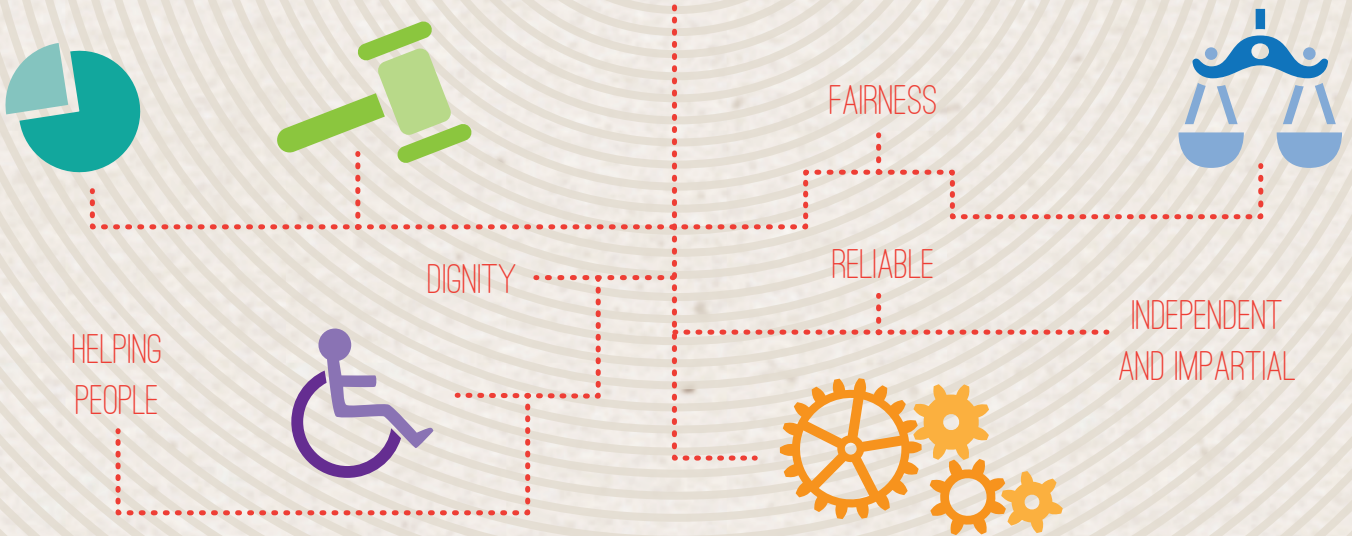




Oifig an Ombudsman  
Office of the Ombudsman



# ANNUAL REPORT 2012



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Office of the Ombudsman  
18 Lower Leeson Street, Dublin 2

Tel: +353 1 639 5600

Fax: +353 1 639 5674

E-mail: [ombudsman@ombudsman.gov.ie](mailto:ombudsman@ombudsman.gov.ie)

website: [www.ombudsman.ie](http://www.ombudsman.ie)

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Annual Report 2012

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## Report to both Houses of the Oireachtas

I hereby submit my tenth Annual Report to the Dáil and Seanad pursuant to the provisions of Section 6(7) of the Ombudsman Act 1980. This is the 29th Annual Report submitted in relation to the work of the Office of the Ombudsman since it was established in 1984.

A handwritten signature in black ink that reads "Emily O'Reilly". The signature is written in a cursive, flowing style.

**Emily O'Reilly**  
Ombudsman  
June 2013

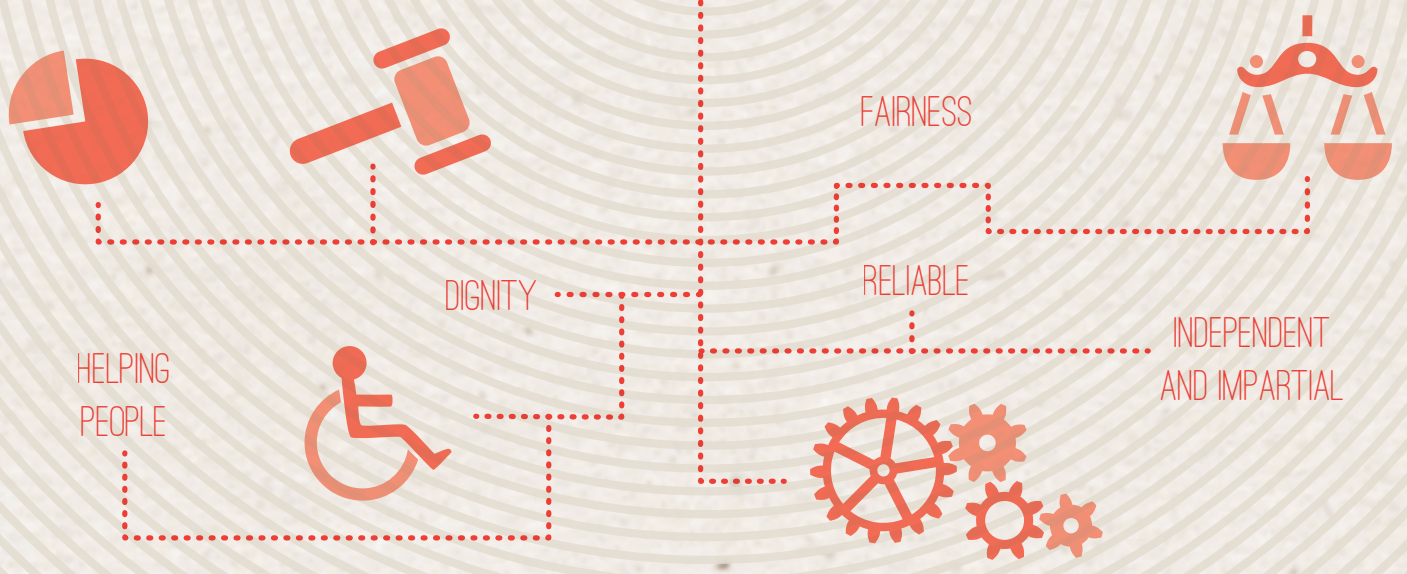


**Bernadette McNally**  
Director General

Bernadette McNally was appointed as Director General of the Office in April 2012.



# CHAPTER ONE





# Chapter 1: Introduction from the Ombudsman

## 1.1 The Ombudsman (Amendment) Act 2012

The most significant event for my Office during 2012 was the passing by the Oireachtas of the Ombudsman (Amendment) Act 2012. The Act extended my remit to over 180 additional public bodies. This means that anyone who is not satisfied with any aspect of administration by nearly every publicly funded organisation in the State now has a right to an independent, impartial and free investigation of their complaint by my Office.

In previous Annual Reports I have commented on the delay in passing the Act. A new Ombudsman Act was first mooted as far back as January 1987, and over the years many promises to update and expand the Ombudsman's powers and remit were made and broken. The current Government's Programme for Government made a commitment to extend the Ombudsman Act so as to "ensure that all statutory bodies and all bodies significantly funded from the public purse are covered". I am delighted to say that this important piece of legislation is now a reality and I commend the Minister and the Department of Public Expenditure and Reform for their part in bringing this legislation into existence.

### Jurisdiction

I already had jurisdiction to investigate complaints in relation to the administrative actions of Government Departments, local authorities and the Health Service Executive. Among the 180 or so additional bodies now under my jurisdiction are all publicly funded third level education institutions (including the universities and Vocational Education Committees), the State Examinations Commission, the Student Grants Appeals Board, FÁS, the Legal Aid Board, the National Treatment Purchase Fund, the National Transport Authority, and the Health Information and Quality Authority. A list of these new bodies is set out in Annex D to this Annual Report. These bodies came under my remit from 1 May 2013 enabling me to examine complaints in relation to administrative actions which occurred on or after that date.

Since the passing of the Act my Office has actively engaged with all these new bodies. As part of this engagement I held seminars in February 2013 in order to explain my role, set up liaison arrangements, ensure the new bodies understood their obligations under the new Act (which I explain in more detail in Chapter 2) and, importantly, to encourage effective systems of complaint resolution at local level.

While the Act extends my remit significantly, I remain prohibited from investigating actions taken in “the administration of the law relating to immigration or naturalisation” and “the administration of the prisons”. I believe that it is appropriate for the Ombudsman to have oversight of these matters and I have made my views known to the Oireachtas, including in my submissions to the Joint Oireachtas Committee on Public Service Oversight and Petitions. During the debate on the Ombudsman (Amendment) Bill in the Oireachtas many speakers made strong interventions calling for my remit to be extended to these areas. I very much appreciate the support expressed for my position.

The Government has said that a new complaints system for prisoners was being introduced which would be open, transparent and independent, and will provide an immediate mechanism to deal with such complaints. In relation to immigration, residency and asylum matters the Government has said that a new statutory appeals system will be established through the enactment of the Immigration, Residence and Protection Bill 2010.

These processes must be robust and truly independent if they are to provide a genuine alternative to Ombudsman oversight. They should also be introduced as soon as possible. It is fundamentally the business of the Oireachtas to ensure that the people of the State, including those who come to live here for whatever reason, are given the means to have decisions made about them by the State independently reviewed. I am sure that the Oireachtas will continue to ensure that the administration lives up to its commitments in these sensitive areas. I understand that the Minister has indicated a willingness to revisit the Ombudsman legislation if it requires fine tuning at a later stage, so prisons and asylum matters may be the subject of further consideration in that context at some time in the future.

## 1.2 Constitutional status for the Ombudsman

I have often called for constitutional status for the Office of the Ombudsman. As far back as 1996, the Constitutional Review Group said:

*“Independence is the foundation stone upon which the Office of the Ombudsman is based. The Ombudsman must be able to operate without being influenced by Government action. It is not enough for him or her to be independent in fact - he or she must also be seen as such by those who use the Office. A constitutional guarantee for this independence would reinforce*

*freedom from conflict of interest, from deference to the executive, from influence by special interest groups, and it would support the freedom to assemble facts and reach independent and impartial conclusions”.*

Other oversight bodies in Ireland such as the Comptroller and Auditor General have constitutional recognition. Constitutional status would serve to ensure that administrative accountability is given the same recognition and is regarded as being as important as financial accountability. Constitutional status would also increase public confidence in the independence of the Office of the Ombudsman. During 2013 I intend to make a submission to the Convention on the Constitution calling for constitutional status for my Office.

### **1.3 Office of the Commission for Public Service Appointments**

In 2012 the Office of the Commission for Public Service Appointments amalgamated with the Office of the Ombudsman. The Commission is an independent body that regulates recruitment to the civil service, the HSE, An Garda Síochána and certain positions in other public service organisations. As Ombudsman I am a member of the Commission. The merger was part of the Government’s public service reform plan aimed at reducing costs to the exchequer and was made legally possible via the Ombudsman Amendment Act. I am delighted to say that thanks to the hard work of the staff of the two organisations the merger was completed with a minimum of disturbance to the work of both Offices.

### **1.4 Strategic Plan 2013 - 2015**

The Ombudsman (Amendment) Act 2012 effectively doubles the number of public bodies under my jurisdiction. This poses considerable challenges in terms of preparing my staff to deal with a wide range of new public bodies, schemes and issues, and likely increases in the number of complaints from members of the public. I have been asked to do this against a background of reduced staffing and financial resources. In preparation, significant changes were made to how my Office operates and these changes were described in my 2011 Annual Report. I will make every effort to ensure that my Office continues to rise to this challenge and I will seek to maintain the quality and efficiency of our service. During 2012 my Office prepared a strategic plan for the next three years, reviewing our achievements over the last three years and agreeing what we hope to achieve in 2013-2015. I describe our plan in more detail in Chapter Two of this report.

## 1.5 Breach of Equal Status Acts in the Mobility Allowance and Motorised Transport Grant Schemes

During 2012 I presented two special reports to the Dáil and Seanad. Under Section 6(5) and (7) of the Ombudsman Act 1980 I have the option to make a special report to the Dáil and Seanad where a public body's response to a recommendation I have made, arising from an investigation, is unsatisfactory. Since the establishment of the Office in 1984 there have been only a handful of special reports, so to have two such reports in the one year was truly exceptional. Both reports arose from the failure of the Department of Health to accept and act on recommendations made by me following investigations conducted under the Ombudsman Act 1980. Both recommendations concerned schemes to assist people with disabilities with their transport needs.

### Mobility Allowance

In October 2012 I reported to the Dáil and Seanad that the Department of Health, despite initially agreeing to do so, failed to act on my recommendation in relation to the Mobility Allowance. In April 2011, following investigation of a particular case, I found that the Mobility Allowance scheme was being operated on the basis of an upper age limit which breached the Equal Status Acts. I recommended then that the Department would revise the scheme so as to make it compliant with the Equal Status Acts and that this should be achieved within six months, by October 2011. The Department accepted my finding and agreed to implement the recommendation; however, it did not do so. While I attempted to engage with the Department on the issue for a further 12 months, ultimately I felt I had no option but to report on this situation to the Dáil and Seanad.

### Motorised Transport Grant

In November 2012 I reported to the Dáil and Seanad that the Department of Health had refused to accept my recommendation following an investigation involving the Motorised Transport Grant (MTG). That investigation arose from a complaint made on behalf of a young man from Co. Donegal. When I completed that investigation in September 2012, I found that the MTG scheme was being operated by the HSE (on behalf of the Department of Health) in a manner which, again, was in breach of the Equal Status Acts. The issue here was that the scheme was being operated on the basis of an unduly restrictive approach to what constituted a disability and that this caused unacceptable discrimination within the overall group of persons with disabilities. I made three recommendations to the HSE which it accepted and which, I understand, it is in the process of implementing. I made one recommendation to the Department of Health which was that it revise the MTG scheme so as to make it compliant with the Equal Status Acts. The Department accepted my finding that the scheme was being operated in breach of the law; but it refused to accept my recommendation that it be revised so as to render it compliant with the law.



In both cases, the Department's position was that the costs associated with acting on my recommendations could not, in present financial circumstances, be borne by the State.

I was pleased to be invited, in December 2012, by the Joint Oireachtas Committee on Public Service Oversight and Petitions to discuss the two special reports. Subsequently, in early February 2013, both the Minister for Health and the Minister for State with special responsibility for the disability area also appeared before the Committee. At that stage, the Ministers made it clear that they accepted the correctness of my findings and that they were continuing to search for a solution which respected the Equal Status Acts while being cognisant also of the financial crisis facing the State. However in late February 2013, to my surprise and that of people generally, the Minister for Health announced that both schemes were being discontinued with immediate effect for new applicants and from July 2013 in the case of existing recipients.

I deal in more detail with these special reports in Chapter Three of this Annual Report.

## 1.6 Relationship with the Joint Oireachtas Committee on Public Service Oversight and Petitions

In my 2011 Annual Report (page 17) I welcomed the establishment of the Joint Oireachtas Committee on Investigations, Oversight and Petitions, now known as the Joint Oireachtas Committee on Public Service Oversight and Petitions (PSOP). I have already had a number of positive interactions with the Committee. I made my first appearance before the Committee on 20 July 2011 to give an overview of the work of my Office and to discuss how the working relationship between the Committee and my Office could develop in a mutually beneficial manner.

On 10 October 2012 I appeared before the Committee to discuss the Ombudsman (Amendment) Bill and my 2011 Annual Report. At a further appearance on 6 December 2012 I discussed two special reports in relation to the Mobility Allowance and Motorised Transport Grants.

The Committee carries out a petitions function which enables members of the public to complain to the Committee on a wide range of matters relating to the provision of public services. In recognition of the statutory independence of my Office and in order to avoid any overlap or duplication of effort, the Committee's terms of reference provide that it cannot accept complaints which have been the subject of a decision by my Office.

I see my Office's on-going engagement with PSOP as pivotal in strengthening the Office's relationship with the Houses of the Oireachtas and ensuring that Ombudsman reports and recommendations are given thorough and objective scrutiny in a non-partisan fashion.

## 1.7 Other events in 2012

### Conferences

The year 2012 was an extremely busy year and included my participation at a variety of conferences, seminars and other events. A full list is attached at Annex B.

I am always pleased to be asked to contribute to such events, particularly those organised by voluntary groups around the country who work unselfishly for a variety of worthy causes. These events not only provide me with an opportunity to share my experience of overseeing and raising standards of public administration, but also allow me the opportunity to hear first-hand accounts of the difficulties that people face in their interactions with the public service. They also facilitate solutions and provide different views on how those difficulties may be addressed. This valuable insight helps inform the work of my Office.

During 2012, the events were as varied as discussions at the Young Business Ladies Lunch in my hometown of Tullamore to reporting to the Joint Oireachtas Committee on Public Services Oversight and Petitions Committee.

### **The Ombudsman Association**

During 2012 I continued to play an active role in the Ombudsman Association (formerly the British and Irish Ombudsman Association). The Ombudsman Association, which I had the honour of chairing between 2008 and 2010, is a professional association which promotes the concept of 'the Ombudsman'. Its membership mainly consists of Ombudsman and complaint handling bodies from Ireland, the United Kingdom and UK territories. The Association organises networking opportunities for complaint handling bodies. I both learn from, and provide assistance to, my fellow complaint handlers and our discussions and exchanges of ideas raise the standards by which we operate. We shamelessly steal good ideas from each other, all with the aim of raising standards of 'Ombudsmanship' and ultimately providing a better service to our publics. I would like to thank my fellow complaint handlers for their support and valuable assistance throughout the year.

I am sure that 2013 will be an equally busy year. I look forward, in particular, to co-hosting the European Network of Ombudsmen Conference in Dublin Castle in September 2013 with the European Ombudsman.

### **Kevin Murphy RIP, Ombudsman and Information Commissioner**

Sadly, during 2012 we saw the passing of former Ombudsman and Information Commissioner Kevin Murphy. Kevin retired in 2003 following nine years as Ombudsman and appointment as Ireland's first Information Commissioner in 1998. Kevin was a great champion of people ill-served by the country's public administration. Building on the work of the first Ombudsman, the late Michael Mills, Kevin moved to instil good practices in all of the public bodies the Office dealt with. He developed principles of good administration, complaint handling and customer service and, in doing so, helped to focus the attention of public officials on the needs of the people they served, rather than on the interests of the public bodies themselves. His wide experience of the civil and public service allowed him to cut through bureaucratic obfuscation and excuses when dealing with difficult complaints and his own integrity, and strong sense of ethical behaviour, informed everything that he did.

Kevin exemplified everything that is good about the public servant and the public service. He did his work diligently, thoughtfully and modestly. The values that should be embedded in our public service were deeply embedded in him, and his legacy will be a renewed effort on the part of this Office towards honouring those values, and his memory, through our own service to the public. Kevin will be missed not just by those of us in Ireland but also by his many former colleagues internationally who held him in such high regard.

## Staffing matters

In February 2012, my colleague Pat Whelan retired from the position of Director General. Pat held that position when I was appointed Ombudsman and Information Commissioner in June 2003. I want to thank him sincerely for helping me through my early years in Office and at other times when his wisdom and experience helped steer me and the Office through demanding and challenging periods. I wish Pat well in retirement and in future endeavours.

In April 2012, I was pleased to announce the appointment of Ms Bernadette McNally as Director General to the Office of the Ombudsman, Office of the Information Commissioner, Office of the Commissioner for Environmental Information, the Secretariat to the Standards in Public Office Commission (SIPOC) and the Office of the Commission for Public Service Appointments. The appointment was made by the Minister for Public Expenditure and Reform, Mr Brendan Howlin T.D., following selection and recommendation by the Top Level Appointments Commission.

Prior to her appointment, Bernie worked as a Senior Investigator at the Office of the Ombudsman, as an advisor in the Department of Health and as a senior manager in the health service. I wish Bernie well in her new position and look forward to working with her in the years to come.

During 2012 Liam Kelly, Senior Investigator, moved on to other challenges after making a significant contribution during his time in the Office of the Information Commissioner and as head of Corporate Services for the entire organisation. Tony Hayden, Assistant Principal, also moved on to pastures new. I am grateful and appreciative to both for their hard work and commitment not only in 2012 but in the many years prior to their departure. I wish them both well in their new roles.

During the year Gerry Kenny and Linda Reardon joined the Office. I am delighted to welcome them to the Office and look forward to working with them in the years ahead.

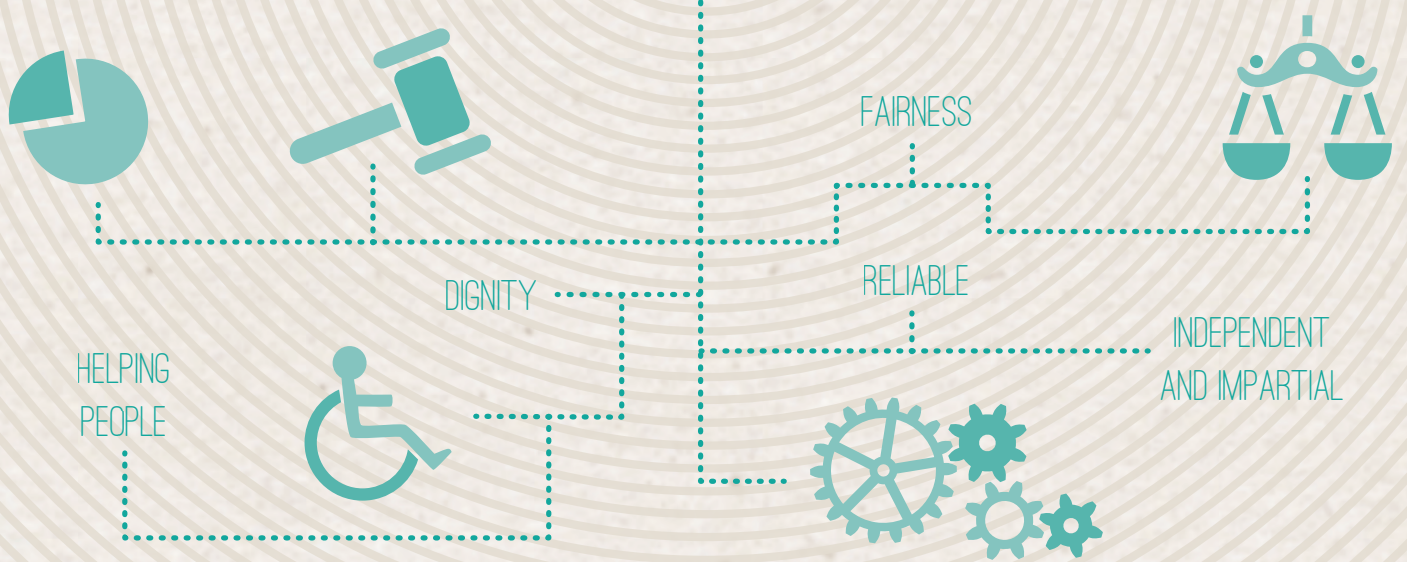
As with the past few years, 2012 was demanding on my staff and colleagues and once again, I would like to thank all of them sincerely for their continued hard work and support during the year.







# CHAPTER TWO



## Chapter 2: The Ombudsman's Business Review of 2012

### 2.1 Overview of Statistics

In my 2011 Annual Report I described the structural changes we implemented in our complaint handling processes to ensure complaints were dealt with fairly, effectively and efficiently. I outlined improvements delivered through those changes, with significant increases in the overall numbers of cases completed and in the proportion of such cases dealt with within three months. In 2012, 60% of cases were closed within 3 months and 85% were closed within 12 months.

In 2012, the total number of complaints received by my Office was 3,412 as compared to 3,602 in 2011. This is a decrease of 5.3% which was itself a decrease of 3.4% over the 2010 figure of 3,727, but is still considerably higher than the average for the previous 9 years (2,703).

Before a complainant brings a complaint to my Office they must take "reasonable steps" to resolve their complaint with the public body concerned. In a number of cases (1,453 in 2012) my Office provides advice and assistance to those who make their complaint 'prematurely' to my Office and usually redirects them back to the local service, inviting them to revert to us if the case is not resolved at that level.

Excluding these 'premature' complaints, it remains the case that the Civil Service which includes the Department of Social Protection is the largest source of complaints (at 46.8% compared to 46.4% in 2011), followed by Local Authorities (30.4% compared to 27.7%) and the HSE (21.1% compared to 24.3%). In 2012, 13% of cases were fully or partially resolved, assistance was provided in 28.4% of cases, 43.9% were not upheld and 14.7% were either discontinued or withdrawn.

Of the 917 complaints made against the Civil Service, 624 were against the Department of Social Protection, 80 against the Department of Agriculture, Food and the Marine, and 78 against the Revenue Commissioners. 59 of the 595 Local Authority complaints were

against Dublin City Council, 48 against Cork County Council and 36 against Galway County Council. There was a very even spread of the 413 health sector complaints between hospitals and the four HSE regions.

Postal services provided by An Post were removed from the remit of my Office with effect from 2 November 2011, and its other services (including savings schemes, issuing of TV licences, etc.) with effect from 1 November 2012. Complaints against An Post are now dealt with by ComReg.

As I mention in detail later in this Report, the remit of my Office has been extended to include a range of new public bodies for actions taken on or after 1 May 2013. While I anticipate that this will lead to a significant increase in the number of complaints made to my Office, it is difficult to estimate what this volume will be. The changes my Office has introduced over the last 2 years has speeded up the time taken to examine complaints and reduced the number of cases on hand. This will place us in a better position to deal with the expected additional demand in the absence of additional resources. I will, of course, report on this matter in my Report for 2013.

## 2.2 The Main Provisions of the Ombudsman (Amendment) Act 2012

### Over 180 additional public bodies now subject to the Ombudsman's remit

The Ombudsman (Amendment) Act 2012 was signed into law on 31 October 2012. The most significant change is the extension of my remit to over 180 public bodies or “reviewable agencies” as they are described in the Amendment Act.

The Amendment Act lists categories of “entities” which are now subject to investigation by the Ombudsman, rather than an exhaustive schedule of specific public bodies. These “entities” include:

- Any entity established by or under any enactment, statutory instrument or charter
- A company (within the meaning of the Companies Acts) in which a Minister of the Government has a majority of shares (or a subsidiary of that company)
- Any entity established or appointed by the Government or a Minister.

Other types of entities are listed in Part I of the First Schedule of the Amendment Act. Further public bodies can be brought within my remit by Ministerial Order.

The additional 180 or so bodies which now come under my remit include all publicly funded third level education institutions (including the universities, Vocational Education



Committees and Institutes of Technology), the State Examinations Commission, the Student Grants Appeals Board, FÁS, the National Treatment Purchase Fund, the National Transport Authority and the Health Information Quality Authority. A list of these new bodies is set out in Annex D to this Annual Report.

Only certain functions of some public bodies are within my remit. These include the Nursing and Midwifery Board (An Bord Altranais), the Courts Service, the Health and Safety Authority, and the Medical Council. A list of these bodies and the functions that are within my remit are set out in Annex D to this Annual Report and in Part II of the First Schedule of the Amendment Act respectively.

These new bodies came under my remit from 1 May 2013 enabling me to examine complaints in relation to administrative actions which occurred on or after that date.

The Act also specifies certain bodies which are not subject to the Ombudsman's oversight. These include An Bord Pleanála, An Post, the Central Bank of Ireland, the Equality Tribunal, An Garda Síochána and the National Asset Management Agency. These bodies are listed in the Second Schedule of the Act.

### **A duty on public bodies to provide assistance and guidance**

Where an action taken by or on behalf of a public body affects certain rights, privileges, obligations or liabilities there is now a duty on public bodies within the Ombudsman's remit:

- to give "reasonable assistance and guidance" to the public in their dealings with the public body "having particular regard to the needs of the person as a result of any disability"
- to ensure that members of the public are dealt with properly, fairly, impartially and in a timely manner
- to provide information to the public on any rights of appeal or review in respect of the action and on any time limits applying to the exercise of those rights. This includes a legal requirement to advise complainants of their right to refer a matter to the Ombudsman.

I have also requested that all public bodies provide a link on their own website directing them to the website of the Office of the Ombudsman.

### **Reference of questions of law to the High Court**

The Amendment Act also provides that the Ombudsman may refer any question of law arising in an investigation to the High Court for determination. There have sometimes been cases where the interpretation of a particular provision in legislation is unclear or

where the interpretation given by the public body differs from that of the Ombudsman. This provision allows the Ombudsman seek clarification on interpretation on questions of law from the High Court where it is considered necessary to do so.

## The Ombudsman can seek a court order to compel the provision of information to her

Under Section 7 of the Ombudsman Act 1980 the Ombudsman has the power to require anyone who has information or documents relevant to an investigation to provide that information or document to her, or require that person to appear before her. Prior to the Amendment Act if a person refused to comply with such a requirement the Ombudsman had no powers to compel that individual to comply. The Ombudsman can now apply to the Circuit Court for an order directing that person to comply with the Ombudsman's requirement.



Irish Times, October 24, 2012

## The Ombudsman can make recommendations to public bodies generally

Following an investigation of a complaint against a public body the Ombudsman will make a finding. If the complaint is upheld the Ombudsman may make a recommendation to that public body aimed at rectifying the maladministration that occurred. Prior to the Amendment Act the Ombudsman had the power to make recommendations only to the public body which was the subject of the investigation. Under the Amendment Act the Ombudsman can now make recommendations, following an investigation, in general terms to those public bodies that the Ombudsman considers appropriate. This means that where the Ombudsman finds maladministration in one particular body, and considers that it would be beneficial for other public bodies to also act on those recommendations, the Ombudsman can make a recommendation to those other public bodies.

## Preparations for new public bodies

In December 2012 I contacted all 180 or so public bodies that were to come within my remit on 1 May 2013. I offered my Office's assistance and guidance to help these new bodies prepare to comply with Ombudsman legislation, to explain my role and to allow discussion on our future working relationship. I held seminars in February 2013 for all the new bodies aimed at explaining the provisions of the Ombudsman Acts and highlighting the importance of a good internal complaint handling system. Also, in 2013, I published 'Six Rules for Getting it Right - The Ombudsman's Guide to Good Public Administration'. I hope this guide proves useful not only to these new public bodies but the public bodies

already within my remit. Within my Office a number of staff have been given the additional responsibility of liaising with these bodies and developing relationships with them. I hope that these preparations will not only benefit these public bodies but ensure that the public benefits through the raising of standards of public administration and complaint handling.



## 2.3 Bringing the Ombudsman Service to the Regions:

### Visits to Citizens Information Centres (CICs)

Most of our complaints are received by letter, email and phone calls but sometimes people want to talk to us in person. For over twenty years now staff from the Office of the Ombudsman, based in Dublin, have been visiting CICs to take complaints from members of the public. The monthly visits to Cork, Limerick and Galway continue to provide a valuable local service, easily accessible to people living there. During 2012, Ombudsman staff were available on 38 occasions to provide advice and assistance and to take complaints on behalf of the public.



#### Limerick CIC in 2012

112 valid complaints were received.



#### Galway CIC in 2012

77 valid complaints were received.



#### Cork CIC in 2012

100 valid complaints were received.

I would like to thank my staff for their participation in our Outreach programmes during 2012. As ever, my staff continue to bring our service directly to the people in a courteous, disciplined and professional manner.

## 2.4 Section 7 Notices - Failures to Cooperate with the Ombudsman

Section 7 of the Ombudsman Act 1980 (as amended) confers very significant powers on my Office in terms of acquiring documents and information necessary for the examination or investigation of complaints. Under the Act, there is a legal obligation placed on “any person who, in the opinion of the Ombudsman, is in possession of information, or has a document or thing in his power or control, that is relevant to the examination or investigation” to provide that material to the Ombudsman. Furthermore, the Ombudsman is empowered to require such a person to attend before her “and the person shall comply with the requirements”. Section 7(3) of the Act provides that:

*“A person shall not by act or omission obstruct or hinder the Ombudsman in the performance of his functions or do any other thing which would, if the Ombudsman were a court having power to commit for contempt of court, be contempt of such court.”*

Thankfully, in the vast majority of cases I do not encounter any difficulty in acquiring the material I need to deal with complaints. In the normal course, it is not necessary to invoke my statutory powers and I very much appreciate the full cooperation which I get from public bodies. In the relatively rare cases where there is a delay in providing material, and usually in the case of investigations, I formally invoke my statutory powers in order to acquire relevant material.

In almost every case the information is provided to my Office when a Section 7 notice is issued. My Annual Report is used to publish the number of occasions where I have issued a Section 7 notice. See table below for details of the numbers issued in 2012 and the previous 10 years.

Year	Number of Section 7 notices Issued
2012	7
2011	5
2010	8
2009	8
2008	7

2007	18
2006	18
2005	31
2004	6
2003	12
2002	16

In 2012 I issued seven Section 7 notices. In relation to three notices which issued to the Health Service Executive and one which issued to Dublin City Council, the information sought was received by my Office.

However, I have to report that in the course of 2012 there were three cases of refusals to provide material which I had sought in pursuance of my statutory powers under Section 7. One case involved the Health Repayment Scheme (HRS) Appeals Office; the other involved the Health Service Executive and the third case involved the Department of Health.

At the time when these notices were served, there was no compliance mechanism available to me in circumstances where a person fails to cooperate with a statutory requirement under Section 7 of the Ombudsman Act. This lack has since been rectified with the enactment of the Ombudsman (Amendment) Act 2012 which provides, in Section 10 of that Act, that I may apply for a Circuit Court order in the event of non-compliance by any person.

### **Health Repayment Scheme (HRS) Appeals Office**

This refusal arose in the context of my composite investigation of a number of complaints arising from the rejection of claims under the Health Repayment Scheme. The Health Repayment Scheme was introduced in 2006 to repay people who had been charged illegally for long-stay hospital care. The initial decisions to reject these claims were made on behalf of the HSE by the HRS Scheme Administrator and these initial decisions were subsequently upheld by the HRS Appeals Officer. My investigation involved the actions both of the HSE and of the HRS Appeals Officer and, following normal procedure, I sought relevant file material and information on the cases from both of these parties. The HSE provided the material sought but the HRS Appeals Officer refused to do so. Not only did the HRS Appeals Officer refuse to provide relevant documentation, he also failed to attend at my Office following a requirement that he do so issued under Section 7 of the Ombudsman Act 1980.

Further details of the above are set out in my investigation report which will be published shortly.



## Health Service Executive

In this case, I was investigating complaints relating to two people who had to avail of private nursing home care because the HSE did not provide public nursing home care for them.

I was aware that more than 300 sets of legal proceedings against the HSE had been initiated in other broadly similar cases. In each of these Court cases, the Department of Health was a co-defendant. I was aware that some of these cases had been settled out of Court. I felt that details of the settlements were relevant to the cases I was investigating, both to confirm that financial compensation was being paid, and also to establish the levels of financial compensation involved. I told the HSE why this information was relevant to my investigation and required it, under Section 7, to provide me with the information.

The HSE took some time to provide a clear response but eventually it stated that it was refusing to provide the information I required.

The HSE said that the Department of Health did not agree to the release of the information and the HSE said that for this reason it would not comply with the Section 7 requirement. It also said that providing the information could compromise the ongoing litigation in the other cases. The HSE quoted advice given by the Attorney General to the Department in another case that because my investigation cases were “unrelated and unconnected” to the cases which had been settled, the information should not be released. (The case in which that advice was given was covered in my “Who Cares?” report of 2010, which was an investigation into the general rights of older people to nursing home care.) I was, and remain, fully satisfied that information relating to the settled High Court cases was relevant to my investigation.

In the meantime I have completed that investigation, in the absence of the information sought from the HSE, and my investigation report has been published.

## Department of Health

The refusal to provide records in this instance arose in the context of my preliminary examination of a number of complaints relating to what is generally known as the “Drogheda Review”. This was a non-statutory review commissioned by the Department of Health and relating back to abuse incidents which were alleged to have occurred in the past at Our Lady of Lourdes Hospital, Drogheda. The review was conducted by a retired judge.

The purpose of the review was to examine and recommend to the Minister for Health whether a further investigation into the procedures and practices operating at Our Lady of

Lourdes Hospital, Drogheda would be likely to provide additional information or insights in helping to improve present best practice guidelines which protect patients from being sexually abused in hospital. My complainants are all individuals who agreed to give evidence for the purposes of the review. Their complaints relate to the manner in which the review was devised and conducted as well as to certain issues arising following the completion of the review.

The Department's position is that the review was independent in nature, and that it could not comment on the approach taken by the reviewer. Furthermore, the Department contended that the reviewer had specified that his records, including transcripts, should not be disclosed in any circumstance except by Court Order for discovery. In effect, the Department was arguing that the records in question, while physically in its possession, were not legally within its "power or control". In June 2012, the Secretary General said that he had in the meantime discussed the matter further with the Office of the Attorney General and that the Department was maintaining its position that the reviewer was an independent person and that the matter "under investigation" is not "an administrative action".

I first notified the Department of these complaints on 24 November 2011 and requested the provision of all records relevant to the conduct of the review. When the Department failed to provide any records, I served a Section 7 notice on 17 January 2012 on the Department requiring the records. On 7 February 2012, I sent a reminder letter to the Department. I issued a further Section 7 notice on 10 April 2012 with an added requirement that a named Assistant Secretary attend at my Office on 20 April 2012 in the event that the records were not provided. The records were not provided; and while a response from the Department issued on 19 April, and while the Assistant Secretary did attend on 20 April 2012, this did not advance matters.

It is important to note that at this stage I was seeking access to relevant records for the purposes of a preliminary examination only, that is, in order to form a view as to whether the complaints had sufficient substance to warrant further examination or investigation. Without access to the relevant records in 2012 it was not possible for me to form any conclusion, however tentative, regarding the merits of the complaints. I am continuing to pursue access to these records with the Department of Health.

## 2.5 Second Scheme of the Official Languages Act

The Official Languages Act 2003 provides a statutory framework for the delivery of State services through the Irish language. The Act seeks to ensure better availability and a higher standard of public services through Irish.

Under the Act there is a requirement on a public body to draw up and publish a scheme in which it sets out the details of its delivery of services in Irish as well as a timetable for the progressive enhancement of those services. Such schemes, provided for at section 11 of the Act, must be approved by the Minister for Arts, Heritage and the Gaeltacht.

The second Scheme of my Office, to cover the period 2012-2015, was approved by the Minister for Arts, Heritage and the Gaeltacht and is effective from 1 December 2012. The Scheme was developed by my Office following a public consultation process and taking account of the experience of the first scheme. The second Scheme reflects:

- the restructuring process that took place in my Office,
- the decision to bring the work of the Commission for Public Services Appointments within the remit of my Office,
- the level of demand to my Office for Irish languages services,
- the personnel challenges to ongoing provision of the service,
- the importance of electronic communication,
- the commitment to publicising the availability of services, including those available within my Office and on outreach regional visits.

The Scheme can be viewed on the Office's website at [www.ombudsman.gov.ie](http://www.ombudsman.gov.ie) under "Policies and Strategies".

## 2.6 Complaints under the Disability Act 2005

As in previous years, the relatively low number of complaints received under the Disability Act 2005 is disappointing. It is vitally important that people with a disability are informed as to their rights on access to services and information and that they are aware of their right of recourse to me as Ombudsman to examine their unresolved complaints.

It is also crucial that both professional and non-professional people involved in the disability sector are knowledgeable about the Disability Act, 2005 and the Ombudsman's remit.

Complaints under the Disability Act 2005			
Category	Brought forward from 2011	Received in 2012	On hand for 2012
Access to Services (Section 26)	1	5	6
Access to Information (Section 28)	1	2	3
<b>Total</b>	<b>2</b>	<b>7</b>	<b>9</b>

## 2.7 Update on Healthcomplaints.ie

Last year I reported on healthcomplaints.ie, an initiative that my Office founded and chaired with sixteen health and social care agencies. My Office has stepped back from its previous lead role, but remains involved.

[www.healthcomplaints.ie](http://www.healthcomplaints.ie) is an on-line information portal, which provides information to the public on how to make a complaint or give feedback about health and social services in Ireland. It is managed by a governance committee consisting of representatives from various agencies including regulators, services providers, information providers, Ombudsmen and service user advocates. The website is hosted by the Citizen's Information Board, with telephone queries handled by CORU (the regulator for health and social care professionals).

The website is receiving approximately 2,500 hits per month. The Department of Health's strategic plan for 2012 to 2015 sets out that [www.healthcomplaints.ie](http://www.healthcomplaints.ie) will form part of the new Patient Safety Agency when established. Staff of the HSE continue to be made aware of the many healthcomplaint resources via a number of activities. An article was published in the December issue of *Health Matters*, the HSE newsletter which is seen by most HSE staff. The Chairperson of the governance committee also spoke with the HSE Risk Managers Forum and with the CEOs of the Independent Hospitals of Ireland which includes many of the larger private hospitals.

Further details can be obtained on the website or from Ginny Hanrahan, Chair, Healthcomplaints Governance Committee.



Medical Independent, May 17, 2012

## 2.8 Redesign of the Ombudsman website

On 9th July 2012 I launched a new website for my Office, [www.ombudsman.gov.ie](http://www.ombudsman.gov.ie). The new website is part of my Office's efforts to make our services accessible to as many people as possible and to provide information to the public and to public bodies on the service we provide.

The website introduces an improved design and navigation structure, a comprehensive search facility and, most importantly, a secure Online Complaint Form. Members of the public can make their complaint online and also check the status of their complaint online.

Our secure online complaint form provides 24 hour access to our complaints facility. Between 6 July 2012 and 31 December 2012 196 valid complaints were received through the online complaint facility.

Our Complaint Status Check facility provides complainants with a daily update on the status of their case.

The aims of the website are to improve the user experience of our website, to deliver operational efficiencies for the Office through web based services, and to increase public awareness of the Office through our web presence.

The website meets the requirements of the eGovernment 2012-2015 strategy ([www.egovstrategy.gov.ie](http://www.egovstrategy.gov.ie)).

## 2.9 Use of Social Media

My Office also communicates through a number of social media platforms, including Twitter ([www.twitter.com/officeombudsman](http://www.twitter.com/officeombudsman)).

The purpose of using these social media channels is to:

- Increase public awareness of the role, functions and responsibilities of the Office
- Provide an informal voice for the Office to promote understanding of, and engagement with, our messages
- Encourage and generate engagement with the Office of the Ombudsman
- Apply the requirements of the eGovernment 2012-2015 strategy to maximise the potential of social media to improve access to services.

The number of followers of the Ombudsman on my Twitter account, launched in June 2012, has risen very quickly to over 800, and I tweet regularly in both English and Irish.



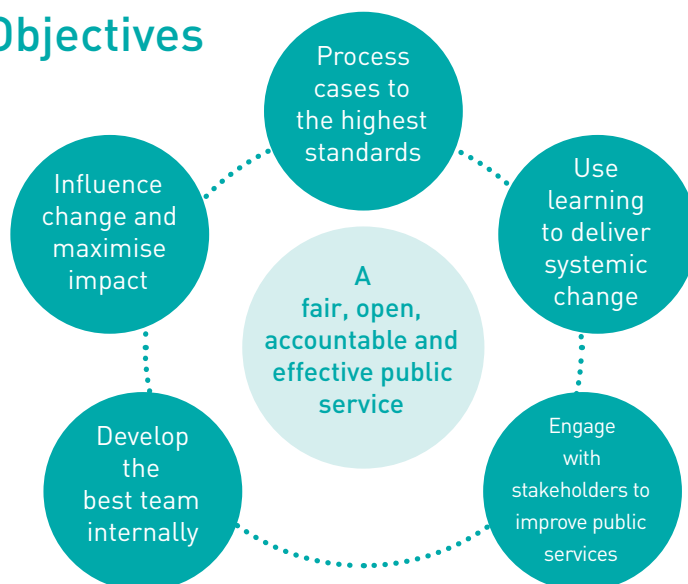
## 2.10 Strategic Plan 2013-2015

The drafting of our Strategic Plan and Statement for the next three years was undertaken during the latter part of 2012 against a background of continuing exchequer resource constraints and anticipated increases in complaint numbers arising from the extension of my remit as Ombudsman. In drafting the plan we were keenly aware of the challenge, for both this Office and the public service generally, of dealing with the current economic difficulties and generating efficiencies, while ensuring that we continue to honour the fundamental principles of good administration. The plan sets out how, in the coming years, we will seek to improve standards of public administration and promote the principles of openness, transparency, accountability and effectiveness.

Over the next three years our main priority will be to provide a high quality and timely service to members of the public who seek our assistance. We will regularly review how we operate to ensure that we respond as effectively and efficiently as possible to the increased demand from the large numbers of new bodies coming within my remit. We are fortunate to have a strong team that is committed to meeting these challenges and we will support and strengthen this team in the coming years to ensure that we will continue to have a dynamic staff with the capability to deliver our goals. We will also use our experience of dealing with complaints to support public bodies in tackling the root causes of complaints, thus maximising our impact and providing leadership in public sector reform. Above all, we will use our expertise and resources to support public administration in delivering quality public services to the people.

Set out in more detail below are our strategic objectives and the key activities that we will undertake to achieve them.

## Strategic Objectives



## Key Priorities

### Process cases to the highest standards

- Robust management practices to manage casework demands, capacity and performance.
- A structured process for continuous performance improvement.
- New quality standards, measures and practices.
- More strategic investigations and improved investigation process.

### Use learning to deliver systemic change

- Effective processes and information systems to identify current and emerging case trends.
- Effective interventions to address these trends, to achieve early resolution and systemic change.
- Publish material/guidance to assist agencies under remit to improve services (case digests and reports, quality standards, guidelines for improved decision making).

### Engage with stakeholders to improve public services

- New communications strategy and implementation plan to maximise outcomes.
- Plan of structured engagement with members of the public and agencies within remit.
- Seek feedback to improve our performance and the levels of satisfaction with our service.
- Formal mechanism to share learning with key stakeholders on a regular basis.

### Develop the best team internally

- New Human Resource Strategy.
- New training and development practices and closer integration of the training function with operational needs.
- Better knowledge management systems and new procedures for sharing our expertise internally.

### Influence change and maximise impact

- Strategic engagement with key organisations to achieve improvements in public administration.
- Strengthened relationship with the Public Services Oversight and Petitions Oireachtas Committee.
- Systemic investigations/initiatives to deliver wider improvements in public administration.
- Annual Ombudsman lecture on public administration.

We are committed to delivering on this admittedly challenging programme and have identified the following key measures of success which we will monitor to ensure that we are achieving what we have set out to do:

- Faster case completion times.
- Case examinations are meeting quality standards.
- Members of the public trust us and the level of satisfaction with our service is high.
- The Office commands respect and co-operation from public bodies and the Oireachtas.
- New engagement practices with public bodies achieve early complaint resolution and systemic change.
- Staff are developed and engaged.

### **Quality, Stakeholder Engagement and Communications (QSEC) Unit**

As part of our strategic approach, a new unit was established in the Office towards the end of 2012. The function of the new unit, which is headed up by a Senior Investigator, is to oversee a number of particular work areas.

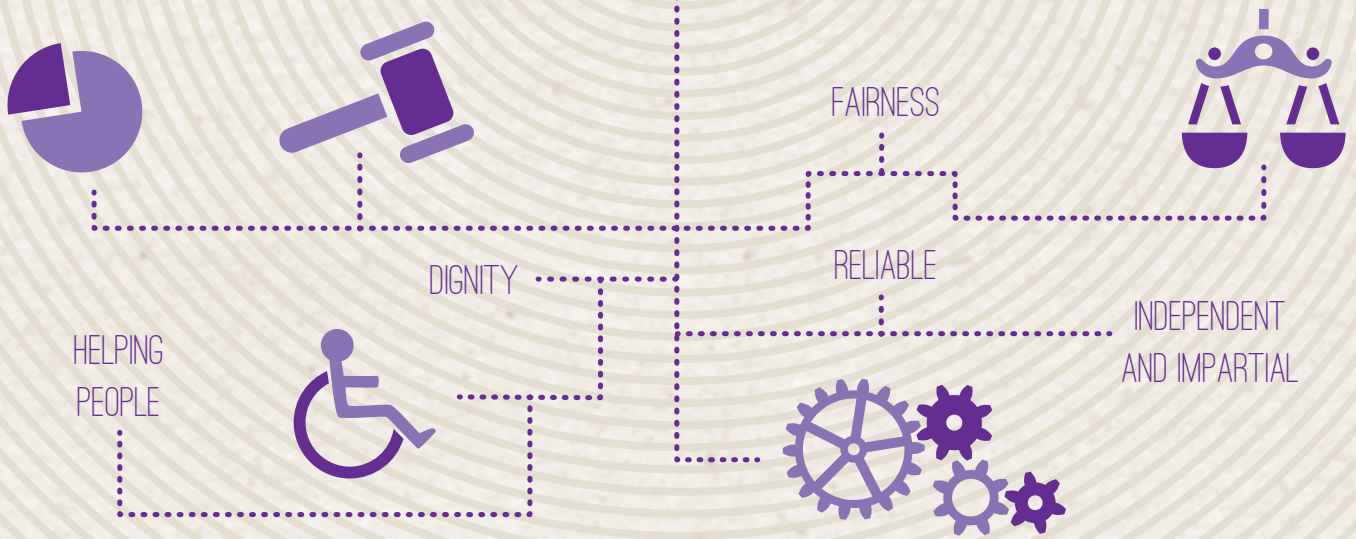
The unit will:

1. Ensure that the Ombudsman's Office delivers high quality complaint assessment, examination and investigation,
2. Engage with public bodies under jurisdiction to ensure maximum cooperation in the examination of complaints and to achieve optimal improvement in public administration,
3. Ensure that the Office communicates effectively with members of the public, public bodies and the Oireachtas.





# CHAPTER THREE



## Chapter 3: Investigations

The majority of complaints that come to my Office are handled by way of preliminary examination. The difference between the preliminary examination and investigation process is that, apart from being a more formal process, investigation cases are concluded with a written report. In most instances, the written report will contain a series of findings and recommendations to the public body concerned.

In this Chapter, I will outline the investigation reports which were completed and published during 2012 together with the outcome in each case. During the year, I also submitted two special reports to the Dáil and Seanad. A special report issues in situations where it appears to me that the measures taken, or proposed to be taken, in response to a recommendation are not satisfactory. (All of these reports can be viewed on our website [www.ombudsman.gov.ie](http://www.ombudsman.gov.ie))



Irish Times, November 23, 2012

### 3.1 Motorised Transport Grant (MTG)

#### An investigation involving the Department of Health and the HSE

##### Outcome

The outcome to this investigation was that the HSE agreed to review the complainant's MTG application which had been refused. The HSE also agreed to review other MTG applications which had been refused by Donegal Medical Officers since 2009 and to review its appeal arrangements under the scheme. Following the review of the particular case,



the HSE found the applicant was entitled to the grant.

## The Complaint

The MTG is a non-statutory scheme in operation since 1968. It was set up by the Department of Health to assist severely disabled people with grants to acquire or adapt a car in order to retain employment. The maximum grant payable is €5,020. The scheme also has an “exceptional circumstances” clause which allows for grant aid to severely disabled people with transport difficulties who are not in employment but who would otherwise suffer social isolation.

In July 2010, the father of a young Donegal man complained to me about the HSE’s decision to refuse his application for a MTG. It had been refused on the basis that the young man did not meet the relevant medical criteria. His father contended that his son’s condition was such that he did meet the medical criteria along with the other eligibility criteria relating to means, age and the need to have transport.

## The Investigation

My investigation looked in detail at the HSE’s handling of this case. The HSE acknowledged that the young man has a profound intellectual disability in addition to other severely debilitating conditions. The HSE accepted that he could not walk independently as he would pose a risk of injury to himself and others. Its position was that, although severely disabled, he was physically able to walk and this was seen as the determining factor in refusing him the grant.

The Medical Officers in Donegal had undertaken a review of the medical eligibility requirements between 2009 and 2011 which resulted in the current interpretation of the term “severe disability” for the scheme which requires a severe and permanent restriction of movement in the lower limbs or where walking would cause severe complications. There was no scope for having regard to the consequences for mobility of psychological or intellectual disabilities.

In my report, I found that this approach was unacceptably restrictive. I found that it was contrary to the Equal Status Acts which prohibit discrimination not only against persons with disabilities when compared to those with none, but also against persons with disabilities when compared with others with different disabilities. The Department of Health was joined to the investigation because it has overall responsibility for the scheme. I was critical of the Department for failing to oversee the implementation of the scheme by the HSE and for neglecting to provide adequate guidance on the interpretation of its terms. I recommended to the Department that it revise the terms of the MTG scheme to provide explicitly that the term “severe disability” be understood in the broad sense having regard

to the definition of disability in the Equal Status Acts.

During this investigation, I also scrutinised the actions of the HSE's Appeals Office as it had made the final decision to refuse the grant in this case. The Appeals Officer involved was of the view that an Appeals Officer could not interfere with a clinician's medical opinion. I found this position inconsistent with an appeal system acting with independence and authority. As mentioned above, the HSE accepted my recommendations and is implementing them.

Regrettably, the Department of Health said that it was not in a position to make the scheme compliant with the Equal Status Acts and to amend the circular relating to the MTG scheme as this would have serious financial implications. It accepted that significant issues were raised by my investigation and said it was working on options to bring all schemes into line with the Equal Status Acts.

### Special Report to the Oireachtas - Department of Health (Motorised Transport Grant)

Following rejection by the Department of Health of my recommendations in the MTG Investigation Report, I made a special report to the Dáil and Seanad. While the HSE had accepted all of my recommendations, in contrast, the Department's position was that it could not do so as this would impose unacceptable financial cost.

Following the making of my special report to the Oireachtas, the Department announced that it was abolishing the MTG scheme and that a review was underway of the transport needs of people with disabilities.

## 3.2 *Too Old to be Equal?* A Follow-up

### An investigation and Special Report involving the Department of Health

In April 2011, I published an investigation report called *Too Old to be Equal?* which dealt specifically with the fact that the Mobility Allowance scheme excluded applicants over the age of 66 years.



Irish Examiner, February 8, 2012

Mobility Allowance is a monthly payment made by the HSE to people with a severe disability who are unable to walk and who would benefit from occasional trips away from home. The Allowance has been in existence since 1979 and is currently worth a maximum of €208.50 per month.

I found in that investigation that the Department of Health was in breach of the Equal Status Act 2000 by making this exclusion and that this upper age limit was illegal since the commencement of the Act. I recommended to the Department that it complete a review of the Allowance, which was already underway, and that it then revise the Mobility Allowance scheme so that it would be compliant with the law. I had recommended that the process of review and revision should be completed within six months.

The Department of Health accepted all of my recommendations at that time. I had anticipated, therefore, that whatever the terms of the revised Allowance, from end October 2011, it would not contain an upper age limit contrary to the Equal Status Act 2000. However, despite assurances from the Department of Health, the scheme was not revised and it continued to be administered by the HSE on the basis of an age limit which the Department accepts is illegal.

This special report which I made to the Dáil and Seanad in October 2012 highlighted the fact that the Department of Health had not taken satisfactory measures to respond to the recommendations which I had made in my 2011 investigation report. It also focused on the investigation of five new complaints from people whose applications for the Allowance were rejected because they were over 66 years of age. This report should be read in conjunction with the April 2011 report *Too Old to be Equal?* which is available on our website.

The Department's position was that it could not act on my recommendations because to do so "would create liabilities the State could not afford". I expressed the view that the continued disregard of the law by a key State body is not something we can afford. I rejected the Department's attempt to represent its position as a common-sense response to an unfortunate situation which, in order to target limited resources effectively, it was necessary to infringe on the law. There were options available to the Department but, as in the MTG scheme, I did not consider that breaking the law was one of them.

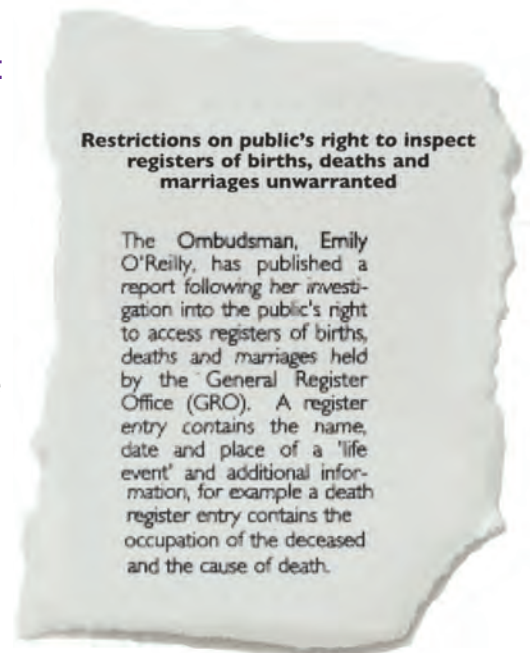
Three months after my special report, the Department of Health decided to discontinue the Mobility Allowance scheme. Recipients were told that they would continue to receive the allowance for a period of four months after which it was to be abolished. The Department has set up a review group to advise on how best to meet the mobility needs of people with disabilities.

### 3.3 Restrictions on access to historical records of births, deaths and marriages

#### An investigation involving the Department of Social Protection - General Register Office (GRO)

##### Outcome

The outcome of this investigation was that the GRO accepted the recommendation which I made for it to engage with the Department of Arts, Heritage and the Gaeltacht (and other bodies that have a responsibility for the national archives) to explore options for facilitating the public's right to inspect these records. This acceptance by the GRO was subject to the qualification that any improvement in accessing its records will be in the context of amendments to the Civil Registration Act 2004.



Waterford Today, August 01, 2012

##### The Complaint

This investigation was prompted by a complaint from a member of a Heritage and Historical Society who was researching the history of a townland in County Westmeath. The complainant wished to examine the death registers for the area from 1864 to 1900 for the purposes of establishing the occupations of local people from that time. He was informed that he would have to provide the name of each deceased and the approximate date and place of death, together with €6 for each uncertified copy of the death register entry. This meant that the man would have had to pay for, and examine, a copy of the register entry for every death that occurred in the area between 1864 and 1900. Previously, it had been possible to examine the actual registers for an hour by booking in advance and paying a small fee. That facility had been withdrawn due to lack of staff and facilities.

##### The Investigation

When I contacted the GRO, it referred to Section 61 of the Civil Registration Act 2004. The section provides the particular procedure for accessing the registers and the GRO was of the view that under the legislation, direct access to the registers by any person other than certain officials of the GRO was prohibited. This means that members of the public are currently entitled to access the index for each register only and not the actual register.

During the course of my investigation, I sought submissions from interested groups on the

issues facing those wishing to access records of births, deaths and marriages. I analysed the provisions of the Civil Registration Act 2004 and considered whether the GRO records might be available for inspection under any other legislation, for example the National Archives Act 1986. Having examined the provisions of this Act, and obtained legal advice, I found that there is no legal provision in the Civil Registration Act 2004 for direct access to register entries. In addition, the GRO does not have discretion under the 2004 Act to grant access in any other manner.

However, the National Archives Act 1986 provides that records which are more than 30 years old must be transferred to the National Archives. The records of the GRO have not been transferred due to a direction, issued under the Act in 1992 by the Taoiseach, which provided that the transfer not take place. This was because the National Archives had insufficient storage space. I found in my investigation report that the indexes and registers of births, deaths and marriages held by the GRO and which are more than 30 years old should be available for public inspection under the National Archives Act 1986, notwithstanding that they have not been transferred. This right of inspection, at present, is not being given effect by the GRO.

As mentioned earlier, the GRO accepted my recommendation to engage with the Department of Arts, Heritage and the Gaeltacht (and other relevant bodies) to explore options for facilitating the public's right to inspect these records subject to possible amendment of the Civil Registration Act 2004.

### **3.4 Domiciliary Care Allowance (DCA)**

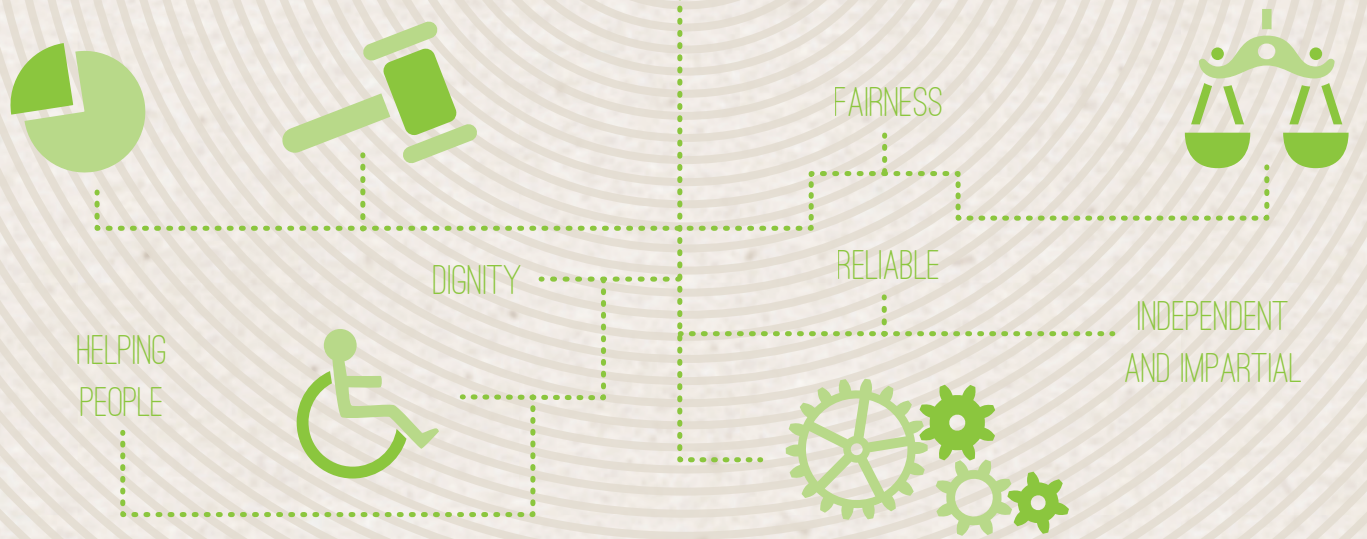


### **A discontinued investigation involving the HSE**

During the year, I started an investigation involving the HSE and the payment of arrears of DCA to a family. Due to developments that arose while it was underway, I decided that it was unnecessary to complete this investigation. I was satisfied that an offer by the HSE to undertake a fresh review of the case was sufficient in all the circumstances. Following the review conducted by HSE personnel not previously involved, the child was found not to be entitled to DCA.



# CHAPTER FOUR



## Chapter 4: Selected Case Studies

In this Chapter I describe just some of the complaints my Office dealt with in 2012. A number of the selected cases involve the Department of Social Protection and the HSE which reflects the large number of interactions they have with the public and the subsequent large number of complaints to my Office.

### 4.1 Man receives €68,000 after Department of Social Protection failed to inform him of entitlement to pension

#### Background

Survivor's Contributory Pension (SCP) is a weekly payment to the husband, wife or civil partner of a deceased person. The payment was formerly called the Widow's/Widower's (Contributory) Pension. To qualify, either the surviving spouse or partner, or their deceased spouse or partner, must have made sufficient social insurance contributions (PRSI).

I received a complaint from a man whose wife had died in November 1998. The man was working at the time and believed that this meant he would not qualify for SCP. He subsequently became aware that he was entitled to SCP and submitted a claim to the Department of Social Protection in December 2008. The Department awarded the complainant payment of arrears under the late claim provision in the Social Welfare Acts but backdated the claim to January 2006 and not November 1998, the date his wife passed away. The man's claim for further backdating was refused and he asked me to examine the case.

#### Examination

I conducted a detailed examination of the Department's files in relation to the man's dealings with the Department. I noticed that the man had notified the Department about

his wife's passing in March 1999 when seeking a transfer of Child Benefit from his late wife's name to his name. I considered that it was reasonable to have expected the Department to have notified the man of his entitlement to claim SCP at that stage.

### Outcome

I asked the Department to review its refusal to fully backdate his claim. I am pleased to say that the Department agreed to review the case. In light of the fact that the man had notified the Child Benefit section that his wife had died, it agreed to backdate his claim to March 1999, and paid the man arrears of SCP of over €68,000.

## 4.2 Man who moved abroad denied social welfare payment as the Department of Social Protection gave him wrong information

### Background

Jobseeker's Benefit may be transferred to another European Economic Area (EEA) member state for up to 13 weeks, if a person is looking for work there. A person is required to register within a week with the employment services of the country where they have relocated. Another stipulation is that the person must take a 'Form U2' to the social services of the country they are travelling to. The 'Form U2' is completed by the local Irish Social Welfare office.

A man was in receipt of Jobseeker's Benefit when his wife was offered a choice of jobs in Guernsey (Channel Islands) or Luxembourg. At the time they were both unemployed with two young children and were deciding which job to take. The man called into his local Social Welfare office to enquire about payment of his Jobseeker's Benefit and was advised that he would continue to receive 13 weeks' payment whether he moved to Guernsey or Luxembourg. This was also confirmed by the Social Welfare Client Eligibility Services. The family decided to move to Guernsey on the understanding that the Jobseeker's Benefit would continue to be paid.

However, Guernsey is not part of the EEA (neither is it part of the EU or the UK). Therefore, this arrangement does not apply to Irish people moving to Guernsey. Irish people moving to Luxembourg do qualify.

The 'Form U2' was completed by the Department of Social Protection and given to the man. When he presented the form to the Social Security Office in Guernsey, that Office referred the matter back to the Department of Social Protection advising that it could not process the payment. At this stage, it was too late for the family to re-locate back to



Ireland. In the meantime, this young family had no income until such time as the mother received her first pay packet - six weeks after arriving in Guernsey, which was two weeks before Christmas.

The Department wrote to the man informing him that an error was made in the completion of the form. The Department apologised for any inconvenience but informed the complainant that it would not be in a position to make a payment of Jobseekers Benefit while he was resident in Guernsey. As the man was unhappy with the Department's response he made a complaint to me.

### Examination

From my examination of the case, it was clear that, prior to deciding to relocate his family to either Guernsey or Luxembourg, the man was given the wrong advice from two different and authoritative sources in the Department of Social Protection. In addition, the 'Form U2' stated that: "The holder is entitled to unemployment benefit from the office issuing this document from 9 November 2011 to 7 February 2012 or for a maximum of 78 days."

It was clear to me that the man and his family had suffered as a result of relying on the information which was given to him - both verbally and in writing. I was satisfied that the man had acted in good faith in re-locating his family to Guernsey, rather than Luxembourg, in the assured belief that he would receive Jobseeker's Benefit. Accordingly, I asked the Department to review the handling of the case and to consider the question of redress.

### Outcome

I am pleased to say that the Department reviewed the case and apologised. The Department also offered an ex-gratia payment of €1,000 to the man by way of redress. This offer was acceptable to the family.

## 4.3 Department refused to award an allowance from the date of application

### Background

My complainant's son had been diagnosed with autistic spectrum disorder when he was two years old. She had applied to the Department of Social Protection for a Domiciliary Care Allowance (DCA) in respect of her son. The DCA application was initially refused. However, following the presentation of additional medical evidence at an oral hearing, the Appeals Officer approved the application but considered that the child needed substantial care from the time of the appeal decision only. My complainant contended that payment should have applied from the date of application, 17 months earlier, rather than from the date of the oral hearing.



## Examination

I examined why the Appeals Officer considered that the child required substantial additional care and attention from the date of the oral hearing and not from the date of the DCA application.

Medical and occupational therapy reports showed that the child had received extensive input from several services including medical, care and treatment professionals, and from his parents, since he was two years old.

The Appeals Officer considered that all children require full-time care and attention up to a certain age and that it is difficult to discriminate among babies/toddlers. I accepted that it may sometimes be difficult to distinguish between the level of care among very young children. I drew the Department's attention to Appendix 6 of the Department's Expert Medical Group Report. The appendix outlines the "*normal age of attainment- age by which 90% of children can perform the activity*". It appeared from the medical evidence on file and the ongoing supporting correspondence from care workers and social workers that the child - by reference to the normal age of attainment as outlined at Appendix 6 - was receiving substantial additional care and attention from a very early stage to allow him to deal with the normal activities of daily living which a typical child of the same age would normally be able to perform without assistance.

I also drew the Department's attention to its 'Guidelines for DCA', which deal with the 'Date of Award'. The Guidelines provide that:

*"As a general rule the date of the award should be the date of application..."*

In addition Appendix 8 of the 'Medical Eligibility Guidelines for DCA' outline the guidelines to desk assessment of DCA. It provides that autism is a condition which is more likely to result in a disability so severe that DCA is appropriate.

## Outcome

Following my request, the Appeals Officer reviewed the case and taking all the above points into consideration, revised his decision. My complainant was awarded DCA for her child from the date of her original application and was awarded payment of arrears of €8,400.

## 4.4 Woman refused second opinion after confusion over serious diagnosis

### Background

A woman who was suffering with heart palpitations was initially diagnosed as having long QT syndrome by a Consultant Cardiologist in Letterkenny General Hospital in June 2007. (Long QT syndrome is a genetic abnormality where the risks are of sudden death from vigorous exercise. The actual diagnosis of the syndrome is considered to be difficult. The most definitive diagnosis is through genetic screening). The woman was told by the Consultant that she should not exercise. She was placed on beta-blockers (medication) and was warned not to stop taking them. The medication caused her to feel tired and dizzy and to notice more chest palpitations. She was very distressed by the diagnosis.

Following further tests in Letterkenny General Hospital in February 2008 the Consultant told her that she did not have the condition. Much to her relief, she was allowed to come off the medication, was told to lose weight and to exercise. A check up was arranged for her with the Consultant in a year's time. In June 2008 the woman was referred to a Consultant Clinical Geneticist in Dublin for genetic screening which was also recommended for her sister and brother. The results of the genetic screening suggested that she did not have familial long QT syndrome.

However, when the Consultant Cardiologist in Letterkenny received the genetic test results, he wrote to the Consultant Clinical Geneticist, indicating that the woman did have long QT syndrome. He said he was unsure as to whether it was familial or not and recommended that she be left on beta-blockers. This completely contradicted what the Consultant had told the woman previously. When the woman discovered this she was totally confused, upset and fearful that she might die or that her child might have the condition. She wrote to Letterkenny General Hospital in September 2009 seeking an urgent referral for a second medical opinion to another cardiologist in a different hospital.

Rather than arranging the second medical referral, the Patient Liaison Officer simply forwarded the request to the same Cardiologist who had treated the woman. She asked him if he could arrange an appointment with the woman to discuss her diagnosis. The Consultant responded directly to the Patient Liaison Officer, advising her that the woman had long QT syndrome and said that her care had been appropriate. The General Manager of the hospital then wrote to the woman in November 2009, two months after her request for a second opinion, to tell her that the Consultant had confirmed the diagnosis and would meet with her if she wished. The onus was placed on the woman to contact the hospital and her request for a referral to another cardiologist for a second medical opinion was ignored. The General Manager did, however, apologise for any unintentional upset caused to her.

In March 2010, the woman wrote to my Office as she was unhappy with the way her complaint had been handled. She said that she had no option but to arrange a second medical opinion privately (February 2010) which had cost almost €1,000. The results from this second consultation indicated that she did not have the condition. Although she was very relieved, the woman was annoyed that the hospital had not arranged the second opinion for her, given the very serious diagnosis which she had received.

### Examination

I pursued this complaint with the HSE in Letterkenny and asked why the woman's request for a second medical opinion had not been acted upon. I raised my concerns at the way her complaint had been handled and enquired about the delays she experienced in having her complaint dealt with. I also asked the HSE to consider reimbursing the woman for the costs she incurred in securing a second medical opinion. In its response, the HSE said that the Consultant had offered to meet the woman to discuss her diagnosis but that she had not taken up this offer. It apologised that the time frame for replying fell short of HSE stated policy, that is, within 30 days. Following further discussions between my staff and the HSE, arrangements were made for the woman to meet with the hospital's Clinical Director to discuss the treatment she had received and her concerns.

### Outcome

Arising from this meeting, the Clinical Director arranged for the woman to be seen by a Specialist Cardio Electro Physiologist for a further definitive medical review. The cost of this medical review was covered by the HSE. The outcome was that the woman did not have long QT syndrome. At my request, the HSE also agreed to reimburse the woman for the costs of the second medical opinion.

This complaint highlights the need for public bodies to have a complaints system in place which engages with, and is responsive to, complainants and which deals with complaints in a fair and timely manner. The seeking of second medical opinions is an issue which has arisen in other hospital complaints dealt with by my Office in 2012. According to the HSE's Patient Safety First document 'You and Your Health Service', patients can seek a second opinion at any time during their care. Guidelines for such referrals are also laid down by the Irish Medical Council in its "Guide to Professional Conduct and Ethics for Registered Medical Practitioners".

## 4.5 Man awarded €23,000 when HSE did not take account of appropriate circumstances when refusing application for Mortgage Interest Supplement

### Background

A man's application for Mortgage Interest Supplement was refused by the HSE on the grounds that the mortgage interest payable exceeded the amount the HSE considered reasonable to meet his residential and other needs. The HSE's decision was based on a formula using a maximum rent limit. The maximum rent formula is used to ensure that maximum value for money for tenants and taxpayers is achieved at the same time as ensuring that people on rent supplement are not priced out of the market for private rented accommodation. The man was married with two small children.

### Examination

I noted that there was no provision in legislation which requires the use of the maximum rent limits in determining what is reasonable for the purposes of the Mortgage Interest Supplement. This link was instead based on an administrative decision of the HSE local area which appeared to take little account for the high house prices of that time and fluctuating (upward) interest rates.

I wrote to the HSE and the Department of Social Protection (who now has responsibility for payment of Mortgage Interest Supplement) and asked for a review of the decision in this case. I suggested that claims for Mortgage Interest Supplement should not be refused solely on the basis that the amount of interest exceeds the appropriate limit but instead regard should be had to other factors such as family circumstances, the average cost of a house appropriate to the family circumstances at the time of purchase and whether the house purchase and mortgage represented a reasonable undertaking given the circumstances and prospects at the time.

### Outcome

The Department agreed to review the decision. Following its review, the Department approved a Mortgage Interest Supplement from the date of application and issued arrears of payment in the amount of €23,241.50.

## 4.6 Man denied Nursing Home support by the HSE despite medical evidence indicating the need for full time care

### Background

I received a complaint from a family regarding the Health Service Executive's decision to refuse assistance to their father under the Nursing Home Support Scheme. The Nursing Home Support Scheme provides financial support to people who need long-term nursing home care. The scheme is operated by the Health Service Executive.

Assistance under the Scheme was refused on the basis that the man had expressed a wish to eventually return to his home. According to the HSE, all applicants have a right to self-determination and such cases could not be considered eligible under the Scheme. However, the man had a serious medical condition and needed respite care over a number of years and, in particular, during the winter months. Sadly, the man passed away and his family brought a complaint to my Office.


### Examination

I requested the relevant Nursing Home Support Scheme file and the medical records from two hospitals which treated the man in the last year of his life.

I formed the view that the refusal by the HSE to grant assistance under the Nursing Home Support Scheme was at odds with the medical evidence on record. In particular, the evidence recorded that the man needed full-time supportive care and that he had lived in nursing homes previously under the "Winter Beds Initiative". His family helped to care for him at home at other times of the year. His application also followed several admissions to hospital in the previous months. In addition, it was clear from the application form for the Scheme that, while the man expressed a preference for staying at home, he also indicated that he was willing to stay in the nursing home for a few months.

### Outcome

I asked the HSE to review its decision. Following this review, the HSE accepted that, having regard to the medical evidence, the application for assistance under the Nursing Homes Support Scheme should not have been refused. As a result, the HSE made the appropriate payment of €5,043.90 to his estate.



### HSE's eligibility rules unclear, says O'Reilly

CARL O'BRIEN

THE PUBLIC is paying the price for the failure of successive governments to introduce a statutory framework that would set out clear rules on eligibility for health services, Ombudsman and Information Commissioner Emily O'Reilly has warned.

She said the lack of legislation meant there was a lack of certainty over what the HSE's obligations were or what people could expect from the State in terms of basic services. It also meant there was a lack of transparency in decision-making about the allocation of resources.

Irish Times, February 26, 2012



## 4.7 Delay in processing couple's application for medical cards despite a clear entitlement

### Background

A married couple applied for medical cards and provided a Revenue Tax Return to the HSE as evidence of income. They were subsequently informed by the HSE that their application form had been lost. They submitted a duplicate medical card application form along with a copy of their income tax return. The couple were then advised by the HSE that it required documentation of their capital assets. The couple brought all their share purchases including share certificates to the HSE office but did not hear anything further from the HSE for over twenty months. They made a complaint to my Office regarding the delay in processing their application.

### Examination

In its report to my Office the HSE stated that the couple's application required a considerable amount of processing due to the validation of share holdings and investments. The HSE also noted that this was the main cause of the protracted amount of communication between it and the couple. However, the couple disputed that there was ongoing contact between them and the HSE.

An entitlement to a medical card can arise in a number of ways. For example, under EU legislation persons who have a social security pension from another EU Member State and an occupational pension from Ireland (including civil service or public service pensions) are automatically entitled to a medical card without having to satisfy a means test provided they are not receiving an Irish social welfare payment or are subject to PRSI.

I discovered that the couple were automatically entitled to Medical Cards under EU legislation, as both had UK pensions and were not in receipt of a State pension in Ireland. Although the HSE was aware of the couples UK pensions it did not approve the applications on this basis, but instead tried to ascertain whether they met the income thresholds for medical card approval.

### Outcome

I requested that the HSE review the application and the entitlement under EU legislation. As a result, the HSE awarded medical cards backdated to 15 working days from receipt of the application and agreed to refund all medical, dental and optical expenses for the previous twenty months. I also contacted the Revenue Commissioners who said they would refund the Income Levy paid by the couple while the application was being processed on the basis that individuals who hold full medical cards are exempt from the Income Levy and any overpayments of the Universal Social Charge due to the delay on the part of the HSE.

## 4.8 Department provides funding to forest owner following complaint to the Ombudsman

### Background

The Forest Road Grant Scheme is administered by the Department of Agriculture, Food and the Marine. The Scheme provides opportunities to forest owners to improve access to forests for example by upgrading or constructing roads. Forest roads provide additional biodiversity opportunities in the forest by increasing open spaces and forest edge effect. I received a complaint from a company that had been refused the grant despite building a road to the appropriate standards.

When the road had been completed the Department carried out an inspection and it was satisfied that it had been built to the appropriate standards. However, due to adverse weather conditions the road was not completed before the relevant deadline date and the Department refused the grant.

### Examination

Having considered the details of the complaint and after speaking with the complainant it seemed that the penalty was disproportionate given that the road had been completed according to the agreed specification and was delayed only as a result of adverse weather conditions. I suggested to the Department that the total refusal of the grant seemed disproportionate to the breach of the condition in this case, especially considering that the completed road was acceptable to the Department.

### Outcome

The Department undertook a review of the case and it decided to pay the grant subject to a 10% penalty for late completion of the road. The man received approval for payment of over €8,000. I considered this a reasonable outcome in the circumstances.

## 4.9 Parking sign confusion for couple with new-born baby

### Background

On a Saturday in February 2012 a couple attended the National Maternity Hospital, Holles Street, Dublin with their newborn baby for tests. As there was no available parking on Holles Street, they parked at the top of Grattan Street, which is near Holles Street. They tried to pay for parking at what they said was the only meter on Grattan Street but the meter rejected their coins. The notice on the meter said that paid parking was “Mon-Fri”. However there was a sign on Grattan Street that said paid parking applied “Mon-Sat”. The couple did not pay and assumed that the sign on the meter was correct as this was where you are expected to pay.

When they returned to their car they discovered it had been clamped. They paid the fine to have the clamp released as they wanted to get home with their new-born baby. They said that when the Council official came to release the clamp he checked the meter and said that it was faulty, that he would log the fault and he advised them to appeal the fine. The complainants appealed but their appeal was refused. They were unhappy with the Council’s decision and complained to my Office.

### Examination

The Council states that following receipt of the Ombudsman’s letter the matter was referred to the independent Parking Appeals Officer for a further examination of the case. The Appeals Officer recommended a refund of the clamp release fee.

### Outcome

The Council refunded the charge to the couple and apologised for the inconvenience that they experienced on this occasion. According to the Council, the information plate on the pay and display parking meter located on Grattan Street was incorrect and has since been changed to correspond with the signage on the street.

## 4.10 Next-of-kin distressed to receive call from mother telling him she is dying

### Background

I received a complaint from a man who was very distressed after he received a phone call from his mother telling him she was dying and that he was to come to the hospital. The hospital was the Mid-Western Regional Hospital, Dooradoyle, County Limerick. He received the call at noon and arrived at the hospital at 13.30. The man was not briefed by medical staff of the seriousness of his mother's condition until approximately 17.45, over four hours after he arrived at the hospital. His mother died that night at 23.40.

The delay in advising the man of his mother's condition had serious implications for the rest of the family - who live in the UK - as they did not have sufficient notice of their mother's condition to allow them make the necessary travel arrangements to be at her bedside before she passed away.

While the man was concerned about the impact on the family of receiving news from their mother about her deteriorating condition rather than from nursing staff, he was primarily concerned that there was a failure to provide convincing evidence that his mother was seen by a member of the medical team between 9.00 and 17.45 on the day of her death (thus making it impossible for the family to be informed of their mother's serious condition and to make arrangements to be present).

### Examination

The hospital maintained that the woman's medical notes were relatively complete, and that they gave a description of the patient's condition and a medical plan. However, I was not entirely satisfied with the hospital's initial response. I felt there were deficiencies in its record keeping. The medical notes were not timed and, therefore, the hospital was not able to say if the patient was seen between 9.00 and 17.45 on the day in question.

My examination focused on the reasons why there was a failure by hospital staff to contact the family. It appeared the reason may have been linked to a delay by medical staff in examining the woman.

The purpose of keeping good records in a clinical environment is to provide accurate, current, comprehensive and concise information concerning the condition and care of the patient. Good record keeping also provides evidence of the care required, interventions by professionals and the patient's response.

I drew the hospital's attention to the fact that all records should be timed, especially where

the condition of the patient is changing or liable to change frequently.

I also pointed out that the HSE's 'Code of Practice for Healthcare Records Management - Recommended Practices for Clinical Staff' states: *"It should always be clear from the patient record what time an event occurred and what time a record was written. The time (24 hour clock) and date (day/ month/ year) are noted against each clinical entry. All entries must be accurate in relation to date (day/ month/ year) and time."*

I noted that the hospital, as part of its review, had confined its examination to the patient's medical notes and formed the view that it was not possible to say if the patient was reviewed medically between 9.00 and 17.45.

I needed to get some appreciation of the extent of the medical review and the timing of that review. Therefore, rather than examine the medical notes in isolation, I reconciled the nursing notes with the medical notes of the same date. This process gave me a broader view of the situation as it was unfolding on the day in question.

From my examination, it appeared to me that, on the balance of probability, the patient was not seen by the medical team in the period 10.00 to 16.30 on the day she died.

## Outcome

The hospital agreed that the documentary evidence supported my view.

In relation to the failure to contact the next-of-kin and the hospital's inadequate recognition of the impact this had on the family, the hospital drew up and introduced a written policy on *"Contacting the next of kin when a patient's condition deteriorates"*, shortly after the incident.

I welcomed the hospital's response to this point. However, I asked the hospital to consider whether it felt an apology was warranted for the distress that was caused to the family as a result of:

- the apparent delay in reviewing their mother by the medical team,
- the consequent delay in advising the next of kin of the seriousness of their mother's condition and
- the impact this delay had on the family, thus denying the family the maximum opportunity to try to reach their mother in her last hours.

Following my request, the hospital offered a sincere apology for the hurt and distress caused to the family. It also regretted that the family did not have the opportunity to be with their mother before she died.



As a result of this complaint the hospital put in place a number of measures that directly address the issues highlighted by my complainant, namely:

- It initiated a guideline on contacting the next-of-kin when a patient's condition deteriorates.
- It introduced, as part of the Acute Medicines Programme for all nursing staff, an early warning scoring system for the recognition of deteriorating patients.
- It commenced a programme of education and training with the focus on a system called COMPASS using MEWS (Modified Early Warning Scores). The MEWS incorporates an escalation flow chart for informing a doctor and requesting a review by the doctor.
- It included a session on the HSE's Code of Practice for Healthcare Records Management as part of its induction training for all new Interns (junior doctor).

The family was happy to receive the clarification and apology from the hospital. It welcomed the revised training and emphasis on good healthcare record management. It also hoped that other families would be spared the heartache that it endured in trying to get reliable responses from the hospital to its genuine distress.

## 4.11 Woman faces difficulties in complaining following a hospital's failure to explain her treatment

### Background

A woman complained to my Office following the birth of her first child in the National Maternity Hospital, Holles St in January 2011. She had been scheduled to have an elective Caesarean section, with epidural, and this was documented in her birth plan. The woman made two complaints - one in relation to the lack of information she received about the type of epidural which was to be administered to her and the process of obtaining her consent to it; the second issue related to the level of information provided to her about the complaints process itself and the fact that information for patients who wanted to make a complaint was not available on the hospital's website.

In this case, the woman said that she was not provided with an opportunity to ask questions about the C-section or about the anaesthetic she was to receive before it had been administered to her. She said that prior to the procedure, she was met by a doctor who explained that an epidural was an anaesthetic administered through the spine. According to the woman, he then signed the consent form and pointed to the form where she was required to sign. When she told the doctor that she wanted to read the form before signing it, she claimed that he walked away. The woman felt that she had no option but to sign the form if she wanted the C-section to go ahead.

According to the woman, the doctor made four failed attempts to insert the epidural before a more senior doctor inserted it higher up her spine without difficulty. After the surgery, the woman said she was badly bruised along her spine and experienced back pain and numbness in her right arm, hand and fingers. Some time later, she discovered she had received a spinal epidural rather than an epidural anaesthesia, and she wrote to the hospital to complain that she was not given the information regarding the epidural in a clear and comprehensive manner to allow her to make an informed decision about her care.

She told the hospital that she was made to feel that the consent process was a mere formality and an annoyance to the medical team. The hospital responded to the woman's complaint, telling her that the junior doctor should have given her an opportunity to read the consent form and to ask any questions. It also said that she should have had a better explanation of the spinal anaesthetic prior to its insertion. The hospital undertook to improve the distribution of information both verbal and written to patients prior to and on admission to the hospital. As the woman was not fully satisfied with the hospital's response, she wrote to my Office.

## Examination

In dealing with complaints about care and treatment in a hospital setting, I am precluded from examining issues pertaining to clinical judgement of doctors. That means that I cannot examine, by law, the judgement doctors use in diagnosing, treating or discharging a patient. However, I can examine issues relating to the seeking of consent to surgery as this is an administrative matter. My Office has a contract with the UK Parliamentary and Health Service Ombudsman which allows my staff seek independent expert clinical advice which helps to inform us on clinically related issues. In this case, my Office sought clinical advice with regard to how the woman's consent to surgery and anaesthesia was obtained. The advice clarified that while it was normal practice to administer a spinal epidural (as distinct from an epidural anaesthesia which is most commonly used for emergency C-sections) when performing elective C-sections, the patient's verbal consent to it should be obtained and documented in the records. While the woman in this case had given her written consent to the surgery itself, her verbal consent for spinal anaesthesia was not obtained. My Office wrote to the hospital and subsequently met with it to discuss this issue.

A spinal epidural is where medicine is injected into the fluid in the spinal cord whereas an epidural anaesthesia is where medicine is injected just outside the sack of fluid around the spinal cord.

## Outcome

As a result of my Office's involvement in this complaint, the Secretary/General Manager of the hospital wrote to the woman acknowledging that she should have been given a more thorough explanation of the spinal anaesthetic prior to its insertion. The hospital apologised for the fact that her verbal consent was not sought prior to administering the anaesthetic. It explained to her how the spinal anaesthetic was the preferred technique for elective caesarean sections being the simplest and most reliable to perform. As a direct result of this woman's complaint, the hospital put arrangements in place to ensure that medical staff seek and record verbal consent to anaesthesia in the patient's medical chart prior to surgery.

In relation to the complaints process within the hospital, it was clear from my Office's examination of this particular complaint that the hospital had not published details of the complaints process on its website. Each hospital has a service level agreement with the HSE which compels it to advertise its complaints process, and a hospital's website is an ideal location to do so. The hospital confirmed that it was reviewing its website and assured me that details about the complaints process would be published as part of the new website, which is now available.

Since the passing of the Ombudsman (Amendment) Act 2010, public bodies under my remit are legally obliged (under Section 7) to give reasonable assistance and guidance to members of the public and deal with them properly, fairly, impartially and in a timely manner. I would expect all public bodies including public hospitals to clearly advertise the complaints process so that service users who wish to complain understand how to go about it and are facilitated to do so.

## 4.12 Council revises procedures for housing transfer requests following intervention by the Ombudsman

### Background

A woman was turned down for a housing transfer by Laois County Council. The woman had sought a transfer following serious social problems and a fire in her Council accommodation. The Council had turned down her request on the grounds that all transfers had been suspended due to financial constraints except in 'exceptional medical or social circumstances'.

### Examination

It is one of the principles of good public administration that reasons for decisions which affect individuals are documented and the rationale for the decision explained

to the individual. Following an examination of the Council's documentation on the case I was concerned about the manner in which the Council had dealt with the application for a transfer. There appeared to be no evidence in the Council's files to show that it had considered the application to see if exceptional medical or social circumstances applied, and it seemed that the Council's assessment of the application was not properly documented.

I asked the Council to review its procedures and to invite the complainant to formally apply for a transfer.

### Outcome

Following receipt of the application and a further assessment, the Council placed the complainant on its Housing Transfer list and the woman accepted an offer of transfer. The Council also reviewed its administrative procedures relating to transfer requests. It said that:

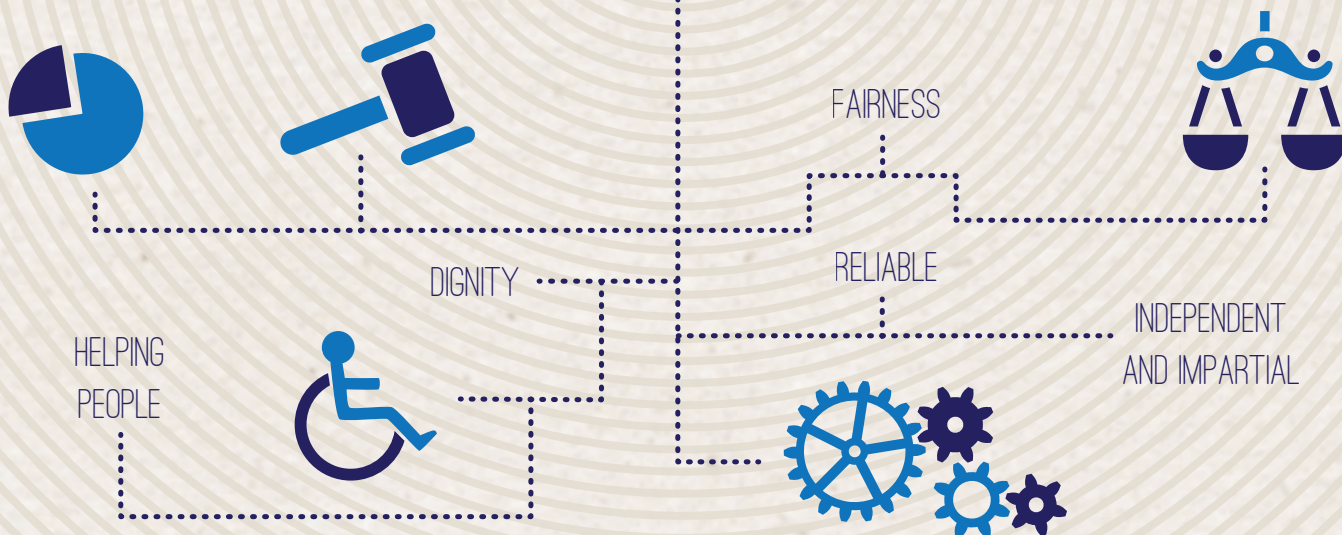
- Formal written requests are now required from applicants. All applications are acknowledged and an assessment of the applicant's circumstances is carried out.
- In order to strengthen its procedures the Council has recently introduced a database system to record applications received, processed, and the resultant decision. This database is now reviewed on a monthly basis.
- The Transfer Form will require the recommendation of the Senior Executive Officer in the absence of the Senior Social Worker, and the final signature of the Director of Services (Housing).

While it is regrettable that the original request was not properly documented I am pleased that the Council took steps to rectify its procedures. The revised procedures should deliver benefits to future transfer applicants.





# ANNEXES



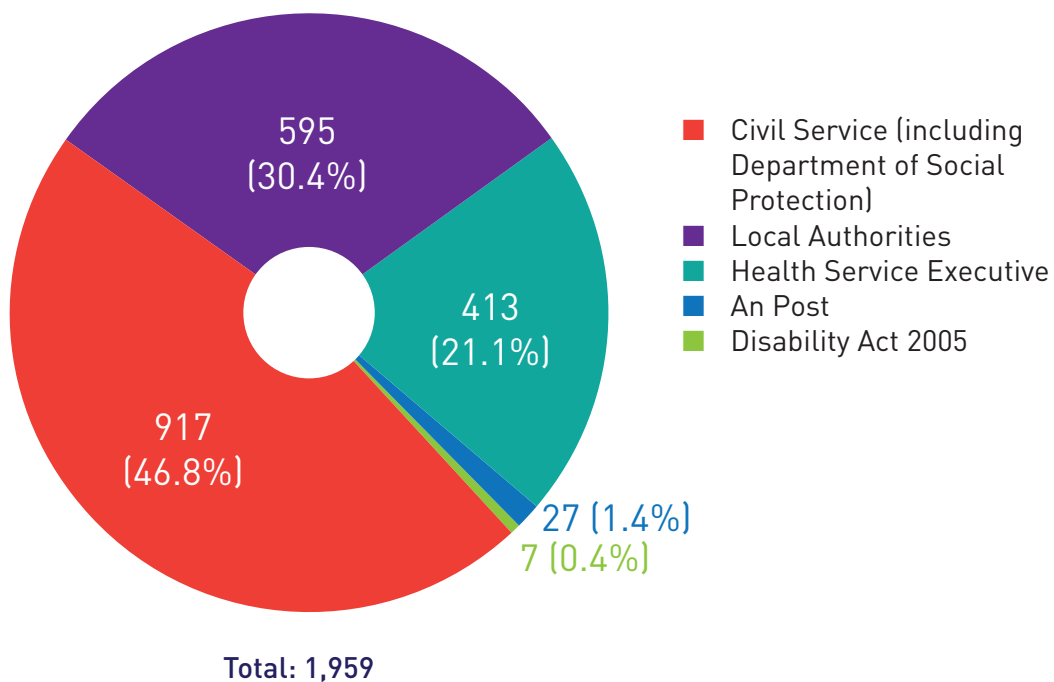


## Annex A: Statistics

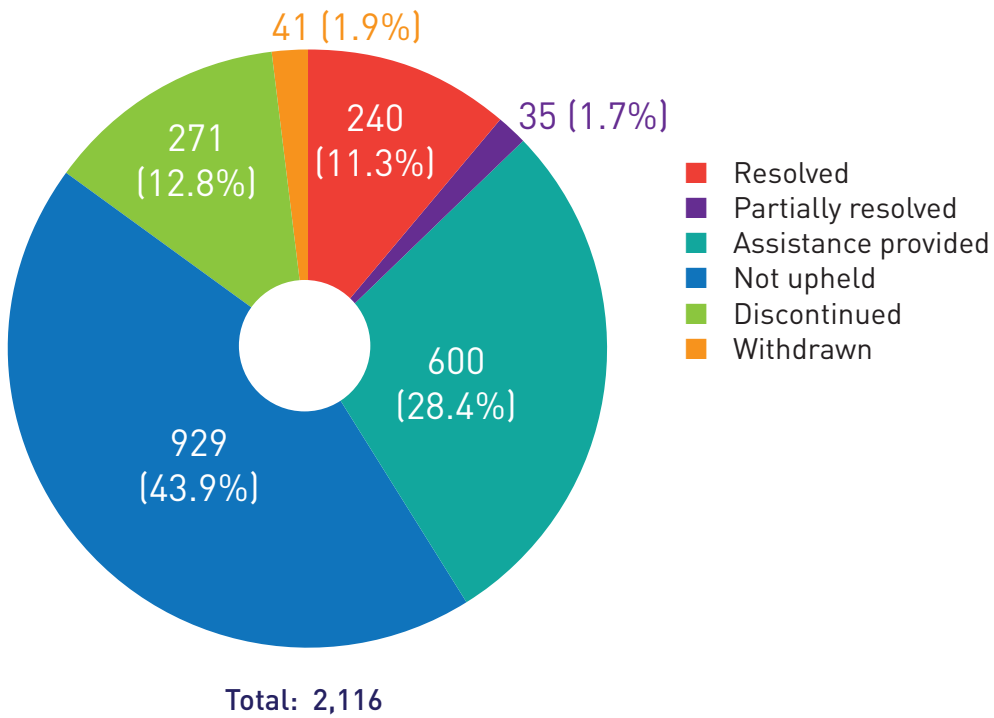
**Table 1: Overview of 2012 complaints**

Total complaints carried forward from 2011	833
<b>Total complaints within remit - received in 2012</b>	<b>3,412</b>
Total examinable complaints received	1,959
Premature complaints within remit	1,453
Total on hand for 2012	2,792
<b>Total complaints completed in 2012</b>	<b>2,116</b>
Total complaints carried forward to 2013	676
Complaints against public bodies outside remit & private companies etc. received in 2012	1,480
Total number of enquiries received in 2012	11,178

**Table 2: Numerical and percentage breakdown by sector of examinable complaints received**



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



**Table 4: 10-year trend of complaints received within remit**

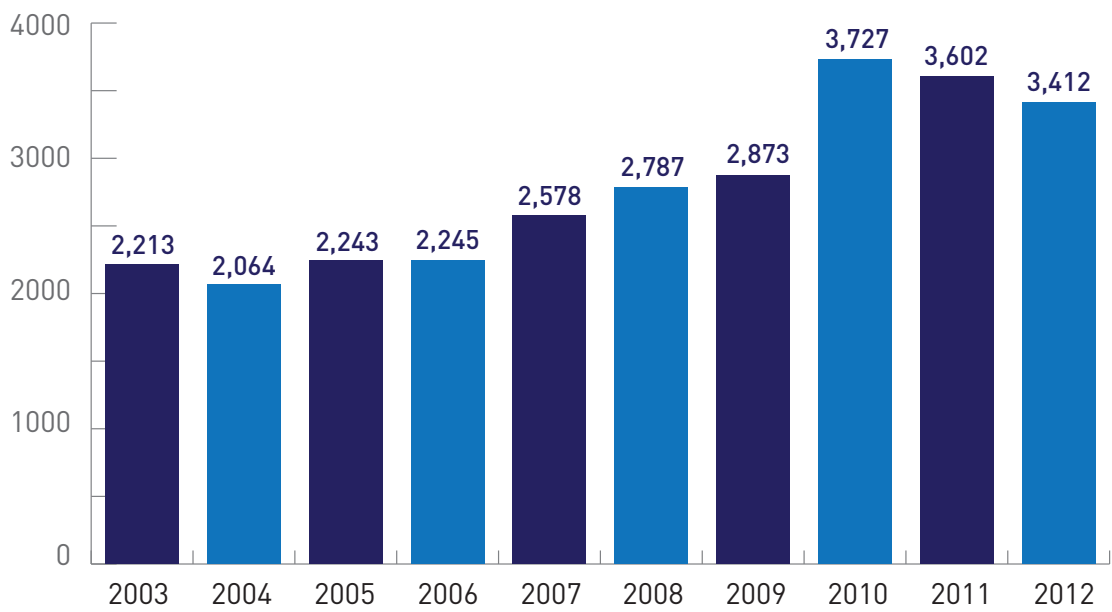
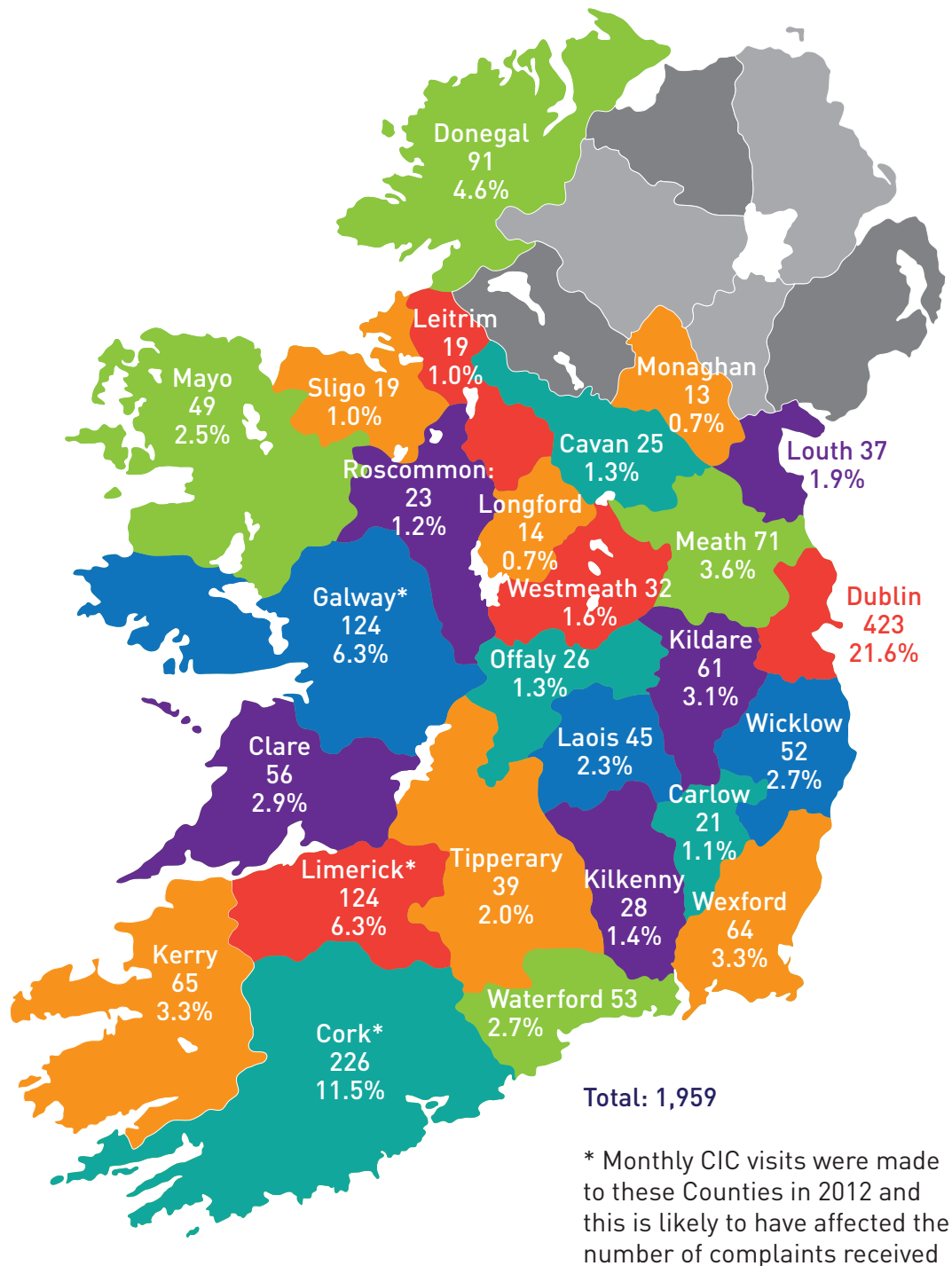


Table 5: Numerical and percentage breakdown of examinable complaints received by county

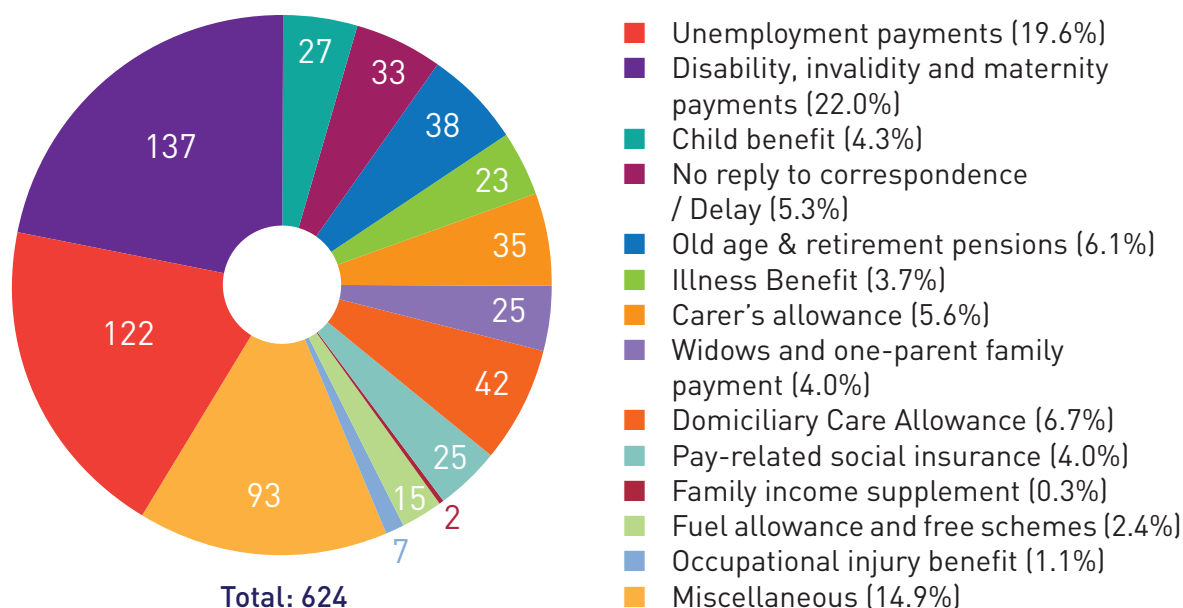


## Civil Service

Table 6: Civil Service - Numerical breakdown of examinable complaints received by Government Departments and Revenue Commissioners	Brought forward from 2011	Examinable complaints received in 2012	On hand for 2012
Social Protection - see 6(a)	236	624	860
Revenue Commissioners - see 6(b)	16	78	94
Justice and Equality	2	18	20
Agriculture, Food and the Marine - see 7(c)	66	80	146
Education and Skills	13	30	43
Environment, Community and Local Government	4	38	42
Health	30	3	33
Jobs, Enterprise and Innovation	3	5	8
Foreign Affairs and Trade	2	6	8
Communications, Energy and Natural Resources	1	0	1
Transport, Tourism and Sport	1	1	2
Others	7	34	41
<b>Total</b>	<b>381</b>	<b>917</b>	<b>1298</b>

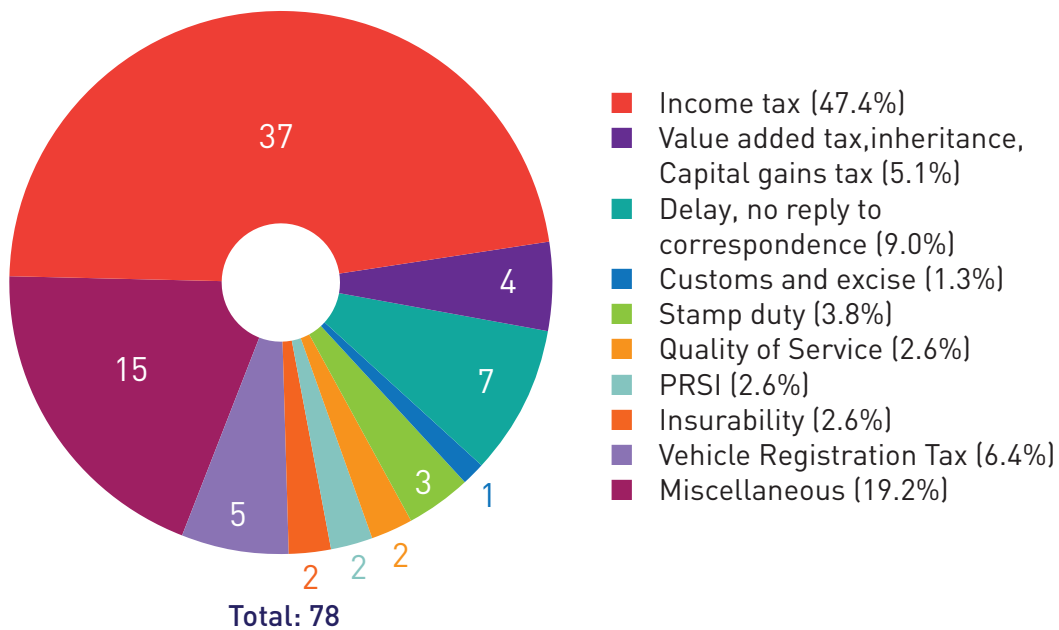
Table 6(a): Department of Social Protection

Numerical and percentage breakdown of types of examinable complaints received in 2012



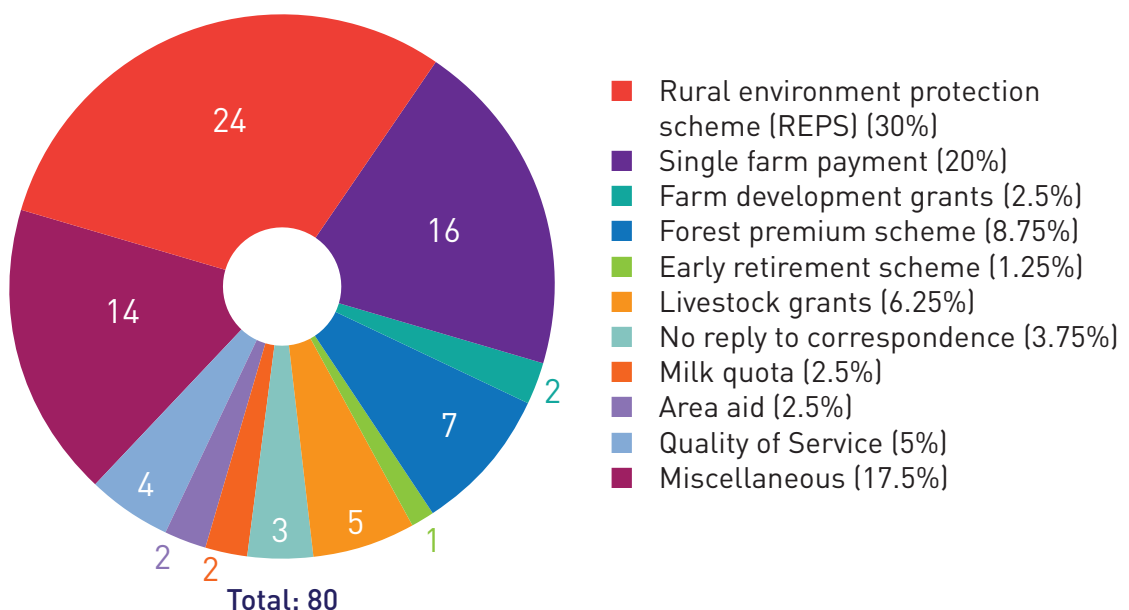
**Table 6(b): Office of the Revenue Commissioners**

Numerical and percentage breakdown of types of examinable complaints received in 2012



**Table 6(c): Department of Agriculture, Food and the Marine**

Numerical and percentage breakdown of types of examinable complaints received in 2012





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**Table 7: Civil Service - Numerical breakdown of complaints completed by outcome**

	Resolved	Partially resolved	Assistance provided	Dis-continued	Withdrawn	Not upheld	Total completed
Social Protection	66	8	146	91	14	341	666
Revenue Commissioners	3	0	25	11	3	36	78
Justice and Equality	2	1	10	3	0	3	19
Agriculture, Food and the Marine	7	1	7	5	2	85	107
Education and Skills	3	0	8	5	0	21	37
Environment, Community and Local Government	4	0	12	6	1	11	34
Health	0	0	27	1	0	3	31
Jobs, Enterprise and Innovation	2	0	2	2	0	2	8
Foreign Affairs and Trade	1	0	4	0	0	1	6
Transport, Tourism and Sport	0	0	1	0	0	1	2
Office of Public Works	1	0	1	1	0	0	3
Property Registration Authority	1	0	2	1	0	1	5
Others	1	0	13	3	2	7	26
<b>Total</b>	<b>91</b>	<b>10</b>	<b>258</b>	<b>129</b>	<b>22</b>	<b>512</b>	<b>1,022</b>

## Local Authorities

<b>Table 8: Local Authorities - Numerical breakdown by local authority of examinable complaints received</b>	<b>Brought forward from 2011</b>	<b>Examinable complaints received in 2012</b>	<b>On hand for 2012</b>
Carlow	6	7	13
Cavan	0	1	1
Clare	7	20	27
Cork City Council	10	35	45
Cork County	12	48	60
Donegal	13	23	36
Dublin City Council	19	59	78
Dún Laoghaire-Rathdown	7	23	30
Fingal	4	22	26
Galway City Council	2	18	20
Galway County	10	36	46
Kerry	15	21	36
Kildare	5	22	27
Kilkenny	3	7	10
Laois	6	26	32
Leitrim	3	5	8
Limerick City Council	2	20	22
Limerick County	3	27	30
Longford	2	6	8
Louth	6	12	18
Mayo	5	14	19
Meath	4	14	18
Monaghan	1	6	7
North Tipperary	2	7	9
Offaly	7	7	14
Roscommon	3	2	5
Sligo	6	12	18
South Dublin	2	15	17
South Tipperary	2	9	11
Waterford City Council	1	6	7
Waterford County	4	6	10
Westmeath	1	12	13
Wexford	10	17	27
Wicklow	8	30	38
<b>Total</b>	<b>191</b>	<b>595</b>	<b>786</b>

**Table 9: Local Authorities - Numerical breakdown of complaints completed by outcome**

	Resolved	Partially resolved	Assistance provided	Dis-continued	Withdrawn	Not upheld	Total completed
Carlow	1	0	8	0	0	1	10
Cavan	0	0	0	0	1	0	1
Clare	1	2	7	3	0	8	21
Cork City Council	4	1	10	0	1	10	26
Cork County	7	0	15	6	0	17	45
Donegal	4	2	7	3	0	9	25
Dublin City Council	8	0	14	6	0	22	50
Dún Laoghaire-Rathdown	3	0	2	2	1	11	19
Fingal	3	1	6	2	0	9	21
Galway City Council	0	0	2	0	0	10	12
Galway County	7	1	12	3	0	11	34
Kerry	4	0	6	4	1	9	24
Kildare	2	0	4	3	1	9	19
Kilkenny	1	0	4	0	0	3	8
Laois	2	0	5	3	0	12	22
Leitrim	0	0	2	0	0	3	5
Limerick City Council	1	0	9	3	0	5	18
Limerick County	2	0	8	2	0	11	23
Longford	0	0	2	0	0	3	5
Louth	3	0	4	2	0	7	16
Mayo	1	0	1	1	1	6	10
Meath	2	0	6	3	0	4	15
Monaghan	1	0	1	1	0	2	5
North Tipperary	0	0	1	4	0	2	7
Offaly	0	0	3	0	0	7	10
Roscommon	1	0	1	1	0	1	4

Sligo	2	0	7	0	0	4	13
South Dublin	1	0	6	1	0	6	14
South Tipperary	1	0	2	0	0	4	7
Waterford City Council	1	0	3	0	1	0	5
Waterford County	0	0	3	0	0	6	9
Westmeath	1	0	4	0	0	4	9
Wexford	4	0	2	1	1	11	19
Wicklow	6	1	11	3	0	8	29
<b>Total</b>	<b>74</b>	<b>8</b>	<b>178</b>	<b>57</b>	<b>8</b>	<b>235</b>	<b>560</b>

## HSE

**Table 10: Health Sector examinable complaints received in 2012 by area**

	Brought forward from 2011	Examinable complaints received in 2012	On hand for 2012
HSE: Dublin / North East	41	79	120
HSE: Dublin Mid-Leinster	57	87	144
HSE: West	50	78	128
HSE: South	44	79	123
Hospitals	40	83	123
Complaints relating to the Health Repayment Scheme	22	6	28
Other Service Providers	2	1	3
<b>Total</b>	<b>256</b>	<b>413</b>	<b>669</b>

**Table 11: Health Sector complaints - closed in 2012 by area**

	Resolved	Partially resolved	Assistance provided	Dis-continued	Withdrawn	Not upheld	Total completed
HSE: Dublin / North East	17	6	22	12	0	36	93
HSE: Dublin Mid-Leinster	14	1	36	18	4	46	119
HSE: West	17	2	26	9	2	35	91
HSE: South	12	2	29	13	1	37	94
Complaints relating to the Health Repayment Scheme	1	0	1	2	1	3	8
Hospitals	12	4	36	23	1	19	95
Other Service Providers	0	0	0	1	0	1	2
<b>Total</b>	<b>73</b>	<b>15</b>	<b>150</b>	<b>78</b>	<b>9</b>	<b>177</b>	<b>502</b>

**Table 12: Health and social care complaints - examinable complaints received in 2012 by complaint category**

	Brought forward from 2011	Examinable complaints received in 2012	On hand for 2012
Dental Services	0	2	2
Disability Services	5	4	9
Hospitals - General	48	94	142
Hospitals - Psychiatric	6	16	22
Nursing Homes	16	24	40
Primary & Community Care	9	15	24
Social Work Services	14	37	51
Treatment Abroad Scheme	1	7	8
Other	0	5	5
<b>Total</b>	<b>99</b>	<b>204</b>	<b>303</b>



**Table 13: Health and social care cases - closed in 2012 by complaint category**

	Resolved	Partially resolved	Assistance provided	Dis-continued	Withdrawn	Not upheld	Total completed
Dental Services	0	0	1	0	0	0	1
Disability Services	0	0	1	1	0	3	5
Hospitals - General	11	5	38	29	2	26	111
Hospitals - Psychiatric	0	1	4	1	0	9	15
Nursing Homes	6	1	6	5	1	12	31
Primary & Community Care	1	1	7	2	1	6	18
Social Work Services	1	0	12	13	0	13	39
Treatment Abroad Scheme	0	1	0	1	0	3	5
HSC - Other-Not otherwise categorised	0	0	2	0	1	1	4
<b>Total</b>	<b>19</b>	<b>9</b>	<b>71</b>	<b>52</b>	<b>5</b>	<b>73</b>	<b>229</b>



<b>Table 14: Other Health Sector complaints - examinable complaints received in 2012 by complaint category</b>			
	<b>Brought forward from 2011</b>	<b>Examinable complaints received in 2012</b>	<b>On hand for 2012</b>
Medical & GP Card-Total	35	105	140
Motorised Transport Grant - Total	16	20	36
SWA - Basic - Total	18	4	22
Exceptional Needs Payment Total	11	2	13
Mortgage Interest Supplement - Total	3	0	3
Rent Supplement Total	20	4	24
Environmental Health Services	0	2	2
Health Repayment Scheme	22	7	29
General Registrar's Office	0	1	1
Domiciliary Care Allowance	0	2	2
Back to School C&FA	9	0	9
Mobility Allowance	8	14	22
Not otherwise categorised - Total	15	48	63
<b>Total</b>	<b>157</b>	<b>209</b>	<b>366</b>

**Table 15: Other Health Sector complaints - closed in 2012 by complaint category**

	Resolved	Partially resolved	Assistance provided	Dis-continued	Withdrawn	Not upheld	Total completed
Medical & GP Card Total	28	3	38	8	1	41	119
SWA Total	7	1	13	2	0	39	62
Mobility Allowance	1	0	2	3	0	5	11
Motorised Transport Grant	4	0	1	2	1	6	14
Domiciliary Care Allowance	0	0	0	1	0	0	1
Environmental Health Services	0	0	1	1	0	0	2
Back to School Clothing & Footwear Allowance	6	0	1	0	0	2	9
Health Repayment Scheme	1	0	2	2	1	3	9
General Registrar's Office	0	0	0	0	0	1	1
Not otherwise categorised	7	2	21	7	1	7	45
<b>Total</b>	<b>54</b>	<b>6</b>	<b>79</b>	<b>26</b>	<b>4</b>	<b>104</b>	<b>273</b>

## Annex B: Ombudsman Engagements

### B.1 Ombudsman meetings with dignitaries, officials, etc.

- Mr Jim Martin, Scottish Public Services Ombudsman - 24th January
- Mr Paul Kenny, Pensions Ombudsman - 24th January
- Mr Peter Tyndall, Welsh Public Services Ombudsman - 25th January
- Mr Aled Eirug, on behalf of the Welsh Language Commissioner regarding the new role of the Ombudsman in relation to the Irish language - 21st February
- Mr Tom Frawley, Northern Ireland Ombudsman - 20th March
- Mr Tom Frawley, Northern Ireland Ombudsman - 28th March
- Telephone conference meeting with Dame Beverly Wakem, New Zealand Chief Ombudsman - 30th March
- Ms Ann Abraham, UK Parliamentary and Health Service Ombudsman - 24th April
- Dr Nikiforos Diamandouros, European Union Ombudsman - 14th May
- Mr Paul Kenny, Pensions Ombudsman - 6th June
- Mr Tom Frawley, Northern Ireland Ombudsman - 31st August
- Department of Justice regarding the Human Rights Commission - 6th September
- Meeting in Leinster House with Mr Peadar Tóibín TD, Chairman of the Joint Oireachtas Committee on Public Service Oversight and Petitions - 18th September
- The Committee of Ministers of the Council of Europe - 3rd October
- Dr Nils Muiznieks, Council of Europe Commissioner for Human Rights - 17th October
- Ms Patricia Byron, CEO of the Personal Injuries Assessment Board - 14th November
- Meeting in Leinster House with the Northern Ireland Civil Service Commissioners - 27th November

## B.2 Conferences at home and abroad

- The Young Business Ladies Lunch - 20th January, Tullamore
- “Caught in the Web” at the launch of the Older & Bolder report - 7th February, Dublin
- “Issues affecting people in Ireland at this time” at a Carnegie UK Trust event - 21st February, Hilton Hotel, Dublin
- “Health Services and the Law” at a meeting of the Medico-Legal Society of Ireland - 23rd February, Dublin
- ACCORD Golden Jubilee Conference - 3rd March, Belfast
- Launch of the Young Social Innovators Speak Out Events - 6th March, DCU
- Freedom of Information to the Dutch Parliament - 16th April, The Hague
- “Reflections and Commemoration” at a Council of the Irish Association event - 5th May, Sandymount Hotel, Dublin
- “Open Government: Where are we now?” at the National Association of Citizens Information Centres and Services AGM - 27th June, Dublin
- “Ethics and governance in Ireland today: rights and responsibilities” at the launch of the voluntary organisation ‘The Wheel’ - 28th June, Mansion House, Dublin
- Reception to mark the conclusion of the term of the President of the Irish Human Rights Commission, Maurice Manning - 31st July, Royal Irish Academy
- The Ombudsman appeared before the Justice Committee to discuss the Human Rights Commission selection panel - 25th September, Dublin
- Launch of the Mary Raftery Journalism Fund - 26th September, Dublin
- The Ombudsman appeared before the Joint Oireachtas Committee on Public Services Oversight and Petitions Committee and gave an address on the Ombudsman (Amendment) Bill and the 2011 Annual Report - 10th October, Dublin
- The Ombudsman appeared before the Joint Oireachtas Committee on Public Services Oversight and Petitions Committee - 17th October, Dublin
- “Economic Recovery & Public Sector Reform” IPA conference - 19th October, Dublin
- The Ombudsman chaired the session, “Reflections on the Leveson Inquiry” at the 14th Cleraun Media Conference - 21st October, Dublin
- Launch of the FLAC report, “Not Fair Enough” - 24th October, Mansion House, Dublin
- National Newspapers of Ireland Journalism Awards Ceremony - 25th October, Dublin
- Nursing Homes Ireland Annual Conference - 15th November, Dublin
- The Ombudsman chaired the session, “Deficit of Protection: Economic, Social & Cultural Rights” at an Amnesty International Conference - 22nd November, Dublin

- Launch of the Alzheimer’s Society of Ireland information booklet, “I have dementia... I have rights” - 28th November, Dublin
- The Ombudsman delivered a seminar, “The National Ombudsman in Europe” at Harvard Law School, Harvard University - 3rd December, Cambridge, Massachusetts
- The Ombudsman appeared before the Joint Oireachtas Committee on Public Services Oversight and Petitions Committee - 6th December, Dublin
- St John of God Hospitaller Conference - 12th December, Dublin

### **B.3 British & Irish Ombudsman Association (now the Ombudsman Association) meetings**

In 2012, the Ombudsman attended the following Ombudsman Association meetings:

- 18th March, British & Irish Ombudsman Association Annual Conference, Belfast
- 3rd August, British & Irish Ombudsman Association Public Sector Ombudsman meeting, Cardiff, Wales



## Annex C: Annual Energy Efficiency Report 2012

Monthly Energy Report		OPW - Office of Public Works Office of the Ombudsman	
Dec 2012			
Summary			
Month to month			
<p>Energy usage has decreased by -27.0% from 58,955kWh in Dec 2010 to 43,023kWh in Dec 2012. As a result, CO2 emissions for this period have decreased by -19.4% from 19,886kg to 16,023kg, (-3,862Kg).</p>			
Annual			
<p>The base year used for all these calculations is 2010.</p> <p>Compared to this base year, energy consumption on site has decreased by -32,453kWh or -7.0% over the last 12 months.</p> <p>In terms of total CO2, production has decreased by -8.3%, since 2010 or by -17,143Kg.</p> <p>Normalised for weather variations, CO2 has decreased by -11.1%, since 2010 or by -22,293Kg</p>			
Energy use - Dec 2012			
Annualised energy usage			
Description	Electricity	Gas	Total
Benchmark Year	284,062	179,086	463,148
Previous 12 months	257,401	173,294	430,695
% Difference	-9.4%	-3.2%	-7.0%

## Annex D: Indicative List of New Agencies Within Remit From 1st May 2013

Agencies marked with (CF) are within remit insofar as certain functions apply as specified by Part II of the First Schedule of the Ombudsman (Amendment) Act, 2012 -

see <http://www.oireachtas.ie/documents/bills28/acts/2012/a3812d.pdf>

Agencies marked with (NS) are North/South bodies which are under the Ombudsman's remit in so far as actions taken in the Republic of Ireland by or on behalf of one of the bodies.

1. Adoption Authority of Ireland (CF)
2. Affordable Homes Partnership
3. An Bord Altranais (CF)
4. An Bord Bia
5. An Bord Iascaigh Mhara
6. An Foras Teanga (NS)
7. Appeal Commissioners of Income Tax
8. Aquaculture Licence Appeals Board
9. Arts Council
10. Athlone Institute of Technology
11. Bord na Radharcmhastóirí (Optician's Board) (CF)
12. CEBs (City and County Enterprise Boards)
13. Censorship of Films Appeal Board
14. Censorship of Publications Appeal Board
15. Censorship of Publications Board
16. Chomhairle um Oideachais Gaeltachta agus Gaelscolaíochta
17. Church of Ireland College of Education
18. Citizens Information Board
19. City of Cork VEC
20. City of Dublin VEC
21. City of Galway VEC
22. City of Limerick VEC
23. City of Waterford VEC
24. Coláiste Mhuire, Marino
25. Competition Authority
26. Cork Institute of Technology
27. County Carlow VEC
28. County Cavan VEC
29. County Clare VEC

30. County Cork VEC
31. County Donegal VEC
32. County Dublin VEC
33. County Galway VEC
34. County Kildare VEC
35. County Kilkenny VEC
36. County Laois VEC
37. County Leitrim VEC
38. County Limerick VEC
39. County Longford VEC
40. County Louth VEC
41. County Mayo VEC
42. County Meath VEC
43. County Monaghan VEC
44. County Offaly VEC
45. County Roscommon VEC
46. County Sligo VEC
47. County Waterford VEC
48. County Westmeath VEC
49. County Wexford VEC
50. County Wicklow VEC
51. Courts Service (CF)
52. Crawford Gallery
53. Credit Review Office
54. Credit Union Restructuring Board
55. Dental Council (CF)
56. Dental Health Foundation
57. Designated Area Appeals Advisory Board
58. Digital Hub Development Agency
59. Disabled Drivers Medical Board of Appeal
60. Dormant Accounts Board
61. Dublin City University
62. Dublin Docklands Development Authority
63. Dublin Institute of Advanced Studies
64. Dublin Institute of Technology
65. Dun Laoghaire Institute of Art, Design and Technology
66. Dún Laoghaire VEC
67. Dundalk Institute of Technology
68. Economic and Social Research Institute
69. Enterprise Ireland
70. Equality Authority

71. Family Support Agency
72. Food Safety Authority of Ireland
73. Foras Áiseanna Saothair (FÁS)
74. Forensic Science Laboratory
75. Forfás
76. Foyle, Carlingford and Irish Lights Commission (NS)
77. Froebel College of Education
78. Galway-Mayo Institute of Technology
79. Grangegorman Development Agency
80. Health and Safety Authority (CS)
81. Health and Social Care Professionals Council (CS)
82. Health Information and Quality Authority (HIQA)
83. Health Protection Surveillance Centre
84. Health Research Board
85. Heritage Council
86. Higher Education Authority
87. Housing Agency
88. Industrial Development Authority
89. Inland Fisheries Ireland
90. Institute of Public Administration
91. Institute of Technology Blanchardstown
92. Institute of Technology Carlow
93. Institute of Technology Sligo
94. Institute of Technology Tallaght
95. Institute of Technology Tralee
96. InterTrade Ireland (NS)
97. Irish Blood Transfusion Service
98. Irish Expert Body on Fluorides and Health
99. Irish Film Classification Office
100. Irish Medicines Board
101. Irish Museum of Modern Art
102. Irish Red Cross
103. Irish Sports Council
104. Irish Takeover Panel
105. Irish Vocational Education Association
106. Irish Water Safety
107. Kerry Education Service (County Kerry VEC)
108. Law Society of Ireland
109. Léargas — The Exchange Bureau
110. Legal Aid Board (CS)
111. Letterkenny Institute of Technology

112. Limerick Institute of Technology
113. Local Government Management Agency
114. Marine Institute
115. Mary Immaculate College
116. Mater Dei Institute of Education
117. Medical Council (CF)
118. Milltown Institute
119. National Cancer Registry
120. National Centre for Guidance in Education
121. National College of Art and Design
122. National College of Ireland
123. National Consumer Agency
124. National Council for Curriculum and Assessment
125. National Council for Special Education
126. National Educational Welfare Board
127. National Gallery
128. National Milk Agency
129. National Paediatric Hospital Development Board
130. National Roads Authority
131. National Sports Campus Development Authority
132. National Standards Authority of Ireland
133. National Statistics Board
134. National Transport Authority
135. National Treatment Purchase Fund
136. National University of Ireland
137. National University of Ireland, Galway
138. National University of Ireland, Maynooth
139. North Tipperary VEC
140. Ordnance Survey Ireland
141. Pensions Board
142. Personal Injuries Assessment Board (CF)
143. Pharmaceutical Society of Ireland (CF)
144. Placenames Commission - An Chomisiúin Logainmneacha
145. Pobal
146. Pre-Hospital Emergency Care Council (CF)
147. Private Residential Tenancies Board (CF)
148. Property Services Appeal Board (CF)
149. Property Services Regulatory Authority (CF)
150. Quality and Qualifications Ireland
151. Radiological Protection Institute of Ireland (CF)
152. Railway Safety Commission

153. Residential Institutions Statutory Fund Board
154. Road Safety Authority
155. Royal College of Surgeons in Ireland
156. Royal Institute of Architects
157. Royal Irish Academy
158. Royal Irish Academy of Music
159. Safefood (NS)
160. Science Foundation Ireland
161. Sea Fisheries Protection Authority
162. Shannon College of Hotel Management
163. Shannon Development
164. Skillnets
165. Society of Chartered Surveyors
166. South Tipperary VEC
167. Special European Union Programmes Body (NS)
168. St. Angela's College, Sligo
169. St. Patrick's College, Drumcondra
170. State Examinations Commission
171. Student Grant Appeals Board
172. Student Universal Support Ireland (SUSI)
173. Sustainable Energy Ireland
174. Teaching Council
175. Teagasc
176. Tipperary Institute
177. Tourism Ireland (NS)
178. Trinity College Dublin
179. Údarás na Gaeltachta
180. University College Cork
181. University College Dublin
182. University of Limerick
183. Veterinary Council of Ireland (CF)
184. Waterford Institute of Technology
185. Waterways Ireland (NS)
186. Western Development Commission





