



Northern Ireland

**Public Services**  
Ombudsman

# Investigation Report

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## Investigation of a complaint against the Department for the Economy

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**NIPSO Reference: 202001158**

The Northern Ireland Public Services Ombudsman

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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, and 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.

The Ombudsman must also consider whether maladministration has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. A remedy may be recommended where injustice is found as a consequence of the failings identified in a report.

## **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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**Case Reference: 202001158**

**Listed Authority:** Department for the Economy (“the DfE”)

## **SUMMARY**

I received a complaint about the administration of the COVID-19 Restrictions Business Support Scheme (the Scheme). In December 2020 the complainant, a self-employed tour guide, considered applying to the Scheme for financial assistance as her business had been impacted by the COVID-19 pandemic.

The complainant did not believe she was eligible for the Scheme after reading the Scheme guidelines which referred to ‘total income’, and speaking to her accountant in respect of same. She subsequently became aware that she was eligible for the Scheme. However, by that time the Scheme had closed and the DfE would not accept late applications. The complainant said that the Scheme did not provide the necessary clarity with respect to the definition of ‘total income’.

The investigation examined the detail of the complaint, the response of the DfE, and relevant information the DfE provided, including the Scheme guidance and relevant internal DfE communications.

The investigation established that the DfE failed to provide clear and complete information regarding the definition of ‘total income.’ It also established that the DfE failed to address this issue, despite being aware of this lack of clarity when the Scheme was live.

I established that the failures identified caused the complainant the loss of opportunity to make an in time application, and understandably led to her feeling anxious and frustrated.

I recommended that the DfE apologise to the complainant. I also recommended that the DfE should accept and consider a retrospective application from the complainant.

## THE COMPLAINT

1. I received a complaint about the actions of the DfE in the administration of the Covid Restrictions Business Support Scheme (the Scheme). The complainant said the guidance supporting the Scheme lacked clarity, in particular with regard to the definition of the phrase 'total income'.

### Background

2. The complainant established a small business as a tour guide. The impact of the COVID-19 pandemic on the tourist industry directly affected the complainant's business. As a result, the complainant's total income dropped by almost a third.
3. The Scheme was administered by Invest NI on behalf of the DfE. The Scheme was designed to provide support to businesses directly impacted by the Northern Ireland Health Regulations during the COVID-19 pandemic. Businesses in the supply chain, whose operations were either severely curtailed or in some instances closed, could apply to the Scheme for financial support during the period 18 November 2020 to closure on 7 April 2021, if the business met the relevant criteria.

### Issue of complaint

4. The issue of complaint accepted for investigation was:  
**Whether the administration of the Covid Restrictions Business Support Scheme, in particular part B and the associated guidance was clear, accurate and complete, with a particular focus on the use of the term 'total income'.**

## INVESTIGATION METHODOLOGY

5. In order to investigate this complaint, the Investigating Officer obtained from the DfE all relevant documentation together with its comments on the issues the complainant raised.

## RELEVANT STANDARDS AND GUIDANCE

6. 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. I also make reference to relevant regulatory, professional and statutory guidance.

The general standards are the Ombudsman's Principles<sup>1</sup>:

- The Principles of Good Administration
- The Principles of Good Complaints Handling

7. The specific guidance referred to apply at the time the events occurred. This governed the exercise of the administrative functions of those individuals whose actions are the subject of this complaint.

The specific guidance relevant to this complaint are:

- The Scheme Part B FAQs 5 March 2021 [Covid Restrictions Business Support SCHEME \(nibusinessinfo.co.uk\)](#) (Scheme FAQs);
- The Scheme [\(nibusinessinfo.co.uk\)](#) Guidance Notes v1.7 5 March 2021 (Scheme Guidance);
- [Covid Restrictions Business Support Scheme Terms and Conditions Invest Northern Ireland \(investni.com\)](#) (Scheme Terms and Conditions);
- [How to complete your Covid Restrictions Business Support Scheme Part B - YouTube](#) (Scheme YouTube Guidance);
- HMRC guidance in relation to income tax ; <https://www.gov.uk/income-tax> (accessed 10 December 2021) (HMRC Guidance); and
- How to claim tax credits: What counts as income - GOV.UK ([www.gov.uk](http://www.gov.uk)) (accessed 10 December 2021) (Gov.uk Guidance).

Relevant sections of the guidance considered are enclosed at Appendix two to this report.

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

8. In investigating a complaint of maladministration, my role is concerned primarily with an examination of the DfEs administrative actions. It is not my role to question the merits of a discretionary decision taken unless that decision was attended by maladministration.
9. I did not include all information obtained in the course of the investigation in this report. However, I am satisfied I took into account everything I considered relevant and important in reaching my findings.
10. A draft copy of this report was shared with the complainant and the DfE for comment on factual accuracy and the reasonableness of the findings and recommendations.

## THE INVESTIGATION

**Issue 1: Whether the administration of the Covid Restrictions Business Support Scheme, in particular part B and the associated guidance was clear, accurate and complete, with a particular focus on the use of the term ‘total income’.**

### Detail of Complaint

11. The complainant decided to apply to the Scheme in December 2020 for financial support due to the impact of Covid-19 on her small business. The Scheme guidance stated, *‘the business must be your main source of income, i.e. must generate at least 50% of your total income’*. The complainant noted that the Scheme’s guidance did not define ‘total income’ and she understood that the definition of ‘total income’ included income from her pension.
12. As advised in the Scheme FAQ’s the complainant said she sought advice from her accountant, and on 9 January 2021 her accountant advised that the standard definition of ‘total income’ included income from a pension. The complainant decided on the basis of the Scheme’s guidance, and the advice from her accountant, that she fell outside the criteria for an application for the Scheme.

13. The complainant said that shortly after the application's deadline of 7 April 2021, a colleague advised the complainant that she had misinterpreted the definition of 'total income' as it excluded income from a pension, and that she did meet the criteria. She explained this to the DfE and twice asked the DfE for permission to submit a late application. However, she was informed that the deadline for applications had passed, and the DfE was unable to grant her a late application. The DfE advised the complainant that it could only accept late applications to the Scheme from those applicants who could demonstrate or provide evidence that they encountered technical/digital issues in the period prior to the Scheme's closure.
14. The complainant said that the lack of clarity surrounding the criteria for application for the Scheme caused her to suffer financial loss, anxiety and frustration. The complainant said she felt demoralised with the application process and lost all confidence in the DfE's ability to assist small businesses adversely affected by COVID-19.

## **Evidence Considered**

### **Legislation/Policies/Guidance**

15. I considered the following guidance:
  - Scheme FAQs;
  - Scheme Guidance;
  - Scheme Terms and Conditions;
  - Scheme YouTube Guidance;
  - HMRC Guidance; and
  - Gov.uk Guidance

Relevant extracts of the above guidance are included at Appendix two to this report.

### **DfE response to investigation enquiries**

16. The DfE accepted that the definition of 'total income' was not clear in its guidance. It said that the *'lack of clarity can be attributed to the pace at which*

*the Department was required to work to produce the Covid-19 business support Schemes.'*

17. The DfE explained that there was no intention to mislead any potential applicants and *'the Frequently Asked Questions (FAQs) and Guidance Notes available to potential applicants were not designed to provide an exhaustive list of information, as they quickly become unwieldy and difficult to navigate'*. The DfE also advised, *'both the Guidance Notes and FAQs clearly outlined that applicants should contact the Scheme Helpline if they had any doubts about their eligibility'*. The DfE advised an online enquiry form was also available for applicants to submit queries regarding the Scheme's eligibility criteria.
18. The DfE noted that the complainant said she relied upon the advice of the accountant regarding the definition of total income. However, it also noted that the complainant did not check this with the Scheme's Helpline.
19. The DfE acknowledged that the definition used in the Scheme is not the established accountancy definition and accepted that in hindsight it may have been helpful to include a published definition of total income.

#### **Relevant DfE records**

20. A summary of the Relevant Records is attached at Appendix three to this report.

#### **Responses to the Draft Investigation Report**

21. Both the complainant and the DfE were given an opportunity to provide comments on the Draft Investigation Report. Where appropriate, comments have been reflected in changes to the report. Other comments are outlined below in paragraphs 22 to 26.

#### *The complainant's response*

22. The complainant had no comments to make to the draft report.

### *The DfE's response*

23. The DfE drew attention to the complainant's Scheme Portal Activity on the day the application process closed which they believe suggested the complainant was considering submitting an application despite the advice by her accountant regarding the definition of total income.
24. The DfE believed they had in place significant assistance and advice services for those that wished to apply for the Scheme. The DfE believed the complainant should have availed one of those services to provide clarity on her query, in particular the Scheme helpline which the DfE promoted on the Scheme's landing page on [nibusinessinfo.co.uk](http://nibusinessinfo.co.uk) and within the Scheme's Guidance Notes and FAQs.
25. The DfE acknowledged the standard accounting definition of total income would include income from pensions, but drew attention to the fact that nowhere in the Scheme's Guidance was this particular definition outlined to potential applicants. The definition included in the Scheme's Guidance did not define whether income from pensions were included or not. The DfE emphasised that potential applicants were encouraged to contact the Scheme's helpline to discuss any doubts they had about their eligibility. Neither the complainant nor her accountant contacted the helpline within the four month period in which the Scheme was open.
26. The complainant did not provide the DfE with any evidence from her accountant to confirm that he provided advice that she was not eligible for the Scheme on 9 January 2021 and did not revise this advice in the subsequent four months.

### **Analysis and Findings**

27. The complainant said that the published guidance did not clearly define 'total income' and the established accountancy definition of same includes income from a pension. The DfE attributes the lack of clarity regarding the definition of 'total income' to the pace at which it was to work to produce COVID-19 business support schemes. On 10 November 2020 prior to the opening of the scheme a meeting was held by Invest NI to discuss the Scheme. In attendance at this meeting were two representatives of the DfE. While I recognise the

challenges of producing COVID-19 support schemes at pace in very challenging and unique circumstances, I consider it clear from the minutes of the DfE's Scheme Project Board on 10 November 2020 that prior to the launch of the Scheme, the DfE was aware of the need for clarity in the definition of 'total income', as two members of the DfE were in attendance at this meeting. The need to provide this clarity to potential applicants was also highlighted at this meeting, and Invest NI were tasked to communicate this clarity. I consider this approach was in accordance with the sixth Principle of Good Administration 'Seeking Continuous Improvement', which states that public bodies should review policies and procedures regularly to ensure they are effective.

28. In response to the draft report the DfE advised it was the role of Invest NI to communicate and the implement of this information within the Scheme's guidance. However, despite the DfE agreeing the need to provide clarity on the definition of 'total income', there was a failure to communicate same to potential applicants. The DfE did not provide evidence to this Office of the steps they took to ensure that Invest NI communicated the clarification on the definition of 'total income' following the meeting on 10 November 2020. Although it was the role of Invest NI to implement this clarification within the Scheme's guidance, I consider that as Invest NI were acting on behalf of the DfE to implement the Scheme, the DfE should have checked that Invest NI implemented the clarification on 'total income' within the guidance. I consider this is contrary to the second Principle of Good Administration 'Seeking Continuous Improvement', as the DfE did not ensure its kept to its commitments, and ensure its applicant could access their services easily.
29. The DfE acknowledged that in hindsight the Scheme's definition could have been clearer in the published guidance. However, the DfE explained that the Guidance Notes and FAQs clearly outlined that applicants should contact the Scheme Helpline if they had any doubts on their eligibility. The DfE also advised that an online enquiry form was also available for applicants to use if they had any questions regarding their eligibility of the Scheme. I consider that the complainant should have availed of the Scheme Helpline or the online enquiry form to clarify her eligibility, rather than to seek advice of her

accountant. However I also note that the Scheme FAQ's direct potential applicants to their accountant to complete the template to strengthen their application. DfE highlighted the fact that in the last day of the Scheme the applicant worked on submitting an application but ultimately did not do so. I have considered the information provided by DfE but ultimately this does not change my view that the definition was not sufficiently clear, a point the DfE were aware of before the scheme went live. As outlined below it also became clear that this issue arose during calls to the Scheme helpline and the DfE failed to act to address the issue.

30. I acknowledge that the Scheme offered guidance through its helpline and online enquiry form, despite this I consider that non-publication of a definition of 'total income' was in itself misleading by omission particularly given that the definition used was a non-standard definition. I also consider it relevant that at a number of points the Scheme's FAQ's suggest that an application would be strengthened by having a registered accountant complete the template provided by the Scheme. This template includes a checklist that an applicant's business qualifies for the Scheme, and includes the requirement for the accountant to confirm that the applicant's business is their main source of income. I therefore consider it reasonable for the complainant to have relied on her accountant's advice on this point. I consider the lack of a definition a failure contrary to the third Principle of Good Administration 'Being Open and Accountable', which requires a public body to be open and clear about policies and procedures and ensure that the information, and any advice provided is clear, accurate and complete. I am of the view that the information available to the complainant on the definition was neither clear nor complete, and was not in accordance with the third Principle of Good Administration. I also consider this omission a failure contrary to the second Principle of Good Administration 'Being Customer Focused', which requires a public body to ensure that people can access services easily.
31. The DfE provided me with records of several calls from its applicants to its Helpline where the callers sought and obtained assistance and clarification relating to the definition of 'total income'. Whilst I acknowledge that the Helpline

provided the necessary clarity to the callers, the calls are further evidence of the lack of clarity within the guidance. I am satisfied that the call logs highlighted to the DfE that there was a requirement to provide clarity within its guidance to potential applicants, yet it failed to take any action to do so. I would have expected to see a record that these issues were fed back to the Scheme's administrators and what consideration was given to take steps to clarify the definition. This Office has not been provided with these records, and consider that such consideration is an essential element of good administration required by the sixth Principle of Good Administration. I consider that this is a failure contrary to the sixth Principle of Good Administration 'Seeking Continuous Improvement'. This principle requires a public body to review its policies and procedures regularly to ensure they are effective, and to use feedback to improve services and performance.

32. All public bodies should aim to practise 'good administration and should aim to perform their public duties speedily, efficiently and fairly. I consider the DfE acted contrary to the Principles of Good Administration and I am satisfied these failures constituted maladministration and I uphold this complaint.

### *Injustice*

33. I considered the impact to the complainant caused by the failures I identified. I am satisfied, on balance, that had the guidance in respect of the definition of 'total income' been clear and complete, the complainant would have lodged an in time application. Whilst I cannot say whether she would have received financial support from the DfE, it deprived the complainant of the opportunity to apply for same. I acknowledge the frustration which the complainant must have felt when she realised she could have applied for the Scheme. These payments made a real difference to people's lives at a time when many had lost their income due to COVID-19. I do not underestimate the anxiety this must have caused the complainant when she became aware that she was eligible to make an application. I acknowledge the effort of DfE and Invest NI to implement the scheme in a much shorter timescale than would be normal for a scheme of this type. Many of our public servants worked very hard during COVID-19 to ensure support was provided to individuals and to businesses, and they are to be

commended for their work. My findings in this case in no way should be read as a criticism of that effort and clear customer focus which was demonstrated. My findings and recommendations are focused on learning for the future and ensuring that the DfE are provided with an opportunity to put things right for the complainant.

## CONCLUSION

### Recommendations

34. I recommend that the DfE provide the complainant with a written apology in accordance with NIPSO 'Guidance on issuing an apology' (June 2016), for the injustice caused as a result of the maladministration identified (within **one month** of the date of my final report).
35. I recommend that the complainant applies for the Scheme within one month to the date of this report, and the DfE retrospectively accepts and considers an application from the complainant to the Scheme (within three months of receipt of the complainant's application). I recommend the DfE provides this Office an update of the complainant's application within six months of the date of this report.
36. While I acknowledge that the Scheme is now closed, I consider it fair that the DfE makes an exception given the circumstances of this case. Any application should of course be based on the complainant's circumstances at the time she intended to apply, and should be considered in line with the Scheme's guidelines.



**Margaret Kelly**  
**Ombudsman**

## Appendix 1

### 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.

