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The Ombudsman's casebook, issue 3, spring 2015

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The Ombudsman's CASEBOOK

Office of the Ombudsman, Dublin, Ireland.

Issue 3 Spring 2015

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Why do some people not complain?

The report of our first ‘own-initiative’ investigation, “Learning to Get Better – How Hospitals Handle Complaints”, is due to be published on 27th May. It was designed to discover why there were relatively few complaints about public hospital services in Ireland compared to other jurisdictions.

Rather than investigating a single complaint or group of complaints, we decided to look at the issue using a variety of approaches. We met with representative groups, professional regulators and health service providers. We invited members of the public to tell us about their experiences of complaining, good and bad. We also visited hospitals.

We found that the main reason people didn’t complain is that they were afraid of the consequences. They feared that they or their loved one would be discriminated against. Many also were convinced that complaining would make no difference. We also found examples of good practice which could be adopted across the board.

We have made a number of recommendations and look forward to working with the HSE, hospitals and the Department of Health on their implementation.

We’re very pleased that Sir Robert Francis, author of the milestone report into the Mid Staffordshire NHS Trust in the UK has agreed to take part in the launch. His report highlighted the critical role which should be played by the active consideration of complaints in identifying systemic failings and making sure that they are addressed.

The Head of the HSE, Tony O’Brien



Ombudsman Peter Tyndall

will also speak about his commitment to ensuring that we have an effective system for encouraging people to come forward with their concerns and actively addressing them.

This quarter’s Casebook features a number of hospital complaints. As is often the case, the issue of communication and the importance of ensuring that patients and their families fully understand the issues concerning their diagnosis and treatment features in a number of these complaints.

There are complaints about anti social behaviour, housing requests, boundary walls, noise from nightclubs and wind turbines, and development bonds.

I hope you find this issue of interest, and that it will prove of benefit in preventing similar failings as those documented here from occurring in the future.

Peter Tyndall, Ombudsman
May 2015

Lessons Learned

In this part of the Ombudsman's Casebook we will highlight any recurring themes arising from cases summarised in this quarter.

Explaining why a delay in service delivery has occurred

Every service provider tries to ensure that there are no, or at least minimum delays to the delivery of its services. However, occasionally delays do occur, often through circumstances outside the control of the service provider. Two cases this quarter highlight the importance of explaining why the delay has occurred, ensuring there is minimum suffering for the person involved and apologising for the delay.

Both cases involved a delay in medical treatment, one to a man with a serious heart condition. The case resulted in the refund of the man's private medical fees to the value of €7,000 (see case [H33/12/0299](#) – Health section). The other case resulted in an apology to the patient and an explanation as to how the same situation will be avoided in the future (case [H78/14/1011](#) – Health section).

There are a number of other particularly interesting cases this quarter including:

[C22/13/1783](#) – Social Protection. A separated man with joint access to his dependent children was granted an increase in his Rent Allowance.

[C25/15/0247](#) – Vehicle Registration. A woman's vehicle registration certificate was sent to the wrong address.

Ensuring appropriate procedures are complied with

It is important that all appropriate procedures are followed, particularly when someone's rights or reputation are likely to be affected.

This quarter the Ombudsman examined a complaint from a man about how social workers had dealt

with allegations of sexual abuse against him. The Ombudsman discovered shortcomings in the way the allegations had been handled. See case [HA4/12/0577](#) in the Health section.

Interpreting rules in a flexible way

In the last Ombudsman Casebook we highlighted the importance of interpreting rules and procedures in a sensible and flexible way.

This quarter, the Ombudsman examined a complaint from a man who had been refused an appeal by the Social Welfare Appeals Office as his appeal was made outside the time limit for appeals. While the time limit for making an appeal cannot be open-ended, the acceptance of a late appeal should be considered if exceptional circumstances apply. Each case should be considered on its own merits. In this case the man had a disability which made it difficult for him to understand the appeals process. Following discussions with the Ombudsman the Appeals Office accepted the late appeal in this case. See case [C22/14/1705](#) in the Social Protection section.

Further Information on Cases

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

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Agriculture

R.E.P. Scheme

Department of Agriculture, Food and the Marine

C01/14/0228

Completed 26/02/2015

Not Upheld

A man complained to the Ombudsman regarding an overclaim on his Rural Environment Protection Scheme (REPS) contract.

The REPS Scheme is designed to reward farmers for farming in an environmentally friendly manner. One of its aims is to improve the environment on existing farms. Farmers with land in a NATURA 2000 site i.e. Special Areas of Conservations (SACs) or Special Protection Areas (SPAs) were required to include such lands in the REPs farm plan. The Department said that the man overclaimed for payment for a portion of Natura land.

The National Parks and Wildlife Service (NPWS) moved the designated boundary line closer to the perimeter of his property thus reducing the Designated Natura area. However, the complainant said he was not informed that this was happening at the time. The over declaration was greater than 50% resulting in a 100% reduction based on the area declared. The overclaim reduction was €1,539.12.

The Department said that the man availed of the opportunity to have his case heard by the independent Agriculture Appeals Office (AAO). He was partially successful in this appeal. The appeals officer decided that the man had been informed of the change in designation of Natura area but that he should only suffer a clawback of the Natura top-up on the basic REPS payment but should be paid the basic REPS payment on the land concerned. The penalty amount of €1,539.12 was reduced to €805.86 in accordance with the appeal outcome.

The Department said that the man originally appealed against the extent of proposed designation of a SAC on and adjoining his lands in 2006. His partial success on appeal against the extent of designation was confirmed back to him in writing on 12 November 2007. The Department advised that it was not in a position to release the letter from the NPWS dated 12 November 2007, as this would constitute releasing information to a third party. This Office obtained the man's written consent to request a copy of the letter to assist with the examination of his case. We subsequently received a copy of the letter from the NPWS, which enclosed a revised map of the area.

The Ombudsman examined the basis of the Appeals Office decision and was satisfied that it fair and reasonable under the circumstances. As he was in possession of the correct information at the time of application (the letter from NPWS dated 12 November 2007 enclosing a revised map of the area), there was no basis to uphold the complaint.

False Allegations

Department of Agriculture, Food and the Marine

C01/14/2047

Completed 27/01/2015

Not Upheld

A man complained that a Government Department had disclosed him as the source of complaints concerning his neighbours, and said that the Department should instead have treated his complaints in confidence. The Department said that it respected confidentiality for genuine complaints, but that the man had made repeated allegations against his neighbours, all of which turned out to be false following investigation. For this reason it took the view that the man's neighbours were entitled to know who was making repeated false allegations about them. The Ombudsman considered that the Department's position was reasonable and so did not uphold the complaint.

Farm Development Grants

Department of Agriculture, Food and the Marine

C01/14/1524

Completed 21/01/2015

Not Upheld

A man applied to the Department of Agriculture, Food and the Marine (the Department) for a Targeted Agricultural Modernisation Scheme (TAMS) grant at the end of 2011 in respect of a milking machine, auto-washer, water heater and bulk milk tank. An earlier Scheme had been in place in 2011 which had been terminated and a new Scheme was introduced, under which the man had applied. At the pre-approval inspection which took place in July, 2012 it was found that the equipment on which grant aid had been sought had already been installed. It was a condition of the scheme that written approval had to have been obtained before installation and on that basis his application was refused.

The man maintained that he was forced to install the equipment in May, 2012 because the equipment in his home farm had failed and it was prime milking season. However, he had not contacted the Department beforehand to see if the inspection might be brought forward as a matter of urgency due to the circumstances he found himself in. At the oral appeal hearing he said that he had made a "spur of the moment" decision because of the losses he faced and on the assumption that his application had been unsuccessful because he hadn't heard anything from the Department for so long. It was also claimed by his Teagasc Advisor that the man could have submitted an application under the earlier Scheme in 2011 and the problem would not have occurred but for the fact that he was under the impression that he needed to have planning permission for the bulk tank prior to submitting it. The Teagasc Advisor claimed that he was aware that other farmers had submitted applications prior to having secured planning permission and their applications had been processed. The Department denied that this was the case. It said that where such applications were received, the Department wrote to the applicant to let them know that the application was invalid and told people what additional information was required. If the information was received at a

later date, the application was accepted as valid from that date and then processed.

Given that he was satisfied that the Department and the Agriculture Appeals Office had applied the terms and conditions of the Scheme correctly, the Ombudsman did not uphold the complaint.

Disability Act

Accessibility

Disability Act Complaints

HDA/14/1935

Completed 03/02/2015

Not Upheld

A woman sought compensation from the HSE as it had repeatedly issued her a Medical Card in a format she could not read. The Ombudsman confirmed his earlier finding that the Medical Card must in future be issued in the format requested. The HSE gave a commitment that this would be done in any future communication with the woman. However, as the woman had not been without Medical Card cover at any stage and had not therefore incurred any costs, the Ombudsman accepted the HSE's position that compensation was not required and so did not uphold the complaint.

Education

Fees

National University of Ireland Maynooth

E67/14/0855

Completed 31/12/2014

Not Upheld

A University student complained to the Ombudsman that he was required to pay an additional year's tuition fees, despite the fact that he had completed and submitted his research thesis for his PhD degree. He added that he would not receive any tuition, support or supervision, and that no benefit would accrue to him whatsoever from the payment of the additional year's tuition fee. He said that it was unfair of the University to demand payment of the fee before his thesis would be assessed for his PhD. The student also complained that the University's fee structure unfairly discriminated against part-time students by comparison with full-time students.

Section 40 of the Universities Act 1997 empowers Universities to set their own fees. It is normal practice for Universities both in Ireland and abroad, to set 'minimum duration' periods for a research degree such as a PhD. The University recognises, however, that in some circumstances students can complete their PhD research early. Where this arises each case is brought to the Academic Council for consideration. The Academic Council has the authority to approve the submission earlier than the 'minimum duration' period. However, it is a condition for approval that the full fees for the 'minimum duration' period of the degree course are paid. The Ombudsman concluded that as this information is readily available for students who embark on a course of study, and as the setting of fees is within the power of Universities, the case could not be upheld.

The Ombudsman also considered whether the University's fee structure unfairly discriminates against part-time students. The University said that while there is a proportionately higher fee payable by part-time students over a five year period, compared to full-time students over a three year period, for the same degree, the costs of providing part-time courses are normally higher than those for providing full-time courses. In this case the additional fee cost amounted to approximately €66 per annum. The case was not upheld.

Third Level grant

Student Grant Appeals Board

E77/14/0703

Completed 08/12/2014

Not Upheld

This complaint was about the refusal of a student grant by Student Universal Support Ireland (SUSI) in respect of a Level 8 course that commenced in 2013. The decision by SUSI

was subsequently upheld by the Student Grants Appeals Board (SGAB). The man was told that he could not be considered for a grant in respect of this course, because in 2010 he started a two year Level 6 course, of which he completed only the first year. He was told that he could not be considered for a grant in respect of the Level 8 course, until he had completed one year of that course - equivalent to the time he spent on the Level 6 course.

Under the 2013 Student Grant Scheme SUSI has discretion to waive the provisions which required a student to complete an equivalent period of study “in exceptional circumstances, in line with guidelines drawn up by the Minister”. The Ombudsman asked SUSI to review the man’s application to see if any such exceptional circumstances might exist. SUSI informed the Ombudsman that the guidelines drawn up by the Minister refer to exceptional circumstances that may arise which could impact on a student completing a particular period of study or undertaking exams. In this case, the period of study that the man did not complete was the Level 6 Course that he commenced in 2010. Therefore, any exceptional circumstances had to relate to that time. SUSI said that, after reviewing the man’s application, it was satisfied that he had not provided any evidence that there were circumstances which had an exceptional impact on his decision to leave the Course in 2011.

The Ombudsman agreed that ‘exceptional circumstances’ had not been shown to waive the requirement that the man complete an equivalent period of study before he could be considered for a grant. He found that the decision by SUSI/SGAB was in accordance with the relevant legislation.

Third Level grant

Student Universal Support Ireland (SUSI)

E77/14/0999

Completed 03/12/2014

Assistance Provided

A man had applied for a Third Level Grant in 2013. His application was refused on the basis that his parent’s income exceeded the permitted limits. He argued that trading losses incurred by his parents which were allowable for income tax purposes should also be allowable in calculating their income for grant purposes.

It became clear that not only had the trading losses not been taken into account but that his parents also had rental income which had not been included in the grant application calculations by SUSI.

It was clear from the Student Grant Scheme that trading losses can be deducted from income for grant purposes. As a result SUSI agreed to review the grant application and sought additional information from the man. However, following the review which took account of the trading losses and rental income, the family income was still in excess of the income limits and as a result he failed to qualify for a grant.

Health - Care and Treatment

HSC - Care and Treatment

St James' Hospital (HSE Dublin South Hospital Group)

H78/14/1011

Completed 05/12/2014

Upheld

The Ombudsman received a complaint from a woman whose daughter had to wait over four hours in the Ophthalmology Clinic in St James's Hospital even though she had a scheduled and pre-determined appointment time.

When the Ombudsman took the matter up with the hospital it said that, in general, there are few delays in the clinic but that there were exceptional circumstances on the day in question. It explained that such delays usually occur if there is an emergency which requires a ward-based patient to be brought down to the clinic as an additional unscheduled patient or some other unprecedented event. The hospital apologised to the patient, explained what happened on the day in question, identified where improvements could be made and offered to meet with her to discuss her concerns. The Ombudsman was happy with the hospital's response. As her daughter was a regular patient at the clinic, the Ombudsman invited the woman to come back to the Office if her daughter experienced a similar situation in the future. The Ombudsman's view is that good communications is an integral part of quality healthcare and that, where there are unexpected delays, patients should be advised of the reason for delay and where possible, given an explanation as to how long the delay may be.

HSC - Care and Treatment

St. Luke's Regional Hospital Kilkenny (HSE South Eastern Hospital Group)

H53/14/0920

Completed 25/02/2015

Not Upheld

A man complained to the Ombudsman regarding the level of care his partner and baby daughter had received while they were patients in St Lukes Hospital Kilkenny. The HSE conducted a Systems Analysis Investigation of Incidents and Complaints and issued its findings to the man but he was not satisfied with the outcome. Poor communication was a significant aspect of the man's complaint. He maintained that Hospital staff had failed to keep him and his partner properly informed during the birth of their daughter, and that medical staff had failed to do the best for her.

Additional clarification was sought from the Hospital on all the issues raised by the man. The Ombudsman was satisfied that the hospital had apologised and that the importance of good communications was brought to the attention of all staff.

HSC - Care and Treatment

Health Service Executive

HA9/13/1583

Completed 10/12/2014

Upheld

A man complained to the Ombudsman about a delay by the HSE in examining a complaint he had made about his elderly mother's care and treatment while she was a patient in University Hospital Galway (UHG) and Merlin Park Hospital in 2012. His mother died a short time after being discharged. There was no suggestion that her death had been as a result of negligence.

However he had made complaints in January and April, 2012 to UHG and Merlin Park respectively about aspects of her care and how he was dealt with by some staff in both hospitals. He had received a response to the first complaint in June, 2012 and sought a review as he was unhappy with the outcome of it. The reviewer had met with the man and agreed a series of questions to which he sought clarification. No report had issued in answer to these questions. No reply was received in relation to the Merlin Park Hospital complaint.

Following the Ombudsman's examination of the complaint it was discovered that a very comprehensive report had been completed by the Consultant who had treated his mother in UHG which, if it had been released to him at the time, would have addressed many of his concerns. This report had also acknowledged and praised his ability to gain the cooperation of his mother which sometimes eluded the hospital staff, especially in relation to getting her to eat. The reply which had issued to the man had only contained a short synopsis of the Consultant's report and had not given a clear impression of what it contained.

As a result of the Ombudsman's examination, the HSE conducted a full review of the man's complaints and issued a comprehensive report to him, which included the Consultant's report. The man sought some additional clarifications which were obtained also.

HSC - Care and Treatment

Health Service Executive

HA9/14/0136

Completed 30/12/2014

Partially Upheld

A complaint was received from a man whose elderly mother had been admitted to University Hospital Limerick following a severe stroke. Difficulties had arisen with the woman's ability to swallow and medical staff had made a referral for her to be assessed by a Speech and Language Therapist (SALT). There was a delay of four days before the swallowing assessment was conducted and the man said that his mother could not eat for over a week prior to her death due to difficulties in inserting a nasal gastric tube. The woman had been transferred to Ennis General Hospital where doctors also tried to reinsert the Nasal Tube but without success. Her son also complained about the end of life care his mother received in Ennis General Hospital and said that the family had to ask for a priest to be called to administer the

Last Rites. He said that no rosary beads or candles were provided for his mother who was a devout Catholic.

The Ombudsman sought independent clinical advice to enable him to take a view in relation to the woman's care and treatment. It was clear from the advice provided that the woman had been treated correctly with intravenous fluid therapy to ensure that her nutritional and hydration requirements were met. It was explained to the man that going without food during this period had not made a significant difference to his mother's outcome. It was also explained that his mother was not sufficiently alert to participate in an earlier swallowing assessment. An apology was made to the man for the end of life care provided to his mother in Ennis General Hospital. The hospital said that a new policy/guideline for staff was being introduced for all hospitals within the Mid -Western Hospital Group entitled "Care of patients when death is imminent and after death at UL Hospitals". The hospital said that training and education sessions were being provided for all staff to enhance their awareness of the needs of patients and family members during and after death.

HSC - Care and Treatment

Dublin South West (HSE Dublin Mid-Leinster)

HB4/14/0007

Completed 29/01/2015

Assistance Provided

The Ombudsman received a complaint against Tallaght Hospital about a delay of over 20 months in providing the results of blood tests to a patient.

The woman attended Tallaght Hospital in January 2011. Following this, she had blood tests carried out in February 2011. Subsequently, all blood tests were reported upon, except for one set. The woman rang the Hospital in August 2011 and again in mid Summer 2012 regarding the particular test results. She was told that the blood tests were not available.

In October 2012, her Consultant reviewed the woman at his clinic. It was during this consultation that the Consultant became aware of the results of the blood test which had been taken in February 2011. Following this consultation, the woman was prescribed vitamin injections over an extended period of time.

It was clear from our examination that the hospital initially failed to communicate adequately with the patient in relation to her blood tests in many respects. However, once this Office brought the matter to the hospital's attention, the Consultant acknowledged that an administrative error had happened. He apologised, both verbally and in writing, to the patient. He explained, in considerable detail, what went wrong and he tried to put things right as quickly and effectively as he could.

In concluding the case, the Ombudsman was satisfied that the patient did not suffer any clinical adverse effect as a result of the delay in examining the blood test results. Furthermore, he was satisfied that the Hospital had responded positively to the complaint and had learned from the experience.

HSC - Care and Treatment

Mater Misericordiae University Hospital (HSE Dublin North East Hospital Group)

H81/14/1052

Completed 04/12/2014

Not Upheld

A woman complained about the level of care her father (a 91 year old with a number of health issues) had received on the day he died in the Mater Hospital. She also raised concerns about the Do Not Resuscitate decision reached by her family in her absence in discussion with her father's medical team and the fact that her father was not included in these discussions.

On the day of his admission the woman's father was seen by three consultants, two of which had previously dealt with her father and knew him and his family. The woman's father was very ill when he arrived at the A&E and the consultants agreed that he would not survive. His condition was explained and the family agreed that the best that could be done was to provide comfort for their father. He had initially been given antibiotics and fluids but these were discontinued. He subsequently suffered a heart attack. CPR was initially applied but was stopped after a short time.

An examination of the medical and nursing notes indicated that consultation had taken place with other family members and the Hospital consultants. Agreement had been reached on the Do Not Resuscitate decision before the woman arrived at the hospital. Family members were also interviewed by this office. The Ombudsman found no evidence of poor care by the Mater Hospital.

HSC - Care and Treatment

Bantry General Hospital (HSE Southern Hospital Group)

H41/14/0932

Completed 16/01/2015

Not Upheld

A woman attended Bantry General Hospital on the recommendation of her GP. While being examined in the company of a nurse, she said that the Doctor sexually assaulted her. She did not complain immediately but left the hospital and went to the Gardai, having discussed the incident with a friend.

The woman then made a complaint to the HSE. The Hospital carried out an investigation under the Trust in Care procedures. The HSE investigation found that the woman had consistently maintained that a sexual assault had occurred and the Doctor consistently denied the allegation. The chaperone nurse had no recollection of any incident on the day. Accordingly the HSE did not find in the woman's favour.

The woman requested the Ombudsman to examine her complaint. Additional papers and statements were requested from the Hospital and these were examined.

As there was conflicting evidence in this case the Ombudsman did not conclude that there was maladministration by the hospital.

HSC - Care and Treatment

St James' Hospital (HSE Dublin South Hospital Group)

H78/13/1805

Completed 06/01/2015

Partially Upheld

A woman complained to the Ombudsman about the treatment her elderly father had received while he was a patient in St. James hospital over a six month period. The woman's father had entered hospital just before Christmas and over the course of the following two weeks, he was moved to a different ward on six occasions. On each occasion the family were not informed and would arrive in hospital to discover their father moved and staff not knowing where he was. A second issue of complaint related to the administration of medication and hospital staff leaving medication on the patient's locker.

Subsequent to this office examining the complaint the hospital apologised to the woman and her family for the hospital's failure to inform them about the moves. The hospital introduced a new protocol which requires the staff moving the patient to ensure that the patient's family has been informed about the move and this is to be included in the nursing report at the change of shifts. The hospital also apologised for the failure regarding the administration of medicines in this case and confirmed that the responsible staff, have been spoken. Other issues raised by the woman have also been addressed by the hospital and the Ombudsman is satisfied that the hospital response is reasonable.

HSC - Care and Treatment

Waterford Regional Hospital (HSE South Eastern Hospital Group)

H52/14/0465

Completed 28/01/2015

Upheld

A woman attended a regional hospital for a preoperative gynaecological procedure. During the course of the procedure, the woman said the Doctor was unable to answer certain questions and did not conduct a pregnancy test or sign the necessary form. A number of days later the woman attended the hospital and underwent the procedure. It subsequently came to light that the woman was pregnant and that if the correct test had been carried out there would have been no need for her to undergo the procedure.

The woman complained to the HSE and then to the Ombudsman. The Regional Hospital conducted an investigation and the Consultant was satisfied that the locum Doctor should have been able to answer all the woman's questions and carry out the necessary tests. As a result of an examination conducted by the Ombudsman the Hospital introduced additional training for all staff and an additional consent form to be completed by all patients prior to surgery.

Health - Payments

HSE - Medical & GP Card

Primary Care Reimbursement Service

HC1/13/0672)

Completed 07/01/2015

Not Upheld

The Ombudsman examined a complaint from a couple on behalf of their daughter who had been refused a Medical Card on discretionary medical grounds by the HSE. The Ombudsman found that the Medical Officer did not provide any explanation as to how she made her decision. The Medical Officer ticked a box to show their decision on the file and noted that the case had been discussed with other Medical Officers.

The relevant Guidelines state:

“A decision should only be taken after a sufficient and reasoned assessment of all the circumstances of an individual case to include the nature and extent of personal, medical or social circumstances of the applicant and/or his/ her family. ”

The Ombudsman asked the HSE for its reasons for refusing the application on discretionary grounds. He found that the HSE's decision was made in accordance with the Guidelines, i.e. after all allowances for the woman's medical conditions had been deducted, her means were still significantly over the income thresholds as set out in the Guidelines.

Although the Ombudsman did not uphold the complaint, the HSE agreed to provide more detailed reasons for Medical Officers' decisions on all new Medical Card applications.

HSE - Motorised Transport Grant

Laois/Offaly (HSE Dublin Mid-Leinster)

HB8/14/0348

Completed 27/02/2015

Upheld

A woman applied to the HSE for a Motorised Transport Grant (MTG) two weeks before the Scheme was closed in February 2013.

The Grant is a means tested payment for people with disabilities to assist with their mobility. It is payable towards the purchase of a vehicle where this is essential to help that person retain employment. The scheme also provides for the payment of the grant, in exceptional circumstances, to a person with a severe disability, who lives in very isolated circumstances, and whose disability prevents them from using public transport.

The woman was medically assessed and found to be severely disabled for the purposes of the MTG. It was also found that the nature of her disability prevents her from using public

transport. Her application was refused on the basis that the purchase of the vehicle was not essential for her to retain employment and that she had access to transport by a family member.

She appealed the decision to the HSE. Her appeal was refused as it was considered that, under revised National Guidelines which were introduced in March 2013, she did not to meet the criteria to qualify on the grounds of exceptional circumstances in that she was not considered to be living in very isolated circumstances.

The woman had previously qualified for the MTG on the basis that she was in “very isolated circumstances”. She had applied for the grant prior to the introduction of the revised National Guidelines and therefore had a legitimate and reasonable expectation that her application would be processed in accordance with the terms of the scheme which were in place when her application was first accepted. The Ombudsman felt that the retrospective application of the conditions of the new National Guidelines to her case was unfair in the circumstances of her complaint. Accordingly, he asked the HSE to review its decision.

As a result, the HSE agreed to pay the woman a MTG of €5,020.

Nursing Home Support Scheme

Sligo Leitrim (HSE West)

HC5/15/0135

Completed 19/02/2015

Not Upheld

A woman complained to the Ombudsman on behalf of her Aunt regarding the refusal by the HSE to reassess her aunt's total weekly contribution to the Nursing Home Support Scheme. The woman said that the contribution should have been reassessed as the value of her aunt's property had dropped to almost half the original value due to its deterioration over the last number of years.

There is no provision in the legislation that would allow the HSE to retrospectively review applications using a new property valuation. The legislation only allows for the estimated market value of the property at the time of the application to be used for the assessment. It does not allow for adjustment in respect of changing market value, either upwards or downwards as a result of either changing markets or neglect of property.

The Ombudsman was satisfied that the Nursing Home Support Office had properly assessed the application in accordance with the Nursing Home Support Scheme Act 2009, and that the woman's aunt's contribution was calculated correctly by the HSE.

Health - Various

Appointment Delay

Mid Western Regional Hospital, Dooradoyle (HSE Mid Western Hospital Group)

H33/12/0299

Completed 19/12/2014

Upheld

A man complained to the Ombudsman in relation to his care at the Mid Western Regional Hospital in Limerick in 2010 and 2011. He was referred to the hospital by his GP in October 2010 with a specific heart condition. The day after the referral, the staff in the emergency department confirmed the GP's suspected diagnosis with an ECG and initiated appropriate treatment. They referred him to the consultant cardiologist for DC cardioversion (medical procedure where an abnormally fast heart rate is converted to a normal rhythm using electricity or drugs).

Seven weeks later as he had not got an appointment for the cardiologist the man presented to the medical clinic where his condition was noted. As he already had a referral to the consultant cardiologist he was discharged.

In February 2011, the man was eventually seen by the Senior House Officer (SHO) to the consultant cardiologist. The SHO judged that the man had chronic obstructive pulmonary disease and arranged pulmonary function tests and a follow-up appointment in three months. Despite the clinical opinions of the general practitioner and other hospital doctors that cardioversion was indicated, the SHO did not consider cardioversion and did not discuss his (the SHO's) alternative diagnosis with the consultant.

In March 2011, as the man still hadn't got an appointment to see the cardiologist he presented again to the medical outpatient clinic where a further referral to the cardiology department was made. A month after this the man presented again to the medical clinic following which the GP again referred him to the consultant cardiologist requesting cardioversion. The man eventually felt he had no choice but to seek private treatment for his condition. By way of redress he sought a refund of the costs of his private treatment at the Galway clinic.

Following a review of the case, the Ombudsman was concerned that the delays at the hospital compounded by the misdiagnosis by the SHO caused undue distress to the complainant. He felt that administrative procedures should have been in place to ensure that SHOs consult with senior colleagues in cases where other doctors have recommended a specific course of action. Under the circumstances, he concluded that there was a strong case for the HSE to refund the man's private medical fees. The HSE refunded the man €7000.

HSC - Disability Services

Dublin North West (HSE Dublin North East)

HA1/14/0490

Completed 10/12/2014

Partially Upheld

The Advocate of an elderly intellectually disabled man made a complaint about her dealings with a HSE Disability Service Provider (the Service Provider). She said that it had failed to allow her time to consult with her client prior to him being moved on several occasions. She also said that it failed to respond adequately to her letters and phone calls and that staff had not been available to attend a meeting which had been arranged.

The Advocate had been appointed by the National Advocacy Service following a request from a private Disability Service Provider where the man had lived for six years on a contracted basis.

The Service Provider said that the man had been lived at their own facility for most of his life. He was transferred to the private facility along with other clients on a contracted basis several years previously because of overcrowding issues. The Service Provider had maintained contact with the man and the other ex-residents while they were there. In 2012 it was decided to return the man and others to the HSE facility. Meetings had been held with staff of the private facility and with the man about the planned transfer. Visits had been arranged to the new facilities in Dublin before the Advocate had been appointed. Staff of the private facility had confirmed that the clients were looking forward to returning to the new facilities. Therefore the Service Provider saw no reason to delay the transfer of the man when the Advocate contacted it.

Soon after the man returned to Dublin to a mixed unit, an issue arose regarding a woman resident. This continued despite efforts by staff to address the situation. They decided that they had to move the Advocate's client immediately to resolve the situation. They failed to notify the Advocate in advance of the move. The Unit to which he was moved had previously been condemned by the Mental Health Commission as unsuitable. The HSE was aware of this and intended the move to be temporary until the refurbishment of another Unit was completed. The Advocate was made aware of this. The refurbishment of the new unit was completed sooner than expected and the client was moved again without the Advocate being notified in advance. The Service Provider accepted that due to an oversight the Advocate was not notified in advance.

The Service Provider accepted that there had been delays in responding to correspondence. It said that they updated her during her visits to the man. It also said that due to unforeseen circumstances, two staff member who had been due to attend the meeting with the National Advocacy Service were not available.

The Ombudsman concluded that it was not unreasonable for the Service Provider to proceed with the transfer from the private facility as planned. However he considered that they had breached guidelines in not contacting the Advocate in advance of the transfers after the client had moved back to Dublin. He also considered that it would have been better had the meeting been rearranged given the unavailability of relevant staff. The Ombudsman concluded that there had been a breakdown in communication between the Service Provider and the Advocate, albeit not deliberately intention.

HSC - Social Work Services - Child Welfare and Protection

Cavan/Monaghan (HSE Dublin North East)

HA4/12/0577

Completed

Partially Upheld

A complaint was received from a man regarding the way social work services had dealt with allegations of sexual abuse which had been made against him. He complained that the process had not been properly explained to him and that no written information had been provided to him. He was also unhappy that he had not received notice of the allegations in writing before social workers interviewed him, that he was not given the option of objecting to the presence of a student social worker during the interviews, and that he was not afforded the opportunity to have a support person attend with him during the interviews. Nor was the man afforded an opportunity to appeal against the social worker's request that he decline from having unsupervised contact with children until a risk assessment had been completed.

Following examination of the man's complaint, the Ombudsman formed the view that there were serious shortcomings in the way these allegations had been handled and that the man had been treated unfairly. However, it was not clear that the outcome to the allegations would have been different had the process itself been conducted more fairly as the social workers believed the allegations to be credible in nature. Following discussions with the newly formed Child and Family Agency, revised processes and procedures for handling allegations of abuse have been developed and implemented nationally to ensure that social work services take a consistent national approach when dealing with such allegations. The Agency said it was committed to ensuring that persons who are the subject of investigation receive a full entitlement to fair procedure and natural justice. An Appeals Panel has also been established for people who are dissatisfied with decisions of social workers in relation to outcomes following a child protection investigation. The man received a written apology from the Child and Family Agency for the shortcomings he experienced from social work services.

HSC - General

Coombe Women's Hospital (HSE Dublin Mid Leinster Hospital Group)

H62/14/0466

Completed 17/12/2014

Assistance Provided

A complaint was received from a woman who had given birth to her first child having agreed a birth plan with the hospital. The woman said that her birth plan preferences were not met by the medical staff. During her complaint to the hospital she sought the pin numbers of the medical staff involved in her care as she wished to make a formal complaint about them to the relevant regulatory bodies. However, the hospital had not disclosed the pin numbers to her but had advised her that these were freely available on the respective websites. She was told that she could proceed to make a complaint to the regulatory bodies even without a pin number. The woman had met with the Director of Nursing to outline her complaint but had not received a detailed response.

The Master of the hospital told the Ombudsman that it continuously strives to work harmoniously with women whose wishes for pregnancy, labour and birth may not be consistent with those recommended by the healthcare provider. The hospital provided a detailed written response setting out the clinical approach taken in relation to the woman's care which was forwarded to the woman to enhance her understanding as to why her birth plan was not followed. The Master said that it was not hospital practice to contact staff who are out on sick or maternity leave in relation to complaints, as was the position in this instance, but that this practice was under review. The Master said that she regretted that the woman's birthing experience was not as she had planned it but explained that it was important to differentiate between low-risk and high-risk when delivering care. She said this had been fully explained to the woman when her birth plan was being drawn up. In this case, the level of risk to the woman and her baby had changed during labour and delivery which meant that her birth plan could not be followed as a result.

The Ombudsman believes that this case highlights the importance of explaining in clear terms to expectant mothers how levels of risk can change during labour, which may result in their birth plans not being followed. Clear and sensitive communication between hospital staff and patients is crucial if conflict is to be avoided in such circumstances.

Residential Care

Brothers of Charity

S39/14/0629

Completed 09/01/2015

Assistance Provided

The Ombudsman received a complaint from a man whose late sister - a resident in a sheltered housing project - had been assaulted by another resident in 1994. His sister informed the man of the attack in January 2009. This was 15 years after the actual incident. He was concerned that there were insufficient protocols in place to ensure that his sister did not come in contact with the person who had assaulted her. She died in 2012. Since then, the man has been trying to get the matter investigated by the HSE.

This Office could not examine the issues surrounding the assault in 1994. Our examination was confined to the actions which the HSE, and the care institution, took once the man approached them in 2012. This is because the action happened before the care institution came within our remit. The assault was, however, reported to the Gardan 1999.

On receipt of the complaint, the HSE contacted HIQA, the Health Information and Quality Authority. HIQA requested a Provider Led Investigation Report. This Investigation confirmed that the 1994 incident occurred on a social outing. The Investigation Report identified a number of key findings, highlighted a number of important issues and suggested a number of improvements to the care institution's procedures, including its complaint handling processes.

The Investigation Report identified serious shortcomings in the care institution's operational procedures. These have since been rectified. The Ombudsman was satisfied that, once the matter was brought to the HSE's attention in 2012 it took appropriate action.

Local Authority

Housing

Bray Town Council

L58/14/2044

Completed 17/02/2015

Assistance Provided

A woman applied to her local authority for improvement works to be done on her mother and aunt's house. The Council refused as it said it did not have the money in its budget to carry out the requested works. The woman complained to the Ombudsman.

When contacted by the Ombudsman, the local authority explained its position on its budget for the scheme, but suggested that the woman may wish to apply for funding under its Housing Adaption Scheme. As this meant there was another way of resolving the woman's complaint the Ombudsman closed the case.

Housing

Limerick City Council

L27/13/1683

Completed 23/12/2014

Not Upheld

A woman complained that there was a delay by Limerick City and County Council in providing her with a house. It was the woman's view that because she had previously been a Council tenant that her case was special and deserving of preferential treatment. The woman also stated that the Council had made a mistake when it calculated her rent as it assessed her son's income when he was not living with her. As a result she was in rent arrears.

Once the information about the woman's son was given to the Council and verified, the Council recalculated her rent and credited her rent account. There were however arrears outstanding from when the woman had surrendered her previous tenancy with the Council. The woman had entered into agreements with the Council in respect of these rent arrears. The Ombudsman decided that this arrangement was reasonable and did not uphold the woman's complaint about these earlier arrears.

As regards the woman's wish to be rehoused, the areas that she had stated a preference for were areas where there was a significant demand. These areas also have a very low turnover so the Council could not say when housing would become available. It was not in a position to buy or build properties in these areas so was completely dependent on tenancy turnover. The Council has told the woman that she will continue to be considered for housing when a suitable vacancy arises along with other eligible people.

Housing

Limerick City/County Council

L27/13/1543

Completed 27/02/2015

Not Upheld

A woman complained that she felt she had been unfairly treated in relation to her application for a housing transfer on medical grounds and that she was dissatisfied with the service that she received from Limerick City and County Council. Following a visit from a Housing Welfare Officer the woman was considered for a transfer on medical grounds and was subsequently offered a transfer which she refused. In the absence of a further offer of a transfer the woman subsequently surrendered her existing tenancy as she considered it no longer suitable.

The Ombudsman considered that, as the offer of a transfer had regard to the woman's medical needs i.e. ground floor and no steps, it was a reasonable offer of alternative accommodation. As the basis for the complaint against the Council was also that the woman was dissatisfied with the service that she had received, the Ombudsman had regard to the woman's interaction with the Council and the service that was provided.

The woman had two previous tenancies with the Council and had surrendered both. The tenancy that she had surrendered after she refused the transfer was her third tenancy. The Council had continued to facilitate and assist the woman in terms of her housing needs after the surrender of these tenancies. The Council was aware of the deteriorating health of the woman and the problems associated with accessing her current accommodation. It offered a suitable property and it was the woman's choice to refuse it. This is allowed for in the relevant housing regulations. The Council was trying to source alternative appropriate accommodation up until the time the woman surrendered her third tenancy, however, there was none available. There was no evidence that she was treated other than in accordance with the Council's Housing Allocation Scheme and as a result the Ombudsman could not uphold her complaint.

Planning

Clare County Council

L05/13/0938

Completed 13/02/2015

Not Upheld

A man complained about the delay by the Council in pursuing enforcement action against a developer. The man said the developer had not completed all works on his housing estate. The man was also not happy that the Council had not taken the estate in charge. Furthermore, the man said the water mains were not completed to a minimum standard and a stop/yield sign at the entrance to his estate was not erected as per one of the conditions of the planning permission.

The Ombudsman was satisfied that the estate did not meet the minimum criteria to have it taken in charge given the outstanding works that were required. The Ombudsman also found that the Council's decision not to complete the works itself until the outcome of enforcement proceedings against the developer through the Courts had been concluded, was reasonable in the circumstances, i.e. exhausting all avenues open to it to secure completion of the estate.

In relation to the water mains, the Council supplied a report from the Fire Officer explaining that the flows were sufficient for fire-fighting purposes in domestic dwellings. It said it also repaired some leaks in the estate. The Council also explained that the general low water pressure in the area was due to a lack of upgrade works to the existing infrastructure. As factors outside the Council's control were causing the poor water pressure the Ombudsman did not uphold this part of the complaint.

The Council said that the erection of the stop sign was being pursued under the enforcement notice. However, the Ombudsman requested that it review the situation with a view to erecting the sign on safety grounds. The Council agreed and installed the stop sign.

Planning

Cork City Council

L07/13/1212

Completed 04/12/2014

Assistance Provided

A man complained to the Ombudsman about the delay by the Council in taking enforcement action against a nightclub in relation to a failure to comply with planning permission. The man said that noise from the nightclub kept him up all night and he could not understand why the Council was not enforcing the planning conditions in relation to noise mitigation measures.

The Council had initially issued the nightclub with a warning letter. As the club had engaged with the Council regarding the outstanding works it decided not to continue with enforcement action. The Ombudsman was of the view that the Council's position was reasonable. Furthermore, the nightclub completed all but one of the outstanding works.

The outstanding work related to providing acoustic lobbies that would serve the purpose of reducing noise from the premises. There was a delay by the developer in completing these works. However, the Council said that it would resume enforcement action if the developer did not complete the works within a specified period of time. The Ombudsman advised the man that he could come back to the Ombudsman if there were further undue delays in dealing with the matter.

Planning

Kerry County Council

L18/13/1745

Completed 04/12/2014

Upheld

A man complained that Kerry County Council had not replied to him with details of whether a developer had paid a development bond. In addition the man was concerned that the development would not be completed and that the Council were slow in pursuing planning enforcement action against the developer.

The Ombudsman determined that the development bond had not been paid by the developer and that when the Council was informed that as the development was now complete there was no need for bond to be paid. The Council were of the view that the development was not complete as there were outstanding works. As a result the Council took planning enforcement action against the developer. However this action was delayed for a variety of reasons, including a commitment by the developer to complete all outstanding works, a delay in carrying out site inspections, delays in advising the developer that works were outstanding, and a lack of resources within the Council to pursue enforcement action.

The Ombudsman upheld the man's complaint as it was found that the Council had not provided the requested details and that there were significant delays in pursuing planning enforcement action. While it was acknowledged that the reasons for the delay were reasonable the man was left without answers. The Ombudsman was able to report that as all outstanding works were completed the development was now complete and the matters in relation to the bond and delays were now moot.

Planning

Limerick City/County Council

L27/14/0202

Completed 08/12/2014

Not Upheld

A woman wrote to the Ombudsman complaining Limerick Council in relation to planning enforcement and noise nuisance connected with wind turbines which were located near her home.

The Council's file showed that an independent consultancy company had been hired to carry out a review of the noise levels from the wind turbines. This report concluded that the noise levels were satisfactory and were within required guidelines. Based on this report the Council decided not to pursue the case any further and enforcement action was closed.

The Ombudsman did not uphold the complaint as he found that there was no breach of the legislation by the Council in their actions.

Planning

Roscommon County Council

L42/13/1247

Completed 05/12/2014

Not Upheld

A man sold land to the Council and one of the conditions of the sale was that it would construct a boundary wall for him. The man said that the construction of the wall was carried out under the Rural Social Scheme and was mostly unsupervised by the Council. The man also contended that the wall was structurally unsound and the Council's proposed plans to repair it were unacceptable.

The Ombudsman received conflicting reports from the Rural Social Scheme foreman and the Council's area engineer in relation to the level of supervision of the wall during its construction. It was not possible for the Ombudsman to reach a determination about supervision. However, the Council's practice of not keeping site inspection records for projects of this nature was not in line with best administrative practice. The Ombudsman requested the Council to review its procedures in this regard.

The man also provided a structural engineer's report in support of his contention that the wall was structurally unsound. However, the Council's engineers were of the view that the wall was structurally sound and fit for purpose. The issue related to a difference of technical opinion, taking the matter outside the scope of administrative function. The Ombudsman explained to the man that his role was confined to examining the reasonableness of the Council's response, rather than the technical merits of a particular opinion. As the Council was prepared to carry out cosmetic repair works to the wall following normal wear and tear, there was no further role for the Ombudsman and the case was closed.

Various Others

Limerick City/County Council

L27/14/0180

Completed 12/01/2015

Not Upheld

A woman complained about the delay or lack of action by Limerick City & County Council in changing an entrance to a housing estate that was being used by youths for anti-social activities.

The Ombudsman found that the Council was fully aware of, and had investigated, the woman's concerns. The Council stated that the entrance was a feature of the housing estate and any change to it would be an extreme response to the level of anti-social activity the woman had reported. The entrance had been built in accordance with planning permission and there would have to be consensus among the residents for any changes to it. This had not proved possible to achieve.

The Ombudsman decided there was no administrative failing on the part of the Council.

OPW - Flooding

Flood Damage Relief Scheme

Office of Public Works

C20/12/1698

Completed 14/01/2015

Not Upheld

A woman complained that she was not satisfied with a response that she received from the Office of Public Works (OPW) in relation to a bridge and a river that she alleged were the cause of flooding on her property. She stated that the OPW was responsible for the flooding as it did nothing to stop changes to a flood eye of the bridge and the diversion of a river.

The Ombudsman had examined this matter previously and had concluded that there were changes to the flood eye of the bridge and that on the balance of probabilities the river had been diverted. However, there were conflicting views as to when these changes happened and the Ombudsman was not in a position to decide which was the correct view. Without definitive evidence, and due to the passage of time, the OPW was not in a position to invoke its powers under the Arterial Drainage Act. Furthermore there was a difference of opinion as to the impact the changes to the flood eye had on the woman's property with regard to its potential to flood.

The Ombudsman accepted that the OPW had engaged with the local landowners in an effort to bring about a solution, however, this was not successful as there was no consent from the landowners. The OPW had done all it could and in the absence of a Flood Relief Scheme, which could not be justified on a cost benefit analysis, it could not bring about a resolution.

As a result the Ombudsman could not conclude that the adverse effect (the flooding) the woman was suffering was due to poor administration by the OPW and so did not uphold her complaint.

Other

Vehicle Registration Certificate

Department of Transport, Tourism and Sport

C25/15/0247

Completed 17/02/2015

Assistance Provided

A woman purchased a car and the change of ownership form was sent to the Department of Transport, Tourism and Sport to process. When she did not receive her Vehicle Registration Certification (VRC) she contacted the Department. The Department would not deal with her because it did not have her listed as the registered owner. The woman contacted the Gardai. It transpired that the VRC issued to an incorrect address and the individual who received it made a further change of ownership application for the same vehicle. This further change of ownership application was processed by the Department as it was unaware of its error with the woman's address.

Following contact from the Ombudsman, the Department apologised for the inconvenience and distress caused. It invalidated the VRC which incorrectly issued and it provided assurance that the invalidated VRC could not be used in the future. The Department also re-issued the correct VRC to the woman as she was unhappy with the replacement one received.

Housing Repairs

Sustainable Energy Authority Ireland

O95/14/1808

Completed 12/02/2015

Not Upheld

A man complained that he did not qualify for a Better Energy Home Scheme grant from the Sustainable Energy Authority of Ireland (SEAI). The Ombudsman established that it is a condition of this scheme that approval be secured in advance of the work being completed. The man had completed the renovations before contacting or getting the approval of the SEAI, so the Ombudsman accepted that the SEAI had acted in line with the terms of the scheme and for that reason did not uphold the complaint.

Recognition of Qualifications

Health and Social Care Professionals Council (CORU)

R08/14/1205

Completed 16/02/2015

Upheld

A man contacted the Office of the Ombudsman because of the difficulties he was having in getting the RQRB (Radiographic Qualifications Review Board) and the Department of Health (the Department) to recognise the qualification he had obtained in the UK. He had qualified in the UK in 2012 and immediately applied for recognition of his qualification to the Irish Institute of Radiography and Radiotherapy. At the time of his application, the Department was designated the Competent Authority to decide these matters. The Department decided the man was required to complete an assessment period because of the insufficient hours practical experience completed during his course in the UK when compared with those completed by students in this country. The applicant agreed to complete the assessment period. However due to problems in getting insurance in Ireland he returned to work in the UK and applied again to the Department for recognition of his UK qualification. By this time CORU had been established as the Competent Authority regulating Health and Social Care Professionals and sought the fee of €410.00 which was by then in force to deal with the man's application. As the man had applied for recognition before the fee was introduced he felt he should not have to pay it and complained to the Ombudsman.

Following contact from the Ombudsman, the Department accepted there had been significant delay in the original assessment of the man's application and authorised CORU to waive the assessment fee in this case. CORU then immediately dealt with the recognition of the applicant's UK qualification. On this basis the complaint was closed as upheld.

Driving Licence

Road Safety Authority

R25/14/0589

Completed 17/12/2014

Not Upheld

A man complained that information about motorcycle driving tests on the website of the Road Safety Authority (RSA) was unclear and contradictory and that this had caused his driving test for a class A2 licence to be cancelled when he went for it. The man had went for his test with a particular motorcycle (for which that class of licence was required). However, under the rules he was required to present with a 'representative vehicle' and his motorcycle did not meet the requirements. Therefore his test did not go ahead. The man sought a refund of his test fee but this was refused by the RSA.

An A2 licence allows a person to legally drive motorcycles with a wide range of engine power outputs. The RSA said it would not be appropriate that a person could attend for a test with

a motorcycle at the lower end of this range and then, on passing their test, be allowed to drive a motorcycle at the upper end of the range. For this reason the rules require that a person present for their test with a 'representative vehicle', which is neither at the lower or upper end, but is reasonably mid-range. This was to allow a person show their proficiency at the test in order to allow the driving of all vehicles in that licence category.

The Ombudsman found that all the relevant information is available on the website, and was not contradictory. In addition, the RSA had provided the Ombudsman with a detailed background to the man's application, including that he had received a test appointment notification from the RSA, 5/6 weeks in advance of his scheduled test date, which included very precise specifications for the 'representative vehicle' required for the test. In addition, he was also sent a booklet ('Checklist for your Driving Test') which advises test applicants as follows: "Ensure that the vehicle you are using for your test meets the minimum vehicle requirements for the driving test as set out on your appointment letter and also available at www.rsa.ie". The booklet also advises that these requirements may require time to prepare for and comply with in some cases and to ensure that adequate time is allowed to comply.

The Ombudsman found that the RSA had provided sufficient information about the 'representative vehicle' required for the test, both on its website and in the documentation sent to the man. The Ombudsman also accepted that the man had received this information in sufficient time for him to ensure that he met the requirements for the driving test.

Property Tax

Local Property Tax

Department of the Environment, Community and Local Government

C08/14/0808

Completed 29/01/2015

Not Upheld

The Ombudsman received a complaint against the Department of the Environment, Community and Local Government in connection with its refusal to include a particular housing development on a Schedule which would have given the residents of the housing estate an exemption from the Local Property Tax.

The Department pointed out that the local authority did not formally submit the housing development to it for inclusion on the Schedule by the specific deadline date. The Department confirmed that only those developments which were deemed by local authorities to be in a “seriously problematic condition” and which were submitted to it by mid-February 2013 were placed on the Schedule.

In the meantime, in 2014, an allocation of 250,000 under the Site Resolution Fund was allocated by the Department to the local authority in respect of the housing development. The purpose of this allocation was to upgrade road ways, footpaths and drainage in the housing estate.

The Ombudsman took the view that the local authority did not include the housing development in its submission to the Department on time. Therefore the development was not considered by the Department for inclusion in the Schedule. Furthermore, the Ombudsman felt that the situation had moved on considerably since the complaint was first presented to the Department in that the Department had allocated substantial funds to the local authority for use in the housing development. These funds were aimed at making good deficiencies in the estate and to bring it up to acceptable standards.

As the local authority was actively working on improving the standard of the development, the Ombudsman did not uphold the complaint.

Social Protection

Carer's Allowance

Department of Social Protection

C22/14/2004

Completed 05/02/2015

Not Upheld

A woman wrote to the Office as her application for Carers Allowance was refused by the Department of Social Protection and that refusal was subsequently upheld by the Social Welfare Appeals Office. Carers Allowance is awarded based on the level of care a person needs rather than any particular medical condition he or she may have.

The Ombudsman's examination of the case showed that the medical evidence submitted in the case was properly considered by the Departmental Medical Assessors. He was satisfied that the decision to refuse the woman's application was based on their opinions that the medical evidence did not indicate that the person being cared for required the level of care needed to qualify for Carers Allowance. The Ombudsman was satisfied that the Department took account of all the relevant information that was given to it regarding the application, and that the correct procedures were followed by the Department in the processing of the application and the subsequent appeal.

Disability Allowance

Department of Social Protection

C22/14/1694

Completed 15/01/2015

Upheld

A man was in receipt of Illness Benefit (IB) for 2 years up until he exhausted his entitlement in May 2011. He then applied for Invalidity Pension (IP) but this was refused on medical grounds. That decision was upheld on appeal to the Social Welfare Appeals Office. Shortly after the appeal he applied for Disability Allowance (DA) in February 2012. This claim was also refused but he was subsequently awarded DA on appeal in April 2014, backdated to the date of application. The man then appealed to have his DA payment backdated to when his Illness Benefit was stopped but this was refused because, according to the Appeals Officer, no good cause for backdating the claim had been established.

The Ombudsman pointed out that during the period between when his IB was stopped (May 2011) and the effective award date of his DA (February 2012), the man had been pursuing his unsuccessful IP claim. The Department agreed to review the case and subsequently decided to backdate his DA payment to when this IB payment stopped.

Disability Allowance

Social Welfare Appeals Office

C22/14/1705

Completed 10/12/2014

Upheld

A man wrote to the Ombudsman regarding the decision of the Social Welfare Appeals Office (SWAO) not to accept his appeal on his case as it was outside the normal 21 day period in which to lodge an appeal.

The Ombudsman asked the SWAO to accept the appeal outside of its usual time frame due to the man's disability as he did not fully understand the process for appealing. The Chief Appeals Officer noted the particular circumstances of the case and accepted the Ombudsman's request to accept a late appeal. As the man has now been granted an appeal of the original decision, the Ombudsman closed the case.

Disablement Pension

Department of Social Protection

C22/14/0427

Completed 12/01/2015

Not Upheld

The man had appealed to the Department for an increase in the rate of Occupational Injuries Benefit (OIB) paid to him. He had been awarded a 15% OIB payment for life as a result of an incident which had occurred in 2000. The man subsequently resigned from his place of work. In 2012 the Department told the man that he had been over paid. He appealed the overpayment and the Department admitted that the overpayment had been issued in error. The man made an application to the Department for an increase in the rate at which he was paid OIB on the basis of the stress he had suffered as a result of the Department's error.

In order to make a claim for OIB or Disablement Benefit, the injury or loss of faculty must have occurred while the individual was in insurable employment. When the most recent incident occurred the man was not in insurable employment nor was there a causal link between the original incident in 2000 and the most recent incident in 2012. Ombudsman did not uphold the man's complaint against the Department.

Family Income Supplement

Department of Social Protection

C22/14/1429

Completed 08/01/2015

Upheld

A man complained that the Department of Social Protection (the Department) had withheld arrears of €1,444 due to him under the Family Income Supplement scheme, against an overpayment it had previously assessed against his partner under a different scheme. An overpayment may arise when the Department revises an earlier decision in accordance with Social Welfare legislation. Such a decision might be that during a particular period a person had not been entitled to a particular payment which was granted to them, or had received a higher rate of payment than they were entitled to receive. The overpayment assessed is the amount the person received during the period in question.

When the Ombudsman examined the Department's files, he noted that they did not contain a revised decision of the man's partner's claim. He drew the Department's attention to this pointing out that, there could not be an overpayment as a consequence of such a revised decision. The Department subsequently refunded the amount of the FIS arrears it had withheld from the man.

Family Income Supplement

Department of Social Protection

C22/14/1402

Completed 05/12/2014

Not Upheld

A woman complained about a decision by the Department of Social Protection to withhold arrears of Family Income Supplement (FIS) of €2,340 against an overpayment of One Parent Family Payment (OPFP), the balance of which stood at €5,962.50. Initially, the woman was informed that the Department proposed to withhold the full amount of the arrears and to recover the balance of the overpayment by way of weekly deductions of €25 from her FIS payment. However, by the time the complaint was made to the Ombudsman, the Department had decided to withhold only half of the FIS arrears against the OPFP overpayment and to recover the balance by deductions of €10 per week. In the complaint to the Ombudsman, the woman was seeking to have the full amount of the FIS arrears paid to her and the overpayment recovered by weekly deductions of €20.

When the woman was informed about the Department's initial proposal, it had been argued on her behalf that the arrears should be paid to her in full and that the overpayment should be recovered by way of weekly deductions of €10, as had been previously agreed with the Department. The Ombudsman noted that the Department had written to the woman saying that if she provided details of her weekly income and expenditure, her recovery plan would be reviewed without delay. At no time after that were these details supplied to the Department. The woman had average weekly earnings from employment of around €380 per week (not

including her FIS payment) which was around €104 above the appropriate Supplementary Welfare Allowance (SWA) level (below which a person's means are considered to be such that they are unable to meet their needs, and they may have an entitlement assistance under the SWA scheme). In the woman's case, the non-payment of the FIS arrears (or half thereof) did not have the affect of placing her below the SWA level during the period covered by the arrears (i.e. her income during that period was €103.91 over the SWA level).

The Ombudsman took account of the fact that the woman had not provided details of her income and expenditure, which would have resulted in the recovery plan being further reviewed, and also of the level of her income from employment during the arrears period. In the circumstances, the Department's final decision to withhold only half of the arrears against the overpayment (paying the other half to the woman) and to recover the balance of the overpayment by weekly deductions of €10 (which was the previous agreement with the Department) was a fair and reasonable outcome.

Jobseeker's Allowance

Department of Social Protection

C22/14/1195

Completed 30/01/2015

Not Upheld

A man complained that the Department of Social Protection had incorrectly refused his Jobseeker's Allowance application and that his subsequent appeal to the Social Welfare Appeals Office was also refused incorrectly.

The man's application was refused on the basis that he did not satisfy the condition that he was habitually resident in Ireland at the time of his application. A qualifying condition for receipt of Jobseeker's Allowance is that you have to satisfy the habitual residence condition, and in making its decisions on that condition the Department has to take five particular factors into account. When the man was asked to provide information on these five factors he did not provide any substantive evidence to support the application and as a result his application was refused. When he appealed this decision he was again asked to provide supporting evidence and again he did not do so.

The Ombudsman concluded that the decision to refuse the man's application on 'habitual residency' grounds was in accordance with the rules governing the scheme.

Jobseeker's Allowance

Department of Social Protection

C22/14/0649

Completed 03/12/2014

Assistance Provided

A woman made a complaint about a means test carried out by the Department of Social Protection (the Department) in 2012 which resulted in a reduction in the amount of Jobseekers Allowance (JA) she received. When the Ombudsman examined the Department's file relating to the woman's JA claim, he was satisfied that the means test had been carried out correctly and therefore he could not uphold her complaint.

In the course of his examination the Ombudsman noted that when the Governing Contribution Year (GCY) changed at the beginning of 2013, the Department should have reviewed her entitlement to Jobseekers Benefit (JB), which is a contributions based payment. For JB, a person must have a certain number of PRSI contributions paid since they started work and also a certain number of PRSI contributions paid or credited in the GCY. The GCY is 2 years before the year in which a claim is made - so, for claims in 2013, the GCY is 2011.

In the woman's case, she did not have the required contributions in 2010 and therefore in 2012 she was not entitled to JB. She received the means-tested JA instead. The Ombudsman noted, however, that she had the required number of contributions in 2011 to entitle her to JB from the start of 2013 and he asked the Department to review her case. The Department decided that she was entitled to JB from 3 January 2013. She received arrears of JB amounting to €4,149.83, which was the difference between the amount of JB she had been entitled to receive and the amount of JA she had been paid.

Jobseeker's Benefit

Department of Social Protection

C22/14/1156

Completed 04/02/2015

Not Upheld

The Ombudsman received a complaint from a woman who had been refused Jobseekers Benefit (JB) from the Department of Social Protection.

The woman stated on her application form that she wanted part time work only, as she wanted to mind her baby. She also indicated that she was not registered with FAS.

The legislation governing the payment of JB requires that an applicant is genuinely seeking and available for full time employment. It requires, among other issues, that in order to qualify a person must be actively seeking, and available for employment, and must not place unreasonable restriction on the hours of work they seek.

As the woman stated on her application form that she was not available for full time work as she had to mind her child each afternoon, the Ombudsman was satisfied that she did not meet the conditions for receipt of JB.

Pension

Department of Social Protection

C22/14/1689

Completed 04/03/2015

Upheld

A self-employed man made a complaint at one of the Ombudsman's monthly outreach services at a Citizens Information Centre about the refusal by the Department of Social Protection to backdate his full rate of Non-Contributory State Pension to 2010. He was approved for the pension in 2010 but at a reduced personal rate. He was awarded maximum rate State Pension Non Contributory in 2014 and he believed he was entitled to have this backdated to 2010. The Department would not consider his case until he could supply evidence of his self-employment earnings between 2010-2014.

The Ombudsman asked the Department to review the case when the man supplied the evidence of his self employment earnings to the Department regarding his application. The Department reviewed all of the evidence in the case supplied by the man and backdated the man's Non-Contributory State Pension. This involved a payment of approximately €15,000.

Rent Supplement

Department of Social Protection

C22/13/1783

Completed 06/11/2014

Upheld

The Ombudsman received a complaint from a separated father of 3 children who was paying rent of €675 per month for a 3 bedroom house.

His Rent Allowance was refused on the basis that: the rent was in excess of the cap allowed for a single person, the housing needs of his children were considered to be met in the family home and he was afforded an opportunity to source cheaper alternative accommodation for himself.

In this particular case the man was classified, for Rent Allowance purposes, by the Department of Social Protection as a single person, who was living alone. Therefore, he was subject to a rent cap of €450 per month. The man maintained that he should have been treated as a separated father with three children. This was on the basis that he had a Court Order which granted him overnight access to his three children for three nights per week during school terms and for a 14 day block period during summer holidays.

Rent Supplement is payable in respect of the applicant and any "qualified" children as defined in the Social Welfare Consolidation Act, 2005. This provides that a qualified child is one who is dependent on the applicant for support. It seemed that the Department had not addressed the question of whether the children were dependant on the complainant for the support which was set out in the Court Order. Following the Court Order, the children had

been staying with their father overnight for several nights per week since 2010.

The Ombudsman referred the case to the Social Welfare Chief Appeals Office who decided that, during such access, the children were dependent on their father for support. Accordingly, the appeal was allowed and the man was awarded backdated Rent Allowance of €18,109.44.

About the Office of the Ombudsman

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

At present, the public bodies whose actions may be investigated by the Ombudsman are: 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).

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

Making a Complaint to the Ombudsman

Before the Ombudsman can investigate a complaint, the person affected must try to solve their problem with the public body 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 body concerned has not treated them fairly, they can contact the Ombudsman.

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

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

Contacting the Ombudsman

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

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

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

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

Feedback on the Casebook

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



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