



Tithe an Oireachtais

**An Comhchoiste um Airgeadas, Caiteachas Poiblí
agus Athchóiriú**

**Tuarascáil maidir leis an bPrionsabal a bhaineann le
Comhlachtaí Poiblí do Ghlacadh le Moltaí an
Ombudsman**

Iúil 2012

Houses of the Oireachtas

**Joint Committee on Finance, Public Expenditure and
Reform**

Report

**Report on the Principle of Acceptance by
Public Bodies of Recommendations of the
Ombudsman**

July 2012

31/FPER/011

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FOREWORD

The Joint Committee on Finance and the Public Service in the 29th Dáil had drafted this report, which recommended that full redress should be made by the Revenue Commissioners to the taxpayer concerned and secondly, the Joint Committee called on all public bodies to respect and implement in full the recommendations of the Ombudsman arising from formal investigations by that Office.. That draft report was not agreed prior to the 29th Dáil being dissolved. The attention of the Joint Committee on Finance, Public Expenditure was drawn to this report and on the 6th June 2012 the Dáil ordered: *"That, in relation to the draft report of the Joint Committee on Finance and the Public Service entitled 'Report on the Principle of Acceptance by Public Bodies of Recommendations of the Ombudsman', the papers connected therewith of the Joint Committee on Finance and the Public Service established by orders of Dáil and Seanad Éireann of 16 October 2002 and 17 October 2002, respectively, be referred to the Joint Committee on Finance, Public Expenditure and Reform established by orders of Dáil and Seanad Éireann."*

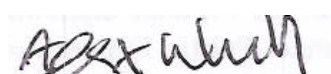
On the 6th June Seanad Éireann passed the same order.

The Joint Committee on Finance, Public Expenditure and Reform has the same remit, under its orders of reference, as the Joint Committee on Finance and Public Service in the 29th Dáil in respect of bodies under the aegis of the Department of Finance. The remit includes the Office of the Revenue Commissioners and the Office of the Ombudsman. Accordingly, the Joint Committee in accordance with the access given by the Orders of the Dáil and Seanad of the 6th June have agreed the draft report as prepared by the Joint Committee on Finance and Public Service of the 29th Dáil

The Ombudsman plays a key role in ensuring that the public service is open, fair and accountable. This arises from the power of the Ombudsman to investigate complaints against public bodies and to make recommendations which it has become established practice for public bodies to implement in full. In the particular case referred to in this report, established practice has not been followed by the public body in question.

The Joint Committee on Finance and the Public Service had given much consideration to this case over an extended period of time which has included extensive contacts with the then Chairman of the Revenue Commissioners, the then Ombudsman and the then Minister for Finance. The matter was also brought to the attention of the then Taoiseach and the then Tánaiste. However, the matter remained unresolved and Joint Committee on Finance and the Public Service in the 29th Dáil considered that the only remaining course of action open to it is to report its concerns to the Houses.

The Joint Committee on Finance, Public Expenditure and Reform agreed at its meeting of 18 July 2012 to publish the report of the Joint Committee on Finance and the Public Service in the 29th Dáil



Alex White T.D.
Chairman
July 2012

1. THE ROLE OF THE OMBUDSMAN

- 1.1 The Ombudsman Act, 1980 established the Office of Ombudsman. The Ombudsman is impartial and independent and investigates complaints against Government Departments and Offices, Local Authorities, the Health Service Executive and An Post.
- 1.2 Most complaints are finalised following an informal examination but if it is not possible to resolve a complaint informally, the Ombudsman may decide to undertake a formal investigation of the matter. If, at the end of this process, the complaint is found to be justified the Ombudsman will make recommendations to resolve it.
- 1.3 The Ombudsman is empowered to make recommendations only; the Ombudsman's findings are not legally binding. In most instances a public body will comply with the Ombudsman's recommendations. However, where the public body concerned fails to act on the Ombudsman's recommendations the Ombudsman may present a special report to the Houses of the Oireachtas on the matter.

2. BACKGROUND TO THE COMMITTEE'S CONCERNS

- 2.1 In June 2003, through correspondence forwarded by the Public Accounts Committee, the Joint Committee on Finance and the Public Service became aware of a case involving an individual taxpayer and his dealings with the Ombudsman and the Revenue Commissioners.
- 2.2 It is not the intention of the Committee to report on the specific details of this case, relating as they do to the tax affairs of an individual. In essence, the key facts of the case are as follows –
 - Following a complaint by a member of the public, the Ombudsman commenced a formal investigation into the Revenue Commissioners' dealings with the individual concerned. The Ombudsman concluded that the individual *'had been adversely affected by the improper, unfair and unsound actions of the Revenue Commissioners'* and recommended that *'they take specified measures to mitigate the adverse affect of their action'*.
 - The Ombudsman assessed the redress he considered appropriate and recommended the payment of €612,616 to the individual.
 - The Revenue Commissioners rejected this recommendation.
 - Subsequently, the Revenue Commissioners offered the significantly reduced sum of €300,000 which was acceptable to the Ombudsman.
 - The Revenue Commissioners accepted that compensation was due in this case, which is supported by documentation which accompanied the payment to the individual concerned.
- 2.3 The then Joint Committee on Finance and the Public Service had a concern to ensure that the principle of acceptance by a public body of a recommendation of the Ombudsman should be upheld including, as in this case, the payment of compensation for 'maladministration'. The matter is **not** about the tax affairs of an individual and the Committee wishes to stress that it would never intervene in the tax affairs of any person

- 2.4 The concerns of Joint Committee on Finance and Public Service (noted in 2.3 above) in regard to the principle of acceptance by a public body of the recommendation of the Ombudsman are shared by the current Joint Committee on Finance, Public Expenditure and Reform as the Joint Committee notes that in November 2002, the then Ombudsman, Mr. Kevin Murphy, submitted a special report to each House of the Oireachtas under Sections 6(5) and 6(7) of the Ombudsman Act, 1980. This was the first time, since the inception of the Ombudsman's Office where the recommendation of the Ombudsman, following the completion of a formal investigation by that Office, had **not** been fully implemented by a public body. The report: *Redress for Taxpayers* concerned the actions of the Revenue Commissioners relating to two issues:
- (i) time limits on retrospective refunds of tax wrongly collected and
 - (ii) compensation for loss in value where tax refunds are made in cases where the overpayments of tax were the result of maladministration.
- 2.5 The Joint Committee on Finance, Public Expenditure and Reform further note that in 2009 the current Ombudsman, Ms. Emily O'Reilly, issued, under Sections 6(5) and 6(7) of the Ombudsman Act, 1980, the second ever special report to each House of the Oireachtas. This related to the Department of Agriculture, Food and Fisheries and the Lost at Sea Scheme.

Further, the Joint Committee on Finance, Public Expenditure and Reform note that in the 2011 Annual Report of the Ombudsman, published June 2012, the Ombudsman noted *"I have to report to the Houses of the Oireachtas that the Department of Health has failed to comply with the recommendation I made in my investigation of the Mobility Allowance case ... the then Secretary General wrote to say that his department had accepted this recommendation and intended "to act on it within six months as recommended". ... This has not happened and, at the time of writing, the Mobility Allowance scheme remains unchanged. This means that the scheme continues to include a condition which is contrary to the Equal Status Act.* In view of the foregoing examples, the Joint Committee is concerned that the principle of acceptance by a public body of the recommendation of the Ombudsman is being further eroded.

3. RECOMMENDATIONS

- 3.1 The Joint Committee is unanimously of the view that full redress should have been made in this case by the Revenue Commissioners to the taxpayer concerned.
- 3.2 The Joint Committee, in regard to the points raised at 2.4 & 2.5 above, calls on all public bodies to respect and implement in full the recommendations of the Ombudsman arising from formal investigations by that Office and if necessary legislation to give effect to this principle should be contemplated.

Appendix I

List of Members of the Joint Oireachtas Committee on Finance, Public Expenditure and Reform

Chairman:	Alex White (LAB)
Deputies:	Richard Boyd-Barrett (IND) Michael Creed (FG) Jim Daly (FG) Pearse Doherty (SF) Stephen Donnelly (IND) Timmy Dooley (FF)* Sean Fleming (FF) Joe Higgins (IND) Heather Humphreys (FG) Kevin Humphreys (LAB) Peter Mathews (FG) Pádraig Mac Lochlainn (SF)*** Mary Lou McDonald (SF) Michael McGrath (FF) Michael McNamara (LAB)** Olivia Mitchell (FG) Kieran O'Donnell (FG) Arthur Spring (LAB) Billy Timmins (FG) Liam Twomey (FG) (Vice-Chair)
Senators:	Sean D. Barrett (IND) Thomas Byrne (FF) Senator Paul Coghlan (FG)***** Michael D'Arcy (FG) Aideen Hayden (LAB) Tom Sheahan (FG)

Notes:

1. Deputies appointed to the Committee by order of the Dáil on 9 June 2011
2. Senators appointed to the Committee by order of the Seanad on 16 June 2011
3. *Deputy Timmy Dooley appointed on 21 June 2011 in place of Deputy Seán O'Feaighaíl
4. Deputy Alex White elected as Chairman on 23 June 2011
5. Deputy Liam Twomey elected as Vice Chairperson on 23 June 2011
6. **Deputy Michael McNamara appointed on 8 December 2011 in place of Deputy Thomas P. Broughan
7. ***Deputy Pádraig Mac Lochlainn appointed on 14 December 2011 in place of Deputy Jonathan O'Brien
8. *****Senator Denis O'Donovan appointed on 10 May 2012 in place of Senator Katherine Zappone
9. *****Senator Paul Coghlan appointed on 14 June 2012 in place of Senator Denis O'Donovan

APPENDIX II

Orders of Reference of the Joint Committee on Finance, Public Expenditure and Reform

a. Functions of the Committee – derived from Standing Orders [DSO 82A; SSO 70A]

- (1) The Select Committee shall consider and report to the Dáil on—
 - (a) such aspects of the expenditure, administration and policy of the relevant Government Department or Departments and associated public bodies as the Committee may select, and
 - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee may be joined with a Select Committee appointed by Seanad Éireann to form a Joint Committee for the purposes of the functions set out below, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3) Without prejudice to the generality of paragraph (1), the Select Committee shall consider, in respect of the relevant Department or Departments, such—
 - (a) Bills,
 - (b) proposals contained in any motion, including any motion within the meaning of Standing Order 164,
 - (c) Estimates for Public Services, and
 - (d) other mattersas shall be referred to the Select Committee by the Dáil, and
 - (e) Annual Output Statements, and
 - (f) such Value for Money and Policy Reviews as the Select Committee may select.
- (4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies, and report thereon to both Houses of the Oireachtas:
 - (a) matters of policy for which the Minister is officially responsible,
 - (b) public affairs administered by the Department,
 - (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,

- (d) Government policy in respect of bodies under the aegis of the Department,
 - (e) policy issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
 - (f) the general scheme or draft heads of any Bill published by the Minister,
 - (g) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
 - (h) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
 - (i) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in paragraph (4)(d) and (e) and the overall operational results, statements of strategy and corporate plans of such bodies, and
 - (j) such other matters as may be referred to it by the Dáil and/or Seanad from time to time.
- (5) Without prejudice to the generality of paragraph (1), the Joint Committee shall consider, in respect of the relevant Department or Departments—
- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 105, including the compliance of such acts with the principle of subsidiarity,
 - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
 - (c) non-legislative documents published by any EU institution in relation to EU policy matters, and
 - (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- (6) A sub-Committee stands established in respect of each Department within the remit of the Select Committee to consider the matters outlined in paragraph (3), and the following arrangements apply to such sub-Committees:
- (a) the matters outlined in paragraph (3) which require referral to the Select Committee by the Dáil may be referred directly to such sub-Committees, and
 - (b) each such sub-Committee has the powers defined in Standing Order 83(1) and (2) and may report directly to the Dáil, including by way of Message under Standing Order 87.

- (7) The Chairman of the Joint Committee, who shall be a member of Dáil Éireann, shall also be the Chairman of the Select Committee and of any sub-Committee or Committees standing established in respect of the Select Committee.
- (8) The following may attend meetings of the Select or Joint Committee, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
 - (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
 - (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (c) at the invitation of the Committee, other Members of the European Parliament.

b. Scope and Context of Activities of Committees (as derived from Standing Orders [DSO 82; SSO 70])

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders.
- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 26. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.
- (4) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Dáil Standing Order 163 and/or the Comptroller and Auditor General (Amendment) Act 1993.
- (5) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
 - (a) a member of the Government or a Minister of State, or
 - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.