



Investigation Report

Investigation of a complaint against the Department for Communities

NIPSO Reference: 18451

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The Role of the Ombudsman

The Northern Ireland Public Services Ombudsman (NIPSO) provides a free, independent and impartial service for investigating complaints about public service providers in Northern Ireland.

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman can normally only accept a complaint after the complaints process of the public service provider has been exhausted.

The Ombudsman may investigate complaints about maladministration on the part of listed authorities. She may also investigate and report on the merits of a decision taken by health and social care bodies, general health care providers and independent providers of health and social care. The purpose of an investigation is to ascertain if the matters alleged in the complaint properly warrant investigation and are in substance true.

Maladministration is not defined in the legislation, but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

Where the Ombudsman finds maladministration or questions the merits of a decision taken in consequence of the exercise of professional judgment she must also consider whether this has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. The Ombudsman may recommend a remedy where she finds injustice as a consequence of the failings identified in her report.

The Ombudsman has discretion to determine the procedure for investigating a complaint to her Office.

Reporting in the Public Interest

This report is published pursuant to section 44 of the 2016 Act which allows the Ombudsman to publish an investigation report when it is in the public interest to do so.

The Ombudsman has taken into account the interests of the person aggrieved and other persons prior to publishing this report.

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EXECUTIVE SUMMARY

I received a complaint about the actions of the Department for Communities in relation to an appointee being made for the complainant's aunt to receive benefits, and about the Department's handling of the subsequent complaint.

Issues of Complaint

I accepted the following issues of complaint for investigation:

- Whether appropriate policies and procedures were followed in respect of the approval of the Appointee form (BF56)?
- Whether the complaint was handled appropriately and in line with relevant policy/procedures?

Findings and Conclusion

I have investigated the complaint and found failures amounting to maladministration in relation to the following matters:

- Failure to follow Department guidance and maintain appropriate records
- Failure to operate the Department complaint policy and conduct an appropriate investigation

I am satisfied that the maladministration I identified caused the complainant to experience the injustice of distress, frustration, and time and trouble taken to pursue her complaint to my office.

Recommendations

I recommended:

- an apology from the Permanent Secretary of the Department
- a payment of £350 to the complainant as a solatium for the injustice of distress, frustration, and time and trouble taken in pursuing her complaint.
- a review of Department appointee policy and procedure to ensure compliance with the guidance and appropriate record keeping.
- the Department to consider operation of their complaint policy to ensure appropriate investigation and record keeping in dealing with future complaints.

THE COMPLAINT

1. I received a complaint about the actions of the Department for Communities in relation to an appointee being made for the complainant's aunt to receive benefits, and about the Department's handling of the subsequent complaint. An appointee is a person 'appointed' by the Department to deal with social security benefit matters if a benefit customer is incapable of managing their own affairs. The Departmental form to authorise an appointment is known as 'BF56'.
2. The complainant was concerned as to the process which was followed to make an appointee, the justification or need for an appointee, the selection or approval of the appointee, how the paperwork was completed or records kept, and her dissatisfaction with responses to her subsequent complaint.
3. I accepted the following issues of complaint for investigation:
 - Whether appropriate policies and procedures were followed in respect of the approval of the Appointee form (BF56) for the complainant's aunt?
 - Whether the complaint was handled appropriately and in line with relevant policy/procedures?

INVESTIGATION METHODOLOGY

4. The Investigating Officer obtained from the Department all complaint documentation together with the Department's comments on the issues raised by the complaint.
5. All documentation from the Department relevant to the issue of making an appointee was also obtained, including information and guidance on making an appointee. My investigating officer interviewed the Outreach Officer, who visited the complainant's aunt and completed the paperwork to authorise an appointee. The manager of the relevant Outreach team was also interviewed to seek further information. Enquiries were made of the Department of Work and Pensions in Great Britain regarding the practice of making an appointee there under the same

guidance and record keeping.

6. As Ombudsman, my role in the investigation of maladministration complaints is to examine the administrative actions, including inactions, of the Department. I am unable to challenge the merits of a discretionary decision unless I have first identified maladministration. I refer to section 23 of the Public Services Ombudsman Act (Northern Ireland) 2016 which provides that I am not authorised to question the merits of a decision taken by a listed body in the exercise of its discretion, unless it is attended by maladministration. In order to investigate complaints, I must establish a clear understanding of the standards, both of general application and those which are specific to the circumstances of the case.

7. The general standards are the Ombudsman's Principles¹:

- (i) The Principles of Good Administration
- (ii) The Principles of Good Complaints Handling
- (iii) The Public Services Ombudsmen Principles for Remedy

8. The specific standards are those which applied at the time the events occurred and which governed the exercise of the judgment of the individuals whose actions are the subject of this complaint and the administrative policies of the Department. The specific standards relevant to this complaint are:

- (i) Regulation 33 Social Security (Claims and Payments) Regulation 1987 – 'the Regulations'
- (ii) Department for Work and Pensions (DWP) - Agents Appointees Attorneys and Deputies Guide - 'the guidance'
- (iii) Social Security Agency Form BF56(NI) 11/12 – Application for appointment to act on behalf of someone else – 'BF56 Form'
- (iv) DSD² 'Guide to Effective Complaints Handling – 'Complaints policy'

¹ These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

² DSD – Department for Social Development the predecessor department of the Department of Communities.

9. I have not included in this report every detail identified during my investigation. However, I am satisfied that everything that I consider to be relevant and important has been taken into account in reaching my findings and conclusions in this case. A copy of this draft report was shared with the complainant and the Department for comment on factual accuracy and the reasonableness of the findings and recommendations.

THE INVESTIGATION

(i) Whether appropriate policies and procedures were followed by the Department for Communities (the Department) in respect of the approval of the Appointee form (BF56) for the complainant's aunt?

10. The complainant stated in a letter in January 2017 to the Department that she was concerned about the circumstances that led to an appointee being made for her aunt. She raised issues about the nature of the process which was followed to make an appointee, the justification or need for an appointee, the selection or approval of the appointee, and how the paperwork was completed or records kept. [The complainant also raised issues about the money being paid into the appointees account and about potential misuse of these funds by the appointee. I note that a police investigation was launched in this respect.]

11. The complainant had further contact with Departmental staff from a number of sections over the next number of months seeking information and making a complaint.

12. The complainant's aunt was ill in 2016. She had a number of living family members including a surviving brother (subject to a 'Controllership'³ from the Office of Care and Protection of the High Court) as well as several nieces and nephews. The complainant raised concerns regarding the financial affairs of her

³ When a person is deemed incapable of managing his financial affairs, the law, in particular, the Mental Health (Northern Ireland) Order 1986, permits the appointment of another person to take charge of these affairs. A 'Controller' is the name given to those appointed by Court to manage a Patient's financial affairs.

aunt, including her receipt of benefits. The complainant's aunt died in October 2016. These concerns were raised after the complainant's aunt had died.

13. Initially the Department replied to the complainant that it appeared all appropriate action had been taken. Further responses confirmed that the appointee issue related to an application for Attendance Allowance made in August 2016. A request had been made that an appointee be put in place. If approved, the appointee role in respect of the complainant's aunt's affairs would then have applied to the receipt of all relevant benefits.

14. The complainant formalised her complaint to the Department by email in relation to the above issues on 18 May 2017. She received a response indicating the Department were restricted in the information it could disclose and providing a copy of the Part 5 DWP guidance on Appointees.

15. The complainant was dissatisfied with the Department's response and proceeded to the second stage of the complaints process by letter dated 13 June 2017. The Department provided a detailed response by letter of 5 July 2017. That letter indicated that previous communications from the complainant had been 'fully considered and investigated' and that a further review had taken place to provide the response. The Department confirmed in that letter:

'...we always seek to apply processes fairly, transparently and consistently...in authorising an appointee DCS follows the guidelines set out in The Agents, Appointees, Attorneys and Deputies Guide..

...Whilst there is no legal requirement for DCS to take steps to inform others of a pending Appointment to Act, procedural guidance and processes are in place whereby confirmation from the potential Appointee is obtained that a discussion has taken place with other families or next of kin and that there is no objection to the application.

...As part of the application process the prospective Appointee is asked if other family members are aware of their application to become the Appointee.

...Where the potential Appointee indicates at the application stage that a discussion with other family members has not taken place or the officer conducting the interview doubts the answer given then further enquiries would be made to ensure the appropriateness of the appointment.'

16. The complainant remained dissatisfied with this response and proceeded to the next stage of the Department's complaints process. She sent a letter to the Director of Pensions, Disability, Fraud and Error Reduction dated 31 July 2017 setting out her concerns. The complainant received a substantive reply on 13 October 2017 from the Director, indicating that the delay in a response had been to ensure a thorough review was conducted. He confirmed:

'The Departments procedural steps for making an Appointment to Act are similar to those adopted by the Department for Work and Pensions in Great Britain and are reasonable and proportionate...the Department will keep these arrangements under review there are no plans to change them now.'

17. In relation to the complainant's concerns about how an appointment was made for her aunt, I have considered the following relevant extracts of the Department for Work and Pensions (DWP) guidance:

'5153 Remember: An appointment must never be made because it is 'convenient' either for the Secretary of State or the prospective appointee. The customer must, because of mental incapacity (or, exceptionally, severe physical disability), be incapable of managing their affairs. If challenged we must be able to justify our decision to make an appointment. And at all times we must be able to provide the necessary paperwork to show that we followed departmental procedures.

...

Assessing the customer's capabilities

(Appendix 23 lists some of the questions you may wish to ask.)

...

5180 When assessing the customer's capabilities:

- *assume they are capable until they demonstrate otherwise*
- *focus on the customer's abilities to understand and function in making particular decisions...*
- *it may be helpful to have an independent person who is familiar with the customer present at the interview, eg a family member or social worker ...*
- *if the customer has lost the ability to communicate, eg because of a stroke, do not assume they are incapable.*

*Make every effort to find out their views and wishes by all possible means
Make a comprehensive record of the visit and the assessment of the
customer's ability to act in their own right.*

5210... The issue here is that if there is a family member, next-of-kin or executor and none of these are aware that a third party is seeking to become the appointee, we will need to clarify the situation. This applies equally to prospective COPs. We also need to know whether there is an existing authority e.g. PoA, deputy, in existence for the claimant. We need to try and prevent family disputes arising later. We must be able to confirm later that we covered the following two points from the BF56... You should ask the prospective appointee if they know of any next-of-kin, family member, executor - if they do not then unless you have reason to doubt him the interview should proceed - if they do or you doubt the answer, then further enquiries should be made.

APPOINTEE GUIDANCE AMENDMENTS SUMMARY OF MAIN SHANGES

...

There is a new Appendix - Appendix 23, which should help you in assessing the customer's capabilities.

REMINDERS

...when completing the BF56 we must be certain of the facts when it is said that the application has been discussed and agreed with other family members.'

18. My investigating officer interviewed the Outreach Officer who conducted the visit to the complainant's aunt. In summary, at the interview, he stated that he had more than 30 years' experience working for the civil service, 15 years at his current grade. As a Community Outreach Officer he had initial training and subsequent updating training. He confirmed that he recalled meetings and team briefs on the appointee process. He had a recollection of the visit to the complainant's aunt as it was outside his normal geographical area. It was an

urgent request for an appointee visit requested by the Attendance Allowance benefit section. His recollection is that he would deal with approximately 15 appointee visits each month.

19. The Outreach Officer recalled that the initial visit request had contained the details of another proposed appointee and he had telephoned to make an arrangement to visit. The proposed arrangement was discussed with that person but was not readily available and suggested an alternative, namely, his wife.

20. The Outreach Officer indicated at interview that he arranged to visit the complainant's aunt at home and that the alternate proposed appointee would be present. He stated that the arrangement for the visit at the same time and place with the complainant's aunt and the proposed appointee was for convenience and to allow for verification that the customer knew the proposed appointee. He stated that he did not know either the complainant's aunt or the prospective appointee personally and he did not know medical details of her condition.

21. The Outreach Officer recalled at interview his attending the complainant's aunt's home, being shown into a room where she was seated. He described introducing himself; explaining his role and asking her some general questions about her benefits and how they are paid. He continued that she lifted her head to talk, she mumbled some words and put her head down. He summarised his view:

*'...she looked very, very unwell. She was sitting with her head slumped over, when she lifted up... she was trying to answer the questions but... she didn't ... seem that lucid...I was just going on that and that was all I was going on. I tried to get answers and she wasn't fit to give them. She didn't look that well.'*⁴

22. The Outreach Officer continued that at interview he took the proposed appointee through the responsibilities outlined on the Department's form. He stated that the proposed appointee advised him all the family were aware she was going to become the appointee for the complainant's aunt. He indicated at interview that:

⁴ [Interview P15/line15]

‘...Basically all we would do is ask ...are family members, next of kin aware, that you’re becoming, going to become appointee? And if the person says, well yeah they are, really that’s as far as we go on that.’⁵

The Outreach Officer confirmed that he did not enquire into the detail of the family members or seek information about who, if anyone, was the next-of-kin of the complainant’s aunt or whether any family members lived nearby. He stated that he was aware that the original proposed appointee on the application form was stated as ‘nephew’ and the revised proposed appointee was married to him. I will return to this information in my analysis. He confirmed at interview that he formed the view after speaking to the complainant’s aunt and the proposed appointee that the complainant’s aunt was not capable of managing her affairs. He explained at interview that he dealt with the necessary banking details and completed the paperwork with the proposed appointee. He continued that he had read the responsibilities on the form to the proposed appointee and had her sign the declaration on the form BF56 and he had also signed the form to authorise the appointeeship. A confirmation of appointment letter (BF57) was also sent out to the appointee the next day, 4 August 2016.

23. In the course of the investigation the manager of the Outreach Service was also interviewed by the Investigating Officer. She confirmed the arrangements for initial and on-the-job training for Outreach Officers. This included being ‘buddied’ with an experienced officer initially and being ‘signed off’ by a line manager as competent to fulfil the requirements of the role after a number of months. She confirmed there were arrangements for ongoing checking and supervision of officers. She indicated that some 5000 such appointee visits are carried out and appointments were made in Northern Ireland in 2016/2017 and that figure does not fluctuate. She confirmed after the interview, after checking the general practice regarding taking notes at the outreach officer visit of the discussion that:

⁵ [Interview P17/line5]

'Generally no notes are taken as the Outreach Officers perceive the BF56 as the record of the visit and assessment of customer's ability to manage their affairs.' [Emphasis added]

24. I have noted that issues associated with appointeeship have been the subject of legal⁶ and academic debate⁷ for some time. I have carefully considered some of the relevant academic research. The DWP guidance (which the Department follow) is clearly considered to be the most comprehensive outline of how the process 'should' operate. In this investigation I am considering the practical application of that guidance in the appointee process for the complainant's aunt. I will also consider the issues raised by the complainant after her aunt's death.

25. In the course of the investigation, enquiries were directed to DWP Decision Making and Appeal Section regarding the appointee process in Great Britain which operates under an identical legal framework to that applicable in Northern Ireland and the published guidance referred to previously in this report. The response from DWP provided a sample written note/report as follows:

'...this is a fairly typical report, as the Visiting Officer guidance is - Confirm Customer's capacity, for dealing with their own affairs, through sensitive questioning and/or any other available medical evidence.' The roles and responsibilities of the appointee are covered as part of the BF56 completion. So there appears to be much information gathered but not recorded. The report in effect is a summary of the discussion that takes place. However, there is not a full written report available on request.'

In response to investigation enquiries, DWP also provided copies of training materials provided to Visiting Officers who are their equivalent of Outreach Officers.

⁶ See *DB v SSWP and Birmingham CC* [2018] UKUT46

⁷ In Northern Ireland as far back as Lundy L & Lavery, R (1994), "The social security appointee system." *Journal of Social Welfare and Family Law*, vol. 16, no. 3, pp. 313, Law Commission Law Comm N0231 Mental Incapacity (1995) and more recent example 'Appointeeship under scrutiny' *Public Law Today* March 16, 2018

Analysis and findings

26. I note that the Department in several responses have repeated that the relevant guidance has been followed in this appointee process by its officers.
27. I have considered the content of the Department guidance, extracts of which are set out at paragraph 11. I note the comments and recollection of the Outreach Officer provided during interview. Those comments are based on his recollection and on available documentation. The guidance clearly emphasises the need for a comprehensive note or record to be used to record that the relevant guidance had been followed. I consider it is clear that the Department in this instance does not have a contemporaneous record of the visit as required in the relevant guidance. There is no indication of the type of questions or issues that were raised with the complainant's aunt including any knowledge of her medical condition. The Outreach Officer confirmed at interview that he had no knowledge of the complainant's aunt's medical condition and that he based his decision on her mental incapacity on her incoherent responses to his initial questions.
28. The absence of a contemporaneous record of the visit and discussion calls into question how the Department satisfied itself of the complainant's aunt's family members, or the existence or otherwise of a next-of-kin. The Outreach Officer on behalf of the Department relied on the fact that the prospective appointee had indicated that 'other family member or next-of-kin' are aware of the application by a tick in the 'yes' box on the BF56 form. The relevant guidance makes clear that the Department expect that 'family disputes' may arise and again emphasises that a record is made of the responses to questioning around the existence of other family members or a next-of-kin beyond simply ticking a box:
- 'We also need to know whether there is an existing authority e.g. PoA, deputy, in existence for the claimant. We need to try and prevent family disputes arising later. We must be able to confirm later that we covered the following two points from the BF56... You should ask the prospective appointee if they know of any next-of-kin, family member, executor'.*

The Departmental guidance indicates that further enquiries may be necessary.

The information on the application form stating the proposed appointee was a nephew is incorrect. He is in fact the son of a niece of the complainant's aunt, making him a great nephew. I acknowledge that there is no priority for closer relatives in the decision making process. The Outreach Officer did not inquire into this issue at the meeting on 3 August 2016.

29. In relation to the issue of the capacity of the complainant's aunt, I am not satisfied that an assessment of capacity was adequately undertaken in this case. There is no record of an assessment of capacity being made. It is inherent in the guidance that the Outreach Officer as a decision maker must satisfy himself that the appointee is necessary as the person in question is 'incapable of managing their own affairs'. I consider that following the guidance in the circumstances of deciding to appoint a substitute for the rights and responsibilities of a benefits customer is essential. I have had regard to the Fourth Principle of Good Administration: 'acting fairly and proportionately' which requires a public body to ensure decisions and actions are proportionate, appropriate and fair. This principle takes account of the actions of the public body dealing with important decisions affecting often vulnerable individuals.

30. I have also taken account of information that a record or note of visit, with more appropriate recorded information, is taken in similar situations, based on the same guidance, in Great Britain. I also note that the regulations providing for the appointee process do not provide a legal 'right of appeal' to a social security tribunal.

31. In considering this issue I have also had regard to the First Principle of Good Administration which requires public bodies to 'get it right', which includes acting in accordance with the law and relevant policies and guidelines. The Third Principle of Good Administration: 'being open and accountable' includes keeping proper and appropriate records. The Department guidance on appointees makes it clear that a comprehensive record should be kept of the visit to include information gained from questioning about the family situation and the reasons for any decision on the mental incapacity of the benefit customer. Therefore I consider that the Department's explanation that the guidance was followed is not

correct. I am satisfied that the Department has not complied with its own guidance. The recording of relevant and necessary information is highlighted in the guidance and is a key tenet of good administrative practice. I consider this to be maladministration. **I uphold this part of the complaint.** I consider that the complainant sustained the injustice of distress and frustration as a result of the failure of the Department to have a record of having covered necessary elements of the questioning and decision making process for appointing an appointee for her aunt. I will deal with the remedy in the conclusion of my report.

(ii) Whether the complaint was handled appropriately and in line with relevant policy/procedures?

32. The complainant made initial contact with the Department in January 2017, seeking answers to a number of questions. After an exchange of communications the first formal complaint was made in May 2017. There followed a second and third stage complaint and response ending with the letter from the Director of the service area in October 2017. In December 2017 the complainant stated that she remained dissatisfied with the outcome of her complaint to the Department.
33. The Investigating Officer obtained copies of all complaint correspondence between the complainant and the Department, the Department complaint file, and internal communications between Department staff involved with the complaint.
34. The Department complaint policy document 'Guide to effective complaints handling' (April 2016 Revision) clearly indicates a two stage complaint process. The aim is to respond to the initial complaint within 10 working days. The response should be 'signed off' by the Manager at Grade 7. Stage 2 of the complaints process involves the same timescales and 'sign-off' by a higher level manager at Grade 5. I have referred to the content of the responses at paragraphs 17 and 18. The responses emphasise that the Department was content that the relevant guidance and procedure were followed.
35. I note the Department stated in an email of 7 March 2018 in response to

investigation enquiries:

“The Head of Community Outreach Service... response

The Community Outreach Officer followed the procedures for dealing with appointees which is contained in ‘Agents, appointees, attorneys, deputies and third parties guide’ in line with our guidance and procedures.

The comprehensive record of the visit and the assessment of the complainant’s aunt’s ability to act in her own right is recorded in the BF56 which was completed during the visit.

The Outreach Officer previewed the case prior to the visit and made arrangements to visit and interview the complainant’s aunt and the prospective appointee.

At the visit the Outreach officer verified the complainant’s aunt was incapable of managing her own affairs and confirmed that the prospective appointee was suitable and willing to act on her behalf. The Outreach Officer would have asked the prospective appointee if other family members or next of kin were aware of the application to become appointee.

The BF56 is the only record of the visit available.”

[Emphasis added]

Analysis and findings

36. The Department have clearly stated that they have reviewed and investigated this complaint at the various stages of the complaints process. The complaints file contains limited information regarding the type of investigation undertaken, what avenues of investigation were pursued, what responses were received to those investigations and any analysis outside of the written responses to the complainant. The Department’s complaints policy states:

“Record Keeping

...in terms of good practice all details of the complaint including the investigation...must be stored...”

[Emphasis added]

37. I have found limited evidence of the Department’s investigation of the complaint

beyond the responses. In particular there is no written record of anyone in the Department speaking to the Outreach Officer about the visit in question, what occurred or what should have taken place according to the Department guidance. The written responses to the complaint express unjustified confidence that the guidance was followed. I have set out at paragraphs 28 to 30 in this report the basis upon which I consider that the Department guidance was not followed. At the last stage in the Department's complaint response, some ten working weeks elapsed. I consider that the proper operation of the Department's own complaints policy should have elicited the same material and conclusions which have become apparent during my investigation. The complaint investigation should have covered speaking to the Outreach Officer and the Outreach Manager, confirming the acknowledged general practice on appointee visits, and examining the requirements of the Department's own guidance.

38. I consider that the Department failed to follow its complaints policy in relation to conducting an appropriate investigation capable of evaluating the facts of what occurred at the appointee visit and ensuring compliance with the Department guidance. The First Principle of Good Administration: 'Getting it Right' requires a public body to act in accordance with published guidance. The Sixth Principle of Good Administration: 'seeking continuous improvement' includes learning lessons from complaints to improve services and performance. I consider this failings to amount to maladministration. **I uphold this issue of the complaint.** I consider that the complainant sustained the injustice of distress and frustration as a consequence of the inadequate investigation of her complaint. I also consider that there was an element of time and trouble in the complainant bringing her complaint to my office. I will deal with the remedy in the conclusion of my report.

CONCLUSION

39. I received a complaint about the actions of the Department of Communities. I have investigated the complaint and found failures amounting to maladministration in relation to the following matters:

- Failure to follow Department guidance and maintain appropriate records
- Failure to operate the Department complaint policy and conduct an appropriate investigation

I am satisfied that the maladministration I identified caused the complainant to experience the injustice of distress, frustration, and time and trouble taken to pursue her complaint to my office.

Recommendations for Remedy

40. The complainant should receive a written apology from the Permanent Secretary of the Department, in the terms of my guidance on apology, for the failures identified in this report and a payment of £350 by way of solatium for the injustices I have identified in this report.

41. I recommended that the Department should review its operation of the appointee procedure to ensure compliance with the guidance within three months of the date of my report. I also recommended that the Department review staff training to ensure clarity on the role of the Outreach Officer following the issues highlighted in this report. The reviewed procedures should be cascaded to all relevant staff with an implementation/action plan to incorporate any recommendations of the review and the Department should provide me with an update within six months of the date of my final report, supported by evidence to confirm that appropriate action has been taken (including, where appropriate, records of any relevant meetings, training materials, training records and/or self-declaration forms which indicate that staff have read and understood any revised procedures).

42. I recommended that the Department should consider the issues arising from this complaint in the ongoing operation of the Department complaints process and considering my findings to ensure full investigation of issues, adequate recording and adequate reflection on the learning to be gained from complaints in the future. The Department should provide me with an update within three months of

the date of my final report. That update should be supported by evidence to confirm that appropriate action has been taken such as any necessary amendments to training materials/guidance to staff who deal with complaints.

The Department accepted my findings and recommendations.

Marie Anderson

MARIE ANDERSON
Ombudsman

July 2019

APPENDIX ONE

PRINCIPLES OF GOOD ADMINISTRATION

Good administration by public service providers means:

1. Getting it right

- Acting in accordance with the law and with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

2. Being customer focused

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

3. Being open and accountable

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision making and giving reasons for decisions
- Handling information properly and appropriately.
- Keeping proper and appropriate records.
- Taking responsibility for its actions.

4. Acting fairly and proportionately

- Treating people impartially, with respect and courtesy.

- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

6. Seeking continuous improvement

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.

APPENDIX TWO

PRINCIPLES OF GOOD COMPLAINT HANDLING

Good complaint handling by public bodies means:

Getting it right

- Acting in accordance with the law and relevant guidance, and with regard for the rights of those concerned.
- Ensuring that those at the top of the public body provide leadership to support good complaint management and develop an organisational culture that values complaints.
- Having clear governance arrangements, which set out roles and responsibilities, and ensure lessons are learnt from complaints.
- Including complaint management as an integral part of service design.
- Ensuring that staff are equipped and empowered to act decisively to resolve complaints.
- Focusing on the outcomes for the complainant and the public body.
- Signposting to the next stage of the complaints procedure, in the right way and at the right time.

Being Customer focused

- Having clear and simple procedures.
- Ensuring that complainants can easily access the service dealing with complaints, and informing them about advice and advocacy services where appropriate.
- Dealing with complainants promptly and sensitively, bearing in mind their individual circumstances.
- Listening to complainants to understand the complaint and the outcome they are seeking.
- Responding flexibly, including co-ordinating responses with any other bodies involved in the same complaint, where appropriate.

Being open and accountable

- Publishing clear, accurate and complete information about how to complain, and how and when to take complaints further.
- Publishing service standards for handling complaints.
- Providing honest, evidence-based explanations and giving reasons for decisions.

- Keeping full and accurate records.

Acting fairly and proportionately

- Treating the complainant impartially, and without unlawful discrimination or prejudice.
- Ensuring that complaints are investigated thoroughly and fairly to establish the facts of the case.
- Ensuring that decisions are proportionate, appropriate and fair.
- Ensuring that complaints are reviewed by someone not involved in the events leading to the complaint.
- Acting fairly towards staff complained about as well as towards complainants.

Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Providing prompt, appropriate and proportionate remedies.
- Considering all the relevant factors of the case when offering remedies.
- Taking account of any injustice or hardship that results from pursuing the complaint as well as from the original dispute.

Seeking continuous improvement

- Using all feedback and the lessons learnt from complaints to improve service design and delivery.
- Having systems in place to record, analyse and report on the learning from complaints.
- Regularly reviewing the lessons to be learnt from complaints.
- Where appropriate, telling the complainant about the lessons learnt and changes made to services, guidance or policy.