



# The Ombudsman's CASEBOOK

Office of the Ombudsman, Dublin, Ireland.

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## Direct Provision, social protection overpayments and more

Welcome to the October edition of The Ombudsman's Casebook.

The object of the Casebook is to promote learning from complaints. There is a wide variety of case summaries here which will hopefully help service providers to avoid making the mistakes of others or to improve systems to prevent unintended consequences.

Our work in the field of Direct Provision relies on our outreach programme, so that we are available in person in each centre as part of a rolling programme of visits. The experiences of the last year were summarised in a special report - [The Ombudsman and Direct Provision: An Update for 2018](#) . I discussed the report with the Oireachtas Joint Committee on Justice and Equality in September.

As I have said before, Direct Provision is suitable for short stays only. Because of the time it takes to process applications and to exhaust the appeals process, residents are spending much longer in the accommodation than was originally intended, and this is highly unsatisfactory. The consequence of these factors and the growth in the numbers of people seeking asylum is that demand for the centres is exceeding supply. More people are having to be accommodated in emergency accommodation, and we



have modified our outreach programme to ensure that they too have access to our staff. We published our [Annual Report](#) in June, which showed an increase in complaints of 11%. We also published a report, [Fair Recovery](#), on the work we did with the Department of Employment and Social Protection on how they dealt with overpayments. This report shows how we can address individual injustices and systemic problems by working in partnership with the Department. Finally, we signed a revised [MoU with HIQA](#) which provides for individual complaints being directed to my Office while issues arising in complaints being passed to HIQA, so that they can take them into account in their work of inspection and regulation. This is a good example of regulators and complaints handlers working together to produce better public services for all.

Peter Tyndall October 2019

# Agriculture

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## Non Reply to Correspondence

C01-18-0757 & OMB-10365-G9B6Z6

# *Not upheld*

### Background

A representative made a complaint on behalf of a woman who was a participant in a 'division of commonage' scheme. The women wanted to transfer lands to her children and to sell a plot. Due to a delay of many years and no reply from the Department she said she was unable to.

### Examination

The Department explained why there was a delay. There were 18 shareholders that were participants of the scheme. One shareholder would not engage in the process. Due to the interdependent nature of the scheme all shareholders were required to sign the agreement in order to bring it to 'vested' stage.

### Outcome

The woman received an apology for the delay and an explanation of what the issue was. She was also given a direct contact at the Department for future updates.

# Local Authorities

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## Donegal County Council - Housing Allocation

OMB-12063-Z6Z1J9

# *Not upheld*

### Background

A man contacted the Council as he wanted to become the tenant of a late relative's three-bedroom Council property. He said that he had stayed with his relative at the house in the months leading up to their death. He was unhappy that his request was refused and that another family member was housed in the property.

### Examination

For a person to take succession of the tenancy of a deceased tenant, they are required to have lived at the property for two years prior to the death of the tenant. Their income also has to be taken into account in determining the amount of rent to be paid.

The man was not on the Council's housing list when he requested the property. The Council asked him to apply to be placed on the Housing list. He did this and his application was approved. He was assessed as needing a two-bedroom property based on his family composition.

The man and two other family members had applied, and were considered for the property. Only one family member had been a Council tenant, and was assessed as needing a three-bedroom property.

### Outcome

This man had failed to prove that he had lived at the property before the passing of his relative. His income had never been taken into account for the level of rent paid on the house. The house had three bedrooms and he was assessed as needing two only.

The man had failed to meet the criteria to succeed the tenancy and the complaint was not upheld.

## South Dublin County Council - Housing Assistance Payment

L59-17-3228 & OMB-12623-W1Y1W7

# *Assistance Provided*

### Background

A representative made a complaint on behalf of a couple. The couple were on the Housing list and had been approved for Housing Assistance Payment (HAP). They sourced accommodation and paid the deposit. They were also removed from the Housing list. After they moved into the accommodation South Dublin County Council (SDCC) reviewed their application and they were told that they were over the threshold for the payment. They could not afford the accommodation and were due to be evicted for arrears of rent.

### Examination

Following the Ombudsman's request, SDCC undertook another review of the couple's eligibility for HAP. The couple also submitted further information to SDCC in support of their application. SDCC found that the couple were eligible to receive the payment.

### Outcome

The couple were eligible for HAP and the payment was backdated to when they moved into the accommodation.

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## Dublin City Council - Housing Allocations & Transfers

L12/18/1051 & OMB-12290-B5T8Q1

# *Not upheld*

### Background

A woman was in receipt of a Housing Assistance Payment (HAP) for a property which was now being sold. She was in receipt of Disability Allowance and needed to be housed as a priority because of her health issues. She said that she would be homeless when the current property is sold. She said that she had been on the housing list for nine years and needed to be housed as a priority because of her health issues. However the Council told her that she was not entitled to be housed as a priority despite her current housing situation.

### Examination

The woman applied for Social Housing Support on 3 October 2008. She moved to the HAP Scheme in August 2017 and she applied for medical priority in March 2018. Her application was considered but she was not awarded priority as priority is only given in cases

of exceptional medical circumstances and if the housing accommodation is unsuitable by reason of the disability or illness.

The Council said that in situations like the woman's where a tenant has received a notice to quit or termination notice from a landlord that expires within the next 28 days, the applicant is assessed for approval for Homeless HAP through the Homeless Service Section. It said that the benefits of Homeless HAP over mainstream HAP are a higher supplement of rent and deposits, and a month's rent up front may be paid.

#### Outcome

As there was no evidence to show that the Council was treating the woman other than in accordance with the housing allocations scheme the complaint was not upheld.

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## Cork City Council - Housing Allocation and Transfer

OMB-12070-Z1Z1Y6

# *Not upheld*

#### Background

A woman had been seeking a housing transfer for seven years without success. Her Social Worker had written to the Council explaining that aside from herself and her two sons aged 18 and 5, her niece was now also resident with her in a two-bedroom property which was damp.

#### Examination

In its response, Cork City Council said that the complainant had been a tenant at the current address since 2003. She had sought a transfer in 2010 due to dampness and the application had been approved.

The Council said that it allocated all available standard properties via the Choice Based Letting Scheme. Applicants are asked to log on weekly to the website to view available properties and express an interest or "bid" on those suited to their needs. The Council would then offer each property to the most suitable applicant who had submitted a bid. The woman had not submitted a bid on any property since December, 2017.

The Council said that as at mid-April, 2018 there were 1,146 qualified applicants approved for three bedroom properties and only 76 properties available for letting. The tenant was at the higher end of those prioritised for housing, should she bid on a suitable property.

It said that tenants are required to seek permission from the Council prior to any additional residents moving into their property. It had only been informed that her niece was residing with her a year after the event. However, the Council said that it could not agree to the niece becoming a legitimate tenant as to do so would create an overcrowding situation as

defined by Section 63 of the Housing Act, 1966. The Council's opinion was that given the age profile of her sons, the woman required a three-bedroom house for herself and them alone and would not be suitable were the niece to live with them too.

The Council was not treating her unfairly and if she continued to bid for suitable housing that she would be considered for one. The only reason why she had not been successfully rehoused was due to her failure to submit bids and the lack of available three bedroom houses, which was outside of the Council's control.

#### Outcome

The case was not upheld because the Council was applying its housing allocation procedures in accordance with the eligibility criteria.

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## Wicklow County Council - Planning Enforcement

OMB-08107-F4M1L6

# *Not Upheld*

#### Background

A man complained that Wicklow County Council constructed a parking bay on public open space at the entrance to his housing estate.

The entrance to the housing estate is at an extremely acute angle. Turning room for cars entering, and leaving, the estate is severely restricted. There are a number of adjacent properties where vehicle access is very difficult. In addition, due to the narrow width and seriously deficient alignment of the surrounding roads, utility companies, and other service providers, tend to park at the entrance to the particular housing estate.

#### Examination

The Residents Association requested the Council to construct the parking bay. The Council said that the works made the entrance to the housing estate safer and the Residents Association did not consider they lost any open space amenity.

However, the land on which the parking bay was constructed was not owned by the Council, nor was it registered with the Property Registration Authority.

#### Outcome

The Ombudsman was satisfied that the Council was concerned with improving the road safety infrastructure at the entrance to the estate following a request from the Residents Association. In addition, as the man's house was some distance away from the parking bay, the Ombudsman did not consider that he was adversely affected by the development.

However, the Ombudsman had a concern that the Council built on lands on which it

had no title. He asked it to rectify this matter and to improve some elements of its record keeping.

# Department of Employment Affairs and Social Protection

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## Social Welfare Allowance

C22-18-0406

# *Not upheld*

### Background

A man complained that his Jobseekers Allowance payment was stopped because a Social Welfare Officer assumed he was not living at the address he said he was.

### Examination

At issue was where the man lived. Jobseekers Allowance is a means-tested allowance and the Social Welfare Officer must be satisfied about where the applicant lived. The man had shown the Social Welfare Officer documentation which indicated he was not living at the address he had originally submitted on his application. Our examination found that the man was using two addresses. One was for a housing application and the other was for his Jobseekers Allowance.

### Outcome

This case was not upheld. The Social Welfare Officer had acted correctly in stopping the social welfare payment. Residency must be confirmed so correct means can be determined for Jobseekers Allowance.

## Backdating of Household Benefits allowance

OMB-12265-T0N5X3

# *Not upheld*

### Background

A man complained about the decision of the Department to refuse his application for backdating of the Household Benefits allowance. He said that he had not been aware of the Household Benefits allowance scheme until he had been told about it by a friend shortly before he applied for it in January 2018. The Department had refused to backdate the allowance as the man had not applied within six months of reaching the relevant age, as required in the legislation governing backdated payments.

### Examination

The Department provided the Ombudsman with copies of two letters that had issued to the man in May 2013 in relation to both his State Pension and EU State Pension entitlements. These letters had provided him with information in relation to his possible entitlement to the Household Benefits allowance.

### Outcome

The Ombudsman was satisfied that the man had previously received information from the Department in relation to the scheme and would have been aware of the scheme. There were no grounds for the Ombudsman to pursue the matter further with the Department.

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## Withdrawal of Back to Work Enterprise Allowance

OMB-12184-V1X0B0

# *Not upheld*

### Background

A man had his Back to Work Enterprise Allowance (BTWEA) withdrawn and he felt that he had been treated unfairly. He said that he had not been afforded sufficient support while on the Allowance and as a result of its withdrawal he had lost the Back to School Clothing and Footwear Allowance and the Household Benefits package.

### Examination

The purpose of the BTWEA scheme is to encourage long-term unemployed people to take up self-employment opportunities by allowing them to retain a portion of their social welfare payment, plus secondary benefits in certain circumstances, over two years.



Applicants are required to submit a business plan to a DEASP Case Officer or Local Development Company (LDC) who must approve the plan in writing in advance) and be receiving a qualifying payment from the Department of Employment Affairs & Social Protection. You can retain certain additional social welfare benefits such as fuel allowance etc. while you are on the BTWEA.

The business plans are required to include Business Financial Planning including: business cash flow; incomings and outgoings (to include overheads such as insurance, rent business rates, stock/equipment costs etc.) Participants need to demonstrate that their Business Plan is viable and has sustainability potential. Applicants are subject to regular reviews to ensure that they are meeting their development goals and that the business is progressing and viable.

In this instance, the applicant's business was reviewed on a number of occasions and he was asked to provide additional information about the business and its financing, which he failed to do. Where he did provide information, it was not considered sufficient to prove that the business was viable as a full time enterprise. Therefore the Allowance had been withdrawn. He had been advised to apply for Jobseeker's Allowance instead but had failed to do so. Had he applied for and been granted it, he would have retained the other financial supports which he had lost.

#### Outcome

The complaint was not upheld as he had not met the targets required for retention of the BTWEA.

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### Purchase additional voluntary PRSI contributions

OMB-12242-R4W8K5

# *Not upheld*

#### Background

A man had been self-employed since 2004. His business suffered significant losses in 2008 and as a result he had no liability to income tax that year. No PRSI contribution was paid that year either as he was unaware that he could pay voluntary contributions to keep his contributions intact. It was only when he reached retirement age that he discovered that he was ineligible for a full State Pension (Contributory) as he had only nine years paid contributions. He sought to purchase voluntary contributions for 2008 in 2015 but his application was refused and he was not allowed purchase contributions for the period between age 65 and 66 either.

### Examination

The relevant legislation applicable to voluntary contributions, Article 28 of SI No. 312 of 1996, specifies that any voluntary contributions must be made within twelve months of the end of the contribution year in which the self-employed person ceased to be a self-employed contributor. In this case, the man could have made voluntary contributions up to 2010.

There is provision to allow the Minister to exercise discretion in relation to extending the deadline for contributions to be made where extenuating circumstances arise and the man had sought to have this done in his case, without success.

### Outcome

The Department had applied the legislation correctly. Furthermore, the man had employed an accountant to assist him in completing his tax returns, who should have been aware of the provisions of the Voluntary Contribution scheme and advised him accordingly.

While the man did not qualify for a full Contributory Pension, he had qualified for a pro-rate Pension on the basis of his combined earnings in Ireland and the UK over his working life.

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## Quality of Service

OMB-12264-R6K4Y9

# *Partially upheld*

### Background

This man complained that staff in the INTREO Office had failed to correspond with him by his preferred method, by email, despite his asking them to do so on numerous occasions. He also said that they had failed to tell him directly whether he could retain his Jobseeker's Allowance and other supplementary benefits while he established a micro business.

### Examination

The Department said that it was standard practice to communicate with clients in writing by post, particularly when addressing matters about claims. It said that their INTREO office does not have a generic email address to which clients could send correspondence. If staff used their individual email address, there was a danger that if they were out of the office or had left, there could be a failure to respond which could generate complaints from clients.

The Department said that in responding to the query about the possible retention of his Jobseeker's Allowance, it could not give a definite answer as it depended on the income generated by the Micro business. If his earnings were below a certain threshold he could continue to receive the payment.

The Department's Customer Charter stated that when you contact them by letter or email, they will give a contact name, telephone number and email address (if contacted by email) so that you can contact them again. This would imply that where people sought to be contacted by email, they would be responded to in the same manner. The Jobseeker's Application Form also asked for an email address as well as a postal address and phone number.

It was accepted that problems could arise where a public body did not have a generic email to which members of the public can send emails and the person to whom an email was sent was out of the office or had left the job. However, given that other areas of the Department had been able to facilitate this man's request for emailed contact only, the Ombudsman considered that his request should have been facilitated.

#### Outcome

The complaint was upheld in relation to the failure to communicate with the man by email. The Department had provided appropriate information about the possibility of retaining the Jobseeker's Allowance and this aspect of the complaint was not upheld.

# Health

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## St Vincent's University Hospital - Care and Treatment

OMB-10328-M7G1S7

# *Assistance provided*

### Background

A woman complained about the care and treatment provided to her in the Emergency Department of St Vincent's University Hospital. She said that some staff did not listen to her and did not treat her with courtesy. She was also unhappy with the medical treatment she received, the tests carried out and how she was discharged.

### Examination

The Ombudsman cannot examine the medical treatment or diagnosis provided to the woman. However, the Ombudsman examined the other elements raised in the complaint. The hospital provided details of the tests carried out and it explained the reasons for those tests. It also explained its discharge policy which it followed when the woman was discharged.

### Outcome

The Ombudsman was satisfied that the hospital has taken the complaint seriously and the hospital apologised again for her experience in the hospital.

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## Naas General Hospital - Appointment Delay

OMB-10345-C9L6Q1

# *Assistance Provided*

### Background

A man complained there was a delay by Naas General Hospital in scheduling him for an operation.

### Examination

The hospital explained that the man has a complex medical condition. His lifestyle and active alcohol use complicated his condition. The man had to address these issues before the hospital would consider him for the operation.

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The man agreed to change his lifestyle. Subsequently, the hospital agreed to assess his suitability for the operation.

#### Outcome

The decision to perform an operation is a clinical decision made by a person's Consultant. Clinical decisions are outside the Ombudsman's remit. However, the Ombudsman felt the hospital's position was reasonable.

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## Mayo - Primary and Community Care

OMB-12185-H2B3B0

### # Assistance Provided

#### Background

A man complained that Mayo Mental Health Services discharged his brother from its care to an empty house and without a care plan.

#### Examination

The decision to discharge a patient is a clinical one and is outside the Ombudsman's remit.

The patient's Medical Notes indicated that the patient was deemed well enough to be discharged. The nursing staff informed the patient's sister of his discharge plan at that time. In addition, the Nursing Notes record that the patient gained access to his house after he got a key from another member of his family.

Furthermore, the Nursing Notes record that staff had extensive contact with the patient following his discharge. The HSE explained that the first home visit took place the day after his discharge and continued for several months. However, the patient did not always accept the assistance offered.

The HSE allocated a Personal Assistant to the patient in August 2018 and agreed to monitor his condition.

#### Outcome

The Ombudsman was satisfied that the HSE responded appropriately to the man's needs.

## HSE - Medical Card

OMB-12344\_H2P4N9

# *Not upheld*

### Background

A woman sought a free place at a crèche in September 2017 as the father of her child held a medical card which entitled the child to a free place. When the crèche asked for a letter from the National Medical Card Unit (NMCU) stating that the father's medical card was valid she discovered that the card had not been valid since April 2016 as he never returned a residency letter which NMCU had sent him in March 2016. She said that her partner did not receive this letter and she now owes the crèche a significant amount of money.

### Examination

Where there is no activity on a medical card for a period of 12 months or more a Confirmation of Residency letter is sent to the cardholder. This is to ensure that the person remains ordinarily resident in the country and continues to need their Medical Card. A letter was sent to the child's father on 7 March 2016 at the address where all previous correspondence had been sent. When no response was received from the father, his Medical Card eligibility was withdrawn on 28 April 2016 even though the card in his possession showed a date of validity of 30 April 2018. The HSE says that all Medical Card/GP Visit Card holders are advised to inform NMCU of any change in their circumstances, including change of address.

### Outcome

As the NMCU were acting in accordance with its procedures and guidelines governing the Medical Card Scheme there was no basis on which the Ombudsman could ask that the HSE issue a letter of eligibility for the period requested by the woman.

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## Cavan General Hospital - Care and Treatment

OMB-12017-T6S2L5

# *Partially Upheld*

### Background

A woman complained that her late father, who had vascular dementia and was frail, had been physically restrained during his admission to the Psychiatric Unit for an assessment. Her key concern was that physical restraint had been used on a number of occasions without telling her family members. She also questioned whether staff had received training

in Prevention and Management of Aggression and Violence (PMAV training) and whether they had used de-escalation techniques before physically restraining her father. The decision to use physical restraint is a clinical one usually taken to protect a patient, other patients or staff members. While the Ombudsman cannot examine clinical decisions, he can determine whether the hospital had complied with best practice as set out in the Mental Health Commission's "Voluntary Code of Practice on the Use of Physical Restraint in Approved Centres (2009)".

#### Examination

While the Code of Practice has no statutory footing, it is generally followed within approved centres. The Ombudsman contacted Dr Susan Finnerty, Inspector of Mental Hospitals who explained that, in her most recent Annual Report, she had called on this Code of Practice to be placed on a statutory footing so that compliance was mandatory. She said that the Mental Health Act, 2001 does not allow for the making of rules for physical restraint, with the result that there cannot be enforcement if there is non-adherence to the Code of Practice on Physical Restraint. Dr Finnerty said that protection for service users during physical restraint would be increased if there was a statutory basis for governing physical restraint.

The hospital said that it had used physical restraint techniques to protect their father when he became agitated during the night but this had only been used as a last resort following the use of distraction techniques. It acknowledged, however, that it had breached the Code of Practice when it failed to notify the family following every episode of restraint pertaining to their father. In addition, the hospital had failed to record the reason why the family had not been told. The lack of communication about the use of restraint on their father had caused the family considerable distress.

#### Outcome

The hospital apologised to the family for its failure to notify them following each episode of restraint and for the upset this had caused. It had since put measures in place to ensure that the Code of Practice was being followed.

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## St. Vincent's University Hospital - Care and Treatment

OMB-12044-G7J4B7

# *Not Upheld*

#### Background

A man said that he was verbally abused, insulted and slapped on the hand by a doctor while a patient in St Vincent's University Hospital. He said that the incident happened when he was severely ill, paralysed and suffering from extreme pain.

The man was also unhappy with the hospital's examination of his complaint under the 'Trust in Care' (TIC) policy. He said that he was not interviewed by the investigating

officer (IO) and that the response he received stated that an 'abusive action could not have occurred'.

#### Examination

The incident was not witnessed and there was no record of it in the man's healthcare record. The doctor denied the allegations against him. The doctor acknowledged that he refused to shake the man's hand and apologised for this. He also accepted that his manner with the man was inappropriate and apologised unreservedly for the distress caused to the man and his family.

The man's complaint was examined at the preliminary screening stage of the TIC policy. The Ombudsman noted from the policy that the IO could only determine if an abusive action could have occurred or could not have occurred. He also noted that, despite the wording used, the man's complaint did not proceed to formal investigation due to a lack of evidence. There was no requirement to interview a complainant at preliminary screening.

#### Outcome

The Ombudsman could not determine what happened as the incident was not witnessed and there was no reference to it in the man's healthcare record.

With regard to the TIC investigation, the Ombudsman was satisfied that the investigation had been carried out in accordance with the relevant policy.

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## Tallaght University Hospital - General Appointments

OMB-10334-C3N7G5

# *Upheld*

#### Background

A man complained about the cancellation of his out-patient appointment at Tallaght University Hospital as he had been given incorrect information about preparing for the procedure. He was also unhappy with how his complaint to the hospital had been handled.

#### Examination

The hospital acknowledged that poor communication had led to a misunderstanding, which resulted in the cancellation of the man's appointment and its failure to organise a new appointment. It apologised and agreed to offer the man an immediate appointment. It also outlined the actions it had taken to prevent a recurrence of the issues experienced by the man.

With regard to the handling of the complaint, the hospital apologised for its poor communication and follow-up in relation to the investigation of the man's complaint.



The Ombudsman asked the hospital to consider reimbursing the man as he had taken time off work, at his own expense to attend the cancelled appointment.

#### Outcome

The hospital agreed to reimburse the man. It also acknowledged the lack of communication on its part and its failure to respond to his complaints in a timely manner.

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## St. James' Hospital - Appointments

OMB-12074-G7M0C8

# *Partially Upheld*

#### Background

A man complained about problems he had experienced with his outpatient appointments at St James' Hospital. He said that he only found out that an appointment had been arranged for him when he got a call to ask why he had not attended. According to the man, the appointment was rearranged, which he attended. A further appointment was arranged a week later. However, he said that he got a call the day before to say that it had been cancelled. The man said that he was told that another appointment would be arranged, but that there was a four year wait. He said that an appointment was arranged, but again he was not notified of it. The man wanted an explanation from the hospital for what had happened.

#### Examination

In relation to the first appointment, the hospital confirmed that an appointment card issued to the man when it was scheduled, several weeks in advance. It could not explain why the man did not receive the card at his home address. According to the hospital, a text reminder issued to the man. However, it said that a wrong number was provided for him by the referring doctor. It updated its records and arranged a new appointment for the man a week later.

The hospital said that the follow up appointment had been arranged in error as his doctor did not have a clinic on the day in question. It said that the error was made by a staff member who was covering for his doctor's secretary at the time. It said that the man was contacted as soon as the error was noticed. The hospital said that the man should not have been told there was a four year wait as he was a priority case. It apologised for this.

With regard to the third appointment, the hospital said that written notice of the appointment issued to the man in advance of the appointment. It could not explain why he did not get the letter. It apologised for this and the difficulties he experienced contacting the hospital about the appointment. The hospital also confirmed that a text message reminder did not issue to the man. It said that it was investigating this with a view to ensuring it did not happen in other cases.

### Outcome

The Ombudsman was satisfied that the hospital had addressed the man's queries. He acknowledged the hospital's apology to the man and the steps it was taking to prevent a recurrence of the problems he experienced.

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## St. Luke's Regional Hospital Kilkenny - Care and Treatment

OMB-10308-H8Y4Q8

### # Assistance Provided

#### Background

A woman complained about the care provided to her in St Luke's Hospital, Kilkenny. The complaint concerned the insertion of a cannula into her arm and the subsequent antibiotic provided to her through the cannula. She believed that the cannula was not inserted correctly which resulted in her arm becoming infected.

#### Examination

The hospital acknowledged that the cannula caused discomfort for the woman and it apologised. The hospital said that the Clinical Nurse Manager on the ward works with her staff to ensure that care provided to patients is improved. It also introduced bi-monthly audits on the ward around cannulas and cannula care. The hospital said that these audits have shown a significant improvement in practice.

#### Outcome

The Ombudsman was satisfied that the hospital has made improvements in the area of cannula and cannula care. The hospital has taken the complaint seriously and has taken steps to improve its processes for other patients.

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## Naas General Hospital – Care and Treatment

OMB-12057-P9Y3C4

### # Assistance Provided

#### Background

A woman complained about the care and treatment provided to her elderly father in Naas General Hospital in February 2014. She felt that a simple scan would have saved her father who unfortunately passed away in the hospital. She believed that the hospital chose not to

carry out the scan because it was the weekend. She was also unhappy that her father was left in a corridor in the emergency department (ED) while waiting on a bed in a ward.

#### Examination

Part of the complaint was outside the Ombudsman's remit as it related to the clinical decisions about the care and treatment provided to the woman's father. The hospital had said that the scan was not carried out because it was not clinically indicated and not because it was over a weekend. The hospital had apologised for the time the woman's father spent in the corridor in ED and it had set out what the hospital and the HSE were doing to help alleviate overcrowding in ED. The records showed evidence of on-going monitoring from the time of admission to the time of her father's death two days later.

#### Outcome

The Ombudsman was satisfied that the hospital has taken the complaint seriously, had met with the woman to discuss her concerns and had apologised for the time her father had to spend on a corridor in ED.

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## Ennis Hospital - Delay

OMB-12183-C6H0F8

### # Assistance Provided

#### Background

A woman complained about a six-month delay in providing copies of her ultrasound results to her GP. Although she had received an apology from the hospital she had not received any details of why the delay had occurred or any information about the changes the hospital or the hospital group had made to prevent a delay happening again.

#### Examination

When the University of Limerick hospital group was contacted by the Ombudsman it provided more detail on what had caused the delay. The group had established that the delay occurred due to how workloads in the section concerned were being organised. Following the complaint, the group reviewed those workloads and reorganised staff in that section.

It also put in place new Standard Operating Procedures that flagged any delays to ensure orderly and timely processing of administrative duties. There is now ongoing monitoring of administrative workloads and clear escalation procedures outlined in the event of a backlog developing. Finally, UL hospital group staff received training on both the importance of processing all requests promptly and the repercussions for patients if that processing does not occur.

#### Outcome

The woman was happy with the additional information provided to her.

## Primary & Community Care - HSE Appliances & Equipment

OMB-12052-V7C7J1

# *Not Upheld*

### Background

A woman complained about the HSE in relation to the quality and suitability of mobility aids provided to her. The woman has Multiple Sclerosis and is reliant on a rollator for her mobility. The woman informed the Ombudsman that on a number of occasions the rollator's brakes had failed, causing her injury and distress.

A multi-disciplinary team meeting took place with HSE Officials and the woman in December 2017 at the request of the Ombudsman. As a result of this meeting another new rollator was ordered for the woman, however, she informed the Ombudsman that the new rollator had not resolved the issue as the wheel was getting stuck on the new aid.

### Examination

The HSE provided chronological records detailing complaints received from the woman about the rollators and showing that she had received 15 new/replacement rollators between September 2016 and December 2017. The HSE said that, with regard to the maintenance and repair of the rollators, typically these rollators require minimal repair and maintenance. The company that supplies the rollators informed the HSE that having tested and carried out routine adjustments to the brake cable of the woman's rollators, they could not find any problems with any of the rollators returned and no repairs were necessary. According to the company's report to the HSE there were no mechanical faults identified.

The HSE informed the Ombudsman that a physiotherapy assessment had been carried out for the woman. An outpatient assessment was also offered and declined by the woman. The physiotherapist had referred the woman to Occupation Therapy for assessment for powered mobility but the woman also declined this assessment. According to the HSE other alternatives to the rollator e.g. zimmer frame, perching stool had been declined by the woman. The HSE informed the Ombudsman that it had told the woman that a suitable rollator may not be available to suit her needs, but she was willing to trial other rollators to determine this.

### Outcome

HSE staff continued to engage with the woman positively, including offering to meet with her and arranging for the trialling of other rollators. The next step in determining the woman's needs would be to schedule an Occupational Therapist assessment, but to date the woman had declined the Occupational Therapist approved services offered to her by the HSE.

## HSE Primary & Community Care - Home Help

OMB-12267-LOX1H7

### # *Assistance Provided*

#### Background

A man complained about the Home Help Department in the HSE. The man had applied for additional home help hours for his mother and the application had been approved. However, despite the approval, his mother was placed on a waiting list and did not receive the hours. The man complained that it was not clear where on the waiting list his mother was, how the waiting list worked or if reassessment of an applicant's needs ever took place.

#### Examination

The HSE said that the waiting list was based on a scoring system following examination of the applicant. It said a specific place on the waiting list wasn't given as the waiting list could change depending on the needs of the applicant or other applicants. It agreed to reassess the man's application following the receipt of additional information.

#### Outcome

Following the receipt of additional information the HSE reassessed the application and the man's mother was granted the five additional hours a week as had originally been approved.

# Private Nursing Homes

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## HSE Nursing Home Subvention

OMB-10327-Z4Y8G2

# Upheld

### Background

A woman living in a private nursing home in Galway complained that her contribution towards her nursing home fees was constantly increasing, while the subvention being paid by the HSE was reducing. Whereas it had covered around 50% of the cost when she entered the nursing home, now it only covered around 36%. She had sought an “enhanced” subvention but her costs were still increasing. She had opted to remain in the Nursing Home Subvention Scheme when the Nursing Home Support Scheme (commonly known as the Fair Deal Scheme) was introduced.

### Examination

The woman was in receipt of the “enhanced” subvention rate. However it was being calculated on the basis of an average weekly cost of €300 for nursing home care in Galway and had not increased since 2007. No account was being taken of the increase in nursing home costs in the intervening years. As a result, those who had opted to remain on Subvention as opposed to transferring to the Nursing Home Support Scheme were now at a financial disadvantage. When we brought this to the HSE’s attention, it agreed to review the guidelines applying to the Subvention Scheme.

### Outcome

As a result of the HSE’s review the average weekly cost of Nursing Home care in Galway was reassessed at €846 per week. This resulted in increasing the woman’s weekly subvention to €534.32 which was backdated to January, 2018. The HSE also reviewed others in receipt of subvention and adjusted their contributions accordingly.

## Care and Treatment

OMB-12119-G6B8J6

# *Assistance Provided*

### Background

A woman complained about the care of her mother while a resident in a private nursing home. The woman sent in a detailed account of the problems experienced by her mother in the 12 months she lived in the home. The Ombudsman examined the key issues in the complaint, namely the management of patients with dementia, manual handling / transfer of patients and incontinence management. The woman was also unhappy with the nursing home's decision to terminate its contract with her mother.

### Examination

Manual handling in the nursing home was carried out onsite by its physiotherapy and a Dementia Programme had commenced for staff. The Ombudsman noted that training in both areas had been included in the Action Plan in the nursing home's most recent Health Information & Quality Authority (HIQA) inspection report. The nursing home said that a Continence Advisor was available and that a Continence Management Programme was in place for the woman's mother. It was clear that there were conflicting views regarding the effectiveness of the programme. Given that the woman's mother no longer resided in the nursing home, the Ombudsman brought the general issue to HIQA's attention for review at the next inspection. The woman had also complained to HIQA. It confirmed that the issues raised by the woman mirrored those it had identified in previous inspections of the nursing home. HIQA's recent inspection reports indicated that a number of action plans had been agreed with the nursing home and it advised that the home's progress in this regard would be assessed during its next inspection.

### Outcome

The Ombudsman considered it best that HIQA continue with its investigation as it has the expertise and authority to remedy the issues highlighted in the woman's complaint and identified during its inspections. With regard to the decision to serve a month's notice to leave the home, the Ombudsman found that the nursing home was acting within the terms of the contract of care in issuing a notice of termination under section 4 of the contract of care. However, while the Ombudsman accepts the contractual right of proprietors to terminate a contract for specific reasons, it is his view that, in general, nursing home contracts give little protection to a resident in this regard. The Ombudsman has highlighted nursing home contract issues, such as this, to the Minister for Health & Children, and will continue to do so.

## HSE - Nursing Home Support Scheme

H09/18/0737

# *Not upheld*

### Background

A woman made a complaint about the Health Service Executive's (HSE) decision regarding the weekly contribution payable by her mother towards her nursing home care. The assessment by the HSE included a transfer of a sum of money to the woman from her mother.

### Examination

The contribution which an applicant must make towards the cost of their nursing home care is determined by a financial assessment which includes assets transferred in the five years prior to the making of a first application for State support. There was no dispute about the fact that there had been a transfer of assets but the issue being raised was the purpose of the transfer.

The Nursing Home Support Scheme (NHSS) Act gives the definition of a transferred asset but the interpretation of "allowable deduction" in this legislation does not include a provision for the purpose for which a transferred asset was used.

### Outcome

The HSE's decision was made in accordance with the relevant legislation and there was no evidence that it treated her other than in accordance with the scheme.

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## Management of Patient Account

OMB-12144-N7B5K2

# *Not Upheld*

### Background

A woman complained about a private nursing home's management of the Private Patient Property Account of her late sister. When her sister died and the account was settled the final figure was less than the woman had expected. The woman also raised queries about the explanations for some of the expenditure provided to her by the nursing home.



### Examination

The nursing home provided the Ombudsman with a large amount of documentation including complete statements of the patient's accounts, and copies of receipts and invoices for expenditure made from the account. Expenditure and withdrawals from the account were checked for compliance with the nursing home's "Procedures for the Management of Service Users' Monies and Property" policy.

### Outcome

The Ombudsman was satisfied that the final amount in the Private Patient Property Account was an accurate reflection of the patient's income and expenditure over the period of her stay in the nursing home.

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## Care and Treatment

OMB-12217-Q4C0L6

# *Upheld*

### Background

A woman complained about the treatment and care her mother had received in a private nursing home prior to her admission to hospital. The complaint included failing to call a doctor to examine her mother, failure to record vital signs and failure to sufficiently monitor her mother's condition.

### Examination

The nursing home provided copies of medical and nursing notes and copies of its standard operating procedures (SOPs). It also provided details of the investigation it undertook in response to the woman's initial complaint and the changes it had made to SOPs on foot of that.

It became clear from the investigation that on more than one occasion a decision was made to call a doctor to examine the resident but that nursing staff simply forgot to follow through on the decision and actually call the doctor. As the nursing home had no system in place for recording decisions taken that required follow-up action, these errors were not caught at the time. When the Ombudsman raised this issue with the nursing home it further amended its SOPs to ensure that future decisions are recorded and flagged to senior staff on duty to ensure prompt follow up and accountability.

Although nursing staff said that the resident's vital signs were taken daily there was no documented evidence in the nursing notes to support this. On foot of the original complaint the nursing home had initiated disciplinary proceedings against the nurses who had failed to record vital signs in the nursing notes.

Other aspects of the complaint were excluded from examination as they related to matters of clinical judgment.

#### Outcome

The nursing home apologised for the errors on a number of occasions and made changes to several SOPs to ensure the same issues do not occur again.

## Transport Infrastructure Ireland

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### Fines/Penalties

OMB-10975-X6J2J0

# *Not upheld*

#### Background

A man had been a longstanding customer of EFlow which operates the M50 toll. He had a debit account which was paid via his credit card monthly. However due to a problem with the bank, the EFlow payments were not deducted in March, 2017. As a result after a month he had incurred penalties of over €2,500. He contacted the company to explain what had happened and sought to have the penalties withdrawn, without success. He felt that this was unfair and appealed to Transport Infrastructure Ireland (TII). It did not uphold the appeal. By the time he made his complaint to this Office the debt had increased to €14,335.50.

#### Examination

Under the by-laws, all drivers incur penalties where they fail to pay their toll on time. EFlow then issues reminders to the drivers, at the address registered with the Vehicle Registration Office in Shannon, to prevent large arrears building up. It is only when no response is received to these that further measures are taken to refer the matter to the Sheriff for collection of the due debt.

eFlow had written to the man at his registered address at an early stage to advise him that his toll charges were overdue. He confirmed to this Office that he had received them at his old address. However, he hadn't opened them and disposed of them as junk mail.

TII had investigated the matter and found that the penalties had been correctly applied. Numerous efforts were made to contact the man to advise him of the outstanding tolls, without reply. The company had offered a settlement, offering significant reductions in the penalties, which he had rejected.

## Outcome

Given that the man had ignored the warning letters which had issued to him and he had not notified the Vehicle Registration Office of his change of address, the Ombudsman decided that both EFlow and TII had acted in accordance with the relevant by-laws.

# Education

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## Trinity College Dublin - Course Delivery/Provision

OMB-12034-S3Q5Z0

# *Assistance Provided*

## Background

A woman complained about the way she was treated by Trinity College Dublin during year one of a Professional Masters in Education course. She said that she had been effectively removed from the course in February 2016 and that was why she did not submit assignments or finish her school placement. This resulted in her failing year one of the course. The woman was also unhappy with the school placement, the assessment process and other aspects of the course.

## Examination

The College said that the woman had not been removed from the course and the records held by the College show that it continued to deal with her as a registered student. While there was some confusion over her eligibility to register with the Teaching Council, the Ombudsman was satisfied that the College had dealt with the woman in accordance with its procedures. He was also satisfied that the school placement sourced by the College for the woman was suitable and that the assessment process and other issues were dealt with by the College in accordance with its procedures.

## Outcome

The Ombudsman did not uphold the complaint with regard to her alleged removal from the course as there was insufficient evidence to make a finding. He was satisfied that fair procedures were followed with regard to all other aspects of her complaint.

# Student Universal Support Ireland

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## Student Grant Refused

E78/18/0691

# *Not upheld*

### Background

A man made a complaint against Student Universal Support Ireland (SUSI) about its decision to refuse his application for a student grant on the basis that he claimed he wasn't receiving any financial support from his parents. He had appealed the decision to the Student Grant Appeals Board (SGAB) which upheld SUSI's decision.

### Examination

The Ombudsman considered SUSI's report and the relevant sections of the Student Support Scheme 2017 and the Student Support Act 2011.

While a letter from An Garda Síochána was provided stating that the man was not living at home, it was not established to SUSI's satisfaction that he was irreconcilably estranged from both of his parents and that neither of his parents furnished financial support to him.

The relevant legislation says that a dependent student may be exempted from having his parent's income taken into account if he furnishes SUSI with particular information acceptable to it to show that he was irreconcilably estranged from his parents. SGAB gave him examples of the documentation required to be furnished to satisfy it of his estrangement from his parents.

### Outcome

The Ombudsman found that SUSI's decision on his case was made in accordance with the relevant legislation and found no evidence that it treated him other than in accordance with the scheme.

# Direct Provision

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## Reception and Integration Agency - Transfer

OMB-13134-P9Z0W5

# *Not upheld*

### Background

A woman complained after she received a letter from the Reception & Integration Agency (RIA) in mid-April 2018 informing her that the accommodation centre where she resided was closing down in late June. She said that she was told she would be moved to alternative accommodation, but she heard nothing further from RIA until early June when she was told that she was being moved to a centre in another county. She said that following contact with RIA she was offered accommodation in the same county. However, she was unhappy with RIA's handling of her move.

### Examination

When RIA wrote to the woman in mid-April she was told that she would be offered alternative accommodation by late May / early June. RIA wrote to the woman on 31 May 2018 and she was offered accommodation similar to what her family currently enjoyed, but in a different county. Her initial request to remain in the same county was refused as RIA did not have suitable accommodation available for the family. However, a second request made on her behalf was successful and she was offered accommodation in the same county.

### Outcome

The Ombudsman acknowledged that the initial offer of accommodation would have been a major disruption for the family. However, he was satisfied that RIA made a reasonable effort to maintain a similar standard of accommodation for the family. The Ombudsman also acknowledged the fact that RIA had found alternative accommodation for the family in the same county, despite a shortage of accommodation in the area.

## Reception and Integration Agency - Transfer

OMB-22956-N1R1W2

# *Upheld*

### Background

A man contacted the Ombudsman about his request to the Reception & Integration Agency (RIA) to transfer to a centre in Sligo. He said that he had been offered a place on a degree course in Sligo Institute of Technology.

### Examination

The Ombudsman had previously examined the man's complaint about RIA's decision to refuse his request to transfer to Sligo to attend an IT training course. On that occasion RIA agreed to the transfer. However, he did not take up the offer as the course was no longer available.

RIA said that it had recently received the man's transfer application and that it would consider the request if there was available accommodation in Sligo. It subsequently informed the Ombudsman that it had approved the transfer request.

### Outcome

The Ombudsman welcomed RIA's decision to transfer the man to Sligo to further his education.

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## Reception and Integration Agency - Re-admission

OMB-12246-V7L4Z8

# *Upheld*

### Background

A man complained to the Ombudsman that he had been refused admission to direct provision accommodation by the Reception and Integration Agency (RIA). The man arrived in the country in March 2018 but informed the Ombudsman that he was not aware that he had to present himself to RIA for accommodation when he applied for international protection.

### Examination

RIA viewed this matter as a re-admittance case, and as such it was open to RIA to apply discretion as to whether it was obliged to offer accommodation to the man.

Based on the information provided to the Ombudsman by the man through his representative (due to his lack of English), he did not understand the process and he did not realise that by him failing to seek direct provision accommodation from RIA immediately upon arrival in the country it would result in him ending up homeless.

#### Outcome

The Ombudsman was satisfied that this was effectively a first instance admittance request rather than a re-admittance request, and therefore the man was entitled to State provided direct provision accommodation. Accordingly, the Ombudsman asked RIA to review its decision to refuse the man's request for admission. RIA reviewed its decision and offered the man a place in direct provision accommodation, which he accepted.

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## Reception and Integration Agency - Re-admission

OMB-10826-H8K4H6

# *Upheld*

#### Background

A non-governmental organisation (NGO) complained to the Ombudsman on behalf of a man who had been refused re-admission to direct provision accommodation by the Reception and Integration Agency (RIA). According to the NGO, the man's request for re-admission to direct provision accommodation was refused by RIA in April 2018.

The man informed the NGO that he had previously lived in RIA accommodation after arriving in the State in 2015 and had no preference as to the location of the accommodation centre. At the time of making the complaint, the NGO told the Ombudsman that the man was being assisted by a homeless organisation but that his accommodation would cease with them on 21 April 2018 leaving the man homeless and with no alternative accommodation. The NGO told the Ombudsman that it was its understanding that RIA had breached its obligations to this man, as he was entitled to accommodation given that he was still in the international protection process.

#### Examination

According to RIA, the man was removed from direct provision accommodation as a result of his alleged breaching of house rules. RIA's position was that the man made himself homeless through his own actions.

RIA informed the Ombudsman that the man had applied for international protection in November 2015. The man had been accommodated in four centres since the end of 2015. While he is still in the international protection process and therefore entitled to accommodation, due to the constant unruly and bad behaviour, RIA was of the view that he should be removed from direct provision accommodation entirely.

### Outcome

The Ombudsman requested that RIA review its decision to refuse the man's request for re-admission to direct provision accommodation. The Ombudsman also requested that RIA develop a disciplinary procedure or policy document outlining the different outcomes for breaches of House Rules including the penalties. This would also cover the process around removal for misbehaviour. RIA indicated that it was due to update and amend the House Rules in line with the EU Reception Conditions Directive (Recast) including a section on the withdrawal of services.

RIA reviewed its decision in line and said it was open to the man to submit a request for re-admission into direct provision accommodation. The Ombudsman informed the NGO of this decision.

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## Reception and Integration Agency - Transfer

OMB-10895-K5T4T0

# *Upheld*

### Background

A man complained to the Ombudsman about being refused a transfer by the Reception and Integration Agency (RIA). According to the man, he submitted several transfer requests to RIA but neither he nor his advocates received a response from RIA. The man requested a transfer to an accommodation centre closer to the centre where his children live with his ex-wife in order to have easier access to his children. At the time of the complaint the man lived on the other side of the country to his children.

### Examination

According to the man's doctor, the lack of access to his children was causing the man undue stress in an already very stressful situation. The man feared that he may lose any right of access to or custody of his children because he is unable to see them when they live so far away. The man travels to their accommodation centre to visit them on a regular basis, at great expense given the cost of travel, which is putting a huge financial strain on him.

### Outcome

The Ombudsman asked RIA to review its decision to refuse the man's request for a transfer to a centre closer to his children, given the exceptional needs arising in these circumstances. RIA reviewed its decision in line with the Ombudsman's request and offered the man accommodation closer to his children which he accepted.



## Reception and Integration Agency - Transfer

OMB-22956-N1R1W2

# *Upheld*

### Background

A man contacted the Ombudsman about his request to the Reception & Integration Agency (RIA) to transfer to a centre in Sligo. He said that he had been offered a place on a degree course in Sligo Institute of Technology.

### Examination

The Ombudsman had previously examined the man's complaint about RIA's decision to refuse his request to transfer to Sligo to attend an IT training course. On that occasion RIA agreed to the transfer, however, he did not take up the offer as the course was no longer available.

RIA said that it had recently received the man's transfer application and that it would consider the request if there was available accommodation in Sligo. It subsequently informed the Ombudsman that it had approved the transfer request.

### Outcome

The Ombudsman welcomed RIA's decision to transfer the man to Sligo to further his education.

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## Irish Refugee Protection Programme - Accommodation

OMB-12128-Z6X4V7

# *Upheld*

### Background

A man complained about the Irish Refugee Protection Programme (IRPP) in relation to the standard of accommodation in the Emergency Reception and Orientation Centre (EROC) where he and his family lived. The man complained that his family of six (four children and two adults) were accommodated in one bedroom for five months.

### Examination

The IRPP informed the Ombudsman that some of the bedrooms in this particular EROC were designed specifically with the refugees in mind. It had been the IRPP's experience that as refugees are used to living overseas in direct proximity to each other, the parents wished to replicate this scenario when in the EROC and did not wish to have family members in

separate rooms. The IRPP stated that space provision is in line with the recommendations contained in the McMahon Report (Working Group Report on Improvements to the Protection Process including Direct Provision).

The IRPP told the Ombudsman that the family was subsequently moved to a larger accommodation space when it became available and has since been re-settled into the community and is no longer living in the centre.

#### Outcome

The man and his family had been re-settled in the community. Therefore the issue giving rise to the adverse effect has been overtaken by time. However, the Ombudsman is pursuing the systemic issue with the IRPP and will inform the man of the outcome.

# Law Society of Ireland

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## Compensation Fund

OMB-10342-S1H4L4

# *Assistance Provided*

### Background

A man complained about the Law Society's refusal to make an award to him from its Compensation Fund. The man had paid money to a solicitor to help obtain early access to part of his pension fund but found himself in a situation where he claimed his entire pension was lost as a result of the actions of the solicitor.

### Examination

The Law Society and the man provided a large amount of documentation to the Ombudsman. It was clear from this that the man had signed some documents which should have raised questions about the process being used by the solicitor to access the pension fund. The Law Society determined that as the man had signed all these documents he should have been aware of what the solicitor was doing. It felt the man had contributed to his own loss and so refused to make a payment from the fund.

In the course of the examination it became clear that the Law Society had found the man only partially responsible for his loss. Legislation allows for the Law Society to make a partial award but in this case, even though it found the man only partially responsible, it did not consider making a partial award to him.

### Outcome

When the failure to consider making a partial award was raised with the Law Society it agreed to take the matter back for reconsideration.

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## Complaints about Solicitors Complaint Handling

OMB-10836-W3T7T6

# *Not Upheld*

### Background

A man complained about the Law Society's handling of his complaint to it. He complained that his solicitor had failed to correct errors he had identified in an engineer's report and that

his solicitor recommend he settle the case on the morning of the hearing. The Law Society investigated the complaint but declined to make a determination and closed the case.

#### Examination

The man provided a number of documents in relation to the case and both the Law Society and the Independent Adjudicator provided copies of their complete files to the Ombudsman.

The documents showed that the Law Society had engaged with the man several provides to establish the precise nature of his complaint and details of the solicitor he wished to make a complaint against. When the solicitor couldn't be identified the Law Society engaged with the principal of the firm instead. The Law Society corresponded with the firm on a number of occasions and pursued further explanations when it felt they were lacking.

The legislation governing the Law Society's handling of claims for inadequate service states that the Law Society shall not make a determination on a matter unless it feels it is appropriate to do so. The Law Society's information leaflet on complaints in this category, which was provided to the man, says that if the Law Society feels the solicitor's explanations are reasonable it will not intervene.

Following the correspondence with the firm the Law Society wrote to the man to say that it felt it could not intervene any further and closed the case.

#### Outcome

The Law Society had fully investigated the man's complaint and, as per the legislation, as it was satisfied with the solicitor's explanations, it declined to intervene any further.

# An explanation of the Ombudsman's Case Closure Categories

## 1. Upheld:

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

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

## 2. Partially Upheld includes:

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

## 3. Assistance Provided includes:

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

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

## 4. Not Upheld includes:

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

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

## 5. Discontinued/Withdrawn includes:

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

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# About the Office of the Ombudsman

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

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

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

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

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## Making a Complaint to the Ombudsman

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

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

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

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## Contacting the Ombudsman

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

Tel: 01 639 5600 Fax: 01 639 5674

Website: [www.ombudsman.ie](http://www.ombudsman.ie) Email: [info@ombudsman.ie](mailto:info@ombudsman.ie)

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

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## Feedback on the Casebook

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

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In December 2019  
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