



The Ombudsman's CASEBOOK

Office of the Ombudsman, Dublin, Ireland.

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Health complaints and more

Welcome to the final Casebook of 2018.

The Casebook contains summaries of some of the cases we recently examined in the wide range of public sectors under the Ombudsman's jurisdiction such as agriculture, direct provision, social protection and health.

In the health sector the Ombudsman Acts do not allow me to examine complaints about 'clinical judgment' such as diagnosis or courses of treatment. Nonetheless many of the complaints we receive are about the general care and treatment of patients and a number of recent complaints are summarised in this Casebook.

Since the last Casebook we have published two follow-up reports to investigations we carried out over the last few years in the health sector.

[A Good Death: Progress Report](#) highlights developments in 'end-of-life care' since our 2014 report. We need to ensure that people dying in Ireland can do so with dignity, without pain and surrounded by their loved ones. Considerable progress has been made in such care in recent years, through excellent partnership working. However, there are still some aspects of services that require attention and I look forward to seeing these addressed in the near future.

We also published [Learning to Get Better: Progress Report](#) which set out developments since our 2015 investigation into the healthcare system. 2015's 'Learning to Get Better', found that many people were afraid to complain about the treatment they receive in hospitals and that many hospitals were not learning important lessons from



complaints they receive. The HSE and Department of Health accepted all 36 recommendations in the report. In November last, I reported that 10 of the recommendations were fully implemented by the HSE, while seventeen were partially implemented and 9 were either not implemented or are still being considered. I am pleased that the HSE has committed to ensuring that all the recommendations in the report are fully implemented across the entire health care system.

Both reports are available at www.ombudsman.ie, as are previous quarterly casebooks, special regional casebooks such as [Louth](#) and [Donegal](#), and sector casebooks such as '[local authority](#)' and '[nursing home](#)' casebooks.

Finally, I want to take this opportunity to wish you all a happy Christmas and also to wish you well with your important work for the remainder of this year and 2019.

Peter Tyndall, December 2018

Agriculture

Fines/Penalties

C01/18/0350 OMB-08158-N3T3L0

Completed 20/03/2018

Not Upheld

Background

A man complained about the 100% penalty imposed on his 2016 Beef Data and Genomics Programme (BDGP) application. The penalty had been applied because, in error, one calf out of 150 calves born on the farm that year had not been tagged and tested within the required 20 days. He considered the penalty to be excessive.

Examination

The Department said that under the BDGP scheme, all participants were required to be fully compliant with Bovine Viral Diarrhoea (BVD) Regulations. These require that animals be tagged and tested within 20 days of birth and have samples sent to designated laboratories as soon as possible thereafter. Failure to do so would result in no payment being made under BDGP in the following year. In this case, the animal was not tagged and tested until 46 days after birth so no payment issued to the man in 2017.

However, changes had recently been made to the BVD Regulations which were being applied retrospectively. As the man was in compliance with the revised BVD Regulations, payment would issue to him shortly – provided he met all other requirements of the scheme.

Outcome

The Ombudsman found that the Department had applied the terms and conditions of the BDGP Scheme correctly at the time the application was processed. He also noted that due to the changes in the BVD Regulations, the man would now be paid.

Direct Provision

Emergency Reception & Orientation Centre

D23/17/3374 OMB-08142-K2Q7D9

Completed 16/03/2018

Not Upheld

Background

A Syrian refugee, complained that her family was under threat in an Emergency Reception & Orientation Centre (EROC). She gave details of a number of incidents involving her family and other residents in the centre. She said that her family was not safe in the centre and that she was unhappy that her family had not been given a date to move to their new home.

Examination

The Irish Refugee Protection Programme (IRPP), who have overall responsibility for the operation of the EROCs, informed the Ombudsman that the family had been moved to their new home. It said that there had been three incidents involving the family and other residents and outlined its response to these events. It provided copies of the relevant incident reports, completed by centre management, and detailed its contact with An Garda Síochána.

Outcome

Based on the available evidence, the Ombudsman was satisfied that reasonable steps were taken by both centre management and the IRPP to deal with the incidents involving the woman's family and that appropriate action was taken.

Accommodation Centre - Food

D09/17/2728 OMB-07444-Y0R0M2

Completed 20/02/2018

Assistance Provided

Background

A man complained to the Ombudsman about the Direct Provision accommodation centre he was living in. The man complained about the lack of vegetarian options available in the canteen at the centre, the cover when the chef was on holidays and the lack of raw food-stuffs available to residents who wish to cook for themselves.

Examination

The Ombudsman raised the issues with the Centre Manager. He said that there was a vegetarian option available on a daily basis at every meal and that the chef was open to discussing vegetarian options with residents.

According to the Centre Manager, a second chef had been hired towards the end of 2017. He noted that this should address the issue of not having adequate staff or expertise in the kitchen when the head chef was on holidays.

The final element of this complaint was in relation to the provision of raw food-stuffs. The Reception and Integration Agency (RIA) informed the Ombudsman that it could not compel privately run accommodation centres to provide raw food-stuffs to residents as there was no contractual obligation to do so and the centre was operating as per contract. RIA stated that it hoped to roll out independent living in all centres in the future.

The Centre Manager acknowledged that raw food-stuffs were not provided but that the intention for the centre was to move in the direction of independent living with a communal cooking area. The accommodation centre in question was not currently set up for this as the kitchen facilities had to be installed, but she assured the Ombudsman that a plan was in place for this. Although there is no exact timeframe in place, the Ombudsman asked the Centre Manager to inform residents about this plan.

Outcome

The Ombudsman was satisfied that the Centre Manager had responded reasonably in relation to each of the matters raised. The Ombudsman was also satisfied with the assurance and commitment to the roll-out of independent living provided by the Centre Manager and RIA.

Reception and Integration Agency – Transfer

D10/18/1294 OMB-09687-F1Q6G2

Completed 20/04/2018

Assistance Provided

Background

A man complained to the Ombudsman about being transferred by the Reception and Integration Agency (RIA) from the reception centre in Dublin where he and his partner were living. The man complained about the short notice he and his partner were given by RIA about having to move to a regional accommodation centre and raised concerns over how he and his partner would be received as a same-sex couple in a rural accommodation centre.

Examination

The Ombudsman explained RIA's dispersal process to the man and informed him that their transfer is in line with this dispersal process. The man was assured that he and his partner would not be separated in the transfer.

Outcome

The Ombudsman put the man's mind at ease by explaining he was moving to a new family centre and that staff would be there to assist new residents. If the man wasn't satisfied with the centre once he arrived there, he was informed it will still be open to him to submit a new complaint to the Ombudsman.

Accommodation Centre – Food

C15/17/3297 OMB-08178-Q8M0P4

Completed 20/03/2018

Assistance Provided

Background

A man complained about the Reception and Integration Agency (RIA) in relation to the lack of raw food-stuffs provided for residents to cook for themselves in the accommodation centre where he and his family lives. The man complained that buying food drained his family's resources. He also said that he finds it unfair that residents in other direct provision centres are treated differently and have financial assistance to allow them to buy food for home-cooking. The man contended that all asylum seekers are entitled to the same basic services while awaiting the decision on their application for international protection.

Examination

The centre manager confirmed that no food-stuffs at all are provided for residents to cook for themselves in this State-run centre. The Ombudsman is aware of other centres where food-packs or some basic materials are supplied by the kitchen staff to residents. Therefore, the practice of not providing any food-stuffs appears to be inconsistent with what is happening in other centres.

RIA informed the Ombudsman that the first food-hall to be developed in a State-owned centre was in Athlone Accommodation Centre. RIA noted that now the residents in Athlone, Ballyhaunis, Clonakilty and Mosney Accommodation Centres can avail of independent living arrangements.

RIA stated that it understands the man is frustrated by having access to a kitchen but is limited in what he can purchase. However, a considerable amount of time, planning and work is required to develop and roll out a new system of provision. RIA informed the Ombudsman that it is in preliminary discussions regarding the construction of cooking facilities and a food-hall in the man's accommodation centre.

Outcome

The Ombudsman was satisfied that RIA's position in this case is reasonable. RIA assured the Ombudsman that a schedule of implementing independent living arrangements is being developed and RIA will keep the Ombudsman informed of the timeframe of the roll-out. The Ombudsman will keep the man informed of these developments.

Accommodation Centre – Transfer

C15/18/0240 OMB-06885-Z9N8F1

Completed 23/01/2018

Assistance Provided

Background

A man living in a direct provision centre complained about his treatment by the Reception and Integration Agency (RIA). The man said his partner had moved to the Mosney Accommodation Centre and he had requested a transfer to be with her.

The man said that although he had informed his current accommodation centre that he was visiting his partner, it had deemed his bed space to be abandoned. Therefore, the man said he had nowhere to sleep while waiting for the decision on his transfer request.

Examination

The Ombudsman requested a report from RIA. It responded on the same day to say a letter had issued earlier that day to the man approving his transfer to the Mosney Accommodation Centre.

The Ombudsman contacted the man, who said he had nowhere to sleep that night. The Ombudsman requested a copy of the letter from RIA by email and then sent a copy of the letter to the man's email address. He also advised him to contact the Mosney Accommodation Centre to check whether it would accept this copy before making his way there.

Outcome

The Ombudsman was satisfied that RIA had approved the man's transfer.

Accommodation Centre – Transfer

C15/18/0288 OMB-08204-H1H4D9

Completed 08/03/2018

Assistance Provided

Background

A woman complained to the Ombudsman about the Reception and Integration Agency's (RIA) decision to transfer her to another direct provision centre. The woman complained that RIA had transferred her as there was an increase in demand for accommodation in the centre she had been living in (due to the closure of another centre in Dublin).

Examination

During the examination process, the woman informed the Ombudsman that while she originally had been reluctant to transfer, she was happy with the new centre. However, she had shared a room with one other person in the original centre but was now sharing a room with two other women. The woman felt that sharing with two other people was too

cramped and therefore requested either a single room or to share with just one other person.

RIA informed the Ombudsman that it is experiencing a severe shortage of accommodation. RIA stated that, under these circumstances, it is obliged to maximise its bed usage and can only allocate lower occupancy or single rooms in exceptional circumstances and maintains an Exceptional Needs List of those particular cases where lower occupancy is justified. RIA stated that the woman is accommodated with two other people in a room for three people. RIA said that it does not have any single rooms available and in the event that it did, a single room would be offered on the basis of need. RIA also commented that it had received no information from the woman that demonstrated a pressing need for her to be included on the Exceptional Needs List for a single room. In relation to the request to share with only one other person, RIA stated that if it was to agree to this, it would effectively be making a decision to reduce its available bed-spaces even further. It noted that this could result in a protection applicant who needs accommodation being turned away.

Outcome

Given the capacity issues in RIA's accommodation system, the Ombudsman was satisfied that the Exceptional Needs List is a reasonable approach to dealing with the accommodation shortage. Following involvement from the Ombudsman, the woman and her two room-mates were moved to a larger room and the woman was now satisfied with her accommodation. As a result of the move to the larger room, the woman no longer required a single room and did not wish to proceed with her complaint.

Reception and Integration Agency – Accommodation

C15/18/0635 OMB-08257-K0P8D4

Completed 27/03/2018

Upheld

Background

A non-governmental organisation (NGO) complained to the Ombudsman on behalf of a man who had been refused re-admission to direct provision accommodation by the Reception and Integration Agency (RIA). According to the NGO, the man presented himself at its offices in February 2018 looking for help with a request for re-admission to direct provision accommodation.

The man informed the NGO that he had previously lived in a RIA accommodation centre, but that he left in November 2017 to live with his partner in Cork. However, the relationship had since broken down and he was no longer living with his ex-partner. The man's living situation was precarious and he was staying with a friend on a temporary basis as he was homeless. The NGO helped the man to submit a request to RIA to be re-admitted to direct provision but RIA refused.

A further re-admission request was made to RIA by the NGO but this was also refused. In its letter to the NGO, RIA stated: "I note the contents of your letter, particularly [the man's] fears that he may have no alternative than to sleep rough in the coming weeks ... unfortunately we are experiencing an unprecedented shortage in our accommodation

at the moment and as a result cannot locate any suitable vacancies for [the man] in our accommodation.”

Examination

The man informed the Ombudsman that he had since become homeless and was sleeping rough. He said the Islamic Centre had allowed him to stay there during the freezing temperatures in late February and early March 2018, but he did not know how much longer they would allow him to stay. At that time, he was living on the streets during the day as he could not find shelter during daylight hours.

Outcome

The Ombudsman requested that RIA review its decision to refuse the man's request for re-admission to direct provision accommodation. RIA reviewed its decision in line with the Ombudsman's request and offered the man a place in direct provision accommodation, which he accepted.

Health

Hospitals - General

H71/17/2565 OMB-06768-Q8P6R7

Completed 16/01/2018

Upheld

Background

A man complained about St. Vincent's University hospital in relation to his clothes going missing after he was moved a number of times to different beds, when he was a patient. The man wanted the hospital to reimburse him the €170 value of his clothes.

Examination

The hospital explained that when patients are admitted to the Emergency Department, their property is put into a green patient bag, which is placed on the trolley or bed. The hospital said that on admission to a ward, as part of the Nursing Admission Assessment, all patients are informed that patient property is retained at a patient's own risk. The hospital said patients are also advised to send their property home with a relative.

The man's Nursing Admission Assessment booklet had informed the man that property is retained at a patient's own risk. However, the hospital noted the man had not signed the Patient Property form to confirm that he accepted this.

Outcome

The hospital said that although it considered the man's property was to be retained at his own risk, it was happy to offer €170 as a goodwill gesture. The Ombudsman was satisfied with the hospital's response.

Hospital Care and Treatment

H66/17/1713 OMB-07392-R5K5H0

Completed 06/02/2018

Not Upheld

Background

A man who had been suffering from dizziness and breathlessness complained about the way a Tilt Table Test had been conducted on him in the Midland Regional Hospital, Tullamore. He said that while the information leaflet provided to him about the test indicated that it would last approximately 45 minutes, his test was stopped within the first two to three minutes. Afterwards, he said his consultant had referred him to another hospital to be assessed for a pacemaker. However, when he attended the second hospital, he was informed that he did not need to have a pacemaker after all.

Examination

While the Ombudsman cannot examine matters relating to clinical judgement, he was able to seek a better explanation for the man as to why the test had been stopped so soon. The man's clinical records and a report from his treating consultant showed that the man's blood pressure and heart rate had slowed significantly following the start of the Tilt Table Test, when pressure was placed on his carotid sinus. Therefore, the test had to be stopped and he was referred by his consultant for a cardiology assessment in a different hospital. However, the results of this assessment showed that he had good ventricular function with no significant valve disease and that he did not need to have a pacemaker inserted.

Outcome

The Ombudsman was satisfied that the staff in both hospitals had done their best to explain the situation to the man. He wrote to the man setting out what the hospital report had said.

Hospital Care and Treatment

H33/18/0363 OMB-08170-B8B5M6

Completed 06/03/2018

Assistance Provided

Background

A woman complained about a delay in carrying out an angiogram on her husband. She said that her husband was a patient at University Hospital Limerick and that the test had been cancelled on four occasions. The woman was also concerned about the treatment her husband was receiving for another health issue.

Examination

Following the Ombudsman's contact with the hospital, the woman contacted him to say that her husband had met with the Consultant and that there was a satisfactory outcome to the meeting.

Outcome

The Ombudsman was satisfied that the hospital had taken steps to address the woman's concerns about her husband's treatment.

Hospital Care and Treatment

H41/17/2368 OMB-07448-P7B1M2

Completed 06/02/2018

Not Upheld

Background

A woman complained that Cork University Maternity Hospital cancelled her elective surgery.

Examination

The woman developed a Respiratory Tract Infection immediately before her surgery. She had been vomiting and had a sore throat. The medical staff examined her and decided to postpone her proposed surgery.

A decision to postpone surgery is a clinical decision. The Ombudsman cannot examine these decisions as they are outside his remit.

Outcome

The Ombudsman was satisfied that the hospital explained its reasons for cancelling the surgery. He noted the woman had her surgery at a later date.

Hospital Care and Treatment

H82/17/2039 OMB-09425-Y0G3Q9

Completed 23/04/2018

Upheld

Background

A patient complained about a number of matters relating to his treatment at a hospital following various brain scans which he contended, did not verify whether he had suffered a stroke or not. As the Ombudsman cannot examine clinical judgement, the examination focused on the communication between the hospital and the patient.

Examination

A report obtained by the Ombudsman from a relevant medical professional at the hospital clarified a number of issues in relation to the case, the most important highlighting that a typing error had occurred in correspondence issued directly to the patient which may have given the impression that he had suffered a stroke, when in fact he had not.

Outcome

The complaint was upheld because there was a communication failure between the hospital and the patient which caused distress and confusion in relation to his health.

Hospital Care and Treatment

H23/17/2305 OMB-06778-W2M6X7

Completed 03/01/2018

Assistance Provided

Background

A man complained that the level of post-operative care he received in Mayo University Hospital was inadequate.

He said he was in pain and discomfort due to his bed position, the lack of pain relief provided and the failure to re-stock his water jug. He also said that his call bell was outside his reach.

Examination

The beds on the ward are operated with an electronic key pad. This allows patients to move the bed up and down. It also allows a patient to adjust the back / head rest independently.

The hospital accepted there was inadequate communication surrounding the use of the patient's bed controls, the inaccessibility of his call bell and the failure to restock his water jug. However, once the patient told staff he was in pain, he received appropriate pain relief.

When the patient brought his concerns to the hospital's attention, it took the matter very seriously. It acknowledged there was a problem and spoke to the staff on duty. It apologised to the patient and explained what happened and also identified where it could make improvements.

Outcome

The Ombudsman was satisfied with the hospital's response.

Hospital Care and Treatment

S39/17/1820 OMB-09420-S5X5T3

Completed 20/04/2018

Not Upheld

Background

The family of an elderly terminally ill woman, who had been caring for their mother at home, complained to the Ombudsman that she had been denied respite care in the Marymount Hospice in Cork. The request for respite care had been made by the woman's General Practitioner (GP) but had been declined since the hospice does not have respite beds. It had been explained to the GP that respite care was available in Marymount

Hospital, through the Service for Older People, by contacting the HSE. The woman developed C-Diff, which is an infection requiring acute hospital care. The woman had been admitted to hospital but once her infection cleared, the family requested that she be transferred to the hospice. Following a clinical review by the Consultant in Palliative Medicine, it was considered that the woman did not need specialist palliative care in the hospice. The woman remained in hospital where she died some weeks later. The family complained that their mother's wishes to be moved to the hospice were not followed.

Examinations

The Consultant explained that the hospice provides services for patients who have advanced, progressive, life-limiting conditions. Patients must also have current or anticipated complexities relating to symptom control or other physical, psychosocial or spiritual needs that cannot reasonably be managed by the current care provider. It was his clinical opinion that the woman's needs were being fully met within the acute hospital setting. The hospice did acknowledge, however, that GPs may not be aware of the fact that it did not have respite beds. It said that GPs needed to be aware that respite care was accessible through the HSE in Marymount Hospital.

Outcome

The Ombudsman wrote to the family and outlined the hospice's response in relation to their late mother's care and to explain his role in relation to matters of clinical judgement. In providing feedback to the hospice, he asked that information be provided locally to GPs about accessing respite care for terminally ill patients.

Hospital Charges

HD9/17/1068 OMB-09419-H0P7F1

Completed 20/04/2018

Upheld

Background

A complaint was received on behalf of an elderly resident at a Community Hospital who was paying private fees for her care there. The complaint outlined that unexplained increases to fees had not been communicated to the elderly resident by the HSE until after they came into effect and that she was being billed for arrears in fees which was distressing to her.

Examination

It was clear that there had been failure in communication by the HSE as regards incorrect billing and failing to provide a sufficient notification period for increasing fees. There had not been any overpayment of fees by the elderly resident as she had refused to pay the increases until the communication issues had been resolved. There was therefore, no requirement for the HSE to reimburse any overpayment of fees.

Outcome

The HSE acknowledged its failings in communication. In recognition of this and of the distress caused, the HSE agreed not to collect any increase in fees for the time period

affected by the communication failures. The HSE provided assurances that these issues had been resolved and that future correspondence about any increases would issue both orally, and in writing well in advance of the date that any increase is to come into effect. More recent increases had been communicated in sufficient time however and the HSE advised the complainant that they would seek to collect this, which the Ombudsman considered to be reasonable. A meeting was also held between the complainant (and her representative) wherein the reasons for the increases as well as the communications failures were discussed, and an apology was provided.

Hospital Charges

H31/17/2743 OMB-07472-W5T1L6

Completed 12/02/2018

Not Upheld

Background

The Ombudsman received a complaint from a patient who said that he had been charged a fee as a private patient for a medical procedure which as far as he was aware had been conducted under the public healthcare system. He acknowledged that he had signed an In-Patient Admission Form stating that he wished to be treated as a private in-patient for his admission.

Examination

The documentation provided to the Ombudsman by the hospital included a time and date stamped copy of a referral letter from the patient's GP to the hospital. The patient subsequently sent the Ombudsman a copy of the GP referral letter, which had the words 'for public appointment' included. These words were not on the date stamped copy of the referral letter on the hospital's file. As there was no date stamp or other mechanism to verify the time of creation of the letter the patient provided, the Ombudsman considered he could not accept it as evidence to support the man's argument that he was to be treated as a public patient.

Irrespective of this issue, there was evidence that the patient signed the In-Patient Admission Form which clearly states that he wished to be treated as a private patient. The patient said that he asked to be treated as a public patient, but that due to weakness from his illness he did not understand what he was being asked to sign at the time, and that nobody in the hospital explained the issue to him. As there were no records on file to verify what the patient was, or was not told by hospital staff, the Ombudsman did not consider that he could regard the man's statements to be objective evidence of what actually happened.

Outcome

As the only objective evidence in this case (the signed form), supported the hospital's position that the patient opted for private care, the Ombudsman did not consider that he had a basis for querying the hospital's position.

Medical & GP Card

H09/17/3365 OMB-06724-D6G7Z9

Completed 10/01/2018

Assistance Provided

Background

'Cairde', a group working to tackle health inequalities among ethnic communities, complained that a man had been refused a medical card. The man suffers from cancer and is being treated at the Mater Hospital

Examination

The HSE was considering the man's application for a medical card and had not yet made a decision on it. It appears that the HSE were concerned that the man's Visa had run out and that he therefore had no legal status or right to reside in this country. The Ombudsman pointed out that the man satisfied the medical card 'residency' condition and that the issue of a person's legal status in this country is not mentioned in the regulations governing the award of medical cards.

Outcome

The HSE granted the man a medical card on compassionate grounds taking account of his 'exceptional and difficult circumstances.'

Health Expenses

HD5/17/2054 OMB-08113-R1N4B9

Completed 09/03/2018

Assistance Provided

Background

A complaint was received from a woman who while visiting family in Poland suffered severe back pain. The woman who is ordinarily resident in Ireland, attended a public hospital in Poland and required immediate surgery. She presented her European Health Insurance Card (EHIC) but was informed by the doctor that the card could only be used if there was 'a serious danger to life as opposed to health'. She was advised to look for treatment in a private clinic which she did at a cost of €7,500. Upon her return to Ireland, she made an Application for Refund of Medical Expenses incurred under EHIC (E126 form) but following a delayed response from the HSE, was informed that her application had been refused because 'the decision of the Polish authorities is that ...the treatment is deemed to be private'.

Examination

An Irish resident is entitled to get healthcare through the public system in countries of the EU, EEA or Switzerland if they become ill or injured while on a temporary stay in that country. A doctor's referral is required in cases where specialist outpatient treatment is required. The complainant said that she received a referral from the doctor she attended

in the public system. As part of the examination of the complaint, enquiries were made with the HSE about making a further application for a refund of fees, and with the Polish authorities to assess whether it might be more appropriate to submit a complaint about the decision making of the public hospital attended by the complainant in Poland.

Outcome

The woman was informed that there were two options available for her to pursue (i) Submit a complaint to either the Polish Ombudsman or the Commissioner for Patients' Rights in Poland in relation to the decision of the doctor to refuse the EHIC in Poland and for the fees that had to be paid in order to receive treatment (ii) Apply for a refund of medical expenses through the Cross Border Directive in Ireland through the HSE. The woman was informed that the Ombudsman would take no further action in relation to the complaint at present as it would appear that there were other more appropriate routes to follow.

Hospital - Charges

H24/17/1763 OMB-06703-DOT1T8

Completed 16/01/2018

Assistance Provided

Background

A man complained to the Ombudsman about Roscommon University Hospital when he was incorrectly asked to pay €200 when he attended the Minor Injuries Unit. While the hospital reduced the charge to the correct amount of €100 after the man complained, he wanted to find out if corrective action had been taken to ensure the same mistake would not be made again. He also sought copies of medical reports completed at the hospital for two examinations carried out on him in which the man said he had asked for but had not been given. He also said he was not given a follow-up appointment when he attended the Unit later in 2016.

Examination

The hospital told the Ombudsman that all clerical staff members working in the Urgent Care Centre/ Minor Injuries Unit were fully informed of the correct policy of a €100 charge. The hospital assured the Ombudsman that it now routinely operates a procedure where staff ask patients presenting if they have a medical card and if not, if they have attended their GP before attending the Unit. Staff then inform patients of the €100 charge if applicable. Signs have also been placed throughout the relevant parts of the hospital informing patients of the different categories of charge.

The hospital confirmed that the healthcare records the man requested were sent to him by registered post.

With regard to the man's follow-up visit, the medical records showed that his discharge plan included a follow-up appointment at the trauma clinic for 29 July 2016, but the man was not told about this. However, he did confirm that a separate appointment was made for him to attend the Unit on 28 July 2016 when he attended the hospital for a scan earlier that month.

Outcome

The Ombudsman was satisfied that procedures are now in place to ensure patients are charged the correct amount when attending the Minor Injuries Unit. He noted that signage has been placed throughout the relevant parts of the hospital indicating charges for all categories of patient. The Ombudsman was also satisfied that, the man received a copy of his medical reports.

In view of the fact that the man attended the Unit on 28 July 2016, there was no evidence of adverse effect as a result of the hospital's failure to notify him of his follow-up appointment. However, the Ombudsman brought this matter to the attention of the hospital with a view to ensuring a similar mix-up does not arise in the future.

Health Expenses

HD1/16/3399 OMB-07367-Y2J4S7

Completed 12/02/2018

Assistance Provided

Background

A man complained about the HSE regarding its delay in refunding medical expenses he incurred while on holiday in France.

Examination

The HSE said that under EU Regulations, EU citizens are entitled to public health care in another Member State on the same basis as a resident of the State. Therefore, if the man was treated in a private hospital, no refund was applicable. It was also noted that in some States such as France, public health care involves a co-payment and such payments are non-refundable.

The HSE said the French authorities would have to inform it whether a refund was applicable or not and only they could provide the relevant information by completing the relevant section of the E126 form. The HSE provided evidence of its efforts to obtain a response from the French authorities. The Ombudsman was satisfied the HSE had made reasonable efforts to follow up with the French authorities.

The Ombudsman noted that SOLVIT deals with cross-border complaints and suggested to the HSE that it could be contacted to try progress the matter. The HSE agreed to do so and obtained the man's consent before contacting SOLVIT.

Outcome

SOLVIT obtained a response from the French authorities, who provided a partial refund to the man for some of the medical costs he incurred. The Ombudsman was satisfied with the response of the HSE.

Disability Services

HA4/17/2037 OMB-07488-Y4T8J6

Completed 20/02/2018

Assistance Provided

Background

A woman complained that the HSE had failed to provide the residential care her sister needed in her own county but instead, she had to be accommodated in Northern Ireland. She said that the family had been promised that her sister would be accommodated in a new centre being built close to the family home. She also complained that, under revised arrangements, the family was being asked to pay the costs of her sister's visits home to her family.

Examination

The centre in question was scheduled to open in the second quarter of 2018 and that a place has been reserved for the woman's sister. In addition the HSE has decided to meet the costs of the home visits. The Ombudsman also noted that the HSE had kept the family informed of progress on these issues.

Outcome

The Ombudsman was satisfied that the HSE had acted correctly on the issues raised by the woman.

Law Society

Handling of Application or Claim

R13/17/1208 OMB-06696-P3J0T0

Completed 24/01/2018

Not Upheld

Background

A woman complained about the way that the Law Society of Ireland had handled her complaint against a named solicitor. In particular, she was unhappy that the Law Society had not contacted her about its proposed recommendation to resolve her complaint against the solicitor and also with the solicitor's delay in providing the file to the Law Society.

Examination

The Ombudsman examined the relevant files and was satisfied that the Law Society had followed its procedures and had kept the woman informed throughout the complaint handling process. Although there was a short delay in receiving the relevant file, the Law Society followed up with the solicitor in a timely manner. The Law Society also explained that, in general, it does not invite a complainant to comment on, or to make submissions on, its proposals to resolve a complaint. It said that it is aware that the woman had an

option to request the Independent Adjudicator review the way the complaint had been handled by the Law Society.

Outcome

The Ombudsman was satisfied that the Law Society had fully considered the issues in this case and conducted its enquiries in a fair and reasonable manner.

Level of Service

R13/17/2187 OMB-06722-Z9H9Q8

Completed 22/01/2018

Not Upheld

Background

A man complained to the Ombudsman when the Law Society did not direct his solicitor to pay compensation to him for what, in the man's view, was the poor standard of professional services he received. The Society decided that the man should get a full waiver of his fees and that his file should be transferred so that the man could instruct a different solicitor on his case.

Examination

The relevant legislation gives the Society the discretion to direct a solicitor to pay compensation "if they think fit". The Ombudsman noted that the Society exercises this discretion in a sparing manner and that a decision to make a direction depends on the circumstances of each individual case.

In this case, as there was no evidence of financial or other loss, the Society took the view that the full waiver of the man's fees and the transfer of his file to another solicitor was enough to deal with the man's complaint and that further compensation was not justified in the case.

Outcome

The Ombudsman was satisfied that the Society's position was reasonable and in accordance with the relevant legislation.

Complaint/Appeal Handling

R13/17/1845 OMB-08099-H8C2F2

Completed 29/03/2018

Not Upheld

Background

A woman complained to the Ombudsman about the Law Society of Ireland regarding the services provided by her solicitor for a court case. She said she still did not know the outcome of the court case and the decision of the judge. She complained to the Law Society seeking an apology and her money back for a service she said she did not receive. She considered that the refund of €500 offered to her was not enough compensation in her case.

Examination

The Society told the Ombudsman that it examined the woman's complaint under the relevant law which requires the Society to "...take all appropriate steps to resolve the matter by agreement between the parties concerned..."

The Society said that despite an extensive exchange of correspondence between it, the solicitor and the complainant, the complaint was not resolved so it was referred to the Complaints and Client Relations Committee. The solicitor attended the Committee meeting where he offered to refund €500 to the complainant. The Committee took the view that the solicitor's offer was reasonable taking into account the solicitor's apologies to the complainant for incorrectly addressing correspondence, and the amount of the offered refund in proportion to the level of fees originally charged. As the Society felt the offered refund was reasonable, the issue of an apology from it did not arise.

The Society told the Ombudsman that the woman could contact the Courts Services regarding the outcome of the court case. It explained that as it was not a party to the proceedings is not entitled to seek details of family law cases.

Outcome

The Ombudsman was satisfied that the Society set out a reasonable basis for its decision that the solicitor's offer of €500 was a reasonable response to the complaint. The Ombudsman was also satisfied that the Society's reason for not giving an apology was reasonable, as was its reason for not seeking details on the woman's case from the Courts Service.

Complaint/Appeal Handling

R13/17/2400 OMB-08143-N0N0G8

Completed 13/03/2018

Not Upheld

Background

A man complained to the Ombudsman about the Law Society of Ireland when his application for a claim on the Compensation fund was refused.

The man said his application was refused on the basis that the man's solicitor did not hold a practising certificate. The man said he employed the solicitor in good faith and was not aware that he did not hold a practising certificate. He complained that the Society did not take this into account when refusing the claim and that he suffered financially as a result.

Examination

The Society refused the man's claim on the Compensation Fund on the basis that under the relevant legislation the Society has discretion to refuse claims from the Fund where the solicitor did not have a practising certificate at the relevant time.

The Ombudsman noted that the solicitor in this case represented himself as a solicitor through an advertisement and titled his bank account "solicitor account". He asked the Society why it used its discretion not to compensate the man in these circumstances.

The Society said that the Solicitors Acts do not give it the power to compensate a person who has sustained losses from a person that falsely represented him or herself as a practising solicitor, but who did not hold a practising certificate at the time the losses were sustained. The extent of the Society's remit in such circumstances is to take the appropriate regulatory action against the person who falsely represented themselves as a solicitor entitled to practice. In this case the Society took legal action against the solicitor in question.

Outcome

The Ombudsman noted that the Society acted in accordance with the relevant legislation in this case. While the Society was aware that the person complained of falsely represented himself as a solicitor, the only action available to it was to litigate, which it did in this case. The Ombudsman was satisfied that the Society's position was reasonable under the circumstances.

Complaint/Appeal Handling

R13/17/2511 OMB-09450-C6F4N0

Completed 06/04/2018

Not Upheld

Background

A woman complained about the Law Society's handling of her complaint of overcharging by her solicitor. The woman's solicitor had originally estimated fees between €3,000 and €10,000 but the final bill was €25,000 plus VAT. Her solicitor provided an explanation as to the increased fees and offered her the option of bringing the matter to a legal cost accountant for resolution but she declined.

The woman complained to the Law Society and the matter was rejected. She subsequently appealed to the Independent Adjudicator who did not uphold the complaint.

Examination

The Law Society provided a detailed file on the matter including all correspondence with the woman and her solicitor. The file showed that its investigation found that the fees charged were not excessive but did raise a concern that the final charge was over 100% higher than the original estimate. The Ombudsman noted that the solicitor was asked for an explanation of this which he provided. Also of note was the fact that the Law Society recommended a reduced fee in an effort to bring the matter to a close.

Outcome

The Ombudsman was satisfied that the Law Society undertook a full and fair investigation of the matter. The Law Society identified a concern regarding the increase in estimated fees but sought and received a detailed explanation on this. Additionally, the Law Society made efforts to resolve the matter by agreement between the parties. Finally, although it ultimately rejected the woman's complaint, it made a non-binding recommendation that the solicitor accept a substantially reduced fee.

As such, the Ombudsman could not see a basis on which he could uphold the complaint.

Local Authority

Cork County Council - Planning

L08/17/2805 OMB-08206-C9F4Y7

Completed 27/03/2018

Not Upheld

Background

A man complained about the refusal of the Council to change the route of a proposed public amenity walkway on its Draft Development Plan, so that it was away from his property. The proposed route had initially gone through his house and later was adapted, but it still went through his driveway. The final amended walkway travelled along a private road which he the man owned. He felt that the proposed walkway infringed on his property rights.

Examination

The Council said that the proposal had been in the Development Plan for the past 20 years. When the man made the officials aware that the map showed the route going through his house and later his driveway, it had been amended to move the route onto the roadway instead. The Council acknowledged that the private roadway was in his ownership. It pointed out that Development Plans always included areas which were in private ownership. The Plan was amended to include a commitment to work with private landowners in order to achieve the Council's objectives.

Outcome

The Ombudsman found that the Council had prepared the Development Plan in accordance with the relevant legislation. It had taken action to amend the Plan when it was made aware of errors or discrepancies such as those identified by the man. The Ombudsman noted that the man had other avenues available to him to protect his property rights if he should he choose to take them.

Wexford County Council - Planning

L55/17/0585 OMB-07383-S1W5B1

Completed 02/02/2018

Not Upheld

Background

A representative complained on behalf of a company, which was granted planning permission for the retention and completion of ten houses. A condition of the permission was the payment of planning contributions in accordance with the Development Contribution Scheme. The houses were completed and were unsold at 1 September 2015. The company applied to have the development contributions reduced, as the Council

had introduced a revised scheme resulting in lower contributions. The Council reduced the contributions except for water and waste stating this was at the direction of the then Department of the Environment, Community and Local Government.

The representative argued that the relevant Act made no reference to an exclusion for water services and the relevant circular did not make a distinction between the elements of the contributions scheme. He said that the Department told him that local authorities are no longer water authorities but in his view, this is contrary to the circular which stated: "Therefore planning authorities which were water service authorities before the establishment of Irish Water remain water service authorities". In his view there is confusion among the local authorities and the Department's direction was outside the scope of the Urban Renewal and Housing Act 2015 and has caused inequity.

Examination

The Council provided a copy of a letter from the former Department of Environment, Community and Local Government about the application of the relevant Act. In its view, the letter provided that there is no reduction for water and sewerage contributions. The Council was satisfied that it was applying the terms of the Act as interpreted by the Department. It referred the Ombudsman to the Department for clarification regarding the circular.

The Department's position was that under the Act the reductions in development contributions only apply where the local authorities provide the water services directly themselves. As the water services on the unsold estate were a matter for Irish Water, they were not provided directly by the local authority and therefore the owners of the estate did not qualify for the reduction in development contributions.

The Department confirmed that it had not received any other complaints in this regard and considers that Wexford County Council has correctly interpreted the relevant legislative provisions.

Outcome

The Ombudsman was satisfied that the Council correctly interpreted the instruction from the Department in this case and there was no evidence of poor administration. Additionally, he felt the Department's view regarding the application of development charges was reasonable.

South Dublin County Council - Burial Grounds

L59/17/2903 OMB-07422-B9L6W7

Completed 02/02/2018

Upheld

Background

A woman complained about the way that she had been treated by staff in South Dublin County Council when it dealt with her complaint concerning a cemetery. She said that although the Council had dealt with the main issue in her complaint, it had not fully addressed her complaint about its staff.

Examination

Following contact from the Ombudsman, the Council reviewed its handling of the complaint. It acknowledged that the complaint had not been handled in accordance with its Customer Charter. It had issued an acknowledgment of this fact and an apology to the woman.

Outcome

The Ombudsman was satisfied that the Council addressed the issues raised and had provided an apology to the woman.

Revenue Commissioners

Vehicle Registration Tax

C21/17/3132 OMB-07554-Q0K1C7

Completed 13/02/2018

Upheld

Background

A man converted his vehicle from a jeep to a car and added extra seats. To ensure the appropriate tax conditions applied, he followed the instructions for converting the car on the Revenue website. He declared the conversion to Revenue (Central Vehicle Office). He was told in writing by Revenue that no Vehicle Registration Tax (VRT) was due and that he should proceed to submit an application to his local Motor Tax Office. A month later Revenue told him that VRT of €190 was due and apologised for its initial mistake.

Revenue require that conversions are carried out by a 'Suitably Qualified Individual' (SQI) which the man had done. However, the Motor Tax Office understood at the time that all vehicle conversions should be certified by a National Standards Authority of Ireland Approved Test Centre (ATC). The man had been advised to surrender his tax disc and declare the vehicle 'off the road'. He could not get an NCT or insurance for the car without the appropriate documentation. As a result the man, who lived in a rural area, was left without a car for a considerable period.

The man wanted an apology and for the VRT to be waived.

Examination

Revenue had incorrectly told the man that no VRT was due. The Motor Tax Office had incorrectly told the man that the NSAI needed to carry out the conversion. The Ombudsman raised these issues with Revenue.

Outcome

The Motor Tax Office acknowledged it made a mistake. It acknowledged that it should have advised the man that it was querying the issue of whether VRT was due.

Revenue issued a full apology to the man. It could not refund the VRT as it is correctly due. The case has highlighted to Revenue the need for more care to be taken in the processing of applications. It has since set up arrangements to ensure that the mistake does not reoccur. Responsibility has also been assigned at Assistant Principal level for quickly resolving such issues if they do reoccur.

Social Protection

Direct Provision Allowance

C22/18/0219 OMB-09478-H3Y8D3

Completed 06/04/2018

Assistance Provided

Background

A woman complained about a difficulty she was having collecting her direct provision allowance from the GPO. She said that the identification (ID) card issued to her by the Department of Employment Affairs and Social Protection did not have her picture on and that staff in the GPO would not accept it as a valid ID card. The woman said that she was using a photocopy of her picture, signed by the Community Welfare Officer, to collect her payment.

Examination

The Department informed the Ombudsman that the woman had not completed her application for a Public Services Card (PSC). It said that when she made her application, she did not have the required documents for a PSC card. The Department outlined what the woman needed to complete the application and suggested that she contact her PSC Centre to complete the application.

Outcome

The Ombudsman referred the woman to the PCS Centre to complete the application process.

Guardian's Payment

C22/17/1655 OMB-07397-X6L4M7

Completed 07/02/2018

Upheld

Background

A woman complained that her application for a Guardian's Allowance for her grandson had been refused by the Department of Employment Services and Social Protection. The refusal was upheld in two separate appeals to the Social Welfare Appeals Office.

Examination

The Ombudsman established that the key factors in the decisions to reject the application was a belief that the child had not been abandoned by his father and that the woman's role in the care of her grandchild was a private arrangement between her and the child's father. The woman told the Ombudsman that the level of contact the child's father had with his son was confined to a few visits to a restaurant over the course of more than a year. The Ombudsman verified this with the child's father. The Ombudsman was satisfied that this new information confirmed that the child's father had failed to maintain a reasonable degree of interest, concern and responsibility for the child's welfare and that the child was in effect, 'an orphan', within the meaning of Social Welfare legislation. He brought this information to the attention of the Chief Appeals Office and asked that the earlier decisions be reviewed.

Outcome

The Appeals Service accepted the new evidence and revised its earlier decisions. The woman was awarded the Guardian's Allowance and arrears of €12,517 have been paid to her.

Exceptional Needs Payment

C22/17/3655 OMB-07402-R1W5L4

Completed 12/02/2018

Not Upheld

Background

A man complained about the refusal of his application for an Exceptional Needs Payment (ENP) by the Department of Employment Affairs and Social Protection. He had applied for this ENP to repay a loan he had obtained from a friend to pay advance rent on a rental property.

Examination

The man did not meet the eligibility criteria for an ENP because ENPs are not paid where the need has already been met. The Department said that the initial need had been met through a loan the man had himself sourced. He was not in arrears at the time of his ENP application. Its view was that there were other sources available to him to arrange to repay the loan to his friend and he was informed of these alternative sources.

Outcome

The Ombudsman was satisfied that the Department had correctly considered the application in line with its guidelines on ENPs.

Student Universal Support Ireland (SUSI)

Higher Education Grants

E78/16/3865 OMB-06695-Y9X5N4

Completed 25/01/2018

Not Upheld

Background

A woman complained to the Ombudsman about her son's application to Student Universal Support Ireland (SUSI) for a student funding grant which was refused.

Examination

Following her son's departure from the army in August 2015, he commenced a third level course to further his education. He applied for a SUSI grant as a late applicant, having missed the application closing deadline. Under the legislation for the 2015 scheme - Section 34(1) states - 'Applications duly completed must be received by the awarding authority [SUSI] not later than 1 August 2015.' However, the legislation also provides for the consideration of late applications in cases where exceptional circumstances outside the control of the applicant arise.

In support of his late application the woman's son stated to SUSI that 'he had not thought of applying for a SUSI grant before' [the deadline]. This was not considered a satisfactory reason to accept his late application for funding.

Outcome

The applicant had also indicated that he could not complete SUSI's application form online. He considered that this was because of his status as a Recognition of Prior Experiential Learning (RPEL) student who did not have a primary qualification. SUSI stated that his status as a RPEL student would not have prevented him from completing his funding application if he had entered his details in the online application form before the closing date for applications.

Caranua

Application for Grant

O83/17/3347 OMB-09439-P3F6Z4

Completed 30/04/2018

Not Upheld

Background

A woman complained to the Ombudsman about the refusal by Caranua of her application for funding to get work done on her garden.

The woman said she was told over the phone to go ahead and get the work done and to send the invoice to Caranua. She did this but Caranua refused to fund the work.

Examination

The guidelines state that Caranua must approve all services and Caranua's notes on the application indicate that the woman said she would send in a quote for garden clearance.

While the woman said she was advised over the phone to get the work done and to send in the invoice, there was no evidence or supporting documentation to confirm this.

As there were two conflicting versions of events, and in the absence of evidence to the contrary, the Ombudsman could not come to a definitive conclusion on this point. He noted that Caranua acted in accordance with its guidelines in refusing the application on the basis that the work was completed before the application was approved.

Outcome

The Ombudsman was satisfied that Caranua's decision was reasonable and in accordance with its guidelines.

Dept. Business, Enterprise & Innovation

Work Permit

C44/17/2885 OMB-08191-D0P1K4

Completed 27/03/2018

Assistance Provided

Background

A man complained regarding the refusal of an employment permit for the role of a specialised chef by the Department of Business, Enterprise and Innovation (DBEI). It was refused on the basis that the man did not have the required qualifications and did not have an up-to-date tax clearance certificate.

Examination

The man contended that both of these requirements had been met and provided documents in support of this. The DBEI had another look at the permit application. It then agreed to carry out a further review of the application with the employer.

Outcome

The Ombudsman was satisfied that the DBEI had agreed to a further review of the case.

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

<https://www.ombudsman.ie/making-a-complaint/make-a-complaint/>

Contacting the Ombudsman

The Ombudsman's Office is located at 18 Lower Leeson Street in Dublin 2, D02 HE97.

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

Website: www.ombudsman.ie Email: info@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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