

**Memorandum of Understanding (MoU) between  
the Ombudsman and the Ombudsman for Children**

## **1. Background**

1.1 The parties to this MoU are:

- the Ombudsman and the Ombudsman's Office (OO), established under the Ombudsman Act 1980 (the Act of 1980); and
- the Ombudsman for Children and the Ombudsman for Children's Office (OCO), established under the Ombudsman for Children Act 2002 (the Act of 2002).

1.2 The OO operating under the Act of 1980, investigates complaints against certain public bodies. The OCO, operating under the Act of 2002, investigates complaints against certain public bodies including schools and voluntary hospitals.

1.3 Under the Act of 1980 and the Act of 2002, investigations arise where the action complained of "has or may have adversely affected" a person. In the case of the OCO, the person adversely affected must be a child; in the case of the OO, the person adversely affected is a "person" in the wider sense of any natural person or any corporate entity. However, the Act of 2002 amends the Act of 1980 to provide that the OO shall not investigate any action which is one to which section 8 of the Act of 2002 applies, that is, an action which has, or may have, adversely affected a child. It is clear that the intention of the Oireachtas is that where an action of a public body has, or may have, adversely affected a child then any investigation of that action will be a matter for the OCO rather than the OO.

1.4 There will be instances, however, in which an action of a public body has, or may have, adversely affected both a child and an adult. This MoU provides the basis for enhanced cooperation to address and deal with such instances appropriately. It builds on the engagements and consultations about complaints which have previously taken place between the two Offices on an informal basis. The two Ombudsmen have entered into this MoU in order to further their shared commitment to working together as effectively as possible in the public interest.

## **2. The Purpose of the Memorandum**

2.1 This MoU is designed to promote inter agency consistency between the two Offices in examining and investigating complaints in respect of which either or both Offices have a jurisdiction. In order to minimise duplication of effort and assist speedy and efficient examination and investigation of complaints, under the MoU both Offices will:

- Foster mutual communication and cooperation;
- Optimise the use of public resources placed at their respective disposal;
- Strengthen practical arrangements for handling complaints which either Office can examine/investigate;

- Keep the wishes and best interests of complainants central to decisions on jurisdiction over complaints; and
- Monitor the effectiveness of cooperative working arrangements.

### **3. Scope of the MOU**

3.1 This MOU covers joint or linked jurisdictions related to the complaints investigation functions of the OO and the OCO where a decision will be needed on whether the alleged action taken in the performance of an administrative function should be examined /investigated under the Act of 1980 or under the Act of 2002.

3.2 The factors that the OO and OCO would expect to take into account in deciding which one of them will investigate the complaint will include:

- which Ombuds Office is best placed in the circumstances to conduct the most efficient investigation, including whether either Office has particular knowledge or experience that is relevant to the issues raised by the complainant;
- which Ombuds Office is able to provide the more effective solution, including taking into account the function of the OCO under Section 7 of the Act of 2002 to promote the rights and welfare of children; and
- any views or preferences expressed by the complainant.

3.3 The OO and OCO agree to continue, under this MoU, the current arrangement between the Offices that the OO may examine and investigate individual complaints relating to the payment of certain allowances and grants made to parents/guardians in respect of children, for example - statutory or discretionary payments of child benefit, domiciliary care allowance, exceptional needs payments under the supplementary welfare allowance scheme, payments under the back to school clothing and footwear scheme, carer's allowance/benefit, adoptive benefit, guardian's payment contributory, maternity benefit and health & safety Benefit.

### **4. Consultation and Liaison between the Offices**

4.1 The OO and OCO are committed to ensuring that any question about which Office has jurisdiction in a particular case shall be dealt with speedily, cooperatively and with the best interest of the complainant in mind.

4.2 Where either the OO and OCO receive a complaint which falls within the jurisdiction of the other Office to investigate, it shall, with the consent of the complainant, be re-directed to the appropriate office.

4.3 Where the OO and OCO, following consultation, determine that it is more appropriate for the other Office to proceed with an examination/ investigation of a complaint which falls within the jurisdiction of either of them to investigate then the referring Office shall seek the consent of the complainant to processing the complaint accordingly.

4.4 In exceptional cases where each Ombudsman finds it necessary to undertake an investigation arising from a particular aspect of one complaint, both Ombudsmen are committed to mutual cooperation to the extent that is possible within the governing ombudsman legislation. Where information or documentation may be shared between the Offices, for the purposes of examining or investigating such cases, the material involved shall be treated as confidential. In such instances, it shall be the practice of each Office to advise the public body or third party concerned of an intention to share information or documentation in this manner.

4.5 Each Office will respect the confidentiality and/or secrecy of information exchanged under this MoU and which has been obtained under the statutory powers of the other Office and which relates to any person contemplated within either the Act of 1980 or the Act of 2002. Each Office will comply with any non-disclosure obligations that are binding on the other and with due regard to the requirements of secrecy in the conduct of an investigation pursuant to Section 9 of the Act of 1980 and Section 16 of the Act of 2002 . Otherwise such material shall be treated as confidential.

4.6 A decision as to whether the OO or OCO should deal with a particular complaint would normally be taken soon after receipt of a complaint or after receipt of any further information that may be necessary to provide a clear understanding of the administrative action that is the subject of complaint. The OO and OCO will aim to be in a position to make decisions on jurisdiction within a period of 3 weeks from receipt of the complaint. In all instances, a letter of hand-over will issue between Offices to mark decisions involving the transfer of complaints documentation for processing purposes.

4.7 Each Ombudsman will nominate two liaison persons, of at least Investigator level or equivalent, in their respective Offices to operate and monitor the cooperative arrangements entered into under the MoU.

## **5. Operative Date and Review**

5.1 The provisions of this MoU will take effect from 2<sup>nd</sup> April 2012

5.2 The MoU will be reviewed by the two Ombudsmen after 12 months or otherwise as requested by either Ombudsman.

---

**Emily Logan**  
**Ombudsman for Children**

---

**Emily O'Reilly**  
**Ombudsman**