identify the mistake for about two years, effectively allowing the overpayment to escalate.

### Examination

The Department accepted that it was its error that led to the overpayment. It also confirmed that it did not send her a 'revised decision' letter to notify her of the overpayment, nor did it advise her of the option to appeal the decision.

### Outcome

The Department agreed to cancel the overpayment. It also confirmed that it would refund the amount already repaid to it.

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## Department of Social Protection

Jobseeker's Allowance - refused

OMB-41496-T5H3F3

# *Not Upheld*

### Background

The man worked as a Poll Clerk and he was subsequently informed that his Jobseekers Allowance would be stopped, and he would have to repay the allowance already paid to him. The man argued that his means and income had not been calculated correctly by the Department.

### Examination

The Department provided details of its calculation and explained that employment as a Poll Clerk is a 'contract of service' being paid as an employee of the Department of Communications, Climate Action & Environment. Social welfare legislation provides that income earned as a 'contract of service' constitutes 'weekly means' and, therefore, the Department was correct in calculating the overpayment of Jobseekers Allowance.

### Outcome

The Ombudsman was satisfied that the Department had calculated the man's income and means, and correctly withdrew his Jobseekers Allowance for the period in question.



# 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 6 Earlsfort Terrace, Dublin 2.

Tel: 01 639 5600

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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