



The Ombudsman's CASEBOOK

Office of the Ombudsman, Ireland

Winter 2020

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Delivering services in a Covid world

WELCOME to the December 2020 Casebook. It contains the usual mix of cases from across the public service. We know from our conversations with readers that it is a useful source of learning, and helps to highlight areas where possible service failures can be avoided. By including cases which were not upheld by my office, it also highlights that we take an objective approach in our consideration of complaints and we are happy to highlight good practice where we find it.

It would be impossible to write at the moment without acknowledging the context in which public services are being delivered. Can I start by offering my thanks to all of those who are working with people who have been infected, the staff in our hospitals, health services and care homes. I would particularly like to pay tribute to those health workers who have lost their lives. We all owe them a huge debt of gratitude.

I am conscious also of the huge contribution of staff across public services. Many have moved to working online, and have had to implement major changes both to the way in which services are delivered, and to introduce new initiatives at short notice, such as the Pandemic Unemployment Payment. Again, our thanks are due to all of those who have worked in a typically public-spirited way.



Ombudsman Peter Tyndall

We also have had to adapt. We moved to online working once the lockdown commenced and have been able to respond to complaints as normal. The number of complaints we have received is broadly similar to last year. We have had to adapt some of our ways of engaging. For example, our Outreach programme has been carried out through webinars and other remote methods. My thanks are due to our staff for their flexibility and commitment.

Can I conclude by wishing you all a safe, healthy and happy Christmas.

Peter Tyndall December 2020

Companies Registration Office

Companies Registration Office (CRO)

Error in late annual return

OMB-40165-R1M2W1

Assistance Provided

Background

A man complained about the Companies Registration Office's (CRO) decision to reject his annual return for his company which meant he could face penalties for a late return.

It appeared to the Ombudsman that the man had made a genuine effort to complete his return on time.

Examination

The CRO explained that there had been a number of issues with the company's return dating back to the man's first annual return in 2017. The man had accidentally entered "1 December 2016" on the appropriate form (B1) as the date for the end of his financial year. The financial statements which he lodged had the correct date for the financial year-end as "31 December 2016".

The CRO agreed that it should have returned the man's submission when it received it and told him that the two dates did not match. It also agreed that it should have advised the man to submit a form to change the mistake (B1B form).

Outcome

The CRO amended the appropriate dates and agreed to regard his 2018 annual return as filed on time, so avoiding any penalties for a late return.

Direct Provision

Reception and Integration Agency

Re-admission to accommodation centre refused

OMB-30474-R9S1Q3

Upheld

Background

A non-governmental organisation (NGO) complained to the Ombudsman on behalf of a man who had been refused re-admission to direct provision accommodation by the Reception and Integration Agency (RIA). The man approached the NGO looking for help with a request for re-admission to the accommodation system.

Examination

The man had previously been in direct provision accommodation up to the beginning of 2018, but left due to alleged tensions between residents and staff. In August, the man sent a request for readmission to RIA because the friend he had been staying with since leaving Direct Provision was due to leave the country that week. He would have no means to support himself and would be homeless by the end of the week. This request was refused by RIA which said that it was not in a position to offer the man accommodation at present.

The man's living situation became very precarious. He was homeless and resorted to sleeping on the streets. The man attempted to access homelessness services and emergency accommodation, but was turned away because he is still in the International Protection process and therefore is not entitled to State homeless support services.

Outcome

Given the man's entitlement to direct provision accommodation the Ombudsman asked RIA to review its decision to refuse re-admission. RIA agreed and re-accommodated the man.

Education

Student Universal Support Ireland (SUSI)

Higher education grant refused

OMB-16323-L6Q7Q5

Partially Upheld

Background

A student applied to SUSI for a grant to pay fees for the 2017/18 year. In completing the renewal form in September he made some errors which resulted in his application being refused. He said that he had not received notification from SUSI of the rejection of his application. By the time he realised the grant had not been paid it was too late for him to make a late application.

Examination

Letters sent by SUSI are not registered because of the volume of correspondence involved in the process. However, there is also e mail and online correspondence between the student and SUSI. In this case the student misunderstood the message he received and did not realise his application had been refused.

Outcome

The Ombudsman accepted that there was no reason why the student would not have made a late application with the correct information had he been aware of the problem. He accepted that a misunderstanding arose due to the terminology used. The Ombudsman asked SUSI to accept a late application provided the required information was submitted quickly by the man. SUSI accepted the man's late application.

Galway Mayo Institute of Technology

Wrong exam taken

OMB-38099-V8G0G6

Assistance Provided

Background

A student arrived late for her second-year college exam. She asked for the paper for her exam but was given the wrong paper. The paper she was given was for a similar topic, and one which she had studied previously and with the same lecturer.

Not realising the error she sat the paper. It was only when the results were posted some time later, and she was listed as not attending the exam, that she realised what had happened. She

asked that the college allow her to complete a project in lieu of the “missed” exam. The college rejected her request and indicated that the invigilator said she had been given the correct paper. The college also believed that she had a responsibility to ensure that she had been given the correct paper.

Examination

The Ombudsman considered that there was a certain onus on the college to ensure that the correct papers were provided to students. He was however also mindful that some responsibility for the matter lay with the student.

Outcome

The college introduced new procedures to ensure this was unlikely to happen again. As a gesture of goodwill the student was allowed to repeat the exam during the summer session with no exam/ repeat fees. The Ombudsman considered this to be a reasonable response by the college.

Student Universal Support Ireland (SUSI)

Higher education grant refused

OMB-37589-Q1L6X8

Assistance Provided

Background

A man complained about SUSI's decision not to award him a student grant for the 2018/19 academic year. The man had been working in Canada for a number of years but had returned to Ireland to go to college. The man moved back to his parents' home on his return to Ireland. For the purpose of assessing his eligibility for the grant, SUSI assessed the man as a 'dependent' student.

Examination

SUSI assesses an applicant's means on the basis of their previous year's income. As a dependent student SUSI took account of both the income in Canada in the previous year and his parents' income in that year.

The man contended that as SUSI assessed him on his previous year's income it should assess him as an independent student as he had been living independently in that year. (An independent student can qualify for a higher grant than a dependent applicant).

SUSI said that the man was not living independently so he could not be assessed as an independent student. The man had not informed SUSI that his income in 2018/19 would not be as high as his income while in Canada in 2017. The man assumed this would be obvious as he was no longer in Canada. Removing the man's 2017 income from the assessment would be likely to bring him below the qualifying threshold for the grant.

Outcome

There is provision for SUSI to review an application if the applicant's circumstances (for example, income) have changed. In this case, the fact that the man had left employment would warrant such a review. SUSI agreed to review the man's eligibility.

DARE (Disability Access Route to Education)

Application refused

OMB-40523-Z5M1L8

Not Upheld

Background

A student had been involved in an accident which caused a temporary disability in the months leading up to the Leaving Certificate examination. The student applied to be included under the DARE scheme in order to access a number of college courses which had reserved DARE places. His application was rejected as it was considered that his disability was considered to be temporary.

Examination

While sympathetic to the student's difficulties, the Ombudsman accepted that the DARE scheme was not intended for situations where temporary disability arose. The disability had to be one which was enduring and expected to continue for at least 12 months. Although the student had suffered injuries which affected his studies he was expected to recover from the injuries.

Outcome

The Ombudsman accepted that the application had been processed in accordance with the scheme.

Student Universal Support Ireland (SUSI)

Higher education grant refused

OMB-10789-C7L9D0

Not Upheld

Background

A student complained that she was originally assessed as a 'dependent' of her parents when she first applied to SUSI in the academic year 2016/2017. As a dependant of her parents she would not be eligible for the grant as her parents' income exceeded the threshold for the scheme.

The student had moved to local authority accommodation for herself and her daughter in December 2016. She was no longer a dependent of her parents and wanted to be assessed as an independent 'mature student'. A 'mature student' is defined as someone who is 23 years of age at the point of entry to higher education and has proof that they are supporting themselves for a period of time before starting their studies and be independent of parental means. Her application was refused.

Examination

The Department of Education and Skills explained that a student's status is determined at the time they apply. There is no legislative provision to allow re-classification unless a student has a break in studies for at least three years. The Department said 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. Some students 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 mature students.

Outcome

As the legislation provides for determination of the student's status at the time of application the Ombudsman was satisfied that SUSI had acted correctly. The Ombudsman informed the student of discretionary funding available to students who are experiencing financial hardship.

Health

Health Service Executive

Treatment Abroad - Cross Border Directive

OMB-13282-Z1X0Y4

Upheld

Background

A woman who had been referred by her GP to hospital for a hip replacement operation decided to avail of surgery abroad under the Cross Border Directive. However, when the woman applied for reimbursement to the HSE in March 2016, she was told that it was seeking clarification on how the woman had been referred for treatment. The HSE said that the documents she had submitted were not compliant with 'public patient pathways'. The woman had appealed to the Assistant National Director who assured her that her case was being actively reviewed to allow a decision be made. However, after two years without a decision, the woman contacted the Ombudsman.

Examination

The HSE said that it was seeking access to the patient's records in the hospital before deciding on the application. While the woman's name had been placed on the in-patient waiting list, it was unclear how this had happened as she had not been seen by the consultant as an out-patient at that time. The Ombudsman examined the case and in particular the referral letter from the woman's GP to the hospital. The referral letter should have been sufficient for the HSE to reimburse the appropriate cost of treatment. The Ombudsman asked the HSE to review the case.

Outcome

After it reviewed the case the HSE agreed to reimburse the woman €10,821 towards her cost of care abroad. This represented the public rate for a hip replacement in Ireland.

Health Service Executive

Hospitals - Lost Property / Failure to contact relatives

OMB-12226-B3F4L6

Upheld

Background

The Ombudsman received a complaint from the daughter of a man who was admitted to a hospital by ambulance. The man, who was cognitively impaired, was transferred to another hospital the same day. However, a number of personal items were lost, including a large sum of money. In addition, the hospital did not contact any family member prior to the man's discharge from the first hospital.

Examination

The hospital said that it was not its practice to keep an inventory of items that patients bring to the hospital. The HSE said that the priority for hospitals is to provide medical care. The Ombudsman was concerned that there were a number of administrative failings, including lack of awareness of the complaints procedure and an absence of records verifying compliance with procedures.

Outcome

The HSE sent two letters of apology to the family. The first apology did not contain a proper apology and referred to the loss of the property only. The Ombudsman asked the HSE to send another apology to include an apology for its failure to contact a family member prior to his discharge from hospital.

The HSE said that it would change its Complaints Procedures and advise of how and where a person can seek a review of a decision. It also developed a new Patient Property Policy in relation to belongings of elderly patients and those with cognitive impairment. In addition, it provided training and education on the importance of communicating with families about the treatment of a relative.

Health Service Executive

Treatment Abroad - Cross Border Directive

OMB-39625-V5B6L9

Assistance Provided

Background

An 81-year-old man travelled to Northern Ireland to have treatment for cataracts. His application under the Cross Border Directive for reimbursement of his costs was refused. He had paid a total of £1,420 for treatment.

The man's optician had written to the man's GP in May 2018 saying that he needed treatment for cataracts. In August 2018 he sought an urgent referral letter from his GP to have the treatment in Northern Ireland as a local politician was organising a bus for a group of patients to have treatment there. The GP provided a referral letter which was addressed "to whom it concerns" and which contained details of his medical history and medications. When he sought reimbursement from the HSE, the application was refused because the referral letter did not specify the doctor or hospital to whom the patient was being referred.

Examination

The GP had provided the letter of referral at the patient's request in order that he could avail of the opportunity to travel with other patients to Northern Ireland.

The HSE had refused the application for reimbursement because the referral wasn't a valid referral letter. The HSE said that a referral had to meet the criteria in the Irish College of General Practitioners (ICGP) guidelines and must include the name and address of a consultant who can accept responsibility for the patient. It was pointed out that a referral letter carries with it clinical responsibility for the patient and is the way in which a patient's care is transferred between one physician and another. The GP subsequently sent confirmation to the HSE that the referral letter which had been supplied to the HSE was wrong and should have contained the consultant's name and the hospital details. The GP then sent the HSE a copy of the corrected referral letter.

Outcome

After a review the HSE agreed to allow the claim. The Ombudsman's examination was completed as costs were reimbursed to the man.

The case shows the importance of ensuring that referral letters contain the name and address of the treating consultant or clinical lead, the hospital where treatment will take place, and all other relevant information before undergoing treatment under the Cross Border Directive. THE ICGP has a Guidance Document which is available on www.icgp.ie which sets out the information required to be provided in referral letters.

Health Service Executive

Reimbursement of Expenses for Organ Donors

OMB-37296-L6J3B1

Not Upheld

Background

In January 2018 a woman became an organ donor for her daughter who required a kidney. She became aware of a HSE scheme whereby living organ donors can obtain reimbursement of certain expenses while they are in hospital and are recovering following the surgery. Both the woman and her husband were self-employed. Both of them had to take time off from work for the procedure. They also had to employ someone to replace the woman while she had the surgery and recovered. However, when the woman claimed under the scheme she qualified for €122 per week for twelve weeks only, which did not cover all of her expenses.

Examination

The Reimbursement of Expenses for Living Donors Policy was introduced by the Minister for Health to minimise financial disincentives for potential living donors, with a view to ensuring that the pool of such donors continues to expand. The policy allows for loss of earnings up to a maximum of €10,000 to be paid. Vouched travel and accommodation expenses may also be reimbursed up to a maximum of €6,000.

Where PAYE workers are not eligible for payment by their employers, and if they are not entitled to any Department of Employment Affairs and Social Protection or other income continuance payment, they can submit their most recent P60 and payslips for the preceding six months with their application for payment.

Self-employed donors must submit a Notice of Assessment and the Revenue Commissioner's Form 11. Reimbursement is calculated on the basis of 12/52 of the donor's income in the preceding twelve-month tax period.

The Ombudsman noted that self-employed peoples' income tax liability is assessed on a previous year basis, so the woman's 2017 assessment was based on her income in 2016 rather than the amount earned in 2017, as would be the case if she were a PAYE worker. Given that the business was only in operation for 10 months in 2016 her income was considerably less than in the year she suffered the loss of earnings. Furthermore, a self-employed donor may have to employ someone to cover for them while they are having the surgery and no consideration is taken of the costs involved in this under the Policy

Outcome

The Ombudsman could not uphold the complaint as the HSE had applied the Policy correctly. However, the Ombudsman has written to the Minister for Health to advise him of possible anomalies in the Reimbursement Policy which could result in self-employed people being treated unfairly compared with PAYE workers.

Connolly Hospital Blanchardstown

Access to records

OMB-23442-M2N6Q3

Upheld

Background

A man had a procedure in Connolly Hospital. Two days later the man was experiencing chest pains so he went to the Emergency Department in Connolly Hospital. However, the hospital staff could not access the medical records from the procedure the man had undergone two days before. The man complained that there could have been serious consequences in an emergency as hospital staff were unable to access his medical records.

Examination

The man's procedure had taken place on Thursday. Following his procedure staff sent the man's medical records to the Hospital In-Patient Enquiry (HIPE) Department on Friday for coding. His medical records remained in the HIPE Department over the weekend. Therefore, they were not accessible by the medical staff when he arrived in the Emergency Department on Saturday.

Speedy access to a patient's medical records is essential to assist hospital staff provide the best care to any patient and a lack of up to-date information can lead to the unnecessary duplication of tests or misdiagnosis.

Outcome

Following the complaint, the hospital introduced new protocols. These protocols facilitate the retrieval of charts out-of-hours. Security staff will now help Emergency Department staff to access the HIPE over the weekend and during out-of-hours periods.

In addition, the hospital undertook an audit to test the accessibility of healthcare records to clinicians, out-of-hours and at weekends. Finally, the hospital reassured the man that the lack of availability of his medical records on that occasion did not alter the clinical management of his condition. The Ombudsman was satisfied that the hospital took the matter seriously, acknowledged there was a problem and took the necessary corrective action to address the issue.

St. Luke's Hospital Kilkenny

Care and treatment

OMB-37153-M5G1R5

Not Upheld

Background

A woman complained that when she was in hospital after an operation she had difficulty communicating with staff, was not provided with assistance with her mobility and was discharged in a rush. She also complained that she was given medication which she was allergic to.

Examination

The hospital had met with the woman on a number of occasions and also written to her in relation to her complaint. The hospital had admitted and apologised for its failings with regards to communication around both mobility and discharge. The hospital also apologised for the medication error.

During the course of the Ombudsman's examination the hospital provided details of the steps it had taken in an effort to prevent a reoccurrence of the communications issues. These included meetings with staff, additional staff training and the development of new information leaflets relating to post-op issues and discharge.

Outcome

From the beginning of the woman's complaint the hospital had acknowledged the errors that occurred and apologised for them. The hospital also provided details of meetings with nursing staff to remind them of procedures relating to the prescription of medication.

University Hospital Limerick

Seeking Consent

OMB-37465-J3D4H6

Partially Upheld

Background

A woman complained that she was tested for HIV as part of other treatment in University Hospital Limerick. She said that the doctor did not ask for her consent.

Examination

While the Ombudsman cannot examine matters relation to clinical judgement, he investigated whether or not consent was sought. The hospital said that verbal consent was normally sought but this was not documented on patient files so there was no way of checking whether it was sought in this case.

Outcome

The hospital accepted the woman's position and apologised to her. The hospital also confirmed that the test was necessary as part of a work-up for on oncological diagnosis.

The Ombudsman partially upheld the woman's complaint as it appeared verbal consent may not have been sought but he noted that the treating doctors had apologised to the woman.

University Hospital Limerick

Missing referrals / Refund of treatment

OMB-37949-H7Z2P3

Not Upheld

Background

A woman complained to the Ombudsman about University Hospital Limerick. She was seen by her local optician who diagnosed cataracts in her eyes. She was referred by her optician to the hospital in 2015, 2016 and 2017. Her G.P also wrote to the hospital in 2017. She said that she received no response and she was concerned about her sight. As a result, she paid to have her cataracts operated on in a local private hospital. She felt that the HSE should provide her with reimbursement given that they fund schemes such as the National Treatment Purchase Fund.

Examination

The optician provided copies of the referrals she made to the hospital. However, the hospital said that they had no records of receiving them. Following receipt of the referral from her G.P. the hospital said that the woman was placed on a waiting list to see a Consultant Ophthalmologist in 2017. She was graded with a priority of 'routine'. She was not on a waiting list for cataract surgery. She would first have to be reviewed by the Consultant Ophthalmologist to be placed on the list.

The hospital explained that it can only consider outsourcing patients under the National Treatment Purchase Fund. As the woman was not listed for cataract surgery, she would not have been considered for a scheme such as the NTPF. The hospital said that it does not pay or refund the cost of procedures which were undertaken outside of the hospital's remit.

Outcome

The Ombudsman was unable to establish what happened to the referrals from the optician. However, he was satisfied that the hospital had made reasonable efforts to try locate them. As there was no agreement in advance that reimbursement would be provided by the hospital he did not uphold the woman's complaint.

National Learning Network

Placement on course

OMB-14412-B6T5C9

Partially Upheld

Background

A woman complained to the Ombudsman on behalf of her son, who has an intellectual disability. She said that her son attended for an interview for a place on a course run by the National Learning Network (NLN). Following the interview she understood that her son would get a place on the course and she said that she was not provided with a reason for why this did not happen. She said that the National Learning Network never came back to them and did not keep them updated.

Examination

The examination of the complaint was made difficult by the lack of records. In accordance with NLN's data protection policy, information related to an unsuccessful applicant is destroyed a year after the decision on the application is made. Furthermore, a number of staff involved were no longer working in the organisation.

From speaking with staff, the National Learning Network provided the Ombudsman with a reasonable explanation as to why it felt the man was not suitable for the course. However, it seems that this was not made clear to the woman and her son. They were also not informed that he would not receive a place on the course in a timely manner.

Outcome

The National Learning Network agreed that, in future, all applicants would be informed in writing if a training programme is deemed not to be suitable. It will explain the reasons why and any alternative options. Existing policies and procedures will be reviewed in order to put this in place. The National Learning Network apologised for any shortfalls in communication.

Law Society of Ireland

Complaint examination

OMB-11032-Q5Y4M8

Not Upheld

Background

A woman complained that the Law Society closed its examination of her complaint about her solicitor as it believed the issue was appropriate for civil action. Initially, the complaint appeared to be a standard 'inadequate services' complaint and the Law Society began investigating it. In compliance with the legislation the Law Society attempted to resolve the complaint by agreement between the parties. However, this was unsuccessful.

As its investigation progressed however, the Law Society believed that the complaint related to negligence and that it would be more appropriate for it to be dealt with through a civil action. Therefore, the Law Society closed its investigation.

Examination

The Law Society was asked to provide an explanation as to how it reached the conclusion that the matter was one of negligence and it provided this. There were also documents from both the complainant and the solicitor where both parties indicated their belief that the matter was one of negligence.

Outcome

In the circumstances it was open to the Law Society to decline to make a determination or decision on the complaint. The Law Society had conducted an investigation into the complaint, had attempted to resolve it by agreement and was in compliance with the legisla-

tion when it eventually closed the case.

Local Authority

Cork City Council

Housing repairs

OMB-13218-F8Y2F3

Assistance Provided

Background

A representative complained that a woman had written to the Council about housing repairs and dampness at her home but she had heard nothing back. The woman also said she would be grateful for a new house or flat as she was recovering from injury and has had several falls.

Examination

The Council said that the property in question is a one-bedroom house which is over 100 years old. The woman has been a tenant there since 2004. Although the Council is responsible for the maintenance of the property, it said that its ability to carry out repairs is limited by a lack of resources, particularly throughout the recession.

The Council also said that the woman had submitted a number of transfer requests within the last number of years which had not been approved and it had no current application from her.

Outcome

Following contact from the Ombudsman, the Council's Area Engineer visited the woman's property and identified the repairs that were necessary. These included installation of three new windows downstairs, repointing of brickwork in the front of the building, installation of draught proofing to the front door and ensuring the wall vent was installed correctly.

The Council said it hoped to complete the works over a three-month period. The woman's requests for a transfer had been considered under the Council's Allocations Scheme but her requests were rejected because there were not enough grounds for considering that her accommodation does not meet her housing needs.

Tipperary County Council

Housing Aid for Older People Scheme

OMB-38536-R4C0V7

Not Upheld

Background

A man applied to Tipperary County Council for a grant to repair the roof of his house. He said that the felt was damaged and needed to be completely replaced. Given that the roof itself and the tiles were in good condition the Council did not agree that the felt needed to be replaced but said that some repairs were needed.

He was unhappy that he was only offered a grant of €3,000 for minor repairs because he had received quotes of around €9,000 from builders for the work. He said that the Council staff had not examined the roof properly to see the damage to the felt.

Examination

The terms and conditions of the Housing Aid for Older People Scheme provide that a Council may pay a grant for carrying out repairs to a house where, in the Council's opinion, the repairs are necessary to make the property habitable for the lifetime of the occupant.

The Council's engineer had examined the property on three separate occasions. While there was damage to the felt, there was no sign of any water ingress in the attic or any sign of sagging. The man agreed that there were no leaks into the attic. The Council said that it would be unreasonable to remove the tiles and lathes in order to install new felt, when there were no water leaks. Instead the engineer had recommended minor repairs to the barges, upgrading of lead flashing and the installation of roof vents. The Council had also provided photographs of the roof, both external and internal, which showed the good condition it was in.

Outcome

The complaint was not upheld as the Council had fully examined the property and deemed that only minor repairs were required. It had approved an appropriate amount for the repairs.

Galway County Council

Social housing allocation

OMB-37887-Q1D7Z6

Not Upheld

Background

A man complained that Galway County Council had exceeded its obligations under Part V of the Planning and Development Act 2000 when it purchased housing in an estate which already had social housing. He said that the Council purchased more than the 20% it is obliged to do under the Act. The man believed that the Council's actions could also reduce the value of the properties in the estate. He further claimed that private purchasers were prevented from buying the units as the Council purchased the units as a block.

Examination

Under Part V of the Planning and Development Act 2000 local authorities are obliged to obtain 20% of land zoned by a developer for the delivery of social housing. It also obliges the developer to allocate 20% to a local authority for the purposes of social housing. This is a minimum requirement. It does not preclude a local authority from purchasing further units or prevent a developer selling further units to a local authority. The units were sold as a block by the developer.

Outcome

As the 20% provision is a minimum requirement the Ombudsman concluded that the Council had acted within the legislation and did not uphold the complaint.

Private Nursing Homes

Care and treatment

OMB-14433-N1N3V8

Partially Upheld

Background

A man complained on behalf of his father about a nursing home where his father was resident. His father had suffered a number of assaults by another resident and the man was concerned about the actions taken by the nursing home following the attacks. The man said that following one of the assaults his father was sent to hospital without a change of clothes. The man complained about the way the nursing home responded to falls his father had in the previous 12 months.

The nursing home acknowledged that it had made a mistake in not sending clothes to the hospital and apologised. It said that its policy was to always send clothes with a resident. However, this was not what the policy said.

Examination

The nursing home provided documents showing the actions it undertook in an effort to prevent the assaults and falls that the man had suffered.

It could be seen from the documents provided that the nursing home complied with its falls policy, completed the required reports, identified possible factors that led to the falls, and identified what could be done in the future to mitigate those factors. It had also undertaken regular falls and physio assessments of the man, and regularly updated his care plan in an effort to reduce the number of falls. The man was also provided with physio treatment designed to improve his mobility and posture.

Similarly, following the assaults, the nursing home undertook appropriate actions. It prepared the required reports and documentation, reported the incidents, and identified and undertook actions in an effort to prevent future occurrences.

Outcome

The nursing home amended its policy to expressly state that residents who have to attend hospital are sent with a change of clothes and toiletries.

Social Protection

OMB-39507-G1P2M3

Domiciliary Care Allowance refusal

Not Upheld

Background

A man contacted the Ombudsman when the Department of Employment Affairs and Social Protection refused his Domiciliary Care Allowance (DCA) application. The man had applied as he was caring for his daughter. His daughter was diagnosed with Asperger syndrome and he believed that the Department had a lack of understanding of the condition.

Examination

Following an examination of the Department's files it was clear the application was refused because of lack of supporting evidence from the complainant. The application had been assessed by two medical assessors who both gave the same opinion that his daughter did not qualify for DCA, as she did not need 'full time care and attention in excess of what would normally be required by a child of similar age'.

Outcome

The Ombudsman could not uphold the complaint. The man was advised that he should provide as much medical evidence as possible if he was considering re-applying to the Department in the future, including providing reports from consultants, specialists, etc., that his daughter is attending, as well as providing a report from his own GP.

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.

About the Office of the Ombudsman

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

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/>

Contacting the Ombudsman

The Ombudsman's Office is located at 6 Earlsfort Terrace, Dublin 2.

Tel: 01 639 5600

Website: www.ombudsman.ie Email: info@ombudsman.ie

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

Feedback on the Casebook

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



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