



The Ombudsman's CASEBOOK

Office of the Ombudsman, Dublin, Ireland.

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Reaching out to complainants

Welcome to the latest edition of the Casebook. This edition is special in that it includes two Direct Provision cases for the first time. Since taking on jurisdiction for the Direct Provision Centres for refugees and asylum seekers my Office has been engaged in a programme of information sessions, training and visits.

We have met extensively with the Resettlement and Integration Agency of the Department of Justice which has overall responsibility for the provision of accommodation, with the private providers of the Direct Provision centres and with NGOs. We have worked closely with the Ombudsman for Children who has jurisdiction over cases involving children and young people.

Above all, we have visited centres and talked with the residents. We realise that many people will come from situations where complaining about public services was not an option. They may be fearful about doing so for fear of negative repercussions. Meeting with residents at the centres has allowed us to form a real feel for the issues affecting their daily lives. We are able to deal with issues on the day without the need for formal complaints. We are also able to give people the confidence they need to make complaints and the number of formal complaints reaching my Office is gradually rising as a consequence.

Reaching out to people will also be a feature of the autumn. As well as our regular visits to Citizens Information Centres in Cork, Galway and Limerick



Ombudsman Peter Tyndall

we very recently visited Waterford where we met with local elected representatives, service providers, provided a seminar on 'Learning from Waterford's complaints', provided training to staff of Citizen Information Centres in taking complaints to our Office and we took complaints directly from members of the public. We also produced a special Waterford Casebook which is now available on our website.

As ever, I hope you find the contents of the Casebook of interest, and that there are learning points there that you can use to improve the services you provide.

Peter Tyndall September 2017

Agriculture

Single Farm Payment

C01/16/2876

Completed 05/05/2017

Not Upheld

Background

A man complained that a fine imposed on him under the Nitrates Regulations was unfair as he had notified the Department of Agriculture, Food and the Marine of additional land he was renting for grazing purposes. If the additional land had been included the man would not have been fined.

Examination

The Department said that the required notification had not been received and it provided comprehensive details of how it deals with post, of its filing system and also of the measures it undertakes to search for post reported as missing.

Outcome

The Ombudsman was satisfied that the Department's procedures for receiving and recording correspondence were satisfactory. In addition, as the man did not provide any evidence of posting such as a receipt for Express or Registered Post, the Ombudsman did not consider that he had a basis to challenge the Department's position that it did not receive the notification of the additional land.

Social Protection

Back to Work Enterprise Allowance

C22/16/3511

Completed 30/03/2017

Assistance Provided

Background

A woman complained that the Department of Social Protection had given her incorrect information as to the Enterprise Scheme she had been awarded. She also complained about the manner in which a department official treated her in a phone conversation.

Examination

The Department said that a mistake had been made and that the wrong notification form had been issued to the woman. However, despite this the woman was paid correctly under the scheme she qualified for, rather than the one it incorrectly told her she had been awarded. In relation to the phone call, the Department said that the official involved had been interviewed and she had a different recollection of the phone call.

Outcome

The Department admitted its mistake and apologised to the complainant. It also put in place improved procedures and training to ensure that a similar mistake could not occur again. As the woman had been paid under the correct scheme she had not suffered any financial loss.

In relation to the phone call, there was a clear difference of opinion between the Department and the woman. The Department does not record its phone calls and there was therefore no independent evidence available, to conclude that one version of the phone contact was more accurate than the other.

Domiciliary Care Allowance

C22/16/3102

Completed 10/03/2017

Upheld

Background

A woman complained that the Department of Social Protection had refused her application for retrospective entitlement to Domiciliary Care Allowance (DCA).

Examination

The woman had applied for DCA on three occasions between 2013 and 2016. While she was eventually granted payment, she also sought retrospective entitlement to the date of the original claim. She argued that her child's medical condition had not changed throughout the three year period.

Having examined the Department's file this Office requested a review of the decision. We highlighted that while it appeared that the child's medical condition was never at question, the woman had perhaps failed to demonstrate the specific care and attention she was providing to her child, which may have been related to the fact that English was not the woman's first language. We suggested the Department review the file in its totality, and that it be reviewed by a Medical Assessor.

Outcome

The Department agreed to our request and advised that a review was warranted. It backdated the woman's entitlement to the date of application.

Domiciliary Care Allowance

C22/16/3876

Completed 09/05/2017

Not Upheld

Background

A woman complained about the Department of Social Protection's decision not to backdate Domiciliary Care Allowance (DCA) for her daughter.

Examination

The woman applied for DCA for the first time in 2011. The application and the subsequent appeal were disallowed by the Department. The woman applied again in 2013, when her daughter started primary school, and the payment was awarded to her. The woman said that there was no change in her daughter's medical condition between 2013, when DCA was granted, and 2011 when she initially applied for the allowance. The only change in the application was that a letter from the school was included with the application in 2013. She felt that her first application should not have been refused and the DCA payment should therefore have been backdated to 2011.

The Department refused the woman's application for DCA on the grounds that the conditions for the scheme had not been satisfied. While it acknowledged that the woman's daughter required additional support, it stated that there were no typical indicators of the substantial care that is implied under the DCA Scheme. On foot of the 2013 application, the Department noted that the child's health had dis-improved and she required additional support in the form of a Special Needs Assistant to look after her in school. The Medical Assessors considered that the child now satisfied the qualifying conditions for DCA.

Outcome

The Ombudsman was satisfied that the Department's decision not to backdate the claim for DCA was correct.

Jobseeker's Allowance

C22/16/3773

Completed 04/04/2017

Not Upheld

Background

The Department of Social Protection (the Department) stopped paying a man his Jobseekers Allowance because he failed to attend appointments in relation to the Department's 'activation' process.

Examination

The man was selected for 'activation' which is the selection and referral of a person on a Jobseekers payment to a compulsory engagement and case management process to support him back into employment. Jobseekers must fully engage with this process and sanctions can be imposed for non-engagement. Clients are expected to use the supports offered during the activation process which might include education or training, employment support schemes to help them back into the workplace, internships and other supports.

The man failed to attend an initial appointment and a new appointment was issued which he also failed to attend. The man was advised on appointment letters that failure to attend may affect his payments. He was then issued with a letter from the Department informing him that his Jobseekers Allowance would be reduced and should he fail to re-engage within 21 days his Jobseekers Allowance would be disqualified. The man made no contact with the Department during that period.

Outcome

The Ombudsman found that the Department's decision on his case was made in accordance with the relevant legislation and guidelines and found no evidence that the Department treated him other than in accordance with this.

PRSI - Voluntary Contributions

C22/16/3332

Completed 06/04/2017

Assistance Provided

Background

A man made a request to the Department of Social Protection (the Department) that he be allowed to make voluntary contributions from 1992 to date in order to preserve his pension entitlements. The Department refused his request because he had made it outside the 12 month time limit.

Examination

There were periods in the 1990's where the man might have been entitled to Unemployment Assistance for which he had not been credited. The Department was asked to review his file.

Outcome

The Department, having reviewed the man's file, accepted that he should be awarded additional credited contributions for periods spent on Unemployment Assistance in the 1990's. As a result of these additional credited contributions he has now qualified for the maximum weekly rate of State Pension Contributory of €238.30. He has also received arrears of State Pension Contributory of €2,278.80.

Back to Work Family Dividend

C22/16/3194

Completed 23/02/2017

Not Upheld

Background

A woman complained that the Department of Social Protection (DSP) refused her application for a Back to Work Family Dividend (BTWFD) due to the fact that it did not regard her Back to Work Enterprise Allowance scheme (BTWEA) as a qualifying scheme as time spent on it could not be included in calculating the 156 days required.

The woman was of the opinion that time spent on BTWEA should be included.

Examination

The Ombudsman found that the relevant legislation states that 'qualifying payment' means an allowance payable to a person participating in a qualifying scheme where immediately before such participation commenced the person was in receipt of, for instance, Jobseekers Allowance (JA).

The person was in receipt of JA for 94 days, however, on reading the DSP BTWFD guidelines used in processing claims and which lists the specific qualifying schemes, it was noticed that this list did not include the BTWEA scheme.

It was confirmed by the Regional Support Unit in the DSP who administer the BTWFD scheme and issue the operational guidelines that the BTWEA is not a qualifying scheme.

Outcome

Based on all the information available to him, the Ombudsman did not uphold the complaint.

Jobseeker's Allowance

C22/15/4136

Completed 20/02/2017

Upheld

Background

A man complained that the Department of Social Protection increased the rate at which he was repaying an overpayment from €10 per week to €25 per week. The man had an overpayment of €18,000 backdated to 1995. The man said he would suffer financial hardship by having to repay at the rate of €25 per week. The man did not dispute the overpayment and accepted that he did not declare his wife's earnings at the relevant time. The man appealed the decision but it was unsuccessful. The deductions were taken from the man's State pension.

Examination

The Department was satisfied that the man had not shown financial hardship by having to repay at the rate of €25 per week.

Outcome

The Department looked at the man's income and expenditure again and agreed to reduce the repayments to €10 per week. The Ombudsman was satisfied with this outcome on the basis that the Department agreed to 'poverty proof' the repayments and to take into consideration the additional expenditure he incurred by virtue of living in a remote area and his additional health expenses.

Jobseeker's Allowance

C22/16/2754

Completed 27/02/2017

Not Upheld

Background

A man complained to the Ombudsman about the refusal by the Department of Social Protection of his application for Jobseeker's Allowance on the basis that he was not habitually resident in the State. He appealed the decision to the Social Welfare Appeals Office but the appeal was not upheld. He reapplied for Jobseeker's Allowance 15 months later and the application was approved. He applied to have his claim backdated to the date he originally applied but this was refused.

Examination

The relevant legislation requires applicants to show that they are habitually resident in the State. In deciding if applicants have done so, deciding officers have to regard all the circumstances of each case including, in particular:

- the length and continuity of residence in the State or in any other particular country;
- the length and purpose of any absence from the State;
- the nature and pattern of the person's employment;
- the person's main centre of interest; and
- the future intentions of the person concerned as they appear from all the circumstances.

At the time of the man's application, the Deciding Officer decided that he did not satisfy the Habitual Residence Condition on the basis that he had only been living in Ireland for two months; had lived all of his life outside of Ireland; had no apparent means of financial support; had no established employment record in Ireland and his centre of interest was stronger elsewhere. The Appeals Officer upheld this decision on the basis of the evidence available at the time. When the man reapplied for Jobseeker's Allowance 15 months later, his application was approved as it was decided that he satisfied the Habitual Residence Condition at that time.

Outcome

The Ombudsman was satisfied that, as the Department's position was reasonable and in accordance with the relevant legislation, there was no basis to request that the claim be backdated to the date of the man's original application for Jobseeker's Allowance.

Jobseeker's Allowance

C22/16/3693

Completed 22/02/2017

Not Upheld

Background

A man complained to the Ombudsman in August 2016 about the undue delay by the Department in processing his application for Jobseekers Benefit (JB). He said that he applied for JB in April 2016 and that he was told the delay was due to the transfer of UK contributions to Ireland.

Examination

The Department said that it was making ongoing efforts to retrieve the man records but it was having difficulty contacting the relevant person in the UK office.

Outcome

Following contact from the Ombudsman, the matter was escalated within the Department and the UK records were eventually received. The Department said that it has amended its process for retrieving UK records to prevent delays like this in the future.

One Parent Family Payment

C22/15/4400

Completed 20/02/2017

Assistance Provided

Background

A woman complained that the Department of Social Protection had failed to advise her of an overpayment of €8,000 in relation to the One Parent Family Payment (OPFP) backdated to 2001. The woman said she was told about the overpayment in 2012 when she applied for another payment. The woman said that she should not be held liable for the overpayment on the basis that she was unaware of it and the Department did not contact her about for about 11 years. She also said that she could afford to repay at €10 per week and not €40 per week as requested by the Department.

Examination

The Department had written to the woman three times between 2003 and 2006 at the address she gave to it. It accepted that it did not contact her again until she applied for another payment in 2012. It also stated that it did not have the power to recover overpayments when the individuals were no longer in receipt of a State payment. The Department also said that when it suspended the OPFP the woman did not contact it. It was statute barred in relation to prosecutions following the passage of time but this did not extend to the recovery of overpayments. It was satisfied that the debt existed.

Outcome

The Department agreed that it would be open to receiving a reasonable settlement offer from the woman. The Ombudsman was satisfied with this outcome on the basis that the woman had not told the Department of her change of address and had not contacted the Department when the OPFP was suspended. He also noted that the woman had not shown any evidence of financial hardship. The Ombudsman advised the woman to engage with the Department in an effort to get an agreed settlement.

State Pension (Contributory)

C22/13/1796

Completed 20/02/2017

Upheld

Background

The Ombudsman received a complaint from a woman who had received a letter from the Department of Social Protection seeking the recovery of an overpayment of €13,000 which was backdated to 2001. The woman said she was unaware of the overpayment and had not been advised of it by the Department until she became entitled to a State pension. The Department was deducting €29 per week from her pension. The woman said she could not afford to repay at this rate.

Examination

The Department's report stated that it contacted the woman in 2001. The woman appealed the decision but it was unsuccessful. The Department wrote to her again and told her that the debt would be recouped from any future social welfare payments awarded to her. It also stated that it did not have legal powers to recover the overpayment from her earnings at that time.

Outcome

The Department agreed to reduce the recovery to €10 per week. It subsequently suspended the recovery. Following discussions with the Ombudsman, it agreed to write off the remainder which amounted to €11,000. The Ombudsman was satisfied that this remedy was reasonable and had regard to the delay in recovering an overpayment and the fact that the time to take legal action under the Statute of Limitations had lapsed.

Direct Provision

Reception and Integration Agency

C15/17/1037

Completed 22/05/2017

Not Upheld

Background

A man complained to the Ombudsman about the Reception & Integrations Agency's (RIA) decision to refuse his request to transfer to self-catering accommodation. He said that he had a severe medical condition and that he had submitted medical evidence in support of his request.

Examination

RIA said that there are two self-catering centres in the State and that when a unit in one of these centres becomes available, persons / families with severe medical and / or social needs are prioritised. It said that the man's transfer request was referred to the Independent Medical Referee (IMR) for review. According to RIA, the IMR was of the opinion that there was not a strong medical need to transfer to self-catering and they suggested that the man discuss his dietary requirements with management in the accommodation centre.

Outcome

In examining complaints where the decision is based on medical evidence, and differing medical opinion, the Ombudsman considers whether all evidence and relevant information was taken fully into consideration in arriving at a decision. It was clear from the man's file that the IMR took all medical evidence into account when deciding on his request to transfer to self-catering accommodation. In such circumstances, there was no basis on which he could seek a further review of RIA's decision.

Direct Provision - Accommodation

D29/17/0728

Completed 31/05/2017

Assistance Provided

Background

A woman complained that her accommodation at a Direct Provision centre was unsuitable for her and her child. She said that she was sharing a bedroom with her four year old son and was due a second child. According to the woman, she asked to be moved to another unit but her request was refused.

Examination

The Reception & Integration Agency informed the Ombudsman that it was implementing changes to accommodation within its centres and that this included the creation of additional living space for families. It said that this process was underway at the woman's location. The Manager was contacted for an update and he advised that the woman had recently been moved to another unit. The woman confirmed that she was happy with her new accommodation.

Outcome

The Ombudsman was satisfied that the latest response to the woman's request to be moved was reasonable.

Education

Course Delivery/Provision

E55/16/3068

Completed 10/03/2017

Not Upheld

Background

A man made a complaint to the Ombudsman about an Institute of Technology (IT). He was registered for Year 3, the final year of Internet Systems Development (level 7) programme. He was required to undertake a work placement but said despite his best efforts, he could not find an employer. He asked the IT to provide him with an alternative learning opportunity and to let him continue to 4th year in the current academic year, but the request was denied. He complained that this was in breach of the IT's work placement policy.

Examination

The Work Placement Policy states that the Placement Student is responsible for finding his/her own work placement. It says "Where an adequate number of placements (or single placement of adequate duration and challenge) cannot be arranged for the students on a programme, provision should be made for an appropriate alternative learning activity". The syllabus for the Work Placement Module says that Learners are tasked with finding a suitable work placement with the support and approval of the work placement coordinator.

The IT said the man was provided with an employer for his work placement. The IT provided emails between the man, the Employer and the Work Placement Supervisor which confirmed that the man accepted in writing the arrangements for his work placement. When he did not fulfil the requirements for the placement, the Work Placement Employer agreed to provide him with an alternative learning opportunity in the following academic year. The IT agreed that this alternative learning opportunity would be suitable to complete the work placement module. However, the man declined to accept the alternative learning opportunity project.

The IT said he then put forward his own alternative learning project option and said that he had been approved by the Department of Social Protection (DSP), to start his own business. The IT was willing to accommodate this proposal and asked him for a copy of the approval letter from the DSP together with a detailed proposal as to how the work placement learning outcomes would be attained. However, he did not provide the documents requested.

With regard to his request to continue 4th Year in the current academic year, the IT explained that the programme of study was the final year of a 3 year Level 7 degree. Students are required to complete the Level 7 programme before they can progress to a Level 8 programme.

Outcome

The Ombudsman was satisfied the IT treated the complainant fairly and acted in accordance with its Work Placement Policy.

SUSI/SGAB - Higher Education Grants

E78/16/3742

Completed 10/02/2017

Not Upheld

Background

A woman's representative complained to the Ombudsman about the decision of Student Universal Support Ireland (SUSI) to refuse her application for a third level grant and the subsequent decision by the Student Grant Appeals Board (SGAB) to uphold that decision.

Examination

The woman started a level 7 course in 2008 but did not complete it. At the time she was a dependent student. She returned to her studies in 2014, and completed a level 5 PLC FETAC course. She then applied for a SUSI grant for the academic year 2015/2016, for a Level 8 course. Her application was refused because SUSI did not consider her to be a "Second Chance Student". The woman's representative argued that she was not classified correctly by SUSI.

The Ombudsman received clarification from SUSI on its interpretation of the relevant legislation which defines a Second Chance Student as someone who started but did not finish an approved course and now, after a break of at least five years, wants to take another approved course. SUSI said that as the woman completed a course in 2014 she did not meet the condition regarding a break in studies of five years and so was not a Second Chance Student. Her representative said the woman was a dependent student in 2008 when she started the course she withdrew from and a Second Chance Student must have done a previous course as a mature student - not a dependent student.

The Ombudsman accepted SUSI's view that the legislation does not state that a Second Chance Student has to have been classed as a mature student in their previous course.

Outcome

The Ombudsman was satisfied that SUSI's decision to refuse the grant was in line with the relevant legislation.

SUSI/SGAB - Higher Education Grants

E78/16/3354

Completed 22/02/2017

Assistance Provided

Background

A man complained about SUSI and their administration of his grant application.

Examination

Prior to applying to SUSI for assistance with fees, the man had received funding from the VEC. He said that due to circumstances outside of his control he was unable to provide the requested documentation to SUSI within the specified time frame and his grant application

was refused. There was a considerable delay on his behalf in providing the outstanding documentation. He was of the view that SUSI's requests for documentation were excessive, as they requested, for example, a copy of a rental agreement for a property he lived in 5-6 years prior to his application. He said however that he had previously provided the same information to the VEC as part of his application process. He therefore formed the opinion that it should have been retained on his file when it transferred from the VEC to SUSI.

Outcome

SUSI firstly confirmed that the applicant's files did not automatically transfer from the relevant VEC to SUSI. Following some additional correspondence between SUSI, the man, and this Office, SUSI confirmed with the VEC that he had previously been assessed as an independent student and decided to award him fees for 2014/15.

Health and Social Care

Hospitals - Care and Treatment

HD5/15/3532

Completed 14/03/2017

Assistance Provided

Background

A woman complained to the HSE about the care provided to her late father, who had Alzheimers, prior to his death in 2015. The man had been a resident in a Dementia Unit since 2013 having previously been cared for by his daughter. His nursing home care was funded under the Nursing Home Support Scheme. Between 2013 and 2015, the man had spent several weeks in the psychiatric hospital undergoing an assessment of his needs.

Examination

The Dementia Unit was dormitory in style with the bedroom space situated a considerable distance from the dayroom, dining areas and snug areas. This meant that residents did not always have access to their bed during the day if they wished to rest as staff would need to be assigned to supervise them. This had been a matter of deep concern for the woman who felt that her father should be allowed access his own bed as required rather than having to take a nap on a sofa in the snug area. The HSE had fully acknowledged that this was not ideal and had obtained minor capital funding to create a break-out room close to the day ward for residents who wished to take a nap. After the woman had made the complaint, the HSE allocated staff to the dormitory area so that residents could have supervised naps during the day in bed as required. The HSE had implemented the recommendations made by the Complaints Officer with regard to the other aspects of the woman's complaint and HIQA had also inspected the Unit. The multi disciplinary team had met with the woman to discuss her father's care plan and the legalities around decision making in the absence of her holding Power of Attorney. The HSE said the team acted at all times in the best interests of the man who had specific care needs which it felt were being met in the Dementia Unit.

Outcome

The Ombudsman was precluded from examining the man's medication regime and the decision taken by the multi disciplinary team that he should not be transferred to another facility on the basis that these were clinical decisions. He found that the man should have been given access to his bed during the day when he wished to rest. This was a particular problem in the Unit due to the lay out and design. The HSE apologised sincerely to the woman for this difficulty during the early months of her father's care. As a gesture of goodwill, the HSE offered to reduce the amount outstanding by €2,400 having regard to the time he spent outside of the Unit undergoing assessment in the psychiatric hospital. In closing this case, the Ombudsman had regard to the fact that nursing home residents are required to pay for their care once a bed is being held for them and this applies to both private and public nursing homes.

Hospitals - Care and Treatment

H95/16/1184

Completed 22/02/2017

Partially Upheld

Background

A woman complained about the care and treatment of her husband when he was taken to Cavan General Hospital (CGH) by ambulance following a suspected stroke. She was unhappy that he was not seen by a doctor on arrival and that he was not given the 'stroke injection' (Thrombolysis). The woman also complained that her husband's healthcare record did not contain a copy of the ambulance documentation.

Examination

The woman's husband was reviewed by the Triage Nurse at 1.19pm, but was not seen by a doctor until 2.30pm. He was assessed as a priority patient and should have been reviewed within 10 minutes. However, the hospital explained that the delay was due to the fact that there were three high priority patients there at the time.

The Ombudsman could not examine the issue relating to the use of Thrombolysis as this was a clinical decision and therefore outside his remit. The complaint file indicated that the clinical issues in the case had been referred to the Clinical Director of the RCSI Hospital Group for review. The hospital confirmed that the review was ongoing and that a reply would issue to the woman.

The hospital could not explain why the records were not on the husband's healthcare record and it apologised to the woman for this. The Review Officer had recommended that CGH implement a policy whereby a member of staff from the Emergency Department sign the ambulance records and place them directly on the healthcare record of the patient.

Outcome

The Ombudsman's role in this complaint was limited as the key issues in this case, ie the diagnosis and treatment of the husband's medical condition, were clinical in nature and therefore outside his remit. The Ombudsman will follow up with the hospital to ensure the Review Officer's recommendation about the ambulance records is implemented.

Hospitals – Care and Treatment

H41/16/1886

Completed 23/02/2017

Upheld

Background

A woman complained about the standard of care she received in Cork University Hospital (CUH). She said that she was not monitored regularly by nursing staff and her requests for pain relief were ignored.

She was also unhappy with the fact that it took 21 months for the hospital to reply to her complaint.

Examination

Following a request from the Ombudsman the case was reviewed by the Assistant Director of Nursing (ADON). The ADON found that the woman's cardiovascular observations were not monitored. The ADON stated that she should have been monitored at four-hourly intervals. The ADON also reported that the woman's pain score was not recorded until the morning following the procedure (from 10pm the previous night). The ADON commented that it was unsatisfactory that a surgical patient did not have their pain assessed and a score recorded at least every four hours. The ADON accepted that the level of care in this case was not to an acceptable standard as the woman should have been closely monitored overnight and should she have received appropriate pain relief.

There was an unacceptable delay in replying to her complaint. There were also delays in replying to correspondence the woman sent the hospital while the complaint was being examined. The Ombudsman raised these issues with the hospital. He also brought the matter to the attention of the Area Manager for Consumer Affairs in the HSE South area to ensure similar issues did not occur in future complaints.

The Ombudsman requested that the hospital apologise to the woman for the poor standard of care she received. It had previously apologised for the delay in dealing with her complaint.

Outcome

The Chief Executive Officer of the CUH Group issued a formal apology to the woman. He accepted that the level of care she received was not to an acceptable standard and outlined the action taken to prevent a recurrence of her experience. He also apologised for the unacceptable delay in dealing with her complaint.

Hospitals - Complaint Handling

H47/15/3185

Completed 07/02/2017

Partially Upheld

Background

A woman was unhappy with the response to her complaint about the care and treatment of her late mother while a patient in University Hospital Kerry.

Examination

It was evident from the woman's detailed complaint that the key issues in her case were outside the Ombudsman's remit as they related to the clinical care and treatment of her mother. However, the Ombudsman found that the hospital's response to the complaint did not fully address the issues raised by the woman. He asked the hospital to review the complaint, highlighting the key areas of concern arising from his review of the file.

The woman also complained about the manner in which hospital staff communicated with her family, particularly about their mother's condition. It was clear from the file that there was regular communication with the family and that they were updated on her condition. They were also consulted about or informed of key decisions in her care. An issue was also raised about communications among the medical staff involved in the mother's care. The hospital outlined a number of initiatives it had implemented as a result of the complaint, which it said would greatly enhance communications between healthcare professionals in future cases.

Outcome

The Ombudsman was satisfied that the hospital's agreement to conduct a clinical review of the case, which would address the issues raised by the woman and her family, was reasonable.

Treatment Abroad

H09/17/0148

Completed 19/05/2017

Not Upheld

Background

A 74 year-old woman complained to the Ombudsman when the HSE did not refund the full cost of her hip operation. The woman had waited over two years on the public waiting list for the operation and had decided to travel to Northern Ireland for treatment under the Cross Border Healthcare scheme. She had paid the full cost of the operation in advance (€12,500 which she had borrowed from a relative) and then sought to reclaim the money from the HSE. However, the pensioner complained to the Ombudsman when the HSE repaid only €10,900 of the cost involved.

Examination

The HSE explained that the original approval was based on the information provided by the woman's consultant. She had originally been approved for a 'non-standard' hip replacement operation. After the woman's surgery, the Northern Ireland consultant had not confirmed that she had received the more expensive 'non-standard' surgery. The HSE made a payment for a less expensive 'standard' hip replacement operation but committed to having the woman's medical chart independently assessed to check whether the more complicated procedure had been provided. When the woman contacted the HSE the independent assessment of the medical chart had not been carried out.

Outcome

The HSE accepted that the independent assessment should have been carried out sooner. As a gesture of goodwill the HSE apologised to the woman and refunded her the shortfall amounting to €1,600.

Treatment Abroad

H09/17/0598

Completed 10/04/2017

Upheld

Background

A woman who was suffering from pancreatic cancer received approval on two separate occasions from the HSE for Nanoknife surgery in the UK under the Cross Border Directive (CBD). The CBD allows patients to be reimbursed for the cost of treatment abroad based on the cost of public care for the treatment in Ireland or the cost abroad, whichever is the lesser. In this instance, the woman's first application for Nanoknife surgery had been approved and she had received full reimbursement based on the treating code (H01A) which had been provided by her UK consultant. However, when she sought similar reimbursement a second time for further Nanoknife surgery, the HSE, having approved her second application in advance of surgery, refused to reimburse her under the same H01A code.

The HSE disputed that this was the correct code and referred her clinical records to the Health Pricing Office (HPO) in Ireland for an independent review. The HPO formed the view that a lesser code should apply in the woman's care given that her average length of stay in hospital was shorter than the average time a person using the H01A code would be expected to remain in hospital. It suggested that the code (H01B) should apply which attracted a lesser reimbursement rate. As a result, when processing the second payment to the woman, the HSE deducted the "overpayment" from the first application and applied the lesser rate to her second application. This left the woman significantly out of pocket (€8,821.95) as she had to pay for her full treatment costs in advance. She was advised by the HSE to take the matter up with her treating consultant in the UK.

Examination

The Ombudsman noted that the woman was expected to undergo identical treatment on both occasions. When she received approval and reimbursement under the treating code H01A on the first occasion, she had every reason to believe that the reimbursement rate would be the same on the second occasion. Her second application had been approved in advance of her treatment and details of the proposed surgical care was available to the HSE. It was not until she had undergone surgery a second time and applied for reimbursement that the HSE challenged her clinical care and sought advice from the HPO with regard to the level of treatment provided to her. The Ombudsman considered that the HSE had acted unfairly in applying the lesser code to both applications, having already approved the higher code, and he requested the HSE to review the case.

Outcome

The HSE accepted the Ombudsman's point of view and decided to reimburse the woman for both procedures based on code H01A. This meant she received €8,821.95 to make up the financial shortfall with regard to her two applications. The HSE also agreed to review its procedures around coding to ensure that applicants have knowledge of likely reimbursement levels prior to acquiring financial liabilities for treatment abroad.

HSE - Care and Treatment

HD2/16/3887

Completed 26/05/2017

Assistance Provided

Background

In January 2016 a woman applied for Respite Care for her elderly brother, who is a heavy smoker. This was to allow her take a holiday in March 2016. However, two weeks before she went on holidays, the HSE told her that it could not accommodate her brother due to the introduction of a No Smoking Policy in the local Community Hospital on 7 March 2016.

The HSE, in consultation with the complainant, arranged alternative private nursing home care for her brother. However, this caused her considerable inconvenience and stress in the lead up to her holiday.

Examination

It is good practice for service providers to give appropriate notice to their clients before changing rules. This did not happen in this case. In such instances, the Ombudsman expects that service providers acknowledge when they make a mistake, apologise, explain what went wrong, put things right quickly and effectively and, if appropriate, provide some redress to the individual.

From the outset, the HSE acknowledged the considerable distress its actions caused the complainant. It accepted that the untimely communication of the new No Smoking Policy to the complainant represented a failing on its behalf. It wholeheartedly apologised for this.

Given the situation in which the complainant was placed, the HSE paid an emergency cash grant, in the sum of €1,770, in order to allow her brother avail of respite care in a private Nursing Home. This represented an additional €500 above the normal grant for such placements.

Outcome

While the Ombudsman understood the difficult situation in which the complainant was placed at very short notice, he was satisfied that the HSE's response was reasonable.

National Ambulance Service

H09/16/3579

Completed 08/05/2017

Not Upheld

Background

A man complained about the care provided to his father by the National Ambulance Service. The main said that an ambulance crew, who called to his home twice on the same day in July 2012, left his father lying on the floor.

The man said the crew would not put his father back into bed even though his mother gave her permission for them to do so and Ambulance Control had said that they would.

Examination

The Ambulance Service explained that the ambulance crew did not put the man's father back into bed as they believed there was a risk that he might fall from it so they left him on the mattress on the floor and asked Ambulance Control to contact the Community Care Section of the HSE to make it aware of the man's situation. The Ambulance Service also confirmed that the crew had offered to take the man's father to hospital but the offer was refused.

Outcome

The Ombudsman was satisfied that the ambulance crew had made their decision following their assessment of the situation at the time and with the best interest and safety of the man in mind.

Nursing Home Support Scheme

H09/16/2310

Completed 26/05/2017

Assistance Provided

Background

A woman complained about the HSE's calculation of the Nursing Home Support Scheme (Fair Deal) contribution for her mother.

Examination

In 2012 the family applied for Fair Deal for their mother. The financial information the family sent the HSE in support of the application included a share certificate. In assessing the share value for the purposes of the application, the HSE based its calculations on one of the share prices provided on the document. The workings were noted on the certificate. In her complaint the woman pointed out that the certificate also indicated the price of new shares. The value of the shares on the share certificate was out of date but this was not noticed by either the family or the HSE at the time of the initial assessment and was only discovered when the application was reviewed three years later. The error resulted in the HSE seeking arrears of over €10,000 from the family.

The Ombudsman sympathised with the family in this matter but he accepted that the arrears were applicable as the family had, in all good faith, provided out of date information and the original calculation was based on that incorrect information. In examining the matter a calculation error was identified, which resulted in a slight reduction in the arrears amount due. The HSE confirmed that there was a mistake in the calculation of the arrears and apologised to the woman for this error.

Outcome

The Ombudsman was satisfied that the HSE was correct in seeking repayment of the arrears from the family.

Tusla

H04/16/1355

Completed 02/02/2017

Assistance Provided

Background

A woman complained to the Ombudsman about the manner in which her complaint to Tusla was managed. She had complained to Tusla about its treatment of her as a foster carer. She felt unsupported by her social worker.

Examination

Having reviewed the complaint response provided by Tusla, the Ombudsman was not satisfied that this response adequately addressed the woman's complaint. It failed to provide enough information in relation to her queries. The Ombudsman also disagreed with some of the findings of the report. It was also felt that the tone of the report in general lacked empathy and that it was antagonistic in nature.

Outcome

Tusla acknowledged that there were shortcomings in the practice and support offered to the woman and that the complaint had not been managed appropriately. Tusla undertook to review the complaint again. Following their review of the complaint, the woman was happy with the outcome.

Local Authority

Environmental Health Services

L12/16/2139

Completed 29/03/2017

Not Upheld

Background

A woman complained about Dun Laoghaire-Rathdown County Council's failure to take action in respect of alleged dust and noise pollution from a neighbouring property.

Examination

The woman contacted the Council a number of times regarding stone cutting activity. The Council investigated the property on a number of occasions and was satisfied that noise and dust levels from the site were not excessive. It also advised that it conducted a thorough investigation and interviewed a number of local people in the area, who agreed with its view. The woman confirmed that activity at the site had recently stopped. The Ombudsman was satisfied with the Council's position but told the woman that, given the intermittent nature of the work, if the activity started again she could contact the Office and it would revisit the matter with the Council as a matter of priority.

Outcome

The Ombudsman was satisfied that the Council had investigated the matter thoroughly.

Planning

L61/16/3700

Completed 10/03/2017

Not Upheld

Background

A man complained that Dun Laoghaire - Rathdown County Council had not taken action to ensure compliance with some changes from the planning permission granted for a neighbouring house.

Examination

The Council had inspected the finished house and found that, while there were certain changes to the original permission, it considered these were minor and were not a breach of the overall permission. Accordingly the Council had decided that enforcement action was not necessary.

Outcome

Local authorities have discretion on whether or not to take enforcement action in any particular case of alleged unauthorised development or deviation from planning permission. The function of the Ombudsman in such cases is to assess whether or not the local authority had exercised its discretion in a reasonable manner.

In this case, the Ombudsman noted that the Council had inspected the house and concluded that, although there were some changes to the original permission, they were not significant. The Ombudsman considered that the Council's view was reasonable and that it had acted correctly.

Planning

L20/16/3069

Completed 13/02/2017

Partially Upheld

Background

A woman said that at the time of the sale of a property her solicitor had paid €10,00 to a County Council in error and that the Council was refusing to refund it. She explained that this money was for development contributions which she had been informed in 2009 by a Town Council had been written off.

Examination

The woman had appealed a decision by the Town Council in 2007 in relation to certain planning permission conditions to An Bord Pleanála (ABP).

ABP's decision in 2008 was to remove certain conditions and attach a condition for development contributions of this sum of money. However, the Town Council had already made an order removing this particular condition. This was made while the appeal was being considered and never conveyed to ABP.

Initially, on receipt of the money from the solicitor, the County Council contended that it was correct in collecting the payment in accordance with the decision made by ABP.

However, it decided to examine the file, having taken over the duties for this area following the abolishment of Town Councils.

The County Council decided that if the Town Council had applied the method used in accordance with the appropriate scheme at the time in calculating contributions, any previous payments should have been taken into account and deducted from the overall charge.

Outcome

The Ombudsman put it to the County Council that the person should then be entitled to a refund of the balance of the amount paid. The Council agreed and said that it would refund the woman this amount which is in excess of €6,800.

Non Principal Private Residence charge

L18/16/3800

Completed 01/03/2017

Not Upheld

Background

A solicitor complained, on a man's behalf, regarding Kerry County Council's decision not to exempt him from the Non Principal Private Residence (NPPR) charge for the man's property for the years 2011 to 2013. The solicitor argued that the man travelled for the majority of the year in his work as a seaman and did not have a residence abroad so the property in question was his primary residence and therefore he should not have to pay the NPPR charge.

Examination

The man provided the Council with documentation that confirmed he was working abroad for the time in question and that he took the measure of having all correspondence addressed to his parents' home in Tralee for practical reasons. He said that he worked on a rotation basis and returned to Ireland periodically and did not own or rent another property in Ireland. He worked at sea for six months of the year and travels abroad for on average two months per year. He also said that he spends four months of the year in Ireland, during which time the property in question serves as his base but that he also travels around Ireland during this period.

As the property was not the man's principal place of residence for the years in question and he did not meet the requirements to qualify for an exemption from the NPPR charge as provided for by Local Government Charges Act, 2009 the Council could not issue a certificate of exemption.

Outcome

The Ombudsman was satisfied that the Council had applied the legislation correctly in this case.

Housing

L48/16/3019

Completed 27/03/2017

Upheld

Background

A man complained to the Ombudsman about Tipperary County Council's decision to only pay him half the grant the Council had provisionally approved under the Built Heritage Investment Scheme on the grounds that a specific condition requiring native Irish materials had not been met. The man said that neither the application form nor the guidance circular provided with the application form specified that the materials used must be of Irish origin. He only became aware of this months after his application had been submitted and only at the time that the provisional grant was offered.

At that stage the man had already sourced the materials required and booked a thatcher. It was too late for him to source the quantity of reed necessary from that winter's Irish harvest and so he had to proceed with his thatcher's sourcing of the necessary materials.

Examination

The Ombudsman examined the application form, accompanying guidelines, and information booklet on the scheme and established that none of them had a specific condition stating explicitly that 'native Irish materials' had to be used. The Ombudsman was satisfied that the man met the requirements as laid out in the relevant documentation at the time of submitting his application. In light of the absence of any specific reference to a requirement for 'Irish' materials in the guidelines and other publications at the time of application, the Ombudsman asked the Council to reconsider its decision to pay only half of the provisional grant offered to the man.

Outcome

The Council revised its decision in line with the Ombudsman's examination and paid the man the remainder of the original provisional sum it offered him.

Private Nursing Homes

N43/16/0206

Completed 26/04/2017

Upheld

Background

A man made a complaint on behalf of his parents about a substantial increase in the social charge in the nursing home where they lived. The charge for the social programme was increased from €86.66 each per month to €173.33 each/ per month. The man complained that there was no explanation or breakdown of the charge, residents were given no choice about the charge and their ability to engage in activities was not taken into account.

Examination

Under the Regulations that govern nursing homes, The Health Act 2007 (Care and Welfare of Residents in Designated Centres for older People) Regulations 2013, nursing homes are required to provide facilities for recreation for residents, but no payment for these activities is included in the Nursing Home Support Scheme (NHSS or 'Fair Deal' Scheme). Nursing homes are allowed to agree charges with residents for additional services that fall outside what is covered by the NHSS.

The Regulations require however that these additional services and charges must be set out and agreed upon under a 'contract of care' between the resident and the nursing home. In addition residents in a nursing home should also be allowed to exercise choice, where reasonably practical and have their needs and preferences taken into account in the planning, design and delivery of services.

The nursing home said that the doubling of the charge was necessary due to the social programme running at a loss the previous year and to allow for increased social activities. However the contract of care listed only an overall charge for 'entertainment' but gave no breakdown of the charge. The Ombudsman was of the view that in order to be transparent and to comply with the Regulations the content of the social programme should be listed in the contract of care. This would enable the resident to know what they were signing up to at the outset. The Ombudsman felt that the residents should also have been consulted regarding the potential for increased activities, especially with an associated cost. Finally the Ombudsman was also of the view that there was no financial choice for a resident to opt out of paying for any aspect of the programme which they did not wish to, or were unable to avail of.

Outcome

As a result of the complaint a new more detailed contract of care which includes a breakdown of the social charge was introduced allowing for more transparency for existing residents and enabling new residents to understand what they are signing up to on admission. Importantly, residents who do not have the capacity to take part in the social programme will now only be charged a nominal fee. Residents capable of attending all social activities will however still be fully charged. Finally resident input into the content and design of the social programme will in future be sought, especially when an increase in activities (with an associated cost implication) is being considered.

Other

Legal Aid Board

O56/16/2232

Completed 09/05/2017

Not Upheld

Background

A man made a complaint about the Legal Aid Board regarding its refusal of his application for emergency legal aid and of his appeal against that refusal. He complained that none of his substantial submissions were properly considered, either for the initial application or the subsequent appeal.

Examination

The Ombudsman noted that the Board did not consider all of the man's submissions in his application for legal aid. However, the Board explained that this was because it dealt with the net legal points which did not require an extensive review of all the facts and material in the case. The Board explained that the core issues in the man's application was a Supreme Court appeal. The Board refused the application for legal aid for the Supreme Court case as the man was out of time in lodging the necessary papers, and even if he was not out of time, leave would not be granted as the case did not meet the legal criteria.

Outcome

The Ombudsman was satisfied that the Board's decision was correctly made in accordance with the relevant legislation.

Courts Service

O15/16/3245

Completed 06/02/2017

Not Upheld

Background

A man complained about the refusal by the Courts Service to arrange for the stamping and sealing of a document by the County Registrar.

Examination

The man asked the Courts Service to issue a Civil Bill, which it did. The following day he e-mailed a member of staff and asked that further records be added to the documents and for the County Registrar to sign the copies of "Notice of Institution of proceedings" before sending it to the Royal Courts of Justice in London. The Courts Service confirmed that it was not possible to add anything to the documents or to get the County Registrar to sign the form.

The Courts Service refused to amend or alter the documents on the basis that it is a transmitting agency and has no authority to amend or alter any documents. The man said that the District Court rules provide for the signature of the District Court Clerk. However, the Court Services confirmed that he lodged a Civil Bill in the Circuit Court and therefore the District Court rules did not apply.

It was evident from the relevant form that there was no provision for the signing of the document by the County Registrar. It only provided for the signature of either the plaintiff or their solicitor.

Outcome

The Ombudsman was satisfied that there was no evidence of poor administrative practise by the Courts Service.

Pyrite Resolution Board

OAH/17/0262

Completed 24/03/2017

Not Upheld

Background

A woman made a complaint to the Ombudsman about the Pyrite Resolution Board (PRB), regarding remediation works carried out on her home. She identified a number of snag and work items that needed to be addressed and said that damage to her suite of furniture was caused by the pyrite works. She requested that all outstanding works be completed to the correct standard and that her suite of furniture be repaired or replaced.

Examination

The PRB advised the woman that the Housing Agency agreed to address the list of snag and work items that were highlighted in her complaint. However, it was unable to establish that the damage to her suite of furniture was caused by the works contractor. For this reason it did not uphold this part of the complaint.

The Ombudsman asked the woman to provide further evidence, if available, to support her claim that the suite of furniture was damaged through the pyrite works. A Sales Order showed that the suite of furniture was purchased four months before the works were carried out, and that the family was living in the house during this time. The woman provided photographs which showed some damage to the suite but it was unclear to the Ombudsman whether that damage had been caused by the pyrite works or was a result of normal wear and tear. There was not enough evidence for the Ombudsman to go back to the PRB on this point. He also noted that arrangements were ongoing for the new contractor to address the items on the snag list.

Outcome

The Ombudsman was satisfied that the PRB's position was reasonable. He told the woman that she could come back to him if there was undue delay in having the outstanding works completed, or was unhappy with the end result, and he would review the matter further at that time.

An explanation of the Ombudsman's Case Closure Categories

1. Upheld:

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

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

2. Partially Upheld includes:

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

3. Assistance Provided includes:

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

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

4. Not Upheld includes:

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

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

5. Discontinued/Withdrawn includes:

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

About the Office of the Ombudsman

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

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

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

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

Making a Complaint to the Ombudsman

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

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

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

Contacting the Ombudsman

The Ombudsman's Office is located at 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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