



Office of the Ombudsman
Oifig an Ombudsman

Public Service Oversight and Petitions Committee

Annual Report 2014 & Own Initiative Investigation Learning to Get Better

30 September 2015

Chairman, Members

I very much appreciate the opportunity to appear before you again. The two topics I am addressing today are my 2014 Annual Report and the own initiative investigation report Learning to Get Better.

My Office has provided members with copies of the reports. You have also been provided with an information pack which was distributed to private nursing homes in recent weeks, a matter which I will return to later.

Annual Report 2014

30th Anniversary

2014 was the 30th anniversary of the Office of the Ombudsman and it was marked by a conference co-hosted by my Office and the IPA which was attended by a range of Irish and international speakers led by Mr Brendan Howlin, Minister for Public Expenditure and Reform. My staff, old and new, were delighted to receive a warm welcome at a special reception given by President Higgins at Áras an Uachtarán in recognition of the Office's work.

Casebook

I strongly believe that complaints are not always a negative thing but something that we can all learn from and use to improve our services to the public. As part of my objective to 'share the learning' from complaints, I issued my first Ombudsman's Casebook in September 2014. The Casebook contains summaries of cases my Office has dealt with and is aimed at public bodies to learn, both from the good practice and the mistakes of others. The Casebook is issued in electronic format on a quarterly basis. Over 2,500 public sector officials, public representatives and representative organisations are now subscribed to the Casebook. The first four issues contain summaries of over 200



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cases. The reaction I have received from public representatives and public bodies has been extremely positive.

As well as offering a useful perspective to service providers, it helps my Office to be alert to any developing trends where there are clusters of complaints which might suggest systemic problems which need to be addressed. I would urge all public service providers to take steps to aggregate any information they have about things which have not gone well, whether they learn about them through complaints they have dealt with themselves, through the work of my Office, through whistle-blowers or through their own monitoring so that they can unearth any trends and take action appropriately to address them.

Statistics

I would now like to give you a general overview of the statistical picture for 2014, a year in which the total number of complaints received by my Office was 3,535 compared to 3,190 in 2013. This is an increase of 11% and considerably higher than the average for the previous 10 years (2,872).

In 2014, 60% of cases were closed within 3 months and 91% were closed within 12 months. Before complainants bring complaints to my Office they must take “reasonable steps” to resolve their complaint with the public body concerned. In a number of cases (1,407 in 2014) my Office provided advice and assistance to those who made their complaint ‘prematurely’ to us and usually redirected them back to the local service, inviting them to come back to us if the case was not resolved at that level.

The Civil Service, which includes the Department of Social Protection, is the largest source of complaints (at 41.3% compared to 46.5% in 2013), followed by Local Authorities (25.5% compared to 27.5%) and the HSE (19.7% compared to 17.3%). This is broadly consistent with the volume of interactions that these bodies have with service users.

Excluding ‘premature’ complaints, 25% of cases were fully or partially upheld, assistance was provided in 21% of cases, 42% were not upheld and 12% were either discontinued or withdrawn. In 46% of cases members of the public directly benefitted from contacting the Office but even where complaints are not upheld, we are often able to provide an explanation or reassurance.

Of the 1,459 complaints made against the Civil Service, 898 were against the Department of Social Protection, 196 against the Revenue Commissioners, 155 against



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the Department of Agriculture, Food and the Marine, and 58 against the Department of Justice and Equality.

93 of the 900 Local Authority complaints were against Dublin City Council, 60 were against Limerick City and County Council, 58 against both Cork County and Galway County Councils, and 52 against Wicklow County Council.

262 of the 698 complaints against the HSE were against hospitals. 164 involved medical or GP cards.

A total of 467 complaints were received about the public bodies which came within my jurisdiction in May 2013 following the enactment of the 2012 Act. These include publically funded-third level education bodies such as universities and institutes of technology. 89 complaints were received against Student Universal Support Ireland (SUSI) and we have worked closely with SUSI to resolve many of these complaints.

Engagement with Tusla

While much of our day to day work is spent trying to satisfactorily resolve individual complaints it is when we identify systemic weaknesses and resolve them that my Office can make a real and lasting impact in improving our public administration. We strive to do this in a spirit of cooperation with the reviewable agencies under my remit. I find that when we show an agency examples of cases where poor administration has led directly to considerable adverse affect on complainants this is quite persuasive in getting them to buy in to suggestions and recommendations for procedural improvements. Our engagement with Tusla during 2014 is a good example.

Prior to the setting up of Tusla in January 2014, my Office had received a number of complaints about the way social workers handled historic allegations of abuse. The role of the social worker is to carry out an initial assessment by talking to the alleged victim and then, in line with fair procedure, to the person against whom allegations have been made. If the allegations are considered to be credible, then social workers will ask the person not to have unsupervised contact with any child until the assessment has been completed. The social workers are also required to let the parents of the child or children who are potentially at risk know about the allegations so that they can take appropriate steps to protect them. Once a comprehensive assessment has taken place, the social workers will be in a better position to determine whether there may be any ongoing risk to children. This is what is provided for in the Children First Guidelines.

The complaints which my Office received primarily related to social workers not following fair procedure or natural justice in their interactions with the complainants. In



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some instances, the complainants had not been given a full account of the allegations made against them, they were not allowed have a support person attend with them when being interviewed, and information about the unproven allegations were disclosed to others without the complainant being afforded any avenue of appeal. While the protection of children must be a priority for social workers in accordance with their statutory role, adults against whom allegations have been made must be afforded due process.

My staff had a number of constructive meetings with Tusla to highlight the issues arising from these complaints and to see whether steps could be taken to ensure fairness and consistency in the handling of retrospective allegations of abuse against adults. I was pleased that Tusla issued new guidelines for social workers effective from September 2014. Training was provided for social workers regarding the implementation of these new guidelines. I am hopeful that the new guidelines and the training will help to ensure that adults who are the subject of abuse allegations are treated more fairly while maintaining the key focus which is child protection.

Mobility Allowance and Motorised Transport Grant Schemes

This Committee is familiar with the background to the decision of the Department of Health to discontinue the Mobility Allowance (MA) and Motorised Transport Grant (MTG) schemes to new applicants and the subsequent developments arising from that decision.

In 2013 the Government decided to introduce a new statutory transport support scheme for disabled persons with mobility needs. I am aware that Mr Jim Breslin, the Secretary General of the Department of Health came before the Committee last week to discuss the matter and I have read the transcript of his appearance. I share this Committee's concerns about the long delay in having this matter resolved and that at this stage it is still not entirely clear what precise shape or form the new statutory scheme will take. I do acknowledge that trying to move from the two previous administrative schemes to a unified statutory scheme with clear eligibility criteria in an area of such complexity and sensitivity poses a significant challenge. There is the further complication as to how the 4,700 individuals who continue to receive payment under the previous mobility scheme should be treated when the transition is made to the statutory scheme. I am conscious of the fact that the new scheme and heads of Bill are in draft form and it is currently subject to detailed legal examination to be followed consultations with other relevant Departments, in particular the Department of Social Protection. The legislative process will no doubt involve close scrutiny and review of the proposed scheme as the Bill goes through its various stages. As Ombudsman I have to let the legislative process take its



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course and it would not be appropriate for me to suggest particular outcomes other than to say once again that the matter such be treated with the urgency it demands and I also want to express the wish that whatever scheme which emerges that it will be clear, objective, fair and transparent.

Extension of Remit over Private Nursing Homes

Since taking up Office in December 2013 I have highlighted a number of gaps in my jurisdiction which I felt needed to be addressed. I flagged in my 2014 Annual Report that one of my concerns was a lack of remit over private nursing homes. As members will be aware my Office has been taking complaints against public nursing homes for many years and also complaints from residents in private nursing homes who were occupying publicly contracted beds. I pointed out that this was an anomaly. Thankfully this matter has now been resolved.

The 2012 Amendment Act enables the Minister for Public Expenditure and Reform to declare by Ministerial Order that an entity should become a reviewable agency if that entity is publicly financed wholly or partly, directly or indirectly. The Minister used that power for the first time in recent months when he issued SI 300 of 2015 which declared private nursing homes to be reviewable agencies. Almost all private nursing homes get public funding through the Fair Deal scheme which enabled the Minister to issue the SI. This means that any resident of a private nursing home, or persons acting on their behalf, can complain to my Office. I can only deal with complaints regarding actions which occur on or after 24 August 2015.

There are almost four hundred and thirty private nursing homes throughout the country with over 22,000 residents. The SI prevents me from looking at complaints against private nursing homes where the action complained of relates solely to a clinical judgement decision. As you know, this replicates a similar exclusion which applies in the case of public nursing homes and hospitals. I should say that I have argued that this constraint should be removed and I understand that the Minister for Health is undertaking a review of this matter in consultation with the Department of Public Expenditure and Reform and other interested parties. The Northern Ireland Ombudsman, the UK Parliamentary Ombudsman and many other Ombudsman Offices have unfettered jurisdiction in the area of clinical judgement.

Private nursing homes operate their own local complaints systems under a statutory framework as set out in SI 415 of 2013. However, in an effort to promote best practice and a consistent approach to local complaint handling my Office has rolled out a model complaints system for private nursing homes. This system underpins and complements



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the statutory framework. My Office has recently run briefing sessions for private nursing homes throughout the country to explain the role of my Office and how the model complaints system should operate. I plan to roll out the model in other sectors over time. Members will have received the information pack which we have provided to private nursing homes and this includes the model complaints document as well as a specially produced guidance document on the provision of redress and the Ombudsman's Guide to Good Administration.

I should mention that in the lead up to the extension of remit and in the period since my Office has had positive engagement with Nursing Homes Ireland which represents the vast majority of private nursing homes.

Direct Provision

Members are already aware of the backdrop to the restriction imposed on my Office as regards complaints against the Department of Justice and Equality insofar as they relate to actions taken in the administration of the law relating to immigration or naturalisation. I have already publicly welcomed this Committee's comprehensive report on the direct provision system which was published in May of this year and which included a recommendation that my Office be granted unfettered jurisdiction in this area. As you know, the Department of Justice and Equality set up a Working Group on the Protection Process and the Direct Provision System under the chairmanship of Mr Justice Bryan McMahon. I met with Justice McMahon, along with the Ombudsman for Children and senior officials from both our offices. We also made a joint submission to the Working Group. The Working Group reported in June of this year and made around 170 recommendations including a recommendation that the two Ombudsman Offices should have remit over complaints relating to services provided to residents of direct provision centres, including transfer decisions following a breach of the House Rules governing such centres. I thank the Committee for its support on this matter. I intend engaging directly with the Department in the near future to discuss its position on the recommendations which have been made regarding my Office's remit.



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Overview of Some Cases

I now want to touch briefly on some of the individual cases outlined in the Annual Report.

Hospital contacts wrong woman for medical procedure (see page 37, section 4.2)

Beaumont Hospital telephoned a woman to attend the hospital for a lumbar puncture. The woman was surprised as she had no prior involvement with Beaumont Hospital but had recently attended another hospital. Immediately prior to the procedure, and as a result of persistent questioning from the woman, the hospital agreed to check its files and discovered that the wrong patient had been contacted. The correct patient shared the same name and year of birth as the woman. Following the woman's complaint the hospital took steps to ensure the same mistake would not reoccur. The hospital delivered additional training to all staff and changed its procedures to ensure that a three point identification reference is carried out prior to future medical procedures.

Department accepts man was habitually resident and pays disability arrears of €79,468 (see page 41, section 4.7)

In order to qualify for certain social welfare payments, such as disability allowance, the person must be 'habitually resident' in Ireland. Factors taken into account when deciding if someone is 'habitually resident' include having a 'right to reside' in the State, the length of time in Ireland and the general nature of the residence.

In one case a man, with a congenital arm condition, had his application for Disability Allowance refused by the Department of Social Protection as he was not considered habitually resident. My Office established that the man's family, including his mother, brothers and sisters were living with him in Ireland; that he was in employment in Ireland for nearly a year and that his wife had recently moved to Ireland to be with him. In light of this the Social Welfare Appeals Office reviewed its decision and awarded weekly disability allowance to the man and an arrears payment of €79,468.



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Student Grant scheme changed after complaint (see page 45, section 4.13)

I received a complaint on behalf of a third level student in relation to her application for funding from SUSI. The woman had been fostered as a child and up until the time of her 18th birthday, she was in receipt of a Fostering Allowance, which was a qualifying payment under the Student Grant Scheme 2013 enabling her to receive funding from SUSI. When the woman reached 18, she was no longer eligible for the Foster Allowance but she received an After Care Allowance. However, the After Care Allowance was not a qualifying payment under the Student Grant Scheme and therefore the student did not receive a grant from SUSI.

Following the complaint to the Ombudsman, the Student Grant Appeals Board recommended to the Department of Education and Skills that the After Care Allowance be included as a qualifying payment in the Student Grant Scheme 2014. The recommendation was accepted and the After Care Allowance is a qualifying payment from 2014 onwards.



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Learning to Get Better

At the end of May, I published Learning to Get Better – an investigation into how public hospitals handle complaints.

This was the first 'own initiative' investigation undertaken by my Office since it was established over 30 years ago. It was in response to the fact that complaints to my Office about healthcare represent 20% of all complaints received. This is very low compared with other jurisdictions such as Northern Ireland (over 60% investigated) and the UK Parliamentary and Health Services Ombudsman (80%). I wanted to find out why this was.

The investigation was the most extensive investigation carried out by my Office and involved surveys of all public hospitals, site visits to a sample of hospitals (including a maternity hospital and mental health facility), interviews with front line and senior hospital staff, focus groups with members of the public and consultations with regulators, health sector and advocacy groups.

The investigation discovered that many users of hospital services:

- are afraid to complain because of possible repercussions for their own or their loved one's treatment
- do not believe anything would change as a result of complaining
- find it difficult to discover how to complain and are not aware of the support available to help them to do so (including the right to come to my Office).
- are frustrated at delays, incomplete answers and failure to provide proper apologies.
- As a result, I made a number of recommendations, which were accepted in full by the HSE. In particular, I have asked that the HSE and each hospital put a robust complaints system in place to ensure that
 - it is easy for people to complain
 - people have access to an effective independent advocacy service
 - there is a single, consistent complaints system
 - the most serious complaints are investigated independently

I understand that the HSE is currently developing an action plan in order to implement the recommendations and I am in ongoing discussions with the HSE about this. I intend to monitor progress on implementation over the coming months and year.

Thank you, I am happy to take questions from Members.

ENDS