

The investigation of a complaint concerning the  
administrative actions of the HSE in determining an  
application for provision of a powered wheelchair

April 2011  
(Updated September 2013)



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A statement under section 13(2) of the Ombudsman for Children  
Act 2002

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actions of the HSE in determining an application for provision of a  
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April 2011  
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**Ombudsman for Children's Office**

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## **1. Introduction**

### **1.1 Background**

In March 2010 an investigation was initiated by the Ombudsman for Children's Office (OCO) under Section 8 of the Ombudsman for Children's Act, 2002 (the Act). The investigation was based on a complaint received on behalf of a child into the determination of the HSE not to grant the provision of a powered wheelchair.

Under Section 13(2) of the Act, following an investigation, the Ombudsman for Children is required to produce a statement outlining the results. In accordance with the Act, this statement is for distribution to the public body under investigation, the complainant, other relevant parties involved in the investigation and any other persons to whom she considers it appropriate to send the statement.

## **2. The Complaint**

### **2.1 Background**

The Complaint was brought to the Ombudsman for Children's Office on 1<sup>st</sup> October 2009 by the parents of a four year old girl with disabilities.

The child concerned has significant motor problems resulting in a diagnosis consistent with Cerebral Palsy. She is almost wholly without the use of both legs, unable to walk, has problems with her upper limbs and is unable to propel/manoeuvre a manual wheelchair for any length of time. At the time of the complaint, her primary means of locomotion was by crawling/bunny hops, or with the assistance of a specialised buggy.

An application for a powered wheelchair was made to the HSE on 15<sup>th</sup> May 2009 and the complainant was informed of the policy of not providing powered wheelchairs to children under the age of seven by telephone call on 23<sup>rd</sup> July 2009.

The parents complained in writing about the HSE's decision on 4<sup>th</sup> September and subsequently, a complaint form was submitted to this Office in October 2009 following an unsuccessful appeal of the decision to the HSE.

This Office conducted a preliminary examination of the complaint received and, in accordance with the Act, determined that an investigation was necessary and warranted. This Office initiated an investigation in March 2010 by writing to the HSE outlining the concerns arising from the preliminary examination and setting out the proposed remit of the investigation.

## **2.2 The Complaint**

The complaint relates to the refusal to grant an application for a powered wheelchair to the complainants' daughter as the child is under the age of seven.

In particular the complainants raised the following concerns:

1. That their daughter was refused the powered-wheelchair on an age criteria basis only without, allegedly, any assessment of her ability (including previous powered wheelchair training undergone through Enable Ireland), without taking into consideration recommendations from the professionals caring for the child and without meeting the child
2. That there is an inconsistency between their HSE (Dublin West LHO) local policy with the policies in other HSE areas, specifically that Dublin West will not consider applications from children under seven. The complainant provided documentation from an Enable Ireland professional explaining that a child of similar age and condition was reviewed and granted a powered wheelchair in a neighbouring area
3. The alleged adverse effect on their daughter's mobility, ability to attend primary school and potential psychological effect of not being able to be reviewed for or granted a powered wheelchair before the age of seven.

### **3. The investigation, analysis and findings**

#### **3.1 Background**

The Office initiated an investigation into the complaint in March 2010 by writing to the HSE and the complainants outlining the following concerns that arose during the preliminary examination and that will be considered during the investigation:

1. The LHO Dublin West Policy states that powered wheelchairs will not be considered for children under seven. The policy states that referrals made on behalf of children under seven years of age are not accepted on the basis of 'seven being the age of reason in common law'. It is unclear, what, if any mechanism was in place to review this child's situation and assess her ability.
2. Since the initiation of this examination, the HSE has now undertaken to review the case and sought additional information for this purpose. It is unclear what information was sought at the time of the application and whether the initial decision in this case may have been based on incomplete information.
3. Concerns have been expressed regarding possible inconsistencies with other HSE local area policies where applications from children of similar age and disability were allegedly processed and granted. No information was provided by the HSE with regard to this contention at preliminary examination stage.

#### **3.2 Investigation**

The Ombudsman for Children's Office provides an independent and impartial complaint handling service. The Office, following an investigation, aims to make recommendations which are fair and constructive for both parties. In the context of an investigation, the Office is neither an adversary of the public body nor advocate for the child.

In accordance with Section 6(2) of the Act, this Office also met with the girl and her parents (who brought the complaint on her behalf) to gain further understanding of the complaint and the girl's views and wishes on her current situation.

The principal concerns addressed by the investigation, arising from the complaint itself or identified during the examination phase, were:

1. Whether those actions had, or may have had, an adverse effect on the child concerned; and
2. Whether the actions were or may have been:
  - i. taken without the 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 undesirable administrative practice; or
  - vii. otherwise contrary to fair and sound administration.

The investigation focussed on the administrative actions and processes followed by the HSE and it is out of the remit of the Office to look at any aspects relating solely to clinical decisions.

### **3.3 Views of the child**

This Office met with the child to obtain her views in accordance with Section 6(2) of the Ombudsman for Children Act, 2002.

During this meeting she expressed her dislike of the buggy that she was using at the time and stated that she wished to throw this away and have a wheelchair 'hot wheels' to use. She also explained that she had 'funny legs' (cerebral palsy) and was unable to walk.

At the time, the child's primary means of locomotion was bunny-hops/crawling and the cuts and bruises on her hands and knees as a result of this crawling were displayed by her at this meeting. She explained that she did not like people looking at her when she was crawling or in a buggy like a baby. She said that people do not understand that she has 'funny legs'.

The child attended a training day for powered wheelchair use, facilitated by Enable Ireland, in April 2009 and stated that she enjoyed this.

At the time of the meeting, an application for a manual wheelchair was ongoing and the child had attended fitting and testing for this the previous day. This was considered an interim measure by the complainants as the girl would become tired using this, she does not have good grip and, as she demonstrated, has mirrored arm movements which would create difficulties when turning. The child confirmed this and said it was tiring for her, even if it was better than the buggy.

### **3.4 Analysis**

#### **Background**

For the purpose of clarity, the analysis and subsequent findings by this Office have been set out in various sections below to correspond with the issues raised by the complainant and put to the public body through the preliminary examination and investigation of the complaint. Following these sections, further elements of the investigation are discussed regarding the overall concerns raised by this Office with the HSE in relation to the subject matter of the complaint.

#### **3.4.1 Policy and procedures for the provision of powered wheelchairs in Dublin West Local Health Office (Dublin West LHO)**

##### **3.4.1.1 The absence of a national policy in this regard resulting in the difference of policies between Local Health Offices' local policies**

The local HSE office has informed the Ombudsman for Children's Office that there is no national policy, no national guidelines (except the new HIQA standard) or national oversight for the provision of Occupational Therapy (OT) equipment including the provision of powered wheelchairs for children. The LHO does not receive directions from the HSE Care Group or the HSE Regional Office in this regard. Each Local Health Office Area has its own budget and assesses applications according to the needs of the area or their own priorities. Each Local Health Office (LHO) develops their own procedures or guidelines in that regard.

However, a more general set of policy documents/guidelines exist for the use of powered wheelchairs by adults. This Office understands that this policy was developed by the Health Boards of the old Eastern Region and remains in use in several LHO areas. These policy documents set out the procedure for assessment and training of powered wheelchair users, examples of relevant correspondence in this area, a powered mobility skills test, terms and conditions of supply for powered wheelchairs and the handover checklist for powered wheelchairs.

The HSE explained that the absence of a general policy for the provision of powered wheelchairs for children leads to some difficulties across different HSE areas as different children will receive different equipment. Provision of equipment is based on local considerations. However it was also stated that standards have changed under HIQA and that OT Managers must abide by these standards. For example, standardized risk assessments are required with applications and procedures regarding this have been formalised.

In the course of the investigation, the OCO requested samples of local policies from other HSE areas regarding the provision of powered wheelchairs for children including the neighbouring LHO area which, according to the complainant and the voluntary service providers, had granted a powered wheelchair to a child of a similar age and disability as the girl.

The HSE Dublin West LHO have outlined that to their knowledge, other neighbouring LHO Areas use these same policy/guidelines to assess applications for powered wheelchairs whether they are made on behalf of adults or on behalf of children. The Dublin South West LHO confirmed that they use the more general guidelines to determine applications made for powered wheelchairs for children. It explained that the criterion for the provision of powered mobility in their area is not age specific. It further explained that 'for children under 7 years of age, consideration is always given to the assessment of risk, which focuses specifically on the evidence that children under this age are not fully matured in reasoning or decision making ability and visual spatial awareness is also not fully developed. In some cases, a compromise is required, e.g. the environment in which the wheelchair is to be used may be limited, or the wheelchair must be operated by an adult (via attendant controls) in situations where a child may experience difficulty.'

No other LHO sample policies were provided.



However, the HSE informed the OCO that the Irish Posture and Mobility Network (a group of professionals working in the area of posture and mobility) formed a sub-group in February 2010 to develop best practice guidelines on powered mobility; the HSE is awaiting recommendations.

#### **3.4.1.2 The procedures and guidelines for the provision of powered mobility for new users under 18 in the Dublin West LHO and specifically the policy not to accept referrals for children under 7 years of age**

- **Definition: the local procedures for the provision of powered mobility for under 18s in Dublin West LHO**

In July 2008, Dublin West LHO developed procedures and guidelines for the provision of powered mobility for new users under 18 in their area. The policy sets out that an application for a powered wheelchair should be in writing. It states that referrals for powered mobility for children under seven are not accepted.

The policy does mention that there can be some benefit to the use of a powered wheelchair before seven (in terms of the development of their spatial awareness, independent mobility and social relationships) in a controlled environment such as a clinical setting or a special school. However, in these cases, the applications are not processed by the HSE but the onus is put on the organisations who manage these controlled environments to provide the wheelchair directly to the child.

The local procedure sets out the reasoning in relation to powered mobility for children under seven years. This states that 'under common law, seven is the age of reason which a child is considered capable of acting responsibly and capable of making reasoned judgement. Children under seven can lack the skills and judgement to react in situations of distractibility, fatigue and impulses of other children. Their cognitive ability or attention to tasks without losing concentration, perception, sequencing, spatial awareness and problem solving may put themselves and others at risk.'

The reasoning states that 6 to 11 is the cognitive milestone for a child to think and plan in a logical and rational manner (American Academy of Paediatrics Guidelines for Health Supervision).

When asked why seven was specifically chosen, the HSE responded that children under seven do not have the ability to responsibly operate a powered wheelchair and as such they would be deemed to be a health and safety risk to themselves and others. Furthermore the health and safety implications of decisions regarding OT equipment are also the ultimate responsibility of the OT manager and could entail liability for the HSE.

It appears that in developing the local procedures for the provision of powered wheelchairs for children, very little guidance from the HSE was available to the LHO OT manager who explained that the age limit of seven was determined having heard in the media that it was the age of reason and having carried out a subsequent internet search. No indication was provided to this Office of consideration having been given to the available body of published research relating to the provision of powered mobility to young children, in conjunction with medical assessment of the individual child's capabilities and potential. Such research provides information which would appear to be directly relevant to formulating an appropriate evidence base for policy and procedure in this area. Instead, the basis of the reasoning provided by the HSE to this Office was an article from the internet referring to the age of criminal responsibility in the United States.

- **Review process for referrals sent by voluntary organisations**

The HSE explained that in Dublin West LHO, the OT Manager is the budget holder and as such has final responsibility for signing off / approving applications for equipment that are made to the HSE. As such, when applications are received from voluntary organisations (VO) such as Enable Ireland, the HSE OT Manager assesses the application and makes a determination on suitability and approval. It was explained that each HSE area operates differently and that while in some areas the Disability Manager may make the ultimate decision, in others the VO (if they have their own budget / funding), or the Central Remedial Clinic, themselves may make the decision.

As, in Dublin West, the VO are not the budget holder, the HSE explained their view that the VO can make recommendations that are difficult for the HSE to fulfil based on their finite budget. It was explained that there have been discussions regarding whether VOs should have their own budgets allocated to them and that they would make the decisions about the provision of equipment.

As a result of the arrangements in Dublin West, the HSE outlined that the equipment supplied by the HSE OT Manager is owned by the HSE and therefore there is potential liability (in terms of being sued) for the HSE if there is a problem with the equipment or its use. As such, the HSE explained that considerations need to be given to the 'global effects' that the provision of equipment may have and must anticipate 'what may go wrong with the piece of equipment' before making a decision.

Referrals are accepted on an individual basis with regard to local guidelines, waiting times and budgets. Prior to the provision of powered mobility, a detailed report by a Senior Occupational Therapist and other health care professionals who work with the child or are involved in the seating is requested. Other information that will be considered when assessing the suitability of equipment for children are social aspects, family dynamic, health and safety of others in the community, schooling, transport provision, and other relevant factors. A Risk Assessment (RA) must also be carried out.

The child/applicant is usually not met during this process and the HSE liaise directly with the prescribing therapist. When a decision is made, the HSE explained that the process of communication with parents/child is through the prescribing therapist in the first instance.

The HSE explained that applications are processed on a monthly basis. The service is demand led and is constrained by a finite budget. All referrals to OT and applications for equipment are prioritised and given a priority status, which determines how quickly the equipment will be made available to the applicant. Priority 3 (P3) is a routine referral for assessment, P2 is a referral for assessment which is more urgent than P3, while P1 is considered an immediate / emergency referral.

Powered mobility for new users is usually given a P3 status. If the referral is approved, a child with P3 application could be waiting 2 years to receive the equipment applied for.

### **3.4.2 Decision-making process in relation to the application made on behalf of the child**

In the case of the child, the HSE explained that the application on behalf of the child was received from Enable Ireland on the 15<sup>th</sup> May 2009. It appears that the application contained a seating assessment report from Enable Ireland, a prescription for a powered wheelchair and its fitting and two quotes from relevant providers. The application was originally given a Priority 3 (P3) status by the HSE as it was not initially recognized that the child was 3 years old. When it came to the attention of the HSE that the child was under seven, the parents were informed by telephone in July 2009 that the referral was not accepted in line with the local policy not to provide powered mobility for children under the age of seven.

A complaint was subsequently made by the parents to HSE Consumer Affairs, who sought a response from the HSE OT Department. The same HSE staff who had made the initial decision responded to HSE Consumer Affairs. The parents then received a response from HSE Consumer Affairs which outlined that powered wheelchairs were not provided to children under seven, as seven was the age of reason. The HSE also stated that there are serious health and safety risks in providing a powered wheelchair to a young child which could cause injury to the child herself or to other children/adults. No substantive review of the case appears to have occurred at this stage of the complaint process and no other information was requested at that stage from the parents or prescribing therapist to assess the health and safety risk posed by the powered wheelchair.

There was a review of the child's case initiated by the HSE in October 2009. According to the HSE, the rationale for this review was that the parents had contacted the OCO with concerns about the decision not to grant a powered wheelchair. On foot of this, the HSE decided to look further into the case.

Further information was sought by the HSE from the prescribing therapist in Enable Ireland. Upon receiving this information, the HSE OT Manager discussed the case with a physiotherapist, a psychologist and another member of the OT team who is an

expert in powered mobility. According to the OT Manager, they were of the same opinion; that the powered wheelchair should not be provided.

However, the HSE OT Manager confirmed that the discussion with the physiotherapist and psychologist were held on an informal basis without them having sight of the child's file. The HSE explained that there was not any multidisciplinary forum to discuss these cases. She explained that she took a note of her discussion with the physiotherapist in her OT note. The other OT did have sight of the file and her input was documented. This person requested a number of clarifications regarding the details of this case which, it appears, were subsequently not requested from Enable Ireland by the HSE.

The HSE clarified that in cases in which additional advice is sought this is often done without access to the client's file which remains confidential.

At review stage, the risk matrix was completed by the HSE based on the documents received from Enable Ireland. A Risk Assessment had been carried out by Enable Ireland but it was not the standard one. When asked why the two risk assessments came to different conclusions based on the same documentary evidence, it was explained that the OT Manager considered that the child's age gave rise to a higher risk and this was confirmed in her discussion with the HSE physiotherapist and psychologist. A powered wheelchair would not have been provided as she was under the age of 7 and beyond what would have been considered safe.

The HSE explained that the following were considered when determining suitability of a powered wheelchair for this child:

- the area in which she lives is a designated 'RAPID' area and social deprivation with many single and or drug using parents;
- other children (besides the wheelchair user herself) may inappropriately use the powered wheelchair (such as to 'get a lift');
- her pre-school (the one she attends in combination to the Enable Ireland pre-school) was not wheelchair accessible and the parents had not identified the primary school the child was to attend;
- her house was not fully wheelchair accessible (and the family were on the housing list) and the HSE do not provide temporary ramps for houses;
- the family did not have a vehicle suitable in which to transport the child and her wheelchair;

- that the girl's mother had recently had another child and may be unable to safely supervise a child in a powered wheelchair whilst also pushing an infant in a pram; and
- the HSE Dublin West are of the opinion that the girl would not be able to control a powered wheelchair as she has poor co-ordination and arm splints. It was stated that the child can operate a manual wheelchair in some circumstances.

The review of the decision regarding the girl and the provision of powered mobility has been completed and the decision not to grant the girl a powered wheelchair has remained the same. This was not communicated to Enable Ireland, who, according to the HSE, did not make contact with the HSE OT department in this regard.

Notwithstanding this, the HSE advised that the case was not closed by it as the OT Manager indicated that they are awaiting the outcome of this Office's investigation. It was clarified that, at the time of investigation the girl did have a buggy for mobility which had been supplied in 2008 as assessed by Enable Ireland. HSE also advised that the girl had received a hi-spec manual wheelchair with customised seating as assessed in October 2009. It was explained that this assessment report stated that the girl requires the manual wheelchair with customised seating and that it is lightweight, affording her the option of self propelling, in addition to being transportable and easily manageable for her parents. The HSE stated their understanding that the girl should be using this chair since the date of its delivery and as a result, should not need to be carried.

### **3.4.3 Contended adverse affect and response from the HSE in that regard**

The child's parents have highlighted their concern about the affect not providing a powered wheelchair to their daughter may have on her mental health into the future. This was confirmed by professionals involved with the child, including a psychologist who reported concerns regarding the impact of not having a wheelchair on her emotional well-being, her socialisation, her self-esteem and confidence.

At the time of the investigation her main form of mobility was by crawling which resulted in cuts and bruises on her hands and knees. Her OT and physiotherapy reports also raised concerns about the impact of her continuing crawling on her disability and overall physical development. At the time of the complaint, the

professionals from Enable Ireland were of the opinion that the child was unable to propel a manual wheelchair because of difficulties in her upper limbs. A further assessment by the Enable Ireland OT dated October 2009, following the refusal of a powered wheelchair, outlined that she could propel a manual wheelchair short distances and not over a raised surface.

The girl has been attending pre-school at Enable Ireland since September 2008 for two mornings a week. She was planning to attend her local pre-school from September 2010. Reports from the pre-school outline that the child enjoys the pre-school and applies herself very well to the work, however, the reports state that the child has to be carried from one activity to another or will be placed on the floor to crawl. The report states that it is dangerous to have her crawling and it is not age appropriate for her to be carried. It continues to state that it impacts on her ability to choose between activities and effects her social and emotional development.

The girl is enrolled to begin mainstream primary school in September 2011. Her parents have stated that without the provision of a powered wheelchair, the girl will be unable to begin primary school and her right to education would be removed. As her disability is solely physical it appears that she would benefit from a mainstream school but would require mobility in order to attend.

On this last point, the HSE responded that the school that the girl was due to attend was not identified by the applicants and the mainstream pre-school she attended is not wheelchair accessible: therefore the HSE refutes that the granting or otherwise of a powered wheelchair had an impact on her right to education as contended by the complainants.

Furthermore the HSE's position is that an educational placement should not discriminate on the basis of the style of wheelchair provided and that the girl has been provided with a self propelling wheelchair which should enable her to attend school.

- **Mitigation of contended adverse affect**

the girl obtained a manual wheelchair in April 2010. Her parents described it as an improvement on the crawling but explained that she finds it very tiring and can only use it for short distances and no more than 30 minutes at a time. The child still wants

a powered wheelchair and attended training in April and July 2010. The HSE was allegedly informed of this but outlined that it would not change its decision as the child was under seven years of age. The HSE has clarified that a child of three years and over who can propel themselves continuously for 30 minutes would be considered to demonstrate good upper limb function and fitness.

The manual wheelchair was regarded as an interim measure by the complainants. The HSE confirmed that the girl is currently using a manual wheelchair which has been customised for her postural management. They explained that this will not affect any future applications for powered mobility as the HSE has an open door policy regarding applications and further information being submitted.

The HSE also clarified their position that the provision of the customised manual wheelchair is not an interim measure. It was stated that powered wheelchair users will also have a manual wheelchair, standard or customised, which can be required at specific times for reasons of access, transport or when the powered wheelchair may breakdown or require service.

### **3.5 Conclusion of findings**

#### **3.5.1 Adverse affect on the child**

Having regard to the information provided by the HSE, the child and the complainants in this case, this Office is of the opinion that the child has been adversely affected by the actions of the HSE, within the meaning of section 8(a) of the Ombudsman for Children Act, 2002

The purpose of this investigation was never to determine whether the child should or should not be given a powered wheelchair or determine whether the non-provision of a powered wheelchair by the HSE adversely affected her. This Office cannot substantiate the contentions made by the parents and professionals in this regard.

The investigation focussed on the process and procedures used by the HSE to determine in the first instance and then review the application made on behalf of this child. The actions of the HSE in that regard appear to have adversely affected her, as this Office is of the opinion that she was not afforded due process because of the strict age rule that was applied in this particular LHO area regardless of her ability,



the inconsistency of policies across the various LHO areas and the way her application was processed. This appears to be further compounded by the fact that as powered wheelchairs for new users appear to be routinely given a P3 status, the child, even if granted a wheelchair when she reaches 7 years of age, would have to wait additional time to actually get the equipment – in this area the HSE have clarified that, due to budgetary restrictions, the waiting time at present is two years.

It appears that the strict operation of the local policy not to accept referrals for the provision of powered wheelchairs for children under seven ruled out any opportunity of engagement by the HSE with the child, her parents, the professionals working with her to further explore health and safety concerns and the possible measures, if any, to address them. While the HSE state that they do engage with professionals regarding alternative modes of transport including manual wheelchairs, the loss of opportunity for a broad engagement in the context of the child's powered wheelchair application constitutes an adverse effect in itself.

Further information on the findings of this Office in this regard is available below.

### **3.5.2 findings regarding the action(s) of the HSE and whether they fall within 8(b) of the Ombudsman for Children's Act, 2002**

The lack of HSE national policy, guidelines or oversight appears to have resulted in different practices across the country for determining applications for the provision of powered wheelchairs for children. This was acknowledged by the HSE in this case. It appears that it also resulted in professionals developing local policy and procedures with little support and guidance in doing so. This Office finds that the lack of national policy, guidelines and oversight in this regard constitutes an undesirable administrative practice within the meaning of section 8 of the Ombudsman for Children's Act, 2002.

Having considered the information and rationale provided by the HSE regarding the local policy to refuse all referrals for the provision of powered wheelchairs made on behalf of children under seven years of age without reference to or review of their individual ability, this Office is of the opinion that this policy is 'contrary to fair and sound administration' and 'improperly discriminatory' within the meaning of section 8 of the Ombudsman for Children Act, 2002.

With regard to the child's application and complaint, it appears that the initial application was given a priority status without complete information, as all the documentation usually required to process the application (such as the risk assessment) was not available to the HSE at the time. It also appears that the complaint made by the parents to HSE Consumer Affairs did not give rise to a substantive and entirely fresh review of the case but that the same HSE staff who made the decision were asked to respond to the complaint. The decision to refuse the application based on the child's age, initially and at complaint stage, appears to also have been made on the same incomplete application and strictly on the ground of the child's age, without regard to her ability and in the absence of engagement with the child, her parents and the voluntary organisation on the possibilities to address the health and safety concerns. Neither was there any indication provided of due consideration having been given by the HSE to existing research evidence concerning the provision of powered wheelchairs to children. This Office finds that the actions of the HSE in this regard were therefore based on 'incomplete information' and 'irrelevant grounds' within the meaning of section 8 of the Ombudsman for Children Act, 2002.

When the HSE did review the case, it appears that the review was poorly documented; advice was sought from three other professionals, two of whom did not have sight of the specifics of the case and another who requested clarifications which were not subsequently sought by the HSE from the prescribing therapist. The risk matrix which was filled in by the HSE as part of the review came to a very different conclusion to the one filled in by the prescribing therapist who worked with the child. The only reason given by the HSE for the difference in result was that the child was under seven and not a substantive review of her ability.

Finally, while, in the context of that review, some of the other considerations given by the HSE when determining the suitability of a powered wheelchair for this child were of a clinical nature (i.e. her ability to propel herself), others pertained to the child's social and economic background and how others might interact with her in that background (e.g. RAPID area and other children asking for lifts) and the potential liability of the HSE in this regard. No discussion with the parents appears to have taken place to consider how some of the issues identified (such as the transport of the wheelchair, the accessibility of the house or potential health and safety risks) could be addressed. Having considered the above, this Office is of the opinion that

the review process undertaken by the HSE was "based on incomplete information', 'irrelevant grounds' and 'contrary to fair and sound administration' within the meaning of section 8 of the Act.

#### **4. Recommendations**

The Office, following an investigation, aims to make recommendations which are fair and constructive for both parties to the complaint. The Office shall also have regard to the best interests of the child concerned. The recommendations aim to mitigate the adverse effect found in this particular case and improve future administrative practices of the HSE in that regard.

As per Section 13(3) of the Ombudsman for Children Act, 2002, following this investigation and its findings, the Ombudsman for Children recommends that the following actions take place:

1. The HSE to carry out an early, and entirely fresh, review of the child's case based on:
  - complete information, including consideration of research evidence in the area; and
  - an assessment of her ability, including identification of steps that can be taken to strengthen her competencies, to the extent that may be deemed necessary, to address any health and safety concerns.

It is recommended that the decision making in this regard be supported by a formalised multidisciplinary forum and give due consideration to the developmental benefits to be derived by the child from powered mobility. It is further recommended that in the conduct of the recommended review, the child's parents and relevant voluntary organisation personnel be provided with the opportunity to fully contribute to the process.

2. HSE policies and decisions in the case of such applications should accord due recognition to waiting periods that may arise in the actual provision of supports, depending on the assessed level of priority in any particular case. This Office would urge that any such periods be kept to an absolute minimum in the case of children having regard to the need to provide optimum support for their development.

3. The HSE to expedite the work initiated, in consultation with the IPMN, to develop national guidelines for the provision of powered wheelchairs for children. The policy basis for such guidelines to be clearly set out by the HSE and to be formulated with due regard to existing research evidence and experience in the area.
4. The HSE to take all necessary steps to establish clear criteria and guidance in order to achieve consistency on the part of Local Health Offices in relation to the processing of applications, and appeals, in cases relating to the availability of powered wheelchairs for children.

The Human Rights Standard relevant to this investigation is outlined, for information purposes, in the Appendix to this statement.

#### **5. Post Script – HSE response to recommendations arising from this investigation**

In its response, the HSE undertook to carry-out a fresh review of the case, with a home visit by relevant professionals to the child and her family scheduled for an early date. On foot of this review, the child was awarded a powered wheelchair in July 2011.

HSE states that it operates a priority system to ensure minimum waiting time, fairness and equity. Waiting lists are prioritised into three levels viz. Immediate/Emergency, Urgent, and Routine.

Following this Office's recommendation, the HSE set up a national committee to develop a National Policy in relation to powered wheelchairs/assistive devices for children so as all areas of the HSE are dealing with assistive devices in a similar manner. This Office has been in regular contact with the HSE and, more recently, the Department of Health to monitor the progress of this recommendation. This Office understands that the National Policy is now in the process of being finalised.

## **Appendix 1 – Human Rights Standard relevant to this investigation**

### **1. Introduction**

In determining these particular recommendations, good practice provides that this Office also take cognisance of relevant human rights provisions which relate to the issues raised.

### **United Nations Convention on the Rights of the Child**

The Ombudsman for Children's Office has the statutory function to promote the rights and welfare of children. Section 7 of the 2002 Act provides that this role shall include encouraging public bodies, schools and voluntary hospitals to develop policies, practices and procedures designed to promote the rights and welfare of children. There is also a prescribed role to promote public awareness of matters (including the principles and provisions of the Convention) relating to the rights and welfare of children and how those rights can be enforced.

The Convention referred to is the United Nations Convention on the Rights of the Child (CRC) and was ratified by Ireland in 1992. It is important to note that the CRC outlines the minimum standards that signatories to the Convention should aim to achieve in their promotion and protection of children's rights. The Convention sets a baseline that, once achieved by States, should be improved upon with a view that minimum standards should increase over time.

In furtherance of the statutory function and having regard to the above, this Office is of the view that a number of provisions of the Convention should be brought to the attention of the HSE for its consideration alongside the recommendations that are contained in the investigation statement. It is intended that by highlighting a number of articles of the Convention (which in the opinion of this Office have a particular resonance with respect to how the rights of the child in this investigation may have been affected), the State, through the HSE or otherwise may be best informed with respect to any future actions that it may choose to take.

Article 3 provides that:

*In all actions concerning children... the best interests of the child shall be a primary consideration.*

*States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, ... and, to this end, shall take all appropriate legislative and administrative measures.*

Article 6 states:

*States Parties shall ensure to the maximum extent possible the survival and development of the child.*

Article 12 provides that:

*States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child ... [and] the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative.*

Article 23 provides that:

*States Parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity ... and facilitate the child's active participation in the community... to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, ... and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development.*

Article 24 makes provision that:

*States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services...[and] ... shall pursue full implementation of this right and... shall take appropriate measures... to ensure the provision of necessary medical assistance and health care to all children*

Article 27 states:

*States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.*

Articles 28 and 29 state:

*States Parties recognize the right of the child to education.*

*States Parties agree that the education of the child shall be directed to... the development of the child's personality, talents and mental and physical abilities to their fullest potential*

Article 31 provides that:

*States Parties recognize the right of the child ... to engage in play and recreational activities appropriate to the age of the child*

The above provisions with selected sections are not intended to be a further adjudicative process of the administrative actions of the HSE in addition to that which has already occurred through this Office's investigatory function. Rather they are included to help guide and encourage public bodies in the development of policy, practice and procedure to ensure that the best interests of the child are a primary consideration.

It should also be noted that since the entry into force of the UN Convention on the Rights of the Child in 1990, the UN committee of experts tasked with examining states' compliance with the Convention - known as the UN Committee on the Rights of the Child - has had occasion to consider in some detail what the obligations contained in the Convention require of states in practice. Of particular relevance to this case is the UN Committee's General Comment on the rights of children with disabilities, published in 2006. In this general comment, the Committee sets out what practical steps states should take in order to give effect to their obligations under Article 23 of the Convention. In its consideration of family support, the UN Committee indicated that the families of children with disabilities should be provided with equipment such as special furniture and mobility devices that are deemed necessary for the child with a disability to live a dignified, self-reliant life, and be fully included in the family and community.