



European Ombudsman consultation

on the Joint Sickness Insurance Scheme (JSIS)
and the UN Convention on the Rights of Persons
with Disabilities (UNCRPD)¹

Background

On 10 May 2016, the European Ombudsman opened a strategic inquiry (OI/4/2016/EA) on whether the treatment of persons with disabilities under the Joint Sickness Insurance Scheme (JSIS) for EU civil servants and their families complies with the UN Convention on the Rights of Persons with Disabilities (UNCRPD).

A person has a disability if he has a long-term physical, mental, intellectual or sensory impairment which, in interaction with various barriers, may hinder his full and effective participation in society on an equal basis with others (Article 1d (4), para 1, of the Staff Regulations).

The inquiry focuses, in particular, on the criteria for the recognition of “serious illness” - which determine whether medical costs can be fully reimbursed - as set out in the European Commission’s General Implementing Provisions (GIPs)². Failure to recognise a condition as constituting a “serious illness” affects the percentage of cost reimbursed by the JSIS. The Ombudsman is concerned that those criteria, notably the criterion of “shortened life expectancy”, may not necessarily be suited to the specific situation of persons with disabilities. Many disabilities, although they have a very significant impact on the well-being of the person concerned, do not necessarily impact negatively on life expectancy. However, they may give rise to high expenses in terms of treatment, medication or special devices/ equipment, which are essential for the person’s full and effective participation in society on an equal basis with others.

¹ Targeted consultation: addressed to the European Parliament’s Disability Support Group (EP DSG), the European Commission’s Disability Support Group (EC DSG), the Association of Staff with a Disability in the European Commission (ASDEC), as well as to the European Disability Forum (EDF).

² Commission Decision laying down general implementing provisions for the reimbursement of medical expenses, which entered into force on 1 July 2007.



Invitation to submit comments

As a first step in the inquiry, the Ombudsman put specific questions to the Commission, to which the Commission replied on 28 October 2016. The Ombudsman's inquiry team then met with Commission representatives to discuss the case. The meeting report is available on the Ombudsman's website.³

The Ombudsman would like to have your views on suggestions she might make to the Commission in the context of this inquiry. Arising from the Commission's replies to her questions, the Ombudsman has already identified the following issues on which she expects to make suggestions to the Commission:

I. Disability-related needs under the JSIS

1. The Commission says that in the application of the four GIP criteria relevant to recognising a "serious illness", it does not take a 'tick all the boxes' approach. Rather, a flexible approach is applied. This means that if a person meets one criterion to a very large extent, this may compensate for the fact that the person does not meet another criterion to a significant extent.

Ombudsman's suggestion: The fact that this kind of discretion may be exercised in practice, when applying the four criteria for the recognition of a "serious illness", should be made clear by the Commission in the GIPs.

2. Since the changes to the Staff Regulations that came into effect in January 2014 aimed at fully complying with the UNCRPD, the Commission does not see a need for further significant legislative or regulatory changes in relation to the JSIS.

Ombudsman's suggestion: The Commission should carry out an assessment to identify whether any provisions of the GIPs and/or the related forms⁴, need to be revised in view of the UNCRPD and the UNCRPD Committee's concluding observations in 2015.⁵

3. According to the Commission, the absence of a detailed list of reimbursable assistive devices under the JSIS allows for more flexibility, which is necessary in dealing with disability related health needs. However, the Ombudsman considers that the publication of a (non-exhaustive) list would provide clarity to persons with disabilities on the type of devices that can be reimbursed.

Ombudsman's suggestion: The Commission should publish a non-exhaustive list of reimbursable assistive devices under the GIPs.

³ All inquiry-related documents are available here:

<https://www.ombudsman.europa.eu/en/cases/caseopened.faces/en/65814/html.bookmark>

⁴ By way of example, the two forms attached to Chapter 3 of Title II of the GIPs, which are specific to assessing the possible reimbursement of the cost of a permanent or long-term residence in a paramedical establishment. The forms are entitled: I. Functional independence evaluation; II. Evaluation of spatial and temporal awareness.

⁵ Concluding observations regarding the EU's implementation of the Convention on the Rights of Persons with Disabilities made by the relevant UN Committee, 2 October 2015.



4. When examining a complaint under Article 90 (2) of the Staff Regulations⁶ against a decision by the Commission's Paymaster Office (PMO) not to recognise a "serious illness", PMO submits the complaint to a Medical Officer, who re-analyses the file and issues a reasoned opinion. If required, the specific case may be presented to the Medical Council, for example where the individual case is particularly difficult or where it may (potentially) concern a greater number of cases.

Ombudsman's suggestion: The PMO should ensure that any review of a medical file, following a complaint under Article 90 (2) of the Staff Regulations, is carried out by a different Medical Officer than the one who provided an opinion in the context of the contested decision.

II. Social protection for persons with disabilities

5. The Commission notes that the JSIS covers only medical expenses relating to disabilities. However, there are other kinds of support which address social aspects of disabilities. There are three types of benefit outside the JSIS for persons with disabilities: i) the social aid scheme, ii) the doubling of the dependent child allowance, iii) reasonable accommodation. However, it seems that these schemes cover the non-medical needs of persons with disabilities in a limited way and there appear to be certain restrictions; there is a certain institutional budget for the social aid scheme, the entitlement to the reimbursement under the social aid scheme is linked to specific thresholds as regards family income, the benefits are granted upon the assessment of a certain degree of disability, etc.

Ombudsman's suggestion: The Commission should carry out an assessment to identify - in a non-exhaustive way - non-medical needs relating to disabilities. It should initiate a procedure to ensure that the non-medical needs of EU civil servants - and their families - with disabilities are addressed in a satisfactory way, through the allocation of sufficient resources and within an appropriate framework, under the EU institutions' social schemes.⁷ As regards reasonable accommodation provided to its own staff,

⁶ According to Article 90 (2) of the Staff Regulations, any person to whom the Staff Regulations apply may submit to the appointing authority a complaint against an act affecting him adversely, either where the said authority has taken a decision or where it has failed to adopt a measure prescribed by the Staff Regulations.

⁷ The Ombudsman understands that the detailed provisions for granting these benefits are set out in the: i) Provisional Guidelines for implementation of the budget heading "Supplementary aid for the disabled" concerning welfare appropriations for disabled persons, adopted on 19 February 2004 by the College of Heads of Administration.

ii) Conclusion 177/87 of the College of Heads of Administration regarding the double dependent child allowance for a child whose maintenance involves heavy expenditure by reason of a disability or a long-term illness (Article 67 (3) of the Staff Regulations). The 2nd revised conclusion was approved by the Heads of Administration on 26 March 2014.



the Commission should review its current rules,⁸ adopted in 2004, in the light of the provisions of the UNCRPD which apply since 2011.

'Reasonable accommodation', in relation to the essential functions of the job, shall mean appropriate measures, where needed, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer (Article 1d (4), para 3, of the Staff Regulations).

6. The "medical certificate" common to all EU institutions, which refers to the European Assessment Schedule for Physical and Mental Impairments (also known as the "European Disability Scale"), is not used to recognise a "serious illness". However, it is used for granting the doubling of the dependent child allowance and social aid benefits relating to disabilities. Representatives of persons with disabilities contend that this scale is excessively medicalised and does not take into account the individual circumstances relating to disabilities.

Ombudsman's suggestion: The Commission should initiate a review of the content of the medical certificate by the Inter-institutional Medical Board as regards, in particular, the appropriateness of the European Disability Scale in assessing a person's degree of disability.

7. In the context of its social protection schemes, the Commission says that special training on how to deal with disability is available for all Commission staff.

Ombudsman's suggestion: The Commission should ensure that special training on how to deal with disability is part of the induction programme for its staff working on related issues.

III. Consultation with interested parties

8. According to its Diversity Communication of July 2017, the "Commission will set up a suitable body to study the current situation and to propose ideas and means to lighten as far as possible the burden of staff with disabilities".⁹ In its reply of October 2016 to the Ombudsman's letter, the Commission stated that it is considering consulting persons with disabilities on the application of the JSIS in relation to disability related health needs.

Ombudsman's suggestion: The Commission should, as referred to in its letter to the Ombudsman, set up a suitable body, involving representatives of persons with disabilities, employees with disabilities and/or associations of persons with disabilities, to study the current situation as regards the day-to-day application of the JSIS in relation to disability related health needs, and, if necessary, to propose ideas and means of improvement. The Commission

⁸ Commission decision of 7 April 2004 implementing Article 1d(4) of the Staff Regulations .

⁹ Commission Communication "A better workplace for all: from equal opportunities towards diversity and inclusion", C (2017) 5300 final, 19.7.2017.



should set out a detailed timeline for this process. It should ensure that the representatives of persons with disabilities are consulted in a structured and meaningful way and that the results of this consultation are implemented in practice.

9. The Commission says that it has been in contact with the newly set up association of Commission staff members with disabilities, and with the association of Commission staff members whose family members have disabilities.

Ombudsman's suggestion: The Commission should establish regular contacts with the associations of EU staff members with disabilities (or of EU staff members whose family members have disabilities) in order to receive feedback on the day-to-day application of the JSIS and of the social schemes for persons with disabilities.

IV. Other comments

10. In addition to getting your views on the issues set out above, please propose any other suggestions you feel it might be useful for the Ombudsman to make in the context of this inquiry. Please be as specific as possible.

How to contribute

The deadline for submitting comments is **31 January 2018**.

By e-mail to the following address: EO@ombudsman.europa.eu

or

By letter: European Ombudsman, 1 avenue du Président Robert Schuman, CS 30403, F - 67001 Strasbourg Cedex, France

Please clearly indicate 'JSIS consultation - OI/4/2016' at the start of your contribution.

Contributions may be submitted in any of the 24 official languages of the EU. If possible, please do not exceed **10 pages** for your contribution, including annexes if any.

The Ombudsman will forward to the Commission all contributions received. The Ombudsman also intends to make these contributions available on her website. Physical persons who consider that, in accordance with Regulation 45/2001 on the protection of personal data¹⁰, their name should not be published should inform the Ombudsman.

¹⁰ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ 2001 L 8, p. 1. See also: <http://www.ombudsman.europa.eu/en/resources/dataprotection/home.faces>.



Should you require any further information, please contact Ms Elpida Apostolidou from the Ombudsman's Strategic Inquiries Unit
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