

Waste waiver schemes administered by local authorities

**A report of an investigation
by the Ombudsman**

October 2008

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Contents

Chapter 1

Introduction

Chapter 2

Legal perspective - Waste Collection Functions of Local Authorities

Chapter 3

Complaints received

Chapter 4

The Investigation

Chapter 5

Acknowledgements

Chapter 6

Waste Collection Systems and Charges

Chapter 7

Waste Waiver Schemes

Chapter 8

Who qualifies for a Waiver?

Chapter 9

Survey's Main Findings

Chapter 10

Waste Collection Charges and Low-Income Households - Summaries of Submissions Received

Chapter 11

Conclusions

Chapter 12

Recommendations

Chapter 13

Response of Department of Environment, Heritage & Local Government to the Draft Report

Appendices

Appendix 1 – Questionnaire

Appendix 2 - Table 1 - Average annual waste charges 2006

Appendix 3 - Table 2 - Waivers granted in 2006

Appendix 4 - Monaghan Hardship Fund

Appendix 5 - Table 3 - Waiver provision and qualifying criteria

Appendix 6 - Submission by Society of St Vincent de Paul

Appendix 7 - Submission by Senior Citizens Parliament

Appendix 8 - Letter to Department of Environment, Heritage & Local Government

Appendix 9 - Submission by Department of Environment, Heritage & Local Government

Appendix 10 - Letter to Department of Social & Family Affairs

Appendix 11 - Submission by Department of Social & Family Affairs

Appendix 12 - Response of Department of Environment, Heritage & Local Government to the Draft Report

1. Introduction

My Office has received complaints alleging inequity and unfairness in the administration of the waste waiver scheme being operated by a particular local authority. Having considered the complaints and the issues raised by the complainants together with the view of the local authority concerned, I formed the view that this was not likely to be a matter of concern to the particular local authority alone and that other local authorities face similar issues. I, therefore, decided to carry out a general investigation of the operation of waiver schemes in local authorities.

This investigation report is primarily concerned with highlighting inequity and unfairness in the administration of these schemes with particular attention being focused on the adverse effect on individuals. In my recommendations, I point to some further work that needs to be undertaken by local authorities and by the Department of the Environment, Heritage and Local Government. For this reason, the design and implementation of a waiver scheme, either at national or at local level, is not addressed in this report.

I am heartened that the Department of the Environment, Heritage and Local Government, to whom I provided an advanced copy of the report, has welcomed the report and accepted that the existing regulatory framework requires modernisation. The Department has also assured me that it will be giving the report and my recommendations the fullest consideration in the context of the ongoing review of the regulation of the whole waste management sector.

1.1 Ombudsman's Powers and Jurisdiction

My powers and jurisdiction, as Ombudsman, are set out in the Ombudsman Act 1980 (as amended). Normally, I do not investigate a complaint unless certain specific criteria are met. Usually there will be a complainant who claims to be adversely affected by an action of a public body listed in the Ombudsman Act 1980 as being a body subject to investigation by the Ombudsman.

Following a preliminary examination of a case, it must appear to me that the action complained of has, or may have, adversely affected the complainant and that the action involved maladministration. In this regard Section 4 of the Ombudsman Act 1980 sets out a range of headings which help to determine whether or not there has been maladministration. I must decide whether the action complained of was, or may have been –

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

In addition, I have the power under Section 4(3)(b) of the Act to carry out an investigation, on my own initiative, without having received a specific complaint, where such an investigation appears to be warranted.

This is a situation where, although I have received complaints about one local authority only, I have decided to use my powers under Section 4(3)(b) to carry out an investigation into certain aspects of the administration of waiver schemes in other local authorities with a view to highlighting the problems arising, their adverse effect on individuals and making findings and recommendations.

Emily O'Reilly
Ombudsman
October 2008

2. Legal perspective - Waste Collection Functions of Local Authorities

The EU Waste Framework Directive of 1975 and the EU Landfill Directive of 1992 provide the basis for Ireland's current system of waste management. These Directives have been transposed into Irish law by means of primary legislation including the Waste Management Act 1996 (WMA) and the Protection of the Environment Act 2003.

Under the Waste Management Act 1996 (as amended), local authorities have a wide range of functions in relation to waste collection. Section 33 of the Act provides that *"each local authority shall collect, or arrange for the collection of waste within its functional area."* Each local authority can decide who provides the waste collection service in its own area and, currently, waste collection is carried out in a number of different ways:

- collection by the local authority,
- collection is contracted out by the local authority to private operator(s) who collect(s) the waste on its behalf,
- collection by a private waste operator (fully privatised).

All private operators who wish to collect waste must first obtain a waste collection permit. The Waste Management Act divided the country into waste management regions and one local authority in each region has responsibility for awarding permits to private operators within its region.

Section 52 of the Protection of the Environment Act 2003 amended the waste Management Act 1996 to provide for the imposition of waste charges and the waiving of all or part of the charges on the grounds of financial hardship as follows:

*"75.- (1) A local authority may make a charge in respect of the provision of any waste service by, or on behalf of, that authority.
(3) A local authority may, if it is satisfied that it is appropriate so to do on grounds of personal hardship, waive all or portion of a charge made by it under subsection(1)."*

Waste Management legislation, however, is silent in relation to the imposition or waiving of charges by private waste operators.

According to the Department of the Environment, Heritage and Local Government (the Department), a local authority has the power to make appropriate arrangements with the private sector for the waiving of waste charges where it is not the service provider (See Appendix 9 to this report). However, a High Court judgement delivered in June 2005 notes that a local authority is not entitled to pay a third party for a waiver scheme - all it is entitled to do is to waive a charge it levies for a service provided by or on behalf of the local authority (*Mr Binman Ltd v Limerick City Council*).

The making of a charge in respect of the provision of a waste service and the provision of a waste waiver scheme is an executive function under the provisions of S75(8) of the Waste Management Act 1996 (as amended).

3. Complaints received

In 2006 a public representative drew my attention to the waste waiver scheme being operated by Waterford County Council. He made a complaint to my Office on behalf of a number of low-income householders who pleaded inability to pay the waste charges but did not qualify for relief under the Council's waste waiver scheme. I subsequently received a further complaint directly from another householder in a similar position. These applicants had been refused a waiver of waste charges by the Council on the basis that the source of their income was not one of the forms of social welfare income listed in the Council's waiver scheme. The complainants felt that this was unfair and inequitable.

3.1 Details of the Complaints

Details of the complaints received are as follows:

Complaint A

Ms A lives alone and was in receipt of an Invalidity Pension and a Social Welfare Living Alone Allowance giving her a total weekly income of €179. Her application for a waiver was refused because her income was not one of the Social Welfare incomes listed in the Council's Scheme. However, had she been in receipt of a Non-Contributory Old Age Pension and the Living Alone Allowance she would have qualified for a waiver although her total weekly income would amount to €189.70 (€10.70 greater than her actual income).

Complaint B

Mr B was in receipt of Disability Benefit and his wife was on an Invalidity Pension. They were refused a waiver because such benefits are not listed in the Council's Scheme. He was advised that if he had been in receipt of Disability Allowance, rather than Disability Benefit, he would have qualified. The complainant alleged that the Allowance and the Benefit are paid at the same weekly rate and, therefore, he could not understand why one payment was acceptable and the other not.

Complaint C

Ms C is a deserted wife in receipt of the One Parent Family Allowance of €185.80 per week. She was refused a waiver as this form of income is not listed in the Council's Scheme. A person in receipt of the basic rate of Deserted Wife's Benefit (€191.30 at that time) would, however, have qualified for a waiver.

In addition to the above complaints, I have in the past received complaints in relation to the terms of the waiver scheme being operated by Mayo County Council. However, this Council no longer provides a waste collection service and the service is now provided by private operators. In the course of preparing this report, I received correspondence from a woman, representing a Community Association in County Cork, concerning the failure of private operators to provide any relief for low-income households.

3.2 Waterford County Council's Response to the complaints

My Office asked Waterford County Council (the Council) for a report on the complaints raised. In its reply the Council provided a copy of its Waste Waiver Scheme and explained that its Waiver Scheme is mainly confined to people whose only source of household income is one of the Department of Social & Family Affairs (DSFA) means-tested allowances listed in the scheme. The reason for this, according to the Council, is that it gives the Council an objective assessment of the financial circumstances that a person is in. When the DSFA undertakes a means test, they consider the income of the applicant and their spouse. As part of the application the Council also requires the applicant to confirm if the payment/allowance is the only source of income in the household. In this way every reasonable effort is made to ensure that the waiver is given to those who are most in need.

In relation to non-means tested allowances, the Council took the view that the household may be in receipt of other forms of income, which are not considered by DSFA as these allowances are normally paid based on PRSI contributions and no means-testing is undertaken e.g. Invalidity Pension and Old Age Contributory Pension. The Council informed my Office that an excessive level of resources would be required if the Council were to conduct a means test for all applicants for a waiver, and that it therefore relies on the work previously carried out by the DSFA as the best available basis for assessing a person's financial situation.

My Office noted that the Deserted Wife's Benefit (DWB) is included in the list of qualifying criteria for the scheme, although it is not necessarily a means-tested payment, while the One Parent Family Allowance (OPFA) is not included, even though it is a means-tested payment. This appeared to be an anomaly in the waiver scheme and at variance with the general rationale on which the waiver scheme was based. The Council subsequently explained that applicants in receipt of DWB were deemed eligible for a waiver as, historically, recipients of this payment had been granted relief by the Council under previous schemes that provided relief on hardship grounds. It also explained that the DWB was replaced by the OPFA in January 1997 and, consequently, there are only a

small number of on-going recipients of DWB. The Council further explained that it had decided not to include the OPFA as a qualifying income source as it had been established through the DSFA that there was a large number of people in the area of the local authority in receipt of this payment, and on that basis, the Council would not have the resources to fund the grant of a waiver to such numbers of potential applicants.

It was also noted by my Office that there was no provision in the waiver scheme that would allow the Council to consider granting a waiver to applicants on hardship grounds, where the applicant did not qualify under the specific terms of the scheme. The Council explained to my Office that its policy is to keep within the limits of the scheme and that it rarely made exceptions. At November 2006, out of approximately 500 unsuccessful applicants that year, only two exceptions had been made and waivers were granted in these two cases on medical grounds.

In further correspondence between the Council and the public representative who had made the complaint to my Office, the Council accepted that the scheme is not entirely fair as each applicant is not fully means-tested, and it would be fairer to make the waiver available to all people with an income below a certain set level. However, the Council pointed out that the administration of such a scheme would require access to an independent source of income verification and this was not available to the Council.

3.3 This Report

As already stated, it was the receipt of a number of complaints against Waterford County Council that prompted me to carry out a wider study of waiver schemes in local authorities generally and the individual complainants have been advised of this review. This Report describes my findings, conclusions and recommendations in relation to the operation of waste waiver schemes.

4. Investigation

Having carried out an initial examination of the complaints made against Waterford County Council, I decided to use my power under Section 4(3)(b) of the Ombudsman Act 1980 to investigate the position in other local authority areas across the country, although I had not received any specific complaint other than those referred to in the previous Chapter.

4.1 Objectives of the investigation

The objectives of the investigation are to:

- Establish the terms and qualifying criteria of the waiver schemes being administered across the country by local authorities in respect of refuse collection charges;
- Consider the adverse effects on low-income households of the failure of local authorities to grant waste charge waivers.

4.2 Methodology

The investigation process was carried out as follows:

- Twenty three local authorities (see list below) were surveyed by way of a questionnaire. (A copy of the questionnaire is at Appendix 1.) Those selected represent a cross-section of urban and rural local authorities across the country and included:

Carlow, Cork City, Cork County, Donegal, Dublin City, Dun Laoghaire-Rathdown, Fingal, Galway City, Galway County, Kerry, Kildare, Kilkenny County, Limerick City, Limerick County, Louth, Mayo, South Dublin, Waterford City, Waterford County, Dungarvan Town Council, Westmeath, Wexford County and Wexford Borough.
- As interested stakeholders, the Department of the Environment, Heritage and Local Government, the Department of Social and Family Affairs, the Society of St Vincent de Paul and the Irish Senior Citizens Parliament were asked for their comments and these are included in the Appendices to this Report.
- In addition, I had regard to other research in this area including two reports published by the Combat Poverty Agency viz. Waste Collection Charges and Low-Income Households –2003 and Implementing a Waiver Scheme Guidelines for Local Authorities - 2005.

5. Acknowledgements

I would like to thank each of the local authorities surveyed as part of this investigation for the prompt return of the completed questionnaires and their co-operation with some follow-up enquires from my Office.

I am mindful that this Report is based on what a selected number of local authorities have advised me is the position on the ground, and apart from a limited number of follow-up enquiries, I have relied on the information provided to me.

It was clear from the responses that many local authorities acknowledge that providing a waiver of refuse charges presents ongoing difficulties for them and that any initiative that might serve to highlight those difficulties and assist in arriving at a solution would be welcome.

I would also like to thank the Department of the Environment, Heritage and Local Government, the Department of Social and Family Affairs, the Society of St Vincent de Paul and the Irish Senior Citizens Parliament for their contributions.

6. Waste Collection Systems and Charges

6.1 Service Providers

Traditionally, local authorities played the key role in the collection and disposal of household waste. In 1998 the Department of the Environment's policy document "*Changing Our Ways*" highlighted the scope for increased participation by the private sector in the area of waste management. The returns from the 23 local authorities included in my survey (See Table 1 at Appendix 2), indicate that the household waste collection service is provided entirely by private operators in 35% or eight of the local authorities surveyed, and entirely by the local authority in 17% or four of the local authorities surveyed. (In three of these local authorities, private operators provide a collection service to private apartment complexes only.) A waste collection service is provided by both the local authority and private operators in 48% or 11 of the local authorities surveyed, with private operators having a market share of between 15% and 32%.

6.2 Collection Charges

Under Section 52 of the Protection of the Environment Act 2003, the determination of waste management charges is a matter for the relevant local authority, where it provides the service. Where a private operator provides the collection service, it is a matter for that operator to determine charges.

In 2005, in order to reflect the “polluter pays principle” and to incentivise households to recycle more of their waste, the Department of the Environment, Heritage and Local Government asked waste collection service providers to move to a system of use-based charging. There are currently three systems of pay-by-use charges: volume-based system, tag-based system and weight-based system:

- In the volume-based system householders pay an annual fixed charge for a weekly collection based on the size of the bin, with lower charges for smaller sized bins.
- Users of the tag-based system purchase tags to attach to their bin or refuse bag and only pay when they present the bin or bag for collection.
- Under the weight-based system the waste collector weighs the waste presented for collection and bills the householder per kilogram of waste collected.

As can be seen from the Table at Appendix 2, the majority of the local authorities surveyed employ a combination of a fixed charge and a pay-by-use charge while the weight-based system is provided by three of the local authorities surveyed.

The estimated average annual charge to householders for the waste collection service provided by the local authorities surveyed ranges from €192 in Fingal and Westmeath to €516 in Wexford County, while the charge for the private collection service ranges from €200 in Westmeath to €450 in Limerick County Council.

7. Waste Waiver Schemes

7.1 Value of waivers

All local authorities surveyed who provide a waste collection service in their area offer a reduction of the amount of the waste charges to low-income households who qualify under their waste waiver schemes. There are a wide variety of schemes with different qualifying criteria and different types and amounts of reductions. Some local authorities offer a full or partial waiver of the fixed annual charge only, while others offer a waiver of the pay-by-use portion of the charge, in the form of free tags or a free weight allowance and some schemes provide an element of both types of relief. In 2006, the average annual value of a waiver ranged from €40 in Wexford County to €357 in Galway City.

7.2 Waivers granted in 2006

Details of the waivers granted in 2006 by the local authorities surveyed are contained in Table 2 at Appendix 3 of this report.

7.3 Cost of providing a waiver scheme

The provision of a waiver scheme has significant cost implications for local authorities. As can be seen in Table 2 (Appendix 3) the cost of implementing a waiver scheme ranges from €30,000 in Wexford County to €7.8 million in Dublin City. Most local authorities surveyed are using income allocated to other services to subsidise the scheme. Only three authorities, (Cork County, Dun Laoghaire/Rathdown and Waterford County), recover the cost of waivers by levying sufficient charges on other users of the waste collection service.

Private operators provide no relief by way of a waiver of charges to low-income households. As part of the survey, I asked local authorities for their views on whether, in these circumstances, the local authority should provide a waiver to customers of the private collector in the area. None of the respondents saw this as a realistic proposition with the exception of Limerick County, which from 2007 provides a partial waiver to customers of the private collectors, and Limerick City, which arranges collection by a private contractor for a limited number of low-income households.

The report of the Combat Poverty Agency “Implementing a Waiver Scheme – Guidelines for Local Authorities – 2005”, made reference to a hardship scheme operated by Monaghan County Council (not one of the authorities included in our survey). Monaghan County Council, whose waste collection service has been privatised for a number of years, has established a Hardship Fund with a small annual budget to provide relief for those most in need. My Office contacted the Council in the context of this survey and was advised that a sum of €20,000 was set aside for this fund in 2006 and again in 2007. Details of this scheme are at Appendix 4.

The difficulties identified by local authorities in providing a waiver to private operators’ customers included the following:

- Would pose administrative problems for the local authority;
- Would place an unsustainable financial burden on the local authority;
- Would result in local authority customers subsidising the users of the private service;
- Would increase the cost of the local authority service thereby weakening its market competitiveness;
- Could force the local authority out of the market, create a monopoly, and would be likely to result in spiralling charges.

The responses of the local authorities surveyed are described in more detail at Chapter 10. My comments on their responses are at Chapter 11.

8. Who qualifies for a Waiver?

8.1 Table 3 at Appendix 5 of the Report gives an overview of the waste collection system in place in the local authorities surveyed, together with an overview of the qualifying criteria for a waiver of waste charges.

8.2 Criteria

The criteria used to decide which households qualify for a waiver are different in each local authority. The most common criterion used is the amount of total household income. Individual local authorities set different levels of income limits that are broadly based on rates of social welfare payments. The majority of local authorities surveyed which offer a waiver, do so regardless of the source of the household income, recognising that some people in employment have income levels so low as to impede their ability to pay waste charges. Three local authorities confine the grant of a waiver to households that are exempt from tax, one local authority offers a waiver only to households whose sole source of income is from means-tested social welfare payments, and one local authority grants a waiver only to a person or a couple over 65 years of age and living alone. (Appendix 5)

8.3 Use of discretion

Of the 16 local authorities surveyed that provided a waiver scheme for their customers in 2006, 15 provide for the use of discretion in hardship cases on an ad hoc evaluation basis. One local authority, however, (Waterford County Council) operates within the strict qualifying criteria set out in its scheme i.e. households in receipt of means-tested social welfare payments, and the scheme specifically states that any applicant who does not fall into the listed income categories will not qualify.

9. Survey's Main Findings

The responses of local authorities to the Ombudsman questionnaire reveal that:

- four (17%) of the 23 local authorities surveyed provide a waste collection service to all their households. All are urban based.
- private operators provide a waste collection service exclusively in eight (35%) of local authorities surveyed. All except one are rural based - see Table 1 at Appendix 2;
- there is a wide gap between the lowest (192) and the highest charge (516) for waste collection services; local authority annual service charges range from €192 to €516 and private service charges range from €200 to €450- see section 6.2;
- private operators provide no relief by way of a waiver of charges to low-income households; (*As from 2007 one local authority provides a partial waiver to customers of private operators, and one arranges collection by a private contractor for a limited number of low-income households - see Section 7.3);
- seven (35%) of the local authorities surveyed provided no waiver of charges to any household in 2006 because the waste collection service was provided exclusively by private operators - see Table 2 at Appendix 3;
- in an area where the service is provided by both a private operator and the local authority, only those whose waste is collected by, or on behalf of, the local authority have access to a waiver scheme, apart from those referred to at * above;
- there is a wide variety of waiver schemes among local authorities and within one county there are three different waiver schemes in operation - see Table 3 at Appendix 5;
- the criteria used to decide which households qualify for a waiver are different in each local authority - see Chapter 8;
- where operative, different qualifying criteria and different types and amounts of reductions in waivers apply. The average value of a waiver ranged from €40 to €357 - see Section 7.1;
- the annual cost in 2006 of implementing a waiver scheme ranged from €30,000 to €7.8m - see Section 7.3;
- only three of the authorities surveyed recover the costs of the waiver scheme by increasing charges to other users of the waste collection service;
- most local authorities cover the costs of the waiver scheme by using funds from other sources, e.g. rates and revenue receipts;
- of the eight areas where the service is provided exclusively by a private operator, seven are in rural areas. Where the service is provided by both (LA and private), the majority are in rural areas - see Table 1 at Appendix 2.

10. Waste Collection Charges and Low-Income Households - Summaries of Submissions Received

10.1 Some solutions proposed

Some years ago the Money Advice and Budgeting Service (MABS) identified refuse collection charges as a cause of indebtedness for some of their clients. In 2003 the Combat Poverty Agency (CPA), at the behest of MABS, prepared a report "*Waste Collection Charges and Low-Income Households*". This report highlighted the need for a uniform approach to the application of waiver arrangements for waste collection charges for low-income households. It recommended the introduction of a national waiver scheme to be administered by local authorities, which would apply to all waste collection operators (public and private). It called for Guidelines to be drawn up by the Department of the Environment, Heritage and Local Government, in consultation with the Department of Social and Family Affairs, Combat Poverty Agency, MABS and community and voluntary sector representatives. The report was submitted to the Department of Social and Family Affairs and the Department of the Environment, Heritage and Local Government for consideration of its recommendations.

In 2005 the Combat Poverty Agency produced a further report "*Implementing a Waiver System: Guidelines for Local Authorities*". That report highlighted a number of issues, in particular:

- The conflict which often exists between environmental and social policies;
- The need to poverty proof all policies at both design and implementation stage;
- Problems posed by the increasing privatisation of public services for those who cannot afford to pay for them.

The Report included a set of proposed guidelines for use by local authorities nationally to structure waste charging systems, including waiver systems. While promoting the guidelines as a means of achieving consistency across local authority areas in the short term, the report called for the introduction of a universal waiver model that would satisfy the guidelines at a national level. Three such options were identified and analysed in the report – a tax credit system implemented nationally via the existing taxation system; a locally operated system to be implemented via local authorities; and a national waiver scheme delivered through the social welfare system.

The report concluded that a locally operated waiver system would offer the most effective delivery model and that consideration should be given to centralised funding of the waiver scheme, with grants given to local authorities for its operation.

10. 2 Comments of the Society of St. Vincent de Paul

In response to my Office's invitation, the Society of St. Vincent de Paul made a submission to this investigation in relation to waste management costs for low-income families. I do not propose to repeat the entire submission here but the following selected comments are particularly relevant. The full text is at Appendix 6 to this report.

SVP is concerned that many low-income households are experiencing poverty due to the waste charges structure in a number of local authorities. There have been significant increases in waste charges in recent years coupled with a growing shift to private sector providers, whose main concern is cost effectiveness rather than protecting low-income households from unnecessary financial burdens. Private operators are under no obligation to provide a waiver scheme. Operational aspects of waste management policy are decided upon at local Government level, resulting in different systems operating in different counties.

The current Pay by Volume / Pay by weight systems, while having clear environmental merits, pose a number of key problems and anomalies:

- some local authorities have a standing charge (recycling service included in this) and any refuse pick-up is an additional cost;*
- some have no standing charge and sell bags for waste, with a recycling service as an optional extra to pay for on top of the bag system;*
- while some people on social welfare are entitled to a waiver, others in a neighbouring county – or even a neighbouring estate - may not be; and*
- payment methods often do not assist the budgeting behaviour of low income households.*

At the local level, Conferences of the Society of St. Vincent de Paul provide financial assistance as a direct result of the hardship caused by lack of appropriate support with domestic waste charges. The SVP Conference has found it necessary to help clean out back gardens, and have helped with the replacement of stolen bins also. It is worth noting that for volunteers such work is very difficult and the conference can no longer assist in such demanding physical work.

If a single old lady (pensioner) lives in an apartment and puts out waste contained in a couple of small supermarket plastic bags per week she gets charged the same amount annually as her neighbour who might be a couple with two children on either social welfare or with one partner working at least.

Consequences of the Present System

Through the work of our volunteers the Society sees at first hand the direct consequences for individuals and families of the present system. These include rubbish building up in peoples' back gardens leading to public health concerns, dangers for children, neighbour unease, and potentially anti-social behaviour. Having to pay full charges also has an impact on other household discretionary budgets such as food / clothing / entertainment. It is also worth recording the experience of Medical Burns Units who have mentioned the increase in burns due to the burning of household rubbish.

In order to try and deal with these issues the Society has paid for the costs of private skips, the costs of cleaning out houses and vermin control. At local level the Society has also come to arrangements with Local Authorities and Private Waste Collectors.

The Conundrum of Private Waste Collection

The majority of local authorities use the private sector to deliver waste management services to at least some extent in their counties. Waste collection permits are the means by which local government regulates private waste companies. Unfortunately, the waste collection permits fail to make mandatory the following: any aspect of pricing, payment policy or consumer protection (in contrast to essentially all other aspects of the waste management issue). As a direct result, we believe the majority of areas under private provision do not provide any form of income protection to poorer households. In counties where this is the case, SVP is very concerned about the barriers in establishing a system which protects low-income households while encouraging the reduction of household waste.

What SVP want

We believe that Government should allocate adequate resources for a consistent, country-wide system to assist those on low income - on both social welfare and low wage incomes - with their domestic waste costs. We believe that this can be done while continuing to encourage those households to recycle where possible.

10.3 Comments of the Irish Senior Citizens Parliament

In response to my Office's invitation, the Irish Senior Citizens Parliament made a submission to this investigation. I do not propose to repeat the entire submission here but the following selected comments are particularly relevant. The full text is at Appendix 7 to this report.

At present many pensioners live at risk of poverty. Half of all pensioners are solely dependent on the state pension (CSO, 2007) and extra costs like waste charges erode their real income. The system is inequitable as some local authorities operate a waiver scheme and others do not. We can find no justifiable reason for this inconsistency other than the fact that it seems to be the result of uncoordinated policy-making. Simply put, no consistent national waiver system has been developed. The result is that older people in some areas benefit from a waiver, while many more do not.

Of the 34 local authorities surveyed on this issue last year, just half operated a waiver scheme.¹

¹ O'Callaghan-Platt and Davies A. (2006) 'A Nationwide Review of Pay-By-Use (PBU) Domestic Waste Collection Charges in Ireland: Extensive Survey Findings (2005-WRM-MS-33) Interim Report Wexford: EPA

Where a waiver scheme does operate, there are inconsistent means of accessing the waiver. Some local authorities demand that older people apply for a waiver, undergo a means test or make an individual hardship case. Older people who are most at a disadvantage are those who have no waiver and must meet a large annual charge.

To address this concern, the Irish Senior Citizens Parliament would like to make two simple recommendations to government:

- 1. Implement a national waiver system for waste charges ensuring that all pensioners are entitled to a waiver on waste charges.*
- 2. Make this waiver part of the existing Household benefits package.*

10.4 Comments of the Department of the Environment, Heritage and Local Government (the Department)

In response to my Office's invitation, (see Appendix 8) the Department made a submission to this investigation. I do not propose to repeat the entire submission here but the following selected comments are particularly relevant. The full text is at Appendix 9 to this report.

Waste management services have traditionally been provided at a local level, with individual arrangements being locally determined and tailored to local circumstances. The present legal framework, as determined by the Oireachtas, reflects this. In accordance with section 52 of the Protection of the Environment Act 2003, the determination of waste management charges, and any associated waiver scheme, is a matter for the relevant local authority, where it acts as the service provider. Similarly, where a private operator provides the collection service, it is a matter for that operator to determine charges.

...in regard to waiver schemes in respect of these charges, it is a matter for the local authority concerned to determine the nature and extent of any such scheme in the case of services provided by itself. Generally speaking waiver schemes do not operate in respect of privately supplied collection services. There is legal advice to the effect that such a scheme is not legally provided for in circumstances where the private sector are providing the service. However, where a local authority enters into an arrangement with a private operator to provide a service to certain households a waiver scheme can apply. Local authorities have been asked by the Department to engage with commercial waste collectors to agree on arrangements to assist lower-income households by offering alternative payment methods to an annual lump-sum.

In a broader setting the issue of waste charges and low income persons/households has been raised in the Social Partnership context. The community and voluntary sector have argued that low-income households in areas serviced by private waste collectors are treated inequitably in comparison to those receiving waivers from local authorities; that they are also treated inequitably in comparison to higher income households in the same areas, as the latter can avail of tax relief on their waste charges; and that real hardship arises in certain cases as a result.

Discussions have taken place between the Department and the Department of Social and Family Affairs in response to the issues raised. It did not prove possible however to identify a mechanism to address the issues raised through the social welfare system.

The Combat Poverty Agency report again raised the issues surrounding the operation of waiver schemes in certain areas but not in others. The report fully acknowledges the centrality of the polluter pays principle and that incentives should exist for all households to control waste generation and maximise recycling...Essentially the authors look at possible models for delivering what they would regard as a more nationally equitable waiver system and come down on balance in favour of one... Ultimately the report comes down in favour of the locally based system as against the social welfare system.

The issue of waiver schemes was considered by Dail Eireann in February 2005 in the context of a motion which was not carried and which called for the introduction of a National Waiver Scheme.

The switch to use based charges over the past few years is intended to reward those who generate least waste and who are most active in recycling. The precise charging mechanism in any given area will inevitably be fitted to local circumstances, local costs and available technology.

In regard to the waiving of such charges, each individual local authority has the power to make a waiver scheme where it is the service provider, or to make appropriate arrangements with the private sector, where it is not. In this way local solutions can be tailored to local circumstances with proper application of the subsidiarity principle. Ideally any such arrangement should also reflect the polluter pays principle and incorporate an incentive to recycle waste, though historically this has not been the case.

In practice, waiver schemes are generally available where the local authority provides the service directly. Where services are provided by private collectors, local authorities have the power, under existing provisions, to make special arrangements in the case of hardship if they consider it necessary. Some local authorities do so, although on a very limited scale.

There is one further development which is relevant to this issue. A public consultation has concluded on issues surrounding the overall regulation of the waste management sector. Stakeholders and the general public were invited to make submissions on whether there is a need for a regulator for the sector, on what model of regulator might be most appropriate and on what powers any such regulator should be given. Among the possible powers identified is the power to impose a public service obligation. This is a feature of regulation in some other sectors, and effectively requires contractors to operate cross-subsidisation so that services can be provided where they would not otherwise be economically feasible. The various submissions received and the issues raised will be considered further in the context of the review of waste management

generally provided for in the Government's policy programme and which will shortly be initiated.

To summarise the position then, it has never been the practice for central Government to determine operational matters in regard to waste management. Waste management is a service that is one of the oldest provided by local authorities. It is the Government's view that, working to national and EU environmental standards, local authorities should be free to tailor services to local needs and that a local approach to the determination of charges, and any waiver of such charges, is consistent with this.

10.5 Comments of the Department of Social and Family Affairs (the Department)

In response to my Office's invitation, (See Appendix 10) the Department made a submission to this investigation. I do not propose to repeat the entire submission in this report but the following selected extracts are particularly relevant. The full text is at Appendix 11 to this report.

This is very definitely a local issue and local authorities have all the necessary powers to operate waiver schemes in their areas. Indeed, some local authorities already operate good waiver schemes and not just those where the refuse collection service is provided directly by the local authority. In some areas private contractors are involved in a waiver scheme. Minister Cullen reinforced this point recently in a recent Dáil debate on the issue:

"The local authorities have all the necessary powers to operate waiver schemes in their areas. It is a matter on which local councilors in the local authorities should make the decision. They can do it by involving themselves in the estimates process."

It has been suggested that this Department could respond to the issue of waste charges through the exceptional needs payments of the supplementary welfare allowance scheme. Under this scheme a single payment may be made to help meet essential, once-off, exceptional expenditure, which a person could not reasonably be expected to meet out of his or her weekly income. The payments are for such items as bedding or cooking utensils for someone setting up a home for the first time or costs relating to funerals, or visiting relatives in hospital or in prison. This scheme is not intended to meet the cost of regular household bills.

This Department is responsible for the Household Benefits Package (formerly known as the Free Schemes) which provides recipients with assistance with their gas/electricity and telephone costs and covers the full cost of a television licence. The possibility of extending this package to cover other socially desirable goods, which could include waste charges, has been considered. The Review of the Free Schemes carried out in 2000 explained that other State agencies and indeed local authorities can introduce their own similar schemes if they wish as follows:

"While recipients consider the Free Schemes to be very valuable, there is continual pressure to extend these schemes to other socially desirable goods. Any new schemes would add to that pressure and divert resources from other areas such as increasing the basic rate of payment. However, there is nothing to preclude other State agencies introducing their own schemes, such as Local Authorities extending Free Dog Licences, as part of their wider social obligations. Many private companies already extend concessions to pensioners in order to increase their business usage, as part of their social aims and as recognition of the value they have received from their customers over the years. It is not the business of the Department of Social, Community and Family Affairs to provide for all socially desirable items of expenditure, even if there was agreement on what those items of expenditure might be".

In any event, the introduction of a national social welfare scheme to address the issue of waste charges would not be feasible given the wide range of charging regimes and cost structures that exist in respect of waste management throughout the State. Any system put in place to assist people with waste collection charges would have to take account of the different local arrangements.

As you mention, the CPA report considered the various options for waste charging delivery models... The report concluded that, if a suitable procurement approach could be developed, the locally operated waiver system would offer the most effective delivery model and this Department is in agreement with that consideration.

There have been some discussions between officials from this Department and colleagues in the Department of Environment, Heritage and Local Government on this issue. That Department is aware of our position.

10.6 Comments of the local authorities

As part of the questionnaire local authorities were asked for their views as to whether they should provide a waiver to customers of private operators. The following are some of the responses received:

- it would be impossible to manage a scheme which provided waivers to customers of private operators;
- local authorities should not be involved in waiver schemes for private waste collection;
- extending the local authority waiver scheme to include customers of private operators would weaken the competitive position of the local authority;
- extending the waiver scheme to customers of private operators would only serve to increase the annual charge for paying local authority customers;
- the Council service is available to all households in the city, so if a customer chooses to use a different operator we see no reason to extend the waiver scheme to them;

- where the collection is privatised there is no way the Council can provide any form of waiver, it simply is not practical or economic;
- the Council receives no subvention from Central Government for the implementation of the waiver scheme; in addition to the door to door household collection, the Council operates a Civic Amenity Centre where a wide range of waste items are accepted free of charge from the public, and many Bring Banks for glass, cans, old clothing etc. None of the private operators provide any such additional services. The provision of a waiver for customers of private companies is a matter for the companies involved;
- if the waiver scheme was recognised by the State with no loss accruing to the local authority (such as with the Free Travel Pass Scheme, Free Electricity) then the Council may consider offering a waiver to customers of a private collector.

The questionnaire also invited the local authorities to provide any general comments that they felt might be relevant to this report. A representative selection of those comments have been grouped together under some general headings as follows:

Calls for a National Waiver Scheme

- subsidies/waivers should be provided nationally through the Social Welfare system in the same manner as other schemes for low-income households, rather than as a burden on the Council's resources;
- the waiver issue has been considered at Strategic Policy Committee level and is deemed to be a matter for the Department of Social and Family Affairs (DSFA);
- a national waiver system is the best solution in the interests of fairness and equity;
- national guidelines are essential to ensure a consistent approach countrywide; these should be drawn up by the Department of the Environment, Heritage and Local Government, in conjunction with DSFA, D/Finance, and groups such as MABS, Combat Poverty and community and voluntary sector representatives;
- a national waiver system should be funded through the Department of Social and Family Affairs;
- a nationally administered waiver system may provide the best solution ; a notice of motion has been passed in this Council calling on "the Minister for Social and Family Affairs to draw up National Guidelines for implementation of a waiver scheme in line with the recommendations contained in the Combat Poverty report;
- the cost of a national scheme should be borne at central government level as is the case with Free Travel, Free TV Licence, Free Fuel Allowance, Free Electricity ;
- a national scheme which provides for a partial waiver of the fixed charge element only would comply with the polluter pays principle and still provide an incentive to reduce the volume of waste being disposed of.

Resource Issues:

- local authorities lack the resources to provide a waiver scheme which would be equitable to all low-income households;
- the resources of the local authority are used to fund the waiver scheme and if costs were to be passed to the paying customer it would make the service non-competitive;
- private operators are not required to provide a waiver, therefore, local authorities are at a disadvantage;
- the provision of a waiver scheme is a very heavy cost on local authority resources and makes it impossible to provide a waste collection service which is self funding;
- the waiver scheme is open to abuse but the Council would require additional resources to carry out more spot checks;
- an equitable and adequate basis for funding schemes such as the refuse waiver scheme must be devised and implemented.

Administration Difficulties

- many individuals do not apply for a waiver in a timely manner; applications for a number of years can be sent in at the same time and usually only when the service has been withdrawn due to lack of payment;
- the reliance on third party information (e.g. social welfare statements) is not totally satisfactory.

11. Conclusions

11.1 This Report

As stated in the Introduction to this report, this investigation is primarily concerned with highlighting inequity and unfairness in the administration of waste waiver schemes with particular attention being focused on the adverse effect on individuals. The design and implementation of a waiver scheme, either at national or at local level, is not addressed in this report. Nevertheless, I would hope that my report will inform further work which is ongoing but which, in the light of my findings, now should be addressed as a matter of some urgency. In passing, I would like to acknowledge the work done by the Combat Poverty Agency which has made a very useful contribution to highlighting the impact of waste collection charges on low income households and has pointed to the real problems that exist in attempting to devise an equitable and fair waiver scheme.

11.2 Waiver Schemes - National or Local?

The submissions that I received from the Society of St Vincent de Paul and the Senior Citizens Parliament also highlight, very clearly, the impact of waste charges on the poorer sections of our community and the inadequacies of existing waiver schemes - a concern which I share having regard to the results of my survey. I understand the matter has also been raised by the Community and Voluntary Sector in the context of Social Partnership but, as is clear from the submissions of the Department of the Environment, Heritage and Local Government and the Department of Social and Family Affairs, it has not proved possible to identify a solution via the social welfare system. I also note that a motion in Dáil Éireann in 2005 calling for the introduction of a national waiver scheme, was not carried. It is the view of both Departments that the administration of a waiver scheme needs to be addressed via the local authorities through locally-tailored solutions.

11.3 Privatisation - the Social Policy Aspects

The comments made by local authorities themselves show many of them calling for the waiver problem to be addressed through the social welfare system, something which, in the light of the submissions of both Departments, does not appear feasible. Nevertheless, it is clear that national waste management policy and, specifically, the privatisation of waste collection services, inevitably has led to an undesirable change in the mindset of some local authorities. In the past, when waste collection services were exclusively delivered by local authorities, one would have found that local authorities were very mindful of their social obligations to their clients. But now that many local authorities are either in direct competition with private operators for the delivery of waste collection services, or have completely divested themselves of this function, the approach in many local authorities seems to be driven solely by commercial considerations. To my mind, this is a worrying development on two counts.

First, it seems to me that when any public service is privatised or part-privatised, while accepting that there may be a very sound business case for so doing, the social policy factors attaching to such a decision should not be lost sight of. In the case of waste collection, there are important lessons to be learned from the manner in which legislation has facilitated the entry of private operators into the waste collection market. The primary focus appears to have been on commercial considerations with little or no consideration of the needs of the poor and marginalised in our society. Also, there have been attempts to justify this approach solely from the standpoint of environmental considerations. The "*polluter pays*" principle is all very well as far as it goes. But if as seems likely, waste collection charges continue to rise - often at rates in excess of inflation - ways must be found to protect low income households, while at the same time, encouraging recycling and preventing abuse of any waiver system. It seems to me that there is a responsibility on the Department of the Environment, Heritage and Local Government to revisit the policy approaches taken in this area to see how the balance between commercial, environmental and social policy obligations can best be met.

Second, it seems to me, based on the experience of my colleague ombudsmen in other jurisdictions that the trend towards privatisation of public services will continue in Ireland just as it has in other countries. I have fears that the mindset which is displayed by some local authorities will also become evident as other parts of the public service are privatised. I think this is a timely opportunity to put down a marker that such privatisation should fully consider the needs of the poor and the vulnerable in our society and should not focus solely on the commercial considerations - accepting all the time that privatisation can be of significant benefit in the overall scheme of things.

Other comments by some local authorities, notably on the resources issue, show the same worrying change of attitude. Many now see themselves as direct players in the waste market, in competition with private operators and viewing a waiver scheme simply in terms of adding to their administration costs or affecting their ability to compete with private operators but displaying little concern about the ability of their clients to pay waste charges. To some degree it is understandable how this change in mindset came about, given the way the legislation, which I mentioned earlier, was framed. But, while it may be understandable, I do not find it acceptable. Many other local authorities have found ways - imperfect though they may be - of operating waiver schemes despite the constraints of a privatised service. I say more about this later.

11.4 Local Authorities as Regulators and Service Providers - a Conflict?

I note from the submission of the Department of the Environment, Heritage and Local Government, that a public consultation process has taken place on issues surrounding the overall regulation of the waste management sector. According to the Department, the submissions it has received are to be considered further in the context of the review of waste management generally provided for in the Government's policy programme and which, I understand, will be initiated shortly. Under current legislation, many local authorities act as de facto regulators and also as suppliers of waste services, often in direct competition with those private operators whom they regulate. This model of regulation is far from ideal and the deficiencies in waiver provision uncovered in my investigation are attributable in part to this defective model. I was pleased to see the Department mention that it will be considering what might be the most appropriate model of regulation for the sector, including the need for a regulator, and what powers any such regulator might be given. In particular, the Department noted that in some other sectors, regulators have the power to impose a public service obligation which effectively requires contractors to operate cross-subsidisation so that services can be provided where they would not otherwise be economically feasible. These issues are of direct relevance to, and make an impact on, waiver schemes and require urgent and active consideration in order to resolve some of the difficulties which have arisen concerning private operators and waiver schemes.

11.5 Inconsistencies in Waiver Schemes

I now turn to the specific inconsistencies and inequities in the operation of waiver schemes as uncovered in the results of my survey of local authorities. The legal position governing the collection of waste and the power to grant waivers is set out in Chapter 2 of this report. As already outlined, there are three categories of collection:

- collection by the local authority;
- collection is contracted out by the local authority to private waste operator(s) who collect(s) the waste on its behalf;
- collection by a private waste operator (fully privatised).

Of course, some local authorities operate a combination of these collection methods.

Traditionally, local authorities carried out waste collection services throughout the country and administered waiver schemes for the benefit of those who could not afford to pay their charges. This still remains the situation in a few areas of the country, but in most areas, the local authority and private operators provide the service and, in a growing number of areas, the service is provided exclusively by private operators. In this context and from my perspective, two issues arise:

- where the service is provided by or on behalf of local authorities, whether the waiver schemes in operation are administered fairly, and

- whether local authorities are acting properly in relation to those households that cannot afford to pay the waste collection charges of private operators.

From the submissions I received, it is clear that views on how the issue of waivers of waste collection charges ought be administered, differ widely. Also, the results of the survey give me cause for concern about the extent to which sections of the population are effectively excluded from access to waiver systems that are designed to provide relief for low-income households and that, depending on where one lives, there may or may not be access to a waiver system.

While the survey was not exhaustive, I have a concern about a trend detected in the results. Where the service is provided exclusively by a private operator, rural areas appear to be at a disadvantage as compared with urban areas, in relation to access to waivers. Of the eight local authorities concerned, all but one are in rural areas. Where the service is provided by both (local authority and private), the majority are in rural areas - see Appendix 2.

The results of the survey indicate an unacceptable level of inconsistency as between waiver schemes administered by local authorities; in one county alone three different waiver schemes are in operation, each with different qualifying criteria. This level of inconsistency is not in keeping with the highest standards of public administration. Some waiver schemes operate in a discriminatory fashion e.g., as demonstrated at section 3.1 of this report in relation to Complaints A and B. This means that in the case of two households on the same income from the same source, one would qualify for a waiver because it is a means-tested payment, while the other would not. One local authority has explained that it would require an excessive level of resources to conduct a means test for all waiver applicants. I have difficulty in accepting this argument, particularly when the survey results indicate that 11 (48%) of the local authorities surveyed have found a way to carry out some form of means-testing - see Appendix 5.

11.6 Resources

Other local authorities have argued that they lack the resources required to provide a waiver scheme which would be equitable to all low-income households and that the provision of a waiver scheme is a very heavy cost on the local authority and that there are administrative difficulties involved. (See section 10.6).

I do not accept the validity of these arguments on the basis that:

- some local authorities have found a way to provide a reasonable service;
- while others may not be providing the level or standard of service they would aspire to, nonetheless, they are providing a service for the most needy hardship cases and the cost does not seem to be prohibitive - e.g. Monaghan County Council - where the domestic refuse collection service has been privatised for a number of years. (See section 7.3).

11.7 Means-testing

On the question of means-testing and the inability or unwillingness of local authorities to carry out means-testing in the context of a waste waiver scheme, I have little sympathy for this argument. First, I am aware that all local authorities carry out means-testing for the purposes of the Higher Education Grants Scheme. Second, since November 2007, all local authorities are obliged, in law, to introduce means-testing for the Housing Adaptation Grant Scheme for People with a Disability, Housing Aid for Older People Scheme and the Mobility Aids Grant Scheme. Therefore, since all local authorities have, or should have in place, systems for carrying out means-testing for other schemes, it is difficult to understand why, with some streamlining of resources, an effective system could not be put in place for waste waivers. I have difficulty in accepting that this is an issue incapable of resolution without incurring significant cost.

11.8 Private Operators and Waivers - the Legal Position

Where the waste collection service is fully privatised, it would seem that, with the exception of a few, the local authorities surveyed take the view that their obligations towards low-income households are somehow diminished or non-existent by virtue of the involvement of a private operator. And yet, many of these households would be tenants of the local authority - a proportion of whom, as a result of means-testing, would be availing of low rents under the differential rent scheme, in recognition of low household income. I find it difficult to reconcile the existence of a strong and long-standing social obligation in relation to one public service (the charge for social housing) with its almost complete absence in another area of public service provision (the charge for waste collection services).

It is clear that the intention of Section 75 (3) of the Waste Management Act 1996 (the Act), (as amended), was that local authorities would have discretion to exercise a social obligation by providing relief in cases of individual personal hardship by way of a waiver scheme. It is also clear that they have the authority to do so where the waste collection service is provided directly by the local authority itself or where the service is provided under contract by a private operator on behalf of the local authority concerned. However, the Act is silent on the subject of the provision of a waiver to customers of private operators where the service has been fully privatised - as opposed to being operated by a private operator under contract to the local authority. Local authorities probably have some scope to provide a waiver to clients of fully privatised services by entering into a local arrangement with the private service provider for the collection of waste, although whether all local authorities agree that they have such a power is open to question.

For example, some local authorities (e.g. Limerick City and County Councils) have addressed this situation by entering into local arrangements with the private waste companies operating in the area. These arrangements authorise the private operator to collect waste on behalf of the Council from certain low-income households identified by the Council. This then allows the Council to waive/subsidise all or part of the waste collection charges to those households.

In its submission to me, the Department addressed the legal position in relation to waiver schemes in the following terms:

"...in regard to waiver schemes in respect of these (waste collection) charges, it is a matter for the local authority concerned to determine the nature and extent of any such scheme in relation to services provided by itself. Generally speaking waiver schemes do not operate in respect of privately supplied collection services. There is legal advice to the effect that such a scheme is not legally provided for in circumstances where the private sector are providing the service. However, where a local authority enters into an arrangement with a private operator to provide a service to certain households a waiver scheme can apply. Local authorities have been asked by the Department to engage with commercial waste collectors to agree on arrangements to assist lower-income households by offering alternative payment methods to an annual lump sum."

Essentially, the Department's view is that there is no legal obligation on either a local authority or a private operator to provide a waiver scheme where that operator is delivering a fully privatised waste collection service. On the assumption that the number of operators providing a fully privatised waste collection service will increase, the absence of a legal provision for a waiver scheme will become more acute. While the Department adds that it has asked local authorities to agree arrangements with private operators for alternative payment methods, in every respect this falls far short of what is commonly understood by a waste waiver scheme.

Elsewhere in its submission, the Department refers to the public consultation it undertook on issues relating to the overall regulation of the waste management sector and commented as follows:

"Stakeholders and the general public were invited to make submissions on whether there is a need for a regulator for the sector, on what model of regulator might be the most appropriate and on what powers any such regulator might be given. Among the powers identified is the power to impose a public service obligation. This is a feature of regulation in some other sectors, and effectively requires contractors to operate cross-subsidisation so that services can be provided where they would not otherwise be economically feasible. The various submissions received and the issues raised will be considered further in the context of the review of waste management generally provided for in the Government's policy programme and which will shortly be initiated."

While the Department's approach to developing policy in relation to the regulation of the waste management sector is outside the scope of this report, I am encouraged to see it mention the possibility of factoring in a public service obligation. As I said earlier, this goes to the heart of the current problems with the administration of waste waiver schemes.

The absence of a public service obligation is also evident from the results of my survey. Six of the eight local authorities surveyed (who use private operators only) have made no provision for hardship cases; only two local authorities have taken steps to provide relief for qualifying waiver applicants (Limerick City Council and Limerick County Council, but also Monaghan County Council which was not one of the local authorities surveyed). Despite the Act's silence on the matter of private operators and waivers, nevertheless, it is significant that these local authorities have introduced waiver arrangements. I am of the view that all such authorities should emulate this practice by introducing a scheme or reviewing their existing scheme, as appropriate, to provide relief for qualifying waiver applicants. However, I also recognise that the longer-term solution to this issue lies in the hands of the Department. There are unresolved issues relating to the regulation of the waste management sector and the question of a public service obligation which will need to be addressed through legislation. And in the shorter term, there is scope for the Department to provide guidance to local authorities in relation to the administration of waiver schemes. I deal with this matter in more detail in section 11.10 below.

11.9 The Powers of Local Authorities

In summary, and returning to the categories of waste collection services that I referred to earlier, viz.,

- collection by the local authority;
- collection is contracted out by the local authority to private operator(s);
- collection by a private waste operator,

it is clear to me that local authorities, that are involved directly in the collection of waste or which have contracted out the service to private operators, have sufficient powers under existing legislation to design and implement fair and equitable waiver schemes. However, some work needs to be done to ensure that these schemes are reasonably consistent with each other. For example, and as previously mentioned, some form of means-testing may need to be introduced where it does not already exist.

In relation to local authorities where the service has been fully privatised, based on the results of this survey, while there is no legal provision to provide a waiver of waste charges, local authorities do have some scope to operate waiver schemes, as demonstrated by the Limerick Councils. In my view others should follow suit, but the parameters for such schemes need to be made more explicit. This is an area where the Department of the Environment, Heritage and Local Government needs to play a more proactive role.

11.10 The Role of the Department of the Environment, Heritage and Local Government

In 2003 the Combat Poverty Agency recommended that:

"Guidelines for a national waiver scheme should be drawn up by the Department of the Environment, Heritage and Local Government"

And in 2005 the Combat Poverty Agency proposed a set of guidelines for use by local authorities nationally as a means of achieving consistency in waste charging and waiver systems.

In their responses to the questionnaire, a number of local authorities also referred to the need for general guidelines to be provided. While the Department of the Environment, Heritage and Local Government did not specifically address the question of guidelines in its submission, its general approach appears to be that waste management, which would include any waiver of charges provided, is a matter for the individual local authority. It has stated that:

".. it has never been the practice for central Government to determine operational matters in regard to waste management. Waste management is a service that is one of the oldest provided by local authorities. It is the Government's view that, working to national and EU environmental standards, local authorities should be free to tailor services to local needs and that a local approach to the determination of charges, and any waiver of such charges, is consistent with this."

While I do not disagree with the Government's view on the matter of tailoring services to local needs etc., this must be seen to be done in a manner that is fair, open and transparent, and with a level of consistency that is in conformity with good administrative practice. This report has demonstrated that waste waiver schemes are not administered fairly in individual local authorities, or with any degree of consistency across local authorities in general, based on the survey results. It has also exposed difficulties in administering a waiver scheme where private operators deliver the waste collection service.

The Department has, in the past, and continues to issue guidelines on other matters that are administered locally e.g. schemes of letting priorities for housing and, in my view, it should now address the question of issuing guidelines relating to waste waiver schemes.

I am of the view that it is feasible to devise general guidelines that do not compromise the capacity of local authorities to draw up and operate their own waste waiver schemes. The Department is best placed to draw up such guidelines with a view to addressing some of the inequities identified in this report, and, in particular, the position in relation to private operators.

Finally, it is evident from my investigation that the current arrangements for the administration of waste management services do not make adequate provision to mitigate the cost burden on low-income households. The current model for privatisation of those services acts as a barrier to local authorities in exercising their social policy obligations. These matters can be addressed only through new legislation.

12. Recommendations

12.1 Having regard to the inconsistencies and unfairness identified in this report in relation to the administration of existing waiver schemes and, in other instances, the failure to introduce such a scheme, I recommend that each local authority take immediate steps to:

- (a) ensure it has in place a waste waiver scheme that caters for hardship cases in a fair, equitable and consistent manner; and
- (b) review its position vis-à-vis clients of private operators to ensure hardship cases are provided with relief.

I recommend that each local authority proceed immediately with implementation of these recommendations, notwithstanding my recommendations at 12.2 below.

12.2 Given the responsibilities of the Department of the Environment, Heritage and Local Government in relation to local government matters, I recommend that the Department take a lead role in helping and encouraging local authorities by:

- (a) carrying out a review of the administrative inconsistencies and anomalies that exist in waiver schemes throughout the country;
- (b) devising guidelines for local authorities that will assist them in achieving fairness, equity and consistency in the administration of waiver schemes;
- (c) addressing the legal position relating to the provision of waiver schemes where the waste collection service has been fully privatised;
- (d) expediting consideration of the regulation of the waste management sector with particular reference to the needs of low-income households with a view to ensuring that all households availing of such services, from whatever source, are facilitated with a waste waiver scheme.

12.3 I intend to ask each local authority to furnish me with a progress report on the implementation of the recommendations at 12.1 above, 12 months after the date of publication of this report.

The Department will be asked to report to my Office, at six monthly intervals, on progress in implementing the recommendations at 12.2 above.

13. The Response of the Department of the Environment, Heritage and Local Government to this Report

As provided for in Section 6(2)(d) of the Ombudsman Act 1980, a draft copy of this report was sent to the Department of the Environment, Heritage and Local Government for its comments. The full text of the Department's response is at Appendix 12 to this report. The following is a brief extract:

"The Department welcomes this report by the Ombudsman as a significant contribution to an issue which has been the subject of repeated comment by stakeholders and will be giving the report, and in particular the recommendations contained within it, our fullest consideration in the context of the ongoing review of the regulation of the waste management sector.

The report highlights issues in the operation of waiver schemes operated by local authorities and the absence of such schemes in areas serviced by the private sector. These are matters which have previously been raised in the social partnership context by the community and voluntary sector who have argued that low-income households in areas serviced by private waste collectors are treated inequitably in comparison to those receiving waivers from local authorities; that they are also treated inequitably in comparison to higher income households in the same areas, as the latter can avail of tax relief on their waste charges; and that real hardship arises in certain cases as a result."

Questionnaire on Waivers of Waste Charges

1. Please indicate by clicking on the box, which of the following waste collection services are provided in your Council area and state the average annual cost per household.

Local Authority Service	Annual Cost
Private Collector	Annual Cost
LA and Private	Annual Cost
Other	Annual Cost

Comments

2. What percentage of households in the Council area avail of
- (a) Local Authority Service
 - (b) Private Collection Service
 - (c) Other

3. Details of your waste collection charging system and amount of charges:

Flat Charge	Amount
Bin Tags	Amount
Pay by Weight	Amount
Green Bin Charge	Amount
Brown Bin Charge	Amount
Other	Amount

Comments

4. Does your Council have a Waste Waiver Scheme?
If yes, attach a copy and give full details of type and amount of waiver.
For example: % reduction in charge, number of free bin tags etc
Comments

If no, proceed to Question 15.

5. Please give details of the qualifying criteria to avail of a waiver.

6. Does the Council's scheme provide for a waiver for all households on income below a set threshold?
If yes, please outline how an applicant's income is assessed, including details of any proofs of income that an applicant is required to submit.

7. Does the Council's scheme provide for a waiver where the qualifying criteria are based on payments/income that are means tested by another body e.g. Department of Social and Family Affairs?
If yes, does the Council have concerns that this can result in inequity of treatment e.g. in cases of applicants on similar incomes from non means-tested sources such as Invalidity or Contributory Old Age Pensions?

Comments

8. If difficulties or questions of equity arise, by reason of relying on a means test carried out by another body, does the Council carry out its own means test?
If no, why not?

9. Does the Council scheme provide for the exercise of discretion in the case of low income households who do not qualify for a waiver under the strict terms of the scheme?
If yes, please provide details:
If no, please explain why the scheme does not so provide:

10. How are households notified of the **availability** of a waiver?

11. How are households notified of the **grant/refusal** of a waiver?

12. Can an applicant appeal a refusal to grant a waiver?

If yes, please give details of the appeal process in place.

13. Details of the number of waiver applications received and the number granted/refused in 2006
Received
Granted
Refused
14. Cost of the waiver scheme for 2006 (not including administration costs)
Cost of administering the scheme for 2006
15. How is the cost of providing waivers funded?
From refuse service charges
Own resources (specify area)
Other
- Comments
16. If the Council does not operate a waiver scheme, please state whether such a scheme has been considered?

If yes, the reasons why it has not been provided?
If no, the reasons why it has not been considered?
17. If all or part of the waste collection service in the area of the Council is provided by private collectors, does the private collector offer a waiver of charges?

If yes, please give details?
If no, the Council's views on whether it (the Council) should offer a waiver to the customers of private collectors?
- Comments

18. Has the Council received any complaint(s) about uncollected waste as a result of failure to avail of the waste collection system in place?

If yes, indicate the number of complaints received in each of the last three years, together with details of the response of the Council?

If yes, how many of these complaints can be linked to the issue of waivers?

19. If relevant, does each Town/Borough Council within the County operate the same waiver system as the County Council?
20. Any general comments the Council wishes to make which may be helpful to the Ombudsman in this review. These might include details/comments on problems encountered in providing waivers, complaints received, availability of resources, administration issues or any other matter considered relevant?
21. E-mail address and telephone number of Council's contact person.

Please return this questionnaire by email only to: anne_o'reilly@ombudsman.gov.ie

Appendix 2

Table 1. Average annual waste charges 2006

Council	Means of collection	L.A system of charging	LA Average yearly charge *	Private Average yearly charge *
Carlow	Private	--	--	€300-€360
Cork City	LA & Private	Fixed charge & Bin tags.	€506	€324
Cork County	LA & Private	Fixed charge & pay by weight	€350	€300
Donegal	Private	--	--	Not available
Dublin City	LA	Fixed Charge & Bin Tags	€286	--
Dun Laoghaire/Rathdown	LA & Private	Fixed charge & pay by weight	Not available	Not available
Fingal	LA	Bin tags	€192 ¹	--
Galway City	LA & Private	Fixed charge & pay by weight	€235	€229
Galway County	Private	--	--	€368
Kerry	LA & Private	Fixed charge & pay per collection	€414	€360
Kildare	LA & Private	Fixed charge & Bin tags	€353	€280 - €380
Kilkenny County	Private	--	--	€395
Limerick City	Private ²	--	Free ²	€400
Limerick County	Private	--	--	€450
Louth	Private	--	--	€300-€384
Mayo	Private	--	--	€300
South Dublin	LA	Bin tags	€288	--
Waterford City	LA	Fixed charge & Bin tags	€290	--
Waterford County	LA & Private	Fixed charge & bin tags	€432	€320 - €420
Dungarvan Town	LA & Private	Fixed charge & Bin tags	€376	€320 - €420
Westmeath	LA & Private	Bin tags	€192	€200 – €300
Wexford County	LA & Private	Fixed charge	€516	€324 - €420
Wexford Borough	LA & Private	Fixed charge	€480	€300 - €420

Notes

*Average annual charges for LA Service estimated by Ombudsman based on 3 bin presentations per month. Where Brown and green bins provided charge based on one presentation of each bin type per month. Pay by weight average charge estimated on basis of data provided by LA. Private operator charges as provided by LAs.

1. Fingal County Council average charge is based on collection of two black bins and one green bin per month (as agreed with Fingal). Brown bins provided to pilot area – not taken into account.
2. Limerick City Council provide a limited free refuse collection service to qualifying waiver applicants carried out by a private waste operator on behalf of the Council.

Appendix 3

Table 2 Waivers granted in 2006

Council	LA Average yearly charge	Private Average yearly charge	Waivers Sought	Waivers Granted	Waivers refused	Average value of waiver 2006	Cost to LA €m
Carlow	--	€300-€360	--	--	--	Nil	--
Cork City	€506	€324	11,929	11,729	200	€315	€3.96
Cork County	€350	€300	11,904	11,689	215	€145	€1.90
Donegal	--	Not available	--	--	--	Nil	--
Dublin City	€286	--	42,700	42,500	200	€180	€7.80
Dun Laoghaire/ Rathdown	Not available	Not available	5,337	4,266	1,071	€100	€0.94
Fingal	€192	--	8,366	8,241	125	€180	€1.56
Galway City	€235	€229	4,300	3,769	531	€357	€1.41
Galway County	--	€368	--	--	--	Nil	--
Kerry	€414	€360	2,134	2,033	101	€135	€0.30
Kildare	€353	€280 - €380	8,416	8,180	236	€258	€2.16
Kilkenny County	--	€395	--	--	--	Nil	--
Limerick City	Free	€400	3,577	3,542	35	€124	€0.47
Limerick County	--	€450	--	--	--	Nil	--
Louth	--	€300-€384	--	--	--	Nil	--
Mayo	--	€300	--	--	--	Nil	--
South Dublin	€288	--	14,182	14,050	132	€208	€3.07
Waterford City	€290	--	4,650	4,585	65	€214	€1.03
Waterford County	€432	€320 - €420	1,110	610	500	€150	€0.10
Dungarvan Town	€376	€320 - €420	214	186	28	€265	€0.06
Westmeath	€192	€200 - €300	1,742	1,725	17	€120	€0.24
Wexford County	€516	€324 - €420	604	569	35	€40	€0.03
Wexford Borough	€480	€390 - €420	810	800	10	€120	€0.11

Note: Limerick County Council has introduced a limited waiver scheme in 2007 to provide a partial waiver to some customers of private operators. The Council contracts the private operators to operate this service on its behalf.

Appendix 4

Waste Management Hardship Fund - Monaghan County Council

The domestic refuse collection service in County Monaghan has been privatised for a number of years. Consequently, there is no longer a waiver scheme in place for householders in receipt of a low income. In response to genuine hardship experienced by some householders in coping with the costs of paying for their refuse collection service, the Members of Monaghan County Council decided to establish a Hardship Fund for those most in need. There is a small annual budget set aside each year for this fund: the provision for 2007 is €20,000.

The Council recognises that there are many thousands of people living in the County who are in receipt of social welfare payments. However, in order to qualify for assistance from the Hardship Fund, applicants must satisfy the Council that their circumstances are worse than the majority of other low – income householders. Applications are assessed on a case-by-case basis. Examples of cases where assistance has been given include:

- Families where a member of the household has been diagnosed with a very serious illness who may incur significant additional expenditure travelling to hospital for treatment, visits etc.
- Recent bereavement giving rise to funeral and other costs
- Families caring for an elderly or disabled relative who needs to use incontinence pads

(Pay-by-weight is the most commonly used service in Monaghan: Incontinence pads add considerably to the weight of refuse bins and cannot be recycled / disposed of in any other manner).

Whilst Monaghan County Council has never advertised the availability of this assistance, the Elected Members (since it was they who decided to adopt the scheme) are all aware of the scheme and will frequently make its existence known to constituents they encounter who are experiencing grave hardship. Referrals are also often made by MABS (Money Advice and Budgeting Service) and the Society of St Vincent de Paul has also been instrumental in highlighting cases of special need.

Applicants for assistance from the fund are asked to submit a copy of their most recent refuse collection bill. The Council only makes a contribution towards the cost – usually 50%. Cheques are paid directly to the Waste Contractor not to the householder.

In 2006, 45 people received assistance and the total expended was €6,205. In 2007 to date, the number of applicants assisted was 35 and expenditure to date(October 2007) is €4,747.

Table 3: Waiver provision & qualifying criteria

COUNCIL	LA Collection	Private Collection	Waiver Scheme?	All Low Income Households	Criteria to Qualify	Low Income OAPs living alone	Tax Exempt Households only	SW means tested income only
Carlow County	✗	✓	✗					
Cork City	✓	✓	✓	✓				
Cork County	✓	✓	✓	✓				
Donegal	✗	✓	✗					
Dublin City	✓	✓	✓			✓		
DunLaoghaire/Rathdown	✓	✓	✓	✓				
Fingal	✓	✗	✓			✓ 1		
Galway City	✓	✓	✓	✓				
Galway County	✗	✓	✗					
Kerry County	✓	✓	✓	✓				
Kildare	✓	✓	✓	✓				
Kilkenny County	✗	✓	✗					
Limerick City	✗ ²	✓	✓	✓				
Limerick County	✗	✓	✓ ³					
Louth County	✗	✓	✗					
Mayo	✗	✓	✗					
South Dublin	✓	✗	✓			✓		
Waterford City	✓	✓	✓	✓				
Waterford County	✓	✓	✓					✓ ⁴
Dungarvan Town Council	✓	✓	✓		✓			
Westmeath	✓	✓	✓	✓ ⁵				
Wexford County	✓	✓	✓	✓				
Wexford Borough	✓	✓	✓	✓				

Notes:

1. Households in receipt of Family Income Supplement also qualify
2. Limerick City Council arrange for collection by private contractor for qualifying waiver applicants
3. Limerick County Council from 2007 provides a partial waiver to customers of private operators if they live alone and are in receipt of certain SW payments
4. A person in receipt of an Old Age Contributory Pension will also qualify in 2007 if living alone
5. Person over 75 years of age living alone or with others over 65 qualifies for full waiver regardless of income level.

Submission by the Society of St Vincent de Paul

Introduction

While we support the 'Polluter Pays Principle', SVP is concerned that many low-income households are experiencing poverty due to the waste charges structure in a number of local authorities. There have been significant increases in waste charges in recent years coupled with a growing shift to private sector providers, whose main concern is cost effectiveness rather than protecting low-income households from unnecessary financial burdens. Private operators are under no obligation to provide a waiver scheme. Operational aspects of waste management policy are decided upon at local Government level, resulting in different systems operating in different counties.

The Current Policy

The current Pay by Volume / Pay by weight systems, while having clear environmental merits, pose a number of key problems and anomalies:

- Some Local authorities have a standing charge (recycling service included in this) and any refuse pick-up is an additional cost;
- some have no standing charge and sell bags for waste, with a recycling service as an optional extra to pay for on top of the bag system;
- while some people on social welfare are entitled to a waiver, others in a neighbouring county – or even a neighbouring estate - may not be; and
- payment methods often do not assist the budgeting behaviour of low income households.

The Society notes also that there is an implicit inequality in the existing structure as tax relief is available to 'tax-payers' while low wage households who pay little or no income tax do not benefit from such relief. The relief is paid at 20% and therefore in some instances will equate to a saving of up to €100.

The Society welcomes the present advertising campaign of this relief as we believe that many low wage households on the standard tax rate are unaware that they are entitled to any tax relief whatsoever, and even if aware, are often unsure how to claim such relief.

To date, the state has failed to develop a consistent and comprehensive scheme to assist poorer households with such charges. To compound matters, there is often a lack of adequate recycling facilities, particularly in rural areas. At the local level, Conferences of the Society of St. Vincent de Paul provide financial assistance as a direct result of the hardship caused by lack of appropriate support with domestic waste charges.

Some Examples of the Present Situation

Grange in Douglas, Cork: a tale of two systems – Ardfield and Hollyville Estates

A waiver system operates in the Ardfield estate. Both estates have social housing units and according to the Society of St. Vincent De Paul some families who are experiencing financial hardship are further burdened by the waste management fee and the lack of a waiver system in the Hollyville Estate. It would appear to the SVP, and it is the perception of residents, that there is an unfair bias against those people who live in a Housing Estate where there is no longer a local authority collection. SVP assisted one family with €185 for six months waste collection.

Dublin 15: The difficulties faced by our volunteers

The SVP Conference have found it necessary to help clean out back gardens, and have helped with the replacement of stolen bins also. It is worth noting that for volunteers such work is very difficult and I believe the conference can no longer assist in such demanding physical work.

Dundrum: The inequalities within a Local Authority Complex.

The problems in this instance have to do with Dun Laoghaire Rathdown Council (DLRC) charging apartment dwellers (specifically their own tenants) in Rosemount Court a "common figure" for waste collection charges. If a single old lady (pensioner) lives in an apartment and puts out waste contained in a couple of small supermarket plastic bags per week she gets charged the same amount annually as her neighbour who might be a couple with two children on either social welfare or with one partner working at least.

Consequences of the Present System

Through the work of our volunteers the Society sees at first hand the direct consequences for individuals and families of the present system. These include rubbish building up in peoples' back gardens leading to public health concerns, dangers for children, neighbour unease, and potentially anti-social behaviour. Having to pay full charges also has an impact on other household discretionary budgets such as food / clothing / entertainment. It is also worth recording the experience of Medical Burns Units who have mentioned the increase in burns due to the burning of household rubbish.

In order to try and deal with these issues the Society has paid for the costs of private skips, the costs of cleaning out houses and vermin control. At local level the Society has also come to arrangements with Local Authorities and Private Waste Collectors.

Monaghan: Finding a local solution with the assistance of SVP

The SVP locally enjoy a good relationship with the Local Authority. In some instances the SVP has more flexibility to assist families which the County Council may not have. This working relationship has been extended to include the provision of waste management services. While a private operator provides services in the town, the local SVP came to an arrangement with the County Council that in specified cases the County Council would in fact pay the bin rental (standing charge) to the private operator –

basically an informal waiver. For their part the Society continues to assist these households, either directly with waste management issues or on other issues.

Westport: Negotiating with Private Collectors

Mayo Co. Co introduced private waste collection in January 2007. In meeting with the SVP our members were informed that the issue was now a private matter between customer and provider. The SVP had to resort to seeking meetings with one local provider who is now providing a significant discount to tenants living in SVP owned homes.

The Conundrum of Private Waste Collection

The majority of local authorities use the private sector to deliver waste management services to at least some extent in their counties. Waste collection permits are the means by which local government regulates private waste companies. Unfortunately, the waste collection permits fail to make mandatory the following: any aspect of pricing, payment policy or consumer protection (in contrast to essentially all other aspects of the waste management issue). As a direct result, we believe the majority of areas under private provision do not provide any form of income protection to poorer households. In counties where this is the case, SVP is very concerned about the barriers in establishing a system which protects low-income households while encouraging the reduction of household waste.

What SVP want

We believe that Government should allocate adequate resources for a consistent, country-wide system to assist those on low income - on both social welfare and low wage incomes - with their domestic waste costs. We believe that this can be done while continuing to encourage those households to recycle where possible.

Possible Policy Solutions

There is a need to integrate any policy development with Social Partnership initiatives on Waste Management as a matter of urgency. SVP recommend that Government introduce a locally administered system, based on the free allocation of two different amounts of bags / tags / bins. This free allocation can be based on sound environmental practice, by giving a limited number of tags or bags, and on the assumption that households will reduce, reuse and recycle a proportion of household consumption. A larger amount of these would be for households solely dependent on social welfare, and a smaller amount – perhaps half - would be available for low wage households, with incomes below FIS levels. However, the additional costs associated with the increased local / central administration of this scheme would require resources from a central Government fund.

An assumption that households will reduce, reuse and recycle can only be made if there are adequate, comprehensive, accessible and advertised facilities across the state in order to do so. It is also important that free waste tags / bags / bins should not look different to the pre-paid tags in order to avoid stigma.

Conclusions

Ultimately, this is an issue for Department of Environment, Heritage and Local Government (DEHLG), given that they are the parent department, and did not poverty proof this policy in the first instance – an action they are obliged to do under the National Anti-Poverty Strategy. If DEHLG believe they do not have a brief in this area, the SVP would like to remind them that they currently operate an income support policy through the operation of the Differential Rent Scheme in the local authority housing sector. A social welfare solution alone is flawed for two reasons:

- It is not available for households in low wage employment – unless you channel and ring-fence additional resources through FIS (which in any event has a low take-up)
- It does not provide any incentives for households to reduce, re-use, recycle or compost.

Recommendations

SVP Believe that the Government should:

- Provide sufficient levels of recycling infrastructure – low income households can only minimise waste if there are opportunities to comprehensively reduce their domestic waste.
- Develop a locally based system using a particular level of free allocation of tags / stickers / bags or bins (according to weight or volume) for social welfare dependent households and a smaller free allocation for households headed by those on a low wage. In order to do this, Government will have to:
- Change the private permit system to incorporate the new measures outlined above. Failing this, Government will have to:
- Challenge the legal position with regard to the current permits system. If this cannot happen, Government may have no choice but to find a social welfare solution to the problem, which is flawed for reasons outlined above
- Regarding existing social welfare provisions, develop a standard set of guidelines relating to the waiver dimension of waste charging systems urgently.

The Society would like to thank the Office of the Ombudsman for undertaking this review.

Submission by the Irish Senior Citizens Parliament

Why Should Waste Charges be waived for Pensioners?

The Irish Senior Citizens parliament wishes to make a submission on behalf of older people who are paying waste charges at present. The parliament takes the position that waste charges should be waived for all pensioners and for other social welfare and low-income groups.

At present many pensioners live at risk of poverty. Half of all pensioners are solely dependent on the state pension (CSO, 2007) and extra costs like waste charges erode their real income. The system is inequitable as some local authorities operate a waiver scheme and others do not. We can find no justifiable reason for this inconsistency other than the fact that it seems to be the result of uncoordinated policy-making. Simply put, no consistent national waiver system has been developed. The result is that older people in some areas benefit from a waiver, while many more do not. Of the 34 local authorities surveyed on this issue last year, just half operated a waiver scheme.¹

¹ O'Callaghan-Platt and Davies A. (2006) 'A Nationwide Review of Pay-By-Use (PBU) Domestic Waste Collection Charges in Ireland: Extensive Survey Findings (2005-WRM-MS-33) Interim Report Wexford: EPA

Where a waiver scheme does operate, there are inconsistent means of accessing the waiver. Some local authorities demand that older people apply for a waiver, undergo a means test or make an individual hardship case. Older people who are most at a disadvantage are those who have no waiver and must meet a large annual charge.

The parliament calls for a national system whereby all local authorities must operate a waiver scheme in order to avoid undue hardship for older people, or indeed for any low income families. At present those older people on the lowest incomes, namely pensioners reliant solely on the state pension, spend a disproportionate amount of their income on waste charges. This is of grave concern to the parliament as it means those older people living just above the poverty line may be pulled below it again, thereby widening the income distribution gap between low income families and the rest of the population.

To address this concern, the Irish Senior Citizens Parliament would like to make two simple recommendations to government:

1. Implement a national waiver system for waste charges ensuring that all pensioners are entitled to a waiver on waste charges.
2. Make this waiver part of the existing Household benefits package.

Were government to adopt these measures a far more equitable and efficient system of waste charging would result. This system would benefit everyone, but especially our older generation.

Appendix 8

Letter to Department of the Environment, Heritage and Local Government

Ms Geraldine Tallon,
Secretary General,
Department of the Environment,
Heritage and Local Government,
Custom House,
Dublin, 1.

12 September, 2007

Review of Refuse Waiver Schemes

Dear Ms Tallon,

I would like to congratulate you on your recent appointment as Secretary General of the Department and to wish you every success for the future in your new position.

I wish to advise you that the Ombudsman has been dealing with a number of complaints in relation to alleged inequity in schemes operated by local authorities concerning the matter of waivers of refuse charges. The Ombudsman has decided to use the power contained in Section 4 (3)(b) of the Ombudsman Act, 1980 to carry out a general review of the operation of waiver schemes in local authorities. It is intended that the review will (a) highlight the key issues arising, (b) focus on the adverse effects suffered by some local authority clients, and (c) consider the options for mitigating any such adverse effects.

As part of this review a selected number of local authorities have been requested to complete a questionnaire in relation to their waste collection systems and to provide details of any refuse waiver scheme in operation. A copy of the questionnaire is enclosed for your information. The Ombudsman intends to publish a report on the outcome of the review and in that regard it would be helpful to have the views of the Department on the general issues arising so that the Ombudsman can reflect them in her report.

In the responses to the questionnaire a significant number of local authorities have made the following comments:

- local authorities lack the resources to provide a waiver scheme which would be equitable to all low income households;
- the resources of the local authority are used to fund the scheme and if costs are passed to the paying customer it would make the service non-competitive;
- private operators are not required to provide a waiver, therefore, local authorities are at a disadvantage;

- extending the local authority waiver scheme to include customers of private operators would weaken the competitive position of the local authority;
- a national waiver system is the best solution in the interests of fairness and equity,
- a national waiver system should be funded through the Department of Social and Family Affairs.

It is clear from the information provided to date that the refuse waiver schemes being operated by local authorities vary greatly, particularly in the category of persons deemed to qualify for relief. There is a lack of consistency across the board and we are aware that, in the geographical area of at least one County, there are three different schemes in operation all with different qualifying criteria. The result is that the relief, if any, available to low-income families is often dictated by the location in which they reside and the source of their income, rather than their ability to pay. The lack of consistency or uniformity of approach is a cause for concern, from an administrative perspective.

You may be aware that this Office wrote to the Department some time ago concerning difficulties, including the matter of inconsistency in the administration of the Disabled Persons Grant (DPG). In response the Department advised that it was reviewing the scheme with the aim of developing a more seamless set of responses to the housing needs of older people and people with disabilities, "to ensure the available funding is targeted to those persons in greatest need of such assistance, to improve equity and consistency and to streamline administrative and operational procedures". The Department published its new policy statement on DPG in "Delivering Homes, Sustaining Communities". Perhaps a similar uniformity of approach would provide the solution to this issue also.

The Ombudsman notes that the 2005 Combat Poverty Agency report "Implementing a Waiver System" recommended the introduction of a National Waiver System and outlined 3 models for implementing such a system (1) via local authorities, (2) via the tax credit system, and (3) via the Social Welfare System. In this regard perhaps the Department would state:

- (a) its views on the recommendations of the above mentioned report; and
- (b) whether the Department has:
 - (i) initiated any action following consideration of the above report; and/or
 - (ii) entered into any dialogue/communication with the Department of Social and Family Affairs on this issue, and if so, the outcome of such dialogue/communication.

As the deadline for the completion of the review, including a draft report, is the end of September 2007, a reply within 3 weeks would be appreciated.

Yours sincerely,

 Pat Whelan
 Director General

Submission by Department of the Environment, Heritage and Local Government

Waiver schemes in respect of waste management charges

Response to query in the Office of the Ombudsman letter of 12 September 2007

Query

“The Ombudsman notes that the 2005 Combat Poverty Agency report “Implementing a Waiver System” recommended the introduction of a National Waiver Scheme and outlined 3 models for implementing such a system (1) via local authorities, (2) via the tax credit system, and (3) via the Social Welfare System. In this regard perhaps the Department would state:

- (a) its views on the recommendations of the above mentioned report; and
- (b) whether the Department has:
 - (i) initiated any action following consideration of the above report; and/or
 - (ii) entered into any dialogue/communication with the Department of Social and Family Affairs on this issue, and if so, the outcome of such dialogue/communication.”

Response

Waste management services have traditionally been provided at a local level, with individual arrangements being locally determined and tailored to local circumstances. The present legal framework, as determined by the Oireachtas, reflects this. In accordance with section 52 of the Protection of the Environment Act 2003, the determination of waste management charges, and any associated waiver scheme, is a matter for the relevant local authority, where it acts as the service provider. Similarly, where a private operator provides the collection service, it is a matter for that operator to determine charges.

Where, as is commonly the case, a private operator (some 20 of 34 local authorities) is providing the service then that operator will set the charges. Similarly, in regard to waiver schemes in respect of these charges, it is a matter for the local authority concerned to determine the nature and extent of any such scheme in the case of services provided by itself. Generally speaking waiver schemes do not operate in respect of privately supplied collection services. There is legal advice to the effect that such a scheme is not legally provided for in circumstances where the private sector are providing the service. However, where a local authority enters into an arrangement with a private operator to provide a service to certain households a waiver scheme can apply. Local authorities have been asked by the Department to engage with commercial waste collectors to agree on arrangements to assist lower-income households by offering alternative payment methods to an annual lump-sum.

Since 2005 local authority and private providers of waste collection services are expected to introduce charges on a pay-by-use basis. This is intended to promote more responsible behaviour on the part of individuals by rewarding those who minimise their waste and

reuse/recycle. The general increase in charges in this context has to be viewed against the background of the exponential increase in the cost of providing waste management services given the need to comply with necessary but stringent environmental standards and to fund extensive recycling infrastructure.

In a broader setting the issue of waste charges and low income persons/households has been raised in the Social Partnership context. The community and voluntary sector have argued that low-income households in areas serviced by private waste collectors are treated inequitably in comparison to those receiving waivers from local authorities; that they are also treated inequitably in comparison to higher income households in the same areas, as the latter can avail of tax relief on their waste charges; and that real hardship arises in certain cases as a result.

Discussions have taken place between the Department and the Department of Social and Family Affairs in response to the issues raised. It did not prove possible however to identify a mechanism to address the issues raised through the social welfare system.

The Combat Poverty Agency report again raised the issues surrounding the operation of waiver schemes in certain areas but not in others. The report gives background on the waiver issue, including the legal context, and goes on to look at three models for delivering what is regarded as a more equitable, across local authorities, system. The existing variable systems are seen as producing unacceptable differentials in entitlements to people of similar means.

The report fully acknowledges the centrality of the polluter pays principle and that incentives should exist for all households to control waste generation and maximise recycling.

Essentially the authors look at possible models for delivering what they would regard as a more nationally equitable waiver system and come down on balance in favour of one. The three options considered in the report are a locally based system, an exclusively tax credit system and a social welfare system. The tax credit option is ruled out given the numbers of people in the target population who would be outside the tax net. Ultimately the report comes down in favour of the locally based system as against the social welfare system. In discussing the locally based system the points made include:

- it would involve the least disruption over the present system;
- a bin tagging system is seen as the best option (this would permit frequent payment of small amounts for those on low income but who would continue to pay in whole or part and would allow the polluter pays principle to apply to exempted households by limiting the number of tags to be made available to a pre-determined number);
- funding the scheme should not involve cross subsidisation within the local authority but outside the waste area i.e. it should be funded by other users paying additionality;
- the potential for national funding is addressed and the allocation of funds by the Department of Social and Family Affairs is considered a possibility "if it is accepted that the waiver scheme represents a form of social welfare" (no definite

recommendation is made in this regard but this Department is not considered as a potential source of funding).

It should be noted that the main focus of the report is in respect of local authority provided services.

The issue of waiver schemes was considered by Dail Eireann in February 2005 in the context of a motion which was not carried and which called for the introduction of a National Waiver Scheme . On that occasion, the Minister for the Environment, Heritage and Local Government explained the Government's policy on the issue. It has been the policy of successive Governments that waste charges should take account of the polluter pays principle in line with EU and wider international best practice – in other words, charges for waste services should reflect the costs of providing them and should be paid by those who generate the waste. There is an explicit provision to that effect in Section 22 (6) of the Waste Management Act 1996.

The switch to use based charges over the past few years is intended to reward those who generate least waste and who are most active in recycling. The precise charging mechanism in any given area will inevitably be fitted to local circumstances, local costs and available technology.

In regard to the waiving of such charges, each individual local authority has the power to make a waiver scheme where it is the service provider, or to make appropriate arrangements with the private sector, where it is not. In this way local solutions can be tailored to local circumstances with proper application of the subsidiarity principle. Ideally any such arrangement should also reflect the polluter pays principle and incorporate an incentive to recycle waste, though historically this has not been the case.

In practice, waiver schemes are generally available where the local authority provides the service directly. Where services are provided by private collectors, local authorities have the power, under existing provisions, to make special arrangements in the case of hardship if they consider it necessary. Some local authorities do so, although on a very limited scale.

There is one further development which is relevant to this issue. A public consultation has concluded on issues surrounding the overall regulation of the waste management sector. Stakeholders and the general public were invited to make submissions on whether there is a need for a regulator for the sector, on what model of regulator might be most appropriate and on what powers any such regulator should be given. Among the possible powers identified is the power to impose a public service obligation. This is a feature of regulation in some other sectors, and effectively requires contractors to operate cross-subsidisation so that services can be provided where they would not otherwise be economically feasible. The various submissions received and the issues raised will be considered further in the context of the review of waste management generally provided for in the Government's policy programme and which will shortly be initiated.

To summarise the position then, it has never been the practice for central Government to determine operational matters in regard to waste management. Waste management is a service that is one of the oldest provided by local authorities. It is the Government's view that, working to national and EU environmental standards, local authorities should be free to tailor services to local needs and that a local approach to the determination of charges, and any waiver of such charges, is consistent with this.

Letter to Department of Social and Family Affairs

Ms Bernadette Lacey,
Secretary General,
Department of Social and Family Affairs,
Aras Mhic Dhiarmada,
Store Street,
Dublin,1.

12 September, 2007

Review of Refuse Waiver Schemes

Dear Secretary General,

I wish to advise you that the Ombudsman has been dealing with a number of complaints in relation to alleged inequity in schemes operated by local authorities concerning the matter of waivers of refuse charges. The Ombudsman has decided to use the power contained in Section 4 (3)(b) of the Ombudsman Act, 1980 to carry out a general review of the operation of waiver schemes in local authorities. It is intended that the review will (a) highlight the key issues arising, (b) focus on the adverse effects suffered by some local authority clients, and (c) consider the options for mitigating any such adverse effects.

As part of this review a selected number of local authorities have been requested to complete a questionnaire in relation to their waste collection systems and to provide details of any refuse waiver scheme in operation. A copy of the questionnaire is enclosed for your information.

In the responses to the questionnaire a significant number of local authorities have made the following comments:

- local authorities lack the resources to provide a waiver scheme which would be equitable to all low income households;
- a national waiver system is the best solution in the interests of fairness and equity,
- a national waiver system should be funded through the Department of Social and Family Affairs.

The Ombudsman notes that the 2005 Combat Poverty Agency(CPA) report "Implementing a Waiver System" recommended the introduction of a National Waiver System and outlined 3 models for implementing such a system (1) via local authorities,

(2) via the tax credit system, and (3) via the Social Welfare System. The Ombudsman intends to publish a report on the outcome of the review and in that regard it would be helpful to have the views of your Department on the issue of a National Refuse Waiver System implemented via the Social Welfare system so that the Ombudsman can reflect them in her report.

In this regard perhaps the Department would state:

(a) its views on the recommendations of the above mentioned CPA report; and

(b) whether the Department has:

(i) initiated any action following consideration of the above report; and/or

(ii) entered into any dialogue/communication with the Department of the Environment, Heritage and Local Government on this issue, and if so, the outcome of such dialogue/communication.

As the deadline for the completion of the review, including a draft report, is the end of September 2007, a reply within 3 weeks would be appreciated.

Yours sincerely,

Pat Whelan
Director General

Submission by Department of Social and Family Affairs

I refer to your letter of 12 September 2007 in relation to the Ombudsman's review of refuse waiver schemes.

The setting of waste management charges and the introduction of waivers in respect of such is a matter for each local authority. As you know, local authorities operate under the auspices of the Department of Environment, Heritage and Local Government.

This is very definitely a local issue and local authorities have all the necessary powers to operate waiver schemes in their areas. Indeed, some local authorities already operate good waiver schemes and not just those where the refuse collection service is provided directly by the local authority. In some areas private contractors are involved in a waiver scheme. Minister Cullen reinforced this point recently in a recent Dail debate on the issue:

"The local authorities have all the necessary powers to operate waiver schemes in their areas. It is a matter on which local councilors in the local authorities should make the decision. They can do it by involving themselves in the estimates process."

It has been suggested that this Department could respond to the issue of waste charges through the exceptional needs payments of the supplementary welfare allowance scheme. Under this scheme a single payment may be made to help meet essential, once-off, exceptional expenditure which a person could not reasonably be expected to meet out of his or her weekly income. The payments are for such items as bedding or cooking utensils for someone setting up a home for the first time or costs relating to funerals, or visiting relatives in hospital or in prison. This scheme is not intended to meet the cost of regular household bills.

This Department is responsible for the Household Benefits Package (formerly known as the Free Schemes) which provides recipients with assistance with their gas/electricity and telephone costs and covers the full cost of a television licence. The possibility of extending this package to cover other socially desirable goods which could include waste charges has been considered. The Review of the Free Schemes carried out in 2000 explained that other State agencies and indeed local authorities can introduce their own similar schemes if they wish as follows:

"While recipients consider the Free Schemes to be very valuable, there is continual pressure to extend these schemes to other socially desirable goods. Any new schemes would add to that pressure and divert resources from other areas such as increasing the basic rate of payment. However, there is nothing to preclude other State agencies introducing their own schemes, such as Local Authorities extending Free Dog Licences, as part of their wider social obligations. Many private companies

already extend concessions to pensioners in order to increase their business usage, as part of their social aims and as recognition of the value they have received from their customers over the years. It is not the business of the Department of Social, Community and Family Affairs to provide for all socially desirable items of expenditure, even if there was agreement on what those items of expenditure might be.”

In any event, the introduction of a national social welfare scheme to address the issue of waste charges would not be feasible given the wide range of charging regimes and cost structures that exist in respect of waste management throughout the State. As you know, charges vary across local authorities and within local authorities where there is more than one provider. In addition, as I mentioned above, some local authorities and private operators already operate waiver schemes but again the qualifying conditions for these schemes also vary. Any system put in place to assist people with waste collection charges would have to take account of the different local arrangements.

In its 2005 report "Implementing a Waiver System: Guidelines for Local Authorities" the Combat Poverty Agency (CPA) investigated the practice of charging for waste collection services, examined the rationale behind the practice, established the implications for low income households and considered potential solutions to ease the financial burden on them.

A set of guidelines was developed for local authorities to consider when implementing a waste charging system. The report considered that the most effective way of achieving a fair and consistent system of waste charging in Ireland would be via the national implementation of one model that satisfies all of these guidelines.

As you mention, the CPA report considered the various options for waste charging delivery models, examining a locally operated waiver system implemented via local authorities; a tax credit system implemented nationally, via the existing taxation scheme; and a social welfare system implemented nationally as part of the social welfare mechanism.

Each option was considered in terms of its operation, its implementation from a household perspective, its advantages and disadvantages, and its cost implications. Each option was also analysed in terms of its fit with the guidelines, and in terms of procurement options. The report concluded that, if a suitable procurement approach could be developed, the locally operated waiver system would offer the most effective delivery model and this Department is in agreement with that consideration.

There have been some discussions between officials from this Department and colleagues in the Department of Environment, Heritage and Local Government on this issue. That Department is aware of our position.

You may know that one of the waste management commitments in the Programme for Government is to ensure *that “flat rates on waste disposal will be abolished and a mandatory system of weight-related charges for waste collection introduced.”* This of course is a matter for the Minister for Environment, Heritage and Local Government. I trust this information is helpful to you.

**Response of Department of Environment, Heritage & Local
Government to the Draft Report**

29 May 2008

Mr Pat Whelan
Director General
Office of the Ombudsman
18 Lower Leeson Street
Dublin 2

Dear Mr Whelan,

Thank you for providing us with a copy of your draft report on waiver schemes administered by local authorities.

The Department welcomes this report by the Ombudsman as a significant contribution to an issue which has been the subject of repeated comment by stakeholders and will be giving the report, and in particular the recommendations contained within it, our fullest consideration in the context of the ongoing review of the regulation of the waste management sector.

The report highlights issues in the operation of waiver schemes operated by local authorities and the absence of such schemes in areas serviced by the private sector. These are matters which have previously been raised in the social partnership context by the community and voluntary sector who have argued that low-income households in areas serviced by private waste collectors are treated inequitably in comparison to those receiving waivers from local authorities; that they are also treated inequitably in comparison to higher income households in the same areas, as the latter can avail of tax relief on their waste charges; and that real hardship arises in certain cases as a result. As noted previously, discussions have taken place between this Department and the Department of Social and Family Affairs in response to the issues raised but it did not prove possible to identify a mechanism to address the issues raised through the social welfare system.

It is recognised that significant regulatory issues have emerged as waste management services have rapidly evolved in recent years, including through the rapid growth in, and consolidation of, the private waste management sector. These matters have been the subject of a formal public consultation, including the dual role of local authorities as regulators and service providers, the need to ensure that waste services are provided in a manner consistent with the achievement of national and EU environmental objectives and targets, and the need to ensure that necessary public service criteria in relation to the provision of services in particular areas or in respect of specific households are properly reflected regardless of whether the service is provided by the public or private sector.

There is no doubt that the existing regulatory framework requires modernisation. The identification of the changes necessary will be greatly assisted by the recent OECD review of the Irish public service, which included a specific case study on waste management, and will be implemented in the context of the overall review of national waste management policy provided for in the Programme for Government and now being initiated.

Yours sincerely

Geraldine Tallon
Secretary General

Office of the Ombudsman

18 Lower Leeson Street,

Dublin 2

Lo-call: 1890 22 30 30

Tel: 01 639 5600

Fax: 01 639 5674

E-mail: ombudsman@ombudsman.gov.ie

www.ombudsman.gov.ie