

**Presentation by Peter Tyndall, Ombudsman
to the
Joint Oireachtas Committee on Public Service Oversight and Petitions**

4 June 2014

Chairman and Members

Thank you for your invitation to appear here today to discuss the 2013 Annual Report of the Office of the Ombudsman. It is an important occasion for me personally as it is my first Annual Report since taking up the post late last year. 2013 was also a very important year for the Office as it marked the significant extension of the Office's remit following the enactment of the Ombudsman (Amendment) Act 2012. As well as providing you with an overview of my Annual Report, I would also like to take this opportunity to mention some ongoing issues and to share with you again some of my vision for the future of the Office.

2013 Annual Report

Members will be aware that I published the Annual Report last Wednesday. Much of the activity reported on related to complaints examined during Emily O'Reilly's final year as Ombudsman before she was appointed European Ombudsman. I want to take this opportunity to again commend Emily for her work as Ombudsman during her ten year period in office.

Activity

The Office received 3,190 complaints in 2013. The largest number of complaints involved the Department of Social Protection (491). The Office received 203 complaints against the Department of Agriculture, Food and the Marine, and 68 against the Revenue Commissioners. Complaints in relation to local authorities amounted to 495, with 310 complaints against the HSE.

Nearly 200 additional public bodies came under the Office's remit in May 2013. The Office received 150 complaints in 2013 involving those 'new'

bodies. 105 complaints were in connection with third level education. 69 of these complaints were about SUSI, Student Universal Support Ireland.

Looking at the overall complaint pattern, 47% of complaints related to the Civil Service, 27% to Local Authorities, 17.3% to the HSE and 5.8% to third level education bodies. The balance was made up of a number of miscellaneous bodies. This pattern broadly reflects the trends of recent years. However, at my press conference last week I did express my surprise in relation to the relatively low levels of complaints against the HSE, in particular, complaints about the care and treatment of users of the health service. More than half of the complaints I receive about the health service are to do with financial matters, medical cards, in-patient charges and so on. Compared to Ombudsmen in other countries, I receive a very small number of complaints about care issues and this is something I intend to focus on in the coming months.

In addition to dealing with individual complaints, staff from the Office dealt with nearly 11,600 enquiries from members of the public and provided assistance by helping to signpost them to an appropriate body or by offering advice on how to resolve matters at a local level.

Significant Cases Resolved in 2013

Chapter Four of my Report gives a flavour of some of the complaints upheld by the Office during 2013. I would like to give you a broad outline of some of these cases.

The first case I want to consider saw a hospital apologise to a family for the poor treatment of a woman prior to her death

A woman's two daughters complained about the care and treatment their mother received from St. Vincent's University Hospital, Elm Park, Dublin. Their mother was admitted to A&E in 2007 where she underwent an x-ray for chest pain and shortness of breath. The x-ray showed evidence of a mass on her lung and a CT scan was recommended. However, this did not happen and the woman was never advised that this was required. She instead received

care for her cardiac condition only. The woman returned to hospital in early 2008 and was advised of the oversight. At that stage her cancer was advanced and she died later that year of lung cancer.

My office commissioned independent expert clinical advice. The advice said that the form of cancer the woman had would not have been amenable to treatment even if she had been diagnosed earlier. An earlier diagnosis would, however, have given the woman greater time to come to terms with the diagnosis and to settle her affairs. The hospital CEO apologised in person for the shortcomings associated with many aspects of the woman's care. The hospital also put measures in place to ensure the same situation did not recur. (See section 4.5, page 42)

The next case is particularly relevant at the moment. It led to the State Examinations Commission providing assistance to a student at short notice

The State Examinations Commission turned down a young man's application for a 'reader' to sit his Leaving Certificate examinations. (A 'reader' is a person who assists a visually impaired student with reading the exam paper). While the information provided by the school in support of the student's application for a 'reader' was not entirely satisfactory, the Ombudsman found that the State Examinations Commission should have requested the additional information required to make its decision. The State Examinations Commission agreed and a 'reader' was made available for the student in time for the start of his exams. (See section 4.8, page 46)

A further case saw a woman incorrectly refused Invalidity Pension twice by the Department of Social Protection

The woman's Invalidity Pension claim and appeal were refused on the basis of insufficient credit contributions for 2003. On examination of the Department's files, the Ombudsman discovered that a medical certificate submitted for a period in 2003 had not been included in the woman's contribution records. The Department agreed to re-examine the woman's claim. However, this claim was also refused. The woman complained about

this decision to my Office and subsequently received arrears totalling €91,496. (See section 4.1, page 37)

The final individual case I wish to consider saw a Council imposing a time limit for local residency contrary to regulations

Laois County Council refused a woman's social housing application because she had not lived within the Council area for a period of six months or longer. The period of six months was not set out in any legislation and was not included in the Council's Housing Allocation Scheme. Following advice provided by the Department of Environment, Community and Local Government to the Ombudsman, the Council accepted that the woman had a right to be assessed for social housing and her application was backdated to the original date of application. (See section 4.4, page 41)

I want to speak now about the Mobility Allowance and Motorised Transport Grants Schemes

Members of this Committee will be familiar with the special reports which Emily O'Reilly 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 the eligibility criteria. The former Ombudsman appeared before you to discuss her dealings with the Department going back to 2009 when she first brought these issues to the Department's attention. You also met with Ministers and with the Secretary General and senior officials from his Department.

In Feb 2013 both schemes were suspended for new entrants and a review group established to look at alternatives to the schemes. In June 2013 the Government announced that new statutory provisions would be introduced in relation to financial supports for disabled persons with mobility needs. The Government established an inter-departmental group, chaired by the Department of the Taoiseach, to develop proposals for a new scheme.

The final outcome of that work is awaited and the precise timescale for its completion is unclear to me at present. I very much hope that this work will be

concluded as soon as possible. I understand that Dr McLoughlin is scheduled to appear before you early next month to give you an update on the matter.

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. It is my view that a report on the matter from this Committee would ensure that there is learning for public bodies and that future recommendations from the Ombudsman will not be rejected.

I should mention that following the completion of my Office's investigation into the administration of the Motorised Transport Grant scheme in Donegal, 17 individual complaints from the Donegal area were open in my Office regarding the refusal of the Grant. These applications had been refused on medical grounds because the applicants were not considered to have *a severe disability* which made them eligible for the Grant, or were refused on the grounds that the applicants were not in employment and did not show "exceptional circumstances" to warrant the Grant in other circumstances. In line with one of the investigation recommendations, the HSE agreed to review all these cases. The final outcome of the HSE review was that the HSE decided to overturn its original decision in 9 of the 17 cases, approving payment of the Grant. My Office was satisfied with these individual outcomes.

Discretionary Medical Cards

I am very conscious of the current controversy about decisions to grant or refuse *discretionary medical cards* and the recent decision of the HSE to suspend the review of such cards. I think it may be helpful to make a few remarks on the matter from my perspective as Ombudsman and in light of my Office's experience of dealing with recent individual complaints. Any member of the public who is adversely affected by a decision about a medical card can come to my Office after they have first taken the matter up with the HSE. At present my Office is examining 40 such complaints. It is important to say also that my Office has had several discussions with the HSE and the Primary Care Reimbursement Service over the last two years leading to some improved practice in various aspects of the process.

No doubt members of the Committee will already be aware of the rules governing medical card eligibility. Under the Health Act 1970, persons who are unable, without undue hardship, to arrange GP services for themselves and their families can qualify for a medical card, having regard to their overall financial situation and

reasonable expenditure. The Health Service Executive assesses applications in accordance with the Health Act and also by reference to its medical card national assessment guidelines. "Undue hardship" is, therefore, ascertained through an assessment of financial means.

Needless to say, as Ombudsman, I examine complaints on a case by case basis having regard to the legislation and the guidelines. I also have regard to the principles of good administration and fair procedure when looking at such cases. A number of procedural issues have emerged from my Office's examination of individual cases and some of these have been resolved.

A key issue for my Office concerned cases of people who were above the national income guidelines and had received cards in the past. The people concerned were recently refused a card although there had been no change in their circumstances. However, when we sought to consider the reasons for the differing assessments, the files explaining the original decisions to award the cards were no longer available, and it was impossible therefore to understand how the original decisions had been arrived at.

Another administrative failing which was identified by my Office was the lack of detailed explanations by the Medical Officer when refusing an application on hardship grounds. The Medical Officer in these cases would typically tick a box to show their decision on the HSE files. Consequently, in some cases there was no information on the file to show what had been considered by the Medical Officer and how the assessment had been carried out. This often left members of the public with no medical card and no understanding of why they were refused.

Section 4.6.3 (Relevant Factors in Assessing Hardship) of the Medical Card/ GP Visit Card National Assessment Guidelines states:

"A decision should only be taken after a sufficient and reasoned assessment of all the circumstances of an individual case to include the nature and extent of personal, medical or social circumstances of the applicant and/or his/ her family. "

Following my Office's intervention, I can inform the Committee that the HSE agreed to provide the reasons for the Medical Officer's decision on all subsequent cases processed.

In some cases, medical cards had very long expiry dates, i.e. 2025, but the cards were withdrawn following a periodic review of applicants. Similarly some cards

with relatively short expiry dates of 2-3 years were reviewed before they expired. For example, this occurred with the over 70s medical card scheme when the income limits were reduced.

My Office asked the HSE to review the expiry date issue with a view to informing applicants that any medical card approval is subject to periodic review and, continued entitlement is conditional on successful approval following any such review. The HSE has agreed to inform applicants that the expiry date on the medical card does not automatically grant entitlement until that date.

One particular complaint related to the medical card/long term illness system (LTI) within the HSE and it highlighted a systemic issue. The complainant had a long term illness and as such he was entitled to medication and aids and appliances to deal with his illness for free. When he reached 70, the HSE issued him with a medical card which covered all his medication and GP visits. However, when the prescription charge was introduced, he was charged 50c for every item on his prescription (which increased to €1.50). Following my Office's intervention the HSE agreed that this was incorrect and changes to the administration of the LTI Scheme came into effect from 1 December 2013. A circular was issued to all pharmacists to advise that those people with LTI books could use their LTI eligibility to access their approved medication. Furthermore, the HSE is undertaking a general scoping exercise to identify persons similarly affected with a view to arranging refunds in appropriate cases.

In broad terms and in the interests of good administration all decisions should be thoroughly documented and be seen to be in accordance with the legislation and the guidelines. Any exercise of discretion in favour of or against an individual applicant should be fully and openly recorded and be seen to accord with the facts of the case. Any such decision should be fully explained to the applicant in writing including rights of appeal open to them and their right of appeal to the Ombudsman.

My Vision for the Future of the Ombudsman's Office

This year the Office is celebrating its 30th anniversary. It is perhaps a fitting time to stand back and reflect on how else the Office can serve the citizen and improve standards of public administration. There are a number of areas where I believe there is potential for improvement in public administration in this country. These include the extension of the Ombudsman's jurisdiction to include public services provided by private bodies and in particular, the opportunities offered by the

European Directive on Alternative Dispute Resolution. I have also spoken with you previously about the benefits of adopting a standardised approach to complaint handling across the public sector, the development of a single portal for complaints, and the benefits of affording the Office constitutional status.

In April 2013 the European Council adopted two key legislative measures regarding dispute resolution. One was a directive on alternative dispute resolution (ADR). The aim is to offer consumers fast and cost-effective means to resolve disputes with businesses. I believe this Directive offers an opportunity for Ireland to ensure that it has a *public services* ombudsman, and not a *public sector* ombudsman. With so many services being provided by private companies or bodies in the independent sector (for example, waste services and water services), we have an increasingly complex *public service* landscape, but I believe we can and should have simplified access to redress regardless of who the service provider is. I believe it is also important to reconsider those aspects of publicly provided services which are not in my jurisdiction, for example the area of asylum, and consider further extensions in the future.

Often, complaints considered by my Office about the services provided by public bodies have been compounded by very poor complaint handling. People face delays, a lack of information, incomplete answers, defensive attitudes and no effective redress. Widely varying approaches to complaint handling abound, with no obvious rationale for the differences. Introducing a standard approach to complaint handling across the public sector, setting out clear timescales, standards for responses, a common approach to redress and above all, a focus on tackling most dissatisfaction at the time it arises, can bring real dividends.

I want to work with Government, with this Committee and with public service providers to introduce a model complaints policy to be used across all public services in Ireland. This has the potential to lead to greatly improved complaint handling. It means that a single investigation can address complaints across multiple providers. It allows for standardised complaint training for staff of all public service providers. It gives complainants certainty about what they should expect. A model system would be streamlined and based on an “Investigate Once, Investigate Well” approach. It would eliminate multiple stage processes which create work and delay resolution.

Making it easy for people to complain is essential if we are to improve public services. I want people to be told as soon as they complain to any public service provider about their right to complain to the Ombudsman if they remain

dissatisfied. I want them to be able to complain in a way which they find convenient, in a language they are comfortable with and in a medium which suits them, whether that is in a letter, filling in a form by hand or on-line, on the phone or in person. As social media, smart phones and tablets are now common; we need to facilitate their use in contacting the Office, while not neglecting the interests of those who prefer more traditional means. A standardised public sector complaint process would also make it easier for the agencies within jurisdiction with no need to reinvent the wheel and ready access to validated training modules, for example.

The complex pattern of public service delivery can also serve to confuse people who want to complain. They are not always sure where they should go and how they should make a complaint. If you take the case of Irish Water as an example, they have contracted local authorities to undertake work on their behalf, such as fitting water meters, and they in turn use contractors. If a contractor damages the gas supply while fitting the meter, as happened in a recent case brought to my Office, who should you complain to? Water services were traditionally within my jurisdiction, *Irish Water* however is not.

One way to address this confusion for members of the public who do not know who to complain to is to provide a single portal for all public sector complaints. The website www.healthcomplaints.ie which was developed by my Office in partnership with other bodies is a useful building block towards a telephone and online service which can signpost people who want to make a complaint about any public service, or capture that complaint and send it on their behalf. Already, my Office signposts many complainants to the appropriate agency or to another Ombudsman. Extending this service would cost money, and would need to be funded, but it is an idea we plan to explore for the future.

Recent events have highlighted the importance of Ombudsman institutions being accountable to the Oireachtas. One way to secure this would be for the Ombudsman to become a constitutional Office, in the same way as the Comptroller and Auditor General. At the moment, the Ombudsman is appointed by the President on the recommendation of the Oireachtas and has access to this Committee. Public confidence in oversight institutions is enhanced when they are clearly independent of the bodies in their jurisdiction. Constitutional status would serve to reinforce the independence of the Office and offer a further reassurance to members of the public that their complaint will be dealt with properly on its merits, and that the people making disputed decisions will not themselves be able to dictate or influence the outcome.

Finally, the future relationship between my Office and this Committee is all important. My predecessor Emily O'Reilly repeatedly stressed the importance she attached to the role of this Committee as a forum for honest and open debate on issues relating to public administration in Ireland highlighted by the Ombudsman. I very much concur with her view and I look forward to maintaining my Office's high level of engagement with this Committee.

Thank you for your patience and attention and I welcome any questions you may have.

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