



Oifig an Ombudsman  
Office of the Ombudsman

Annual Report 2009

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Designed by: **catalyst**<sup>o</sup>



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**Annual Report 2009**

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## Report to both Houses of the Oireachtas

I hereby submit my seventh Annual Report to the Dáil and Seanad pursuant to the provisions of Section 6(7) of the Ombudsman Act 1980. This is the 26th Annual Report submitted in relation to the work of the Office of the Ombudsman since it was established in 1984.

A handwritten signature in black ink, reading "Emily O'Reilly". The signature is fluid and cursive, with a long horizontal stroke at the end.

**Emily O'Reilly**

Ombudsman

July 2010





We are all adapting to changed circumstances and my Office is no exception. This year we are moving to a primarily web-based report to cut costs in printing and posting and to deploy our staff resources more effectively.

“

## Chapter 01

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## Chapter I: Foreword and Introduction

### Special report to each House of the Oireachtas - Lost at Sea Scheme

While Annual Reports tend to focus on the year under review, nevertheless, some issues arise in one year that reverberate into the next and demand commentary. Such an issue was the Lost at Sea Scheme Report, which I published and submitted to each House of the Oireachtas in December, 2009. The Report followed from a decision of the Department of Agriculture, Fisheries and Food to reject my findings in an Investigation Report, together with my recommendation to pay financial compensation to a complainant.

When I consider that a public body's response to a recommendation made by me is unsatisfactory, then I may make a special report to each House of the Oireachtas under sections 6(5) and 6(7) of my governing legislation, the Ombudsman Act, 1980.

While the Department is free in law to reject my recommendations, this is only the second time in the twenty-five year history of the Office that this has happened. The previous episode – relating to a series of complaints against the Revenue Commissioners – was successfully resolved with the assistance and support of the Oireachtas.



Subsequent media coverage and commentary on the special report highlighted issues around the credibility and integrity of the institution of the Ombudsman and the relationship with the Houses of the Oireachtas. I was pleased to have the opportunity to present my case to the Joint Oireachtas Committee on Agriculture, Fisheries and Food, before which I appeared on 21 April, 2010. The full text of my statement to the Committee can be viewed on the Ombudsman website:

**<http://www.ombudsman.gov.ie/en/SpeechesandArticles/Ombudsmansspeeches/>**

At the time of writing, the Committee's deliberations were ongoing. I look forward to its report and recommendations in the matter.

## **The Ombudsman and Child Welfare and Protection services**

I have decided this year to include in my report a section (Chapter 2.9) on my specific role on Child Welfare and Protection services.

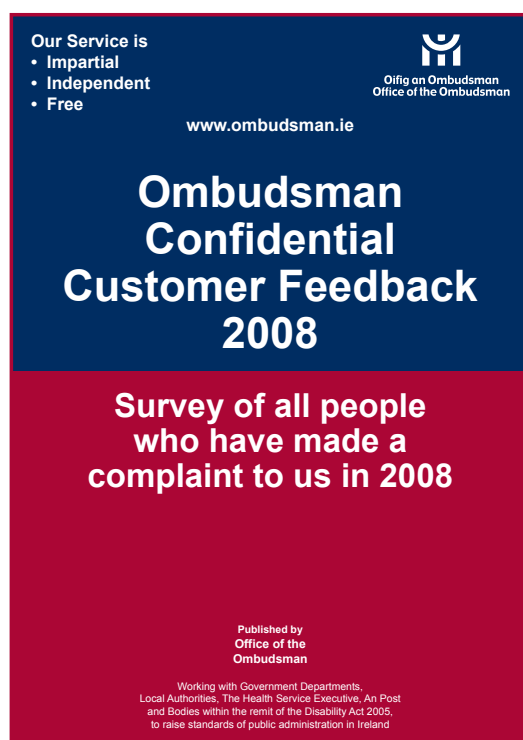
My Office receives a number of complaints each year from adults who feel they have suffered adverse affect arising from the actions of the Health Service Executive's (HSE) Child Welfare and Protection services. Under the Ombudsman Act, 1980 as amended, I as Ombudsman may investigate any action taken by or on behalf of certain public bodies, if it appears that the action has or may have adversely affected a person. Under the Ombudsman for Children Act, 2002, the Ombudsman for Children may investigate similar actions if it appears that the action has or may have adversely affected a child. Since the establishment of the Office of the Ombudsman for Children in 2004, complaints where the adverse affect is to the child, are clearly under the jurisdiction of that Office. Complaints where the adverse affect is to an adult, come under my jurisdiction. Where there is "overlapping" adverse affect to both the child and a parent, for example, both Offices work together under established procedure to ensure that the complaints are handled in the best interests of all concerned.

In the complaints I receive, the adult against whom an allegation of abuse has been made, generally recognises the HSE's duty to act in the best interests of the child. However, they can be unhappy with the manner in which they were treated in the process, the fairness of the investigation process and in some instances, the ongoing damage to their reputation by what they perceive to be an unfair process.

I selected four particular cases we dealt with, for inclusion in the section, to illustrate the role of my Office on Child Welfare and Protection services and I hope that they will prove informative and increase awareness about our role.

## Looking after community care home residents

In my last Annual Report I spoke for the first time about the global recession, the dramatically changed economic circumstances and individual complaints investigated which resulted in systemic change and benefited people other than my complainants. I spotlighted one particular complaint involving a community care home resident who had the weekly in-patient service charge of €96.60 for his wife reduced to nil. He also received a refund of €8,381 from the Health Service Executive (HSE). At my request, the HSE initiated a review of all their other persons who were similarly being assessed for in-patient charges for a spouse of an individual in receipt of a qualified adult payment. Initially, 14 similar cases were identified involving repayments of over €160,000. On completion of the review the HSE made refunds in total of some €407,000 to 81 families. This is a very good example where the resolution of a single complaint had a knock-on effect, which led to the betterment of other HSE clients without the need for them to make separate complaints. It also illustrates how an initiative or an issue highlighted in one year's report can command a follow-through in the next one.



## Looking after our customers

2009 saw the roll-out of a comprehensive customer feedback survey conducted by my Office of our 2008 complainants and new and more expansive quarterly surveying, which started for the first quarter of 2009 and continues to date.

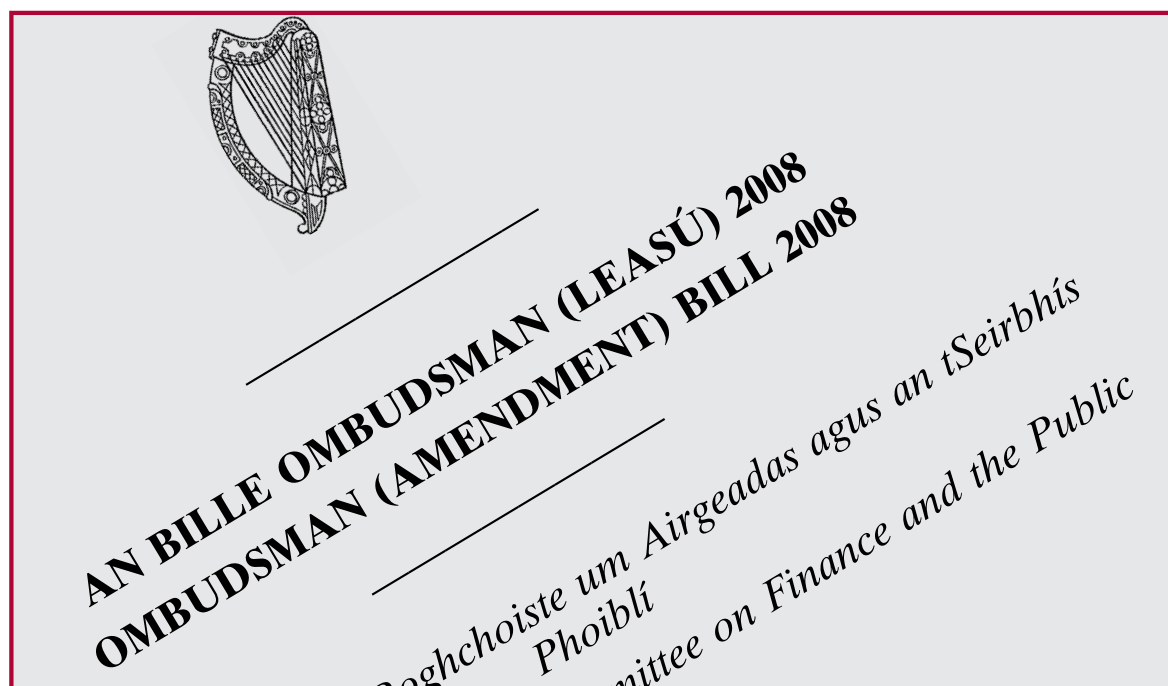
The surveys threw up some interesting results. While the full details are available on our website, I thought it would be informative if I mentioned some of the key findings:

- On satisfaction with the Ombudsman, the majority of complainants (66%) were satisfied with the handling of their complaint.
- Most (73%) said that they would use the services of the Ombudsman again if they ran into serious problems.
- Just 32% said that the public body which was the subject of their complaint had made them aware of their code of practice on complaint handling.
- The majority (59%) had spent more than 6 months trying to resolve their complaint with the public body before approaching the Ombudsman.
- Only 19% of the complainants were advised by public bodies that they had recourse to the Ombudsman, despite the fact that all public bodies under remit have been asked by my Office to do so.
- 35% of HSE complainants were given this advice, while just 16% of complainants to government departments and 8% of local authority complainants received advice.
- Complainants have a greater expectation that they would get their case concluded more quickly than is actually the case.
- 46% felt that the decision in their case had gone in their favour, 47% against and 7% felt the outcome was neutral.

The full executive summary of the survey results is available to read at **Chapter 3.3 Customer Feedback/Survey**.



## Ombudsman Amendment Bill



At the time of going to print the Ombudsman Amendment Bill is before the Houses of the Oireachtas. Subject to enactment, the Bill will bring some ninety-five additional public bodies under my Office's remit. This expansion of my Office's jurisdiction will pose considerable challenges in terms of preparing my staff to deal with a wide range of new public bodies and schemes, briefing the new public bodies on the role, functions and procedures of my Office, putting appropriate liaison arrangements in place and dealing with a greatly increased volume of complaints from members of the public. I will make every effort to ensure that my Office rises to this challenge and I will seek to maintain the quality and efficiency of our service during this period of increased demand and diminishing resources.

### Ombudsman's remit will not be extended

MARY MINIHAN

THE OMBUDSMAN'S remit will not be extended to cover the asylum process, according to Minister of State Martin Mansergh.

Last month Ombudsman Emily O'Reilly expressed frustration that she lacked the jurisdiction of her EU counterparts in the asylum area.

Irish Times, Thursday, March 26, 2009

**Requesting public bodies under remit to make a clear reference to the Office of the Ombudsman on their websites and to inform dissatisfied complainants who had completed their internal complaints procedures that they have a right of recourse to the Ombudsman.**

This initiative was all about informing people about their rights and, in particular, those who would have gone through a complaints procedure with the public body concerned and still felt aggrieved in some way. My Office asked public bodies to make a clear reference to the Office of the Ombudsman on their websites with correct contact information and to inform dissatisfied complainants who had completed their internal complaints procedures, that they have a right of recourse to my Office. My Office also provided to each body an information and contacts template to facilitate the exercise. While some public bodies already provided contact details for my Office, a significant number did not do so.

I undertook in my Report of 2008 to return to the matter in this year's report. But my update is not as positive as I expected. Despite follow-up contacts, both oral and written with the bodies, as I put the finishing touches to this foreword in May, 2010, a total of some 13 public bodies failed to accede to my request. A more detailed report is at **Chapter 3.5 - Website signposting**.

## **Saving money and the trees**

We are all adapting to changed circumstances and my Office is no exception. This year we are moving to a primarily web-based report to cut costs in printing and posting and to deploy our staff resources more effectively. Not only will this be cheaper, more efficient and accessible, it is, of course, more environmentally friendly and sustainable. We are doing this with no loss of quality while retaining the easy style and layout of last year's revamped Annual Report. For people who do not have access to the internet or downloading facilities, we will of course make copies of the report available free of charge, on request.

## **Planning Enforcement**

During 2009, an investigation was completed by my Office into a complaint against Meath County Council about unauthorised developments. Enforcement of planning laws by local authorities is critical to ensure that people are not allowed to flout planning laws and that the rights of their neighbours are protected and upheld by their local authority. Later this year I intend to publish a full report of the investigation into this particular case, which disclosed systemic issues on planning enforcement.

## **Ombudsman Staff**

My best wishes to Michael Bell, Clerical Officer and Maureen Behan, Senior Investigator, who retired during the year under review.

Michael came to the Office in 2002 and retired in April.

Maureen, who retired in September, worked for exactly 25 years for the Office of the Ombudsman and gave long and dedicated service as one of my senior staff.

We wish them both well in their retirement and thank them on behalf of all the complainants they assisted.

A complete listing of all current Ombudsman staff is available at:  
<http://www.ombudsman.gov.ie/en/AboutUs/OfficeoftheOmbudsman-Staff/>

## **Investigating Complaints / Helping People / Improving Standards of Public Service**

The work of the Ombudsman centres on investigating individual complaints fairly and impartially, helping people and raising standards of public service. Following are summarised examples of cases completed in 2009, illustrating the type of complaints we deal with and the outcomes achieved.

### **Social Services and Public Healthcare Cases - Chapter 4**

#### **Cases related to the Department of Social and Family Affairs - Chapter 4.1**

**Delay by General Register Office in amending child's birth certificate to include natural father's name.**

See chapter 4 - case 4.1.1

**Department of Social and Family Affairs makes an ex-gratia payment of €2,500 to a separated man.**

See chapter 4 - case 4.1.2

**A mother, working full-time and caring for her son on a full-time basis, loses out on a respite care grant.**

See chapter 4 - case 4.1.3



**Decision not to grant State Pension (Contributory) reversed and arrears of €30,420 paid.**

See chapter 4 - case 4.1.4

**Widower gets €35,530 backpayment of pension arrears.**

See chapter 4 - case 4.1.5

**Carer's Benefit refusal decision reversed and arrears of €12,000 paid by Department.**

See chapter 4 - case 4.1.6

#### **Cases related to the Health Service Executive (HSE) - Chapter 4.2**

**Decision not to grant a Domiciliary Care Allowance and Carer's Allowance for a child with sickle cell disease reversed. Arrears of almost €18,000 paid.**

See chapter 4 - case 4.2.1

**Woman suffering from eating disorder gets decision by HSE not to fund in full her treatment costs reversed.**

See chapter 4 - case 4.2.2

**Maternity care at Waterford hospital neglectful - Woman given apology, counselling and ex-gratia payment of €1,000.**

See chapter 4 - case 4.2.3

**Wife complains about standard of care and treatment of her terminally ill husband in Tullamore hospital. Hospital addresses systemic failures.**

See chapter 4 - case 4.2.4

**Poor treatment of respite care patient at Wexford hospital. Stayed in bed, as no suitable seating available and arrived home badly bruised.**

See chapter 4 - case 4.2.5

**Daughter's complaint about the treatment of her cancer patient father – hospital apologises and introduces new procedures.**

See chapter 4 - case 4.2.6

**Major deficiencies in psychiatric hospital conditions.**

See chapter 4 - case 4.2.7

## **Local Authorities; Department of the Environment, Heritage and Local Government Cases - Chapter 5**

**Public servant caught in stalled decentralisation process. Must pay €200 annual charge for owners of non-principal private residences – anomaly highlighted.**

See chapter 5 - case 5.1

**€3,000 paid by Council for incorrect registration of house with Land Registry.**

See chapter 5 - case 5.2

**Tenancy offer to woman by Galway County Council withdrawn due to alleged anti-social behaviour – Ombudsman investigation results in new tenancy offer.**

See chapter 5 - case 5.3

## **Civil Service Cases - Chapter 6**

**Ombudsman Co-operation on complaints against North-South Implementation bodies.**

See chapter 6 - case 6.1

**Unfair income tax deduction rule for tenants of non-resident landlords. Highlighted first in 1998.**

See chapter 6 - case 6.2



In 2009 my Office received 2,873 valid complaints and 9,913 enquiries. Once again, the 2009 figures represent the highest level of complaints recorded since 1998.



## Chapter 02



## Chapter 2: The Ombudsman's Business Review of 2009

### 2.1 Complaints Management

**In 2009 my Office received 2,873 valid complaints and 9,913 enquiries.**

This represents a modest rise of 3% in the number of valid complaints and a 4.4% rise in enquiries, when compared to 2008. In my 2008 Annual Report I commented on the record level of complaints to my Office during that year. Once again, the 2009 figures represent the highest level of complaints recorded since 1998. My Office also continues to receive a significant number of invalid complaints, that is, complaints that are outside of my jurisdiction. However, unlike the growth patterns of previous years, the numbers within this category have fallen by 6.5% in 2009. We do, of course, offer guidance to people whose complaints are not within my jurisdiction and where possible, my staff will suggest other appropriate mediation services. Further details on complaints can be found at Annex A - Statistics.

## Watchdog critical of civil servants over disability law

**by Sean McCárthaigh**

THE Ombudsman Emily O'Reilly has expressed concern that large numbers of civil servants are ignorant of their statutory obligations towards people with disabilities.

Irish Examiner, Thursday, July 2, 2009

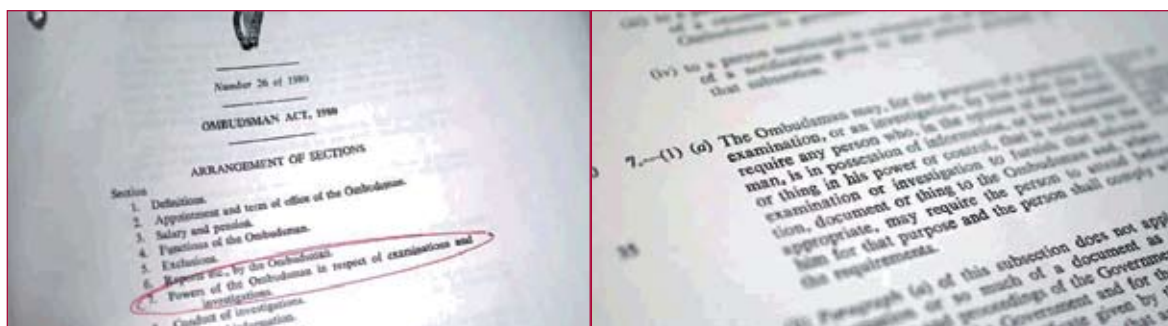
Taking into account all valid complaints received in 2009, the percentage pattern of complaints against individual public bodies is as follows:

**Civil Service** - accounted for 41.9%, **up 2.8%** on 2008,  
**Local Authorities** - accounted for 30%, **down 0.1%** on 2008,  
**HSE** - accounted for 26.3%, **down 1.2%** on 2008,  
**An Post** - accounted for 1.6%, **down 1.7%** on 2008.

The number of complaints received under the Disability Act, 2005 was six, disappointingly, the same number as in 2008 and representing just 0.2% of all complaints received by my Office in 2009.

The total number of cases completed in 2009 was 2,784, compared to 2,701 cases completed in 2008 - an increase of 3%. Progress on achieving case targets is rigorously monitored on a monthly basis by the internal office Management Advisory Committee. Individual sectoral areas and staff members have their targets under performance management plans closely reviewed on an ongoing basis. The rate of increase in complaints made to my Office in 2009 is lower in percentage terms than in 2008. Nevertheless, I am pleased to have increased the number of case completions once again and at this point I would like to acknowledge the tremendous effort made by my staff during 2009. I would also like to thank my staff for their continued dedicated commitment to the work of the Office and our objective of maintaining a high-quality, impartial, independent and free service to members of the public.

## 2.2 Notices issued to public bodies under Section 7 of the Ombudsman Act, 1980 - demanding information



Under Section 7 (1) (a) of the Ombudsman Act, 1980, I am empowered to request information from a person or body, which in my opinion is relevant to an examination or investigation. Consequently, during the course of the year, my



Office may issue a Section 7 notice seeking the required information, in a case where there has been a delay in responding to such a request. The annual pattern of such notices over a ten-year period is as follows:

Year	Number issued
2009	8
2008	7
2007	18
2006	18
2005	31
2004	6
2003	12
2002	16
2001	19
2000	14

I am pleased to note the relatively small number of Section 7 notices issued in 2009, as compared with previous years. Hopefully, this reflects the increasing climate of co-operation and trust between my Office and the public bodies within my remit. In particular, I welcome the significant decrease in issuance of Section 7 notices to Local Authorities, over the past few years. For example, in 2005, 22 Section 7 notices were issued to various City and County Councils, whereas in 2009, only one was issued.

The following is a listing of the eight Section 7 notices issued in 2009 and the timelines involved for each notice.

### **Three Section 7 notices were issued to Waterford (HSE South) in 2009.**

#### **I. Waterford (HSE South)**

- Report requested on 18th October - Correspondence not acknowledged.
- First reminder issued on 27th October - Correspondence not acknowledged.
- Final reminder issued on 9th November - Correspondence not acknowledged.
- Section 7 notice issued on 1st December.
- Report received on 17th December.

## **2. Waterford (HSE South)**

- Report requested on 8th October - Correspondence not acknowledged.
- First reminder issued on 27th October - Correspondence not acknowledged.
- Final reminder issued on 9th November - Correspondence not acknowledged.
- Section 7 notice issued on 18th November - Correspondence acknowledged on 20th November.
- Report received on 26th November.

## **3. Waterford (HSE South)**

- Report requested on 21st October - Correspondence not acknowledged.
- First reminder issued on 9th November - Correspondence not acknowledged.
- Final reminder issued on 18th November - Correspondence not acknowledged.
- Section 7 notice issued on 1st December.
- Report received on 15th December.

## **One Section 7 notice was issued to Dublin South City (HSE Dublin Mid-Leinster) in 2009.**

- Report requested on the 1st September - Correspondence acknowledged on 9th September.
- First reminder issued on the 28th September - Correspondence not acknowledged.
- Final reminder issued on 7th October - Correspondence acknowledged on 20th October.
- Section 7 Notice issued on 27th October - Correspondence not acknowledged.
- Report received on 4th November.

## **One Section 7 notice was issued to Donegal (HSE West) in 2009.**

- Report requested on 4th August - Correspondence acknowledged on 12th August.
- First telephone reminder on 2nd September.
- Second telephone reminder on 4th September.
- Third telephone reminder on 10th September.
- Fourth telephone reminder on 16th September.
- Section 7 notice issued on 17th September - Notice acknowledged on 30th September.
- Report received, dated 12th October.

**One Section 7 notice was issued to the HSE (Health Repayment Scheme) in 2009.**

- Report requested on 24th March - Correspondence acknowledged 30th March.
- Reminder issued on 2nd April.
- Telephone reminder on 21st April - Acknowledged on 22nd April.
- Section 7 notice issued on 27th April.
- Report received on 29th April.

**One Section 7 notice was issued to Meath (HSE Dublin North East) in 2009.**

- Report requested on the 1st September, 2008 - Correspondence acknowledged on 9th September.
- First reminder issued on the 28th September, 2008 - Correspondence not acknowledged.
- Final reminder issued on 7th October, 2008 - Correspondence acknowledged on 20th October.
- Section 7 Notice issued on 28th January - Notice acknowledged and extension requested on 30th January.
- Extension granted until 16th February.
- Report received on 9th February.

**One Section 7 notice was issued to Cork County Council in 2009.**

- Report requested on 10th February - No acknowledgement received.
- First reminder issued on 31st March - Acknowledgement received on 1st April.
- Final reminder issued on 5th May - No acknowledgement received.
- Extension requested by Council on 21st May - Extension refused.
- Section 7 notice issued on 21st May.
- Report received on 4th June.



## **2.3 Ombudsman Meetings with dignitaries, officials, etc**

Meeting with His Excellency, Mr. Ato Abay Tekle, Chief of the Institution of the Ombudsman of Ethiopia - 19th January.

Reception hosted by President Mary McAleese in Áras an Uachtaráin, to mark the twenty-fifth anniversary of the Office of the Ombudsman - 22nd January.

Meeting with His Excellency, Mr. Anas Khaled, Ambassador of the Kingdom of Morocco - 12th March.

Meeting with President Mary McAleese in Áras an Uachtaráin to receive a warrant of appointment as Ombudsman and Information Commissioner for a second term of six years - 25th June.

Meeting with a Swedish delegation from the Parliamentary Ombudsman Institution - 10th September.

## **2.4 Conferences at home and abroad**

The Ombudsman addressed the Irish Primary Principals Network Conference - 31st January, in Killarney.

The Ombudsman addressed the launch of the Women's Health Council report, "Translating Pain into Action" - 24th February, at the Royal Irish Academy.

The Ombudsman addressed the International Women's day Conference – 4th March, in Trinity College, Dublin.

The Ombudsman addressed the Irish Hospice Foundation Conference on 'End of Life' - 11th March, in Harold's Cross, Dublin.

The Ombudsman attended the 7th Seminar of the National Ombudsmen of EU Member States - 6-8th April, in Cyprus.

The Ombudsman addressed the University of Limerick, 'Having a Voice' Conference - 29th May, in Limerick.

The Ombudsman addressed the Sisters of Mercy Conference, 'Justice and the Downturn' - 30th June, in Dublin Castle.

The Ombudsman addressed a conference marking the 10th Anniversary of the Office of the Ombudsman in Gibraltar - 1-2nd October, in Gibraltar.

The Ombudsman addressed the Nursing Home Ireland Annual Conference, 'Rights and Entitlements of Older People' - 22nd October, in Dublin.

The Ombudsman addressed the Mayo Advocacy Service Conference - 19th November, in Westport.



### **Westport Conference on Independent Advocacy.**

**Left to right back:** Cllr. Myles Staunton, Cathaoirleach, Westport Town Council; Linda Gilroy, Area Executive, Citizens Information Board (CIB); Dr. Michael Reynolds, Chairperson, Advocacy Project Steering Group; Pat Coffey, Access Officer, Dún Laoighaire-Rathdown County Council; Declan Turnbull, Chairperson Mayo CIS; Tomás Lally, Manager, Mayo Citizens Information Service (CIS); Dr. Mark Garavan, Senior Lecturer GMIT; Marty Kerrane, Regional Manager CIB; Andrew Fagan, Inspector Manager HIQA.

**Front:** Donal Toolan, Conference Chairperson; Clare O'Neill, Disability Advocacy Officer Mayo CIS; Michael Corbett, Support Officer Disability Federation of Ireland; Emily O'Reilly, Ombudsman; Eileen Fitzgerald, Senior Manager, CIB.

The Ombudsman gave an address at the International Symposium, held to mark the 15th Anniversary of the Walloon Region's Ombudsman - 23-25th November, in Namur, Belgium.

The Ombudsman attended and gave an address marking the 40th Anniversary of the Northern Ireland Ombudsman Office - 25th November in Belfast, Northern Ireland.

## **2.5 British and Irish Ombudsman Association (BIOA) meetings**

In 2009, the Ombudsman attended the following executive meetings of the BIOA. The Ombudsman was appointed Chair of the BIOA in 2008 for a term of two years.

19th February	Executive meeting, Dublin
16th April	Executive meeting, Dublin
7-8th May	BIOA Annual Conference, Warwick, England
25th September	Executive meeting, Dublin
17th November	Seminar, Dublin
3rd December	Executive meeting, London, England

## **2.6 Public Sector Ombudsmen (PSO) Network Meetings - A network of Public Sector Ombudsmen from Ireland and the United Kingdom.**

In 2009, the Ombudsman attended the following meetings of the PSO:

5-6th March	Public Sector Ombudsmen meeting, London, England
6th November	Public Sector Ombudsmen meeting, London, England

## **2.7 Health Ombudsmen Meetings - A network of Health Service Ombudsmen and senior officials from Ireland and the United Kingdom.**

27th March, in Belfast, Northern Ireland

17th September, in Manchester, England

### **Other statutory functions of the Ombudsman**

Throughout the year the Ombudsman also attend meetings in her role as an ex officio member of the following bodies:

- Standards in Public Office Commission,
- Commission for Public Service Appointments, and
- Referendum Commission.

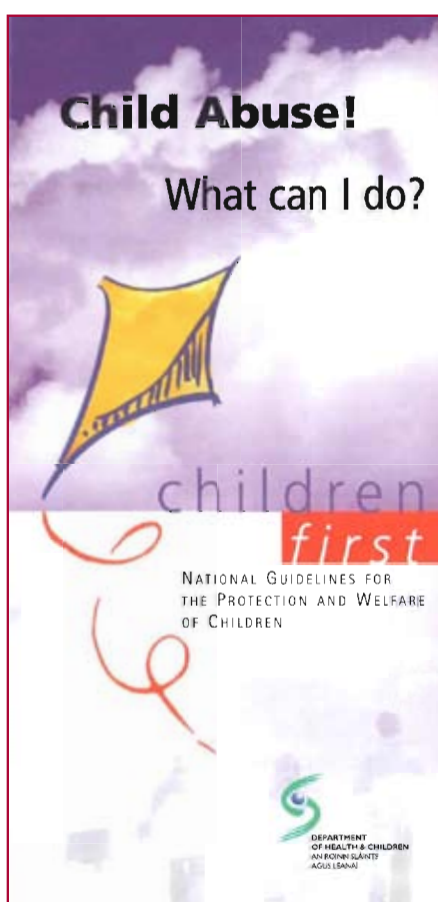
## **2.8 Equality**

The Office's Equality Committee reports to the Management Advisory Committee twice yearly on its activities in relation to:

- (I) Monitoring equality in the workplace,
- (II) Identifying and addressing equality issues arising under the provisions of the Equality Act 1998, which precludes discrimination with respect to all aspects of recruitment, selection and employment on the basis of the nine grounds,
  - gender                      • age                      • religion
  - marital status      • disability      • sexual orientation
  - family status      • race              • membership of the traveller community.
- (III) Promoting positive actions,
- (IV) Conducting awareness days,
- (V) Building an ethos of equality in the workplace, and
- (VI) Promoting the commitment of all management and employees to equality generally.

## 2.9 Issues arising from individual complaints - The Ombudsman and Child Welfare and Protection services

My Office receives a number of complaints each year from adults who feel they have suffered adverse affect arising from the actions of the Health Service Executive's (HSE) Child Welfare and Protection service. Under the Ombudsman Act, 1980 (as amended), the Ombudsman may investigate any action taken by, or on behalf of, certain public bodies, if it appears that the action has, or may have, adversely affected a person. Under the Ombudsman for Children Act, 2002, the Ombudsman for Children may investigate similar actions if it appears that the action has, or may have, adversely affected a child. Since the establishment of the Office of the Ombudsman for Children in 2004, complaints, where the adverse affect is to the child, are clearly under the jurisdiction of that Office. Complaints, where the adverse affect is to an adult, come under my jurisdiction. Where there is "overlapping" adverse affect to both the child and a parent, for example, both Offices may work together under established procedure to ensure that the complaints are handled in the best interests of all concerned.



The HSE has statutory responsibility for the protection of children. The HSE is also required by the Department of Health and Children to implement “Children First: National Guidelines for the Protection and Welfare of Children”. The HSE’s responsibility is an onerous one and it must take all reports of child abuse very seriously. I note the recent Investigation by the Ombudsman for Children into implementation of these Guidelines and her findings that while substantial efforts have been made in recent times, substantial evidence of unsound administration persists.

The process of examining whether abuse has taken place is undoubtedly difficult for all concerned.

### The “Children First” Guidelines state:

“The welfare of children is of paramount importance. A proper balance must be struck between protecting children and respecting the rights and needs of parents/carers and families. Where there is conflict, the child’s welfare must come first”.

I receive complaints from adults every year, however, who feel that an appropriate balance has not been struck between protecting children and respecting the rights of parents/carers and families. This is particularly the case where the allegations of abuse may be unfounded or indeed malicious.

I am clear that when I am asked to examine HSE actions in investigating allegations of child abuse, my Office examines each case with respect to the above principle from “Children First”. I expect that when child protection concerns are being examined, the HSE must, first and foremost, protect the child. But the HSE must also follow fair procedure and demonstrate due respect for the parents or other adults (such as teachers) involved in the process.

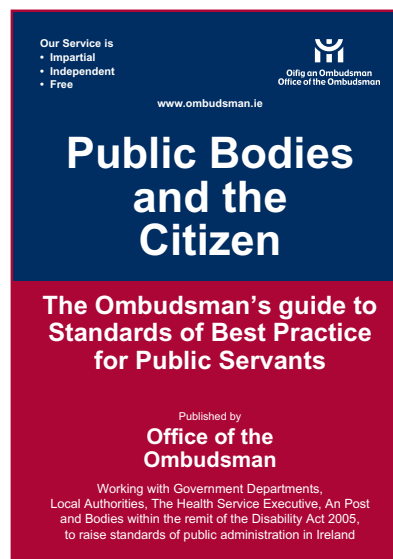
In the complaints I receive, the adult against whom an allegation of abuse has been made, generally recognises the HSE’s duty to act in the best interests of the child. But they may be unhappy with the manner in which they were treated in the process, the fairness of the investigation process and in some instances, the ongoing damage to their reputation by what they perceive to be an unfair process.

The Ombudsman’s Guide to “Standards of Best Practice for Public Servants”, published by my predecessor in 2003, is relevant in this area. Adults, against whom allegations of child abuse are made, can generally expect to be dealt with properly, fairly and impartially by the HSE. This should not in any way compromise the safety or well-being of a child or children, and each case must be considered separately, but generally, robust and fair procedures for dealing with adults can only strengthen the process and ultimately provide greater protection for all children.

My Office’s guide clarifies the meaning of “properly, fairly and impartially”.

“Properly” means being dealt with promptly, correctly, sensitively and carefully.

“Fairly” means treating people in similar circumstances in a like manner, having an internal review system so that adverse decisions can be looked at again and reviewed by someone not involved in the first decision; informing people of their rights, co-operating fully in any review and being open to proposals for redress if the public body had acted improperly in the first



place; adopting a policy for dealing with the small number of people who act in a vexatious manner or in bad faith, which strikes a balance between the interests of the public body, its staff and the child/person concerned.

“Impartially” means making decisions based on what is relevant and ignoring what is irrelevant; being careful that one's prejudices are not factors in a decision; declining any involvement with a decision where one has a conflict of interests, or a potential conflict of interests.

Following are some cases my Office dealt with in 2009, which serve to illustrate my Office's role in the area of Child Welfare and Protection services:

#### **Case 1**

##### **Complaint about the way the HSE handled a man's complaint against social workers.**

A County Waterford man approached my Office about the way in which the HSE handled a complaint from him against named social workers who had been dealing with him and his children. In particular, he was unhappy with the length of time it took the HSE to review his complaint. He also expressed concerns about the independence and thoroughness of the HSE review.

I wrote to the HSE for a report. My examination identified that when this man had approached the HSE in the first instance, the statutory complaint process under the Health Act, 2004 had not been in place. However, as his complaint had progressed, the statutory complaint process had been introduced. Following discussion, the HSE agreed to raise awareness among child welfare and protection staff about the rights of people using these services to make a complaint, and if necessary, to seek an independent review under the statutory complaints process.

The outcome in this case was significant in seeking to ensure fair procedures in the future and consistency across the HSE. While the complainant himself unfortunately suffered adverse affect, his complaint led to systemic improvements and has already assisted other complainants.



## **Case 2**

### **Complaint by grandfather fostering his three grandchildren, about the poor handover of case arrangement responsibilities between HSE Regions.**

A man approached my Office in relation to the care arrangements for his grandchildren. He has been fostering his three grandchildren since December, 2006. Following the formal transfer of the care from one HSE geographical area to another, difficulties arose in relation to the care arrangements. In particular, no social worker was assigned to the case. The children's medical cards (with which they are provided while in foster care), were also withdrawn and no foster care allowance was paid for several weeks.

My Office contacted the HSE and within a short period of time a social worker was assigned to the case. The foster care allowance and medical cards were also restored in full.

The HSE acknowledged its unsatisfactory handling of this case. I pointed out that its ability to take responsibility for the case was severely affected by staff shortages, referral rates and the existence of a large waiting list for the social work service. The HSE has now put in place agreed procedures for the transfer of such cases in the future (subject to the availability of staff).

## **Case 3**

### **Complaint by mother about the HSE handling of unfounded child abuse complaints against her.**

The complainant's husband and two of his colleagues made complaints to the HSE about the complainant, expressing concern that she might have been physically abusing her two children. The complainant was at this time going through an acrimonious separation and her two children were ill, requiring regular and intensive medical attention. The HSE fully investigated the complaints in considerable detail and found them to be unfounded.

The complainant maintained that:

- It was unnecessary for the HSE to have investigated the complaint in such depth, as this put her under further stress at a difficult time in her life and that of her children.
- The complaints against her were malicious, that the HSE should have recognised this and ended its enquiry early on.



- As her children were under regular general practitioner and hospital care, it could have been established immediately if the children were being physically abused.
- The HSE investigated the allegations in such depth only because of pressure being brought to bear by third parties known to her husband.

The complainant made a complaint herself to the HSE which was investigated by the HSE and then by an independent reviewer. She was unhappy with the findings and complained to me. My Office examined her complaint and obtained all HSE documentation, including those of the independent review officer. We established that the HSE had complied with its guidelines and protocols, which at the time dictated that once a complaint entered the HSE child protection system, it had to go through the entire process. Although the complainant perceived this as unfair and inappropriate, my Office established that the HSE did this in response to published guidelines. My Office found no evidence that the HSE's actions were influenced by the identities of those who made the complaints.

My Office met with senior officials from the Office of the Minister for Children who were at the time revising the 'Children First National Guidelines for the Protection and Welfare of Children'. They raised the issue of a protracted and arduous process, when early evidence was provided indicating that the allegation was unfounded. They also raised the issue of the duty of the HSE to report people who have made a malicious complaint to An Garda Síochána and the responsibility of the HSE to revert to the Gardai when a complaint had been fully investigated and an outcome reached. In this case the allegation was established as unfounded and although the Gardai had previously been notified of the allegations, they were only notified of the unfounded outcome when my Office requested the HSE to do so.

#### **Case 4**

**Complaint by a Midlands crèche that HSE had failed to communicate to it that a complaint against the crèche centring on child protection issues, after examination, was deemed not to stand up.**

Allegations were made about a crèche in the Midlands in April, 2006 which had to be investigated by the Social Work Department of the HSE. These allegations had been forwarded to the department by the Pre-School Services Section of the HSE, which inspected the crèche on a regular basis.

The Social Work Department examined the allegations and found that there was no child protection issue and that an investigation was not warranted. However, it

failed to contact the crèche to advise it of this outcome and the staff at the crèche had encountered difficulty in establishing what was the position. The complainant had to write to the department through her solicitor in order to obtain a response outlining the position with regard to the status of the allegations.

The HSE's response to the complainant in December, 2007 indicated that the allegations did not warrant any form of investigation. However, the complainant was unhappy that the HSE had not advised her of this sooner and claimed that she was denied access to natural justice. The complainant asked me to ensure that the HSE had proper procedures in place when dealing with such complaints in the future.

Following contact from my Office, the HSE - Dublin Mid-Leinster completed a review of its pre-school services guidelines to include a provision whereby the HSE Social Work Department will inform the service provider directly where a referral has been deemed not to warrant a child protection assessment. It apologised for the lack of communication with the crèche which caused uncertainty and stress for the staff involved.

My Office subsequently contacted the HSE's 'National Specialist Children and Family Services' with a view to having these revised guidelines implemented nationwide. Assurances were given by the HSE that this would happen.


## Conclusion

The HSE must always act in the best interests of the child but it must also seek to strike a proper balance between protecting children and respecting the rights and needs of parents/carers and families. I acknowledge that sometimes achieving this balance is difficult. Nonetheless, systems and processes must be put in place to ensure that it is made easier. Some of the cases I detailed above resulted in individual redress for the particular complainant, but all of these cases resulted in systemic change that will hopefully prevent other people from experiencing the same adverse affect in the future. As well as the many positive changes outlined above, I would also like to welcome several other developments, which will hopefully reduce the number of related complaints to my Office.


I am pleased that the Children First Guidelines have been revised and improvements made to the processes for protecting children. It is a welcome development that these guidelines are soon to be placed on a statutory footing as a result of the Report of the Commission to Inquire into Child Abuse, 2009 (Ryan Report). It is notable that the HSE has appointed a single person at national level with responsibility for Children and Family Services and I feel this will assist

in ensuring higher standards and consistency of approach for Child Welfare and Protection services across the country. I am also pleased that the Consumer Affairs Directorate of the HSE, in liaison with the HSE's child and family services, has clarified the rights of people adversely affected by any child welfare or protection process, to make a complaint under the Health Act, 2004. I look forward to further education of staff in this regard in 2010.

I hope that these developments will provide a safer country for our children. At the same time, I also hope that a proper balance is achieved in ensuring that adults are treated fairly in any child protection investigations.



Our Outreach Programme brings our service to the heart of local communities and to people with problems about public bodies who may not have made use of the Ombudsman in the past.



## Chapter 03



## Chapter 3: Communications and Research

### 3.1 Investigation Reports and Media Releases

27th January - The Ombudsman issued a media release marking the 25th anniversary of the Office of the Ombudsman.

29th January - The Ombudsman issued a media release on the occasion of the death of the Honourable Mr. Justice Kevin Haugh, RIP, then Chairman of the Garda Síochána Ombudsman Commission.

1st July - The Ombudsman published and submitted her Annual Report 2008 to each House of the Oireachtas. The Ombudsman also issued a media release and held a press conference, following the publication of her Annual Report.

13th July - The Ombudsman published and submitted a report to each House of the Oireachtas on Local Authority charges for photocopying planning documents. The Ombudsman also issued a media release following the submission of the report.

22nd September - The Ombudsman published four Reports into complaints which she successfully settled. The Reports were published on the website. The Ombudsman also issued a media release to mark the publication.

### **Council defends “excessive” fees**

**by Peter Kelly**

THE INCLUSION of Kildare County Council on a list of local authority which charges “excessive” fees for photocopying planning files has been dismissed by the local authority.

Liffey Champion, Saturday, July 18, 2009

14th December - The Ombudsman published and submitted a Special Report to each House of the Oireachtas - Lost at Sea Report - following the decision of the Department of Agriculture, Fisheries and Food to reject her findings in an investigation report, together with her recommendations to pay financial compensation to a complainant. The Ombudsman also issued a media release following submission of the Special Report to each House of the Oireachtas.

**For Media releases:**

<http://www.ombudsman.gov.ie/en/PressReleases/>

**For Investigation Reports:**

<http://www.ombudsman.gov.ie/en/Publications/InvestigationReports/>

### **3.2 Outreach - Visits to Citizens Information Centres (CICs), regional visits, and other outreach events undertaken in 2009**

Throughout 2009, staff from my Office continued with the monthly visits to CICs in Cork, Galway and Limerick. Staff also visited Sligo and Athlone, as part of the Office Regional Visit programme. In addition, the Office was represented at the annual Cork Adult Education and Learning Exhibition and the 'Senior Times Over 50's Shows' in Dublin, Cork and Limerick.

#### **Citizens Information Centres**

In previous Annual Reports, my predecessors and I have commented on the monthly programme of visits my staff make to CICs. These one-day visits to the Offices in Cork, Galway and Limerick are an integral part of my Office's annual Outreach Programme. Once again, therefore, I would like to take this opportunity to note the generous and professional support offered to my staff by the managers, staff and volunteers at the CICs in Cork, Galway and Limerick.

#### **Cork CIC**

A total of 58 valid complaints were received through the CIC in 2009. This represents 16% of all new complaints received from Cork City and County in 2009.

#### **Galway CIC**

A total of 45 valid complaints were received through the CIC in 2009. This represents 31% of all new complaints received from Galway City and County in 2009.



### **Limerick CIC**

A total of 98 valid complaints were received through the CIC in 2009. This represents 55% of all new complaints received from Limerick City and County in 2009.

### **Regional Visits**

Each year my Office organises regional visits to major cities or towns which had not recently benefited from a visit under our outreach programme. In 2009 staff from my Office visited Athlone and Sligo. In preparation for these visits, my Office identified hotels which provided suitable facilities to interview visitors as well as fully accessible facilities for persons with differing mobility and other access requirements. Disappointingly, both town visits resulted in low levels of interviews, inquiries and complainants. This was despite a publicity campaign which involved placing advertisements and publicising the visits on local radio and in newspapers; a poster campaign in local libraries and churches and advertising on the Ombudsman website. Feedback from some visitors suggests that new hotels which are accessible, and therefore most suited to the needs of our complainants, might not be well known to some local and/or rural residents, if the hotel was recently built. I am grateful to visitors who offered feedback to my staff which will inform policy directions on the future organisation and management of the Outreach Programme. The visits bring our service to the heart of local communities and to people with problems about public bodies who may not have made use of the Ombudsman in the past.

### **Ombudsman Regional Visits in 2009**

#### **Sligo – 9th September**

A total of 29 complaints were received, 26 of which were valid new complaints. This represents 60% of all new complaints received from the County Sligo area in 2009.

#### **Athlone – 23rd September**

A total of seven complaints were received, six of which were valid new complaints. This represents 14% of all new complaints received from the County Westmeath area in 2009.

### **CIC and Regional Visit Review**

In 2009, I decided to initiate a review of our outreach programme to maximise the use of our resources and ensure value for money. The aim is to maximise the effectiveness of the programme in bringing our service to the people and ensuring that it is as effective, efficient and accessible as possible. I will comment further on the results of the review in my Annual Report 2010.

### **Adult Education and Learning Exhibition 2009**

Every year, in early Autumn, staff from my office commit to participate for three days at the Adult Education and Learning Exhibition in Cork City. This very successful and well-attended event is organised by the Cork Adult Education Council, which is a voluntary body and the only one of its kind in the country. The exhibition brings together a variety of voluntary groups, colleges and organisations from the private sector, which offer adult learning of different kinds. Ombudsman staff maintain an exhibition stand at the event and are available to offer advice and assistance on the services of the Office to interested members of the public.

### **Senior Times Over 50's Shows**

In 2009, staff from my Office participated as an exhibitor at the Senior Times Over 50's Shows in Cork (16 & 17 May), Limerick (12 & 13 September) and Dublin (16-18 October). The shows are lifestyle events for older people and provided an opportunity to reach out to that segment of the population with information about the Office and our service.

### **In appreciation**

I would like to thank my staff for their participation in our outreach programmes during 2009 and also for the courteous, disciplined and professional manner in which they represent the Office of the Ombudsman at these and many other events each year.

“

“Thank you for your response. Since we registered the complaint we received a legal notification, so I felt I had no option but to pay the charges in question, as the account is in my wife's name and for health reasons she would be unable to make a court appearance. However a few days ago, the local authority refunded the amount for the disputed period in question. I would like to thank you for your time and I consider the matter to be fully resolved.”

A Complainant

”

“

“Thank you for a very comprehensive reply, it is very much appreciated. I understand the position.”

A Complainant

”



“

“Mr.Y said that he appreciates that we have opened the doors again for him with the Council and thanked us for our help, stating that he couldn't get anywhere for a year.”

”

“

“For over a year I had written and written and written (all letters by registered post or recorded post) to [the Council]. All my letters were ignored (not even acknowledged). I sent my file to my solicitor and he advised me that equally, letters from him would also be ignored. He advised me to contact the Ombudsman... as he felt the only way [the Council] would respond would be if they were contacted by your Office. ....I sent my file to your office and lo and behold, I got a response in turn. I got a response from [the Council]. I felt outraged at the manner in which [the Council] treated me. However, I found the service I received from your Office to be 100% in every respect. The personnel dealing with my case really understood my position. Your Office followed through and kept me fully up-dated at all times.”

A Complainant

”

“

“Thank you so much for dealing with my complaint. I received the cheque, and I received an apology letter from the Revenue. Thank you again, I really appreciate your helpfulness.”

A Complainant

”

“

“I would like to thank you and your colleagues for the positive outcome of your investigation.”

A Complainant

”

### 3.3 Customer feedback/survey

#### Summary

This report presents the findings from a customer survey conducted by the Office of the Ombudsman during 2008. Overall 742 complainants participated in the survey. Analysis of the survey data and reporting was conducted independently by Social Market Research ([www.socialmarketresearch.co.uk](http://www.socialmarketresearch.co.uk)).

#### Satisfaction with the Ombudsman

The majority of all complainants (66%) were satisfied with the Ombudsman's handling of their complaint. However, satisfaction is correlated with outcome of complaint, with 36% of those who felt the decision in their case had gone against them satisfied, compared with 97% of all other complainants.

Most (73%) complainants said they would use the services of the Ombudsman again if they ran into similar problems.

#### Complainants and Public Bodies

Only a minority (32%) of complainants said that the public body which was the subject of their complaint had made them aware of their Code of Practice on complaint handling;

The majority (59%) of complainants had spent more than six months trying to resolve their complaint with the public body before approaching the Ombudsman;

Being advised by public bodies that they could refer their complaint to the Office of the Ombudsman was the experience of only 19% of complainants, with this less likely to be the experience of local authority (8%) and government department (16%) complainants, compared with HSE complainants (35%).

#### Contact with the Ombudsman's Office

71% of complainants waited until the public body concerned had made their decision before first contacting the Office of the Ombudsman;

Promotional activity (e.g. advertising, website etc) by the Office of the Ombudsman accounted for 45% of respondent awareness of the organisation, with friends, colleagues and family accounting for 17% of awareness;

First contact with the Office of the Ombudsman was mainly by letter (47%) and phone (36%), with 9% of first contacts coming by email;

The main reasons for contact were for the Ombudsman to contact the public body on behalf of the complainant (38%), to register a complaint (34%) and to get advice on what to do next (13%).

### **Satisfaction with Aspects of First Contact**

Complainant satisfaction with all aspects of first contact was high, ranging from 88% satisfied with the leaflet or form sent, to 74% for the content of the written response by the Ombudsman.

34% of complainants had visited the Ombudsman's website, with 8% having completed the online complaint form. In most cases (57%) staff from the Office of the Ombudsman had contacted complainants, who had completed the online form, for more information. 87% of those who had completed the online complaints form had found it easy to do so.

### **Speaking with Staff**

79% of complainants had spoken with a member of the Ombudsman's staff at some point during their case, with this more likely to have been the experience of local authority (50%) and HSE (48%) complainants compared with government department complainants (36%);

Complainant satisfaction levels with staff ranged from 93% satisfied with staff friendliness, 89% with helpfulness to 77% satisfied that staff they spoke with had sufficient authority to deal with their case;

51% of complainants had been contacted by Ombudsman staff asking them for more information in relation to their case;

76% of complainants had been kept informed by Ombudsman staff on how their case was progressing;

53% of complainants had contacted staff in regard to their complaint, with 84% saying that staff had called them back when they had left a telephone message.

### **Resolving Cases**

Complainants were found to have a greater expectation that they would get their case concluded quicker than is actually the case;

46% of complainants felt that the decision in their case had gone in their favour, 47% against and 7% felt that the outcome was neutral.

The most common (36%) expectation for complainants was to get a decision reversed, with this actually happening in just 11% of cases.

### **3.4 New layout and presentation of Annual Report**

As Ombudsman, I have a particular interest in accessibility issues. The British and Irish Ombudsman Association (BIOA), which I chaired for a two-year period to May 2010, in collaboration with my Office, hosted a seminar on 17 November, 2009, on the issue of "accessibility", with speakers from all jurisdictions in the BIOA network. I was fascinated by the multi-faceted nature of this issue and the very useful suggestions which emerged to improve best practice in this area. My Office has already taken many of these suggestions on board – see for example, the initiatives described in the remaining sections of this chapter.

Also, in my Annual Report 2008, I mentioned that further improvements on the Ombudsman website were planned for 2009. A major element of the improvement process is to focus on user access and, using innovative solutions, improve the layout, structure and accessibility of the website. I am also aware of the continuing challenge for all public sector bodies to look at more cost effective ways of working smarter, more efficiently and more effectively, given the difficult economic times.

As such, I decided that this year's Annual Report would mainly be made available in electronic formats, either as a pdf or a website presentation.

In 2009 my Office reviewed the process of producing and distributing annual reports and concluded that significant savings could be made by reducing costs associated with staff resourcing, printing and posting and by presenting the report in a more environmentally friendly and sustainable way. In addition, I was aware that an increasing number of people were accessing the services of my Office through the Ombudsman website.

The process was started in 2009 when my Office published a tender document and engaged a design company to produce the Annual Report for 2009. A specific requirement in the tender was to design the Annual Report in such a way so as to make it more accessible to visitors to the Ombudsman website. This year's report, and its layout, conforms fully to Web Content Accessibility Guidelines (WCAG) 2.0. The guidelines cover a wide range of recommendations for making web content more accessible to a wider range of people with disabilities, including blindness and low vision, deafness and hearing loss and learning and speech disabilities.

I hope that with the new website design and layout of this year's report that the many visitors to the website will find an improvement in accessing and navigating the various chapters and tables.

### 3.5 Website signposting

In previous Annual Reports I mentioned that my Office had implemented an Integrated Strategic Communications Plan, a critical objective of which is to increase public awareness of the role of my Office and bring our service to as many people as possible.

Indeed, as I mentioned in my Annual Report for 2008, in support of our public awareness programme, it would be genuinely helpful to all members of the public if the websites of the departments and other public bodies concerned had a comprehensive link to the Ombudsman website.

In 2008, my Office completed a review of the websites of the relevant public bodies and found that some had no website linkages, inadequate linkages and/or incorrect Ombudsman contact details. During the ensuing period, my Office wrote on three separate occasions to all the public bodies concerned and requested each one to make a clear reference to the Office of the Ombudsman on its website. Included in the letters was a suggested website text, providing information and contact details about my Office. I have reproduced the Ombudsman contact and information details in Annex B.

The response to these letters was very positive and I am pleased to note that most public bodies have included a link to the Ombudsman website and up-to-date information and contact details. However, I am disappointed that having requested public bodies to provide their customers with a more detailed explanation of my Office's complaint resolution services, a few have not yet updated their websites.

At the date of publication of this Annual Report, two public body websites do not show any information about the Office of the Ombudsman and eleven websites continue to provide inaccurate or incomplete information. The two public bodies not providing any information are local authorities and of the 11 other public bodies with inaccurate or incomplete information, five are government departments and six are local authorities.

Given the drive towards public service reform, it is enlightening that a simple request to provide contact details for the Ombudsman's Office on a website is

met with disinterest and lack of co-operation on the part of certain public bodies. I suppose this illustrates in concrete terms the difficulties people must have in their dealings with public bodies, ending up with complaints to me.

Feedback from Ombudsman complainants who participate in our customer surveys, suggest that a growing number of people are accessing the services of my Office through the internet. It is evident then that an important aspect of modern communications is the provision of up-to-date and accurate information, which not only informs the public about the services offered by public bodies but also about how to complain when things seem to be going wrong.

I will revisit the issue of website signposting in my next Annual Report and at that stage, I hope that, as with Section 7 notices in chapter 2.2, I do not have to resort to “naming and shaming”.

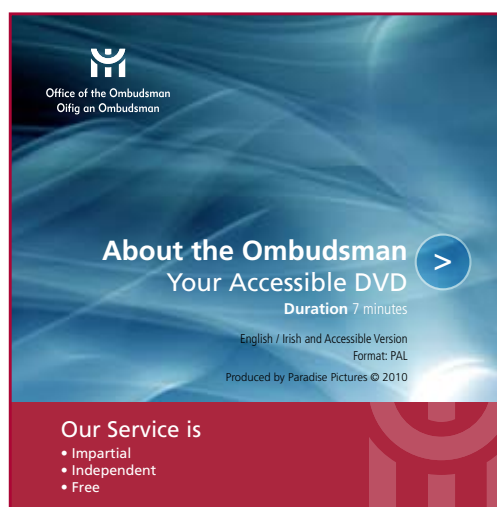
### 3.6 Information DVD

In late 2009, my Office published a tender document with the intention of engaging a film production company to make an information DVD and website presentation on the functions of the Office and how to access its services.

The target audience for the DVD and website presentation is the general public which includes a range of people with varying access needs, such as people who are blind, visually impaired, hard of hearing or functionally deaf. The intention is that a person, having viewed or accessed the DVD or website presentation, would understand the role of the Ombudsman and the service we provide.

The DVD is bespoke designed and includes facilities such as lip-reading, sign language and subtitles to help more people and especially those with a disability, who feel badly treated by public bodies, to make a complaint to my Office. As I write, the presentation is now available to view on my website at [www.ombudsman.ie](http://www.ombudsman.ie).

The DVD is also available on request and free of charge to members of the public.



### 3.7 BrowseAloud



My Office, together with other public bodies, has enabled the latest version of an innovative website product called 'BrowseAloud'. This facility allows people with literacy difficulties, dyslexia or mild visual impairments to hear online content being read aloud.

BrowseAloud is a text-to-speech solution that reads all accessible website content aloud in a high-quality human-sounding voice which can be altered to suit the individual's specific needs. As text is read aloud, words are highlighted; a useful tool which aids literacy and comprehension.

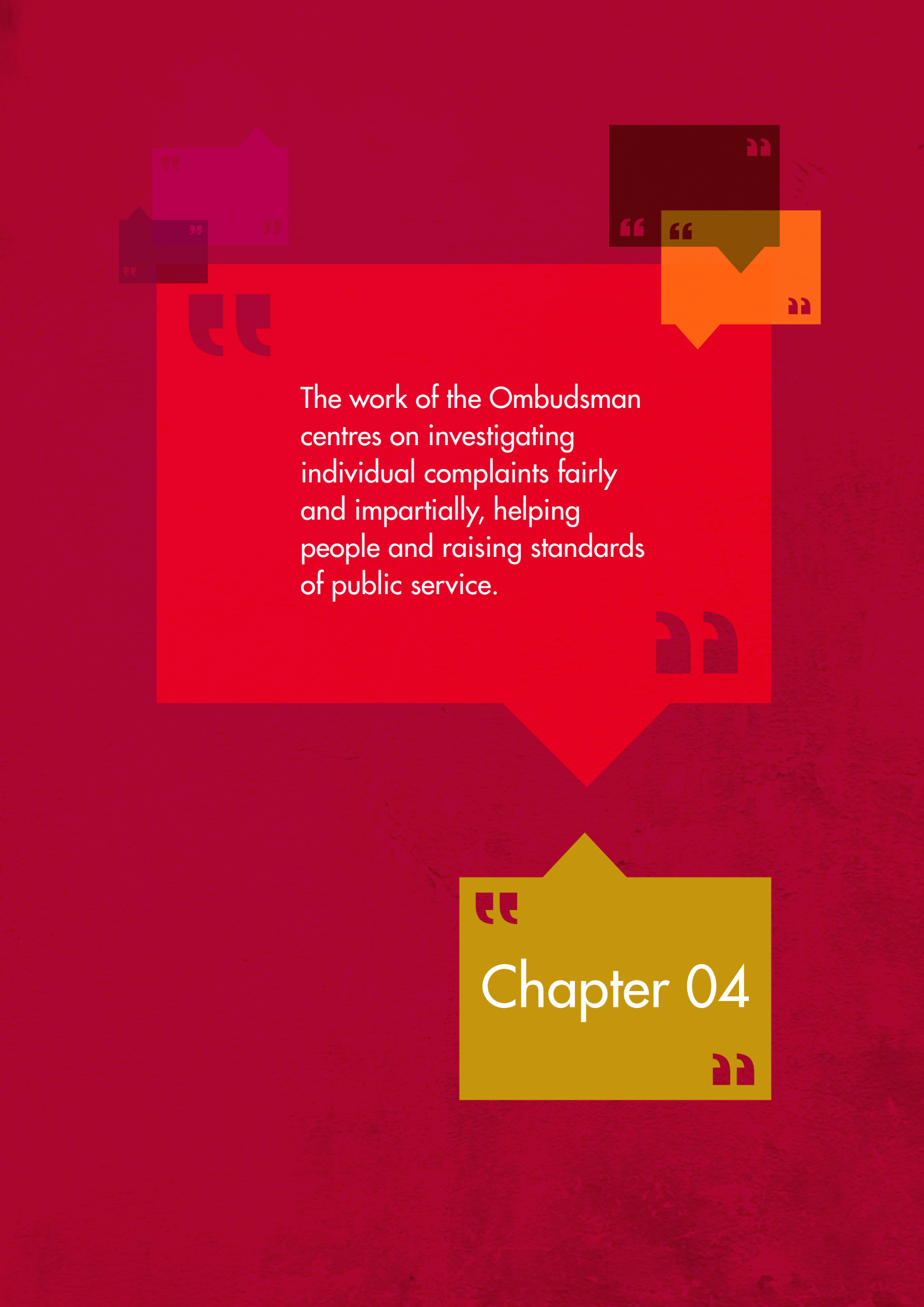
Features include a translation tool; allowing for single word translations in English, French, Spanish, German or Italian, and a screen masking facility which allows users to mask information on the screen to help with concentration. The facility also includes a talking dictionary and the ability to convert text to MP3.

As people with disabilities frequently have greater contact with public bodies, the importance of online accessibility is paramount. I am hopeful that this new facility can further help to reduce accessibility barriers. The service is free to users by simply downloading the software from the Ombudsman homepage.

### 3.8 Ombudsman Link Service

The Ombudsman Link Service, which is provided through Citizens Information Centres (CICs), allows members of the public easier access to the services of my Office. This is achieved by providing training to the staff at the centres to help them identify and submit potential complaints, which my Office can take up on behalf of members of the public. In my last Annual Report, I outlined the progress that had been made with the roll-out of the service up until the end of 2008. During the first half of 2009 my Office completed the programme of providing training to the staff of CICs throughout the country and, during the year, I received 41 valid complaints via the Ombudsman Link Service.





The work of the Ombudsman centres on investigating individual complaints fairly and impartially, helping people and raising standards of public service.

## Chapter 04



## Chapter 4: Social Services and Public Healthcare – Selected Cases

### 4.1 Department of Social and Family Affairs



#### 4.1.1 Delay in amending child's birth certificate to include natural father's name.

A Cork man approached my Office about a protracted delay on the part of the General Register Office (GRO) in implementing its decision to amend the birth certificate of his child. The amendment required was the addition of his name and the deletion of the name of another man who had been initially named as the child's father. Both the child's mother and the man registered as the father failed to consent to the amendment.

As the GRO decided to further delay the amendment to allow the child's mother to make submissions or to initiate legal proceedings to stop the amendment, I began an investigation into the actions of the GRO in this case.

During the course of this investigation, the birth certificate was amended along the lines first sought by the natural father, nearly two and half years previously. I found that, in allowing the delay, the GRO failed to strike a reasonable balance between the rights of the natural father and child (whose fundamental right to identity was at stake) and the rights of the other parties (the child's mother and the man who was initially named as father). Arising from the investigation findings, I recommended to the GRO that it:

- develop and publish clear guidelines covering all possible scenarios in which an application to amend a birth certificate might be made.
- send a written apology to the child's natural father for the delays which had arisen, and
- make a "time and trouble" payment of €500 to the child's natural father in recognition of the fact that he was affected adversely by the GRO's actions.

All three recommendations were accepted by the GRO.

#### **4.1.2 Department of Social and Family Affairs makes an ex-gratia payment of €2,500 to a separated man.**

A man from County Tipperary approached my Office in relation to a direction from the Department of Social and Family Affairs to contribute towards maintenance payments in respect of his separated wife. The Department issued him with a determination order in March, 2006 directing him to contribute €35.00 per week to the Department for maintenance payments in respect of his wife who was in receipt of One Parent Family Payment. He decided to pay this sum directly to his wife. Her One Parent Family Payment ceased in December, 2006 and therefore, so did the complainant's liability to the Department. However, the Department did not inform him of this fact and that he had no further liability to the Department, as a consequence, until June, 2008.

My Office contacted the Department and pointed out that the man had only begun making the additional payment of €35.00 per week as a result of the determination order issued by it. Therefore, it should be considered that he had acquired a legitimate expectation that the Department would also inform him of any change in this liability, in a timely manner.

The Department accepted that an error was made in failing to notify the complainant in December, 2006 of the cessation of the One Parent Family Payment. Although not admitting liability, the Department agreed to make an ex-gratia payment of €2,500 to him, in order to compensate him for his financial loss.

#### **4.1.3 A mother, working full-time and caring for her son on a full-time basis, loses out on a respite care grant.**

A Dublin woman approached my Office in relation to the refusal of her application for a respite care grant by the Department of Social and Family Affairs. The respite care grant currently amounts to €1,700 per year for each person being cared for. Her application was disallowed on the basis that she was working outside the home for 38 hours per week.

The Department accepted that she cared for her son on a full-time basis. However, regulations governing the scheme specify that in order to receive the respite care grant, a carer cannot work for more than 15 hours per week. The woman did not therefore satisfy one of the fundamental conditions for receipt of the grant. Unfortunately, given the circumstances, I could not see a basis to ask the Department to review a decision which was properly taken within the framework of the legislation governing payment of the grant.

This case highlights a regrettable anomaly and potential social benefit poverty trap. By working full-time and caring for her son, my complainant is contributing to and benefiting the State in financial terms but is losing out on a financial gain herself. If the woman gave up her job, it is likely that she would receive one parent family payment and half-rate carer's allowance, as well as the respite care grant. Alternatively, if she ceased caring for her son, the State would have to provide an alternative care system which would prove to be substantially more expensive.



“The matter was resolved to my satisfaction but in total it took more than one and a half years. I did take the time out to write to your Office and express my total satisfaction at the efficient manner in which you handled my case. Well Done!! Thank you.”

A Complainant



#### **4.1.4 Decision not to grant State Pension (Contributory) reversed and arrears of €30,420 paid.**

In 2007 my complainant from County Roscommon applied for a Contributory State Pension and was informed by the Department of Social and Family Affairs that she did not qualify as she had insufficient social insurance contributions. Subsequently her accountant applied on her behalf. Despite an extensive exchange of correspondence, she still received no pension.

In 2009 her accountants contacted my Office. Having entered correspondence with both the self-employed section of the Department and the scope section, my Office established that she was liable to pay Class S, Pay-Related Social Insurance (PRSI) contributions on her share of investment income for 1991/1992 and 1992/1993. This was duly paid by her and the record updated accordingly.

She received her pension entitlement of €230.30 weekly and arrears of €30,420 were paid.

#### **4.1.5 Widower from County Meath gets €35,530 backpayment of pension arrears.**

A man from County Meath contacted my Office to complain that the Department of Social and Family Affairs had reduced the amount of arrears of widower's contributory pension (WCP) due to him. The man was widowed in 1988 but only became aware of his entitlement to WCP in December, 2007, when he first applied. The Department awarded him WCP with effect from September, 2004 and when the arrears were paid to him, the sum was reduced by an amount equal to the amount of jobseeker's allowance and other payments that he had received during the period. He believed that this was unfair because, although he had been only awarded WCP with effect from September, 2004, the Department had never advised him of his entitlement to claim WCP when he made a claim for jobseeker's allowance in 2000, at which time he told the department's staff that he was a widower. My Office explained to the man that the Department's actions in recovering the jobseeker's allowance and other payments from the arrears of WCP, were correct. Generally, a person is only entitled to receive one payment in respect of any particular period.

I decided to look further into his claim that the Department was aware in 2000 that he was a widower and that he had not been made aware of his entitlement to WCP at that time. My Office contacted the Social Welfare Local Office where he

made his jobseeker's allowance claim in 2000 and discovered that there was a claim form dated 12 January, 2000, which was signed by a Social Welfare Inspector and a Deciding Officer, on which the man had stated that he was a widower. We then contacted the WCP section of the Department and asked it to consider further backdating the man's pension on the basis that the Department had been made aware in 2000 that he was a widower but had failed to inform him of his possible entitlement to WCP at that time.

In the course of their consideration of my request, some issues arose in relation to the man's insurance record. However, when these were resolved, the Department informed me that it accepted that he would have satisfied all of the conditions for receipt of WCP from when he was widowed in September, 1998 and that his pension was to be backdated to then. The man subsequently received arrears of pension amounting to €35,530.72.

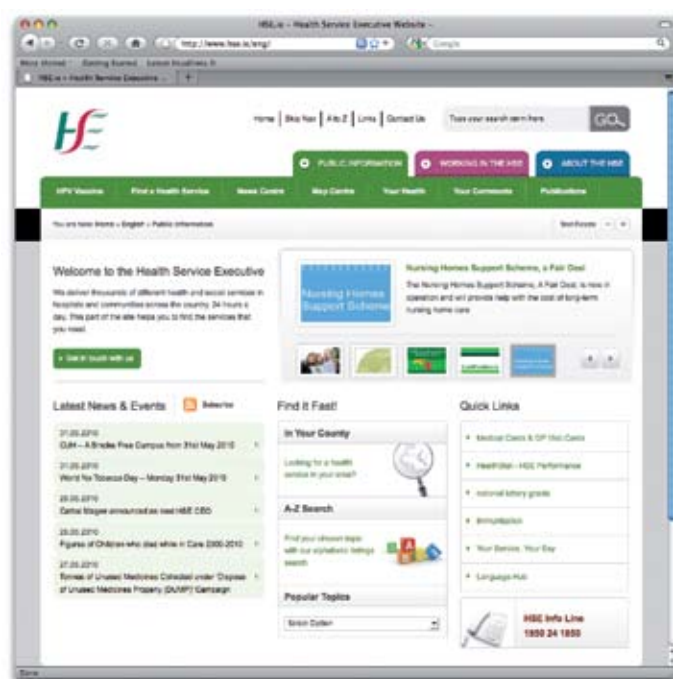
#### **4.1.6 Carer's Benefit refusal decision reversed and arrears of €12,000 paid by Department.**

The complainant, from Dublin, applied for Carer's Benefit in May, 2007 in respect of her aunt and uncle. Payment for her uncle was approved but was disallowed in her aunt's case. The Department said that the medical evidence submitted with the application was deemed by its Medical Adviser and Deciding Officer to be insufficient to demonstrate that full-time care and attention was needed. The complainant appealed the decision to the independent Social Welfare Appeals Office (SWAO). Following an oral hearing of the appeal, the appeals officer upheld the disallowance of payment in her aunt's situation.

Following receipt of the complaint, my Office obtained the relevant papers from the Department and the SWAO. It emerged from our examination of the matter that there was additional medical evidence on the Department's file, which differed substantially from the medical evidence examined by both the Deciding Officer and the Appeals Officer. It was clear that this had not been referred on to the Medical Adviser, nor had it been examined by the Deciding Officer. This evidence suggested that the aunt's medical condition was more severe than that which had been described in the medical evidence for the purposes of the original decision and the subsequent appeal. My Office asked the Department to carry out a review of the decision to take account of the additional medical evidence. In carrying out the review, the Department referred the matter back to its Medical Adviser who accepted that the additional medical evidence was sufficient to satisfy the condition relating to full-time care and attention requirement in the Carer's Benefit scheme.

Payment in respect of the complainant's aunt was approved and backdated to the date of the original claim. This resulted in arrears of nearly €12,000 being paid to the complainant which included payment of the Respite Care Grant for 2007 and 2008.

## 4.2 Health Service Executive



### 4.2.1 Decision not to grant a Domiciliary Care Allowance and Carer's Allowance for a child with sickle cell disease reversed. Arrears of almost €18,000 paid.

A man from County Louth approached my Office about the decision of the Health Service Executive (HSE) to refuse Domiciliary Care Allowance (DCA) of €309.50 per month, prior to July, 2009, in respect of his daughter who has sickle cell disease. She was diagnosed with the ailment shortly after birth and has been hospitalised on several occasions since. According to the medical evidence, it is imperative that she is kept under constant and continuous surveillance and attention. Also, it is only because of that care and attention given at home that there have not been more hospital admissions. Her father, who is a foreign national, was given leave to come to Ireland to help look after her.

I requested that the HSE review its decision. I submitted that it is difficult to see how a child with such a lifelong condition could be deemed medically ineligible at the first application in February, 2007 but medically eligible in 2009. Practically identical medical evidence was offered in support of both applications.

The HSE reviewed its decision and granted DCA from February, 2007. This resulted in payment of arrears amounting to €10,598.98.

While finalising the case, it came to my attention that the child's mother had previously been refused carer's allowance (CA) on the basis that DCA had not been given. I contacted the Department of Social and Family Affairs and requested that it review this decision also, on the basis of the HSE's revised decision in March, 2009. The Department agreed to revise this decision also and awarded payment of CA from February, 2007. This resulted in a further arrears payment amounting to €7,352.36.



“I also want to thank you very sincerely indeed for the help you have been to me in this whole matter and for the kindness you have shown me throughout the process. I deeply appreciate the service you have given me.”

A Complainant



#### **4.2.2 Woman suffering from eating disorder gets decision by HSE not to fund in full her treatment costs reversed.**

A woman suffering from Bulimia Nervosa (a common chronic eating disorder) complained to me that the HSE in Clare had withdrawn funding which had allowed her to attend private treatment for her condition. A medical card holder, she had been referred by her GP, with the approval of a Senior Medical Officer (Medical Card Section) in Ennis, to a private clinic in Dublin, as there was no specialised service for eating disorders in the Mid-West Area. The woman had been attending the Centre for almost six months (from January to June, 2006) when she was advised by the HSE that it could not pay these costs.

The HSE explained that it had no specific allocation for the treatment of eating disorders, and the woman was told that requests to fund her treatment would only be considered once a referral was obtained from a HSE treating consultant. The woman met with the HSE consultant in Ennis on three occasions, but he did not



recommend the course of treatment which she was receiving, nor did he refer her to another service.

Instead he provided her with information about a programme (Eating Disorders Recovery Programme) in a private hospital in Dublin which he felt might help her. This particular programme was geared towards people with a primary diagnosis of anorexia, a different ailment, who were seriously ill and underweight, rather than a person of normal weight suffering from bulimia, which was this woman's profile.

The woman appealed the HSE's decision not to provide funding for her treatment and the HSE agreed to provide half of the costs involved, in recognition of the fact that she had already commenced therapy.

Following contact from my Office however, the HSE agreed to reimburse the woman the full cost of her past treatment. It accepted that she had commenced the programme in the private clinic in good faith with a legitimate expectation that her costs would be met. The HSE insisted, however, that the funding of future treatment would require a clinical recommendation from her consultant psychiatrist, and this was not forthcoming.

By this stage, the woman had made significant progress in terms of her recovery, but was faced with the prospect of financing the remainder of her treatment herself, which would cause her financial hardship. My Office contacted the HSE again, seeking clarification as to what treatment was proposed for the woman to ensure continuity of care and whether a proper evaluation of her progress had been made. The HSE agreed to review the case and decided to pay the full costs of the woman's treatment. She has now successfully concluded the therapy programme and, I am pleased to say, is doing very well.

## Patient gets €15,000 refund after Ombudsman mediates

**RUADHÁN Mac CORMAIC**

A CANCER patient who was treated abroad received more than €15,000 in medical costs and back-dated illness benefit after the Ombudsman intervened in a dispute between the patient and the Health Service Executive (HSE).

Irish Times, Wednesday, September 23, 2009

#### **4.2.3 Maternity care at Waterford hospital neglectful – Woman given apology, counselling and ex-gratia payment of €1,000.**

A woman complained to me about the standard of maternity care she received in Waterford Regional Hospital during the birth of her child in 2007. She claimed that she had been deprived of pain relief because the attending midwife had failed to recognise that she was in labour. Her initial complaint to the hospital had taken two years to be examined. This was done by an investigation team, in accordance with the Health Service Executive, “Trust in Care” policy. It found that the woman had received sub-optimal care, falling into the category of neglect. The investigation found that this neglect deprived the woman of the expert care and support of the professional midwife during critical labour hours, of having her partner or mother present at the birth and also, the opportunity to have appropriate pain relief.

The woman had considered taking a legal case against the hospital but found she was statute bound (due to the Trust in Care Investigation taking so long to be completed). She came to me for assistance, seeking an apology for the pain and distress she had suffered, counselling to help her deal with the trauma of the birth, and financial redress to reflect costs she had incurred in pursuing her complaint.

My Office discussed the complaint with the hospital General Manager and arrangements were made for hospital staff to meet with the woman and her family. It was hoped that this meeting would provide the hospital with an opportunity to outline how the woman’s complaint was handled and to apologise to her for the distress she had experienced during the birth. The meeting did not help to bring a satisfactory conclusion to the issues raised by the woman, no offer of financial compensation was made to her and, while the minutes of the meeting contained an apology, the woman felt this did not resolve the matter to her satisfaction.

My Office again contacted the hospital General Manager and following further discussions, the General Manager agreed to write a full letter of apology to the woman, acknowledging the fact that she had received sub-optimal care during her stay. The General Manager outlined what measures had been taken to improve services at the hospital as a result of the woman’s complaint. The General Manager offered to provide private counselling sessions to the woman, the cost of which was met by Waterford Regional Hospital. The hospital also agreed to an ex-gratia payment of €1,000 as a good-will gesture.

#### **4.2.4 Wife complains about standard of care and treatment of her terminally ill husband in Tullamore hospital. Hospital addresses systemic failures.**

I received a complaint from a woman regarding the care her late husband received while a patient in the Midland Regional Hospital, Tullamore. My complainant had a number of concerns specifically:

- the manner in which her husband's terminal condition was conveyed to the family,
- that medication was being left on the patient's bedside locker,
- that his Thrombo Embolic Deterrent Stockings (TEDS) had not been removed in almost three weeks, and
- that his patient's nursing notes were deficient in a number of respects.

During the course of my examination of this complaint, I received a number of detailed reports from the hospital and the Investigator involved from my Office met with the complainant at her home.

Having regard to the manner in which my complainant was told about her husband's condition and the hospital's initial response to my Office, I asked it to consider whether there would be benefit from the introduction of a policy on breaking bad news to patients. In response, the hospital developed draft guidelines on "Breaking Bad News to Patients within an acute hospital setting". The purpose of this policy is to provide guidance to medical and nursing staff, in line with international best practice, on the process of breaking bad news to patients, their families and/or significant others.

In relation to the patient's medication, I was concerned that some of his medication was being left on his bedside locker and not being administered to him as good practice dictates. From my examination of the patient's nursing notes, these incidents appeared to be at a time when the patient was drowsy or unable to take his prescribed medication. The practice of leaving medication on bedside lockers is unacceptable and against hospital policy. Accordingly, I suggested that some staff receive refresher training on this aspect of drug administration. In response, the hospital arranged for the issue to be addressed at nurse manager meetings and for the hospital's drug administration policy to be reviewed.

The complainant told me that, one day, when she removed her husband's Thrombo Embolic Deterrent Stockings (TEDS) to wash his feet, so much dry skin came

away that she could see his flesh beneath his toes. She alleged that the TEDS had not been removed in almost three weeks. TEDS are designed to prevent deep vein thrombosis, which is the development of blood clots in the legs. TEDS can be worn for the full duration of a patient's stay in hospital. I understand that the manufacturer recommends that TEDS should be changed every 3 days and temporarily removed for bathing / showering.

When I raised this issue with the hospital, it suggested that it was possible that the TEDS were changed more frequently than the complainant had suggested. However, as I was not satisfied that the hospital's claim could be supported by reference to the specific entries in the patient's nursing notes, I pursued the matter further. Following detailed correspondence, the hospital developed comprehensive guidelines on the use of TEDS. While I could not come to a firm conclusion on my complainant's reported experience, I was reassured that, as a result of this complaint, lessons were learned in the hospital, corrective action taken and a clear policy drawn up and implemented.

Having regard to the quality of the nursing notes which I examined as part of this complaint, I asked the hospital to consider whether it needed to review its record management policy in light of the National Hospitals Office "Code of Practice for Healthcare Record Management." In response, the hospital developed and rolled out a policy and guidelines on best practice in nursing documentation. The hospital also sent me a list of staff members who attended the training programme and confirmed that the training programme is ongoing.

Furthermore, the hospital told me that it completed a number of self-assessments in 2009. As a result, approximately 37 quality improvement plans were identified and the hospital is endeavouring to adhere to all the criteria from the various standards in this self-assessment.

In summary, my complainant identified a number of systemic administrative management failures in the hospital. Following my involvement with this case, the hospital acknowledged a number of problems and took steps to address them in a positive fashion, in consultation with nursing and medical staff. It drew up new procedures, and staff training was focused on the issues identified. The hospital's positive response is welcome and I hope that, as a result of my complainant's negative experience and the improvements which have since been introduced, other families will not find themselves facing a similar situation at such a stressful and difficult time in their lives.

#### **4.2.5 Poor treatment of respite care patient at Wexford hospital. Stayed in bed, as no suitable seating available and arrived home badly bruised.**

A woman made a complaint to me about the care and treatment her mother had received at Ely Hospital, Wexford. She said that her mother had been admitted to the hospital for two weeks respite care, but came home with severe bruising which she alleged resulted from being poorly handled by hospital staff. She also complained that:

- While in the hospital, her mother was not allowed use a special mattress, which she used at home, even though she had been told that she would be allowed to do so.
- Her mother had to remain in her bed for much of her stay as no suitable seating was available.
- Staff were rude and inflexible with regard to visiting hours, requesting that the complainant leave at the stated times even though her mother was sometimes unsettled and in distress.

The woman had made a complaint to the Health Service Executive (HSE) about her mother's care but was dissatisfied with the outcome and with the way her complaint had been handled.

My examination of the complaint generally supported the case made by the complainant. I found that there was clear evidence of bruising having occurred. The hospital provided a number of explanations as to how this may have happened, including the possibility that staff may not have been aware of her sensitivity to, and potential for, bruising on the many occasions that they had to handle her due to her immobility. Nevertheless, the fact remained that it had occurred while her mother was under their care. The hospital undertook to provide additional training for staff in manual handling and to introduce new procedures to monitor and record bruising. In the course of my examination of the issues, I examined the nursing notes provided by the HSE. I found that the records made available were deficient and disorganised. The hospital implemented new guidelines and provided training to staff in care planning and note keeping.

- As regards preventing the patient from using her own special mattress, the hospital advised that its policy is that the use of non-hospital equipment cannot be permitted, in order to comply with health and safety regulations. It acknowledged that a member of the hospital staff was not aware of this policy and had allowed the mattress from her home to be placed on the patient's bed.

Steps were taken to increase staff awareness of hospital policy and to ensure that families of patients being admitted for respite were also informed of the policy.

- As regards seating, the hospital said that it had no chairs in the ward suitable for the patient's needs. It undertook to give priority to the provision of suitable seating in the future.
- As regards the perceived rudeness, a verbal apology had been made to my complainant, but she did not feel that it was adequate. I advised the hospital that, in my view, proper explanations and apologies should incorporate the following:
  - an acknowledgement of any hurt, inconvenience or hardship caused,
  - an acceptance of responsibility for the fault which has occurred, and
  - an undertaking to make good any loss which may have resulted.

In the matter of visiting hours, the hospital explained that visitors were requested to leave by 9pm because, in the interests of patient safety and security, doors at the main hospital entrance were locked at this time. I fully accept that the safety of patients and staff is paramount, but I suggested that it might also be expected that there would be a degree of flexibility around visiting hours for the benefit of individual patients who are unwell or distressed.

#### **4.2.6 Daughter's complaint about the treatment of her cancer patient father – hospital apologises and introduces new procedures.**

I received a complaint from the daughter of a cancer patient who had died in Beaumont Hospital. The complaint centred primarily on the care her father received, particularly around the August bank holiday Monday, when he was vomiting what appeared to be

## **Patient death forces hospital to change its surgery policy**

**Eilish O'Regan**

Health Correspondent

**ONE of the country's main hospitals has changed its policy of transferring seriously ill patients from one medical team to another in the wake of a tragedy.**

Surgical teams at Beaumont Hospital in Dublin now ensure information on a patient's condition is fully shared, so that whoever is on call is up-to-date on their medical needs.

Irish Independent, Tuesday, December 8, 2009

faecal matter and no medical person came to review him. Nothing was done that day to reduce her father's distress; he was admitted to the intensive care unit the following day and passed away ten days later.

Five years after he died, the woman approached my Office because her family remained dissatisfied with the response they received from the hospital to their complaint.

An independent review team had been appointed by the hospital to examine the family's complaint and had issued its report in May, 2007 (almost three years after the man's death). The family were unhappy with the report, which they felt did not go far enough in addressing the issues they had raised. They also felt that the report contained inaccuracies and did not reflect the position from the family's point of view. They had sought to have some changes incorporated into the report but this request was refused.

The complainant told me that taking legal action was never a route her family wanted to take. She withdrew the legal proceedings which she had lodged so as to allow my Office to deal with the case. She was seeking clear answers with regard to her late father's treatment, an apology for the shortcomings in his treatment and assurances that lessons had been learned within the hospital system.

My Office wrote to Beaumont Hospital and had subsequent meetings with senior personnel where the key issues of the complaint were discussed. Following on from those meetings, the CEO of the hospital agreed to meet with the family to apologise in person for the shortcomings identified with their late father's care and treatment. He also wrote a detailed letter of apology which he gave to the family at that meeting.

I was very pleased that the hospital fully acknowledged the complainant's concerns and made a full apology to her family. It accepted that communication failures had occurred and that her father should have been medically reviewed on the bank holiday Monday when the family desperately sought medical assistance for him. I also welcomed the fact that Beaumont Hospital took steps to put in place a new system which allows for the formal hand-over of acutely ill patients from the primary treating consultant to the relevant consultant on call. This represents considerable progress and should ensure that patients receive continuous and consistent care, crucial to their health and wellbeing.



#### 4.2.7 Major deficiencies in psychiatric hospital conditions.

A woman approached my office to complain about conditions in St. Loman's Hospital, Mullingar, a psychiatric hospital, where her father was a resident. My examination identified that the hospital seemed not to have complied with all of the recommendations contained in the Mental Health Commission Annual Report 2007, including the Report of the Inspector of the Mental Health Services, and the requirements under the Mental Health Act 2001. In particular, it appeared that there was non-compliance in relation to the introduction of multi-disciplinary team care-plans, provision of therapeutic activity, records management, residents' personal property and possessions and privacy and physical accommodation, including toilet facilities. Staff from my Office visited the hospital and met with HSE officials and professional staff to discuss the complaint.

In response, the HSE stated that every effort is made to address issues identified by the Inspector, but it is not always possible to rectify them within available resources. The HSE told me that their catchment management team identify and prioritise actions which can be taken. The HSE also told me that, as a result of the sale of land to the local authority, some €3.5 million had been earmarked to upgrade facilities, including the provision of a visitors' centre. However, according to the HSE officials I dealt with, although they had intentions as to how the money generated by the land sale would be used, there was no guarantee that the money would be prioritised by the HSE corporately and/or by the Department of Finance for this service.


The case speaks for itself. It is unacceptable and sad that psychiatric patients have to put up with a regime and facilities totally unsuited to their needs and which identify deficiencies not addressed.



“Thank you for everything you did to help me. Life is fun now. I cannot believe it really but it is great at last to feel like a normal person, just to deal with life in a normal way for me is nothing short of a miracle. Words spoken at the right time are very valuable and I want you to know that I appreciated very much your kindness, empathy and wonderful human spirit. You have no idea how much your support meant to me at such a difficult and trying time.”

A Complainant





The Office of the Ombudsman is committed to providing all our clients with a high standard of service in accordance with the Ombudsman's Principles of Good Administration and in accordance with the principles of Quality Customer Service approved by Government.



## Chapter 05



## **Chapter 5: Local Authorities; Department of the Environment, Heritage and Local Government – Selected Cases**

### **5.1 Public servant caught in stalled decentralisation process. Must pay €200 annual charge for owners of non-principal private residences – anomaly highlighted.**

The Local Government (Charges) Act, 2009 introduced a new €200 charge for owners of non-principal private residences. I received a complaint from a person who claimed that he had been unfairly charged under the Act. He was working in a public body which had been earmarked for decentralisation and he had applied to move under the decentralisation programme. He bought a site and had a house completed in August, 2008 at the decentralisation location. The following month, the Government announced that the particular decentralisation move had been put on hold. He remained in his present residence pending clarification on the decentralisation move.

Under the Local Government (Charges) Act, 2009, the complainant was levied a charge of €200 as the property, which was empty, was deemed by the local authority where it was located, to be habitable and had to be classified as a non-principal private residence. He applied for an exemption to the local authority and also made representations to his local public representative. He argued that, given the circumstances, it was unfair to apply the charge in his case. His request for an exemption was rejected on the grounds that it was not provided for in the legislation. The complainant told my Office that in protest he had refused to pay the charge and as a result he was incurring monthly penalties of €20 from October, 2010 onwards.

While the Section 4 of the Act provides for exemptions in certain specific circumstances, the complainant's case did not fall within the specified exemptions. It is clear that, beyond the specified exemptions, no appeal or review mechanism is provided for in the Act. There is no provision to enable the Minister for the Environment Heritage & Local Government, or a designated official of a local authority, to waive or "write off" a charge, in what could be considered to be exceptional circumstances.

From my examination of the provisions of this specific piece of legislation, the only apparent course of appeal would appear to be as part of a defence against a prosecution under Section 12 of the Act. However, it would appear to me that jurisdiction for offences under the Act is proper to the District Court. Therefore, in order to challenge the validity, or applicability, of the provisions of the Act, it appears that a person would need to proceed to the Circuit Court and further on to the High Court, in order to have their case heard properly, the cost of which would be beyond the means of most people. I have also noted that the cost of any such appeal could be considered as being disproportionate to the cost of the action being appealed (the levied charge of €200).

I have noted that Section 14 of the Act provides the Minister with the power to make Regulations. Two statutory instruments have been signed by the Minister, SI 278/2009 and SI 279/2009, neither of which contain provisions relating to appeals, reviews, or waivers.

While I had a certain sympathy for the complainant, I had to recognise that the law as it stood was being applied correctly in this case and there was no element of discretion open to the local authority. In the circumstances, it was not open to me to suggest that the actions of the local authority amounted to maladministration in this case and my Office informed the complainant accordingly.

On occasion, new legislation can have consequences which were unforeseen prior to enactment, as it is not always possible to anticipate fully the impact it may have, or the likely circumstances of all members of the public who end up being covered by the legislation. While this legislation tried to anticipate certain circumstances which would warrant exemption, it provided no scope or mechanisms to deal with other circumstances which might be equally deserving of exemption. For my part, I can only express my concern about the matter and bring it to the attention of the Houses of the Oireachtas and to let the Oireachtas decide if further amendment to the legislation is warranted, in light of the above.

I have also written to the Minister for the Environment, Heritage and Local Government, bringing his attention to the anomaly.

“

“Sincere thanks for your assistance in relation to my complaint against [the Council], which was, I believe, a significant factor in enabling us to reach an acceptable outcome. I have outstanding concerns in relation to points of principle and contract and [the Council’s] approach which, I believe, was inappropriate and unnecessarily aggressive. While I would have liked some clarity in relation to aspects of the case, I am relieved to have reached agreement. Thank you for your support and guidance... it is much appreciated.”

A Complainant

”

## **5.2 €3,000 paid by Council for incorrect registration of house with Land Registry.**

I received a complaint from a man when the sale of his house fell through due to the property having been incorrectly registered with Land Registry when he originally purchased the house. The house was bought by him from South Dublin County Council under its shared ownership scheme and he claimed that the Council was responsible for the error. He wanted the Council to compensate him for the costs involved both in attempting to sell the house and in correcting the error (additional surveyor's, valuer's and solicitor's fees).

I contacted the Council and examined the original documentation relating to the sale of the house. I discovered that when the Council originally purchased the property from the developer in 1996, the incorrect map had been attached to the deed of transfer. The map referred to a property with a similar address in the same development. The error was not discovered until a number of years later when Land Registry was completing the sale of the other property. From the Council's files I also discovered that the Council was aware of the problem two years prior to the complainant attempting to sell his home.

The Council maintained that, at the time of the sale to the complainant, it had advised him to seek the assistance of a solicitor during the transaction but he



had declined to do so. It provided documentation to show that this was the case. The Council maintained that the complainant was responsible for verifying that all documentation was in order when it sold him the property. Therefore, it was not responsible for the additional costs incurred by the complainant when the subsequent sale fell through.

I considered that while there may have been an onus on the complainant, as the purchaser, to ensure that the title was correct, there was also an onus on the Council to inform him, as soon as practicable, of any problems with the sale. Had the Council made the complainant aware of the problem when it first came to its attention, there would have been sufficient time to rectify it before the attempted sale of the house and, so, avoid the sale falling through. I considered that the Council's failure to notify the complainant of the error when it became aware of the problem, amounted to poor administration.

I recommended that the Council make a contribution of €3,166 to the complainant, being approximately half of the additional costs the complainant claimed he incurred as a result of the delay in notifying him of the incorrect registration. I am pleased to say that the Council accepted my recommendation.

## Council u-turn after Ombudsman's intervention

*€2,000 granted for essential repairs*

**DEIRDRE VERNEY**  
reports

A Westmeath pensioner was given €2,000 in an essential repairs grant after the intervention of the Ombudsman prompted a change of policy by the council.

Westmeath Independent, Saturday, July 11, 2009

### **5.3 Tenancy offer to woman by Galway County Council withdrawn due to alleged anti-social behaviour – Ombudsman investigation results in new tenancy offer.**

A woman complained to my Office about the withdrawal of a tenancy offer made to her by Galway County Council on the basis of allegations of anti-social behaviour made against her. She received a letter from the Council in January, 2007 containing a "tenancy offer" for a vacant house, which she accepted. In October, 2007 she received a further letter from the Council advising her that the Council was withdrawing the offer. She contacted the Council about this matter but the offer was not re-instated. She made various representations to the Council, through public representatives, and a solicitor, between December, 2007 and April, 2008, but received no explanation from the Council as to why the offer was withdrawn. She contacted my Office in September, 2008, stating in her letter of complaint that the house which was the subject of the offer, had been allocated to another person during 2008.

The Council provided my Office with a report in which it advised that a "letter of offer" is a proposal to offer a tenancy and that a tenancy is not formalised until the signing of a tenancy agreement, subject to the housing authority being satisfied about all aspects of the application. The Council advised that there were reservations about the proposed tenancy, as it had been made aware of allegations relating to anti-social behaviour on the part of the woman in relation to her tenancy in a private rented dwelling. In support of its position, the Council cited clause 9 in its Scheme of Letting Priorities, which states that:

"The Council may in exceptional circumstances refuse to allocate, or defer to allocate, a dwelling, where it considers the person is or has been engaged in anti-social behaviour".

The Council also advised me that it had met the complainant in August, 2008 and openly discussed the reason why the offer had been withdrawn. A record of the meeting was provided to my Office and it would appear that a number of different options were discussed with her, along with her being advised as to her conduct in relation to anti-social behaviour, in the interim period. As this was the first occasion on which she had been advised that the issue of anti-social behaviour had been a factor in the withdrawal of the offer, I sought additional information from the Council on this particular aspect. The Council's response contained an Estate Management Report which mainly consisted of a complaint about concerns



that the woman would be allocated a house in a particular Council estate, and the possibility that anti-social behaviour would follow her to this estate. There also seemed to be an issue that the allocation of a house in the estate might create future problems from an estate management perspective.

I noted from the documents made available to me that the decision of the Council to withdraw the offer of tenancy was largely based on one submission. The Council sought information from the local Garda Síochána, which advised that it had received no reports of any sort, in relation to the woman's previous address and that she was not personally known to them.

In considering this complaint, I took account of the provisions of the Housing (Miscellaneous Provisions) Act, 1997, which was enacted specifically to address matters relating to anti-social behaviour in local authority estates. Section 14(1)(a) of the Act provides:

"Notwithstanding anything contained in the Housing Acts, 1966 to 1992, or in a scheme made under section 11 of the Housing Act, 1988, a housing authority may refuse to make or defer the making of a letting of a dwelling to a person where... the authority considers that the person is or has been engaged in anti-social behaviour or that a letting to that person would not be in the interest of good estate management". Section 15 of the Act relates to the provision of information to the housing authority from a "specified person".

It was clear that the Council is legally empowered to examine and defer/cancel any offer of tenancy, where it believes the applicant has been engaged in anti-social behaviour.

It appeared to me that the legislation was designed primarily to deal with anti-social behaviour of existing tenants, and provided for an appeals mechanism for such cases through the Courts. Those provisions were supplemented by the District Court [Housing (Miscellaneous Provisions) Act, 1997] Rules, 1999. However, from further examination of the legislation, it appeared that no appeal mechanism was provided in the legislation for cases where offers of tenancy are withdrawn. Another matter of significant concern to me was that the allegations of anti-social behaviour were not put by the Council to the woman, prior to the withdrawal of the offer of tenancy and were not in fact raised until August, 2008, a full ten months after she was notified that the offer had been withdrawn.

On the basis of the evidence before me, it appeared that the woman was not subject to due process from the outset. The information on which the Council

based its decision was derived from one source. The allegations of anti-social behaviour were not supported by information which it received from An Garda Síochána. Yet the decision, albeit a difficult one, was made to withdraw the offer of tenancy. In my opinion, as a formal appeals procedure was not provided for in the legislation, it should be incumbent on a local authority, in cases where the allegations of anti-social behaviour are not supported by corroborating evidence from a member of An Garda Síochána, to ensure that a process which has regard to fair procedures and natural justice is put in place. Such a process should allow the party complained of a right to reply, in advance of a final decision being reached.

In view of the circumstances of this case, I had a concern that the Council's processes did not have the appropriate checks and balances. As a result, I considered that proper procedure was not followed in this case.

I asked the Council to review its procedures to ensure that a similar situation did not arise again. In its response, the Council acknowledged the need for fair procedures in its decision-making processes. It also acknowledged that the woman should have been given the opportunity to be heard before a decision to withdraw the offer of tenancy was made. The Council has given me an undertaking to amend its processes accordingly.

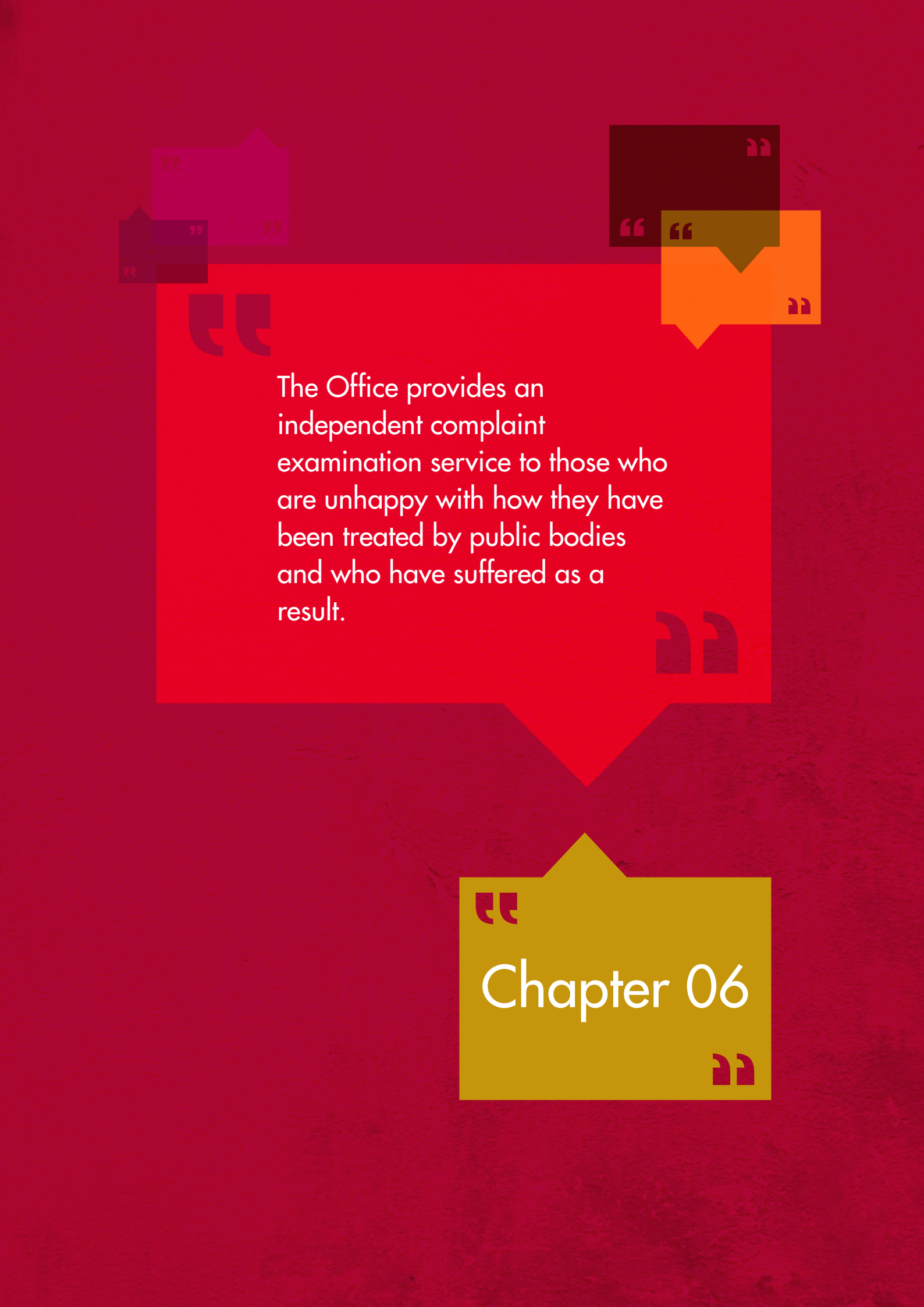
The complainant was subsequently allocated another tenancy by the Council in July, 2009.

“

“I would like to withdraw my complaint regarding a dwelling I was renting from South Dublin County Council that was badly effected by dampness. .... South Dublin County [Council] have now rehoused me and I am very happy with the move to be away from the dampness and problems of [former address], Co.Dublin. I would like to thank you for your help and time in dealing with this matter. I am very grateful.”

A Complainant

”



The Office provides an independent complaint examination service to those who are unhappy with how they have been treated by public bodies and who have suffered as a result.

“

## Chapter 06

”

## Chapter 6: Civil Service – Selected Cases

### 6.1 Ombudsman co-operation on complaints against North-South Implementation bodies.

In line with the Belfast Agreement of 1998, new North-South Implementation Bodies were established:

The Food Safety Promotion Board,  
InterTrade Ireland  
The Language Body (An Foras Teanga/North-South Body  
o Leid) consists of two agencies - Foras na Gaeilge  
and Tha Boord o Ulster-Scotch  
The Special European Programmes Body  
Waterways Ireland  
The Loughs Agency  
Tourism Ireland

The North-South Implementation Bodies fall within the jurisdiction of both my Office and the Northern Ireland Assembly Ombudsman by virtue of, respectively, Section 50 of the British-Irish Agreement Act, 1999 and Paragraph 5 of Part 7 of Schedule 1 of the North/South Co-operation (Implementation Bodies) (Northern Ireland) Order, 1999.

The British-Irish Agreement Act, 1999 allows for liaison and cooperation between my Office and my Northern Ireland counterpart in dealing with complaints against these bodies. Our two Offices have agreed "Practice Notes" for the handling of complaints against the bodies. Key agreed elements are that:

- The two Ombudsmen will consult and liaise with each other, but the determination of the complaint rests solely with the Ombudsman within whose remit the complaint falls;

- Irrespective of the place of residence of the complainant, a complaint will be examined/investigated by the Ombudsman in whose geographical jurisdiction the action complained of has taken place;
- The Ombudsman who accepts a complaint against a North-South Implementation Body will furnish details to, and liaise with, the other Ombudsman and inform him/her of the outcome of the examination/investigation.

A complainant contacted my Office because the Loughs Agency had not approved his application for a draft net licence to fish in Lough Foyle.

As the decision, which had been made in relation to his application, was issued from the Derry office of the Loughs Agency, we agreed that this case fell within the remit of the Northern Ireland Ombudsman.

With the complainant's agreement, I transferred the complaint to my counterpart in the North for investigation. Although some instances of poor administrative practice were identified, the Northern Ireland Ombudsman did not uphold this particular complaint.



“Thank you very much for your correspondence dated the 9th... As you will see from the enclosed copy of a letter I received last April, my late husband was cleared of any liability to the Revenue Commissioners. I had contacted them after this date but my last letter was not even answered. It is now over, thanks to your office, which I sincerely appreciate and I do believe only for you I would not have received the refund that was due to my late husband. Keep up the good work and many thanks again.”

A Complainant



## 6.2 Unfair income tax deduction rule for tenants of non-resident landlords. Highlighted first in 1998.

A complainant, who was a non-national, contacted my Office as she had been told that she was liable for arrears in tax which she should have deducted from her rent payments to her landlord. Under Section 104I of the Taxes Consolidation Act, 1997, where rent is paid directly to a non-resident landlord (including payment directly into a bank account held by the landlord), there is an obligation on the tenant to deduct income tax at the standard rate (20%) from their rent payment and remit this to Revenue. This obligation also falls on tenants where a claim for rent allowance is received and in such cases the tenant must deduct tax from payments to the non-resident landlord. However, if the landlord has an agent in the State to whom the rent is paid then no tax obligations arise for the tenant.

Back in 1998, the then Ombudsman, in his Annual Report, expressed concern over the obligation which was being placed on tenants to withhold tax on the rent paid to a non-resident landlord. In particular he queried whether it was:

“reasonable to expect a residential tenant, who may be elderly or have little experience of tax affairs, to be either aware of, or have the capacity to manage, this type of requirement”.

He also correctly pointed out that there was also a difficulty in that tenants may not even be aware that the landlord's "usual place of abode is outside the State". He suggested that these questions might be considered in any legislation review.

I am concerned that over a decade later, the situation has still not been satisfactorily addressed by Revenue and that tenants may find themselves liable to pay outstanding tax and penalties where they have unwittingly failed to deduct tax from their non-resident landlords. This could cause difficulties and distress for vulnerable tenants such as the elderly, persons with literacy problems, persons who are unfamiliar with the tax system, and foreign nationals who may have limited understanding of English.



“I rang and advised Mrs X of the Department's decision to refund the €4,528.43 under REPS. She was delighted and was happy to see that the Department had a humane side!”







“

# Annexes

”



## Annex A - Statistics

**Table 1: Overview of 2009 complaints**

Total complaints carried forward from 2008	1040
<b>Total complaints within remit - received in 2009</b>	<b>2873</b>
Total on hand for 2009	3913
<b>Total complaints completed in 2009</b>	<b>2784</b>
Total complaints carried forward to 2010	1129
Total complaints outside remit - received in 2009	1077
Total all complaints received in 2009	3950
Total all enquiries received in 2009	9913

**Table 2: Numerical and percentage breakdown by sector of complaints within remit**

Civil Service	1204	42%
Local Authorities	859	30%
Health Service Executive	757	26%
An Post	47	1.6%
Disability Act 2005	6	0.2%
<b>Total</b>	<b>2873</b>	

**Table 3: Numerical and percentage breakdown of complaints completed by outcome**

Assistance provided	860	31%
Not upheld	781	28%
Discontinued	589	21%
Complaint resolved	400	14%
Withdrawn	112	4%
Partially resolved	33	1.2%
<b>Total</b>	<b>2784</b>	

**Table 4: 3-year comparison of complaints received within remit**

2009 *	2867
2008 *	2781
2007 *	2575

\* Figure does not include complaints received under the Disability Act, 2005.  
See table 2 for 2009 details.

**Table 5: 10-year trend of complaints received within remit**

2009	2873
2008	2787
2007	2578
2006	2245
2005	2243
2004	2064
2003	2213
2002	2326
2001	2539
2000	2136

**Table 6: Numerical breakdown of complaints received by county**

Carlow	31
Cavan	31
Clare	93
Cork	372
Donegal	107
Dublin	714
Galway	143
Kerry	104
Kildare	119
Kilkenny	37
Laois	50
Leitrim	24
Limerick	179
Longford	17
Louth	61
Mayo	51
Meath	110
Monaghan	34
Offaly	45
Roscommon	32
Sligo	43
Tipperary	71
Waterford	87
Westmeath	41
Wexford	57
Wicklow	73
Outside Republic	147
<b>Total</b>	<b>2873</b>

**Table 7: Numerical and percentage breakdown of types of complaint received outside remit**

Private companies	405	38%
Banking/Insurance	261	24%
Public bodies outside remit	140	13%
Miscellaneous	114	10.7%
Courts / An Garda Síochána	100	9%
Terms and conditions of employment	57	5.3%
<b>Total</b>	<b>1077</b>	

**Table 8: Civil Service  
Numerical breakdown by government  
department of complaints received**

	<b>Brought forward from 2008</b>	<b>Received in 2009</b>	<b>On hand for 2009</b>
Social and Family Affairs - see 8(a)	196	772	968
Revenue Commissioners - see 8(b)	21	117	138
Justice, Equality and Law Reform - see 8(c)	14	103	117
Agriculture, Fisheries and Food - see 8(d)	24	87	111
Education and Science - see 8(e)	9	54	63
Environment, Heritage and Local Government - see 8(f)	10	25	35
Health and Children - see 8(g)	8	12	20
Enterprise, Trade and Employment - see 8(h)	1	6	7
Foreign Affairs - see 8(i)	1	6	7
Communications, Energy and Natural Resources - see 8(j)	3	2	5
Transport - see 8(k)	1	1	2
Others	9	19	28
<b>Total</b>	<b>297</b>	<b>1204</b>	<b>1501</b>

**Table 8(a): Department of Social and Family Affairs****Numerical and percentage breakdown of types of complaint**

Child benefit	298	39%
Miscellaneous	229	30%
Disability, invalidity and maternity payments	58	7%
Old age & retirement pensions	54	7%
No reply to correspondence	34	4%
Widows and one-parent family payment	32	4%
Back-to-work, education allowance	17	2%
Carer's allowance	16	2%
Pay-related social insurance	13	1.7%
Fuel allowance and free schemes	10	1.3%
Family income supplement	6	0.8%
Occupational injury benefit	4	0.5%
Unemployment payments	1	0.1%
<b>Total</b>	<b>772</b>	

**Table 8(b): Office of the Revenue Commissioners****Numerical and percentage breakdown of types of complaint**

Income tax	62	54%
Miscellaneous	16	14%
Customs and excise	11	9%
Delay, no reply to correspondence	11	9%
Value added tax, inheritance, Capital gains tax	9	8%
Stamp duty	5	4%
Vehicle Registration Tax	2	2%
<b>Total</b>	<b>116</b>	

**Table 8(c): Department of Justice, Equality & Law Reform**

<b>Numerical and percentage breakdown of types of complaint</b>		
Administration of visa or asylum applications	87	84%
No reply to correspondence	9	9%
Miscellaneous	5	5%
Delay	1	1%
Quality of service	1	1%
<b>Total</b>	<b>103</b>	

**Table 8(d): Department of Agriculture, Fisheries and Food**

<b>Numerical and percentage breakdown of types of complaint</b>		
Single farm payment	22	25%
Miscellaneous	17	19%
Rural environment protection scheme (REPS)	12	14%
Farm development grants	11	13%
Early retirement scheme	9	10%
No reply to correspondence	5	6%
Livestock grants	3	3%
Disease Eradication Scheme	2	2.5%
Area aid	2	2.5%
Milk quota	2	2.5%
Forest premium scheme	2	2.5%
<b>Total</b>	<b>87</b>	

**Table 8(e): Department of Education and Science**

<b>Numerical and percentage breakdown of types of complaint</b>		
Higher education grants & fees	26	48%
Delay, failure to reply to correspondence	12	22%
Miscellaneous	8	15%
Special education	4	7%
Examinations	2	4%
National office for victims of abuse (NOVA)	2	4%
<b>Total</b>	<b>54</b>	

**Table 8(f): Department of the Environment, Heritage and Local Government**

<b>Numerical and percentage breakdown of types of complaint</b>		
Miscellaneous	15	60%
No reply to correspondence	7	28%
Motor tax, driving licence, driving test	3	12%
<b>Total</b>	<b>25</b>	

**Table 8(g): Department of Health and Children**

<b>Numerical and percentage breakdown of types of complaint</b>		
General Registrar's Office	7	58%
Miscellaneous	3	25%
No reply to correspondence	2	17%
<b>Total</b>	<b>12</b>	

**Table 8(h): Department of Enterprise, Trade and Employment**

<b>Numerical and percentage breakdown of types of complaint</b>		
Miscellaneous	5	84%
No reply to correspondence	1	16%
<b>Total</b>	<b>6</b>	

**Table 8(i): Department of Foreign Affairs**

<b>Numerical and percentage breakdown of types of complaint</b>		
Passport application	3	50%
No reply to correspondence	2	33%
Quality of Service	1	17%
<b>Total</b>	<b>6</b>	

**Table 8(j): Department of Communications, Energy and Natural Resources**

<b>Numerical and percentage breakdown of types of complaint</b>		
No reply to correspondence	2	100%
<b>Total</b>	<b>2</b>	



**Table 8(k): Department of Transport****Numerical and percentage breakdown of types of complaint**

Delay in transferring penalty points	1	100%
<b>Total</b>	<b>1</b>	

**Table 9: Civil Service – Numerical breakdown of complaints completed by outcome**

	Resolved	Partially resolved	Assistance provided	Discontinued	Withdrawn	Not upheld	Total completed
Social and Family Affairs	97	4	414	103	14	122	754
Revenue Commissioners	16	0	13	49	6	38	122
Justice, Equality and Law Reform	5	0	79	14	10	5	113
Agriculture, Fisheries and Food	4	0	8	23	2	40	77
Education and Science	9	0	7	7	3	21	47
Environment, Heritage and Local Government	1	0	11	8	2	6	28
Health and Children	5	0	3	3	1	1	13
Enterprise, Trade and Employment	1	0	5	1	0	0	7
Foreign Affairs	1	0	3	2	0	0	6
Communications, Energy and Natural Resources	0	0	1	0	0	0	1
Transport	0	0	0	0	0	0	0
Others	2	0	6	5	2	7	22
<b>Total</b>	<b>141</b>	<b>4</b>	<b>550</b>	<b>215</b>	<b>40</b>	<b>240</b>	<b>1,190</b>

<b>Table 10: Local Authorities Numerical breakdown by local authority of complaints received</b>	<b>Brought forward from 2008</b>	<b>Received in 2009</b>	<b>On hand for 2009</b>
Carlow	10	9	19
Cavan	7	4	11
Clare	27	34	61
Cork City Council *	11	46	57
Cork County *	22	53	75
Donegal	15	41	56
Dublin City Council	35	61	96
Dún Laoghaire-Rathdown	34	46	80
Fingal	11	32	43
Galway City Council *	12	16	28
Galway County *	27	34	61
Kerry	22	34	56
Kildare	26	30	56
Kilkenny	5	10	15
Laois	15	31	46
Leitrim	2	5	7
Limerick City Council *	5	31	36
Limerick County *	12	37	49
Longford	7	7	14
Louth	10	15	25
Mayo	21	33	54
Meath	25	22	47
Monaghan	5	15	20
North Tipperary	11	13	24
Offaly	6	20	26
Roscommon	11	14	25
Sligo*	1	11	12
South Dublin	14	31	45
South Tipperary	19	14	33
Waterford City Council	5	14	19
Waterford County	2	19	21
Westmeath*	8	18	26
Wexford	15	24	39
Wicklow	13	35	48
<b>Total</b>	<b>471</b>	<b>859</b>	<b>1,330</b>

Complaints received against borough councils, and town councils are included in the county figures.

\*Monthly CIC visits or regional visits were made to these counties in 2009 and this is likely to have affected the number of complaints received.

**Table 10(a): Local Authorities**

<b>Numerical breakdown of types of complaint received</b>		
Housing		311
	Allocations & transfers	214
	Repairs	38
	Loans & grants	26
	Rents	17
	Sales	16
Planning		176
	Enforcement	106
	Administration	70
Roads and traffic		109
Delay/Failure to reply to correspondence		98
Miscellaneous		61
Waste disposal		44
Sewerage and drainage		12
Water supply		11
Provision of service		9
Service charges		8
Quality of service		7
Rates		4
Parks/Open space		4
Motor tax & Drivers licence		3
Acquisition of land/rights		2
<b>Total</b>		<b>859</b>

**Table 11: Local Authorities – Numerical breakdown of complaints completed by outcome**

	<b>Resolved resolved</b>	<b>Partially resolved</b>	<b>Assistance provided</b>	<b>Discont- inued</b>	<b>With- drawn</b>	<b>Not upheld</b>	<b>Total completed</b>
Carlow	1	0	2	5	1	2	11
Cavan	0	0	5	1	0	2	8
Clare	6	1	6	4	0	15	32
Cork City Council	6	0	3	16	0	9	34
Cork County	8	1	9	19	2	14	53
Donegal	3	0	17	6	3	8	37
Dublin City Council	16	0	10	19	2	24	71
Dún Laoghaire- Rathdown	9	13	4	8	3	15	52
Fingal	3	0	7	14	2	7	33
Galway City Council	6	1	2	3	0	8	20
Galway County	9	2	4	8	3	10	36
Kerry	8	0	5	10	1	12	36
Kildare	8	1	8	3	0	14	34
Kilkenny	2	0	2	3	0	2	9
Laois	4	0	9	11	0	5	29
Leitrim	0	0	1	2	0	1	4
Limerick City Council	3	1	1	14	2	5	26
Limerick County	7	0	5	9	4	10	35
Longford	0	0	2	4	0	5	11
Louth	1	0	3	7	0	4	15
Mayo	4	1	9	10	1	12	37
Meath	10	0	6	4	1	13	34
Monaghan	1	0	1	0	0	8	10
North Tipperary	6	0	2	2	2	8	20
Offaly	4	1	2	5	0	6	18
Roscommon	2	0	5	4	0	2	13
Sligo	0	0	1	3	0	2	6
South Dublin	9	0	5	7	2	10	33
South Tipperary	7	0	9	2	0	8	26
Waterford City Council	3	0	3	3	0	6	15

**Table 11: Local Authorities – Numerical breakdown of complaints completed by outcome (continued)**

	<b>Resolved</b>	<b>Partially</b>	<b>Assistance</b>	<b>Discont-</b>	<b>With-</b>	<b>Not</b>	<b>Total</b>
	<b>resolved</b>	<b>resolved</b>	<b>provided</b>	<b>inued</b>	<b>drawn</b>	<b>upheld</b>	<b>completed</b>
Waterford County	2	0	6	2	4	3	17
Westmeath	0	0	4	5	0	7	16
Wexford	2	0	10	12	3	2	29
Wicklow	4	0	11	7	3	7	32
<b>Total</b>	<b>154</b>	<b>22</b>	<b>179</b>	<b>232</b>	<b>39</b>	<b>266</b>	<b>892</b>

Complaints received against borough corporations, urban district councils and town commissioners are included in the county figures.

**HSE administrative areas**

<b>Dublin Mid-Leinster</b>	<b>South</b>	<b>West</b>	<b>Dublin North East</b>
<b>Dublin Midlands Hospitals Group</b>	<b>South Eastern Hospitals Group</b>	<b>Mid-Western Hospitals Group</b>	<b>Dublin North Hospitals Group</b>
Adelaide & Meath & National Children's Hospital, Tallaght	Lourdes Orthopaedic Hospital, Kilcreene, Kilkenny	Mid-Western Regional Hospital, Dooradoyle	Beaumont Hospital
Coombe Women & Infants University Hospital	South Tipperary General Hospital, Clonmel	Mid-Western Regional Hospital, Ennis	Cappagh National Orthopaedic Hospital
Midland Regional Hospital, Mullingar	St. Luke's General Hospital, Kilkenny	Mid-Western Regional Hospital, Nenagh	Children's University Hospital, Temple Street
Midland Regional Hospital, Portlaoise	Waterford Regional Hospital	Mid-Western Regional Maternity Hospital, Limerick	Connolly Hospital, Blanchardstown
Midland Regional Hospital, Tullamore	Wexford General Hospital	Mid-Western Regional Orthopaedic Hospital, Croom, Co Limerick	Mater Misericordiae Hospital
Naas General Hospital	<b>Southern Hospitals Group</b>	St John's Hospital Limerick	Rotunda Hospital
Our Lady's Hospital for Sick Children, Crumlin	Bantry General Hospital	<b>West and North West Hospitals Group</b>	<b>North Eastern Hospitals Group</b>
<b>Dublin South Hospitals Group</b>	Cork University Hospital	Letterkenny General Hospital	Cavan General Hospital
National Maternity Hospital, Holles Street	Erinville Hospital, Cork	Mayo General Hospital, Castlebar	Louth County Hospital, Dundalk
Royal Victoria Eye & Ear Hospital	Kerry General Hospital	Merlin Park Regional Hospital, Galway	Monaghan General Hospital
St Colmcille's Hospital, Loughlinstown, Co. Dublin	Mallow General Hospital	Our Lady's Hospital, Manorhamilton	Our Lady of Lourdes Hospital, Drogheda
St. James's Hospital	Mercy University Hospital, Cork	Portiuncula Hospital, Ballinasloe	Our Lady's Hospital, Navan
St. Luke's Hospital	South Infirmary-Victoria University Hospital, Cork	Roscommon County Hospital	
St. Michaels Hospital, Dún Laoghaire	St. Mary's Orthopaedic Hospital, Gurrabraher, Cork	Sligo General Hospital	
St. Vincent's University Hospital, Elm Park		University College Hospital, Galway	

**Table 12: Hospitals: Numerical breakdown of complaints received by administrative area**

	<b>Brought forward from 2008</b>	<b>Received in 2009</b>	<b>On hand for 2009</b>
Dublin South Hospitals Group	3	16	19
West and North Western Hospitals Group	4	15	19
Southern Hospitals Group	4	13	17
Dublin North East Hospitals Group	4	10	14
Dublin and Mid-Leinster Hospitals Group	5	8	13
South Eastern Hospitals Group	3	7	10
Mid-Western Hospitals Group	2	8	10
North Eastern Hospitals Group	2	8	10
<b>Total</b>	<b>27</b>	<b>85</b>	<b>112</b>

**Table 12(a): Hospitals: Numerical breakdown of types of complaint received**

Miscellaneous		36
Hospital services		32
	Miscellaneous	32
Hospital charges		9
Delay/Failure to reply to correspondence		6
Hospital services - psychiatric		1
Health Services		1
<b>Total</b>		<b>85</b>



**Table 13: Hospitals: Numerical breakdown of complaints completed by outcome**

	Resolved	Partially resolved	Assistance provided	Discontinued	Withdrawn	Not upheld	Total completed
Dublin South Hospitals Group	0	0	3	8	0	1	12
Southern Hospitals Group	0	0	2	3	0	6	11
West & North Western Hospitals Group	1	0	1	7	0	1	10
Mid-Western Hospitals Group	1	0	4	1	0	2	8
Dublin North East Hospitals Group	2	0	3	1	0	1	7
South Eastern Hospitals Group	2	0	2	1	0	2	7
Dublin & Mid-Leinster Hospitals Group	1	0	2	1	1	2	7
North Eastern Hospitals Group	1	0	2	3	0	1	7
<b>Total</b>	<b>8</b>	<b>0</b>	<b>19</b>	<b>25</b>	<b>1</b>	<b>16</b>	<b>69</b>

**Table 14: \*Non-Hospitals: Numerical breakdown of complaints received by administrative area**

	Brought forward from 2008	Received in 2009	On hand for 2009
Dublin Mid-Leinster	53	158	211
South	49	150	199
Dublin North East	45	140	185
West	35	148	183
<b>Total</b>	<b>182</b>	<b>596</b>	<b>778</b>

\*The term 'non-hospitals' refers to types of complaints that are associated with services administered by or on behalf of the HSE. For example: supplementary welfare allowance, medical card entitlement or nursing home subvention.

<b>Table 15: Health Act 2004: Numerical breakdown of complaints received</b>	<b>Brought forward from 2008</b>	<b>Received in 2009</b>	<b>On hand for 2009</b>
Complaints relating to health repayment scheme	52	73	125
Complaints under section 38 of the Health Act 2004 bodies*	0	3	3
Complaints under section 39 of the Health Act 2004 bodies*	0	0	0
<b>Total</b>	<b>52</b>	<b>76</b>	<b>128</b>

\*These complaints relate to health or personal social services provided by a service provider who has entered into an arrangement with the HSE, or who has received assistance from the HSE for that purpose.

<b>Table 16: Disability Act 2005: Numerical breakdown of complaints received</b>	<b>Brought forward from 2008</b>	<b>Received in 2009</b>	<b>On hand for 2009</b>
<b>Disability Act complaints – Total</b>	<b>0</b>	<b>6</b>	<b>6</b>

**Table 17: Non-Hospitals, Health Act 2004 & Disability Act 2005****Numerical breakdown of types of complaint received**

Supplementary welfare allowance (SWA)		202
Exceptional needs payment	69	
Rent and mortgage allowances	60	
Miscellaneous	51	
Back-to-school - clothing/footwear allowance	22	
Health services (general)		106
Medical card	105	
Drugs, medicines and appliances	1	
Hospital services		83
Nursing homes/long stay	76	
Miscellaneous	7	
Miscellaneous		125
Cash payments (other than SWA)		60
Delay/Failure to reply to correspondence		30
Health services		23
Services for the elderly - Housing aid		18
Childcare/Social work services		16
Hospital charges		7
Dental service		4
Hospital services - psychiatric		4
<b>Total</b>		<b>678</b>

\*The term 'non-hospitals' refers to types of complaints that are associated with services administered by or on behalf of the HSE. For example: supplementary welfare allowance, medical card entitlement or nursing home subvention.

**Table 18: Non-Hospitals: Numerical breakdown of complaints completed by outcome**

	Resolved	Partially resolved	Assistance provided	Discontinued	Withdrawn	Not upheld	Total completed
South	21	1	24	31	7	51	135
Dublin Mid-Leinster	14	2	20	23	4	68	131
Dublin North East	15	4	24	22	7	53	125
West	17	0	10	32	4	42	105
<b>Total</b>	<b>67</b>	<b>7</b>	<b>78</b>	<b>108</b>	<b>22</b>	<b>214</b>	<b>496</b>

\*The term 'non-hospitals' refers to types of complaints that are associated with services administered by or on behalf of the HSE. For example: supplementary welfare allowance, medical card entitlement or nursing home subvention.

**Table 19: Health Act 2004: Numerical breakdown of complaints completed by outcome**

	Resolved	Partially resolved	Assistance provided	Discontinued	Withdrawn	Not upheld	Total completed
Complaints relating to Health repayment scheme	18	0	23	4	3	30	78
* Complaints under Section 38 of the Health Act 2004 bodies	0	0	2	1	0	0	3
* Complaints under Section 39 of the Health Act 2004 bodies	0	0	0	0	0	0	0
<b>Total</b>	<b>18</b>	<b>0</b>	<b>25</b>	<b>5</b>	<b>3</b>	<b>30</b>	<b>81</b>

**Table 20: Disability Act 2005: Numerical breakdown of complaints completed by outcome**

<b>Total 2009</b>	<b>Resolved</b>	<b>Partially resolved</b>	<b>Assistance provided</b>	<b>Discont- inued</b>	<b>With- drawn</b>	<b>Not upheld</b>	<b>Total completed</b>
Disability Act Complaints	0	0	2	1	2	1	6

**Table 21: An Post  
Numerical breakdown of complaints  
received**

**Brought  
forward  
from 2008**

**Received  
in 2009**

**On hand  
for 2009**

An Post	11	47	58
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**Table 22: An Post: Numerical breakdown of complaints completed by outcome**

	<b>Resolved</b>	<b>Partially resolved</b>	<b>Assistance provided</b>	<b>Discont- inued</b>	<b>With- drawn</b>	<b>Not upheld</b>	<b>Total completed</b>
An Post	13	0	7	12	4	14	50

## **Annex B – Ombudsman contact and information details forwarded to public bodies within the Office's remit**

### **Complaint procedures**

If you feel that you have been unfairly treated or are not satisfied with our decision on your complaint, it is open to you to contact the Office of the Ombudsman. By law the Ombudsman can investigate complaints about any of our administrative actions or procedures as well as delays or inaction in your dealings with us. The Ombudsman provides an impartial, independent and free dispute resolution service.

Contact details are as follows:

Office of the Ombudsman  
18 Lower Leeson Street  
Dublin 2

**Tel:** Lo-call 1890 22 30 30

**Tel:** 01 639 5600

**Fax:** 01 639 5674

**Email:** [ombudsman@ombudsman.gov.ie](mailto:ombudsman@ombudsman.gov.ie)  
**www.ombudsman.ie**