



# The Ombudsman's Donegal CASEBOOK

Office of the Ombudsman, Dublin, Ireland.

Donegal Special Edition 2015

## Better public services

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When my Office considers complaints, we are looking to see whether the person complaining has received a poor service, or not received a service they were entitled to. If this is the case, and the person has suffered an injustice as a consequence, we aim to put things right for them. Where possible, we try to put them back into the position they would have been in had nothing gone wrong.

However, that's only part of the work of an Ombudsman. As well as looking to put things right for individuals, we are also looking to ensure that mistakes are not repeated. We aim to ensure that public services are improved through learning from mistakes.

In some complaints, the cause of any failure is just a one off – it's unlikely to happen again. In others, it can become clear that the failures were because of issues that could cause the same failure to be experienced by others. This can be because of poorly trained staff, poor management, inadequate systems or procedures or on occasions, problems with legislation. Making sure that people learn from their own mistakes, and where possible, those of other public service providers, is a key part of our work.

Often, we resolve matters without the need for a full investigation. This can get matters resolved for the individual, but can mean that the learning is limited. To tackle this issue, we introduced quarterly Ombudsman Casebooks which include summaries of cases we have closed. These Casebooks are aimed at service providers. The cases are divided into categories so that public service providers in each sector can readily learn from our findings. There are also cases where we find no fail-



Ombudsman Peter Tyndall

ures, and this illustrates that the work of the Office is to consider cases objectively.

This Casebook is the first regional Casebook we have produced. It is being published on the occasion of a visit to Donegal intended to raise the profile of the Office with potential complainants. It forms part of an extensive outreach programme which my Office undertakes throughout the year.

During the visit, we will meet with key public service providers, provide a seminar for local elected representatives and bodies in jurisdiction, provide training for Citizens Information Centre staff on taking complaints for our Office and have staff available to take complaints from members of the public.

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

Peter Tyndall, Ombudsman  
November 2015

# Statistics

## Complaints received from Donegal between January 2013 and October 2015

Public Service Provider	Total	Upheld	Partially Upheld	Assistance Provided	Discontinued/Withdrawn	Not Upheld
Department of Social Protection	137	12	0	14	51	60
Donegal County Council	86	6	4	18	38	20
HSE	75	17	1	8	28	21
Department of Agriculture, Food and the Marine	36	6	0	0	10	20
Office of the Revenue Commissioners	20	1	0	4	11	4
Department of the Environment, Community and Local Government	12	2	0	4	5	1
SUSI	11	0	0	0	9	2
Others (5 or less complaints)	51	4	1	8	18	20
<b>Total</b>	<b>428</b>	<b>48</b>	<b>6</b>	<b>56</b>	<b>170</b>	<b>148</b>

Table 2: Department of Social Protection Complaints received	Amount
Jobseeker's Allowance	32
Disability Allowance	18
State Pension (Contributory)	15
Carer's Allowance	13
Supplementary Welfare Allowance	12
Invalidity Pension	7
Family Income Supplement	6
Back to Education Allowance	5
Illness Benefit	4
One Parent Family Payment	4
Domiciliary Care Allowance	3
Other	18
<b>Total</b>	<b>137</b>

Table 3: Donegal County Council Complaints received	Amount
Housing	32
Planning Enforcement	13
Planning Administration	12
Miscellaneous	12
Non-Reply to Correspondence	6
Water Supply	3
Other	8
<b>Total</b>	<b>86</b>

Table 4: HSE - Complaints received	Amount
Motorised T'port Grant	23
Care and Treatment	13
Primary & Community Care	6
Social Work Services	6
Medical & GP Card	6
Other	21
<b>Total</b>	<b>75</b>

Table 5: Department of Agriculture, Food and the Marine - Complaints received	Amount
Compensation Losses	17
Single Farm Payment	7
R.E.P. Scheme	3
Marine/Foreshore Licences	2
Other	7
<b>Total</b>	<b>36</b>

Table 6: Office of the Revenue Commissioners Complaints received	Amount
Income Tax	4
Disabled Drivers	2
Customs & Excise	2
Local Property Tax	2
Other	10
<b>Total</b>	<b>20</b>

# Department of Agriculture, Food and the Marine

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## AEOS (Agri-Environmental Options Scheme)

C01/12/1336

Completed 28/03/2014

### # Upheld

#### Background

A farmer complained to the Ombudsman about the decision of the Department of Agriculture, Food and the Marine to refuse his application under the Agri-Environmental Options Scheme (AEOS 1) as he had not complied with all the conditions of the scheme, in particular that he did not include on the application form all of the lands that he owned.

Instead, he had included enough of his lands that would have qualified him for the maximum grant available. While maps submitted with the application form showed all the land owned by the farmer, all of these lands were not listed on the application form. The failure to include all of his lands on the application form did not give him any advantage.

The man also said that there was a delay by the Department in notifying him of its decision and that had he received a more timely decision, he would have been in a position to apply for the next version of the scheme, AEOS 2. Accordingly, he lost the grant in respect of AEOS 1 and AEOS 2.

#### Examination

It was a condition of the Scheme that the application form had to be completed by the farmer's Teagasc Adviser. The applicant was required to sign the form acknowledging that he understood and accepted that it was his responsibility to acquaint himself with the conditions of the Scheme.

In this case, the Teagasc Adviser acknowledged that she made the error in leaving part of the farmer's lands off the form. She said that this scheme was introduced quickly by the Department without much preparation. Teagasc and applicants had little time to familiarise themselves with the scheme and complete the applications. When completing the complainant's form, the Teagasc Adviser said that she included on the form only the amount of land needed to qualify for the maximum amount of grant. As the grant was set at €75 per hectare and the maximum grant was €5,000, a plot of land containing 72.41 hectares, which she included in the form, was sufficient to qualify for the maximum grant.

The relevant European Commission regulations provide that "Applications for support and payment claims may be adjusted at any time after their submission in cases of obvious errors recognised by the competent authority." Therefore, it was open to the Department to have viewed it as an obvious error and not to have rejected it.

## Outcome

The Department was asked to review its decision and it subsequently informed the Ombudsman that having considered all the issues raised, and considering that the farmer could have taken part in the AEOS 2 Scheme from 1 September 2012, it was prepared to make a payment to the farmer of €6,000, equivalent to the maximum payment available for the period in question.

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## Disadvantaged Areas Scheme

C01/14/0886

Completed 18/06/2014

### # Upheld

#### Background

A farmer from Donegal complained in July 2014 about his application under the Disadvantaged Areas Scheme 2012 with the Department of Agriculture, Food and the Marine.

He said that in his application he had outlined his medical circumstances to the Department but his application was refused. The Department considered that his medical condition had not affected his pattern of farming under the Scheme.

#### Examination

After being contacted by the Ombudsman, the Department agreed to review the case.

#### Outcome

Following a review, the Department decided to allow the payment on an exceptional basis. Even though his stock levels were low the Department was satisfied that the farmer had farmed all year round.

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## R.E.P. Scheme (Rural Environment Protection Scheme)

C01/14/2289

Completed 07/05/2015

### # Not Upheld

#### Background

A man complained that the Department of Agriculture, Food and the Marine had imposed a penalty on his application for funding under the Rural Environment Protection Scheme 3 (REPS 3). A penalty of 15% was imposed because the Department said that he had failed to spread lime, as agreed in his REPS plan, and had also failed to rejuvenate an agreed area of hedgerow. The man did not contest these omissions but said that it was normal practice for the Department to reduce the amount of penalties on appeal. He also said that bad weather had prevented him spreading the lime.

### Examination

The Department said that it does not automatically apply reductions in penalties but that such decisions are made on a case-by-case basis taking account of any exceptional circumstances.

### Outcome

Having examined all the evidence, the Ombudsman decided that the Department had properly applied the terms of REPS 3 in the man's case. He agreed with the Department's view that the weather did not constitute an "exceptional circumstance" for reducing the penalty as provided for in REPS 3 and so did not uphold the complaint.

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## R.E.P. Scheme (Rural Environment Protection Scheme)

C01/13/1101

Completed 06/03/2014

### # Upheld

#### Background

A woman complained that the Department of Agriculture, Food and the Marine had imposed a financial penalty or "clawback" on her REPS 3 payment. The penalty was imposed due to some incorrect information returned to the Department.

#### Examination

The Ombudsman consulted the Department's file and established that in certain circumstances a penalty can be set aside. The Ombudsman and the Department established that at the time the returns were made the woman had been suffering from ill health following the tragic death of her husband. Medical evidence of this ill health was obtained from the woman's doctor and this was treated as new evidence by the Department.

#### Outcome

This prompted a further review of the issues and the Department agreed to set aside the penalty.

# Department of Social Protection

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## Carer's Allowance

C22/14/0481

Completed 07/08/2014

### # Not Upheld

#### Background

A lady applied for Carer's Allowance on 30 January 2013 in respect of her 25 year old brother who has ADHD and some behavioural issues. Her brother had left school early but is now living independently in his own apartment and studying for the Leaving Cert as a mature student. The woman said that she has to organise direct debits for paying his bills because of his behavioural problems.

#### Examination

The Department's Medical Assessor examined her application including the medical report submitted by her brother's G.P. and decided that she was not eligible for Carers Allowance. The reason given was that, while her brother may need some assistance, there was no medical evidence to show that full time care and attention was required for 12 months or more. The Social Welfare Appeals Office disallowed her appeal on the grounds that "full time care was not required" and said that "the evidence indicates that [he] needs some support and assistance in relation to managing his life but does not show a need for full time care".

#### Outcome

The Ombudsman did not uphold this complaint. He was satisfied that the Department had processed her claim in accordance with the legislation and operational guidelines. He also acknowledged that both the medical evidence on file and the fact that the woman's brother is living independently in an apartment and studying for his Leaving Certificate would support the Department's decision that the care she provides is not considered to be full time care and attention within the meaning of social welfare legislation.

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## Carer's Allowance

C22/14/1562

Completed 24/02/2015

### # Assistance Provided

#### Background

A man applied for Carer's Allowance in respect of his mother and the application had been refused on medical grounds. The man said that his mother had a number of falls and needed constant supervision. His appeal had also been refused by the Social Welfare Appeals Office.

### Examination

The reports which had been completed by the GP had not provided much supporting evidence for the man's claim. In submitting the appeal, he had provided a further report from the GP about further medical issues which although considered by the Appeals Officer had not been referred to a Medical Assessor for review.

### Outcome

The Ombudsman asked that a Medical Assessor review the additional medical report. The Medical Assessor decided that the report did not provide sufficient evidence to overturn the Appeals Officer's original decision. However the Chief Appeals Officer reconsidered the case and decided that the appeal should be re-opened by way of an oral hearing. This provided the man with another opportunity to provide further evidence that his mother does require full time care.

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## Jobseeker's Allowance

C22/13/1540

Completed 13/08/2014

### # Upheld

#### Background

A man complained to the Ombudsman in relation to his application for Jobseeker's Allowance. He is Romanian and has lived in Ireland since 2007. The application was refused on the basis that he is not habitually resident in the State. He appealed the decision and the Appeals Officer upheld the original Deciding Officer's decision on the same grounds.

#### Examination

Following a review of the case, the Ombudsman was concerned that the decision to refuse the claim for JA may have been taken on irrelevant grounds. The man had provided supporting documents to prove that he worked in Ireland, that his immediate family live here and that his main centre of interest is in Ireland. Under the circumstances, the Ombudsman requested the Department to review its decision in this case.

#### Outcome

Arising from the Ombudsman's correspondence, the decision was reviewed by an Appeals Officer. The officer revised the original decision and decided that the man satisfied the habitual residence conditions from the date he applied for JA. In the circumstances, he will be entitled to payment of JA if he satisfies the other qualifying conditions.

## Jobseeker's Allowance

C22/14/0378

Completed 03/06/2014

### # Upheld

#### Background

A man complained to this Office regarding a retrospective payment of Jobseeker's Allowance (JSA) from the Department of Social Protection. He had been refused as he was not 'habitually resident' in the State. The man appealed the decision to the Social Welfare Appeals Office (SWAO) and it allowed his appeal and awarded him JSA backdating it to September 2014. However, he was unhappy with this decision as he felt JSA should have been awarded from the date of his application which was April 2014.

#### Examination

The Ombudsman examined the legislation governing the habitual residence condition and found that in order to receive an allowance an applicant must be habitually resident in the State at the date of making the application for the allowance.

In the circumstances the Ombudsman considered that once the man was successful with his appeal regarding meeting the habitual residence condition, he is approved from his date of application.

#### Outcome

The SWAO reviewed the original decision and allowed the JSA claim from April 2014. The Department paid arrears of €3,634.67 to the man, along with his JSA weekly payment of €188.

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## One Parent Family Payment

C22/14/0208

Completed 24/11/2014

### # Not Upheld

#### Background

A woman and her children moved to Ireland to be near her family when her relationship broke up. Her parents who are Scottish and her brothers have been resident and working in Ireland for over 7 years. She sought Social Welfare Assistance (SWA) One Parent Family Payment (OPFP) and Child Benefit (CB) from the Department of Social Protection but was refused on the basis that she was not habitually resident here. Her appeal to the Social Welfare Appeals Office (SWAO) was not upheld either. She wrote to the Ombudsman claiming that she was dependent on her father for food and shelter and that she should be considered to be habitually resident here.

### Examination

In order to claim social welfare benefits in Ireland a person must have been working here and paying PRSI or be habitually resident. There is provision under EU Regulations whereby if an adult child or relative has been a dependent of the non national EU worker in their home Country prior to their moving to the other EU Country, that they can be considered a dependent in the second Country also.

In this case, the woman had been living independently of her parents in Scotland prior to moving to Ireland. Therefore she could not be considered to be her father's dependent and she had not been working here prior to submitting her claims. Therefore the Department's decision had been correct.

### Outcome

However the woman had been in employment since making her complaint. Therefore, her application for One Parent Family Payment was reviewed and paid from the date she had started working.

# Donegal County Council

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## Housing Allocation & Transfers

L10/14/1249

Completed 23/07/2015

### # Not Upheld

#### Background

A couple applied to Donegal County Council for a transfer to move in with their uncle in his Council owned home. The uncle is elderly and has specific accommodation requirements due to ill health. The uncle lives in an old cottage with a very small kitchen and three small bedrooms. The couple currently live adjacent to their uncle with their two children.

#### Examination

The Council stated that, if the transfer was allowed, it would lead to overcrowding which would make the living situation of the couple, their two children and their uncle worse than it currently is. While the Council empathised with the situation, it refused the transfer request.

#### Outcome

As the Council had acted in accordance with the terms and conditions of the policy in relation to the number of bedrooms required for social housing support, the Ombudsman did not uphold the complaint.

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## Housing Allocation & Transfers

L10/14/1534

Completed 15/10/2014

### # Upheld

#### Background

A couple who were members of the travelling community complained that Donegal County Council refused to give them a bay on a halting site, which they had been living on for a number of months. The man had lived on the halting site since he was young. The couple had previously lived in private rented accommodation, but found it very hard to cope with living in a house without their family support. The Council told the couple that the site was temporary and may be closed in the future.

#### Examination

When the Ombudsman explained the situation to the Council, it agreed to review the couple's request for a bay on the halting site.

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## Outcome

The Council provided the couple with a bay on the halting site. In this particular case, the Council also agreed to provide the couple with a mobile home.

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## Planning Enforcement

L10/13/1058

Completed 19/09/2014

### # Not Upheld

#### Background

A man complained to the Ombudsman about a Council's delay in pursuing enforcement action against a developer to bring about the completion of the complainant's estate. The man listed a number of items that had not been completed by the developer. The man also said that the Council would not meet with residents on a regular basis to update them on the Court action it was taking.

#### Examination

The Ombudsman examined the matter and found that the Council had taken enforcement action against the developer in a reasonable timeframe. Although there were delays in dealing with the matter this was because the Courts adjourned the case to allow the developer opportunities to carry out works in the estate. In the circumstances, the Ombudsman could not fault the Council for the length of time it was taking to finish the estate.

The Ombudsman also noted that the Council had held occasional meetings with residents and provided them with updates regarding the Court action it was taking.

#### Outcome

The Ombudsman found that there were long delays in informing residents of the outcome of Court appearances in writing. The Ombudsman asked the Council to provide future updates to residents in a reasonable timeframe. The Council agreed to do this.

# HSE

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## Home Care Grant

HC4/13/0479

Date completed: 20/05/2014

### # Upheld

#### Background

A woman complained to the Ombudsman when her personal assistance hours were reduced following a review of her home care package (from 42 hours to 30.5 hours per week). She was concerned that the reduction was unfair and that the review did not take her personal needs and circumstances into account. Her case was reviewed by the HSE. However, her hours were not increased following the review.

#### Examination

The woman was assessed as requiring maximum assistance when using the toilet. When the Ombudsman looked at the assessment form used for the review, he saw that while help using the toilet was provided for at mid-day and in the evening, there was no help offered in the morning. This is despite the fact that this is when she said she would need the time most. She was allocated 7 hours per week for help with bathing in August 2009 but this time was removed when her hours were reviewed in February 2012.

#### Outcome

The Ombudsman considered it unfair that the woman no longer had help with bathing in her home care package, particularly in view of her personal circumstances. He was also concerned that the assessment form used for the review did not reflect her individual needs. He asked the HSE to consider restoring her personal assistance hours to 42 hours per week. As part of the ongoing review process within the Physical and Sensory Disability Service, the woman's hours were reviewed. The outcome of the review was that her hours were increased to 46.5 hours per week.

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## Letterkenny General Hospital

### Care & Treatment

H21/14/176

### # Partially Upheld

#### Background

The family of a late 67 year old man, who had been a resident in a nursing residential unit for over twenty years, complained that there was undue delay in diagnosing his bowel cancer. The man was severely disabled and was unable to communicate clearly. His family noticed that he was in pain and that he had lost considerable weight. He had been initially referred by his GPs in the Nursing Unit to Letterkenny General Hospital (LGH) for tests in October 2013 but

was discharged five days later. No consultation with the family had taken place during this first admission.

An ultrasound of his liver had been taken which detected two lesions on his liver which were thought to be benign.

One week later, the man was readmitted to LGH (under a different consultant) following a bleed from his bowel. Following a CT scan, the man was diagnosed with inoperable bowel cancer and transferred back to the Nursing Unit with palliative care in place. He sadly died some weeks later. His family said that there was a history of bowel cancer in the wider family. They complained that neither the attending GPs in the Unit nor the initial treating consultant in LGH had sought information from them regarding the family's medical history. Had this been documented in the man's records or had medical staff sought information about his family's medical history, the family believed that an earlier diagnosis of bowel cancer could have been made.

#### Examination

Examination of the medical records showed that the treating GPs first noticed weight loss in September 2013. However, the man's vital signs were stable and other examinations were normal. Repeated blood tests had shown signs of infection in October 2013 which triggered an immediate referral to LGH. During the man's first admission, an ultrasound scan had been performed which showed two lesions on his liver. Consideration was given to the possibility of cancer but a clinical decision was taken that the scan did not indicate the presence of cancer. Crucially, however, the treating consultant did not discuss the scan results with the family before discharging the man back to the residential unit. This lack of direct contact with the family meant that an opportunity was lost for them to provide information about the presence of bowel cancer in the wider family or to ask relevant questions of the consultant.

In discussion with the Director of Nursing in the Nursing Unit, the Ombudsman established that it had not generally been the practice for the treating GPs to meet with family members to discuss the medical care provided to residents. Nursing staff would, however, advise the family if tests had been requested. The Director of Nursing undertook to ensure that regular family meetings between the practice GPs and nursing staff took place at the Unit.

#### Outcome

In relation to the care provided in LGH, the hospital said that its policy was to ensure that doctors were proactive in communicating with family members to get a complete medical picture and family history. This was particularly important when a patient could not communicate or suffered from a mental disability. The hospital acknowledged that its policy had not been followed in this case. The Clinical Director for Medicine undertook to remind all medical staff of the need for proactive communication and engagement with family members of vulnerable patients. The General Manager wrote to the family to acknowledge this shortcoming and to apologise sincerely for it.

# Office of the Revenue Commissioners

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## Income Tax Audit

C21/15/0570

Completed 28/08/2015

### # Not Upheld

#### Background

A man complained about an audit of his tax affairs by the Office of the Revenue Commissioners. He was unhappy with the length of time the audit took and the expense he incurred in hiring a specialist tax expert to deal with the audit and legal representation to attend the appeal hearing.

#### Examination

The Ombudsman was satisfied that the correspondence showed that the audit was dealt with professionally and efficiently. There were a number of follow up queries and when no agreement could be reached on certain disputed issues, the Revenue concluded the audit.

#### Outcome

The Ombudsman did not uphold the complaint as he considered that the Revenue had dealt with the audit fairly and reasonably. The matter of the costs incurred had not been raised with the Revenue so the Ombudsman could not examine this aspect of the complaint.

# Property Registration Authority

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## Land Registry

C31/14/0639

Completed 30/04/2015

### # Assistance Provided

#### Background

A Donegal man complained about the Property Registration Authority when changes were made to maps involving his lands. In 1956 the man's father and a neighbouring farmer had exchanged two fields. Both parties agreed the location of the new boundary line and registered the relevant documents and map with the Land Registry in 1956. In 2009 the man sought maps for the two folios from the PRA. However he believed the maps, which were now digitised, did not match the position as laid out on his father's original 1956 maps. The PRA requested the return of both folios. It returned the maps to the man in 2010 reflecting the changes he had asked for.

In 2012 the PRA were contacted by the neighbouring landowner seeking to have the boundary line relocated to the position prior to the 2010 changes. The man says that the PRA failed to notify him until after these changes were carried out. The PRA said that further changes could only be made on foot of a Court Order or an agreement signed by both land owners.

#### Examination

The PRA said that when it was contacted by the neighbouring landowner in 2012 querying the revision of the boundary between the two folios, the case was referred to the Superintendent of Mapping and the Interim Chief Executive of the PRA. It was decided that the boundaries should be reverted to the position that pertained prior to the 2010 revision. Following an objection, a further review was carried out by the PRA as a result of which the PRA directed that the map lodged in 1956 was inconclusive and should not have been open to a new interpretation in 2010 and the revision should not have been made.

The Ombudsman accepted that as the PRA believed a mistake had occurred in 2010, and it had taken steps to rectify the matter (by reverting to the position as it was before the error occurred), it had complied with the legislation.

#### Outcome

While the man has a right of appeal to the Courts, the PRA agreed to review the man's contention that the problem was as a direct result of the digitising of the maps. It agreed to process his complaint (that the digitised maps did not accurately reflect the 1956 agreement between the man's father and the neighbouring farmer) under its procedure for dealing with issues regarding digitisation. As the Ombudsman was satisfied the PRA was dealing reasonably with the matter, he closed the complaint.

# Ombudsman Investigations - Donegal

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The vast majority of complaints to the Office of the Ombudsman are dealt with speedily by way of what is known as a “preliminary examination”. As is the case with many Ombudsman offices internationally, the “preliminary examination” process allows for an approach to complaint handling which is relatively informal and facilitates resolution and, where appropriate, redress by agreement.

There will always be a small number of complaints which, for one reason or another, require a more formal process of investigation and reporting. These cases are dealt with under the “investigation” process. Investigation cases are concluded with a written investigation report which contains findings and, if relevant, recommendations to the public service provider concerned.

A number of recent investigations were prompted by a number of individual complaints, including complaints from Donegal:

## Too Old To Be Equal?

### Investigation into the Mobility Allowance and Motorised Transport Grant schemes: An Update

#### Background

Mobility Allowance is a monthly payment made by the HSE to people with a severe disability “who are unable to walk and who would benefit from occasional trips away from home”. The Allowance is worth a maximum of €208.50 per month.

In July 2011 the Ombudsman found that:

- the Mobility Allowance Scheme discriminated on the ground of age as it included an upper age limit of 66, which is in breach of the Equal Status Act, 2000
- the upper age limit in the Scheme had been illegal since the commencement of the Equal Status Act in 2000.

In November 2012 the Ombudsman also submitted a special report to the Oireachtas involving the Health Service Executive and the Department of Health finding that the Motorised Transport Grant Scheme was administered in a manner which breached Equal Status legislation. In both cases the HSE and the Department had acknowledged that they were acting in breach of the law but had taken no effective action to remedy the situation.

The Department of Health accepted the Ombudsman’s findings and recommendations which included completing a review of the Mobility Allowance Scheme by the end of 2011. Many of the people who complained to the Ombudsman about the schemes were from Donegal. Despite commitments from the Department no review or replacement scheme was introduced.

#### Update

The Joint Oireachtas Committee on Public Service, Oversight and Petitions held a number of public hearings involving the Ombudsman, the Minister for Health and senior officials from the Department and the HSE. The two schemes had to be closed down for new entrants and an inter-Departmental Working Group was set up to formulate new proposals. Arising from this process the Ombudsman understands that plans are at an advanced stage to bring in new legislation to introduce a special transport support scheme for persons with disabilities.

## Passport Investigation

Ombudsman finds that the Passport system is too complex for certain non-EEA workers



In July 2014 the Ombudsman published his report 'Passports for Irish-born children of non-EEA parents' following his investigation into the difficulties faced by non-EEA workers in obtaining passports for their children born in Ireland. The report concerns three men who came from Brazil to work in Ireland. Two of the men were living in Donegal.

### Findings

The Ombudsman found that, while the laws in relation to both the processing of passport applications and employment permits were being correctly applied, the complex administrative processes were likely to cause difficulties that could amount to unfairness and unnecessary delay in individual cases.

While the Ombudsman's investigation was underway, two of the cases were reviewed and passports issued for the children concerned, which was good news for the families involved. The third case was under review at the time of writing the investigation report and a passport has since issued.

### Background

In his report, the Ombudsman describes how, although the men had worked in Ireland for more than four years prior to the births of their children,

they did not meet the legal requirement that they must have at least three years lawful residence in the State in the four years prior to the child's birth. Some of their residence was recorded by the authorities here as unlawful and the total period of lawful residence recorded for them did not add up to three years.

The reason for this was that, while their employment permits had no gaps and were kept up to date, their residency permissions had not always been kept up to date (for a variety of reasons, not all of them the fault of the worker) and contained gaps which had the unfortunate consequence of making periods of residence in Ireland as officially unlawful.

So, they were in the odd position of living here for many years, working (with permits from the State), paying income tax and social insurance to the State and yet not "lawfully resident" for certain periods of time during those years.

The Ombudsman noted the difficulties caused by the system for the people involved. It is undoubtedly a complex system and the Ombudsman recommended closer co-operation between the agencies involved. His recommendations have been accepted and are in the process of implementation.

### Update

A working group has been established to investigate the feasibility of introducing a unified employment permit and visa applications system as part of the Action Plan for Jobs. This is a positive step which, if pursued to an effective conclusion, will help overcome difficulties of the kind described in the investigation report and which is faced by workers coming to Ireland from outside the European Economic Area.

The Department of Jobs, Enterprise and Innovation and the Department of Foreign Affairs and Trade have also given the Ombudsman assurances about the introduction of improvements in their practices which should assist such workers in the future.

The Ombudsman's full report, 'Passports for Irish-born children of non-EEA parents', and a summary of the report are available on the Ombudsman's website.

# 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.

## 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 bodies.

At present, the public bodies whose actions may be investigated by the Ombudsman are:

- 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)

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.

**From 24th August 2015 the Ombudsman has been able to examine complaints about private nursing homes.**

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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 public body 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 body concerned has not treated them fairly, they can contact the Ombudsman.

Further details on making a complaint can be found on our website

<http://www.ombudsman.gov.ie/en/Make-a-Complaint/>

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## Contacting the Ombudsman

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

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

Website: [www.ombudsman.gov.ie](http://www.ombudsman.gov.ie) Email: [Ombudsman@ombudsman.gov.ie](mailto:Ombudsman@ombudsman.gov.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.gov.ie](mailto:casebook@ombudsman.gov.ie) with any comments.



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