

Decision of the European Ombudsman closing the inquiry into complaint 684/2012/JF against the European Food Safety Authority

Decision

Case 684/2012/JF - **Opened on** 31/05/2012 - **Decision on** 25/03/2015 - **Institution concerned** European Food Safety Authority (Friendly solution) |

The case concerned EFSA's refusal to grant an employee a dependent child allowance for his grandchild.

The Ombudsman inquired into the issue and found that EFSA should have been more attentive to the employee's specific situation. She therefore proposed that EFSA explain to the employee what documents were possibly missing and that, after receiving these documents, EFSA sympathetically review the request for a dependent child allowance.

EFSA accepted the Ombudsman's proposal and the Ombudsman closed the case as resolved.

The background

1. The complainant, an employee of the European Food Safety Authority ('EFSA'), requested EFSA to treat his grandson as a dependent child and consequently grant him a dependent child allowance [1] . EFSA refused his request. It argued that the complainant had not provided evidence demonstrating that he was legally responsible for his grandson's maintenance and that that maintenance involved heavy expenditure, as required by the applicable rules and case-law.
2. The complainant then contacted the European Ombudsman who decided to open an inquiry into the complainant's allegation that EFSA's decision refusing the complainant an allowance for a person treated as a dependent child was unjustified and his claim that EFSA should grant him the allowance [2] .

Allegation that EFSA's refusal to grant a dependent child allowance was unjustified and related claim



The Ombudsman's friendly solution proposal

3. The Ombudsman noted that EFSA has a wide margin of discretion in assessing the facts and circumstances relied on by its staff in support of their applications for a person to be treated as a dependent child. EFSA was correct in requiring the complainant to establish, on the basis of supporting documents, the existence of a legal responsibility for maintenance under Italian law and to provide proof of expenditure stemming from that responsibility, including the relevant amount. The Ombudsman found, however, that the duty of care requires EFSA to be more attentive to the complainant's specific situation and not to rely on an overly restrictive interpretation of the applicable rules. Since EFSA had accepted that the complainant could submit evidence that was possibly missing, the Ombudsman made a friendly solution proposal to EFSA that it

"[f]ollow up its own invitation to the complainant to submit all relevant evidence by:

(i) explaining to the complainant what evidence he needs to submit to comply with the applicable rules; and

(ii) considering, on the basis of that evidence, reviewing sympathetically its decision on the allowance for a person treated as a dependent child. "

4. In response to the Ombudsman's proposal, EFSA stated that it had sent a letter to the complainant with a list of documents that he would need to provide in order to comply with the applicable rules [3] . EFSA also stated that, once the complainant submitted the missing documents, it would reassess his request, in accordance with the Ombudsman's proposal, and inform the Ombudsman of the outcome of its reassessment.

5. In his observations on EFSA's response, the complainant informed the Ombudsman that he had sent new documents to EFSA.

The Ombudsman's assessment after the proposal for a friendly solution

6. The Ombudsman welcomes EFSA's acceptance of her friendly solution proposal. She trusts that in its reassessment of the complainant's request, EFSA will adopt a sympathetic approach to the complainant's situation.

Conclusion

On the basis of the inquiry into this complaint, the Ombudsman closes it with the following conclusion:



EFSA accepted the Ombudsman's proposal and resolved the matter.

The complainant and the Executive Director of EFSA will be informed of this decision.

Emily O'Reilly

Strasbourg, 25/03/2015

[1] According to Article 2 of Annex VII to the Staff Regulations of Officials of the European Union ('SR') in force at the time: " 1. *An official who has one or more dependent children shall ... receive an allowance of EUR 328.73 per month for each dependent child.* 2. *"Dependent child" means the legitimate, natural or adopted child of an official, or of his spouse, who is actually being maintained by the official. The same shall apply to a child for whom an application for adoption has been lodged ... Any child whom the official has a responsibility to maintain under a judicial decision based on Member States' legislation on the protection of minors shall be treated as a dependent child ...]* 4. *Any person whom the official has a legal responsibility to maintain and whose maintenance involves heavy expenditure may, exceptionally, be treated as if he were dependent child by special reasoned decision of the appointing authority, based on supporting documents.* " The current SR, in force since January 2014, raised the amount of the allowance to EUR 372.61.

[2] For further information on the background to the complaint, the parties' arguments and the Ombudsman's inquiry, please refer to the full text of the Ombudsman's friendly solution proposal available at:

<http://www.ombudsman.europa.eu/cases/correspondence.faces/en/59364/html.bookmark> [Link]

[3] EFSA enclosed a copy of the letter with its reply to the Ombudsman.