

A statement based on an investigation regarding the refusal
to provide an assistive technology grant to a child by the
Department of Education and Skills

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ombudsman
for children • do leanaí



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1 Introduction

1.1 An investigation was initiated in August 2010 by the Ombudsman for Children's Office under Section 8 of the Ombudsman for Children's Act, 2002. The investigation was based on a complaint, brought by the mother of a 11 year old child, regarding the refusal by the Department of Education and Skills (from this point referred to as the Department) to provide an assistive technology grant in respect of her son under the Assistive Technology Scheme.

1.2 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.

1.3 A copy of the draft statement was sent to the Department, in accordance with Section 13 (6) in order to provide the public body with an opportunity to consider the findings and make representations in relation to same. A response was received from the Department on the 4th July 2011, the representations considered by this Office and subsequently included in the statement along with this Office's consideration of same, where appropriate.

2 The Complaint

2.1 The complaint, submitted in April 2010, was brought by a mother on behalf of her son, who was aged 9 at the time of the complaint and attending a mainstream national school. On contacting the Office, the mother explained that an application made for assistive technology on behalf of her son had not been granted. Copies of reports from the child's GP as well as from a Senior Clinical Engineer at the Central Remedial Clinic, a Paediatrician, a Speech and Language Therapist, an Occupational Therapist, a Physiotherapist and his school teacher were provided which outlined the medical difficulties that the child experienced. These difficulties included problems associated with handwriting, bone age delay, low muscle tone, hypermobility, dyspraxia and cleft palate. The mother stated that these conditions were causing her son difficulties in school and with his homework, in particular with his handwriting ability, fine motor coordination, concentration levels and fatigue. It was contended that as a result of these factors her son was falling further behind with his school work and was not gaining the level of education

that he would be able to avail of with assistive technology. In the case of the reports completed by the Senior Clinical Engineer at the Central Remedial Clinic and the Physiotherapist, a specific recommendation was made for assistive technology to be provided for the child.

2.2 The complainant explained that the application for assistive technology, specifically a lap top and appropriate software with an estimated cost of €1000, had been turned down on the basis that there was no clear diagnosis made in respect of her son's medical difficulties.

3 The Investigation

3.1 Role of the Ombudsman for Children's Office

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

3.2 Preliminary Examination

3.2.1 Following receipt of the complaint a preliminary examination was carried out. Whilst the complaint identified the administrative actions of the National Council for Special Education (NCSE), as this Office understands that the application process for the Assistive Technology Scheme involves an administrative role for the Department as well as the NCSE, both public bodies were engaged as part of the preliminary examination process.

3.2.2 The main purpose of a preliminary examination is to gain a better understanding of the complaint from all relevant parties and to determine if an investigation of the matter is warranted in accordance with the Ombudsman for Children Act, 2002.

3.2.3 Following the preliminary examination of the complaint a decision was made by this Office to proceed to an investigation of the administrative actions of the Department. This decision was based on their role in relation to policy guidance regarding administration of the Scheme and information provided by the NCSE that responsibility for determining such applications is a matter for the Department.

3.3 Investigation Process

3.3.1 The investigation of this complaint involved further correspondence with the Department and a review of their files received in relation to this matter. As part of the investigation process a meeting also took place with relevant staff from the Department.

3.3.2 In accordance with Section 6(2) of the 2002 Act, the Office is obliged to have regard to the wishes of the child. As part of the investigation process the Office met the child, accompanied by his mother.

3.3.3 The NCSE do not come within the investigatory remit of this Office and their administrative actions were not the focus of this investigation. However, given their role and knowledge of this case, a meeting was also sought and held with representatives of the NCSE.

3.3.4 In accordance with Section 13, relevant extracts of the draft statement which pertain to the role of the NCSE were provided to them, in order to offer the NCSE an opportunity to consider same. A response was received from the NCSE on 21st June 2011, and is included in the finalised statement where appropriate.

3.3.5 Given its role in the education of the child, the school Principal was also contacted in order for this Office to have as complete an understanding as possible as regards the issues arising in the investigation.

3.3.6 The focus of the investigation centred on the administrative actions of the Department which were identified as requiring clarification following the preliminary examination. These included:

- The actions of the Department in the administration of the Assistive Technology Scheme, in particular, in relation to the application made on behalf of this child.
- The availability of an appeals mechanism in the Department for dealing with refusals to grant assistive technology.
- The eligibility criteria for the Scheme, in particular the situation whereby only children with an assessed diagnosis of a disability, as detailed in Department circulars, can be considered for the granting of assistive technology.

3.3.7 The principal issues addressed by the investigation, arising from the complaint itself or identified during the preliminary examination, were, in accordance with Section 8 of the Ombudsman for Children Act, 2002:

1. whether those actions had, or may have had, an adverse effect on the child involved; and
2. whether those 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.

4 Analysis

4.1 The Assistive Technology Scheme and its administration

4.1.1 The purpose of the Scheme is to meet the cost of assistive technology for pupils with an assessed special educational need and where it is recommended that such equipment can be of educational benefit to the child concerned. Examples of such equipment include computers, word processors, software, etc

4.1.2 The Department explained that their role in the application process for assistive technology grants is an administrative function which involves setting the policy(s) applicable to the administration of the Scheme, processing applications, and administering grant payments for applications recommended for approval by the NCSE.

4.1.3 The Department advised that it does not have any role in making decisions regarding whether to approve or otherwise an application for assistive technology. It was stated that the decision to approve or otherwise the application is made by the NCSE's Special Educational Needs Organiser (SENO), prior to forwarding the application to the Department and that, as such, the SENO determines whether a pupil qualifies for support under the Scheme. The Department stated that it does not reconsider the recommendation made by the SENO.

4.1.4 The NCSE stated that it makes recommendations to the Department regarding the eligibility or otherwise of a pupil for the Scheme but does not subsequently make the final decision regarding an application, which is a matter for the Department. NCSE circular 01/06 sets out that the SENO is not currently responsible for deciding on such applications. The NCSE advised this Office that these recommendations are made in accordance with the Department policy and criteria and that a SENO can only make a recommendation for the granting of assistive technology where a clear diagnosis of a disability exists as per current Department criteria.

4.1.5 It is apparent that there are different understandings and a lack of clarity between the public bodies involved, regarding accountability for decision making in relation to such applications. Each public body is of the opinion that the other is making the decision. It is unclear how such a situation could arise and remain ongoing since the Assistive Technology Scheme became operational in 2005. It is not satisfactory that this would be the case between two public bodies charged with administering a service to children.

4.2 The policies regarding the administration of the Assistive Technology Scheme

4.2.1 This Office understands that the Department circular M14/05: *'Revised scheme of grants towards the purchase of equipment for pupils with a disability'* is the circular which currently governs the administration of the Scheme. The Department has advised that a new circular to cover the administration of the Scheme is planned and its preparation has involved consultation with the relevant education partners. The Office understands that there is currently no specific circular relating to primary school children, but they have been considered in line with the current operating scheme.

4.2.2 The purpose of the Scheme is to provide grants towards the purchase of equipment for pupils who have been diagnosed as having serious physical and/or communicative disabilities which makes ordinary communication through speech and/or writing impossible for them. The Department advised that applications should be accompanied by an up to date professional report which includes a clear diagnosis. The providing of grants, as outlined by the circular, is considered on the basis of the following criteria: a) that the professional who assessed the child has made a recommendation that assistive technology is necessary for the effective education of the child including illustrating how it will be used; b) that it can be evidenced that the child will need the recommended equipment throughout the day and; c) that it is clear that the existing equipment in the

school is insufficient to meet the child's needs. The circular also provides that the SENO will examine an application in light of the needs of the pupil, the school facilities, and the criteria set out in the circular and subsequently decide whether to recommend to the Department approval of the grant aid.

4.2.3 During the investigation the Department explained that circular M14/05 is not prescriptive in relation to the assessed disabilities which may lead to eligibility for assistive technology. This was stated as being as a result of the broad spectrum of disabilities which may result in the requirement for assistive technology. It was advised that disabilities considered for such resourcing are not restricted to the list of low incidence disabilities contained in circular Sp Ed 01/05.

4.2.4 The NCSE circular 01/06, which refers to their role in the administration of the Scheme, outlines that only applications for assistive technology for pupils who have an assessed disability as per Sp Ed 01/05 should be forwarded to the SENO. A further circular, 01/11, sets out additional clarification in relation to the disability codes considered for such applications by the NCSE.

4.2.5. It appears that there may be different understandings between the public bodies concerned regarding children who may be considered for eligibility for the Scheme. In this respect it is unclear what, if any, policy guidance was made available from the Department to the NCSE regarding eligibility for the Scheme. It is also unclear to what extent the Department has oversight of the administration of the scheme by the NCSE and how Department policy guidance is being applied.

4.2.6 This raises concerns as to the clarity and consistency of information provided to schools and parents regarding the potential eligibility of children on whose behalf applications may be made.

4.2.7 In this specific case the Department has stated that, although the professional reports in respect of this child appear to strongly indicate that he has a physical disability, they do not provide a diagnosis that would allow a recommendation for assistive technology, nor do they set out a recommendation for a requirement for assistive technology, taking into account such diagnosis, and setting out how the equipment might be used for educational benefit. The Department advised that, '*where there is unclarity*

regarding diagnosis, further assessment or clarification of the assessment may be required'.

4.2.8 While it is acknowledged by all parties that the child has significant medical needs, this Office was advised by the Department that, due to a diagnosis confirming a specific disability being outstanding, the pupil has remained ineligible to be considered for the Scheme. It should be noted that the report of the Central Remedial Clinic, which was carried out specifically for the purpose of evaluating appropriate assistive technology for this child, acknowledged that no diagnosis had been identified but also detailed the impact his difficulties have educationally. In particular, the report found that the child's *'ability to produce handwriting to the level required within school is seriously impaired'*, stating that this was *'very slow'* and noting that the child had *'difficulties with legibility'*. The report recommended that the child would *'need to begin to use typing as an alternative to handwriting'* as this would *'allow him to keep up with the class work without getting exhausted'*. It was stated that he needed to *'develop these skills now'*, as the volume of work would only increase as he moves up through school. The report recommends that he be provided with a computer for his use within the school. The report was completed by a Senior Clinical Engineer at the Clinic, based on his view of the child's needs; it is also noted that the child's class teacher had submitted information directly to the Clinic outlining the difficulties he was experiencing in the classroom. A physiotherapy report of January 2010, which was provided to this Office also made summary assessment findings that the child required a laptop and recommended software for use in school as his hypotonia (muscle weakness) was having a significant effect on his ability to respond to writing tasks. Therefore, while the Department holds the view that the documentation provided in the application did not indicate a recommendation for a requirement for assistive technology, the information provided to this Office indicates that documentation to that effect was available.

4.2.9 It is of concern that the approach to operating the circular relating to assistive technology does not provide flexibility to include children for whom it is not possible to have a medical diagnosis of a disability. There will always be some children in this situation and having regard to the fairness and adequacy of the Scheme, this Office is of the view that it is reasonable to expect the implementation of the circular to allow such flexibility in recognition of the complexities and realities that can arise in the area.

4.3 The Review / Appeals Process

4.3.1 During the course of this investigation both the Department and the NCSE outlined their understandings of the review/appeals process relating to decisions regarding assistive technology applications. The Department advised that they have no role in reviewing a recommendation made by the SENO and so do not have a role in any appeal. The NCSE advised that applications can be reviewed on an informal ongoing basis by the NCSE should new information be brought to the attention of the SENO, but that any appeal is a matter for the Department as the decision making body on grant applications.

4.3.2 There is no formal appeals process in relation to the final decision made to approve or otherwise an Assistive Technology Scheme application. The confusion regarding accountability for the decision making process has directly impacted on the availability of an appeals process. Consequently, applicants are not provided with an opportunity to appeal a decision made regarding an application and how this was determined.

5 Views of the Child

5.1 In his meeting with this Office, held in August 2010, the child explained that he enjoys school most of the time and wants to do well in class. However, most days he finds school difficult and feels like he is falling behind all the other pupils. He explained that this is because his hands can become '*really hurt and tired*' from writing. The child also stated that he '*hardly ever*' gets to finish work that is assigned in class because he gets too tired to do so.

5.2 The child said that he feels different, left behind and unable to do the work he should be able to do, that he has never been able to finish a test or exam that has been set in class and that, as a result, he has never received special prizes or awards that are given out to pupils in the school when they perform successfully.

5.3 The child explained that there are computers in his school but they are not of much help to him. As the computers in the school are to be shared between all the students the child said that he had limited access to them and, in addition, as they do not have the special programmes required by him. He stated that a laptop designed for him would have certain special features that would make it easy for him to use, which include a smaller

keyboard and a facility for him to speak into a headset and translate his words onto the computer.

5.4 The child discussed what homework is like for him. He said that it can regularly take over three hours to finish it at night. A lot of the time he will finish his homework by calling out his work to his mother who will write his answers for him. However, as she can be busy with his brothers and sister, sometimes this isn't always possible. As a result he does not always finish his homework. It was explained that last year the recommended time for spending on homework was thirty minutes. The child stated that homework can often end in tears for both him and his mother.

5.5 The child said that the laptop would mean that he would be treated fairly and that things would be a lot easier for him if he had it. He also said that he did not understand why an application was refused for a laptop as he thinks he has '*loads of diagnoses*'.

6. Adverse affect

6.1 The complainant stated that the child suffers in school and with his homework on a daily basis. She stated that he suffers a lot of pain as a result of his various conditions and that his struggle with completing school work had affected his mood. The complainant felt that her son was not being given the supports that would allow him to achieve his educational potential and that the provision of assistive technology would remove an obstacle to his educational development. It was also stated that the provision of assistive technology would improve family life and give the child more opportunity to spend time on other activities that he would like to do. During the course of the investigation the complainant explained that the child continued to attend medical appointments and had received a number of other medical diagnoses. It was also stated that as a result of his lowering mood, in part as a result of his view regarding to his ability to engage in school, the child had begun to attend psychology services. The complainant feels that, as the child continues to grow up with these medical difficulties, he will have an increasing requirement for assistive technology supports.

6.2 The complainant also stated that the decision regarding the application for assistive technology had been refused without the child being met or having his voice heard in the process.

6.3 A letter by the child's class teacher in October 2009 was provided in the complaint correspondence. The letter stated that, '*while he engages well in class*' the child's main difficulties were with his hand writing, which was '*slow and laborious*' and caused him '*to be behind in his work*'. It was noted that this could lead to frustration. The school also supported and submitted the application for assistive technology in November 2009 which indicates that there was an understanding that his education may have benefited from assistive technology.

7 Response of the Public Bodies

7.1 In accordance with Section 13.6 of the Ombudsman for Children's Act, 2002, this Office provided a draft copy of this statement to the relevant public bodies in order to afford them an opportunity to consider its contents and to make any representations they wished.

7.2 In relation to Section 4.2 of this statement, which referred to the eligibility criteria for the Assistive Technology Scheme, the NCSE restated its position that its role is to process applications in respect of resources for pupils with Special Educational Needs arising from one of the fourteen disabilities specified in Department policy and that pupils who have a diagnosed disability which is outside of the fourteen disabilities specified do not come under the remit of the NCSE.

7.3 As set out in paragraph 4.2.3, the Department stated that the disabilities which can be considered for eligibility for assistive technology are not restricted to those listed as low incidence in circular SpEd 01/05. The Department also advised that, due to the wide ranging nature of disability classification, it is their view that it is not possible to be absolute in relation to disability categories which qualify for consideration for the provision of supports for pupils with special educational needs. Following consideration of the response of the NCSE and the Department, the concerns raised by this Office at paragraph 4.2.6 remain.

7.4 Regarding this Office's analysis of the lack of flexibility contained within the Assistive Technology Scheme (4.2.9) the Department stated that the Scheme is designed to provide technology to support children with a disability and distinguished between an assessed disability and a medical condition. It was stated that a medical condition may be temporary or symptomatic, as opposed to assessed disabilities which indicate a permanency of a

condition which requires ongoing support. Given the limited funding available to the Scheme the Department indicated that available resources must be put to optimum use and as a result, criteria for qualification for such resource support must be clearly defined. The Department are of the opinion that, in this case, any decision to change policy to extend the Scheme to include children with medical conditions could have significant resource implications regarding other similar applications which would be required to be taken into account and is a policy consideration as opposed to an administrative action taken in the administration of policy. The Department also contends that it is not clear that there may be only a small number of children in this situation.

7.5 The Department has stated that it has acted in accordance with Departmental policy with regard to the eligibility criteria for the Scheme and has indicated that a change to this policy would be required at Ministerial level, as it is a matter for the Minister to establish and review educational policy. The Department understands that Section 8 of the Ombudsman for Children Act, 2002, provides that the Office may investigate an action taken in the performance of an administrative function by a public body i.e. in the administration of policy and that it is a matter for the Minister to establish and review educational policy. The Department does not accept this Office's contention that the failure of the Assistive Technology Scheme to consider children who have significant medical needs which have, or may have had, an adverse affect on their education, based on the lack of a diagnosis, is an administrative action which is contrary to fair and sound administration.

7.6 The Office has considered the Departments' response as set out in 7.3 and 7.4 and is aware that there are lots of children with a medical condition. The comments made in this statement are not referring to this wide group of children, rather the focus is on children, who have not yet been diagnosed, but who have the kind of symptoms which significantly impact on their physical dexterity and communicative abilities, which can directly adversely affect the child's ability to engage in, and benefit from, education. The Office remains of the view that the lack of a diagnosis in such situations should not impede a child's opportunity to engage in their education to the fullest possible extent, including if assistive technology is deemed beneficial. As set out in Paragraph 4.2.7, the Department has stated that the medical reports appear to strongly indicate that the child has a physical disability but do not provide a diagnosis. This Office remains concerned regarding the lack of flexibility in the Assistive Technology Scheme to consider applications for children in such

circumstances. It views such an approach not as an extension of the Scheme, but rather as a reasonable and pragmatic recognition that circumstances can arise which strongly indicate that a formal diagnosis is proving elusive and requiring time to resolve. The Ombudsman for Children has no doubt that an approach of this kind is in the best interest of children. While this may be more challenging administratively, the key issue raised through this investigation relates to the impact of some medical conditions on a child's opportunity to engage in education to the fullest extent possible.

7.7 Regarding the conclusion drawn by this Office at Section 8.1 of this Statement the following responses should be noted.

7.7.1 The NCSE restated that their role in the administration of the Scheme is to provide a recommendation to the Department regarding an individual application and that it is the Department who then make the decision in the matter. In their response to the draft statement the Department advised that the recommendation of the NCSE regarding an application for the Scheme is the '*guiding decision*' for the Department, whose role is to process the application and make payments of any grant.

7.7.2 The Department reiterated that a new circular regarding the Assistive Technology Scheme is currently being drafted, in consultation with stakeholders, and will subsequently issue to schools. It has stated that the findings and recommendations of this report relating to the administration of the Scheme and the communication between the Department and the NCSE will be taken into account in the development of the circular. It is stated that the new circular will also provide clarity to parents and schools with regard to the operation and qualification criteria for the Scheme. In this regard the Ombudsman for Children is of the opinion that a consistent understanding between the Department and the NCSE regarding qualification criteria for the Scheme will be required in the first instance as, following the responses of the public bodies to this report, it appears that different understandings continue to exist regarding this matter.

7.8 The conclusion of section 8.3 of this statement makes reference to the lack of an appeals procedure in the Assistive Technology Scheme. In their response to this report the Department stated that a process to review and resolve this case has been, and remains available, as the NCSE are open to considering any new information submitted to them and can subsequently make a recommendation decision to the Department. Furthermore,

it is stated that the circular currently being drafted will address the issue of an appeals procedure.

7.9 In the case of this child there is a specific issue regarding different understandings which appear to exist between the parties regarding a diagnosis of dyspraxia, a disability which the NCSE and the Department have both stated would provide eligibility under the Scheme. The complainant is of the opinion that a diagnosis exists, as referred to in paragraph 2.1, while the NCSE have stated that the SENO would not be of this opinion. The mother states that she has submitted all information in this regard to the NCSE. In addition, there are clear differences of understanding regarding this child's requirement for assistive technology and his access to relevant and meaningful I.T. equipment in the school to meet his needs, as well as the specific software he required to assist him. The Office has made comments and findings regarding the matter of an appeals procedure which are contained in the following section.

8 Conclusion and findings

8.1 There is a lack of clarity regarding the administrative accountability of the Department in the application process for the Assistive Technology Scheme and a clear difference in understanding exists between the Department and the NCSE in relation to their respective roles in this matter. Neither the Department nor the NCSE are of the view that they have responsibility for making the decision in relation to such applications. It also appears that there may be different understandings in relation to the eligibility criteria being applied in the administration of the Scheme. It is of serious concern to this Office that there is not a common understanding between the Department and the NCSE in relation to the administration of a scheme for supporting the educational needs of children, which has been in place since 2005.

8.2 In this particular case the young person was not considered eligible for assistive technology on the basis that he did not have a definitive diagnosis of a disability. It is of concern that the current administration of the scheme does not provide the flexibility to comprehend the particular medical circumstances and consequent educational needs of children who may have significant medical needs, which may be impacting on their education, but for whom no definitive diagnosis has been made.

8.3 There is no formal appeals process available in the Scheme. The Department is of the view that an appeal is a matter for the NCSE while the NCSE is of the view an appeal of a decision can only be carried out by the Department. Furthermore, there does not appear to be an opportunity for pupils on whose behalf an application has been made to express their opinions in relation to how assistive technology may benefit their educational participation. This Office is of the view that the details of this case illustrate the need for a clear appeals procedure which can address cases where different contentions regarding the same information can be addressed. In addition it is the Office's opinion that such appeals should consider the views of the pupil where appropriate, as well as those of medical and other relevant professionals, in particular where assistive technology is deemed to be beneficial but where no diagnosis is available.

8.4 This Office is of the view that the administrative actions of the Department, in regards the failure of the Scheme to consider the impact children's medical difficulties may have on their ability to engage in their education, based solely on the lack of a specific diagnosis, to be contrary to fair and sound administration

8.5 This Office is of the view that the administrative actions of the Department, with regard to the following, are based on an undesirable administrative practice:

- the lack of clarity regarding the administration of the Assistive Technology Scheme, specifically regarding accountability for the decisions made;
- the lack of availability of an appeals procedure;
- the apparent lack of an effective process by the Department to monitor the implementation of its circular, M14/05.

8.6 Having reviewed all the information gathered through the investigation process, including the views of the child, the school authorities and the public bodies as well as the documentation provided by all parties, the Department of Education argue that the child has not been adversely affected as a result of the failure to grant assistive technology to him.

8.7 This Office contacted the school in July 2011 to ascertain the current position on the child's access to relevant I.T equipment in school. The school acknowledged the child's medical and physical difficulties and advised that there were no concerns in regards the child's '*academic performance*'. The school also reported that given the child's particular

needs and that he is assigned less work than his classmates in light of his inability to complete same. In support of the child the school intervened by integrating a private sourced laptop which had been provided to the child by way of donation. This was implemented into the school day as a result of the school's understanding of the child's needs in cooperation with the child and his family. It appears that this informal situation is being employed by the school and the child's parents in the absence of an assistive technology grant being provided. It should be noted that any benefit to the child is not as a result of an intervention or action taken by the NCSE or the Department. Therefore, while some efforts have been made locally by the school, no attempt to mitigate the action has been taken by the Department.

8.8 In light of the information provided, this Office is of the opinion that the child faces a number of challenges in participating fully in his education as a result of his medical conditions. Education extends beyond the classroom and into the home for every child and family, not least in the form of homework. The Office notes the extended hours spent doing homework and believes that the child's family and social life are being adversely affected in this regard. This Office is cognisant of the medical and professional reports received outlining the physical difficulties that he has and the affect that he himself has stated they have on his ability to engage with his education. While it is noted that the Department does not have an obligation to hear the child's own experience in this regard, it is considered a serious omission by this Office given the nature and impact such a decision is having on the child's life.

8.9 The Department has stated that there is no educational basis to indicate that the decision not provide access to assistive technology affected the child's ability to engage at school, in particular in light of the range of factors involved in educational outcomes, the potential for classroom based interventions and the availability of other technology in the classroom.

8.10 The Office has considered the different contentions raised during the investigation regarding the Departments' refusal to provide assistive technology and the adverse affect on the child of this action. It is the Office's opinion that there was clear medical and professional information which was readily available to them during the application process which indicated ongoing difficulties for this child in terms of his education. This information included specific recommendations made regarding his need for assistive technology.

Furthermore, the child himself has explained that the technology available to him in the school was not meeting his needs, was not dedicated to his use and was not regularly available for normal class work. The affect that the lack of assistive technology had on the child's education, both in the classroom and at home, was also readily available in the information provided, as well as through discussion with the child himself. The mother has raised a key concern that her son was not met with at any stage during the application process to ascertain his views and the impact on him of his difficulties. Following on from the above listed findings of this statement which relate to the administrative actions of the Department in regards the Assistive Technology Scheme, it is the conclusion of this Office that this child has been adversely affected by these actions.

8.11 Finally, in determining the adverse affect on this child, the Ombudsman for Children's Office has considered his situation holistically having regard not simply to his academic performance and outcomes, but rather all aspects of his educational experience, that extends beyond the classroom. It is clear that his medical difficulties are making his ability to perform significantly more challenging, stressful and time consuming. This Office does not believe that it is fair or reasonable that a child with such medical difficulties, evidenced and supported by professionals, should be excluded from a scheme on the basis that his medical difficulties do not neatly fit into an assessed disability.

9 Conclusion of the investigation

9.1 In conclusion of this investigation, pursuant to Section 13 of the Ombudsman for Children Act 2002, the Office found that the administrative actions of the Department come within the ambit of Section 8 of the Act. Specifically:

- (a) Section 8 (a) that the child concerned has been adversely affected; and
- (b) Section 8 (b)(vi) and (vii) that the Department's actions have been based on an undesirable administrative practice and are contrary to fair and sound administration.

10 Recommendations

10.1 The Office aims to make recommendations which are fair and constructive for both parties to the complaint. The Ombudsman for Children shall have regard to the best interests of the child concerned. The recommendations aim to mitigate the adverse affect found in this particular case and improve future administrative practices of the Department in that regard.

10.2 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 Department should consider providing assistive technology in this instance whilst the issues regarding the eligibility for the Scheme, as set out in 2(b) below, are being addressed. This recommendation is being made with particular regard to:

- the serious concerns regarding the fairness and adequacy of the Scheme to consider this child's particular needs;
- the impact that the current medical and physical needs of this child are having on his education and family life, and the potential benefits of the assistive technology applied for;
- the low cost involved for the provision of the assistive technology which was applied for and the significant benefit for the child that it would provide.

2. The Department in its role of setting policy for the administration of the Assistive Technology Scheme should develop clear and conclusive guidance and policy documents. The Ombudsman for Children urges the Department to arrange for the completion and issue of the proposed new circular at an early date and is of the view that, in particular, it should:

- a) Provide clarity regarding the decision making process and the respective responsibilities of the Department and the NCSE in this regard. In accordance with fair and sound administration, a clear decision-making process based on complete information is required. The Department should take steps as appropriate in relation to the findings and recommendations of this report;
- b) There will always be some children for whom a specific medical diagnosis cannot be readily determined, but whose education may be impeded by significant medical difficulties. Having regard to the fairness and adequacy of the Scheme, it should provide for reasonable inclusion of children in such circumstances. This should be addressed in any revised circular developed in respect of the Scheme. The revised circular should specifically address provision of Assistive Technology to primary schools, where by virtue of their younger age definitive diagnosis for a child may be an issue.

- c) Provide for an appeals process for decisions made in respect of the Assistive Technology Scheme. This should be clearly and uniformly communicated to schools and families in order to ensure that accessibility to an appeal process is commonly understood.
 - d) Provide for effective mechanisms for monitoring the operation of the scheme.
3. The Department should take steps as appropriate to ensure that school authorities and parents who may wish to apply for assistive technology, can access clear and complete information on the eligibility criteria for the granting of support under the Assistive Technology Scheme.