



# The Ombudsman's CASEBOOK

Office of the Ombudsman, Dublin, Ireland.

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# SHARING THE LEARNING



Ombudsman Peter Tyndall

THIS year marks 30 years of the Office of the Ombudsman in Ireland. The Office has a two-fold task - to examine complaints and to improve public services. Improving services relies on making use of the evidence gathered when complaints made to my Office are examined.

Each year I publish my annual report which contains statistical information about complaints considered in the year and some of the cases that are of particular interest to the public. Reports published by my Office highlight systemic problems which may need changes to practice, policy or procedures if the same problems are not to affect others.

However, the majority of the cases dealt with by my Office are not publicised, and their content is generally only known to the complainant and the organisations complained about.

I have been aware that these have a

wider interest and therefore, to help mark our 30th anniversary, I have decided to make summaries of these cases available to public service providers in Ireland and key partners so that opportunities for learning are maximised.

These summaries will be used in a variety of ways but in the first instance, this Casebook has been developed to bring them together in a coherent and accessible way. While some cases have limited lessons as the events are unlikely to be repeated, I hope that others will prompt public service providers to think about ways they can change to avoid the injustices identified here from happening to their users in the future. The Casebook is conveniently organised by subject area, and will be issued quarterly. We will be happy to provide further information on each case if you contact us with the relevant reference number.

From time to time there may be themes evident in the cases, and where this is the case, we will provide commentary on them. I hope you find it helpful in our shared goal of improving services for the people that we serve.

Peter Tyndall  
Ombudsman  
September 2014

# Lessons Learned

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In this part of the Ombudsman's Casebook we will highlight any recurring themes arising from cases summarised in this quarter. We will also suggest 'Key Questions' which public bodies might ask themselves to help ensure they are delivering public services to the highest standard.

## Do you have all the relevant information you need to make a decision?

The summaries contain a number of examples where the public body did not have all the relevant information it required to make a proper decision, for example, in relation to an application for a social welfare benefit. Sometimes the applicant had not supplied the relevant information (references C22/14/0447, C22/13/1390, C22/13/0088). In other cases, the public body had not fully assessed the information it had in its possession (references HC4/13/0479, C22/12/1595, C22/13/0689). Public bodies should take steps to ensure that service users are aware of the need to, and are given the opportunity to, supply all the relevant, up-to-date information the public body needs to make its decision.

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## Key Questions

Do we make it clear to the public what information we need to consider their application, complaint, etc.? (e.g. do our information leaflets, application forms and websites facilitate the provision of all the information both we and they need in a clear and accessible form?)

If there is a time gap between the making of the application and the decision, are there mechanisms in place to ensure up-to-date information is available prior to the decision?

Are there procedures in place to ensure that the relevant information is properly and fairly evaluated?

## Has appropriate redress been provided if the person has been wronged?

Where a person has been wronged by a public body, that body should provide appropriate redress. The redress can take a number of forms ranging from an apology to financial redress. No matter what the form of the redress the aim is to put the person back in the position they would have been in had they not been wronged. The Ombudsman has published a 'Guide to the Provision of Redress' for public bodies which is available on the Ombudsman's website [www.ombudsman.ie](http://www.ombudsman.ie)

Examples of redress awarded to complainants are shown in case references C22/13/0081, C22/13/1953, C22/13/0168 and L07/11/0124.

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## Key Questions

If the person has been disadvantaged can they be put back in the situation they were?

If an apology is required does it include:

- the reasons why the public body got it wrong;
- a proper, meaningful apology for any hurt, inconvenience or hardship caused;
- an acceptance of responsibility for the fault which has occurred;
- an undertaking to make good any loss which may have resulted;
- an acceptance that, where time limits apply, any undue delay on the part of the public body will be discounted where possible.

## 'New public bodies' within the Ombudsman's remit

Since 1 May 2013 the Ombudsman has been able to examine complaints about the administrative actions of nearly 200 additional public bodies. The most significant sector brought within the Ombudsman's remit was the publically-funded third level education sector. The Ombudsman has so far received a relatively small proportion of complaints about this sector. Some cases involving the State Examinations Commission, Student Universal Support Ireland (SUSI) and the HEAR/DARE scheme are included in this Casebook (references E45/13/1135, E45/13/1133, E85/13/1704, E78/13/1140, E78/13/1670).

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### Further Information on Cases

Please contact us if you require further information about any of the cases mentioned in the Casebook. In order to protect the identity of the complainant we may not be able to give specific details in every case. However, we will be happy to provide general guidance on the learning from the complaint.

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# Agriculture

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## Forest Premium Scheme

Department of Agriculture, Food and the Marine

C01/14/0556

Date completed: 14/05/2014

### # Outcome: Not Upheld

A man wrote to the Ombudsman complaining about a decision of the Department of Agriculture, Food and the Marine to impose a 100% penalty on his company on a forest road grant. He felt that the penalty was unfair and the level of penalty was disproportionate to the apparent breach of the rules of the scheme.

The Department said that the company had sent in a form for payment stating that the road was completed. However, when an unannounced inspection of the road took place a couple of months later by a Department Inspector it was discovered that the works were ongoing on the road despite the statement that it had been completed within the grant expiry period.

The Forest Roads Scheme provides for a number of penalties including a penalty of up to 100% for "Provision of a false statement, false information or false claim". In this case it was decided to apply a 100% penalty, a decision which was subsequently upheld on appeal.

The Ombudsman was satisfied that the reasons given by the Department were reasonable to warrant such a penalty in this case.

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## Single Farm Payment

Department of Agriculture, Food and the Marine

C01/13/0640

Date completed: 10/02/2014

### # Outcome: Not Upheld

When submitting a Single Payment Scheme (SPS) application, applicants agree to allow officials/agents of the Department to carry out on-farm inspections with or without prior notice at any reasonable time. An on-farm compliance inspection in relation to the SPS was scheduled for a farm on 1 June 2011 but the farmer refused to allow the inspection to proceed. As a result the Department refused to pay her 2011 Single Farm Payment. She appealed the non-payment to both the Department and subsequently to the Agriculture Appeals Office but her appeal was refused as she had refused the on-farm inspection.

The farmer complained to the Ombudsman that the Department had failed to take into account the stress which she and her husband were under at the time of the proposed inspection due to a bank having published their names in the media in relation to their financial situation.

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The Ombudsman did not uphold this complaint. The Ombudsman was satisfied that the Department, and subsequently the Agriculture Appeals Office, had dealt with the farmer's SPS application in accordance with the terms and conditions of the 2011 SPS by imposing a penalty for non-compliance with the inspection requirements. Although the farmer said that the Agriculture Appeals Office had failed to take account of her situation in relation to the banks, the records of the oral hearing of her appeal showed that she and her husband did not elaborate on this point relating to the banks even though the opportunity was available to them. They also did not supply details of the bank's newspaper advertisement or medical evidence of stress until seven months after the oral hearing had taken place. In addition, the farmer had refused to allow Departmental inspections in previous years.

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### Suckler Cow Premium

Department of Agriculture, Food and the Marine

C01/13/0602

Date completed: 21/02/2014

#### # Outcome: Not Upheld

A farmer applied to the Department of Agriculture under the Animal Welfare, Recording and Breeding Scheme for Suckler Herds 2008-2012. The terms and conditions of the Scheme stated that abrupt weaning of all animals at the one time is not permitted and for herds with more than 10 suckler cows, a gradual weaning procedure must be followed. The farmer had 11 calves which were born in 2011 and he informed the Department that all 11 calves had the same meal introduction date and weaning date. Six months later, the Department refused payment on the basis that the 11 calves must be weaned in at least two separate groups with each group removed at a minimum interval of five days. The farmer appealed and said that he had made an error with the weaning dates which he had originally notified to the Department and that the calves were actually weaned in two batches at a two month interval.

The Ombudsman did not uphold the farmer's complaint. The man had no concrete evidence or paper records to support the revised weaning date. The farmer had not made any revised return or attempts at correction to inform the Department of a revised weaning date even though he was in his 4th year of the Scheme and would have been aware of the requirements to notify events.

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### Disadvantaged Areas Scheme

Department of Agriculture, Food and the Marine

C01/13/0847

Date completed: 17/04/2014

#### # Outcome: Upheld

A farmer complained that she had been unfairly treated under the 2012 Disadvantaged Areas Scheme by not having the exceptional circumstances of her farming enterprise recognised by the Department of Agriculture, Food and the Marine.

Budget 2012 made fundamental changes to the terms of the Disadvantaged Areas Scheme for 2012 (DAS) including the doubling of the minimum stocking density (from 0.15 to 0.30 livestock units per hectare) for the calendar year 2011 to qualify for DAS payment in 2012. Given the retrospective nature of the revised minimum stocking density level, a substantial number of farmers failed to meet the requirement. The Department established a two-tier procedure to ensure that farmers who, for some exceptional reason, failed to meet the revised minimum, would not lose their qualification for DAS payment in 2012. This involved an application for derogation from the 2011 minimum stocking levels followed by access to appeal. The farmer engaged unsuccessfully with the two-tier procedure before making her complaint to the Ombudsman.

This particular farmer was an 82 year old sheep farmer in a mountainous area who had farmed sheep consistently for very many years on a small holding. The soil type was described as boggy in nature and very marginal. While falling slightly short of the 0.30 mark in 2011, the farmer had increased her stock numbers in 2012 from 28 to 40 sheep which brought her well over 0.30 for 2012. The Ombudsman took the view that this was an active farmer who was maintaining an enterprise suitable to the conditions and the location to the extent that her age and associated health issues would permit. The Ombudsman asked the Department to review its decision not to award DAS 2012 to the farmer. Having considered the evidence, the Department accepted that a derogation was appropriate and awarded payment to the farmer.

# Education

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## Recheck of Exam Results

State Examinations Commission

E85/13/1704

Date completed: 31/01/2014

### # Outcome: Not Upheld

A woman made a complaint on behalf of her daughter about a disputed grade in one particular subject in her Leaving Certificate. She said that she requested a re-check by the State Examinations Commission (the Commission) but this did not result in an upgrade. She said that at that point her daughter gave up as she had lost out on her CAO first choice.

It is important to note that it is not the Ombudsman's role to re-mark the script in question. The Ombudsman's role in examining complaints such as this is to consider whether there were any shortcomings in relation to how the Commission applied its appeals procedure when reviewing the script, and whether there was any evidence that those procedures were not applied correctly and/or fairly. The examination in this particular case involved reviewing:

- the subject exam paper,
- the daughter's exam script and her 'appeal',
- the Commission's procedures for reviewing papers,
- guidelines provided to Markers (including reviewers) for this subject,
- and the notes prepared by the person who carried out the re-check.

The Ombudsman also reviewed the Commission's Appeal Procedures, a copy of which is given to all Leaving Certificate students in the 'Candidate Information Booklet'.

The Commission operates a multi-stage appeal process as follows: (i) View Scripts, (ii) Written Appeal, (iii) View report of the appeal examiner post appeal, and (iv) Review by the Independent Appeal Scrutineers. In addition, there are also quality assurance measures undertaken by the Commission itself.

In this case, the woman's daughter availed of stages (i) and (ii) of the appeals procedures, after which she contacted the Ombudsman. Having examined the manner in which the appeal was handled the Ombudsman concluded that Commission's appeal procedures (for stages (i) and (ii) of the process) had been applied correctly and fairly in this case. The Ombudsman did not uphold the complaint.

## Higher Education Grant

Student Universal Support Ireland (SUSI)

E78/13/1140

Date completed: 10/04/2014

### # Outcome: Upheld

A woman applied for a Higher Education grant from Student Universal Support Ireland (SUSI) in 2012 for the 2012/2013 academic year. She was granted 50% Tuition Fees and 100% Student Contribution which she appealed on the basis of financial necessity. She was first informed that her appeal was allowed and later that the original decision stood. She then submitted a complaint to the Ombudsman.

The Ombudsman sought a report from SUSI and a breakdown of the calculations used to determine the level of entitlement to the grant. SUSI reviewed the grant application. It discovered that it had erred in not taking account of the deduction that may be made to reckonable income arising from an applicant's earnings during holiday time. As a result of the review, the student's reckonable income was determined to be less than previously calculated and entitled her to a higher level of grant award of 100% Student Contribution, 100% Tuition Fees and 25% Maintenance Non-Adjacent. The value of this maintenance award was €755. It also resulted in her qualifying for the higher grant in the 2013/14 academic year.

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## Higher Education Grant

Student Universal Support Ireland (SUSI)

E78/13/1670

Date completed: 24/06/2014

### # Outcome: Not Upheld

A post-graduate student complained that the award of her tuition fees by Student Universal Support Ireland (SUSI) for the 2012/2013 academic year did not constitute 100% of the tuition fee in question (€4,650). The letter from SUSI said she qualified for "Post Graduate 100% Fee Contribution".

The maximum overall limit for a Postgraduate Fee Contribution (PFC) is €2,000. SUSI advised that its purpose in including '100%' in its letter of award was to indicate the proportion of the maximum PFC involved rather than 100% of the actual fee for the course in question. SUSI explained that there are instances where less than 100% of the maximum PFC would be awarded eg. Where an applicant had previously attended, but not completed, a postgraduate course, had not attained the qualification and was returning to pursue a course at the same level on the National Framework of Qualifications.

The Ombudsman acknowledged the student's contention that she believed that the full fee for the course was covered by the SUSI award. However, the fact is that SUSI's letter included the phrase that the award was "*(I)n line with the terms of this year's student grant scheme as published by the Department of Education and Skills ....*".

The Ombudsman concluded that the student had a level of responsibility to establish the detail of the scheme and to understand what she had applied for and what she had been awarded. In the absence of evidence of unfairness, or defective administration, or departure from the terms of the Student Grant Scheme 2012 on the part of SUSI, the Ombudsman did not uphold the student's complaint.

However, SUSI decided to amend some of its letters. With effect from the 2013/2014 academic year, the actual monetary amount involved is being cited in all letters of award of PFC. SUSI also said that a further review of all decision letters would take place to improve their clarity.

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### Special Education Facilities

HEAR/ DARE

E45/13/1133

Date completed: 30/06/2014

#### # Outcome: Assistance Provided

A parent complained to the Ombudsman on behalf of her son, who had applied for approval under the Higher Education Access Route (HEAR) scheme. His application was refused.

The HEAR scheme is a college and university admissions scheme which offers places on reduced points and extra college support to school leavers from socio-economically disadvantaged backgrounds who have completed the Leaving Certificate examinations.

Approval of the HEAR scheme is not based on 'low income' alone, although it is a condition that must be met. The wider definition of socio-economically disadvantaged includes, attending a DEIS school, living in an area in which there is concentrated disadvantage, or, belonging to a population group that is under-represented in higher education. In establishing the latter condition, the occupation and employment status of the student's parents / guardians is considered.

In this case the student's application was disallowed on the basis that his parent's income was not properly verified in time. The student submitted a Revenue P21 form (confirmation of earnings) for his mother's earnings in the wrong year. Although his completed application was submitted in time he was not informed by HEAR administration that sending the wrong P21 would result in non approval for the scheme. It later emerged that his mother's earnings for the required year of verification would have satisfied the income condition for approval.

As it happened the student's examination results were sufficiently high for him to gain access to his preferred course of study without having to rely on the reduced points benefit in the HEAR scheme.

The Ombudsman is in discussions with the HEAR scheme's management regarding the potential for correcting simple errors in applications that result in a student's exclusion from the scheme.

## Special Education Facilities

HEAR/ DARE

E45/13/1135

Date completed: 23/12/2013

### # Outcome: Upheld

A parent complained to the Ombudsman on behalf of his son, who had applied for approval under the Disability Access Route to Education (DARE) scheme. His application was refused.

The DARE scheme is a supplementary college and university admissions scheme which offers places on reduced points and extra college support to school leavers with disabilities, who may not be able to meet the points for their preferred course, due to the impact of their disability.

In this case the student's application was refused on the basis that the medical report submitted in evidence of his disability was not signed by his consultant psychiatrist. The report was signed by two members of the consultant's team and contained the consultant's stamp.

The Ombudsman noted that the DARE application guide / application form did not state explicitly that the medical evidence needed to be signed and stamped by a medical consultant/specialist. It only required that medical evidence must be stamped with the consultant's stamp.

This was presented to DARE management for consideration; along with the assertion that the student in question satisfied the criteria for approval for the DARE scheme. The Ombudsman considered that the severity of the adverse affect on the student, by denying him approval for DARE, simply because of the omission of his consultant's signature, was unfair.

DARE management accepted the Ombudsman's view and reversed its original decision. DARE management amended the specification for future years to include the medical consultant's / specialist's signature as an essential prerequisite for approval of DARE applications.

# Environment, Community and Local Government

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## Motor Tax

Department of the Environment, Community and Local Government

C08/14/0102

Date completed: 21/05/2014

### # Outcome: Not Upheld

The owner of a professional driving instruction school made a complaint against the Department. He said that, for motor tax purposes, a bus he uses to train bus drivers is being treated as a “goods” vehicle. This means that it attracts a higher rate of motor tax than it would if it were deemed to be a bus. He argued that in the absence of a specific motor tax class for school of motoring vehicles the normal rates of motor tax for these types of vehicles should be applied (i.e. the “goods” rate of motor tax for trucks and the “bus” rate of motor tax for buses).

The Ombudsman did not uphold this complaint. He was satisfied that the Department had acted in accordance with regulation 4 of S.I. No. 112/1977 by applying the “goods” rate of motor tax to the driving instruction bus because the bus fell under the category of Class D. Class D includes “vehicles having passenger accommodation for more than 8 persons” and which are not used for the carriage of passengers for reward. Class D includes buses such as this which are specifically used for driving instruction.

# Health

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## Nursing Homes Support Scheme

HSE - HB2/14/0252

Date completed: 21/06/2014

### # Outcome: Not Upheld

A woman wrote to the Ombudsman on behalf of her sister regarding how the HSE had assessed her sister's weekly contribution under the Nursing Home Support Scheme. She was concerned that the HSE calculations included an amount for a 'life interest' her sister had in their father's property.

The Ombudsman's examination of the case showed that the Nursing Home Support Office had assessed the application in accordance with the Nursing Home Support Scheme Act 2009. Her contribution was based on 80% of her income, together with 5% of the value of her cash assets which included a life interest in a property less the general assets deductible amount of €36,000. It was concluded that the HSE was acting correctly in accordance with the relevant Scheme by including the complainant's sister's interest in their father's property.

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## Health and Social Care

Health Service Executive

HA9/13/1581

Date completed: 05/06/2014

### # Outcome: Assistance Provided

A woman complained to the Ombudsman concerning the treatment she had received while a patient in Our Lady's Hospital Navan. The woman raised a number of issues:-

- maintaining that the treatment she had received did not meet good medical practice.
- medication was placed on a dirty counter top.
- a request for her records was refused because she had discharged herself.

The woman also requested a refund of the hospital fees she paid as she maintained she had received substandard treatment.

The HSE had conducted a full review of the complaint. This review was re-examined by HSE Regional staff and an additional report supplied to the Ombudsman. The A&E department had been totally refurbished and regional guidelines in the dispensing of medication were in force in the Hospital at the time of the complaint. The woman's medical records were supplied in accordance with the Freedom of Information Act and Data Protection Act. In view of the corrective actions taken by the HSE the woman withdrew her complaint.

## Home Care Grant

Donegal (HSE West)

HC4/13/0479

Date completed: 20/05/2014

### # Outcome: Upheld

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

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

The Ombudsman considered it unfair that the woman no longer had help with bathing in her home care package, particularly in view of her personal circumstances. He was also concerned that the assessment form used for the review did not reflect her individual needs. He asked the HSE to consider restoring her personal assistance hours to 42 hours per week. The woman's hours were subsequently reviewed and her personal assistance hours were restored.

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## Parking arrangements

St. Colmcille's Hospital, Loughlinstown

H73/14/0626

Date completed: 28/07/2014

### # Outcome: Not Upheld

A woman was attending the hospital's outpatient department in mid 2013. She had attended twice before and on each occasion the appointments had not exceeded 45 minutes, so she paid for parking for 90 minutes. However the Consultant was delayed at another hospital and as a result her car was clamped when she returned to the car park. She had exceeded the paid parking time by half an hour. She wrote to the hospital seeking written confirmation of the Consultant's delayed arrival in order to appeal the decision to clamp her car. The letter was not received by the hospital and it was only when she sent a reminder in January, 2014 that the Hospital Manager became aware of her correspondence. He responded promptly to her second letter, confirming the delay and explained that car parking services were provided by a private company and that her appeal should be submitted to the company. He also provided her with a copy of the appeals procedure.

The company did not uphold her appeal, although it did advise her of her right to appeal to the Independent Car parking Appeals Service, which she failed to take up. She then wrote to the Hospital Manager again to complain about the prepaid parking system being used given the fact that it could not guarantee appointment times. The Hospital Manager responded and explained that because of the site layout when parking facilities were being considered, it wasn't possible to install a barrier system because of the need for ambulance access, so it was decided that the current system of prepaid parking was the only viable solution. He also explained that as the clamping fee was paid to the car parking company, any refund would be a matter for the company.

The lady then wrote to this Office seeking to have the hospital's parking system changed. The Ombudsman noted that there had been a delay in her appointment which was outside of both her and the hospital's control. She was aware of the length of time she had paid for parking and that it might run out because of the delay. She had an option to pay for more parking in anticipation of going over the time limit and had failed to do so. She had not exhausted all of the appeals procedures available to her. Given the site constraints, the Ombudsman did not consider that it was unreasonable that the hospital had opted for a prepaid parking system or that it should be managed by a private company. He considered that the hospital had treated her fairly and on that basis there was no grounds for upholding the complaint.

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## Nursing Homes

Laois/Offaly (HSE Dublin Mid-Leinster)

HB8/12/1810

Date completed: 14/05/2014

### # Outcome: Not Upheld

A woman complained that an incident involving a visitor and an elderly resident at a HSE residential facility for older people had not been adequately investigated by the HSE and that sufficient regard had not been afforded to the family.

Examination by the Ombudsman revealed that the incident was recorded on CCTV and was witnessed by a member of staff. The matter was reported to the Gardaí as an alleged criminal offence and a file was submitted to the Director of Public Prosecutions.

The HSE explained to the Ombudsman that, as a first step, the resident was moved to a different location within the facility, extra staff were assigned for the purpose of supervision, the resident was assessed by the Psychiatry of Later Life team and additional CCTV cameras were installed. The HSE then initiated moves to have the resident re-located. This was achieved 8 weeks after the incident had occurred. The HSE offered its apologies and its support, including counselling, to the family concerned and the Community Services Team maintained contact with the family.

While acknowledging the difficult situation for all concerned, the Ombudsman concluded that the HSE did not act in a way which adversely affected the woman or which was contrary to fair or sound administration.

The complaint against the HSE was not upheld.

## Investigation of a complaint against a consultant

Mater Misericordiae University Hospital (HSE Dublin North East Hospital Group)

H81/12/1910

Date completed: 06/03/2013

### # Outcome: Assistance Provided

A woman complained to the Ombudsman about the way she was treated by her hospital consultant during an examination. She complained that the consultant was rude, discourteous, bad tempered, dismissive and that she didn't listen to her concerns.

In the course of the examination the consultant informed the complainant that the treatment program she had been used to receiving was going to be reduced. She informed her that the medical evidence indicated she was not a 'high risk' in the context of her medical condition, and the examination program she had been receiving was designed for high risk patients.

The woman first complained to the hospital through its formal complaints procedure. The hospital conducted an examination of the patient's complaint and discussed the details with the consultant. It then issued the complainant with a detailed report of its findings and recommendations. While the hospital apologised for any upset or distress suffered it could not substantiate that the consultant's behaviour was unsatisfactory. The woman was unhappy with the outcome of her complaint to the hospital.

She decided to submit a further complaint to the HSE through the national complaints and appeals procedure. A review officer conducted a detailed review of the patient's complaint to the hospital and how it was dealt with. That review concluded that as there were no witnesses during the examination and there was no evidence to substantiate one person's statement over another's that the findings had to be inconclusive. The patient was unhappy with the outcome of her complaint to the HSE.

The Ombudsman reviewed the hospital's and the HSE's complaint files. The Ombudsman concluded that the hospital and the HSE had satisfactorily conducted examinations of the patient's complaint in accordance with their respective, documented complaints handling procedures; and concurred with the findings from those examinations. The complaint was 'not upheld'. In a closing letter to the hospital, the Ombudsman stressed the importance of hospital staff dealing with patients with the utmost sensitivity.

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## Social Work Services

HSE

HA9/14/0011

Date completed: 30/07/2014

### # Outcome: Not Upheld

The Ombudsman received a very sensitive complaint from an unmarried father of a teenage boy who had been taken into foster care following a court order some fourteen years ago without the man's knowledge or consent.

The man believed that the HSE was responsible for depriving him of a father-son relationship, having failed to take steps to locate the father all those years ago. The man, who resided in the UK, was the natural father of the boy and had only recently been notified of plans to proceed with the making of an adoption order for his son. (It is a legal requirement under the adoption acts that the natural father must be notified of the forthcoming adoption). The history to the case was complicated in that the boy's natural mother had failed to provide social workers with sufficient information to enable them to trace the natural father, who had never sought either guardianship or access to his child. The identity of the boy's father had not been fully explored by the HSE and there was no legal obligation on the HSE to contact him at the time the child was placed in foster care.

The HSE had completed a review report into the man's complaint. However, he was unhappy with it because it did not recommend either financial compensation for him or an apology for the lost relationship. The review report did, however, recommend that future care reviews of children in state care should consider the question of parental circumstances. It recommended that when a child's parent was not involved in a child's life, the HSE should actively consider how and if contact should be established with this parent. The Ombudsman did not uphold the complaint.

# Justice

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## Magdalen Laundries Redress Scheme

Department of Justice and Equality

C15/14/0583

Date completed: 31/01/2014

### # Outcome: Not Upheld

The Ombudsman received a number of complaints about applications made under the 'Ex Gratia Scheme for Women who were Admitted to and Worked in Magdalen Laundries' (the Scheme). These included complaints about the levels of payments already offered to the women, and the refusal of applications on the grounds that the women had not been resident in any of the 12 institutions covered by the scheme. In all these cases the Ombudsman examined the relevant files of the Restorative Justice Implementation Team (the Implementation Team), which was established within the Department of Justice and Equality to consider applications.

In all the cases he has examined at the time of writing, the Ombudsman has found that the Implementation Team had conducted thorough investigations of the individual cases before reaching decisions on applications, and also that the internal appeals procedures that was set up as part of the scheme was equally thorough when considering appeals. The Ombudsman found that in all the cases examined, the decisions of the Implementation Team were made in accordance with the terms of the Scheme and that there were no grounds on which to seek to have those decisions changed.

# Local Authority

## HOUSING

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### Housing Repairs

Cork City Council

L07/13/0358

Date completed: 29/01/2014

#### # Outcome: Upheld

A woman complained to the Ombudsman about repairs that the Council were to make to her Council property. The required repairs related to dampness in the property caused by faulty chutes and guttering. The issue had been ongoing for a number of years.

The Council confirmed to the Ombudsman that there was a dampness issue in parts of the house. The Council's report said that the problems in the house were not specifically caused by faulty chutes or guttering. The woman wanted to have the chutes and guttering replaced, as several other properties in the area had been repaired, and she had been reporting her problem for a long period of time.

However the Council's report concluded that the property would benefit from insulation to the walls and attic. The Council advised that most of the issues with the property could be resolved under the 'Fabric Upgrade Scheme' if the wall insulation, attic insulation and ventilation were dealt with as a priority in 2014.

The Council agreed that the maintenance work would be included in the Fabric Upgrade Programme 2014. The works on the property were scheduled to be completed in the first half of the year.

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### Housing General

Sligo County Council

L45/13/0812

Date completed: 18/11/2013

#### # Outcome: Not Upheld

A man wrote to the Ombudsman saying that he had separated from his wife and was paying maintenance of €320 per week. He made an application to his County Council for social housing support but the Council said that he was ineligible for social housing as his income exceeded the eligibility criterion for social housing.

The Council said the man's application was assessed against the Household Means Policy issued to all Councils by the Department of the Environment, Heritage and Local Government.

The Department determines how means are calculated for social housing. The Council said it could not take the man's weekly maintenance payments into account as maintenance payments are specifically excluded from such calculations.

The Ombudsman found that the Council had acted correctly under the Social Housing Assessment Regulations 2011 and the Household Means Policy in assessing the man for social housing. Until such time as there is a change in the legislation, the Council is correctly working within the legislation.

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## Housing General

Galway City Council

L15/13/0488

Date completed: 27/01/2014

### # Outcome: Not Upheld

A woman made a housing application to Galway City Council in respect of her family. The family is currently accommodated in a three bed mobile home at a halting site but the site is dangerous as younger children can access the road. Having examined the Council's housing file the Ombudsman was satisfied that the Council had actively engaged with the woman over the years in relation to resolving her housing situation. However, the Ombudsman noted that she had changed her mind on numerous occasions about the type of accommodation that she wanted and was not cooperating with the Council in relation to settling her rent account. The Ombudsman also noted that the Council had made several attempts in 2011, 2012 and 2013 to close sales in relation to the purchase of private houses which were deemed suitable to her needs. However these sales fell through for various reasons outside of the Council's control.

The Ombudsman did not uphold her complaint as the Council had been proactive in trying to resolve her housing problems and was continuing to try and source suitable accommodation for her.

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## Housing General

Cork City Council

L07/12/0884

Date completed: 06/05/2014

### # Outcome: Not Upheld

A man bought a house from the Council in 2002 under the Affordable Housing scheme. A condition of the affordable housing scheme when he bought the house was that a clawback would apply if the house was sold within 20 years. A full clawback would apply if the house was sold within the first 10 years and the clawback amount payable would be reduced by 10% in respect of each complete year after the 10th year during which he resided in the house. This clawback was secured by way of a charge on the title of the house.

The man wished to remortgage the house by €70,000 as he needed to extend and adapt the house for a disabled child. However, the Council could not offer any facility to remortgage the house and the sale/remortgage of the house with a financial institution would automatically trigger the clawback.

As he had bought the house from the local authority he could not get a top up mortgage/loan from an independent financial institution because any charge that the financial institution might want to put on the title would be registered as a second charge behind the housing authority's clawback - this was not an acceptable situation for the financial institutions. The Housing (Miscellaneous Provisions) Act 2009 and S.I. No. 145 of 2009 made provision for purchasers under new affordable dwelling purchase arrangements to re-mortgage or top up their mortgage without triggering the clawback, but the legislation does not provide this facility for people like this man who bought under the previous affordable housing arrangements. While the Council can provide loans under the Housing (Local Authority Loans) Regulations 2009, the maximum loan which a local authority can provide for house improvements is €38,000 where the loan is secured by a mortgage on the house and €15,000 where the loan is not secured. The Council is not empowered to provide loans for remortgage purposes.

The Ombudsman did not uphold this complaint. The Ombudsman was satisfied that the Council had complied with the affordable housing legislation in dealing with the clawback on the man's affordable housing mortgage. Unfortunately there was no option currently available to resolve this man's situation. However, the Ombudsman contacted the Department of the Environment in relation to this case and highlighted the problems which had arisen so that the Department would take these issues into consideration when making amendments to the affordable housing legislation.

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## Housing Allocation

Midleton Town Council

L09/12/1522

Date completed: 05/02/2014

### # Outcome: Upheld

The woman making this complaint moved to Midleton on 30 June, 2010. She applied to Midleton Town Council for social housing in April, 2012. Her application was refused on the basis that she had a property available to her previously which had been sold in 2010. The Council said that the proceeds of the sale could be used to purchase a house in Midleton. Due to circumstances beyond her control, the woman's assets had been reduced to around €21,000 by 2012. At the date of application for housing her assets consisted of these savings and One Parent Family payment in respect of herself and her two youngest children. She was living in private rented accommodation and was approaching a point where she would be unable to meet the cost of the rented accommodation.

If you have a house in which you can live or have money from selling a property, you would not normally be entitled to be placed on the social housing list.

As a result of this refusal, the woman was also unable to obtain rent supplement from the Department of Social Protection to assist with renting private accommodation, because you must be on the Social Housing list to receive this support.

In taking this case up with the Council, the Ombudsman pointed out that under the Housing Regulations, the person applying for housing can only be refused where alternative accommodation is available to them which would meet their housing needs, either by occupying it or selling it, and using the proceeds of the sale to secure other suitable accommodation. This did not apply in this instance as the woman did not have alternative accommodation which could be sold, nor did she have the proceeds of the sale of property which could be used to purchase suitable accommodation *at the date of application for social housing*. He was of the opinion that her finances at the time she made her application were what should have been taken into account in assessing her housing need, i.e. €21,000 and not her situation in 2010 after her previous home had been sold.

As a result of the Ombudsman's intervention, the Council agreed to review the case and having confirmed her financial status at date of application, she was placed on the Social Housing list. The woman was able to receive rent supplement for her private rented accommodation pending the provision of social housing to her and her family.

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## Housing transfer refused

Galway City Council

L15/14/0507

Date completed: 07/08/2014

### # Outcome: Not Upheld

A woman who was living in a house leased by the Council said that she and her daughter were being subjected to anti-social behaviour by children in the estate. She said that her daughter had been the victim of bullying for which she was receiving counselling. She was afraid to let her daughter out to play. The property had also been broken into. She said that the Gardaí were powerless to do anything because the perpetrators were children. She sought a transfer to another area and the Council had refused so she made a complaint to the Ombudsman.

The Council said that under the Scheme of Letting a tenant must be resident in a property for a minimum of two years before consideration could be given to a transfer application. It accepted that she might be eligible for consideration on compassionate grounds or because of exceptional circumstances. However she had not held her tenancy for two years. While there is provision in the case of an emergency to forego this requirement, the Council said that in this instance, the applicant had not provided any supporting evidence to show that this was that case. She had not provided evidence of a formal complaint being made to the Gardaí which would indicate that they were investigating a complaint and the Gardaí had not recommended that she should move for her own safety.

The Council said that this is a private estate where it has leased nine properties on long term leases for Council tenants.

The Council said it has not been made aware by other tenants of a particular problem with anti-social behaviour and it is generally considered to be a quiet family friendly estate. The report also said that the Gardai can take action if minors are involved in anti-social behaviour through the Juvenile Liaison Schemes and the Community Gardaí and they have often done so.

Given that the Council was applying the Regulations correctly and no evidence had been presented which would allow it to consider that an emergency situation required that the tenant be moved from the area for her safety, there was no basis upon which the Ombudsman could request that the Council use its discretion to grant her a transfer at present.

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## Housing Repairs

Galway County Council

L16/13/1372

Date completed: 08/04/2014

### # Outcome: Assistance Provided

A woman complained to the Ombudsman about the lack of action by the Council in dealing with dampness and loose roof tiles at her Council house. The woman also noted that her family had several different health problems that she said were caused by the dampness in the house.

The Ombudsman noted that the Council knew about the problems with the air vents and roof pointing at the property in March 2013. Another site inspection took place in August 2013, and the same problems were still there.

The Council promised to carry out the works within one year of the most recent site inspection. However, the Ombudsman did not consider the Council's position reasonable as the property was first inspected in March 2013, and the side of the house was blocked off on health and safety grounds due to the risk of falling roof tiles. Shortly afterwards, the Council cleared the vents and carried out the roof pointing and the case was then closed.

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## Housing Allocations

Laois County Council

L24/13/0162

Date completed: 13/02/2014

### # Outcome: Not Upheld

A woman turned down two offers of accommodation from the Council and because of this, she was removed from its housing list for a twelve month period. The woman did not agree that the two offers of accommodation were reasonable because of the condition of the properties.

The woman said that she had refused the first offer because of anti-social behaviour at the property. The Ombudsman asked the Council for any Garda reports about this property.

Once the Council confirmed that there were no Garda reports, the Ombudsman could not find that there was any evidence to support the woman's claim.

The woman felt she had to refuse the offer of the second property as the size of the second bedroom was too small for her child. The Ombudsman noted that Section 63 of the Housing Acts 1996 sets out that overcrowding takes place where a room is less than 400 cubic feet.

The room was over 400 cubic feet in size. Therefore, the Ombudsman could not find that this offer of accommodation was not reasonable. The Ombudsman did not uphold the complaint.

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## Housing Transfer

Dublin City Council

L12/12/1930

Date completed: 11/04/2013

### # Outcome: Not Upheld

A man was living in a Council bed-sit and felt that it was not suitable for his long term needs. Although the man had been approved onto the Council's housing transfer list, the Council decided that his medical conditions were not serious enough to put him ahead of other people waiting for housing.

The Ombudsman was satisfied that although the Council had looked at all the medical evidence the man gave it about his medical conditions, there was not enough evidence to put him ahead of other people. The Council also explained that it would eventually replace all bed-sits with one bedroom apartments but this would take some time. The Ombudsman did not uphold the complaint.

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## Housing General

Limerick County Council

L28/13/0899

Date completed: 05/08/2014

### # Outcome: Upheld

A complaint was received from a couple who had their application for social housing refused by Limerick County Council. It had been decided that they did not qualify because they could live in their respective family homes and therefore did not need social housing.

A review of their application and the relevant legislation (Social Housing Assessment Regulations 2011) showed that the couple were living together in private rented accommodation. The man was in receipt of a qualified adult payment for his partner (the woman) as part of his Jobseeker's Allowance payment. The couple had lived independently and separately from their respective families and were continuing to do so.

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They were a household in their own right, as per the Housing (Miscellaneous Provisions) Act, 2009 and they did not have other accommodation available to them. The Ombudsman decided that the legislation does not allow for people who seek social housing to be housed by people who are not part of their household.

The Ombudsman asked the Council to look again at the couple's application under the legislation. As a result of this review the couples application was looked at again and they were put on the housing list with effect from the original date.

## PLANNING

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### Planning Enforcement

South Dublin County Council

L59/14/0372

Date completed: 16/07/2014

#### # Outcome: Not Upheld

A man wrote to the Ombudsman about an alleged delay by South Dublin County Council in taking enforcement action against the owners of his neighbours' properties for breaches of the planning permissions granted for their sites. Planning permission had been granted for a two storey house in place of what had been the garage adjoining the original houses and for separate access for the new houses. It was claimed that the neighbours had instead sub-divided the original and new properties into multiple dwelling units in breach of their planning permissions.

The Council had written to the owners/occupiers of both sites and has sent warning letters subsequently, advising that if no response was received it would take enforcement action. Inspectors had visited both sites and had been unable to access the interior of any of the four properties. However from the examinations of the exteriors, the inspectors had formed an opinion that there might have been a change of use from that provided for in the planning permission. They concluded that the properties had probably been subdivided because there were door bells for a number of homes. Because of the lack of co-operation by the owners/occupiers of the properties it was considered that Enforcement Notices should issue to allow the inspectors to examine the interiors of the four properties involved. Despite several efforts to serve the Enforcement Notices, it had not proved possible to do so. The Council told the Ombudsman that it had now contracted professional Summons Servers to try to locate and serve the Notices/correspondence on the owners of the four properties.

Given that it was clear that the Council was still pursuing enforcement action in relation to these properties, the Ombudsman was unable to uphold the complaint. However, he decided to seek regular updates from South Dublin County Council to ensure that progress was maintained in taking the enforcement action.

## Planning Administration

Meath County Council

L36/13/1685

Date completed: 14/07/2014

### # Outcome: Not Upheld

This complaint related to two issues:

1. an allegation that Meath County Council had displayed bias against the complainant, who was the developer of a site for which planning permission had been granted in June, 2002 for six terraced houses and a creche in an L shaped layout, by taking enforcement action against him twice for breaches of the planning permission and;
2. alleged defamatory comments contained in a submission made to the Council in relation to another planning application for a change of entrance to the above mentioned site, which the Council had refused to remove from the planning file.

Having examined all of the relevant information, the Ombudsman concluded that the Council had made administrative errors in relation to the issuing of the Enforcement Notices, which had resulted in their being disallowed by the Courts on technicalities. These included:

- a failure to specify what was required to be done to comply with the planning permission in the first enforcement notice which had issued;
- the wrong address being entered on warning letters which had issued to the man's company, and
- the wrong date being referred to on the Court documents.

However, he concluded that there was no evidence of bias on the part of the Council in relation to their dealings with the company because it had received complaints about the non compliance with the planning permission granted from a neighbour. An inspector had visited the site on each occasion and found that there were breaches to be addressed.

With regard to the second issue, the Council said that it was required under the Planning Acts to place all submissions on a planning file. It had no function in relation to commenting on the accuracy of the information contained within the submission. It further argued that even if defamatory information was contained therein, qualified privilege applied to the Council in relation to such matters. In deference to his concerns, the Council had agreed to remove the electronic version of the submission from its website, while noting that it remained on the paper file.

The Ombudsman took the view, that the Council was legally obliged to place all submissions on the planning file. He suggested that the Courts were the appropriate forum if the man considered that he had been defamed. In the event that his case was upheld, a Court Order could issue requiring that the information should be removed from the planning file. The Ombudsman noted that there was provision under Section 17 of the Freedom of Information Act to allow for untrue or misleading information to be removed from a public record and that the complainant could request that the information be removed on that basis also. For these reasons the complaint was not upheld.

## Planning Enforcement

Westmeath County Council

L53/13/0608

Date completed: 21/07/2014

### # Outcome: Upheld

This case relates to a complaint from a couple about the failure of Westmeath County Council to either finalise the transfer of a site adjoining their property to them or to take it in charge and clean it up.

The property had originally been purchased by their daughter who wrote to the Council's Enforcement Officer in early 2002 about the fact that the developer had enclosed an area of open space beside her property and used the site to dump rubble from other parts of the site rather than remove it to the dump, while he was preparing for the Council to take charge of the estate. Despite a lot of correspondence between her and Council officials no action was taken. In 2006 the couple wrote to the Council identifying a possible problem with title to a portion of the site. The Council took no action about this until 2011, when it sought to have the couple purchase the land from the developer, which they refused to do.

The couple subsequently wrote to the County Manager suggesting two options to the Council:

1. Westmeath County Council should force the developer to hand over the portion of land concerned to it free of charge, given that it should have formed part of the Open Space/Green Area under the Planning permission and the couple would buy the plot from the Council under the terms already agreed if it still wished to sell it; or
2. the Council could clean up the area and make it part of the Open Space/Green Area.

The dumping of rubble and building waste on what was meant to be part of a green area had been brought to the Council's attention as early as 2002. It appeared that no action was taken, despite the site being inspected by Council staff. It became clear that no enforcement file was opened in relation to the issue. The estate was taken in charge by the Council in 2012, so responsibility for clearing and maintaining this area of green space now rested with the Council, rather than the developer. However, no action had been taken to clean up this site. There was also a delay in finalising agreement with the developer to transfer the portion of land he owned which was still not completed.

The Council agreed to clear the site and reseed it pending the completion of negotiations with the developer to transfer ownership of the sliver of land to it. The complainants have accepted that this will resolve their complaint.

## Planning Enforcement

Wexford County Council

L55/12/0931

Date completed: 11/02/2014

### # Outcome: Not Upheld

A man complained that the Council failed to take enforcement action in relation to a development located near his property. The man alleged breaches of planning involving the location and suitability of the wastewater system, and the removal of a hedge.

The Ombudsman could not examine the complaint relating to the suitability of the wastewater system. An assessment of the suitability of the site for a wastewater system was considered as part of the planning application for the development. It was open to the man to make a submission to the Council and appeal the planning decision to An Bord Pleanála.

In relation to the location of the wastewater system, the man had made a complaint to the Council a number of years before contacting the Ombudsman. At the time, the Council had undertaken a site inspection. The Council found that although not located in accordance with the terms of the planning permission, the system was in substantial compliance with the planning permission.

The Ombudsman cannot examine complaints in relation to matters which occurred over 12 months before the complaint is made to him unless special circumstances make it proper to do so. In this case, this aspect of the complaint occurred some years ago and there appeared to be no special circumstances which would warrant the Ombudsman setting aside the 12 month limitation.

The Ombudsman concluded that even if he were to set aside this limitation, he could not conclude that the Council's decision not to take enforcement action was incorrect. In reaching this decision he took into account:

- the nature and scale of the alleged breach,
- the adverse affect on the man, and
- the Council's chances of success in court were it to initiate proceedings.

The final element of this complaint concerned the alleged removal of a hedge. The Council inspected the site and reported that while some vegetation was removed from the location, mature trees and hedgerow were retained in accordance with the planning permission. The Council included an aerial photo of the site with its report.

There was no clear evidence to show that the planning permission had been breached. Even if it were accepted that the removal of the vegetation was in breach of the planning permission, the Ombudsman considered that the Council's chances of success in court, were it to pursue enforcement action, seemed to be very limited due to:

- the scale of the alleged non-compliance,

- the remaining trees and shrubs,
- the level of screening in place, and
- the limited adverse affect.

The Ombudsman concluded that there were no grounds on which he could recommend that the Council review its decision not to initiate enforcement action.

## VARIOUS OTHERS

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### Service Charges

Dun Laoghaire Rathdown County Council

L61/13/1094

Date completed: 20/11/2013

#### # Outcome: Not Upheld

A woman wrote to the Ombudsman regarding her local County Council's service charges to her premises. Over the last number of years she did not put out any waste for collection as she claimed she disposed of all her waste herself. However the Council was still charging her for the service.

The Council said that its Environmental Waste Charges were in accordance with the Waste Management Act 1996. From 2004 onwards the charges were determined by the County Manager. In 2005, the Council introduced a "Pay by Weight" collection service and an annual standing charge of €80. It said that the €80 annual charge was introduced as a minimum contribution towards the provision of waste services by the Council. These services include a black bin waste collection service, a green bin collection service; bring centres for recycling in various locations within the county and also recycling amenities.

Householders were liable for the annual standing charge regardless of whether they use all of, some of, or none of the services stated above. The relevant Manager's Order states that the Standing Charge of €80 was "PER HOUSEHOLD PER ANNUM FOR ALL HOUSEHOLDS".

Having examined the legislation and the Manager's Orders, the Ombudsman found that the Council was entitled to impose the annual charge and was not acting outside the relevant legislation.

## Sewerage & Drainage

Waterford County Council

L51/13/1612

Date completed: 14/02/2014

### # Outcome: Not Upheld

A woman made a complaint about repairs to drains/sewer which ran under her property which she believed were the responsibility of Waterford County Council (the Council). She said that leakage from the drain caused weakness in the soil with consequential subsidence in the house. Her understanding was that this is a public sewer and therefore the Council was liable to maintain it. She said that this infrastructure had been built on land purchased by her parents from the Council in the 1970s.

The issue of who is liable to maintain and/or repair drains/sewers is something that has arisen on numerous occasions throughout the 30 years that the Office of the Ombudsman has been in existence. The question of whether such liability rests with a Council or with a property owner depends on whether the infrastructure concerned is a drain or a sewer, as defined in legislation. Essentially, if it is a sewer the Council is liable for its maintenance and repair. If it is a drain the property owner is liable. Legal definitions for 'drain' and 'sewer' are contained in the Water Services Act 2007.

The Council said that the land was sold to the woman's parents as a 'serviced site' and, while it acknowledged that it constructed the drains to service four sites, it did not accept that the damage caused to her home was as a result of any negligence on its part. The Council provided the Ombudsman with a copy of the indenture of sale for the land with a map showing the site with the drains clearly marked. The Ombudsman was satisfied that, under the indenture, the land had been sold as a serviced site and that the sale included "*the drains to be laid in or under the demised premises*". He was also satisfied that what was laid on the woman's property were drains, as defined in the relevant legislation (i.e. drainage pipes for the collection of waste water that are not owned by, vested in or controlled by the Council and which are used to convey waste water from one or more premises). Therefore, the Ombudsman was satisfied that liability to maintain/repair them rested with the woman and not with the Council.

The Ombudsman did not uphold the complaint.

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## Non-Principal Private Residence (NPPR) Charge

Galway County Council

L16/12/1024

Date completed: 10/04/2014

### # Outcome: Not Upheld

The NPPR charge applied to any residential property which was not the owner's normal place of residence. The charge was effective for the years 2009 to 2013. The Local Government Reform Act 2014 introduced an additional penalty to be imposed in cases where NPPR charges due were outstanding on 1 September 2014.

The Ombudsman has received a number of complaints in relation to the NPPR charge since its introduction. This number increased in 2014 as many property owners sought to settle their NPPR charge accounts to avoid the imposition of additional penalties on 1 September. Complaints were made for a variety of reasons. All complaints were assessed on their individual merits. A number of complaints were not upheld. Following contact with this Office, local authorities agreed to review the penalties imposed in a small number of exceptional cases.

In this case, a woman complained that the Council failed to notify her of her liability for the NPPR charge and that as a result she failed to pay the charge on time and incurred significant late payment penalties. The Council maintained that it did not have a statutory duty to advise the woman of her liability for the charge. It also pointed out that it had taken steps to inform landlords of their potential liability for the charge using the register of tenancies retained by the Private Residential Tenancies Board (PRTB).

As the woman had omitted to register the tenancy of her property with the PRTB as required, she had not received the notification that issued to other landlords included on the register. The Ombudsman concluded that the Council had taken reasonable steps to notify the woman of her liability, and that the late payment penalties were levied in accordance with the relevant legislation.

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## Rent Arrears/Refuse Charges

Cork City Council

L07/11/0124

Date completed: 24/04/2014

### # Outcome: Upheld

A couple complained to the Ombudsman that they received a bill from Cork City Council which they maintained they did not owe. The amount demanded was made up of outstanding rent arrears, unpaid services charges (refuse collection) and maintenance charges. The total debt demanded by the Council was €2,300.

The couple had been in communication with the Council over a number of years to try and resolve their differences but to no avail. As the Council was adamant the debt was owed and that it were considering escalating the recovery process by referring the matter to the courts, the couple decided to seek the Ombudsman's intervention.

The couple purchased their home from the Council in 1998. However, the Council insisted that outstanding rent arrears in the amount of €350 remained unpaid, from when they were tenants. The Ombudsman expressed surprise that the sale was agreed by the Council without ensuring that any outstanding debts payable were discharged.

It was a condition in the sale agreement between the Council and the couple that they would pay a weekly sum in respect of 'maintenance charges'. However, the Council did not send bills or seek payments from them for approximately four years after they purchased their home. Furthermore, the couple maintained that the Council did not honour its obligations in the agreement to provide maintenance services as required.

The third strand of the debt demanded by the Council related to unpaid refuse collection charges.

The couple had been making regular payments to the Council between 1998 and 2010 when the debt was first raised. Their payment records were good. However, it was very difficult to reconcile the payments they made with the Council's records of payments received, as the Council's records were difficult to decipher.

Given the passage of time, non-demand of payment of rent arrears and service charges over a long period, and difficulties in accurately reconciling payment and receipt records, the Ombudsman believed that to seek payment of the full amount of the debt was unfair and unsound. The Council agreed to waive €1,700.

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### Delay in dealing with drainage problem

Galway County Council

L16/13/1624

Date completed: 06/02/2014

#### # Outcome: Assistance Provided

A woman complained to the Ombudsman about the Council's lack of action in relation to a drainage problem. The woman said that a motorway to the west of her land impeded drainage and waterlogged her land. The woman also noted that the waterlogging affected septic tanks in the area.

The Council explained that the delay was due to getting a suitably priced piece of land to put in a grit trap and drainage, in order to solve the problem. The Council said that although it had identified a suitable piece of land, the landowner would not sell it at a reasonable price. In the circumstances, the Ombudsman was of the view that the Council had not made reasonable efforts to properly deal with the issue.

During the Ombudsman's examination of the case, the Council negotiated with another landowner to buy a different piece of land. The Ombudsman asked that the Council keep the woman updated on the matter.

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### Derelict Sites

Clare County Council

L05/13/1565

Date completed: 24/03/2014

#### # Outcome: Assistance Provided

A man complained to the Ombudsman about the Council's failure to tackle health and safety issues at an alleged derelict and dangerous property beside his mother's property. The man wanted the Council to make the site safe and manage the health and safety risks on it.

The Council explained that its Building Control section had examined the site and although the property was derelict it was not a dangerous structure. The Ombudsman was satisfied that the Derelict Sites Act 1990, did not cover things like burst pipes, attic partitioning and lack of heating, that the man had complained about.

The Council told the property owners they had to replace broken window panes, fix outside doors and paint parts of the property. The Council also promised to monitor the situation by inspecting the property every six months. The Council later told the Ombudsman that the property was taken off the Derelict Sites Register as the work promised by the owners had been done.

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## Road Maintenance

Clare County Council

L05/13/1389

Date completed: 07/04/2014

### # Outcome: Not Upheld

A man complained to the Ombudsman about the Council's failure to maintain part of a local road. The man also said that his neighbours had not cut their hedges along this road.

The Ombudsman noted that the road was not to be part of the Council's 2014 Roadworks programme for either strengthening or resurfacing works. However, the Council had kept the part of the road mainly used by members of the public to a good standard. The Council explained that it did very little work on the section of the road the man was complaining about because very few people used it.

Having examined the way the Council decided to carry work on roads in its area and the small amount of money it had for that work, the Ombudsman found that the Council's position was reasonable.

The Ombudsman was also satisfied that people who own land at the side of roads are responsible for cutting hedges on the road under Section 70 of Roads Act 1993.

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## Noise Pollution

Wexford Borough Council

L56/11/3189

Date completed: 18/12/2013

### # Outcome: Assistance Provided

A man complained to the Ombudsman about the failure of the Council to enforce planning conditions about noise levels which were part of a Supermarket's planning permission. The man said that early morning deliveries at the supermarket breached the Supermarket's planning permission. The man was not happy that the Council did not take enforcement action against the Supermarket as his house was directly behind the delivery yard. The man also noted that the Council had not told him why it didn't take the matter further.

Following an examination by the Ombudsman, the Council carried out noise tests that showed the Supermarket was in breach of the noise levels in its planning permission. However, the noise tests also proved that normal noise levels in the urban area were higher than the noise levels set out in the Supermarket's planning permission. As such, the Council said it did not intend to take the matter further.

The Ombudsman asked the Council to look again at the matter as it was clear from the noise tests that early morning deliveries at the Supermarket were in breach of its planning permission. The Council then took further action and the Supermarket took steps to reduce loud noise early in the morning, that meant it obeyed the conditions of the planning permission.

# Revenue Commissioners

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## Local Property Tax

Office of the Revenue Commissioners

C21/14/0367

Date completed: 05/07/2014

### # Outcome: Not Upheld

A man wrote to the Ombudsman complaining that when he filled out his on-line Local Property Tax (LPT) form he agreed with the Office of the Revenue Commissioners (Revenue) that €9.50 would be deducted from his income on a weekly basis. The man is in receipt of an Invalidity Pension from the Department of Social Protection. It came to light some time later that Revenue was deducting €7.50 per week and not €9.50.

Revenue said that under legislation the Department of Social Protection would not allow it deduct the full amount. This was in order to maintain statutory minimum incomes. The Finance (Local Property Tax) Act 2012 provides that deductions from Social Protection scheme payments in relation to the local property tax will not breach the statutory minimum income provided for by Social Welfare legislation.

The Ombudsman found that Revenue had acted correctly under Section 189 of the Social Welfare (Consolidation) Act 2005, in deducting only €7.50 per week from his Department of Social Protection payment. Until such time as there is a change in the legislation, it is correctly working within the legislation.

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## Capital Gains Tax

Office of the Revenue Commissioners

C21/13/1722

Date completed: 28/07/2014

### # Outcome: Not Upheld

A solicitor made a complaint in relation to the manner in which Revenue dealt with him when he was making a Capital Acquisitions Tax return on behalf of his client. He said that Revenue had not answered his queries and explained why interest was due or how liabilities were apportioned; that he had had difficulties in lodging an electronic return causing him to have to make a manual return; that Revenue had delayed in engaging Counsel to deal with an appeal before the Appeal Commissioners; that a Revenue official had made a remark to his client about the size of the fees he was charging; and that Revenue had issued a tax assessment directly to his client rather than dealing with him as her agent.

Having reviewed the tax file, the Ombudsman did not uphold his complaint as he was satisfied that Revenue had provided answers on numerous occasions to the queries raised; that Revenue had apologised on several occasions for the difficulties he had encountered

when trying to file electronically; that the time taken to arrange the appeal and engage Counsel was broadly in line with the timescales set down in Revenue's Tax and Duty Appeals Manual; that it would not be possible for the Ombudsman to reconcile the conflicting accounts of what was said about fees; and that Revenue were legally correct to issue the assessment to the client as she was the accountable person for this CAT return.

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### V.R.T.

Office of the Revenue Commissioners

C21/13/1740

Date completed: 09/04/2014

#### # Outcome: Not Upheld

A man bought a car in the UK on 14/08/2013 and imported it to Ireland on 21/08/2013. Under legislation he was required to make an appointment to register the car within 7 days of its arrival in the State and to actually register it within 30 days of its arrival. He made an appointment to register the car on 29/08/2013 but was unable to conclude the registration process as he did not have a complete log book for the car. He contacted the dealer in the UK to obtain the missing part of the logbook but was told it would take six weeks to obtain the full logbook from UK authorities. He didn't get the full logbook until the first week of October and re-arranged his registration appointment for 11 October 2013. He was charged the appropriate amount of VRT, however he also received a penalty of €88 for late registration which he felt was unfair as he had tried to register promptly.

The Ombudsman asked Revenue if the man would have any avenue of appeal in relation to the penalty applied. Revenue clarified that the appeals procedure is a two stage process in which certain VRT related decisions made by the Revenue Commissioners can be appealed. (The first stage of the process consists of the re-examination/assessment of the matter under appeal by a senior manager within Revenue who was not involved in the original decision. Where a person is not satisfied with the outcome of the first stage of the process, they may proceed to the second stage of the process by further appealing the decision to the Appeal Commissioners.) Revenue agreed that the man could avail of the two stage appeal procedure and the Ombudsman then provided him with details of how to do so.

# Social Protection

## CARER'S ALLOWANCE

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### Carer's Allowance

Department of Social Protection

C22/13/1537

Date completed: 11/06/2014

#### # Outcome: Upheld

A woman wrote to the Ombudsman regarding the refusal of her application for Carer's Allowance for her daughter. She sent in further medical evidence in support of her complaint. The Ombudsman sent the extra medical evidence to the Department of Social Protection and asked for it to be examined by the Department's Chief Medical Adviser.

After having reviewed all of the evidence in the case, the Department's Deciding Officer awarded the woman Carer's Allowance. The Allowance was backdated to 2012.

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### Domiciliary Care Allowance

Department of Social Protection

C22/14/0509

Date completed: 18/07/2014

#### # Outcome: Not Upheld

In this case a woman complained that her application for Domiciliary Care Allowance (DCA) had been disallowed by the Department of Social Protection (DSP). DCA may be paid to a person who is providing care at home for a child who has a severe disability requiring continual or continuous care and attention substantially in excess of the care and attention normally required by a child of the same age, and where the child is likely to require full-time care and attention for at least 12 consecutive months. The woman had applied for DCA in respect of her 5 year old son who had a diagnosis of Aspergers Syndrome. With her application she provided medical reports which confirmed the child's diagnosis and gave details of the affects this had on the child and of the supports he required as a result. The application was disallowed because, in the opinion of the Department's Medical Assessors, the need for continuous care and attention was not substantially in excess of care and attention normally required by a child of similar age.

While there was no question as to child's diagnosis or that he required some additional care, the issue was in relation to the level of care he required and whether this would be regarded as 'continual or continuous' or care that is 'substantially in excess of the care and attention normally required by a child of the same age'.

The child was under 5 years of age when the medical assessments were carried out, and the Ombudsman took into account that most children of that age would not be regarded as fully independent in the area of, for example, activities of daily living. Therefore, another child of the same age who did not have a diagnosis of Asperger's Syndrome would also require some level of care and attention with activities of daily living, travelling to and from school, attending leisure activities, etc. In this case, the Ombudsman could not conclude that the evidence submitted to DSP demonstrated that the level of additional care and attention would be considered as 'continual or continuous' or 'substantially in excess of that normally required by a child of the same age'.

The Ombudsman did not uphold the complaint.

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### Carer's Allowance

Department of Social Protection

C22/14/0447

Date completed: 30/07/2014

#### # Outcome: Assistance Provided

A man applied for Carers Allowance in respect of the care he was providing to his mother who suffered from ill health. His application was turned down by the Department of Social Protection and subsequently by the Social Welfare Appeals Office because the Medical Assessor was of the opinion that the woman did not require full time care and attention as laid down in the Carers Allowance legislation. Following the appeal hearing the man supplied the Appeals Office with further medical evidence in relation to his mother. However the Appeals Office again disallowed the appeal on the grounds that "the medical evidence indicates the need for support but not for full-time care and attention".

Having examined the file, it appeared that this new medical evidence had not been reviewed by the Department's Medical Assessor prior to a final decision being made on this appeal. The Ombudsman contacted the Appeals Office and asked that this medical evidence be referred to the Medical Assessor so that the case could be reviewed on the basis of the most recent medical assessment. Following a further review, the Appeals Office decided to allow the appeal and the man was granted the Carers Allowance.

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### Carer's Allowance

Department of Social Protection

C22/14/0481

Date completed: 07/08/2014

#### # Outcome: Not Upheld

A woman applied for Carer's Allowance on 30 January 2013 in respect of her 25 year old brother who has ADHD and some behavioural issues. Her brother had left school early but is now living independently in his own apartment and studying for the Leaving Certificate as a mature student.

The woman said that she has to organise direct debits for paying his bills because of his behavioural problems.

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

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

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### Carer's Allowance working hours

Department of the Social Protection

C22/13/1608

Date completed: 29/04/2014

#### # Outcome: Upheld

A woman complained when she was refused Carer's Allowance by the Department of Social Protection in respect of her father. Her application was refused for two reasons. The first reason being that the medical evidence did not support the requirement that the person being cared for should require full time care and attention. The second reason was that it was determined that she was working outside the home for more than 15 hours per week. The original decision was appealed and it was determined that her father now satisfied the care requirements. However this left the second reason for refusing her the allowance.

The Ombudsman examined the employment records of the woman and observed that during the period she was caring for her father she only exceeded the 15 hours per week some of the time. This would have left her eligible to receive Carer's Allowance for the weeks she did not exceed the maximum allowed for 15 hours. The Ombudsman was of the view that there was no reason why she should not get the allowance for these weeks and requested the Department to review the case with a view towards making the necessary payment.

The Department reviewed the case and agreed that Carer's Allowance was properly payable for the weeks in question. Unfortunately the complainant's father had died in the interim and the Department took this into account when making the payment. This meant that not only did the complainant receive payment in respect of the weeks she was caring for her father, but also for the six weeks after his death. In addition the Department also paid the Annual Respite Care Grant of €1700 which resulted in a total payment of €3750 to the complainant.

## PENSIONS

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### State Pension (Contributory)

Department of Social Protection - C22/13/1699

Date completed: 10/05/2014

#### # Outcome: Not Upheld

A man wrote to the Ombudsman complaining that the Department of Social Protection should be paying him a 75% State Contributory Pension instead of the 50% that it had paid him since he turned 66. He said that he was at a weekly loss of €57 with an accumulated loss to him of approximately €7,000. His argument was that his pension should be calculated from the contribution year 1979 and not 1963 which the Department was using in calculating his pension.

The examination of the case showed that the man was awarded a State Contributory Pension at 'half rate' of the maximum state pension in accordance with the legislation. This was because his yearly average fell within the range of 10 to 14 social qualifying insurance contributions. The date of starting insurable employment is taken as the date of a person's first paid employment contribution. As the complainant had already paid full rate social insurance in 1963, the option of using 1979 as the date of entry into insurance was not available to him in these circumstances. On this basis he was awarded a 50% contributory pension.

As the Department had calculated the amount in accordance with the provisions of the legislation the Ombudsman did not uphold the complaint.

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### Survivor's Contributory Pension

Department of Social Protection - C22/13/1561

Date completed: 21/05/2014

#### # Outcome: Not Upheld

The Ombudsman received a complaint from a woman regarding her Widow's Contributory Pension (WCP). She lives in England and her ex husband died in Ireland in January 2009. She said that she rang the Department of Social Protection in 2009 soon after her ex husband's death, to find out if she was eligible for WCP. She was told she was not eligible as she was divorced from her former husband at the time of his death. She then contacted a solicitor in Ireland and the solicitor also told her she did not qualify. In October 2011 she made a claim for WCP and it was paid and back dated to January 2010. She requested that the pension be backdated to January 2009, the date of her ex husband's death. However the request was refused on the basis that the effective date of her pension was calculated in accordance with the relevant legislation. She appealed the decision to the Social Welfare Appeals Office (SWAO). The SWAO would not accept the appeal as it was not submitted within the specified timeframe.

The Ombudsman was concerned that the decision not to backdate her pension to the date of her late husband's death may have been unfair as she was not aware of her entitlement at the time, and was given incorrect information. He noted that there is provision in legislation for backdating late claims to the date entitlement commenced in cases where the Department provides incorrect information. However, the complainant had no record or details of her call to the Department and the Ombudsman could not establish what information had been given to the complainant.

The Department's award letter states that "lack of knowledge of entitlement to pension or the lack of knowledge of entitlement to pension of an agent/person acting for you is not regarded as satisfying the criteria for a backdate of pension entitlement". In the circumstances, the Ombudsman could not take into account the incorrect advice from the solicitor.

Following a review of this case, the Ombudsman was satisfied that the date of payment of the pension was calculated in accordance with the relevant legislation. The complaint was not upheld.

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## Invalidity Pension

Department of Social Protection

C22/14/0444

Date completed: 18/07/2014

### # Outcome: Not Upheld

The Ombudsman received a complaint on behalf of a woman whose Invalidity Pension (IP) claim was refused by the Department of Social Protection. In order to qualify for IP a person must (among other things) have been continuously incapable of work for a period of one year and the Department must be satisfied that the person is likely to continue to be incapable of work for at least a further year. In this case, the woman had been in receipt of Illness Benefit (IB) from the Department, and therefore incapable of work, for over a year before she submitted her claim. The issue in this case related to the condition that there be a likelihood that she would remain incapable of work for at least another year. The Department's Medical Assessors, did not consider that her incapacity for work would last for a year.

The woman had appealed the Department's decision to refuse her claim but before the Appeals Officer had issued his decision, and only 10 months after she had made her claim, the woman submitted a final IB medical certificate. According to her GP, she was fit to resume work the following day. The day after she submitted the certificate, which had the effect of stopping her IB payments, the woman signed-on for Jobseekers Benefit at her local Social Welfare Office and in so doing, declared herself to be capable of work. This is one of the conditions for receipt of JB.

As both the woman herself and her GP considered her to be capable for work less than 10 months after she submitted her IP claim, there was no basis on which the Ombudsman could then question the Department's decision that it did not consider that she would remain incapable of work for at least 12 months after the date on which she made her IP claim.

## State Pension (Contributory)

Department of Social Protection

C22/13/0557

Date completed: 25/11/2013

### # Outcome: Not Upheld

A woman complained that the Department of Social Protection had refused her application for the State Pension (Contributory). This was because she did not have a yearly average of at least 10 paid or credited full rate social insurance contributions between the date she started work in 1960 and the end of the last tax year before her 66th birthday in March 2010.

She said she was self-employed in 2008 and 2009 and was entitled to an additional 52 contributions for these years which would give her a yearly average of 11 contributions. However, the Department explained that her "S" Self Employed contributions for the years 2008 and 2009 were not used in calculating her average contributions as she did not pay these self employed contributions before her 66th birthday. This was a requirement of the Social Welfare Consolidation Act 2005. These PRSI contributions were paid after her 66th birthday in March 2010.

The Ombudsman was satisfied that the Department was acting in accordance with the Social Welfare Consolidation Act 2005 (as amended) in not including the woman's 2008 and 2009 contributions. Unfortunately, the woman did not have the qualifying number of contributions and her complaint could not be upheld by the Ombudsman.

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## Illness Benefit / Invalidity Pension

Department of Social Protection

C22/13/1576 / C22/13/1577

Date completed: 15/05/2014

### # Outcome: Assistance Provided

A man applied to the Department of Social Protection (the Department) for Illness Benefit and Invalidity Pension. The Department refused both applications. The Appeals Officer's decision said "the applicant had a medical assessment on 17 September 2012 and was declared capable of other work". From an examination of the Department's files it appeared that the Social Welfare Appeals Office wanted this case referred for an oral hearing in view of the wide variance between the man's GP medical report, the Department's Medical Assessor assessments, and the appellant's contention that he is awaiting an orthopaedic operation. However, there was no record of the oral hearing and there is no GP report on file. In view of these and other facts the Ombudsman asked the SWAO to review this case with a view to holding an oral hearing.

The Department reviewed the case and agreed to hold an oral hearing.

## Widows Pension

Department of Social Protection

C22/13/1390

Date completed: 25/06/2014

### # Outcome: Upheld

A woman had applied to the Department of Social Protection (the Department) for a widow's pension on the death of her husband. This application was refused. The woman appealed this decision. An oral hearing was held by the Department at the appeal stage which refused the woman's application.

Following clarification by the Ombudsman of a number of issues, the Department was asked to re-interview the applicant on the basis that she had supplied additional information which had not previously been brought to the attention of the Department. The Department undertook to do so and subsequently informed the Ombudsman that the Widow's pension was to be awarded to the applicant.

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## Invalidity Pension

Department of Social Protection

C22/13/0483

Date completed: 04/07/2014

### # Outcome: Not Upheld

A man had applied to the Department of Social Protection (the Department) for an Invalidity Pension (IP). His application was refused. The man asked the Ombudsman to review the Department's decision.

In order to qualify for IP, a person must satisfy a number of conditions such as being permanently incapable of work. 'Incapable of work' is defined as:

- incapacity for work of such a nature that the likelihood is that the person will be incapable of work for life, or
- an incapacity which has existed for 12 months prior to the date of claim, and where the Deciding Officer or an Appeals Officer is satisfied that the person is likely to be unable to work for 1 year from the date of claim.

While the man's doctor had certified that he was no longer capable of doing the work he had previously been capable of doing, the doctor did not state that the man was incapable of work. The Department review had established this and the man had not supplied any additional evidence to counter this. Accordingly the Ombudsman could not uphold the complaint.

## Contributory Pension

Department of Social Protection

C22/13/1073

Date completed: 02/05/2014

### # Outcome: Assistance Provided

A man had asked the Department of Social Protection (the Department) about his future pension entitlements. As a result of his enquiry the Department discovered that he had incorrectly been awarded credits in the past when he was not entitled to them. The Department said that based on his contribution history (from 1968 and projected forward to 2015), he would have 1,975 contributions which gives a yearly average of 42 contributions. Based on current rates, this would give the man an entitlement of €225.80 per week in 2015. The man contacted the Ombudsman as he was very concerned about the impact on his future pension entitlements.

The Department explained that the man could purchase additional voluntary contributions. It also set out in detail how much he would have to purchase in order to qualify for the maximum contributory pension.

As the Department had acted in a reasonable way and had provided assistance to the man, the Ombudsman could not uphold the complaint.

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## Backdating of State Pension

Department of Social Protection

C22/13/1717

Date completed: 15/05/2014

### # Outcome: Not Upheld

A man's complaint related to the refusal of the Department of Social Protection to backdate his State Pension Contributory to June, 2008, when he became entitled to claim the pension. He had not submitted his claim until February, 2012 because he had been trying to have errors in his income tax and PRSI records resolved by the Revenue Commissioners and the Department of Social Protection. His application to have the pension backdated to 2008 was refused on the basis that there had been no legislative or other barrier to his applying for the pension in 2008. His subsequent appeal was not upheld.

He had retired as a Garda in 1999 and became self employed. He had notified the Revenue Commissioners and was told that if his income from self employment exceeded €2,500 per annum he would have a liability to pay at least a minimum payment of €215 per annum in PRSI contributions. Although he had submitted income tax returns annually showing his income from self employment in excess of that required for Class S contributions, he discovered in 2006 that he had only been credited with contributions in respect of his Garda pension. He received contributions records from the Department of Social Protection in 2009 which showed that between 1999 and 2007, only Class K contributions had been recorded with the exception of 2005, when 52 Class S contributions were recorded.

After corresponding with the Department and the Revenue Commissioners in 2009, he had not followed up with either of them until May, 2011.

Section 32 of the Social Welfare Act, 1997 only allows for a State Pension (Contributory) to be backdated for 12 months from when the claim is made, unless there are exceptional circumstances outside of the applicant's control. This man could have submitted his application for the pension in 2008. The Revenue Commissioners had written a detailed letter to him in 2003 outlining what his responsibilities were as a pensioner who had other income from self employment. In 2009 it was noted that that he had not been recording his self employment income correctly on his tax returns. This had resulted in the wrong liability being deducted from him. He had been told that the onus was on him to ensure that his tax returns were completed correctly. If he had he sought annual balancing statements he could have ensured that any non PAYE income had been correctly treated. Despite all of this, he had not taken action to resolve matters until 2011.

As the Department of Social Protection had acted in accordance with the Social Welfare legislation and there was no evidence presented of exceptional circumstances arising which were outside of the complainant's control, the Ombudsman could not uphold this complaint.

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## Pension Entitlements

Department of Social Protection

C22/13/1542

Date completed: 19/05/2014

### # Outcome: Assistance Provided

A woman was in receipt of a Widow's Pension from 1986 until she remarried. Her second marriage ended in divorce when she was 65 years of age and she then moved abroad. There were two aspects to her complaint:

1. the number of contributions calculated in respect of her Contributory State Pension and
2. her view that she was entitled to be paid the equivalent of her first Widow's Pension following her divorce from her second husband.

She had a mix of Class A and reduced rate PRSI in her own right and as such qualified for a Mixed Insurance Pension rather than a standard one. She wanted to revert to her Widow's Pension (Survivor's Pension) rather than claim the Retirement Pension (Mixed Insurance State Pension Transition) she was put on, as there was a higher rate of payment. The difference in the payment was around €30 per week. She subsequently transferred to the Mixed Insurance State Pension Contributory when she reached 66 years of age.

Having examined the Department's file in relation to the State Pension Transition, the Ombudsman concluded that the Department had calculated her pension entitlement correctly. However she said that not all of her contributions had been included by the Department of Social Protection in calculating the entitlement.

The Ombudsman asked the Department to review its records and as a result additional contributions were found in respect of the years 2009 and 2010. Her pension was increased as a result.

There is a provision under the Social Welfare Acts, 2005 wherein if the second spouse is deceased and his/her contributions would not entitle the widow/widower to a Survivor's Pension equivalent to that which they had received after the first spouse died, they can be paid the equivalent of the first Survivor's Pension, even if the applicant has been divorced from the second spouse. In this instance, the woman's ex-husband is still alive and therefore she is not entitled to receive a Widow's Pension at present. In the event that her ex-husband dies, she can then submit an application for a Survivor's Pension based on his contributions, despite their divorce. If his contributions are not sufficient for her to receive a pension equivalent to that she previously received when her first husband died, she will receive the higher rate of payment.

## VARIOUS OTHERS

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### Refund of PRSI Contributions

Department of Social Protection

C22/13/0383

Date completed: 31/03/2014

#### # Outcome: Not Upheld

A 78 year old woman wrote to the Ombudsman regarding her application for a PRSI refund from the Department of Social Protection. The refund related to a 12 year period. The woman had worked full time since she was 66 years of age. Since then she had been paying the wrong rate of PRSI. (When she turned 66 she should have automatically gone on to Class J but her employer continued to pay PRSI contributions at Class A. ) When she discovered the error she applied for a refund to the Department of Social Protection. However, the Department provided her a refund for four years only rather than refunding her for all twelve years.

The legislation in question limits the Department's scope to retrospectively review entitlements to four years. Following an examination of the case, the Ombudsman considered that the Department had assessed the woman's application for a PRSI refund in accordance with the legislation by paying her for a four year period and could not uphold the complaint.

## Refund of PRSI contributions

Department of Social Protection

C21/13/1274

Date completed: 01/04/2014

### # Outcome: Upheld

A dentist wrote to the Ombudsman complaining that the Department of Social Protection had not correctly recorded his PRSI contributions. The man said he had paid Class S PRSI contributions since 1988 (the year that compulsory social insurance was introduced for self-employed persons). According to the Department's records, however, he only commenced paying Class S contributions in 1993/94.

Despite attempts over a number of years, the dentist could not get the Department to accept that his class S contributions were paid from 1988.

The Ombudsman's examination of the case showed that the Department's PRSI contribution records for the man were incorrect. The Ombudsman contacted the Department's Self Employment Section and it confirmed that the records in Self Employment Section did not appear to tally with the records in the Department's Records Section. The records showed he had made class S contributions from 1988 to 1993.

The Ombudsman asked the Department to ensure that its records were amended to show the correct PRSI contributions for the man. Within a week the Department issued the man with a copy of the amended records which showed that he had in fact paid Class S contributions from 1988.

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## Cost of Birth Certificate (GRO)

Department of Social Protection

C13/13/1653

Date completed: 21/05/2014

### # Outcome: Not Upheld

A man complained about the cost of obtaining birth certificates for himself and his wife for social welfare purposes (They had applied for a new Public Services Card). He paid the standard fee as he was not aware that he was entitled to obtain the certificates at a reduced cost. He was subsequently refused a refund of the excess fees paid.

The man claimed he was not informed that he could purchase the birth certificates at a reduced rate by either the Department of Social Protection or the Civil Registration Service.

The Registrar General explained that a letter is required from the Department if a certificate is needed for social welfare purposes. This is needed to comply with social welfare legislation. The Civil Registration Service at Joyce House has several signs in place informing clients that if a certificate is required for social welfare purposes, or for the new Public Services card, a letter from the Department must be produced to obtain the certificate at a reduced fee.

The notices also state that if a full fee has been paid for a certificate, it is non-refundable. In the circumstances, the Ombudsman could not uphold the complaint. However, the Registrar General contacted the Department and recommended that the invitation letter to SAFE registration be amended to advise the customer that a reduced cost certificate could be provided on production of the invitation letter. The Department has now amended the invitation letter. The information has also been placed on the Department's website.

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### Jobseeker's Benefit

Department of Social Protection

C22/13/1661

Date completed: 18/07/2014

#### # Outcome: Not Upheld

A man complained to the Ombudsman regarding his entitlement to an Adult Dependant Allowance (ADA) while he was a participant on Community Employment, which was run by FÁS.

He started Community Employment (CE) on 1 March 2010 at which time he was getting Jobseekers Benefit at the single rate. The amount payable on CE is determined by the Department of Social Protection. The man commenced CE at the correct rate. However, when his wife became unemployed in June 2010 he was entitled to claim an ADA for her. He did not notify the authorities of his change in circumstances and therefore continued to receive payment at the single rate.

When the man completed the CE programme in February 2013, he applied for retrospective ADA for his wife, backdated to June 2010. This was refused by the Department on the basis that he did not notify the authorities of his change in circumstances at the time. CE is an administrative scheme and there are no guidelines for dealing with claims made following the completion of a CE programme. In the absence of any specific guidelines on retrospective payments on CE, guidelines on Claims and Late Claims were used as a reference. The guidelines say that lack of knowledge by itself is not sufficient reason for not claiming in time.

The Ombudsman's examination of this case was restricted to the actions of the Department as FÁS came within his remit from 1 May 2013 only. Following a review of the case, he found that the Department's decision not to backdate the ADA was fair and reasonable and in accordance with published procedures. The case was not upheld.

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### Disability Allowance

Department of Social Protection

C22/12/1595

Date completed: 19/06/2014

#### # Outcome: Upheld

A man, who is a non-Irish national, was refused Disability Allowance (DA) in 2010 by the Department of Social Protection (the Department) on the grounds that he did not satisfy the

Habitual Residence (HR) conditions. He was also refused on medical grounds. The man had an earlier DA claim in 2009 and, while it too was disallowed on HR grounds, he was deemed to have satisfied the medical criteria on that occasion.

The Social Welfare Appeals Office (SWAO) decided that the man had not established a viable centre of interest in the State and, therefore, did not satisfy the requirements of the Habitual Residence condition which applied to his claim for Disability Allowance. There were a number of factors considered by the Appeals Officer, including :

- no evidence of continuous residence in Ireland from March 2006 to May 2009
- he had not established a pattern of employment in the State
- his main centre of interest is not Ireland
- he intended to rely on State supports and benefits while in Ireland, and
- the evidence available did not substantiate habitual residence.

With regard to whether the man's main centre of interest was in Ireland, the Ombudsman established that his entire family (wife, son, mother, brothers and sister) were also living in Ireland, and his mother and one brother were in receipt of Social Welfare payments for which they had to be HR. The man's wife had not come to Ireland with him in 2006 but by the time of his DA application in May 2009, she had joined him here and had remained here ever since. Another factor in the DSP decision was that the man had not established a pattern of employment in the State. The man had stated that he had worked and paid PRSI contributions in this country for almost a year before he had made his DA claim and he provided a P60 to this effect. However, the Department stated that it had no record of these contributions. The Ombudsman contacted the Department and established that the man's employment contributions had been sent in at the relevant time. However, because there was an error with his PPSN on the documentation submitted, the contributions were not recorded on his social insurance record. Instead, they were held on an 'emergency file'. The man's social insurance record was subsequently updated and now includes these employment contributions. The Ombudsman considered that this period of employment (43 weeks for one employer) established a pattern of employment in Ireland, and also that he had been living here during the relevant period. The Ombudsman also considered that the fact that the man had been employed here demonstrated that it had not been his intention to rely on State supports and benefits while in Ireland.

In light of all this, the Ombudsman asked the Social Welfare Appeals Office (SWAO) to review its 2009 decision that the man did not satisfy the HR conditions. The SWAO revised its decisions of 2009 and 2010 and the man is now regarded as being habitually resident for Social Welfare purposes from June 2009. Following this revised decision by the SWAO, the Department then established that the man also satisfied the medical and means criteria for receipt of DA. The outcome was that he was awarded DA at a weekly rate of €312.80 and received arrears of €79,468.

## Disablement Benefit

Department of Social Protection

C22/13/1573

Date completed: 23/01/2014

### # Outcome: Not Upheld

A man complained about the refusal by the Department of Social Protection (the Department) of his Disablement Benefit claim in respect of occupational deafness. Disablement Benefit (DB) is a benefit under the Occupational Injuries Scheme which can be paid to a person if they suffer a loss of physical or mental faculty because of an accident at work, or a prescribed disease contracted at work.

The DB claim was made in January 2012 and, according to the man's application form he had last worked at this type of occupation in 2003. Elsewhere on the application he said that he last worked at this in 1990. The man's DB application was refused on the grounds that his hearing loss is not an occupational injury within the meaning of the Social Welfare Act 2005. The Appeals Officer who considered the appeal referred to Article 46(2) of Statutory Instrument 102 of 2007 which stipulates that any claim in respect of occupational deafness must be made within five years of ceasing work in an occupation prescribed in relation to occupational deafness.

The Ombudsman found that the Department's decision on the claim was correct and in accordance with the law governing the scheme.

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## Rent Supplement

Department of Social Protection

C22/13/1526

Date completed: 31/01/2014

### # Outcome: Not Upheld

A man who has joint custody of his young son said he should be entitled to receive a Rent Supplement (RS) from the Department of Social Protection (the Department) at the rate applicable for a single parent with one child (i.e. €950 per month). However, he was refused and was informed that, in his case, the rate for a single person, €520 per month, applied.

The basis for the Department's decision was that:

- the man was in receipt of the single rate of Jobseeker's Benefit (JA) and he was not receiving a child dependant rate, or any other payment in respect of the child, including child benefit.
- the child's mother was in receipt of One Parent Family Payment (OPFP), which included an allowance in respect of the child and she also received child Child Benefit (CB)
- the child's mother was housed by South Dublin County Council and therefore the housing needs of the child were already being met [S. 189 of SW Con. Act 2005]

The Department said that its Rent Unit is not a Housing Authority (as Local Authorities are). It said that its purpose is to provide temporary, short term housing for the applicant based on the appropriate rent levels in place at the relevant time.

The man had provided a Court document to the Department stating that he had been appointed as joint guardian of his son, which is not the same as being granted joint custody. The document stated that both parents had entered into arrangements regarding custody of [and access to] the child.

The Ombudsman concluded that the legal basis on which the child's mother was receiving an increase in the rate of her OPFP, as well as child CB, meant that he was a qualified child who normally resided with her. As the man's ex-partner, with whom his son normally resided, had been allocated Local Authority Housing, the Ombudsman accepted that the child's housing needs were met. The Ombudsman determined that there were no exceptional circumstances that would merit support for the man's application to receive RS at the higher rate on the basis that he and a qualified child normally residing with him had a housing need.

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### Family Income Supplement

Department of Social Protection

C22/13/1265

Date completed: 24/04/2014

#### # Outcome: Partially Upheld

A man complained that the Department of Social Protection had carried out a review of his Family Income Supplement (FIS) claims over a number of years and had decided that he had not been entitled to receive FIS for a number of periods when he was not working. The Department informed him that as a result he had been overpaid in excess of €21,000 and that it proposed to recover this overpayment at €50 per week from his current payment.

There were two distinct elements to this complaint. The first was the decision that he was not entitled to FIS during specified periods, which was appealable to the Social Welfare Appeals Office (SWAO). The second was the consequential overpayment, which was not appealable, although he had been informed of his right to comment on the proposed method of recovery. When the man wrote to the Department his focus was on the proposal to recover the overpayment. By the time he complained to the Ombudsman, almost a year after the revised decisions were made, the time frame within which he could have appealed against those decisions to the SWAO had elapsed.

The Ombudsman noted that the information in the Department's letter to the man which told him about the revised decisions was incorrect. The letter referred to the revision of one decision made on one (incorrectly stated) date, whereas there had in fact been revisions of four separate decisions made on four different dates over a number of years. In the circumstances, the Ombudsman considered that it would be appropriate for the Department to issue a revised decision to the man. The Department indicated that it would do this. The effect of issuing a revised decision was that the man was given the right to appeal it to the SWAO. The Ombudsman discussed this with the man and explained that he would have to avail of that right before his office could examine the complaint further. The case was closed at that stage.

## Bereavement Grant

Department of Social Protection

C22/13/0689

Date completed: 27/03/2014

### # Outcome: Upheld

A man complained that the Department of Social Protection had refused his application for the bereavement grant for the funeral expenses he had incurred to bury his late father because the grant had already been paid to a third party. He said that he was able to provide a coroner's certificate and proof of payment of the funeral bill and that this was the required documentation under the terms and conditions of the Bereavement Grant scheme.

Having reviewed the Department's file, the Ombudsman was satisfied that the man had provided the correct documentation for his grant application. The Ombudsman was also concerned that there was insufficient documentary evidence on the Department's file to show that the third party had made a valid application. Following a further examination, the Department agreed that errors had been made in dealing with the man's grant application. The Department accepted that the man was the person responsible for paying the funeral bill for his late father, that he had made a valid application, and that he had supplied the required documentation in respect of his application.

The Department agreed to send the man a cheque for €850 and to issue him with an apology for the way in which his application was dealt with, and for the distress and inconvenience this had caused him.

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## Back to Education Allowance

Department of Social Protection

C22/13/1548

Date completed: 14/05/2014

### # Outcome: Not Upheld

A woman applied for a Back to Education Allowance (BTEA) from the Department of Social Protection. She had been getting Job Seekers Allowance as required by the terms of the BTEA. She contacted the local social welfare office and was told that she would qualify for BTEA. She rang local the social welfare office a second time and they confirmed that she would qualify for BTEA. The Department refused her application. She brought her case to the Ombudsman.

The woman in this case was under 21 years of age. The scheme criteria say that to qualify for the Back to Education Allowance, you must be at least 21 years of age. You must be 24 for a third-level postgraduate course. However, if you are getting Job seeker's Allowance, Job seeker's Benefit or One-Parent Family Payment for the required period (3 months/78 days or 9 months/234 days), are aged between 18 and 20 and have been out of the formal education system for at least 2 years you may qualify.

In this case the woman had not been out of full time education for 2 years and, therefore, the Ombudsman could not uphold her complaint.

## Back to Work Enterprise Allowance

Department of Social Protection

C22/14/0084

Date completed: 28/05/2014

### # Outcome: Not Upheld

A man had been unemployed for a number of months and applied to the Department of Social Protection (the Department) for a Back to Work Enterprise Allowance. The man's application was refused and he contacted the Ombudsman.

Prior to applying for the Back to Work Enterprise Allowance the man had applied for a Short Term Enterprise Allowance. Accordingly when the man's entitlement to Jobseeker's Benefit ran out so did his entitlement to the Short Term Enterprise Allowance. Short Term Enterprise Allowance ends when an applicant is no longer entitled to receive Jobseeker's Benefit, whereas Back to Work Enterprise Allowance (BTWEA) scheme encourages people getting certain social welfare payments to become self-employed. If you take part in the BTWEA you can keep a percentage of your social welfare payment for up to 2 years.

There was no maladministration by the Department in this case. The man was not entitled to apply for the Back to Work Enterprise Allowance as he was already in receipt of the Short Term Enterprise Allowance.

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## Jobseeker's Benefit

Department of Social Protection

C22/13/1370

Date completed: 17/06/2014

### # Outcome: Not Upheld

A man complained to the Ombudsman because the Department of Social Protection (the Department) had refused his application for Jobseeker's Benefit.

In 2009 the man had changed his work pattern from five days a week to weekends only with the option of working additional hours should additional hours become available. The Department decided that he had suffered a substantial loss of employment and as such the Department paid his initial application for Jobseeker's Benefit. When this **initial entitlement** ran out the man reapplied for Jobseeker's Benefit. However the Department decided that the situation was not the same and that as the man had been working weekends only for over two years he had not suffered a substantial loss of employment.

In order to receive Jobseeker's Benefit the applicant must satisfy a number of conditions, one of which is ....

*"(d) other than in the case of a person engaged in casual employment, he or she has sustained a substantial loss of employment in any period of 6 consecutive days."*

When the man made his claim for Jobseeker's Benefit in 2011, he was working weekends only. In 2011, he was contracted to work weekends and also any additional relief work if it became available. He had a permanent contract of employment for his weekend work and as such he did not satisfy the Department's definition of a casual worker. Accordingly he was required to have sustained a substantial loss of employment in any period of 6 consecutive days to be entitled to claim Jobseeker's Benefit. The work records supplied by his employer to the Department indicate that he had not suffered a loss of employment with reference to his weekend work and therefore did not have an entitlement to Jobseeker's Benefit. His complaint was not upheld.

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## Eligibility for Disability Allowance

Department of Social Protection

C22/14/0126

Date completed: 14/07/2014

### # Outcome: Not Upheld

This complaint related to the refusal of an application for Disability Allowance by the Department of Social Protection. The man concerned had been diagnosed with and had surgery for Prostate Cancer. Within five months of having had the surgery his entitlement to Illness Benefit had run out so he had applied for Disability Allowance. The application was refused on the basis that he didn't have a medical need. His appeal was also turned down on the same basis. The gentleman maintained that his GP and his Consultant had stated that he would be unable to work for an indefinite period of time.

The report which was completed by the man's GP did not support the contention that he would be unable to work or undertake training for rehabilitation purposes. The report indicated only minor incapacity. The Consultant's Registrar's report which had been written two months after the surgery indicated that the patient was making a satisfactory recovery. The GP had subsequently provided a letter in support of the man's appeal which appeared to contradict his earlier report but did not specify whether or not the level of disability had increased or why the person would be unable to undertake any form of work or training.

Disability Allowance is payable where a person is substantially restricted in undertaking work which would otherwise be suitable with reference to their age, experience and qualifications and where the disability is expected to continue for at least a year.

The Ombudsman did not uphold the complaint on the basis that there was insufficient evidence to support the contention that the complainant was unfit for work and thereby eligible for Disability Allowance.

## Household Benefit package discontinued

Department of Social Protection

C22/13/0168

Date completed: 15/04/2014

### # Outcome: Upheld

A man complained to the Ombudsman that his mother's household benefits package was discontinued by the Department of Social Protection without notification. While the Department restored her benefits, the man and his mother complained about the way the Department had taken its decision. The decision had caused considerable distress and trouble to them both.

The man had contacted the Department to enquire about nominating his wife to be an 'appointed agent' for his mother, so that she could collect his mother's pension from the Post Office. He informed them that she had become too physically frail to collect it herself. In the course of submitting the necessary documentation to the Department, the man mentioned that his mother had been ill and was admitted to hospital. The Department interpreted this information as notification that the man's mother had 'changed address' and immediately acted to discontinue her household benefits package.

The man's mother had been admitted to hospital for short stay, acute hospital in-patient treatment. She returned home after only a few weeks.

The Department accepted the Ombudsman's view that its own principles of natural justice and good practice had been breached; by not informing the man's mother of the imminent discontinuance of her household benefits package and affording her the opportunity to contest that decision.

The Department also accepted that information posted on its website regarding in-patient hospital visits and their impact on household benefits packages, was misleading. It agreed to amend the information and ensure that staff were told not to discontinue household benefits packages from recipients without giving them advance warning.

The Department wrote to the man and his mother apologising for their action and the distress caused.

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## Habitual Residence Condition

Department of Social Protection

C22/12/1953

Date completed: 21/01/2013

### # Outcome: Upheld

A woman (non Irish national) complained to the Ombudsman that her application for One Parent Family Payment (OPFP) was refused by the Department of Social Protection, as she did not satisfy the Habitual Residence Condition (HRC).

In the course of examining the complaint the Ombudsman concluded that there was a breakdown in communication between the OPFP Local Office, the Appeals Office and the woman, which adversely affected her entitlement.

She had attempted to introduce new information affecting her HRC status and entitlements through the appeals office. The appeals office however only considered the facts regarding her HRC status at the time of the original decision disallowing her application. Her change of circumstances should have been accepted as an amendment to her application, or incorporated into a new application, by the Local OPFP office. She was not correctly advised as to how to enter her change of circumstances into the system.

When the Ombudsman brought this information to the Department's OPFP section they reviewed the woman's application and awarded her a backdated OPFP payment amounting to almost €8,000.

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### Allegations of a false claim

Department of Social Protection

C22/13/0373

Date completed: 07/08/2014

#### # Outcome: Upheld

A man complained to the Ombudsman that he was unfairly billed by the Department of Social Protection for an overpayment of Disability Allowance. The Department demanded repayment of some €63,000. The man appealed this demand unsuccessfully, so he asked the Ombudsman to examine his case. The alleged overpayment accrued over a six year period between 2005 and 2011.

The Ombudsman learned that the Department received an anonymous report alleging that while he was receiving Disability Allowance the man was working in the fruit and vegetable business. It also alleged that his wife was employed and that the family home was used to accommodate students in lodgings. It was further alleged that the man had a holiday home and that his wife was bequeathed a farm by her late father.

The man denied that he was working during the period in question. In the course of responding to the Department's allegations the man provided medical evidence confirming he was unfit to work or to drive professionally (which had been an integral element of his work), since 2002.

He provided evidence that the holiday home was no more than a quarter acre site, officially valued at €2,000, where he once had a mobile home.

The man's wife denied that she was working at the location identified in the anonymous report. The Department offered no evidence or further observations about this allegation. Neither had she benefited from the share in the farm she was alleged to have inherited.

The man and his wife acknowledged that they had tried providing lodgings for students for a brief period but that it proved to be a venture not worthwhile.

Despite the man's attempts, along with his solicitor, to satisfy the Department regarding his entitlement to D/A, the Department maintained its view that he had "failed to disclose his means" and that a full refund of the €63,000 must be made.

The Ombudsman queried the Department's findings in this case. The Ombudsman noted that the DA claim had been approved initially following the usual checks. In the circumstances, the Ombudsman took the view that the onus was on the Department to produce sufficient evidence that the man was no longer entitled to receive the payment. The Social Welfare Appeals Office agreed with the Ombudsman's view. In light of the Ombudsman's argument the Department agreed it had not demonstrated that the man's means exceeded his statutory level of entitlement for the period in question. The Department decided not to pursue repayment.

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## Supplementary Welfare Allowance

Department of Social Protection

C22/14/1360

Date completed: 07/08/2014

### # Outcome: Not Upheld

A man complained to the Ombudsman that his weekly social welfare income had been cut off. He had been receiving a reduced weekly payment of supplementary welfare allowance on the grounds that he earned €70 per week as a part time cook. The reason for disallowing the man's supplementary welfare allowance was that he did not meet two of the criteria for SWA, i.e. he was not:

- *"registered for unemployment in the manner that the Minister may prescribe"*

and he did not:

- *"make an application for any statutory or other benefits or assistance to which the person may be entitled including any benefits or assistance from countries other than the State."*

The Ombudsman learned that the man had a history of psychiatric treatment.

The Ombudsman considered whether the man's medical condition was such that it would be unreasonable to expect him to be able to make such an application particularly as SWA was originally designed to ensure that "... any person in the State whose means are insufficient to meet their needs and the needs of any qualified adult or qualified child of the person shall be entitled to supplementary welfare allowance", and to be a safety net for people who might otherwise fall outside the Social Welfare code.

The Department, (who had over a long period been helpful and supportive to the man), argued that there was evidence to demonstrate that the man was capable of compliance with several other normal living demands such as, holding down part time employment, running a car, paying household charges, etc.

The Ombudsman accepted the Department's evidence and did not uphold the complaint.

## Refusal of SWA arrears

Department of Social Protection

C22/13/0081

Date completed: 27/06/2014

### # Outcome: Upheld

A man complained to the Ombudsman that he ran into arrears of rent with his landlord and lost his tenancy as a result of having his Supplementary Welfare Allowance – Basic Income and Rent Allowance cut off. He maintained that he and his son, who was living with him, ended up homeless for a period of time.

The main reason for the disallowance was that the man was suspected of cohabiting with his son's mother and that he failed to satisfy the Designated Officer that he was not. Despite his protests to the contrary his Basic Income and Rent Allowance were disallowed. In reaching the decision the Designated Officer relied on an investigation and report conducted by a Social Welfare Inspector.

He appealed the decision, but the appeal was not considered or decided for ten months. The man said he had to sell his possessions and rely on charity to support himself and his son during that period.

The appeals officer in the Department of Social Protection overturned the disallowance, noting, among other things, "I am of the opinion that cohabitation has not been established in this case". He awarded backdating of Basic Income and Rent Supplement to the date of disallowance. However, as the man had lost his tenancy some four months after his rent supplement was stopped, the Department paid arrears of rent supplement for the period he was in the tenancy only.

The man complained that although he won his appeal his living circumstances were not restored to the way they were before the incorrect decision to disallow his supplementary welfare allowance was implemented.

The Ombudsman agreed that he had been treated unfairly by the Department and that there was an absence of natural justice in the Designated Officer's decision. The Ombudsman asked the Department to pay €3,500 to the man, i.e. the amount equivalent to the rent supplement he would have received had he remained in the tenancy between June, when he lost his tenancy, and December, when he won his appeal. The Ombudsman further asked the Department to apologise to the man and pay an additional amount of €1,000 in recognition of the adverse affects suffered by him and his son, as a result of the Department's actions. The Department accepted and agreed to the Ombudsman's requests.

## Calculation of weekly means

Department of Social Protection

C22/13/1567

Date completed: 16/07/2014

### # Outcome: Not Upheld

A man complained to the Ombudsman that his application for a Fuel Allowance, under the Winter Fuel Scheme, administered by the Department of Social Protection (the Department), was refused. The basis for the refusal was that his income exceeded the weekly means threshold by 17c. Broadly, in the case of the Fuel Allowance, a single applicant can earn up to €100 per week over and above the State Pension rate of income and still qualify for the allowance.

The formula used to calculate the weekly means for recipients of many means tested allowances is set in legislation as follows:-

Multiply the gross calendar monthly income by 12 and divide the annual amount by 52.

In the case in point the calculations were as follows:-

Gross calendar monthly income €434.10 x 12 ÷ 52 = €100.17 per week.

The man argued that the formula used by the DSP for calculating his weekly means was unfair to him and that if an actually more accurate formula was used his means would fall within the entitlement threshold by 10c per week.

The man suggested the following formula as a more accurate and beneficial one:-

Gross calendar monthly income €434.10 x 12 ÷ 365 x 7 = € 99.90 per week.

The Ombudsman questioned the DSP about the appropriateness of the formula it used in the complainant's case.

The DSP advised that although the Winter Fuel Scheme is an 'administrative scheme' (which means that the details relating to entitlement conditions, etc., are not enshrined in legislation), the formula the Department uses for the scheme is essentially the same formula used for most of its means tested statutory schemes. For statutory schemes the formula is set out in legislation as annual income divided by 52. It is the Department's view that using this formula for the Winter Fuel Scheme is therefore reasonable and consistent.

In the circumstances, the Ombudsman could not uphold the complaint.

## Maternity Benefit

Department of Social Protection

C22/13/0088

Date completed: 19/11/2013

### # Outcome: Upheld

A mother who returned to work three days after giving birth prematurely found herself in a situation where she was not entitled to six months Maternity Benefit. The woman noted that her baby was in a hospital when she went back to work and said she did not know that this would mean she could not get Maternity Benefit.

The Ombudsman found that the Department of Social Protection's decision was correct under the Maternity Protection Act 1994. However, the woman had given further medical evidence to the Ombudsman to support what she felt were the exceptional circumstances in her case.

The Ombudsman asked the Department look at the matter again because of the new information given by the woman. Following this, the Appeals Officer allowed payment of the Maternity Benefit. However, the Appeals Officer decided to reduce the 26 weeks of payment by the number of days the woman had worked during this period. The Ombudsman considered the Department's position in this case to be reasonable.

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## Late Application for Back to Education Allowance

Department of Social Protection

C22/13/1432

Date completed: 14/05/2014

### # Outcome: Not Upheld

A complaint was received from a 19 year old third level student who had his application for the Back to Education Allowance refused by the Department of Social Protection because the application had been made late. The Back to Education Allowance is a non-statutory stand alone scheme run by the Department to facilitate people in receipt of certain qualifying social welfare payments, to return to education without losing their welfare payment. Applications for the Back to Education Allowance must be made prior to the commencement of an approved course of study. However an application may be considered within 30 days of the commencement date of a course provided it is accompanied with evidence that reasonable grounds exist for doing so. In exceptional circumstances applications may be considered after the 30 day limit.

In this particular case the application was made on the 21st January whereas the course commenced the previous September. The application was a full four months late. The Department said the lack of knowledge about the scheme was not considered sufficient reasonable grounds for it to accept a late application. However the Department reviewed the application again on receipt of medical evidence submitted in support of the claim for exceptional circumstances and determined that the medical evidence did not establish exceptional circumstances.

As the Back to Education Allowance is a non-statutory scheme an applicant cannot appeal a decision to the Social Welfare Appeals Office. In these circumstances it is considered reasonable and fair that a review be allowed of a decision which adversely affects an applicant. The Ombudsman determined in this case that not only did the Department apply the rules of the scheme fairly but noted that the Department afforded the complainant such a review and provided for a second review on receipt of further information. The Ombudsman considered that there was no basis to uphold the complaint.

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# About the Office of the Ombudsman

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

At present, the public bodies whose actions may be investigated by the Ombudsman are: all Government Departments, the Health Service Executive (HSE) (and public hospitals and health agencies providing services on behalf of the HSE), Local Authorities, publicly funded third level education institutions and educational bodies such as the Central Applications Office (CAO) and Student Universal Support Ireland (SUSI).

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

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## Making a Complaint to the Ombudsman

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

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

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

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## Contacting the Ombudsman

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

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

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

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

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## Feedback on the Casebook

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

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