



The Ombudsman's CASEBOOK

Office of the Ombudsman, Dublin, Ireland.

Issue 2 Winter 2014/15

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Learning from complaints

Welcome to the second edition of The Ombudsman's Casebook. The Casebook is a digest of summaries of cases closed by my Office in the last quarter which would not generally have been widely available or publicised. I am pleased to say that we received a lot of positive feedback on the first edition.

The Casebook is aimed very much at people with responsibility for managing or improving public services. It lets you see what are the trends in particular service areas and to learn from mistakes, or equally, to see where decisions of public bodies have been right and to gain reassurance. A good example is our 'Key Case' which shows the improvements that can be brought about when, in this case a hospital, acknowledges its mistakes and actively engages with the complainant ([Case Ref. H78/13/0402](#)).

Organisations which want to improve are good at aggregating information on things that go wrong. A hospital, for example, can bring together information from complaints, from clinical incidents, from whistle blowers and from litigation to give a comprehensive picture of issues which may need to be addressed.

Sometimes, these will be one-off incidents without wider learning, but equally, aggregating information in this way can help to identify trends which point to systemic problems. Developing in-house casebooks is a useful tool for larger organisations where learning may not otherwise reach front line staff and



Ombudsman Peter Tyndall

also can help those in positions of leadership or governance to monitor actions being taken to put things right.

Our public services get it right most of the time. Of the many interactions with service users, the vast majority go as they should. Inevitably, with so many decisions being taken, often by very hard-pressed staff, and so many services being provided, from time to time, something will not go as it should. Being able to acknowledge mistakes, apologise for them, put things right and take steps to reduce the risk of a recurrence are the hallmarks of a well managed organisation. I hope that this latest Casebook will help our public services continue to improve for the benefit of all of their users.

Peter Tyndall, Ombudsman
January 2015

Lessons Learned

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.

Are your procedures and rules flexible?

All organisations need procedures and rules to ensure consistency and to ensure that everyone is clear on what is required. However, rules cannot be prescribed to deal with every circumstance. It is important that rules and procedures are interpreted in a fair and flexible manner, and do not discriminate against individuals or particular sectors in society. In the last quarter the Ombudsman examined a number of cases which resulted in procedures or rules being either changed or interpreted in a more flexible way:

[R02/14/0424](#): An Bord Altranais - Flexibility around criteria for registration of midwives.

[H82/13/1400](#): Beaumont Hospital - Changes made to A&E visiting hours.

[H26/13/0784](#): University Hospital Galway - Changes in policy when administering medication.

[C31/14/0191](#): Property Registration Authority - Ensuring vulnerable people are properly represented.

Key Question

Have you ensured that staff interpret rules and procedures in a flexible and fair manner?

Have you ensured that existing and future procedures meet the intended purpose and do not discriminate?

Does 'fairness' require a change to the legislation?

Sometimes the Ombudsman comes across cases where the public body is administering legislation or rules correctly but the legislation or rules do not have the intended effect. Both the public body and the Ombudsman may take a view that the legislation or rule needs to be amended.

In one case a complaint involving the Student Grant Appeals Board and Student Universal Support Ireland (SUSI) - [E77/14/0834](#) resulted in an additional, relevant, allowance being included as a qualifying payment in the Student Grant Scheme 2014. The case involved a fostered child who was no longer eligible for the Foster Allowance after she turned 18.

Key Question

From your experience of administering legislation or rules has an inequity occurred? Have you drawn this inequity to the attention of those who have the power to change the rule or legislation, for example, the Oireachtas or parent Department?

Do you let complainants know of their right to complain to the Ombudsman?

Under the Ombudsman (Amendment) Act 2012, all public bodies must provide information to people on their rights of appeal or review, including the right to complain to the Ombudsman. It is also useful to include the contact details for our Office.

The Ombudsman received a number of complaints from people whose applications for a Primary Medical Certificate had been refused by the Disabled Drivers Medical Board of Appeal (see case [Q23/14/0939](#)). Among the issues discovered in the Ombudsman's examination was the failure to explain the reasons why their appeal failed and not letting people know they could complain to the Ombudsman.

Key Question

Do you make it clear to individuals that they have a right to complain to the Ombudsman and do you provide contact details for our Office?

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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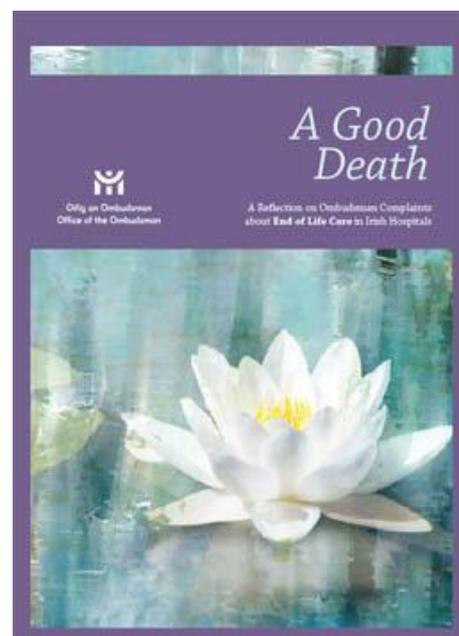
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'End of Life' Care

In a complaint about 'end of life' care the family was happy to eventually receive an apology from the hospital ([H66/11/3512](#)). 'End of life' care is a particularly sensitive area of care where simple steps can be taken to ensure the patient and their family experience the dignity and care that is required. In 2014 the Ombudsman published a report, *A Good Death - A Reflection on Ombudsman Complaints about End of Life Care in Irish Hospitals*. The report contains some useful suggestions for ensuring that 'end of life' care is delivered in an appropriate and sensitive way. A copy is available from our office or on our website: www.ombudsman.ie

Key Question

If your organisation is involved in 'End of life' care, have the relevant staff and management taken into account the lessons learned in the Ombudsman report – [A Good Death](#)?



Key Case

Health & Social Care

St James's Hospital (HSE Dublin South Hospital Group)

H78/13/0402

Assistance Provided

A man was having difficulties in making a complaint to St James's Hospital about his wife's care and treatment. She had been rushed to St James's Hospital having suffered epileptic-type seizures but unfortunately, her condition remained undiagnosed. Her husband said that his wife was very confused and was aggressive towards him and family members which was most unusual behaviour. He felt it might have been misinterpreted by medical staff. She had remained overnight in A & E before being transferred to a psychiatric hospital where she was detained for ten days. She was then admitted to another hospital where the diagnosis of Encephalitis was made. (Encephalitis is not a psychiatric disorder but an auto-immune disease).

The man was refused access to his wife's medical records. He was advised by hospital staff that he would need to send the hospital, by post, an original signed, and witnessed, letter of authority from his wife in order to gain access to the hospital records. He was told that the alternative was for his wife to write in directly and request her own records after which she could attend the hospital, with photo identification, and collect them. The man had explained to the hospital that his wife was unwell and could not sign a letter of authority nor could she write directly herself. Ultimately, the hospital released the records to the man but only after his wife became well enough to give her written authority.

Following contact from the Ombudsman, the hospital organised a meeting between the couple and the Clinical Director for Emergency Medicine, which both sides found very beneficial. The hospital subsequently wrote to the woman to apologise unreservedly and to explain that the hospital accepted that the treatment she had received was not up to standard. The Clinical Director acknowledged that all relevant diagnostic tests should have been completed fully to rule out a medical condition before the determination of a mental health condition was made. He said this was a fundamental requirement in terms of junior doctor training. Accordingly, he said he intended to present the woman's case at Grand Rounds (this is the training forum for consultants and junior doctors). He also offered the woman the opportunity of participating in the training event. The Clinical Director also raised the medical management of the woman with the Emergency Clinical Team to ensure there would be no recurrence of what had happened to her. He also undertook to brief the hospital's Medical Board to ensure that all medical teams were fully apprised of the condition and presenting symptoms and to stress the importance of completing medical investigative processes before referrals are made to the mental health services. Crucially, the hospital acknowledged that a full copy of the woman's healthcare records should have been sent to the psychiatric hospital, rather than a discharge summary, at the time of her transfer.

It accepted that such a summary would not have been sufficient to enable a full assessment of her condition take place in the receiving hospital, and that this may have contributed to the delay in the diagnosis of her condition. Again, the Clinical Director undertook to bring this important issue to the attention of the Medical Board to ensure that in all cases where a referral is being made to another hospital, a copy of the healthcare clinical notes is provided.

In relation to the release of medical records, the hospital said it fully accepted that the quality of the information that is made available to patients and relatives about the release of records under the legislation could be improved. Accordingly, the hospital revised the Patient Information Leaflet together with the information available on the hospital's website about the matter. This advised that requests relating to patients who are unable to provide written consent should include the relevant documentation outlining the reasons why they are unable to consent and be supported by a letter from the patient's clinician.

Agriculture

Compensation Losses

Department of Agriculture, Food and the Marine

C01/14/0437

Completed 03/11/2014

Not Upheld

A man complained that when he presented an animal at a Meat Plant for slaughter it was certified as unfit for human consumption and it had TB. The Department of Agriculture, Food and the Marine is supposed to immediately restrict a herd when TB is discovered but it did not restrict the man's herd for a number of weeks. The man felt that he was due compensation over and above the standard payments made by the Department in respect of animals with TB as it had erred in not immediately restricting his herd.

The Ombudsman found that the actions taken by the Department following its error were reasonable as the man was paid full market value for his animals and also paid Income Supplement following the delayed restriction of his herd. As it was found that the man was not put at a disadvantage, his complaint was not upheld.

Farm Development Grants

Department of Agriculture, Food and the Marine

C01/13/1308

Completed 14/10/2014

Upheld

A man submitted a complaint against the Department of Agriculture, Food and the Marine whose application under the Targeted Agricultural Modernisation scheme had been refused. The Department had written to the man requesting additional documents, including a stamped lease from the Office of the Revenue Commissioners. The man telephoned the Department twice to advise that the cost of obtaining a stamped lease was prohibitive.

A stamped lease was not necessary for this particular application. However, the Department did not inform the man of its mistake even though it knew that the reason the man did not progress the application was because of the cost. There was nothing on the Department's file to indicate that it had tried to advise the man of its mistake even though it knew that the man would lose the entire grant.

The Department was asked to review its decision. Following a review, the Department awarded the grant to the man. The Department was also asked to review all of its schemes to ensure that no one else was similarly affected. The Department confirmed that no one else was affected and that it now has a system in place whereby if it makes a mistake, it will inform the applicant at the earliest opportunity.

Delay in Service

Department of Agriculture, Food and the Marine

C01/13/1738

Not Upheld

A man complained to the Ombudsman about the delay by the Department of Agriculture Food and the Marine in issuing replacement cattle tags following the loss of cattle tags issued to both him and his wife by the Department following a family bereavement. The man said due to this delay, intermixing of both his and his wife's herds occurred which led to the subsequent decision by the Department to amalgamate both herds. As a result, the Department recouped money it had paid out to the man's wife under the Rural Environment Protection Scheme (REPS).

The man also stated that the Department had agreed at a meeting that intermixing of the herds could occur over the winter period due to its delay in issuing the replacement tags. However, the Department said that it had stated at the meeting that intermixing of the herds should cease with immediate effect. Given these conflicting positions and the lack of objective evidence to support either, the Ombudsman was not able to reach a decision on this aspect of his complaint.

The Ombudsman was satisfied that there was an undue delay by the Department in notifying the man's wife that it would not provide extra tags and that she should instead make an application for replacement tags. However, there was insufficient evidence for the Ombudsman to find that there was also an unreasonable delay in issuing the man with tags. Furthermore, the Ombudsman was satisfied that the Department had acted reasonably regarding the delay on its part in relation to the tags by paying for D.N.A testing to separate the herds. The Ombudsman also noted that regardless of the delay in issuing tags, the man's wife signed a REPS contract saying that she would operate her herd on a day to day basis with no intermixing of cattle.

Based on the available evidence, the Ombudsman could not find a sufficient basis to uphold the man's complaint.

Pollution - Noise

Department of Agriculture, Food and the Marine, Pollution

C01/14/0035

Completed 12/11/2014

Assistance Provided

A man made a complaint against the Department of Agriculture, Food and the Marine regarding the granting of an Environmental Impact Assessment (EIA) Screening application to a farmer in respect of the re-contouring land beside the man's home.

The works included the removal of a long rocky ridge using rock breakers. The removal of the ridge took 18 months to complete, during which time the man was subjected to noise levels that frequently forced his family to leave their house while work was in progress.

The Department's Guide for Farmers on the 2011 EIA Regulations gives an example of re-contouring of land. The example refers to the removing or shifting of earth/rocks. In this case a "rock outcrop" was involved. A rock outcrop is a part of a large rock formation which appears above the surface of the surrounding land. The Ombudsman asked the Department to clarify whether the EIA Regulations, in the context of re-contouring farm land, envisage the removal of rock outcrops / rock formations, as opposed to the shifting of earth or rock.

The Department said that the EIA Regulations came into force in September 2011 and that this was the first EIA Screening Application it received that required rock breaking.

The Department acknowledged that the ongoing nature of the rock breaking may have had an impact beyond that anticipated in the original EIA screening decision. It said that the experience gained from this complaint would be valuable in making decisions on whether similar applications in the future should be refused screening and whether an application for consent would be required. The Department also acknowledged that the man should have been directed to its website for more information.

The Ombudsman noted that the re-contouring of the lands outside the complainant's home had been completed. However, he accepted that the Department had acknowledged the importance of learning from this complaint and the need for greater clarity, more open communication and a greater appreciation, in the context of the EIA Regulations, of the potential impact of rock breaking activity on the local environment and on local inhabitants.

R.E.P. Scheme

Department of Agriculture, Food and the Marine

C01/12/1380

Completed 03/09/2014

Not Upheld

A woman complained when the Department of Agriculture, Food and the Marine (the Department) terminated her Rural Environment Protection Scheme (REPS) contract. The termination happened three years into the five year contract and was as a result of an inspection by a departmental inspector who determined that she was not eligible for the Scheme in the first place. The effect of the termination was that the Department sought repayment of the first three years payments, which had been previously paid, and the disallowance of the remaining two years.

An examination of the Department's files and the woman's application for the Scheme together with the departmental inspector's report showed that she had not complied with the terms and conditions of the Scheme. In order to be eligible under the Scheme a person has to be farming a minimum amount of land. In this case it was found that the woman was not farming and neither did she have the minimum amount of land.

Having regard to the eligibility requirements of the Scheme the Ombudsman considered that there was no basis for upholding the complaint.

Single Farm Payment

Department of Agriculture, Food and the Marine

C01/13/1776

Completed 06/11/2014

Not Upheld

A man complained about the Department of Agriculture, Food and the Marine carrying out an unannounced inspection of his lands on which he was claiming payments under the EU Single Payment Scheme (SPS). The man said he should have been given prior notification of the inspection.

Under the EU SPS, prior notification of an inspection is usually given. However, the Department can carry out an unannounced inspection if there are 'risk issues' associated with a particular claim. In this case the Department decided to carry out an unannounced inspection as:

- the man was farming his main holding in one county and also claiming on lands in another,
- he did not have an ovine number until 6 October 2010, (a farmer cannot buy sheep until he has an ovine number)
- he did not purchase sheep until 1 October 2010,
- he refused inform the Department from whom he purchased the sheep.

The Department is the EU accredited Paying Agency, and subject to EU Audit. Therefore, it has to have robust detective, preventative and corrective controls in place to safeguard EU and public funds. In the circumstances and having regard to the 'risk issues' identified by the Department, the Ombudsman considered that it was reasonable for the Department to undertake the site inspection without prior notice.

Education

Higher Education Grant

Student Grant Appeals Board

E77/13/1407

Completed 08/10/2014

Upheld

The Ombudsman received a complaint from a man whose application for a student grant was refused by Student Universal Support Ireland (SUSI) on the grounds that he had not provided documentary evidence of independent residence. This decision was upheld on appeal to the Student Grants Appeals Board.

The issue centred around the question of whether the man was living at his parents home or, as he maintained, at the home of a relative. He said that he had provided documentary evidence to support his case in the format specified by SUSI and this included having the Department of Social Protection (the Department) complete forms about the payments he had received. SUSI was not satisfied that he had provided evidence of independent living and his application was refused. When he appealed to SGAB, it contacted the Department and obtained details of addresses that it had the man residing at. This information was taken into account in the decision to disallow the appeal.

The Ombudsman was not satisfied that the addresses that SGAB had obtained from the Department corresponded with other information that was available. Therefore, he contacted the Department and asked for copies of all correspondence that the Department had with the man during a particular period. All of the correspondence that the Ombudsman received, including two 'proof of residence' forms, had been addressed to, or received from the man at his relatives address. With the man's consent, the Ombudsman sent this information to SGAB and asked that it review its decision.

SGAB/SUSI then changed its decision and the man was awarded the student grant at the appropriate rate.

Higher Education Grant

Student Grant Appeals Board

E77/14/0790

Completed 03/10/2014

Not Upheld

A man complained about the decision of Student Universal Support Ireland (SUSI) to refuse his application for a third level grant and the subsequent decision by the Student Grant Appeals Board (SGAB) to uphold that decision. The man was 30 years of age and had lived independently for a number of years before returning to live with his parents due to his ill health.

Because he was living with his parents before he first entered higher education, he was classed as a 'dependent student'. Consequently his parents' incomes were included in the assessment of his income. This resulted in his income being above the threshold and his application was refused.

The Ombudsman examined the legislation governing the payment of third level grant. In the man's case, he was correctly classed as a 'dependent student'. This legislation does not contain any provisions allowing for individuals to be treated differently on age grounds. None of the specific circumstances under which a 'dependent student' may be exempted from having some or all of his or her parents' income taken into account applied in the man's case. The Ombudsman also found that the assessment of his income was done correctly.

Higher Education Grant

Student Grant Appeals Board

E77/14/0834

Completed 12/11/2014

Assistance Provided

A complaint was received on behalf of a third level student in connection with her application for funding from SUSI. The applicant was a foster child and up until the time of her 18th birthday, she was in receipt of a Fostering Allowance, which was a qualifying payment under the Student Grant Scheme 2013 enabling her to receive funding from SUSI. When the applicant reached 18, she was no longer eligible for the Foster Allowance and she received an After Care Allowance. However, the After Care Allowance was not included as a qualifying payment under the Student Grant Scheme and therefore the student did not receive a grant from SUSI.

Following a complaint to the Ombudsman, the Student Grant Appeals Board made a recommendation to the Department of Education and Skills that the After Care Allowance be included as a qualifying payment in the Student Grant Scheme 2014. The recommendation was accepted and the After Care Allowance is now deemed to be a qualifying payment from 2014 onwards.

Higher Education Grant

Student Grant Appeals Board

E77/14/0864

Completed 03/10/2014

Not Upheld

A woman complained to the Ombudsman about the decision of Student Universal Support Ireland (SUSI) to refuse her application for a third level grant and the subsequent decision by the Student Grant Appeals Board (SGAB) to uphold that decision. The woman had registered for a part-time course in a UK college. Her grant application was refused because part-time courses are not approved for funding.

The woman said that the legislation is very unfair as it takes no account of the fact that there is no similar degree course in Ireland. Her personal circumstances do not allow her to emigrate to UK to undertake full-time study and this leaves her with no alternative but to complete the course on a part-time basis.

The Student Support Act 2011 (the Act) provides that an 'approved course' includes a course which requires attendance by a student on a full-time basis. In the woman's case, because she was doing a part-time course, she was not eligible for a grant. The Ombudsman did not uphold the complaint.

The Ombudsman noted that section 8(3) of the Act allows the Minister for Education and Skills, with the consent of the Minister for Finance, to prescribe a course that does not require attendance by a student on a full-time basis to be an approved course. However, this particular provision in the Act has not yet been commenced. It is not yet law, so the Ombudsman was not in a position to uphold the complaint.

Level of Contact (Lecture) Hours

Dublin Institute of Technology

E38/14/0384

Completed 16/10/2014

Not Upheld

A woman who was attending a law course in Dublin Institute of Technology (DIT) complained that the low number of lecture hours she received each week impacted in her studies and resulted in low grades. She had previously undertaken FETAC Level 5 and HETAC Level 6 courses in another institution for which she received 'distinction' level grades, whereas she had received considerably lower marks for her exams at the end of the first semester in DIT.

DIT said that contract hours may vary from one Bachelor Degree to another, and tend to be higher in Science programmes, reflecting more laboratory work, and lower in Arts and Social Science programmes including Law. It said that DIT has the same hours as other colleges supplying the same programme. The DIT degree programme was academically validated in the normal way and recognised by the Honourable Society of King's Inns. The Ombudsman found that the level of contact hours (as well as the expected level of independent study) for the DIT course was broadly similar to the hours in other colleges. The Ombudsman also noted that details of the 'class contact' hours, and the expectation that students would engage in a significant number of hours of independent study per week, were contained in the Student Handbook which is given to all students of DIT, including the complainant, at the time of their registration.

The Ombudsman did not uphold the complaint.

Quality of Service

Dublin City University

E36/14/0653

Completed 17/10/2014

Not Upheld

A man complained to the Ombudsman regarding the manner in which his PhD thesis was examined by Dublin City University (DCU). He registered as a full time research student (PhD-track) at the beginning of the 2011/2012 academic year. He re-registered in 2012/2013 and registered as a research master's student for the 2013/2014 academic year. He complained that he did not receive sufficient feedback on his written work over an unacceptably long period (prior to March 2013). He also claimed that there was confusion over how his masters would be funded.

DCU came under the Ombudsman's jurisdiction on 1 May 2013. The examination of the complaint was restricted to the actions which occurred after this date. The Ombudsman noted that the man was not given timely feedback in the course of the PhD track. DCU acknowledged that if feedback had been provided earlier, subsequent problems could have been addressed at an earlier stage. However, as he was progressed, and registered into a third year seeking a research award, it was recommended that the fees for this year would be refunded to him. The Ombudsman was satisfied that this was appropriate redress under the circumstances.

The man was not aware that his fellowship would cease when he transferred from PhD-track to Masters. DCU acknowledged that this should have been made clear to him when he commenced his research studies in September 2011. DCU said that procedures were put in place in 2012 to ensure students knew of their entitlements at the outset. The man felt that this best practice guidance should have retrospectively been applied to him and other students in similar circumstances. However, as this was the position prior to 1 May 2013, the Ombudsman could not examine this aspect of his complaint.

Following the review, the Ombudsman concluded that the DCU Academic Regulations for Postgraduate Degrees by Research and Thesis were applied correctly in this case. The complaint was not upheld.

Reasonable Accommodation

State Examinations Commission

E85/14/1026

Completed 01/12/2014

Not Upheld

The Ombudsman received complaints from a number of parents of Leaving Certificate 2014 students, who had applied to the State Examinations Commission, through their schools, for a range of accommodations, under the Reasonable Accommodations at Certificate Examinations (RACE) scheme.

Despite being diagnosed with specific learning difficulties, in most cases (including dysgraphia, dyslexia and dyspraxia), their applications and appeals were unsuccessful.

The RACE scheme is designed to assist candidates with 'special needs' that is those who have physical disabilities, including visual and hearing impairments, and candidates with specific learning difficulties.

There is a range of accommodations which may be approved under the RACE scheme.

The majority of complaints related to unsuccessful applications for 'scribes' and 'readers', with a smaller number from candidates who had sought 'a waiver from spelling and grammar in the language subjects'.

The Ombudsman concluded that the students in these cases did not satisfy the eligibility criteria (for provision of the accommodations they sought) as their applications did not meet the scheme's governing principles as set out by the Department of Education and Skills, and the framework of principles drawn up by an expert advisory group.

However, while examining these complaints with the SEC the Ombudsman expressed concern about the application and appeals processes. The Ombudsman is continuing in dialogue with the SEC regarding a number of matters arising from these examinations, including; communication of precise details regarding why applications and appeals were unsuccessful; time frames for processing applications and appeals and the rationale used in assessing professional reports.

Recognition of Qualifications

University of Limerick

E83/14/0562

Completed 08/10/2014

Not Upheld

A woman complained to the Ombudsman regarding the manner in which her PhD thesis was examined in the University of Limerick (UL). She said that there was substantial irregularity in the examination process which ultimately led to her being awarded a Masters Degree instead of a PhD. She submitted two appeals in accordance with UL's complaints procedures. However, she complained that the college authorities did not follow their own procedures when processing the re-examination of her thesis.

UL came under the Ombudsman's jurisdiction on 1 May 2013, so the examination of the complaint was restricted to the actions which occurred after this date. In her complaint, the woman claimed that "the external examiner signed off on changes in April 2010 and as per regulations and written instructions sent to examiners, 'an external can sign off on changes if the internal is unavailable'." She considered that the changes that were signed off were valid and so she should have been granted her PhD in April 2010. As these actions occurred prior to 1 May 2013, the Ombudsman could not examine this aspect of the complaint.

In the first appeal, the Ombudsman noted that there were some procedural irregularities in the examination process. However these irregularities were dealt with by UL resulting in the appeal being upheld. Under the circumstances the Ombudsman was satisfied that the first appeal was adequately addressed by UL.

In the second appeal, UL reported that the examiners were properly briefed and were fully aware of the task assigned to them, that they were appointed in accordance with the Regulations, that they were not involved in the supervision or examination of the thesis at any earlier stage, and therefore, they had the necessary independence. For these reasons, the relevant UL Committee recommended that she be awarded a Masters Degree. The Ombudsman considered that the issues raised by the woman were adequately addressed, so the complaint was not upheld.

Staff conduct

Dublin Institute of Technology

E38/14/0292

Completed 28/11/2014

Not Upheld

A student of Dublin Institute of Technology (DIT) complained about the college's response to a complaint of alleged bullying he had made about one of his lecturers. The student considered the response ignored the internal DIT policies. He also felt that the response had taken too long to issue and was not based on any investigation.

DIT explained to the Ombudsman how it dealt with the allegation. It provided copies of the relevant policies and the procedures for the investigation of such complaints. DIT found no evidence of repeated inappropriate behaviour by the lecturer.

It is not the Ombudsman's role to decide whether bullying did, or did not occur - his role is to look at how the college dealt with the allegation. Having examined all of the evidence in this case, the Ombudsman concluded that the allegation had been handled in accordance with the relevant policy, and that all the individuals whose involvement was required under the policy, were involved. While the Ombudsman felt that it would have been preferable if the matter had been dealt with in a shorter time frame, he noted that the lecturer's line manager had been away on DIT business and the college's Christmas break occurred during the investigation. The Ombudsman acknowledged that the events about which the student complained to the college were upsetting to him and had impacted on his studies. However, the Ombudsman noted that, notwithstanding the fact that the college did not uphold the student's complaint, it did have regard to the affects the events complained of had on him personally and, it arranged a tutor for him to enable him to continue his studies. The Ombudsman felt that this was an appropriate arrangement in the circumstances.

Environment Community and Local Government

Household Charge

Department of the Environment, Community and Local Government

C08/13/1290

Completed 11/09/2014

Not Upheld

A man sought to have his estate retrospectively included in a list of unfinished housing estates to qualify for a waiver from the Household Charge which was introduced in 2012. He claimed that his estate should have been included in a national survey the Department of the Environment, Community & Local Government had conducted in 2010. He claimed that his estate qualified because the developer had effectively been inactive from July, 2011 and had abandoned the development.

The Department admitted that it had made a mistake in not surveying the estate in 2010. It also accepted that it was likely that the estate would have qualified as an unfinished estate under the guidelines in 2010. Tipperary County Council stated that it had understood that the Survey was only to apply to developments commenced after 2000 and this was it had not included the estate in its suggested amendments in 2010. When the Department reviewed the list in 2011 it said that the estate was substantially complete and therefore did not qualify for exemption. It provided email evidence from the Council and a resident to support their decision.

Given that estates had to meet both the criteria of being unfinished and effectively abandoned by the developer in order to qualify for a waiver from the Household Charge in 2012, the Ombudsman accepted that while the Department had erred in excluding the estate from its survey, it had not resulted in any adverse effect as the Council had correctly categorised it and no exemption was due.

Leader Programme

Department of the Environment, Community and Local Government

C08/14/0068

Completed 18/09/2014

Partially Upheld

The Ombudsman received a complaint from an organisation whose application for funding of about €195,000 under the EU LEADER Rural Development Programme was refused.

The Department refused the application on the basis that the organisation had breached the procurement procedures in that it had not advertised the tender on www.etenders.gov.ie. The organisation did not accept this and stated that it was relying on a particular circular which had been circulated by the Department to all organisations. The circular said that construction projects in excess of €50,000 must be advertised on national media, i.e., www.etenders.gov.ie OR a national newspaper. The organisation advertised in a national newspaper. The Department imposed a penalty of 25% of the value of the contract.

The Ombudsman found that the circular on which the organisation relied also advised all local action groups to visit www.constructionprocurement.gov.ie. Other circulars were also issued to all local action groups pointing to the necessity to advertise on www.etenders.gov.ie in instances where the project was a construction project.

Following a review of the file, the Department found that the organisation did not comply with the terms of the scheme, but that it had made some effort to do what it was supposed to do. For this reason, the Department decided that rather than impose a penalty on the total contract value, it was more appropriate to apply the penalty to the grant amount only. The penalty was reduced from about €65,000 to about €49,000. The Ombudsman considered that the reduction in the penalty was reasonable.

Health

Care and Treatment

Beaumont Hospital (HSE Dublin North East Hospital Group)

H82/13/1400

Completed 23/10/2014

Partially Upheld

A woman complained about the way she and her family were treated by staff in the A&E department of Beaumont Hospital when her mother was brought there in 2011. They were not allowed to remain with her and security staff were called to remove them when they objected. She was unhappy with the fact that they had not been informed about how recommendations made by an internal reviewer of their complaint had been implemented and that an apology had not issued to them in accordance with the hospital's complaints management procedure. She also complained about the triage system at the hospital and how it could result in ambulances being held up from resuming duty.

The HSE reviewer had recommended that the visiting policy and guidelines should be reviewed with input from patients and that their wishes should be at the core of the review. However when the Ombudsman examined the complaint, it appeared that there had been no input from A&E patients to the revised visiting policy which restricted visiting in A&E to only two hours per day, regardless of whether or not the patient wanted a family member to remain with them. This aspect of the complaint was upheld and it was recommended that the guidelines be reviewed again with a view to allowing for one family member to remain with an elderly or very young patient where the patient wanted this to happen. Letters of apology had issued to the complainant but were not acceptable as they did not address any of the core issues. The Ombudsman recommended that guidelines on issuing a meaningful apology should be followed and that a further apology should issue. However he considered that there was no basis for upholding the woman's view that the triage procedures were the cause of delays in ambulances being released from the hospital.

Care and Treatment

St. Luke's Hospital, Kilkenny (HSE South)

HD5/12/0995

Completed 11/09/2014

Upheld

A woman complained about the treatment she received while under the care of a Doctor at St. Luke's Hospital Kilkenny and also about the internal complaints procedures used by the hospital and the Health Service Executive (HSE). She also complained about the loss of her medical records during her stay at the hospital, which she said caused delays in treatment and the repeat of tests.

The Ombudsman is precluded from examining clinical decisions regarding the woman's treatment. However, the Ombudsman could examine what was recorded on the medical records. The Ombudsman on reviewing the records decided that incorrect information had been recorded but that it had been acknowledged and corrected by the Doctor concerned. Furthermore an apology had been provided by the Doctor and as a result of the Ombudsman's involvement an offer was made for the woman to meet with the Doctor. Regarding the internal complaints procedures used by the hospital and the HSE, the Ombudsman decided to pass on this information to his Investigation Team which is currently conducting an investigation into hospital complaints systems.

With regard to the missing medical records, the Ombudsman was satisfied that the hospital had procedures in place and that these procedures were followed when the records were discovered to be missing. Furthermore the Ombudsman was satisfied that the records were found within a reasonable time and that there were no delays in treatment as a result. The Ombudsman found no evidence that tests had to be repeated as a result of the missing records.

Care and Treatment

Midland Regional Hospital, Tullamore (HSE Dublin Mid Leinster Hospital Group)

H66/11/3512

Completed 24/11/2014

Assistance Provided

A woman had complained to the HSE about the end of life care her husband received. The woman complained to the Ombudsman as she believed that a Report, carried out by an independent review team into her complaint, contained a number of inaccuracies and contradictions. In addition, although the Review Team had recommended that an apology be sent to the woman, no such apology had been received.

The Ombudsman sought independent expert clinical advice from the Parliamentary and Health Services Ombudsman's Office in the UK in relation to the man's treatment. Based on the evidence from the clinical records and the clinical advice received from the UK, the Ombudsman concluded that the Review Team's report reflected fairly what had happened in this case. The hospital undertook to write to the woman to apologise for the failings identified in the report and to let her know what progress it had made in implementing the Review Team's recommendations.

Care and Treatment

Mater Hospital / Beaumont Hospital

HA2/13/1315

Completed 03/10/2014

Not Upheld

A complaint was made by a young man who had been initially treated for a knee injury at the Mater Hospital. His complaint related to the way he was left in considerable pain for a number of hours, unattended in an isolated room without access to nursing staff or toilet facilities. The man also complained that he had been discharged from hospital without any advice or consideration as to how he might manage at home. The hospital apologised for these shortcomings and said that staff had been alerted to what had happened to him and had taken steps to ensure that no other patient would be treated this way.

Some weeks later, the man was rushed by ambulance to Beaumont Hospital having suffered a black-out at home. He was in considerable pain and eventually diagnosed with a large clot on both sides of his lung. He said that he was advised that the blood clot could have been avoided if he had received anticoagulation medication following his surgery for his knee injury.

In examining this complaint, the Ombudsman had to be mindful that the diagnosis and treatment of a patient were matters of clinical judgement which he cannot examine. He also had regard to the fact both the Mater and Beaumont Hospitals had provided detailed reports in relation to the man's care and treatment, that appropriate steps had been taken to avoid a similar experience for other patients, and that a sincere apology had been made to the man for the difficulties he had encountered in the Mater Hospital. However, the Ombudsman decided to seek independent clinical advice in relation to the general practice of prescribing anticoagulation medication in light of the man's experience.

The advice clarified that while the use of anticoagulants probably does reduce the risk of clots, it does not eliminate the risk entirely. It clarified that anticoagulants have side effects while the risk of serious clots forming is relatively rare. It also said that pulmonary embolism is relatively rare in younger, fitter, patients. The advice also explained how doctors assess various risk factors associated with each patient when considering whether or not to prescribe anticoagulants. This information was passed to the man which provided him with greater clarity and reassurance in relation to his care and treatment.

Care and Treatment

University College Hospital Galway (HSE West NW Hospital Group)

H26/13/0784

Completed 16/09/2014

Partially Upheld

A woman wrote to the Office concerning the care and treatment her mother received in a hospital. She raised a number of issues in her complaint which included that her mother was not seen by a Senior Doctor over the weekend of her stay and that her mother's sleeping tablet was stopped and nothing prescribed for her during her stay in the Hospital. She was also unhappy with the Hospital's examination of her complaint and the HSE's subsequent review of it.

The Hospital fully accepted that there was an inordinate delay in dealing with her complaint and apologised. To improve matters for future complainants, the Hospital has since developed and put in place systems to enable it to deal with complaints within the required time frames.

The Ombudsman was pleased to note that following this complaint, the Hospital's Medication Safety Committee of the Hospital was to draw up a policy about the withdrawal of sleeping tablets, with a view to it being implemented shortly. The Hospital also confirmed that all complaint reports are now issued in draft form to complainants for their comments in relation to accuracy and chronology before being finalised. This is now a standard part of their policy around complaint management.

Care and Treatment

Beaumont Hospital (HSE Dublin North East Hospital Group)

H82/13/1488

Completed 14/10/2014

Upheld

A woman received a phone call from a nurse in Beaumont Hospital asking her to attend the hospital for a Lumber Puncture. The woman attended the hospital. The woman had been surprised to be called for the procedure as she had no prior involvement with the Hospital. She also received a prescription from the hospital that she knew nothing about. It was only as a result of persistent questioning by the woman that hospital staff agreed to investigate. When the nurse obtained the file of the patient who was to have the procedure, it became apparent that the hospital had contacted the wrong patient. The patients shared the same forename and surname, the same year of birth and also lived near each other in Dublin. In her letter of complaint to the Ombudsman the woman said that in dealing with her complaint the Hospital did not properly answer her questions and she believed that the Hospital had failed to take her complaint seriously. She also believed that a similar error could reoccur in the future.

Subsequent to her complaint, the Hospital issued a report outlining the process which led to the error occurring. This report identified human error as the cause of the mistake. The report indicated that when a patient is placed on a waiting list, they are identified by what is known as a History Number and their name, address and date of birth. The Admissions Officer in this case had in error, written the woman's history number on the top of a letter which was addressed to another patient of the same name. This history number was then used by the Nurse to check the Beaumont Hospital Information System (the BHIS) and the wrong contact details were obtained from the BHIS which resulted in the woman being contacted.

The Hospital has also confirmed that the second incident regarding a prescription being sent to the woman was also attributable to human error and a lack of familiarity with the BHIS.

The Ombudsman recommended that in future the patient history number or the patient's Medical record number should be used together with the three point reference (that is DOB, full name and address) to provide an extra security check and prevent a similar error reoccurring.

Beaumont Hospital has now brought in the following changes in procedures:

- Additional training has been and is to be provided to all nursing and administrative staff on the use of the BHIS, on the conducting of additional searches and the necessity to ensure that the correct patient has been identified.
- Nursing staff now ring a patient and go through the three point identification reference prior to making any arrangements. All such calls are logged and kept in a diary.
- Day Patients are now required to sign a consent form prior to a procedure which contains the type of procedure, the patient's full name and address and the patient's date of birth and the patient's history number.

Medical Card

HSE - PCRS

H09/14/0737

Completed 22/09/2014

Assistance Provided

A woman complained to the Ombudsman about not having her Medical Card reinstated following the Government's announcement in July 2014 to reinstate Medical Cards in the following situations:

A person issued either a Medical Card or GP Visit Card on a discretionary basis because of a serious medical condition, and who lost it after undergoing an eligibility review between 1 July 2011 and 31 May 2014

A person must have held a Medical or GP Visit Card issued on a discretionary basis during that period, but had it withdrawn on foot of a completed eligibility review

They must have completed the review process during that period i.e. provided the information and documentation required to assess their eligibility

They must have a serious medical condition which required that their case was referred to a Medical Officer as a part of the review process.

The Ombudsman examined the case and was satisfied that the woman was previously approved a discretionary Medical Card between 1 July 2011 and 31 May 2014. The woman also had her Medical Card withdrawn following a completed eligibility review which included a referral to a Medical Officer during that period. Therefore, the Ombudsman found that the woman was eligible to have her Medical Card reinstated as she fulfilled the above criteria. The HSE then issued the woman with her Medical Card and the case was closed.

Medical Card

HSE - PCRS

H09/14/0356

Completed 04/09/2014

Assistance Provided

A woman complained to the Ombudsman about an invoice she received from a hospital for the treatment of her husband shortly before he passed away. The woman felt that her husband should have had a discretionary medical card which would have covered this bill given his terminal illness. The woman also noted that she could not cover the bill as she was currently unemployed.

The HSE explained that an emergency medical card may be granted where the person has a terminal medical condition and where the person is nearing the end of their life. The person's application must include a medical consultant or a GPs certificate to that effect.

The HSE said that in this case the application did not include a medical report about the man's terminal illness, so it could not provide a refund as the man was not eligible for a medical card before he passed away.

The Ombudsman sought and received a medical report from the GP who had been treating the man. The report indicated that the man was terminally ill at the time. The Ombudsman then asked the HSE to review its position in light of this report, as the man would have been eligible for an emergency medical card had this information been included with his medical card application.

The HSE examined the information sent by the Ombudsman and said that it would not pursue collection of the invoice.

Medical Card

HSE - PCRS

H09/14/0143

Completed 16/10/2014

Not Upheld

A man complained to the Ombudsman about the withdrawal of his and his wife's Medical Card after the HSE reviewed their eligibility following the expiry of the Medical Card. The man was unhappy with the way the HSE arrived at its figures in carrying out the assessment of his and his wife's income.

The couple had previously been in receipt of a Medical Card under the Over 70's Medical Card Scheme. In Budget 2013, the income limits for the Over 70's Medical Card Scheme were reduced to €900 for a married couple. The Over 70's Medical Card Scheme does not contain a discretionary element, i.e. an applicant can only qualify if he/ she is under the income limits. Given the couple's income, they were no longer eligible for a Medical Card.

However, given that the couple had medical conditions, it was open to them to also apply under the General Medical Card Scheme. This meant that they could be assessed on discretionary medical grounds even though they were over the income limits. Although a Medical Card can be awarded if the HSE is of the view that undue financial hardship will result due to an applicant's medical condition(s), the income limits under this Scheme are much lower, i.e. currently €298 of net income for a couple over 66.

The Ombudsman was satisfied that the HSE had correctly assessed the couple's income under both Schemes. Furthermore, the Ombudsman could not conclude that the HSE's decision not to approve the couple on discretionary grounds would cause them undue hardship based on the costs associated with their medical conditions.

Medical Card

HSE - PCRS

HC5/14/0667 Completed 18/09/2014

Not Upheld

A man complained to the Ombudsman about the refusal of a Medical Card because his income was over the Medical Card Guideline income limits. The man was in receipt of a State pension and a small private occupational pension. The man felt that he was being unfairly treated as applicants who are only in receipt of a Social Welfare allowance/ benefit are automatically eligible for a Medical Card. The man's home improvement loan had also not been taken into account during the calculation of his means to see if he was over the Guideline income limits.

The Ombudsman found out that although home improvement loans used to be deducted from an applicant's income under the means test, this allowance was removed after Budget 2013. In the circumstances, the Ombudsman was satisfied that the HSE had calculated the man's income correctly.

The Ombudsman also explained to the man that the making of legislation is a matter for the Oireachtas. As such, the Ombudsman could not examine why some applicants were automatically eligible for a Medical Card if they were solely in receipt of a Social Welfare allowance/ benefit.

Nursing Homes

Dublin North West (HSE Dublin North East)

HA1/14/0533

Completed 12/09/2014

Not Upheld

A woman complained to the Ombudsman about the level of care provided to her mother while she was a patient in the local community nursing home. The woman also wanted a reduction in the amount that she was required to pay under the Nursing Home Support Scheme subsequent to her mother's death and the sale of the family home. This was on the basis that she believed that the care received by her mother did not amount to the sum of money the HSE was seeking.

The complainant had been informed from the beginning of the process that the contract under the Nursing Home Support Scheme was a private contract between herself and the HSE, and could not be examined by the Ombudsman. However the rest of her complaint was examined. The Ombudsman found that the interviews and documentation supplied by the HSE did not uphold the complaint as there was no evidence to support the woman's complaint.

Nursing Homes

Waterford (HSE South)

HD7/14/0415

Completed 24/11/2014

Partially Upheld

A woman and her husband lived in a nursing home through support provided for under the Nursing Home Support Scheme. When the complainant's husband died the woman continued to receive a higher rate of subvention than she was entitled. The HSE has sought repayment of € 7,484.99. The woman's son had not informed the HSE as required under the Nursing Home Subvention scheme. However the Nursing home had informed the HSE of the death of the woman's husband.

The Nursing Home Support Scheme application form completed by the woman's son in respect of both his parents, stated at part 5 - "that the applicant must report to the HSE, within 10 working days any changes in his/her or their parents circumstances which may affect entitlement to financial support.". The Chief Appeals Officer was of the view that this requirement had not been complied with and as such no reduction in the outstanding amount should be allowed in this case.

The relevant legislation is silent on this issue. However, the Appeals Office accepted that the Nursing home had notified Elderly Services in Waterford. On this basis the HSE reduced the outstanding amount by 50%. In recognition of the fact that the son had not informed the HSE as required and the fact that his mother had received a higher rate of subvention than she would have been entitled to the Ombudsman considered that in the circumstances the HSE offer was reasonable.

Nursing Homes

Health Service Executive

HA9/14/0691

Completed 06/11/2014

Assistance Provided

The Ombudsman received complaints from a man against the HSE in relation to the treatment of his mother in a private nursing home. One issue was a missing peg tube from his mother's stomach when he visited her in the home, another was that the HSE paid arrears of the Fair Deal Scheme directly to the private nursing home. Private nursing homes do not come under the remit of the Ombudsman so he could not examine the part of the complaint relating to the peg tube incident.

Regarding the payment of arrears, the Ombudsman examined the relevant legislation and found that it provides that the HSE must pay arrears due under the Fair Deal Scheme to the nursing home. As the HSE had acted correctly, the Ombudsman did not uphold this part of the complaint.

Although the HSE does not have the legal power to investigate private nursing homes, it decided to assist the man and it wrote to the nursing home in an effort to resolve the matter. However, the man experienced a very long delay in receiving any information from the HSE. As the complaint was about delay, and therefore an administrative action, the Ombudsman was able to examine this part of the complaint.

The HSE apologised unreservedly for the delay in communicating with the man. It also decided to conduct a formal review of its actions, after which it apologised again for the delays. The review also identified three new administrative changes namely:

- (1) it will send a timely response to any request from any source;
- (2) it will send a formal notification to its clients or their representatives when it is closing cases; and
- (3) staff of the HSE will be reminded of the need to have appropriate back-up/hard copies of all computerised records to prevent loss of files.

The Ombudsman is satisfied that the identification of the new administrative procedures will help ensure that a similar incident will not arise again.

Various Others

Dublin South East (HSE Dublin Mid-Leinster)

HB2/14/0294

Completed 10/10/2014

Upheld

A woman complained to the Ombudsman that the HSE had wrongly deducted nearly €23,000 from her retirement lump sum to make good a shortfall in the woman's pension contributions. The HSE accepted it had made a mistake in the amount it deducted from her salary from 1985 until she retired in 2012. However, it said that the legislation on pension contributions did not allow for people to be paid particular pension rates if they had not paid the contributions needed to qualify for those pension rates. Therefore the HSE felt that the only way it could pay the correct pension rate was by deducting the shortfall in contributions from her retirement lump sum. The HSE then noticed that it had made a mistake in calculating the amount of the shortfall in the woman's pension contributions, and offered to refund her that amount (around €3,700). It also refunded her a further €1,000 in recognition of its mistake in not deducting the correct rate of pension contributions from the woman's salary. The woman did not accept this offer and complained to the Ombudsman.

Following examination of the case by the Ombudsman, the HSE revised its position and increased from €1,000 to €6,000 the amount it was prepared to refund in recognition of its mistake. The woman accepted the Ombudsman's view that the HSE's revised position was reasonable.

Various Others

Health Service Executive

HA9/13/1447

Completed 23/10/2014

Not Upheld

A woman objected to the fact that she had been accused of elder abuse against her mother, who is now deceased, and wanted the allegation withdrawn. She also claimed that the Senior Social Worker in charge had taken her sister's side against her.

The woman was working full time while trying to care for her mother. She said she was under a lot of stress and had no support from most of her family. Her mother had fallen and was dehydrated when she was found. The mother was released from hospital and went to a Nursing Home for convalescence. Staff there notified the HSE about what they considered was inappropriate behaviour by the woman towards her mother. They claimed she was shouting at her and treating her roughly. She denied this but the HSE eventually decided that the mother should remain in the Nursing Home.

After examining the HSE records and speaking to the HSE staff involved it was clear that the woman's mother, who had dementia, had been neglected, albeit unintentionally. The daughter was working full time in another county and her mother was being left alone a lot. She was prone to falling and was unable to care for herself without assistance. When the Social Worker spoke to other family members and in particular to the GP, Public Health Nurse and Care Assistant it became clear that there were safety issues in relation to this woman's mother's care. It was accepted that the abuse/neglect was unintentional. However it was also clear that the family were not prepared to support this woman in caring for their mother at home. The Social Worker said that the woman refused to accept that her mother had dementia and that she would be better off in the Nursing Home.

Eventually the HSE had to arrange for the mother to be made a Ward of Court. It was accepted by the Ombudsman that the Social Worker had acted in the best interests of the complainant's mother and the complaint was not upheld.

Various Others

Cavan/Monaghan (HSE Dublin North East)

HA4/12/0577

Completed

Partially Upheld

A complaint was received from a man regarding the way social work services had dealt with allegations of sexual abuse which had been made against him. He complained that the process had not been properly explained to him and that no written information had been provided to him. He was also unhappy that he had not received notice of the allegations in writing before social workers interviewed him, that he was not given the option of objecting to the presence of a student social worker during the interviews, and that he was not afforded the opportunity to have a support person attend with him during the interviews. Nor was the man afforded an opportunity to appeal against the social worker's request that he decline from having unsupervised contact with children until a risk assessment had been completed.

Following examination of the man's complaint, the Ombudsman formed the view that there were serious shortcomings in the way these allegations had been handled and that the man had been treated unfairly. However, it was not clear that the outcome to the allegations would have been different had the process itself been conducted more fairly as the social workers believed the allegations to be credible in nature. Following discussions with the newly formed Child and Family Agency, revised processes and procedures for handling allegations of abuse have been developed and implemented nationally to ensure that social work services take a consistent national approach when dealing with such allegations. The Agency said it was committed to ensuring that persons who are the subject of investigation receive a full entitlement to fair procedure and natural justice. An Appeals Panel has also been established for people who are dissatisfied with decisions of social workers in relation to outcomes following a child protection investigation. The man received a written apology from the Child and Family Agency for the shortcomings he experienced from social work services.

Local Authority

Housing

Dublin City Council

L12/13/1715

Completed 16/10/2014

Upheld

The Ombudsman received a complaint from a retired couple who had rented an apartment under the Rental Accommodation Scheme (RAS) to a tenant nominated by Dublin City Council. One of the conditions of the Tenancy Agreement was that “where the outgoing tenant has caused damage to the property which goes beyond fair wear and tear, the Housing Authority agrees to reimburse the landlord of the proper and reasonable costs incurred by the landlord in reinstating the property, up to a maximum of one month’s rent under the Tenancy Agreement”.

After four years of tenancy, the couple sought the return of the apartment. They discovered that there had been considerable superficial damage caused to the property. In addition furniture had been removed.

The Council refused to compensate the couple for the damage/losses. They were advised that it was their responsibility to chase up the tenant for the missing items. In addition, the Council said that they had been negligent in their management of the apartment because they had not visited it during the four year term of the tenancy.

However, the couple had made efforts to inspect the apartment over the tenancy period. On each occasion the tenant did not allow them access to the property. The Ombudsman did not consider it reasonable for the complainants to have to pursue the tenant for the missing items as they did not have a forwarding address for him. The Ombudsman examined the Council’s original and final inspection reports on the property and the tenant’s previous tenancy history, as well as complaints which the Council had received from other residents about activity in the apartment. The Ombudsman was satisfied that the bulk of the responsibility for the events which unfolded in this particular case lay with the Council, given that they had selected, and approved, the tenant.

The Council offered the couple an ex-gratia payment of €700 in full and final settlement of the complaint. As this equated to one month’s rent under the Tenancy Agreement, the Ombudsman considered the offer to be reasonable. The couple agreed and accepted the Council’s offer.

Housing

Dun Laoghaire-Rathdown County Council

L61/14/0572

Completed 20/11/2014

Upheld

A woman complained that Dun Laoghaire-Rathdown County Council had no record of her application for housing in 2008 for herself, her partner and four children. The Council said that the letter produced by the woman in support of her claim was used primarily to determine a household's eligibility for income support under the rent supplement scheme and was not an application for housing. The Ombudsman asked the woman to produce further evidence to support her claim that the application was for housing, as opposed to income support under the rent supplement scheme.

In the meantime the Council reviewed the woman's situation and interviewed her and her partner. Following the interview she was given a priority rating and along with others on the priority list, will be considered for any suitable house that becomes available from the end of 2014. As the woman and her family are now on the priority housing list, her complaint was upheld.

Housing

Laois County Council

L24/14/0338

Completed 18/09/2014

Assistance Provided

A man's application for Social Housing Support was refused by his local Council on the grounds that he did not have fifty two weeks employment in Ireland.

The Office sought guidance from the Department of the Environment, Community and Local Government on the Council's interpretation of the relevant Housing Circular. In response, the Department clarified that the circular does not require EEA nationals seeking Social Housing Support who are temporarily unable to work due to illness / accident to have worked for 52 weeks. The Department explained that the 52 weeks requirement applies in cases where an applicant is recorded as involuntarily unemployed. It explained that it is a matter for the local authority to decide whether an applicant meets the provisions of the Circular having regard to the particular circumstances of the case. Such circumstances may involve the consideration of whether the absence from work was from an illness from which, if properly treated, the individual could recover.

The Ombudsman put the Department's position to the Council which said that if the applicant gave it more detailed medical evidence in support of his application for Social Housing, it would review his earlier application for Social Housing Support with effect from the original application date. The Ombudsman considered this to be a reasonable response by the Council.

Housing

Limerick City Council

L27/14/0076

Completed 24/11/2014

Partially Upheld

A Council tenant complained that Limerick City Council had not responded to her complaint in relation to rubbish and vermin in derelict houses adjacent to her property. The area where the woman lived was one of the four Regeneration Areas in Limerick.

The issues being complained of concerned two specific areas, the Council's Housing Maintenance area and the Limerick Regeneration Office. Because of this there was a delay in contact being made with the woman and this resulted in her making a complaint to the Ombudsman.

As a result of the Ombudsman's examination, the derelict properties that are Council owned have been cleared of rubbish and baited for the vermin problem. In addition the woman's own house has been listed for a thermal upgrade and repairs have been carried out to make it more comfortable in the short term. The derelict houses are included for major refurbishment in the regeneration master plan and have been fenced off for security reasons. The Council have engaged with the woman not only regarding proposals for her own property but also as regards possible re-housing.

The Ombudsman partially upheld the woman's complaint as there were delays in dealing with her as a result of two areas being involved and an apparent lack of communication between both.

Housing

Mayo County Council

L34/13/1782

Completed 16/10/2014

Assistance Provided

Mayo County Council refused to carry out works on a woman's house, which she said was cold and in need of insulation. The Council advised her that technical staff reported on the matter and were satisfied that the house in question was structurally sound and fit for purpose, and that no emergency works were required. Under the circumstances, the Council did not intend to carry out works at that time.

The Ombudsman reviewed the report prepared on the woman's house by the Council's Site Technician. The report said that the house was in excellent condition and that no emergency works were required. However, it made a number of recommendations for home improvement which appeared to address the concerns raised by the woman with regard to heating and insulation.

The Ombudsman wrote to the Council in June 2014 regarding the recommendations of the report. In its response, the Council said that it did not have funding to carry out these works at present. The Department of the Environment made funding available for planned maintenance work of this nature for 2014 but the dwelling in question was not included.

However, the Council said that it will make every effort to have the works required carried out in 2015.

Housing

South Dublin County Council

L59/14/0400

Completed 04/09/2014

Upheld

This man had applied for housing to South Dublin County Council. His application was refused on the basis that while he met the income threshold for inclusion on the housing list, it was considered that he was in a position to provide for his accommodation from his own income.

The Ombudsman pointed out that the man had a net income of less than €350 per week and questioned how he would be expected to provide for the cost of housing for himself, given the increasing private rental costs in the Tallaght area. The Council reconsidered its decision and agreed to place him on the housing list.

Housing

Wicklow County Council

L57/14/0519

Completed 06/11/2014

Upheld

A woman complained after receiving a €20,000 grant from Wicklow County Council under the Housing Adaptation Grant. She complained as she later found out that the grant for house adaptations was €30,000 for all Irish citizens with a disability. She was informed by the Council that it capped the Housing Adaptation Grant at €20,000.

The Council stated that it decided to cap the grants so that more people could benefit from the limited allocation it received for the Grant.

The Ombudsman contacted the Department of Environment, Heritage and Local Government for clarification on the issue of capping housing adaptation grants. The Department stated that it had instructed the Council to review the woman's application for the Grant as the Council could have been misinterpreting the regulations governing these grants, which did not give Councils the discretion to cap the €30,000 amount. The Department also stated that a notification would be issued to all Local Authorities to ensure full compliance with the relevant regulations in this area. The woman was subsequently awarded the full €30,000 amount.

While the Ombudsman fully understood the customer focussed motivation behind the decision to cap the amount of the grant, the Council did not have the authority to vary the conditions of a grant scheme provided for in legislation. As the woman was paid the full amount of the grant the complaint was upheld.

Planning

Donegal County Council

L10/13/1058

Completed 19/09/2014

Not Upheld

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

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

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

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

Planning

Donegal County Council

L10/14/0540

Completed 17/09/2014

Not Upheld

A man wrote to the Ombudsman complaining that Donegal County Council had failed to enforce planning laws. The man said that different businesses were being run by a neighbour of his from a private dwelling.

The Council's documentation showed that there was a lack of evidence to show that the dwelling was being used to operate businesses from the premises. Based on this report the Council decided not to pursue the case any further and enforcement action was closed.

The Ombudsman did not uphold the complaint as he found that there was no breach of the planning enforcement legislation by the Council in their actions.

Planning

Galway County Council

L16/14/0340

Completed 03/09/2014

Not Upheld

A woman complained that a Council had not enforced a Court Order that required her neighbour to demolish a housing unit built in the neighbour's back garden without planning permission. At the time it tried to enforce the Court Order, the owner of the housing unit was 92 years old and in a nursing home. The landowner did not demolish the housing unit, so the Council's next move would be to take legal action to make him do so. It decided not to do this because, in its view, such action would not succeed. The woman complained about this decision.

This Office took the view that in the particular circumstances of this case, the Council's position was reasonable.

Planning

Laois County Council

L24/14/0617

Completed 15/09/2014

Not Upheld

A man wrote to the Ombudsman complaining that a County Council had not taken proper enforcement action against a neighbour. The neighbour had built a house in the wrong position on a site that was immediately opposite the entrance of the man's property.

On receipt of the complaint, the Council had issued a warning letter to the developer. The developer outlined to the Council that he was willing to submit a Retention Application to regularise the matter and following further inspections on the property, then went ahead and applied to retain the development. The Council then granted permission for the retention, which the complainant subsequently appealed to An Bord Pleanala. Permission to retain the development was then granted by An Bord Pleanala.

The Ombudsman did not uphold the complaint as it was reasonable for the Council not to take enforcement action while the developer was working to resolve and regularise a development.

Planning

Wicklow Town Council

L58/13/1480

Completed 20/11/2014

Upheld

A man made a complaint about the failure of Wicklow Town Council to take action against a developer whose development he claimed was not in compliance with planning permission. He also claimed that the boundary wall was dangerous.

The Town Council was of the opinion that the boundary wall was proper to Wicklow County Council rather than it. The relevant official had been on extended leave. When she returned she advised that Wicklow Town Council had responsibility for dangerous structures in its own area. As they had no-one qualified to examine the alleged dangerous structure it delayed dealing with this matter. It had identified various defects in the development and had sought proposals from the developer about fixing them.

During the examination of this complaint, Wicklow Town Council was abolished and its functions transferred to Wicklow County Council. It sought a report from the developer about the alleged dangerous wall which was to be prepared by a structural engineer acceptable to the Council. This report concluded that the wall was safe and that no remedial action was required. The Council's senior engineer reviewed both reports and inspected the wall himself. He concluded that the wall is safe and that no further action needs to be taken.

The Ombudsman upheld the complaint against Wicklow Town Council as there was undue delay in its dealing with the complaint. Because of the Ombudsman examining this case, the Council identified the additional deficiencies in the development which resulted in the developer submitting a new planning application for retention. As a result, the complainant has had another opportunity to object and will have a right of appeal to An Bord Pleanála in the event that permission is granted. The Ombudsman also acknowledged that since Wicklow County Council took over from the Town Council that it had dealt with matters promptly.

Various Others

Motor Tax & Driver Licence

Clare County Council

L05/14/0017

Completed 06/11/2014

Partially Upheld

A man had swapped his UK driving licence for an Irish Driving Licence in 1993 at Clare County Council. Both contained a number of higher categories. He lost this licence and in 2002 he applied on a duplicate licence application form for a replacement. He did not fill out the categories of licence he was seeking on the form and so a standard licence issued to him. He never noticed. He later moved to Limerick and got a replacement standard licence from Limerick County Council.

He again never noticed that the higher categories were missing. It was only in 2013 when he approached a driving instructor about lessons in HGV driving that he discovered that the higher categories were not on the licence. He wanted Clare County Council to reinstate the higher categories or to issue a letter to Limerick County Council advising that they should have been on the licence, so that he could have them reinstated on his current licence. Clare County Council refused to do so. He also said that the Council officials had failed to return telephone calls and that there had been an undue delay in issuing a decision to him.

The Council said that the original licence which was no longer available had only issued for three years, from 1993 -1996. A duplicate licence can only issue in respect of a current licence. As he had no licence for six years prior to applying for a replacement, a duplicate licence could not have issued to him in 2002. Because the details contained on the “duplicate” application form were similar to a renewal application form and contained all of the information required, the 2002 application had been treated as a renewal application and he had paid the fee of €25 instead of a duplicate fee of €5.08. The Council also pointed out that for the higher categories of licence to issue a medical report would have been required, which he hadn't provided. The Council acknowledged that there was a delay in issuing a decision due to the volume of work during that period because of the introduction of the Non-Use of Motor Vehicles Act, 2013 and people being on leave.

He disputed that he had only had a three year licence in 1993 and claimed that the fact that they couldn't produce the application form meant that he was right. The national driver licence database contained details of the licence issued in 2003 and in fact had corroborated his contention that the 1993 licence had contained higher categories. Under the Regulations in place at the time, a three year licence could only issue to an applicant under 70 years of age if they requested it or if they had a medical condition which might progress to a stage where they could not drive and this did not apply to him. Therefore it was more likely that he had applied for a three year licence. There is an onus on applicants to read and complete applications for licences fully, to indicate what categories of licence they are seeking and to provide any medical reports etc. Furthermore, when a licence issues to an applicant the covering letter always advises them to check that the licence is correct. Had the complainant done so, it is possible that an amended licence could have issued at that time. The Ombudsman partially upheld the complaint in relation to the failure to respond to telephone calls and the delay in issuing a decision to him only.

Various Others

Illegal Dumping

Dublin City Council

L12/14/0488

Completed 28/11/2014

Not Upheld

A woman complained about the failure of Dublin City Council (DCC) to take appropriate action in relation to illegal dumping in the North Inner City of Dublin where she lives.

In a report to the Ombudsman DCC outlined a number of measures it has taken in the area to tackle the problem of illegal dumping, including:

- examining the contents of illegally dumped domestic waste bags, in order to try and identify the source of the activity
- recently installed wheeled bins into its own properties and
- had also secured agreement with a housing association to have communal bins installed into its properties.

Other measures included the installation of additional signage and the carrying out of multiple surveys of properties in the area to ascertain whether adequate arrangements were in place to dispose of domestic waste. The council said that the installation of CCTV in the woman's street will be considered based on the outcomes of the trial nearby. The Council told the Ombudsman that since September 2014 in excess of 100 fines relating to illegal dumping had been issued to individuals in the woman's immediate area.

Based on his examination, the Ombudsman was satisfied that DCC had, and was continuing to address the problem of illegal dumping in the area in question. While acknowledging the woman's dissatisfaction with the situation, the Ombudsman could not conclude that the Council had not taken reasonable measures to deal with the problem of illegal dumping. The Ombudsman noted that the North Inner City Litter Action Group (NICLAG) had been set up and tasked with identifying the causes/sources of illegal dumping and littering in the area and also with implementing actions to "bring about a gradual and consistent improvement in the situation". The Ombudsman considered that measures that had been, and which are to be introduced by DCC are positive developments which would assist NICLAG in achieving these objectives.

Various Others

Water Supply

Sligo County Council

L44/14/0431

Completed 06/11/2014

Assistance Provided

A complaint was received from a man regarding the decision of Sligo County Council to take in charge waterworks. The Water Services Act 2007 allows a two third majority of members of a group water scheme to request a Council, to take the water scheme in charge. In accordance with the legislation, the elected members must agree to take the group water scheme in charge. These type of decisions made by the elected members of a local authority are known as reserved functions. The man complained that there was no provision in the legislation to accommodate the wishes of those members of the group that did not wish the Council to take the group water scheme in charge.

The actions of Sligo County Council were in accordance with the legislation. It was also clear that there is no provision in the legislation that would accommodate members of a group water scheme that did not agree with the disposal of it.

Primary Medical Certificate

Disabled Drivers Medical Board of Appeal

O23/14/0939

Completed 26/09/2014

Assistance Provided

A number of complaints were received from people whose appeals for a Primary Medical Certificate to the Disabled Drivers Medical Board of Appeal (DDMBA) were refused. The general administrative issues were that the people were not being advised of the reason why their appeals failed; they were not advised that they could complain to the Office of the Ombudsman and the letters they received from the Board were often signed with initials only, amongst other things. It was also the case that the people were unaware that the DDMBA is obliged to confine its clinical assessment of people to six medical criteria set out in legislation. The DDMBA consists of three medical practitioners who together conduct an assessment of the person, examining relevant medical history, supporting medical information and appropriate clinical examination with particular reference to the medical criteria.

The DDMBA has now agreed to provide people with the reason why their appeals failed, along with information about the option to complain to the Office of the Ombudsman. It will also ensure that its letters are properly signed and a new information leaflet is published. The DDMBA also gave its interpretation of the 6 medical criteria and explained how its assessments are based on its clinical judgement of those medical criteria.

Property Registration Authority

Property Registration Issues

Property Registration Authority

C31/14/0191

Completed 19/09/2014

Partially Upheld

A woman complained to the Ombudsman about the way the Property Registration Authority (PRA) dealt with her grandmother's application for registering a piece of land. The grandmother was not capable of representing herself.

The woman said that the PRA did not follow fair procedure by not accepting objections on behalf of her grandmother about registering the land to another party. The PRA ruled in favour of the other party as the woman's grandmother could not explain in an affidavit why she should have the land registered in her name or why the other party did not have a valid claim.

The Ombudsman examined the Land Registry Rules and noted that the PRA had a duty to make sure that a person of "unsound mind" was properly represented. The PRA argued that it could not make an assumption about the woman's state of mind. However, the PRA accepted that it could have informed the grandmother's representatives that it would accept an affidavit on her behalf by a person(s) with knowledge of the facts.

The Ombudsman requested that the PRA review its procedures so that in future it would make sure that it informed the representatives of a person who could not swear an affidavit themselves because of their state of mind that, it would accept an affidavit on their behalf by a person(s) with knowledge of the facts. The Ombudsman was satisfied that this would make sure that a similar situation did not happen again. In this case the only way to overturn the decision or seek compensation under the Land Registry rules was by way of Court action.

Regulatory

An Bord Altranais

R02/14/0424

Completed 23/09/2014

Not Upheld

A woman complained to the Ombudsman regarding the length of time it had taken An Bord Altranais agus Cnáimhseachais na hÉireann (the Board) to deal with her appeal of its decision not to place her name on the Register of Midwives.

The woman had trained as a Midwife outside of Ireland. On moving to Ireland she applied to register with the Board. The Board assessed her application and decided that the woman's skills should be observed over a period of time before it made its final decision.

In April 2012 the woman completed a placement in a Hospital. In July 2012 the Board informed the woman that, following the observation of her skills, it was refusing her application to be placed on the Register. It informed her of her right to appeal that decision

The woman lodged an appeal and the Board decided to allow the woman undergo another period of adaptation in another Hospital.

The woman complained to the Ombudsman that she could not retake the period of adaptation as the hospitals to which she had applied were not offering the course. Following contact from this Office, the Board allowed the woman apply to the original hospital. As the woman now has the opportunity to improve her skills and to reapply to the Board for registration, the case was closed.

Social Protection

Carer's Allowance

Department of Social

C22/14/0224

Completed 04/09/2014

Assistance Provided

A woman made a late application for Carer's Allowance in June, 2012. She had been caring for her now deceased mother from November, 2011. The Department of Social Protection had refused to backdate her claim, even for the six months allowable under the Social Welfare Acts. Her appeal to the Social Welfare Appeals Office was also refused.

The Ombudsman wrote to the Social Welfare Appeals Office pointing out that the complainant's late mother had been discharged from hospital in December 2011 where she had been diagnosed with bone cancer. She had been bedbound and incontinent in the final year of her life and the complainant was the only person available to provide full time care. She had been providing a very high level of full time care and had very limited opportunities to leave her mother. Furthermore, the complainant was in receipt of State Contributory Pension herself and was not aware that she could be entitled to Carer's Allowance as well. Given the woman's circumstances the Ombudsman asked that a further review be carried out of her entitlement to have her claim backdated. As a result, the claim was backdated by six months.

Carer's Allowance

Department of Social Protection

C22/14/0522

Completed 25/09/2014

Upheld

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

The Department then wrote to the Ombudsman, stating that after reviewing all of the evidence in the case, the Deciding Officer had awarded the woman Carers Allowance.

The Allowance was backdated from the date of the further medical evidence.

Carer's Allowance

Department of the Social Protection

C22/14/0158

Completed 23/10/2014

Not Upheld

A woman complained about a decision by the Department of Social Protection (the Department) to refuse her Carer's Benefit (CB). This resulted in an overpayment being assessed against her. The woman also complained about the refusal of a subsequent Carer's Allowance (CA) application.

The woman had initially applied for CB in respect of both her father and her mother. She was awarded it on appeal for her father and withdrew her application for her mother. Over a year after the award for the woman's father, the Department became aware that she had taken up her employment with the HSE when the HSE made an annual return of her PRSI contributions. It then disallowed her CB claim with effect from the date on which the HSE stated she commenced employment with it (about three months after she was awarded CB).

Under CB legislation, a person may be employed for up to 15 hours per week outside their home (for which the earnings may not exceed €332.50 per week). In the woman's case, she did not live with her parents and she had been paid by the HSE for 36 hours per week, every week, - she also had a part time job for which she worked 14 hours per week. Her earnings from these employments was over the €332.50 per week limit. This was the basis for the Department's decision. In her appeal to the Social Welfare Appeals Office (SWAO), the woman argued that the relevant legislation provided that her employment by the HSE should not be taken into account, and that the Department knew that she was employed by the HSE when she withdrew her appeal in respect of her mother.

The Ombudsman examined the relevant legislation and found that there was nothing in it which exempted the woman's employment with the HSE for social welfare, or Carer's Benefit, purposes.

The woman also claimed CA in respect of her father. This was refused on the grounds of means, working outside the home in excess of 15 hours per week and her father's medical ineligibility. The Ombudsman was satisfied that the Department was correct in taking into account the woman's employment outside her home and also in the manner in which it assessed her means. Regarding the woman's father's medical ineligibility, the Ombudsman noted that the Appeals Officer had commented that medical evidence submitted by the woman indicated that there had been a considerable improvement in his condition. Because all of the statutory conditions must be satisfied in order to qualify for CA, and the Ombudsman was satisfied that the woman's means were in excess of the statutory limit and that she worked in excess of the maximum allowable 15 hours per week, he concluded that there would be no benefit in pursuing the medical issue on its own.

The Ombudsman did not uphold this complaint.

Disability Allowance

Department of Social Protection

C22/14/0491

Completed 05/09/2014

Not Upheld

A man wrote to the Ombudsman as his application for Disability Allowance was refused by the Department of Social Protection. The decision was subsequently upheld by the Social Welfare Appeals Office.

The medical evidence submitted in the case was considered by the Departmental Medical Assessors and the decision to refuse the complainant's application was based on their opinions that the medical evidence did not indicate that he was eligible for Disability Allowance. The Ombudsman was satisfied that the Department took account of all the relevant information and that the correct procedures were followed by the Department in the processing of the application and the subsequent appeal.

Disability Allowance

Department of Social Protection

C22/14/0410

Completed 08/09/2014

Assistance Provided

A woman had applied for Disability Allowance on three separate occasions between 2006 and 2013. In each case, the medical report completed by her GP stated that her level of disability was mild and that she was suitable for work or training for rehabilitative purposes. The Department of Social Protection's medical assessors had also concluded that she was not medically qualified for Disability Allowance. Her appeal was disallowed by the Social Welfare Appeals Office.

The woman questioned how someone who had never met nor examined her could decide that she was ineligible for Disability Allowance. The Ombudsman wrote to the Social Welfare Appeals Office and asked that the additional medical information which the woman had submitted be assessed by another Medical Assessor other than the original assessor as per Departmental guidelines. He also asked that she be offered an oral hearing.

As a result the medical information was reassessed by the Deputy Chief Medical Advisor in the Department of Social Protection who decided that the woman would not qualify for Disability Allowance on medical grounds. However the original Appeals Officer agreed to set aside his decision in order to allow for another Appeals Officer to conduct an oral hearing of the lady's appeal. This will allow the woman an opportunity to put her case to the Appeals Officer directly. The Ombudsman considered that this was a reasonable outcome.

Rent Supplement

Department of Social Protection

C22/12/1964

Completed 13/02/2014

Upheld

A man, who was in receipt of Jobseekers Allowance, applied for rent supplement after separating from his partner with whom he has a four year old son. He had applied for housing to South Dublin County Council and it had accepted him onto the housing list for a two bedroom property so that his son could stay with him during access visits. He had contacted the Rents Unit of the Department of Social Protection and said that he was told to find a property, apply for Rent Supplement and await payment. He found a two bedroom apartment. He signed for the lease in July 2012 and applied for Rent Supplement the following month. His application was refused on the grounds that he was only entitled to a one bedroom unit and the rent of €875 per month was in excess of that allowed for a single person.

The access agreement he had with his ex-partner allowed for his son to stay with him every weekend. It had been witnessed by a solicitor and accepted by South Dublin County Council for the purposes of his housing application. The Department of Social Protection refused to accept the agreement and insisted that he must have either a Joint Custody Agreement or Court Order and he was then forced to seek a Court Order. Rent Supplement was granted with effect from April, 2013 because the Court Order was only signed on 25 March, 2013. He wanted to have the rent supplement backdated to August, 2012.

The Ombudsman discovered that the Department of Social Protection has no written policy on court access or joint custody and the Social Welfare Acts do not require that Court appointed Access Agreements or Joint Custody Agreements be in place.

Rent supplement applications had previously been processed by the HSE. It had a written policy in place about how applications for rent supplement from parents who are not the primary carer of their children but have overnight access agreements with the other parent.

It stated that the role of the Local Authority was to establish the person's right to appropriate housing. Where entitlement had been established to a two bed or larger property by a Local Authority, there was no legal basis for the HSE to question it in relation to the claim for rent supplement, as it could amount to double jeopardy.

The Ombudsman was of the opinion that if double jeopardy applied to the HSE, it would also apply to the Department of Social Protection. He suggested to the Department that given that it had no written policy itself, it would be good administrative practice to apply the terms and conditions of the HSE's existing policy in such cases. On that basis, it appeared to the Ombudsman that this man should have been granted Rent Supplement backdated to the date of application in August, 2012. He asked the Social Welfare Appeals Office to review this case on that basis. Having done so, it accepted that Rent Supplement should be backdated to when the man made his original application.

Invalidity Pension

Social Welfare Appeals Office

C22/14/0344 Completed 17/09/2014

Assistance Provided

A woman applied for an Invalidity Pension after her entitlement to Disability Benefit expired. She was diagnosed with Crohns Disease (an inflammatory bowel disease), and it had proved difficult to control her symptoms. Her application was refused on medical grounds because the information provided by her GP and Consultant was insufficient to indicate that her disability was such that she was unlikely to be able to return to work for at least a year or more.

After she contacted the Ombudsman, it was suggested she get more comprehensive reports from both her GP and Consultant, which she did. These were then forwarded to the Social Welfare Appeals Office by the Ombudsman with a request that her case be reviewed. The Chief Appeals Officer has now agreed to have her case reviewed.

One Parent Family Payment

Department of Social Protection

C22/14/0208 Completed 24/11/2014

Not Upheld

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

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

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

However the woman had been in employment since making her complaint. The Appeals Officer wrote to the Department and suggested that her application for One Parent Family Payment be reviewed with the intention that it should be payable from the date she had started working and it is expected that payment, plus arrears, will be made.

About the Office of the Ombudsman

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

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/>

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 Email: Ombudsman@ombudsman.gov.ie

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

Feedback on the Casebook

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



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