



# The Ombudsman's CASEBOOK

Office of the Ombudsman, Dublin, Ireland.

Issue 6 Spring 2016

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## I'm sorry...

Welcome to the first edition of The Ombudsman's Casebook in 2016. This issue contains summaries of just some of the complaints we recently examined. I hope that you find them interesting and that there is useful learning to be gained from them.

The Office of the Ombudsman has been examining complaints from the public for over 30 years. Over that time the topic of complaints has varied. However, one thing that has not changed is the desire of people who have been wronged to have the public service provider acknowledge that something went wrong and to apologise for its mistake.

Things can go wrong and do go wrong. However, when they do, most complainants want a meaningful apology. They want to be listened to and they want to be reassured that lessons have been learned and that steps are in place to make sure the same mistake does not happen again.

An apology is much more than an expression of regret. A meaningful apology can help both sides calm their emotions and help put things right. An apology can help restore trust and avoid future disputes. It acknowledges that you did not behave in line with your responsibilities or rules.

On many occasions in our office we have seen complaints escalate where had an apology been given by front line staff or a senior manager, the complaint would have been avoided. If the response to the individual's concerns is respectful, positive and constructive, those concerns can be resolved



Ombudsman Peter Tyndall

satisfactorily, enabling the person to 'move-on'. Sometimes what causes the most grief or hurt is often not the original mistake or problem but rather how it was dealt with. If the response is dismissive, defensive or negative, this is likely to result in an escalation of the problem which only serves to prolong and deepen the hurt experienced which can be detrimental to both the person making the complaint and to the organisation involved.

I have published a '[Guide to Making a Meaningful Apology](#)' which is available in the '[Guidelines for Public Bodies](#)' section of our website [www.ombudsman.ie](http://www.ombudsman.ie)

I would urge you to take the time to study the guide and circulate it to the appropriate people in your organisation.

Peter Tyndall, Ombudsman  
April 2016

# Lessons Learned

In this part of The Ombudsman's Casebook we highlight recurring themes arising from cases we recently examined.

## Having the Right Rules and Procedures in Place

Every organisation has rules and procedures that it must follow or it expects those who avail of their service to follow. Some are based in legislation while others are less formal but nonetheless important guides to expected behaviour and to the relevant process. In the majority of cases we examine appropriate procedures are in place and they are complied with. However, we have come across some cases where the public service provider does not have an appropriate policy or procedure in place, or has not complied with its own procedure. Two cases in this edition provide examples.

In case [E00/14/1331](#) a student alleged that a lecturer had bullied her. The education body investigated the allegation under its 'Staff policy on dealing with Bullying' as it did not have an appropriate policy or procedure in place for dealing with complaints from students.

Case [C15/15/1046](#) involved a complaint against the Department of Justice and Equality/Reception and Integration Agency. In this case a resident of a direct provision accommodation centre had been the subject of serious accusations. When the RIA investigated the incident it failed to follow its own procedures requiring it to give the man an opportunity to comment on the allegations. *(While the Ombudsman was able to examine this complaint involving a resident in direct provision accommodation there is some disagreement as to the extent of the Ombudsman's remit in this area. The Minister for Justice has recognised the need for the Ombudsman to have unambiguous, independent oversight of direct provision centres and is committed to doing so in the very near future).*

## Backdating Claims for Payments

We receive a number of complaints where the complainant is seeking have a benefit or payment to them backdated. This can arise for a variety of reasons, from the complainant not being aware of the benefit until sometime after their entitlement to it commenced,

to a change in circumstances which changed the amount of the benefit.

These cases can be complex and difficult to deal with. While the appropriate rules must be applied, each case must be treated on its own merits. A number of complaints where this issue arises involve the Department of Social Protection. This is due to the large number of interactions the Department has with the public in relation to social welfare benefits and payments.

In three cases in this edition of the Casebook the Ombudsman has Upheld a complaint to have a social welfare payment backdated:

- In case [C22/14/1207](#) a woman sought to have her Domiciliary Care Allowance in respect of her daughter backdated as she was not aware of her entitlement to the benefit.
- In case [C22/15/1358](#) a man complained about the Department's refusal to backdate his Invalidity Pension which overlapped with his entitlement to Illness Benefit.
- While in case [C22/14/1398](#) a woman complained about the Department seeking to recover an overpayment of her Jobseekers Allowance.

## More Information on Cases?

Please contact us if you require further information about any of the cases mentioned in the Casebook. In order to protect the identity of the complainant we may not be able to give specific details in every case. However, we will be happy to provide general guidance on the learning from the complaint.

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# Agriculture

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## Rural Environmental Protection Scheme

Department of Agriculture, Food and the Marine

C01/14/1594

Completed 02/09/2015

### # Not Upheld

#### Background

A woman complained that, following an appeal from her, the Department of Agriculture, Food and the Marine had incorrectly imposed a penalty on her for not complying with the rules of the Rural Environmental Protection Scheme. In particular, the woman complained that, as a channel in her land was dry for three months of the year she did not have to fence it as it was not a “watercourse” as set out in the Scheme. The Department decided that the channel was a watercourse. She also complained that the Department should not have carried out a second inspection of her land before it decided on her appeal of its imposition of the penalty on her, and that the level of penalty it applied was not in line with the Scheme.

#### Examination

The Ombudsman established that the term “watercourse” in the Scheme is defined as a channel that conveys water for 9 months in the average year. As the woman had confirmed that her land was dry for three months, the Ombudsman was satisfied that the Department had interpreted the term “watercourse” correctly. The Department explained that it is obliged under the Scheme to carry out audits of applications, and that its second inspection of the woman’s land was as part of an audit. It also said that the woman was given the chance to fence the channel in her land but did not do so before the second inspection for the audit. As the Scheme provided for the doubling of a penalty for an issue that was noticed in a first inspection but had not been fixed by the time of a second inspection, it doubled the original penalty of 35% for not fencing the channel to 70%.

#### Outcome

The Ombudsman considered that the Department’s explanation for its actions on the matters the woman complained of was consistent with the wording of the Scheme. For this reason he considered its imposition of the increased penalty to be reasonable.

## Single Farm Payment Scheme

Department of Agriculture, Food and the Marine

C01/14/1905

Completed 26/11/2015

### # Not Upheld

#### Background

A man complained about a decision of the Department of Agriculture, Food and the Marine to impose penalties under the Single Farm Payment Scheme (SFPS).

#### Examination

The terms and conditions of the SFPS provide that all land claimed under the scheme should be used for an agricultural activity. This excludes areas under woods, scrub, lake, etc. The Department decided that certain parts of the land claimed by the man included illegible areas and areas where no agricultural activity was taking place. This decision was made following four separate inspections.

#### Outcome

The Ombudsman found that the inspections carried out by the Department were in line with the SPS and that its decision was reasonable.

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## Single Farm Payment Scheme

Department of Agriculture, Food and the Marine

C01/15/2861

Completed 09/09/2015

### # Not Upheld

#### Background

A farmer complained after the Department of Agriculture, Food and the Marine imposed a 15% penalty on her 2013 Single Farm Payment for breaching the EU Nitrates Regulations. Under the regulations, limits are imposed on the amount of nitrogen from animal manure which can be spread on farmland. This farmer had breached the limits in 2011, 2012 and 2013. Her appeal to the Agriculture Appeals Office was unsuccessful.

#### Examination

The farmer said that she had an informal lease agreement with an elderly neighbour and that 80% of the slurry produced from her animals was spread on his land.

The legislation states that farmers are required to keep records about lease agreements and the movement of organic fertilisers on or off the farm. This information must be sent to the Department by 31 December of each year.

No such information was sent to the Department in this case. The farmer had not asked the neighbour to attend the oral appeal hearing to confirm that the agreement was in place either.

## Outcome

The Ombudsman found that the Department and the Agriculture Appeals Office had applied the legislation correctly.

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## Single Farm Payment Scheme

Department of Agriculture, Food and the Marine

C01/15/3106

Completed 30/09/2015

### # Upheld

#### Background

A man complained about the Department of Agriculture, Food and the Marine assessing him with a penalty under the Single Farm Payment Scheme (SFPS). This was for allegedly increasing the amount of nitrogen he put on his land.

#### Examination

To qualify for the SFPS, a herd owner must ensure that the amount of nitrogen from grazing livestock manure applied to land does not exceed 170 kg per hectare per year. The Department claimed that the man had failed to comply with this requirement. As a result, it applied a penalty of €1,643 to his SFPS.

The man disputed the penalty, claiming an error occurred when the Department omitted his son's hectares from its calculation. He had formed a company with his son in late 2012. Since then, they had traded together using the same herd number.

#### Outcome

The Department agreed to recalculate the amount of nitrogen put on the land, allowing the appropriate credits for the combined lands for 2013. This meant that the amount of nitrogen was reduced to below 170 kg per hectare and the penalty was therefore cancelled.

# Education

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## Bullying

E00/14/1331

Completed 27/11/2015

### # Assistance Provided

#### Background

A student alleged that her lecturer bullied her. The education body processed her allegation in accordance with its staff policy on Preventing and Dealing with Bullying and Harassment.

A formal investigation did not uphold the student's allegation. However, she complained that she was pressurised into having her allegation processed under the Institute's staff policy.

#### Examination

The Institute did not have a policy for dealing with complaints by students of bullying by staff. However, the student agreed to allow the Institute examine her allegation using its staff policy. The Ombudsman did not find any evidence to support the student's allegation that she was pressurised into agreeing to the proposal.

However, he asked the Institute to review its current policy and to develop a specific policy to cater for allegations of bullying by students against staff.

#### Outcome

The Institute agreed to review its Bullying and Harassment policy. It also adopted a Code of Conduct for Staff and agreed to review its Staff and Student Complaint procedure.

While the outcome of the examination was not of direct benefit to the student, the Ombudsman is satisfied that it should benefit other students in future.

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## Processing Applications

Waterford Institute of Technology

E84/14/1148

Completed 15/09/2015

### # Upheld

#### Background

A woman complained that Waterford Institute of Technology (WIT) took approximately 11 months to inform her that it was unable to grant her application for a full-time Postgraduate Research programme. The woman also sought financial compensation for the distress the incident caused her and for the impact on her career. According to guidelines issued by WIT, applicants are advised that it can take up to two months before receiving confirmation that they have been accepted onto postgraduate research study.



The woman commenced the application process in October 2012 and from February 2013 onwards she was led to believe from various written communications that she would be offered a place in September 2013.

She received a letter on 30 September 2013 saying that she was not being offered a place, i.e. a few days before her programme was due to start and far too late to start the process for a place in another college. The woman wrote to the WIT seeking an explanation for the delay and the decision but was unhappy with its responses.

#### Examination

WIT accepted that its engagement with the woman was below an acceptable standard and agreed to pay her €1,500 for the distress. The WIT also agreed to carry out a review of all of its administrative procedures, including the information on its website, FAQ, Guidelines, Procedures, etc. to ensure that all sources of information say the same thing. It also agreed to take steps to amend correspondence about a 'provisional offer' to ensure that recipients of communication are alerted to the fact that it is a provisional offer only. WIT confirmed that the Registrar will advise all staff that it is the Registrar only that advises applicants of the success or otherwise of an application. The woman declined the financial compensation.

#### Outcome

The Ombudsman was satisfied that he could uphold the woman's complaint and that there had been an undue delay between the time she applied and the time she was advised that she was not being offered a place. The adverse effect on the woman was that she had to put her plans on hold for another academic year. The Ombudsman was satisfied that all communication from WIT actively encouraged her to continue with the process and she was never given any indication that her application would not be successful. The Ombudsman is also satisfied that WIT has put measures in place to ensure that this problem does not arise again.

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## Recheck of Exam Results

State Examinations Commission

E85/15/0066

Completed 15/09/2015

### # Not Upheld

#### Background

A woman complained to the Ombudsman that the State Examinations Commission awarded her daughter the wrong mark for her Leaving Certificate English examination paper. As a result her daughter received a B2 grade instead of a B1 grade. The totting error (10 marks short) was discovered when her daughter availed of the opportunity to review her English examination script, as provided for under the State Examinations Commission's review and appeals process for Leaving Certificate students. When she discovered the error the student submitted an appeal to the State Examinations Commission.

In accordance with the appeals process an appeal examiner was appointed to carry out a full re-marking of the student's paper. The appeals examiner agreed that a totting error had occurred. However the appeal examiner also determined that the student was incorrectly awarded a higher mark (by 12 marks) for an answer in her script than was warranted under the marking scheme. An appeal advising examiner also re-marked the student's paper, agreeing that the totting error occurred, and that 12 marks too many had been awarded for one of the exam questions by the initial examiner.

The student's mother was unhappy with the marking of her daughter's examination paper and asked the Ombudsman to pursue the matter with the State Examinations Commission

Examination

Invoking a right of appeal compels the State Examination Commission to conduct a complete re-marking of the paper, and not just a review of the single issue prompting the student's appeal. An appeal examiner and an appeal advising examiner separately reviewed and re-marked the student's script.

Outcome

The Ombudsman concluded that had the first examiner not made a totting error, the student may have been awarded a B1 for English and may have been happy to accept that as her grade. However, two compensating errors conspired to award her the correct grade for her script on the day of the exam. The Ombudsman acknowledged that the student and her mother were genuinely and justifiably upset by the turn of events. He noted that the State Examinations Commission have in place a robust review and appeals system, which offers students the opportunity to review their scripts and contest the marks awarded, where they are of the view that marking errors may have occurred. However, he stressed to the State Examinations Commission the imperative of maintaining confidence in the integrity of the State Examinations process by ensuring it is not weakened or undermined by human error.

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## Special Education Facilities

Department of Education and Skills

C07/14/1816

Completed 25/09/2015

**# Not Upheld**

Background

A woman complained that the Department of Education and Skills sought to recover an overpayment of funds received by her under the Home Tuition Scheme. The woman had already engaged tutors and was familiar with the terms and conditions of the scheme. She had great difficulty in sourcing 3 additional tutors. She made enquiries of the Department to see if she could engage tutors in exceptional circumstances. The woman then engaged 3 tutors. The Department paid 'up front' on the basis of her exceptional circumstances. It subsequently sought to recover the funds on the basis that the woman failed to provide the full names, PPSN numbers and teaching qualifications of those she engaged.



The woman said that she had consulted with local child protection services and the Gardaí for clearances in respect of those she engaged.

#### Examination

It is a condition of the scheme that the tutors are fully qualified and registered with the Teaching Council of Ireland. It is possible to recruit someone who does not fulfil these conditions if they have alternative qualifications. The scheme does not allow for a situation where the identity, teaching qualifications and PPSN numbers of tutors is unknown and it was on this basis that the Department sought a refund.

#### Outcome

The Department was willing to review its decision to recoup the overpayment if the woman provided the outstanding information. The Ombudsman was satisfied that the Department's response was reasonable. There was nothing to indicate that the Department's decision to recoup the funding was incorrect or unfair.

# Environment

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## Leader Programme

Department of the Environment, Community and Local Government

C08/15/0101

Completed 21/09/2015

### # Upheld

#### Background

A student complained after his funding to do a Bachelor of Science (BSc) in Rural Development under the Rural Development Programme 2007–2013 was stopped at the end of his first year. The Department of the Environment, Community and Local Government did not uphold his appeal.

#### Examination

The student had a contract with the Local Development Company (LDC) that delivered the programme.

The Department said that: 'Given the lack of specific commitments in the agreement between the LDC and the man, the Regional Inspector was unable to rule in the man's favour and direct the LDC to reconsider its decision to discontinue funding of the course'. The Ombudsman noted that the contract clearly stated that the funding was for a B. Sc. in Rural Development. It stated that the project was not considered complete until the college provided proof of final exams taken and full attendance of the course. The man had a legitimate expectation that his course fees would be paid in full in accordance with the terms and conditions of the contract.

The Department also based its decision not to uphold the appeal on the fact that an issue arose regarding eligibility of funding for the B. Sc. in Rural Development in July 2013. The LDC decided in August 2013, in the absence of clarification from the EU Commission not to further fund courses in Rural Development. Clarification was received by the Managing Authority (Dept Agriculture, Food and the Marine) in September 2013. However, the LDC had already decommitted the funds and they were not reallocated following clarification from the EU Commission.

In light of this, the Ombudsman requested the Department to review its decision in this case.

#### Outcome

The Department reviewed its decision and made an ex gratia payment of €6,414 to the student.

# Health

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## Care and Treatment

Cavan/Monaghan (HSE Dublin North East)

HA4/14/1357

Completed 06/10/2015

### # Not Upheld

#### Background

A woman complained about the amount of support provided to her son, who has mental health difficulties, following his discharge from hospital. She was particularly unhappy that despite her son being sent back to the hospital for treatment, he was either not admitted as a patient or was discharged again within a very short time.

#### Examination

The Ombudsman noted that a care plan had been put in place for the woman's son and that the consultant had written to his GP with details. The file also contained details of the numerous home visits and outpatient appointments organised by Mental Health Services following his discharge from hospital.

#### Outcome

The Ombudsman concluded that there was evidence to show that a high level of support was provided to the woman's son following his discharge from hospital. However, he was unable to examine the issues about admission to and discharge from hospital as he cannot examine issues which, in his opinion, relate to clinical judgement.

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## Nursing Home Support Scheme

Cork South Lee (HSE South)

HD1/15/1626

Completed 29/10/2015

### # Not Upheld

#### Background

A woman complained on behalf of her father about the HSE refusing him support under the Nursing Home Support Scheme (NHSS).

The man was refused support because he was assessed on combined income from transferred assets and the Single Farm Payment (SPS) scheme. This put him above the financial threshold for support. The woman said that her father lives in a nursing home and has not farmed or had any income for a number of years.

### Examination

The Ombudsman noted that there was a valuation certificate showing that the SPS was attached to the transferred farm and therefore assessable under the law. The Ombudsman asked the woman to provide evidence that her father had not received a Single Farm Payment for a number of years.

The woman provided confirmation from the Department of Agriculture, Food and the Marine stating that her father had not received an SPS for over five years. The HSE carried out a re-assessment based on the additional information. However, the man's transferred assets still put him above the threshold for support.

### Outcome

The Ombudsman found that the HSE had conducted the re-assessment in accordance with the legislation and the man did not qualify for State support.

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## Primary and Community Care

Dublin South East (HSE Dublin Mid-Leinster)

HB2/14/2306

Completed 20/11/2015

### # Partially Upheld

#### Background

A couple complained about the HSE regarding a refund of incontinence wear and the purchase of a new wheelchair. The HSE changed its incontinence wear provider but the man was not happy that this new brand suited the needs of his wife. Furthermore, her wheelchair broke and the man said he had to buy a new one due to the HSE's delay in repairing it.

#### Examination

The Ombudsman was satisfied that the HSE had made reasonable efforts to contact the couple by phone once they reported the fault with the wheelchair. As such, he did not find grounds to request that it refund the couple for purchasing a new wheelchair.

The HSE carried out an assessment on the woman which found that the new incontinence wear was not suitable to her needs. Although the HSE subsequently arranged for suitable incontinence wear to be supplied to the couple, they had incurred around €800 in the meantime buying the old product. Additionally, there was a three month period where the couple had to buy incontinence wear due to a breakdown in communication with the HSE.

#### Outcome

The Ombudsman was satisfied that the couple acted reasonably in not accepting the new incontinence wear and that the HSE was responsible for the breakdown in communication. As such, he requested the HSE review its position with a view to paying the couple for costs incurred in buying incontinence wear subject to receipts being provided. The HSE agreed to issue a refund in such circumstances.

## Care and Treatment

Dungarvan Community Hospital

H56/15/3417

Completed 23/11/2015

### # Not Upheld

#### Background

A woman complained about aspects of her late father's care as an inpatient in a rehabilitation unit, having previously suffered a stroke. The complaint related to his nutrition and hydration, his personal hygiene and care, the management of a blood test result and his physical condition on discharge. The man passed away within hours of arriving home.

#### Examination

Parts of this complaint concerned clinical decisions and could not be examined. Our examination showed that the man's personal hygiene and nutritional needs were looked after. Staff were worried about his ability to swallow and helped him at mealtimes. During the week he was seen three times by doctors and the speech and language therapist (SLT). Results of a blood test were delayed but these were brought to the attention of the Doctor once they were received. The Doctor recommended that the man should be encouraged to increase his intake of fluids. This was done by staff and the man's family. The hospital told us that if intravenous fluids had been required by the Doctor the man would have been transferred to a bigger hospital. On discharge it was noted that the man was breathing normally and the family had been notified of the arrangements when he was leaving the hospital.

#### Outcome

It appeared that the man's needs had been attended to in the hospital. Staff had highlighted their concerns about his ability to swallow to the SLT and to the Doctor. He was helped at mealtimes. The man was breathless on his arrival home but the staff who assisted him for discharge felt he was comfortable when he left the Hospital and this was written in the chart.

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## Accident and Emergency

Naas General Hospital (HSE Dublin Mid Leinster Hospital Group)

H64/14/1418

Completed 09/10/2015

### # Assistance Provided

#### Background

A woman complained about the care she received when she attended the Emergency Department of Naas General Hospital. She lay on a trolley without a pillow, a sheet or a blanket in a corridor. Although attended to twice, she generally felt ignored by staff for a number of hours. She found the staff had an uncaring attitude and that her husband was spoken to in a rude tone on a number of occasions when he asked for information.

In addition, she felt that an assumption was made about her religion. The woman also felt that the hospital did not take her complaint seriously.

#### Examination

The Ombudsman found that when the woman complained to the hospital, the response she received assumed that she was complaining about the length of time she had to wait on a trolley. The nature of the complaint had been misunderstood. The woman's complaint was presented again to the hospital and outlined in more detail.

#### Outcome

As a result of the Ombudsman's examination, the hospital management addressed the issues raised and apologised unreservedly to the woman and her husband. The management states that it is engaging with staff to ensure that patients and their families are treated with dignity and respect when attending the hospital.

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## Nursing Home Support Scheme

North Dublin (HSE Dublin North East)

HA3/15/2796

Completed 21/10/2015

### # Upheld

#### Background

A woman complained on behalf of her mother about the HSE's failure to provide a refund of nursing home fees following a change in her financial circumstances. The woman had thought the Ward of Court's Office would notify the HSE of her mother's changed circumstances. This resulted in two-month delay in notifying the HSE of the new situation.

#### Examination

The HSE said that it would not refund the €2,000 because the legislation stated that an applicant had to notify it within 10 working days of a material change in circumstances.

The Ombudsman examined the legislation and found that the definition of the change in circumstances only applied where an applicant's contribution to the Scheme would increase. This was not the case here as the applicant's contribution was going to decrease. That is, the HSE was going to contribute more to the woman's nursing home care.

#### Outcome

The HSE accepted that the definition in the legislation did not apply to the woman's case. Furthermore, it accepted that the woman's daughter had provided a reasonable explanation for the delay in notifying it of the change. Therefore, the HSE decided to change its decision.



## Care and Treatment

Sligo General Hospital (HSE West NW Hospital Group)

H22/14/0512

Completed 15/10/2015

### # Assistance Provided

#### Background

A woman complained about the aftercare treatment she received in Sligo General Hospital following the removal of a skin tumour from her eyelid. She had a phobia about having her eyes touched. Therefore, she was given sedation in tablet form during her initial eye examination and local anaesthetic along with oral sedatives during surgery.

During a second operation to have further fragments of the tumour removed, she was refused sedation by medical staff. She said she was left with no choice but to allow the fragments to be removed without any sedatives, which caused her considerable distress. She wanted to know why she was refused sedation during the removal of the fragments when she attended the ophthalmic ward and was reluctant to return to the hospital for any future treatment.

#### Examination

The Consultant Ophthalmic Surgeon responded to the woman's initial complaint and apologised for her unsatisfactory experience. The decision to prescribe sedation was considered to be a clinical judgement, which the Ombudsman could not examine.

However, the Ombudsman wrote to the hospital to clarify what measures were in place to ensure individualised patient care, given the woman's eye phobia. The hospital acknowledged that there should be flexibility to ensure that individualised patient care is provided. It said sedative medicine should be decided on a case-by-case basis involving the treating doctor and the patient.

#### Outcome

Following a request from the Ombudsman, an independent advocate was sourced for the woman through the Support and Advocacy Service (SAGE) to support her in any future visits to the hospital. The Assistant Director of Nursing in the hospital also contacted the woman to reassure her that she would be supported should she decide to return.

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## Child Welfare and Protection

TUSLA

H04/15/2671

Completed 21/10/2015

### # Not Upheld

#### Background

A woman, whose children were placed in the care of their father, complained about the way the Child and Family Agency (which was then the HSE), had dealt with her case. She felt that she was not treated fairly by the social workers involved and that this affected the decisions made in court in relation to the care of her children.

### Examination

The Ombudsman was unable to look at the actions she was making a complaint about because they were out of his jurisdiction as so much time had passed. However, he was able to examine a review of the case that the Child and Family Agency had conducted more recently. The woman stated that this review did not answer all of the questions that she had raised.

The Child and Family Agency had met with the woman to agree the questions to be addressed in the review. It later offered her the opportunity to amend or add to these questions. It addressed these questions in an appropriate manner. This was despite the fact that it was restricted by many of the issues being outside the Agency's remit as the case had been before the courts.

### Outcome

The Ombudsman found that the Agency had made efforts to assist this woman with her complaint despite the length of time that had passed and that the courts were the appropriate place for her questions. The Agency made some recommendations, which have been implemented. These include inviting the woman to place a written version of her account of events on the social work file

# Justice

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## Direct Provision

Department of Justice and Equality

C15/15/1046

Completed 07/09/2015

### # Upheld

#### Background

A resident of a Direct Provision Accommodation Centre complained that the Reception and Integration Agency (RIA) had failed to follow its own House Rules and Complaints Procedures when dealing with a complaint made about him. In particular, the man said that the RIA had not given him an opportunity to comment on serious allegations made against him by RIA staff members.

#### Examination

The Ombudsman found that the RIA did not deal with the man's complaint according to its procedures. These require the RIA to write to a resident asking for their observations, if allegations are made against them. The RIA accepted that there were flaws in how it dealt with the complaint, and that it should have given the man the opportunity to comment on the allegations.

#### Outcome

After the Ombudsman's examination, the RIA accepted there had been a mistake and apologised for not having followed its complaints procedure. It also said that new arrangements for dealing with complaints had been introduced.

# Local Authority

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## Housing Allocation & Transfers

Kildare County Council

L20/14/1210

Completed 08/09/2015

### # Upheld

#### Background

A man complained about being removed from Kildare County Council's approved housing list in 2013. He was approved for social housing in 2008 but was removed from the approved housing list in 2013 as he had not replied to correspondence from the Council.

#### Examination

The man had provided proof to the Council that he was having difficulties in receiving his post. The Ombudsman felt there was a doubt that the man received the Council's letter informing him he would be removed from the housing list.

Under the Assessment of Housing Needs, councils are expected to check that if an applicant is no longer in need of social housing if they fail to reply to a letter informing them they are being removed from the list. The Ombudsman felt the Council had made insufficient enquiries to justify its decision to remove the man from the housing list.

#### Outcome

The Council agreed to include the man on its housing list with effect from his original application date, June 2008.

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## Housing Allocation & Transfers

Laois County Council

L24/14/0690

Completed 08/10/2015

### # Not Upheld

#### Background

A man complained that Laois County Council refused to put him on its social housing waiting list. The man is 30 years of age and lives with his parents and his sister in the family home.

#### Examination

The Council told the Ombudsman that under the relevant Regulations (S.I. 84 of 2011) the principal way in which a housing authority determines whether there is a need for social housing is to assess a household's accommodation and the household circumstances.

There are certain circumstances that it must take into account including whether there is overcrowding and whether the existing accommodation is fit for human habitation. The regulations do not state an age at which an individual living at home with his parents is considered to be independent of them for housing purposes. The Council considered that the complainant's accommodation is adequate and that he did not provide independent evidence of any special circumstances as to why this accommodation is not suitable for him.

#### Outcome

The Ombudsman considered that the Council was correct in its interpretation of both the Regulations and of the man's circumstances and for these reasons he did not uphold the complaint

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## Housing Allocation & Transfers

Laois County Council

L24/14/1949

Completed 19/11/2015

### # Assistance Provided

#### Background

A woman complained about the Council's decision not to include her on its housing list as she did not meet the requirements of a Department of Environment, Heritage & Local Government (Department) Circular. The Circular provides that EEU nationals must have a record of 52 weeks employment in Ireland or be currently employed/ self-employed in order to be eligible for social housing.

#### Examination

The Ombudsman requested further evidence from the woman in relation to her business and asked the Council to review the matter. The Council accepted that the woman was self-employed based on this further evidence. However, it stated that she would have to submit a statement of her average weekly income to ensure that she was under the income limits to be eligible for social housing.

#### Outcome

The Ombudsman informed the woman that she would be accepted onto the housing list once she satisfied the Council that her means were under these income limits.

## Housing General

Limerick City and County Council

L27/15/3205

Completed 21/10/2015

### # Not Upheld

#### Background

A couple complained after Limerick City and County Council refused their application for social housing because they owned accommodation in their country of origin.

#### Examination

The couple maintained that one of their parents lived in the property and it was not an option for them to sell it. The Ombudsman examined Article 22 of the Social Housing Assessment Regulations 2011, which states:

A household shall be ineligible for social housing support if it has alternative accommodation that the household could reasonably be expected to use to meet its housing need, either by occupying it or by selling the accommodation and using the proceeds to secure suitable accommodation for the household's adequate housing.

#### Outcome

The Ombudsman was satisfied that the Council's decision was correct.

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## Housing General

Wexford County Council

L55/15/2533

Completed 14/10/2015

### # Not Upheld

#### Background

A woman complained that she and her brother had to pay Wexford County Council the Non-Principal Private Residence (NPPR) charge and penalties on a property registered in their names but occupied by their parents. The Council levied an NPPR charge on the children as neither of them lives in the property and they are its legal owners.

The woman said her parents had purchased land in her and her brother's names and had later built a house on it. The intention was that the children would later transfer title of this land to the parents.

#### Examination

The Ombudsman found that the woman and her brother met the definition of 'owner' as defined in the legislation. Therefore, the Council had no discretion to waive either the charge or the penalties.



## Outcome

The Ombudsman found that the Council's actions complied with the Local Government (Charges) Act 2009. However, the Council agreed to offer a payment plan up to a maximum of three-and-a-half years.

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## Waste Disposal

Cork County Council

L08/14/2235

Completed 23/11/2015

### # Assistance Provided

#### Background

A man complained that Cork County Council failed to respond to reports of illegal dumping in his neighbourhood.

#### Examination

The Council had inspected the site four times in a 15 month period. It also spoke to landowners and issued Notices under the Waste Management Acts to two different landowners. Following this, there was a significant improvement in the situation locally.

## Outcome

The Ombudsman was satisfied that the Council responded reasonably, and that it acted in accordance with the governing legislation.

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## Roads/Traffic

Dun Laoghaire-Rathdown County Council

L61/15/1941

Completed 28/09/2015

### # Upheld

#### Background

A man complained about Dun Laoghaire-Rathdown County Council's decision to refuse his application for a parking permit.

#### Examination

The Council said it refused the application because the man's insurance certificate for his car did not have the address of the residence he was seeking the permit for. Therefore, it could not consider the certificate as acceptable evidence of residence under its bye-laws. The Council said that if the man could produce evidence from his insurance company that his car was insured at the address, it would review his application.

### Outcome

The Ombudsman obtained the information from the complainant and sent it to the Council. The Council then reviewed the application and granted the parking permit.

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### Parking Fine

Fingal County Council

L60/15/3088

Completed 29/09/2015

#### # Upheld

#### Background

A woman complained to Fingal County Council about having to pay a parking fine. On her way to a funeral just before Christmas she had accidentally parked in a loading bay after reading a sign on a parking meter saying parking was free for up to three hours on that date.

The company contracted by Fingal County Council to manage parking fined her and the Council rejected her appeal. She later discovered that the contract company had not forwarded to the Council photographic evidence which she had submitted to support her appeal.

#### Examination

The Ombudsman asked the Council to review the case on the basis of the photographic evidence which, the woman claimed, showed that the sign was misleading. He also asked whether the Council was aware that not all relevant information had been forwarded to it by the contract company.

### Outcome

The Council withdrew the parking fine. It also told the contract company that all information submitted in relation to appeals must be forwarded in the future.

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### Motor Tax

Kildare County Council

C08/15/2033

Completed 27/10/2015

#### # Not Upheld

#### Background

A man complained about Kildare County Council refusing to refund him his motor tax. He said that he had mistakenly taxed his car as a private vehicle instead of taxing it as a commercial vehicle.

### Examination

The Ombudsman found that that the man did not meet the conditions listed in the legislation to qualify for a refund. The guidelines issued by the Department of the Environment, Community and Local Government state that there is no provision for repayment when a vehicle is subsequently used solely for a purpose which would make it liable to road tax at a lower rate than was actually paid.

### Outcome

The Ombudsman found that the Council applied the legislation and guidelines correctly.

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## Flooding Repairs

Mayo County Council

L34/15/1566

Completed 09/10/2015

### # Upheld

#### Background

A woman complained that Mayo County Council caused flooding to a small part of her garden after it resurfaced the road outside her house. The Council initially agreed to rectify the matter. However the problem continued for a further six months.

#### Examination

The Ombudsman arranged for his staff to inspect the site.

#### Outcome

Following the site inspection, the Council undertook an agreed schedule of works that relieved the flooding in the garden.

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## Planning Administration

Dun Laoghaire-Rathdown County Council

L61/14/1321

Completed 04/09/2015

### # Not Upheld

#### Background

A woman complained that Dun Laoghaire-Rathdown County Council had not enforced the relevant building regulations regarding the dividing wall that separated her house from that of her neighbour.

### Examination

The Council said that it inspected her house and was satisfied that the wall construction complied with Part E the Building Regulations and that the wall is constructed of 9 inch solid blockwork and that enforcement action was not needed. The Council also pointed out that, as the woman's complaint was made five years after the completion of the buildings, the relevant regulations did not allow enforcement action.

The Ombudsman examined the Council's report and was satisfied that the actions of the Council in inspecting the wall concerned were reasonable and, therefore, that its conclusion that enforcement action was not needed was also reasonable. He examined the Regulations regarding the timing of action and was satisfied that the Council's interpretation that the time that had elapsed since the completion of the buildings meant that enforcement action could not be undertaken was reasonable.

### Outcome

For these reasons he did not uphold the complaint. However, the woman had also mentioned that the Council had failed to tell her of her right to appeal against its decision or of her right to complain to this Office. The Ombudsman therefore wrote to the Council to remind it of its obligations in relation to these issues.

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## Planning Enforcement

Tipperary County Council

L48/15/2556

Completed 05/10/2015

### # Not Upheld

#### Background

A man complained that a landfill carried out in a neighbouring field did not comply with the terms of the permit issued. He said there was an increased run-off of water into his property and there was inadequate drainage to cope with this. He wanted Tipperary County Council to enforce further measures to resolve the problem.

#### Examination

The Council's Planning Department declared that in-filling of this land constituted exempted development. The Council confirmed that waste authorisation was not required and it had issued a permit subject to a number of conditions.

The Council met the man to discuss his concerns. It also checked to ensure the work had been carried out in compliance with the permit and conducted a professional survey of the in-fill field before and after the operation. Its opinion was that the existing drainage was sufficient to cope with any run-off.

#### Outcome

The Ombudsman found that the Council had acted according to the relevant regulations and procedures and that the work complied with the terms of the permit.

# Revenue

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## Income Tax

Office of the Revenue Commissioners

C21/14/1238

Completed 09/09/2015

### # Not Upheld

#### Background

A woman complained about the Revenue Commissioners seeking repayment of an overpayment of a tax credit paid to her.

#### Examination

The woman claimed a tax credit in 2012 and had it backdated to 2008. However, in 2008 and 2009 the woman was jointly assessed with her then husband, from whom she legally separated in 2010. In 2013, Revenue informed her that as she had been jointly assessed, the credits should not have been paid in full to her. Revenue sought repayment of the full tax credit she had been paid for 2008 and 2009.

#### Outcome

Revenue arranged to collect the overpayment from the woman over an extended period. The Ombudsman was satisfied that Revenue had acted correctly and according to the legislation.

# Social Protection

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## Back to Work Allowance

Department of Social Protection

C22/14/0502

Completed 09/10/2015

### # Partially Upheld

#### Background

A woman complained to the Ombudsman regarding the manner in which the Department of Social Protection handled her application for the Back to Work Enterprise Allowance Scheme (BTWEA).

The woman was on Jobseeker's Allowance and decided to apply for the BTWEA. She was informed by the Department that the rate of allowance would be based on one adult dependant and two child dependants. She contacted the Department regarding her husband's Illness Benefit claim to inform them that he had moved to Canada to work. The Department reviewed her case in light of this, and reduced her payment by over €150 per week. Her previous Jobseeker's Allowance and her BTWEA were revised because she was not eligible to claim any amount for her husband. This resulted in an overpayment of €1185.30.

#### Examination

Before her husband left the country, the woman asked the Local Development Company (LDC) if her BTWEA would be affected if her husband got a job in Canada. In the response the LDC officer said that she was told by a member of staff in the Department by phone that if her husband was under her claim, that it would not affect her payment at all.

#### Outcome

The Ombudsman considered that there was a basis for the Department cancelling the overpayment of €1,185.30. The Department accepted the Ombudsman's view and did so. However, the Department said that the adult dependent rate could not be paid for the period her husband was in Canada on the basis that it was disallowed because he was absent from the State, and not because he was working. No means were assessed on her claim for her husband's employment. The Ombudsman considered that the Department's position on this point was reasonable and in line with the relevant scheme guidelines which said: "Participation in the BTWEA can be periodically reviewed, to confirm that the conditions of entitlement continue to be satisfied. A review may also be initiated on receipt of notification of any change in circumstances which may affect entitlement. This may include a request for proof of residency in the State". For this reason he did not uphold the part of the woman's complaint regarding the reduction in her BTWEA payment.



## Carer's Allowance

Department of Social Protection

C22/14/1242

Completed 01/09/2015

### # Upheld

#### Background

A woman complained to the Ombudsman about the refusal by the Department of Social Protection of her husband's application for Carer's Allowance for caring for her. The application was refused on the grounds that the woman did not satisfy the medical criteria necessary to qualify for the Allowance. The man appealed this decision but the Appeals Officer was not satisfied that the extent of the care described by the woman satisfied the definition of full time care and attention as set out in the relevant legislation.

#### Examination

The Ombudsman got more evidence from the woman on the nature and extent of the care her husband provided to her on a daily basis. In the light of this further evidence the Ombudsman asked the Appeal Officer to review the decision.

#### Outcome

The Chief Appeals Officer revised the original decision and allowed the man's appeal.

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## Carer's Benefit

Department of Social Protection

C22/14/1393

Completed 24/11/2015

### # Not Upheld

#### Background

A woman complained to the Ombudsman when her Carer's Benefit was refused following a review on the basis of the medical evidence the Department received. However, the woman said that her daughter's circumstances had not changed between the initial assessment and the review.

#### Examination

The Ombudsman asked the Department to clarify the basis of its review decision to refuse the Benefit. The Department said that the relevant Social Welfare legislation requires that the person being cared for needs continual supervision and frequent assistance throughout the day in connection with normal bodily functions. The Department noted that most of the medical evidence described the woman's daughter's disability rather than the effect of the disability on her daughter's daily life. The Department said that it did not see any evidence to show that her daughter required the continual supervision and frequent assistance as set out in the legislation.

When it reviewed the case, the Department invited the woman to submit further medical evidence in respect of her daughter and was also advised of her rights of appeal to the Social Welfare Appeals Office.

#### Outcome

The Ombudsman was satisfied that the Department's position was reasonable and in accordance with Social Welfare legislation. He advised the woman that it was still open to her to submit further medical evidence to the Department in support of her case and to revert to his Office if she was unhappy with the outcome should she do so.

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## Child Benefit

Department of Social Protection

C22/15/2147

Completed 19/11/2015

### # Not Upheld

#### Background

A couple complained that the Department of Social Protection was recovering an overpayment of approximately €25,000 which was a combination of Child Benefit and Early Childcare Supplement between 2006 and 2011. The family moved to France in 2006 and between 2006 and 2008, they travelled back and forth between Ireland and France. From 2008 to 2014 they resided permanently in France. The overpayment came to light in 2011 when the Department carried out a review.

#### Examination

The couple appealed the overpayment and it was reduced on the basis that they were deemed to be 'ordinarily resident' in the State between October 2006 and March 2008. The family returned to Ireland in August 2014. At that stage their entitlement to Child Benefit was restored and the overpayment was being recouped at €200 per month from a payment of €405 per month. Section 249 of the Social Welfare Consolidation 2005 limits the payment of Child Benefit to those living in the State. There was nothing on the Department's file to show that the couple had contacted it prior to moving or at any time between 2006 and 2011.

#### Outcome

The Ombudsman was satisfied that the decision to recoup the overpayment was correct and that the legislation specifically prohibits the payment of Child Benefit when residing outside the State. The Ombudsman was also satisfied that there was nothing to indicate that the couple had made any enquiries of the Department at any time between 2006 and 2011 when the overpayment was identified.

## Child Benefit

Department of Social Protection

C22/15/2130

Completed 03/09/2015

### # Not Upheld

#### Background

A man complained that his application for Child Benefit was refused because the Department of Social Protection decided his son was not attending full-time education.

#### Examination

The man's son was attending a full-time two-year course in a college in Northern Ireland. The course is regarded as work experience, involving three days' work experience and two days' classroom instruction per week. The man's son also received a training allowance of £40.00 per week. The Department's guidelines for Child Benefit state that full-time education does not include courses 'which form part of a work experience programme' or courses 'where the period of paid work experience exceed the time spent in the classroom'.

#### Outcome

The Ombudsman was satisfied that the Department's decision was correct.

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## Child Benefit

Department of Social Protection

C22/14/1514

Completed 04/09/2015

### # Not Upheld

#### Background

A man complained that the Department of Social Protection refused to pay him Child Benefit for his four children from August 2013 to June 2014, while he and his family lived outside Ireland. Before this the man and his family had always lived in Ireland.

#### Examination

One of the conditions required to be satisfied before the Department will pay Child Benefit is that the child must be "ordinarily resident" in Ireland. The man said that his children were ordinarily resident in this country, just not for the ten months when they were overseas. The term "ordinarily resident" is not defined in Social Welfare legislation, so its meaning has to be interpreted by a Deciding Officer and/or Appeals Officer. In the Department's view it must be given its everyday meaning in light of the facts of each case.

The Department said that absences by families of up to 2 months should not affect their entitlements. Effectively these periods are accepted as holiday breaks. On the other hand, where a family is absent for a longer period, the Deciding Officer considers the merits of

each individual case. In this case the Deciding and Appeals Officers decided that the man's family's absence of 10 months was too long a time period to be regarded as a holiday absence and refused the man's application

#### Outcome

The Ombudsman considered that the Department's interpretation of the term "ordinarily resident" was reasonable and for this reason its decision to refuse the man's application for Child Benefit was in line with the legislation.

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## Disability Allowance

Department of Social Protection

C22/15/1084

Completed 15/09/2015

### # Upheld

#### Background

A 45 year old woman complained that her application for Disability Allowance (DA) was refused because the Department of Social Protection decided she did not satisfy the medical conditions. The woman had been diagnosed with a severe anxiety disorder and was attending a Psychologist for treatment. The Social Welfare Appeals Office upheld the Department's decision.

#### Examination

The Ombudsman found that the Department's Medical Assessor had not considered all of the medical evidence provided by the woman. The Ombudsman noted from the Department's file that the woman had provided additional medical evidence after the Department had made its decision, however, this evidence had not been considered by a Medical Assessor. The woman had also provided the Ombudsman with the most recent letter from her doctor which was not seen by the Department. He requested that the Department review the DA application, taking all the medical evidence into account.

#### Outcome

Following the review, the Department approved the woman's application for DA and backdated her claim to the date of her application.

## Domiciliary Care Allowance

Department of Social Protection

C22/14/1207

Completed 11/09/2015

### # Upheld

#### Background

A woman applied to the Department of Social Protection for Domiciliary Care Allowance (DCA) in respect of her daughter in December 2012. She was awarded the allowance with six months arrears. The woman maintained that she had not been aware of her entitlement earlier and applied for additional arrears dating back to September 2009. This was when the Department had taken over responsibility for payment of the allowance from the HSE. At the same time the woman had applied to the HSE for retrospective payment of DCA. The HSE awarded payment and paid six months arrears. The woman maintained that HSE staff had not told her she was entitled to DCA and she sought additional arrears for the period March 2009 to the date of transfer in September 2009. Both the HSE and the Department refused to pay additional arrears beyond the six months both had paid.

#### Examination

The Ombudsman took the view that the woman was entitled to the arrears she had sought as she had been caught up in the transfer of DCA from the HSE to the Department.

#### Outcome

The HSE agreed to pay additional arrears which recognised the woman's entitlement to DCA up to the date of transfer. Once the Department was informed of this by the HSE and the Ombudsman, it agreed to pay all outstanding arrears from the date of transfer.

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## Invalidity Pension

Department of Social Protection

C22/15/1358

Completed 11/09/2015

### # Upheld

#### Background

A man complained about the Department of Social Protection's refusal to backdate his Invalidity Pension (IP). The man had made two applications for an IP. The first one, in January 2012, was refused. The second was accepted, and he was granted IP from December 2013. The man asked that his IP be backdated to the date of his initial application but the Department refused.

#### Examination

The man had been receiving Illness Benefit (IB) from June 2008 until he was awarded the IP in 2013. Illness Benefit is paid by the Department when a person cannot work due to illness.

Therefore, the Department accepted that the man had been unable to work since 2008, due to illness. The Ombudsman acknowledged the criteria for the payment of IB and IP are different but noted that the man's medical condition on his first IP application was the same as on the second application. He requested that the Department review its decision.

#### Outcome

The Department agreed to pay the man the difference between Illness Benefit and Invalidity Pension from the date of his unsuccessful IP application in 2012 to when he was awarded the IP in 2013.

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### Jobseeker's Allowance

Department of Social Protection

C22/14/1496

Completed 06/10/2015

#### # Not Upheld

#### Background

A man complained about the Department of Social Protection's decision to refuse his application for Jobseeker's Allowance (JSA). His application was refused because he had failed to provide evidence that he was genuinely seeking work. He had also failed to meet the habitual residency condition. The man had worked and lived in the UK for 26 years and returned to Ireland in September 2013. He believed that he was entitled to the payment on the basis of his UK contributions. The Department's decision was upheld by the Appeals Office.

#### Examination

The man had lived in Ireland for less than two years. The man had not arranged employment before returning to Ireland, had not provided evidence he had links, or retained links, with Ireland and had not established that he had severed his links with the UK. In addition, he had not been employed or provided evidence that he had sought work since returning to Ireland.

#### Outcome

It was explained to the man that he could not qualify for JSA based on his UK contributions alone. By law, he had to have at least one Irish contribution.

The Ombudsman was satisfied that the Department and the Appeals Officer had considered all of the evidence. He was therefore satisfied that the man's application had been properly processed.

## Jobseeker's Allowance

Department of Social Protection

C22/14/1398

Completed 15/09/2015

### # Upheld

#### Background

A woman complained about the Department of Social Protection's decision to assess her for an overpayment of €174.67 on her Jobseeker's Allowance (JSA) claim. The Department sought to recover the payment from the time her husband started work on 31 October 2012 to 10 November 2012, when it became aware he was back working. The woman claimed that she had given the Department advance notice that her husband was due to start work and that he was not paid his first wage until 12 November 2012.

#### Examination

The Department was entitled to reduce the complainant's JSA from the date her husband started work under social welfare legislation. However, as the complainant's husband had not been paid until 12 November 2012, there was no money earned before that date from insurable employment which the Department could assess. The Ombudsman asked the Department to review its decision on this basis.

#### Outcome

The Department agreed to waive its demand on the overpayment of JSA.

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## Jobseeker's Allowance

Department of Social Protection

C22/15/2543

Completed 22/10/2015

### # Not Upheld

#### Background

A man complained about his Jobseeker's Allowance (JSA) being stopped and having an overpayment awarded against him following a review carried out by the Department of Social Protection in 2012.

#### Examination

When the man applied for JSA in 2010, he did not inform the Department that he had a pension investment. Under the regulations for JSA, claimants have to tell the Department about any savings and investments as these would affect the size of payment a claimant is entitled to.

### Outcome

The Ombudsman found that the Department's review of the JSA payment was reasonable and that it had properly applied the legislation.

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### State Pension (Contributory)

Department of Social Protection

C22/14/0880

Completed 09/09/2015

#### # Not Upheld

### Background

A man complained to the Ombudsman after the Department of Social Protection (the Department) sought repayment of overpayments he had received in respect of Jobseeker's Benefit and Illness Benefit in the 1980s.

### Examination

The man had acknowledged the overpayments and made intermittent payments to the Department. Initially the Department sought repayments of €10 per week. The legislation allowed the Department to seek repayments at a rate of 15% of the man's pension, amounting to €35 per week. However subsequent to a meeting with the man the Department sought €28 per week and the man agreed to this. The Department had previously said that if the man found the €28 per week repayment too burdensome it was open to him to request a review of the arrangement.

The man had requested the Ombudsman to examine why the Department insisted on taking €28 per week when it had initially sought €10 per week. The man also wanted a breakdown from the Department as to how these overpayments had occurred and why the Department was still seeking repayment of the debt.

### Outcome

The Department had supplied the man with a breakdown of the debt and his repayment history on a number of occasions and showed that the man had attended a meeting in the local social welfare office and agreed to repay €28 per week. The Ombudsman considered that the Department had acted reasonably and so did not uphold the man's complaint.

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### State Pension (Contributory)

Department of Social Protection

C22/15/2635

Completed 03/11/2015

#### # Upheld

### Background

A man complained about the Department of Social Protection failing to backdate his



application for a Qualified Adult Allowance (in respect of his wife) to February 2007. He became aware of his entitlement to this payment in 2014, and the Department backdated it to 2011. However, he sought for it to be backdated to 2007 as this was the last time his wife had received any payments from the Department.

#### Examination

The Ombudsman found that the wife's application of 2007 may have stopped because the Department had not provided correct information to her. It appeared that this may have contributed to the loss of entitlement to her payment. The Ombudsman asked the Department to review its decision as there is provision in the Act to further backdate a payment if incorrect information had been provided to the applicant.

#### Outcome

The Department revised its decision and awarded a retrospective payment of a Qualified Adult Allowance backdated to February 2007.

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## Supplementary Welfare Allowance

Department of Social Protection

C22/14/2073

Completed 02/09/2015

### # Upheld

#### Background

A man's application for a Supplementary Welfare Allowance (SWA) was refused by the Department of Social Protection.

The man was separated from his wife. She was paying him voluntary maintenance of €40 per week out of her weekly income of €690. The Department concluded that, as the man had decided not to pursue his wife through the courts for a higher amount of weekly maintenance that he has forfeited his right to have his own weekly financial needs considered under the SWA scheme.

#### Examination

The Ombudsman established that the Department had, as it is supposed to do under the relevant legislation, considered the man's application as regards his immediate short term needs, such as heat and food. However, the Department did not seem to have considered the man's specific needs as it is also supposed to do under the legislation.

#### Outcome

Accordingly, the Ombudsman asked the Department to review the case having regard to the very specific circumstances in which the man found himself.

Following this review, the Department awarded a Supplementary Welfare Allowance of €186.00 per week less any maintenance which his wife gave to him. The Ombudsman considered this to be a reasonable outcome given the man's particular circumstances.

## Supplementary Welfare Allowance

Department of Social Protection

C22/14/1453

Completed 02/10/2015

### # Not Upheld

#### Background

A woman complained about being assessed for an overpayment of Rent Supplement (RS) by the Department of Social Protection. She applied for RS as a sole tenant in January 2013 and it was paid until February 2014 when the overpayment was discovered. She complained that she was not told that her entitlement to RS would be affected if another tenant moved into the property where she was living. She also said she was not aware that she would lose her RS entitlement when she was removed from the housing list after refusing a second offer of social housing.

#### Examination

The overpayment arose because another tenant moved into the property in March 2013 but the woman did not inform the Department and so it continued to allow RS.

The Ombudsman noted that the Department's website provides information on RS and asks applicants to tell it about any change in circumstances, including the number of people living in the household. The Department's RS guidelines state that a person is no longer entitled to Rent Supplement if they refuse a second offer of social housing from the local authority.

#### Outcome

The Ombudsman explained to the complainant how the overpayment arose and provided a breakdown of how the overpayment was calculated.

# Other Service Providers

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## Grant Application

Sustainable Energy Ireland

O95/14/1773

Completed 09/09/2015

### # Not Upheld

#### Background

A man complained about the Sustainable Energy Authority of Ireland (SEAI) refusing his application for a grant for cavity wall insulation under the Better Energy Warmer Homes Scheme.

#### Examination

On inspection, it was found that the man's house had solid walls and so cavity wall insulation was not possible. Therefore, SEAI decided that the man did not qualify for a grant.

#### Outcome

The Ombudsman was satisfied that SEAI had properly applied the terms of the Scheme. However, he drew the man's attention to the Better Energy Homeowners Grant Scheme. This offers a grant for external or internal wall insulation and is appropriate for houses with solid walls.

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## Driving Licence

Road Safety Authority

R25/14/1150

Completed 23/11/2015

### # Assistance Provided

#### Background

A man applied to his local Motor Taxation Office to renew his driving licence. He subsequently received his driving licence but it was only for Group 1 type vehicles. The man complained to the Road Safety Authority (RSA) concerning the fact that the licence did not reflect the motor group which he had applied for and delay in issuing his licence. The RSA had only recently taken over issuing driving licences. The man reapplied for his driving licence and received it a number of weeks later.

#### Examination

The man was unhappy with the manner in which this complaint was dealt with by the RSA and complained to the Ombudsman. The wrong box had been ticked on the original application form and that as such there was no evidence of maladministration on the part of the RSA.

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## Outcome

The RSA had only recently taken over the process of issuing driving licences and the system which had been put in place was not sufficiently robust to deal with the initial high level of demand. Accordingly there was a delay in the man receiving his second driving licence. The RSA had issued an apology to the man and paid all medical costs incurred connected with the second driving licence application. The Ombudsman did not uphold the man's complaint as there was no evidence of maladministration on the part of the RSA.

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## NCT

Road Safety Authority

R25/14/1576

Completed 23/10/2015

### # Partially Upheld

#### Background

A man complained about the refusal by the National Car Test Service (NCTS) to issue him with an NCT certificate. The man appealed the decision but was refused on the grounds that the vehicle had been repaired in the meantime. The NCTS told him that as the condition of the vehicle had changed, it was impossible to make any judgement on its condition at the time of the original testing.

#### Examination

The Ombudsman could not examine the decision to refuse the certificate and the issues raised by the man about the testing process as there is a right of appeal to an Independent Appeals Board and the District Court. The District Court can decide whether or not a test was properly conducted and refer cases back to the NCTS for re-testing. However, the Ombudsman noted that the man had not been informed of his right of appeal to the Independent Appeals Board and the District Court. He asked the RSA if the NCTS would recognise that the man had not been informed of this right of appeal.

#### Outcome

The NCTS agreed to reimburse the man 50% of his costs. The RSA also confirmed that decision letters from the NCTS and the Independent Appeals Board now include details of the appeals process as well as the right of appeal to the District Court.



# 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.

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# About the Office of the Ombudsman

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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.

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## 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/>

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## 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](http://www.ombudsman.ie) Email: [Ombudsman@ombudsman.ie](mailto:Ombudsman@ombudsman.ie)

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

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## Feedback on the Casebook

We appreciate any feedback about the Ombudsman's Casebook. Please email us at [casebook@ombudsman.ie](mailto:casebook@ombudsman.ie) with any comments.

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