

A statement based on an investigation of a complaint that a
Local Authority failed to provide appropriate housing in the
case of a child with a disability

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Ombudsman for Children

A Statement based on an investigation of a complaint that a local authority, Fingal County Council, failed to provide appropriate housing in the case of a child with a disability

(in accordance with Section 8 of the Ombudsman for Children Act, 2002)

January 2007

The complainant has not been named in this document
to protect the privacy of the child

Ombudsman for Children's Office

Millennium House, 52 – 56 Great Strand Street, Dublin 1, Ireland

1 Introduction

Background

Between November 2005 and September 2006, an investigation was carried out 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 that a local authority failed to provide appropriate housing in the case of a child with a disability. A report on this investigation with recommendations was sent to the local authority and to the complainant.

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

2 The Complaint

Background

The complaint was brought to the Ombudsman for Children's Office on 16 August, 2005 by Ms Y, the mother of 13 year-old boy who was diagnosed with an advanced form of a progressive and disabling disease. He now has an advanced form of the disease, is fully paralysed and needs assistance with everyday tasks. The boy and his mother live in a local authority dwelling. Ms Y is this boy's sole full-time carer. Ms Y was concerned that their housing conditions were no longer meeting her son's needs.

Ms Y's complaint

Ms Y explained that, as soon as her son was diagnosed, she applied to the local authority for a transfer to a different public dwelling as she knew they would need a specially-adapted home to meet his changing needs. In 2000, she was given overall medical priority and was offered a new dwelling.

However, Ms Y asserts that at the time, she was concerned that the dwelling was not being adapted to meet her son's specific needs. In letters to Ms Y, the local authority stated that the newly-offered dwelling had been adapted in consultation with her son's occupational therapists. However Ms Y asserts that no such consultation took place.

The medical advice given to Ms Y made it clear that the new dwelling would only meet her son's needs into the very near future. She therefore felt she had to turn down the offer and request a more appropriate solution. Ms Y feels that because of her refusal the

local authority decided that no other dwelling would be adapted for her son. She states that at the time, she was not told that a refusal would mean the loss of overall medical priority. Since then, Ms Y asserts that the local authority has refused to review her case despite several requests and representations from her and from several medical practitioners who were caring for her son.

Both Ms Y and her son feel that his current accommodation is unsuitable. It does not afford him any dignity. He cannot be easily washed. He can't be easily lifted out of bed. The space is too narrow for an electric wheelchair and for other assistive technology and the location does not allow him to independently move outside the house.

3 The investigation, analysis and findings

The Ombudsman for Children's Office provides an independent, 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 adversary to the public body nor advocate to the child.

The principal areas of concern arising from Ms Y's complaint itself or identified during the examination phase were:

1. Has Ms Y's son been adversely affected?
2. Had the house which was offered been adapted for Ms Y's son and did it constitute a reasonable offer?
3. Was the family's loss of overall medical priority for housing justified and fair?
4. Had Ms Y's file been properly reviewed between 2000-2006?
5. Were there administrative weaknesses in the local authority's systems?

1. Has Ms Y's son been adversely affected?

The Office found that the unsuitability of the family's present accommodation is likely to significantly curtail the boy's home life and have an adverse effect on his general quality of life, freedom, independence and dignity. It is clear that the decisions taken by the local authority did not have the best interest of the child as a prime consideration.

2. Had the house offered, been adapted for Ms Y's son and constituted a reasonable offer?

Ms Y maintains that the house offered in 2000 was not adapted for her son, that it was not a reasonable offer and she therefore had no choice but to refuse it. During the investigation the Office found that this house appears to have been initially adapted for another family. The local authority has acknowledged that there is no documentary evidence that the house was approved by the HSE occupational therapist as meeting her son's needs. It therefore appears to the Office that the house was not adapted for the boy's needs.

3. Was the family's loss of overall medical priority for housing was justified and fair?

The Housing Act, 1988 and accompanying guidelines states that a local authority may reduce an applicant's priority after a number of reasonable offers. Ms Y only received one offer. The two relevant policies at the time did not outline the loss of overall priorities as a possible sanction for refusing an offer. No letter was sent to Ms Y stating that she was removed from the transfer list or outlining a suspension time and the local authority confirmed that she had not been suspended.

4. Had Ms Y's file been properly reviewed between 2000-2006?

Between December 2000, the date the initial offer was refused, and August 2005, when the complaint was made to the Ombudsman for Children's Office, Ms Y's case was referred twice to the Chief Medical Officer. During that time, at least nine medical representations, including from general practitioners, a neurologist, occupational therapists and an orthopaedic surgeon, were sent on Ms Y's behalf. Ms Y did not receive any correspondence from the local authority explaining that she could get her case reviewed because of the on-going deterioration of her son's condition and his changing needs, or how this could be done.

Since 2000, eleven generic letters were sent by the local authority to Ms Y and/or her advocates. Each letter stated:

"Ms Y was offered the tenancy of (house address), which she refused. This dwelling was specifically adapted, in consultation with Ms Y's occupational therapist, to meet the needs of Ms Y's son. The local authority have no plans at present to adapt another dwelling for Ms Y"

Despite the eleven generic letters being sent to Ms Y, there is no evidence that the case was reviewed for a period of four years.

Despite a decision being taken at a medical priority meeting that the Y family's current accommodation would be examined, there is no evidence in the file that this decision was enforced or discussed with the family.

The local authority acknowledged that there is no written guidelines/policy on what does or does not get referred to the Chief Medical Officer. There appears to be a lack of transparency and due process. The Office finds that Ms Y's file should have been reviewed in parallel with her son's changing circumstances but was not.

5. Possible general administrative weaknesses in the local authority

A number of additional issues arose during the examination and investigation relating to possible administrative weaknesses of the local authority. The authority highlighted difficulties in locating files and in providing supporting evidence for their decisions during the processing of this case. Records were incomplete and inadequate – some were in the form of illegible, handwritten, unreferenced notes. It appeared that the decision-making process was not formalised, adequate or clear.

Despite improvements to the local authority's complaints and appeals procedures, there is still a lack of clarity on what officially constitutes a formal complaint.

CONCLUSION OF THE INVESTIGATION

Based on the above analysis and findings on the five main issues under investigation, the Ombudsman for Children's Office found that both the actions and lack of action of the local authority:

- a) had adversely affected the child; and
 - b) were contrary to fair and sound administration
- (Section 8(b) of the Ombudsman for Children Act, 2002).

4. Recommendations

Following this investigation, the Ombudsman for Children recommends that the local authority takes the following action:

1 **Work to solve the Y family's housing problem**

- Immediately review Ms Y's case and adopt a proactive approach to finding a suitable solution to the family's housing problem.

2 **Ensure children are central to the process**

- Develop systematic and timely review of housing applications made in the context of a child with a serious medical condition or a disability

3 **Implement clear and user-friendly systems**

- Adopt clear and transparent criteria in relation to securing medical priority status so that relevant cases are referred to the chief medical officer.

4 **Adopt a more integrated approach to benefit children**

Give consideration to the holistic needs (e.g. educational and health needs) of the child in cooperation with other relevant agencies.

5 **Improve information flow and communication**

- Provide clear information to applicants regarding their housing application and entitlements.
- Review information management processes.
- Continue to improve the Complaint and Appeal system so that complainants are informed of their right to appeal a decision and are given instructions on how to proceed.
- Provide clear and accessible information on the consequences of refusing a housing allocation.

5. Post Script

The Ombudsman for Children met with Fingal County Council on 8th December 2006. We recognize that the first recommendation in terms of the immediate review of Ms Y's housing problem is currently taking place and that the family are currently looking at suitable accommodation. While acknowledging that progress has been made by the local authority, a timescale of July 2007 has been given to progress the above recommendations.