



The Ombudsman's CASEBOOK

Office of the Ombudsman, Dublin, Ireland.

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A lesson learned

Welcome to the first edition of The Ombudsman's Casebook in 2017. This edition includes the usual wide variety of cases drawn from across public services in Ireland. I hope that you find them of interest and that there is useful learning from them. This quarter, I have focused on education cases in my introduction.

My Office deals with a considerable number of cases in the education sector from students who are 18 or above, and includes cases involving providers of higher education services. The cases range from issues about grants, to access to third level education and to exam results.

In cases about exam results we are reluctant to challenge the assessment of professional examiners, and will normally confine our consideration to the administration of the exams, although we could obviously intervene if there were a glaring error.

There are various education schemes designed to level the playing field for people who because of factors including disability or lack of income would otherwise struggle to go on to third level education.

These schemes are essential in achieving fair access for all. The schemes are generally well administered, but when things do not work as expected, it is very useful for applicants to be able to complain to my Office.

If we find that the outcome was not appropriate, we can then seek redress for the individual student and, if necessary ask for changes to the grant scheme or its administration to avoid any repetition.



Ombudsman Peter Tyndall

Two of the cases in this Casebook concern the DARE scheme. The Disability Access Route to Education (DARE) is a third level alternative admissions scheme for school-leavers whose disabilities have had a negative impact on their second level education. DARE offers reduced points places to school leavers who as a result of having a disability have experienced additional educational challenges in second level education.

The scheme is topical at the moment as the closing date for the current round is 1 March 2017.

Peter Tyndall January 2017

Agriculture

Agri-Environment Options Scheme (AEOS)

C01/14/2083

Completed 09/08/2016

Not Upheld

Background

A family made an application to the Department of Agriculture, Food and the Marine under the AEOS2 scheme. Their application, which was submitted in May, 2011 contained the minimum requirements of one mandatory and one complementary undertaking. They chose halting biodiversity decline by planting species rich grassland and tree planting and met the eligibility requirements under the Scheme. Applicants were entitled to reimbursement of non-productive capital investments up to a certain maximum limit and the family submitted their application in August, 2012. The Department discovered that they had planted a non native species of tree (sycamore) which was excluded from the AEOS2 scheme. As a result of this, they failed to the eligibility requirements of the scheme and their contract was terminated. Their appeal to the Agriculture Appeals Office was refused.

Examination

The father, who had been the farmer, had become ill and died between the time they had submitted the application and the trees had been planted. His son in law had purchased the trees from a local nursery, who had recommended sycamores. This species of tree had been included in the first AEOS Scheme but was excluded from the second Scheme because they were not a native species as required under EU regulations. It had been claimed at the appeal that they had received the wrong list of trees with their application, i.e. that the list for AEOS1 was sent rather than AEOS2 but this was denied by the Department. No evidence was presented to support this claim at the appeal or to this Office.

Outcome

As there was no evidence of maladministration on the part of the Department the Ombudsman did not consider that he could uphold this complaint.

Disadvantaged Areas Scheme

Department of Agriculture, Food and the Marine

C01/16/0528

Completed 18/07/2016

Not Upheld

Background

A man applied for the Disadvantaged Areas Scheme, 2014 (DAS) on the basis that he had an equine breeding enterprise. Based on the size of his farm, he was required to maintain seven

equine animals on the farm throughout the year. He listed seven animals on his application. Six were accepted but one was not because there was no evidence that the mare had bred a foal in the relevant years. His DAS application was not accepted and his appeal to the Agriculture Appeals Office was not upheld either.

Examination

Our examination of the complaint showed that the terms and conditions of the Scheme required that any mare over five years of age must have bred a foal in one of the years 2011, 2012 or 2013. The mare and the foal also had to be registered with Weatherbys Ireland. This mare was six years old and had bred a foal which had died two days after birth in 2013. The farmer had not registered its birth. He had buried the foal on his farm without seeking a burial licence from the Department of Agriculture, Food and the Marine, as required. The owner of the stallion from which the foal had been bred had not registered the covering of the mare either, so there was no evidence of the existence of the foal. The farmer said that he had not sought the covering certificate from the stallion's owner or registered the foal because of the cost. He supplied a letter from his vet confirming that he had attended a new born foal in 2013 and a letter from the stallion owner that the mare had been covered in 2012. During the course of the appeal, the Appeals Officer had confirmed with the Department and Weatherbys that the applicant could have registered the foal as deceased.

Outcome

The Ombudsman found that as the foal had not been registered, the terms and conditions of the Scheme had not been met and therefore the complaint could not be upheld.

Farm Improvement Scheme

C01/14/2053

Completed 26/10/2016

Upheld

Background

A farmer complained about the decision of the Department of Agriculture, Food and the Marine to refuse his and his wife's Farm Improvement Scheme (FIS) applications on the grounds that they were received after the closing date, i.e. 21 October 2007.

Examination

The Ombudsman noted that the couple were never informed of the decision to refuse the applications, or of their right of appeal, until they wrote to the Minister's office in 2011. They appealed the decision and the farmer provided evidence to show that the applications had been hand delivered to the Department's offices in Carrick-on-Shannon on 18 October 2007. This included a statement from the Teagasc official who delivered the applications, details of their travel claim in respect of their trip to Carrick-on-Shannon on 18 October 2007 and a copy of the Teagasc Daybook (which contained details of the applications delivered that day). The Appeals Office concluded that, on the balance of probabilities, the applications were received after the closing date because they were date stamped as received on 22 October 2007.

The Ombudsman asked the Department to reconsider its decision as he felt that there was compelling evidence provided by a State agency to support the farmer's claim that the applications had been received before the scheme was closed. It agreed to review the matter.

Outcome

The Department agreed to make an ex gratia payment to the man and his wife in respect of the applications.

R.E.P. Scheme

C01/14/2088

Completed 22/08/2016

Not Upheld

Background

A man complained to the Ombudsman that the Department of Agriculture, Food and the Marine had rejected his application for participation in the Rural Environmental Protection Scheme (REPS) and assessed an overpayment of over €50,000 against him.

The man had originally been admitted to REPS but following inspection by the Department it was found that there were deficiencies in the organic fertiliser storage capacity on his holding. Under REPS there was a requirement to have adequate storage capacity in place by the first winter and the man had failed to comply with this condition.

Examination

The facts of this case were not in dispute. However, the Ombudsman advised the man that the Department could sometimes consider exceptional circumstances ("force majeure"). The man then supplied details of his wife's ill health and also the presence of John's disease in his herd which he said cattle could not be sold and had to be kept on the farm, overwhelming his storage capacity.

The Ombudsman put these points to the Department and asked if it would review its decision. However, the Department rejected both arguments on the grounds that a force majeure must be notified to it within ten working days of an applicant becoming aware of it. In addition, the man's wife was not one of the three applicants for the REPS. In relation to the presence of disease in the herd the Department supplied evidence that apart from one year in the period 2008-2016 there was constant movement of cattle off the farm.

Outcome

Taking account of the evidence in relation to the breaches involved, the Ombudsman concluded that the Department had acted correctly

Environment

LEADER

C08/15/1797

Completed 11/08/2016

Not Upheld

Background

A woman complained to the Department of the Environment, Community and Local Government about funding that was granted to a community project under the Rural Development Programme 2007-2013 (RDP). The woman said that the community project was providing a service to the general public in contravention of the funding provided and it was displacing her business which was already in existence in the same area.

Examination

The Department established that the project had been assessed by the Evaluation Committee and by the Board of Directors of the Local Area Group as required by the Operating Rules of the RDP. The Department also inspected the project twice and one inspection included a full review of the project file and a visit to the community project. No evidence of displacement of existing businesses was found.

Outcome

Having reviewed the case, the Ombudsman was satisfied that the investigation carried out and the subsequent decision of the Department was reasonable. As a result he did not uphold the complaint.

Education

DARE (Disability Access Route to Education)

E86/16/2674

Completed 24/10/2016

Not Upheld

Background

A student complained that her application to the DARE scheme for 2016 which was made through the CAO, was never assessed as there may have been a mistake in completing Section A of the of the application form which deemed it invalid. The student only became aware of the mistake when she spoke to a representative from her chosen college. As far as she was aware, all parts of the application form had been submitted on time and correctly. She did not know which part of Section A may have contained the mistake as she was not told where the mistake was on the form or how she could fix it in good time. She appealed the decision but was not successful.

Examination

When the Ombudsman reviewed the detailed report he got from the CAO on the complaint, it became clear that the student had not completed two of five parts of Section A correctly or on time. Although she had made an attempt to complete all sections, she had failed to save the information on the online form and because of that it was not submitted.

The CAO e-mailed the student three times with a reminder to complete and submit Section A by the deadline of 1 March 2016 in order to be considered for DARE. The student did not respond to the e-mails and did not log into her account again until after the deadline had passed. The CAO confirmed that it does not review or assess DARE applications. As the student did not confirm that she wanted to be considered for the DARE scheme before the deadline, the CAO confirmed that her application was not screened.

As regards the appeal, the CAO confirmed that they did not believe the student had been treated unfairly when measured against the set of tests used in assessing appeals.

Outcome

The Ombudsman was satisfied that the student was given the opportunity to apply to the DARE scheme correctly and on time but unfortunately failed to do so, and that the decision made by the CAO was therefore reasonable. He told the CAO however that he felt the student was not clearly told why her application/appeal was rejected and that the CAO could tell her or other students about mistakes in application forms sooner to give them a chance to fix any mistakes in good time.

DARE (Disability Access Route to Education)

E86/16/2318

Completed 25/08/2016

Assistance Provided

Background

A young man's application to the DARE scheme for 2016 was refused on the grounds that particular information required by DARE to assess the application was not provided. The man's representative also complained that there was a lack of information provided by DARE as to what specific information was missing from the application which meant the man did not have the opportunity to provide the required information at an early stage.

Examination

A DARE representative told the Ombudsman that the Dyslexia Association of Ireland had been in contact with them and confirmed that the correct information required to evidence the complainant's disability was in existence and available.

When the relevant documents were examined, it was established that it was possible that two versions of a report which was central to the application may have been in existence and that an incorrect or incomplete version may have mistakenly been submitted by the complainant to DARE. Although the complainant had missed the deadline to submit a fresh appeal, the Ombudsman asked DARE to confirm that it was open to the complainant to submit a late appeal in the particular circumstance of his case.

Outcome

DARE confirmed it was open to the complainant to submit a late appeal so the Ombudsman advised the complainant to appeal the decision and to submit the correct information/documentation in support of the appeal. The complainant was told that if he was dissatisfied with the outcome of the appeal, he could complain again to the Ombudsman. The Ombudsman brought it to DARE's attention that the complainant was provided with limited information about what specific information was missing from the application, which left little opportunity to rectify the matter in good time.

Exam Results Recheck

University College Galway

E66/14/1196

Completed 09/08/2016

Not Upheld

Background

A student complained that University College Galway penalised her for submitting an assignment which exceeded the specified word count limit by 70%. She said that she had not been advised that a breach of the word count limit would attract a penalty.

Examination

The Ombudsman established that 90% of the class respected the required word count limit. A consistent penalty was applied to those students who exceeded the limit.

However, the Ombudsman found that there were weaknesses in the manner in which the penalty was communicated to students.

Outcome

The University revised its procedures and amended the manner in which it communicated such penalties to students. It also offered to allow the student resubmit her original work but for her to bring it within the word count limit of 8,000 words (+/-10%).

The Ombudsman felt the University's offer was reasonable.

Exam Results Recheck

State Examinations Commission

E85/15/4447

Completed 11/08/2016

Not Upheld

Background

A man complained that the results he received in Geography and Economics in the 2015 Leaving Certificate were incorrect and that the appeals system of the State Examinations Commission (SEC) was flawed and unjust.

Examination

The SEC said that it had conducted a full review of the grades awarded and that it had found them to be correct. It also said its appeal process was accessible and fair.

The Ombudsman examined the review process and noted that students are entitled to view their corrected exam papers and to make submissions to support an appeal against the grades awarded them. Their paper is then completely re-marked by an appeal examiner who also ensures that all marks have been included and totalled correctly and that all parts of the exam (e.g. written, oral and practical) have been included. The Ombudsman considered that the fact that a total re-marking is undertaken, rather than a mere check of the addition of the marks, was a significant factor when considering the overall efficacy and fairness of the system. In this case it was noted that the appeal had resulted in extra marks being awarded for some questions but that these increases were not sufficient to change the overall grades awarded.

In relation to the appeals system, the Ombudsman noted that the Independent Appeals Scrutineer is independent of the SEC and he did not consider that having the same scrutineer for both of this man's papers gave rise to prejudice or a biased decision.

Outcome

The Ombudsman concluded the SEC had acted correctly and fairly in handling this issue.

Higher Education Grants

Student Universal Support Ireland (SUSI)

E78/16/0302

Completed 02/08/2016

Not Upheld

Background

A student applied for a higher education grant in respect of his Masters degree course. He expected to qualify for a higher grant of €6,270 because of his low income but was only awarded a Postgraduate Fee Contribution of €2,000. He did not receive the decision until early October, 2015, after he had commenced the course on 7 September. He had contacted the SUSI Support Desk on several occasions about his grant prior to commencement. He considered that the delay in issuing the decision on his application had resulted in his being unable to make an informed decision about whether to proceed, given the financial costs involved.

Examination

The legislation applying to the 2015/16 Higher Education Grant Scheme showed that in order to qualify for the higher grant, the applicant needed to have been in receipt of a qualifying Social Welfare payment. The man was not in receipt of the payment. Therefore he had received the correct grant award.

SUSI had written to him seeking his Final Course Acceptance (FCA) form and other details in June. He was asked to submit the FCA form and other details online. However he had not submitted the FCA form, either online or by post. As a result his application had been placed in a queue of applications where additional information was required. Due to the volume of applications received, it took around 10 weeks to process his application. If he had submitted his FCA form online as requested, the decision would have issued by the end of July.

The record of his enquiries to the Support Desk showed that he had been told that his application was awaiting final review and that once his registration with the college was confirmed, a final decision would issue. However it was not clear if staff on the Support Desk were aware that he had not submitted the FCA form.

Outcome

The Ombudsman did not uphold the complaint as the delay in making a decision on his application was because the student had not submitted the information requested and he had received the grant to which he was entitled. However the Ombudsman did identify failings within the Support Desk system about how emailed correspondence was linked to applications which SUSI acknowledged and is seeking to address.

Higher Education Grants

Student Universal Support Ireland (SUSI)

E78/14/0473

Completed 20/07/2016

Upheld

Background

The Ombudsman received a complaint from a woman on behalf of her daughter who was a student. The daughter's application and appeal under the Student Grant Scheme for a Special Rate of Maintenance Grant (SRMG) was refused because her mother's second husband was not the student's legal guardian or father, and for that reason his income could not be considered as reckonable income for the purposes of SRMG. The man and the student's mother were in receipt of a Family Income Supplement (FIS) from the Department of Social Protection.

Examination

SUSI advised that it has to administer the scheme in accordance with the terms and conditions of that scheme. The legislation governing the scheme prohibited it from looking at income from someone who is neither a parent nor legal guardian. The Department of Social Protection confirmed the view that even though FIS is payable to the applicant, a husband and wife are deemed to be joint applicants. The Department of Education and Skills which has responsibility for the legislation also confirmed that it would amend the legislation.

Outcome

The legislation governing FIS deems a husband and wife to be joint applicants. This means that the student's mother's income was reckonable, but because the application was in her husband's name and he was not the student's legal guardian or father, his income was not reckonable. The definition of parent in the legislation governing the Student Grant Scheme does not include step-father. The revised Student Grant Scheme legislation now specifically mentions FIS as reckonable income and it recognises that it is a joint payment.

Higher Education Grants

Student Universal Support Ireland (SUSI)

E78/15/2868

Completed 26/07/2016

Assistance Provided

Background

A man complained that his application and appeal for a grant under the 2014/2015 Student Grant Scheme had been refused by Student Universal Support Ireland (SUSI) and the Student Grant Appeals Board (SGAB) on the basis that he did not satisfy the residency requirements. The man had been a Volunteer Development Worker and had been abroad prior to returning to Ireland to study. He was not resident in Ireland for three out of five years immediately prior to beginning a course of study.

The Department of Education and Skills had amended the 2014/2015 Student Grant Scheme which served to exclude an exemption from the residency requirement for Volunteer Development Workers (VDW).

Examination

The Ombudsman found that the decisions were correct. However, the Ombudsman noted that the residency requirements had changed. The Department of Education and Skills had issued a Circular in October 1998 stating that a VDW will be exempt from the requirement of being ordinarily resident in an EU Member State for at least three of the five years prior to third level education. The Department changed the residency requirements, but omitted to advise all relevant organisations of the change, including Comhlámh, which is an organisation that helps those returning from VDW service abroad. The European Commission adopted a Recommendation (85/308/EEEC) to remove obstacles in the field of social protection for VDW when they returned to their own country.

The Department of Education and Skills admitted that the residency requirements changed and said that it informed all relevant departments, including the Department of Foreign Affairs and Trade on 23 January 2013, of the decision to change the requirements. The report from the Department of Foreign Affairs and Trade did not inform Comhlámh of the decision.

Outcome

The Ombudsman discussed the issue with both Departments and SUSI and the following procedural changes were agreed:

The Department of Foreign Affairs and Trade:

- updated its website information to direct prospective volunteers to visit the site to check the current SUSI requirements;
- advised the Department of Education and Skills that some third level educational establishments continue to advertise the exemption that obtained prior to the 2014/2015 academic year;
- Following consultation, Comhlámh has updated its website to alert VDW to the current residency requirements and
- highlight the new requirements at the Irish Aid Volunteering Fair.

The Department of Education and Skills:

- will raise the issue with SUSI and
- has asked the Higher Education Institutes to advise students that an exemption from the residency requirement no longer applies to Volunteer Development Workers.
- SUSI had already updated its website and highlighted that there are no exemptions to the residency requirements and specifically mentioned volunteer development workers returning from abroad to undertake studies.
- The Ombudsman was satisfied that SUSI made the correct decision at the outset. He was also satisfied that once the matter was brought to the attention of both Departments, they worked speedily to remedy the failure to advise all relevant organisations and to ensure that the change is brought to the attention of all concerned.

Higher Education Grants

Student Universal Support Ireland (SUSI)

E78/16/1435

Completed 14/07/2016

Upheld

Background

A student complained about Student Universal Support Ireland (SUSI) not renewing his higher education grant. He said he had received no notification from SUSI advising him to submit a renewal application.

Examination

The student provided evidence of having contacted SUSI advising of changes to his email details.

Following an investigation SUSI confirmed that, due to an error, a duplicate account had been created for the student on its support database. This gave rise to a large delay in a late application form being sent to the student. As a result, his late application was refused.

Outcome

Because of technical difficulties experienced within SUSI regarding the duplicate email details, SUSI agreed to accept a late application form from the student.

Higher Education Grants

Student Universal Support Ireland (SUSI)

E78/16/2107

Completed 04/08/2016

Upheld

Background

A student complained about Student Universal Support Ireland (SUSI) not renewing his higher education grant. He said when he had tried to renew his application for year three he was presented with technical issues on the online system and he could not complete his application. He said it was only after the application deadline expired that SUSI identified technical issues regarding the web browser and operating system he was using.

Examination

The student provided evidence of having contacted SUSI regarding his technical issues and provided screen captures of the problems.

Following an investigation SUSI confirmed that, due to incompatibilities between the SUSI Online Application System and the combination of web browser and operating system that the student was using, he could not complete the online process.

Outcome

Because of technical difficulties experienced with SUSI's online system, SUSI agreed to accept a late application form from the student.

Higher Education Grants

Student Universal Support Ireland (SUSI)

E78/16/2204

Completed 03/10/2016

Assistance Provided

Background

A man complained that his daughter's application to the SUSI grant scheme for 2016 was refused on the grounds of reckonable income relating to recurring overtime payments paid to him during the period 2014. The man contended that at no stage during his contact with SUSI staff was he told that overtime payments had to have ceased but said he was told they were to be non-guaranteed and non-regular and not forming a regular part of his employment. He said he was told that this would be considered a disregard from gross income if he provided written confirmation from his employer.

Examination

The Student Grant Scheme 2015 outlines that for the purposes of determining the reckonable income of an applicant, the aggregate of overtime payments earned in the reference period that are not recurring payments shall be deducted. From documentation submitted by the complainant, it was clear that there had been a number of overtime payments made but that the overtime was being worked at the behest of his employer in what were exceptional circumstances. The man said that he had sent two letters to SUSI, from his employer explaining the situation, the second of which confirmed that the overtime payments were no longer available.

SUSI confirmed that it did not have the second letter from the man's employer which outlined that the overtime had ceased. The Ombudsman sent SUSI a copy of this letter for their consideration.

Outcome

SUSI confirmed to the Ombudsman that the man's daughter would be awarded the grant for the academic years 2015/2016 and 2016/2017. The Ombudsman also asked SUSI to ensure its staff are providing clear and accurate advice and information to their customers, particularly in relation to overtime payments and the impact that these may have on grant eligibility.

Higher Education Grants

Student Universal Support Ireland (SUSI)

E78/16/2389

Completed 19/10/2016

Not Upheld

Background

A student complained that SUSI under-calculated the distance from her home to her college which meant that she was awarded the adjacent grant as opposed to the non-adjacent grant. The Student Grant Scheme provides for two rates of maintenance grant, the adjacent rate for students who live 45km or less from their college, and the non-adjacent rate in all other cases. The student calculated a distance of 45.1km from her home to her college which included the distance travelled around a ring road in order to park her car at the back of the college. This is the only area available for student parking, and can only be reached via a ring road which is a one-way system. The student contended that, as she had to travel over 45km to get to college she was eligible for the non- adjacent grant.

Examination:

The Ombudsman examined maps and distances involved in the journey from the complainant's home address to college, both including and excluding car parking. From this it became clear that the student had over calculated the distance involved in accessing the carpark, stating it was a distance of 3km/3.1km. Her calculated additional journey appeared to include the entire ring road including a roundabout when it should only have included the distance actually travelled from the front of the college, around the ring road to the back of the college to park, a distance of 1.6km. SUSI had calculated the student's journey to college as 42km, which did not include the extra distance to the car park. When the 1.6km journey around the ring-road is added to the 42 km journey from the complainant's home directly to the college, the total distance of 43.6km is still less than the 45km needed to qualify for the non-adjacent grant.

Outcome

The Ombudsman was satisfied that, as the distance between the student's home and her college was less than 45km, SUSI's decision that the student was not eligible for the non-adjacent grant was reasonable.

Health

Hospitals - Care and Treatment

Midland Regional Hospital, Mullingar

HB5/15/1513

Completed 14/07/2016

Upheld

Background

A woman who had recently given birth attended the hospital for an ultrasound scan due to ongoing pain and bleeding. After the scan she was not contacted by her medical team and eventually presented to the Emergency Department (ED). She underwent a procedure to remove some tissue from her uterus and it was discovered that she had developed an infection. The woman never received a six weeks follow-up appointment and a discharge summary was never sent to her GP. The woman also complained during her readmission to hospital that it was never suggested that she could keep her new baby with her. Eventually after six months the woman attended her Consultant but she was not satisfied with the meeting. The woman received an apology from the Consultant but felt the full extent of her complaint had not been understood.

Examination

Our examination showed that the ultrasound scan results had been sent to the junior doctor who ordered the scan but he/she was no longer involved in the woman's care. A trigger copy of the report was issued to the Consultant, but he did not receive it until later. The discharge summary was dictated but may not have been sent with the chart for typing. Had the discharge summary been typed this would have triggered an appointment for the six weeks check. The hospital could not explain why three letters sent by the GP although filed, were not responded to or why personal contacts were not acted on.

Outcome

A number of administrative and communication issues were identified in this complaint. The processes around the digital Radiology system, which was new at the time, have since bedded down in the hospital. The issuing of discharge letters, and follow-up appointments have become more streamlined and are now typed on the ward. A 'Birth Afterthoughts' Service has commenced where a new mother can meet with a senior midwife and discuss any issues. The hospital sent the discharge summary to the GP and apologised to the woman for the upset and distressed caused.

Hospitals - Care and Treatment

Sligo General Hospital

H22/14/1682

Completed 20/07/2016

Partially Upheld

Background

A woman complained about the failure of a Consultant in Sligo General Hospital to communicate the severity of her late father's illness to her family. She was also unhappy with the Consultant's apology, saying that he had not accepted responsibility for what happened.

The woman also complained that nursing staff should have consulted a doctor before her father was discharged. She said that he was dehydrated and malnourished by the time he was admitted to Cavan General Hospital with suspected Sepsis, 24 hours after his discharge from Sligo General Hospital. She said that Sepsis was present before he was discharged.

Examination

The medical team had recorded in the clinical notes that the man had end-stage heart failure. However, there was no evidence on file to indicate that this had been communicated to the family. A detailed review of the complaint had been carried out and the Review Officer found that there was a failure to communicate the serious and ultimately terminal nature of the man's illness and the potential for a rapid deterioration in his condition. He recommended that the clinical care plan is communicated clearly to the patient and their close family members and that any changes are discussed and clearly understood, including the detailed discharge plan.

The Ombudsman was unable to pursue the issue of the apology with the Consultant as he no longer worked at the hospital. However, the Hospital Manager and Review Officer had issued appropriate apologies to the family.

A review of the nursing notes indicated that the ambulance booked to take the man home had been redirected to another job. The hospital advised that, following consultation with an Occupational Therapist, it was decided he could go home by car. The Ombudsman noted the Review Officer's recommendation that any patient who has been identified as requiring transportation by ambulance to another facility is reassessed for suitability by medical and other professionals as necessary, prior to any change in the mode of transport used to ensure that adequate equipment and expertise is available.

Outcome

The Ombudsman concluded that there was no evidence to indicate that the severity of the man's illness had been communicated to the family. He also felt that nursing staff should have consulted the medical team before a decision was made to allow the man home by car. The Ombudsman acknowledged that the issues raised by the woman had been examined as part of the review and welcomed the hospital's decision to accept and implement the Review Officer's recommendations.

The issue as to whether the man had Sepsis before he was discharged could not be examined by the Ombudsman as it was a clinical matter.

Hospitals - Care and Treatment

Sligo General Hospital

H22/15/3040

Completed 08/07/2016

Not Upheld

Background

A woman complained about the nurses involved in her late husband's care while he was a patient in Sligo General Hospital. She said that nurses removed his hearing aids, despite his objections, and then put them back in incorrectly. She also said that she was accused of bringing his food from the hospital kitchen and holding his hand and not allowing him to sleep. The woman also claimed that she had been accused by a member of the Infection Control Team of spreading infection in the hospital.

Examination

There was no specific reference to the issues raised by the woman in the medical records. In fact, the records indicated that hospital staff had facilitated the woman's involvement in her husband's day-to-day care and no concerns were noted. Hospital staff had met with the woman to discuss her complaint. The Director of Nursing explained that the hearing aids were removed to allow him settle. She apologised for the fact that they were put back in incorrectly. The woman's contribution towards her husband's care was acknowledged at the meeting and it was noted that she had been given permission to collect his food from the kitchen. The Ombudsman noted the conflicting views of nursing staff and the woman regarding her husband not being allowed sleep.

Outcome

Given the lack of evidence, and the conflicting views of the woman and nursing staff, the Ombudsman was unable to reach conclusive findings in relation to the issues raised by the woman.

The Ombudsman was unable to examine an issue the woman raised about the diagnosis of her husband's medical condition, as it was a clinical matter and therefore outside his jurisdiction.

Hospitals - General

St. Vincent's University Hospital, Dublin 4

H71/15/4395

Completed 15/09/2016

Not Upheld

Background

A woman complained about the manner in which a doctor in St Vincent's University Hospital told her that she had tested positive for a hospital superbug. She stated that she was given the news as an afterthought in front of a team of student doctors.

The woman also stated that she had not had the test that indicated the positive result and that it was now recorded, incorrectly, in her medical records that she had a superbug. She sought to have the test result removed from her record. She said that she had been under the impression from talking with the Consultant that the test result could be removed.

Examination

The hospital had apologised for the upset caused by the manner in which the woman was informed of her infection status. The issue was raised with the Patient Safety Committee and relevant Consultant / Medical Team to remind clinicians of the need to deal sensitively with patients when giving news of this nature.

It was recorded in the woman's medical records that the test (swab) was carried out by nursing staff. The hospital also provided the Ombudsman with a copy of the laboratory reports relating to the test results, which contained the woman's name, address and patient number. The complaint file indicated that the nurse who took the samples had been interviewed. The nurse confirmed that the samples were taken from the woman as they were the only ones taken on the ward that day.

The hospital confirmed that the positive test result could not be removed from the woman's record. There was nothing on file to indicate that she had been told the result could be removed.

Outcome

The Ombudsman acknowledged the hospital's apology to the woman and the steps taken by the hospital to prevent a recurrence of her experiences. However, he could not conclude that there had been a mix up with the woman's samples, based on the available evidence.

Hospitals - General

Midland Regional Hospital, Mullingar

H65/15/4217

Completed 08/07/2016

Partially Upheld

Background

A woman complained about the information she was given by the different doctors she attended in the hospital following the birth of her baby by Caesarean section. Due to ongoing pain and bleeding she was readmitted to hospital and treated with antibiotics. She said she was told by doctors at each appointment that she had retained tissue from the placenta in her uterus but a hospital response to her complaint said this was not the case. She continued to suffer with pain and discomfort and questioned why these problems persisted.

Examination

Our examination of the clinical record showed that a history of retained products was referred to in some of the medical notes and in a letter sent to the GP. However, some clinical notes did not refer to retained products. Overall it appeared that the woman was given differing interpretations of her condition by the different doctors she attended.

There were issues of clinical judgement in this complaint which could not be examined. The Hospital Group had sent a very empathetic response confirming that the conservative approach taken in the woman's care was correct. The likelihood of her retaining tissue from the placenta following a C-section was low. A definitive diagnosis of this could only be confirmed following the analysis of a tissue sample, which was not possible in this case. However it seems this was not explained to the woman at the time.

Outcome

Overall it appeared the approach taken in the treatment of the woman by the hospital was correct. However the information given by the doctors was not consistent and this caused uncertainty, confusion and upset for the woman. The hospital accepted that there were some mixed communication and was sorry for the upset caused. The hospital reiterated to the team involved the importance of communicating clearly with patients and offered the woman a consultation with her original consultant to discuss the issue.

Hospitals - General

Cork University Hospital

H41/15/3170

Completed 18/08/2016

Partially Upheld

Background

A woman complained about the failure of Cork University Maternity Hospital to respond to concerns she raised about the care and treatment she received while a patient there. She stated that she met with hospital staff about her complaint and that they had agreed to contact the doctor involved in her care and provide her with further information. However, the woman said that this did not happen, despite further correspondence with the hospital.

The woman also complained that she had been given an epidural without her consent. A further complaint about the treatment given to her by a nurse could not be examined as it was a clinical matter, and therefore outside remit.

Examination

A review of the complaint file indicated that, following the meeting, the Clinical Director wrote to the doctor in question and received their statement. However, the statement was not forwarded to the woman, as agreed. The woman had not received a written response to her complaint, despite the fact that it was noted on the file that a letter should issue after the meeting.

The medical file contained a copy of the woman's consent form for a Caesarean Section. In signing this, she also consented to "such further or alternative operative measures as may be found to be necessary during the course of the operation and to the administration of general, local or other anaesthetic for any of these purposes". The Ombudsman obtained independent information on this issue which indicated that once the consent form is signed for a Caesarean Section, there is implied consent for anaesthesia, including an epidural, if deemed necessary.

The woman had also complained that she was offered a drug she was allergic to on several occasions and that there was confusion in the delivery room regarding the mode of delivery. However, there was insufficient evidence available to allow the Ombudsman make a determination on these issues.

Outcome

The hospital apologised to the woman for failing to provide her with a copy of the doctor's statement. It also agreed to bring the issues raised in this case about the complaint handling to the attention of staff involved in examining complaints to prevent a recurrence.

Hospitals - General

Mid-Western Regional, Nenagh

H31/15/4466

Completed 15/07/2016

Partially Upheld

Background

A woman complained about the prescription of a laxative for her father while he was a patient in the Mid-Western Regional Hospital, Nenagh. She said that her father was admitted to the hospital with diarrhoea and that the use of the laxative was not monitored by staff on the ward. The woman was also unhappy that her mother had been unable to make an appointment with the Consultant to discuss her father's care.

Examination

The medical records indicated that he had been given the medication for 13 days, despite his condition. The hospital accepted that the prescription of the laxative was an error and inappropriate in her father's case. It also accepted that the requirement for, and administration of, the drug was not monitored during her father's stay in hospital. The Consultant and Clinical Nurse Manager apologised to the woman and her family. The Ombudsman noted that the hospital had taken action to prevent a recurrence of the problem. This included the development of a learning notice for staff and the introduction of the National Nursing Metrics Audit on the ward, which included a review of the administration of medication.

The hospital informed the Ombudsman that the woman's mother had been given incorrect information on how to make an appointment to meet with the Consultant. It apologised for this and stated that notices with the correct procedure for arranging appointments with Consultants were now on display in the ward.

Outcome

The Ombudsman was satisfied that the hospital had acknowledged the errors made in this case and that it had taken action to prevent a recurrence of the issues experienced by the woman and her family.

Hospitals - General

University Hospital Kerry / Cork University Hospital

H47/15/4074

Completed 29/09/2016

Assistance Provided

Background

A man complained that his late wife was transferred back to University Hospital Kerry (UHK) too soon after undergoing a cardiac angiogram in Cork University Hospital (CUH). He felt that given his wife's medical history she should have remained an in-patient in CUH after the procedure. He felt his wife's condition deteriorated in the days that followed the angiogram and queried if appropriate precautions were taken before and after the procedure to protect his wife's kidney function.

The man also questioned the decision to discharge his wife from UHK a week later and the reaction in UHK to her deterioration when she was subsequently readmitted a few days later which he said lacked urgency. He felt there was a delay in her transfer back to CUH for urgent treatment.

Examination

A number of the issues raised pertained to clinical decisions taken by the doctors and as such could not be examined. However the hospital provided additional information in order to give a better explanation.

Our examination found that appropriate precautions were taken by the doctors in both hospitals to ensure the woman was clinically fit for the cardiac procedure. Prior to the procedure she was reviewed by her Consultant Nephrologist and the technique used during the procedure was altered in light of her previous history. When the woman was readmitted to UHK she was reviewed by a number of different doctors and specialist advice was obtained from CUH.

Once the clinical decision was made to transfer the woman to CUH a delay occurred due to both an acute deterioration in her condition and an ambulance issue. The ambulance service acknowledged there was an initial delay due to the recording of the received call.

Outcome

The area Manager for the National Ambulance Service apologised for the delay and undertook to bring the complaint to the attention of the dispatch supervisor in the area in order to highlight to call takers and dispatch handlers the importance of processing all calls correctly.

Hospitals - General

Rotunda Hospital

H84/16/1479

Completed 16/09/2016

Not Upheld

Background

A woman complained about the refusal of the Rotunda Hospital to refund the booking deposit she paid for semi-private care. She had complained to the hospital about the care she received in the Semi-Private Clinic and had sought the refund as compensation for her experiences.

Examination

The hospital said that the Semi-Private Clinic is a separate clinic from the main hospital and it is managed by staff who are not in the employment of the hospital (except medical staff). It also said that the booking fee paid by the woman paid for the administration of the Clinic and covered the cost of laboratory, ultrasound or any other tests / procedures a patient has during their ante-natal care. The woman's complaint related to care she received following the birth of her child. The hospital said as the woman had no issue with her ante-natal care, there was no basis on which it could refund the booking deposit.

Outcome

Given that the booking deposit covered the woman's ante-natal care, and her complaint related to issues that arose in relation to her neo-natal care, the Ombudsman concluded that there was no basis on which he could pursue the matter further with the hospital. He acknowledged that the hospital had accepted responsibility for the shortcomings in the care provided to the woman, apologised to her for her experiences and it had taken steps to prevent it happening in other cases.

Hospitals - Psychiatric

HSE

HA1/15/1284

Completed 23/09/2016

Partially Upheld

Background

A woman complained about the manner in which her care plan was completed on admission to a mental health out-patient service. She said it had been partially completed in her presence and had not been agreed with her. She also complained about a lack of one to one sessions with her assigned key worker. She felt that this and other issues resulted in the breakdown of her relationship with her key worker. The handling of her request for a change of key worker also formed part of the examination.

Examination

It was found that the care plan had not been signed by the woman and had not been reviewed monthly as required under national standards. Staff felt the woman was aware of the contents of the care plan but there was no signature to verify this. This resulted in a misunderstanding about the planned frequency of one to one sessions. The woman believed she was to have weekly one to one sessions but this was not in her care plan. The care plan was not reviewed after a month and therefore the misunderstanding had not been picked up. A number of one to one sessions took place but not all with the assigned key worker due to annual leave arrangements.

The clinician agreed to the woman's request for a change in key worker. However this presented an issue from a staffing point of view for nursing. Due to genuine concern, a clinical decision was taken by nursing staff to try to re-establish the relationship with the keyworker and an unplanned meeting occurred. However this caused the situation to worsen. It was found that there was no discussion between nursing and clinical staff regarding the situation. The woman complained to the service and an alternate arrangement was then made.

Outcome

Management of the service apologised to the woman for her experience and have since introduced a monthly audit of the care planning process. The service accepted that there was poor communication between clinical and nursing staff. A reconfigured weekly multi-disciplinary team meeting now takes place with feedback to nursing staff from the meeting. The service felt that lessons had been learned from the complaint and improvements put in place.

Medical & GP Card

HSE

H09/16/2342

Completed 30/08/2016

Not Upheld

Background

A man complained about the decision of the HSE to not re-issue medical cards to his sons in 2015.

Examination

The HSE said that the medical cards should not have been given to his sons in 2013 as that decision was made following an incorrect interpretation of the legislation. The relevant guidelines provide that dependants of EU pensioners resident in Ireland, who are in receipt of a qualifying pension are entitled to a Medical Card once they are not subject to Irish social security legislation. Children of EU pensioners are entitled to a Medical Card where the spouse or person looking after the children is not also subject to Irish social security legislation. At the time of the application the man's sons were under 18 and in full time education. Therefore child benefit was payable to the family.

His wife was employed and subject to PRSI. Therefore his spouse and, in turn, his dependent children were subject to Irish social security legislation.

Outcome

The Ombudsman found that the HSE had interpreted the legislation in a reasonable manner.

Primary & Community Care

HSE

HB7/16/0554

Completed 29/09/2016

Partially Upheld

Background

A woman applied to the Council for a Housing Adaptation Grant (HAG) but was not happy with the HSE Occupational Therapist's (OT) report on the application. The woman said that due to the delay by the HSE in amending its report she lost out on her preferred builder. The woman said that due to the poor workmanship of the replacement builder she had to employ an architect to check the works which cost her a lot of money.

Examination

The HSE explained that the Council requested it to carry out an OT assessment as required by the terms and conditions of the HAG scheme. It also said that it could recommend works for the future needs of the woman. As the woman was not happy with the report, the HSE said it proposed a compromise solution to accommodate the level access shower she may require in future. Given the woman was still not happy it removed the level access shower from the final OT report. This was on condition she would not look for funding for it from the Council in future. The HSE also undertook to amend its procedures so that if an applicant was not happy with its OT report, it would ask the Council to get an independent OT report.

Outcome

The Ombudsman was satisfied the HSE had taken reasonable steps to make sure a similar situation did not occur in future and any issues regarding the workmanship were a matter between the woman and the builder. As such, he could not conclude that the HSE could be held responsible for any extra costs incurred due to the delay in its part in dealing with the matter.

Treatment Abroad - Cross Border Directive

HSE

H09/16/1740

Completed 04/08/2016

Assistance Provided

Background

A man complained about difficulties he experienced with the HSE in seeking reimbursement for treatment his son had received in Germany under the Cross Border Directive. (This Directive allows a person to avail of treatment abroad and recoup the costs on return). The man had submitted a claim using the claim form that the HSE had provided to him but this was subsequently returned to him with a new claim form which he was told needed to be completed. This new claim form was duly completed by the treating physician in Germany and submitted to the HSE for reimbursement. However, the second claim form was also returned to the man with a request that all the supporting documentation be re-submitted with certified translations. The documents requiring translation were invoices relating to catering, accommodation and medical function within the clinic in Germany which had been provided by the clinic to justify their treating costs. The man had offered to obtain a single invoice from the clinic but the HSE had said that his claim would not be processed until the certified translations were submitted.

Examination

The Ombudsman contacted the HSE to discuss the complaint. The HSE advised that when the invoices were submitted, it was unclear whether the accommodation being availed of was part of the treatment facility or separate from it. This was due to the fact that the invoices for the treatment and the accommodation were from two different companies. Upon review, the HSE said it was satisfied that the accommodation was part of the treating facility and that the man's son had been treated in an inpatient capacity and not as an out-patient. It agreed that there was no need to obtain certified translations of the documents in question.

Outcome

The HSE agreed to reimburse the man without delay and apologised for the frustration he had experienced.

Treatment Abroad - Cross Border Directive

HSE

H09/16/1578

Completed 26/08/2016

Assistance Provided

Background

A man received approval from the HSE for in-patient treatment (involving an overnight stay) for carpal tunnel syndrome in both his hands. The man paid in advance for his in-patient

care in a Northern Ireland hospital at a cost of nearly €7,000 but was well enough to leave the hospital on the same day as his operation. Therefore, he was deemed to be a day patient and should have received a refund from the hospital. However, when the man sought a refund from the hospital it was refused. The hospital said that the cost was the same whether he went home the same day or remained overnight. The HSE could only reimburse the man as a day patient which amounted to just over €2,000. This left him with a shortfall of almost €5,000.

Examination

When the Ombudsman checked with the Northern Ireland hospital about the variation between day and in-patient charges, the hospital accepted that an error had been made in his case. It agreed to refund the man's outstanding costs. In highlighting this case, the Ombudsman is keen to highlight what can happen in situations where patients are not fully aware of the details of the scheme or how it operates. In this case, the HSE could not have been expected to know that the man would be discharged as a day patient having issued approval for him to receive in-patient care.

Outcome

The HSE, in consultation with the Office of the Ombudsman, has altered its approval letter to inform patients of the range of possibilities under the scheme and about their entitlements.

Treatment Abroad - Cross Border Directive

HSE

H09/16/1213

Completed 29/09/2016

Upheld

Background

A woman who had previously been approved for in-patient lymphoedema treatment (to control swelling on her legs following cancer treatment) under the Treatment Abroad Scheme (TAS) was initially refused further treatment under that scheme. She was then incorrectly advised to apply for treatment under the Cross Border Healthcare scheme before eventually being approved for treatment under the Treatment Abroad Scheme.

Examination

The woman was not informed that she could have appealed the HSE's initial decision to refuse her TAS application. Instead, the HSE told her to apply for treatment under the Cross Border Healthcare (CBH) scheme. According to the HSE, the treatment she needed was available on an out-patient basis in Ireland. This was incorrect. While out-patient care is available here for some lymphoedema patients, the woman required a more intensive form of in-patient treatment for her condition which is not currently available in Ireland. Therefore, her application should have been considered under the Treatment Abroad Scheme rather than the Cross Border Healthcare scheme.

Outcome

After paying in advance for her treatment abroad under the CBH, she was advised by the HSE that she needed to submit a 'treating code'. However, there are no HSE treating codes for out-patient care abroad. In desperation the woman turned to her private healthcare which provided a contribution towards the costs. After she complained to the Ombudsman the HSE agreed to refund the balance to her (€2,900). The HSE also agreed to approve future lymphoedema treatment for the woman under the Treatment Abroad Scheme and to consider applications for other patients in a similar situation.

Parking Spaces (Disabled)

HSE

HB9/16/0743

Completed 07/09/2016

Not Upheld

Background

The man complained about changes to the provision of disabled parking facilities at Mullingar Hospital and Health Centre. He said that there had been a total elimination of convenient parking spaces for disabled persons as three spaces were eliminated from the hospital and two spaces had been eliminated from the Health Centre while three car parks had been commissioned. Furthermore, disabled drivers would have to pay for the disabled parking spaces in the car parks.

Examination

The HSE said that over the past number of years, the traffic in and out of the Health Centre, Mullingar had increased significantly. There had been ongoing Health and Safety issues relating to the disabled parking spaces as they were located on the periphery of what was now a busy roundabout at the entrance to the Health Centre. As a result a review of the car park facilities had been undertaken by Management and the disabled car parking spaces were moved into the main car park area of the Health Centre. A Consultancy firm who carried out a site survey for the HSE had concluded that there was adequate disabled car parking spaces provided in close proximity of the Health Centre.

The Ombudsman queried whether there was any provision for validating parking tickets for disabled drivers using the disabled spaces in the car park. The HSE pointed out that there were six free disabled parking spaces provided adjoining Mullingar Hospital which is close by the Health Centre as well as the paid disabled spaces in the car park.

Outcome

Given that there is no legal requirement for the HSE to provide free disabled parking spaces and that six had been provided on the campus, as well as the paid disabled parking facilities, the Ombudsman took the view that the complaint could not be upheld.

Local Authority

Derelict Sites

Longford County Council

L30/14/1838

Completed 07/07/2016

Assistance Provided

Background

A man complained that the Council was not taking any action under the Derelict Sites Act in relation to two adjoining properties. The man said that there was rubble and debris at the front to the properties and illegal dumping was taking place in the back garden of one of them.

Examination

The Council said that it did not consider the sites to be derelict as it was of the opinion that boarded up dwellings in a housing estate do not constitute a Derelict Site. The Ombudsman was not happy that the Council had provided enough evidence to support its position.

Outcome

The Council subsequently carried out another site visit and then decided to take action under the Derelict Sites Acts in respect of both properties as they had not taken action to clean up the properties.

Housing Allocation & Transfers

Cork City Council

L07/16/2746

Completed 10/10/2016

Assistance Provided

Background

A woman complained about Cork City Council because it had not offered her social housing support. She said she had five small children and had been on the waiting list for eight years. She said she was currently in private rented accommodation but had been served notice to vacate.

Examination

The Council said its records showed the woman was listed under a different surname and different address. It was also recorded that she had three children. The Council said it had previously received a phone call from the woman informing it that she had changed address. A change of address form was sent to the new address but was never returned.

As the Council had no proof of the new address it retained the old address on its records. The Council confirmed its policy that it could only correspond with the address on its system and that all changes must be notified in writing.

Outcome

The Council agreed that the woman has been an eligible applicant since 2008. It said she will now be considered for any property she bids on through the Choice Based Letting Scheme.

Housing Anti-Social Behaviour

Monaghan County Council

L38/16/2014

Completed 07/09/2016

Partially Upheld

Background

A couple complained about how the Council dealt with their claim that their neighbour had blocked their driveway.

Examination

In 2013 the couple made a similar complaint to the Council and it sent a warning letter to their neighbour. On this occasion the Council referred the couple to An Garda Síochána. The couple complained to the Council about the handling of their complaint and further appealed to the Council as they were not happy with its reply. The couple did not receive a reply in line with the timelines set out in the Council's Customer Care Policy, nor was it reviewed by the Council's Designated Appeals Officer as set out in the Policy. The Council accepted that its process failed on that occasion and agreed to send a letter of apology to the couple.

On the point of referring the couple to An Garda Síochána the Council said that it was sometimes necessary for it to rely on An Garda Síochána to independently investigate allegations. In this case the Council said it could not confirm how long the neighbour's vehicle was parked at the entrance of the property. It said that it referred this complaint to An Garda Síochána as the number of complaints had increased between the parties and it wanted to be fair to all involved. It had also previously referred other similar complaints to An Garda Síochána for investigation.

The Council's tenant handbook describes the blocking of common areas as antisocial behaviour. Antisocial behaviour is defined in the Housing Act 1997, as 'behaviour which causes any significant or persistent impairment of a person's use or enjoyment of his or her home'. While the Council accepted that the driveway was obstructed significantly it stated that this was not occurring on a persistent basis. The Ombudsman noted that there were two instances of obstruction recorded on the Council's file in the two years prior to the most recent complaint.

Outcome

The Ombudsman was satisfied that the Council had acted reasonably in referring the couple

to An Garda Síochána. He noted that the Council had reviewed its Customer Care Charter and Customer Service Formal Complaints Procedure, which it stated would strengthen its complaints process and should prevent similar issues from occurring again. He also noted that the Council had apologised to the couple for the failure to deal with their complaint and appeal letters properly.

Planning

Cork County Council

L08/15/1298

Completed 26/08/2016

Assistance Provided

Background

A man complained that Cork County Council had failed to enforce planning conditions relating to floodlighting at a local sports facility. The glare from the floodlights was encroaching on the man's home.

Examination

Following discussions between the Ombudsman and the Council, the Council agreed to carry out further remedial works to the floodlights designed to resolve the problem.

Outcome

The Ombudsman was satisfied with the Council's decision to rectify the problem.

Planning

Donegal County Council

L10/16/2224

Completed 22/09/2016

Assistance Provided

Background

A man complained that the Council had withdrawn enforcement proceedings against a developer because the developer's company went into liquidation. Since then, the man noted that the developer has applied for retention permission. However, although the Council had refused the developer's application, the man said no enforcement action was being taken.

Examination

The Council explained that although it had refused the retention application it met with the developer who undertook to submit another retention application to regularise the development. The Council stated that this matter was complicated by the fact that the original planning permission in relation to parking spaces could probably not be complied with in practise. It stated that if the developer did not submit this application within four weeks it would consider pursuing further enforcement action.

Outcome

The Ombudsman was satisfied the Council was actively pursuing a resolution to the matter. He could also not find that its approach of seeking a solution by allowing a retention application for alternative parking was unreasonable in the circumstances. The Ombudsman informed the man that he could come back if there was an undue delay by the Council in dealing with the matter.

Planning

Kildare County Council

L20/16/0126

Completed 30/08/2016

Upheld

Background

A man complained that Kildare County Council was in possession of part of his garden without his consent. He bought his house in 2002. At the time, the wall at the end of his garden was completely overgrown. In 2011, he cleared the overgrown hedge and discovered that the wall, as constructed, was in the wrong position. As a result, part of his garden was in the physical possession of his neighbour, a Council tenant.

Examination

The Council purchased the neighbouring property in 2008 - 6 years after the man purchased his house. From an examination of the Council's file, it was clear that the dividing wall pre-existed the Council's involvement in the case. However, the Council agreed to undertake some remedial works and to share the cost of re-siting and rebuilding the boundary wall on a 50:50 basis with the man. This allowed the man to take possession of his full garden.

Outcome

The Ombudsman was satisfied that the Council's proposal was reasonable.

Planning

Galway City Council

L15/16/1931

Completed 21/09/2016

Not Upheld

Background

This man complained that Galway City Council was not taking action in relation to unauthorised changes which the developer had made to the car park area of his apartment complex. These included moving the wheelie bin storage area from the car park, the creation of an unauthorised fire exit from an adjoining public house by building a wall through the car park without planning permission, blocking up an existing fire exit and using a public road as a private parking area by the installation of parking meters and signage.

Examination

Galway City Council provided a comprehensive explanation of all it had done to try to resolve these issues. The developer's agents had claimed to the Council that much of the work carried out had been done at the behest of the Chief Fire Officer for Galway and therefore was exempted development. The report showed that the Council had not fully accepted this argument and had initiated enforcement proceedings at one stage, which had been put on hold as the developer had indicated that he would be submitting an application for retention. When this was received the Council sought further information which was not forthcoming. As a result the enforcement proceedings have been reactivated and are proceeding. Other issues which the complainant had raised had been referred to the appropriate sections of the Council and are being investigated.

Outcome

Given that the Council had shown that it was actively pursuing the issues raised by the complainant, the Ombudsman did not uphold the complaint.

Planning

Wicklow County Council

L57/16/0927

Completed 06/09/2016

Not Upheld

Background

A man complained that the Council was refusing to refund a special development contribution he paid as part of his planning permission for a Community Centre. The man said the Planning and Development Act 2000 (as amended) provided for a refund if the works were not carried out in a certain amount of time. The man also noted that the Council had not carried out the works itself.

Examination

The Council said it had allowed the man to pay the contribution on a phased basis so the time for it to complete the works started from the date of his final payment and not the first instalment. As such, it was of the view that the relevant time periods in the legislation had not yet expired. The Council also said that the legislation allowed for the works to be provided on its behalf and that by part funding the project it had community facilities built in keeping with this provision.

Outcome

The Ombudsman was satisfied that the way the Community Centre was provided met the requirements of the legislation. He could also not find that the Department's interpretation of the date of payment was unreasonable in the circumstances.

Regulatory

Driver Licence

Road Safety Authority

R25/15/0032

Completed 25/10/2016

Not Upheld

Background

A man complained to the Ombudsman about the decision of the Road Safety Authority not to renew his Driver Certificate of Professional Competence (CPC) on the basis that he had not completed the required number of hours of periodic training.

Examination

The man held both a bus and truck licence and had completed 35 hours periodic training within a 5 year period. However, the Authority informed him that he must complete an additional 7 hours before the CPC could be renewed. The Authority was of the view that, under the relevant legislation (S.I. 359 of 2008), it was necessary to complete periodic training for both categories of licence to cover the category specific subjects. The man was of the view that the relevant EU Directive did not require periodic training to be completed for both categories.

Outcome

The Ombudsman considered that there was a clear distinction in the Directive between the goods and passengers licence categories. The Ombudsman was satisfied that the Authority's decision, in requiring that category specific subjects also be covered as part of periodic training, was reasonable.

Driving Test

Road Safety Authority

R25/16/1566

Completed 12/09/2016

Not Upheld

Background

An Authorised Driving Instructor (ADI) claimed that a Driver Tester in his local test centre was failing more of his students than other ADI's students. He had made a complaint against the Driver Tester in 2011 which had not been upheld. He also alleged that the Driver Tester was referring failed students to another ADI with whom he was friendly. He considered that the Road Safety Authority (RSA) had not properly investigated his complaint.

Examination

The RSA's investigation file indicated that the preliminary investigation did not support the claims made based on available statistical information and the lack of other complaints received about the Driver Tester. The RSA investigator formed the view that the complaint had not been made in good faith.

The file showed that at least one other Driver Tester had a higher rate of failures against the ADI's students than the Tester complained about. Similarly other statistical information on the driving tests results by all Driver Testers in the centre, did not support the complaint.

The Driver Tester had admitted that he and his family were friends with the ADI and her family for many years but both denied that he was referring on failed candidates to her. The evidence presented by the complainant amounted to hearsay as none of the students or other ADIs who allegedly had issues with the Driver Tester had submitted complaints to the RSA.

The RSA had examined all of the twenty two allegations made against the Driver Tester but had not found any substantive evidence to support the complaint.

Outcome

Given that there was no substantive evidence to support the complaint and the RSA had examined all aspects of the complaint, the case was not upheld.

Vehicle Testing

Road Safety Authority

R25/16/2161

Completed 18/08/2016

Not Upheld

Background

A man complained about the retesting period for the commercial vehicle roadworthiness (CVR) test.

Examination

The man's vehicle failed the CVR test twice. He arranged for the repairs to his vehicle but when he attended the test centre for the third time he was informed that he had missed the deadline for retest and therefore would have to pay for a full test. The regulations setting out the period for retests state that a retest should take place within 21 calendar days and within 4,000kms of the initial reading. Drivers are given a report after each test that gives a date by which the retest has to be done. It was the man's position that as his vehicle failed the test twice he should have been allowed two 21 day periods i.e. 42 days, to present for the retest.

The RSA offered to cover the cost of a full test at a centre of the man's choice and also stated that it was reviewing the legal texts. The man did not take up the offer of the free test. The RSA decided no changes were required to the legislation.

Outcome

The Ombudsman found that the RSA had interpreted the legislation in a reasonable manner and that the test centre reports had clearly informed the man of the applicable deadline for retesting purposes.

Registration/Recognition of Qualifications

Teaching Council

R29/15/4250

Completed 16/08/2016

Assistance Provided

Background

A man complained to the Ombudsman about the decision of the Teaching Council to grant him conditional registration only when he applied to be registered as a primary school teacher. The man had qualified in another jurisdiction and had not completed the Irish language requirement. The man teaches in a school where Irish is not taught.

Examination

The current teacher registration requirements provide that primary school teachers must be able to teach the Irish language and the range of primary school subjects through Irish. This Irish language requirement has a legislative basis. However, the Ombudsman also noted that it may be open to the man to register as a special needs teacher if he completes the Department of Education postgraduate special educational needs (Postgrad SEN) course.

Outcome

The Ombudsman was satisfied that the Teaching Council's actions were fair and reasonable and in line with the relevant legislation.

Social Protection

Back to Education Allowance

C22/16/0330

Completed 11/07/2016

Not Upheld

Background

A man applied for a Back to Education Allowance (BTEA) for a one year Graduate Diploma in Adult and Further Education course. He was initially told that he would qualify for the payment but then was told that the Diploma was not a qualifying course for the purposes of the scheme. His course had started in early September, 2015. He was informed at the end of November that he would not qualify for payment, by which time he had completed a third of the course. He considered that the Department should pay him BTEA due to the fact that he had commenced his course in good faith and had no other income available to him. He had received Jobseekers Allowance until late December, 2015.

Examination

The postgraduate option of Back to Education Allowance is payable only to persons who wish to pursue a postgraduate course that leads to a Higher Diploma (level 8) qualification in any discipline, or to those pursuing a Professional Masters in Education (PME) (Level 9). It is aimed at those pursuing primary or secondary school teaching.

To teach at primary or secondary school level in Ireland, a postgraduate qualification is required and it is necessary to hold a Bachelor of Education (B.Ed.) or a postgraduate teaching qualification, the Professional Masters in Education.

The Graduate Diploma in Adult and Further Education is recognised by the Teaching Council of Ireland as a professional qualification for the purposes of registration as a teacher for the Further Education sector. The course allows those working in that sector to register as a Further Education teacher in Ireland and the EU. However it does not entitle a graduate to work in the primary or secondary level education sector and this is the reason why it is not an approved course for BTEA purposes.

Outcome

While acknowledging that he had been misinformed initially, the Ombudsman could not uphold the complaint because the course was not a qualifying course under the BTEA scheme.

Domiciliary Care Allowance

C22/16/2186

Completed 06/09/2016

Upheld

Background

A woman complained about the refusal by the Department of Social Protection of her application for arrears for Domiciliary Care Allowance (DCA) for the woman's foster child. The woman had been awarded DCA from 1 August 2011 and applied for backdating to 1 January 2005 as the additional care her foster child's special needs required had become more progressive from that time.

Examination

The Department suggested that the backdating should initially be pursued with the HSE as it had responsibility for administering DCA up until 1 September 2009 when that responsibility was transferred to the Department. This seemed reasonable to the Ombudsman so he engaged with the HSE on the case.

Outcome

The HSE accepted the case for backdating made by the Ombudsman and paid the woman arrears of €19,683.60 to cover the period from 1 January 2005 until DCA transferred to the Department in September 2009. The Ombudsman then re-engaged with the Department for the period 1 September 2009 up to 1 August 2011. The Department also accepted the case and, when it got formal confirmation from the HSE that the woman was eligible for DCA on the date of transfer of DCA to the Department, paid the woman arrears of €7,118.50. The Department further confirmed that the woman also qualified for the Carers Support Grant (formerly the Respite Care Grant) for 2010 and 2011 and paid her 1,700 for each of those years. This amounted to total payments of €30,202.10 made to the woman.

PRSI - Insurability of Employment

C22/16/0468

Completed 15/07/2016

Not Upheld

Background

A woman worked in the HSE and also as a Director of a company. She complained about the Department's decision not to award her class S contributions for her work as a Director. People who are self employed pay class S contributions that fund social insurance payments such as the contributory State pension. The woman said that due to the Department's decision she would receive a reduced pension.

Examination

The Department said that the relevant legislation provided that certain public service employees are excluded from paying class S contributions. It noted that the woman

was returning a modified rate of PRSI, i.e. class D in her HSE employment, it was permanent and pensionable and commenced before or on 5 April 1995. As such, the legislation prevented the woman from being able to pay class S contributions for her other employment.

Outcome

The Ombudsman was satisfied that the Department's decision was in accordance with the relevant legislation.

Rent Supplement

C22/15/4180

Completed 05/09/2016

Upheld

Background

The Ombudsman received a complaint on behalf of a man about an overpayment of Rent Supplement (RS) of €3,000.00. In 2007 the RS had been suspended because the man had not been able to provide receipts to prove that he had given the RS to the landlady. The man had withheld the RS from the landlady because of a dispute, prior to the suspension. Following a finding by the Private Residential Tenancies Board, the man gave the landlady all of the RS he had withheld.

Examination

The Department had no choice but to suspend the RS. It could not support a decision to continue payment of RS in the absence of proof that the RS was given to the landlady. However, the Department's file confirmed that it was satisfied that all rent owed was eventually paid to the landlady.

Outcome

The Department agreed to review its decision and it cancelled the overpayment.

State Pension (Non-Contributory)

C22/16/1076

Completed 10/08/2016

Not Upheld

Background

A woman was in receipt of a non-Contributory State Pension of €51.50 and a living alone allowance of €9 per week. She said that she could not survive on such a small pension. In assessing her means, the Department of Social Protection had taken into account two apartments abroad which had been purchased by her ex-husband in 2006 and 2007 but which were in their joint ownership until 2013. She wanted the Department to reassess her means by excluding the half share value of the apartments.

Examination

In examining the complaint we reviewed the Department's file and also examined the relevant provisions of the Social Welfare Consolidation Act, 2005. It became clear that the woman had not declared her shared ownership in the apartments until her Disability Allowance had been refused. She had claimed that the only reason her name was on the deeds was to ensure that her children could inherit the apartments in the event that her ex-husband died. However, she had assigned her share in the apartments back to her ex-husband in 2013 and signed a legal document stating that the reason for doing so was because she had lost her Disability Allowance payment.

Section 2(1) of Part 3 Schedule 3 of the Social Welfare Consolidation Act 2005 states that "Subject to paragraph (2), if it appears that any person has, whether before or after the commencement of this Act, directly or indirectly deprived himself or herself of any income or property in order to qualify himself or herself for the receipt of the pension or allowance in question, or for the receipt of the pension or allowance at a higher rate than that to which he or she would otherwise be entitled, that income or the value of that property shall for the purposes of these Rules be taken to be part of the means of that person." Therefore the Department was entitled to include half of the value of the apartments in assessing her means. She was also in receipt of a weekly UK pension of around €35.

Outcome

The woman had not offered any other identifiable reason for transferring her share of the properties back to her ex-husband other than in order to obtain a Social Welfare payment from the Department. It had calculated her means and assessed her pension entitlement correctly in accordance with the legislation and therefore there was no basis for upholding the complaint.

Training/Employment Schemes

C22/16/1894

Completed 14/10/2016

Assistance Provided

Background

A woman complained to the Ombudsman when she was removed from the client list of Employment Response Northwest (ERNW). ERNW is funded by the Department of Social Protection and provides employment support services for disabled people.

Examination

The Department stated that the woman had initially been taken off the client list at her own request in October 2008. It provided a copy of a note the woman had sent ERNW withdrawing from the service. The woman had two subsequent meetings with officials from the Department in May 2014 and September 2015 in relation to access to ERNW's services. The woman was not seeking employment, so the Department decided that access to employment support was not appropriate in her case.

The Ombudsman received additional information from the woman's representative regarding

her disability and how it affected her decision making and ability to deal with people and situations. They confirmed that she was now seeking employment and that she sought the support of a Job Coach to do so. The representative said that the woman would require an advocate in the event that she was referred to a Job Coach.

Outcome

The Department reviewed the case in light of the new information and a referral was made for the woman to ERNW.

Widow/ers or Surviving Civil Partners Contributory Widowers Pension

C22/16/2353

Completed 21/10/2016

Not Upheld

Background

A man complained to the Ombudsman when the Department of Social Protection refused to backdate his application for the Widower's Contributory Pension. He had applied on the two grounds for backdating set out in the relevant legislation i.e. his incapacity by illness or infirmity and incorrect information being supplied by an official of the Minister. He also referred to a case which was published in the Ombudsman's Annual Report in 1999, and considered that this was a precedent in support of his case to have his claim backdated.

Examination

The man said the Appeals Officer rejected his Doctor's medical reports in favour of the views of the Department's Medical Adviser who had never seen or examined him and whose report was not available to him at the appeal hearing. The Deciding Officer accepted the advice of the Department's Medical Adviser which was that the evidence provided did not support the man's view that his condition prevented him from making a claim himself or getting someone else to make a claim for him.

With regard to whether incorrect information was supplied by an official of the Minister, the Ombudsman noted that the man was advised by the Department to apply for the Widower's Contributory Pension at the time his Bereavement Grant application was processed. There was no evidence on file to suggest that he was given incorrect information.

In the case that was published in the 1999 Annual Report, there was no evidence that the Department advised the claimant of her right to apply for the Widow's pension. For this reason the Ombudsman was satisfied the circumstances were not the same as in the man's case.

Outcome

As the Department had considered the evidence the man provided about his medical condition the Ombudsman was satisfied that the Department's decision was made in accordance with the relevant legislation.

Other

Access to/Application for Grant

Caranua

O83/16/0708

Completed 23/09/2016

Not Upheld

Background

A woman complained to the Ombudsman about the manner in which her application for housing support and reimbursement of medical bills was handled by Caranua. She also complained about being given decisions that were important to her over the phone and not in writing.

Examination

The woman was hoping Caranua could help her to avail of the Incremental Purchase Scheme. Caranua's Guidelines for making an application state: "We will work with our local authority partners and others to make sure that you have access to decent and secure housing in a place appropriate to your needs." Caranua told the Ombudsman it contacted Dublin City Council and established that as she was renting privately the woman was not eligible to apply for the Incremental Purchase Scheme. However there were other schemes she may be eligible for, in particular the House Purchase Loan Scheme. It suggested that she contact the Council directly to discuss her possible eligibility for those other schemes. The Ombudsman was satisfied that Caranua acted within its remit with regard to housing support.

Caranua told the Ombudsman that some of the medical receipts the woman submitted could not be refunded as they were dated prior to her application. It referred to its Guidelines which state "we cannot pay for treatment or services that have already been completed before you apply to us."

Caranua said that the bills the woman provided were not acceptable as proof of payment as they were written on compliment slips and did not comply with Caranua's internal financial control processes which required copies of the actual bills issued to the woman. The Ombudsman reviewed Caranua's Policy in this regard and was satisfied that it acted in accordance with its procedures. Caranua advised the woman that it was open to her to request proper receipts from her GP and the fees would be reimbursed once she received them.

With regard to the fact that the woman was given an important decision over the phone, Caranua advised the Ombudsman that it is its practice to discuss all decisions with applicants over the phone and it does not always follow that a formal letter of refusal is issued. Caranua subsequently sent an email to the woman, as requested, providing the required information.

Outcome

The Ombudsman was satisfied that Caranua acted in accordance with its Guidelines and procedures regarding the woman's application.

Access to/Application for Grant

Citizen Information Board

O12/16/1836

Completed 05/07/2016

Not Upheld

Background

The Chairman of a Money Advice and Budgeting Service (MABS) made a complaint about the decision of the Citizens Information Board (CIB) to suspend funding to the MABS.

Examination

The CIB told the Ombudsman that the funding was suspended as in its view MABS did not comply with the CIB's Financial Controls and Reporting Requirements. This was in breach of the Service Agreement between the parties. The CEO of the CIB requested a meeting with the MABS to discuss delays in submitting mandatory returns, with a view to bringing about an agreed resolution to the situation. The MABS requested documentary evidence of non-compliance with the Service Agreement and non-co-operation by the MABS in advance of a meeting being arranged. THE CIB provided this and suggested dates for a meeting at the CIB headquarters. However, the MABS did not make itself available to attend. Funding to the MABS was therefore suspended due to continued non-compliance with the conditions of its Service Agreement.

Outcome

The Ombudsman was satisfied that the CIB's position was fair and reasonable under the circumstances. He noted that funding was subsequently restored on a month by month basis while compliance issues were being addressed.

Access to/Application for Service

Legal Aid Board

O56/16/2531

Completed 02/09/2016

Assistance Provided

Background

A man complained to the Ombudsman about the delay by the Legal Aid Board in making a decision on his application for legal services. The man contended that the main reason for the delay in his case was to prevent the proceedings he wished to take from going to Court. The Board told the man there would be a considerable delay before it could provide a second appointment with a solicitor.

Examination

The Board said that the reason for the delay related to the demand for services and the available resources to deal with this demand. It confirmed that it publishes details of waiting times for each of its law centres on its website in the interest of transparency. The Ombudsman did not see any evidence of the man being treated differently to any other person who seeks the services of the Board.

Outcome

Given the limited resources available to the Board to deal with the demand for its services, and the transparent approach it takes to informing people of the delay through its website, the Ombudsman was satisfied that the Board's response to the man was reasonable.

Loan Application

Credit Review Office

O17/15/4075

Completed 28/09/2016

Not Upheld

Background

The role of the Credit Review Office (CRO) is to provide a simple, effective review process for Small and Medium Enterprises, including sole traders and farm enterprises, which have had requests for credit refused or existing credit facilities reduced or withdrawn by a financial institution. A man complained about how the CRO carried out its review of a bank's decision not to approve the man's application for a loan.

Examination

The CRO formed the view that the bank assessed the man's application to the best of its ability. The bank was unable to make a lending decision due to insufficient information being provided by him. The CRO also concluded that it could not give an independent and impartial opinion on the credit decision without the requested information. The CRO told the man that both it and the bank and the CRO would review the position if the man provided the further information he had been asked for.

Outcome

The Ombudsman was satisfied that the request by the CRO for further information from the man was reasonable. However, he told the man that he could make a further complaint if he was unhappy with the outcome of the review once he gave the CRO the information it had asked for.

An explanation of the Ombudsman’s Case Closure Categories

1. Upheld:

The following describe some of the scenarios where the Ombudsman upholds a complaint:

- It has been accepted by the public body that maladministration has occurred which has adversely affected the complainant.
- The complainant is found to have a genuine grievance and the body agrees to resolve/rectify the matter.
- The body departs from the original position some form of redress is offered

2. Partially Upheld includes:

- The complaint is not fully upheld, but the complainant has benefitted by contacting the Ombudsman.
- The complainant has a number of grievances but only some of them are resolved.
- The complainant is seeking a specific remedy but the Ombudsman decides on a lesser remedy.
- The complainant may have come to the Ombudsman with a complaint about a particular entitlement but, on examination, it is found that a different entitlement is more relevant and the complainant receives the different entitlement.

3. Assistance Provided includes:

- The complainant has benefitted from contacting the Office although their complaint has not been Upheld or Partially Upheld. A benefit to a complainant might take the form of:
 - The provision of a full explanation where one was not previously given.
 - The provision of relevant information, or the re-opening of a line of communication to the body complained about.

- While the complaint was not Upheld or Partially Upheld, the public body has adopted a flexible approach and has granted a concession to the complainant which has improved his/her position or resolved the complaint fully.

4. Not Upheld includes:

The actions of the public body did not amount to maladministration. In other words, the actions were not:

- (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,
- (vii) contrary to fair or sound administration

5. Discontinued/Withdrawn includes:

- The complainant does not respond within a reasonable time to requests from the Ombudsman for relevant information.
- It has been established in the course of the examination/investigation that the complainant has not been adversely affected.
- The Ombudsman is satisfied that maladministration has occurred and that appropriate redress is being offered by the public body. The complainant refuses to accept the redress and is insisting on a level of redress which the Ombudsman considers to be unreasonable.
- The complainant initiates legal action against the public body in relation to the matter complained about.

About the Office of the Ombudsman

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

At present, the service providers whose actions may be investigated by the Ombudsman include:

- All Government Departments
- The Health Service Executive (HSE) (and public hospitals and health agencies providing services on behalf of the HSE)
- Local Authorities
- Publicly-funded third level education institutions and educational bodies such as the Central Applications Office (CAO) and Student Universal Support Ireland (SUSI)
- Public and private nursing homes

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

Making a Complaint to the Ombudsman

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

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

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

Contacting the Ombudsman

The Ombudsman's Office is located at 18 Lower Leeson Street in Dublin 2.

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

Website: www.ombudsman.ie Email: Ombudsman@ombudsman.ie

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

Feedback on the Casebook

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



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