

Motorised Transport Grant

**Report on the refusal by the Department of Health
to implement a recommendation of the Ombudsman**

*A Report to the Dáil and Seanad under section 6(5) and (7) of the
Ombudsman Act 1980*

November 2012

Introduction & Summary

The Ombudsman reports to the Dáil and Seanad that the Department of Health has recently rejected an Ombudsman recommendation relating to the operation of the Motorised Transport Grant (MTG) scheme. The recommendation, if implemented, would ensure that the MTG scheme operates in compliance with the Equal Status Acts. The Department accepts that the Ombudsman's investigation has raised significant issues in relation to the MTG scheme; but it states that it cannot accept the Ombudsman's recommendation because to do so would have serious financial implications for the State. The Ombudsman made the recommendation following her investigation of a complaint on behalf of a young man with severe disabilities whose MTG application had been rejected by the Health Service Executive (HSE).

The Ombudsman made three recommendations to the HSE which reflect the same concerns as inform the recommendation to the Department of Health. The HSE accepted the Ombudsman's recommendations in full and noted the thoroughness of the investigation. The HSE has drawn up an implementation plan to deal with the recommendations made to it. The willingness of the HSE to act on the Ombudsman's recommendations is in contrast with the Department's position that it cannot accept the Ombudsman's recommendation.

The Department's rejection of the recommendation is consistent with its recent rejection of a similar Ombudsman recommendation relating to the Mobility Allowance.¹ Both Ombudsman recommendations reflect the fact that administrative schemes operated on behalf of the Department by the HSE should be in compliance with the law of the land.

The Department will now continue to operate two schemes for people with disabilities on the basis of conditions which fail to comply with the law. The Department's position is that the public interest is best served by its refusal to agree to render the MTG and Mobility Allowance schemes compliant with the Equal Status Acts, as to do so would impose unacceptable financial cost.

It is the Ombudsman's position that there can be no justification for allowing this disregard for the law to continue. We are a society ruled by law.

The Investigation

The MTG is a non-statutory scheme in operation since 1968. It was set up by the Department to grant-aid severely disabled people in acquiring or adapting a car in order to retain employment. The maximum grant payable is €5,020. It is possible, under the terms of the scheme, to name another person to drive the car. The scheme also has an "exceptional circumstances" clause which allows for grant aid to severely disabled people with transport difficulties who are not in employment but who would otherwise suffer social isolation.

¹ The Ombudsman reported on this to the Dáil and Seanad on 24 October 2012; see <http://www.ombudsman.gov.ie/en/News/Media-Releases/2012-Media-Releases/Mobility-Allowance-Scheme-Ombudsman-publishes-special-report-to-the-Houses-of-the-Oireachtas.html>

This was an investigation of a complaint about the refusal of the HSE to award a MTG to a young Donegal man. The refusal was on the grounds that the applicant did not meet the medical criteria for eligibility. Following a detailed investigation, the Ombudsman upheld the complaint. She found that the interpretation of the medical criteria for eligibility used by the HSE was unacceptably restrictive and contrary to Equal Status legislation. She found also that the Department of Health had failed in its responsibility to oversee the implementation of the scheme and had failed to provide the HSE with adequate and clear guidance.

The investigation looked in detail at the HSE's handling of the particular case. The HSE acknowledged that the applicant has a profound intellectual disability in addition to other, severely debilitating conditions. The HSE also accepted that the applicant cannot walk independently as he would pose a risk of injury to himself and others. The HSE's position was that, although severely disabled, he is physically able to walk and this was seen as the determining factor in refusing him the grant.

Between 2009 and 2011 the HSE's Medical Officers in Donegal had undertaken a review of the medical eligibility requirements for the MTG which resulted in a particular interpretation of the term "severe disability". In Donegal (and possibly in some other areas) "severe disability", in the context of the MTG, is understood to refer to a disability involving a severe and permanent restriction of movement in the lower limbs or to a situation in which walking would cause severe complications. In this view, there is no scope for having regard to the consequences for mobility of psychological or intellectual disabilities.

The Ombudsman found that this approach is unacceptably restrictive and contrary to the Equal Status Acts. These Acts prohibit discrimination not only against persons with disabilities, when compared to those without a disability, but also prohibit discrimination against persons with disabilities when compared with others with different disabilities. The latter case applies here.

The approach also flies in the face of the very explicit 2009 finding of an Equality Officer who, in dealing with a similar scheme, was very critical of the "*failure to assess the intellectual and/or psychological capacity of the applicant in relation to their mobility*". The Equality Officer recommended to the HSE and to the Department at that time that they should "*examine the various allowance schemes governing people with disabilities to ensure that they and the associated assessment processes comply with the requirements of the Equal Status Acts*". The Ombudsman found no evidence that any such review had taken place.

Following the investigation, the Ombudsman made recommendations to the HSE about the individual case which had prompted the investigation and also about some wider administrative issues. She recommended to the HSE that the particular case, the subject of her investigation, be reviewed and that there be a review of all MTG applications refused on the basis of the revised approach taken by the Donegal Medical Officers since 2009. She recommended also that the HSE review its appeal arrangements under the MTG scheme with a view to ensuring that all Appeals Officers have the freedom to exercise authority and independence in carrying out their appeal functions.

The HSE accepted the Ombudsman's recommendations in full. The HSE has in the meantime drawn up a plan for the implementation of the Ombudsman's recommendations.²

Recommendation to the Department of Health

The Ombudsman made one recommendation to the Department arising from the investigation:

That the Department of Health revise the terms of the Motorised Transport Grant circular governing the scheme, to provide explicitly that the term "severe disability" is to be understood in the light of the findings of this investigation and in the light, in particular, of the 2009 comments and recommendations of the Equality Officer on the need to have regard to the broad definition of disability set out in the Equal Status Acts; the Ombudsman further recommends that the revised Motorised Transport Grant circular be issued to the HSE within six weeks of the date of this report.

This recommendation is directed towards ensuring that the MTG scheme reflects an understanding of disability which is consistent with the Equal Status Acts. The recommendation is consistent with the 2009 observations of an Equality Officer (cited in the investigation report).

The Department has rejected this recommendation. It said that it was not in a position to amend the circular relating to the MTG as this would have serious financial implications. It accepted that significant issues were raised by the investigation. The Department said that it is its policy objective "*to consider and present to Government all the options open to it in the current economic climate so as to ensure that all schemes meet the requirements of the Equal Status Acts*". The Secretary General of the Department concluded the Department's response to the Ombudsman with the statement: "*In the current financial environment this will prove challenging to achieve and I can give no assurances in this regard.*"

The full text of the Department's response is included as an appendix to this special report.

Comment

It is unacceptable that the Department should say that it cannot guarantee that its schemes will "*meet the requirements of the Equal Status Acts*". The Department of Health is indeed challenged by the current financial environment but it has known about the necessity to bring its schemes into line with the Equal Status Acts for many years. The Equal Status legislation, dating from 2000, is unequivocal in prohibiting discrimination against a person with a disability in comparison with a person with none or in comparison with a person with a different disability.

² The full details of these recommendations are set out in the investigation report which is being published separately on the Ombudsman's website.

In refusing to accept the Ombudsman's recommendations (both in relation to the MTG and the Mobility Allowance) the Department claims to be doing the right thing. Yet the disregarding of the law can never be the "right thing" for citizens or for Government departments.

It is imperative that the Department should reflect on the wider societal implications of its current position.

There is now an urgent need to establish the basis on which the Minister and his Department have arrived at this position.

Under Section 6(5) and (7) of the Ombudsman Act 1980 the Ombudsman may present a special report to the Dáil and Seanad where it appears to her that the response made to a recommendation arising from an investigation is unsatisfactory. This is such a report.

The full report of the investigation which led to the rejected recommendation is now being published on the Ombudsman's website. The executive summary of that investigation report is included as an appendix to this special report.

EMILY O'REILLY

OMBUDSMAN

November 2012



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive

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Ms Emily O'Reilly
Ombudsman
Office of the Ombudsman
18 Lower Leeson Street
Dublin 2

CEO Ref: 221457

15 October, 2012

Re: Ombudsman Investigation – Motorised Transport Grant – Final Report

Dear Ms O'Reilly

I refer to the above report which contained your findings and recommendations.

I wish to advise that the HSE are accepting your recommendations in full and Greg Price, Director of Advocacy, will forward an implementation plan to you in the next two weeks. I can also advise that there is a group in place chaired by Dr. Cate Hartigan to bring consistency and clarity nationally to the operation of this scheme.

I wish to thank you for the report and for the thoroughness of your investigation and I hope that it will assist staff dealing with this scheme to ensure that it continues to be administered in an effective and fair manner.

Yours sincerely

Tony O'Brien
Director General Designate.

An Roinn Sláinte
DEPARTMENT OF HEALTH

22 October 2012

Your Reference: HC4/10/1994

Emily O'Reilly
Ombudsman
Office of the Ombudsman
18 Lower Leeson St.
Dublin 2

Dear Ms O'Reilly,

I refer to your letter of 28th September 2012 enclosing your report of an investigation of a complaint by Mr. Noel Ryan regarding an application by his son Michael for a Motorised Transport Grant.

Your letter requests that the Department should indicate whether it accepts and intends to act on your recommendations in the report.

In the first instance, I would like to clarify a point around your statement in the introduction to the report. "While the HSE supplied a detailed commentary on the draft, the Department noted its findings but did not comment on the content." I respectfully suggest that this statement might be read as being pejorative to the Department in that it seems to indicate that the Department did not consider that the report merited comment. The Department set out its position in previous correspondence.

Your recommendation is that the Department should revise the definition of disability in the circular governing the Motorised Transport Grant having regard to the broad definition of disability set out in the Equal Status Acts and should do so within six weeks of the publication of your report. In addition you have requested the HSE to review Michael Ryan's application and other applications in Donegal having regard to the broad definition of disability in the Equal Status Acts and also having regard to comments and recommendations by an equality officer in two cases which related to a different allowance and which were successfully appealed by the HSE in the courts.

The Department is not in a position to amend the circular relating to the Motorised Transport Grant as you recommend in the report. Expansion of the definition would impose serious financial constraints on the Department, the HSE and the State generally. The recommendations, if implemented as outlined, would create liabilities that the State could not afford.

However, the Department does accept that significant issues have been raised by you in relation to the Motorised Transport Grant, the Mobility Allowance and the Equal Status Acts in relation to age limits and the definition of disability. As per previous correspondence the Department's policy objective remains to consider and present to Government all the options

open to it in the current economic climate so as to ensure that all schemes meet the requirements of the Equal Status Acts. Any delay in reaching this policy objective is regretted, but we are still working on options in this matter.

In the current financial, environment this will prove very challenging to achieve and I can give no assurances in this regard.

Yours sincerely

Dr Ambrose McLoughlin
Secretary General

Ombudsman Investigation - Motorised Transport Grant Scheme

Complaint against the Health Service Executive and the Department of Health

Summary

This was an Investigation by the Ombudsman of a complaint about the refusal of the Health Service Executive (HSE) to award a Motorised Transport Grant (MTG) to a man with a profound intellectual disability. The investigation looked at the actions of the HSE, which decided the application, as well as those of the Department of Health (the Department) which has overall responsibility for the MTG scheme. The HSE refused the application on the grounds that the applicant did not meet the medical criteria for eligibility. Following a detailed investigation, the Ombudsman upheld the complaint. She found that the interpretation of the medical criteria for eligibility used by the HSE was unacceptably restrictive and contrary to Equal Status legislation. She also found that the Department of Health had failed to properly oversee the scheme.

The Case

In July 2010 the father of Mr Ryan (not his real name) complained to the Ombudsman about the refusal of his application for a MTG for his son, a young Donegal man. The HSE's refusal was on the basis that Mr. Ryan did not meet the relevant medical criteria. The applicant's father believed that his son's condition was such that he did meet the medical criterion, which is stated in the scheme to be a "severe disability". He also contended that his son met the other eligibility criteria which relate to a means test, age, and the need to have transport.

The MTG is a non-statutory scheme in operation since 1968. It was set up by the Department to assist severely disabled people with grants to acquire or adapt a car in order to retain employment. The maximum grant payable is €5,020. The scheme also has an "exceptional circumstances" clause which allows for grant aid to severely disabled people with transport difficulties who are not in employment but who would otherwise suffer social isolation.

Health Service Executive

The investigation looked in detail at the HSE's handling of Mr. Ryan's case. The HSE acknowledged that Mr. Ryan has a profound intellectual disability in addition to other, severely debilitating conditions. The HSE also accepted that he cannot walk independently as

he would pose a risk of injury to himself and others. The HSE's position was that, although severely disabled, he is physically able to walk and this was seen as the determining factor in refusing him the grant. The Medical Officers in Donegal had undertaken a review of the medical eligibility requirements between 2009 and 2011 which resulted in the current interpretation of the term "severe disability" for the scheme. In Donegal (and possibly in other areas also) "severe disability", in the context of the MTG, is understood to refer to a disability involving a severe and permanent restriction of movement in the lower limbs, or where walking would cause severe complications. In this view, there is no scope for having regard to the consequences for mobility of psychological or intellectual disabilities.

The Ombudsman found that this approach is unacceptably restrictive. It is contrary to the Equal Status Acts which prohibit discrimination not only against persons with disabilities when compared to those with none but also against persons with disabilities when compared with others with different disabilities. The approach also flies in the face of the very explicit 2009 finding of an Equality Officer, who, in dealing with a similar scheme, was very critical of the "failure to assess the intellectual and/or psychological capacity of the applicant in relation to their mobility". The Officer recommended to the HSE and to the Department at that time that they should "examine the various allowance schemes governing people with disabilities to ensure that they and the associated assessment processes comply with the requirements of the Equal Status Acts". The Ombudsman found no evidence that any such review had taken place.

Department of Health

Since its inception in 1968 the MTG has remained an administrative scheme without a statutory basis. The Department was joined to this investigation as, although it has no input into the decisions made on individual cases, it has overall responsibility for the scheme. The Department took the view that it is the job of the HSE to define what is meant by "severe disability". The Department told the Ombudsman during the course of this investigation that policy proposals relating to the scheme have been formulated and are awaiting decision by the Minister for Health.

The Ombudsman examined the Department's role and concluded that it is reasonable to assume that it is the Department which has legal responsibility for the MTG scheme. She criticised the Department for failing to oversee the implementation by the HSE of the scheme in general and for neglecting to provide adequate and clear guidance on the interpretation of its terms and, in particular, the term "severe disability".

The HSE Appeals Process

The Ombudsman's investigation also scrutinised the actions of the HSE Appeals Office as it had made the final decision to refuse the grant in this case. The Appeals Officer involved was of the view that an Appeals Officer could not interfere with a clinician's medical opinion.

The Ombudsman found this position to be inconsistent with an appeal system acting with independence and authority.

Recommendations

The Ombudsman made a number of recommendations based on her investigation findings. She recommended that the HSE review Mr Ryan's MTG application in the light of her report; that all MTG applications refused on the basis of the revised approach taken by the Donegal Medical Officers since 2009 also be reviewed and that the HSE review its appeal arrangements under the MTG scheme with a view to ensuring all Appeals Officers have the freedom to exercise authority and independence in carrying out their functions.

The Ombudsman recommended to the Department that it revise the terms of the MTG scheme, to provide explicitly that the term "severe disability" be understood in the light of the findings of her investigation and in the light of the 2009 comments of the Equality Officer on the need to have regard to the broad definition of disability in the Equal Status Acts. She specified time frames for the implementation of each recommendation.

The Department of Health said that it was not in a position to amend the circular relating to the MTG as this would have serious financial implications. The Department accepted that significant issues were raised by the investigation and it is working on options to bring all schemes into line with the Equal Status Acts.

The HSE accepted the recommendations made to it and is implementing them without delay.

An Deontas Mótariompair

**Tuarascáil maidir le diúltú na Roinne Sláinte moladh de chuid an
Ombudsman a chur i bhfeidhm**

*Tuarascáil don Dáil agus don Seanad faoi alt 6(5) agus alt (7) den Acht
Ombudsman 1980*

Samhain 2012

Réamhrá & Achoimre

Tá an tOmbudsman ag tuairisciú don Dáil agus don Seanad gur dhiúltaigh an Roinn Sláinte le déanaí moladh de chuid an Ombudsman a chur i bhfeidhm i ndáil le feidhmiú an Scéime Deontais Mótariompair (DMI). B'e aidhm an mholta ná go mbeadh an scéim DMI ag teacht le forálacha na hAchtanna um Stádas Comhionann. Glacann an Roinn leis go n-ardaíonn imscrúdú an Ombudsman ceisteanna tábhachtacha i ndáil leis an scéim; ach deir an Roinn freisin nach feidir léi glacadh le moladh an Ombudsman mar gheall ar na himpleachtaí tromchúiseacha airgeadais a bhainfeadh leis seo ó thaobh an Stáit de. Rinne an tOmbudsman an moladh tar éis imscrúdú a dhéanamh ar ghearán thar ceann fear óg faoi mhíchumas trom ar dhiúltaigh Feidhmeannacht na Seirbhíse Sláinte (FSS) a iarratas ar DMI a fháil.

Tar éis an imscrúdaithe, bhí trí moladh ón Ombudsman do FSS a n-eascraíonn as an inní céanna is a bhaineann leis an moladh don Roinn Sláinte. Ghlac FSS ina n-iomláine le moltaí an Ombudsman agus d'admhaigh cé chomh cuimsitheach is a bhí an t-imscrúdú. Tá na moltaí sin á chur i bhfeidhm faoi láthair ag FSS. Tá an seasamh seo ó FSS ag teacht salach ar sheasamh na Roinne a deir nach féidir léi glacadh le moladh an Ombudsman.

Tá diúltú na Roinne don mholadh comhchosúil le diúltú a rinne an Roinn do mholadh a rinne an tOmbudsman le déanaí i ndáil leis an Liúntas Soghluaisteachta.¹ Is léiriú an dá mholadh de chuid an Ombudsman ar a tuairim dhaindear gur chóir go ndéanfaí scéimeanna riaracháin a fheidhmiú FSS thar ceann na Roinne a bheith ag feidhmiú de réir dhlí na tíre.

Beidh an Roinn ag leanstan ar aghaidh anois le dhá scéim le haghaidh daoine faoi mhíchumas ar bhonn choinníollacha nach bhfuil de réir dhlí na tíre. Is é seasamh na Roinne ná go bhfuiltear ag freastal ar an leas coiteann trí dhiúltú go ndéanfaí na scéimeanna DMI agus Liúntais Soghluaisteachta a athrú le go mbeidís ag feidhmiú de réir an dlí. De réir na Roinne, ní bheadh sé in-déanta na costais a bhainfeadh leis seo a sheasamh.

Is é seasamh an Ombudsman ina leith seo ná nach bhfuil aon bhonn cirt ligean don neamhaird seo i leith an dlí leanúint ar aghaidh. Táimid i sochaí atá faoi riail an dlí.

An tImscrúdú

Is scéim neamhrechtúil é an DMI atá i bhfeidhm ón mbliain 1968 i leith. Bhunaigh an Roinn an scéim seo chun cúnadh deontais a sholáthar do dhaoine faoi mhíchumas trom ionas go bhféadfaidís carr a fháil nó a chur in oiriúint d'fhonn fanacht i bhfostaíocht. An t-uasdeontas is iníoctha ná €5,020. Is féidir, faoi théarmaí na scéime, duine eile a ainmniú an carr a thiomáint. Chomh maith leis sin, tá foráil eile sa scéim do “chúinsí eisceachtúla” inar féidir an cúnadh deontais a sholáthar do dhaoine faoi mhíchumas trom a bhfuil deacrachtaí taistil acu agus a mbeadh leithlisiú sóisialta i ndán dóibh ina éagmais.

¹ Thuairiscigh an tOmbudsman seo don Dáil agus don Seanad ar an 24 Deireadh Fómhair 2012; féach <http://www.ombudsman.gov.ie/en/News/Media-Releases/2012-Media-Releases/Mobility-Allowance-Scheme-Ombudsman-publishes-special-report-to-the-Houses-of-the-Oireachtas.html>

Seo imscrúdú ar ghearán faoi dhiúltú FSS an DMI a bhronnadh ar fhear óg as Dún na nGall. Bhí an diúltú seo bunaithe ar nár chomhlíon an t-iarratasóir na critéir incháilitheachta leighis. Tar éis imscrúdú sonrach a dhéanamh, sheas an tOmbudsman leis an ngearán. Chinn sí go raibh an léirmhíniú a rinne FSS ar na critéir incháilitheachta leighis ina léirmhíniú a bhí sriantach agus a bhí contrártha leis an reachtaíocht um Stádas Comhionann. Chinn sí freisin gur theip ar an Roinn Sláinte ina freagracht maoirseacht a dhéanamh ar chur i bhfeidhm na scéime agus gur theip ar an Roinn treoir imleor shoiléir a sholáthar do FSS.

San imscrúdú breithníodh go sonrach láimhseáil FSS ar an gcás áirithe seo. D’admhaigh FSS go bhfuil míchumas trom intleachtach ar an iarratasóir chomh maith le riochtaí diandíblithe eile. Ghlac FSS leis nach féidir leis an iarratasóir siúl go neamhspleách sa mhéid go mbeadh sin ina bhaol dó féin agus do dhaoine eile. Is é seasamh FSS ina leith seo ná, cé go bhfuil sé faoi mhíchumas trom, tá sé ábalta siúl go fisiceach agus áiríodh sin mar fhachtóir cinntitheach agus an deontas á dhiúltú.

Idir 2009 agus 2011 bhí na hOifigigh Leighis san FSS i nDún na nGall tar éis athbhreithniú a dhéanamh ar cheanglais incháilitheachta leighis don DMI agus mar thoradh ar an athbhreithniú sin cumadh an léirmhíniú ar cad is “míchumas trom” ann. I nDún na nGall (agus b’fhéidir i limistéir eile) tuigtear le “míchumas trom”, i gcomhthéacs an DMI go bhfuiltear ag tagairt do mhíchumas ina bhfuil diansrian buan ar ghluaisteacht i ngéaga íochtaracha nó do chúinse ina gcúiseadh siúl deacrachtaí tromchúiseacha. Sa chomhthéacs sin, níl aon scóip ann aird a bheith ar na hiarmhairtí ó thaobh soghluaisteachta a bheadh ag míchumais shíceolaíocha nó intleachtacha.

Chinn an tOmbudsman go raibh an cur chuige seo ró-shriantach le bheith inghlactha. Tá sé contrártha leis na hAchtanna um Stádas Comhionann a chuireann cosc ar idirdhealú a dhéanamh ní hé amháin i gcoinne daoine faoi mhíchumas i gcomparáid le daoine nach bhfuil faoi mhíchumas ach idir daoine atá faoi mhíchumais éagsúla. Tá an cur chuige ag teacht salach freisin ar an toradh sainráite ón mbliain 2009 a fuair Oifigeach Comhionannais, a bhí ag déileáil le cás comhchosúil, a bhí an-chriticiúil faoin *“teip measúnú a dhéanamh ar chumas intleachtach agus/nó síceolaíoch an iarratasóra i ndáil lena soghluaisteacht”*. Mhol an tOifigeach Comhionannais do FSS agus don Roinn ag an uair gur chóir dóibh *“scrúdú a dhéanamh ar na scéimeanna liúntais éagsúla a rialaíonn daoine faoi mhíchumas chun a chinntiú go bhfuil na scéimeanna sin agus na próisis atá bainteach leo ag comhlíonadh cheanglais na nAchtanna um Stádas Comhionann”*. Chinn an tOmbudsman nach raibh aon fhianaise ann gur tharla athbhreithniú dá leithéid.

Tar éis an imscrúdaithe, chuir an tOmbudsman moltaí faoi bhráid FSS faoin gcás ar leith seo as ar d’eascair an t-imscrúdú seo; bhí moltaí uaithe freisin i ndáil le saincheisteanna riaracháin níos leithne a bhaineann leis an scéim. Mhol sí do FSS go ndéanfaí athbhreithniú ar an gcás áirithe seo, ábhar a himscrúdaithe; agus go ndéanfaí athbhreithniú ar gach iarratas DMI a diúltaíodh ar bhonn an chuir chuige leasaithe a ghlac na hOifigigh Leighis i nDún na nGall le bheith i bhfeidhm ó 2009 i leith. Mhol sí freisin go ndéanfadh FSS athbhreithniú ar a ghnáthaimh maidir le hachomharc faoin scéim DMI; ag féachaint lena chinntiú go mbeadh saoirse ag Oifigigh Achomhairc a n-údarás agus a neamhspleáchas a úsáid agus iad i mbun a bhfeidhmeanna achomhairc.

Ghlac FSS lei moltaí an Ombudsman ina n-iomláine. Idir an dá linn tá FSS tar éis plean a dhréachtú do chur i bhfeidhm mholtaí an Ombudsman.²

Moltaí na Roinne Sláinte

Chuir an tOmbudsman moladh amháin faoi bhráid na Roinne ag eascairt ón imscrúdú:

Go ndéanfadh an Roinn Sláinte leasú ar théarmaí an chiorcláin maidir leis an Deontas Mótariompair ag rialú na scéime, chun foráil go sainráite gurb é a thuigfí leis an téarma “mhíchumas trom” ná a raibh cinnte i bhfianaise thorthaí an imscrúdaithe seo agus i bhfianaise, go háirithe, thuairimí agus mholtaí 2009 ón Oifigeach Comhionannais maidir leis an ngá a bhí ann sainmhíniú leathan a bheith ann ar cad is míchumas ann mar atá leagtha amach sna nAchtanna um Stádas Comhionann; de bhreis air sin mhol an tOmbudsman go n-eiseofaí an ciorclán maidir leis an Deontas Mótariompair chuig FSS laistigh de shé seachtaine ó dháta na tuarascála seo.

Tá an moladh seo dírithe ar a chinntiú go léiríonn an scéim DMI ar an tuiscint ar cad is míchumas ann agus é a bheith ag comhlíonadh fhorálacha na nAchtanna um Stádas Comhionann. Tá an moladh i gcomhréir le barúlacha an Oifigeach Comhionannais (luaite i dtuarascáil an imscrúdaithe).

Dhiúltaigh an Roinn don mholadh seo. Dúirt an Roinn nach raibh sé de chumas aici leasú a dhéanamh ar an gciorclán maidir leis an DMI sa mhéid go mbeadh impleachtaí tromchúiseacha airgeadais ag baint leis. Dar leis an Roinn an cuspóir polasaí atá aici ná “breithniú a dhéanamh agus moltaí a chur faoi bhráid an Rialtais faoi na roghanna éagsúla go léir atá ar fáil i gcomhthéacs na timpeallachta eacnamaíochta reatha chun a chinntiú go mbeadh na scéimeanna go léir ag comhlíonadh na nAchtanna um Stádas Comhionann”. Mar chríoch le freagra na Roinne ar an Ombudsman dúirt an Rúnaí Ginearálta: “Sa chomhthéacs airgeadais reatha beidh sé dúshlánach seo a bhaint amach agus mar sin níl aon dearbhuithe á thabhairt agam ina leith.

Tá téacs iomlán fhreagra na Roinne á fhoilsiú mar aguisín leis an tuarascáil seo.

Barúil

Tá sé neamh-inghlactha go ndéarfadh an Roinn nach féidir léi rathú a thabhairt go mbeidh a scéimeanna “ag comhlíonadh cheanglais na nAchtanna um Stádas Comhionann”. Cé go bhfuil ceisteanna tromchúiseacha airgeadais ag brú anois ar an Roinn, bhí fhios ag an Roinn Sláinte le fada an lá go raibh gá a scéimeanna a leasú le go mbeidís ag comhlíonadh na nAchtanna um Stádas Comhionann. Tá an reachtaíocht um Stádas Comhionann, a achtaíodh sa bhliain 2000, ina reachtaíocht aonchiallach ag cosc idirdhealú a dhéanamh i gcoinne duine faoi mhíchumas i

² Tá sonraí iomlána na moltaí seo leagtha amach i dtuarascáil an imscrúdaithe atá á fhoilsiú ar leithligh ar shuíomh gréasáin an Ombudsman.

gcomparáid le duine nach bhfuil faoi mhíchumas nó i gcomparáid le duine faoi mhíchumas éagsúil.

Go praiticiúil, tá an Roinn ag rá go bhfuil sí ag feidhmiú ar mhaithe leis an leas coiteann sa chás seo trí neamhaird a dhéanamh do cheanglais an dlí. Ach níl sé cóir riamh go ndéanfadh Roinn Stáit nó saoránach neamhaird ar an dlí.

Tá sé práinneach anois a chinntiú cén bunús atá taobh thiar de sheasamh seo an Aire agus na Roinne.

Faoi alt 6(5) agus alt (7) den Acht Ombudsman 1980 féadfaidh an tOmbudsman tuarascáil speisialta a chur faoi bhráid na Dála agus an tSeanaid i gcás go bhfuil an chuma air, ina tuairim, go raibh an freagra a fuair sí ar mholadh a rinne sí ina fhreagra míshásúil. Is tuarascáil dá leithéidí an tuarascáil seo.

Tá an tuarascáil iomlán ón imscrúdú ónar eascair an moladh diúltaithe á foilsiú anois ar shuíomh gréasáin an Ombudsman. Tá achoimre fheidhmeach ar thuarascáil an imscrúdaithe anois ina aguisín ag gabháil leis an tuarascáil speisialta seo.

EMILY O'REILLY

OMBUDSMAN

Samhain 2012



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Health Service Executive

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Ms Emily O'Reilly
Ombudsman
Office of the Ombudsman
18 Lower Leeson Street
Dublin 2

CEO Ref: 221457

15 October, 2012

Re: Ombudsman Investigation – Motorised Transport Grant – Final Report

Dear Ms O'Reilly

I refer to the above report which contained your findings and recommendations.

I wish to advise that the HSE are accepting your recommendations in full and Greg Price, Director of Advocacy, will forward an implementation plan to you in the next two weeks. I can also advise that there is a group in place chaired by Dr. Cate Hartigan to bring consistency and clarity nationally to the operation of this scheme.

I wish to thank you for the report and for the thoroughness of your investigation and I hope that it will assist staff dealing with this scheme to ensure that it continues to be administered in an effective and fair manner.

Yours sincerely

Tony O'Brien
Director General Designate.

An Roinn Sláinte
DEPARTMENT OF HEALTH

22 October 2012

Your Reference: HC4/10/1994

Emily O'Reilly
Ombudsman
Office of the Ombudsman
18 Lower Leeson St.
Dublin 2

Dear Ms O'Reilly,

I refer to your letter of 28th September 2012 enclosing your report of an investigation of a complaint by Mr. Noel Ryan regarding an application by his son Michael for a Motorised Transport Grant.

Your letter requests that the Department should indicate whether it accepts and intends to act on your recommendations in the report.

In the first instance, I would like to clarify a point around your statement in the introduction to the report. "While the HSE supplied a detailed commentary on the draft, the Department noted its findings but did not comment on the content." I respectfully suggest that this statement might be read as being pejorative to the Department in that it seems to indicate that the Department did not consider that the report merited comment. The Department set out its position in previous correspondence.

Your recommendation is that the Department should revise the definition of disability in the circular governing the Motorised Transport Grant having regard to the broad definition of disability set out in the Equal Status Acts and should do so within six weeks of the publication of your report. In addition you have requested the HSE to review Michael Ryan's application and other applications in Donegal having regard to the broad definition of disability in the Equal Status Acts and also having regard to comments and recommendations by an equality officer in two cases which related to a different allowance and which were successfully appealed by the HSE in the courts.

The Department is not in a position to amend the circular relating to the Motorised Transport Grant as you recommend in the report. Expansion of the definition would impose serious financial constraints on the Department, the HSE and the State generally. The recommendations, if implemented as outlined, would create liabilities that the State could not afford.

However, the Department does accept that significant issues have been raised by you in relation to the Motorised Transport Grant, the Mobility Allowance and the Equal Status Acts in relation to age limits and the definition of disability. As per previous correspondence the Department's policy objective remains to consider and present to Government all the options

open to it in the current economic climate so as to ensure that all schemes meet the requirements of the Equal Status Acts. Any delay in reaching this policy objective is regretted, but we are still working on options in this matter.

In the current financial, environment this will prove very challenging to achieve and I can give no assurances in this regard.

Yours sincerely

Dr Ambrose McLoughlin
Secretary General

Imscrúdú de chuid an Ombudsman - An Scéim Deontais Mótariompair

Gearán i gcoinne Fheidhmeannacht na Seirbhíse Sláinte agus i gcoinne na Roinne Sláinte

Achoimre

Seo Imscrúdú a rinne an tOmbudsman ar ghearán maidir le diúltú a rinne Feidhmeannacht na Seirbhíse Sláinte (FSS) Deontas Mótariompair (DMI) a bhronnadh ar fhear le míchumas trom intleachta. San imscrúdú breithníodh gníomhartha FSS, a rinne an cinneadh maidir leis an iarratas, chomh maith le gníomhartha na Roinne Sláinte (an Roinn) ar a bhfuil an fhreagracht fhoriomlán as an scéim DMI. Dhiúltaigh FSS an t-iarratas ar a bhforas nár chomhlíon an t-iarratasóir na critéir incháilitheachta leighis. Tar éis imscrúdú sonrach a dhéanamh, sheas an tOmbudsman leis an ngearán. Dar léi bhí an léirmhíniú a rinneadh ar na critéir incháilitheachta leighis a bhí in úsáid ag FSS ina gcritéir a bhí chomh sriantach nach bhféadfaí glacadh leo agus go raibh siad ag sárú na reachtaíochta maidir le Stádas Comhionann. Bhí sí den tuairim freisin gur theip ar an Roinn Sláinte an scéim a mhaoirsiú i gceart.

An Cás

I mí Iúil 2010 chuir athair an Uasail Ryan (ní seo a fhíor-ainm) gearán faoi bhráid an Ombudsman ag cur in iúl gur diúltaíodh iarratas a rinne sé le haghaidh DMI ar son a mhic, fear óg as Dún na nGall. Dhiúltaigh FSS an t-iarratas ar a mbonn ar nár chomhlíon an tUasal Ryan na critéir iomchuí incháilitheachta leighis. Bhí athair an iarratasóra den tuairim gur chomhlíon a mhac an critéar leighis atá sonraithe sa scéim, eadhon go bhfuil sé faoi “dhian-mhíchumas”. Mhaígh sé freisin gur chomhlíon a mhac na critéir incháilitheachta eile a bhain le tástáil acmhainne, aoise, agus an gá a bhí aige le hiompar.

Is scéim neamhrechtúil é an DMI atá i bhfeidhm ó bhí 1968 ann. Chuir an Roinn an scéim ar bun chun cuidiú le daoine atá faoi dhian-mhíchumas trí dheontais a thabhairt dóibh chun carr a fháil nó chun carr a oiriúnú d’fhonn fanacht i bhfostaíocht. Is é €5,020 an t-uasdeontas atá ar fáil. Tá foráil sa scéim freisin le haghaidh “cúinsí eisceachtúla” a cheadaíonn cúnamh deontais do dhaoine atá faoi dhian-mhíchumas agus nach bhfuil fostaithe, ach a bheadh aonraithe go sóisialta gan an cúnamh deontais.

FSS

San imscrúdú amharcadh go sonrach ar an gcaoi a ndearna FSS cás an Uasail Ryan a láimhseáil. D’admhaigh FSS go raibh an tUasal Ryan faoi mhíchumas trom intleachta chomh maith le riocht dian-dhíblithe a bheith aige. Ghlac FSS leis chomh maith nach féidir leis siúl as a stuaim féin mar go mbeadh seo baolach dó féin agus do dhaoine eile. An seasamh ag FSS ná, cé go raibh sé faoi dhian-mhíchumas, go bhfuil sé in ann siúl go fisiceach agus go raibh seo ina fhachtóir cinntitheach i ndiúltú an deontais. Rinne na hOifigigh Leighis i nDún na nGall athbhreithniú ar na ceanglais d’incháilitheacht leighis idir 2009 agus 2011 agus is as sin a d’eascair an léirmhíniú reatha ar an téarma “dian-mhíchumas” don scéim. I nDún na nGall (agus b’fhéidir i limistéir eile chomh maith) tuigtear le “dian-mhíchumas”, i gcomhthéacs an DMI, míchumas atá ann ina bhfuil dian-srian buan ar ghluaiseacht na ngéag íochtair, nó i gcás go mbeadh deacrachtaí ann ó thaobh siúil de. Sa chomhthéacs seo, níl aon scóip ann le haird a bheith ar iarmhairtí a bheadh ag míchumas síceolaíoch nó intleachtach ar an tsoghluaisteacht.

Chinn an tOmbudsman go raibh an cur chuige sin róshriantach. Tá sé ag teacht salach ar na hAchtanna um Stádas Comhionann a chuireann cosc ní hé amháin ar idirdhealú éagórach a dhéanamh ar dhuine atá faoi mhíchumas agus iad á gcur i gcomparáid le duine nach bhfuil faoi mhíchumas ach idirdhealú a dhéanamh orthu i gcomparáid le daoine eile le míchumas éagsúil. Tagann an cur chuige salach freisin ar na torthaí sonracha sa bhliain 2009 ó imscrúdú a rinne Oifigeach Comhionannais, imscrúdú a bhí ag déileáil le scéim chomhchosúil, inar teipeadh “measúnú a dhéanamh ar chumas intleachtach agus/nó síceolaíoch an iarratasóra i ndáil lena s(h)oghluaisteacht”. An tráth úd an moladh a chuir an tOifigeach faoi bhráid FSS agus na Roinne ná gur chóir “iniúchadh a dhéanamh ar na scéimeanna liúntais éagsúla atá ann do dhaoine faoi mhíchumas chun a chinntiú go bhfuil siad, agus na próisis mheasúnachta bhainteacha, ag cloí le ceanglais na nAchtanna um Stádas Comhionann”. Ní bhfuair an tOmbudsman aon fhianaise go ndearnadh aon athbhreithniú dá leithéid.

An Roinn Sláinte

Ó bunaíodh an scéim sa bhliain 1968 d’fhan an DMI ina scéim riaracháin gan aon bhonn reachtúil léi. Bhí an Roinn san áireamh san imscrúdú seo, cé nach bhfuil aon ionchur aici i gcinntí sna cásanna indibhidiúla, sa mhéid go bhfuil freagracht fhoriomlán ar an Roinn as an scéim. Bhí an Roinn den tuairim gurb é jab FSS é sainiú a dhéanamh ar céard is “dian-mhíchumas” ann. Chuir an Roinn in iúl don Ombudsman le linn an imscrúdaithe seo go bhfuil tograí beartais i ndáil leis an scéim ceaptha agus go bhfuiltear ag fanacht le cinneadh ón Aire Sláinte.

Rinne an tOmbudsman iniúchadh ar ról na Roinne agus chinn go raibh sé réasúnta glacadh leis go bhfuil freagracht dhlíthiúil ar an Roinn as an scéim DMI. Cháin sí an Roinn as teip maoirseacht a dhéanamh ar chur i bhfeidhm FSS ar an scéim i gcoitinne agus as bheith faillíoch i soláthar treorach a bhí imleor, soiléir maidir le léirmhíniú théarmaí na scéime agus, go háirithe, an téarma “dian-mhíchumas”.

Próiseas Achomhairc FSS

Rinne an tOmbudsman grinnscrúdú freisin ar ghníomhartha Oifig Achomhairc FSS sa mhéid gur an oifig sin a rinne an cinneadh deireanach an deontas a dhiúltú sa chás seo. Bhí an tOifigeach Achomhairc i gceist den tuairim nach bhféadfadh an tOifigeach Achomhairc cur isteach ar thuairim an chliniceora leighis. Chinn an tOmbudsman nach raibh an seasamh sin ag teacht leis an gcóras achomhairc a bheith ag feidhmiú go neamhspleách agus le húdarás.

Moltaí

Rinne an tOmbudsman roinnt moltaí bunaithe ar thorthaí a himscrúdaithe. Mhol sí go ndéanfadh FSS athbhreithniú ar iarratas an Uasail Ryan ar DMI i bhfianaise a tuairisce ; go ndéanfaí athbhreithniú ar gach iarratas a diúltaíodh ó leasaigh Oifigigh Leighis Dhún na nGall an cur chuige sa bhliain 2009 agus go ndéanfadh FSS athbhreithniú ar na socrúithe achomhairc faoin scéim DMI ag féachaint lena chinntiú go mbeadh an tsaoirse ag gach Oifigeach Achomhairc a n-údarás a chur i bhfeidhm go neamhspleách agus iad ag cur i gcrích a bhfeidhmeanna amach anseo.

Mhol an tOmbudsman don Roinn go ndéanfadh an Roinn leasú ar théarmaí na scéime DMI, chun go mbeadh tuiscint shainráite ann ar cad is brí leis an téarma “dian-mhíchumas” i bhfianaise thorthaí a himscrúdaithe agus i bhfianaise thuairimí an Oifigigh Chomhionannais ó 2009 maidir leis an ngá go mbeadh aird ar an sainmhíniú leathan ar cad is míchumas ann faoi na hAchtanna um Stádas Comhionann. Shonraigh sí amscálaí do chur i bhfeidhm na moltaí go léir.

Dúirt an Roinn nach raibh ar a cumas an ciorclán a leasú mar gheall ar na himpleachtaí tromchúiseacha airgeadais a bhainfeadh leis seo. Ghlac an Roinn leis go n-ardaíonn an tuarascáil ceisteanna tábhachtacha agus dúirt go bhfuil sí ag plé leis na roghanna atá ann chun go mbeidh gach scéim dá cuid ag teacht go hiomlán le forálacha na hAchtanna um Stádas Comhionann.

Ghlac FSS leis na moltaí a bhaineann leis agus tá FSS ag gníomhú láithreach dá réir.