



# The Ombudsman's Louth CASEBOOK

Office of the Ombudsman, Ireland.

Louth Special Edition 2018

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## Learning from complaints

WHEN my Office examines complaints, we are looking to see whether the person complaining has received a poor service, or not received a service they were entitled to. If this is the case, and the person has suffered an injustice as a consequence, we aim to put things right for them.

Where possible, we try to put them back into the position they would have been in had nothing gone wrong. However, that is only part of our work. As well as looking to put things right for individuals, we are also looking to make sure that mistakes are not repeated. We help public services to improve through learning from mistakes and from good practice.

In some complaints, the cause of any failure is just a one off – it is unlikely to happen again. In others, it can become clear that the failures were because of issues that could cause the same failure to be experienced by others. This can be because of poorly trained staff, poor management, inadequate systems or procedures or on occasions, problems with legislation.

Often, we resolve matters without the need for a full investigation. This can get matters resolved for the individual, but can mean that the learning is limited. To tackle this issue, we introduced quarterly Ombudsman Casebooks which include summaries of cases we have closed.

These Casebooks are aimed at service providers. The cases are divided into categories so that public service providers in each sector can readily learn from our findings. There are also cases where we find no failures, and this illustrates that the work of the Office is to consider cases objectively.



Ombudsman Peter Tyndall

This is the first Louth Casebook we have produced. It is being published on the occasion of our visit to Louth to raise the profile of the Office with potential complainants. It forms part of an extensive outreach programme which my Office undertakes throughout the year.

During the visit, we will meet with key public service providers, provide a seminar for local elected representatives and bodies in jurisdiction, provide training for Citizens Information Centre staff on taking complaints for our Office and have staff available to take complaints from members of the public.

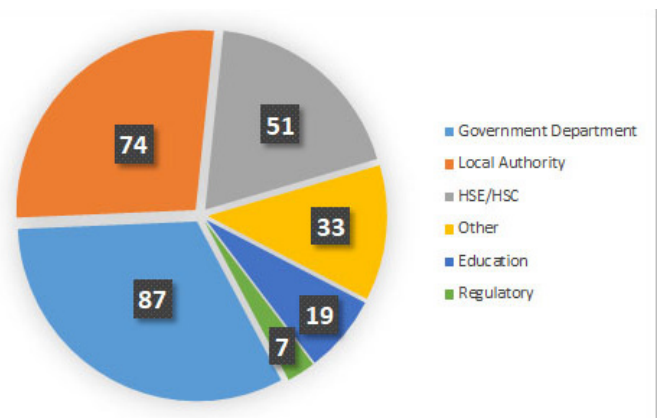
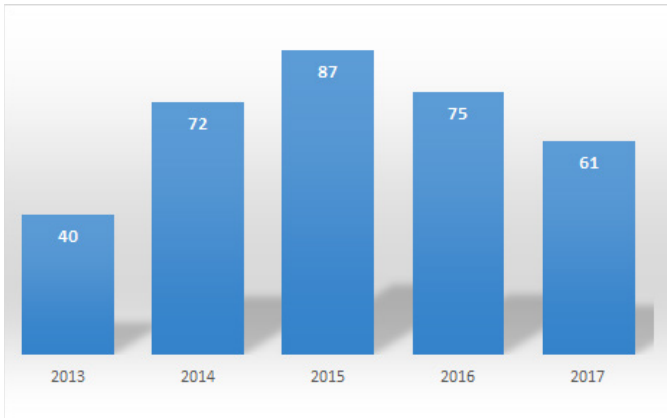
We hope that the Casebook will prove of benefit to service providers in Louth and that it will contribute to the delivery of better public services in the future.

Peter Tyndall September 2018

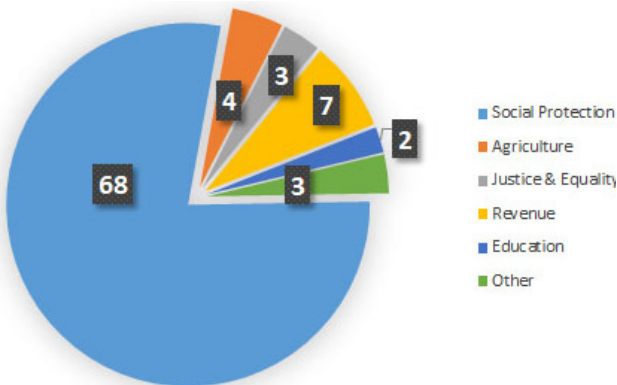
# Statistics

## Complaints received from Louth from January 2015 to July 2018

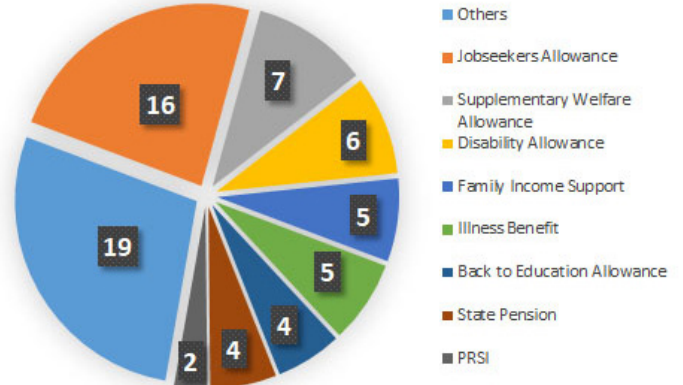
### Complaints received in last 5 years    Complaints received by sector



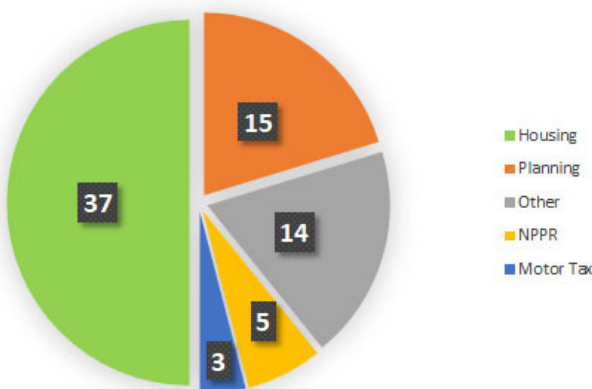
### Government Department/Office



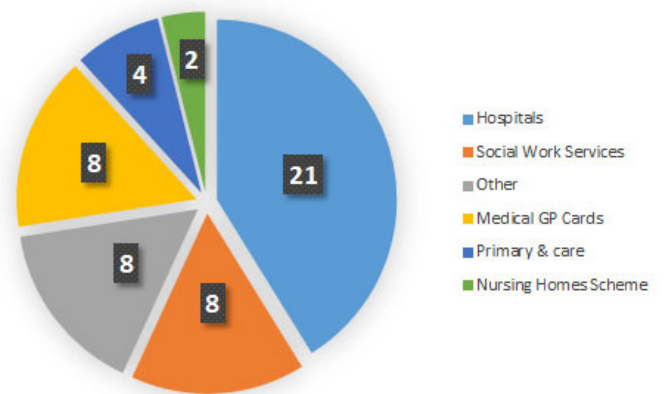
### Department of Social Protection



### Louth County Council



### Health and HSE / Social care



# Department of Agriculture, Food and the Marine

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## Basic Payment Scheme

C01/17/3133

### # Upheld

#### Background

A Dundalk man complained to the Ombudsman when the Department of Agriculture, Food and the Marine imposed a penalty on his application for a Basic Payment in April 2016.

He had not ticked the compliance box under the 'Ecological Focus Area' on his online application. This resulted in a non-compliance penalty of €2,937. His appeal of the decision was refused as the Department said he had been notified of the error on its online system and he could have rectified the mistake.

#### Examination

After the Ombudsman asked the Department to review the application the Department discovered that the man had not been registered for the 'business notification text' or email alerts on the system. The 'business notification' would have alerted the man to revisit the Department's online system and check for the error.

#### Outcome

The complaint was upheld because the man was not registered for 'business notification texts' or emails. The Department agreed to waive the penalty of €2,937 and pay the man the remainder of his Basic Payment. A standard deduction of €74 was made under the EU Financial Crisis Reserve scheme so the man received €2,863. The man has now completed the Department's 'business notification' form which gives it permission to use his contact details for future notifications.

# Education

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## Application refused

Dundalk Institute of Technology  
E41/16/2475

### # Assistance Provided

#### Background

A woman complained about the administration of her application to the Dundalk Institute of Technology. She was unhappy that she was not accepted onto a veterinary course as a mature student given her past experience, and that she received conflicting correspondence from the Institute which led her to think that her application may have been successful.

#### Examination

She was unhappy that she was not accepted onto her chosen course of study, but also that the Institute failed to address her complaint once she realised that she was not successful. She said that it also failed to provide feedback on her application, and or issue a substantive response to her requests for assistance. The Ombudsman contacted the Institute and advised that it appeared that the woman did not fully understand the application process and how the mature application process worked in tandem with the CAO process. It appeared that when she queried the process involved, she was referred to the Institute's website for assistance.

#### Outcome

The Institute accepted that it had, on occasion, failed to address the woman's concerns. As a result, it agreed to address and review their protocols involved in administering the mature student entry route to guarantee students are communicated with in a clear, concise and timely fashion. It also agreed to undertake a review of best practice across the education sector in relation to the processing and administration of mature applications.

## Higher Education Grant refused

Student Universal Support Ireland (SUSI)

E78/15/3177

### # Not Upheld

#### Background

A student from Louth complained that her application for a student grant was refused. She applied under section 21(3) of the Student Grant Scheme 2014 but it was refused on the basis that the level of reckonable income assessed was in excess of the threshold allowed. The student is an orphan but the income of her guardians was taken into account. The student argued that she is over 18 and entitled to be treated as someone with no living parent and therefore exempt from having parents income taken into account, in accordance with section 21(3).

#### Examination

Section 52 of the Children and Family Relationships Act 2015, which amended section 8 of the Guardianship of Infants Act 1964, provided that a person continues to be a guardian of a child until the child reaches 18 years of age. SUSI advised that section 52 had not been enacted yet and it must comply with the law as it stands.

#### Outcome

The Ombudsman was satisfied that in the absence of parental income, the legislation allowed the income of guardians to be taken into account when assessing an application. Therefore, the decision of SUSI to assess the income of the guardians was correct.

Section 52 of the Children and Family Relationships Act 2015 has since been enacted.

# Health

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## Care and Treatment

Our Lady of Lourdes Hospital, Drogheda

H92/15/1538

### # Upheld

#### Background

A woman complained to the Ombudsman after her son paid a number of visits to Our Lady of Lourdes Hospital, Drogheda, to have his shoulder, which regularly dislocates, re-set. Her son suffers from a rare and painful hereditary medical condition (Elhers Danlos Syndrome). She complained that he was receiving unsatisfactory treatment from medical staff, which was both unnecessarily painful and distressing for her son and the family. She said that, as a result he preferred to travel a considerably longer distance to A&E in another hospital, where his physical and personal treatment was substantially better.

#### Examination

In January 2015, the woman formally complained to the hospital. She set out her concerns, and asked that her son's care and treatment plan be reviewed. She referred to the satisfactory approach adopted in the other hospital. The woman also complained about the behaviour of certain medical staff in the hospital and a number of extremely upsetting incidents her son had endured.

Initially the hospital's response was encouraging. It promised to arrange a full review of her son's medical care and treatment plan, to be led by a Consultant from another hospital. It also promised to investigate her allegations relating to the interaction between clinical staff and her son, as well as the family. However, the woman received no further contact from the hospital despite contacting it several times seeking updates and action.

#### Outcome

The Ombudsman contacted the newly appointed General Manager of the hospital, who intervened, promptly convening a meeting between the hospital and the woman. The woman told the Ombudsman that she and her son were happy with the outcome from the meeting. She said that her son's admissions to A&E in the hospital had improved and were "very positive and consistent".

## Care and Treatment

Our Lady of Lourdes Hospital, Drogheda

H92/16/2613

### # Not Upheld

#### Background

A man complained about the failure of Our Lady of Lourdes Hospital, Drogheda, to arrange a gastroscopy for his mother while an in-patient in July 2016. He said that the procedure was cancelled on three occasions. He was also unhappy with the hospital's examination of his complaint. He said that its response summarised what had happened with no admission of fault and did not resolve the situation.

#### Examination

The hospital said that endoscopic procedures for gastroenterology in-patients are scheduled for Wednesdays and Fridays and that all referrals are assessed for clinical urgency on a daily basis by the Consultant Gastroenterologist. It said that the woman had been assessed as a priority-one patient. However, it was unable to arrange the procedure for her on a number of occasions as there were other patients with an even higher clinical urgency. The Ombudsman noted that priority-one patients should have the procedure within a month. The hospital apologised to the woman and her family for the distress this caused. It also advised that a second treatment room was opened in late 2016 and that the majority of in-patient referrals were now dealt with the same day.

#### Outcome

The Ombudsman could not examine the fact that other patients had been prioritised for the procedure ahead of the woman as this was a clinical matter. However, he acknowledged that the hospital had apologised to the family and that the opening of the second treatment room would prevent a recurrence of the issues experienced by the woman.

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## Care and Treatment

Our Lady of Lourdes Hospital, Drogheda

H92/15/4294

### # Assistance Provided

#### Background

A man complained about the care provided to his mother in Our Lady of Lourdes Hospital, Drogheda prior to her death in January 2013. The issues of concern were that his mother had no access to palliative care following an administrative error, there was non-transcription of heart medication, insufficient oversight of agency staff in a temporary overflow ward and there was poor record keeping and communication with him. He was also unhappy with the complaints process.

The motivation in making this complaint was to ensure that the failings highlighted were addressed adequately. The man wanted to ensure that the necessary changes were followed through to ensure that the potential for other patients or families to suffer a similar experience was minimised.

#### Examination

The hospital failed to keep adequate records in relation to the recording of heart medication and other procedures carried out. It admitted that communication with the man could have been clearer and that the complaints process and outcomes did not meet his needs. Following contact from the Ombudsman, the hospital reviewed the case and the man's concerns. It also set out the improvements and changes implemented since his complaint was made.

Policies have been introduced and training has taken place for hospital staff on the importance of good record keeping, open communication with patients and families, palliative care and complaint handling. The hospital introduced audits on the processes and systems in place to ensure that all staff adhere to these policies and procedures. It also extended its sincere apologies again for the shortcomings identified in the care provided to the man's mother.

#### Outcome

The hospital has made significant improvements in the provision of palliative care, record keeping, communication and the management of patients particularly at times of surge in admissions. The Hospital has taken these matters very seriously and has taken steps to improve its processes for other patients and their families.

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### Funding for surgery

Beaumont Hospital

H82/15/2984

#### # Assistance Provided

##### Background

A man from Louth complained on behalf of his father that keyhole surgery was not available in Beaumont Hospital for patients requiring a prostatectomy (removal of the prostate gland). He said that keyhole surgery was available to some public patients in the west of Ireland by referral to private facilities and that this unfair

Although the consultant urologist in Beaumont Hospital had recommended keyhole surgery, the man's father decided to proceed with open surgery, which was available to him in that hospital.

##### Examination

The Ombudsman was informed by Beaumont Hospital that it was developing a proposal to deliver robotic (keyhole) surgery. The hospital noted that its Transplant, Urology and Renal Directorate had been seeking funding for public patients to undergo robotic-assisted prostatectomy at the Mater Private Hospital.



The Ombudsman also contacted the National Cancer Control Programme in Ireland about the matter. It explained that open surgery is an acceptable standard of care and that a HIQA report into the provision of keyhole surgery did not support its provision in the public service.

The Ombudsman took the view that the consultant urologist could have made a case to the HSE for funding to have the complainant's father treated in the private sector if he believed that open surgery was not clinically appropriate in his case.

#### Outcome

The Ombudsman explained to the complainant that the allocation of resources for robotic surgery had to be considered in the context of a hospital's budget. The Ombudsman could not recommend that a public hospital provide this service over other demands for patient services, particularly given that open surgery is not considered to be a sub-standard procedure.

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## Handling of complaint

### Social Work Services

H04/17/0549

#### # Not Upheld

#### Background

A woman complained that the social workers who had dealt with her family had not acted impartially towards her. She said that details from a past court case had been included in the social work report to the Child Protection Conference (CPC), that concerns she had for her own safety in attending the CPC were not addressed, and that her son's needs were placed before her own.

#### Examination

In examining this complaint, the Ombudsman reviewed the social work records and the complaint file held by Tusla. Based on the review of these records, the Ombudsman formed the view that the complaint had been properly and fairly addressed by the Complaints Officer. However, the Complaints Officer had made a recommendation that a review of the practice in responding to clients who report personal safety concerns in attending Child Protection Conferences should be undertaken within the local area.

#### Outcome

In following up on the implementation of this recommendation, the Ombudsman was advised that Tusla had reviewed the practice in the local area. It had communicated with the CPC Chair and the social workers and had decided that a staggered attendance at the CPC should be offered and/or the offer made to bring a support person in cases where a client expresses concerns about their personal safety due to domestic violence.

# Social Protection

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## Carer's Allowance

C22/16/1772

### # Not Upheld

#### Background

A man from Louth complained that his application for Carers Allowance had been refused because the Department of Social Protection decided that his mother did not require full-time care and attention as laid down in Carer's Allowance legislation. The man appealed his case to the Social Welfare Appeals Office (SWAO), which upheld the Department's decision.

#### Examination

The Ombudsman examined the Department's file, along with the Department's guidelines in relation to Carers Allowance. The Ombudsman noted that the man attended an oral hearing after submitting his appeal to the SWAO. The man reported that his mother was able to go to the toilet, bathe, dress herself and has the ability to walk half a mile. The man also reported that his mother was in charge of her own medication and keeps track of her appointments and attends church and bingo. Based on the information provided by the man at the oral hearing it appeared the man's mother did not require full-time care and attention.

#### Outcome

The Ombudsman was satisfied that the Department's decision, that the man's mother did not satisfy the medical conditions to be eligible for Carer's Allowance, appeared to be reasonable.

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## Domiciliary Care Allowance

C22/16/3876

### # Not Upheld

#### Background

A woman complained about the Department of Social Protection's decision not to backdate Domiciliary Care Allowance (DCA) for her daughter.

#### Examination

The woman applied for DCA for the first time in 2011. The application and the subsequent appeal were refused by the Department. The woman applied again in 2013, when her daughter started primary school, and the payment was awarded to her. The woman said that there was no change in her daughter's medical condition between 2013, when DCA was granted, and 2011 when she initially applied for the allowance. The only change in the application was that a letter from the school was included with the application in 2013. She felt that her first application should not have been refused and the DCA payment should therefore have been backdated to 2011.

The Department refused the woman's application for DCA on the grounds that the conditions for scheme had not been satisfied. While it acknowledged that the woman's daughter required additional support, it stated that there were no typical indicators of the substantial care that is implied under the DCA Scheme. On foot of the 2013 application, the Department noted that the child's health had dis-improved and she required additional support in the form of a Special Needs Assistant to look after her in school. The Medical Assessors considered that the child now satisfied the qualifying conditions for DCA.

#### Outcome

The Ombudsman was satisfied that the Department's decision not to backdate the claim for DCA was correct.

# Louth County Council

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## Housing

L32/15/1864

### # Upheld

#### Background

A woman complained about the Non Principal Private Residence (NPPR) charge and penalties of €4,220 being applied on her holiday home. She said her principal residence is outside Ireland and she was not aware of the NPPR charge. She requested a waiver of the penalties but the Council refused. The woman paid €4,220 to the Council to avoid further penalties.

#### Examination

The Ombudsman asked the Council to review its decision as it appeared the woman was eligible for a reduction of 50% in the penalties, under the Briefing Note for Local Authorities. The note dealt with the level of awareness that complainants had about the NPPR.

The Council said it did not consider that a person visiting the country twice or three times a year could be classed as an infrequent visitor, and so, unaware of the charge. The Council also believed that as the property was being used as a holiday home this would suggest the woman had someone looking after the property.

The Ombudsman clarified that the woman did not have an agent taking care of the property. In relation to the frequency of the woman's visits to Ireland, he pointed out it was unfair to presume that her two or three annual visits coincided with publicity campaigns about the NPPR charge. He asked the Council to review its decision again as he believed the woman satisfied the criteria under the Briefing Note.

#### Outcome

After the Ombudsman's request for another review, the Council granted a 50% reduction in penalties and refunded the woman €1,610.

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## Housing

L32/15/2045

### # Not Upheld

#### Background

A man complained about Louth County Council increasing his rent by €60 per week and seeking €7,932 in arrears under its Differential Rents Scheme.

### Examination

The man provided evidence that he had informed Dundalk Town Council of a change in his family circumstances in 2012. Dundalk Town Council did not act on this information at the time.

In 2014, the rents sections for all town and borough councils were centralised in Drogheda. At that time, a review discovered that there was an underpayment of weekly rent and arrears had built up. Louth County Council acknowledged that Dundalk Town Council was at fault in 2012 and that the arrears owed were due to it not applying the correct rent.

Although, the Differential Rents Scheme does not allow for arrears to be cancelled after an error is discovered, Louth County Council offers payment plans for people in financial hardship.

### Outcome

Louth County Council offered an agreed payment plan to the man.

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## Housing

L32/16/3577

### # Not Upheld

#### Background

A woman complained to the Ombudsman about Louth County Council's decision to refuse her application to be placed on the Council's Housing List. She said she was currently housed but had been served with a notice of intention of possible court proceedings to repossess the property, which was owned by her parents.

#### Examination

The Council said the woman in question was originally placed on the housing list in 2003 and that she was offered a property in 2010, which she refused on medical grounds. Following a Housing Needs Assessment in 2013 she was deemed adequately housed and as a result was removed from the housing list. The woman made another application to be placed on the housing list in 2016 and was refused on the same grounds as before. While she had been notified that court proceedings were pending, she had not been served with a notice to quit the property.

#### Outcome

The Ombudsman was satisfied that the Council's position was reasonable. The Council said that should the woman be issued with a notice to quit she would immediately be entitled to a place on the housing list.

## Housing

L32/16/0420

### # Upheld

#### Background

A woman complained about arrears on her rental account that arose due to incorrect assessments by Louth County Council.

#### Examination

The arrears on the woman's account arose due to the incorrect calculation of rent between 2009 and 2014. The error was discovered during an assessment by the Council in 2015. The Council said that over the period 2008 to 2015, seven rent assessments were carried out and the woman had provided all of the relevant documentary evidence. The woman's employment had changed during that time, which may have led to an increase in her rent but this information was ignored by the Rent Assessment Officer so the woman was not told that she was due to pay more rent. The Council told her in March 2015 that arrears of rent had built up which she now had to pay. She appealed the decision but this was rejected by the Council, which told her that it did not have the legal authority to waive the arrears.

The Ombudsman was satisfied that the woman provided the relevant information for each assessment and therefore complied with the requirements of the Council. The Council accepted that it was at fault in not calculating the correct rent amount based on the information supplied to it.

#### Outcome

The Council proposed a mechanism in order to resolve the matter, which did not require the woman to make additional rent payments. The Ombudsman was satisfied with the proposal.

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## Motor Tax & Driver Licence

L32/14/0753

### # Assistance Provided

#### Background

A man complained that Louth County Council had not given him the correct category of licence when he applied in 1900. He only became aware when his Certificate of Person Competence Instructor told him that he did not have the appropriate category on his licence to enable him to drive trucks. The Road Safety Authority (RSA) told the man that he had not been issued with the correct licence, or an EC Certificate of Competence, despite correctly applying for it 24 years earlier. The man said he had to leave his job as he did not have the right licence to drive trucks.

### Examination

Louth County Council had not issued the correct licence in 1990 due to an administrative error.

### Outcome

The man had to re-sit two driving tests to get the driver categories he needs as there is no provision in law for the RSA to correct the error. However, the RSA agreed to give him

- One free driving test for both categories;
- Free learner permits and full licences for both categories; and
- Early dates for the driving tests.

The Ombudsman found that this response was reasonable.

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## Pollution

L32/15/4183

### # Not Upheld

#### Background

A couple complained that Louth County Council was not enforcing environmental legislation regarding smoke emissions from a neighbour's flue. They said their health was suffering as a result of smoke pollution and they wanted the Council to force the owner take remedial action.

#### Examination

The Council had engaged with the owner of the flue. While there are no specific limits on emissions from domestic flues, it conducted a number of inspections and did not deem the smoke from the flue as excessive. The Council advised the owner as to the acceptable types of fuel to use. It also referred the construction of the flue to the Council's buildings control officer who determined that the flue height be increased by one metre to comply with building regulations. The Council ensured that this was done.

#### Outcome

The Ombudsman found that the Council had acted appropriately and in accordance with the

# An explanation of the Ombudsman's Case Closure Categories

## 1. Upheld:

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

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

## 2. Partially Upheld includes:

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

## 3. Assistance Provided includes:

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

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

## 4. Not Upheld includes:

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

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

## 5. Discontinued/Withdrawn includes:

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



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# About the Office of the Ombudsman

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

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

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

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

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## Making a Complaint to the Ombudsman

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

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

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

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## Contacting the Ombudsman

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

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

Website: [www.ombudsman.ie](http://www.ombudsman.ie) Email: [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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# About the Ombudsman's Casebook

The Ombudsman's Casebook provides summaries of complaints the Ombudsman has dealt with over the previous months. It is published quarterly. It can help service providers to learn from our examination of complaints and see what similar organisations are doing well and not so well.

The Casebook describes complaints (both upheld and not upheld) across all the areas dealt with by the Ombudsman, for example health, social welfare, education, local government (including planning, housing, roads and water supply), environment, agriculture, equality, taxation and payments/benefits received by the public.

The Casebook is published in PDF format and can be read online, downloaded or printed.

If you wish to be notified when the Casebook is published, please email [casebook@ombudsman.ie](mailto:casebook@ombudsman.ie) with the subject SUBSCRIBE.

If you have any queries on The Ombudsman's Casebook, please contact the Communications Unit at 01 639 5645 or [communications@ombudsman.ie](mailto:communications@ombudsman.ie).





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