



The Ombudsman's CASEBOOK

Office of the Ombudsman, Dublin, Ireland.

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Good complaint handling

Welcome to the final edition of the Casebook for 2015. As usual, it includes summaries of cases closed by the office in the last quarter. We hope that you find them of interest and that there is useful learning to be gained from them.

It has been a very busy year with further growth in the number of complaints. In general, we aim to resolve complaints by reaching a settlement, rather than through a formal investigation. I'm grateful to complaint handlers in public service providers for the assistance which enables us to do this.

On some occasions, it is not possible to do this and a formal process is required. One of the key factors which leads to disagreements is the difference between compliance with the law and good administration. If an overly rigid approach leads to patently unfair or unjust outcomes, then my Office will generally class this as maladministration. There is often a need for procedures or regulations to be changed to ensure that outcomes are fair, as well as legal. We also look at cases from a human rights perspective to ensure that these are properly taken into account when decisions are being made.

One trend which has caused me concern has been the overly vigorous pursuit of grants or benefits paid in error. Where the error has been made by the state agency, and there was no error or omission on the part of the applicant, it is often appropriate to at least consider setting the debt aside entirely. Where debt is being reclaimed, it is essential that the circumstances of the individual are properly taken into



Ombudsman Peter Tyndall

account. The amount of the repayments should not cause real hardship to the individual, and discretion must be exercised appropriately.

On a more positive note, my Office introduced a model complaints policy for private nursing homes which is available on [our website here](#). We are working to extend this model policy across the wider public service landscape. If you are reviewing your complaints policy, please talk to us before making any changes.

As Ombudsman, I inevitably hear negative comments about public services, and it is possible to adopt a very jaundiced view. However, I am very conscious of the excellent and often unsung work which characterises our public services and would like to extend thanks and seasonal greetings to all of those who work hard to make this a better country for us all.

Peter Tyndall, Ombudsman
December 2015

Lessons Learned

In this part of The Ombudsman's Casebook we highlight recurring themes arising from cases that we recently examined and which are summarised in this quarter's Casebook.

Ensuring payments are received by those entitled to them

Where payments are being made to the public there is a clear need to have rules and guidance on who is entitled to those payments and how those payments are made. In some cases those rules can be quite complex and present challenges for services providers to ensure that payments are received by those who should receive them.

In some cases examined this quarter people who were entitled to payments did not receive them as their applications were not properly considered by the service provider.

Two cases related to Guardian Payments. In [C22/14/1102](#) a man did not receive a Guardian Payment in respect of his sister from the Department of Social Protection despite the fact that she met the criteria of being in 'full-time' education.

In [C22/14/0768](#) the Department refused a Guardian Payment to a grandmother as it considered her granddaughter had not been 'abandoned' by her parents. The Department revised its decision when the Ombudsman asked it to review evidence of the child being 'abandoned'.

In [C22/14/0942](#) a man made a complaint to the Ombudsman about a reduced payment of his State pension. When the Department reviewed the case it discovered errors in how his pension had been calculated and issued an arrears payment of nearly €10,000.

Suggested Tips

Where a service provider is involved in providing payments to the public it should ensure that:

- all the information in each application is considered
- all staff have the appropriate knowledge, training and support to administer the particular payment scheme
- there are checks in place to ensure that payments are being made correctly
- its payment systems are regularly reviewed
- application forms, advice on websites, etc. help ensure the service provider receives the information it needs to assess each application.

General Customer Service

This quarter's Casebook includes cases closed in some of the summer months when applications for third-level student grants are being made. We have summarised a number of complaints we received about Student Universal Support Ireland (SUSI).

In [E78/13/1003](#) the Ombudsman upheld a man's complaint about delays in processing his application for a student grant. SUSI dealt with the complaint and has since revised its application process and helpline service.

In [E78/14/1172](#) a student was refused a grant despite providing evidence of 'living independently' which is one of the criteria for receiving the grant.

Agriculture

Agri-Environment Options Scheme (AEOS)

Department of Agriculture, Food and the Marine

C01/14/0666

Completed 16/06/2015

Not Upheld

Background

A man complained about a 20% reduction in a payment to him under the Agri-Environmental Options Scheme (AEOS). As part of his application for this scheme, he had submitted measurements in relation to traditional stone-wall maintenance. When the Department of Agriculture, Food and the Marine inspected his land, it found that the stone walls measured less than the figure he had submitted on his application form.

Examination

The man argued that even with the Department's measurement, he would qualify for the AEOS. He argued that a 20% financial penalty should therefore not have been placed on his payment. However, AEOS section explained that where a scheme is over-prescribed, an applicant could gain an advantage by overstating the length of their wall.

Outcome

The Ombudsman found the complainant breached the AEOS terms and conditions by providing incorrect information. While the scheme was not oversubscribed in this particular case, the Ombudsman found that the Department's decision was justified.

Single Farm Payment

Department of Agriculture, Food and the Marine

C01/15/0801

Completed 17/06/2015

Not Upheld

Background

This man bought land from another farmer and entitlements under the Single Farm Payment Scheme (SFPS) transferred with to him with it. Because the transfer took place only two days before the closing date for submitting his SFPS application, he claimed the same number of hectares as the previous owner had done on his application. However the Department of Agriculture, Food and the Marine had reviewed the area and reduced the eligible land because some of it was scrub and there was a roadway neither of which was eligible for payment. The farmer had received a penalty of over 1,200 as a result.

Examination

The Ombudsman examined the Department's file and the terms and conditions applying to the Scheme. The closing date for receipt of applications was 15 May, 2013. The entitlements were transferred on 13 May, 2013. He accepted that the farmer might not have been aware at the date of application that there had been a change in the eligible land area. However, in submitting his appeal he admitted that land had been included which should not have been and other land which should have been included, had been excluded. He asked the Appeals Office to review the maps to ensure that this did not occur in the future. Therefore, he was aware that he had claimed on ineligible land. The Appeals Office said that it could not accept the amendments as the closing date for receipt of amendments had passed. The terms and conditions of the scheme allowed for receipt of amendments up to 31 May, 2013. The appeal wasn't submitted until January, 2014.

Outcome

The Ombudsman could not uphold the complaint because the deadline for submitting amendments had passed and the Department's decision was in accordance with the terms and conditions of the Scheme.

Single Farm Payment

Department of Agriculture, Food and the Marine

C01/15/0304

Completed 21/07/2015

Not Upheld

Background

A woman complained about her son receiving a penalty on his Single Payment Scheme (SPS) payment in 2011. The Department of Agriculture, Food and the Marine had found that the man, who leases a farm from his mother, did not have grazing rights on part of the land submitted under the SPS application.

Examination

The Ombudsman found that the Forest and Wildlife Service acquired the commonage lands by compulsory purchase order (CPO) in 1983. The plot in question had originally been intended for forestry production but was found to be unsuitable. As a result, the Forest and Wildlife Service granted a licence to a farmer to graze the plot. When the National Parks and Wildlife Service took over responsibility for this land, it continued to license the land to the same farmer for grazing purposes.

Outcome

The Ombudsman found that the woman had no legal claim on the disputed parcel of land.

Single Farm Payment

Department of Agriculture, Food and the Marine

C01/15/0677

Completed 18/06/2015

Assistance Provided

Background

A man complained about the Department of Agriculture, Food and the Marine imposing penalties on his 2013 and 2014 Single Payment Scheme (SPS) applications because ineligible land had been declared. The man claimed that he had been unable to farm the land for health reasons. He had provided medical evidence to support his case.

Examination

The dates for the medical evidence did not correspond with the Department's assessment and the guidelines on allowing for extenuating circumstances did not apply. While examining this complaint, the Department became aware that a parcel of land was eligible for payment. The man received payment in respect of this land.

Outcome

The Ombudsman found that the Department had acted in accordance with the scheme's conditions.

Education

Higher Education Grant

Student Universal Support Ireland (SUSI)

E77/15/0451

Completed 10/08/2015

Not Upheld

Background

A woman complained about her unsuccessful application for a grant from SUSI

Examination

SUSI staff told the woman by phone that she would be eligible for a grant. It later found that the woman had completed an NFQ (National Framework of Qualifications) level 7 course. In order to qualify for funding, applicants must show that the course they are applying for is at a higher level than any courses they have already completed. SUSI refused the woman's application because this was not the case. SUSI apologised to the woman for the error in telling her by phone that she would be eligible.

Outcome

The Ombudsman was satisfied that SUSI had applied the legislation correctly in the grant application and acted reasonably by apologising to the woman for the misinformation.

Higher Education Grant

Student Universal Support Ireland (SUSI)

E78/13/1003

Completed 13/07/2015

Upheld

Background

A man complained to the Ombudsman that his application for a support grant to Student Universal Support Ireland (SUSI) was unfairly and unreasonably delayed by over 18 months from the date of his initial application.

The student said that in his dealings with SUSI he had encountered undue delay, misinformation and poor communication. He was particularly unhappy with SUSI's helpline, which he contacted on more than 70 occasions over a 14 month period.

Examination

After examining his complaint the Ombudsman contacted SUSI detailing his dissatisfaction both with how the student's application was processed and how he was treated by SUSI in the course of pursuing his entitlement.

Outcome

The Ombudsman decided to uphold the student's complaint. The Ombudsman arranged to meet SUSI's senior staff, to express his concerns about how this student's application and complaints were handled, (among other things). The Ombudsman highlighted that an in depth analysis of helpline calls conducted by his Office revealed there was a serious disconnection / information gap between helpline staff and administration / decision makers in SUSI. SUSI accepted that this student's application was handled poorly, explaining that the unfortunate circumstances in this case occurred during SUSI's first year of operations, when inexperience led to a number of serious difficulties for applicants. SUSI assured the Ombudsman that such a poor response could not occur again, within its present application process and improved helpline service.

The student received a backdated support grant to the date of application and an apology from SUSI.

Higher Education Grant

Student Universal Support Ireland (SUSI)

E78/14/1172

Completed 31/07/2015

Upheld

Background

A student complained to the Ombudsman that she was unfairly refused a financial grant, by Student Universal Support Ireland (SUSI).

The Student Grant Support Act 2011, provides for a range of financial support grants for students attending approved third level courses in Ireland or EU member states, subject to certain conditions.

The student applied to SUSI as an 'independent student' believing she satisfied all the conditions for the level of grant aid awarded to students in such circumstances. However, SUSI was not satisfied with the evidence she furnished to prove she lived as an 'independent student' and so refused her application. In its report to the Ombudsman SUSI stated that had the student been able to provide a utility bill in her own name, registered at the address for which she said she was residing, she would have been approved for the grant.

Examination

The Ombudsman examined the student's application details concluding that the evidence she had furnished to prove she was living independently should have been deemed satisfactory by SUSI. The documentary evidence included:-

- A live claim with the Department of Social Protection, registered and in payment at the independent address
- A P45 from her previous employer showing her independent address
- A letter from the Revenue Commissioners about her tax affairs, addressed to her independent address

- A motor insurance renewal notice showing the address at which her car was registered, to be her independent address

Outcome

The Ombudsman arranged to meet with senior officials in SUSI. He expressed his concern that many students living independently would not have utility bills in their own names and might be unfairly denied the financial support they needed to engage in education. He urged SUSI to expand its range of acceptable evidence for the purposes of satisfying the 'living independently' condition. The Ombudsman remains in dialogue with SUSI about this issue.

In the meantime the student furnished a television account bill registered at her independent address. SUSI approved her funding grant retrospective to the date of her application.

Higher Education Grant

Student Universal Support Ireland (SUSI)

E78/15/0092

Completed 30/07/2015

Not Upheld

Background

A woman complained to the Ombudsman about her unsuccessful application for funding from Student Universal Support Ireland (SUSI).

The woman's grant application was approved in November 2013. Following an audit of grant applications, SUSI wrote to the woman again in April 2014 to state it had assessed her application and she did not qualify for a grant as she did not meet the nationality requirements set out under the Student Support Act 2011 or the Student Support Regulations 2013.

Examination

The woman held a Stamp 4 EUFAM visa and had satisfied the Irish Naturalisation and Immigration Service's requirements on the basis of her relationship with an Irish citizen. However, the 2013 Regulations provide that a person must be married to or in a civil partnership with an Irish person before the person satisfies the nationality requirements of the Regulations. While the woman was cohabiting with an Irish person, she was not married to or in a civil partnership with that person.

Outcome

The Ombudsman decided that SUSI had applied the Regulations correctly and so did not uphold the complaint.

The Ombudsman asked SUSI if it would consider amending the Regulations to reflect the criteria set out by the Act. SUSI committed to raising the issue with the Department of Education and Skills in the context of the drafting of the Student Grant Scheme for 2016. It also acknowledged and apologised for the initial communication error it made in respect of the woman's application.

Reasonable Accommodations (RACE)

State Examinations Commission

E85/15/1322

Completed 21/07/2015

Not Upheld

Background

A woman complained to the Ombudsman that her son's application for a 'reader' to assist him in his Leaving Certificate exams was unfairly refused by the State Examinations Commission (SEC). The SEC administers a Reasonable Accommodations at Certified Examinations (RACE) scheme to assist students sitting the Junior and Leaving Certificate Examinations, who are disadvantaged because of physical or specific learning disabilities. The woman's son was diagnosed with dyslexia and dyspraxia.

The woman appealed the refusal to the SEC's Independent Appeals Committee, but the appeal was unsuccessful.

Examination

The woman contended an independent Psychologist's report had confirmed that her son's word reading score and his reading accuracy error rate in assessment tests, fell within the SEC's qualification criteria for the provision of a reader. However, an examination of the Psychologist's report did not support the woman's contention that her son's reading accuracy error rate fell within the prescribed limits.

The SEC reported that RACE scheme applicants must satisfy clearly defined national tests for eligibility for a reader before such an accommodation is approved. The tests are conducted in schools to identify student's support needs.

The SEC acknowledged that the woman's son was diagnosed with dyslexia and dyspraxia, and that his word reading test score fell within the specified range. It reported however that his reading accuracy error rate did not fall within the specified criteria. As it is a condition of the RACE scheme that all three of the criteria must be satisfied for approval of a reader his application was unsuccessful.

(Note: Eligibility criteria provides, for students whose reading accuracy error rate does not fall within the specified range, an alternative test must be considered by the SEC - if a student reads at a rate of less than 90 words per minute they may be approved for a reader. Test results indicated the student did not satisfy this condition either).

Outcome

The Ombudsman was satisfied that the SEC's decision was correct. This student was deemed eligible by the SEC for two other accommodations (i) a waiver from the assessment of spelling and grammar in the language subjects and (ii) the use of a word processor in his exams.

Reasonable Accommodations (RACE)

State Examinations Commission

E85/15/2006

Completed 06/06/2015

Upheld

Background

A woman complained that her daughter had been refused permission to use a laptop computer during her Leaving Certificate exams, by the State Examinations Commission.

Examination

Her daughter had a developmental co-ordination disorder which made it difficult for her to write by hand for long periods of time. As she had been using a laptop throughout the school year, she was not used to writing for long periods. During our examination, the mother told us that her daughter has Scoliosis but that she had not informed the Commission. The Ombudsman contacted the Commission to explain the situation.

Outcome

Subsequently, the daughter was granted approval to use a laptop in her Leaving Certificate examinations.

Special Education Facilities

National University of Ireland Galway

E66/15/0608

Completed 16/06/2015

Assistance Provided

Background

A man complained about the treatment he received while attending a course at the NUI Galway in the 2013/2014 academic year. He has type 1 diabetes and stated that the relevant supports were not made available to him. He withdrew from the course in February 2014.

Examination

The University was satisfied that it had all reasonable supports in place to accommodate a student with type 1 diabetes. However, it regretted that the man had felt compelled to withdraw as a student. Accordingly, it offered to transfer his tuition fees for the 2013/2014 academic year towards the course fees for 2014/2015. The man did not accept this offer at that time.

The Ombudsman considered that the NUI Galway had all reasonable supports in place for the man. After being contacted by the Ombudsman, the University extended its offer to the 2015/2016 academic year. The man indicated that he hopes to resume his studies at the University in 2015.

Outcome

NUI Galway extended the timeframe for transferring the man's tuition fees. Therefore, the complaint was closed as Assistance Provided.

Environment

Leader Programme

Department of the Environment, Community and Local Government

C08/15/0003

Completed 11/06/2015

Not Upheld

Background

A Group complained to the Ombudsman that a grant that had been made to it under the Leader element of the Rural Development Programme 2007 - 2013 had subsequently been withdrawn by the Department of the Environment, Community and Local Government which oversees the Programme.

Examination

The Department said that its decision was based on the failure of the group to abide by the obligatory rules of the scheme, particularly those relating to public procurement. In this case those rules require that tenders must be invited from three different companies. The Department considered that the Group had not satisfied this condition as the three companies it quoted in this regard were all closely linked and shared the same directors, so it concluded that the quotes the Group submitted were not actually from three separate companies as is required under the Programme.

Outcome

The Ombudsman considered that the Department was correct in its judgement that the companies were so closely linked that the Group had failed to satisfy the condition on procurement and also that it had given the group a fair opportunity to put its case. For those reasons he did not uphold the complaint.

Leader Programme

Department of the Environment, Community and Local Government

C08/14/0887

Completed 29/06/2015

Not Upheld

Background:

The CEO of a Local Development Company (LDC) complained to the Ombudsman about refusal by the Department of the Environment, Community and Local Government a claim for funding under LEADER element of the Rural Development Programme 2007- 2013. The Department contracted 35 Local Action Groups to deliver the Programme in their respective areas.

Examination:

The LDC developed a project to support individuals taking Degree /Diploma courses in Rural Development. The Ombudsman established that a claim the LDC made on behalf of students was refused by the Department as it could not verify that the students had completed enough of the course to trigger the claim. It cited the Operating Rules of the Programme which provide that - "LAGs should issue payment once the year in question is completed. In exceptional circumstances, when 30% of the course has been completed, LAGs may issue a 30% phase payment".

The CEO appealed the decision to the Department Appeals Panel, proposing a solution. He argued that the fact that the LDC claimed more than it should on the basis of the amount of course time completed at that time had been superseded by time and events. The Panel did not accept the proposal and the appeal was not upheld.

Outcome:

The Ombudsman was satisfied that the Department acted in accordance with the Operating Rules for the Programme, and did not ask the Department to accept the proposal suggested by the LDC.

Leader Programme

Department of the Environment, Community and Local Government

C08/15/0616

Completed 14/07/2015

Not Upheld

Background

In 2009, a LEADER Group approved grant aid to a community project under the Rural Development Programme (RDP). Following a Department of the Environment, Community and Local Government inspection, this grant was found to be illegible for non-compliance with Public Procurement Guidelines.

Examination

The LEADER Group assessed the community project's application under the 2009 Operating Rules which it contends only requires five quotations and not the higher threshold of requiring public procurement through the e-tenders website or advertisement in national newspapers etc.

However, the Department said that there is a requirement for public procurement under the 2009 Operating Rules and the associated guidelines. The relevant guidelines say that projects, such as this one, costing above €50,000 and up to the value of EU thresholds for advertising in the Official Journal of the European Community should be advertised in accordance with national advertising and publicity requirements. In most cases, advertising on the e-tenders website would satisfy this requirement.

Outcome

Having reviewed the case, the Ombudsman was satisfied that the decision of the Department was reasonable as it was in keeping with the guidelines set out in the 2009 Operating Rules. As a result he did not uphold the complaint.

Rural Development Programme

Department of the Environment, Community and Local Government

C08/14/1240

Completed 29/06/2015

Not Upheld

Background: The CEO of a Local Development Company (LDC) complained that a claim for funding it has approved under the Rural Development Programme 2007- 2013 was refused following an audit by the Department of the Environment, Community and Local Government. The Department contracted 35 Local Action Groups to deliver the Programme in their respective areas.

Examination: The Ombudsman established that the LDC developed and implemented an in-house cooperation project to carry out an analysis of the craft sector in the County. Three companies were invited to tender for the work, two by email and one by phone call. The company that was invited to tender by telephone was awarded the contract.

The project was selected for audit by the Department's Inspection Services Section. It was deemed ineligible for a number of reasons by the District Inspector whose decision was appealed to the Regional Inspector. The Regional Inspector requested evidence that the project complied with the Operating Rules of the Programme which require that "the LAG must publicly advertise/seek quotations from outside providers to ensure that at all times there is a clear competitive situation" As the LDC did not provide this, he refused the request for funding. This decision was appealed to the Department's Appeals Panel which upheld the Regional Inspector's decision.

A Circular from the Department sent to the Ombudsman provided that the need to publicly advertise projects did not apply for applications before March 2012 in cases where a clear audit trail relating to procurement existed. As the LDC was unable to provide a verifiable audit trail, the application for RDP grant aid was refused.

Outcome: The Ombudsman considered that the Regional Inspector's decision was consistent with the Operating Rules for the programme and so found that the Department properly applied those Rules.

Foreign Affairs

Passport Application

Department of Foreign Affairs and Trade

C11/14/1471

Completed 30/07/2015

Not Upheld

Background

A woman complained that the Department of Foreign Affairs refused to renew her child's passport because it did not accept she was the sole guardian.

Examination

The woman had provided an affidavit stating that she was the sole guardian of her child. But, the Department would not process the application because the woman had also said that her child's father had joint guardianship.

By law, the Department must be satisfied that each person who is a guardian consents to the issue of a passport to a child. After further enquires and on legal advice, it decided that the child's father is also a guardian.

Outcome

The Ombudsman considered that the Department's assessment of the information, and therefore its decision, was reasonable.

Health

Care and Treatment

Letterkenny General Hospital

H21/14/0176

Completed 10/06/2015

Partially Upheld

Background

The family of a late 67 year old man, who had been a resident in a nursing residential unit for over twenty years, complained that there was undue delay in diagnosing his bowel cancer. The man was severely disabled and was unable to communicate clearly. His family noticed that he was in pain and that he had lost considerable weight. He had been initially referred by his GPs in the Nursing Unit to Letterkenny General Hospital (LGH) for tests in October 2013 but was discharged five days later. No consultation with the family had taken place during this first admission. An ultrasound of his liver had been taken which detected two lesions on his liver which were thought to be benign.

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

Examination

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

Outcome

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

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

Care and Treatment

HSE Nursing Home

HA1/14/1920

Completed 12/06/2015

Assistance Provided

Background

The Ombudsman received a complaint about the care and treatment provided to an elderly woman in an HSE-run nursing home. The woman fractured her wrist during her stay.

Examination

As the woman needed assistance in getting in and out of bed, the Ombudsman requested information on the type of hoists and procedures used to move her. According to the nursing home, two fully-serviced types of hoists were used. A sling used to transfer her in and out of the hoist had been used during the woman's previous stays in the nursing home.

The HSE said that an assessment of the woman needs (including her level of mobility) has been completed on admission. This assessment required that two people were involved in lifting and moving her. The HSE said that this was the case throughout her stay. It also said that staff were up to date with their manual handling training during the period in question.

The Ombudsman examined the available nursing notes and testimonies from nursing staff. These did not indicate any problem with moving the woman during her stay or point to any incident which may have led to the injury.

Outcome

The Ombudsman concluded that it was not possible to identify how and when the woman fractured her arm. He also noted that the HSE had implemented improvements following the initial complaint made to it, including the following:

- Healthcare assistants must complete a duty register noting any observations made.
- Family members have to be informed of any unusual appearances in their relatives as soon as possible.

Care and Treatment

St Vincent's University Hospital

H71/14/1199

Completed 19/08/2015

Partially Upheld

Background

A woman complained to the Ombudsman that her mother (who suffered from dementia) was discharged on a Friday from St Vincent's University Hospital back to her nursing home in pain without any warning or adequate information regarding her pain management. The woman said that her mother arrived accompanied by a care assistant in severe pain with no referral to the community palliative care service.

Examination

It appeared that while in hospital the lady's pain had been well managed with paracetamol and this seemed to be the case at the time of her discharge. She was to be referred to the community palliative care team on discharge for a review of her pain management, but this was not deemed urgent. However on arrival at the nursing home she became confused and later her pain increased. It was at this stage that the nursing home contacted the community palliative care team to discover that the woman had not as yet been referred. Her pain was managed over the weekend by her GP and she was seen by palliative care the following week.

Outcome

The Ombudsman's examination found on that on discharge the woman's pain appeared to be controlled. The community palliative care referral which was not deemed urgent was not sent by the hospital on the day of her discharge, the nursing home had not been informed of this. The community palliative care service said that the delay in referral did not alter her treatment. They said that unless there was an absolute urgent need for their involvement her pain would have been managed by her GP over the weekend. It seems that at the outset the nursing home were unaware of this. However the Ombudsman found that had the hospital notified the nursing home of the delay in referral and the action to take should her pain increase, the misunderstanding that occurred could have been avoided. The Hospital apologised to the lady's family and has undertaken to remind staff to include this detail in their telephone/verbal handover to a nursing home.

Care and Treatment

HSE Dublin Mid-Leinster

HB9/15/0718

Completed 08/07/2015

Partially Upheld

Background

A woman complained on behalf of her brother, who is a resident in a care home with an intellectual disability, about his level of care. She felt the home had not sufficiently helped the man to maintain his mobility and that his family had not been kept informed of his deteriorating condition. She also complained about the way the HSE had handled her complaint.

Examination

The Ombudsman found there was no exercise programme in place for the man. His condition had deteriorated over a year but no family meeting had been called. He was suffering from an ailment that was limiting his mobility. However, it appeared the care home had had him medically reviewed on a number of occasions.

Outcome

As a result of the Ombudsman's examination, the HSE provided the resident with an individual carer for four days a week. It also agreed to purchase a MOTOMed unit to exercise his limbs, in order to maintain good circulation and movement. The HSE apologised to the family for any distress caused and a better approach to family communication has been agreed on.

Complaint Handling

Waterford Regional Hospital

H52/14/1908

Completed 04/06/2015

Not Upheld

Background

A man complained about the Health Service Executive's (HSE) handling of his complaint concerning University Hospital Waterford (UHW). His complaint related to an allegation of assault against a member of staff and delays in handling his complaint.

Examination

The HSE acknowledged that there were delays as a result of the complaint not being initially processed in the correct office. It noted that staff were on leave and that there was a lack of resources. It accepted that the timeframes in its 'Your Service, Your Say' policy had not been adhered to. We examined the CCTV footage of the alleged assault.

Outcome

As a result of UHW's review of the handling of this complaint, further staff were allocated to the Office dealing with complaints and the Deputy General Manager is now more involved with the whole process relating to the management of complaints. The staff member involved received a conflict resolution training refresher course. Also, the HSE confirmed that all staff involved in the handling of complaints will be participating in a management of complaints education programme in 2015.

The Ombudsman was happy that on foot of this complaint the HSE took steps to rectify the areas in which its complaint handling process required improvement and the case was closed.

Fees

Health and Social Care Professionals Council

R08/14/1409

Completed 20/07/2015

Upheld

Background

A social worker complained about the level of registration fees retained by the Health & Social Care Professionals Council (CORU). The regulatory body had reduced the registration fee from €295 to €100 as a result of the Haddington Road Agreement. CORU believed that the woman was not entitled to a partial refund of her fees as she had applied and paid for registration before 1 January 2013.

Examination

The woman had acted on CORU's statements to apply promptly for registration. He also noted that it seemed unfair and arbitrary that 1 January 2013 was chosen as the cut-off date for a partial refund of the registration fee.

Outcome

In response to the Ombudsman's request for a review, CORU agreed to partially refund the registration fee in line with applications received after the cut-off date. It also agreed to partially refund the other 32 registrants in the same position.

HSE - Health Repayment Scheme

Health Repayment Scheme

HRS/13/1806

Completed 29/06/2015

Not Upheld

Background

A man complained on behalf of his late aunt after his application for a refund under the Health Repayment Scheme (HRS) was refused. His appeal was also refused.

The HRS was introduced in 2006 to repay people charged illegally for long-stay hospital care. Before 2005, there was no legal basis for imposing charges for hospital in-patient services (including long-stay hospital care) on Medical Card holders.

The man was originally offered €18,326 to cover the period from 2001 to his aunt's death in 2003. He appealed the decision because his aunt went into a nursing home in 1998. The Appeals Officer overturned the HRS decision because the man's aunt was admitted under a private contract and so she was not eligible for any refund under the HRS.

Examination

The Ombudsman sought to establish whether the woman was in the nursing home on a private or public placement. In almost all public placements, patients paid their contribution to their local Health Board, which would then pay the total cost of care to the nursing home. No such arrangements were in place for the woman's placement and her fees were paid directly to the home. It was also noted that the woman was admitted to the nursing home in March 1998, which was before the HSE began contracting beds there.

Outcome

The Ombudsman concluded that the woman had been a private patient in the nursing home and so was not eligible for any refund under the HRS.

Hospital Charges

Mater Misericordiae University Hospital

H81/14/1089

Completed 14/08/2015

Not Upheld

Background

A man complained to the Ombudsman about being charged the statutory fee of €100 for attending the Emergency Department (the ED) in the Mater Hospital. The man had previously attended the outpatient clinic a number of times. After one of these visits he attended the emergency department of the hospital and was assessed by the Triage Nurse but not admitted. The man was subsequently charged for this visit to the ED. The man contended that his visit to the ED was in connection with his previous attendance at the out patients

clinic and as such he should not have been charged the statutory fee. The 100 fee is not charged when patients have a referral letter from their own GP.

The Hospital acknowledged that the man had previously attended the outpatients' clinic but maintained that the charge for the visit to the ED related to a separate instance of care. As the man did not have a referral letter from his GP, the Hospital stated that it had no option but to impose the statutory charge. Following his examination of the relevant information, in particular the Department of Health instructions regarding the statutory charge and how it should be applied, the Ombudsman agreed that the man's visit to the ED related to a separate instance of care. He considered that the Hospital's actions were reasonable so for this reason he was unable to uphold the complaint.

Nursing Homes Support Scheme

Dublin South City

HB3/15/1621

Completed 15/06/2015

Not Upheld

Background

A woman complained about the level of contributions her mother was required to make under the Nursing Homes Support Scheme.

Examination

The woman felt that the contributions her mother had to make left her with insufficient money every month for necessary expenses. These included clothing and taxis fares to appointments. The file showed that the payments had been reduced as the mother's savings decreased. It also showed that the principal residence had been disregarded after three years. The rate of contribution was correct as provided for in the legislation.

Outcome

The Ombudsman decided that the HSE had correctly applied the Nursing Homes Support Scheme.

Nursing Homes Support Scheme

Kerry (HSE South)

HD9/14/0777

Completed 26/06/2015

Not Upheld

Background

A woman applied for support for her husband under the Nursing Home Support Scheme. She complained that the HSE had included as part of her means the notional income she received from a farm that she transferred to her son within the previous five years. The Scheme is means tested and one of its conditions is that any assets an applicant transfers up to five years before they apply are counted as part of that applicant's income. The woman said

that although the formal transfer had been made within the previous five years, the farm had effectively been transferred to her son under the Early Retirement Scheme for Farmers more than ten years earlier.

Examination

The HSE told the Ombudsman that under the relevant legislation it had to take the formal date of transfer and had no discretion to take account of other circumstances such as those outlined by the complainant.

Outcome

The Ombudsman considered that the HSE was correct in its interpretation of the legislation and for this reason he did not uphold the complaint.

However, the Ombudsman noticed that there was an anomaly in the operation of the Scheme. This was that the notional income from the farm was counted when the woman's contribution to the cost of her care was calculated but it was not counted when she applied for an Ancillary Loan to help with those costs. The Ombudsman has informed the Department of Health and Children about this anomaly.

Pharmacy Charges

HSE

H09/15/0587

Completed 16/06/2015

Upheld

Background

A man complained about the decision of the HSE to refuse him and his wife a refund of prescription charges. The man, who is blind and has Parkinson's disease, lives alone. His wife lives in a nursing home.

Examination

Prescription charges were introduced in 2010. At that time, the man and his wife both had medical cards but they used different pharmacies. In May 2014, the man became aware that he had been entitled to a family card (which means a family pays prescription charges to a set limit) and he applied for a refund.

The HSE refused to refund him the extra charges he incurred for the period that he and his wife were not registered as a family. The Ombudsman highlighted the unique circumstances of this case with the HSE.

Outcome

The HSE refunded the difference paid in prescription charges for the period in question (€305).

Primary & Community Care

Health Service Executive

HA9/14/1854

Completed 10/06/2015

Upheld

Background

A man complained that he was not informed in writing why a service he had been receiving from his Public Health Nurse was stopped.

Examination

The man said that he had complained about the fact that he had not been informed in writing of the reasons for the cancellation of this service to the Public Health Nursing service and the National Advocacy Unit but he had not received a letter explaining why the service was cancelled. The Ombudsman concluded that the complainant should have received this information in writing.

Outcome

The man was subsequently provided with a letter outlining the reasons. Following the Ombudsman's intervention, the Director of Public Health Nursing will put a protocol in place so that clients will be informed in writing of the reasons for a service provision change.

Local Authority

Estate Management

Galway City Council

L15/14/1190

Completed 14/07/2015

Upheld

Background

A man complained to the Ombudsman about the location of a bench beside his home, within two yards of his sitting room window. The bench was for community use and he said that he suffered trauma and ill health as a result of smoking and noise from the residents that used the bench. He complained to the Residents Association and the City Council, but the problem continued.

Examination

The Ombudsman contacted the Council and the bench was eventually moved. The Council assumed that this resolved the matter as it did not hear from the man for several months. It said that the man could contact the Tenant Liaison Officer if he had any concerns in the future.

Outcome

The man advised the Ombudsman that he continued to experience anti-social behaviour from some of his neighbours, but did not want to deal with the Council as it would not do anything about it. The Ombudsman considered that the Council's advice to the man (that he should contact the Tenant Liaison Officer if there were any issues he wished to raise) was reasonable, and told the man he could make a new complaint if he was not happy with the result of any further contact he might have with the Council.

Fire Service Charge

Limerick City and County Council

L27/15/1340

Completed 06/07/2015

Not Upheld

Background

A man complained about Limerick City and County Council imposing a Fire Service Charge on him although he did not use the service. The Council rejected his application to have the charge waived or reduced.

The man was involved in a single-vehicle motor accident and a passing motorist called the Fire Services. The man was uninjured and had got out of his car unaided by the time the Fire

Services arrived. They departed shortly afterwards. The man said that his insurance company would not pay the charge as the Fire Services had not provided any service.

Examination

The Council provided details of the duration of the Fire Services call-out and how the charge was calculated. It had offered the man a payment plan but not a reduction based on the information in his waiver application.

Outcome

In law, there is a basis for applying a charge to help fund the running of the Fire Services. The person calling the Fire Services does not have to benefit from the service.

Housing

Cork City

L07/15/0407

Completed 04/08/2015

Not Upheld

Background

A woman complained about not being rehoused by Cork City Council following the sale of the property, which had been allocated to her by the Council under the Rental Accommodation Scheme (RAS).

Examination

In these circumstances, the Council would normally find new accommodation for a tenant under RAS. However, in this case, the woman had significant rent arrears. A condition of RAS is that there should be no rent arrears in a previous tenancy particularly in a social housing tenancy. The Council said it had tried to help the woman to maintain her tenancy over a number of years. It repeatedly told her that she would not get further offers of social housing, if she went into rent arrears.

Outcome

The Ombudsman was satisfied that the Council had acted in accordance with the RAS conditions.

Housing

Cork City Council

L07/15/1418

Completed 12/06/2015

Upheld

Background

The Ombudsman received a complaint from a woman against Cork City Council. The woman is confined to a wheelchair. She contacted the Council in 2007 about repairs to her house. However, despite repeated requests to have various repairs carried out, the Council failed to carry out the repairs. The woman had also given the Council many reports about her medical conditions and how the state of disrepair of the house exacerbated her condition.

Examination

The report from the Council confirmed that it had carried out some repairs over the years to the house. It engaged a Consulting Engineer to inspect the house and to make recommendations. The Council also confirmed that it would carry out all of the recommendations in the Consulting Engineer's report.

Outcome

The Ombudsman was satisfied that the Council agreed to carry out all the recommendations in the report. The woman subsequently contacted the Ombudsman and confirmed that the Council had called to her house and agreed to carry out the works.

Housing

Donegal County Council

L10/14/1249

Completed 23/07/2015

Not Upheld

Background

A couple applied to Donegal County Council for a transfer to move in with their uncle. The uncle is elderly and has specific accommodation requirements due to ill health.

The uncle lives in an old cottage with a very small kitchen and three small bedrooms. The couple currently live adjacent to their uncle with their two children.

Examination

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

Outcome

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

Housing

Galway County Council

L16/15/1786

Completed 08/07/2015

Upheld

Background

A woman complained that the Non Principal Private Residence (NPPR) charge and penalties had been applied incorrectly. Her mother had transferred the ownership of the property to the woman in 2006 but she retained an exclusive right of residence for the rest of her life. The NPPR does not apply in such a case if the deed states that the right of residence is exclusive to the transferor of the property. The deed did not state this.

Examination

The woman had requested an exemption from the NPPR charge because her mother had continued to live in the property since it was transferred. The Council refused this request and demanded €7,230 in charges and penalties. The Ombudsman asked the Council to review its decision. He said that it was unfair to penalise the woman as the NPPR legislation had not been in force when the property was transferred. He also noted that the woman had lodged a Deed of Rectification. The Property Registration Authority confirmed that the woman's mother is now listed as having an exclusive right of residence.

Outcome

The Council granted the woman an exemption from the NPPR charge.

Housing

Kildare County Council

L20/15/2438

Completed 20/08/2015

Upheld

Background

A woman complained about the delay in receiving social housing from Kildare County Council. She said that she had been on the Council housing list since 2006 without receiving a housing offer. Her family had been forced to move from their private rented accommodation to a different town. She said she is a single parent of two children who were suffering emotionally because of the lack a permanent home.

Examination

The Council accepted that the woman had been on the housing list for a long time. It said that there were people waiting even longer because of the shortage of suitable units and the number of applicants seeking accommodation. However, as she had moved to a new location, the Council reassessed her circumstances. It recommended the family for a new voluntary housing scheme which was due to become available in her desired location.

Outcome

The woman accepted the offer of a three-bedroom house from the voluntary housing association.

Housing

Kildare County Council

L20/14/0624

Completed 22/06/2015

Assistance Provided

Background

The Ombudsman received a complaint from a tenant of Kildare County Council who was seeking a Housing Adaptation Grant. The grant was for the provision of (1) soundproofing for her daughter's bedroom, and (2) a shower room. Her daughter suffers from narcolepsy, a condition marked by a tendency to suddenly fall asleep.

Examination

The Council approved the works required. However, while the Council was considering the proposed works, the woman requested a housing transfer rather than a grant. The Council informed the woman that a transfer to another house would not address her family's housing requirements. It also explained that it did not have alternative housing stock that would cater for the family's specific housing requirements. The woman was advised to keep in regular contact with the Council and to inform it of any changes in her circumstances or requirements.

Outcome

The Ombudsman considered that the Council was acting reasonably in seeking to resolve the complainant's particular housing needs.

Planning

Galway City Council

L15/15/0280

Completed 11/06/2015

Upheld

Background

A man complained to Galway City Council about its failure to take appropriate action on foot of an enforcement notice dated March 2014. The notice concerned an unauthorised wall and the provision of a bin storage area in a block of apartments.

Examination

The property owner had indicated that the works were carried out under a direction from a Fire Safety Officer to comply with a Fire Safety Certificate. Meetings were held between the owner and the Fire Safety Officer. However, no letter from the Fire Safety Officer confirming the request for the fire escape route was received by the Council.

The Council issued a further enforcement notice in February 2015. In April 2015, it instructed its solicitors to commence legal proceedings against the owner for failure to comply with the enforcement notice terms.

Outcome

The Ombudsman was satisfied that the Council was dealing with the matter in accordance with the Planning and Development Acts.

Planning

Skibbereen Town Council (abolished, now Cork County Council)

L09/14/0669

Completed 03/07/2015

Upheld

Background

A man complained that interest had not been paid by a local authority on refunded development charges. The charges in this case were levied on the developer to ensure the provision of sewerage facilities in line with the planning permission for a small housing development. The legislation requires the Council to invest such funds with any interest arising paid to the developer if the development for which planning permission was sought did not go ahead. In this case the housing development did not proceed. The Council repaid the charges to the developer but had not invested them so did not pay any interest.

Examination

The local authority initially told the Ombudsman that as there had not been an agreement between it and the complainant to invest the charges no investment had been made and

there was no interest due. The Ombudsman told the authority that his interpretation of the relevant legislation was that the Council was obliged to arrange such an agreement. Because of its failure to do so the Ombudsman considered that the complainant's claim was justified.

Outcome

The authority accepted the Ombudsman's interpretation and agreed to pay interest in this and in all other such cases.

Water Supply

Wexford County Council

L55/14/1328

Completed 17/07/2015

Not Upheld

Background

A man complained that Wexford County Council had deducted money he owed in respect of Non Principal Residents 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

Under the relevant Regulations the Council 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.

Road Safety Authority

Approved Driving Instructor Permit

Road Safety Authority

R25/15/1187

Completed 12/06/2015

Upheld

Background

The Ombudsman received complaints from a man against the Road Safety Authority. He had three main complaints, namely (1) the tone of the reminder email he received to renew his Approved Driving Instructor (ADI) permit; (2) whether the RSA could demand payment one month in advance of renewal and (3) the failure of the RSA to issue him with a Garda Vetting Form on two occasions.

Examination

The RSA acknowledged that the tone of the initial email was inappropriate and it amended its standard emails immediately. In relation to whether it had the authority to demand payment one month in advance, the RSA said that there was no legislative basis for requesting the fee one month in advance and it could not explain why the Garda Vetting Form had not been sent to him other than to surmise that this man's complaint was escalated for the CEO's attention, it is likely that the form was overlooked.

Outcome

The Ombudsman researched the governing legislation and discovered that A28(2) of SI 203/2009 provides, amongst other things that the holder of a driving instructor's licence renews it by paying the fee one month before the date on which the licence is due to expire. The Ombudsman gave the correct information to the man.

Revenue Commissioners

Tax Audit

Office of the Revenue Commissioners

C21/15/0016

Completed 31/08/2015

Not Upheld

Background

A man complained about an audit of his tax affairs by the Office of the Revenue Commissioners. He was unhappy that the Revenue would not deal with his complaint under its Complaint and Review Procedures and also that it would not pay a VAT repayment due to him until the audit was complete.

Examination

The Ombudsman established that an issue which can be appealed to the Appeal Commissioners cannot be dealt with under the Revenue's Complaint and Review Procedures once an assessment has been made by the Revenue. In this case assessments had issued before the complaint was made so the man had the right to appeal the assessments to the Appeal Commissioners. Also, relevant tax legislation allows for the Revenue to offset repayments of tax due against any outstanding tax liability before making a repayment.

Outcome

The Ombudsman did not uphold the complaint as he was satisfied that the man had the right to appeal to the Appeal Commissioners on the Revenue's assessment of his tax. The Ombudsman was also satisfied that the Revenue had acted in accordance with the relevant legislation and procedures in refusing to deal with the man's complaint under its Complaint and Review Procedures.

Tax Audit

Office of the Revenue Commissioners

C21/15/0570

Completed 28/08/2015

Not Upheld

Background

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

Examination

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

Outcome

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

Social Protection

Carer's Allowance

Social Welfare Appeals Office

C22/15/1524

Completed 27/08/2015

Upheld

Background

A woman complained after her application for Carer's Allowance was refused and her subsequent appeal was unsuccessful. She has cared for her disabled brother since 2013 and applied for Carer's Allowance in 2014. The application was refused because the deciding officer considered that her brother was not sufficiently dependent on her. In her appeal to the Social Welfare Appeals Office, she included a report from her brother's Occupational Therapist (OT), who said that he did need full-time care.

Examination

The Ombudsman examined the Social Welfare Appeal file and found that the OT report had not been referred to a medical assessor for review. He asked the Chief Appeals Officer to have the report reviewed and the appeal reassessed.

Outcome

The Chief Appeals Officer decided that the OT report had not been considered sufficiently. The woman received the Carer's Allowance, and it was backdated to August 2014.

Contributory Widows Pension

Department of Social Protection

C22/15/2287

Completed 21/07/2015

Not Upheld

Background

The Department of Social Protection (the Department) refused a woman's application for additional arrears of her Widow's Pension. The woman appealed this decision to the Social Welfare Appeals Office (the SWAO), which requested a Social Welfare Inspector to call out to her.

Examination

The SWI established that the woman was residing with another man which would mean the woman was not entitled to the arrears she had applied for. Based upon the SWI report and additional information heard at an oral hearing it held, the SWAO refused the woman's application.

Outcome

The woman complained to the Ombudsman who established that she and her solicitor provided additional information to the oral hearing. This meant the Ombudsman was presented with two different versions of the same events. Having examined all the available evidence provided in both versions the Ombudsman was not in a position to come to a definitive conclusion as to which version of events was correct. For this reason, he could not uphold the complaint.

Disability Allowance

Department of Social Protection

C22/15/1679

Completed 24/06/2015

Assistance Provided

Background

A woman complained about the Department of Social Protection's refusal to backdate her Disability Allowance. Her appeal to the Social Welfare Appeals Office (SWAO) was also refused.

The woman was diagnosed with spinal scoliosis when she was 15. Medical evidence showed that the rehabilitation process following surgery is ongoing, and that the woman also suffers from a mild intellectual disability. Since the woman's diagnosis in 2007, both parents have experienced serious health problems.

Examination

The Ombudsman noted that the woman's representative had made a submission showing "good cause" for the delay in making the Disability Allowance application. However, he noted that this submission had not been put on the woman's file. When this issue was queried with the Department, it discovered that it had failed to put this submission on the woman's file. Therefore, this information had not been considered by the SWAO.

Outcome

The Department apologised for its mistake and the SWAO agreed to review the case.

Disability Allowance

Department of Social Protection

C22/15/1543

Completed 06/07/2015

Not Upheld

Background

A man complained about being refused the Disability Allowance (DA). He had been suffering from depression and anxiety for a number of years and felt that he should be eligible for the payment.

Examination

To be eligible for DA, an applicant must be restricted from doing work as a result of an injury, illness or disability for at least a year. The evidence from the man's doctor was that his mental health issues were mild to moderate and would not substantially restrict him from working.

Outcome

The Ombudsman found the man did not meet the criteria to qualify for DA.

Guardian's Payment (Contributory)

Department of Social Protection

C22/14/1102

Completed 12/08/2015

Upheld

Background

A man complained to the Ombudsman about the decision of the Department of Social Protection to stop paying him Guardian's payment for his sister. He appealed this decision, but it was refused and he contacted the Ombudsman.

Examination

The Ombudsman examined the relevant publication on Guardians' Payment on the Department's website which states that "Payment continues up to the end of the academic year in which the orphan reaches age 22, if they are in full-time education by day at a recognised school or college". In this case the man's sister had completed the third year of a four year third level course in May but was not 22 until August of that year. The Department ceased making the payment from 25 May, the date the man's sister completed the third year of her course.

Outcome

The Ombudsman considered that the payment had ceased before it should have as the man's sister was still in full-time education and asked the Department to review the case. The Department agreed to the review and paid the man arrears of €2,898.00.

Guardian's Payment (Contributory)

Department of Social Protection

C22/14/0768

Completed 23/07/2015

Upheld

Background

A woman complained to the Ombudsman that the Department of Social Protection had refused her request for a Guardian's Allowance. This decision had been upheld on appeal by the Social Welfare Appeals Office. The woman had sought the allowance for her granddaughter whom she is rearing in the absence of her granddaughter's parents.

Examination

The Department and the Appeals Office explained that their decisions were based on the fact that they were not satisfied that the grandchild had been completely abandoned by her parents. Under the relevant regulations the child would have to be abandoned by both parents before the allowance could be paid to a third party. The Ombudsman asked the Appeals Office to review some key points of evidence that in his view supported the woman's claim that her granddaughter had been abandoned. These included the assessment of various officials of the Department who had dealt directly with the woman and who had found her account credible.

Outcome

The Appeals Officer revised his decision and decided that the Guardian's Allowance should be paid. Payment at the current rate of €161, with effect from the 1 July 2011, has begun and arrears of €28,616.15 have issued to the woman.

One Parent Family Payment

Department of Social Protection

C22/15/1015

Completed 29/06/2015

Upheld

Background

A woman contacted the Ombudsman because the Department of Social Protection had demanded repayment of a One Parent Family Payment. The overpayment arose because the woman had not declared to the Department of Social Protection that her children had been removed from her care.

Examination

The Ombudsman found that the woman had little capacity to make reasonable decisions at the time of the overpayment because of alcohol-related issues. However, in the last year she had been sober and had tried to get her life back on track. The Ombudsman asked the Department to review her case.

Outcome

The Department reduced the overpayment by €2,500 to reflect the fact that the woman would have been entitled to Supplementary Welfare Allowance during the period she was wrongly claiming the One Parent Family payment.

One Parent Family Payment

Department of Social Protection

C22/14/1692

Completed 24/08/2015

Not Upheld

Background:

A woman complained that the Department of Social Protection had incorrectly applied changes to the One Parent Family Payment (OPFP) scheme to her disadvantage, including that a child dependant payment should be added to her payment under the Community Employment Scheme. The Department stated that the changes to the OPFP scheme had been properly applied in the woman's case.

Examination:

The Ombudsman got further information from the Department about how it applied the changes to the OPFP scheme and was satisfied that it had calculated the woman's entitlement correctly. It also invited the woman to meet one of its officers so that the scheme, and how it calculated her entitlement, could be explained in more detail.

Outcome:

The Ombudsman considered that the Department had acted reasonably and suggested to the woman that she might consider accepting the invitation for a more detailed explanation.

State Pension (Contributory)

Department of Social Protection

C22/15/1685

Completed 03/07/2015

Not Upheld**Background**

A woman complained that the Department of Social Protection backdated her mother's Contributory Old Age Pension by only six months, after she was late applying for it. The woman also thought that the Department should have written to her mother to inform of her entitlement to this pension.

Examination

The Department had previously informed the complainant that her mother had to satisfy conditions to be entitled to any money owed from more than six months previously and that she did not satisfy those conditions.

The Ombudsman told the complainant that her mother was not entitled to further Contributory Old Age Pension arrears. He also told her that it was applicant's responsibility to make themselves aware of their entitlements.

Outcome

There was no evidence of maladministration by the Department.

State Pension (Non-Contributory)

Department of Social Protection

C22/14/1521

Completed 07/08/2015

Not Upheld**Background**

A man complained about his Non-Contributory State Pension being stopped and having an overpayment awarded against him following a review that the Department of Social Protection carried out in 2013.

Examination

When the man applied for the pension in 2007, he did not inform the Department that his wife was working. He also claimed for her as a qualified adult on his pension. Under the regulations for the State Pension, claimants have to tell the Department about any income earned by spouses or partners as this income affects the size of pension a claimant is entitled to.

Outcome

The Ombudsman found that the Department's review of the pension payment was reasonable and that it had properly applied the legislation.

State Pension (Transition)

Department of Social Protection

C22/14/0942

Completed 12/06/2015

Upheld

Background

A man applied to the Department of Social Protection for his State Pension Transition pension at reaching 65. He was initially informed that he did not satisfy the qualifying criteria. He subsequently supplied the Department with his work history in the UK and it was established that he was entitled to a reduced rate mixed pro-rata EU pension. The man was unhappy with this and appealed the decision to the Social Welfare Appeals Office. The appeal was refused, but the Appeals Officer also requested the Department to re-examine the man's contributions record in both the UK and Ireland. The Department never complied with this request and the man complained about this to the Ombudsman.

Examination

The Ombudsman asked the Department to review the case as it had been asked to do by the Appeals Officer.

Outcome

The Department agreed to re-examine the man's pension contribution record. It noticed errors in its previous calculation of the man's pension and issued him with an arrears cheque for €9,906.60 in respect of his State Pension Transition and his State Pension Contributory. His weekly rate of pension was also increased to €196.00 per week

Supplementary Welfare Allowance

Department of Social Protection

C22/14/1165

Completed 02/07/2015

Not Upheld

Background

The Ombudsman received a complaint from a man who had been refused Supplementary Welfare Allowance (SWA) from the Department of Social Protection while his Jobseeker's Allowance was under appeal. Both allowances were refused as the Department was not satisfied that the man was living at the address he said he was.

Examination

The man provided documentary evidence of his residence at the address to the Department. Following a review, which included unscheduled home visits, the Department was still not convinced that the man was living at the address he said he was and the decision remained unchanged.

Outcome

The Ombudsman considered that the Department's assessment of the information available to it was reasonable and in accordance with the rules governing the SWA scheme. He also considered that the Department's conclusion that the man was not living at the address he provided to it was also reasonable. For these reasons he was unable to uphold the complaint.

Supplementary Welfare Allowance

Department of Social Protection

C22/14/1367

Completed 14/08/2015

Assistance Provided

Background

A man complained to the Ombudsman when his application for a rent deposit was refused in March 2014 on the basis that he previously received a rent deposit of €950 in 2006. He appealed the decision and was advised in June 2014 that the appeal was disallowed.

Examination

The man claimed that he did not make a previous application for a rent deposit. He said that the deposit received and lodged into his bank account, was in respect of his ex partner's application for a rent deposit. He said that it was lodged into his account as she did not have a bank account at the time. He claimed he was seeking asylum at that time and could

not have had a right to his own accommodation. He was granted permission to remain in the State in 2009. In view of these circumstances the Ombudsman requested the Department to review the man's application.

Outcome

The Department agreed to review the case at the Ombudsman's request in light of the additional information received.

An explanation of the Ombudsman's Case Closure Categories

1. Upheld:

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

- It has been accepted by the public body that maladministration has occurred which has adversely affected the complainant.
- The complainant is found to have a genuine grievance and the body agrees to resolve/rectify the matter.

2. Partially Upheld includes:

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

3. Assistance Provided includes:

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

approach and has granted a concession to the complainant which has improved his/her position or resolved the complaint fully.

4. Not Upheld includes:

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

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

5. Discontinued/Withdrawn includes:

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

About the Office of the Ombudsman

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

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

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

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

Making a Complaint to the Ombudsman

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

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

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

Contacting the Ombudsman

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

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

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

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

Feedback on the Casebook

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



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