



# The Ombudsman's CASEBOOK

Office of the Ombudsman, Dublin, Ireland.

Issue 13 August 2018

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## Working together to achieve positive outcomes

Welcome to the latest edition of the Ombudsman's Casebook. This edition follows the publication of my Annual Report for 2017 which is available here. More than 3000 complaints were considered by my Office in 2017 and many were resolved by my Early Resolution Team, leading to a speedy outcome for complainants and less overhead on the bodies complained about. I am grateful to the staff of the bodies in jurisdiction for your assistance in achieving these outcomes.

As ever, the Casebook reflects the great diversity of cases considered by my Office. There are a significant number of cases dealing with asylum and immigration matters, arising from our work in Direct Provision centres.

From the outset, we recognised that people living in the centres would face particular difficulty in complaining to my Office. Many do not have English as a first language, they may be worried that a complaint would have a negative impact on their application to remain in Ireland and their experience of authority in their country of origin may be very negative.

To counteract this, my staff have been engaged in a programme of visits to the centres.



Ombudsman Peter Tyndall

Often, issues can be resolved on the spot but on other occasions, it is necessary to undertake a more formal examination.

The summaries contained here illustrate some of the issues with which we deal. The Reception and Integration Agency, which is responsible for the centres, has been very co-operative with us in resolving difficulties which arrive. My staff also visit the specialist centres which have been established to accommodate refugees.

This month we also feature a number of hospital cases which include issues about care and treatment. Although my Office cannot look at matters concerning the exercise of clinical judgement, this does not preclude us from looking at other aspects of care. I issued a major report on

health complaints in 2015 called “Learning to get better”. This considered how the public health sector managed complaints, and made major recommendations for improvements.

My staff have been undertaking a follow-up investigation to see whether the recommendations have been implemented and whether the necessary improvements have

come about. I look forward to publishing this report in the autumn, along with a follow-up to my report “A Good Death” on end of life care.

Finally, we have been reviewing our email subscription list in light of GDPR. We are keen to ensure that this Casebook has the widest possible circulation amongst public bodies and elected representatives

so I would strongly urge you to encourage your colleagues to subscribe by simply e mailing [casebook@ombudsman.ie](mailto:casebook@ombudsman.ie) with the subject ‘Subscribe’ if they have not already done so.



Peter Tyndall August 2018

## Agriculture

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### Agri-Environment Options Scheme (AEOS)

C01/16/1474

Completed 19/09/2017

#### # Upheld

##### Background

A farmer's representative accidentally omitted to include a claim for 'Species Rich Grassland' on his AEOS application. This land constituted a significant portion of this farm. As a result of the error he was losing an average of €2,500 per annum in payments. He sought to have the application amended and was refused. His appeal was also refused on the basis that there was no provision for amending AEOS applications under the terms and conditions of the scheme

##### Examination

EU Regulation 2419/2001 provided for the establishment of a single integrated administrative and control system for handling EU agriculture aid schemes. It appears that under this Regulation there was provision for amendments in cases of 'obvious errors' on applications. On foot of our enquiries the Director of the Agriculture Appeals Office reviewed this case. She decided that based on the information provided with the application, that there had been an 'obvious error' in this instance. On that basis she overturned the Appeals Officer's decision and granted the appeal.

##### Outcome

As a result the farmer will now be paid for the Species Rich Grassland.

## Forest Premium Scheme

C01/16/1535

Completed 13/10/2017

### # Upheld

#### Background

A man complained to the Ombudsman about the Forest Service's decision to raise an overclaim in relation to a forestry grant. The Forest Service is part of the Department of Agriculture, Food and the Marine. Eighteen years after the original grant application, the man sold some of the land for which the grant was paid to the ESB for the construction of power lines. The Department recalculated the amount payable to the man for the remaining area under a new digitised method for measuring land. Using this new method, the Department calculated that the man had over claimed the amount of land eligible for the grant in his original application. This gave rise to an overpayment which the Department recouped back to the date of the original claim and charged interest by way of netting (withholding payments due) until the debt was repaid in full.

#### Examination

The Ombudsman established that the reduction in eligible land had not been calculated properly as the Department had not adjusted it to properly take account of the area of the plantation removed by the ESB.

#### Outcome

The Department agreed to review its decision and revised it in line with the Ombudsman's examination. The man was refunded the sum of €3824.41 recouped by the Department.

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## R.E.P. Scheme

C01/16/2550

Completed 17/10/2017

### # Upheld

#### Background

A woman complained to the Ombudsman about the Department of Agriculture, Food and the Marine's decision to impose penalties on her for not complying with the terms and conditions of the REPS scheme following its inspection of her stud farm. The Department told the woman she was penalised because her records were not kept as prescribed due to the woman's herd number being dormant.

#### Examination

In an oral appeal before the Agriculture Appeals Office the woman had provided documentation which showed that a different division within the Department used her herd number in its correspondence with her which the woman argued was evidence that the herd number was active, but her appeal was disallowed.

The core issue in this complaint was that one arm of the Department deemed the herd number active but the REPS division had considered it inactive which led to the financial penalties.

The Department accepted that the herd number was active but this led to only a partial refund as the Department maintained that the woman did not send it some paperwork, specifically a Form G in advance of moving livestock owned by others to graze on to the woman's land. However a Form G is only required where cattle are being moved to a holding which does not have an active herd number. As the Department had already accepted that the woman had an active herd number, the Ombudsman asked the Department to review its partial refund.

#### Outcome

The Department agreed to review its decision and revised it in line with the Ombudsman's examination. The woman was refunded the full amount of the original penalty of €1,722.30.

## Social Protection

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### Household Benefits Package

C22/17/2042

Completed 14/09/2017

#### # Upheld

#### Background

A woman complained about the Department of Social Protection's refusal to backdate her payment under the Household Benefits package (HHB). The woman applied for the package almost a year after her husband's death. The package was awarded from the date of her application. The woman believed that the package should have been backdated to the time that she was awarded a Widow's Contributory pension a year earlier.

#### Examination

The woman's household had been in receipt of the HHB in her husband's name and she did not know that she would have to re-apply within a specific timeframe after her husband's death. She said that during his lifetime her husband looked after all household matters and she was not in the habit of dealing with the household accounts, otherwise she might have noticed the withdrawal of the allowance on her utility bill. This happened following her husband's death when she had to provide a death certificate, a copy of the will and marriage certificates for bills etc. to be changed into her name. She was 82 years of age at the time of her husband's death. The Department said that it told the woman of possible additional entitlements when she was awarded her Widow's Contributory pension. The Department said there was no provision to backdate the HHB package where it is not applied for within six months of her pension being approved.

## Outcome

The Ombudsman pointed out that although the Department advised her of her possible additional entitlements to HHB it did not inform her that she should apply within six months of her pension being approved in order for it to be backdated to that date. The Department agreed, on a once off basis, to backdate the award of the Household Benefits package to when she was awarded a Widow's Contributory Pension.

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## Supplementary Welfare Allowance

(C22/17/0074)

Completed 15/11/2017

### # Not Upheld

#### Background

A man complained that he had not been awarded a Supplementary Welfare Allowance by the then Department of Social Protection and that in addition, he had been evicted from temporary accommodation run by Dublin City Council and that it still held some of his belongings.

#### Examination

The Department reported that the man's residency status here specifically precluded him from claiming benefits and allowances. The Ombudsman having examined the issue was satisfied that the Department had acted correctly in refusing the SWA application. In relation to the complaint against Dublin City Council, the Council explained that the man had been evicted on account of threatening behaviour towards other residents. It also advised that it had again searched the man's former residence but could not locate any of his belongings. The man disputed the Council's position both on his alleged behaviour and on its search for his belongings. However as he did not provide evidence to support his position the Ombudsman did not consider that he had a basis to further probe the Council.

#### Outcome

The Ombudsman was satisfied that the Department had acted fairly and correctly and he had no evidence to dispute the Council's position.

## Exceptional Needs Payment

(C22/17/1787)

Completed 20/09/2017

### # Upheld

#### Background

A woman complained about the Department of Social Protection's decision to refuse her application for funeral expenses under the Exceptional Needs Payment scheme.

#### Examination

The woman said that she made an application for funeral expenses in January 2017. She said that she was advised at that time that she needed to provide receipts for the funeral expenses. She said that based on the advice received, she secured a credit union loan and paid the expenses. She later submitted a second application to the Department and enclosed the receipts. However, the application was refused as the woman had paid the expenses from her own resources. As the woman had contacted the Department prior to securing a credit union loan, and prior to paying the funeral expenses, her actions indicated that this was in fact an emergency/unforeseen event which could not have been ordinarily met from her own resources.

#### Outcome

The Department revised its decision and awarded payment to the woman.

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## Exceptional Needs Payment

(C22/17/2079)

Completed 10/10/2017

### # Not Upheld

#### Background

A woman living in a Direct Provision accommodation centre complained about the decision of the Department of Social Protection to refuse her application under the Exceptional Needs Payments scheme for assistance towards the cost of a bus pass so that she could take her children to school and collect them.

#### Examination

Under the rules governing the payment of ENP, a single payment may be made to help meet essential once-off, unforeseen, exceptional expenditure, which a person could not reasonably be expected to meet out of their weekly income. ENPs are not intended to cater for expenses which are of a predictable and recurring nature. The scheme does not cover an ongoing expense, such as assistance towards the cost of a weekly or monthly bus pass. In addition, travel costs associated with school transport for a parent would not be considered unforeseen or exceptional expenditure.

The woman stated that her children did not attend the local school because it was full and as

a result they were attending a school outside the catchment area. She said that her children are on a waiting list for the local school. The issue of access to local schools was discussed with the Centre Manager. He said that he would contact the local school on the woman's behalf if she still wanted her children to move there (subject to there being available places).

#### Outcome

The Ombudsman was satisfied that the Department's decision to refuse the application was in accordance with the rules governing the scheme.

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### Exceptional Needs Payment

(C22/17/2097)

Completed 08/11/2017

#### # Not Upheld

##### Background

A woman complained about the Department of Social Protection and her requests for assistance towards taxi fares to attend medical appointments. The woman, who was living in Direct Provision and attending maternity services in a regional hospital, said that there was no public transport from the centre to attend early morning appointments. She also said that in the latter stage of her pregnancy she found it difficult to walk the 2km from the train station to the hospital.

##### Examination

The Department informed the Ombudsman that taxis are ordered for clients in the centre when there is an early morning appointment and they cannot avail of public transportation. It stated that in such cases the Community Welfare Officer (CWO) may seek a letter from an applicant's doctor as evidence of their condition. In the woman's case, the Department confirmed that it had received a number of requests from the woman regarding taxi costs from the train station to the hospital and to attend an early morning appointment. It stated that the requests were approved on submission of a letter from the woman's doctor.

##### Outcome

The Ombudsman was satisfied that the Community Welfare Service was assisting with taxi fares for residents with mobility issues or who had early morning appointments, including the woman.

# Revenue

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## Income Tax

(C21/17/0077)

Completed 12/09/2017

### # Not Upheld

#### Background

A man complained that the Revenue Commissioners gave him incorrect information when he asked if he would receive tax relief if he purchased service on his public service pension.

In 2013, the man's Defined Benefit Pension Plan, with his former employer, was being wound up. He wrote to the Revenue Commissioners and asked if he would be entitled to tax relief if he decided to purchase years of service. The Revenue Commissioners explained that he would be entitled to tax relief in respect of any purchase of service.

Armed with this information, the man decided to transfer the value of his Defined Benefit Pension Plan to his Civil Service Superannuation Pension Scheme.

However, he did not receive any tax relief on the transaction.

#### Examination

Tax relief is generally available in respect of 'purchase of service'. However, there is no tax relief available in respect of the transfer of value from one pension scheme to another as was the situation in this case. This is because a person's contributions to the original pension scheme receive tax relief at the time of payment.

At no stage in his correspondence with the Revenue Commissioners did the man clarify that his actual query related to a proposal to transfer the value of his Defined Benefits Pension Plan to the Civil Service Superannuation Pension Scheme. He simply sought advice on the tax implications if he "purchased service" on his public service pension.

In addition, it was not clear whether, before approaching Revenue, the man took any advice on the matter (as he had been advised by his former employer) or briefed himself up on the difference between "purchase of service" - for which there is tax relief - and "transfer of value" - for which there is no tax relief.

The Ombudsman established that funds were paid into the Civil Service Superannuation Pension Scheme by means of a Transfer of Value out of the man's Defined Benefit Pension Scheme. Accordingly, as the transaction represented a "transfer of value" from one pension scheme to another, rather than a "purchase of service", there was no tax relief available to him. In summary, the man had previously received tax relief on his original pension contributions.

### Outcome

The Ombudsman was satisfied that the Revenue Commissioners answered, in good faith, the man's specific question in relation to what the man referred to as tax relief on his proposal to "purchase service".

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### No Reply

(C21/17/1386)

Completed 03/11/2017

### # Not Upheld

#### Background

A man complained that the Revenue Commissioners had not replied to his correspondence.

#### Examination

Due to the volume and nature of the man's communications with it over a long period of time, the Revenue Commissioners had previously told the man that it had appointed a designated official as its sole point of contact with him and that only that official would deal with him. The man complained about this to the Ombudsman who was satisfied that the decision by the Revenue Commissioners was reasonable in the circumstances of the man's case. In this case the man did not comply with these conditions.

Having reviewed the history of the case, the Ombudsman was satisfied that the Revenue Commissioners had clearly explained its position, and rationale, to the complainant.

#### Outcome

The Ombudsman was satisfied that the Revenue Commissioner's position was reasonable.

# Reception and Integration Agency - RIA

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## Deportation Order

(C15/17/3379)

Completed 27/11/2017

### # Upheld

#### Background

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

#### Examination

The man told the Ombudsman that he believed that this action by RIA was as a result of him complaining about the accommodation centre where he lives. He also told the Ombudsman that he wanted to return to his home country and that he had told RIA this, but it had failed to enforce the Deportation Order. He said that if RIA evicted him from the accommodation centre then he would have nowhere else to go in Ireland.

Following contact from the Ombudsman, RIA told him that in order to create capacity for new people in the direct provision system, letters had been issued to those people living in direct provision who no longer qualify for RIA accommodation as they are no longer considered to be in the protection process. RIA explained that it is working on assisting persons to comply with Deportation Orders and the letter in this instance was in no way connected to the man's other complaint about the centre. RIA did provide an assurance to the Ombudsman that it will not remove anyone from direct provision centres against their will. The Ombudsman passed on this assurance to the man and put him in contact with Irish Naturalisation and Immigration Service (INIS). INIS can arrange for voluntary deportation of people whose application for asylum have failed and are willing to return home but do not have the means to do so.

#### Outcome

The Ombudsman was satisfied that RIA's assurance that it will not remove anyone from direct provision centres against their will was reasonable.

## Accommodation

(C15/17/3533)

Completed 27/12/2017

### # Upheld

#### Background

The Ombudsman received a complaint on behalf of a man who had been refused re-admission to direct provision accommodation. The man applied for asylum in April 2016 and was placed in a centre in Cork, which he left. Five applications to be re-accommodated were made in October / November 2017, however, RIA was unable to accommodate him as it had no suitable vacancies at the time. The man was living with friends and in hostels.

#### Examination

RIA told the Ombudsman that the man had not availed of the accommodation it had provided him when he claimed asylum. It said that there was a shortage of accommodation and that priority was given to new applicants.

#### Outcome

Following contact with the Ombudsman the man was offered a place in a direct provision centre. The Ombudsman was satisfied that RIA's offer was reasonable.

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## Transfer

(C15/17/1735)

Completed 17/10/2017

### # Not Upheld

#### Background

A man living in a Direct Provision centre complained to the Ombudsman about the Reception & Integration Agency's decision to evict him from a Dublin accommodation centre. He said that he had a major operation and stayed with a friend to recuperate.

#### Examination

RIA stated that the man was relocated to Hatch Hall in March 2016 on medical grounds. However, it was notified by the centre in February 2017 that he had not been using the accommodation. The Centre deemed his room abandoned and it was reallocated. The man contacted RIA and was offered alternative accommodation in another centre outside Dublin. The man refused to accept the offer, stating that he needed to be in Dublin for medical reasons, so it was withdrawn. The man provided evidence to show that he had a number of outpatient appointments in the Dublin area roughly every two months or so. RIA had said it would arrange overnight accommodation for the man when he needed to attend medical appointments in Dublin.

The 'House Rules and Procedures' for Direct Provision state that accommodation is provided on the basis that a resident is living there in the normal course. There is a requirement on residents to let the centre manager know if they will be away from their Centre overnight and accommodation can be reallocated if they fail to do so.

#### Outcome

The Ombudsman was satisfied that RIA's decision to reallocate the man's accommodation was reasonable as he was required to use the accommodation he was assigned and notify management of any absences. The available evidence indicated that the man did not do this.

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## Transfer

(C15/17/1738)

Completed 14/11/2017

### # Assistance Provided

#### Background

A man complained to the Ombudsman about the Reception and Integration Agency (RIA) of the Department of Justice and the direct provision centre where he resides. He complained about RIA's decision to refuse several transfer requests to a single room in a self-catering facility nearer the Dublin area. The man listed several medical issues as to why he requires a single room in self-catering accommodation. He also complained of a series of issues about the accommodation centre including the suitability of his accommodation, food and complaints regarding staff members.

#### Examination

RIA informed the Ombudsman that it could not grant the man's transfer request due to lack of suitable vacancies in its accommodation portfolio. However, due to the medical issues listed in his complaint to the Ombudsman, RIA said it would reconsider a fresh transfer application from him if he provided further medical documentation. RIA sends medical records sent with requests for transfers for medical reasons to its independent medical referee for advice. RIA told the Ombudsman that the man had not sent any substantial medical documentation with his previous transfer request.

In relation to the man's complaint about the direct provision centre, the Ombudsman contacted the man on several occasions to ask for evidence that he had raised the issues with the Centre Manager in the first instance. As he did not reply the Ombudsman could not proceed with an examination of his complaint.

#### Outcome

As RIA agreed to consider any further medical information the man might send it, the Ombudsman was satisfied that it acted in a reasonable manner in relation to his complaint about the transfer, and the Ombudsman could not proceed with his complaint about the centre without the further information he had asked the man to send him.

## Transfer

(C15/17/2084)

Completed 22/11/2017

### # Assistance Provided

#### Background

A man living in a Direct Provision accommodation centre complained to the Ombudsman about the decision by the Reception and Integration Agency (RIA) of the Department of Justice to refuse several requests to transfer from his current centre to the centre at Mosney. The man complained that he and his wife were struggling to cope in a small room with two small children under the age of two in their current centre. The man stated that his wife had been suffering with poor mental health since the birth of their second child and that she had become increasingly isolated and vulnerable since a number of her closest friends had transferred to Mosney. The man stated that he understands that Mosney is at full capacity but he believes it would ease their stress even if he and his family could be put on a waiting list to transfer there as soon as space becomes available.

#### Examination

The Ombudsman received further details from the man's wife regarding her own health. He asked if the woman had submitted any supporting medical documentation with the family's transfer request. The woman confirmed that she had not done so.

RIA told the Ombudsman that Mosney is currently full and RIA does not envisage any vacancies in the near future. In relation to the mental health issues in this case, RIA sends medical records sent with requests for transfers for medical reasons to its independent medical referee for his advice. RIA told the Ombudsman that the family had not sent any substantial medical documentation about the wife's mental health with their previous transfer requests.

#### Outcome

The Ombudsman was satisfied that RIA acted in a reasonable manner in relation to the man's complaint about the transfer. The Ombudsman was aware that all accommodation centres in the direct provision system are at near full capacity and that transfers can only be facilitated in exceptional circumstances. The Ombudsman told the man that RIA would consider any supporting medical documentation sent in as part of a new transfer request.

## Transfer

(C15/17/2706)

Completed 12/12/2017

### # Assistance Provided

#### Background

The Ombudsman received a complaint from a woman concerning the decision of the Reception & Integration Agency (RIA) to refuse her transfer request. The woman sought a transfer to self-catering accommodation in Dublin as she was receiving regular medical treatment there. She said that the food in the current centre was unsuitable.

#### Examination

RIA told the Ombudsman that it was reviewing a further transfer request from the woman, which was made on medical grounds and that the woman had not raised any issue about the food in the current centre. RIA stated that her file had been referred to the Independent Medical Referee (IMR) for review who was satisfied that the woman needed to be closer to Dublin as she will be attending hospital there indefinitely. The woman and her husband were subsequently moved to a Dublin centre.

#### Outcome

The Ombudsman was satisfied that the woman's medical circumstances had been considered when reviewing her transfer request and welcomed the decision to move the family to Dublin to allow easier access to medical services there.

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## Transfer

(C15/17/3091)

Completed 15/11/2017

### # Assistance Provided

#### Background

A woman complained about the suitability of her accommodation in a Direct Provision centre. She said that she had a chronic medical condition and that her third floor room was unsuitable for her physical needs. The woman sought a transfer to a ground floor unit in her current centre or a move to suitable accommodation in another centre.

#### Examination

The Reception & Integration Agency (RIA) confirmed that it believed her request for medical reasons was warranted. However, it advised that there were no ground floor rooms available in the centre and it currently had no suitable vacancy for her in its other centres. The Ombudsman noted that RIA wrote to the woman in early October 2017 to inform her that it will contact her when a suitable vacancy arises. It confirmed to the Ombudsman that it was actively trying to identify suitable accommodation for her.

## Outcome

The Ombudsman was satisfied that RIA had accepted the woman's transfer request and acknowledged its commitment to source suitable accommodation for her.

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## Transfer

(C15/17/3098)

Completed 15/11/2017

### # Not Upheld

## Background

A man complained to the Ombudsman about the Reception & Integrations Agency's (RIA) decision to refuse his request to transfer from his current centre to Dublin. He stated that he had a severe medical condition and that he was attending a Dublin hospital every week for treatment. The man also stated that he had been accepted onto an educational course in Dublin.

## Examination

RIA stated that as the transfer was requested for medical reasons the matter was referred to the Independent Medical Referee (IMR) for review. Following a review of the medical evidence, the IMR was of the opinion that there was no need to transfer to Dublin as the health services he required were available at the man's local hospital. The Ombudsman noted that RIA had refused the man's previous transfer request and that it recommended that he ask his Consultant in Dublin to transfer his medical file to his local hospital. However, the man did not do so.

With regard to the educational element to the request, RIA stated that there are educational courses available in the man's local area so a transfer is not justified on those grounds. For this reason, and as the man accepted the place on the course before requesting a transfer to Dublin. The Ombudsman did not consider he had a basis to ask RIA to reconsider its decision.

## Outcome

In examining complaints where the decision is based on medical evidence, and differing medical opinion, the Ombudsman is limited to examining whether all evidence and relevant information was taken fully into consideration in arriving at a decision. It was clear from the man's file that the IMR took all medical evidence into account when deciding on his request to transfer to Dublin.

## Accommodation

(D09/17/2725)

Completed 23/11/2017

### # Assistance Provided

#### Background

A man complained about his accommodation in the Direct Provision centre he is living in. He said that the room he shared with another resident was too small and he had requested a bigger room.

The man also complained that the Centre Manager was not available until after 11am each day so residents had to wait until then if they had a problem or wanted to collect their post.

#### Examination

The Ombudsman raised the man's issues with the owner of the centre who told him that the man had been subsequently moved to a bigger room. The owner also confirmed that there are 24 hour staff in the centre who can assist in the manager's absence and that access to post and other services is available from 9am onwards. The man also contacted the Ombudsman to confirm that both issues had been resolved to his satisfaction.

#### Outcome

The Ombudsman was satisfied that the Centre Owner had acted reasonably on the man's complaint.

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## Facilities

(D18/17/1764)

Completed 11/09/2017

### # Not Upheld

#### Background

A man complained about the refusal of staff in a Direct Provision Accommodation Centre to allow his girlfriend go to his room during social visits.

#### Examination

Section 2.2 of the House Rules and Procedures for Reception and Accommodation Centres (House Rules and Procedures) states that visits to residents' rooms are not allowed in centres that were former hostels or hotels (such as the one the man lived in) because it is not appropriate to allow non-residents access to communal corridors and landings. It was noted that social visits to such centres can be facilitated in designated visiting rooms.

### Outcome

The Ombudsman was satisfied that the Centre's decision not to allow the man's girlfriend access to his room was in accordance with the 'House Rules and Procedures'. He noted that the man had been told that his girlfriend was welcome to visit him in the centre's designated visiting room.

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### Accommodation

(D06/17/1495)

Completed 03/10/2017

#### # Not Upheld

### Background

A man complained to the Ombudsman about the Direct Provision accommodation centre where he is living. He complained that his dietary needs were not being met by centre staff.

### Examination

The centre manager informed the Ombudsman that there are meals prepared on a daily basis in line with the man's dietary requirements as specified in a letter from the man's doctor. The centre manager also provided a number of weekly menus confirming that there were suitable dishes on offer. Following contact from the Ombudsman, the centre manager met with the man again to discuss his dietary needs further.

### Outcome

The Ombudsman was satisfied that the actions of centre staff were reasonable and fair.

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### Accommodation

(D28/17/2710)

Completed 09/11/2017

#### # Assistance Provided

### Background

A woman complained about the suitability of her accommodation in a Direct Provision centre. She said that her 15 year old daughter and 21 year old son lived in separate rooms in the centre. She wanted shared accommodation for her family.

### Examination

The Centre Manager told the Ombudsman that the centre had a small number of larger rooms that could accommodate the family, but that there were none available at present. The manager stated that the daughter's room was located across the corridor from the woman. They agreed that it was in the family's best interest to keep everyone together and stated that when a suitable room became available they would try accommodate the family.

### Outcome

The Ombudsman was satisfied that the manager was aware of the issue and had agreed to try resolve the matter but she couldn't grant the woman's request as the centre did not have a room available to accommodate the woman and her family. He also noted that the woman had sought a transfer to another centre with shared family accommodation.

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### Accommodation

(D28/17/2714)

Completed 26/10/2017

#### # Assistance Provided

#### Background

During a visit by Ombudsman staff to a Direct Provision centre, a woman complained about her accommodation. She said that she shared a room with her six year old daughter and had requested a bigger room. The woman stated that she was told she would be moved to a bigger room, but this did not happen.

#### Examination

The issue was raised with the Centre Manager on the day and the Ombudsman was subsequently informed that the woman and her daughter had been moved to a larger room with ample living space.

### Outcome

The Ombudsman was satisfied that the matter had been resolved.

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### Accommodation

(D34/17/2724)

Completed 31/10/2017

#### # Assistance Provided

#### Background

A man complained about the suitability of his accommodation in a Direct Provision centre. He said that he had a heart complaint and found it difficult to get to and from his room, which was located on the upper floor in the centre. There was no lift in the building.

#### Examination

The Ombudsman contacted RIA about the complaint. It confirmed that it had received a letter from the man's doctor and that it had offered him a suitable room in another centre, which he refused. RIA agreed to reconsider the man's request for alternative accommodation and transfer him when a suitable place became available.

## Outcome

The Ombudsman was satisfied that RIA was aware of the man's condition and that it had made efforts to move him to alternative accommodation. He also acknowledged RIA's commitment to source suitable accommodation for the man.

# Education

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## DARE (Disability Access Route to Education)

(E86/17/2268)

Completed 05/09/2017

### # Not Upheld

#### Background

A student applied under the HEAR/DARE scheme for a reduced points access to college on the basis of her dyslexia. Her application was refused and the appeal was not upheld. She said that it was deemed that she did not have dyslexia despite the Psychologist's report confirming her diagnosis. She had also been granted a reader and spelling exemptions for her Leaving Certificate as a result of her dyslexia.

#### Examination

While the Psychologist's report confirmed that she had dyslexia, the complainant's literacy test results for DARE did not meet their criteria. Furthermore, the points achieved in the Leaving Certificate would not have qualified for a reduced points place in her two first Level 8 courses choices. However she had obtained her third choice, a Level 7 course, under the CAO system and so was not adversely affected by the refusal of her DARE application.

#### Outcome

The complaint was not upheld.

## Exam Results Recheck

(E85/14/0321)

Completed 03/10/2017

### # Partially Upheld

#### Background

A woman complained to the Ombudsman that her son, who was diagnosed with 'dysgraphia', was unfairly refused RACE accommodations to help him in his leaving certificate exams. He applied for a 'reader and waiver from the assessment of spelling and grammar in language subjects'. The woman complained that the SEC's assessment process for applicants with dysgraphia was flawed and not fit for purpose, as it fails to provide for the specific needs of students with dysgraphia. The woman maintains that the SEC does not have an expert in dysgraphia among its 'expert advisors' upon which it relies in formulating assessment criteria and guidelines. The woman also complained that the SEC did not apply its own published assessment criteria, in that it refused her son's application on the grounds that he did not fall below a qualifying score in standard reading and spelling tests alone, without considering any other factors. In her complaint the woman said that her son was an intelligent, high achieving student who performed at a high level in mathematics and sciences subjects, but poorly in English. She added that he performed significantly better in English when he had the assistance of a reader.

#### Examination

Dysgraphia is a recently diagnosed disability, which can affect students in different ways. Some experience dysgraphia as a learning difficulty similar to students with dyslexia, while for others it manifests more as a physical disability.

#### Outcome

The Ombudsman concluded that there was no decisive evidence of maladministration on the SEC's part which led to an unfair refusal of the reasonable accommodations the student applied for. The Ombudsman however, asked the SEC to review its assessment criteria for RACE accommodations for students with dysgraphia and inform him of the outcome from that review. He also asked the SEC to review its explanatory documentation with a view to providing better clarity and understanding of the assessment criteria and process for students and parents.

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## Exam Results Recheck

(E85/17/1826)

Completed 18/09/2017

### # Assistance Provided

#### Background

A woman complained about the State Examinations Commission (SEC), and its failure to provide her with her Leaving Certificate Vocational Programme (LCVP) script for viewing following receipt of her Leaving Certificate Examinations results in 2016.

### Examination

The woman said that while she made a request to view her LCVP script, the SEC did not make it available. She did not receive an explanation for this oversight. She said that she appealed the results, but in the absence of viewing the script, she could not provide a basis for her appeal. When she contacted the Ombudsman she was unsure if the LCVP scripts were missing, and if they were made available to the Appeals Examiner and Independent Scrutineer. The papers had not been missing, but were not included with the other scripts which the woman had also requested to view. The SEC confirmed that once the appeal was received, the LCVP scripts were completely re marked by an appeal examiner in accordance with their procedures. The SEC also confirmed that while the LCVP script was not made available at time of initial request, the woman had an opportunity to view the script at appeal stage. However, she did not avail of this option.

### Outcome

Once an appeal was lodged, the SEC followed correct procedures. However the SEC agreed to grant a refund of €40.00 in respect of the LCVP appeal. This was because if the script was made available at the time of the initial viewing session, the woman may not have sought an appeal, thus saving €40.00.

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## SUSI/SGAB - Higher Education Grants

(E78/17/0668)

Completed 18/09/2017

### # Not Upheld

#### Background

A student's grant application to SUSI in 2016 was refused on the basis that she had completed a Diploma in Marketing, Advertising and Public Relations in 2011/12 which SUSI said was equivalent to a Level 8 Qualification on the National Framework of Qualifications (NFQ). She was not eligible to receive a grant for further undergraduate study at Level 6, 7 or 8. She was a mature student and was seeking a grant on the basis of entering an approved course following a break in studies of at least three years. She had previously completed a year of a degree course in France in the 2006/07 academic year for which she had not received a grant.

#### Examination

The Diploma was not equivalent to a Level 8 qualification but to a Level 6 on the NFQ. SUSI had concluded that she had only completed one year of a two year Advanced Diploma course whereas in fact she had completed a one year Diploma, which was a stand alone course. SUSI accepted that it had made an error in determining the reason for refusal of the grant originally. However as she had previously completed one year of a degree course, she was not deemed eligible for payment of the grant.

The other option would have been to be considered a "second chance student". However there had to be a full five year break in studies for this to apply.

## Outcome

As she had completed studies in 2012, there was not the five year break and therefore she did not qualify for a grant on that basis either.

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## Course Fees

(E80/17/1927)

Completed 02/10/2017

### # Upheld

#### Background

A man complained that he had received inaccurate information about course fees from Trinity College Dublin. The man had applied to and been offered a place on a two-year Masters course in Trinity College. Before accepting the place on the course the man enquired if the cost of tuition fees quoted were for the full two years of the course or an annual fee. The man received an email from the academic registry in Trinity confirming that the price quoted was the tuition fee for the full duration of the two year course. The man accepted his place on the course. After completing the first year of his course the man discovered that the tuition fee was in fact an annual fee and he was required to pay the same fee again for the second year of his course

#### Examination

In its report, Trinity explained that the fees listing on its website states that fees listed are annual fees and subject to change. Trinity said that the man was issued a personal bill when he accepted his place on the course which listed the tuition fee as an annual fee. Trinity pointed out the man had previously graduated from a different course in the college and so should have been familiar with their tuition fee arrangements. Despite this Trinity acknowledged that the man was misinformed when he asked about the tuition fees so it offered to refund half of the tuition fees for the second year of his course.

#### Outcome

The Ombudsman informed the man of Trinity's offer to refund half of his tuition fees for the second year of the course and gave him the details of who to contact in Trinity to accept the offer. The man was happy with this outcome and thanked the Ombudsman for his work on this complaint

# Health

## HOSPITALS

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### Hospitals Care

(H67/17/2496)

Completed 14/11/2017

#### # Not Upheld

##### Background

A man complained about how Portlaoise Hospital handled his complaint about the care given to his late father. His father's drip became dislodged and it was not clear from the medical records when it was reinserted. There were different accounts from separate staff members.

##### Examination

The hospital's complaint file showed that senior staff had met with the man and his family three times. The hospital went through the father's medical file and answered questions raised by the family. The staff apologised to the man and explained that nurses were being trained to replace drips and there was a continuing emphasis on the importance of documentation.

##### Outcome

The Ombudsman sympathised with the loss and upset experienced by the family. He was of the view that the hospital staff had acted in good faith in meeting with the family three times to discuss their concerns and therefore there was nothing further that he could pursue in this case. He commented to the hospital, that he would expect all relevant actions to be recorded on patient's medical files.

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### Hospitals - Insurance

(H64/17/1261)

Completed 29/12/2017

#### # Not Upheld

##### Background

A man attended the Emergency Department of Naas General Hospital. He was admitted to a ward as a private patient. He said that he did not sign a Private Health Insurance form as he wanted to be treated as a medical card holder.

### Examination

The HSE file included a copy of an electronic claim form with the man's name signed on the form. Hard copies of forms are not retained by the hospital once an electronic version is signed so that was the only version that existed. The man's health insurance policy details were added to the form afterwards, which the hospital said was standard practise. The hospital also provided a consent form signed by the man, which it stated demonstrated a signature consistent with that of the claim form. Hospital staff had spoken to the man's wife in the waiting area when he attended the Emergency Department two days earlier. They asked her to sign a claim form in case he needed to be transferred to another hospital. The man said that his wife felt pressured by the staff member. The hospital apologised for any upset caused and agreed that it should have spoken to the woman in a separate more private location.

### Outcome

The Ombudsman noted that HSE and hospital staff met with the man and his family on two occasions to discuss the matter and apologised to him and his wife for any upset caused. It had spoken to the staff on duty but they could not recall his admission.

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## Hospitals – Appointment Delay

(H52/17/2731)

Completed 08/12/2017

### # Assistance Provided

#### Background

A man complained about a delay in providing a urology appointment. He said that he attended the Emergency Department in University Hospital Waterford and was told that a follow-up urology appointment would be arranged within a few days. However, he said that this did not happen.

#### Examination

The hospital stated that, following the man's visit to the ED, it received a referral from his General Practitioner (GP). The man was placed on the general waiting list for the Urology Department, which is five to seven years. According to the hospital, following a second referral letter from his GP, the Consultant decided to transfer the man to the urgent waiting list. This resulted in a reduced waiting time of six to eight weeks.

#### Outcome

The assessment of referrals from GPs, and the prioritisation of patients for medical appointments, are clinical matters and therefore outside the remit of the Ombudsman. However, he acknowledged the decision to prioritise the man's case in light of the additional medical evidence sent in by his GP.

## Hospitals - Care

(H52/16/2572)

Completed 11/12/2017

### # Upheld

#### Background

A man complained about the care and treatment given to his late mother while a patient in University Hospital Waterford. His mother had banged her head at home and attended the Emergency Department (ED). She was discharged, but went back to the ED the following day as her condition had got worse. He stated that, following her admission to a medical ward, he was asked by nursing staff to give his mother her tablets. He said that she had been asleep when he arrived at the hospital and vomited when she woke up. According to the man, his mother had difficulty swallowing each tablet and after the final tablet was taken she vomited again. He said that his mother died 36 hours later from pneumonia as a result of vomit entering one of her lungs. He stated that he complained to the hospital and it admitted he should not have been asked to give the tablets to his mother and it apologised to him for the upset the incident caused him. He said that the hospital also apologised for stating in its initial reply that such a practice was acceptable.

#### Examination

The Ombudsman noted that the hospital had breached its 'Medication Management Policy for Nursing and Midwifery Policy' as the administration of medication is the sole responsibility of a registered nurse or student nurse under the supervision of a registered nurse. He also noted that there were significant delays in dealing with the man's complaints, that he was not kept updated by the hospital and that it took three complaints (to the hospital, its Chief Clinical Director and the Review Office, Health Service Executive) before the hospital finally admitted he should not have been asked to give the tablets to his mother. The Ombudsman asked the hospital what steps it had taken to ensure compliance with its medication policy. It stated that medication management practises are constantly under observation by Clinical Nurse Managers in clinical ward areas and that ongoing compliance on medication practices is monitored through nursing audit metrics, with quality improvement plans put in place for areas of non-compliance.

The man also raised an issue about the advice given to his mother, following the initial discharge from the ED. He stated that as she had a head injury she should have been given verbal and written advice that a responsible adult stay overnight with her. The hospital was unable to confirm if nursing or medical staff provided verbal or written advice about routine head injury precautions to his mother or the family members with her on the day. Unfortunately, the Ombudsman could not confirm what advice was given, if any, from the available evidence. He noted that the hospital apologised for this and that a 'Head Injury Information Leaflet' is available for patients.

## Outcome

The Ombudsman acknowledged the steps taken by the hospital to prevent a recurrence of the issue. To raise awareness of this issue, and highlight the importance of ensuring that the administration of medicinal products is the responsibility of registered nurses, he brought the matter to the attention of the National Directors of Nursing Group. This was done to ensure that the issue is raised nationally within the HSE hospital groups.

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## Hospitals - Care

(H45/17/0100)

Completed 29/09/2017

### # Assistance Provided

#### Background

A woman complained that following her knee surgery she was discharged from hospital despite the fact that she was feeling very unwell. She had been advised that her observations were normal despite feeling extremely cold, suffering tightness in her chest and pain when breathing. Throughout her stay, her oxygen saturation levels were also low but she was told to take deep breaths until the levels increased. The higher measurements were then recorded. Following her discharge home the woman continued to feel ill and having called an ambulance was readmitted to another hospital the following day with blood clots. When the woman complained to the South Infirmery - Victoria University Hospital, she was advised that she had been medically assessed regarding the reduced oxygen saturations and that the impression at the time was that she was suffering from respiratory depression following opioid analgesia. However, following further correspondence with the hospital, the Clinical Governance Group discussed the woman's complaint and undertook a full clinical review. The review resulted in the hospital acknowledging that she should not have been encouraged to deep breathe with the higher oxygen saturation level then being recorded. The Director of Nursing had subsequently advised all nursing staff of the implications of this practice and instructed them to adhere to the correct method of recording saturation levels. She also circulated further educational literature on blood clots (Venous Thromboembolism) and provided training to all ward staff on best practice in this area.

From a medical learning perspective, the hospital acknowledged that the woman had abnormal vital signs prior to her discharge and that this information was not interpreted correctly or acted upon by medical or nursing staff. It said that the case was being used as part of ongoing training for medical staff during induction for Interns and that quality improvement plans had been put in place as a result of the complaint. The woman contacted the Ombudsman as she wanted to ensure that the hospital had followed through with these improvements and that the learning from her experience could be shared with hospitals nationally.

#### Examination

The Ombudsman's examination of the woman's clinical records and complaint file showed that the hospital had indeed taken the woman's complaint very seriously. It provided copies of the material circulated to staff and the presentation which is made during induction

training. An audit amongst nursing staff had been carried out in relation to the recording of oxygen saturation levels with a 100% compliance outcome both in December 2016 and in June 2017. In addition, the hospital had reviewed and updated the patient pathway policy which meant that patients who undergo procedures now receive information with contact details for each individual clinical area to facilitate contact with the hospital following discharge. If the patient is advised they need to attend an acute hospital, that hospital will be contacted and informed of the patient's referral.

#### Outcome

The Ombudsman was satisfied that that hospital had acknowledged and apologised to the woman for her poor experience and had put measures in place to ensure best practice was followed for other patients. The learning from the case was shared with the Irish Institute of Trauma and Orthopaedic Surgery and with the seven regional Chief Directors of Nursing and Midwifery within the HSE.

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## Hospitals - Care

(H45/17/0495)

Completed 15/12/2017

### # Partially Upheld

#### Background

A woman complained about how she was dealt with by the Ear, Nose and Throat Emergency Department (ENT ED). Her GP sent her to the ENT ED because she had an infection in her implanted hearing aid. It was late afternoon when the woman finished in the ENT ED. A doctor told her she would be sent a follow-up appointment for two weeks' time. However, she did not receive any notification and had to make four phone-calls to the hospital to find out if she had been given an appointment.

#### Examination

The examination showed that when the woman left the ENT ED, the appointments office was closed but a staff member placed an appointment slip in a tray for an appointment to be made. However, the slip was mislaid and the chart re-filed without an appointment being made. When the woman rang to ask about the appointment, there was a delay because her chart had to be taken from filing and a doctor, who was in theatre, had to confirm the appointment. The woman spoke to three different people on the phone, which was frustrating for her. The woman's complaint had been examined and then reviewed by the hospital but at no stage did the hospital acknowledge, or apologise for, the loss of the appointment slip.

#### Outcome

The hospital apologised for the loss of the slip and for not acknowledging this previously. A new process was put in place to deal with appointment slips after hours and the hospital said that in future, issues would be dealt with by the same person until they are resolved. The hospital undertook to ensure that patients and GPs are aware of the procedure for emergency appointments.

## Hospitals – Care

(H82/16/2744)

Completed 06/09/2017

### # Partially Upheld

#### Background

A woman complained that it took Beaumont Hospital two weeks to inform her doctor of a potentially life threatening illness. She said that she only found out about the condition when her doctor contacted the hospital because of her deteriorating health. The woman was unhappy with the hospital's explanation for the delay and wanted to know why she was not contacted earlier.

#### Examination

Following contact from the Ombudsman, the hospital agreed to investigate the matter further. It found that the results of the woman's MRI scan, which contained a significant finding, were sent to the wrong Consultant in error. The woman had been originally been a patient of that Consultant, but he was on an extended leave of absence at the time. The hospital stated that when a doctor orders a scan they should ensure that the correct account and Consultant / Team are selected as this has a bearing on where the results are sent. This did not happen in this case.

The hospital informed the Ombudsman that the details of this case (anonymised) were being used in the training of doctors to highlight how errors can be made when ordering radiology tests to the wrong team. It also stated that the Radiology Information Systems Manager had agreed to conduct an audit of this area, with regard to tests with significant findings, and that the Radiology Department would issue a written apology to the woman.

The woman also raised issues about the diagnosis of her condition, however, the Ombudsman could not examine this issue as it was a clinical matter.

#### Outcome

The Ombudsman was satisfied that the hospital had identified the cause of the problem in this case and that it had apologised to the woman. He also welcomed the steps taken by the hospital to prevent a recurrence in other cases.

## Hospitals - Fees

(H82/17/0887)

Completed 26/09/2017

### # Upheld

#### Background

A man complained about the service provided to him in the Emergency Department (ED) of Beaumont Hospital and the subsequent bill which was sent to him. Due to a hospital error, he was left waiting to be seen by a doctor for longer than was necessary and he felt that it was unacceptable to be billed for the service he received.

#### Examination

The hospital informed the man that an error had been made which meant that he was left waiting to be seen by a doctor for longer than was necessary. It explained how the mistake happened due to human error and it apologised for this mistake. However, it did not cancel the bill as he received appropriate treatment on the day.

While there was no issue with the medical care subsequently received by the man, he did not receive good administrative care from the hospital that day (due to a mistake by the hospital he was left waiting to be seen by a doctor for much longer than he should have been). The hospital said that, it understood that the error caused additional stress and, in the interest of good will and without prejudice, it cancelled the ED charge for that day. It also provided details of a number of new initiatives and improvements which have taken place within the ED since the man made his complaint which should help prevent such an error occurring again. These included the addition of extra staff in the ED and "ED Huddles" which are now held at two o'clock every afternoon with the lead consultant, all medical staff and the clinical nurse manager in attendance.

#### Outcome

The Ombudsman was satisfied that the hospital had dealt with the complaint reasonably and it had decided to waive the charge due to the administrative failings in its dealings with the man in the ED that day.

## Hospitals - Care

(H23/17/0163)

Completed 13/12/2017

### # Upheld

#### Background

A woman complained there was an unacceptable delay by Mayo University Hospital (MUH) in reinserting her late aunt's PEG feeding tube. Her aunt was completely dependent on a PEG feed for nourishment.

A PEG is a flexible feeding tube. It is placed through the abdominal wall and into the stomach. A PEG allows nutrition to be put directly into the stomach. It bypasses the mouth and oesophagus.

#### Examination

The woman's aunt was admitted to the MUH Gastroenterology Department on 6 May but by 13 May her PEG had not been reinserted.

The hospital admitted there was a communication issue with the patient's full treatment plan and accepted it had not managed the woman's aunt appropriately. It admitted that there was poor communication and decision making with regard to her care. It apologised for this.

It explained that Surgeons in the Emergency Department reviewed the lady on 6 May. They were unable to re-site her PEG because the tract was closed. She was to have her PEG re-inserted under the Gastroenterology Team on 9 May. However, when the Gastroenterology Team reviewed her, it felt she needed a Radiological Inserted Gastronomy. The Team inserted a Naso-gastric (NG) tube as an interim measure for nutrition. The woman's aunt was unable to tolerate the NG tube and became agitated. This led to her refusing oral care on several times.

The woman's aunt was without nourishment from 6 May to 14 May. This was because she did not have her PEG and she could not tolerate the NG tube. The hospital acknowledged it was not acceptable for any patient to be without nutritional intake for 9 days.

#### Outcome

##### The hospital

- admitted the mistake,
- explained what happened,
- apologised to the complainant,
- spoke to all staff involved,
- identified where improvements could be made,
- acknowledged that the Gastroenterology Team should have taken over the patient's care,

- drew up a policy for the insertion of PEG tubes, and
- admitted that the level of the patient's nutritional intake over 9 days was not acceptable for any patient.

The Ombudsman was satisfied that the hospital responded appropriately to the complaint. He accepted that it had learned from the experience.

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## Hospitals - Care

(H26/17/0217)

Completed 27/11/2017

### # Partially Upheld

#### Background

A man complained to the Ombudsman about the treatment he received at the Emergency Department (ED) in University College Hospital, Galway (UCHG). His GP referred him there requesting that he be seen as an emergency as he was concerned that the man may have had one of two potentially serious conditions. He was examined in the Ophthalmology Department, where one of the conditions was ruled out. No further tests were carried out and he was sent home and told to contact his GP to arrange an out-patient appointment for an ultrasound. His GP sent him to a private clinic for an urgent scan as there was a 12 month waiting list for scans in UCHG. It revealed that the man had a blocked artery for which he had emergency surgery. The man sought a refund of the €2,000 he had to pay the private clinic which he felt he had to do as UCHG had failed to carry out the necessary investigations. This was refused on the grounds that under health legislation, if a patient chooses to be treated as a private patient then he/she forgoes the right to be treated as a public patient.

#### Examination

Following the man's complaint the hospital accepted that it should have carried out the necessary tests and apologised for the distress caused. The case was referred to the National Director for Acute Hospitals.

#### Outcome

The hospital agreed to reimburse the man €2,000 he had paid the private clinic.

The man subsequently sought a refund of additional medical fees he incurred attending the private clinic (€710). Following further contact with the HSE, it agreed to reimburse the man €260, relating to his initial treatment in the private clinic. It said the other €450 was for scheduled follow-up consultations which the man as a medical card holder should have sought through the public health service. The Ombudsman considered the HSE's position on the €450 to be reasonable.

# HSE

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## Dental Services

(HB9/17/2082)

Completed 11/09/2017

### # Assistance Provided

#### Background

A woman complained that the extensive dental treatment she needed was not covered by her medical card. The woman could not afford to pay for private dental treatment as her only source of income was her direct provision allowance of €21.60.

#### Examination

The Dental Treatment Services Scheme (DTSS) allows medical card holders to attend Private Dentists holding a DTSS contract for treatment. According to the HSE, the DTSS generally covers dental examinations, fillings (maximum of two), extractions and prescriptions. However, the HSE stated that other treatments are available, such as root treatments, periodontal treatment, dentures and further fillings (2+), but these need the prior approval of the Principal Dental Surgeon (PDS) as normally these additional treatments are provided in high risk / exceptional cases. The information provided to dentists indicated that 'exceptional' refers to patients who may not strictly be classified as high risk, but for whom there is sufficient information available to the Principal Dental Surgeon as to justify a decision to approve funding for additional care.

The HSE suggested that the woman return to her dentist and request that they apply to the local PDS for the additional treatment she requires. The PDS will then consider her case and inform the dentist of their decision.

#### Outcome

The Ombudsman advised the woman to contact her dentist and request additional funding for treatment through the PDS.

## Primary & Community Care

(HB6/17/2272)

Completed 22/11/2017

### # Upheld

#### Background

A man complained to the Ombudsman about the HSE and the Department of Social Protection. The man and his family are Programme Refugees living in an Emergency Reception and Orientation Centre (EROC). He and his wife both have diabetes and had scheduled appointments with an optician. These appointments were cancelled at very short notice and weeks later had not been rescheduled. The man also explained to the Ombudsman that his wife had been very ill since arriving in Ireland and had required a stay of a number of days in a regional hospital. The man did not receive any money towards transport to the hospital by way of the Exceptional Needs Payment (ENP) from the Department of Social Protection and had to pay for taxis both ways over the course of his wife's stay in hospital.

#### Examination

Following contact from the Ombudsman, the HSE confirmed that it had rescheduled the appointments with the optician. In relation to the ENP, on examination the Ombudsman established that the complainant had not been aware of his entitlements prior to his wife's hospitalisation and therefore had not applied for ENP.

#### Outcome

The Ombudsman was satisfied that the HSE's response in rescheduling the optician appointments was reasonable.

As there was nothing for the Ombudsman to pursue with the Department of Social Protection on the ENP, he informed the complainant of his entitlements and that if similar circumstances recurred then it would be open to him to apply for an ENP and revert to the Ombudsman if he was unhappy with the outcome.

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## Medical Card

(HA3/17/1213)

Completed 31/10/2017

### # Not Upheld

#### Background

A man complained about his application to the HSE for a hearing test. The man applied for the test while he was a medical card holder. The HSE wrote to the man and said that he was being placed on a waiting list but the letter did not say that an active card was required for the appointment. His card expired while he was on the list and he therefore did not qualify for the test.

### Examination

The HSE stated that at the time the man was placed on the waiting list for Community Audiology services there was a 55 week wait for adult new referrals and 1,283 people on the list. In order to address the lengthy waiting period the HSE carried out a medical card validation exercise. This identified that the man's card had expired. The HSE phoned the man to explain that he was no longer eligible for treatment as he did not hold a current medical card. It also wrote to him and set out the other options available to him. The HSE explained to the Ombudsman that the current Audiology database did not allow it to alter letters to its customers i.e. to specify that an active medical card is required at the time of the appointment. It said that this will be changed when its new database goes live in 2018.

### Outcome

The Ombudsman was satisfied that the HSE had acted within the relevant guidelines.

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## Long Term Illness Scheme

(HA6/16/3440)

Completed 18/12/2017

### # Upheld

#### Background

A man complained to the Ombudsman about the Health Service Executive's (HSE) decision to refuse his claim for backdated payment under the Long Term Illness Card (LTIC) scheme. He said that his pharmacist charged him for drugs he was entitled to receive free of charge. The man said that he wrote to the HSE in 2011 asking it to clarify what drugs were covered under the scheme, but never received a reply. He felt that the matter could have been resolved if the HSE had replied at the time. He sought a refund for the period 2011 to 2014.

#### Examination

The LTIC scheme entitles persons with specific medical conditions to receive certain drugs and appliances free of charge through their local pharmacist. The pharmacist then recoups the cost of the items from the HSE. The man said that the drugs he should have got free of charge were processed by his pharmacist under the Drug Payment Scheme (DPS). The man's claim was reviewed locally by staff in the LTIC Section and a recommendation was made to refund the man for the period in question. However, this was rejected by the General Manager as it was deemed to be a matter between the man and his pharmacist. However, the man advised that the pharmacy had since been sold.

A further review of the payments processed in respect of the man's DPS claims was carried out by the HSE at the Ombudsman's request. It confirmed that he had overpaid for drugs that should have been covered under the LTIC scheme.

#### Outcome

Given that the man had an entitlement to receive the drugs free of charge for the period in question, and as he could not recoup the overpayment from the pharmacist, the HSE agreed to refund the man €2,900.

## Nursing Home Support Scheme

(H09/17/0772)

Completed 06/12/2017

### # Not Upheld

#### Background

A woman complained at the amount being deducted from her Social Welfare benefit under the Nursing Home Support Scheme. She also raised some other issues such as the cost of transport to medical appointments.

#### Examination

The Ombudsman examined the terms of the Scheme and was satisfied that the correct deductions were being made from the woman's benefits. He also established that the Scheme does not cover the cost of transport to medical or other appointments outside a person's nursing home.

#### Outcome

The Ombudsman was satisfied that the deductions were correctly made and therefore that the HSE had acted correctly.

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## Drugs Payment Scheme (a.k.a. Drugs Refund Scheme)

(HD2/17/1727)

Completed 21/12/2017

### # Upheld

#### Background

A man complained to the HSE about refund amounts he received under the Drugs Payment Scheme. He received the HSE rates, which are lower than the pharmacy costs he actually incurred for his items.

#### Examination

The Ombudsman pointed out that in previous cases the HSE accepted that people were entitled to receive refunds of the difference between the HSE rates and the actual amount they paid their pharmacist for prescribed medicines. On foot of this contact the HSE wrote to the man and provided him with the remaining refund amount for his medicines.

#### Outcome

The Ombudsman was satisfied that the HSE provided a full refund to the man. While the man would need his medication for the rest of his life, the Ombudsman noted that the Minister had recently signed a Statutory Instrument, which would give the HSE the legal authority to refund amounts at the HSE rates rather than the pharmacy rates.

## Treatment Abroad - Cross Border Directive

(HB7/17/1340)

Completed 31/10/2017

### # Not Upheld

#### Background

A woman complained about the amount refunded to her by the HSE under the Cross Border Directive. She received a refund €260 for the initial consultation and the subsequent treatment, but she said that the two appointments cost her over €600. The woman said that she expected to receive a full refund for consultation and treatment but only received a portion of the amount.

#### Examination

The HSE said that the maximum amount refunded for an outpatient appointment is €130. The invoice from the clinic at which she was treated, specified that the woman attended as an outpatient and the type of treatment she received would normally be given on an outpatient basis.

#### Outcome

The Ombudsman was satisfied that the HSE had acted with the relevant guidelines.

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## Treatment Abroad - Treatment Abroad Scheme (TAS)

(H09/15/3837)

Completed 21/12/2017

### # Upheld

#### Background

A woman complained to the Ombudsman that she was unfairly denied funding by the HSE to travel to a specialist centre in the UK to receive treatment. She had been suffering for several years with different symptoms and receiving treatment from a number of Irish based public specialists. After being diagnosed with EDS (Elhors Danlos Syndrome), a very rare hereditary disease, she applied for funding under the treatment abroad scheme to travel to a hospital in London. The hospital was recognised by her consultants as a 'centre of expertise' for EDS sufferers. Despite having been referred by her consultant for treatment, including second and specialist opinion and the development of a tailored care plan to be implemented upon her return to Ireland, her application for funding was refused by the central TAS application and assessment office in Kilkenny. The woman subsequently made several more attempts to obtain funding under the TAS scheme all of which were refused. In the meantime she engaged in a fund raising campaign which eventually raised enough funding for her to travel to London as a private patient. She travelled to London many times for assessments and treatment by a many different specialists for symptoms related to her underlying condition, that is EDS. All of her treatments abroad were coordinated by the super specialist in EDS in London, as well as her Irish based public consultant. She also

contacted a number of TD's and Ministers in her quest for approval under the TAS scheme, without success.

#### Examination

The examination of the woman's complaint and the HSE's report revealed that her funding application was not assessed in a reasonable manner, having regard to all the circumstances in her case. After communications between the HSE and the Ombudsman, the HSE agreed to make an ex gratia payment in respect of receipted costs she incurred in obtaining treatment abroad. The HSE agreed to an ex gratia payment of €4,030 without prejudice and without any admission of liability on the part of the HSE that it erred in its earlier decisions on her TAS applications.

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### Treatment Abroad - Treatment Abroad Scheme (TAS)

(H09/17/0299)

Completed 05/09/2017

#### # Assistance Provided

##### Background

The Ombudsman received a complaint from a woman regarding the decision of the Health Service Executive (HSE) to refuse her Treatment Abroad Scheme (TAS) application. The woman sought a refund of the costs she incurred travelling to Germany for treatment.

##### Examination

The woman's file indicated that her application was refused on medical grounds. The Medical Assessor (MA) recommended that she be seen by a specialist in Ireland first and noted that a referral had been made. Furthermore, it was noted that the woman had travelled to Germany for treatment before a decision was made on her application. As her application was unsuccessful, she was not entitled to a refund of her travelling expenses.

Given the circumstances in this case, in particular the fact that the woman's Consultant had recommended the treatment and deemed it urgent, the Ombudsman asked the HSE to consider a contribution towards her travel expenses. The HSE agreed to refund the woman's flight and hotel costs (€1,483.56.)

##### Outcome

The Ombudsman could not examine the decision of the MA as it was clinical. He was satisfied that the evidence submitted by the woman and her doctor had been considered when assessing her application. He welcomed the HSE's decision to refund the woman the cost of her flights and hotels on a once off exceptional basis.

# TUSLA

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## Social Work Services

(H04/17/2098)

Completed 05/10/2017

### # Partially Upheld

#### Background

A woman who had been adopted complained that she had been given conflicting (non-identifying) information about her birth family verbally from two different social workers over a period of several years. When she discovered this and brought it to the attention of the social workers, she said that she was advised about other relevant information of a medical nature which was on file and which had not been disclosed to her. The woman also complained that the social worker who was supporting her during the tracing stages had not taken any written notes during a meeting in her home and that the social worker could not subsequently recall giving the woman any information about her birth family during that meeting.

#### Examination

The Ombudsman discussed the complaint with the Principal Social Worker (PSW). The PSW had written a detailed letter to the woman, based on the information contained in the files. However, it was impossible to tell precisely what information had been imparted to the woman by the two named social workers. Although there was detailed information about the birth family in the social work notes, there was no way of knowing precisely what information had been conveyed to the woman or whether it was accurate or not. The PSW advised that it was now the practice for social workers to provide non-identifying information to adoptees seeking it in writing in order to avoid any possible confusion.

#### Outcome

The Ombudsman asked Tusla to ensure that all tracing information provided verbally to adoptees was followed up in writing on foot of this complaint. He also asked that social workers be reminded to take written notes during their meetings with clients so that accurate records of their conversations can be maintained.

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## Social Work Services

(H04/17/0549)

Completed 11/12/2017

### # Not Upheld

#### Background

A woman complained that the social workers who had dealt with her family had not acted impartially towards her. She said that details from a past court case had been included in

the social work report to the Child Protection Conference (CPC), that concerns she had for her own safety in attending the CPC were not addressed, and that her son's needs were placed before her own.

#### Examination

In examining this complaint, the Ombudsman reviewed the social work records and the complaint file held by Tusla. The complaint had been properly and fairly addressed by the Complaints Officer. The Complaints Officer had made a recommendation that a review of the practice in responding to clients who report personal safety concerns in attending Child Protection Conferences should be undertaken within the local area.

#### Outcome

Tusla had reviewed the practice in the local area. It had communicated with the CPC Chair and the social workers and had decided that a staggered attendance at the CPC should be offered and/or the offer made to bring a support person in cases where a client expresses concerns about their personal safety due to domestic violence.

# Local Authority

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## Housing

(L16/16/2707)

Completed 12/10/2017

### # Upheld

#### Background

A man owned a large property and surrounding land which included a bridge on which a local road is built. Both the property and bridge are protected structures and recorded monuments. The Council was claiming ownership of the bridge under Section 24 of the Local Government Act, 1925 despite the fact that the man's land registry folio showed that he owned it. As a result he was not being notified of issues to do with the bridge, such as proposed maintenance, as he was entitled to be. The man also had concerns as local elected representatives had suggested that the bridge might be demolished and replaced as, it was too narrow for current traffic.

#### Examination

Section 24 of the Local Government Act, 1925 provides for the taking in charge and maintenance of public roads only. It did not confer ownership of them on the local authority. The Council accepted that the man owned the bridge and agreed to write to him confirming its acceptance of his ownership. The Council also confirmed that he would be entitled to be consulted about any changes to the status or in relation to the maintenance of the bridge.

The Council said that there were no proposals to demolish the bridge and given its status as a recorded monument and protected structure it was unlikely to ever be demolished. It said that in the event that there was a need to address the traffic issue it was more likely that a new bridge would be built to divert traffic. Any such proposal would be subject to Section 8 of the Planning Act and the public would have a right to make observations on any such proposals.

#### Outcome

The complaint was upheld.

## Planning Enforcement

(L55/15/4318)

Completed 10/10/2017

### # Assistance Provided

#### Background

A number of residents complained about the Council not taking enforcement action against the developer of a piggery. They complained that they were being subjected to unpleasant smells and that the structure was not built in accordance with planning permission.

#### Examination

The Council had identified breaches in a number of the planning conditions. An Enforcement Notice was issued to the Developer and the Council continued to correspond with him on the specified issues. Some of the issues were resolved and the Council is in contact with the developer on any remaining issues. The Environmental Section of the Council also investigated reports of odours in line with the relevant guidance. As a result of the Ombudsman's examination, the Council committed to weekly odour tests over a six month period, as well as testing in response to complaints during this time period. A decision about whether or not to take enforcement action will be taken once the data from these tests is collected. The Council also confirmed it would carry out noise assessments which it had previously agreed to do.

#### Outcome

The Ombudsman was satisfied that the Council had demonstrated that it was now taking reasonable action on the complaints.

# Private Nursing Homes

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## Private Nursing Homes

(N20/17/1533)

Completed 21/09/2017

### # Upheld

#### Background

A woman complained about the manner in which her verbal complaint about a staff member was handled, initially by care staff in the nursing home and subsequently by the proprietor of the nursing home. The staff member complained of, approached the woman to question her about the verbal complaint. The woman found this conversation upsetting. Staff in the nursing home then contacted the proprietor at home to discuss the woman's complaint. The next day the proprietor discussed the incident with the woman's brother (as her mother's nominated next of kin) before he discussed it with her. Following a number of contacts, the proprietor wrote a letter of apology to the woman for discussing the incident with her brother. At the woman's request he also copied the letter to her family. Unfortunately the contents of this letter caused further upset.

#### Examination

The woman's complaint had not been handled in line with the nursing home's complaints procedure. The proprietor accepted that the verbal complaint had been poorly handled by the staff members involved which resulted in an interaction that was upsetting for all involved. The correct procedure would have been for the staff nurse in charge to bring the verbal complaint to the attention of the nursing home management who would in turn contact the woman. The proprietor spoke to the staff involved and discussed the complaints procedure. The proprietor had already acknowledged that it had been unwise to talk to the woman's brother before discussing the incident with her and he apologised for this.

#### Outcome

The Ombudsman was satisfied that the complaints procedure had been discussed with staff. The proprietor issued a personal letter of apology to the woman and outlined the actions he had taken as a result of her complaint. The proprietor said he was genuine in his apology and was hopeful that his letter would ensure that the woman continued to feel welcome when visiting her mother in the nursing home and comfortable to raise concerns regarding her mother's care.

## Private Nursing Homes

(NJ4/16/3809)

Completed 05/10/2017

### # Upheld

#### Background

A woman complained about the management of her mother's condition, her diet and fluid intake, her oral hygiene and recurrent urinary tract infections (UTIs) in a nursing home. The woman felt that staff failed to recognise a decline in her mother's condition and lacked an awareness of the progression of dementia. The nursing home carried out an internal review of the resident's care and identified a number of shortcomings. The nursing home apologised and outlined an action plan to address the issues. The woman however felt that questions remained and queried how such deficits in care were allowed to develop.

#### Examination

The Ombudsman's examination agreed with many of the nursing homes findings. The resident was seen by a GP a number of times and by a dietitian. In addition specialised food and fluid monitoring charts were maintained. However no specific measures were taken in response to a sharp reduction in the woman's intake and a decline in her condition until it was highlighted by a palliative care team pain review, four days before the resident was admitted to hospital. In the resident's last ten days in the nursing home the daily care notes did not give a full picture of the woman's emerging health needs. A recommended speech and language therapy referral was faxed incorrectly and never followed up on. The Ombudsman was especially concerned about the level of oral hygiene afforded to the resident.

Overall it appeared that the resident's emerging health needs were not recognised, responded to or escalated to senior nursing staff in a timely manner. Her care plan was not updated to reflect the change in her condition. The nursing home also acknowledged that a conversation about the likely progression in the resident's dementia would have assisted the woman to come to terms with her mother's declining health.

#### Outcome

The nursing home had already addressed some of the issues identified through the recruitment of senior staff with additional expertise and enhanced training sessions for staff. A number of improvements have been introduced into the day to day running of the nursing home such as better systems of handover of care, the introduction of an early warning system and multidisciplinary team meetings. The outcome of the complaint was shared with HIQA to ensure maintenance of the promised improvements.

## Private Nursing Homes

(NJ5/17/0353)

Completed 30/11/2017

### # Partially Upheld

#### Background

A woman complained about the general level of care provided to her mother in a private nursing home and the level of communication with her family, who lived abroad. The woman felt the nursing home did not take steps to improve her mother's quality of life. She felt she should have been told that there would be a gap in the physiotherapy and activities services when specialist staff members left. She also complained that staff were slow to react when her mother's condition deteriorated. Finally, there was a delay in the ambulance arriving to bring her mother to hospital.

#### Examination

The resident seemed to be well cared for. She was seen regularly by a number of healthcare professionals and took part in organised outings and activities in the home. The family were also very active in their mother's care. Although there were no regular updates for the family, it was clear that all family emails and phone-calls were fully answered, without delay. There was no evidence of interruptions to the exercise programme and activities offered while posts were being filled.

Some issues of clinical judgement could not be looked at. However, when the doctor requested a urine sample, there was a four-day delay in obtaining it. Reasons for some of this delay were written in the notes. However, for two days there were no notes concerning attempts to get a urine sample. It may have been that the instructions were not handed over at the change in staff shifts. The delay in the arrival of the ambulance was due to poor communication within the ambulance service itself.

#### Outcome

The nursing home apologised to the family for the delay in obtaining a urine sample. The complaint was discussed with staff and the nursing home has improved the process of handing over tasks that have not been completed at the end of each shift.

# Regulatory

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## Law Society – Complaint Adjudicator

(R13/17/2050)

Completed 12/10/2017

### # Not Upheld

#### Background

A man complained to the Ombudsman about the Law Society of Ireland. He said he received inadequate professional services from his solicitors over a right of way dispute with a neighbour. He complained that as a result of these inadequate professional services, his neighbour was granted a right of way, causing adverse effect to him.

The Law Society said it could not investigate his complaint on the basis that the allegations related to a complaint of negligence. He also referred it to the Independent Adjudicator who upheld that view.

#### Examination

The Law Society's leaflet on 'Complaints about Solicitors' explains its procedures for dealing with complaints and what a person should do if they wish to complain about their solicitor. It explains the difference between inadequate professional services and negligence as follows:

'Inadequate Professional Services (or shoddy work) arises where the legal services fall short of reasonable standards but do not cause financial losses or other serious adverse effects.

The society can order the payment of compensation up to a limit of €3000, in some circumstances. However, if you maintain that as a result of your solicitor's negligence you are entitled to damages or compensation, you should consult an independent solicitor. There are strict time limits attaching to claims for negligence, and therefore it is important that you obtain independent advice as soon as possible.'

As the man claimed that he suffered adverse effects as a result of his solicitors' actions, it could not be defined as inadequate professional services. Negligence is defined in law as a breach of a duty of care which results in damage. The Ombudsman was satisfied that the man's complaint fell into this category.

#### Outcome

The Ombudsman was satisfied that that Law Society did not have remit to investigate his complaint, on the basis that it related to negligence as opposed to inadequate professional services.

# 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

<https://www.ombudsman.ie/making-a-complaint/make-a-complaint/>

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## Contacting the Ombudsman

The Ombudsman's Office is located at 18 Lower Leeson Street in Dublin 2, D02 HE97.

Lo-call: 1890 223030 Tel: 01 639 5600 Fax: 01 639 5674

Website: [www.ombudsman.ie](http://www.ombudsman.ie) Email: [info@ombudsman.ie](mailto:info@ombudsman.ie)

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

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## Feedback on the Casebook

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

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**Lo-call:** 1890 223030 **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)