

Too Old to be Equal? – A Follow-up

**Items of key correspondence
Between Department of Health and the Office of the
Ombudsman**

April 2011-October 2012



21 April 2011

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

Dear Ms. O'Reilly

Ombudsman Investigation – Mobility Allowance – Final Report

I refer to your letter of 15th April enclosing the above Report, the contents of which have been noted.

I have noted your recommendation at paragraph 7.2 of the Report and I have discussed it with the Minister. I can confirm that this Department accepts your recommendation and intends to act on it within six months, as recommended.

I trust this resolves the matter to your satisfaction.

Yours sincerely



Michael Scanlan
Secretary General

From: Office of the Ombudsman

Our Reference : HC8/08/2204

21 October 2011

Ms Bairbre Nic Aonghusa
Office for Disability and Mental Health
Department of Health and Children
Hawkins House
Dublin 2

Dear Ms Nic Aonghusa

I refer to the Ombudsman's investigation into the illegal refusal of **Mobility Allowance** to people over 66 years of age, and her subsequent published report, "Too Old to be Equal ?".

Following her investigation the Ombudsman recommended that :

" the Department of Health and Children completes its review of the Mobility Allowance scheme and, arising from that review, revises the scheme so as to render it compliant with the Equal Status Act 2000. The Ombudsman further recommends that this process of review and revision should be completed within six months of the date of this report."

On 21 April 2011 Mr Michael Scanlan, on behalf of the Department of Health and Children, accepted the recommendation and agreed to act on it within six months.

As six months have now passed I would be grateful if you would let me know the outcome of the review and the manner in which the Mobility Allowance scheme has been revised. If the review has not been completed or the scheme not revised, I would be grateful if you would provide me with a detailed update and a date when the Ombudsman's recommendation will be fully implemented.

Yours sincerely

David Nutley

Investigator

From Office of the Ombudsman

Our Reference : HC8/08/2204

29 December 2011

Ms Bairbre Nic Aongusa
Director
Office for Disability and Mental Health
Department of Health
Hawkins House
Dublin 2

Dear Ms Nic Aongusa,

Ombudsman Investigation - Mobility Allowance

I refer again to the matter of your Department's acceptance of the Ombudsman's recommendation following her investigation of a complaint regarding mobility allowance. The Ombudsman's recommendation was that the Department "*completes its review of the Mobility Allowance scheme and, arising from that review, revises the scheme so as to render it compliant with the Equal Status Act 2000. The Ombudsman further recommends that this process of review and revision should be completed within six months of the date of this report.*" In accepting the recommendation, the Department committed itself (a) to review the mobility allowance scheme; (b) to revise the scheme so as to make it compliant with the Equal Status Act and (c) to have the review and revision completed within six months, that is, by end October 2011.

It is clear that the Department has not, in fact, implemented the Ombudsman's recommendation and we have had an exchange of correspondence since early November 2011 arising from this situation. The Department's present position, as set out in your letter of 28 November 2011, is that the future of the mobility allowance scheme "*has already been considered by Government and is due to be considered again soon. When the Government has made a decision in relation to the mobility allowance, the Department will be back in touch with the Ombudsman*". The inference here is that the Department requires a decision from Government in order to comply with the Ombudsman's recommendation. If this is in fact the case, it seems reasonable to expect that the Department would have anticipated this difficulty when it committed to meeting the Ombudsman's recommendation.

It is clear from the Ombudsman's investigation report that the future of the mobility allowance scheme has been under review within the Department for several years now. In the absence of a decision on its future, the mobility allowance continues to operate on the basis of an eligibility criterion which, on the Department's own admission, is in breach of the law. As the Ombudsman commented in her investigation report:

"While the Department may well be acutely aware of the difficulties facing people with disabilities, its apparent inability to respond to specific situations (the Mobility Allowance issue, for example) leaves it open to the charge that it lacks a sense of urgency in tackling such issues. It leaves it open also, in this particular case, to the perception that it is unconcerned with the fact that it is operating a scheme which is at odds both with the law of the land and with human rights law more generally. The Ombudsman is not stating that this is her conclusion; nevertheless, she recognises that others may feel compelled to reach this conclusion."

As you are aware the Ombudsman reports to the Oireachtas on matters relating to her Office. You will appreciate that the Ombudsman is required to keep the Oireachtas informed of developments in relation to implementation of recommendations in her reports. While the Ombudsman has noted the Department's commitment to keep her informed, she will be obliged to notify the Oireachtas of developments in this case when the opportunity arises.

Yours sincerely

Fintan Butler
Senior Investigator



Your ref:- HA6/11/3608

27 July 2012

Ms. Bernie McNally
Director General
Office of the Ombudsman
18 Lower Leeson Street
Dublin 2



Dear Ms. McNally

The Secretary General has asked me to respond to your letter of 20 July concerning the implementation of the recommendations from your investigation into the refusal of the Mobility Allowance on the grounds of age.

I can only apologise again for the delay in relation to this matter. As you are aware there are considerable pressures on the Department at the present time and we have been endeavouring to make progress on this issue since your original recommendations.

It is now our firm intention to have this matter resolved by the end of September. Because of the nature and sensitivity of the decisions that have to be taken in relation to this allowance, and other issues, the matter does have to go to Government and we are preparing for this at the moment.

I appreciate that your Office is concerned at the delays so far, and should there be any change in relation to the above timescale I will let you know.

Yours sincerely

Geraldine Fitzpatrick
Assistant Secretary
Social Care

Other

Patient Safety

Cuirfear fáilte roimh dhícheallfhisnagras i nGeallge

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3rd October 2012

Your ref: HC8/08/2204

Mr Fintan Butler
Senior Investigator
Office of the Ombudsman
18 Lower Leeson Street
Dublin 2

Dear Mr Butler

Re: Ombudsman's Investigation Report of September 2012 into the Mobility Allowance

I refer to your letter of 14th September with enclosed draft investigation report "Too Old to be Equal? – A Follow-up", regarding a recommendation by the Ombudsman in regard to the Mobility Allowance Scheme, along with five additional complaints in regard to the scheme. I apologise for the delay in replying to you.

I would point out that one of the complainants covered in the report has been assessed and does not qualify for the allowance on medical grounds, and that the complainant has accepted this.

This Department originally signalled its intention to review the Mobility Allowance Scheme in late-2009. In February 2011, my predecessor wrote to your office and explained the potential policy options available. In April 2011, this Department accepted the Ombudsman's findings, and recommendation to review and revise the Mobility Allowance Scheme so as to render it compliant with the Equal Status Acts. The Department also noted that the Ombudsman, in a footnote to her recommendation, expressed no view as to the terms of the revision of the scheme other than that the revised scheme should be compliant with the Acts. I note that this is restated in the draft investigation report.

The Department continues to accept that the Mobility Allowance Scheme cannot continue to operate on its present basis. The Department commenced its examination of the issues raised by the Ombudsman, as soon as it signalled its intention to review the scheme in late-2009. At that stage, there were two Equality Tribunal decisions under appeal by the HSE, whose outcome was not known at that time. A decision was also taken to inform the Government that the scheme was under examination. Due to the implications of the Ombudsman's recommendation in her report "Too Old to be Equal" (April 2011), it was felt necessary to obtain Government approval for changes to the scheme. Subsequently, the Department notified the Ombudsman's office that

the future of the Mobility Allowance scheme had already been considered by Government by November 2011, and was due for further early consideration.

In regard to the content of the draft report, I would refer the Ombudsman to previous correspondence from this Department and add the following two additional comments.

(i) In regard to your comment on page 11, (end of paragraph 2), on the need to go to Government on this issue, I would point out that the potential impact of a decision on a scheme such as this, taken at administrative level, in terms of potential increased exchequer costs or loss of income to a vulnerable group of people, would indicate that this was, in fact, an appropriate matter to bring to the attention of the Government.

(ii) In regard to the decision to remove the age limit on the Motorised Transport Grant by an administrative decision, as a precedent upon which the same could be done with the Mobility Allowance, I would point out that the Motorised Transport Grant is not comparable to the Mobility Allowance in terms of its purpose or the level of expenditure involved. Therefore, your contention that the age limit could be removed for the allowance by administrative procedure is not accepted.

I must point out that the Minister reserves the right and discretion to decide on what is appropriate to bring to Cabinet bearing many factors, including those already referred to above, in mind.

Notwithstanding the commitment to meet the six month timescale, it has since proved extremely difficult to resolve this matter. A number of policy options have been put to Government in the intervening period. These have raised significant issues, including:

- (i) the feasibility of extending eligibility under the scheme, due to the potentially significant cost implications;
- (ii) legislating for the scheme;
- (iii) the inappropriateness of extending or formalising schemes which no longer accord with the Government's mainstreaming policy on disability, and where alternative transport options are increasingly available for people with mobility difficulties under the relevant State agencies.

Arising from recent approaches to Government in the matter, a number of legal issues have been raised which require further consideration. The Department will be seeking to resolve the outstanding issues as expeditiously as possible.

I wish to assure you that this Department has serious regard for the legal rights of people with disabilities and, informed by the National Disability Strategy and the Disability Act 2005, consistently seeks to put these rights at the forefront of its policies and their implementation by the HSE. The recently published Value for Money and Policy Review of Disability Services puts the implementation of new person-centred approaches to service delivery at its centre. Unfortunately, the evolution of specific aspects of policy and their implementation has not always been



22 October 2012

Your ref: HC8/08/2204

Bernie McNally
Director General
Office of the Ombudsman
18 Lower Leeson Street
Dublin 2

Mobility Allowance - Ombudsman's Investigation Report

Dear Director General

I refer to your letter of 12th October and enclosed investigation report "Too Old to be Equal? – A Follow-up".

You request that the Department informs you whether it accepts and intends to act on the recommendations in the report.

The Ombudsman is asking the Department to

- remove the upper age limit as a condition of the Mobility Allowance scheme with immediate effect
- authorise the HSE to reconsider the applications of the four complainants in the report without taking account of the upper age limit
- instruct the HSE to reconsider applications received since 1 April 2011 which were refused solely on the basis of the upper age limit without regard to the upper age limit.

The Department is not in a position to amend the circular relating to the Mobility Allowance as recommended in the report. The recommendations, if implemented would ignore the very serious financial constraints on the Department, the HSE and the State generally. Implementation of the recommendations would create liabilities that the State could not afford.

However, I would refer to my letter of 3rd October where the Department again accepts that the Mobility Allowance scheme cannot continue to operate on its present basis. As stated in my previous letter the Department is obliged to consider further a number of issues which have arisen from recent approaches to Government in this matter.

The Department will be seeking to resolve the outstanding issues as expeditiously as possible.

Yours sincerely

A handwritten signature in black ink, appearing to be 'AM', with a long horizontal stroke extending to the right.

Dr. Ambrose McLoughlin
Secretary General