



The Ombudsman's CASEBOOK

Office of the Ombudsman, Dublin, Ireland.

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Learning from Local Authority Complaints

Welcome to a special 'local authority' edition of The Ombudsman's Casebook. Through the quarterly Casebook I make summaries of many cases my Office deals with available to public service providers in Ireland so that opportunities for learning are maximised.

Around 25% of complaints received by my Office are about local authority services. This is no great surprise given the range of services local authorities provide. The areas of complaint cover the full range of local government activity.

By circulating these cases among those in the local authority sector I hope that local authorities will think about ways they might improve the delivery of the many services they deliver to the public. I hope you find it helpful in our shared goal of improving services for the people that we serve. If you or a colleague want to receive the electronic edition of The Ombudsman's Casebook every quarter then simply e mail casebook@ombudsman.ie.

I want to avoid the need for complainants to come to my Office by tackling the causes of complaints and by ensuring that complaints are well handled locally. When complaints come to my Office, and where there is evidence that all has not gone as it should, I try to ensure that complaints are resolved to the satisfaction of both parties. This avoids the need for formal examination or investigation. I'm grateful to you for responding promptly to my Office when we ask for information, and for engag-



Ombudsman Peter Tyndall

ing constructively in efforts to achieve resolution.

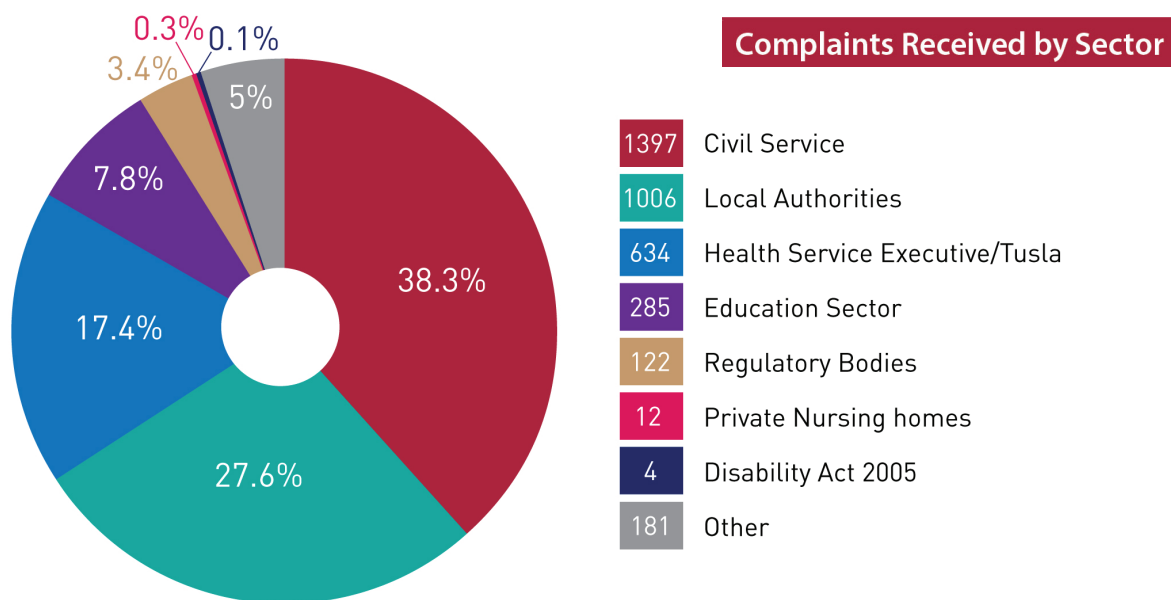
Finally, I am working to ensure that there is a standard approach to managing and categorising complaints across the sector, to ensure that learning is maximised through the development of comparable statistics and that training can be developed at a national level for all staff dealing with complaints. I have published a 'Model Complaints Policy' to this end which is available on my Office's website www.ombudsman.ie.

Hard copies are available on request by e mailing: ombudsman@ombudsman.ie

Peter Tyndall, Ombudsman

2015 Annual Report - Local Authorities

The statistics below give an overview of the work the Ombudsman handled with regard to local authorities in 2015.



Local Authority - Complaints Received in 2015		
Housing		546
	<i>Allocations and Transfers</i>	430
	<i>Repairs</i>	79
	<i>Rents</i>	18
	<i>Loans and Grants</i>	10
	<i>Sales</i>	9
Planning		218
	<i>Enforcement</i>	113
	<i>Administration</i>	105
Roads/Traffic		86
Motor Tax & Driver Licence		11
Provision of Service		11
Sewerage & Drainage		10
Water Supply		9
Acquisition of land/rights		8
Parks/Open Spaces		6
Waste Disposal		5
Rates		5
No Reply to Correspondence / Delay		4
Miscellaneous		87
Total		1006

Local Authority - Complaints Received and Completed in 2015

	Received	Completed							
		Upheld	Partially Upheld	Assistance Provided	Discontinued/ Withdrawn	Discontinued Premature	Not Upheld	Outside Remit	Total
Carlow County Council	3	0	0	0	0	1	2	0	3
Cavan County Council	9	5	0	1	0	2	2	0	10
Clare County Council	44	6	2	7	6	7	12	3	43
Cork City Council	61	15	0	8	2	18	13	2	58
Cork County Council	78	10	0	10	4	20	23	5	72
Donegal County Council	37	1	1	6	3	10	10	5	36
Dublin City Council	134	9	2	23	17	29	47	5	132
Dún Laoghaire-Rathdown County Council	39	5	1	1	3	9	17	2	38
Fingal County Council	33	8	0	4	3	3	9	3	30
Galway City Council	48	12	0	8	3	12	11	3	49
Galway County Council	42	13	1	1	6	8	12	2	43
Kerry County Council	46	5	0	6	3	11	10	1	36
Kildare County Council	47	9	1	6	5	9	16	0	46
Kilkenny County Council	10	1	0	1	1	3	1	1	8
Laois County Council	19	1	0	2	2	8	6	1	20
Leitrim County Council	6	1	0	1	0	2	2	0	6
Limerick City & County	56	6	0	4	4	24	15	3	56
Longford County Council	10	2	0	0	0	4	3	0	9
Louth County Council	31	8	0	6	3	3	9	2	31
Mayo County Council	28	6	0	7	0	6	7	0	26
Meath County Council	21	0	0	4	4	4	3	2	17
Monaghan County Council	9	0	0	0	1	3	4	0	8
Offaly County Council	16	1	0	3	1	6	3	0	14
Roscommon County Council	13	1	0	4	0	0	6	1	12
Sligo County Council	12	3	1	1	1	4	2	0	12
South Dublin County Council	28	7	0	5	2	5	6	2	27
Tipperary County Council	26	6	0	5	4	3	6	2	26
Waterford City & County	23	1	0	3	0	7	9	2	22
Westmeath County Council	12	3	0	3	0	1	3	1	11
Wexford County Council	28	5	0	4	5	8	8	0	30
Wicklow County Council	37	5	0	3	1	6	15	2	32
Total	1006	155	9	137	84	236	292	50	963

Housing

Housing

Dublin City Council

L12/13/1715

Completed 16/10/2014

Upheld

Background

The Ombudsman received a complaint from a retired couple who had rented an apartment under the Rental Accommodation Scheme (RAS) to a tenant nominated by Dublin City Council. One of the conditions of the Tenancy Agreement was that “where the outgoing tenant has caused damage to the property which goes beyond fair wear and tear, the Housing Authority agrees to reimburse the landlord of the proper and reasonable costs incurred by the landlord in reinstating the property, up to a maximum of one month’s rent under the Tenancy Agreement”.

After four years of tenancy, the couple sought the return of the apartment. They discovered that there had been considerable superficial damage caused to the property. In addition furniture had been removed.

Examination

The Council refused to compensate the couple for the damage/losses. They were advised that it was their responsibility to chase up the tenant for the missing items. In addition, the Council said that they had been negligent in their management of the apartment because they had not visited it during the four year term of the tenancy.

However, the couple had made efforts to inspect the apartment over the tenancy period. On each occasion the tenant did not allow them access to the property. The Ombudsman did not consider it reasonable for the complainants to have to pursue the tenant for the missing items as they did not have a forwarding address for him. The Ombudsman examined the Council’s original and final inspection reports on the property and the tenant’s previous tenancy history, as well as complaints which the Council had received from other residents about activity in the apartment. The Ombudsman was satisfied that the bulk of the responsibility for the events which unfolded in this particular case lay with the Council, given that they had selected, and approved, the tenant.

Outcome

The Council offered the couple an ex-gratia payment of €700 in full and final settlement of the complaint. As this equated to one month’s rent under the Tenancy Agreement, the Ombudsman considered the offer to be reasonable. The couple agreed and accepted the Council’s offer.

Housing

Limerick City Council

L27/14/0076

Completed 24/11/2014

Partially Upheld

Background

A Council tenant complained that Limerick City Council had not responded to her complaint in relation to rubbish and vermin in derelict houses adjacent to her property. The area where the woman lived was one of the four Regeneration Areas in Limerick.

The issues being complained of concerned two specific areas, the Council's Housing Maintenance area and the Limerick Regeneration Office. Because of this there was a delay in contact being made with the woman and this resulted in her making a complaint to the Ombudsman.

Examination

As a result of the Ombudsman's examination, the derelict properties that are Council owned have been cleared of rubbish and baited for the vermin problem. In addition the woman's own house has been listed for a thermal upgrade and repairs have been carried out to make it more comfortable in the short term. The derelict houses are included for major refurbishment in the regeneration master plan and have been fenced off for security reasons. The Council have engaged with the woman not only regarding proposals for her own property but also as regards possible re-housing.

Outcome

The Ombudsman partially upheld the woman's complaint as there were delays in dealing with her as a result of two areas being involved and an apparent lack of communication between both.

Housing

Mayo County Council

L34/13/1782

Completed 16/10/2014

Assistance Provided

Background

Mayo County Council refused to carry out works on a woman's house, which she said was cold and in need of insulation. The Council advised her that technical staff reported on the matter and were satisfied that the house in question was structurally sound and fit for

purpose, and that no emergency works were required. Under the circumstances, the Council did not intend to carry out works at that time.

Examination

The Ombudsman reviewed the report prepared on the woman's house by the Council's Site Technician. The report said that the house was in excellent condition and that no emergency works were required. However, it made a number of recommendations for home improvement which appeared to address the concerns raised by the woman with regard to heating and insulation.

The Ombudsman wrote to the Council in June 2014 regarding the recommendations of the report. In its response, the Council said that it did not have funding to carry out these works at present. The Department of the Environment made funding available for planned maintenance work of this nature for 2014 but the dwelling in question was not included.

Outcome

However, the Council said that it will make every effort to have the works required carried out in 2015.

Housing

Wicklow County Council

L57/14/0519

Completed 06/11/2014

Upheld

Background

A woman complained after receiving a €20,000 grant from Wicklow County Council under the Housing Adaptation Grant. She complained as she later found out that the grant for house adaptations was €30,000 for all Irish citizens with a disability. She was informed by the Council that it capped the Housing Adaptation Grant at €20,000.

Examination

The Council stated that it decided to cap the grants so that more people could benefit from the limited allocation it received for the Grant.

Outcome

The Ombudsman contacted the Department of Environment, Heritage and Local Government for clarification on the issue of capping housing adaptation grants. The Department stated that it had instructed the Council to review the woman's application for the Grant as the Council could have been misinterpreting the regulations governing these grants, which did not give Councils the discretion to cap the €30,000 amount. The Department also stated that a notification would be issued to all Local Authorities to ensure

full compliance with the relevant regulations in this area. The woman was subsequently awarded the full €30,000 amount. While the Ombudsman fully understood the customer focussed motivation behind the decision to cap the amount of the grant, the Council did not have the authority to vary the conditions of a grant scheme provided for in legislation. As the woman was paid the full amount of the grant the complaint was upheld.

Housing

Laois County Council

L24/14/0338

Completed 18/09/2014

Assistance Provided

Background

A man's application for Social Housing Support was refused by his local Council on the grounds that he did not have fifty two weeks employment in Ireland.

Examination

The Office sought guidance from the Department of the Environment, Community and Local Government on the Council's interpretation of the relevant Housing Circular. In response, the Department clarified that the circular does not require EEA nationals seeking Social Housing Support who are temporarily unable to work due to illness / accident to have worked for 52 weeks. The Department explained that the 52 weeks requirement applies in cases where an applicant is recorded as involuntarily unemployed. It explained that it is a matter for the local authority to decide whether an applicant meets the provisions of the Circular having regard to the particular circumstances of the case. Such circumstances may involve the consideration of whether the absence from work was from an illness from which, if properly treated, the individual could recover.

Outcome

The Ombudsman put the Department's position to the Council which said that if the applicant gave it more detailed medical evidence in support of his application for Social Housing, it would review his earlier application for Social Housing Support with effect from the original application date. The Ombudsman considered this to be a reasonable response by the Council.

Housing

Limerick City Council

L27/13/1683

Completed 23/12/2014

Not Upheld

Background

A woman complained that there was a delay by Limerick City and County Council in providing her with a house. It was the woman's view that because she had previously been a Council tenant that her case was special and deserving of preferential treatment. The woman also stated that the Council had made a mistake when it calculated her rent as it assessed her son's income when he was not living with her. As a result she was in rent arrears.

Examination

Once the information about the woman's son was given to the Council and verified, the Council recalculated her rent and credited her rent account. There were however arrears outstanding from when the woman had surrendered her previous tenancy with the Council. The woman had entered into agreements with the Council in respect of these rent arrears. The Ombudsman decided that this arrangement was reasonable and did not uphold the woman's complaint about these earlier arrears.

Outcome

As regards the woman's wish to be rehoused, the areas that she had stated a preference for were areas where there was a significant demand. These areas also have a very low turnover so the Council could not say when housing would become available. It was not in a position to buy or build properties in these areas so was completely dependent on tenancy turnover. The Council has told the woman that she will continue to be considered for housing when a suitable vacancy arises along with other eligible people.

Housing

Limerick City/County Council

L27/13/1543

Completed 27/02/2015

Not Upheld

Background

A woman complained that she felt she had been unfairly treated in relation to her application for a housing transfer on medical grounds and that she was dissatisfied with the service that she received from Limerick City and County Council. Following a visit from a Housing Welfare Officer the woman was considered for a transfer on medical grounds and was subsequently offered a transfer which she refused. In the absence of a further offer of a transfer the woman subsequently surrendered her existing tenancy as she considered it no longer suitable.

Examination

The Ombudsman considered that, as the offer of a transfer had regard to the woman's medical needs i.e. ground floor and no steps, it was a reasonable offer of alternative accommodation. As the basis for the complaint against the Council was also that the woman was dissatisfied with the service that she had received, the Ombudsman had regard to the woman's interaction with the Council and the service that was provided.

Outcome

The woman had two previous tenancies with the Council and had surrendered both. The tenancy that she had surrendered after she refused the transfer was her third tenancy. The Council had continued to facilitate and assist the woman in terms of her housing needs after the surrender of these tenancies. The Council was aware of the deteriorating health of the woman and the problems associated with accessing her current accommodation. It offered a suitable property and it was the woman's choice to refuse it. This is allowed for in the relevant housing regulations. The Council was trying to source alternative appropriate accommodation up until the time the woman surrendered her third tenancy, however, there was none available. There was no evidence that she was treated other than in accordance with the Council's Housing Allocation Scheme and as a result the Ombudsman could not uphold her complaint.

Housing

Fingal County Council

L60/14/0825

Completed 01/05/2015

Upheld

Background

An elderly woman was awarded a grant of €56,000 by Fingal County Council under the Housing Aid for Older People Grant Scheme. The woman engaged a builder to carry out the works. She told the Council she was not happy with the quality of some of the work completed. Subsequently, the Council released €42,000 of the grant money directly to the builder, rather than to the woman.

Examination

The Ombudsman's examination was confined to the interactions the woman had with the Council. The actions of her builder are not within the Ombudsman's remit. This is because she had a private contract with the builder.

In relation to the release of the funds to the builder, the Council said that there appeared to have been some confusion at the time as to whether or not the woman was available to receive her post. It indicated that she may have cancelled her post for a period. In these circumstances, the Council permitted the builder to collect five cheques and to deliver them to the lady, at her home. The Council emphasised that the five cheques were made payable to the woman and, as far as it was aware, the individual cheques were endorsed by her. This was disputed by the woman.

From an examination of the Council's file, it was noted that the woman was on holidays but returned to her home nine days before the Council released the five cheques to the builder.

Outcome

The Ombudsman took the view that any arrangement which the woman had regarding delivery of her post while she was on holidays was a matter for herself. It was not a matter in which the Council should have become involved, unless there were compelling reasons for doing so. The Ombudsman did not see any valid reason for the Council's release of the five cheques to the builder without the woman's specific authorisation, particularly in the absence of a certification from her that the works were completed to her satisfaction.

Following contact from the Ombudsman, the Council offered the woman €7,500. It also confirmed that, in future, it will only release grant payments to applicants, unless otherwise instructed by an applicant.

The woman accepted the Council's offer. The Ombudsman felt the Council's offer was reasonable and appropriate as he felt it would allow the woman to make good the remaining repairs to her home.

Housing

Kerry County Council

L18/14/1343

Completed 08/05/2015

Not Upheld

Background

A woman applied for social housing to her local county council in 2007. In 2015 she complained to the Ombudsman that she had not been provided with the social housing she had applied for. The Ombudsman established that at the time the woman made her initial application there was an issue as regards guardianship of two of her children and the Council had sought clarification from the woman on this issue, so it could establish the most appropriate accommodation to suit the woman's requirements. However this clarification was not provided and the application did not proceed further.

Examination

In 2008, the woman applied again for social housing. However at this time and until 2010, the woman informed the Council that it was her intention to return home to her country of origin. Subsequently the woman was visited by Council staff and her housing needs were established. The Council informed the woman that it did not have any housing stock in any of her preferred areas and that it considered the Rent Accommodation Scheme was the best option. On two separate occasions the woman obtained private rented accommodation and requested her landlord to consider the RAS. One landlord had no interest in the scheme and while the other landlord was interested he was unwilling to bring the property up to the required standard for the RAS scheme.

Outcome

Council staff had met with the woman on a number of occasions and documentation provided to the Ombudsman indicated that there had been delays on both sides. On the substantive matter of the woman's housing application, the Ombudsman was satisfied that the Council had acted reasonably and so he did not uphold the woman's complaint. Section 52 of the Children and Family Relationships Act 2015 was subsequently enacted on 18 January 2016.

Housing

South Dublin County Council

L59/15/0165

Completed 09/04/2015

Upheld

Background

A woman complained that the Council had failed to notify her that she was required to submit a joint application to purchase her home under the 1995 Tenant Purchase Scheme. The woman had submitted an application in her own name but as her husband's name was on the tenancy the Council required a joint application. However, she complained that she was not notified of this requirement by the Council until after the closing date for the scheme had passed.

Examination & Outcome

The Ombudsman pointed out to the Council that it had failed to notify the tenants in writing of the requirement to submit a joint application despite the tenants complying with all other requirements made of them. Nor did the Council notify them of the termination of the 1995 scheme until after the final deadline had passed. The Council agreed to review its handling of this case. It subsequently advised the Ombudsman that it was not in a position to accept any further applications under the 1995 Scheme. However it agreed, if and where an Incremental or other Tenant Purchase Scheme is introduced by the Minister for the Environment within the next two years for which the tenants are eligible, the valuation of their house would be the 2012 valuation applied to the property under the 1995 scheme. As the Ombudsman was satisfied that the woman would at that stage have the opportunity to buy her house at the same price she would have paid under the previous scheme, he closed the case.

Housing

Cork City

L07/15/0407

Completed 04/08/2015

Not Upheld

Background

A woman complained about not being rehoused by Cork City Council following the sale of the property, which had been allocated to her by the Council under the Rental Accommodation Scheme (RAS).

Examination

In these circumstances, the Council would normally find new accommodation for a tenant under RAS. However, in this case, the woman had significant rent arrears. A condition of RAS is that there should be no rent arrears in a previous tenancy particularly in a social housing tenancy. The Council said it had tried to help the woman to maintain her tenancy over a number of years. It repeatedly told her that she would not get further offers of social housing, if she went into rent arrears.

Outcome

The Ombudsman was satisfied that the Council had acted in accordance with the RAS conditions.

Housing

Cork City Council

L07/15/1418

Completed 12/06/2015

Upheld

Background

The Ombudsman received a complaint from a woman against Cork City Council. The woman is confined to a wheelchair. She contacted the Council in 2007 about repairs to her house. However, despite repeated requests to have various repairs carried out, the Council failed to carry out the repairs. The woman had also given the Council many reports about her medical conditions and how the state of disrepair of the house exacerbated her condition.

Examination

The report from the Council confirmed that it had carried out some repairs over the years to the house. It engaged a Consulting Engineer to inspect the house and to

make recommendations. The Council also confirmed that it would carry out all of the recommendations in the Consulting Engineer's report.

Outcome

The Ombudsman was satisfied that the Council agreed to carry out all the recommendations in the report. The woman subsequently contacted the Ombudsman and confirmed that the Council had called to her house and agreed to carry out the works.

Housing

Donegal County Council

L10/14/1249

Completed 23/07/2015

Not Upheld

Background

A couple applied to Donegal County Council for a transfer to move in with their uncle. The uncle is elderly and has specific accommodation requirements due to ill health.

The uncle lives in an old cottage with a very small kitchen and three small bedrooms. The couple currently live adjacent to their uncle with their two children.

Examination

The Council said that, if the transfer was allowed, it would lead to overcrowding which would make the living situation of the couple, their two children and their uncle worse than it currently is. While the Council empathised with the situation, for this reason, it refused the transfer request.

Outcome

As the Council had acted in accordance with the terms and conditions of the policy in relation to the number of bedrooms required for social housing support, the Ombudsman did not uphold the complaint.

Housing

Kildare County Council

L20/15/2438

Completed 20/08/2015

Upheld

Background

A woman complained about the delay in receiving social housing from Kildare County Council. She said that she had been on the Council housing list since 2006 without receiving a housing offer. Her family had been forced to move from their private rented

accommodation to a different town. She said she is a single parent of two children who were suffering emotionally because of the lack a permanent home.

Examination

The Council accepted that the woman had been on the housing list for a long time. It said that there were people waiting even longer because of the shortage of suitable units and the number of applicants seeking accommodation. However, as she had moved to a new location, the Council reassessed her circumstances. It recommended the family for a new voluntary housing scheme which was due to become available in her desired location.

Outcome

The woman accepted the offer of a three-bedroom house from the voluntary housing association.

Housing

Kildare County Council

L20/14/0624

Completed 22/06/2015

Assistance Provided

Background

The Ombudsman received a complaint from a tenant of Kildare County Council who was seeking a Housing Adaptation Grant. The grant was for the provision of (1) soundproofing for her daughter's bedroom, and (2) a shower room. Her daughter suffers from narcolepsy, a condition marked by a tendency to suddenly fall asleep.

Examination

The Council approved the works required. However, while the Council was considering the proposed works, the woman requested a housing transfer rather than a grant. The Council informed the woman that a transfer to another house would not address her family's housing requirements. It also explained that it did not have alternative housing stock that would cater for the family's specific housing requirements. The woman was advised to keep in regular contact with the Council and to inform it of any changes in her circumstances or requirements.

Outcome

The Ombudsman considered that the Council was acting reasonably in seeking to resolve the complainant's particular housing needs.

Housing

Kildare County Council

L20/14/1210

Completed 08/09/2015

Upheld

Background

A man complained about being removed from Kildare County Council's approved housing list in 2013. He was approved for social housing in 2008 but was removed from the approved housing list in 2013 as he had not replied to correspondence from the Council.

Examination

The man had provided proof to the Council that he was having difficulties in receiving his post. The Ombudsman felt there was a doubt that the man received the Council's letter informing him he would be removed from the housing list.

Under the Assessment of Housing Needs, councils are expected to check that if an applicant is no longer in need of social housing if they fail to reply to a letter informing them they are being removed from the list. The Ombudsman felt the Council had made insufficient enquiries to justify its decision to remove the man from the housing list.

Outcome

The Council agreed to include the man on its housing list with effect from his original application date, June 2008.

Housing

Laois County Council

L24/14/0690

Completed 08/10/2015

Not Upheld

Background

A man complained that Laois County Council refused to put him on its social housing waiting list. The man is 30 years of age and lives with his parents and his sister in the family home.

Examination

The Council told the Ombudsman that under the relevant Regulations (S.I. 84 of 2011) the principal way in which a housing authority determines whether there is a need for social housing is to assess a household's accommodation and the household circumstances.

There are certain circumstances that it must take into account including whether there is overcrowding and whether the existing accommodation is fit for human habitation. The

regulations do not state an age at which an individual living at home with his parents is considered to be independent of them for housing purposes. The Council considered that the complainant's accommodation is adequate and that he did not provide independent evidence of any special circumstances as to why this accommodation is not suitable for him.

Outcome

The Ombudsman considered that the Council was correct in its interpretation of both the Regulations and of the man's circumstances and for these reasons he did not uphold the complaint.

Housing

Laois County Council

L24/14/1949

Completed 19/11/2015

Assistance Provided

Background

A woman complained about the Council's decision not to include her on its housing list as she did not meet the requirements of a Department of Environment, Heritage & Local Government (Department) Circular. The Circular provides that EEU nationals must have a record of 52 weeks employment in Ireland or be currently employed/ self-employed in order to be eligible for social housing..

Examination

The Ombudsman requested further evidence from the woman in relation to her business and asked the Council to review the matter. The Council accepted that the woman was self-employed based on this further evidence. However, it stated that she would have to submit a statement of her average weekly income to ensure that she was under the income limits to be eligible for social housing.

Outcome

The Ombudsman informed the woman that she would be accepted onto the housing list once she satisfied the Council that her means were under these income limits.

Housing

Limerick City and County Council

L27/15/3205

Completed 21/10/2015

Not Upheld

Background

A couple complained after Limerick City and County Council refused their application for social housing because they owned accommodation in their country of origin.

Examination

The couple maintained that one of their parents lived in the property and it was not an option for them to sell it. The Ombudsman examined Article 22 of the Social Housing Assessment Regulations 2011, which states:

A household shall be ineligible for social housing support if it has alternative accommodation that the household could reasonably be expected to use to meet its housing need, either by occupying it or by selling the accommodation and using the proceeds to secure suitable accommodation for the household's adequate housing.

Outcome

The Ombudsman was satisfied that the Council's decision was correct.

Housing

Dublin City Council

L12/14/1617

Completed 22/12/2015

Upheld

Background

A woman took out a Shared Ownership loan with the Council in December 2008 but later her account fell into arrears. She asked the Council how her mortgage protection payments were calculated and about changes in the opening and closing balances on her account. Under the Shared Ownership Scheme the cost of mortgage protection is built into a person's mortgage repayments and covers the mortgage portion only and not their rental payments. The Council said its financial system was designed to ensure a borrower would own their property at the end of their payment period.

Examination

The Ombudsman asked the Council to set out the position on the woman's account if the payments were made in a different sequence to confirm whether or not she had suffered financially. He established that the sequence in which the system allocated payments meant that the woman did not benefit from Tax Relief at Source (TRS) that she was entitled to.

Outcome

The Council confirmed that the woman should have received TRS on her loan of €1,689.51 and agreed to reduce her arrears accordingly.

Housing

L10/14/1534

Completed 15/10/2014

Upheld

Background

A couple who were members of the travelling community complained that Donegal County Council refused to give them a bay on a halting site, which they had been living on for a number of months. The man had lived on the halting site since he was young. The couple had previously lived in private rented accommodation, but found it very hard to cope with living in a house without their family support. The Council told the couple that the site was temporary and may be closed in the future.

Examination

When the Ombudsman explained the situation to the Council, it agreed to review the couple's request for a bay on the halting site.

Outcome

The Council provided the couple with a bay on the halting site. In this particular case, the Council also agreed to provide the couple with a mobile home.

Planning

Planning

Donegal County Council

L10/13/1058

Completed 19/09/2014

Not Upheld

Background

A man complained to the Ombudsman about a Council's delay in pursuing enforcement action against a developer to bring about the completion of the complainant's estate. The man listed a number of items that had not been completed by the developer. The man also said that the Council would not meet with residents on a regular basis to update them on the Court action it was taking.

Examination

The Ombudsman examined the matter and found that the Council had taken enforcement action against the developer in a reasonable timeframe. Although there were delays in dealing with the matter this was because the Courts adjourned the case to allow the developer opportunities to carry out works in the estate. In the circumstances, the Ombudsman could not fault the Council for the length of time it was taking to finish the estate.

The Ombudsman also noted that the Council had held occasional meetings with residents and provided them with updates regarding the Court action it was taking.

Outcome

The Ombudsman found that there were long delays in informing residents of the outcome of Court appearances in writing. The Ombudsman asked the Council to provide future updates to residents in a reasonable timeframe. The Council agreed to do this.

Planning

Galway County Council

L16/14/0340

Completed 03/09/2014

Not Upheld

Background

A woman complained that a Council had not enforced a Court Order that required her neighbour to demolish a housing unit built in the neighbour's back garden without planning permission. At the time it tried to enforce the Court Order, the owner of the housing unit

was 92 years old and in a nursing home. The landowner did not demolish the housing unit, so the Council's next move would be to take legal action to make him do so. It decided not to do this because, in its view, such action would not succeed. The woman complained about this decision.

Outcome

This Office took the view that in the particular circumstances of this case, the Council's position was reasonable.

Planning

Laois County Council

L24/14/0617

Completed 15/09/2014

Not Upheld

Background

A man wrote to the Ombudsman complaining that a County Council had not taken proper enforcement action against a neighbour. The neighbour had built a house in the wrong position on a site that was immediately opposite the entrance of the man's property.

Examination

On receipt of the complaint, the Council had issued a warning letter to the developer. The developer outlined to the Council that he was willing to submit a Retention Application to regularise the matter and following further inspections on the property, then went ahead and applied to retain the development. The Council then granted permission for the retention, which the complainant subsequently appealed to An Bord Pleanala. Permission to retain the development was then granted by An Bord Pleanala.

Outcome

The Ombudsman did not uphold the complaint as it was reasonable for the Council not to take enforcement action while the developer was working to resolve and regularise a development.

Planning

Wicklow Town Council

L58/13/1480

Completed 20/11/2014

Upheld

Background

A man made a complaint about the failure of Wicklow Town Council to take action against

a developer whose development he claimed was not in compliance with planning permission. He also claimed that the boundary wall was dangerous.

The Town Council was of the opinion that the boundary wall was the responsibility of Wicklow County Council rather than it. The relevant official had been on extended leave. When she returned she advised that Wicklow Town Council had responsibility for dangerous structures in its own area. As they had no-one qualified to examine the alleged dangerous structure it delayed dealing with this matter. It had identified various defects in the development and had sought proposals from the developer about fixing them.

Examination

During the examination of this complaint, Wicklow Town Council was abolished and its functions transferred to Wicklow County Council. It sought a report from the developer about the alleged dangerous wall which was to be prepared by a structural engineer acceptable to the Council. This report concluded that the wall was safe and that no remedial action was required. The Council's senior engineer reviewed both reports and inspected the wall himself. He concluded that the wall is safe and that no further action needs to be taken.

Outcome

The Ombudsman upheld the complaint against Wicklow Town Council as there was undue delay in its dealing with the complaint. Because of the Ombudsman examining this case, the Council identified the additional deficiencies in the development which resulted in the developer submitting a new planning application for retention. As a result, the complainant has had another opportunity to object and will have a right of appeal to An Bord Pleanála in the event that permission is granted. The Ombudsman also acknowledged that since Wicklow County Council took over from the Town Council that it had dealt with matters promptly.

Planning

Clare County Council

L05/13/0938

Completed 13/02/2015

Not Upheld

Background

A man complained about the delay by the Council in pursuing enforcement action against a developer. The man said the developer had not completed all works on his housing estate. The man was also not happy that the Council had not taken the estate in charge. Furthermore, the man said the water mains were not completed to a minimum standard and a stop/yield sign at the entrance to his estate was not erected as per one of the conditions of the planning permission.

Examination & Outcome

The Ombudsman was satisfied that the estate did not meet the minimum criteria to have it

taken in charge given the outstanding works that were required. The Ombudsman also found that the Council's decision not to complete the works itself until the outcome of enforcement proceedings against the developer through the Courts had been concluded, was reasonable in the circumstances, i.e. exhausting all avenues open to it to secure completion of the estate.

In relation to the water mains, the Council supplied a report from the Fire Officer explaining that the flows were sufficient for fire-fighting purposes in domestic dwellings. It said it also repaired some leaks in the estate. The Council also explained that the general low water pressure in the area was due to a lack of upgrade works to the existing infrastructure. As factors outside the Council's control were causing the poor water pressure the Ombudsman did not uphold this part of the complaint.

The Council said that the erection of the stop sign was being pursued under the enforcement notice. However, the Ombudsman requested that it review the situation with a view to erecting the sign on safety grounds. The Council agreed and installed the stop sign.

Planning

Cork City Council

L07/13/1212

Completed 04/12/2014

Assistance Provided

Background

A man complained to the Ombudsman about the delay by the Council in taking enforcement action against a nightclub in relation to a failure to comply with planning permission. The man said that noise from the nightclub kept him up all night and he could not understand why the Council was not enforcing the planning conditions in relation to noise mitigation measures.

Examination

The Council had initially issued the nightclub with a warning letter. As the club had engaged with the Council regarding the outstanding works it decided not to continue with enforcement action. The Ombudsman was of the view that the Council's position was reasonable. Furthermore, the nightclub completed all but one of the outstanding works.

Outcome

The outstanding work related to providing acoustic lobbies that would serve the purpose of reducing noise from the premises. There was a delay by the developer in completing these works. However, the Council said that it would resume enforcement action if the developer did not complete the works within a specified period of time. The Ombudsman advised the man that he could come back to the Ombudsman if there were further undue delays in dealing with the matter.

Planning

Limerick City/County Council

L27/14/0202

Completed 08/12/2014

Not Upheld

Background

A woman wrote to the Ombudsman complaining Limerick Council in relation to planning enforcement and noise nuisance connected with wind turbines which were located near her home.

Examination

The Council's file showed that an independent consultancy company had been hired to carry out a review of the noise levels from the wind turbines. This report concluded that the noise levels were satisfactory and were within required guidelines. Based on this report the Council decided not to pursue the case any further and enforcement action was closed.

Outcome

The Ombudsman did not uphold the complaint as he found that there was no breach of the legislation by the Council in their actions.

Planning

Roscommon County Council

L42/13/1247

Completed 05/12/2014

Not Upheld

Background

A man sold land to the Council and one of the conditions of the sale was that it would construct a boundary wall for him. The man said that the construction of the wall was carried out under the Rural Social Scheme and was mostly unsupervised by the Council. The man also contended that the wall was structurally unsound and the Council's proposed plans to repair it were unacceptable.

Examination

The Ombudsman received conflicting reports from the Rural Social Scheme foreman and the Council's area engineer in relation to the level of supervision of the wall during its construction. It was not possible for the Ombudsman to reach a determination about supervision. However, the Council's practice of not keeping site inspection records for projects of this nature was not in line with best administrative practice. The Ombudsman requested the Council to review its procedures in this regard.

Outcome

The man also provided a structural engineer's report in support of his contention that the wall was structurally unsound. However, the Council's engineers were of the view that the wall was structurally sound and fit for purpose. The issue related to a difference of technical opinion, taking the matter outside the scope of administrative function. The Ombudsman explained to the man that his role was confined to examining the reasonableness of the Council's response, rather than the technical merits of a particular opinion. As the Council was prepared to carry out cosmetic repair works to the wall following normal wear and tear, there was no further role for the Ombudsman and the case was closed.

Planning

Clare County Council

L05/14/0648)

Completed 26/05/2015

Not Upheld

Background

A man complained that a County Council had failed to enforce certain planning conditions on his neighbour and that this was having an adverse effect on him and his family. The man's main complaint was about a fence his neighbour had erected which he claimed was in excess of 2 metres and required planning permission. This fence was blocking the light into the complainant's home.

Examination & Outcome

The Council confirmed that the fence in question did not require planning permission as it was not higher than 2 metres and that therefore other issues such as the blockage of light were not subject to enforcement action by the Council. The difference between the height as assessed by the neighbour and the findings of the Council is accounted for by the fact that the neighbour's garden is at a slightly higher level than the complainant's that of his neighbour due to decking and gravel laid by the neighbour. This raised level is within limits acceptable to the Council. Some other issues raised by the Complaint such as the neighbour causing damp in his home were judged by the Council to be subject to redress under the civil law and outside its remit. The Ombudsman did not uphold the complaint.

Planning

Galway City Council

L15/15/0280

Completed 11/06/2015

Not Upheld

Background

A man complained to Galway City Council about its failure to take appropriate action on foot of an enforcement notice dated March 2014. The notice concerned an unauthorised wall and the provision of a bin storage area in a block of apartments.

Examination

The property owner had indicated that the works were carried out under a direction from a Fire Safety Officer to comply with a Fire Safety Certificate. Meetings were held between the owner and the Fire Safety Officer. However, no letter from the Fire Safety Officer confirming the request for the fire escape route was received by the Council.

The Council issued a further enforcement notice in February 2015. In April 2015, it instructed its solicitors to commence legal proceedings against the owner for failure to comply with the enforcement notice terms.

Outcome

The Ombudsman was satisfied that the Council was dealing with the matter in accordance with the Planning and Development Acts.

Planning

Skibbereen Town Council (abolished, now Cork County Council)

L09/14/0669

Completed 03/07/2015

Upheld

Background

A man complained that interest had not been paid by a local authority on refunded development charges. The charges in this case were levied on the developer to ensure the provision of sewerage facilities in line with the planning permission for a small housing development. The legislation requires the Council to invest such funds with any interest arising paid to the developer if the development for which planning permission was sought did not go ahead. In this case the housing development did not proceed. The Council repaid the charges to the developer but had not invested them so did not pay any interest.

Examination

The local authority initially told the Ombudsman that as there had not been an agreement between it and the complainant to invest the charges no investment had been made and there was no interest due. The Ombudsman told the authority that his interpretation of the relevant legislation was that the Council was obliged to arrange such an agreement. Because of its failure to do so the Ombudsman considered that the complainant's claim was justified.

Outcome

The authority accepted the Ombudsman's interpretation and agreed to pay interest in this and in all other such cases.

Planning

Tipperary County Council

L48/15/2556

Completed 05/10/2015

Not Upheld

Background

A man complained that a landfill carried out in a neighbouring field did not comply with the terms of the permit issued. He said there was an increased run-off of water into his property and there was inadequate drainage to cope with this. He wanted Tipperary County Council to enforce further measures to resolve the problem.

Examination

The Council's Planning Department declared that in-filling of this land constituted exempted development. The Council confirmed that waste authorisation was not required and it had issued a permit subject to a number of conditions.

The Council met the man to discuss his concerns. It also checked to ensure the work had been carried out in compliance with the permit and conducted a professional survey of the in-fill field before and after the operation. Its opinion was that the existing drainage was sufficient to cope with any run-off.

Outcome

The Ombudsman found that the Council had acted according to the relevant regulations and procedures and that the work complied with the terms of the permit.

Planning

Monaghan County Council

L38/15/3853

Completed 08/12/2015

Not Upheld

Background

A couple complained that Monaghan County Council was not enforcing compliance with a noise monitoring and reporting planning condition at a neighbouring shooting range. They wanted the Council to enforce this condition.

Examination

The Council's enforcement file showed that it had engaged with the owner of the shooting range over a number of years regarding compliance with the noise monitoring aspect of the planning conditions. The Council accepted that the owner had not always been fully compliant in terms of submitting quarterly noise monitoring reports. However correspondence showed that the Council had pursued the matter with him. Submitted reports showed that noise levels were within stipulated levels. The Council also conducted its own noise monitoring tests with results broadly in line with those submitted by the owner.

As the owner submitted a new planning application, which included seeking to have the noise monitoring condition amended, the Council did not proceed with enforcement action during the assessment of this planning application or the subsequent appeal. This was to ensure that enforcement action was appropriate and legally applicable. As an Bord Pleanála refused permission to amend the noise monitoring condition, the Council said enforcement action will be proceeded with against the owner to ensure full compliance.

Outcome

The case was not upheld. The Ombudsman found that the Council had acted in accordance with the relevant regulations and procedures.

Planning

Dun Laoghaire-Rathdown County Council

L61/14/1321

Completed 04/09/2015

Not Upheld

Background

A woman complained that Dun Laoghaire-Rathdown County Council had not enforced the relevant building regulations regarding the dividing wall that separated her house from that of her neighbour.

Examination

The Council said that it inspected her house and was satisfied that the wall construction complied with Part E the Building Regulations and that the wall is constructed of 9 inch solid blockwork and that enforcement action was not needed. The Council also pointed out that, as the woman's complaint was made five years after the completion of the buildings, the relevant regulations did not allow enforcement action.

The Ombudsman examined the Council's report and was satisfied that the actions of the Council in inspecting the wall concerned were reasonable and, therefore, that its conclusion that enforcement action was not needed was also reasonable. He examined the Regulations regarding the timing of action and was satisfied that the Council's interpretation that the time that had elapsed since the completion of the buildings meant that enforcement action could not be undertaken was reasonable

Outcome

For these reasons he did not uphold the complaint. However, the woman had also mentioned that the Council had failed to tell her of her right to appeal against its decision or of her right to complain to this Office. The Ombudsman therefore wrote to the Council to remind it of its obligations in relation to these issues.

Anti-Social Behaviour

Anti-Social Behaviour

Limerick City/County Council

L27/14/0180

Completed 12/01/2015

Not Upheld

Background

A woman complained about the delay or lack of action by Limerick City & County Council in changing an entrance to a housing estate that was being used by youths for anti-social activities.

Examination

The Ombudsman found that the Council was fully aware of, and had investigated, the woman's concerns. The Council stated that the entrance was a feature of the housing estate and any change to it would be an extreme response to the level of anti-social activity the woman had reported. The entrance had been built in accordance with planning permission and there would have to be consensus among the residents for any changes to it. This had not proved possible to achieve.

Outcome

The Ombudsman decided there was no administrative failing on the part of the Council.

Anti-Social Behaviour

Limerick City Council

L27/14/1087

Completed 02/03/2015

Not Upheld

Background

A man complained that he and his family had experienced ongoing problems of anti-social behaviour by a tenant of Limerick City & County Council (the Council) and that, although he had made several complaints, the Council had done nothing about the problem. He said that on one occasion he had written to the Council about the problem but received no reply.

Examination

It is not the Ombudsman's function to determine whether anti-social behaviour had occurred or not; the Ombudsman's function is to look at how the Council dealt with complaints of alleged anti-social behaviour and whether any investigations of such complaints were in compliance with relevant rules and policies.

Outcome

The Council gave details of four individual complaints alleging anti-social behaviour by his neighbour that the man had made to it. The report also detailed the Council's investigations into these complaints as well as the outcomes. The Ombudsman was satisfied that the Council's investigation of these complaints, which were conducted by its Tenancy Enforcement Officer as required under the relevant policy, were thorough and that the outcomes of these investigations were appropriate in the circumstances. The Ombudsman found that there was no basis on which he could make an adverse finding against the Council in relation to its handling of the complaints.

Dog Fine

Dog Fine

Cork City Council

L08/15/1193

Completed 22/12/2015

Assistance Provided

Background

A man was fined by Cork County Council following an allegation that a third party had been attacked by his dogs. He was contesting the fine in the District Court when he contacted the Ombudsman. The man complained that the Council had fined him without having first established the facts and there was no formal appeals procedure.

Examination

The Ombudsman established that the Council had a policy of fining dog owners following receipt of signed written statements about their dogs without investigating the complaints. He considered this unfair and asked the Council to review its policy.

Outcome

The Council confirmed that it had conducted an internal review and amended its protocol. This now provides that on receipt of a verbal or written complaint, the Dog Warden will contact both the complainant and the owner of the dog(s) to investigate the alleged incident. The Council discontinued the prosecution and the man was awarded costs.

Motor Tax & Drivers Licence

Drivers Licence

Clare County Council

L05/14/0017

Completed 06/11/2014

Partially Upheld

Background

A man had swapped his UK driving licence for an Irish Driving Licence in 1993 at Clare County Council. Both contained a number of higher categories. He lost this licence and in 2002 he applied on a duplicate licence application form for a replacement. He did not fill out the categories of licence he was seeking on the form and so a standard licence issued to him. He never noticed. He later moved to Limerick and got a replacement standard licence from Limerick County Council.

He again never noticed that the higher categories were missing. It was only in 2013 when he approached a driving instructor about lessons in HGV driving that he discovered that the higher categories were not on the licence. He wanted Clare County Council to reinstate the higher categories or to issue a letter to Limerick County Council advising that they should have been on the licence, so that he could have them reinstated on his current licence. Clare County Council refused to do so. He also said that the Council officials had failed to return telephone calls and that there had been an undue delay in issuing a decision to him.

Examination

The Council said that the original licence which was no longer available had only issued for three years, from 1993 -1996. A duplicate licence can only issue in respect of a current licence. As he had no licence for six years prior to applying for a replacement, a duplicate licence could not have issued to him in 2002. Because the details contained on the "duplicate" application form were similar to a renewal application form and contained all of the information required, the 2002 application had been treated as a renewal application and he had paid the fee of €25 instead of a duplicate fee of €5.08. The Council also pointed out that for the higher categories of licence to issue a medical report would have been required, which he hadn't provided. The Council acknowledged that there was a delay in issuing a decision due to the volume of work during that period because of the introduction of the Non-Use of Motor Vehicles Act, 2013 and people being on leave.

Outcome

He disputed that he had only had a three year licence in 1993 and claimed that the fact that they couldn't produce the application form meant that he was right. The national driver licence database contained details of the licence issued in 2003 and in fact had corroborated his contention that the 1993 licence had contained higher categories. Under the Regulations in place at the time, a three year licence could only issue to an applicant under 70 years of age if they requested it or if they had a medical condition which might progress to a stage where they could not drive and this did not apply to him. Therefore it was more likely that he had applied for a three year licence. There is an onus on applicants to read and complete applications for licences fully, to indicate what categories of licence they are seeking and to provide any medical reports etc. Furthermore, when a licence issues to an applicant the covering letter always advises them to check that the licence is correct. Had the complainant done so, it is possible that an amended licence could have issued at that time. The Ombudsman partially upheld the complaint in relation to the failure to respond to telephone calls and the delay in issuing a decision to him only.

Motor Tax

Kildare County Council

C08/15/2033

Completed 27/10/2015

Not Upheld

Background

A man complained about Kildare County Council refusing to refund him his motor tax. He said that he had mistakenly taxed his car as a private vehicle instead of taxing it as a commercial vehicle.

Examination

The Ombudsman found that that the man did not meet the conditions listed in the legislation to qualify for a refund. The guidelines issued by the Department of the Environment, Community and Local Government state that there is no provision for repayment when a vehicle is subsequently used solely for a purpose which would make it liable to road tax at a lower rate than was actually paid.

Outcome

The Ombudsman found that the Council applied the legislation and guidelines correctly.

Fire Service Charge

Fire Service Charge

Limerick City and County Council

L27/15/1340

Completed 06/07/2015

Not Upheld

Background

A man complained about Limerick City and County Council imposing a Fire Service Charge on him although he did not use the service. The Council rejected his application to have the charge waived or reduced.

The man was involved in a single-vehicle motor accident and a passing motorist called the Fire Services. The man was uninjured and had got out of his car unaided by the time the Fire Services arrived. They departed shortly afterwards. The man said that his insurance company would not pay the charge as the Fire Services had not provided any service.

Examination

The Council provided details of the duration of the Fire Services call-out and how the charge was calculated. It had offered the man a payment plan but not a reduction based on the information in his waiver application.

Outcome

In law, there is a basis for applying a charge to help fund the running of the Fire Services. The person calling the Fire Services does not have to benefit from the service.

Illegal Dumping

Illegal Dumping

Dublin City Council

L12/14/0488

Completed 28/11/2014

Not Upheld

Background

A woman complained about the failure of Dublin City Council (DCC) to take appropriate action in relation to illegal dumping in the North Inner City of Dublin where she lives..

Examination

In a report to the Ombudsman DCC outlined a number of measures it has taken in the area to tackle the problem of illegal dumping, including:

- * examining the contents of illegally dumped domestic waste bags, in order to try and identify the source of the activity
- * recently installed wheeled bins into its own properties and
- * had also secured agreement with a housing association to have communal bins installed into its properties.

Other measures included the installation of additional signage and the carrying out of multiple surveys of properties in the area to ascertain whether adequate arrangements were in place to dispose of domestic waste. The council said that the installation of CCTV in the woman's street will be considered based on the outcomes of the trial nearby. The Council told the Ombudsman that since September 2014 in excess of 100 fines relating to illegal dumping had been issued to individuals in the woman's immediate area.

Outcome

Based on his examination, the Ombudsman was satisfied that DCC had, and was continuing to address the problem of illegal dumping in the area in question. While acknowledging the woman's dissatisfaction with the situation, the Ombudsman could not conclude that the Council had not taken reasonable measures to deal with the problem of illegal dumping. The Ombudsman noted that the North Inner City Litter Action Group (NICLAG) had been set up and tasked with identifying the causes/sources of illegal dumping and littering in the area and also with implementing actions to "bring about a gradual and consistent improvement in the situation". The Ombudsman considered that measures that had been, and which are to be introduced by DCC are positive developments which would assist NICLAG in achieving these objectives.

Illegal Dumping

Cork County Council

L08/14/2235

Completed 23/11/2015

Assistance Provided

Background

A man complained that Cork County Council failed to respond to reports of illegal dumping in his neighbourhood.

Examination

The Council had inspected the site four times in a 15 month period. It also spoke to landowners and issued Notices under the Waste Management Acts to two different landowners. Following this, there was a significant improvement in the situation locally.

Outcome

The Ombudsman was satisfied that the Council responded reasonably, and that it acted in accordance with the governing legislation.

Non-Principal Private Residence

Non-Principal Private Residence (NPPR)

Wexford County Council

L55/14/1328

Completed 25/02/2016

Not Upheld

Background

A man complained that Wexford County Council had deducted money he owed in respect of Non-Principal Private Residence charges from refunds he was due in relation to water charges and development levies. He also complained that some of the deductions were in respect of a limited company that had gone into liquidation for which he said he was not liable.

Examination

The Council told the Ombudsman that under the relevant Regulations it could deduct any money owed by the complainant from any refund he was due. It also gave details of how the refunds and debts arose. In relation to the limited company it explained that a refund had been made to the complainant, although it was the company that had paid the levies, and that it had on the same basis made a deduction in respect of water charges owing from that refund.

Outcome

The Ombudsman considered that the Council was correct in its interpretation of the Regulations and that it had acted fairly in its dealings with the complainant and for these reasons he did not uphold the complaint.

Non-Principal Private Residence Charge (NPPR)

Galway County Council

L16/15/1786

Completed 08/07/2015

Upheld

Background

A woman complained that the Non Principal Private Residence (NPPR) charge and penalties had been applied incorrectly. Her mother had transferred the ownership of the property to the woman in 2006 but she retained an exclusive right of residence for the rest of her life. The NPPR does not apply in such a case if the deed states that the right of residence is exclusive to the transferor of the property. The deed did not state this.

Examination

The woman had requested an exemption from the NPPR charge because her mother had continued to live in the property since it was transferred. The Council refused this request and demanded €7,230 in charges and penalties. The Ombudsman asked the Council to review its decision. He said that it was unfair to penalise the woman as the NPPR legislation had not been in force when the property was transferred. He also noted that the woman had lodged a Deed of Rectification. The Property Registration Authority confirmed that the woman's mother is now listed as having an exclusive right of residence.

Outcome

The Council granted the woman an exemption from the NPPR charge.

Non-Principal Private Residence Charge (NPPR)

Wexford County Council

L55/15/2533

Completed 14/10/2015

Not Upheld

Background

A woman complained that she and her brother had to pay Wexford County Council the Non-Principal Private Residence (NPPR) charge and penalties on a property registered in their names but occupied by their parents. The Council levied an NPPR charge on the children as neither of them lives in the property and they are its legal owners.

The woman said her parents had purchased land in her and her brother's names and had later built a house on it. The intention was that the children would later transfer title of this land to the parents.

Examination

The Ombudsman found that the woman and her brother met the definition of 'owner' as defined in the legislation. Therefore, the Council had no discretion to waive either the charge or the penalties.

Outcome

The Ombudsman found that the Council's actions complied with the Local Government (Charges) Act 2009. However, the Council agreed to offer a payment plan up to a maximum of three-and-a-half years.

Parking Fine / Permit

Parking Permit

Dun Laoghaire-Rathdown County Council

L61/15/1941

Completed 28/09/2015

Upheld

Background

A man complained about Dun Laoghaire-Rathdown County Council's decision to refuse his application for a parking permit.

Examination

The Council said it refused the application because the man's insurance certificate for his car did not have the address of the residence he was seeking the permit for. Therefore, it could not consider the certificate as acceptable evidence of residence under its bye-laws. The Council said that if the man could produce evidence from his insurance company that his car was insured at the address, it would review his application.

Outcome

The Ombudsman obtained the information from the complainant and sent it to the Council. The Council then reviewed the application and granted the parking permit.

Parking Fine

Fingal County Council

L60/15/3088

Completed 29/09/2015

Upheld

Background

A woman complained to Fingal County Council about having to pay a parking fine. On her way to a funeral just before Christmas she had accidentally parked in a loading bay after reading a sign on a parking meter saying parking was free for up to three hours on that date.

The company contracted by Fingal County Council to manage parking fined her and the Council rejected her appeal. She later discovered that the contract company had not forwarded to the Council photographic evidence which she had submitted to support her appeal.

Examination

The Ombudsman asked the Council to review the case on the basis of the photographic evidence which, the woman claimed, showed that the sign was misleading. He also asked whether the Council was aware that not all relevant information had been forwarded to it by the contract company.

Outcome

The Council withdrew the parking fine. It also told the contract company that all information submitted in relation to appeals must be forwarded in the future.

Road Repairs

Roads Repairs

Cork County Council

L07/15/3866

Completed 15/12/2015

Upheld

Background

A man complained that Cork County Council would not take responsibility for a broken light near his house. He had been in contact with the Council about the problem for several years but it told him that the light was the responsibility of the company who had upgraded the road. This company denied responsibility and informed the man that the Council had responsibility for repairs.

Examination

The Ombudsman contacted the Council to establish ownership of the stretch of road. The Council said that it was in dispute with the company over responsibility for the repair works. The Council decided that rather than continue to pursue this company, it would request that the repair be dealt with by the company who had since taken on the maintenance contract.

Outcome

The Council arranged for the light to be fixed. It was repaired within a week.

Tender Process

Tender Process

Galway County Council

L16/14/0749

Completed 19/05/2015

Not Upheld

Background

The Ombudsman received a complaint from a man whose tender application to Galway County Council was unsuccessful. The Council maintained that the man's application did not contain a Safety Statement. The man maintained that the Safety Statement was attached to the back of his application. Given the very serious nature of the complaint, the Ombudsman arranged for his staff to visit the Council and inspect its processes. Tendering rules require that at least two officials are present when tenders are being opened.

Examination

It was noted that the man's sealed tender was recorded as having been received by the Council at a specific time and on a specific date. His unopened tender was given a specific number and signed for by a named staff member. Subsequently, three staff members were present when all tenders were opened.

Outcome

Following the inspection, the Ombudsman was satisfied that the Council has comprehensive procedures in place for the receipt, storage and opening of tenders. He was also satisfied that the Council has reasonable preventative and detective control measures in place, involving three staff members, which are aimed at safeguarding the integrity of the tender opening process. He was also reassured that, in this instance, there was a clear administrative audit trail from receipt to opening of the tenders.

In the absence of independent verifiable evidence to support the complainant's case, the Ombudsman could not uphold the complaint.

An explanation of the Ombudsman's Case Closure Categories

1. Upheld:

The following describe some of the scenarios where the Ombudsman upholds a complaint:

- It has been accepted by the public body that maladministration has occurred which has adversely affected the complainant.
- The complainant is found to have a genuine grievance and the body agrees to resolve/rectify the matter.
- The body departs from the original position some form of redress is offered

2. Partially Upheld includes:

- The complaint is not fully upheld, but the complainant has benefitted by contacting the Ombudsman.
- The complainant has a number of grievances but only some of them are resolved.
- The complainant is seeking a specific remedy but the Ombudsman decides on a lesser remedy.
- The complainant may have come to the Ombudsman with a complaint about a particular entitlement but, on examination, it is found that a different entitlement is more relevant and the complainant receives the different entitlement.

3. Assistance Provided includes:

- The complainant has benefitted from contacting the Office although their complaint has not been Upheld or Partially Upheld. A benefit to a complainant might take the form of:
 - The provision of a full explanation where one was not previously given.
 - The provision of relevant information, or the re-opening of a line of communication to the body complained about.

- While the complaint was not Upheld or Partially Upheld, the public body has adopted a flexible approach and has granted a concession to the complainant which has improved his/her position or resolved the complaint fully.

4. Not Upheld includes:

The actions of the public body did not amount to maladministration. In other words, the actions were not:

- (i) taken without proper authority,
- (ii) taken on irrelevant grounds,
- (iii) the result of negligence or carelessness,
- (iv) based on erroneous or incomplete information,
- (v) improperly discriminatory,
- (vi) based on an undesirable administrative practice,
- (vii) contrary to fair or sound administration

5. Discontinued/Withdrawn includes:

- The complainant does not respond within a reasonable time to requests from the Ombudsman for relevant information.
- It has been established in the course of the examination/investigation that the complainant has not been adversely affected.
- The Ombudsman is satisfied that maladministration has occurred and that appropriate redress is being offered by the public body. The complainant refuses to accept the redress and is insisting on a level of redress which the Ombudsman considers to be unreasonable.
- The complainant initiates legal action against the public body in relation to the matter complained about.

About the Office of the Ombudsman

The role of the Ombudsman is to investigate complaints from members of the public who believe that they have been unfairly treated by certain public service providers.

At present, the service providers whose actions may be investigated by the Ombudsman include:

- All Government Departments
- The Health Service Executive (HSE) (and public hospitals and health agencies providing services on behalf of the HSE)
- Local Authorities
- Publicly-funded third level education institutions and educational bodies such as the Central Applications Office (CAO) and Student Universal Support Ireland (SUSI)
- Public and private nursing homes

The Ombudsman also examines complaints about failures by public bodies to provide accessible buildings, services and information, as required under Part 3 of the Disability Act 2005.

Making a Complaint to the Ombudsman

Before the Ombudsman can investigate a complaint, the person affected must try to solve their problem with the service provider concerned. In some cases there may be formal local appeals systems which they will have to go through before coming to the Ombudsman - for example, the Agriculture Appeals Office, the Social Welfare Appeals Office etc. If they fail to resolve their problem and they still feel the provider concerned has not treated them fairly, they can contact the Ombudsman.

Further details on making a complaint can be found on our website

<http://www.ombudsman.ie/en/Make-a-Complaint/>

Contacting the Ombudsman

The Ombudsman's Office is located at 18 Lower Leeson Street in Dublin 2.

Lo-call: 1890 223030 Tel: 01 639 5600 Fax: 01 639 5674

Website: www.ombudsman.ie Email: Ombudsman@ombudsman.ie

Twitter: [@OfficeOmbudsman](https://twitter.com/OfficeOmbudsman)

Feedback on the Casebook

We appreciate any feedback about the Ombudsman's Casebook. Please email us at casebook@ombudsman.ie with any comments.



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