



# The Ombudsman's CASEBOOK

Office of the Ombudsman, Ireland

Special Edition 2020

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## Learning from complaints

When my Office examines complaints, we are looking to see whether the people complaining have received a poor service, or have not received a service they were entitled to. If this is the case 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.

We also aim 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. In others, the failures were because of issues that could cause the same failure to be experienced by others. This can be because of inadequate systems, 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 learning is limited.

To help tackle this issue, we introduced quarterly Ombudsman Casebooks which include summaries of cases we have closed. The 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.

This is a special Casebook we have produced of complaints we received from Sligo, Leitrim and Roscommon in recent years. It is being published as part of a series of Outreach events for these three counties aimed at engaging with local public service providers and complainants. We had hoped to visit the counties in person but for obvious reasons, we have to carry out our Outreach in a different way this year.



Ombudsman Peter Tyndall

Between the 3rd and 11th September, we will:

- meet with key public service providers through video or tele-conference
- host a webinar for local elected representatives and officials of public bodies
- provide an information webinar for Citizens Information Centre staff in Sligo, Leitrim and Roscommon
- provide an additional 'call back' service to take complaints and provide advice to residents of Sligo, Leitrim and Roscommon.

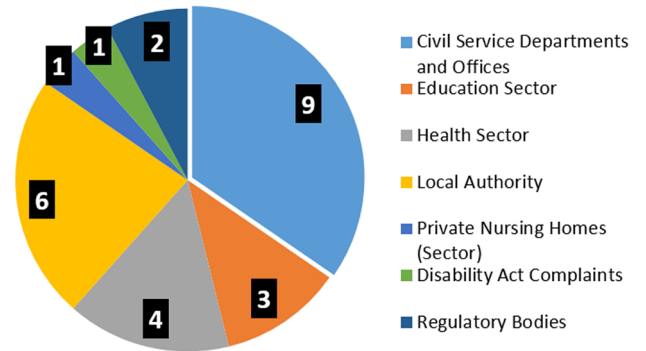
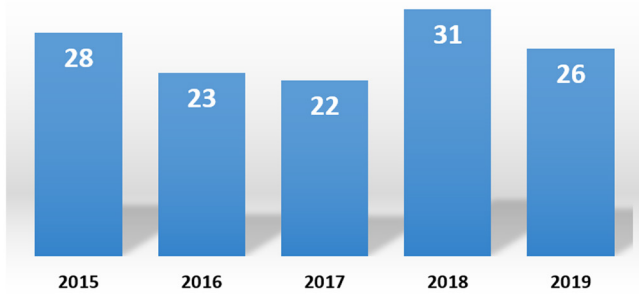
We hope that the Casebook will prove of benefit to service providers in Sligo, Leitrim and Roscommon and that it will contribute to the delivery of better public services in the future.

Peter Tyndall September 2020

# Leitrim: Complaint numbers

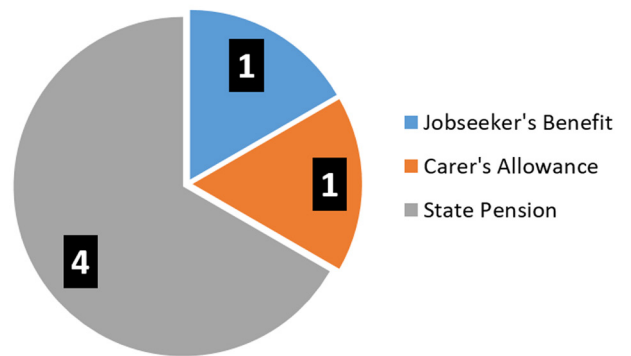
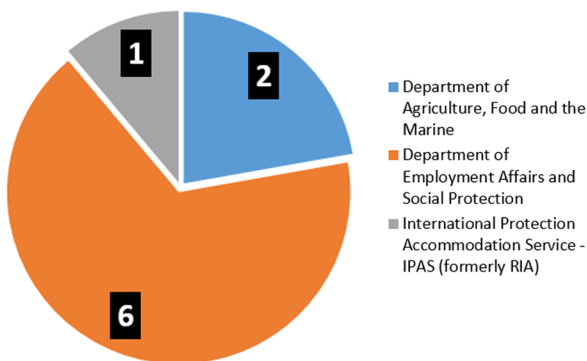
## Complaints received from people in Leitrim

### Complaints received in last 5 years    Complaints by sector: 2019



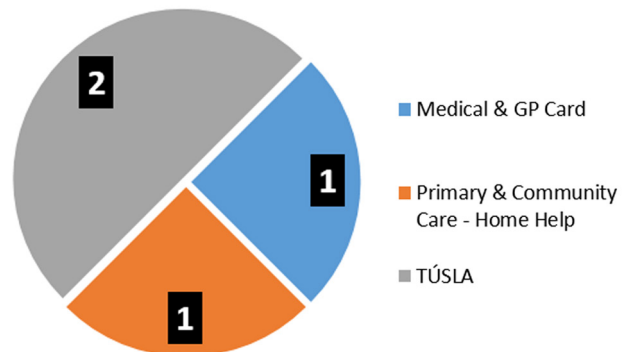
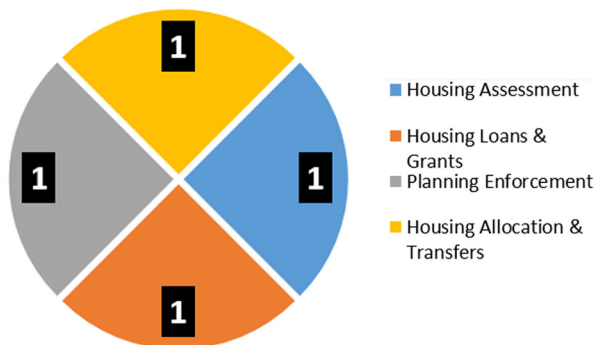
### Government Department/Office

### Dept. of Emp. Aff. & Social Protection



### Leitrim County Council

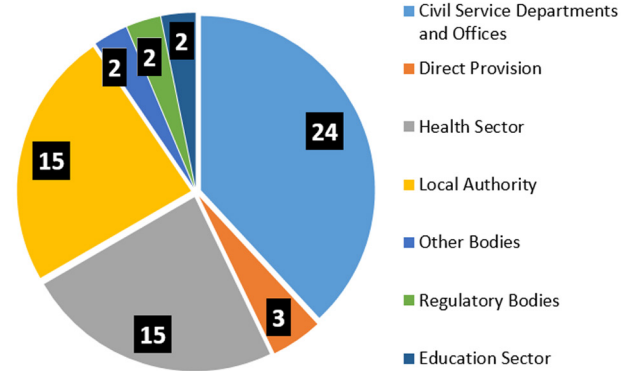
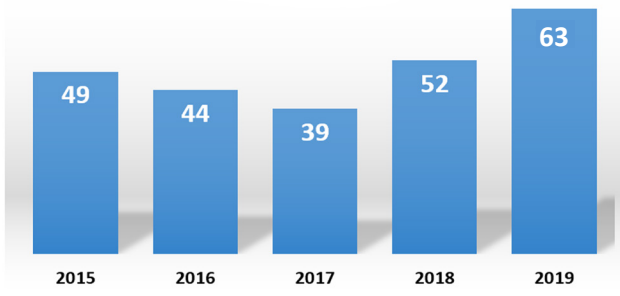
### Health and Social care



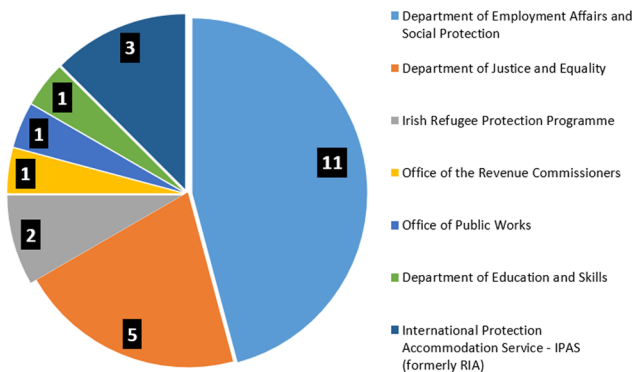
# Roscommon: Complaint numbers

## Complaints received from people in Roscommon

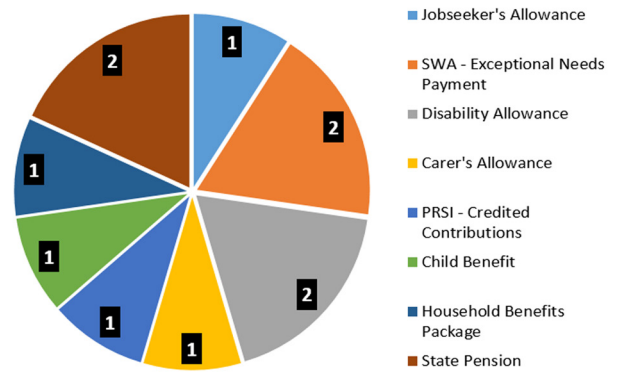
### Complaints received in last 5 years    Complaints by sector: 2019



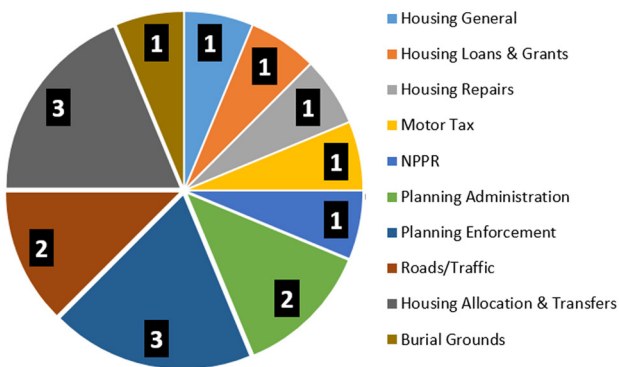
### Government Department/Office



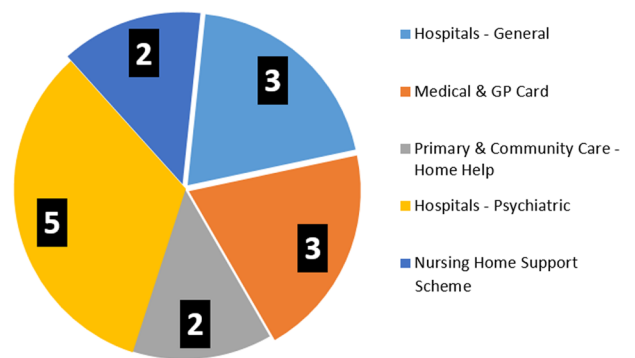
### Dept. of Emp. Aff. & Social Protection



### Roscommon County Council



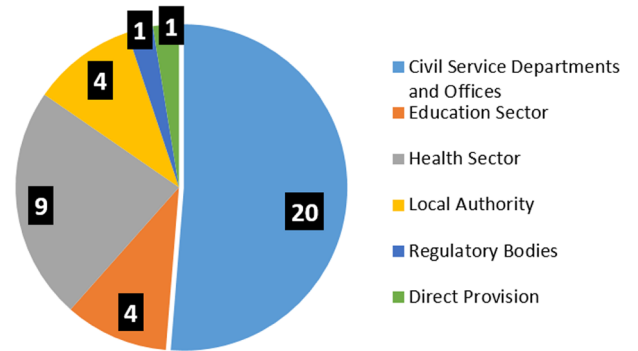
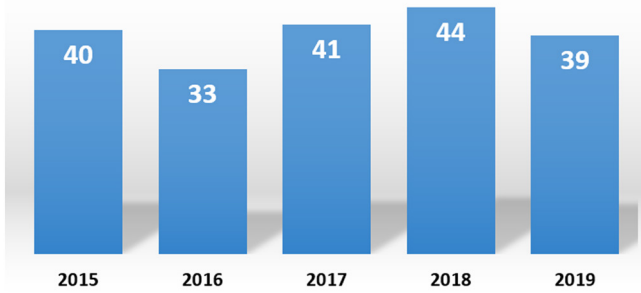
### Health and Social care



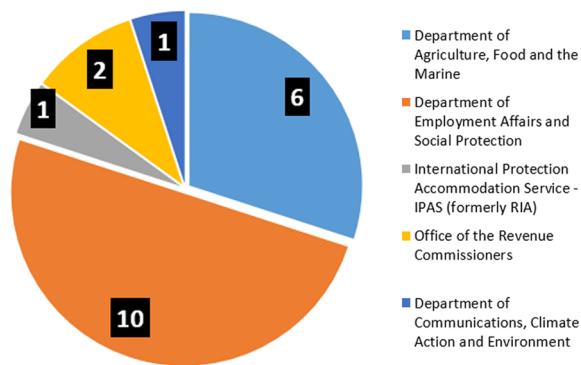
# Sligo: Complaint numbers

## Complaints received from people in Sligo

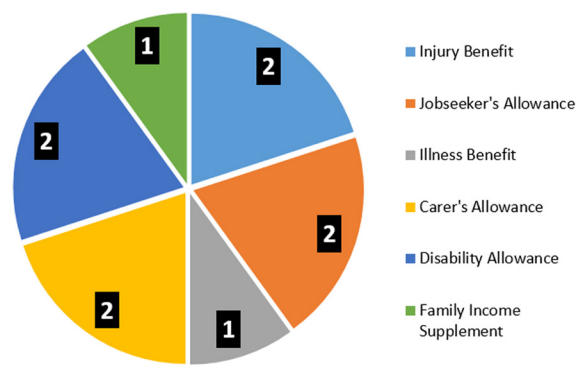
### Complaints received in last 5 years    Complaints by sector: 2019



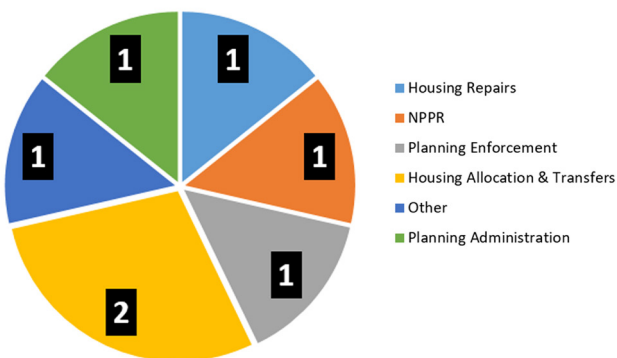
### Government Department/Office



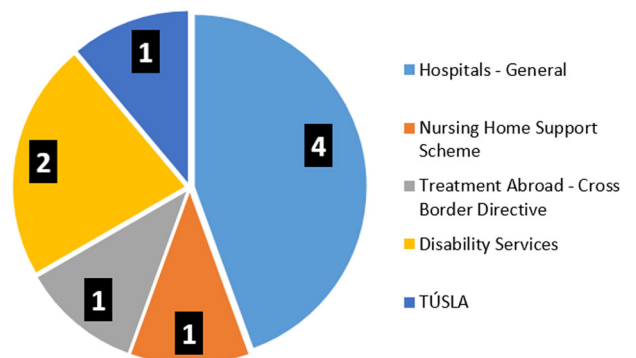
### Dept. of Emp. Aff. & Social Protection



### Sligo County Council



### Health and Social care



# Case studies from Leitrim, Roscommon and Sligo

This is a selection of just some of the cases we received in recent years from people in Leitrim, Roscommon and Sligo or involving public service providers in the area.

## Agriculture, Food and the Marine

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### Farm Improvement Scheme: Payment Refused

OMB-36227-V7Y4J8

# *Upheld*

#### Background

A farmer from Leitrim complained about the decision of the Department of Agriculture, Food and the Marine to refuse his and his wife's Farm Improvement Scheme (FIS) applications on the grounds that they were received after the closing date of 21 October.

#### Examination

The couple were never informed of the decision to refuse the applications, or of their right of appeal, until they wrote to the Minister's office three years later. They appealed the decision and the farmer provided evidence to show that the applications had been hand delivered to the Department's offices in Carrick-on-Shannon on 18 October. This included a statement from the Teagasc official who delivered the applications, details of their travel claim in respect of their trip to Carrick-on-Shannon on 18 October and a copy of the Teagasc Daybook (which contained details of the applications delivered that day). The Agriculture Appeals Office concluded that, on the balance of probabilities, the applications were received after the closing date because they were date stamped as received on 22 October 2007.

The Ombudsman asked the Department to review its decision as there was compelling evidence provided by a State agency to support the farmer's claim that the applications had been received before the deadline.

#### Outcome

The Department reviewed the case and agreed to make a payment to the man and his wife in respect of the applications.

## Agri-Environment Options Scheme (AEOS): Payment Refused

OMB-27031-J8D1D8

### # *Not Upheld*

#### Background

A man from Sligo complained to the Ombudsman that the Department of Agriculture, Food and the Marine, had not paid him the full amount under the Agri-Environment Options and Natura Schemes (AEOS) for the purchase of trees. The man said he paid a supplier over €8,000. The Department said that the invoice submitted by the man did not represent the true price he paid. It said that it knew of a number of cases where the amount shown on the invoices from the particular supplier were in excess of the actual amounts paid by claimants.

#### Examination

The man said that he paid some of the money in cash but was unable to provide any proof. Also he did not provide copies of cheques from the bank for the portion he paid by cheque to the supplier. The Department said that the average price, per tree, in verified cases, is €8.50 before VAT, but in his case the price per tree was €34.05 including VAT, which was above the market value. The Department concluded that claim for reimbursement for the purchase of trees was greater than it should have been. The Department decided to exclude the man from the AEOS for two years.

#### Outcome

The man had been unable to provide proof that he paid the supplier over €8,000. The Ombudsman did not uphold the complaint and was satisfied with the decision of the Department in this case.

# Direct Provision

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## Emergency Reception and Orientation Centre: Food and Health

OMB-12170-D7K3K0

# *Upheld*

### Background

A man complained about the Irish Refugee Protection Programme (IRPP) in relation to the quality of food being served in the Emergency Reception and Orientation Centre (EROC) where he lived. The man's doctor had identified the poor diet and quality of food in the EROC as being the cause of the man's poor health. The man had required surgery for his health complaint. The man told the Ombudsman that he had complained to the centre manager but that there had been no change.

### Examination

The IRPP reported to the Ombudsman that its officials had discussed this matter with the EROC manager who confirmed that she had not received any complaints or correspondence from the man highlighting his dietary issues. During a visit to the EROC, Ombudsman officials discussed the issues raised in the complaint with the HSE Support Workers who said that the quality and variety of food was of a very poor standard and that they were aware of the man's health complications as a result of the poor diet offered in the centre.

The IRPP told the Ombudsman that the quality and quantity of the food is kept under constant review and that the IRPP had ensured that additional funding would be provided for the purchase of better quality raw ingredients as well as additional fruit and vegetables.

### Outcome

The man and his family have since been re-settled in the community. On a recent visit by Ombudsman staff to the EROC in question, it was evident that the IRPP has addressed the food quality issues. The HSE Support Workers confirmed this also.

## Reception and Integration Agency: Transfer Refusal

OMB-21951-B6X0V8 (C15/17/1738)

### # *Assistance Provided*

#### Background

A man complained to the Ombudsman about the Reception and Integration Agency's (RIA) decision to refuse several transfer requests for a single room in a self-catering facility nearer the Dublin area. The man listed several medical issues as to why he requires a single room in self-catering accommodation.

He also complained of a series of issues about the accommodation centre including the suitability of his accommodation, food and complaints regarding staff members.

#### Examination

RIA could not grant the man's transfer request due to lack of suitable vacancies in its accommodation portfolio. However, due to the medical issues listed in his complaint, RIA said it would reconsider a fresh transfer application from him if he provided further medical documentation. RIA sends medical records sent with requests for transfers for medical reasons to its independent medical referee for his advice. The man had not sent any substantial medical documentation with his previous transfer request.

In relation to the man's complaint about the direct provision centre, the Ombudsman contacted the man on several occasions to ask for evidence that he had raised the issues with the Centre Manager in the first instance. As he did not reply the Ombudsman could not proceed with an examination of his complaint.

#### Outcome

As RIA agreed to consider any further medical information the man might send it, the Ombudsman was satisfied that it acted in a reasonable manner in relation to his complaint about the transfer.



## Irish Refugee Protection Programme: Delay in Housing Refugees

OMB-23046-Q9L8G0

### # Assistance Provided

#### Background

A woman complained that she and her family had been waiting over six months to be housed. The family were Programme Refugees which means their application to live in Ireland was pre-approved before they came here and they were accommodated in an Emergency Reception and Orientation Centre pending allocation of housing. The woman said she had not heard anything about when or where she and her family were to be housed. This was one of a total of 18 similar complaints made to the Ombudsman.

#### Examination

Providing housing to Programme Refugees is the responsibility of the Irish Refugee Protection Programme (IRPP) agency within the Department of Justice and Equality. The IRPP had operated a system through which each resident or family group was allocated to a particular local authority, with that authority being responsible for providing the housing. Some local authorities provided housing quicker than others, resulting in some people waiting longer for housing than other people in similar circumstances. IRPP recognised the position and in late 2018 replaced the process of assignment to particular local authorities with a new process through which residents were matched on a first come first served basis with suitable housing in whichever local authority area that housing was available.

#### Outcome

The woman and her family were housed in November 2018. All but one of the other complainants were also housed by the end of 2018. This complainant was offered an apartment in a provincial town but declined the offer.

Following contact from the Ombudsman, the IRPP agreed to more fully document the actions they take in attempting to house individuals and family groups so that the people concerned can be kept better informed on the position on their own particular cases.

The Ombudsman considered the IRPP's actions in introducing its new allocation process to be reasonable, and that its offer of an apartment to the one complainant who has not been housed was also reasonable. He welcomes the IRPP's commitment to more fully document its actions in securing housing for Programme Refugees.

# Education

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## Student Universal Support Ireland (SUSI): Grant Refusal

OMB-01474-D1P0J9 (E78/14/1172)

### # Upheld

#### Background

A student from Roscommon complained to the Ombudsman that she was unfairly refused a grant by Student Universal Support Ireland (SUSI).

The Student Grant Support Act 2011, provides for a range of financial support grants for students attending approved third level courses in Ireland or EU member states, subject to certain conditions.

The student applied to SUSI as an 'independent student' believing she satisfied all the conditions for the level of grant aid awarded to students in such circumstances. However, SUSI was not satisfied with the evidence she had given to prove she lived as an 'independent student', and so refused her application. SUSI said that had the student been able to provide a utility bill in her own name, registered at the address at which she said she was living, she would have been approved for the grant.

#### Examination

The Ombudsman examined the student's application details concluding that the evidence she had given to prove she was living independently should have been accepted by SUSI. The documentary evidence included:

- A live claim with the Department of Social Protection, registered and paid to the 'independent address'
- A P45 from her previous employer showing her 'independent address'
- A letter from the Revenue Commissioners about her tax affairs, addressed to her 'independent address'
- A motor insurance renewal notice showing the car was registered to her 'independent address'.

The Ombudsman arranged to meet with senior officials in SUSI. He expressed his concern that many students living independently would not have utility bills in their own names and might be unfairly denied the financial support they needed to engage in education. He asked SUSI to review its range of acceptable evidence for the purposes of satisfying the 'living independently' condition.

#### Outcome

In the meantime the student furnished a television account bill registered at her independent address. SUSI approved her funding grant retrospective to the date of her application.

## Student Universal Support Ireland (SUSI): Grant Refusal

OMB-19794-V5T6Q9 (E78/17/0668)

### # *Not Upheld*

#### Background

A Sligo student student's grant application to SUSI in 2016 was refused on the basis that she had completed a Diploma in Marketing, Advertising and Public Relations in 2011/12 which was equivalent to a Level 8 Qualification on the National Framework of Qualifications (NFQ). It was deemed that she was not eligible to receive a grant for further undergraduate study at Level 6, 7 or 8.

The woman was a mature student and was seeking a grant on the basis of entering an approved course following a break in studies of at least three years. She had previously completed a year of a degree course in France in the 2006/07 academic year for which she had not received a grant.

#### Examination

The Diploma was not equivalent to a Level 8 qualification but to a Level 6 on the NFQ. SUSI had concluded that she had only completed one year of a two year Advanced Diploma course whereas in fact she had completed a one year Diploma, which was a standalone course. SUSI accepted that it had made an error in determining the reason for refusal of the grant originally. However as she had previously completed one year of a degree course, she was not deemed eligible for payment of the grant.

The other option would have been to be considered a "second chance student". However there had to be a full five-year break in studies for this to apply. The woman had completed her studies in 2012. Therefore there was no five-year so did not qualify for a grant on that basis either.

#### Outcome

The complaint was not upheld.

# Health

## HSE: Cross Border Directive – Refund Reduced

OMB-10822-S6J9M9

### # Assistance Provided

#### Background

A Sligo woman complained to the Ombudsman when the HSE refunded her a lower amount than it had originally approved for treatment under the Cross Border Directive scheme. The scheme allows patients to be refunded for the cost of treatment in another EU or EEA country if certain criteria are met. The woman applied for 'prior authorisation' for treatment under the Cross Border Directive. Her application was also completed by the consultant in the country she was travelling to. She was informed by the HSE that her application had been approved. The HSE confirmed the amount to be reimbursed in respect of the procedure code written on her 'prior authorisation' application by her consultant. When the woman submitted an invoice for the procedure, she was reimbursed an amount less than that in her 'prior authorisation' acceptance letter and less than the amount she paid for the procedure.

The HSE said that the woman was reimbursed the correct amount for the procedure she had received. It said that the consultant had put the incorrect code for the procedure on the 'prior authorisation' application form. The HSE said that the amount quoted to her at prior authorisation stage was based on this code but she actually received a different surgery which involved a lower rate of reimbursement. The HSE said that it was not liable for code errors made by a consultant abroad and it advised her that she could complain through the country in question.

#### Examination

It was clear that an error had been made in the code provided at the application stage. However the letter confirming prior authorisation was clear in stating that prior authorisation confirms that the treatment applied for is in compliance with public patient pathways. This letter also stated that the reimbursement rate could not be confirmed at that point in time, although it did provide the reimbursement rate for the code provided.

The code error was only noticed after surgery when the invoice was submitted for reimbursement. The HSE sought advice from the Health Pricing Office who provided the correct code.

#### Outcome

The HSE acted within their current policy and procedure and the Ombudsman could not uphold the complaint. The hospital in question is outside the jurisdiction of the Ombudsman as it is in another country. However, in order to assist the woman, the Ombudsman contacted the hospital and outlined the situation. The hospital acknowledged that an error had been made and it paid the woman the difference between the amount she paid them and the amount reimbursed by the HSE.

## HSE: Home Help Hours

OMB-12267-LOX1H7

### # *Assistance Provided*

#### Background

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

#### Examination

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

#### Outcome

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

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## HSE: Reduction in Rehabilitation Training Allowance

OMB-25912-W9L1S8 (HC3/15/1443)

### # *Upheld*

#### Background

A man from Roscommon complained to the Ombudsman about a reduction in his Rehabilitation Training Allowance (RTA). He said that this reduction was made, despite the announcement of the Minister at the time that such a cut would not be implemented.

#### Examination

When the man complained to the HSE about this reduction, he was informed that RTA is paid for a maximum of three years. He was also informed that the rate of RTA was reduced locally as part of cost containment measures.

The Ombudsman liaised with the Department of Health who confirmed that RTA is only payable for the duration of training on a rehabilitative training course. It confirmed that no reduction in the RTA payment was authorised by the Department.

#### Outcome

The man was provided with a reimbursement of the reduction in his RTA for the period from when it was reduced until he completed his rehabilitative training. This amounted to €265.20. The HSE also agreed to reimburse others similarly affected by this reduction.

## St John's Hospital, Sligo: Care and Treatment Procedures

OMB-17269-V6S6S1 (HC5/16/1734)

### # *Not Upheld*

#### Background

A man complained about the care provided to his father in the Alzheimer's Unit of St John's Hospital, Sligo during a number of respite admissions before his death in July 2014. He said that his father's dietary requirements were not met, the man was not being listened to about his father's dietary needs, and staff were not trained in appropriate food hierarchy/consistency for residents.

The man said he was making his complaint to ensure that other residents or families would not suffer a similar experience.

#### Examination

The hospital did not properly explain the decisions it made regarding the man's treatment and it apologised to him for this. It also accepted that there needed to be clarity around the food consistency guidelines. Since the complaint was made, training for all staff on speech and language therapy, which includes food consistency, started and is ongoing. There was also an issue with a staff member relying on an unsigned and undated note on the medical file with regard to his father's dietary requirements. Sligo/Leitrim Mental Health Services developed a policy on report writing and record keeping for all clinical staff to clarify staff roles and responsibilities in relation to clinical documentation in relation to residents. This policy applies to the hospital and a compliance officer was appointed to ensure that all staff adhere to this policy.

#### Outcome

The Ombudsman was satisfied that the hospital has made improvements in the provision of the correct dietary requirements for residents, with improved record keeping and communication with families. He believed that the hospital has taken these matters seriously and has taken steps to improve its processes for other patients and their families.

## Roscommon University Hospital: Hospital Charges

OMB-06703-D0T1T8 (H24/17/1763)

### # *Assistance Provided*

#### Background

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

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### Examination

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

Following contact from the Ombudsman, the hospital confirmed that the healthcare records the man requested were sent to him by registered post.

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

### Outcome

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

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

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## Sligo University Hospital: Care and Treatment

OMB-31737-H3C5J1 (H22/14/1682)

# *Partially Upheld*

### Background

A woman complained about the failure of a Consultant in Sligo General Hospital to communicate the severity of her late father's illness to her family. She was also unhappy with the Consultant's apology, saying that the use of the word 'if' diminished its sincerity and implied that he had not accepted responsibility for what happened.

The woman also complained that nursing staff should have consulted a doctor before her father was discharged. She said that he was dehydrated and malnourished by the time he was admitted to Cavan General Hospital with suspected sepsis, 24 hours after his discharge from the hospital. She said that sepsis was present before he was discharged.

### Examination

In its clinical notes the medical team had recorded that the man had 'end stage heart failure'. However, there was no evidence on file to indicate that this had been communicated to the family. A detailed review of the complaint had been carried out and the Review Officer found that there was a failure to communicate the serious and ultimately terminal nature of the man's illness and the potential for a rapid deterioration in his condition. He recommended that 'the clinical care plan is communicated clearly to the patient and their close family members, and that any changes are discussed and clearly understood, including the detailed discharge plan'.

The Ombudsman was unable to pursue the issue of the apology directly with the Consultant as he no longer worked at the hospital. However, he noted that the Hospital Manager and Review Officer had issued appropriate apologies to the family.

A review of the nursing notes indicated that the ambulance booked to take the man home had been redirected to another emergency. The hospital said that, following consultation with an Occupational Therapist, it was decided he could go home by car. The Ombudsman noted the Review Officer's recommendation that 'any patient who has been identified as requiring transportation by ambulance to another facility is reassessed for suitability by medical and other professionals as necessary, prior to any change in the mode of transport used to ensure that adequate equipment and expertise is available'.

### Outcome

The Ombudsman concluded that there was no evidence to indicate that the severity of the man's illness had been communicated to the family. He also felt that nursing staff should have consulted the medical team before a decision was made to allow the man home by car. The Ombudsman acknowledged that the issues raised by the woman had been examined as part of the review and welcomed the hospital's decision to accept and implement the Review Officer's recommendations.

The issue as to whether the man had sepsis before he was discharged could not be examined by the Ombudsman as it was a clinical matter which is specifically excluded from the Ombudsman's jurisdiction by legislation.



# Local Authority

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## Roscommon County Council: Planning Enforcement

OMB-60263-R0W1C1

# *Not Upheld*

### Background

A man complained about the Council not pursuing planning enforcement action against a developer. The man said that as a condition of the planning permission the developer was required to close a gap at the back of the development with mature hedging.

The man said there was a potential health and safety hazard to children who play in the estate who could be injured by a vehicle mounting the pathway when entering and leaving the property through the gap.

### Examination

The Council said it issued the developer with a Warning Letter and he then planted the area. The Council said it was satisfied that the provision of planting across the gap to the former rear entrance of the property reflects the requirements of the relevant planning condition. The Council also said that the perceived gap in the site boundary was not large enough to enable vehicles to enter/exit the property due to the extent of the existing vegetation.

### Outcome

The Ombudsman was satisfied that the Council's position in relation to the requirements of the planning condition being met was reasonable. He also considered that the Council has provided reasonable evidence as to why the current situation does not pose a health and safety hazard.

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## Sligo County Council: Housing Repairs

OMB-18257-C4W5T6 (L44/17/0537)

# *Not Upheld*

### Background

A woman complained to the Ombudsman about the refusal by Sligo County Council to take ownership of her previous property and renovate it. The woman bought a house under the 1979 Tenant Purchase Scheme. She suffered ill health in 2009 and her home had fallen into disrepair and was no longer suitable for her needs. She was rehoused by the Council. It was her understanding that her ownership would be transferred to the new property and the Council would take ownership of the previous property and renovate it.

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### Examination

The woman bought the property in 1988 after it was certified as being in good structural condition in late 1987. In March 1992, she reported to the Council that large cracks were reappearing in the walls. It was inspected by an Engineer, who recommended renovations to the property.

Under the Tenant Purchase Scheme, a local authority is under no obligation to ensure a house is in good structural condition before it sells it. Additionally, on completion of the sale, the owners are responsible for the repair and maintenance of the property. Her solicitor wrote to the Council in 2009 and asked that it explore the possibility of a settlement to include an exchange of her house for more suitable accommodation. She was rehoused by the Council but this was due to her housing needs as a result of her medical condition and there was no evidence to show that the Council agreed to transfer ownership of the properties when it rehoused the woman.

### Outcome

The Ombudsman sympathised with the woman but was satisfied that there was no evidence that the Council considered transferring ownership of the properties. Additionally, there was no evidence of any commitment by the Council to carry out repairs to the property which the woman privately owned.

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## Sligo County Council: Non-Principal Private Residence Charge

OMB-25978-J1T0L1 (L44/15/2083)

### # *Partially Upheld*

#### Background

A woman complained about having to pay penalties for the Non-Principal Private Residence (NPPR) charge. She said that she lived abroad and that she only visited Ireland for very short periods and was not aware of the charge. The woman had paid the Household Charge and Local Property Tax as she had been informed of these taxes.

#### Examination

The Ombudsman received a considerable number of complaints in relation to awareness of the NPPR. As a result the County and City Managers' Association issued guidance to local authorities to waive 50% of penalties if certain criteria were met. One of the criteria related to those living abroad who could not reasonably have been expected to know about the charge. However, the Council said that the criteria did not apply in this case as the woman had paid other property taxes, so she should have been aware of the NPPR charge. The Ombudsman noted that the other taxes had greater media coverage. Furthermore, he was of the view that as they were administered by different public service providers, paying them would not necessarily have alerted the woman of the NPPR charge.

#### Outcome

In the circumstances, the Council reviewed its position and decided to waive 50% of the penalties.

# Nursing Homes

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## Care and Treatment

OMB-38571-V6Y4Z8

# *Not Upheld*

### Background

A man from Leitrim complained about the care provided to his father in a nursing home in 2018. He believed that his father was neglected and not treated for a sore on his heel. He said that his father was left for over 10 weeks in the nursing home before any action was taken to transfer him to hospital and the lack of occupational therapy or physiotherapy impacted on the development of the sore on his father's heel.

### Examination

The Ombudsman could not examine the clinical aspects of the man's care as these are outside his remit. However, he was satisfied that all due care and attention was provided to the man's father. There was no evidence in the records, which were well documented, to support the contention that he was neglected. The man was monitored closely throughout his stay and he was seen regularly by the GP and by a physiotherapist. There was no evidence to show that the lack of occupational and/or physiotherapy impacted on the development of the sore.

### Outcome

The Ombudsman was satisfied that the nursing home had cared for the man and that there was no evidence of neglect.

# Revenue Commissioners

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## Income Tax

OMB-25948-N9W0P3 (C21/15/3384)

# *Not Upheld*

### Background

A man from Leitrim complained about Revenue's refusal to pay interest on refunds of income tax he had paid.

In 2009 and 2011, he was treated as 'single' for income-tax purposes. In 2010, he submitted a tax return claiming as a married man. He submitted a tax return in 2011 and claimed as a single man. He did not submit tax returns for 2012 or 2013. In 2014, Revenue was notified that he should have been assessed as married from 2009 to 2013. It therefore issued a tax refund and interest in respect of 2010 and refunds in respect of 2011, 2012 and 2013. As more than four years had passed, he was not eligible for a tax refund for 2009. He considered that he should have received interest on the refunds for 2011, 2012 and 2013.

### Examination

According to legislation, payment of interest on income-tax refunds applies when the delay in is due to an error by the Revenue Commissioners. It had correctly paid interest in respect of 2010 as it had failed to notice that he was claiming as a married man in that year and assessed him as a single person. However, as he had submitted a return as a single man in 2011 and had failed to file tax returns in 2012 and 2013, the Revenue Commissioners were not required to pay interest for those years.

### Outcome

The Ombudsman found that the Revenue Commissioners had applied the law correctly.

# Social Protection

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## Department of Employment Affairs and Social Protection: Training/Employment Schemes for Disabled Persons

OMB-36221-R3V7Z1 (C22/16/1894)

### # *Assistance Provided*

#### Background

A woman from Leitrim complained to the Ombudsman about the Department of Employment Affairs and Social Protection regarding access to employment support services for disabled persons. She was a client of Employment Response Northwest (ERNW), which is funded by the Department, and had access to a Job Coach. The woman said that she was taken off its client list, despite not asking to be removed from it.

#### Examination

The Department said that the woman had initially been taken off the client list at her own request in October 2008. It provided a copy of a note the woman had sent ERNW withdrawing from the service.

The woman had two subsequent meetings with officials from the Department in May 2014 and September 2015 in relation to access to ERNW's services. The minutes of these meetings indicated that the woman was not seeking employment, so the Department decided that access to employment support was not appropriate in her case.

The Ombudsman received additional information from the woman's representatives regarding her disability, and how it affected her decision-making and ability to deal with people and situations. They confirmed that she was now seeking employment and that she sought the support of a Job Coach to do so. The representatives said that the woman would require an advocate in the event that she was referred to a Job Coach.

#### Outcome

The Department reviewed the case in light of the new information and a referral was made for the woman to ERNW.

## Department of Employment Affairs and Social Protection: PRSI Voluntary Contributions

OMB-16157-V9D2X2 (C22/16/3332)

### # *Assistance Provided*

#### Background

A man from Roscommon made a request to the Department of Employment Affairs and Social Protection (the Department) that he be allowed to make voluntary contributions from 1992 to date in order to preserve his pension entitlements. The Department refused his request because he had made it outside the 12 month time limit.

#### Examination

Having reviewed the man's file the Ombudsman noticed that there were periods in the 1990s where the man might have been entitled to Unemployment Assistance for which he hadn't been credited. He brought this to the attention of the Department and asked that it review his file.

#### Outcome

The Department, having reviewed the man's file, accepted that he should be awarded additional credited contributions for periods spent on Unemployment Assistance in the 1990s. As a result of these additional credited contributions he has now qualified for the maximum weekly rate of State Pension Contributory of €238.30. He has also received arrears of State Pension Contributory of €2,278.

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## Department of Employment Affairs and Social Protection: Jobseeker's Allowance

OMB-06133-V2V1T3 (C22/15/0074)

### # *Not Upheld*

#### Background

A man from Leitrim was refused Jobseeker's Allowance (JSA) on the basis that he did not satisfy the statutory habitual residence conditions. The man appealed to the Social Welfare Appeals Office (SWAO) which decided that he met the habitual residence conditions only from the date of his oral hearing in October 2014. The man complained that his JSA was not backdated to the date of his application in April 2014.

#### Examination

In order to receive a social welfare benefit you must be habitually resident in the State. The relevant legislation sets out the factors which must be considered in determining habitual residence. These include the length and continuity of residence in the State, the person's main centre of interest, the nature and pattern of the person's employment and the future intentions of the person.

The SWAO decided that the man did not satisfy these conditions when he first moved to Ireland and made his JSA application in April 2014. However, it was satisfied that his centre of interest and future intentions to remain in Ireland had been established from the date of the hearing and his JSA was allowed from that date.

#### Outcome

The Ombudsman found that the SWAO's decision was reasonable and that it had properly applied the legislation in this case.

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### Department of Employment Affairs and Social Protection: Carer's Allowance

OMB-26927-D8M5D6 (C22/15/1718)

#### # *Not Upheld*

#### Background

The Ombudsman received a complaint on behalf of a man from Roscommon whose application and appeal for a Carer's Allowance in respect of his father had been refused on income and medical grounds. The case had been appealed to the Social Welfare Appeals Office which found that the man's means were in excess of that allowed under the scheme. The Appeals Office did not assess the medical evidence because the application failed on grounds of income.

The man believed that the proceeds of the sale of the man's house should not be assessed by the Department when calculating his means. The man sold the house 10 years before his application.

#### Examination

Two Medical Assessors decided that the man's father did not need full time care and attention. The man's income was above that allowed under the scheme and the proceeds of the sale of his house were assessed correctly in line with the scheme.

#### Outcome

There is no legislative provision allowing the Department to exclude the proceeds of the sale of a house when assessing the income of an applicant for Carer's Allowance.

## Department of Employment Affairs and Social Protection: State Pension

OMB-27633-G7G6B9 (C22/15/1184)

### # Upheld

#### Background

In 2008 a woman from Leitrim applied to the Department of Employment Affairs and Social Protection for State Pension (Contributory) (SPC) at reaching the age 66. She was initially awarded her pension at a reduced rate based on her contribution records. This pension was increased to the maximum rate following receipt of further information with regard to extra contributions she paid. The maximum rate only applied from the date the woman paid an outstanding PRSI liability based on the extra contributions.

#### Examination

The Department relied on the pension legislation when deciding to pay the full pension only from the date the woman paid her outstanding PRSI liability. The Ombudsman established that the legislation did not apply to claims for SPC made on or before 31 December 2009, and so he asked the Department to review the case.

#### Outcome

The Department agreed to re-examine the woman's pension entitlement and it decided that the woman was entitled to full rate pension backdated to her 66th birthday. Arrears of over €5,400 were paid to the woman.







# 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 6 Earlsfort Terrace, Dublin 2.

Tel: 01 639 5600

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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