

A Guide to Investigations
by the Ombudsman for Children's Office



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for children • do leanaí

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1. Foreword by the Ombudsman for Children

My job, and statutory responsibility, as Ombudsman for Children, is to promote the rights and welfare of all children up to the age of 18 and to ensure that in policy, practice and law their best interests are paramount.

As awareness of the role and function of the Ombudsman for Children's Office (OCO) grows, we are seeing a continuous increase in the number and complexity of complaints being brought to us. As such we are interacting with more and more public bodies which provide services to children and young people under the age of 18.

In exercising our complaints and investigation mandate, the key criterion for intervention is that a child has, or may have been negatively affected by the action of a public body. My Office is neither advocate for the child nor adversary to the public body in this context. We are obliged to have regard for the best interests of children when we carry out an investigation and if appropriate, always find out the views of young people involved.

We understand that while we are a new organisation that is constantly learning, public bodies too are also learning about our work, including our complaints and investigations role, and how this may apply to them. We have developed this booklet, with the help of professionals, to assist public bodies within the remit of the OCO to understand the process we follow when looking into complaints.



This is the second in a series of publications about our complaints and investigation work. The first, *A Guide to Complaint Handling by the Ombudsman for Children's Office* sets out the guiding principals of the OCO's complaints function. We hope that public bodies find both of these booklets helpful.

If you have any ideas, experience or feedback that you would like to share with us which may help us improve our information materials please contact us at oco@oco.ie

A handwritten signature in black ink that reads "Emily Logan". The signature is written in a cursive, flowing style.

Emily Logan
Ombudsman for Children

2. The OCO's mandate and role as an independent complaint handling body

The Ombudsman for Children's Office (OCO) was established in 2004 following the appointment of Emily Logan as Ireland's first Ombudsman for Children. Provided for under primary legislation, **the OCO is an independent statutory body whose mandate is to promote the rights and welfare of children and young people under eighteen years of age in Ireland.**

The Ombudsman for Children reports to the Oireachtas in relation to the exercise of her core functions. Set out in the **Ombudsman for Children Act, 2002** (2002 Act), these functions are:

1. To receive, examine and investigate complaints made by or on behalf of children and young people.
2. To undertake research regarding children's rights and welfare and to provide independent advice on legislative and public policy developments affecting children and young people.
3. To promote children's rights and welfare by providing an independent voice on behalf of all children and young people in Ireland and affording children and young people opportunities to be heard in relation to issues that affect and concern them.

The 2002 Act sets out the defining characteristics of [the OCO's complaint handling mandate](#) and role as follows:

- The OCO manages and operates an **independent and impartial complaint handling procedure**. In handling complaints, the OCO is neither an advocate for any child nor an adversary of any body complained against.
- The OCO provides a **free complaint service**.
- Complaints can be made to the OCO **by children and young people** as well as on their behalf by **parents** or **suitable third parties**.
- Complaints can be made in respect of actions on the part of **public bodies, schools and all hospitals where children are cared for**.
- In handling complaints, **the OCO recognises and respects local complaint procedures**.
- **The Ombudsman for Children is empowered to exercise discretion** in respect of the OCO's procedure for handling complaints, within the parameters of the 2002 Act.

- In the context of examining a complaint, **the OCO aims to support parties to the complaint to arrive at a mutual understanding of the complaint and to resolve the complaint informally.**
- When investigating a complaint, the OCO seeks to resolve the complaint based on its informed understanding of the complaint. At the conclusion of an investigation, **the Ombudsman for Children will issue an investigation statement and a set of recommendations as appropriate.**
- The Ombudsman for Children’s Office will only publish a statement if it believes that there is learning which may impact on bodies other than the one investigated. Both the complainant and the body under investigation would be fully informed of this decision in advance of the publication of the statement.

The ***OCO’s Guide to Complaint Handling 2007*** sets out the guiding principles to the complaint handling process.

The OCO's remit in relation to examination and investigation of complaints

The Ombudsman for Children Act, 2002 sets out the role and remit of the OCO's complaint handling mandate.

Section 6 sets out that the Ombudsman for Children shall; in the performance of the complaints and investigation function, have regards to the best interests of the child concerned and shall, in so far as practicable, give due consideration, having regard to the age and understanding of the child, to his/her wishes.

Sections 8 and 9 outline that the OCO may carry out an investigation into any administrative action taken by, or on behalf of, a public body, school or voluntary hospital, where upon having carried out a preliminary examination it appears to the Ombudsman for Children that the action:

- (a) has or may have adversely affected a child; and
- (b) was or may have been:
 - taken without proper authority;
 - taken on irrelevant grounds;
 - the result of negligence or carelessness;
 - based on erroneous or incomplete information;
 - improperly discriminatory;
 - based on an undesirable administrative practice; or
 - otherwise contrary to fair or sound administration.

Section 10 allows that the Ombudsman for Children may initiate an investigation of her own volition where it appears to the Ombudsman that having regard to all the circumstances, an investigation may be warranted.

Sections 8 to 16 set out the functions and powers of examinations and investigations held by the Ombudsman for Children.

3. The complaints' process

Assessing admissibility

On receipt of a complaint the OCO initially determines whether a complaint falls within the remit of the Office.

Section 11 of the OCO Act 2002 sets out the circumstances when the OCO shall not investigate a complaint.

Examples of complaints manifestly outside the remit of the Ombudsman for Children Office are complaints about persons over the age of 18, complaints against private organisations, complaints against organisations specifically outside the remit of the Office, such as An Garda Síochána.

If uncertainty exists in relation to the admissibility of a particular complaint, the OCO continues to seek clarification and details from both parties in order to establish if there is an appropriate role for the Office.

The Ombudsman for Children Act, 2002, states that the Office should not investigate an action where legal proceedings have been initiated on behalf of the child unless special circumstances make it proper to do so. In situations where there are ongoing legal proceedings in relation to the complaint or if proceedings are initiated after the complaint has been brought to the OCO, the Office requests that this be brought to its attention by the complainant and/or the public body.

Should the public body under investigation be aware that a complaint has also been submitted to other bodies for investigation, it is important to bring this to the attention of the Office, in order to determine whether there is an ongoing role for the Office.

Preliminary examination

When a complaint is received and is not manifestly outside the remit of the OCO, a preliminary examination of the case is carried out which is the first stage of the investigation process.

In brief, during the preliminary examination, the investigation team will:

- assess the admissibility of the complaint;
- aim to get a better understanding of the complaint from all parties involved; and
- decide on the level of intervention, if any, is required from the Office.

The purpose of the preliminary examination is to give the public body an opportunity to respond to the complaint and consider any action that may be taken.

At the preliminary examination stage the OCO writes to the complainant and the public body setting out a summary of the

complaint and advising that an examination is being carried out. This provides an opportunity for the public body to have a “right to reply” to the complaint. In the first instance, the OCO usually requests a summary report from the public body, and a copy of the relevant policies and procedures in relation to the issue at hand. It is helpful at this stage if the public body can provide as comprehensive information as possible. Requests may be made for copies of records held by the public body in order to assist in understanding the case. Where a public body is unclear about what information to forward, the public body should contact the Complaints and Investigation team to seek guidance on this matter.

In order to ensure a timely and efficient complaint handling process it is important that information is provided within the time frame requested. If there are difficulties in providing the information requested it is important that the reasons for the delay are provided to the Office with an expected timeframe for when it will be provided.

On receipt of all requested information the OCO reviews it in the context of the complaint and determines whether any further intervention is required. The Office will then write to the complainant and public body setting out the conclusion of the preliminary examination process and the rationale for this.

When appropriate, proposals can be made by the Ombudsman for Children’s Office after a preliminary examination. Those proposals are in no way binding on either party.

Investigation

An investigation is initiated when, having carried out a detailed examination, it appears to the Ombudsman for Children that the administrative action of the body concerned has, or may have adversely affected a child and may be as a result of maladministration (pursuant to Sections 8 and 9 of the Ombudsman for Children Act, 2002). Action includes decision, failure to act and omission. The investigation is a more detailed process by which the Office will gain a more in-depth understanding of the case. The Office will have access to all information available on the case and can request people to attend interviews to explain their understanding of the situation and reasons for their actions.

When an investigation is initiated the OCO will write and advise the complainant and public body of this and outline the complaint received. The investigation usually involves meeting with the complainant and representatives of the public body and a review of all information requested from the public body during the investigation process. The OCO may also interview any other witnesses that are deemed appropriate.

An investigation by the Ombudsman for Children does not prevent the public body from taking further action to address the complaint.

Meeting with children

The OCO is obliged to give due consideration to the wishes of the child in the performance of the function to examine and investigate complaints, having regard to the age and understanding of the child. The OCO does not use age as the sole criterion for determining whether or not to facilitate participation by a child or young person in the process. When deciding whether to meet with a child in the context of an investigation the OCO employs the following decision making criteria:

- Best interests of the child
- Capacity of the child
- Wishes of the child
- Necessity
- Feasibility

The OCO will determine the consideration (weight) due to a child's or young person's wishes after these wishes have been expressed and having regard to the following factors.

- To what extent are the child's or young person's wishes consistent with his/her best interests?
- To what extent does the child or young person understand the implications of his/her wishes and the process within which these wishes are being expressed?
- Has the child's or young person's wishes been expressed freely ie without influence having been exerted on him/her by any party?
- To what extent, if any, do the child's or young person's wishes impose obligations on others and what is the nature of any such obligations imposed?
- To what extent, if any, do the child's or young person's wishes interfere with the rights of others and what is the nature of such interference?

This information is set out in the **Guide to Complaint Handling**.

Investigation report and recommendations

Following an investigation, the Ombudsman for Children will produce a statement which may include a series of recommendations. The statement is forwarded to the body concerned in order to afford an opportunity to submit a response and to comment on any recommendations. On conclusion of the investigation process a copy of the statement is sent to the body concerned, the parent department of that body and the complainant. This investigation statement may also include an outline of the public body's response to the investigation.

Those recommendations are not binding on the public body. However, if they are not implemented, the Office may submit a special report to the Oireachtas. In the Office's experience, recommendations are usually implemented.

The Office will contact the public body concerned six months after the conclusion of the investigation in order to obtain an update on the progress that has been made in relation to implementation of the recommendations.

The OCO may decide to publish the statement (in an anonymised way in order to protect the confidentiality of the complainant) where the Office determines that there is learning for other public bodies and/or where the issues raised are relevant to other children.

Protection of information

The OCO is obliged to conduct investigations “otherwise than in public”. Records that relate to the examination and investigation of complaints by this Office are exempt from the provisions of Data Protection Acts 1988-2003 and the Freedom of Information Acts 1997-2003. The Office is therefore precluded from releasing information that is obtained during the examination and investigation of a complaint.

All information received by the Office in the context of an examination and investigation of a complaint is stored securely in order to protect the confidentiality of all concerned.

Compellability of information

When carrying out an examination/investigation of a complaint the Office sets out information requested as part of this process and a timeframe for receipt of information.

Under Section 14 of the Ombudsman for Children Act, 2002, the Office has powers to compel documents and witnesses when carrying out an examination/investigation of a complaint.

The Act also sets out that a person shall not obstruct or hinder the Ombudsman for Children in the performance of his functions.

4. Further information

Further information about the OCO's work, including its complaints handling role and service is available at our website, www.oco.ie

To request an information pack or a copy of *A Guide to Complaint Handling*, call **01 865 6800** or email oco@oco.ie

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