



# The Ombudsman's CASEBOOK

Office of the Ombudsman, Dublin, Ireland.

Issue 7 Summer 2016

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## Complaints can make public services better

Welcome to the Summer edition of The Ombudsman's Casebook containing summaries of a selection of the complaints we recently examined. I hope that you find them interesting.

In June, Ombudsman Peter Tyndall published his Annual Report for 2015. In the report the Ombudsman commented that he wanted to see more people complain about public services. Rather than being an administrative burden we strongly believe that complaints can be used to improve the delivery of public services. In most cases the delivery of public services goes smoothly and well.

However, occasionally something may go wrong and if people don't complain when things go wrong then future users of these services may experience the same problems over and over again. When people complain it gives service providers an opportunity to learn from mistakes, put things right and make changes to ensure these issues do not occur again.

During 2015, complaints to the Ombudsman rose by 3% to 3,641. This follows an 11% increase in complaints in 2014. I am pleased to say that most complaints are resolved informally. In 2015, we completed 86% of cases within 3 months and 96% were closed within 12 months.

Private nursing homes came within the Ombudsman's jurisdiction in August 2015. We received 12 complaints about private nursing homes in 2015 and 13 so far in the first five months



Director General Jacqui McCrum

of 2016. As part of an engagement programme we designed a Model Complaints System for use by Nursing Home providers which can be adapted for use by all public service providers.

We have found that early engagement with private nursing home providers has proved very successful in helping to resolve complaints quickly to everyone's benefit. The Model Complaints System is available on our website [www.ombudsman.ie](http://www.ombudsman.ie) and we would be pleased to discuss this further with any interested public service provider.

Recently, the Minister for Justice and Equality announced that both asylum seekers living in Direct Provision accommodation, and prisoners should have their complaints independently investigated by the Ombudsman. We warmly welcome these announcements and we will actively work with all relevant stakeholders now to make these extensions of jurisdiction a reality.

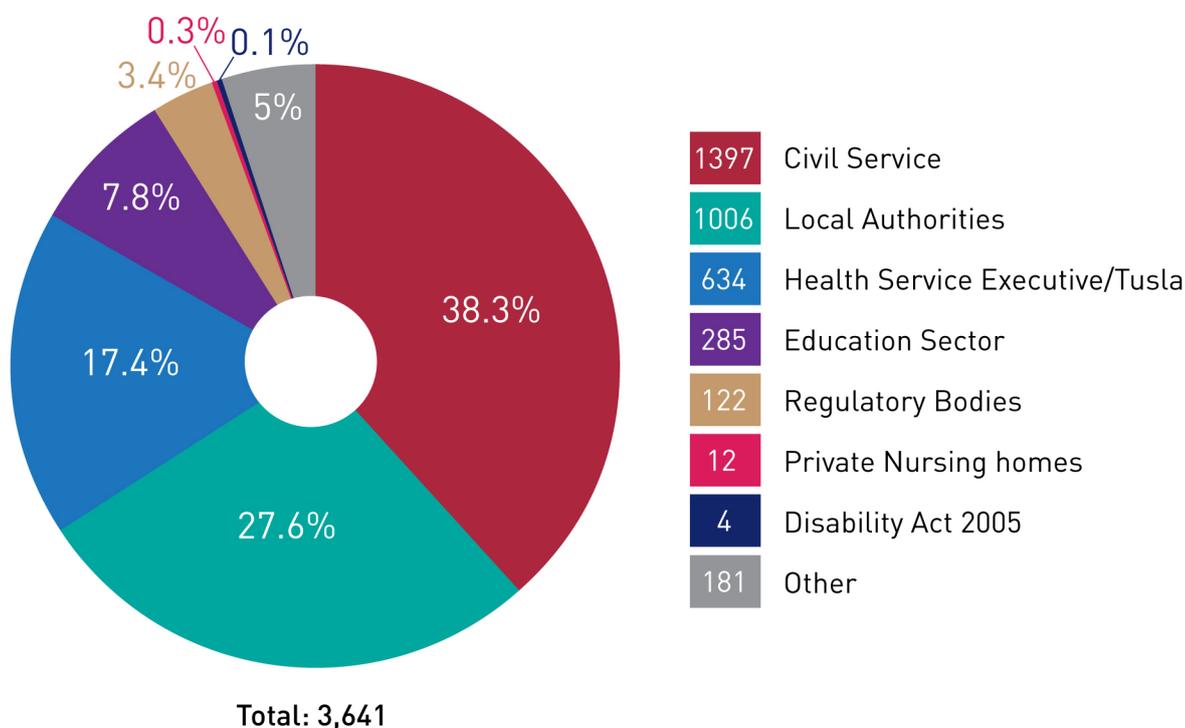
Jacqui McCrum, Director General  
July 2016

# 2015 Annual Report - Selected figures

The statistics below give an overview of the work the Ombudsman handled with regard to public service providers in 2015.

Complaints received in 2015	3,641
Complaints completed in 2015	3,531

## Complaints Received by Sector



Complaints Received and Completed in 2015									
	Received	Completed							
		Upheld	Partially Upheld	Assistance Provided	Discontinued/Withdrawn	Discontinued Premature	Not Upheld	Outside Remit	Total
Civil Service	1397	132	9	116	106	482	457	88	1390
Local Authority	1006	155	9	137	84	236	292	50	963
Health Service Executive	585	66	22	81	60	164	129	45	564

# Agriculture

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## Forest Premium Scheme

Department of Agriculture, Food and the Marine

C01/14/1665

Completed 22/01/2016

### # Upheld

#### Background

A man complained to the Ombudsman that the Department of Agriculture, Food and the Marine (the Department) sought to recover over €25,000 from him following the flooding of his land in Kerry. The man had received the money through the Afforestation Grant and Premium Scheme to cover the cost of establishing a forest.

The Department inspected the man's land and approved his grant in 2004. The forest was destroyed by severe flooding in 2009. When he realised the extent of the damage the man contacted the Department in 2010 looking for advice about what he should do. The Department stopped his payment and did not make a decision about how it was proceeding for nearly three years. In January 2013 the Department demanded repayment of the grant of over €25,000, in full, within one month.

#### Examination

The land is surrounded by canals which form part of a local drainage network. The local authority is responsible for maintaining the drains feeding this network. The local authority stopped draining the canals around 2009 because of damage caused by the floods. The local authority said that it could not maintain the local drainage network each year because of budget restrictions. The drains on the man's land were satisfactory but could not work properly because the local drainage network was not being maintained.

The Department said that the reasons it demanded repayment were that:

- the trees had been removed by the man from the land
- the man had not said in his original application that his land was subject to flooding
- it considered that the man was aware of the risk of flooding and that it was his responsibility to comply with the conditions of the scheme
- it was unreasonable for the man to rely on the actions the local authority to comply with his obligations and that this was the reason why force majeure did not apply in this case.

The man appealed the Department's decision and provided evidence that the flood destroyed the trees and caused damage to his land. The local authority confirmed that the severe rainfall, high tides and excessive amounts of material in the drainage channel had prevented proper drainage which was outside the man's control. (Subsequently a Department official confirmed that the trees had been removed as a result of the flooding).

The Ombudsman discovered that the South Western Regional Fisheries Board had written to the Department in May 2004 advising it that part of the site may be subject to flooding.

This was before the Department approved the grant in August 2004. The man told the Ombudsman that he had no knowledge of the Board's report.

A Forestry Inspector from the Department had visited the man's land in May 2013 and said that it was a case of force majeure. However this was overturned by the Department in December 2013. The Department defines force majeure as 'circumstances outside the farmer's control which s/he could not have foreseen and which s/he, as a prudent farmer, took all reasonable precautions to avoid'. The Department said that circumstances which are accepted as constituting force majeure include 'a severe natural disaster gravely affecting the holdings agricultural land'.

#### Outcome

The Ombudsman considered that the Department had granted the man's application in the knowledge that his land may be prone to flooding, and that it was now trying to hold the man responsible for something about which he was unaware and over which he had no control.

The Ombudsman asked the Department to review the man's case, particularly with regard to the force majeure provision. The Ombudsman considered that the available evidence indicated a natural disaster that was outside the man's control.

In the circumstances the Department agreed to review its decision and decided not to recover the amount of €25,000.

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## Single Farm Payment

Department of Agriculture, Food and the Marine  
C01/14/1124

Completed 23/02/2016

### # Assistance Provided

#### Background

A man complained that a 5% financial penalty imposed on him by the Department of Agriculture, Food and the Marine was excessive. The penalty was imposed under the 2012 Single Payment Scheme. The man argued that the breaches of the terms of the Scheme were minor. He said that under an informal agreement between the Department and the Agricultural sector known as the "Farmer's Charter" such minor breaches should not attract a financial penalty.

#### Examination

Based on the evidence of the case, the Ombudsman asked the Department if it still considered the penalty to be reasonable. The Department offered to reduce the penalty from 5% to 3%. In further correspondence the Department provided more detail on the extent of the breaches of the Scheme and confirmed that there had been similar breaches in a previous year. The Department also clarified that "The Farmer's Charter" was not provided for in any legislation and was intended as a guide to dealing with more minor breaches of the scheme than those recorded in this case. However, it offered a further reduction in the penalty to 1%

Outcome

Taking account of the further information on the extent of the breaches involved, and of the fact that there had been earlier similar previous breaches, the Ombudsman concluded that the Department's offer of a reduction in the penalty to 1% was a fair outcome.

# Education

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## City of Dublin Education Training Board (CDETБ)

E06/14/1745

Completed 29/02/2016

### # Upheld

#### Background

A man complained that his funding for a scholarship grant for a PhD course in Queen's University Belfast (QUB), which had been awarded by CDETБ, was not processed properly. The man had not received all the funding to which he was entitled and had been threatened with suspension for non-payment of fees. The man complained to CDETБ but the problem continued. When QUB issued an invoice, CDETБ paid the amount but failed to have regard to the fact that PhD courses do not run for the same academic year as other courses. This caused a difficulty resulting in overlaps for some academic years and underpayments for other periods and eventually resulting in an situation where there was a shortfall of €97.00 tuition fees, for which QUB said the man was liable.

#### Examination

CDETБ admitted its mistake and put in place procedures to ensure that an incident like this would not reoccur. CDETБ now contacts QUB following receipt of all invoices and seeks a breakdown of months/periods of a course to which invoices apply and requests the fee value for each month. CDETБ apologised for the delay in rectifying the situation and made a payment of €500 to the man in recognition of the difficulties he encountered which were outside his control. QUB agreed to write-off the €97.00.

#### Outcome

The Ombudsman was satisfied that CDETБ accepted and apologised for its failure to deal with the complaint. He also noted that there are new procedures in place to ensure that a similar incident will not recur.

## Exam Procedures

Cork Institute of Technology

E11/15/0041

Completed 14/03/2016

### # Partially Upheld

#### Background

A man attended an audition at Cork Institute of Technology (CIT) for entry onto a degree course in music. A few weeks later he was told that he had not passed the audition but did not receive his marks. He was subsequently told that he had failed each element of the audition.

### Examination

The Ombudsman did not form a view as to the merits of the man's audition or the appropriateness of the marks received. However, the Ombudsman was concerned that the assessment sheets for the audition had no detailed comments accompanying the marks. These comments could enable an applicant to know how they may have lost marks and where to improve should they wish to audition again. It also appeared that there was confusion regarding the level and timing of feedback to be given to applicants.

### Outcome

In view of these concerns about the transparency of the process, the Ombudsman wrote to CIT and requested that it review its audition and marking procedures. In response, CIT said that all aspects of the audition process had been reviewed. Comments now accompany all marks so that a candidate may know how he or she lost marks while transparency and feedback options have also been improved.

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## Exam Procedures

Dublin Institute of Technology

E38/15/0974

Completed 22/02/2016

### # Not Upheld

#### Background

A man complained that two appeals he had submitted to the Dublin Institute of Technology (DIT) regarding a grade for his dissertation and for one other course for his MSc in Finance were not fairly considered by the appeals panel. The appeals had been deemed ineligible by the Appeal Eligibility Sub Group (AESG) panel of DIT.

#### Examination

The Ombudsman examined DIT's Appeals Procedures, the relevant appeal file, emails between the student and his dissertation supervisor, and the student's dissertation log book. The Ombudsman also sought details of the meeting that took place between the student and the Head of School, as there were conflicting views on what issues had been raised in relation to the attendance record of one of the lecturers and the standard of lectures.

#### Outcome

The Ombudsman could find no evidence that the man had been unfairly treated by the AESG panel. He noted that the panel consisted of people who were not affiliated to the School of Business and he was satisfied that all relevant information was considered before a decision was made.

## Exam Marks

State Examinations Commission

E85/15/0112

Completed 07/03/2016

### # Not Upheld

#### Background

A student, who was represented by her father, complained that she had been denied marks she should rightfully have been awarded for one of her leaving certificate examination papers. She exercised her right to review her examination paper and compare her answers with the examination marking scheme furnished by the State Examinations Commission. She then appealed her marks and later opted to seek a further review of her appealed scripts, as provided for in the appeals process, when she was unhappy with the outcome from her appeal. This led to an examination of her paper by the Chief Examiner, which resulted in an increase in her marks, but not to the extent she believed she merited.

#### Examination

The State Examinations Commission said that because of the enormous task in awarding 370,000 grades involving over 3,000 examiners, regrettably some errors are made. The State Examinations Commission said that it has in place an easily accessible, transparent and robust appeals process for students who feel marking errors may have occurred.

#### Outcome

The Ombudsman's examination concluded that the student fully availed of the examinations appeals process and that there was no evidence of maladministration in the application of that process.

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## Higher Education Grant

Student Universal Support Ireland (SUSI)

E78/15/3501

Completed 02/12/2015

### # Not Upheld

#### Background

If a person, who normally qualifies for a maintenance grant, lives more than 45 km (by the shortest possible route) from the college his grant is paid at the non-adjacent rate (a larger amount). A student complained about Student Universal Support Ireland (SUSI) seeking the return of an over-payment for a non-adjacent rate maintenance grant he received.

The student was initially awarded the adjacent rate maintenance grant. He appealed this on the basis that a bridge near his home was due to close for maintenance for two months and he claimed that an alternative route was over 50 Km to college. SUSI agreed to pay the non-adjacent rate for two months but paid four months by mistake.

### Examination

In an audit SUSI found that it had overpaid for a non-adjacent rate maintenance grant. It further discovered that the bridge did not close but did have a weight restriction. It also discovered that an alternative route to college existed which was below the 45 KM threshold for the non-adjacent rate maintenance grant.

When the two month over-payment was discovered, SUSI had to correct it and implement the regulations. It did not seek to recover the two months of non-adjacent rate originally granted.

### Outcome

The student was liable to repay the two months over-payment of special rate maintenance grant.

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## RACE (Reasonable Accommodation at Certificate Examinations)

State Examinations Commission

E85/16/0204

Completed 16/03/2016

### # Not Upheld

#### Background

A mother complained about the State Examinations Commission's (SEC) decision to refuse her daughter access to a reader for her Leaving Certificate Examinations. She appealed this decision to the Independent Appeals Committee but her appeal was not upheld.

#### Examination

In order to obtain access to a reader on the grounds of a specific learning disability, the student must have a standard reading score of less than 85; a reading error (accuracy) rate of more than 7% and a word reading rate of less than 90 words per minute. The Ombudsman's examination of the SEC file showed that her daughter did not qualify for a reader for her exams as she did not meet the criteria required to be eligible under the guidelines for the Reasonable Accommodations in Certificate Examinations scheme.

A late application for a reader on medical/physical grounds was also submitted to the SEC however it was refused as there was no medical evidence to support the application.

#### Outcome

The Ombudsman was satisfied that the SEC had considered all the information available and it had acted in accordance with the relevant guidelines.

## Student Grant Scheme

Student Universal Support Ireland (SUSI)

E78/15/3177

Completed 22/01/2016

### # Not Upheld

#### Background

A student complained that her application and appeal for a student grant was refused. She applied under section 21(3) of the Student Grant Scheme 2014 but it was refused on the basis that the level of reckonable income assessed was in excess of the threshold allowed. The student is an orphan but the income of her guardians was taken into account. The student argued that she is over 18 and entitled to be treated as someone with no living parent and therefore exempt from having parents income taken into account, in accordance with section 21(3).

#### Examination

Section 52 of the Children and Family Relationships Act 2015, which amended section 8 of the Guardianship of Infants Act 1964, provides that a person continues to be a guardian of a child until the child reaches 18 years of age. SUSI advised that section 52 had not been enacted yet and it must comply with the law as it stands.

#### Outcome

The Ombudsman was satisfied that in the absence of parental income, the legislation allowed the income of guardians to be taken into account when assessing an application. In this case the decision of SUSI to assess the income of the guardians was correct.

Section 52 of the Children and Family Relationships Act 2015 was subsequently enacted on 18 January 2016.

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## Third Level grant

Student Universal Support Ireland (SUSI)

E78/15/3602

Completed 17/12/2015

### # Assistance Provided

#### Background

A woman complained to the Ombudsman about SUSI refusing to accept a late application for a grant in respect of the academic year 2014/2015.

#### Examination

After examining the case, the Ombudsman agreed that the woman was provided with every opportunity to submit an application on time, and that the extended deadline for receipt of applications had been widely publicised by SUSI. While the legislation allows SUSI to accept

a late application at its own discretion, they could not accommodate the woman's request as she did not satisfy the certain criteria.

## Outcome

The Ombudsman accepted that SUSI had assessed this case correctly, however he asked SUSI if it could consider accepting a late application on medical grounds and referred to the woman's medical evidence. SUSI agreed that it would make an exception in this case and would contact the woman directly to engage its process.

# Environment

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## Complaint from a Public Service Provider

Department of Environment, Community and Local Government

C08/14/1923

Completed 11/03/2016

### # **Discontinued/Withdrawn**

#### Background

A LEADER Group approved grant aid to a community project under the Rural Development Programme 2007-2013. Following a Department of the Environment, Community and Local Government inspection, this grant was found to be illegible on the basis that the grant aided equipment can only be used to support and enhance agricultural activity. The LEADER Group made a complaint to the Ombudsman on behalf of the community group.

#### Examination

The Ombudsman Act 1980 as amended redefined what a reviewable agency under the Act is. Accordingly, since 1 May 2013 LEADER Groups are considered reviewable agencies and as such, the Ombudsman can no longer investigate complaints from LEADER Groups about the Department.

#### Outcome

Having reviewed the case, the Ombudsman was satisfied that he could not examine a complaint made by a LEADER Group on behalf of a community group. However, he contacted the community group to tell it he would accept a complaint directly from it on the same issue should it wish to submit one.

# Health

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## Care and Treatment

Cork University Hospital

H41/15/0136

Completed 12/02/2016

### # Assistance Provided

#### Background

A woman complained about her treatment while an inpatient in Cork University Hospital. She complained that her request for a certain procedure was denied. She felt that her wishes were not taken in to account and that the information she was given regarding the reason for not carrying out the procedure lacked full details. She also felt that the staff looking after her had little understanding of her condition and lacked compassion in their dealings with her.

#### Examination

On speaking separately with the woman and the hospital, it became clear that there was willingness on both sides for the issues of the complaint to be discussed. The hospital seemed genuinely sorry that the woman had such a poor impression of her care. At the Ombudsman's suggestion, the woman and the hospital agreed to a meeting.

#### Outcome

There was a good outcome to the meeting and both the woman and the hospital were pleased at how the meeting went. The hospital apologised to the woman for her poor experience, while the woman felt that her comments had been listened to and taken on board. The hospital also outlined the improvements they had made in their service since the woman attended. It said that many of the improvements made were as a result of comments and feedback they received from patients.

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## Care and Treatment

Mater Misericordiae University Hospital

H81/15/1431

Completed 21/03/2016

### # Assistance Provided

#### Background

A woman complained about the care she received in the endoscopy unit of the hospital. She complained that she was not given adequate sedation during a procedure and that her request that the examination be discontinued due to pain and discomfort was ignored. She also complained that a female was not present during the whole procedure, that inappropriate comments were made by staff members during the procedure, and that a member of staff in the recovery area was unsympathetic to her needs.

## Examination

In the original hospital reply the Consultant and staff apologised for inappropriate comments and for the general poor experience.

There was evidence in the medical notes that a female nurse was present during the procedure and recorded the vital signs throughout. Pain medication and sedation were topped up during the procedure due to the woman's discomfort.

The staff did not recall the woman asking for the procedure to be stopped and it was not recorded in the notes. The nurse in recovery was of the opinion that she offered assistance but the offer was declined. It was not possible for the Ombudsman to form a definitive view on these issues due to the lack of independent evidence.

## Outcome

The hospital reply had already acknowledged and apologised for inappropriate comments made among staff during the procedure. During our examination it was noticed that prior to the procedure the woman applied to the Primary Care Reimbursement Service (PCRS) for a medical card, which was granted some months later. This information was presented to the hospital Finance Department who agreed to waive the €75 statutory charge in respect of the woman's attendance at the Endoscopy Unit.

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## Care and Treatment

Mid-Western Regional Maternity Hospital

H34/13/1554

Completed 23/12/2015

### # Upheld

#### Background

A woman complained to the Ombudsman that her experience as a maternity patient in the Mid-Western Regional Maternity Hospital in Limerick. She said it led to her needing ongoing mental health treatment and counselling support. She suffered post-traumatic stress disorder and post-natal depression.

She maintained that her distress began when she was delivering her baby. She experienced a feeling of paralysis and severe difficulty with breathing after receiving a 'spinal block' for pain. This caused her to become extremely alarmed and fearful. She believed she was having an adverse physical reaction to the anaesthetic. She later learned that her reaction resembled that of a 'high spinal block'.

When she raised her fears during surgery, (and over the days, weeks and months post-surgery, while in pursuit of answers as to what happened to her), she stated that none of the hospital staff believed her. They continuously insisted she had a panic attack and nothing else. She maintained that the refusal by hospital staff to acknowledge the possibility she had a physical reaction to the 'spinal block', seriously compounded her distress and anxiety.

As the woman was so upset by the hospital's response she decided to engage a medical expert in the UK to conduct an investigation and provide an opinion. The expert noted that the woman's symptoms were congruous with a high spinal block.

A second aspect of the woman's complaint to the Ombudsman focused on the behaviour of some nursing staff while she was an inpatient after giving birth.

#### Examination

The Ombudsman's examination revealed shortfalls in communication on the hospital's part. However, both management and medical staff were keen to make amends. The hospital invited the woman and her advocate to a meeting. The woman described the meeting as satisfactory.

#### Outcome

The hospital agreed to repay the costs she incurred in obtaining a medical expert's report. The nursing staff apologised to the woman.

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## Care and Treatment

Midland Regional Hospital

H66/15/0720

Completed 13/01/2016

### # Not Upheld

#### Background

A woman complained about the care and treatment given to her mother while she was a patient in the Midland Regional Hospital. Specifically, she complained about her mother's diet, the diagnosis of her medical conditions, her palliative care plan and the delay in making her mother a Ward of Court. She also said that the HSE had failed to properly investigate allegations of elder abuse against her step-father.

#### Examination

A review of the medical records showed that hospital staff were aware that her mother required a specific diet, that she was reviewed regularly by a Speech and Language Therapist, and that there was a palliative care plan in place, which was implemented by nursing and medical staff. The file also indicated that the hospital could not proceed with making the woman's mother a Ward of Court at an earlier stage as she had been assessed as having mental capacity to make her own decisions. The Ombudsman noted that the mother's refusal to engage with the social worker limited the interventions available in respect of the allegations of elder abuse.

#### Outcome

While acknowledging the difficult situation for the complainant and her family, the Ombudsman concluded that the hospital had acted reasonably in its dealings with her mother. He was also satisfied that the HSE had investigated the allegations of abuse in accordance with its elder abuse and self-neglect guidelines.

The Ombudsman was unable to examine the issues about the diagnoses of the mother's medical conditions as he cannot examine issues which, in his opinion, relate to clinical judgement.

## Care and Treatment

Our Lady of Lourdes Hospital, Drogheda

H92/15/1538

Completed 23/12/2015

### # Upheld

#### Background

A woman complained to the Ombudsman on behalf of her son, who had to pay frequent visits to the Accident & Emergency Department in Our Lady of Lourdes (OLOL) Hospital, Drogheda, to have his shoulder which regularly dislocates, re-set. Her son suffers from a rare and painful hereditary medical condition (Elhers Danlos Syndrome – EDS). She complained that he was receiving unsatisfactory treatment from medical staff, which was both unnecessarily painful and distressing for her son and the family. She stated that as a result he preferred to travel a considerably longer distance to A&E in another hospital, where his physical and personal treatment was substantially better.

#### Examination

In January 2015, the woman formally complained to OLOL Hospital. She detailed her concerns, and asked that her son's care and treatment plan be reviewed, citing the satisfactory approach adopted in the other hospital. She also complained about the behaviour of named medical staff in OLOL Hospital and a number of extremely upsetting incidents her son had endured. Initially the hospital's response was encouraging. It was timely and it promised to arrange a full review of her son's medical care and treatment plan, to be led by a Consultant from another hospital. It also promised to investigate her allegations relating to the interaction between clinical staff and her son, as well as the family. However, the woman received no further contact from the hospital despite contacting it several times seeking updates and action.

#### Outcome

The Ombudsman wrote to the newly appointed General Manager of the hospital, who intervened, promptly convening a meeting between the hospital and the woman. The woman informed the Ombudsman that she and her son were broadly happy with the outcome from the meeting. She stated that her son's admissions to A&E in OLOL Hospital had improved and were "very positive and consistent at the moment".

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## Care and Treatment

St James' Hospital

H78/14/1860

Completed 08/12/2015

### # Partially Upheld

#### Background

A patient complained about aspects of his treatment in the Orthopaedic Clinic of St James's Hospital. The patient complained of pain in his wrist, which he had injured three months previously. An earlier x-ray showed that there was no fracture.

Due to ongoing pain and the age of the wrist injury, a bone scan was carried out in the X-ray Department. After the bone scan, the patient was told that a healing fracture could be seen on the scan and that he should go to the Orthopaedic Clinic immediately for a cast to be put on his wrist. When he went to the clinic, he was told he would have to wait three weeks for an appointment. He was upset by this delay.

#### Examination

The hospital stated that a member of the radiology team may have told the patient that he had a fracture of his wrist and to attend the fracture clinic for an immediate cast. The Radiology Department said that it would not be usual for staff in the X-ray Department to give clinical advice to patients about their follow-up treatment. Generally, radiology results are sent to the treating team – who then decide on the treatment plan for the patient. The hospital also said that because the fracture was over three months old, a cast would not have been necessary.

#### Outcome

The hospital apologised to the patient for the misunderstanding. The Clinical Director in the Radiology Department reiterated to staff there that patients should be directed to their treating teams for follow-up clinical advice relating to findings in x-rays.

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## Care and Treatment

St Vincent's University Hospital

H71/14/2252

Completed 03/02/2016

### # Not Upheld

#### Background

A woman complained that the hospital did not respect her wishes to have her former husband discharged to her care in the family home.

#### Examination

Our examination showed that the hospital's admission chart recorded the patient's daughter, not the complainant, as his next-of-kin.

Prior to his discharge from hospital, the patient's family made a collective decision to care for him in sheltered accommodation.

#### Outcome

The Ombudsman was satisfied that the hospital acted appropriately in advising the complainant of her options prior to the discharge of her former husband.

## Care and Treatment

St Vincent's University Hospital

H71/15/2997

Completed 20/12/2015

### # Partially Upheld

#### Background

The family of a man complained to the Ombudsman after the man received seven times the amount of pain relief medication recommended for him on two occasions before the error was spotted. The family wanted to know what steps the hospital was taking to ensure that such an error would not happen again. The family said they were offended by remarks made by the Consultant following the error which they felt were inappropriate and defensive. They also asked the Ombudsman to highlight the case so that other hospitals might learn from it.

The man, who had a history of cancer, was admitted to the day ward in St. Vincent's Hospital and treated for dehydration and underwent some tests. During his admission, a doctor asked the man about his pain medication and he was said to have indicated that he was taking seven pain pills twice per day. The doctor understood this to mean 70 mgs (rather than 10 mgs) of pain relief twice per day. The prescription was written and the man's care was then assumed by another doctor who administered this incorrect dosage to him twice before the error was noticed by the hospital's pharmacist. This effectively meant that the man received a seven day dosage within twelve hours. This happened two days in a row before it was stopped. The man had to be admitted to the Medical Observation Unit for closer monitoring. Subsequently, the man developed a lung infection and pneumonia. Sadly, the man died one month later in hospital as a result of his underlying condition.

#### Examination

In response to the incident, the hospital asked the Clinical Director for Unscheduled Care to conduct an Internal Incident Review. The Clinical Director met with the doctor in question and the man's Consultant. The Consultant apologised to the family on a number of occasions throughout the review. The incident had been forwarded to the hospital's Patient Safety Committee (which is chaired by the CEO) to facilitate wider learning. The Clinical Director's report said that the key causal factor was that the doctor had not verified the prescription but presumed the prescription to indicate 70 mg of pain relief twice a day. Contributory factors included the fact that it had been a very busy on the Day Ward on that particular day and that there was no pharmacy input on a daily basis. Measures had been put in place to avoid future errors. These included additional staffing at registrar level and extended pharmacy cover in the Oncology Day Ward. However, the Ombudsman was concerned that despite these additional measures, such an error could potentially happen again. He considered that it would be beneficial for medical staff to receive ongoing training in medication safety and to be reminded of the need to verify medication dosages before charting them.

#### Outcome

Officials from the Ombudsman's Office met with the Consultant and the Clinical Director for Unscheduled Care to discuss the case. The hospital undertook to discuss with the Patient Safety Committee how best to remind all medical staff of the need to verify medication

dosages, possibly through ongoing training events or through the 'grand rounds' forum within the hospital. The treating Consultant also asked that his sincere apologies be conveyed to the family for the remarks he had made which had caused them unintentional upset.

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## Care and Treatment

University Hospital Galway

H26/14/1584

Completed 03/02/2016

### # Not Upheld

#### Background

A woman complained about the four-year delay in getting an out-patient appointment for her son in the Urology Department of University Hospital Galway. She stated that his GP had asked for an urgent appointment. However, the consultant had assessed her son's referral as 'routine'.

#### Examination

The hospital informed the Ombudsman that there was a four-year wait for an out-patient appointment for 'routine' cases in Urology at the time the person was referred by his GP in June 2010. However, it stated that an initiative launched in 2013, where patients are referred to private healthcare providers, had reduced the waiting time to 18 months. The woman's son had been offered an appointment under this initiative.

The Ombudsman noted that patient appointments are categorised by medical professionals using their clinical expertise and judgement. The hospital said that there had been enough medical information in the GP's letter for it to grade the referral as 'routine'. The Ombudsman was unable to explore this aspect of the complaint as he cannot examine issues that, in his opinion, relate to clinical judgement.

#### Outcome

The Ombudsman welcomed the improvements in the appointments process put in place by the hospital, but acknowledged that waiting lists generally in the health service are unacceptably long.

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## Care and Treatment

University Hospital Galway

H26/15/2634

Completed 07/03/2016

### # Not Upheld

#### Background

A woman complained to the Ombudsman about the standard of accommodation in University Hospital Galway. Her partner had been a patient in the hospital. She stated that

there were insects in the room along the skirting board on a regular basis and that staff failed to act when she reported the matter. According to the woman, she asked that her partner be transferred to the Galway Clinic, but this request was refused. She was unhappy with this, stating that her partner was moved six times while a patient at the hospital.

#### Examination

Following the woman's complaint to the hospital, the room was inspected by the Clinical Nurse Manager (CNM). The CNM found no evidence of the insects, but noted that the skirting board in the room needed repair and repainting. The CNM also noted that the woman's reports to nursing staff about the insects and her request to move the partner were not documented in the medical records.

The decision not to move the woman's partner to the Galway Clinic was based on medical grounds. The Consultant Geriatrician acknowledged that moving the woman's partner multiple times during their admission was not in their overall best interests. However, he stated that the situation was unavoidable, due to a lack of single rooms on the ward to allow for adequate infection control. The hospital confirmed that the development of a 75 bed ward had commenced, which it said would address the capacity issues at the hospital and facilitate more efficient use of in-patient beds.

#### Outcome

The Ombudsman was satisfied that the hospital had apologised to the woman and her partner for the problems with the accommodation and that it had taken steps to resolve the matter. He was concerned at the failure of staff to note the woman's concerns, particular the transfer request, in her partner's medical records. These issues were raised with the hospital. The Ombudsman could not look at the decision to refuse the transfer to the Galway Clinic as it was a clinical decision. He acknowledged that moving a patient six times was not ideal, but accepted that this was unavoidable in the circumstances. He noted that the hospital had apologised for this and welcomed the development of the new ward which is due to open late 2016 / early 2017.

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## Care and Treatment

Waterford Regional Hospital and Wexford General Hospital

H52/14/1636

Completed 10/12/2015

### # Not Upheld

#### Background

A woman complained about the care and treatment given to her mother while a patient in Waterford Regional Hospital and Wexford General Hospital. She had been a patient in Wexford but was moved to Waterford for surgery. The woman complained that there was a lack of communication between the hospitals before and after the surgery and that Waterford failed to arrange a follow up appointment with the Orthopaedic Consultant in Wexford. She also stated that there was no care plan for her mother after the operation.

### Examination

A review of the medical records confirmed that a care plan was in place and that it was followed by medical and nursing staff in Wexford. It was also clear from the file that staff in both hospitals had been communicating in relation to the mother's medical condition, medications, treatment, care plan etc. The Ombudsman noted that Waterford had accepted responsibility for failing to arrange the follow up appointment. The hospital apologised for this and it took steps to ensure it wouldn't happen again. He also noted that the mother had been reviewed by a member of the Consultant's team after she was transferred back to Wexford.

### Outcome

The Ombudsman concluded that there was a care plan in place and that communication between both hospitals was not an issue. He was satisfied that the hospital had apologised for the failure to arrange the follow-up appointment and had taken steps to prevent it happening again.

The woman also raised a number of issues about the alleged misdiagnosis of a medical condition and medical negligence. However, the Ombudsman is unable to examine issues which, in his opinion, relate to clinical judgement.

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## Hospital Charges

University Hospital Galway

H26/14/2302

Completed 04/12/2015

### # Upheld

#### Background

A woman complained about the decision of University Hospital, Galway to charge her for in-patient services for her son. Following his initial visit to the Emergency Department (ED), her son was due to return to the hospital the following day for blood tests. The woman said that she was incorrectly sent to the ED for the blood tests and her son was seen by a different doctor. The new doctor was not familiar with the case and admitted her son. The woman felt that the charge should not have been levied as her son's admission was unnecessary and a result of miscommunication between medical staff. The woman stated that the doctor who first treated her son confirmed that he should not have been admitted.

#### Examination

The hospital told the Ombudsman that the woman's son was admitted by a consultant and cared for on the Paediatrics Ward. It stated that the admission was a clinical decision and deemed necessary, and therefore the in-patient charge applied. The Ombudsman did not dispute that the decision to admit the son was clinical or the legality of the charge. However, given the circumstances in the case, he believed the HSE should waive the charge as there had been miscommunication on her son's case.

## Outcome

The hospital agreed to cancel the in-patient charge.

## Hospital Charges

University Hospital Galway

H26/15/2170

Completed 01/02/2016

### # Not Upheld

#### Background

A woman complained about the invoice she received from a hospital. She believed if she had been treated properly the first time she visited A&E the problem would have been diagnosed earlier and resolved earlier. She also complained about the manner in which she was dealt with by the staff of A&E on her first visit in March 2013.

#### Examination

The complaint from March 2013 was investigated by the Clinical Director of the Hospital Group who found that the treatment given to her was appropriate and the charge was a statutory charge which could not be waived. The second complaint concerning her visit in March and June to A&E and admission in July for investigations was investigated by a second Clinical Director who found that all presentations to the Hospital had been dealt with appropriately. The woman did not have a medical card at the time of the hospital visits so was not entitled to a waiver of the statutory charges. The HSE review was satisfied that the charges were in line with the legislation but recommended that the Hospital offer her the option of paying the invoice by instalments to mitigate the burden on her. The HSE also recommended that staff be informed of the need to deal with patients in a friendly and dignified manner.

## Outcome

The Ombudsman was satisfied with the examination of the complaint and subsequent review.

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## HSE Allowances

HSE

HC3/15/1443

Completed 20/12/2015

### # Upheld

#### Background

A man complained to the Ombudsman about a reduction in his Rehabilitation Training Allowance (RTA). At the time in question, there was a range of employment supports for people with disabilities to help with getting a job and staying in employment. These included

accredited training centres run by the HSE or by service providers contracted by the HSE and designated sheltered workshops. Trainees in foundation training and sheltered workshops retained their social welfare payments, usually Disability Allowance, and also received a training allowance each week, which is the Rehabilitation Training Allowance.

The man said that a reduction was made to his Rehabilitation Training Allowance, despite the announcement of Minister Kathleen Lynch at the time that such a cut would not be implemented.

#### Examination

When the man complained to the HSE about this reduction, he was informed by the Area Manager for Primary, Community and Continuing Care that RTA is paid for a maximum of three years. The Ombudsman was subsequently informed by the HSE Consumer Affairs Area Officer that the rate of RTA was reduced locally as part of cost containment measures. The Ombudsman was also provided with a letter issued to trainees by the training unit in question, stating that the reduction was part of cost containment measures.

The Ombudsman liaised with the Department of Health who confirmed that RTA is only payable for the duration of training on a rehabilitative training course. It confirmed that no reduction in the RTA payment was authorised by the Department.

#### Outcome

The man was provided with a reimbursement of the reduction in his RTA for the period from when it was reduced until he completed his rehabilitative training. This amounted to €265.20 in total. The HSE also agreed to reimburse others similarly affected by this reduction.

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## Consultation with Clients

HSE

HC3/15/0155

Completed 23/02/2016

### # Not Upheld

#### Background

A woman was unhappy that the HSE transferred services from Teach de Hide to a new facility nearer Roscommon town. She said that clients hadn't been consulted as they should have been under the Vision for Change policy before the decision was taken.

#### Examination

The report from the HSE stated that it had consulted widely with clients, their families and friend and their advocate both in group discussions and individually in the month prior to the move. It explained that Teach de Hide was intended to be used for another service. However it had to be closed for repairs as the Health and Safety Authority found that facilities were not suitable. The report also said that clients had been involved in decisions about activities to be provided at the new facility. They had also decided that they wanted to have lunches at a local restaurant and the HSE was subsidising this as well.

## Outcome

As there was no evidence that clients had been adversely affected by the move to the new facility and that there had been significant discussions with them beforehand, the Ombudsman did not uphold the complaint.

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## Drugs Payment Scheme

HSE (PCRS)

H09/15/1902

Completed 03/12/2015

### # Upheld

#### Background

A man complained about the amounts that the HSE's Primary Care Reimbursement Service (PCRS) had refunded him under the Drugs Payment Scheme (DPS) on four different occasions. The man claimed to have provided evidence that he had paid over €144 per month for prescribed drugs and under the DPS he was entitled to a refund of all monies paid over €144 in each of the four months. The PCRS determined that the man did not reach the €144 threshold in the months under review.

#### Examination

The Ombudsman asked the PCRS to provide a report on the case and to provide a detailed breakdown of all prescribed drugs purchased and receipts supplied by the man's pharmacy relating to the months in question. Having examined the correspondence, the Ombudsman noted that the PCRS had made errors in calculating the refund due to the man. The PCRS agreed to review the months in question and determined that all of the man's documentation had not been included in its original calculations.

#### Outcome

The PCRS refunded the man €249.37.

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## Long Term Illness Scheme

HSE

H09/14/1818

Completed 23/02/2016

### # Upheld

#### Background

A woman complained that her application and appeal for a refund of the cost of medicines under the Long Term Illness (LTI) card were partially unsuccessful. She had received a refund from the date of her application but the HSE refused the application prior to the date she submitted the application. The woman said that she was not aware of the LTI and at the time she needed the medicine.

She had suffered an injury to her head and was not able to look after herself. It seemed that nothing other than the date of application was taken into consideration by the HSE when deciding this complaint.

The LTI is not means tested. An applicant must pay the first €144 in any month.

#### Examination

The HSE said it consistently applied the date of application for processing applications under the LTI. It is a financial support scheme and a case had not been made for exceptional financial circumstances. It agreed to refund the amount to the woman for the period of time, less the €144 she was obliged to pay.

#### Outcome

The Ombudsman was satisfied that the HSE decision to backdate the refund prior to the date of application was correct, bearing in mind that the LTI is not means tested; and the woman was unaware of the LTI at the time of her injury.

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## Medical & GP Card

HSE

HA9/14/2067

Completed 26/02/2016

### # Not Upheld

#### Background

A woman's Over 70s Medical Card was withdrawn by the Health Service Executive (HSE) following a review of her entitlement. The means limit was changed with effect from 1 January 2014 and this change brought her means over the new limit set.

The woman was unhappy that the HSE did not accept her written statement that her earnings would be lower in 2014 (her husband's self-employment earnings were reduced due to ill health) and allow her the Over 70s Medical Card.

#### Examination

The woman did not provide any evidence to support her statement that her income had reduced and the legislation for the Over 70s Medical Card does not give the HSE any discretion on the matter.

#### Outcome

For that reason the Ombudsman considered that the HSE's assessment of the information available was reasonable and found that it had properly applied the legislation.

## Nursing Home Support Scheme

HSE

HC1/14/1544

Completed 11/12/2015

### # Not Upheld

#### Background

A man complained that the HSE's valuation on his mother's house under the Nursing Home Support Scheme was too high. This resulted in his share of the contribution to her care being too costly and was causing him financial hardship.

#### Examination

The HSE said that the valuation had been submitted by the man and accepted by it. It also said that under the relevant legislation it was obliged to accept the market value of the house at the time it was transferred to him and that it could not therefore accept a revised estimate based on a more recent valuation. In addition, because the transfer was made after 9 October 2008 the HSE could not make any allowance on issues of hardship.

#### Outcome

The Ombudsman considered that the HSE was correct in its interpretation of the legislation and that it had acted reasonably in its dealings with the man.

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## Nursing Home Support Scheme

HSE

HA1/15/1112

Completed 15/03/2016

### # Not Upheld

#### Background

A woman complained that her aunt had been held liable for nursing home charges of over €21,000.

#### Examination

The HSE had not received a completed application form for the Nursing Home Support Scheme ("the Scheme") until 31 July 2013. The application had been approved on 12 August 2013. The original application did not have a Case Summary Assessment Report (CSAR) which details medical evidence that the applicant needs long term nursing home care. The CSAR is an essential part of every application form. However, the family had had a CSAR completed by a doctor on 29 January 2013 but he had failed to forward it to the HSE despite promises and repeated requests that he do so. The delay in forwarding the CSAR meant that the HSE did not receive a completed application until 31 July 2013.

## Outcome

The Ombudsman decided that the HSE's processing of the application was timely and fair. He also accepted that under its guidelines it could not backdate approval of the Scheme. In addition, the HSE had made it clear to the applicant on many occasions that anyone taking up residence in a nursing home in advance of approval of their application would be liable for the relevant fees.

The Ombudsman suggested that the Medical Council might be able to deal with any complaint relating to the delay by the doctor in forwarding the CSAR and supplied contact details to the woman.

## Long Term Illness Scheme

HSE

H09/14/1834

Completed 16/01/2016

### # Assistance Provided

#### Background

A woman complained on behalf of her grandfather who was being charged for diabetic medication which should have been covered under the Long Term Illness (LTI) Scheme. The man said he presented his LTI Card at his pharmacy in 2010, however, he was charged full price for his diabetic medication. He subsequently applied for a new LTI Card in 2013 which was accepted by the pharmacy. The woman wanted the HSE to refund her grandfather for medication costs because it did not make sure he was not charged.

#### Examination

The HSE said that the man had not complained to his Local Health Office (LHO) when the problem occurred. Following a request by the Ombudsman, the man's LHO contacted the pharmacy. The LHO informed the Ombudsman that the pharmacist said the man presented the LTI Card once in 2010, but did not present it again.

The HSE said that if the man contacted the pharmacy, it would find out what medicines should have been covered under the LTI Scheme and issue a refund. The pharmacist would then claim this amount from the Primary Care Reimbursement Service which was responsible for reimbursing these claims under the Scheme.

#### Outcome

The Ombudsman was satisfied that the HSE had outlined reasonable steps to resolve the problem.

## Foster Care Allowance

TUSLA

H04/15/4314

Completed 22/02/2016

### # Not Upheld

#### Background

A woman complained to the Ombudsman when her foster care allowance was stopped. Her grandson had been in foster care but the placement broke down. Tusla then placed her grandson in her care. She said that Tusla advised her at the time that she would receive foster care allowance. However, Tusla subsequently informed her that her grandson was in her care as part of a private arrangement and therefore she would not be eligible for foster care.

#### Examination

The Ombudsman sought further clarification from Tusla. It confirmed that the complainant's grandson had an emergency placement with her. It said that she was paid fostering allowance for the length of this placement.

Tusla said that social workers carried out an assessment and at the end of this assessment, they had no concerns in relation to the child returning to the care of his mother. They had no child protection or welfare concerns and Tusla said that the family were informed that the placement would change from a relative fostering arrangement to a private arrangement.

#### Outcome

Relative foster carers are entitled to foster care allowance. However, children are placed in foster care because of child protection and welfare concerns. In this case, Tusla deemed these to be resolved and closed the case. As the child was not in the care of the state, but in the care of his grandmother as part of a private arrangement, the grandmother was not eligible for foster care allowance.

# Local Authority

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## Housing

Dublin City Council

L12/14/1617

Completed 22/12/2015

### # Upheld

Background:

A woman took out a Shared Ownership loan with the Council in December 2008 but later her account fell into arrears. She asked the Council how her mortgage protection payments were calculated and about changes in the opening and closing balances on her account. Under the Shared Ownership Scheme the cost of mortgage protection is built into a person's mortgage repayments and covers the mortgage portion only and not their rental payments. The Council said its financial system was designed to ensure a borrower would own their property at the end of their payment period.

Examination:

The Ombudsman asked the Council to set out the position on the woman's account if the payments were made in a different sequence to confirm whether or not she had suffered financially. He established that the sequence in which the system allocated payments meant that the woman did not benefit from Tax Relief at Source (TRS) that she was entitled to.

Outcome:

The Council confirmed that the woman should have received TRS on her loan of €1,689.51 and agreed to reduce her arrears accordingly.

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## On the spot fines

Cork City Council

L08/15/1193

Completed 22/12/2015

### # Assistance Provided

Background

A man was fined by Cork County Council following an allegation that a third party had been attacked by his dogs. He was contesting the fine in the District Court when he contacted the Ombudsman. The man complained that the Council had fined him without having first established the facts and there was no formal appeals procedure.

Examination

The Ombudsman established that the Council had a policy of fining dog owners following

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receipt of signed written statements about their dogs without investigating the complaints. He considered this unfair and asked the Council to review its policy.

#### Outcome

The Council confirmed that it had conducted an internal review and amended its protocol. This now provides that on receipt of a verbal or written complaint, the Dog Warden will contact both the complainant and the owner of the dog(s) to investigate the alleged incident. The Council discontinued the prosecution and the man was awarded costs.

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## Roads/Traffic

Cork County Council

L07/15/3866

Completed 15/12/2015

### # Upheld

#### Background

A man complained that Cork County Council would not take responsibility for a broken light near his house. He had been in contact with the Council about the problem for several years but it told him that the light was the responsibility of the company who had upgraded the road. This company denied responsibility and informed the man that the Council had responsibility for repairs.

#### Examination

The Ombudsman contacted the Council to establish ownership of the stretch of road. The Council said that it was in dispute with the company over responsibility for the repair works. The Council decided that rather than continue to pursue this company, it would request that the repair be dealt with by the company who had since taken on the maintenance contract.

#### Outcome

The Council arranged for the light to be fixed. It was repaired within a week.

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## Pollution - Noise

Monaghan County Council

L38/15/3853

Completed 08/12/2015

### # Not Upheld

#### Background

A couple complained that Monaghan County Council was not enforcing compliance with a noise monitoring and reporting planning condition at a neighbouring shooting range. They wanted the Council to enforce this condition.

### Examination

The Council's enforcement file showed that it had engaged with the owner of the shooting range over a number of years regarding compliance with the noise monitoring aspect of the planning conditions. The Council accepted that the owner had not always been fully compliant in terms of submitting quarterly noise monitoring reports. However correspondence showed that the Council had pursued the matter with him. Submitted reports showed that noise levels were within stipulated levels. The Council also conducted its own noise monitoring tests with results broadly in line with those submitted by the owner.

As the owner submitted a new planning application, which included seeking to have the noise monitoring condition amended, the Council did not proceed with enforcement action during the assessment of this planning application or the subsequent appeal. This was to ensure that enforcement action was appropriate and legally applicable. As an Bord Pleanála refused permission to amend the noise monitoring condition, the Council said enforcement action will be proceeded with against the owner to ensure full compliance.

### Outcome

The case was not upheld. The Ombudsman found that the Council had acted in accordance with the relevant regulations and procedures.

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## Water Supply

Wexford County Council

L55/14/1328

Completed 25/02/2016

### # Not Upheld

#### Background

A man complained that Wexford County Council had deducted money he owed in respect of Non Principal Private Residence charges from refunds he was due in relation to water charges and development levies. He also complained that some of the deductions were in respect of a limited company that had gone into liquidation for which he said he was not liable.

#### Examination

The Council told the Ombudsman that under the relevant Regulations it could deduct any money owed by the complainant from any refund he was due. It also gave details of how the refunds and debts arose. In relation to the limited company it explained that a refund had been made to the complainant, although it was the company that had paid the levies, and that it had on the same basis made a deduction in respect of water charges owing from that refund.

#### Outcome

The Ombudsman considered that the Council was correct in its interpretation of the Regulations and that it had acted fairly in its dealings with the complainant and for these reasons he did not uphold the complaint.

# Revenue

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## Income Tax

C21/15/3384

Completed 07/01/2016

### # Not Upheld

#### Background

A man complained about Revenue's refusal to pay interest on refunds of income tax he had paid.

In 2009 and 2011, he was treated as single man for income-tax purposes. In 2010, he submitted a tax return claiming as a married man. He submitted a tax return in 2011 and claimed as a single man. He did not submit tax returns for 2012 or 2013. In 2014, Revenue was notified that he should have been assessed as married from 2009 to 2013. It therefore issued a tax refund and interest in respect of 2010 and refunds in respect of 2011, 2012 and 2013. As more than four years had passed, he was not eligible for a tax refund for 2009. He considered that he should have received interest on the refunds for 2011, 2012 and 2013.

#### Examination

According to legislation, payment of interest on income-tax refunds applies when the delay in is due to an error by the Revenue Commissioners. It had correctly paid interest in respect of 2010 as it had failed to notice that he was claiming as a married man in that year and assessed him as a single person. However, as he had submitted a return as a single man in 2011 and had failed to file tax returns in 2012 and 2013, the Revenue Commissioners were not required to pay interest for those years.

#### Outcome

The Ombudsman found that the Revenue Commissioners had applied the law correctly.

# Social Protection

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## Back to Work Enterprise Allowance

C22/15/1120

Completed 15/01/2016

### # Partially Upheld

#### Background

A man complained about the manner in which his Back to Work Enterprise Allowance (BTWEA) payment was suspended and subsequently refused following a review by the Department of Social Protection. The Department decided that the man had failed to disclose a change in his circumstances i.e. that he had moved in with his partner and he had not disclosed her income. The man was unhappy that he was not provided with the evidence held by the Department. The man was also advised by the Department that he could appeal the decision to the Social Welfare Appeals Office (SWAO).

#### Examination

The onus is on the man, as the applicant for a social welfare payment, to provide true and accurate information to the Department and to notify it of any change in his circumstances that might affect his entitlement. The man was incorrectly advised to appeal the decision to the SWAO which cannot review administrative schemes such as BTWEA.

#### Outcome

The Ombudsman found that the review and subsequent refusal of the BTWEA was reasonable as the evidence available showed that the man had not provided details of a change in his circumstances. However, he contacted the Department with regard to the incorrect appeal option given to the man.

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## Carer's Allowance

C22/15/3323

Completed 01/12/2015

### # Not Upheld

#### Background

A woman complained that the Department of Social Protection was seeking to recover an overpayment of her Carer's Allowance payment after the person she was caring for (the caree) entered full-time residential care.

#### Examination

The legislation states that carers can receive payment only when they are considered to be providing full-time care and attention. Therefore, the woman could not receive payment after the caree entered full-time residential care.

The caree had been resident in full-time care for approximately three months before the Department was notified. It therefore assessed an overpayment for this period.

#### Outcome

The Ombudsman found that the Department had correctly applied the rules of the scheme.

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## Child Benefit

C22/15/2265

Completed 23/12/2015

### # Partially Upheld

#### Background

A mother complained that she could not receive Child Benefit in Ireland for her two UK born children and her Supplement Child Benefit payment had not been paid for over three years.

#### Examination

The woman had been paid Child Benefit from the UK up to March 2010. However as she was not paying PRSI in Ireland and the father of the children continued to pay insurance in the UK, the UK was the competent authority to pay child benefit. Her option was to either apply to the UK herself for the payment or get her ex-husband to apply. In line with EU Regulations, Ireland was responsible for paying an additional supplement to her; being the difference between the UK child benefit amount and that paid in Ireland. This was paid on a quarterly basis and due to a Departmental error, there was a delay in making payment to her. At the time she contacted our Office, all payments had been made. The decision of the Department was found to be in line with EU Regulations and the woman was advised of the need to make her application to the UK authorities. Due to the delay with the Supplement Child Benefit payment, the Ombudsman asked the Department to consider paying loss of purchasing power on the sums due which it agreed to do. The compensation amounted to €54.18 only, based on the small sums involved and the CPI during the period.

#### Outcome

The Ombudsman is satisfied that the Department handled this request properly and co-operated with the request for compensation.

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## Disability Allowance

C22/15/3657

Completed 23/12/2015

### # Upheld

#### Background

A man complained that he had been refused Disability Allowance on medical grounds by the Department of Social Protection. His appeal to the Social Welfare Appeals Office was unsuccessful.

### Examination

The man provided medical evidence of rheumatoid arthritis, depression, panic attacks, anxiety and dizzy spells. The Department's file showed that the man's most recent medical evidence from his GP and from his support worker on a HSE funded mental health rehabilitation programme had not been assessed by the Chief Medical Officer when his appeal was turned down.

### Outcome

As a result of this Office's examination, the Social Welfare Appeals Office reviewed the man's Disability Allowance claim and referred the medical evidence to the Chief Medical Officer. The man was deemed eligible for Disability Allowance, on medical grounds, subject to a means test.

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## Domiciliary Care Allowance

Department of Social Protection

HB7/14/1376

Completed 15/12/2015

### # Upheld

#### Background

A woman applied to the Department of Social Protection for Domiciliary Care Allowance (DCA) in respect of her daughter in December 2012. She was awarded the allowance with six months arrears. The woman maintained that she had not been aware of her entitlement earlier and applied for additional arrears dating back to September 2009, when the Department had taken over responsibility for payment of the allowance from the HSE. At the same time the woman had applied to the HSE for retrospective payment of DCA. The HSE awarded payment and paid six months arrears. The woman maintained that HSE staff had not told her she was entitled to DCA and she sought additional arrears for the period March 2009 to the date of transfer in September 2009. Both the HSE and the Department refused to pay additional arrears beyond the six months both had paid.

#### Examination

The woman complained to the Ombudsman who believed that the woman was entitled to the arrears.

#### Outcome

Following contact from the Ombudsman, the HSE agreed to pay additional arrears which technically recognised the woman's entitlement to DCA up to the date of transfer. Once the Department was informed of this by the HSE it agreed to pay all outstanding arrears back to the date of transfer.

## Domiciliary Care Allowance

C22/15/3383

Completed 06/01/2016

### # Upheld

#### Background

A woman complained about the refusal of the Department to grant her Domiciliary Care Allowance (DCA) for her son. The Department decided that the medical evidence did not support the requirement that the child needed substantially more care and attention than a child of the same age. The Social Welfare Appeals Office (SWAO) agreed with the Department's decision.

#### Examination

The woman had provided an Autism Spectrum Disorder Diagnostic Report from two senior Psychologists to the SWAO after her original application had been considered by the Department's Medical Assessor (MA). The Ombudsman wrote to the SWAO seeking clarification on whether or not this medical report had been referred to a MA. The SWAO decided to review the evidence and decided that the child required substantially more care and attention than a child of the same age and that the level of care which he requires is likely to continue for at least 12 months.

#### Outcome

The woman was granted DCA from the date of her application.

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## Farm and Fish Assist

C22/14/2257

Completed 07/12/2015

### # Not Upheld

#### Background

A man complained about the Department of Social Protection's decision to assess means of €133 per week in respect of his Farm Assist payment. The man, who re-mortgaged his home to renovate the family pub, complained that the Department had not taken his mortgage payments into account when assessing his means.

#### Examination

The Department's assessment of the man's means was based on its estimate of his future earnings from the pub and his farm (based on his earnings in the previous 12 months). The Ombudsman could not establish from the file what information was used by the Department when it calculated his previous earnings. However, his review of the man's business accounts for the 12 months before and after the means assessment showed that the estimated means were accurate. The Ombudsman also noted that there had been changes to the Farm Assist scheme around the time of the review, which affected the man's payment.

The rules governing the scheme allow loan repayments as a business expense. Generally, such an expense would be included in the business accounts. As the repayments in this case were not included in the accounts for the pub, they could not be considered by the Department as a business expense.

#### Outcome

The Ombudsman was satisfied that the man's means had been assessed in accordance with the rules governing the scheme.

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### Jobseeker's Allowance

C22/15/0074

Completed 09/12/2015

#### # Not Upheld

#### Background

A man was refused Jobseeker's Allowance (JSA) on the basis that he did not satisfy the statutory habitual residence conditions. The man appealed to the Social Welfare Appeals Office (SWAO) which decided that he met the habitual residence conditions from the date of his oral hearing in October 2014. The man complained that his JSA was not backdated to the date of his application in April 2014.

#### Examination

The relevant legislation sets out the factors which must be considered in determining habitual residence. These include the length and continuity of residence in the State, the person's main centre of interest, the nature and pattern of the person's employment and the future intentions of the person.

The SWAO decided that the man did not satisfy these conditions when he first moved to Ireland and made his JSA application in April 2014. However, it was satisfied that his centre of interest and future intentions to remain in Ireland had been established from the date of the hearing and his JSA was allowed from that date.

#### Outcome

The Ombudsman found that the SWAO's decision was reasonable and that it had properly applied the legislation.

## Jobseeker's Benefit

C22/15/3975

Completed 02/02/2016

### # Not Upheld

#### Background

A woman complained to the Ombudsman concerning the Department of Social Protection's decision not to pay her Jobseeker's Benefit (JSB) while on the JobBridge Scheme.

The woman contacted her Local Social Welfare Office to make enquiries regarding an internship through the JobBridge Scheme on the 29 September 2015. She said that she was unhappy to be told that had she contacted the Office a week or so earlier than she would have been allowed to maintain her JSB payment and the additional JobBridge payment whilst on the internship.

She believed that she was misinformed about the finish date of her JSB on two different dates and by two different members of staff in the Office.

#### Examination

The JobBridge Scheme provides for accepted interns to receive through the Department, an allowance of €50 per week on top of their existing social welfare payment.

While the woman made enquiries on the 29 September 2015, she did not submit an application for the JobBridge Scheme until 12 October 2015 when she was no longer in receipt of JSB. The Department had written to the woman on 5 September 2015 stating that her JSB was coming to an end in the coming weeks and it expired on 1 October 2015.

The woman had attended a Group Information Session in February 2015 at which the JobBridge Scheme was discussed.

#### Outcome

While it was unfortunate that the woman's application was submitted 11 days after her JSB expired, the Department had acted correctly and given her sufficient notice that her JSB was coming to an end.

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## Invalidity Pension

C22/15/2720

Completed 16/01/2016

### # Upheld

#### Background

In 2013 the Department of Social Protection granted a man's application for Invalidity Pension (IP). The man then requested that his application for IP be backdated to November 2011, but the Department refused this request and a subsequent appeal to the Social Welfare Appeals Office (SWAO) was not upheld.

He made a complaint to the Ombudsman regarding the Department's decision not to back date his application for IP. He said that staff from the Department had advised him in 2011 to apply for Disability Allowance (DA) rather than IP.

#### Examination

The Ombudsman's examination of the case showed that there were sufficient grounds to consider he had been misinformed by Department staff in 2011. The Ombudsman's view was that if the man had applied for IP in November 2011 he would have been eligible. The Ombudsman requested the SWAO to review the case.

#### Outcome

After reviewing all of the evidence the SWAO revised its decision. The man's IP was backdated to 2011 which involved a payment of €11,788.

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### State Pension (Contributory)

C22/15/1184

Completed 04/03/2016

#### # Upheld

#### Background

In 2008 a woman applied to the Department of Social Protection for State Pension Contributory (SPC) at reaching the age 66. She was initially awarded her pension at a reduced rate based on available contribution records. This pension was increased to the maximum rate following receipt of further information with regard to extra contributions paid. The maximum rate only applied from the date the woman paid an outstanding PRSI liability based on the extra contributions.

#### Examination

The Department relied on the pension legislation when deciding to pay the full pension only from the date the woman paid her outstanding PRSI liability. The Ombudsman established that the legislation relied on did not apply to claims for SPC made on or before 31 December 2009, and so he asked the Department to review the case.

#### Outcome

The Department agreed to re-examine the woman's pension entitlement and it decided that the woman was entitled to full rate pension backdated to her 66th birthday. Arrears of over €5,400.00 were paid to the woman.

## Surviving Partners Contributory Pension

C22/14/2072

Completed 10/02/2016

### # Not Upheld

#### Background

A man complained that the Department of Social Protection had made a mistake in turning down his application for a Survivor's Contributory Pension. The refusal was because the man was on a Community Employment Scheme (CES) and a clause in the relevant legislation prevents people who are in receipt of another source of income from qualifying for the Pension. The man believed a different clause in the legislation exempted people on CES from the clause that prevented people with other income from qualifying for the Pension.

#### Examination

The Department gave its interpretation of the legislation on which it had based its decision. The Ombudsman examined the legislation and established that the clause quoted by the man allowed someone already in receipt of a Pension to continue to receive it even if they were employed on a CES but did not allow people who were awarded pension after 16 January 2012 to do so. In this case the man was not in receipt of a Pension and did not apply for it until September 2013 - more than a year after the cut-off date.

#### Outcome

The Ombudsman decided that the Department's interpretation was correct and that it had acted fairly in rejecting the man's claim.

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## PRSI

C22/15/1329

Completed 22/02/2016

### # Upheld

#### Background

A man complained about the refusal of the Department of Social Protection to accept his voluntary PRSI contribution payment because he had insufficient funds in his account when it processed his payment. His cheque was received by the Department before the 31 December 2014. However, it did not cash it until five weeks later. The man felt he should not have been penalised for having insufficient funds in his account due to the Department's delay in cashing the cheque.

#### Examination

The Department said that due to the large volume of cheques (approximately 2,000 relating to voluntary contributions) received at the end of each year it is unable to process them all by 31 December. Following a review of the evidence in this case, the Ombudsman felt that it was unfair that the man had been adversely affected due to the length of time it took the Department to process his payment.

The man was unable to become a Voluntary Contributor and this affected his future pension entitlement. He also noted that the Department did not inform the man that there may be delays in processing payments at this time of year.

#### Outcome

The Department agreed to accept the man's application and allowed him until 31 December 2016 to pay the outstanding amount.

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## PRSI

C22/14/1149

Completed 13/01/2016

### # Not Upheld

#### Background

In 2013, a company director sought a refund of PRSI backdated to 2004. However, under legislation that was introduced in 2010, the Department limited the refund to 4 years.

The man maintained that his earlier application for Jobseekers Benefit (JSB) in 2008 should have triggered an investigation into his insurability and that, as such, the 4-year time limit should not have applied in his case.

#### Examination

An employer is responsible for ensuring that employees are in the correct PRSI Class. Furthermore, there is an onus on employees to ensure that their employer has their correct details.

The man owned 99.99% of the company. He did not refer to his PRSI contributions when he applied for JSB in 2008. The Department received almost 300,000 applications for Jobseeker's Benefit in 2008. Given these volumes, the Ombudsman felt it would not be reasonable to expect an application for Jobseeker's Benefit in 2008 to have triggered an examination of the man's PRSI contributions.

#### Outcome

The Ombudsman was satisfied that the Department's decision was properly made in accordance with the relevant legislation. However, he indicated that he would revisit the issue if the man provided him with evidence to show that, in 2008, he raised the issue of his PRSI contributions. The man did not provide this information.

## Supplementary Welfare Allowance

C22/15/0765

Completed 29/02/2016

### # Upheld

#### Background

A woman complained that the Department of Social Protection recovered €800 from her in 2014 prior to granting her entitlement to a current payment. The €800 related to payments in respect of 2010. The woman was firmly of the view that the Department had made a mistake. She sought a refund.

#### Examination

The Department was unable to produce a file that showed how the overpayment arose and there was no paper trail. The papers produced showed that the claim was not “closed off”, even though the Department accepted that the money had been recovered in 2014.

#### Outcome

The Department accepted it was not in a position to dispute the complainant's claim that she was entitled to the payment and it made arrangements to refund the sum paid in 2014.

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## Supplementary Welfare Allowance

C22/15/2225

Completed 11/03/2016

### # Not Upheld

#### Background

The Department refused a man's application for Rent Supplement on the basis that his monthly rent, at €550, exceeded the maximum amount provided for in social welfare legislation, namely €320.

#### Examination

The purpose of Rent Supplement is to provide short-term income support to eligible people who are unable to provide accommodation from their own resources. Rent Supplement is not normally paid where the rent payable to the landlord is in excess of the limits set out in legislation.

The Ombudsman's examination showed that the man resided alone in a detached 3-bedroomed bungalow in a highly sought after area. He was not prepared to relocate from his chosen area. In addition, the Department felt he was over accommodated.

#### Outcome

The Ombudsman was satisfied that the Department had applied the Rent Supplement rules appropriately in this case.

## Supplementary Welfare Allowance

C22/15/3390

Completed 15/12/2015

### # Upheld

#### Background

A woman wrote to the Ombudsman regarding the refusal of her application for an Exceptional Needs Payment (ENP) by the Department of Social Protection. She had applied for the ENP to pay for clothing for a child that she had become guardian for in unforeseen circumstances.

#### Examination

The records showed that the child's mother had passed away unexpectedly and she did not have a family member to care for her. The woman was a close friend of the mother and volunteered to take the child into her home. The Ombudsman requested the Department to review its decision due to the exceptional circumstances in the case.

#### Outcome

Following the Department's review of the application, it revised its decision and granted the woman an ENP towards clothing for the child.

# Other Service Providers

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## Legal Aid Board

O56/14/2087

Completed 09/03/2016

### # Not Upheld

#### Background

A woman applied for legal aid to take proceedings against her neighbour. Shortly afterwards, the neighbour instituted proceedings against the woman and her husband. The Board advised the woman that as her husband was named on the neighbour's proceedings, both of them would have to jointly defend this action and lodge a counterclaim. However, as their joint income did not satisfy the means test, the application for legal aid was refused. The woman felt that she had been discriminated against as her neighbour was awarded legal aid while she was not.

#### Examination

The Board sought Counsel's opinion which was that even if the woman issued separate proceedings against her neighbour in her own name, they would have to be heard together with his proceedings against her and her husband to prevent duplication of evidence and wasting of court time.

The law setting out the means test is set out in various Civil Legal Aid regulations. As the Board found the woman did not satisfy the means test when her joint income was assessed, she was financially ineligible for legal aid. Regarding her concern that the Board was discriminatory in awarding legal aid to her neighbour, the Ombudsman noted that each application is considered on its own merits. If an application satisfies the relevant criteria under the legislation, legal aid may be awarded. However, in this case, the application did not satisfy the means test as set out in the regulations.

#### Outcome

The Ombudsman was satisfied that the Board's position was fair and reasonable and that it acted in accordance with the relevant legislation.

## Teaching Council of Ireland

R29/14/1897

Completed 04/02/2016

### # Not Upheld

#### Background

A teacher complained to the Ombudsman that the Teaching Council removed her from the Register of Teachers, unfairly. As a consequence, she was also removed from the school's payroll without notification.

The teacher said that because she had suffered a physically and mentally debilitating medical illness, she overlooked the renewal of registration date. In addition, as she had moved address, she did not receive correspondence reminding her about it from the Teaching Council.

She acknowledged that close to the renewal deadline she received an email and an SMS message reminding her to renew her registration, but the messages did not explain the severe consequences for failing to renew on time. She stated she received a further email reminder, urging her not to allow her registration to lapse. This arrived after the renewal deadline and it did explain the consequence that her salary could be stopped. She stated that upon receipt of that email she immediately tried to renew her registration on the Council's website, but she experienced difficulties with paying the fee on line. Although she failed to renew her registration at that point, she did not contact the Teaching Council about it until almost four weeks later. She was informed that her registration had lapsed. A week later she received a "cessation of salary" letter from the Department of Education and Skills.

#### Examination

The Teaching Council pointed out that it is a teacher's responsibility to ensure that their registration does not lapse. It also pointed out that it had sent renewal reminders to the teacher by post, email and SMS message. The Ombudsman's examination concluded that while the individual circumstances in this case were unusual, he found that the Teaching Council had executed its function in accordance with its governing legislation and standard administrative practice.

# An explanation of the Ombudsman's Case Closure Categories

## 1. Upheld:

The following describe some of the scenarios where the Ombudsman upholds a complaint:

- It has been accepted by the public body that maladministration has occurred which has adversely affected the complainant.
- The complainant is found to have a genuine grievance and the body agrees to resolve/rectify the matter.
- The body departs from the original position some form of redress is offered

## 2. Partially Upheld includes:

- The complaint is not fully upheld, but the complainant has benefitted by contacting the Ombudsman.
- The complainant has a number of grievances but only some of them are resolved.
- The complainant is seeking a specific remedy but the Ombudsman decides on a lesser remedy.
- The complainant may have come to the Ombudsman with a complaint about a particular entitlement but, on examination, it is found that a different entitlement is more relevant and the complainant receives the different entitlement.

## 3. Assistance Provided includes:

- The complainant has benefitted from contacting the Office although their complaint has not been Upheld or Partially Upheld. A benefit to a complainant might take the form of:
  - The provision of a full explanation where one was not previously given.
  - The provision of relevant information, or the re-opening of a line of communication to the body complained about.

- While the complaint was not Upheld or Partially Upheld, the public body has adopted a flexible approach and has granted a concession to the complainant which has improved his/her position or resolved the complaint fully.

## 4. Not Upheld includes:

The actions of the public body did not amount to maladministration. In other words, the actions were not:

- (i) taken without proper authority,
- (ii) taken on irrelevant grounds,
- (iii) the result of negligence or carelessness,
- (iv) based on erroneous or incomplete information,
- (v) improperly discriminatory,
- (vi) based on an undesirable administrative practice,
- (vii) contrary to fair or sound administration

## 5. Discontinued/Withdrawn includes:

- The complainant does not respond within a reasonable time to requests from the Ombudsman for relevant information.
- It has been established in the course of the examination/investigation that the complainant has not been adversely affected.
- The Ombudsman is satisfied that maladministration has occurred and that appropriate redress is being offered by the public body. The complainant refuses to accept the redress and is insisting on a level of redress which the Ombudsman considers to be unreasonable.
- The complainant initiates legal action against the public body in relation to the matter complained about.

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# About the Office of the Ombudsman

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

At present, the service providers whose actions may be investigated by the Ombudsman include:

- All Government Departments
- The Health Service Executive (HSE) (and public hospitals and health agencies providing services on behalf of the HSE)
- Local Authorities
- Publicly-funded third level education institutions and educational bodies such as the Central Applications Office (CAO) and Student Universal Support Ireland (SUSI)
- Public and private nursing homes

The Ombudsman also examines complaints about failures by public bodies to provide accessible buildings, services and information, as required under Part 3 of the Disability Act 2005.

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## Making a Complaint to the Ombudsman

Before the Ombudsman can investigate a complaint, the person affected must try to solve their problem with the service provider concerned. In some cases there may be formal local appeals systems which they will have to go through before coming to the Ombudsman - for example, the Agriculture Appeals Office, the Social Welfare Appeals Office etc. If they fail to resolve their problem and they still feel the provider concerned has not treated them fairly, they can contact the Ombudsman.

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

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

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## Contacting the Ombudsman

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

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

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