

An investigation into a decision by the HSE
(now Tusla, the Child and Family Agency) to
cease a Section 10 payment to a family

May 2014



Report on the investigation of complaint regarding a decision by Tusla (formerly HSE) to
cease a Section 10 payment to a family

May 2014

Ombudsman for Children's Office
Millennium House, 52 – 56 Great Strand Street, Dublin 1, Ireland

Contents

1	Complaint.....	3
2	Investigation.....	3
3	Analysis and Findings	4
	<i>HSE initial involvement and child's placement with aunt.....</i>	<i>4</i>
	<i>Summary of HSE involvement.....</i>	<i>4</i>
	<i>Relative care placement.....</i>	<i>5</i>
	<i>Section 10 payment</i>	<i>7</i>
	<i>Decision to review Section 10 payment.....</i>	<i>11</i>
	<i>Complaint by aunt to the HSE</i>	<i>12</i>
	<i>The appeal of the decision to cease Section 10 payment.....</i>	<i>13</i>
	<i>Adverse effect.....</i>	<i>14</i>
	<i>Findings in relation to adverse affect and maladministration</i>	<i>15</i>
	<i>Summary of case</i>	<i>15</i>
	<i>Findings</i>	<i>16</i>
4	Recommendations	18
5	Response from Tusla	19
	Appendix.....	20
	<i>Ombudsman for Children - Statutory role and remit</i>	<i>20</i>

1 Complaint

In September 2012, a complaint was submitted to this Office by the aunt of a young person (A), who was then aged 15 years, regarding a decision by the HSE (now provided by Tusla) to cease financial support being provided to assist her in caring for him. The aunt advised that she has been caring for her nephew since 2003. From September 2006 to November 2008, she was in receipt of a payment made by the HSE through Section 10 of the Child Care Act 1991 (Section 10 payment) and also the Orphan's Allowance (now Guardian's Allowance), a social welfare payment. The complaint centres around the fact that the Section 10 payment was ceased by the HSE in November 2008 on the basis of a contention by the Social Work Department that the aunt did not inform them that she was in receipt of both payments.

2 Investigation

2.1 Having carried out a preliminary examination of the complaint received, in June 2013 the Office decided to proceed with an investigation in accordance with Section 8 of the 2002 Act. The focus of this investigation is on the level of support provided to A since moving to live full time with his aunt in 2003. While the circumstances of his placement with his aunt are not the focus of the investigation, it is summarised here in terms of looking at the supports subsequently provided by the HSE to assist A and his aunt. It is clear that there were concerns about A's safety whilst cared for by his mother and family care arrangements were negotiated by the HSE with his mother and extended family. A's care prior to that had involved periods of care by his family as well as by his mother. Whilst voluntary care was considered, the mother did not consent and all involved – the HSE and the family - were in agreement about the need for a family placement for A. The investigation considered whether the plan made for A's care was a family agreement or private care arrangement or an arrangement mediated by and at the request of the Social Work Department and whether there was an onus on the HSE to provide support to assist him following agreement on the family placement.

2.2 The investigation centred on the administrative actions of the HSE regarding provision of support to this child and his aunt including:

- The actions taken by the HSE in provision of support to A since his placement with his aunt in September 2003 as part of a safety plan with the involvement of the HSE;
- The actions taken by the HSE and consideration given, at that time and subsequently, in relation to the carrying out of a fostering assessment and determining whether the criteria for a relative foster care placement were met;

- The actual support, financial and otherwise, provided by the HSE for the benefit of A since taking up placement with his aunt;
- The communication by the HSE with the aunt regarding its provision of support for the continued placement of A with her and specifically in relation to the availability of the Section 10 payment;
- The HSE's handling of the aunt's complaint, the apparent delay in concluding the investigation of this and the process for implementation of the recommendations made;
- The appeal process of the Section 10 payment, including the information taken into account in the decision communicated to the aunt.

2.3 The investigation involved:

- Review of information and documentation provided by the complainant;
- Review of information and documentation provided by the HSE;
- A meeting with the complainant;
- A meeting with the young person; and
- Meetings with representatives of the HSE.

3 Analysis and Findings

HSE initial involvement and child's placement with aunt

3.1 The child's placement with his aunt in 2003 is a central issue to the complaint received. While the actions of the HSE that occurred at the time A was placed with his aunt are not the focus of the complaint per se, it is considered here briefly as the HSE contend it was a private care arrangement and is a factor in the decision not to re-instate the Section 10 funding. The aunt contends that the HSE were involved with A and his family at that time and the arrangements in relation to his placement were made by agreement with the HSE.

3.2 There had been previous HSE involvement due to concerns of a child protection and welfare nature regarding A.

Summary of HSE involvement

3.3

- The HSE has been involved with A since 2000, as there had been concerns regarding his welfare and whether his mother was able to adequately care for him.

At various stages A lived with extended family and the possibility of voluntary care down the line was discussed.

- The HSE became involved again in 2003 following a referral by the Public Health Nurse. There was on-going contact with the HSE following this which focused primarily on A's placement and substance treatment issues for the mother.
- At that time the HSE met with the family. Arising from one ongoing concerns about the mother's substance misuse, a safety plan was agreed was involving the child living with his aunt and arrangements made about contact with his mother.
- There was further contact between the HSE and the aunt which involved the HSE providing financial support for afterschool care for A. The records state that the aunt may need financial assistance which was to be discussed with the Team Leader.
- Social Work supervision records in October 2003 state that A's present placement and suitability were discussed. There are no details recorded as to the plan of action at that time.
- In February 2004 the supervision records note that the case was discussed at length and the HSE were prepared to close the case and to talk with the mother about "formalising A's placement with [the aunt]". The HSE spoke with the aunt and ascertained that she was happy to continue caring for A. The HSE prepared a written agreement for the aunt and the mother to sign in relation to the care of A. The form notes that a signed copy was to be given to Social Work by the aunt. There is no signed copy on file. The aunt contends that the HSE were to get back to her with a written agreement about this placement arrangement but that this did not happen. The HSE later spoke with the grandparents about applying for formal custody as it would provide security.
- In June 2004 the HSE closed the case and wrote to the mother, aunt and grandparents advising of this. The case closure form noted that the mother in conjunction with the HSE has agreed that A was cared for by extended family.

Relative care placement

3.4 In regard to the complaint matters, the HSE advise that this was not a relative care placement as A was not in the care of the HSE and have described it as a family care/private care arrangement. This was explained in their letter to the aunt in February 2012. It is stated that the aunt and family always expressed a wish to care for A and reached a verbal agreement with [A's mother] for this to happen. *A private arrangement is when both parties come to an understanding like in your case that [mother] was not able to*

care for [A] on a full time basis but was willing to allow him to be placed with another member of his family to ensure his needs are met.

3.5 During the investigation, the HSE advised that not every child who is being cared for by extended family needs to be taken into care. In regard to such arrangements the HSE may receive referrals of a child protection nature or requests for advice on these arrangements. The HSE considers the level of engagement that is required, what supports may be necessary and whether any action is required under Section 3 of the Child Care Act 1991. As regards this child's case, the HSE advised that the concerns were of a welfare nature. The mother did not consent to the child going into care and she had made adequate arrangements for his care, which the HSE were satisfied with. The family were aware of the issues affecting the mother and happy to step in if the child was at risk. As a result there was no reason to take the child into care. It was advised that A was very close to his mother and this bond was maintained through the informal care arrangements for him.

3.6 This Office is of the view that the placement with the aunt went beyond that of a private arrangement between the family members. In this instance the HSE facilitated the arrangement as part of a safety measure. Thus it cannot be said to be a private care arrangement. The HSE were substantially involved in negotiating and arranging the placement with the relatives – stating this was their preference, putting in safety plans around access. The HSE also prepared a written agreement in respect of A to be signed by the mother and the HSE setting out the his care arrangements. The HSE advise that the form has no legal standing. However, it is clear from Social Work supervision records that the form was prepared with a view to formalising the placement with the aunt. The HSE records refer to the form as a contract and advised relevant professionals in this regard.

3.7 Voluntary care was considered on a number of occasions but the mother did not consent. In October 2003, the Social Workers spoke with the mother about the advantages of the aunt fostering the child but she was not in agreement with this. It appears the matter of care, specifically relative foster care was considered by the HSE on several occasions and discussed with the mother, aunt and also grandparents. To some extent it could be considered that the HSE were pursuing this option but the mother did not consent. Nonetheless, the fact that the mother did not agree to any of the legal options available, did not divest the HSE of its responsibility towards A.

3.8 Regional child protection guidelines operational at the time identified a number of options where there are concerns about immediate safety of a child which includes voluntary

placement of child with relatives. It states that where existence of risk is established this needs to address this and reduction of risk elements. One option that can be considered is removal of child to a relative's family home, with clear guidelines concerning access by the abuser. In this case the child was not removed, but a voluntary agreement was put in place and guidelines set about access. It is evident that the HSE considered risk to exist and did not consider that A could be cared for by his mother. It is also clear that there was no consent from A's parent for voluntary care. The HSE negotiated a family placement and were of the view that the family could provide appropriate care and protection for the child.

3.9 While family care is preferable where possible, this case raises concerns about the appropriate use of a private care arrangement mediated by the HSE in the context of child protection and welfare concerns and in the absence of any on-going Social Work Department support and monitoring. Given the specific circumstances of A and the HSE's involvement at that time in planning for his care with his aunt, this Office is of the view that the HSE considered this a private care arrangement beyond a time when it was reasonable to do so. Further, a private arrangement is not a long term solution for a child in situations where it is not suitable for him to be cared for by his parents.

3.10 The long term use of a private arrangement in the context of concerns about the mother's ability to care for A left him in a precarious situation and the level of support provided by the HSE was very limited both in terms of financial support and there was no oversight to ensure the child's welfare. While assistance was provided in relation to after school care, this was for a limited time of 6 months. The grandparents were advised to apply for full custody/ guardianship and the case was closed without this being resolved. This left him in a legally precarious situation in a context where there were child protection and welfare concerns when cared for by his parents.

3.11 Further, A's mother moved in and out of the country intermittently and there were periods of time when the child was without a legal guardian in this jurisdiction.

Section 10 payment

3.12 In 2006 the aunt contacted the HSE seeking financial assistance in caring for the child. Social Work undertook a home visit following receipt of her correspondence. At that time she advised that she was receiving Orphan's Allowance of €130 per week and Lone Parents Allowance of €160 for herself and her own child. The records state that:

- When A was staying with her first, the aunt was not clear in relation to the Social Work contact and plan. The aunt had wanted A to be staying with her under the full care of the HSE but was told that he would have to undergo medical check ups which she believed meant that he would be removed from her care for a short period and she believed that he was under too much stress to be removed from his family again. She objected and believed that the result was A did not go into HSE care.
- At that time she could manage this but her circumstances have changed – she has moved to a bigger place to accommodate A and her son and also to take account of the fact that their previous home was very close to A's mother which created a lot of difficulties for him. She outlined her mortgage and that she is struggling to care for both A and her son's needs.
- She advised that she cannot work as she cannot afford child care.
- She struggles to deal with A's difficulties around not having his parents with him.
- This year is the first year she got back to school allowance as he is not considered in her care.

3.13 At that time (2006) the aunt applied for foster care and noted that this would enable A to remain in a family who love and care for him.

3.14 The HSE advised the aunt that they contacted the Fostering and Adoption team who would not carry out an assessment based on financial need and that a strong argument would need to be made in order to get such an assessment. In the meantime the HSE would apply for Section 10 funding to assist. There is no indication that any correspondence issued by Social Work to make a case for fostering assessment.

3.15 An application was made for Section 10 funding to the Child Care Managers' Office. Under Section 10 of the Child Care Act 1991 the HSE may, subject to any general directions given by the Minister and on such terms or conditions as it sees fit, make arrangements with voluntary bodies or other persons for the provision of those bodies or other persons on behalf of the health board of child care and family support services which the Board is empowered to provide under this Act.

3.16 The application made in March 2007 by the Social Worker and Team Leader reports that the aunt *has clearly stated that she will not be in a position to continue to care for A for much longer due to the added financial difficulties that his care has created. The aunt provides a warm, caring home environment to A where all his needs are met. As [aunt] is not eligible for fostering assessment, I am requesting financial assistance of €160 euro per*

week under Section 10 of the 1991 Child Care Act to support the continuing of the placement. It indicates that €160 per week is the maximum support that can be provided. The Social Work Department were proactive and supportive of the application writing on two further occasions to provide additional information to assist in this regard. At that stage the aunt was again providing part time care to her sibling and the Social Work department were of the view that this strengthened the application. The correspondences detail A's placement with his aunt and her financial situation - both her income (Orphan's Allowance and Lone Parents allowance) and expenses for both A and his mother.

3.17 Having considered the application, the HSE agreed to provide financial assistance under Section 10 from 1st September 2006 to 31st October 2007, with a review expected in October 2007. A rate of €165.80 per week was agreed from September to December 2006 and a rate of €185.80 from January 2007. The Child Care Manager's email confirming payment indicates that any changes to circumstances prior to the review date should be notified. Social Work had requested that the payment be backdated to September 2006 to assist the aunt in reimbursing an over payment made when she had previously cared for her sibling. In terms of the rate agreed, the HSE advised that the Child Care Managers office had received informal advice from the Department of Social Protection that Section 10 payments would not exceed other social welfare payments such as One Parents Allowance. Similarly any increases in Section 10 payments may reflect increases in social welfare payments.

3.18 The aunt reports her understanding was that the Section 10 payment together with the Orphan's Allowance was intended to amount to the financial support provided to foster carers. She reports that it was her understanding that this payment was to continue until circumstances changed such as A leaving the care of his aunt or became of age. There is no evidence that the condition of a review (to occur in October 2007) was communicated to the aunt either verbally or in writing.

3.19 Supervision records of 12th July 2007 state that Social Work are *to continue to renew Section 10 as long as necessary and provide support for A regarding why he is not at home.* The Social Worker subsequently left before the planned review date in October. The transfer summary indicates the case was to be re-allocated and Social Work *to renew Section 10 support as necessary.* The correspondence issued to the aunt in July 2007 when the Social Worker left states *a new social worker will be assigned in my position to continue to re-new the Section 10 payments that were recently granted for A.* This does indicate that the Section 10 payment was to continue and does not specify any conditions.

3.20 There is nothing to indicate at this time that the plan was to cease the Section 10 payment, which was only a short while prior to the expected review in October. At the time the payment was agreed the aunt was receiving Orphan's Allowance and additional financial support was agreed by the HSE as necessary. The transfer summary indicates that a *fostering assessment cannot take place for financial reasons, Section 10 finance secured instead*. It is clear the HSE accepted that both payments were considered necessary at that time and appears to indicate that Section 10 payment was instead of fostering allowance.

3.21 Based on the file records it seems reasonable to conclude that the intention was to seek renewal of the Section 10 payment once the period specified by the Child Care Manager was ended. However, when the Social Worker left the case was not re-allocated but placed on a waiting list pending reallocation. As a result the case was not actively worked during this time and there was no review process instigated in regard to the Section 10 payment until late 2008.

3.22 Aside from the financial difficulties, a number of other concerns were identified by the aunt when Social Work visited in October 2006, specifically emotional difficulties for A about his care situation – not having his parents, access and his future care. There is no evidence that any further support was offered to the aunt and A in regard to these issues or that they were directed to any appropriate service. The only file entries relate to the Social Work visit, a subsequent discussion with the Team Leader and the application for Section 10 payment. Supervision records of November 2006 note that *argument for [fostering] assessment can be made in writing, section 10 payments required in the meantime to financially support the placement continuing, complete checks if not already done, and discuss access and long term plan with Aunt and mother*. Supervision records from March 2007 note that an application was made for Section 10 and current concerns relate to access with parents. The July 2007 records state that social work were to renew section 10 as long as necessary and provide support for A re why he's not at home. Other than the financial support provided at that time, there are no records of any other actions occurring to support A and his aunt. On this basis it appears that the supports relating to emotional difficulties for A provided at that time were not adequate.

Decision to review Section 10 payment

3.23 There are no further records on the case until 2008. At that time the Social Work Department were asked to review all Section 10 payments and subsequently advised the Child Care Managers Office in regard to this case:

- the aunt appears to be getting Section 10 payment for A her nephew. It has come to my attention that she was awarded the Guardian's Allowance.....she appears to be getting 2 payments from the Health Board which we are not aware of.....she is saying she was granted this [section 10 payment] to support fostering A as she would not be assessed as a foster parent. I feel that financially she is fine and that we should look at stopping this payment as soon as possible.

3.24 On consideration of the information provided, the Child Care Manager's office wrote to the aunt in December 2008 stating that they were not notified that she was in receipt of Guardians Allowance and as a result *we have to cease all section 10 funding going forward. Therefore the payment received in November is your last Section 10 payment.*

3.25 This was inaccurate as the information had been notified to both the Social Work department and the Child Care Manager's office. The HSE has subsequently accepted that this was an error and apologised for this, however the aunt was also not afforded the right of appeal. There is no record that she was advised at that time of the complaints process available.

3.26 At the time of the 2008 review, there is no evidence that any evaluation took place in regard to the child and aunt's specific circumstances. The HSE did not meet with the aunt as part of the decision making process and no information was sought in regard to her current circumstances. The grounds for the decision to cease the Section 10 payment was based on erroneous information as the HSE were aware that the aunt was in receipt of the Orphan's/Guardian's Allowance. Further, at the time the payment was ceased, there were inadequate steps taken by the HSE to re-assess A and his aunt's situation and to consider the factors and rationale for the granting of the Section 10 payment at the time when it was first agreed.

3.27 During the course of the investigation the HSE advised that Section 10 payments are not intended to be an income support and the decision to cease the payment was based on the fact that the aunt was receiving all her statutory entitlements. Nonetheless this information was known to the HSE at the time the Section 10 payment was agreed and does

not obviate the need for a more comprehensive assessment of A's situation when the matter was being reviewed.

3.28 Following cessation of the Section 10 payment, the complainant and public representative wrote to the HSE in 2009. While the Child Care Manager wrote to the Social Work Department for an update, this did not prompt any review of A's situation. The Social Work Department's response in January 2009 does not appear to be accurate. It states that while the aunt did declare she was in receipt of Orphan's Allowance, it was not made clear how much income she was in receipt of as part of the application for section 10. However, this information was on the file and had been provided to the Child Care Manager's office at the time of the application. If additional information was required at the time, then the onus was on the HSE to seek it in order to assess the application.

3.29 The Child Care Manager's office sought a further report from the Social Work Department in August 2009 following contact by the complainant. This response also appears not to be an accurate reflection of the situation in that it states that the aunt took on the care of A *without any involvement from the HSE*. It also states that it appears the aunt is now a guardian as she is in receipt of Orphan's Allowance. The aunt had been in receipt of Orphan's Allowance since 2004 and only became A's guardian in late 2009 following the death of A's mother.

3.30 It is of concern that the decision was not reversed following information being submitted to the HSE which indicated that the grounds for the decision to cease the Section 10 payment was inaccurate. There appears to have been no direct engagement with the aunt or a re-assessment of her financial situation.

Complaint by aunt to the HSE

3.31 The aunt subsequently submitted a complaint to the HSE in November 2010. The Complaints Officer was active on the case and progressed the investigation. However, there was substantial delay in the Social Work department responding to the complaints investigation report which impacted on the timeframe for conclusion of the matter. A copy was initially sent for comment in July 2011 with a request for a response in 3 weeks. It was issued again in October with the same request and followed up again by the Complaints Officer in January 2012. A copy of the report was sent to the aunt in April 2012, though the Social Work Department did write to the aunt in February 2012 in response to the recommendations. The Social Work Department has accepted the delay in responding to

the report which was based on volume and prioritisation of work. Whilst acknowledging this, it is of serious concern that this substantially delayed the conclusion of the complaint.

The appeal of the decision to cease Section 10 payment

3.32 In April 2012 following on from the investigation of the complaint by the HSE Complaints Officer the aunt submitted an appeal regarding the cessation of the Section 10 payment. There was a delay in dealing with this as it appears there was a lack of clarity in relation to who should progress the matter arising from changes in the HSE structure. The HSE subsequently informed the aunt in October 2012 of the decision not to re-instate the Section 10 payment and that no action would be taken regarding the overpayment of the Section 10 payment for one year. This appears to relate to the period November 2007 to November 2008.

3.33 The HSE has outlined their rationale for the decision as follows:

- their view that the child's placement was a family agreement whilst recognising that the Social Work Department worked closely with the family and that the family did not want A to come into the care of the HSE which is reflected in the records.
- the file indicates the payment was to be made for a specified period of time (01/09/2006 – 31/10/2007) but due to an administrative error this payment continued for another year.
- The HSE understands that either a Section 10 payment or a Guardianship allowance would be paid but not both at the same time. There was an agreement that both would continue for a specified time only.
- During the course of the investigation the HSE advised that a key determining factor in the decision was that the complainant was in receipt of the standard Social Welfare payment. The HSE noted that payments made by the Department of Social protection should be sufficient to meet the needs of recipients and these payments are used as guidance when determining the level of Section 10 payments. On this basis the HSE were of the view that there were sufficient finances being provided to the aunt to maintain the child. At the time the payment was first agreed, the HSE were aware that the aunt was receiving a Social Welfare payment and determined that additional assistance was required, which was provided at the rate of the maximum support available at that time. As set out above the aunt contends that the payment made in conjunction with the Guardian's Allowance was to amount to the fostering allowance. This is not set out in the written records, however, the Social

Work file, specifically the transfer summary state that *fostering assessment cannot take place for financial reasons, Section 10 finance secured instead.*

3.34 The appeal involved a review of the HSE files but no current information was sought to assess the child and family's circumstances, which was the process used to determine the granting of the Section 10 payment. In addition the HSE complaints officer had recommended that Section 10 applications should consider all incoming and outgoings/expenditure. It is of concern that this was not considered at the appeal.

Adverse effect

3.35 The aunt is happy with the efforts that she has made for A and is proud of the young person that he is today. However, she feels that she could have been better supported by the HSE both financially and specifically in terms of advice in relation to concerns that arose in caring for A. She reports that she had little contact from the HSE and is of the view that inadequate checks were carried out in relation to A's placement, with no oversight or monitoring of how he was doing. She reports that at times she sought advice to support A in relation to his living situation, specifically at the time A's mother died and contends, that this was not responded to. As a result she sourced support independently. The records also indicate that the aunt sought support in 2006 regarding a number of matters for A – managing access arrangements, his feelings and understanding about his family and care situation. Whilst the HSE noted the need for support, there is no indication that any support or guidance was offered.

3.36 She noted her concern about the difficulties A has experienced in his early life and her wish to ensure that this does not negatively impact him. In light of his experiences, she is keen to ensure that he is kept away from trouble and has focused on developing his interests and hobbies. A is involved in a lot of activities, in particular football and soccer. She has also sought additional educational support to assist him with his education.

3.37 She explained that she has secured a loan from the Credit Union of €3,000 (the estimated cost) to cover school expenses. The aunt is very keen that A gets the same opportunities as any other child and emphasised with A the importance of education and how she will cover this cost even if that means re-mortgaging their home.

3.38 She noted that there has been a considerable financial cost in putting in place the necessary supports to assist him which has placed a strain on family circumstances.

3.39 The aunt explained that A has an understanding that she was receiving a payment, which stopped and that she has appealed this decision. She advised that he can worry about things and so she has tried to shield him from any impact of this situation. However, he is aware that there can be financial pressures at times. In terms of the effect of this situation on the aunt, she explained that she had found it very stressful and her own health has been impacted as a result.

3.40 The Office also met with A who advised that at the start that it may have been helpful to have had more support but that he is now living a long time with his aunt and is happy with this situation. He thinks it is too late now for HSE involvement and does not have any interest in having a social worker at this stage.

Findings in relation to adverse affect and maladministration

3.41 Based on the information provided, this Office is of the view that the support provided to A by the HSE was not adequate. There was limited support provided to A following his placement with his aunt. The case was closed without his legal situation being resolved although this was a recommendation by the Social Work Department. The aunt reports that there were on-going issues throughout that time in terms of supporting A with his family and living situation, specifically in relation to access, parental consent for medical treatment and impact of family difficulties on child. Whilst she sought support in this regard in 2006, there is no indication of any assistance offered to her and A. She contends that she again sought support in 2009 but received no response from the Social Work department.

Summary of case

3.42 The aunt sought financial support in 2004 as assistance from the mother had ceased. At that time the HSE advised regarding an application for Orphan's Allowance. The aunt subsequently sought further assistance in 2006 when she reported that her circumstances had changed and she was experiencing financial difficulty. There do not appear to have been any issues of concern about his care arrangement, rather the issue related to both financial and non-financial supports required. Section 10 funding was provided at that time to sustain placement with aunt and to prevent A from coming into care. Thus the provision of Section 10 was in keeping with the HSE approach in 2003 which was to prevent the child from coming into care. The aunt understood that the payment along with the Orphan's Allowances was intended to amount to the financial support provided to foster carers.

3.43 At that time the child's difficulties in regard to his situation were noted both in meeting with her and also in supervision records. However, there is no indication that any support was offered to support and assist A and his aunt at that time, other than by Section 10 payment. The aunt also contends that she sought therapeutic support for A when his mother died in 2009 but received no response from the Social Work Office. The aunt subsequently sourced counselling independently.

3.44 The Section 10 payment was made for a specified period of time and was to be reviewed in October 2007. It appears from the Social Work file that the Section 10 payment was to be renewed as necessary but this did not occur as the Social Worker left and the case was not re-allocated. Any application or appeal regarding a Section 10 should have clear, transparent process for assessment. It is reasonable that funding is not provided indefinitely without review of the situation. However, the decision in December 2008 to cease the Section 10 payment was based on erroneous or incomplete information and there was a failure at that time and subsequently, following contact from the aunt and a representative to fully consider and review her situation.

3.45 During the investigation, the Social Work Department and senior management all noted the benefit of Section 10 payments as a method of supporting children and families. A number of examples were given outlining the flexible approach used in relation to Section 10 payments in order to provide a range of support to families that would otherwise not be available. It was advised that the HSE National are currently looking at providing guidelines in relation to Section 10 payments and the local office expressed concern that chronic situations may not necessarily fit strict guidelines. It is clear that Section 10 payments provide a valuable resource for Social Work Departments and it is important to be able to retain the flexibility it affords whilst also ensuring sound administrative processes are followed in determining such grants.

Findings

3.46 The Office finds that the administrative actions of the HSE with regard to the following to be based on erroneous or incomplete information as per Section 8 (iv) and contrary to fair and sound administration as per Section 8 (vii):

- the decision made to cease the Section payment in December 2008 as per paragraph 3.32

3.47 The Office finds that the administrative actions of the HSE with regard to the following to be based on an undesirable administrative practice as per Section 8(vi) and contrary to fair and sound administration as per Section 8(vii):

- the failure to carry out a review as planned in October 2007.
- the failure to offer support to the family as required following contact by the aunt in 2006, either directly by Social Work Department or by referral to an appropriate agency.
- the failure to carry out an updated review of the child and family's circumstances by direct engagement with the aunt prior to the decision to cease the Section 10 payment.
- the failure to fully review the child and family's situation following contact by the aunt and a public representative in 2009 which provided information that contradicted the grounds for the decision to cease the Section 10 payment.
- the failure to fully consider the child and family's specific circumstances and seek updated information regarding their circumstances at the time the appeal was considered.

3.48 The Office finds that the administrative actions of the HSE with regard to the following to be based on an undesirable administrative practice as per Section 8(vi):

- The substantial delay by the Social Work Department in responding to the complaints officers report.

3.49 Having considered the information provided, this Office is of the view that the HSE's actions in regard to this matter have adversely affected A, specifically:

- The failure to provide adequate non-financial support to assist A when this was sought, specifically in 2006.
- the failure to afford due process in regard to the cessation of the Section 10 payment and to re-evaluate the family circumstances at the time, following representation from the aunt and a public representative and at the time of the appeal has adversely affected him.
- the failure to provide any financial assistance from 2008, in the absence of a full review of the child's circumstances.

3.50 Following the conclusion of this investigation, pursuant to Section 13 of the Ombudsman for Children Act 2002, this Office found that the administrative actions of the HSE come within the ambit of Section 8 of the Act:

- a) Section 8 (a) have adversely affected the child at the centre of this complaint; and
- b) Section 8(b) (iv) have been based on erroneous and incomplete information, and (vi), have been based on an undesirable administrative practice and (vii) contrary to fair and sound administration

4 Recommendations

In this case it would appear from the records starting in 2003, that the HSE circumvented their very real responsibility to A by not receiving him into care, whereon he could have been placed with the aunt and the 1995 Regulations would have applied then. It appears that the HSE considered and discussed with the mother, the aunt and the grandparents the various legal options available in respect of the care of A. The fact that the mother would not agree to any of the legal options available did not divest the HSE of its responsibility towards A.

There is a positive duty on the HSE under both domestic and international law in connection with the protection of children and this Office is of the view that the failure to comply with these principles has led to an adverse effect on A.

1. HSE (now Tusla/ the Child and Family Agency) should provide financial assistance to A and his aunt.

- (a) Tusla should re-instate the Section 10 financial support to A and backdate the payment to December 2008 (the time of its cessation).
- (b) Tusla should engage with the family to ascertain whether any other assistance is required for A and ensure appropriate supports are put in place if deemed required.

2. Administration of Section 10 payments:

It appears from this investigation that the availability of financial support under Section 10 is a valuable resource and has been used flexibly to assist families in a variety of ways. Nonetheless, there should be clear, transparent and consistent processes for dealing with Section 10 applications and also clear communication to families in regard to the outcome of such. In particular it is recommended that there should be:

- (a) a standardised application form for all staff to ensure the consistency of the information required in order to assess the family's circumstances.
- (b) Clear recording of decisions made and rationale for same.
- (c) Clear written communication to the applying Social Work Department regarding the decision and rationale for same.

- (d) Clear communication with the family as to the outcome of the application and any assistance to be provided.

3. Tusla should ensure it fully discharges its obligations to provide appropriate protection and support to children.

This investigation has raised serious concerns more generally in relation to the use of informal family/private care arrangements by Tusla in the context of child protection concerns. This Office is of the view that Tusla needs to address the broader question of the use of such an approach in these circumstances. Moreover, when there are concerns about risk to a child and a family is not agreeable to voluntary care and enters a private arrangement this does not displace Tusla's obligations to the child.

5 Response from Tusla

Tusla advised that they fully accept the recommendations made and will commence implementation of these as a matter of priority as detailed below:

- 1. The re-instatement of the Section 10 payment has been authorised and will be reinstated. In addition, the Social Work Department will meet with the family and carry out a full assessment of the young person's needs to ensure that he is receiving all necessary supports. It is anticipated that this will take place shortly.*
- 2. Tusla is currently considering the development of a standardised application form to ensure consistency of information gathered in order to assess the family's circumstances and to establish processes to ensure the clear recording and communicating of decisions in this area.*
- 3. The Agency is committed to reviewing the use of informal family/private care arrangements. This work has currently commenced in the Midlands area.*

Tusla advised that over the last 18 months there have been positive on-going developments in the area of child protection and welfare to ensure standardisation and consistency of approach across the Agency.

The Agency has developed a National Standard Framework together with the relevant policies and procedures for the assessment, planning and implementation of all standard reporting referrals which it received and this will be evaluated on an on-going basis.

The Office sought further clarification in relation to recommendations 1 and 3. In response the Child and Family Agency advised that:

- *A letter has issued to the A's aunt to advise that the Section 10 payment will be re-instated. This will occur from July 2014. Arrears have been calculated and forwarded for processing and these equate to a period from November 2008 to June 2014.*
- *An assessment of A's current placement with his aunt has been completed and the report will be followed up to ensure A's needs are being met.*
- *All current Section 10 payments are to be reviewed by a team of staff in the Midlands area to standardise appropriate payments and implement policies and procedures in respect of the same.*
- *All private care arrangements are currently being reviewed in the Midlands area and this will be completed in the final quarter of 2014 utilising the recommendations from the Ombudsman's report.*
- *Nationally, a designated staff member, (Information services and Data Control Manager for Tusla) will be reviewing private and family foster care arrangements throughout the Country. Each area will have designated managers who will receive notifications of such private arrangements and will be responsible for the monitoring or arranging the monitoring of such placements.*

Appendix

Ombudsman for Children - Statutory role and remit

1.1 The Ombudsman for Children's Office provides an independent and impartial complaints handling service. The investigatory functions and powers of the Office are set out in Sections 8-16 of the Ombudsman for Children Act 2002. This provides that the Office may investigate the administrative actions of a public body, school or voluntary hospital where, having carried out a preliminary examination, it appears that the action has or may have adversely affected a child and where those actions come within the ambit of Sections 8 (b) or 9 (1) (ii) of the 2002 Act (as referred to in para 2.5 under).

1.2 The Office can receive complaints directly from children and young people or any adult on their behalf. The Ombudsman for Children may also initiate an investigation of her own volition where it appears to her, having regard to all the circumstances, that an investigation is warranted.

1.3 The Office aims to carry out investigations and to make recommendations which are fair and constructive for both parties. In the context of an investigation, the Office is neither an advocate for the child nor an adversary to the public body.

1.4 In accordance with Section 6(2) of the Act, the Office is obliged to have regard to the best interests of the child and in so far as practicable, to give due consideration, having regard to the age and understanding of the child, to his or her wishes.

1.5 The principal issues to be addressed through an investigation are:

- whether the actions of the public body have, or may have had, an adverse effect on the child involved; and
- whether those actions were or may have been:
 - taken without the proper authority;
 - taken on irrelevant grounds;
 - the result of negligence or carelessness;
 - based on erroneous or incomplete information;
 - improperly discriminatory;
 - based on undesirable administrative practice; or
 - otherwise contrary to fair and sound administration.

1.6 This statement has been prepared in accordance with Section 13 (2) of the Act, which requires the Ombudsman for Children to produce a statement outlining the results of an investigation. 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 the Ombudsman for Children considers it appropriate to send the statement.

1.7 A copy of this statement was sent to Tusla (Child and Family Agency), in accordance with Section 13 (6) in order to provide them with an opportunity to consider the findings and make representations in relation to same. A response was received which specifically addressed the recommendations made.