

## Department of Social Welfare and inadequate advice for unsupported child benefit

<b>Legislation</b>	Ombudsmen Act 1975, Social Security Act 1964
<b>Ombudsman</b>	Nadja Tollemache
<b>Case number(s)</b>	W26961
<b>Date</b>	1992

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### *Advice given by Department on availability of financial assistance—remedy for financial loss*

This complaint concerned the Department's failure to advise the complainant about the availability of the unsupported child's benefit when the complainant approached the Department in 1987 for financial assistance for the family. In response to the enquiry, the Department granted the complainant a small special benefit payment only.

The complainant and her husband had been caring for a relative's child since 1981 but had received no financial assistance from the child's parents during that time. In January 1990 the complainant again approached the Department for financial assistance and learned that the unsupported child's benefit was available. A successful application was made and payments were backdated for six months. The complainant considered the decision to limit the backdating of the payments to six months was unfair and believed, because the Department had not informed her in 1987 about the unsupported child's benefit, it had an obligation to backdate the payments to the date of the complainant's inquiry in 1987.

Under the provisions of the Social Security Act 1964, the complainant had a right of appeal to the Social Security Appeal Authority in respect of the backdating decision, having first exercised her right of review to a District Review Committee. Where these rights are available to a complainant section 13(7) of the Ombudsmen Act precludes an Ombudsman from intervening unless by reason of special circumstances it would be unreasonable to expect the complainant to resort or have resorted to such a right of appeal or review. In the complainant's case the Ombudsman decided to exercise this proviso available to her.

In its report, the Department explained that by legislation it had been constrained from backdating the benefit payment for more than six months. The Department also stated that in accordance with policy, the complainants special benefit papers had been destroyed and that it could confirm only that the complainant had been granted a special benefit and that it had been cancelled in 1988. Because of the destruction of the records, the Department could not confirm the existence of a letter the complainant had sent, which the complainant said had accompanied her special benefit application in 1987. A copy of this letter had also been provided to the Ombudsman. The Ombudsman accepted the letter, which confirmed that the Department had been advised that the complainant and her husband had a relative's child in their care and were receiving no payment.

Having considered all the circumstances of this complaint the Ombudsman was satisfied that the Department had failed to provide the complainant with appropriate advice in 1987, and she concluded that the Department had a responsibility to remedy the financial loss the complainant had incurred and advised the Department accordingly.

In reply, the Department agreed that in spite of the complexity of its services which led inevitably to errors and omissions by staff, individuals seeking benefit assistance should be fully informed. The Department decided therefore that in the complainant's case it would establish a date in 1987, approximating the date of the complainant's enquiry, as being the date of application for the unsupported child's benefit. That decision enabled the Department to pay the benefit in full.

Although this decision fully remedied the complaint, the Ombudsman concurred with the Department that its decision to pay the benefit to the complainant from 1987, because it failed to provide appropriate advice at that time, should not be taken as a precedent since every case coming before an Ombudsman must be examined on its own facts, and the discretion available under the provision of section 13(7) is limited to special circumstances.

*This case note is published under the authority of the Ombudsmen Rules 1989. It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.*