**Presentation by Emily O'Reilly, Ombudsman and Information Commissioner, to the Joint Oireachtas Committee on Public Service Oversight and Petitions**  
  
 **26 September 2013**  
  
**My 2012 Annual Report**  
  
Members will be aware that I published my 2012 Annual Report yesterday which was my 10th Annual Report since taking up the position of Ombudsman in 2003. During that period my Office has dealt with over 25,000 complaints against public sector bodies and carried out several key investigations into various aspects of public administration.   
  
My Office continued to receive high numbers of complaints in 2012. While there had been a drop in the numbers of complaints, from a record 3,727 in 2010 to 3,412 in 2012, the number was still 25% higher than the ten-year average of 2,774. The largest number of complaints received involved the Department of Social Protection. Complaints in relation to Local Authorities represented just under a third of complaints and a fifth were in respect of the Health Service Executive (HSE). 11,178 enquiries were dealt with by the Ombudsman’s Office in 2012.

It is very likely that following the extension of the Office's remit, the continuing pressure on public services to do more with less, and with increasing numbers of people seeking State supports of various kinds, the complaint intake will continue to be significant.  
  
  
**Annual Report Cases**   
  
I have attached as Appendix 1 to this presentation a brief summary of four cases in my Annual Report which I would like to highlight. This has been circulated to members so I will just make a few remarks on them here.  
  
***Case 1***  
  
My complainant was granted arrears of Survivor's Contributory Pension amounting to €68,000 because I discovered that the Department of Social Protection had sufficient information available to it in 1999 to be aware of his entitlement but failed to notify him at the time.

***Case 2***  
  
Letterkenny General Hospital gave my complainant a number of conflicting diagnoses in relation to a serious genetic abnormality. Following my Office's intervention, the hospital's Clinical Director met the complainant and arranged for a further definitive medical review by another specialist which confirmed that she did not have the condition. The cost of the review was covered by the HSE and it also refunded her the cost of her private consultation which amounted to €1,000.

***Case 3***

Due to incorrect information from the Department of Social Protection my complainant moved to Guernsey with his family in the belief that he would continue to be paid jobseekers benefit for a period. The Department apologised for its handling of the matter and offered an *ex gratia* payment of €1,000 as redress which the complainant was happy to accept.  
  
***Case 4***  
  
A married couple applied for medical cards to the HSE but suffered considerable delay in having the applications processed, despite the fact that their circumstances were such that it should have been apparent at an early stage that they were eligible. The HSE awarded the medical cards backdated to 15 working days from receipt of the application and agreed to refund all medical, dental and optical expenses for the twenty month period of delay. I also contacted the Revenue Commissioners who agreed to 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.  
  
Members have also been given copies of the 2012 Annual Report which provides details of a number of other cases highlighting the type of case handled by my Office in 2012.

***Ombudsman (Amendment) Act 2012***  
  
Over my 10 years in office, I have constantly urged various Governments to extend independent oversight to all public bodies. In May this year my Office’s remit was extended to over 180 additional organisations, including all publicly funded third level education bodies. On the passing of the Ombudsman (Amendment) Act in 2012, I described it as a historic day for the Office of the Ombudsman and Irish public administration generally. Since 1 May 2013 all public bodies with significant interactions with the public are subject to independent and impartial oversight by the Office of the Ombudsman.

However, I feel I must once again draw attention to some very important areas of activity of the Department of Justice – relating to immigration, naturalisation and the prisons – which continue to remain outside of the Ombudsman’s jurisdiction. This anomalous situation is virtually unique in terms of the jurisdiction of national Ombudsmen internationally and I know that members of this Committee raised their concerns about the matter during the debates on the Ombudsman (Amendment) Bill and I appreciate that.

These areas were not placed within my remit in the Bill as I was told that other measures were being actively progressed by the Department of Justice. The Minister for Justice and Equality announced  in 2012, before the enactment of the Ombudsman (Amendment) Bill, that  a new complaints system was planned for prisoners which he said would be open, transparent and independent and would provide an immediate mechanism to deal with such complaints on the ground. I know that new procedures for the investigation of complaints went live on 1 November 2012.

In May 2013 Judge Michael Kelly, Inspector of Prisons presented his  report titled *An Assessment of the Irish Prison System* to the Minister for Justice and in Chapter 8 he gave a detailed description of the new procedures. However, he declined to comment on investigations commenced under the new procedures since 1 November 2012 as they were in their infancy. He did, though, voice concern in the report in relation to the fact that the new complaint procedures provide only a process for the investigation of Category A complaints, which are complaints of the most serious nature, including assaults, serious intimidation etc. He called for a robust complaints procedure to be brought in for category B and C complaints and also asked as a matter of urgency that Section 31 of the Prisons Act 2007 be amended to strengthen his own investigatory powers in certain areas.  This suggests to me that there is much work to be done in relation to bringing in a fully effective and comprehensive prisoner complaints system.

In relation to the areas of immigration, residency and asylum, the Minister said that  a new statutory appeals system will be established through the enactment of the Immigration, Residence and Protection Bill 2010. We still await the enactment of this legislation. Until we see the final shape and substance of these new complaint processes in the immigration area, I think it would be premature of me to judge how effective they will be. I must today express concern re the delay in advancing this legislation.

I know that the Minister for Public Expenditure and Reform had indicated, during the Ombudsman Bill debates, a willingness to revisit the Ombudsman legislation if it requires fine tuning at a later stage so that prisons and asylum matters may be the subject of further consideration in that context at some time in the future. I expect that the new Ombudsman may wish to monitor progress on both these areas.

The consequential increase in complaint numbers arising from the expansion of remit will be managed within existing resources and supported by significant operational reforms my office has implemented in the last 2 years. The Office’s strategic plan for 2013-2015 sets out our plans for greater engagement with public bodies under remit to encourage effective systems of complaint resolution locally, thus improving satisfaction with the service at point of contact and preventing the need for escalation to my Office.

***Complaints Against New Bodies***

It is early days to try and quantify the likely number and types of additional complaints that the Office will receive from the the new bodies annually. However, I would now like to give members a general overview on the most recently available figures relating to valid complaints received against the new bodies in 2013. As provided under the Amendment Act I can examine only actions that occur on or after 1 May 2013 and complainants are normally required to exhaust local appeal processes before coming to my Office. In total we have received 78 valid (and by valid I mean admissible) complaints against the new bodies. I have divided the breakdown of the figures into four broad sectoral categories and attached them in Appendix 2 which has been circulated to members.

Aside from the valid complaints being dealt with my Office has received a considerable amount of telephone queries in relation to a wide range of the new public bodies as well as complaints that were invalid or premature because they had not been taken up with the public body concerned or the actions complained of predated 1 May 2013 or were otherwise outside remit for whatever reason. Adding the valid and invalid and premature figures together my Office has received over 200 complaints against the new bodies to date.

**Observations on New Bodies**

I will also make some general comments on our experience to date in dealing with the new bodies.

My Office has appointed Sectoral Leads to deal closely with the new bodies in the four sectors and to monitor, analyse and process the initial complaints received in each sector. These Sectoral Leads have had a high level of direct engagement, including face to face meetings with a number of bodies so that we can get a clear understanding of their processes and procedures and the challenges they face and the engagement also serves to give the new bodies a better understanding of my Office's approach to complaint handling and the level of cooperation we need fully to investigate and evaluate complaints.

From speaking to my Sectoral Leads they report that the cooperation and engagement from the new bodies has been positive and open. In relation to SUSI it is perhaps not surprising that we have quite a number of valid complaints (a total of 55 to date and a total of 140 if one includes invalids and prematures) given that SUSI has recently processed a very high volume of grant applications on the run up to the current academic year. In fact, quite a number of SUSI cases taken on by my Office relate back to the 2012/2013 academic year as some appeals took some time to process in SUSI and I can also deal with complaints about undue delay in dealing with grant applications going back to 2012/2013 which had not been resolved by May 2013.

Members will be aware that last year as it commenced the new centralised grant processing system SUSI was faced with considerable challenges and a very high volume of complaints but in the meantime it has been refining its processing systems to make them more efficient and effective. SUSI has met with officials from my Office on a number of occasions and I am entirely satisfied with the level of cooperation they are providing to my Office. Needless to say if the individual complaints my Office is dealing with suggest further ways to improve the system then we will be communicating with SUSI in this regard.

**Emerging Relationship with PSOP**  
  
As you know, I have repeatedly welcomed the establishment of this Committee. The Ombudsman has a duty to report to Parliament and any broad concerns or issues identified by any Ombudsman relating to the Irish public administration system must provoke the interest of, and a response from, members of Parliament. That is why this Committee is a pivotal bridge between elected representatives, the Office of the Ombudsman and members of the public who may have suffered harm at the hands of public bodies.  
  
This 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, the Committee's terms of reference provide, among other things, that the Committee will not accept complaints which have been the subject of a decision by my Office or are under active consideration by my Office. This is a practical and sensible approach to take and the Office will continue to liaise with the Clerk of your Committee on such issues.  
  
I am aware that Standing Orders cannot provide for the non-application of the Party Whip to the Committee. I do however recall, when I appeared before the Committee in July 2011, that members seemed to take on board my pleas for the Committee to seek to act on a non-party political basis when considering my annual and other reports. I don't want to put particular members on the spot in relation to this issue, but I noted Deputy Flanagan's contribution on this point at the meeting because I thought it summed the issue up very neatly and, I suggest, courageously, when he said;

***"I am conscious that I speak as a member of a Government party with a large majority. However, if the committee is to work to its potential - and supporting the Chairman will be vital in that regard - we should be less swayed by the rigorous application of the party whip. If there was ever an opportunity for any Oireachtas committee to be less dependent on the rigours of the whip, this committee may most appropriately take that approach. I welcome the Ombudsman’s observations in this regard, as contained in a report published earlier this year. I hope we will work together on an all-party basis, arriving at decisions by way of consensus rather than taking positions along narrow, partisan and party political lines."***

I attached particular importance to this issue because of my decidedly painful experience in dealing with the Joint Oireachtas Committee on Agriculture, Fisheries and Food in the aftermath of my Special Report on the Lost at Sea Scheme. I don't propose to rehash that battle all over again today, but I must say that if one had to give an example of how an Oireachtas Committee should **not** deal with an Ombudsman report, then that is as good an example as you could find.

As I leave Office, one of my great regrets is that I did not manage to get redress for the Byrne family and I remain utterly convinced as to the merits of the case I presented at the time. It is only fair to say however that my experience with this present Committee has been nothing but positive and although I await your report to the Dáil on the two special reports I brought before you, I have confidence in your commitment to good public service, fairness, accountability and openness. I very much hope that the next Ombudsman will continue to receive the same level of interest as I have done and that the Committee and he or she will work constructively together with a strong and courageous mutual commitment to good public administration.

***Investigations and Special Reports***  
  
I would now like to give the Committee an update on the Special Reports I mentioned a few moments ago.  
  
**Mobility Allowance and Motorised Transport Grant Schemes**  
  
Members of the Committee will be familiar with the Special Reports I published in relation to the Mobility Allowance (MA) and Motorised Transport Grant (MTG) Schemes which were in breach of the Equal Status Acts. In the case of the Mobility Allowance Scheme the breach related to age grounds, whereas in the case of the Motorised Transport Grant scheme, the breach related to the way "severe disability" was being defined by the HSE in the Donegal area for the purposes of eligibility criteria.   
  
The HSE accepted the recommendations of the MTG report. Since its publication, the applicant who was the subject of the investigation was approved for the MTG following the review. An additional 50 people who had been refused the grant, but who had been deemed eligible on previous occasions, had the recent decision overturned and were also awarded the grant.

I made a separate recommendation to the Department of Health that it issue a circular to the HSE in relation to eligibility criteria around the issue of "severe disability" and to ensure that the definition of the term should not be in breach of the Equal Status Acts. This recommendation was rejected leading to one of my Special Reports to the Oireachtas.

The second report related to the Mobility Allowance. The Department of Health had originally accepted my recommendations to make the scheme compliant with equal status legislation, however, when it did not implement the recommendations and I pursued it, I was informed that it must belatedly reject them.  
  
Following my appearance before you in relation to the Special Reports, you held separate hearings with the Minister for Health, the Minister for State and the Secretary General of the Department and other senior officials on 6 February 2013. On 25 February 2013 the Government announced its decision to abolish both the MA and the MTG schemes with immediate effect; though existing recipients of the MA would continue in payment until June and this cut-off point was further extended subsequently.

On 11 June 2013 the Government announced that new statutory provisions would be established in relation to financial supports for disabled persons with mobility needs. The Government has established an inter-departmental group, chaired by the Department of the Taoiseach, to develop proposals for a new scheme or schemes, and the group has been asked to report back to Government by October.

The closure of the schemes shocked me. Such decisive action contrasted sharply with the inaction of the Department during the period since 2000 when the Equal Status Act was first enacted and, in particular, with its inaction since 2008 and 2009 when it was on notice from my Office, and from the Equality Tribunal, that the MA scheme contravened equality legislation.

The law is the law. If the law is unaffordable as the Department claimed, then the Oireachtas has the power to change it and in fact it has a duty to do so, even if some of the options available will be unpopular. I saw no evidence of serious effort in the period from 2008 to address the issue and thus prevent the ultimate devastation caused to many people with disabilities when the shock announcement was made that the schemes would be abolished.   
  
At the launch of my Annual Report for 2012 yesterday I gave a cautious welcome to the announcement by the Government that payments are to continue to be made temporarily by the HSE to those persons currently in receipt of Mobility Allowance. I very much hope that the inter-departmental group, chaired by the Department of the Taoiseach, will resolve the situation regarding the two schemes in an urgent and equitable manner.  
  
I also understand that this Committee plans to report in due course to the Dáil, as provided for in its Standing Orders, on the outcome of its various deliberations on the matter. I appreciate that this may pose some difficulty for the Committee and will, to a certain extent, be a test of its stated commitment to seek to act in a consensual manner. It is important that the Committee comment on the findings of my report and on how such maladministration can be prevented in the future.

**Health Repayment Scheme**

My Office has recently completed a number of investigations which, if time allowed, I would mention briefly. However, I do need briefly to note serious concerns with yet another report which just last week was rejected by the Health Service Executive with, I have to presume, the backing of the Department Health. The rejection of my recommendations must now be a matter for my successor in his / her first weeks in Office and I do not wish to in any way dictate how he or she should respond. But, as the investigation was initiated and completed on my watch, I feel duty bound to report briefly on it now.

The investigation involved 17 cases where claims for repayments under the Health Repayment Scheme had been refused. This Scheme was introduced in 2006 to refund charges which had been levied illegally by health boards, for long-stay care, over a period of many years. In the cases in this investigation, the repayment claims were refused on the grounds that the applicants had not paid what are termed in the legislation as “recoverable charges”. These negative decisions were upheld by the Health Repayment Scheme Appeals Officer.

Following my investigation, I recommended that repayments should be made in all but one of the 17 cases; in the remaining case, I recommended that the HSE should examine that case further.

The HSE has very recently sent me a detailed statement of the reasons why it has decided to reject my recommendations. All of these reasons were, in fact, matters already raised by the HSE in the course of the investigation and matters on which I had reflected carefully before completing the investigation. Amongst the HSE’s reasons for rejecting the recommendations is a claim that I did not have jurisdiction to conduct the investigation in the first place. This, unfortunately, appears to be the continuation of a pattern of behaviour on the part of the HSE, and more particularly of the Department of Health, in relation to Ombudsman investigations.

It will be a matter for my successor to decide how best to deal with the situation which has now arisen. Amongst my successor’s options will be that of sending a Special Report to the Dáil and Seanad. In the event of my successor making such a Special Report, the involvement of this Committee will be pivotal in determining the eventual outcome. I think it appropriate that I should, at this stage, inform this Committee of the situation which has arisen.

***Constitutional Status for the Office of the Ombudsman***  
  
An issue of great importance raised by me over the years, as well as by my immediate predecessor the late Kevin Murphy, was the need to give constitutional status to the Office of the Ombudsman.  
  
As far back as 1996 the Constitution Review Group recommended that the Office of the Ombudsman should be given constitutional status. The Review Group pointed out that in the same way as the Comptroller and Auditor General monitors financial accountability, the Ombudsman monitors administrative accountability. The C&AG's Office has constitutional status. It also seems somewhat anomalous that the local government system, which is subject to my jurisdiction, also has constitutional status whereas my Office does not.  
  
I spelled out the arguments in favour of such status in my Office's publication on developing and optimising the Office of the Ombudsman which was issued to all political parties in February 2011 on the run up to the last general election. My Office has made a detailed submission on the matter to the Convention on the Constitution and the Office will await with interest the proposals that emerge from that forum.  
  
***FOI Compliance***

Earlier in the year, when I presented my 2012 Office of the Information Commissioner Annual Report, I highlighted a growing concern about the failure of some public bodies to meet time frames for compliance with requests by my Office for information relating to review applications. Indeed, it has become increasingly clear to me that many public bodies do not have an adequately resourced FOI function and the priority afforded to the administration of FOI matters by many public bodies appears to be deteriorating as resources are diminishing and demands for greater efficiencies are increasing. This is a worrying trend which requires immediate action, particularly in light of the Government's commitment to reforming and extending the FOI legislation. As I stated in my 2012 report, public bodies must recognise that the administration of the FOI process, as a statutory function, should be afforded as much weight as any other statutory function. The administration of FOI should not be seen as an optional function from which resources may be diverted as other priorities arise.   
  
**Incoming Ombudsman/Information Commissioner**

Finally, I want to wish my successor, whoever he or she may be, all the very best in his/her work as Information Commissioner and Ombudsman and the other statutory roles which come with the Office. As the remit of the Office expands and the public service comes under further pressure, the job will continue to be a challenging one, but as the challenge grows then so too should the perceived importance of the Offices in seeking to ensure a public service that acts in a fair, proper and open manner towards the public.

I would like to thank the Committee again for its time and attention.

**Appendix 1 -Annual Report Case Summaries**

***Case 1***  
  
Survivor's Contributory Pension is a weekly payment to the husband, wife, or civil partner of a deceased person, provided they, or their deceased partner, have made sufficient social insurance contributions. In this case the complainant's wife had died in November 1998 but he believed he could not qualify for the pension as he was working at the time. He subsequently became aware of his entitlement and lodged an application in December 2008. He was awarded the pension but only from January 2006 under the late claim provision of the Social Welfare Acts.  
  
When I examined the Department's files I noticed that he had notified the Department of 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 it reasonable that the Department should have informed him of his entitlement to the pension at that stage. I asked it to review its position and to backdate the payment to March 1999. I am happy to say that the Department of Social Protection accepted my analysis and agreed to backdate the claim. The man was paid over €68,000.

***Case 2***  
  
In another case a woman was refused a second opinion despite confusion over a serious diagnosis. She was diagnosed by Letterkenny General Hospital as having a relatively serious genetic abnormality. The diagnosis of the condition is considered to be difficult. She was distressed due to the diagnosis and also suffered side effects from the medication she had to take. Following further tests by Letterkenny General Hospital approximately eight months after the original diagnosis, she was told that she did not have the condition. Some months later she was referred to a Consultant in Dublin for genetic screening which confirmed again that she did not have the condition. However, when the Consultant who had been dealing with her in Letterkenny received the results he wrote to the Consultant in Dublin expressing the view that the woman did in fact suffer from the condition. This contradicted his previous diagnosis and it made the complainant fearful and confused and led her to request Letterkenny General Hospital to arrange a further referral to another specialist in a different hospital. However, the hospital did not act on this request but wrote to her two months later stating that the Consultant had confirmed the diagnosis and would meet with her if she wished. The woman who was increasingly concerned arranged a second medical opinion privately which indicated that she did not have the condition. This cost her €1,000 and she wrote to my Office to complain about Letterkenny General Hospital.

Following my Office's intervention, the hospital's Clinical Director met the complainant and arranged for a further definitive medical review by another specialist which confirmed that she did not have the condition. The cost of the review was covered by the HSE and it also refunded her the cost of her private consultation. I was satisfied that the HSE, although belatedly, had accepted the woman had been treated badly. It meant a lot to the woman that a senior consultant agreed to meet with her to discuss the matter and to reimburse her costs.

***Case 3***  
My complainant and his wife were both unemployed. His wife was offered a choice of jobs in either Luxembourg or Guernsey. They chose to move to Guernsey with their children instead of Luxembourg based on information the man received from the Department of Social Protection. He was told that his jobseekers benefit would continue to be paid in either country for a period after he moved. The benefit however was not available in Guernsey and he received no payment. This is because Guernsey is not part of the European Economic Area, neither is it part of the EU or the UK.

Following my examination of the complaint I was satisfied that the man acted in good faith and the possibility of the on-going payment had a bearing on his choice of location, especially given that the move took place in the weeks approaching Christmas. The Department apologised for its handling of the matter and offered an *ex gratia* payment of €1,000 as redress which the complainant was happy to accept.  
  
***Case 4***  
  
A married couple applied for medical cards and provided a Revenue tax return to the HSE as evidence of income. They experienced a very considerable delay of twenty months before hearing anything further from the HSE. Initially their application had been lost and duplicate information had to be submitted. In explaining the subsequent delay the HSE said it had to do a considerable amount of processing due to the need to validate share holdings and investments belonging to the applicants and said it had been in contact with the couple during the processing, which was disputed by the couple.  
  
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 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 they were entitled to medical cards as both had UK pensions and were not in receipt of a State pension in Ireland. The HSE had neglected to approve the applications on this basis. I requested the HSE to review the applications.  
  
The HSE awarded the medical cards backdated to 15 working days from receipt of the application and agreed to refund all medical, dental and optical expenses for the twenty month period of delay. I also contacted the Revenue Commissioners who agreed to 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.

**Appendix 2 -Breakdown of Valid Complaints Received against New bodies by Sector**

**1: Regulatory and Quasi-judicial bodies**:

8 valid complaints have been received by this Office against the regulatory agencies. One each against the following bodies;

The Health and Social Care Professional Council, The Medical Council

An Bord Altranais, The Law Society of Ireland, The Pre-Hospital Emergency Care Council, The National Transport Authority, The Equality Authority, The Competition Authority.

I understand that the complaints received for this sector so far mainly relate to registration issues (in the case of the professional regulators) and non-reply to correspondence.

**2: Universities and all Education apart from Education and Training Boards (formerly VECs) and ITs**

8 valid complaints accepted to date;

2 UCD,1 State Examinations Commission, 1 Post Graduate Applications Centre

1 DARE 1 (service for people with disabilities),3 HEAR (service for people with disabilities)

**3: Education and Training Boards (formerly VECs) and ITs**

In this sector we have received the following:

1 Quality and Qualifications Ireland, 2 VEC complaints , 55 SUSI complaints received (including invalid premature complaints the total against SUSI is approximately 140), 2 Student Grants Appeals Board complaints.

**4: All Other New Bodies**

We have received two valid complaints against the Private Residential Tenancies Board (PRTB) relating to registration of tenancies (which is the only area of PRTB that is within remit.