



FOLKETINGETS  
OMBUDSMAND



The Danish Parliamentary Ombudsman has been elected by Parliament. His task is to help ensure that administrative authorities act in accordance with the law and good administrative practice, thus protecting citizens' rights vis-à-vis the authorities. The Ombudsman investigates complaints, opens cases on his own initiative and carries out monitoring visits.

# Annual Report 2022

**The Danish Parliamentary Ombudsman**

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## Dear Reader,

In accordance with the Ombudsman Act, the Danish Parliamentary Ombudsman submits an annual report on his work to the Danish Parliament. The international edition of the 2022 Annual Report of the Danish Parliamentary Ombudsman seeks to share information and experiences internationally with colleagues and others with a special interest in ombudsman work. This report contains elements from our Danish report but also elements that are unique to this international version.

On the following pages, I will cover some of our most important cases in 2022. This report also contains five articles which we hope will be of interest to an international audience: 2022 marked the 10-year anniversary of the setting up of the Ombudsman's Children's Division, and the first article describes the efforts of the Children's Division and the effects of its work over the years. The next two articles concern the theme for the Ombudsman's monitoring visits in 2022 – force and non-statutory interventions in the psychiatric sector – and the last two articles are about the Ombudsman's focus on digitisation, including authorities' development of IT solutions.

Because of the great diversity of ombudsman institutions around the world, we have included an appendix which will enable readers with a special interest to get a deeper understanding of the Danish Ombudsman institution.

Enjoy the read!

A handwritten signature in blue ink, appearing to be 'NF', written in a cursive style.

Niels Fenger  
Parliamentary Ombudsman

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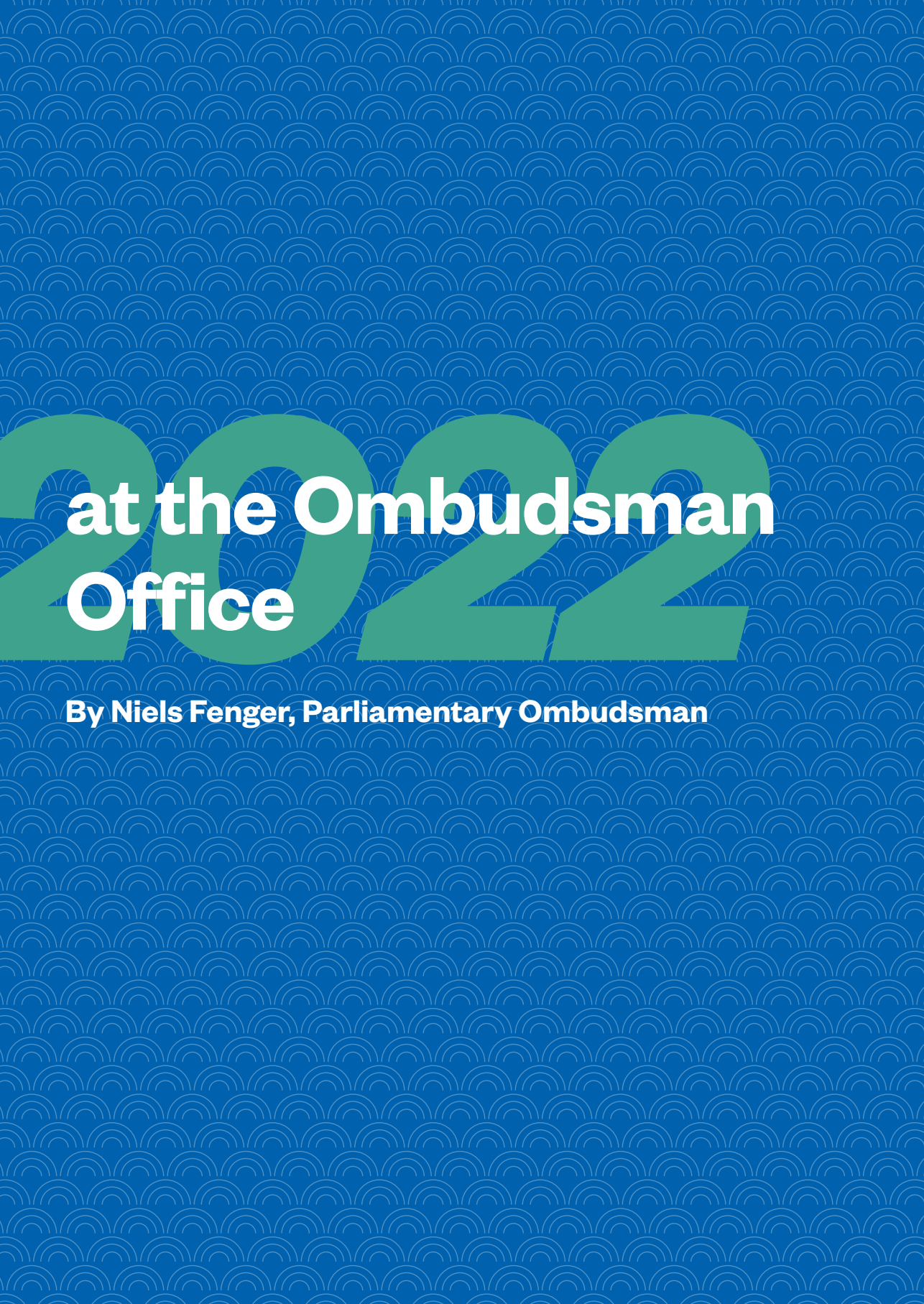
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# 2022 at the Ombudsman Office

**By Niels Fenger, Parliamentary Ombudsman**



The vast majority of cases at the Ombudsman Office start with a complaint from a citizen. Obviously, the complaint cases are important to the individual complainant and constitute my main task as Ombudsman. It is, after all, the Ombudsman Office's core function to ensure that the rights of the citizens are observed.

However, another important task for me as Ombudsman is to start investigations on my own initiative when I become aware of circumstances in the public administration that call for a closer investigation. This may be for instance decisions by the authorities that, based on information in the press, raise questions in relation to the legal rights of citizens. Or it may be cases in which citizens must wait too long for answers.

Such own-initiative investigations often give me the possibility of helping a large group of citizens in one go by righting unreasonable or unlawful administrative practices affecting a lot of people. I usually say that good own-initiative investigations can deliver maximum legal protection, but let me return to that point later. First, I will cover the types of cases that we take up on our own initiative. In this context, I will briefly touch on a number of cases that are almost all described in more detail elsewhere in this Annual Report.

### **Inspiration from many places**

The inspiration for an own-initiative investigation can come from many places. Our complaint cases constitute one of the most important sources. This may sound strange, as own-initiative investigations are characterised precisely by the investigation starting without a complaint. But through the processing of complaints, it frequently happens that I become aware of administrative law errors that the complainants have not noticed themselves – and which may

not be important to the outcome in the complaint in question – but which give me grounds for a separate investigation.

Complaint cases may also form the basis for own-initiative investigations in another way, namely if I receive a substantial number of complaints concerning a specific type of error pointing to what may be a potentially more general problem in the authorities' handling of certain types of cases.

A case in point is my investigations into the case processing times by the Prime Minister's Office and the Ministry of Health in cases regarding access to files. These general investigations were initiated on the basis of a number of complaints from journalists because it took months to process their requests for access to files. The complaint cases thus pointed to a general problem, which was subsequently uncovered and addressed via own-initiative investigations. Moreover, my criticism led to both ministries allocating more resources for processing of the cases in question.

Furthermore, I sometimes receive enquiries from organisations regarding cases of importance to the legal position of their members. I did so in, among others, the case regarding the National Police's new IT system for firearm registration where the Danish Hunters' Association wanted me to enter the case. In the field of taxation, we have a very useful cooperation with external actors such as accountants and lawyers who provide us with good input for possible own-initiative investigations of the tax administration.

Media coverage also often forms the basis for own-initiative investigations. It is part of the job for the legal case officers at the Ombudsman



^ Obviously, the complaint cases are important to the individual complainant and constitute my main task as Ombudsman.

are suited for independent investigation but which would not necessarily have come to our attention otherwise.

This, for instance, applied in my investigation of the Danish Patient Safety Authority's processing time of foreign national doctors' authorisation applications (Case No. 2022-6, published in Danish at [www.ombudsmanden.dk](http://www.ombudsmanden.dk)). And it applied in the case regarding citizens' failed endeavours to make voluntary payments to the Danish Debt Collection Agency so that they would no longer be listed as having a bad payment record.

Office to keep abreast of the news flow, both nationally and locally, so that we can pick up on cases which

We took up these cases after national newspapers had written articles on the matter. When I started an investigation on Nyborg Municipality urging its employees to refrain from criticising the municipality anonymously in the media, it was also a result of press coverage of the matter, this time by local media.

### **Systemic errors**

A characteristic of a large number of the own-initiative investigations is that they concern systemic errors in the authorities' case processing, meaning errors which do not only occur in individual cases but are an expression of matters which are repeated in a series of cases or an entire case field.



This can be for instance giving standard grounds that are not sufficiently adjusted to the individual specific cases. Or it may be errors due to deficiencies in the digital decision-making systems, which impact a lot of citizens. A case involving the Healthcare Platform can serve as an illustration. The Healthcare Platform did not have an automated technical solution to generate letters to parents about the treatment of their underage children. Therefore, Region Zealand, among others, would sometimes address a letter to the child and not to the parents. In this instance, I had to remind the authorities that deficiencies in an IT system cannot justify that the legislative rules on information to the parents are ignored. It is the authority's responsibility that the IT systems used by the authority live up to legislative and administrative requirements. Subsequently, the authorities immediately took steps to change their practice – with effect for quite a number of parents (Case No. 2022-13).

And that brings me back to my initial point, namely that own-initiative investigations often deliver maximum legal protection.

The reason is that when I as Ombudsman point out systemic errors in an authority, it leads to the authority altering its conduct more generally in the future. For the same reason, it is important for me to combine criticism in own-initiative investigations with recommendations for change in the authority's practices. It creates more protection of legal rights at a general level and helps not only the authorities but also far more citizens than just those who may have experienced problems in a specific case.

You will find an illustration of this circumstance in my investigation of the Danish Property Assessment Agency's grounds in cases regarding reassessment of properties. In my investigation,

I found that the Agency's grounds were sometimes written in a way that made them needlessly difficult to understand. Based on my investigation, the Danish Property Assessment Agency changed its way of wording its decisions on several points – thereby benefitting a large number of property owners.

The investigation into the Danish Property Assessment Agency's grounds was carried out by the Taxation Division, one of the Ombudsman institution's divisions carrying out most own-initiative investigations. Usually, the Taxation Division's investigations are focused on compliance with the due process aspects of the public administration's activities and on the underlying network of rights that constitute the core of a correct, lawful process. And the investigations are chosen based on the assessment that also in the field of taxation, the best chance of making a difference is by performing general investigations with a focus on systemic errors. You can read more about it in the article 'The Ombudsman zooms in on authorities' development of IT solutions' on pages 66-69.

### **Own-initiative cases on individual issues**

Apart from the investigations of systemic errors in the public administration, I would also like to mention another category of own-initiative investigations. These are the investigations that are started on the basis of individual cases, and where the aim is not so much to improve a general practice by an authority as to investigate a possible specific injustice or unlawful conduct.

My investigation into Egedal Municipality's processing of a town councillor's application for permission to build a worker's cottage on his farm illustrates this kind of own-initiative cases. In this case, I took the matter up based

on speculation in the press regarding nepotism. The main aim of my investigation was therefore to clarify whether differential treatment had taken place in the specific case. It had not. But we did find various case processing errors, and the municipality used the lesson constructively and implemented various improvements in its administrative practice.

### **Own initiative in the monitoring field**

Lastly, the Ombudsman has extensive own-initiative activities in one additional field of great practical importance, namely the monitoring field.

The Ombudsman monitors a number of public and private institutions where citizens are deprived of their liberty or are otherwise in a vulnerable situation. Core examples are institutions under the Danish Prison and Probation Service, psychiatric wards, social accommodation facilities and secure residential institutions for children and young people. The Ombudsman also monitors accessibility for persons with disabilities in for instance public institutions or transport hubs.

This monitoring is carried out partly by our Monitoring Department and partly by our Children's Division. The aim of the monitoring in both is to ensure that the authorities treat citizens with dignity and consideration and in accordance with their rights. It is my experience that the monitoring visits provide a very good starting point for uncovering problematic issues which otherwise – because the citizens in question are often some of the most vulnerable people in the country – might not be investigated.

In recent years, many of the monitoring visits have been carried out thematically. For instance

in 2021, in cooperation with DIGNITY and the Danish Institute for Human Rights, we carried out thematic monitoring visits to ten psychiatric wards regarding use of force and non-statutory interventions towards the patients. This form of monitoring gives us the opportunity to gain more knowledge of and go into more depth regarding a chosen area, thereby making recommendations that will have a broader impact and at the same time be as precise as possible. Read more about themes for 2022 in the monitoring field on pages 42-43.

### **Resource-intensive – but worth it**

The own-initiative investigations – not least the big investigations in, among others, the taxation field – can be highly resource-intensive.

For the same reason, I am pleased that Parliament in 2022 decided to allocate extra funds to the Parliamentary Ombudsman. These funds will of course strengthen the daily processing of individual complaints but they will also improve my possibilities of giving own-initiative investigations a higher priority.

Read more about own-initiative investigations on pages 28-37.

### **Civil service assistance for private social profiles**

Another issue I have delved into is the civil service's assistance for posts on ministers' private profiles on social media. A citizen complained because he had been blocked on the profiles on Facebook and Twitter of the then Minister of Climate, Energy and Utilities. The minister had created the two profiles as a private individual before he became a minister, but the complainant was of the opinion that the profiles were now in

reality being maintained by the minister in his capacity of minister and that they thereby were included in the general rules in administrative law in relation to, for instance, blocking of users.

Based on information from the Ministry of Climate, Energy and Utilities, I found no grounds for overriding the Ministry's assessment that the profiles were still being maintained by the minister as a private individual and a party politician. But the case raised some fundamental questions regarding developments in the scale of civil service assistance for posts on ministers' private profiles on social media.

The Ministry of Climate, Energy and Utilities stated that the civil service had drafted approximately 40 per cent of the posts on the minister's two profiles. If this estimate were correct, it would mean that the Ministry had drafted over 1,000 posts on the minister's private profiles between June 2019 and June 2022.

In my opinion, this painted a picture of a development where the civil service is used to an increasing extent for political activities in a broad sense – including personal profiling and

branding of their minister – on social profiles where the general principles of administrative law on, among other things, objectivity and equality do not apply, and where each minister can freely choose whom to allow access to the debate. In my opinion, this development should give rise to a closer consideration of the scope for such assistance from the civil service (Case No. 2022-27).

### **A safeguard for legal protection**

In the above, I have touched on some of the corners of the mosaic of legal issues that fill our daily lives at the Ombudsman Office. A common feature of the cases we deal with – whether complaint cases or own-initiative cases – is that they are about safeguarding citizens' rights and legal protection in their encounters with the public administration. And precisely the chance of being involved in this task is one of the great privileges of being Ombudsman.

On the next pages, you can read more about some of the cases that my staff and I have processed in 2022.

Enjoy the read.



# About ✓ the cases



**Complaint cases**



**Own-initiative investigations**



**Monitoring activities**





## Cases opened in 2022<sup>1</sup>

# 5,272

Own-initiative investigations

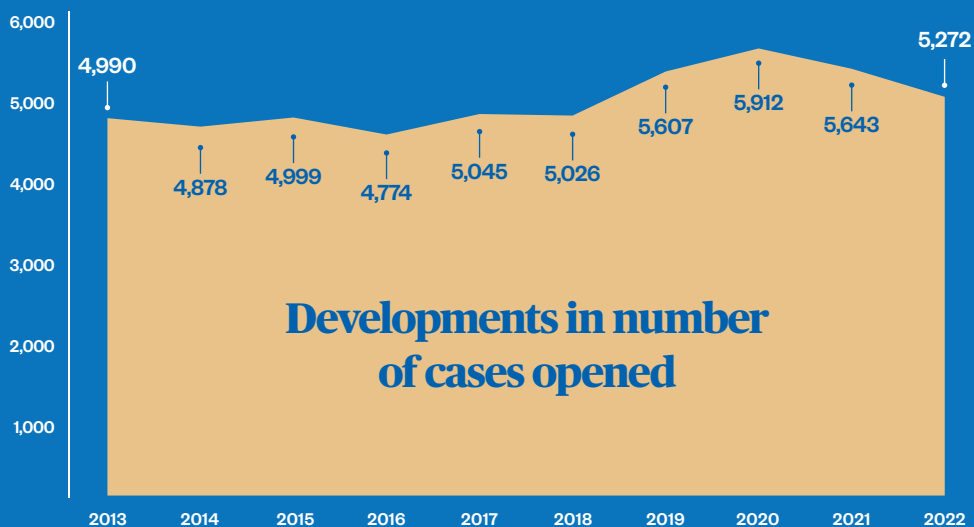
## 148

Monitoring cases

## 52

Complaint cases

## 5,072



1) Administrative cases are not included. In addition, cases selected for collective review in connection with general own-initiative investigations are not normally included.



# Complaint cases

**Who:** In general, anybody can complain to the Ombudsman, and it is not necessary to be a party to a case to lodge a complaint with the Ombudsman. A complainant cannot be anonymous.

**What:** The Ombudsman considers complaints about all parts of the public administration and in a limited number of situations also about private institutions, an example being complaints about conditions for children in private institutions.

The Ombudsman does not consider complaints about courts, nor about tribunals which make decisions on disputes between private parties.

**When:** The Ombudsman's task is to ensure that the authorities have observed the applicable rules. For this reason, the Ombudsman cannot consider cases before the authorities; he can consider a complaint only if the case has been considered by the relevant authority – and by any appeals bodies.

There is a deadline of one year for complaints to the Ombudsman.

**How:** When the Ombudsman receives a complaint, he first determines whether it offers sufficient cause for investigation. In some cases, the Ombudsman is unable to consider a complaint, whereas in other cases, he chooses not to open an investigation, for instance because he would not be able to help the complainant achieve a better outcome.

In a large proportion of complaint cases, the Ombudsman helps the citizen by providing guidance or by forwarding the complaint to the relevant authority, for instance in order that the authority will be able to consider the complaint or give the citizen more details of the grounds for a decision which it has made in the case.

In a number of cases, the Ombudsman discontinues his investigation because the authority chooses to reopen the case, for instance after being asked for a statement on the matter by the Ombudsman.

In some complaint cases, the Ombudsman carries out a full investigation, which, among other things, involves obtaining statements from the authority and the complainant. The investigation may result in the Ombudsman choosing to criticise the authority and, for instance, recommend that it make a new decision on the matter.

## What were the complaints about?

### Children

The Ombudsman's Children's Division considers complaints concerning children and young people. The complaints are lodged particularly by parents or by other relatives or caregivers. Many complaints are about support measures for children and young people. The Ombudsman also receives a number of complaints about family law matters or relating to schools.

### Social benefits and services

Complaints concerning social benefits and services account for a large proportion of the complaints received by the Ombudsman. The majority of these complaints involve municipalities, Udbetaling Danmark (an authority responsible for a number of public benefits), Labour Market Insurance or the National Social Appeals Board and are about, for instance, occupational injuries, pensions, home help, cash benefit, accompaniment or technical aids.

### Environment and building

Many complaints under this heading are made by dissatisfied neighbours. Complaints may be about, for instance, loss of privacy due to overlooking from a building, smells from a pig farm or noise from a school. Other complaints are about wind turbines or solar panel installations. The complaints typically concern issues relating to compliance with rules on environmental protection and building and planning legislation.

### Access to public records under the Access to Public Administration Files Act, the Environmental Information Act etc.

Complaints under this heading are primarily about refusals by authorities to give access to information or documents and about processing times. A large proportion of the complaints are against the central government.

### Institutions for adults

The institutions which these complaints concern include prisons, psychiatric wards and institutions for adults with disabilities. As residents and inmates typically spend 24 hours a day in the institutions, the complaints cover all aspects of life, for instance relations with staff, feelings of unsafety with other residents/inmates or contact with relatives and friends.

### Taxation

The Ombudsman's Taxation Division handles complaints from both citizens and businesses, including professional representatives of complainants, such as practising lawyers specialised in tax law and accountants. Examples of the subject matter of complaints include tax assessments, debt collection, property assessments and long processing times.

### The health sector

Complaints relating to the health sector are made by, among others, citizens who are dissatisfied with treatment they have received in the healthcare system, including the psychiatric healthcare system. Another common theme for complaints is long processing times, for instance in complaint or licensing cases.

### Transport, communication and roads

A substantial proportion of complaints under this heading concern public roads or private communal roads and arise from, for instance, situations involving disputes between neighbours or dissatisfaction with an order by a municipality to maintain or provide access to a private communal road. Other complaints concern, for example, public digital self-service solutions.

### Foreign nationals

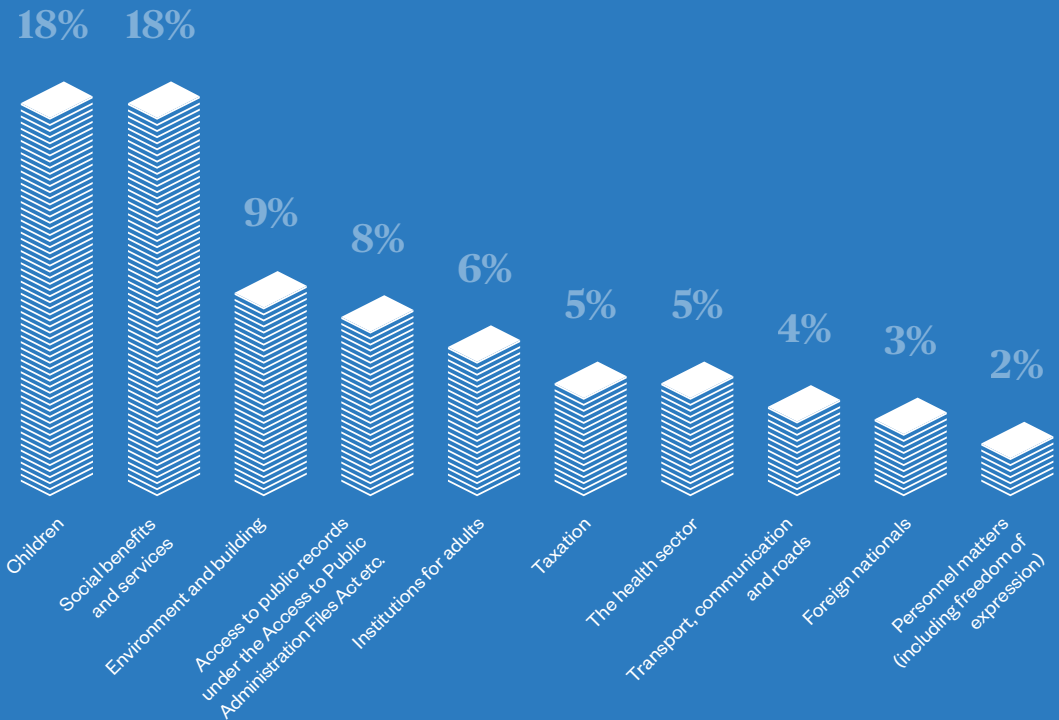
A number of complaints under this heading are about long processing times. In addition, the Ombudsman receives complaints about, among other things, refusals of applications for humanitarian residence permits, family reunification and visas.

### Personnel matters (including freedom of expression)

The majority of complaints about personnel matters are from public employees who are dissatisfied with a negative reaction from their employer, such as dismissal, a warning or a reprimand. A small proportion of complaints relate to the freedom of expression of public employees. Complaints about personnel matters are received mainly from affected employees or their union.



## Complaint cases



Selected subject areas of complaints as percentages of all complaints received by the Ombudsman in 2022

## Is information about COVID-19 infection environmental information?

**Access to public files:** When the COVID-19 pandemic came to Denmark, doubt arose as to whether information about COVID-19 infection and documents about the tackling of COVID-19 could be characterised as environmental information. If so, the cases would be assessed according to the Environmental Information Act, which in some instances entitles you to wider access than the Access to Public Administration Files Act does.

In Case No. 2022-24, the Ombudsman considered that issue. A journalist complained that the Ministry of Health had rejected to give him access to documents about COVID-19 and would not assess the case according to the Environmental Information Act.

The Ombudsman pointed to two matters that could in principle lead to an application of the Environmental Act.

One would be if information about COVID-19 infection could generally be characterised as information about the state of health of humans. If there is the required relation between the state of health of humans and the state of an environ-

mental element (the air), the Environmental Information Act would apply. In other words: Is COVID-19 transmissible through the air? The health authorities did not believe this to be the case, and they explained that the disease transmits through droplet and contact infection. The Ombudsman had no reason to disregard this health-professional assessment.

The other would be that the Environmental Information Act could also apply if the measures put in place by the authorities in order to limit the transmission of COVID-19 had environmental consequences, for instance by reducing air pollution from cars or airplanes. As the case concerned access to a draft amendment to the Epidemic Act and issuance of executive orders about visitation restrictions and closing of schools etc., the Ombudsman did not believe that the information in question fell within the scope of the Environmental Information Act.

Therefore, the Ombudsman could not criticise that the Ministry of Health had not assessed the case according to the Environmental Information Act.

## Decision in building case was not wrong but the grounds were

**Right to complain:** The Building Appeals Unit made a decision that two citizens were not entitled to complain in a case about overlooking nuisance from a raised terrace on the property neighbouring their holiday house. In the decision, the Building Appeals Unit especially emphasised that the couple's boundary line did not directly adjoin the boundary line of the property with the raised terrace, as there was a driveway between the two properties. In the elaborating grounds from the Building Appeals Unit, only this matter was taken into account.

The Ombudsman noted that it was not in accordance with the Building Act to cut off the citizens' right to complain only because their boundary lines did not directly adjoin.

However, during the Ombudsman's processing of the case, the Building Appeals Unit stated that the Unit had also taken into account a number of other matters in its assessment that the neighbours were not entitled to complain. In the light of these matters overall, the Ombudsman could not criticise the Building Appeals Unit's assessment, but he found it criticisable that the two citizens had not received correct grounds before they contacted the Ombudsman.



## Citizen misunderstood consultation of parties and lost grant

**Consultation of parties:** An authority can carry out a consultation of parties by sending the citizen a draft of the decision which the authority expects to make if no new information appears in the case.

The draft decision may include several contemplated decisions even if the consultation is only pertaining to one of them. However, if that is the case, there may be a bigger risk of the citizen misunderstanding the content of the consultation – and whether a decision has already been made about some of the other matters addressed in the authority’s letter. Therefore, the authority should pay special attention to ensuring that the content of the letter is clear and in plain terms states what the citizen is being consulted about and perhaps should be attentive of with respect to the other contemplated decisions mentioned in the draft.

The importance of the authority’s letters being clear was the pivotal point in a case where a citizen had applied for a grant from the Danish Energy Agency’s Building Pool for replacing facade windows and outer doors in their house.

As part of the consultation of parties, the Energy Agency sent the citizen a letter, which contained a contemplated refusal for a grant for outer doors and a contemplated approval of a grant for facade windows. The letter was written in the same format as a final decision, but across each page, the letter had a watermark with the word ‘DRAFT’.

The citizen got the wrong impression that the letter contained a final decision about the approval of a grant for facade windows and made a deal with a contractor about replacing the windows. A couple of months later, the Energy Agency refused to pay the grant because it is a condition for getting a grant that the work has not been started until the Agency has made its final decision.

➤ **The letter was written in the same format as a final decision, but across each page, the letter had a watermark with the word ‘DRAFT’.**

The Ombudsman could not criticise that the Energy Agency had not paid the grant. But he found that the Agency’s consultation of the citizen had been inadequately worded. Therefore, it was appropriate that the Agency had improved the consultation material by making it clearer.

## Can a citizen's case be kept secret?

**Sensitive personal data:** In some instances, the Access to Public Administration Files Act allows the authorities to exempt information from access, for example when it is necessary in order to protect specific citizens' rights to a private life.

Thus, according to section 30(i) of the Access to Public Administration Files Act, the right of access does not include information about individuals' private matters.

Normally, the provision is used to exempt specific sensitive personal data in a case, but the authorities may also keep it secret whether a citizen even has or has had a case be processed.

In 2022, the Ombudsman has considered several of such decisions and expressed that when access to information about the existence of a case is cut off according to section 30(i) of the Access to Public Administration Files Act, it must be based on a specific assessment that the information in itself would reveal sensitive personal matters about a citizen.

In Case No. 2022-4, a citizen had complained to the Danish Patient Complaints Agency about the emergency doctor service's (Lægevagten) handling of a case on access to some audio files from telephone consultations that the citizen wanted to use to elucidate a case about potential identity theft. A journalist later requested access to the citizen's contact details, and the request was denied. The Agency referred to the fact that the information would reveal that a specific citizen had had a complaint case with the authority and that such information was always covered by the exemption provision in section 30(i) of the Access to Public Administration Files Act.

The Ombudsman did not agree. Section 30(i) of the Access to Public Administration Files Act does not allow general exemption of information that a citizen has or has had a case with an administrative authority. If the existence of the case is to be kept secret, it is a condition that an assessment of the nature of the specific case concludes that the information should be withheld from public knowledge. The Ombudsman therefore recommended that the Agency reopen the case.

In Case No. 2022-22, a citizen asked the Danish Agency for International Recruitment and Integration (SIRI) for access to the number of foreign national workers, especially from Japan, who, based on special individual qualifications, had been granted residence and work permits for working at some sea farms. SIRI disclosed the total number of permits but refused to disclose the number of permits per sea farm, as SIRI believed that it would involve a risk of identification of individual foreign national workers and thus reveal sensitive information covered by section 30(i) of the Access to Public Administration Files Act. However, the Ombudsman did not believe that information that a foreign national has a residence and work permit based on special individual qualifications says anything about the foreign national's private matters. He therefore recommended that the case be reopened.

*News item 3 October: Japanese nationals' permits to work in Danish sea farms were not exempt from access*

## Authorities sent letters to minors instead of parents

**Digital case processing:** An authority must send its letters directly to the rightful recipient. Therefore, in cases involving minors, authorities must be mindful of whether a letter is to be sent to the parents or to the minor. In some cases, a letter must be sent to the parents as well as to the minor.

In several cases, letters with important and serious information and authorities' decisions, which should have been sent to the custodial parent, have been sent to minors instead.

### Regions' letters about treatment of minors under 15

When Region Zealand's hospitals wrote to parents with information about treatment of minors under 15, the letters were often addressed to the child and not to the parents. The reason for this was that the Region's IT system, the Healthcare Platform, did not have an automated solution that could generate letters to the parents.

➤ **Letters with serious information might be sent directly to the children. This could put the children in a vulnerable situation and did not safeguard the parents' rights to be informed.**

The Ombudsman said that the technical design of an IT system could not justify disregarding the rules about informing the parents. The Region's procedure meant that letters with serious information might be sent directly to the children. This could put the children in a vulnerable position and did not safeguard the parents' right to be informed. In the Ombudsman's opinion, the procedure was against regulations.

After the Ombudsman's statement, Region Zealand has stated that the Region – probably in the beginning of March 2023 at the latest – will implement a new IT solution. The solution implies that letters to custodial parents about treatment of minors under 15 are sent directly to the custodial parents and not to the child. The Capital Region of Denmark, which also uses the Healthcare Platform and had the same issue, implemented the solution on 15 November 2022.

### Letters to three-year-old

In Hillerød Municipality, there was also a case where letters were sent to the child instead of to the custodial parent. In this case, the municipality sent letters in a case about change of residence and payment of additional expenditure to a three-year-old child instead of to the child's mother.

The reason was that a case worker did not change the child's social security number to the mother's social security number in the municipality's digital case processing system. This caused the municipality's IT system automatically to print and send, among other things, the decision in the case to the child by ordinary post, after the system had found that the child did not have Digital Post.

In a case about an aid to a minor, Kalundborg Municipality sent a consultation letter and a decision to the child instead of to the child's mother.

Both Hillerød Municipality and Kalundborg Municipality said that it was an error that the letters had been sent to the minors instead of to the parents to which the Ombudsman agreed.

## Extraction is still a complex exercise

**Facts and functional facts:** As a rule, the authorities have a duty to disclose factual information in documents that are exempt from access. This is called extraction. The concept 'information on the factual grounds for a case' has two principal meanings.

Firstly, it means information that is purely factual, for example that 20,000 cars pass by on a motorway.

Secondly, it means information which supplements the case's evidential grounds or is otherwise provided in order to provide clarity in regard to the factual grounds of the case. It is necessary to look at the *function* of the information. Information of a subjective nature may also constitute facts that are subject to extraction.

➤ **This included information about geographical distances, financing possibilities and previous political announcements.**

In Case No. 2022-30, a citizen wanted access to the Ministry of Immigration and Integration's documents about the state's purchase of a de-

portation centre. The case concerned an extensive number of documents amounting to approximately 5,000 pages. The Ombudsman focused on whether the extraction rules had been applied correctly. The case had been reopened by the Ministry several times, where new information had been disclosed. However, the Ombudsman believed that the documents still contained considerably more factual information that the authorities had not disclosed. Among other things, this included information about geographical distances, financing possibilities and previous political announcements. The Ombudsman therefore recommended that the Ministry review the documents again.

In Case No. 2022-28, a consulting firm had made an analysis of special education in a municipality. During the analysis, the firm had held a workshop to validate collected data and observations. The consulting firm, which was subject to the Access to Public Administration Files Act's rules about access, received a request for access to a memorandum about the workshop. The document was internal, and the immediate assessment was that it could therefore be kept secret. However, the Ombudsman believed that the memorandum contained information subject to extraction (functional facts). This was because the information in the memorandum was part of the basis on which the firm built its analysis and recommendations. The Ombudsman therefore recommended that the firm review the case again.

## The Ombudsman's hidden help in a school case

**Elegant solution:** A mother complained to the Ombudsman because the managing director of education in a municipality would not consider her complaint about a school principal's conduct and observance of rules when her son was excluded from lessons.

The Ombudsman pointed out to the municipality that school principals are accountable to the Municipal Council in the performance of their duties. Therefore, the Municipal Council can process complaints about a school principal having made a decision which is in contravention of the framework laid down by the Municipal Council or the school board.

Afterwards, the municipality's managing director of education processed the mother's complaint and concluded that the rules for consultation of parties and duty to take notes had not been observed. The managing director of education also expressed regrets that the school principal had not given sufficient grounds for the decision and asked the school principal to make a new decision.

At the same time, the managing director of education stated that the municipality was going to draft guidelines for teachers' and school principals' duty to take notes and keep records in connection with a future electronic case processing system.

## The responsibility for processing times and notifications, when several authorities are involved in a case

**The main authority does not always have sole responsibility:** The Ombudsman investigated a complaint about the processing times in a case about victim compensation with the Criminal Injuries Compensation Board. He found that the long processing times were primarily due to Labour Market Insurance having spent more than two years and two months giving a guiding statement for the purpose of the case. The Ombudsman therefore opened a case against Labour Market Insurance and stated that the processing times had been unnecessarily long.

The Ombudsman stated that the Criminal Injuries Compensation Board was responsible for the processing time in the victim compensation

case as well as notifications about the case to the citizen, even though the Board had asked another authority for a statement. However, the Ombudsman understood that Labour Market Insurance was in practice notifying the applicant of expected processing times and replying to reminders etc. Under these circumstances, Labour Market Insurance's notifications should be in accordance with the general legal basis for notifications. The Ombudsman did not believe that this applied in this case. He criticised that Labour Market Insurance had not given the citizen an estimate of when they expected to give the guiding statement when it turned out that the original processing time could not be observed.

## Board of appeal refused complaint without taking into account that the citizen was a party to the case

**Calculation of complaint deadline:** As a party to a case, you must normally receive individual notification of the authority's decision and guidelines on complaint. Any complaint deadline will normally be calculated from the date of the notification. Sometimes, a complaints body refuses a complaint as the complaint was submitted too late without taking into account that the complainant is a party to the case and should therefore have received individual notification.

➤ **Since the citizen had not received individual notification about the operation permit with guidelines on complaint, the complaint deadline had not started running.**

In a specific case, a neighbour to a newly established grocery store complained to the Danish Town and Country Planning Board of Appeal about the municipality's operating permit for the construction, including about the decision that the construction was in accordance with provisions about noise in the local development plan. The citizen was disturbed by noise from

the delivery of goods and did not believe that the Danish Environmental Protection Agency's guidelines on noise thresholds had been observed.

The Town and Country Planning Board of Appeal believed that the four-week complaint deadline was to be calculated from when the grocery store started operating. Since the complaint was submitted several months later, the Board of Appeal refused the complaint on the grounds that the complaint was submitted too late.

The Ombudsman forwarded the citizen's complaint to the Town and Country Planning Board of Appeal, so that the Board of Appeal could determine if the citizen was a party to the case, and, if so, how it would affect the citizen's possibility of having the complaint processed. The Town and Country Planning Board of Appeal reviewed the case again and now assessed that the citizen – whose garden was bordering the area used for delivery of goods – was a party to the case. Since the citizen had not received individual notification about the operation permit with guidelines on complaint, the complaint deadline had not started running. The Town and Country Planning Board of Appeal therefore processed the citizen's complaint.

## Wording of voting ballot

**Limits to the Ombudsman's jurisdiction:** Prior to the referendum on the defence opt-out, the Ombudsman received a complaint about the wording of the voting ballot that had been suggested for the referendum. According to the complaint, the wording did not correspond with the purpose of the referendum and the bill on which the voters had to decide. In addition, the complainant did not find that the language of the voting ballot was politically neutral.

The Ombudsman's activities are delimited to the public administration. This means that he cannot consider laws adopted by Parliament or bills drafted by ministers. Since the wording of the voting ballot had been processed in a bill that had been subject to public hearing and sent to Parliament, the Ombudsman took no further action in the case.



## Two cases involving foreign nationals were reopened

**Family reunification:** Forwarding a complaint to the authority that the complaint concerns can sometimes result in the authority deciding to reopen the case. This happened in two cases on the Immigration Appeals Board's refusal to grant family reunification.

In one of the cases, a citizen had been denied family reunification with his spouse because the immigration authorities believed that it was a marriage of convenience. The citizen complained to the Ombudsman who forwarded the complaint to the Immigration Appeals Board and asked the Board to consider the couple's information that they had had extensive and practically daily contact for several years. The Immigration Appeals Board reopened the case and found the complainant's statement regarding the couple's relationship believable. The original decision was therefore reversed.

➤ **The Immigration Appeals Board reopened the case and found the complainant's statement about the couple's relationship to be credible.**

The other case concerned a foreign national who as a child had been reunited with her father in Denmark but had later left the country to live

with her mother. This resulted in the lapse of the foreign national's residence permit. In addition, her application for a new residence permit was rejected.

While the foreign national was still a minor, her lawyer asked the Immigration Appeals Board to reopen the case. During the case processing, the lawyer stated in a letter to the Immigration Appeals Board that the foreign national's mother had been granted a residence permit in Denmark. He therefore asked that the case be returned to the Immigration Service so that the foreign national could send in a new application for family reunification. As a minor, she had a more extensive access to family reunification than she would have as an adult. The Immigration Appeals Board did not react to the lawyer's letter, and after the foreign national had reached the age of 18, the Board refused to reopen the case.

The lawyer complained about the Immigration Appeals Board's decision. The Ombudsman forwarded the complaint to the Board so that the Board could consider the importance of the lawyer's letter in the light of the rules on authorities' duty to provide guidance. The Board therefore reviewed the case again and found that the Board should have guided the lawyer on the possibility of sending in a new application. The Board then asked the Immigration Service to consider the application for family reunification as if it had been submitted while the foreign national was still a minor.

## Limits of freedom of speech

**Proportionality:** Several of the cases in 2022 concerned the limits of freedom of speech and the proportionality of the authorities' sanctions.

In a case from the municipal school sector, a PPR (Pedagogical Psychological Counselling) consultant employed with the municipality had sent an e-mail to the local municipal council members, among others, where she accused a manager with the municipality of lying in the media. The municipality gave her a written warning. The Ombudsman agreed with the municipality that the accusation was very severe, but in the specific situation, he found that it was not unlawful to make the accusation, as the manager had in fact made incorrect statements in the media. Therefore, the municipality did not have grounds for giving a warning.

In Nyborg, an e-mail from the municipality's main committee could cause doubt as to whether the staff had the right to present criticism publicly without presenting it internally first. In the e-mail, the main committee encouraged the staff to go to their immediate manager, staff representative or HR with criticism instead of going to the press anonymously. The background was a number of articles in the local media about the work culture in Nyborg Municipality, which were based on anonymous information.

The Ombudsman entered the case on his own initiative and asked the municipality how the e-mail should be understood in the light of the rules about public staff's freedom of speech. The municipality's main committee subsequently revised its announcement and made it clear that all members of staff have the right to express themselves within the framework of public staff's freedom of speech.

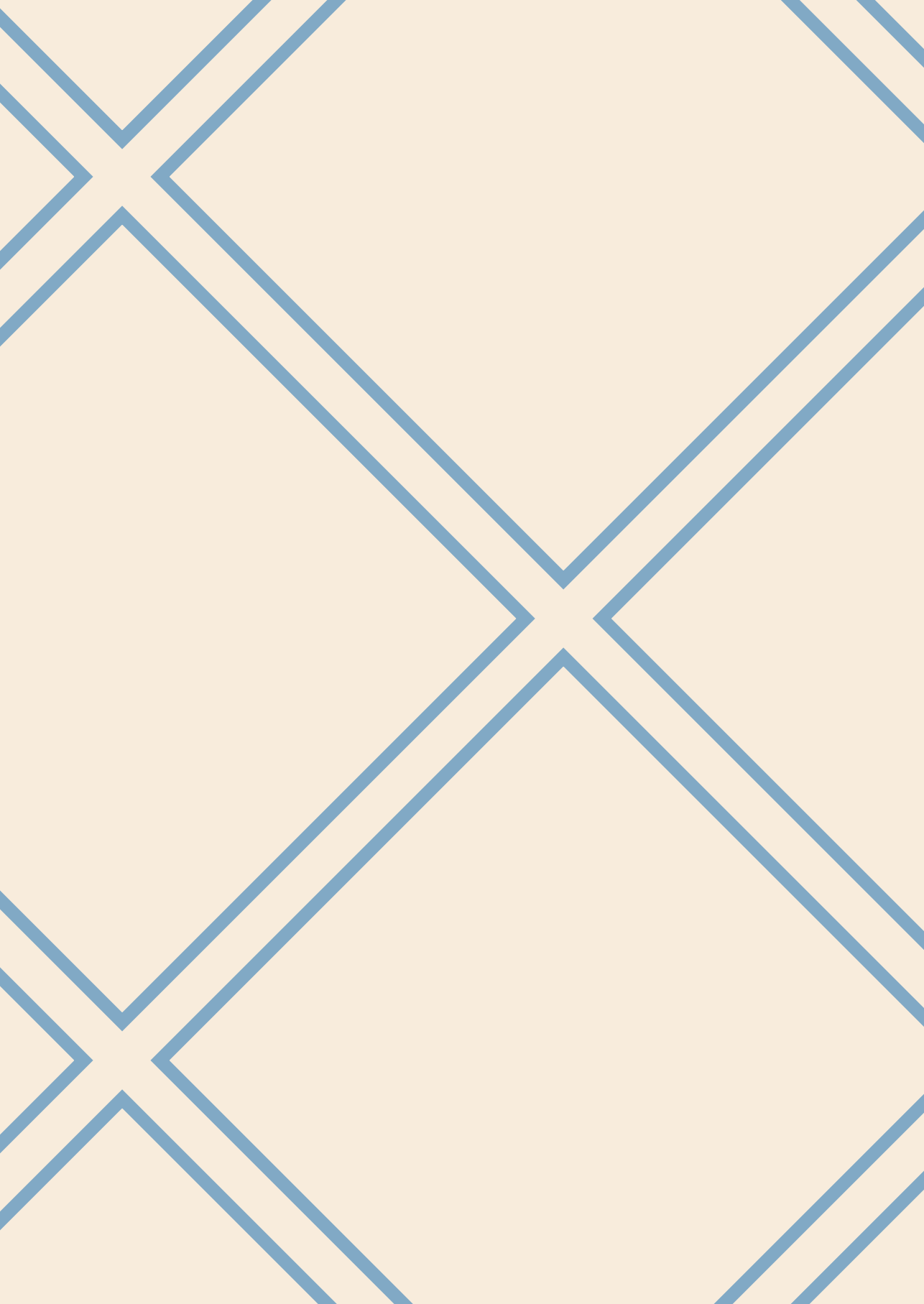
Another case concerned the freedom of speech of others than public staff, namely students at CBS.

CBS had suspended six students for almost nine months – and for two exam periods – because they had sent a party invitation with sexual and alcohol-related references on Facebook. The invitation was to a so-called Slutty Fall Break party and was directed at students for whom the six had just been intro guides.

The Ombudsman understood that the management at CBS found it necessary to react based on the wording of the invitation. However, he found that the suspension had been unjustified.

*News item 1 March: Unjustified to suspend students for nine months due to invitation to 'Slutty Fall Break' party*

➤ **The municipality's main committee subsequently revised its announcement and made it clear that all members of staff have the right to express themselves within the framework of public staff's freedom of speech.**





# Own- initiative investiga- tions

**What:** Opening investigations on his own initiative is a high priority for the Ombudsman.

The Ombudsman may open the following types of investigation on his own initiative:

- investigations of specific cases
- general investigations of an authority's processing of cases

The Ombudsman mainly opens own-initiative investigations of themes and within areas with one or more of the following characteristics:

- There is an aspect of fundamental public importance.
- Serious or significant errors may have been made.
- They concern matters which raise special issues in relation to citizens' legal rights or are otherwise of great significance to citizens.

**Why:** A main objective is to identify recurring errors made by authorities. This can have a great impact on authorities' case processing, thus helping a large number of citizens at the same time.

The focus is not only on errors that the authority may already have made – but also on preventing errors being made in the first place.

In addition, the Ombudsman opens investigations on his own initiative of specific cases of a more one-off nature.

**From where:** Specific complaint cases or monitoring visits may give rise to suspicion of recurring errors etc. and be the launch pad for an own-initiative investigation. Media coverage of a case may also cause the Ombudsman to open an investigation on his own initiative. The Ombudsman monitors both local and national media.

Further, external parties – such as professional committees for practising lawyers or accountants or interest groups – can be useful sources of knowledge about recurring errors etc.

In addition, the Ombudsman chooses some general themes each year for the institution's monitoring activities in relation to adults and children and for the Taxation Division.

**How:** Own-initiative investigations have the common denominator that the focus is usually expanded beyond specific problems to a more general level, with emphasis on any general and recurring errors or problems and on how the authorities involved can handle and rectify errors and problems.

In some own-initiative investigations, the Ombudsman reviews a number of specific cases from an authority. In others, the Ombudsman asks an authority for a statement about, for instance, its administration, interpretation of the law, practice or processing times within a specific area.

The Ombudsman is working on an ongoing basis on a variety of own-initiative investigations where he considers, based on, for instance, specific complaint cases, legislative changes or media coverage, whether there is a basis for further investigation of a matter.

In some cases, the Ombudsman's own investigation leads to the conclusion that there is no cause to contact the authorities involved, and the case is closed without a full Ombudsman investigation. The Ombudsman may also decide to close a case without a full investigation after contacting the authorities.

## Municipality did not take into account the special rules on complaint in cases regarding access to files

**Guidance on complaint:** Special complaint rules apply in relation to decisions on access to files. The specific complaint rules in an access to files case are dependent on whether the decision in a case has been made pursuant to the Access to Public Administration Files Act, the Public Administration Act or the General Data Protection Regulation or the Data Protection Act.

Vejen Municipality had not taken this fact into account in a number of replies regarding access to files in the job centre and in personnel cases and had therefore not given correct guidance on

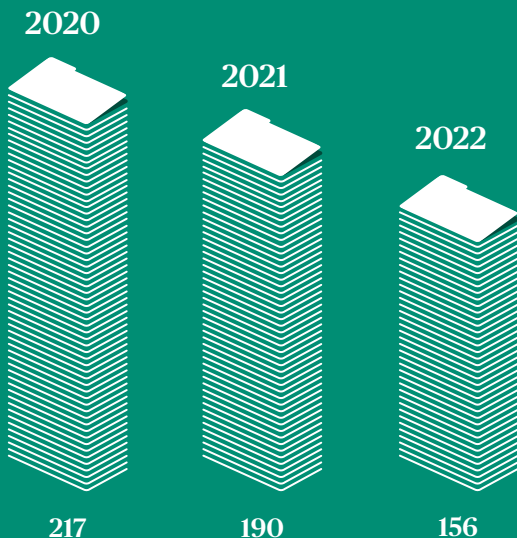
complaint. Among other things, it was wrongly stated in some of the cases that a complaint in the access to files case must be submitted to the municipality and that there was a deadline for complaining. The reason for this was that the municipality had used a wrong template with complaints guidance meant for decisions in social cases.

After the Ombudsman had started a general investigation of the municipality's complaints guidance in access to files cases, the municipality implemented a number of measures to avoid similar errors in future.



### Own-initiative investigations

Total investigations concluded



The decline is mainly due to a decreasing number of own-initiative cases following reports from the police and the Prison and Probation Service of deaths, suicides, attempted suicides etc. in Prison and Probation Service institutions.

Investigations concluded with criticism or formal or informal recommendations





## Local council member did not get special treatment

**Case processing error:** After media coverage of a case from Egedal Municipality about possible special treatment of a local councillor, the Ombudsman decided to open an own-initiative case. The local councillor had applied for and been granted permission to build a worker's cottage on a farm without a permit for construction and changes in land use in rural areas. The worker's cottage was to be used by the local councillor's parents, and on that background several media

were interested in whether the case had been processed correctly.

The Ombudsman investigated the case and in that connection reviewed the Municipality's other cases about the building of worker's cottages from the last ten years. He did not find grounds for assuming that there had been unprofessional special treatment of the local councillor's case. Nor did the Ombudsman find a breach of the rules on legal capacity. But he agreed with the Municipality that errors had been made in the local councillor's case regarding case investigation and the duty to take notes and keep records, and he found that the case processing overall had been criticisable.

➤ **Several media were interested in whether the case had been processed correctly.**

## Vacant positions in municipality should be advertised publicly

**Unlawful practice:** A public workplace cannot implement a general practice about giving its own employees first claim on vacant positions. The Ombudsman established this in an investigation of Frederikshavn Municipality's guidelines for the Municipality's job advertisements.

According to the guidelines, a position in the Municipality should be advertised in-house first in the municipal administration for seven working days. The job vacancy should only be advertised publicly if an employee was not hired who was employed by the Municipality already. This practice was used for almost all employee positions except positions at management level.

In the Municipality's opinion, the guidelines took into consideration the Municipality's duty to re-allocate employees. But in the Ombudsman's opinion, this consideration could not give grounds for a general disregard of the principal rule that vacant positions must be filled after public advertisements so that all interested candidates get the opportunity to apply on equal terms. Therefore, the Ombudsman recommended that the Municipality change its guidelines.

## Investigations into protracted case processing

**Case processing time:** When authorities take a long time to process cases, it is not just detrimental to citizens' legal rights. It can also weaken the authorities' ability to carry out important societal tasks. The Ombudsman has investigated the authorities' processing times in several areas, among others in the healthcare sector.

Media coverage caused the Ombudsman to investigate the Danish Patient Safety Authority's processing of authorisation applications from foreign national doctors from countries outside the EU/EEA. The investigation showed that it took approximately three years from the Danish Patient Safety Authority received an application until the Authority carried out an assessment of whether the doctor's medical training was suited to be tested in practice. The assessment itself generally took between two and five days.

The Ombudsman criticised the long processing times, not least considering that the cases in reality were lying idle for pretty much the whole time. The Ministry of Health stated that an analysis had been started on how to improve the process and that funds had been allocated in the Annual Budget to bring down the backlog.

In another case, an investigation of the Danish Patient Complaints Agency's processing times in complaint cases on access to patient records showed that citizens on average had to wait 12.4

months for a reply to their complaints, and that the processing times in a number of cases had been between two and three years.

The right of access to patient records is one of the fundamental patient rights, which helps ensure the patient self-determination and legal protection within the healthcare system. The Ombudsman found that the Agency's average processing times were far too long.

Also in 2022, the Ombudsman had a focus on health authorities' processing times regarding access to records. Particularly the Ministry of Health and the national serum institute (Statens Serum Institut, SSI) found it difficult to meet the case processing deadlines according to the Access to Public Administration Files Act and the Environmental Information Act.

A status for the turn of the year 2021/2022 showed that the Ministry of Health had 125 pending access to records cases with an average processing time to date of approximately 108 work days, and that SSI had 85 pending cases with an average processing time to date of approximately 44 days.

In the Ombudsman's opinion, the processing times were thereby so long that they challenged the media's possibility of tracking and communicating current issues. He therefore recommended that the Ministry of Health consider whether enough had been done to ensure that the deadlines for processing requests for access to records could soon be met. At the same time, the Ombudsman informed Parliament of the case.

The Ministry of Health then implemented a number of supplementary measures, and the number of pending cases was brought down. Correspondingly, the number of pending cases in SSI was brought down, and SSI expected to be able to

➤ **It took approximately three years from the Danish Patient Safety Authority received an application until the Authority carried out an assessment of whether the doctor's medical training was suited to be tested in practice.**



meet the deadlines before the end of 2022. The Ombudsman has asked the Ministry and SSI for a new status after the first half of 2023.

### **Processing times in the Agency of Family Law and the Immigration Appeals Board**

According to a status from the Agency of Family Law, waiting times for child welfare assessments and expert reports are on average more than five months, and they are expected to rise in future. The main reason is that it is difficult for the Agency of Family Law to obtain enough psychologists to make the assessments.

The Ombudsman approached the Ministry of Social Affairs and Senior Citizens (now the Ministry of Social Affairs, Housing and Senior Citizens), which stated that the Ministry as quickly as possible would look into possible solutions for bringing down waiting times for the children and their parents.

Also the Immigration Appeals Board has problems with processing times. An Ombudsman investigation showed that the Board has a growing problem with its oldest cases. From the first half of 2020 till 2021, the share of cases with a processing time of between two and three years had risen from two per cent to 14 per cent. At the same time, 42 per cent of the Board's concluded cases in 2021 had a processing time of one year or more.

The Immigration Appeals Board has hired more case officers, and for a period of time the Board will be allocated additional staff in order to bring down processing times.

### **Complaints about processing of driver's licences**

The Ombudsman has received many complaints from citizens about the time the Danish Road Traffic Authority takes to process cases regarding the issue and administration of driver's licences.

At the end of 2021, the driver's licence area was transferred from the police to the Danish Road Traffic Authority on the basis of a political agreement. It was agreed that it was to be expected that there would be a transition period with phasing-in of IT and new organisation of tasks, and there was a clarification of expectations that it would take one to two years before operations had been normalised. The Minister for Transport has on several subsequent occasions briefed Parliament on the status and a number of initiatives to bring down processing times.

Particularly in view of the fact that the processing times have been discussed regularly in the relevant parliamentary committee, the Ombudsman has assessed that he is not at present in a position to help achieve shorter processing times.

*News item 23 February: Far too long processing times in authorisation applications from foreign national doctors*

*News item 25 November: Processing times at the Immigration Appeals Board still too long*

## Still problems with collecting child support

**Limited possibility of withholding pay:** In 2022, some parents had to keep waiting to receive child support due to the problems with the tax authorities' collection. The parents in a tight spot included the ones who were entitled to child support in addition to the basic amount, as child support in addition to the basic amount was not paid in advance by the public authorities. This meant that parents had to wait for the child support to be collected from the other parent.

The problems occurred partly because it was not possible for the Danish Debt Collection Agency to withhold pay to cover these child support payments in the Agency's old collection system DMI. It was only possible in the new collection system PSRM, which in 2022 only dealt with some of the debt items.

In 2022, the Ombudsman started a general investigation of the Danish Debt Collection Agency's collection through withholding pay for the child support payments not made in advance.

In the end of 2022, the Danish Debt Collection Agency and the Ministry of Taxation informed the Ombudsman that the debt in this field was still increasing, and that the authorities had converted claims amounting to approximately DKK 129 million from the collection system DMI to PSRM in order to reverse the trend. They were also working on more conversions and on a major retroactive clearing of older claims.

The Ombudsman stated that it was very unsatisfactory that the total arrears of child support payments not made in advance were still increasing. He asked the authorities to give a status in August 2023 on the efforts to ensure that the owed child support payments were collected and paid.

## Sanctions imposed on cash benefit recipients for short trips abroad

**Free movement:** Media coverage of Aabenraa Municipality's imposing of financial sanctions on cash benefit recipients who had crossed the border to Germany to shop for groceries made the Ombudsman ask some questions of the Ministry of Employment.

The Ombudsman asked the Ministry to explain how the concept of 'staying in Denmark' in section 5(3) of the Active Social Policy Act should be understood in the Ministry's opinion. He asked the Ministry to include the FEU Treaty's rules on freedom of movement.

The Minister for Employment believed that, for very short trips to other EU/EEA countries, sanctions could not be imposed within the framework of Denmark's obligations within EU law. Therefore, the sanctions were to stop, and any decisions on sanctioning and repayment of benefits that had already been made were to be reassessed.

At the same time, the Ministry stated that a legal assessment was on its way concerning whether the Active Social Policy Act's restriction of slightly longer stays in other EU/EEA countries is in accordance with EU law. In the meantime, the Ministry assessed that the municipalities should put these cases on hold

## Municipality too quick to dismiss stressed employee

**Dismissal:** The Ombudsman criticised a municipality for having dismissed an employee suffering from stress without first looking into whether she could resume work in another position in the municipality. The grounds for the dismissal were absence due to illness, which the employee said was because of a bad mental working environment.

In an official meeting where the employee was given notice of the dismissal, she had asked if she instead could be reallocated. Her supervisor had replied that there were no obvious reallocation

options within his field of responsibility but that she could ask when she was consulted about the dismissal. The employee did not take up the question again in the consultation. However, the Ombudsman found that the municipality should have looked into the possibility of reallocation – considering that the employee had been employed in the municipality for a long time, that the absence due to illness could be assumed to be connected to where she worked, and that the municipality had no reason to believe that she was not interested in reallocation.

## General guide must be correct and up-to-date

**Guide from the tax authorities for changes in practice:** The Legal Guide (in Danish only) is a digital guide for, among others, citizens and businesses where the tax authorities give information about the rules and practices in the field of tax law. The Legal Guide is updated twice a year.

Tax auditors and tax attorneys have told the Ombudsman that it often took a long time before new judgments and decisions were published and incorporated in the Legal Guide. Against this background, the Ombudsman started an investigation of the tax authorities' general information and administration when practice changes are implemented based on judgments and decisions.

In the investigation, the Ombudsman emphasised the importance of the information in the Legal Guide being correct and up-to-date. He stated that it sometimes took a long time to update the Legal Guide and that it could be doubtful whether practice changes were made sufficiently clear in the Legal Guide in the meantime.

The Ombudsman's statement made the tax authorities take a number of initiatives. For instance, the internal deadlines for publishing practices have been changed, and a procedure has been implemented for showing any practice changes more quickly and clearly in the Legal Guide. New guidelines have also been implemented for the Danish Customs and Tax Administration's case processing in the period from a new judgment or decision until its meaning has been assessed and a potential practice change has been incorporated in the Legal Guide.

## Focus on digital communication and citizen services

**Public IT systems:** Also in 2022, digital communication between citizens and authorities has been a focal point for the Ombudsman. In various ways, the cases have raised the question of how authorities communicate digitally with citizens and of the duties and rights of citizens in this context.

A mother complained to the Ombudsman because Kolding Municipality would not accept an e-mail from her about her removal of her daughter from a programme for future school children ('GLO'). The Municipality demanded that the removal be made digitally via the electronic self-service system Mit-Kolding.

The Ombudsman asked the Municipality to inform the mother of the grounds for the demand since it requires legal authority to impose on citizens to communicate digitally with public authorities.

The Municipality replied that the digital self-service solution was not a requirement but an option, and that the mother was able to remove her daughter from the programme via e-mail.

In another case, the Danish Agricultural Agency had sent a reminder to a citizen that he needed to report his fertiliser accounts for his farm. However, the Agency had not sent the reminder directly to the farm's Digital Post but to a special digital inbox in a self-service system, which the Agency had not said that it would use. Therefore, the citizen did not see the reminder and ended up being fined. He paid the fine but complained to the Ombudsman about the Agency's use of the special digital inbox.

The Agricultural Agency looked into the case and wrote to the Ombudsman that the underlying rules did allow for establishing rules about the duty to communicate digitally with the Agricultural Agency, including the use of certain postal solutions, but that this legal authority had not been used. Therefore, the reminder should have been sent via a postal solution which the farm was obliged to use, for example e-Boks.

Authorities' digital case processing was also central in a case about dates on municipal letters. In a specific case from the City of Copenhagen, the Ombudsman found that the original date on one of the documents from the City had been replaced with the date when the National Social Appeals Board had forwarded it to the Ombudsman.

The Appeals Board said that the City had not locked the letter date in the document. It was the Board's impression that it was a general issue that did not only concern a few municipalities.

Public IT systems must ensure documents' integrity and authenticity. This can have crucial importance for deadlines and for the identification of the document, among other things.

The Appeals Board promised to focus on the issue internally and would consider opening a monitoring case involving specific municipalities. Afterwards, the Board has communicated to all municipalities that their case processing systems must ensure that letter dates on final documents are locked.

In 2022, the Ombudsman's Taxation Division looked into, among other things, the possibility of using a party representative in the tax authorities' IT systems.



The investigation showed that in five of the Danish Customs and Tax Administration's older IT and case processing systems, it was not technically possible to record that a citizen or business wanted to make use of a party representative, or to design the communication to take the party representative into account.

The Ombudsman found this most unfortunate since a party must be able to have representation, for instance by a lawyer or an accountant. This especially applies in the field of taxation where cases can be complex and of great financial value to citizens and businesses.

### ➤ **The date on one of the documents from the City had changed to the date when the National Social Appeals Board had forwarded it to the Ombudsman.**

The Danish Tax Agency said that the Danish Customs and Tax Administration was going to draw up a plan for developing the IT systems. In May 2022, the Tax Agency wrote that the Agency had finalised further mapping of the Customs and Tax Administration's IT systems in order to fully clarify the need for adjustment of the existing systems so that they could support the right to a party representative. In continuation of this, the Ombudsman asked to be notified of the Agency's final plan for initiatives that could make the systems lawful.

In another investigation, the Ombudsman looked into the Danish Patient Safety Authority's processing times in cases about authorisation of doctors, who are national citizens of or trained in countries outside the EU/EEA. The investigation showed that applicants often had to wait longer to have their application for authorisation processed than stated by the Patient Safety Authority on receiving the application.

However, the Patient Safety Authority did not inform applicants that the processing of their cases dragged out. When the Ombudsman asked about this matter, the Authority replied that it would not be possible on an ongoing basis to send information to applicants without making changes to the Authority's IT system.

The Ombudsman stated that as part of good administrative practice, an authority should notify citizens when the processing of their cases drags out. And he added that the authority cannot refrain from doing so with reference to the design of its IT system.

As a reaction to the criticism, the Patient Safety Authority decided that it is going to review all cases once quarterly in order to assess if the stated processing times are observed. If not, the Patient Safety Authority is going to send new information about expected processing times to applicants, where the processing of their case has not started yet.

*News item 23 February: Far too long processing times in authorisation applications from foreign national doctors*



# **Monitoring activities**



**Where:** The Ombudsman carries out monitoring visits to places where there is a special need to ensure that citizens are treated with dignity and consideration and in accordance with their rights by the authorities – because the citizens are deprived of their liberty or otherwise in a vulnerable position.

Monitoring visits are made to a number of public and private institutions, such as

- Prison and Probation Service institutions
- psychiatric wards
- social residential facilities
- residential institutions for children and young people

In addition, the Ombudsman monitors

- forced deportations of foreign nationals
- forced deportations arranged by other EU member states at the request of the European Border and Coast Guard Agency, Frontex

Finally, the Ombudsman monitors the physical accessibility of public buildings, such as educational establishments or health institutions, to persons with disabilities.

**Why:** The Ombudsman's monitoring obligations follow from the Ombudsman Act and from the rules governing the following special responsibilities which the Ombudsman has been assigned:

- The Ombudsman carries out monitoring visits in accordance with section 18 of the Ombudsman Act to especially institutions where people are deprived of their liberty.
- The Ombudsman has been designated 'National Preventive Mechanism' (NPM) under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The task is carried out in collaboration with DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights

(IMR), which contribute with medical and human rights expertise.

- The Ombudsman has a special responsibility to protect the rights of children under the UN Convention on the Rights of the Child etc.
- The Ombudsman has been appointed to monitor forced deportations.
- The Ombudsman monitors developments regarding equal treatment of persons with disabilities at the request of Parliament.

**How:** A monitoring visit is a physical visit by a visiting team, who speak with users, staff and the management and look at the physical environment.

The monitoring of a forced deportation involves a member of the Ombudsman's staff being present during the whole or part of the deportation. The Ombudsman also reviews the case files of a number of the deportation cases concluded during the preceding year.

The Ombudsman may make recommendations to the institutions etc. visited and to the responsible authorities. Issues from the visits may also be discussed with the responsible authorities or dealt with in own-initiative investigations or thematic reports (i.e. reports on the year's work in relation to each of the themes chosen for monitoring visits during that year).

**Who:** Monitoring visits are carried out by Ombudsman staff, in many cases with participation of external collaborative partners or consultants. Depending on the type of monitoring visit, the Ombudsman collaborates with

- medical doctors from DIGNITY – Danish Institute Against Torture
- human rights experts from the Danish Institute for Human Rights
- a consultant who has a mobility disability
- a consultant who has a visual disability

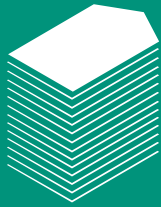
## Where did we go in 2022?



### Monitoring visits – adults



14 Prison and Probation Service institutions, including 1 in the Faroe Islands



12 police detention facilities and custody reception areas, including 4 in the Faroe Islands



2 psychiatric wards



1 social residential facility

Read about the individual monitoring visits at [en.ombudsmanden.dk/visits\\_adults](https://en.ombudsmanden.dk/visits_adults)  
[en.ombudsmanden.dk/visits\\_children](https://en.ombudsmanden.dk/visits_children)



## Monitoring visits – children



9 private accommodation facilities



2 boarding schools

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## Themes

### Theme in 2022 – adults

#### New remand prisoners' conditions

In 2022, the Ombudsman's thematic visits (adults) were focused on conditions for new remand prisoners.

The visits concerned the police's arrests and transfers of prisoners to the Prison and Probation Service as well as the Prison and Probation Service's reception of new remand prisoners.

As part of the theme, the Ombudsman visited eight local prisons and eight police districts.

#### Focus areas

During the thematic visits in 2022, the visiting teams focused particularly on

- the police's guidance on and ensuring of the rights and safety of arrestees
- the police's handing over of relevant information on transfers of arrestees to the Prison and Probation Service
- the local prisons'
  - talks on arrival and other guidance on new arrestees' rights and on guidelines for the stay in the local prison etc.
  - uncovering of conditions relevant to arrestees' safety and state of health
  - screening for mental health issues
  - information on the local prison's health services and the option to talk with a physician or nurse
  - ensuring arrestees' rights, including contact to relatives, lawyers etc.
  - communication of relevant information to and from social authorities etc.

#### Examples of recommendations

During some of the visits to the police districts, the Ombudsman recommended that the police ensure that there is documentation of the arrestees having been informed of their rights.

In connection with the visits to local prisons, a number of recommendations were given on subjects within the year's theme. For example, the Ombudsman recommended that managements of local prisons ensure

- that inmates are given adequate guidance on their rights etc. on reception
- that inmates get a knowledge of the local prison's rules, including its house rules, and practical matters on reception
- the use of an interpreter to the necessary extent on reception of new inmates
- that staff receive guidance on or training in uncovering mental health issues, including thoughts of suicide

#### Follow-up

In the course of 2023, a thematic report will be published, which summarises the main conclusions of the thematic visits. In addition, the thematic report will contain the Ombudsman's general recommendations based on the monitoring visits.

The thematic report will be discussed with key authorities within the police and the Prison and Probation Service.

## Theme in 2022 – children

### Small private accommodation facilities for young people

In 2022, the Ombudsman's thematic visits (children) were aimed at young people at small private accommodation facilities – meaning accommodation facilities with eight to ten places, as a starting point.

As part of the theme, the Ombudsman visited eight small private accommodation facilities with primarily young people aged 13-17 years in residence.

### Focus areas

During the thematic visits in 2022, the monitoring teams focused particularly on

- use of physical force
- returning runaways
- detaining in connection with or during placement
- searches of persons and rooms
- drug testing
- prevention and handling of alcohol and drug addiction, sexual abuse and self-harming behaviour

### Examples of recommendations

In connection with the visits, recommendations were given on subjects within the year's theme – for instance, the Ombudsman recommended that accommodation facilities

- ensure that staff are familiar with the rules on use of physical force and other interventions, including on how physical force should be carried out in practice
- ensure that deadlines for recording and reporting use of physical force are observed
- ensure that the young people and their parents are informed of their rights in relation to use of force and other interventions
- ensure that consent is obtained to use of drug testing, and that the municipality and the parents are informed about use of drug testing and the result of the test

In the course of 2023, a thematic report will be published, which summarises the main conclusions of the thematic visits. In addition, the thematic report will contain the Ombudsman's general recommendations based on the monitoring visits.

Read about themes at  
[en.ombudsmanden.dk/themes](https://en.ombudsmanden.dk/themes)

## The Ellebæk Centre for Foreigners is in better condition but there is still a need for improvement

**Monitoring visit:** In 2019, the Ombudsman visited the Ellebæk Centre for Foreigners and recommended that the condition of the Centre be improved so that the detainees would have adequate material conditions.

When the Ombudsman revisited Ellebæk in September 2022, he found that thorough renovations had been carried out, and that by far the majority of the accommodation units were in good condition. The outdoor areas had also been improved, but the Ombudsman recommended that focus remain on continuing this task. The detainees had access to playing fields together with the centre's staff and could also go outside for fresh air on their own, but in small enclosures with walls and top made of a rigid metal mesh, and there was no roof to protect against rain or direct sunlight.

The detained foreign nationals at Ellebæk come from many different countries and speak many different languages. It is therefore important that interpreters are used in all circumstances when needed – the Ombudsman recommended that the centre's management ensure this.

It also emerged during the visit that – despite management having focused on the issue – there could be episodes where staff talked among themselves or to the detainees in an unprofessional or 'harsh' way. The Ombudsman therefore recommended a continued focus on the staff's way of talking.

*News item 6 December: The Ellebæk Centre for Foreigners is in better condition but there is still a need for improvement*

## Use of force did not give rise to any comments

**Forced deportation:** The Parliamentary Ombudsman monitors authorities' forced deportations of foreign nationals who do not have lawful residence in Denmark. The Ombudsman oversees if the authorities' activities take place with respect for the individual and without unnecessary use of force.

On 29 March 2022, one of the Ombudsman's legal case officers monitored the accompanied deportation of a woman and two of her children to Iran. The legal case officer was there from the pick-up at the Danish Red Cross Centre Avnstrup until the boarding of the flight at Copenhagen Airport. The deportation was subsequently cancelled during transit in Istanbul.

The deportation gave rise to discussions in the media because force was used against the woman and because information came out stating that the authorities allegedly used sedatives during the deportation.

Based on observations of the authorities' handling of the deportation and the information in the case, the Ombudsman concluded that the police's use of force during the deportation did not give rise to any comments. In addition, the Ombudsman noted that there were no observations or information in the case about use of medication or other kinds of sedatives during the deportation.

## Pedagogical-Psychological Counselling (PPR) is a municipal responsibility

**PPR assessments:** When a pupil needs special education, pedagogical-psychological counselling must first be provided, and the pupil and the parents must be consulted. This is pursuant to the Act on Primary and Lower Secondary Education ('Folkeskoleloven'). The pedagogical-psychological counselling is necessary to ensure that among others children and young people placed in care outside the home receive the right educational programme.

In connection with a monitoring visit to an independent institution with an in-house school, the Ombudsman became aware that pursuant to an agreement with Næstved Municipality the task of making PPR assessments was carried out by a special needs adviser employed by the institution. This could be supplemented by buying psychological counselling from the municipality. However, the issue was if an employee with the institution could be in charge of making the assessments or if it was the municipality's responsibility to carry out the task.

The Ombudsman asked the Ministry of Children and Education to say whether it is a municipal responsibility to provide pedagogical-psychological counselling to a placement institution.

The Ministry replied that the municipality has the final responsibility for the pedagogical-psychological counselling and that it rests on the general delegation framework pursuant to administrative law to what extent others than the municipality (for instance independent institutions) can carry out parts of the pedagogical-psychological counselling. The municipality must determine whether the requirements necessary for a delegation have been met. This means, among other things, that if parts of the PPR task – for instance making a PPR assessment – are given to others, the municipality must ensure that these others possess the necessary professional expertise.

On that basis, the municipality implemented a process to ensure that it lived up to the municipal obligation in relation to the PPR task.

➤ **The issue was if an employee with the institution could be in charge of making the assessments.**

## Door alarms could not replace locking of doors

**Secure residential institutions:** Secure residential institutions can be given permission to lock the doors of the institution's young people at night for considerations of order and security. In connection with some of his monitoring visits, the Ombudsman noticed that the social supervisory authorities had a varying practice for giving such a permission. One social supervisory authority had revoked two institutions' permission due to new rules on the use of door alarms. The social supervisory authority believed that the possibility of installing door alarms on the young people's doors could replace the locking of doors at night. Another social supervisory authority did not believe that the possibility of using door alarms changed the need for locking of doors.

The Ombudsman asked the Ministry of Social Affairs and Senior Citizens (now the Ministry of Social Affairs, Housing and Senior Citizens) to consider the correlation between locking of doors and door alarms. The Ministry replied that the door alarms were to be considered a supplement and not a replacement for locking the doors at night. The social supervisory authority that had revoked the permissions then decided to look into the cases again.

➤ **The social supervisory authorities had a varying practice for giving permissions.**

## Monitoring visit to the Faroe Islands

**Medical attention:** In the summer of 2022, the Ombudsman carried out a monitoring visit on the Faroe Islands, which included the police detention facilities and waiting rooms as well as the Faroe Islands detention centre ('Færøerne Arrest'). The Ombudsman's impression of the visited places was generally positive, but he also had certain comments and recommendations. For example, the visits to the detention facilities led to recommendations on surveillance of detainees who are too intoxicated to take care of themselves. The recommendations concerned the police's duty, already during transport to the facility, to summon a doctor who can examine the detainee and to watch the detainee closely until the doctor arrives.

The purpose of the Ombudsman's monitoring visit is to help ensure that people who are deprived of their liberty by the police or the prison and probation service on the Faroe Islands are treated with dignity, consideration and in accordance with their rights.

➤ **The Ombudsman's impression of the visited places was generally positive.**







## Monitoring visits to investigate accessibility for persons with disabilities

The Ombudsman monitors the accessibility of public buildings and their outside areas etc. for persons with disabilities.

During monitoring visits, the Ombudsman focuses on whether the requirements of the building regulations on accessibility for persons with disabilities have been met. The Ombudsman is assisted during monitoring visits by a consultant who has a mobility disability and a consultant who has a visual disability.

### Monitoring visits in 2022

The Ombudsman has decided that the accessibility of healthcare centres is to be the theme for his monitoring visits to investigate accessibility, and in 2022, the Ombudsman visited the healthcare centres of Hillerød and Hvidovre Municipalities.



## Monitoring of forced deportations

### Participation in forced deportations

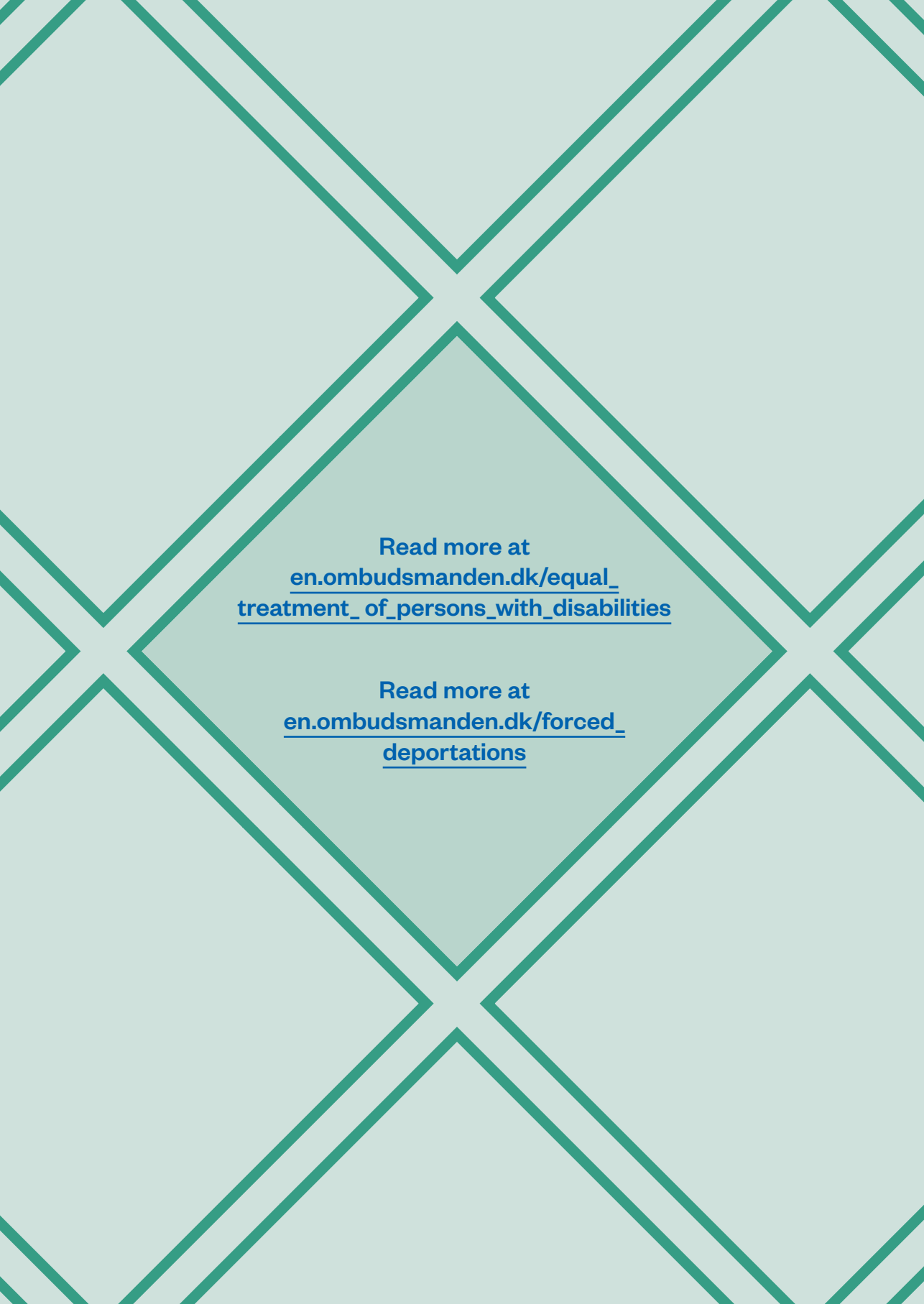
The Ombudsman monitors forced deportations of foreign nationals, among other things by Ombudsman staff being present during the whole or part of some of the deportations. In 2022, a member of the Ombudsman's staff was present during six deportations carried out by the Danish authorities and during one Frontex operation.

In six of the cases where a member of the Ombudsman's staff was present during the deportation, the Ombudsman expressed no criticism. The seventh deportation was carried out by the Danish authorities in December 2022, and the case had not been concluded by the end of 2022.

### Annual review of concluded cases

In addition to a member of the Ombudsman's staff being present during the whole or part of a number of deportations, the Ombudsman's monitoring of forced deportations involves a review of the case files of a number of the deportation cases concluded during the preceding year.

In 2022, the Ombudsman reviewed the case files of 22 deportation cases which had been concluded by the authorities in 2021 – 15 cases involving use of force and seven cases where no force was used. None of the cases gave rise to comments.



Read more at  
[en.ombudsmanden.dk/equal\\_treatment\\_of\\_persons\\_with\\_disabilities](https://en.ombudsmanden.dk/equal_treatment_of_persons_with_disabilities)

Read more at  
[en.ombudsmanden.dk/forced\\_deportations](https://en.ombudsmanden.dk/forced_deportations)

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# Articles





**Ten years with a  
Children's Division**



Lise Bitsch  
Deputy Head of Division

Susanne Veiga  
Senior Head of Division

## The Children's Division tries to help as many children and young people as possible and has a special focus on the vulnerable ones.

In April 2013, the Ombudsman's Children's Division was on a monitoring visit to a residential institution in Esbjerg Municipality. Here, the visiting team met two socially vulnerable children who were siblings.

After the monitoring visit, the Children's Division started a case regarding the municipality's performance prior to the children being placed in care. It turned out that the municipality had not taken any real initiatives to help the siblings, despite having received 11 serious notifications of concern from, among others, police, school and citizens in the course of a year. The children were six and eight years old when the municipality received the first notification of concern. It was not until one of the two siblings, now nine years old, was admitted to hospital with a blood

alcohol level of 2.57 per mille that the children were put into emergency care outside the home. The children had – as shown – received help from the municipality far too late, and the Ombudsman stated that the municipality's neglect was 'completely indefensible'.

The case arose from one of the first monitoring visits carried out by the Children's Division, and it is thankfully a rarity among the various types of cases processed by the Ombudsman's Children's Division. In 2022, it was ten years since the Division opened its doors for the first time. In the following, we will take a look at some of the contributions of the Children's Division and the effect thereof.

But let us start with a bit of history.

### The Children's Ombudsman Cooperation

In connection with the establishment of the Children's Division, Children's Welfare in Denmark and the National Council for Children were also strengthened. The Children's Division, Children's Welfare in Denmark and the National Council for Children constitute the Danish Children's Ombudsman Cooperation.

With the Children's Telephone ('BørneTelefonen'), Children's Welfare in Denmark has an 'entrance portal', which most children in Denmark know.

The National Council for Children makes surveys with and about children and is an advocate for children's rights in Denmark. Through its investigation of complaints and monitoring activities, the Children's Division helps to ensure that children's rights are respected.

So the Danish Children's Ombudsman Cooperation does not consist of one body but of three bodies, each doing what they do best, and together constituting a fundamental support for children in Denmark.

## The establishment of a Children's Division

When Parliament about ten years ago decided to establish a Children's Division within the Parliamentary Ombudsman Office, it was based on a recommendation from the UN Committee on the Rights of the Child and on a wish to strengthen the conditions and legal rights of children.

### Case processing in the Children's Division

Case processing takes place within the scope of the Parliamentary Ombudsman Act. This means that the Children's Division basically considers legal questions and can only investigate a case when all other channels of complaint have been exhausted. When investigating a case, the focus is on whether or not the Ombudsman can help with the result. Help can also consist of getting the case back on track with the authority or by getting the authority to expressly consider specific grievances.

The Children's Division particularly investigates concrete cases on:

- remedial measures and social benefits for children and young people
- cases involving family proceedings
- state, continuation and private independent schools
- institutions for children
- other cases which specifically concern the rights of children.



The task of the Children's Division is to help ensure that both public authorities and private institutions etc. treat children and young people in accordance with the rules, both Danish and international, including the UN Convention on the Rights of the Child.

The Children's Division does so by investigating concrete complaints. The complaints are lodged by both children and adults (though by far the majority are from adults). When children and young people apply to the Children's Division, the case officers quickly take care of it, often through an initial contact over the telephone, followed up by a reply that is written in a way that children can understand.

The Children's Division can also go on monitoring visits to institutions etc. for children and young people and take up cases on its own initiative, for instance following media coverage or based on monitoring visits.

The Ombudsman also investigated cases regarding the rights of children and young people before the Children's Division opened on 1 November 2012. However, with the establishment of the Children's Division, efforts in this important field have been strengthened.

### Vulnerable children and young people

All children and young people may need help to ensure that their rights are respected, and the Children's Division tries to help as many children and young people as possible. However, the Children's Division has a special focus on vulnerable children and young people, such as children and young people placed outside the home.

#### When children are moving back home

Over the years, the Children's Division has processed a number of cases about municipalities



which have moved or have wanted to move children and young people in care back to their parents (return to home). Returning a child (or a young person) who has been in care greatly affects the child's future life. The municipality must therefore ensure that it is the right solution for the child and that the parents are able to safeguard the child's well-being and development in future. Furthermore, the child may be trapped in a conflict of loyalty in relation to the parents if the child does not wish to return home. That is why there are a number of statutory requirements regarding municipalities' case processing.

If a municipality wants to return a child placed in care to the parents, the municipality must have a talk with the child and work out an action plan, which to a relevant degree stipulates among other things the future support for the child (and the parents) following the return. A young person over the age of 12 must receive a decision from the municipality with grounds and guidelines on making a complaint so that the young person can complain about the municipality's decision if he or she disagrees.

A review of seven specific return cases in Randers Municipality and Langeland Municipality in 2018 and 2020 showed that all cases contained serious errors – both in relation to conducting a talk with the child, revision of the young people's action plans and (adequate) grounds for the decision to return the child or young person to the home and guidelines on making a complaint for young people over the age of 12. The Ombudsman expressed serious criticism regarding these deficiencies. And both municipalities subsequently explained how they would ensure that cases involving the return to the home of children and young people placed in care would in future be processed in accordance with legislation.

### **Conditions in placement facilities etc.**

In connection with the Ombudsman's monitoring activities, the Children's Division often visits institutions, accommodation facilities etc. for socially vulnerable children and young people. During the monitoring visits, the Children's Division is normally focused on the use of physical force and other restrictions in the right to self-determination, the children's relationships with staff, education and activities, and health-related conditions.

### **A broader aim**

The Children's Division is not focused solely on helping individual children and young people experiencing problems, but also on pointing out systemic errors by the authorities that have an impact on a number of cases or an entire case field and thereby on a larger group of children. An issue in a specific case or a specific situation may thus be an expression of a more general error (systemic error) or a lack of legal clarity.

### **Right to an education**

Education is an important part of the foundation for all children's footing as adults. The Children's Division has therefore had a focus on education, among other things in-house schools in placement facilities for children and young people, with a view to ensuring that the in-house school pupils get the education they are entitled to. After several examples showing that this was not the case, the Ombudsman raised the issue generally with the (now) Ministry of Children and Education. In March 2022, a political agreement was established on strengthening education for vulnerable children and young people placed in care.

### **Rights of pupils**

In the field of education, the Children's Division has received many complaints about the rights of pupils when a school resorts to serious reactions,

such as expulsion. On that background, the Ombudsman raised the issue with the (now) Ministry of Children and Education. The Ministry then implemented further guidance measures to ensure that school principals apply the rules of administrative law correctly. In the field of private independent schools and continuation schools, the result of the Ombudsman's comments to the Ministry about the issue was that on 1 January 2021, new rules came into force which made it clear that schools must include (consult) a pupil and document this inclusion before a decision to expel the pupil can be made.

#### **Consultation on the child's terms**

When a child or young person is to be consulted as a party to the case, it must be done in such a way that the child understands what the case is about, and the approach must be considerate towards the child. This was a key message in a specific case regarding the National Social Appeals Board's consultation with (among others) a 12-year-old child diagnosed with autism. The Board had sent the child a consultation letter with documents from the case and asked the child for 'any comments within 8 days'.

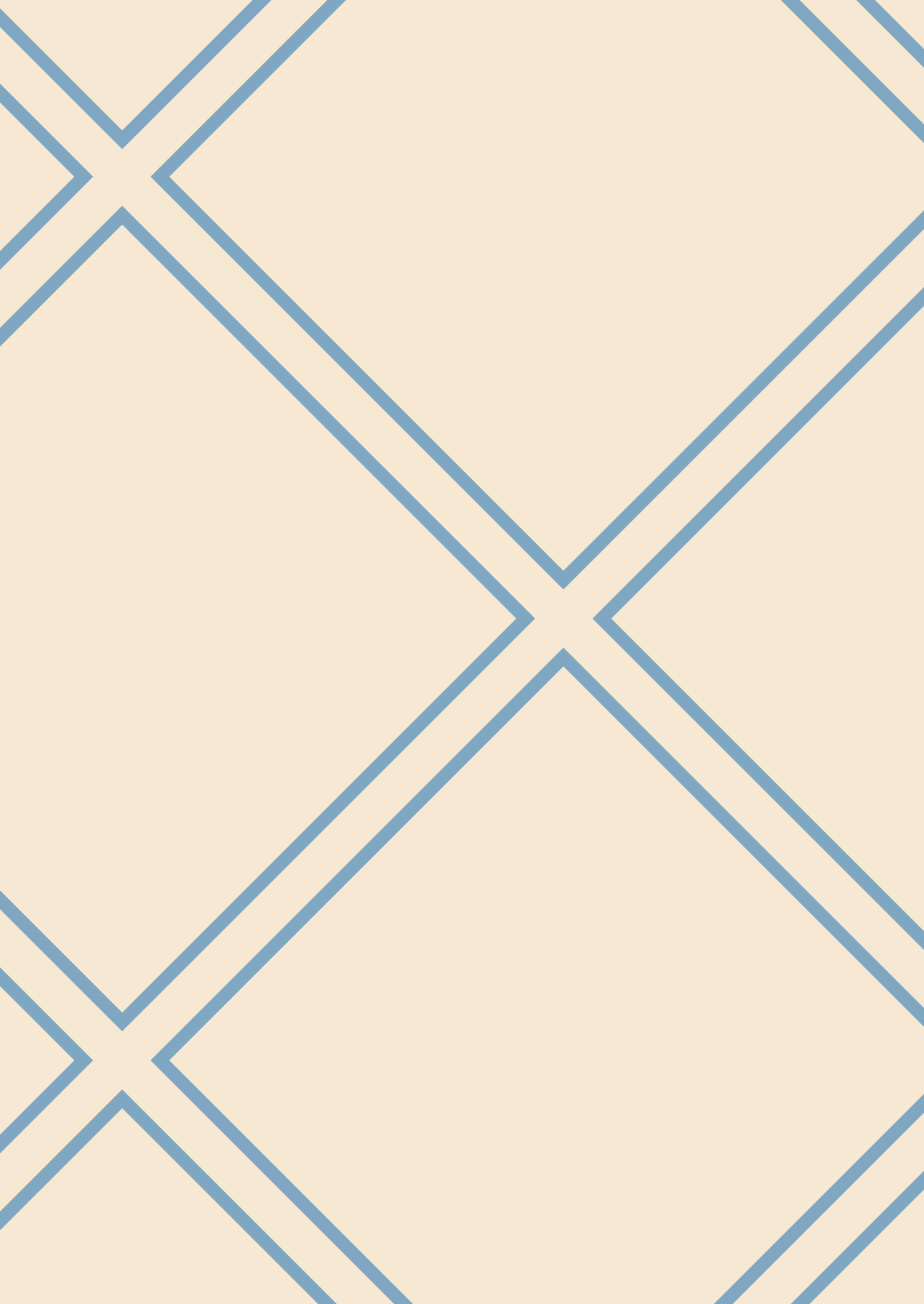
#### **Serious issues**

The cases in the Children's Division often contain basic legal issues. For instance, there was a case where in practice there were doubts as to what rules applied to forcible placement in care of asylum-seeking children whose parents did not have a legal residence permit in Denmark (for instance rejected asylum seekers).

Following the Ombudsman's enquiry of the (now) Ministry for Social Affairs and Housing whether the legal basis for forcibly placing asylum-seeking children in care was sufficient, Parliament in 2020 adopted new rules on social measures towards children of parents without a legal residence permit in Denmark.

#### **Further work**

The first ten years have shown that there is plenty to do for a Children's Division with the Parliamentary Ombudsman. This holds true both in relation to ensuring concrete help for individual children and young people but also in relation to dealing with general errors or legal uncertainties, which can have an impact on many children or on a whole case field. The Children's Division will continue its work of helping the children – with a continued focus on the vulnerable children, including those who are placed outside the home and who maybe need to be helped towards a good life under somewhat more difficult conditions than other children of the same age.





**Force and non-statutory  
interventions in the  
psychiatric sector**



Camilla Bang  
Deputy Head of Department



Morten Engberg  
Senior Head of Department

## The Ombudsman's investigations show that psychiatric wards should continue to have focus on the legal framework for use of force and non-statutory interventions.

Admission, stay and treatment in a psychiatric ward are generally voluntary. However, if a citizen does not want to take part, both admission and treatment can take place by force when the conditions of the Mental Health Act are met. The Act also makes it possible for psychiatric ward staff to use forcible measures such as manual restraint of the patient and belt restraints.

### Non-statutory restrictions and interventions in the psychiatric sector

In addition to the forcible measures mentioned in the Mental Health Act, psychiatric patients are subject to restrictions and interventions in their right to self-determination that are not mentioned in the legislation.

These could be restrictions that are found in the psychiatric wards' regular house rules – such as rules about visitation hours, when a ward should be quiet and where smoking is allowed. There can also be restrictions that a ward is in practice imposing on the patients, without them appearing in the ward's house rules.

As such, an institution's management can, to a certain extent, establish house rules or other restrictions to ensure that the institution can function. The basis is the unwritten principle of institution status.

However, in some cases, a non-statutory restriction is so intrusive for the patient that it cannot be carried out with authority in the principle of institution status, but requires consent from the patient. In these instances, the ward must ensure that the patient gives valid consent that is voluntary and informed. Otherwise, it is force, which requires statutory authority. The patient must also know that the consent can be withdrawn at any time.

### The Ombudsman's monitoring in the psychiatric sector

During monitoring visits to psychiatric wards, the Ombudsman is regularly informed about various kinds of non-statutory restrictions and interventions that are used towards the patients.

- The Ombudsman monitors, among other things, how the authorities treat citizens who are deprived of their liberty. Therefore, the Ombudsman regularly visits the psychiatric wards.
- The monitoring visits are carried out in cooperation with the Danish Institute for Human Rights and with DIGNITY – Danish Institute Against Torture. The two institutions cooperate with the Ombudsman in the monitoring field.
- During monitoring visits, the Ombudsman focuses on whether the basic principle of the patient's right to self-determination is observed, meaning that the patients are only subjected to force if there is legal authority.

In several cases, the Ombudsman has made the health authorities aware that the legal basis for restrictions and interventions was questionable. In Case No. 2020-43 (published in Danish at [www.ombudsmanden.dk](http://www.ombudsmanden.dk)), which concerned 17 psychiatric wards, the Ombudsman questioned the legality of, for instance, restricting the patients' access to a mobile phone, prohibiting sexual relations between patients and the wards' use of breathalysers and urine sampling.

This case and several other cases are described in more detail in the article 'Monitoring activities: Institution status may provide questionable legal authority' in the Ombudsman's 2020 Annual Report.

In 2021, the Ombudsman's monitoring visits focused especially on the use of non-statutory restrictions and interventions in the psychiatric sector. The Ombudsman visited ten psychiatric wards, and it turned out that almost all of them used interventions with a questionable legal ba-

sis. The Ombudsman recommended that nine of the ten psychiatric wards adjust their house rules and practice according to the applicable rules.

### **Amendment to the Mental Health Act**

The Ombudsman has in several instances discussed the non-statutory restrictions and interventions that are used towards psychiatric patients with the Ministry of Health and Senior Citizens (now the Ministry of the Interior and Health).

In order to create more clarity for both patients and staff, the Minister for Health introduced a bill at the end of 2021 about amendment to the Mental Health Act. The amendment, which entered into force on 1 January 2022, describes what prohibitions and restrictions of the patients' right to self-determination that the psychiatric wards can introduce in their house rules. With the amendment, the wards are able to, for instance, prohibit or restrict the patients' access to a mobile phone and sexual relations between patients at the ward. It is also possible to require a patient to submit urine samples or blow into a breathalyser, for instance on suspicion of drugs at the ward.

The amendment has thus created a more clear legal basis in a number of areas.

### **Continued focus**

However, the new rules of the Mental Health Act do not cover all kinds of restrictions and interventions.

During his monitoring visits, the Ombudsman has paid attention to the use of what is referred to as 'seclusion in own room'. This entails that the patient is isolated in a limited area, such as their room, with an unlocked door and possibly


with one or more members of staff standing guard outside the door. Several psychiatric wards have stated that seclusion in own room is used in critical situations, for instance in order to avoid forced immobilisation of a patient, and that it is often difficult to obtain valid consent from the patient in the situation.

In 2020, the Ombudsman considered the use of seclusion in own room in Case No. 2020-25. He agreed with the former Ministry of Health and Senior Citizens that requiring a patient to stay in his or her room without the patient having given consent was a forcible measure, which at the time did not have authority in the Mental Health Act.

The Ombudsman has recently in a specific case about seclusion in own room also agreed with the Ministry of the Interior and Health that neither the amendment to the Mental Health Act of 1 January 2022 nor the principle of institution status provides the necessary authority for seclusion in own room without consent from the patient.

If non-statutory restrictions or interventions cannot be made pursuant to the principle of institution status, the ward must ensure that the patient has given voluntary consent and has also been informed that the consent can be withdrawn at any time.

The Ombudsman will also in future pay attention to the use of non-statutory restrictions and interventions in the psychiatric sector.



**The experience of a monitoring visit – a talk with  
Consultant Psychiatrist  
Hans Henrik Ockelmann**





Martin Østergaard-Nielsen  
Special Communications Advisor

As a consultant with a long career in the psychiatric sector, Hans Henrik Ockelmann has on several occasions experienced a visit from staff members from the Parliamentary Ombudsman's Monitoring Department. And he is generally positive towards the function served by the monitoring visits. Even though he must admit that it can also be stressful when 'you come poking the ant hill', as Ockelmann, now 65 years old and a consultant in forensic psychiatry at Mental Health Centre Sct. Hans, says with a twinkle in his eye.

'The Parliamentary Ombudsman is after all an institution that commands respect. Maybe even a little intimidating. And you ask for a lot of documentation when you visit. Especially if there is a specific theme you wish to explore. I am not saying your questions are not relevant because they definitely are. But it is no secret that they also generate a certain workload. It takes a lot of energy to have the Ombudsman visiting.'

### Monitoring those in control

The Ombudsman's monitoring visits are meant to ensure that persons deprived of their liberty, at psychiatric hospitals for instance, are treated

with dignity, consideration and in accordance with their rights. And to Hans Henrik Ockelmann, this exact purpose is the most important function of the monitoring visits.

'It is necessary to monitor those in control of others,' he says. 'This applies on a personal level as well of course. On a daily basis, I find myself in a position where I am monitored very little. It is of course nice but it can also be a little dangerous in the long run. Therefore, it is good that somebody is looking over your shoulder. When you are in a powerful position, complacency benefits from a bucket of ice-cold water.'

However, Ockelmann does state that the Ombudsman's visits sometimes reveal a schism between what he calls 'the legal requirements' and everyday life at the hospital.

### About

- Hans Henrik Ockelmann, aged 65
- Consultant in forensic psychiatry at Mental Health Centre Sct. Hans
- Doctor of Medicine (MD), University of Copenhagen 1985

‘Here, it is our continuous task to make everyday life work for everybody and to find soft and dynamic solutions to issues to which the law most likely has a more rigid approach.’

As an example, Ockelmann mentions the balancing between the interests of the community and of the individual in the establishing of a calm and accommodating environment at the psychiatric ward.

‘In this connection, I sometimes experience what could be called a clash between two mindsets. The Ombudsman must ensure that the legislation is observed. And legislation is by and large centred on the individual. But in everyday life at the ward, we have to find solutions to situations where some patients exhibit behaviour that is disruptive or anxiety-provoking for the whole group. And those two considerations may very well collide in the practical logistics of social interactions at the ward.’

Ockelmann adds that the Ombudsman’s staff members generally are knowledgeable of and attentive to the conditions at the institutions.

‘We do have some good dialogue, and it is my impression that you always listen to our points of view. Even when you are not convinced in the end.’

## Feel taken seriously

According to Hans Henrik Ockelmann, a very important element of the Ombudsman’s work is to talk to those who live at the institutions, be they prisons or psychiatric hospitals or something completely different.

‘It has been of great importance to the patients at the monitoring visits I have seen. They feel they are being taken seriously in a way that might be quite new to them. They are often vulnerable people on the edge of society. And when they get the opportunity to talk with the Ombudsman and make complaints or wishes for improvements, they get the feeling someone really listens to them.’





**The Ombudsman zooms in  
on authorities' development  
of IT solutions**



Sofie Hedegaard Larsen  
Special Legal Advisor

Lise Puggaard  
Senior Consultant

## As something new, the Ombudsman also looks at IT systems before they are put in operation.

In these years, case processing in the public administration is being digitised to an increasing extent, and much of citizens' contact with authorities takes place through digital self-service systems such as borger.dk and skat.dk. In some cases, the systems also make decisions about citizens and businesses.

There can be no doubt that development and implementation of new digital systems in the public administration offer great advantages for both administration and citizens. For authorities, case processing can be more efficient, and digitisation can help ensure that similar cases are processed in the same way. And many citizens appreciate the possibility to take care of their business with the authorities online at all hours.

However, when the public administration moves away from manual case processing and digitises a case area, there can also be a risk that citizens' legal rights are neglected if authorities do not take into account that the general rules and principles of administrative law also apply when case processing is digital.

Indeed, the Ombudsman's primary task is to ensure citizens' legal rights when they interact with the public administration. This was the reason why the Ombudsman in his 2019 Annual Report pointed to digitisation of the public administration as a focus area for the Ombudsman Office in the coming years.

Since then, the Ombudsman has in a number of cases considered issues that touch upon the digitisation theme in various ways. And since 2021, the Ombudsman's Taxation Division has had a special focus on digitisation of the tax authorities' case processing, which has used many digital systems for a long time, also in their contact with individual taxpayers.

### A new approach supplements the traditional approach

The Ombudsman has previously found serious errors in various areas of public IT systems.

In 2022, it has again come up that, for example, final documents get a new date every time they are forwarded. There have also been examples

that underage children have received letters that their parents should have received because the system could not send to the parents (Case No. 2022-13, published in Danish at [www.ombudsmanden.dk](http://www.ombudsmanden.dk)). In addition, there have been examples of IT systems that did not allow citizens and businesses to use a party representative – such as a professional – to safeguard their interests.

The cases have concerned IT systems already in operation, where the Ombudsman's investigation was carried out based on, for instance, a complaint from a citizen who had experienced problems using the system. This has been the traditional approach at the Ombudsman Office.

As a new, supplementary approach, the Ombudsman is also trying to look at IT systems that are in the process of being developed. Here, the Ombudsman investigates how the authority ensures that the rules of administrative law will be met when the system is put into operation.

As the Ombudsman Office is a control body, the new approach does not mean that the Ombudsman is taking part in the development or approval of the systems. The goal is to contribute to preventing any general or systemic errors pertaining to administrative law – if nothing else then in subsequent development projects.

## Two new investigations

In two investigations from 2022, the Ombudsman has used the new approach and looked into the tax authorities' development and implementation of new IT systems.

While the systems had not yet been put into operation, the Ombudsman asked the responsible authority – the IT and Development Agency – for written material that illustrated how the tax authorities would take into account the rules

and rights of administrative law when developing and implementing the systems, for instance in relation to consultation and representation of parties.

One investigation (Case No. 2022-11) concerned the IT system Sharing Economy Reporting Solution, which businesses that arrange rental of cars, boats or residences must use to report the lessors' rental income. No decisions are made in the system. However, other IT systems with the Danish Customs and Tax Administration and other authorities can retrieve information from the system and use it for tax assessment notices and calculation of pension and public benefits, among other things. The reporting solution is therefore part of a chain of IT systems etc. where the information from the system is used in various contexts, including in decisions about citizens.

The Ombudsman believed that the Customs and Tax Administration should have focused more on this interplay with other IT systems etc. – including the distribution of responsibility and roles between different authorities and systems in relation to securing citizens' legal rights. An authority must take into account the whole that the new system is to be part of. It could be that compliance with administrative law requirements of, for instance, consultation of parties must be supported in the new IT system, even though no decisions are to be made in the new system.

The other investigation (Case No. 2022-12) concerned the Customs and Tax Administration's ESDH system (electronic case and document management system) and was based on the Administration's upgrade from an older and inadequate version of the ESDH system to an up-to-date version.

The ESDH system is used by all seven agencies in the Customs and Tax Administration and is for instance used for case processing where decisions are made about citizens. The processes often take place across an individual agency or across several agencies, and, in that connection, the ESDH system is part of an interplay with many of the Administration's other IT systems.

The investigation did not give the Ombudsman grounds for criticism in connection with the upgrade, but again illustrated the importance of authorities looking out for the interplay between IT systems and authorities.

In the Ombudsman's opinion, the Customs and Tax Administration's upgrade also illustrated that the responsible authority should follow up on whether a new or upgraded IT system supports correct application of the legislation, as presupposed. If the system is to work together with other IT systems or across several authorities, the follow-up can take place through dialogue and cooperation between the involved authorities, so they can uncover and handle any problems with observing administrative law requirements.

### **Digitisation still in focus**

The new cases are built on the Ombudsman's statements in the case about the previous collection system EFI, which was shut down due to errors (Case No. 2014-24). Here, the Ombudsman stated, among other things, that the authorities must create an overview from the beginning of the case types and processes that a new IT system must include and make it clear what formal and material rules apply to the processing of the cases in question.

The work in the digitisation area, including a focus on the development phase of public IT systems, will continue in the coming years, both in the Ombudsman's Taxation Division and in the Ombudsman's other divisions.

**Read more about the Ombudsman's focus on digital communication and citizen services on page 36.**



**Region Zealand's letter  
to 14-year-old girl caused  
distress**





Martin Østergaard-Nielsen  
Special Communications Advisor

One day in the autumn of 2021, a 46-year-old woman from the south of Zealand received a call at work from her then 14-year-old daughter. The daughter was confused and upset. She had just opened a letter from Region Zealand. The letter said that the Region rejected a referral from the municipality for a psychiatric assessment of the daughter. An assessment that both she and her mother wanted in order to get help with the daughter's mental struggles.

The phone call took the mother completely by surprise. She had no idea that the Region would send a letter directly to her child.

'I immediately checked my own Digital Post to see if I had also received the letter,' the mother says. 'But I hadn't. The Region had only written to my daughter.'

The mother tried to console her 14-year-old daughter, who was upset with the Region's rejection and affected by having read the letter by herself without a parent by her side. But it was difficult for the mother to get through to her.

'My daughter closes herself off when she has this kind of experience,' the mother explains. 'She becomes upset and doesn't trust the system.'

She knows that she struggles with anxiety and other things. And when she gets such a letter, she becomes even more anxious. Because what will the future hold?'

### **Complained to the Region**

While the mother supported her daughter, she became angry with Region Zealand, which, in her opinion, had acted irresponsibly by sending the letter directly to the 14-year-old girl.

Therefore, the mother called the Region's mental health services to complain. But she did not feel that she could get through to them.

Afterwards, the mother sent a complaint to Region Zealand. The reply was that this was the procedure in the Region's IT system (the Healthcare Platform) and that the Region was working on changing it.

This means that the Region's IT system had been designed to send letters automatically to the citizens that the letters concerned. In cases involving children under 15, it meant that the Region automatically sent letters that were addressed to the children on the envelope and that you had to open the letters to see that they were really addressed to the children's parents.

## Vulnerable position

The Ombudsman looked into the case and stated that the Region's procedure was against the rules of the Health Act and the Parental Responsibility Act. According to these acts, custodial parents must, as a rule, be informed of the treatment of minors – and, in some cases, the information must only be sent to the parents and not to the children.

'The Region's procedure may mean that the child is put in a vulnerable position by directly receiving – maybe serious – information that it can be difficult for the child to understand or handle without necessarily having immediate access to support from an adult,' said the Ombudsman.

After the Ombudsman's statement, Region Zealand has stated that the Region will implement a new IT solution. The solution implies that letters to custodial parents about treatment of minors under 15 are sent directly to the custodial parents and not to the child. The Capital Region of Denmark, which also uses the Healthcare Platform and had the same issue, implemented the solution on 15 November 2022.

With regard to letters to 15-17-year-olds, both regions have stated that they will implement a new IT solution, which means that, as a rule, the same information is sent to the custodial parents as to the young people.

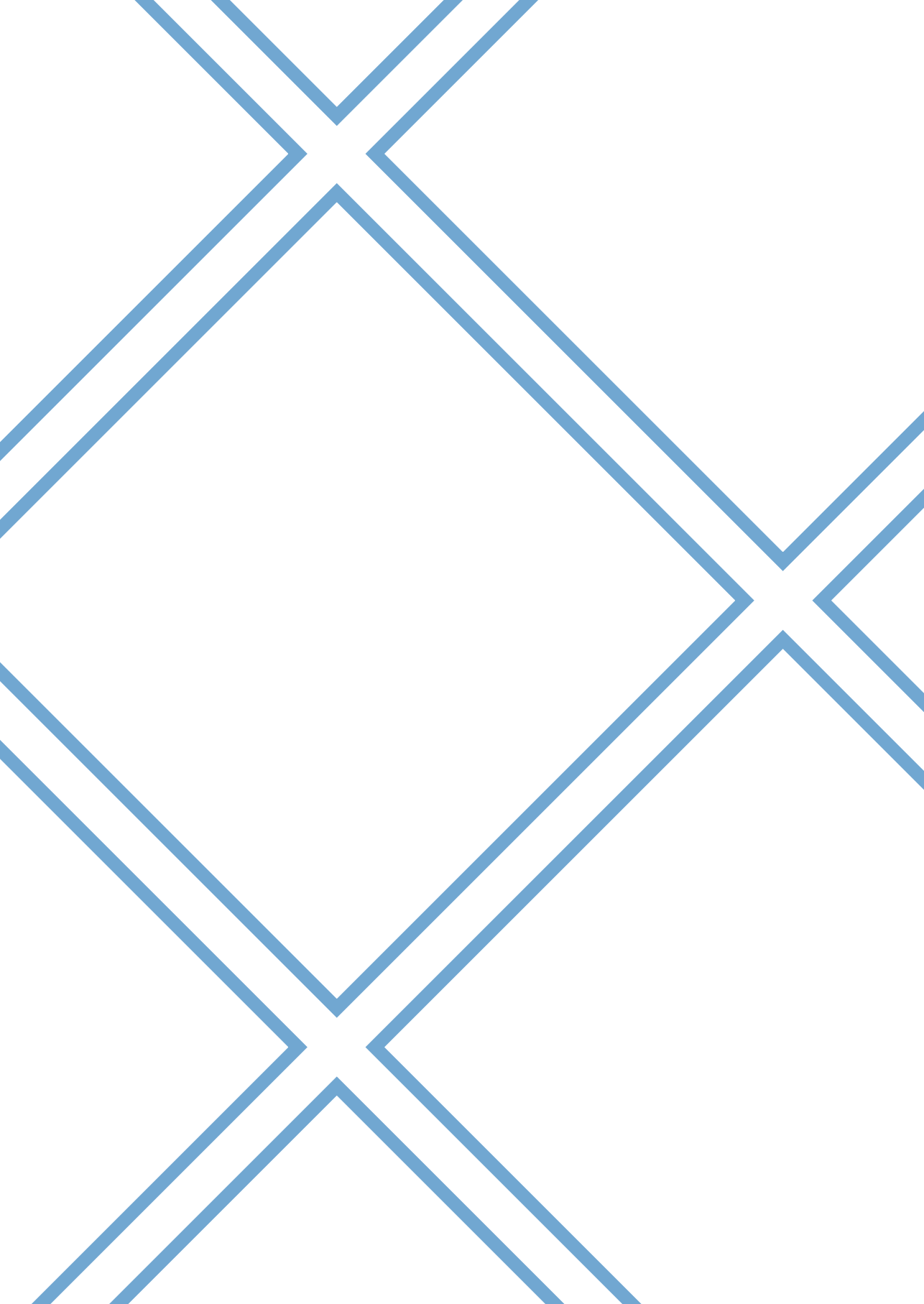
The solutions will also ensure that the Region in all cases can adjust the recipients as needed.

The 46-year-old woman is satisfied with the Ombudsman's statement. Of the Region's procedure, she adds that it has damaged her daughter's trust in the health authorities.

'When you have a diagnosis, you need support and cooperation in your dialogue with the public authorities. You already have a lot to deal with when you are 14 years old.'

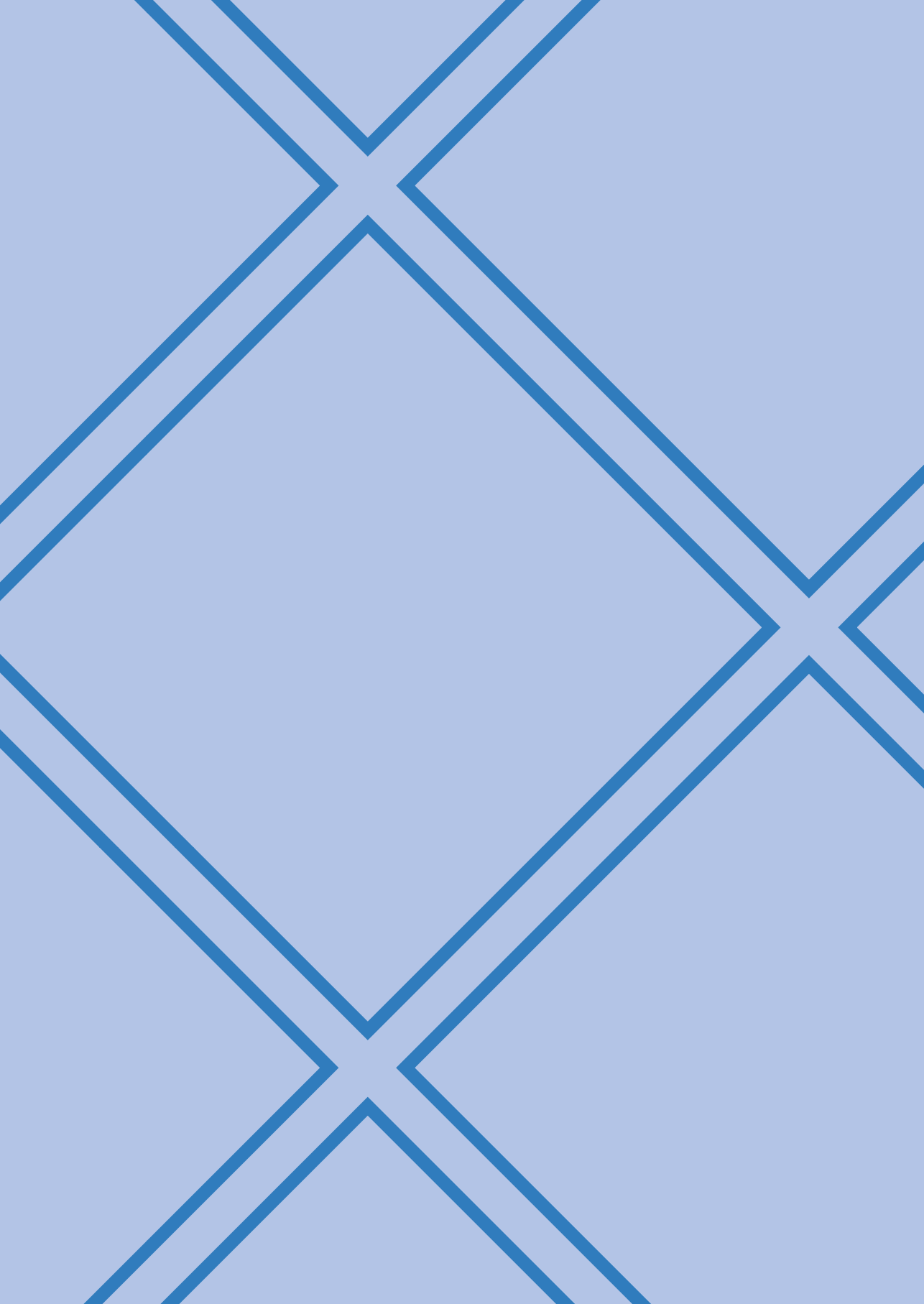


In 2022, the Ombudsman started an own-initiative investigation of Region Zealand's practice of sending letters directly to minors, among other things prompted by a complaint from the mother mentioned in this article. The article builds on the Ombudsman's investigation and the mother's recollections about her conversations with professionals in the case.





**Brief  
overview  
of the  
year**



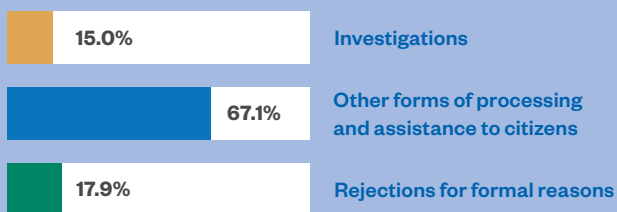
# The year in figures

The following pages contain key figures for the cases processed by the Ombudsman in 2022. More information about the Ombudsman's work and the rules governing the Ombudsman's activities can be found on [en.ombudsmanden.dk](https://en.ombudsmanden.dk).

## Concluded cases<sup>1</sup>

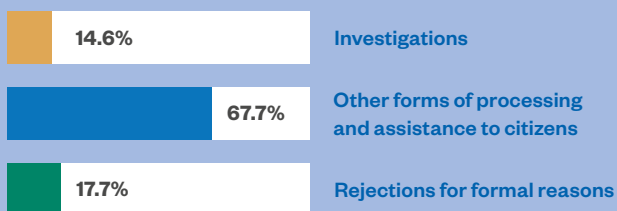
# 2022

5,258 cases



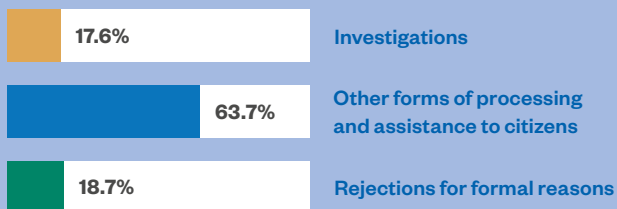
# 2021

5,587 cases



# 2020

6,207 cases



1) Administrative cases are not included. In addition, cases selected for collective review in connection with general own-initiative investigations are not normally included.

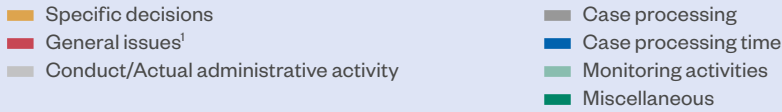
## What was the outcome of the cases?

	Concluded cases
<b>1. Investigations</b>	
Full investigations	217
– of which cases with criticism, formal or informal recommendations etc.	126
Shortened investigations <sup>1</sup>	570
<b>Investigations, total</b>	<b>787</b>
<b>2. Other forms of processing and assistance to citizens</b>	
Various forms of intervention in cases where the avenues of processing by authorities had not been exhausted	1,987
– of which cases forwarded to authorities	1,084
Cases where the Ombudsman's review did not result in further investigation	1,084
Answers to enquiries, guidance etc.	458
<b>Other forms of processing and assistance to citizens, total</b>	<b>3,529</b>
<b>3. Rejections for formal reasons</b>	
Complaints which were submitted too late to the Ombudsman	97
Cases where the complaint/appeal options to authorities had not been used – and could no longer be used	36
Cases which related to courts, judges or matters on which a court had made or could be expected to make a decision – and were thus outside the Ombudsman's jurisdiction	156
Cases which concerned matters relating to Parliament, including legislative issues, and were thus outside the Ombudsman's jurisdiction	73
Complaints which related to other matters outside the Ombudsman's jurisdiction, including private legal matters	292
Complaints which were not clarified sufficiently to be processed and complaints which were withdrawn	252
Cases in which the Ombudsman declared himself disqualified	0
Anonymous approaches	36
<b>Rejections for formal reasons, total</b>	<b>942</b>
<b>Total (1-3)</b>	<b>5,258</b>

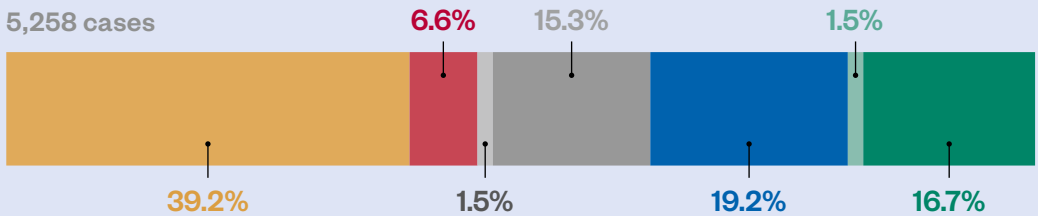
1) Shortened investigations comprise primarily cases in which the Ombudsman reviewed a complaint but decided not to obtain statements from the authorities because it was unlikely that a full investigation would result in criticism or recommendations. The category of shortened investigations also includes, among others, cases which were reopened by the authorities after the Ombudsman asked them for a statement (23 cases in 2022).



## What did the cases concern?



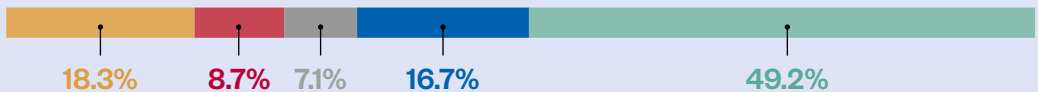
**All concluded cases**  
5,258 cases



**Investigations**  
787 cases



**Cases with criticism,  
formal or informal  
recommendations etc.**  
126 cases



1) The category 'General issues' comprises, for instance, the overall conditions in an institution or questions such as whether an enabling act provides a sufficient legal basis for an executive order or whether an authority's general practice within a specific area is acceptable.

## Which authorities etc. were involved?

### Cases concluded in 2022 - by authority etc.

	Investigations		Other forms of processing and assistance to citizens	Rejections for formal reasons	Total cases
	With criticism, formal or informal recommendations etc.	Without criticism, formal or informal recommendations etc.			
<b>A. Ministries and authorities etc. under them<sup>1</sup></b>					
Ministry of Employment	1	17	69	7	94
Ministry of Children and Education	0	8	11	2	21
Ministry of Industry, Business and Financial Affairs	2	54	77	16	149
Ministry of Finance	0	3	10	0	13
Ministry of Defence	3	7	18	1	29
Ministry of the Interior and Health	8	39	140	10	197
Ministry of Justice	46	146	414	74	680
Ministry of Ecclesiastical Affairs	0	2	36	6	44
Ministry of Climate, Energy and Utilities	2	6	34	8	50
Ministry of Culture	1	9	27	3	40
Ministry of Environment	0	10	38	8	56
Ministry of Digital Government and Gender Equality	0	2	28	1	31
Ministry of Food, Agriculture and Fisheries	1	2	24	1	28
Ministry of Taxation	6	37	188	34	265
Ministry of Social Affairs, Housing and Senior Citizens	8	179	380	98	665
Prime Minister's Office	3	1	12	6	22
Ministry of Transport	1	16	124	8	149
Ministry of Higher Education and Science	7	9	44	7	67
Ministry of Foreign Affairs	1	8	25	3	37
Ministry of Immigration and Integration	4	20	123	15	162
<b>Total</b>	<b>94</b>	<b>575</b>	<b>1,822</b>	<b>308</b>	<b>2,799</b>

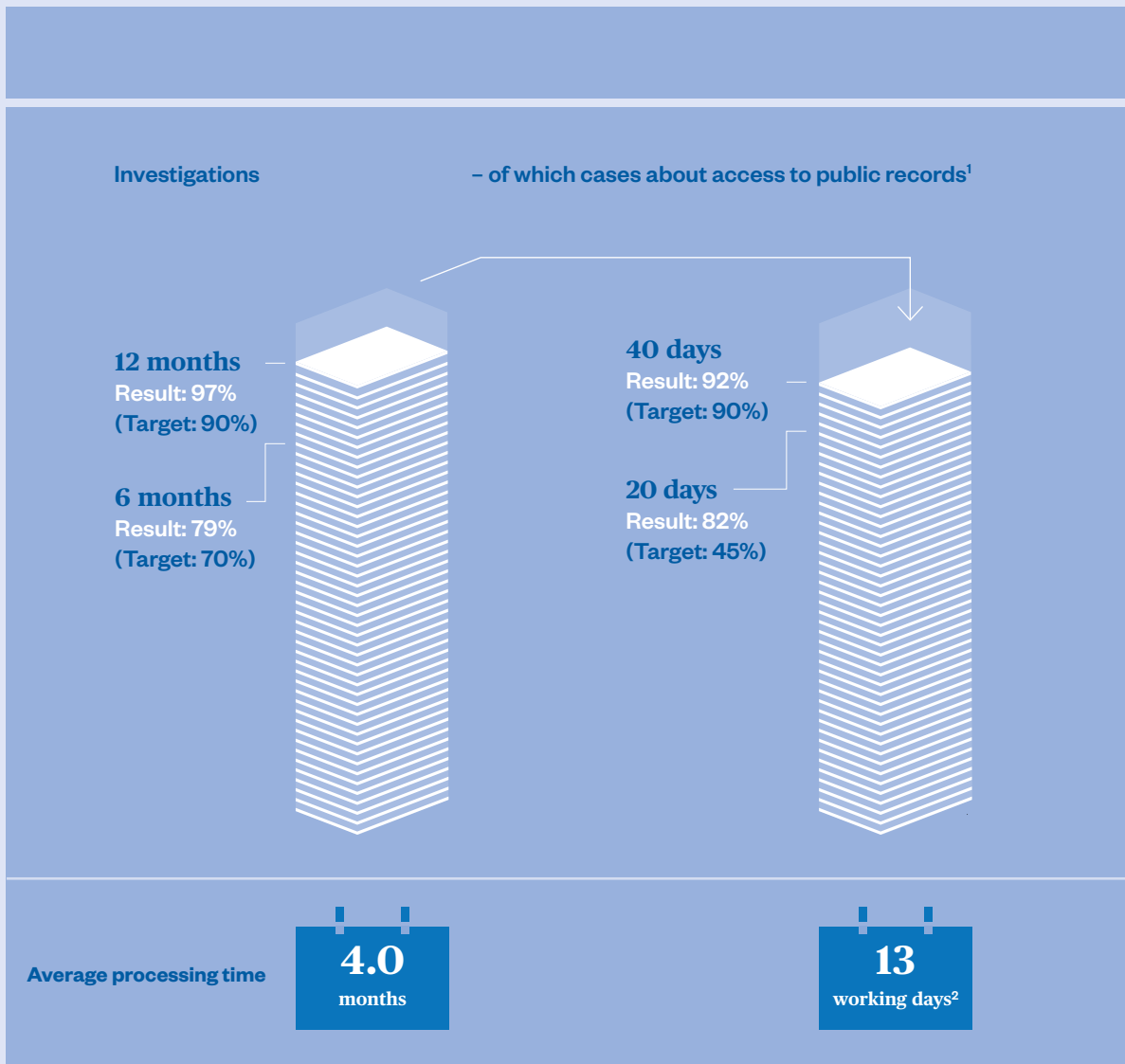
1) The cases have been classified under the ministries existing at the end of the year. Concluded cases relating to authorities which have been moved to another ministry, closed down or reorganised have as a general rule been classified under the ministries which had the remit for the relevant areas at the end of the year.

## Cases concluded in 2022 - by authority etc.

	Investigations		Other forms of processing and assistance to citizens	Rejections for formal reasons	Total cases
	With criticism, formal or informal recommendations etc.	Without criticism, formal or informal recommendations etc.			
<b>B. Municipal and regional authorities etc.</b>					
Municipalities	13	62	1,139	138	1,352
Regions	8	7	61	8	84
Joint municipal or regional enterprises	0	1	3	0	4
<b>Total</b>	<b>21</b>	<b>70</b>	<b>1,203</b>	<b>146</b>	<b>1,440</b>
<b>C. Other authorities etc. within the Ombudsman's jurisdiction<sup>2</sup></b>					
Other authorities etc. within the Ombudsman's jurisdiction	11	16	122	14	163
<b>Total</b>	<b>11</b>	<b>16</b>	<b>122</b>	<b>14</b>	<b>163</b>
<b>D. Authorities etc. within the Ombudsman's jurisdiction, total</b>					
Ministries and authorities etc. under them, total (A)	94	575	1,822	308	2,799
Municipal and regional authorities etc., total (B)	21	70	1,203	146	1,440
Other authorities etc. within the Ombudsman's jurisdiction, total (C)	11	16	122	14	163
<b>Total</b>	<b>126</b>	<b>661</b>	<b>3,147</b>	<b>468</b>	<b>4,402</b>
<b>E. Institutions etc. outside the Ombudsman's jurisdiction</b>					
Courts etc., cf. section 7(2) of the Ombudsman Act	0	0	0	80	80
Dispute tribunals, cf. section 7(3) of the Ombudsman Act	0	0	0	15	15
Other institutions, associations, enterprises and persons outside the Ombudsman's jurisdiction	0	0	6	318	324
<b>Total</b>	<b>0</b>	<b>0</b>	<b>6</b>	<b>413</b>	<b>419</b>
<b>F. Cases not relating to specific institutions etc.</b>					
	<b>0</b>	<b>0</b>	<b>376</b>	<b>61</b>	<b>437</b>
<b>Grand total (A-F total)</b>	<b>126</b>	<b>661</b>	<b>3,529</b>	<b>942</b>	<b>5,258</b>

2) The figures comprise private institutions etc. which fall within the Ombudsman's jurisdiction in connection with OPCAT or in the children's sector and other institutions etc. which have been included under the Ombudsman's jurisdiction. In 2022, the Ombudsman decided in pursuance of section 7(4) of the Ombudsman Act that his jurisdiction was to extend to Komponent - Kommunernes Udviklingscenter to the extent to which the centre is subject to the provisions of the Access to Public Administration Files Act.

## Processing times



1) Complaint cases about access to public records under the Access to Public Administration Files Act, the Environmental Information Act, the Administration of Justice Act etc., with the exception of cases about the right of a party to a case to obtain access to documents of the case.

2) Processing times for cases about access to public records are stated in working days – as in the Access to Public Administration Files Act. The number of working days is calculated from the date on which the Ombudsman has received replies from the citizen and the authorities and the case is thus ready for final processing (the 'maturity date').



### Monitoring cases<sup>3</sup>

Other forms of processing and assistance to citizens and rejections for formal reasons

**6 months**  
Result: 98%  
(Target: 98%)



**3 months**  
Result: 90%  
(Target: 90%)

**6 months**  
Result: 82%  
(Target: 80%)



**1.2**  
months

**4.7**  
months

3) Concluded cases concerning monitoring visits made to institutions etc. for children and for adults, monitoring visits to investigate physical accessibility for persons with disabilities and monitoring of forced deportations of foreign nationals. The processing time for a monitoring case is calculated from the date of the monitoring visit or the deportation.

## Other facts

The Faroese Lagting (the Parliament) did not ask the Ombudsman to act as **ad hoc ombudsman** for the Faroese Parliamentary Ombudsman in any cases in 2022. The Inatsisartut (the Parliament of Greenland) asked the Ombudsman to act as ad hoc ombudsman for the Ombudsman for Inatsisartut in one case.





# **Extracts from news items from the Ombudsman**

**of relevance  
for international  
readers**



The following are extracts from news items from 2022 which were published on the Ombudsman's English website because they were considered to be of relevance for international readers. The news items can be read in full on [en.ombudsmanden.dk](https://en.ombudsmanden.dk).

If you wish to be notified every time news is published in English on [en.ombudsmanden.dk](https://en.ombudsmanden.dk), please follow us on Twitter at [@DanishOmbudsman](https://twitter.com/DanishOmbudsman).

**21 January**

**The Ombudsman's Children's Division monitors small private accommodation facilities for young people in 2022**

In 2022, the Ombudsman's Children's Division is going to visit a number of small private accommodation facilities for young people.

The monitoring visits will be directed especially towards facilities with young residents with alcohol and drug addictions, self-harming behaviour or similar serious problems. Among other things, the purpose of this is to gain knowledge of how the facilities handle the special challenges this group of young people face.

**10 February**

**The Ombudsman investigates conditions for newly arrived remand prisoners**

The Ombudsman's monitoring visits to institutions for adults in 2022 have a special focus on how the Prison and Probation Service receives new remand prisoners.

...

Therefore, the Ombudsman will be visiting a number of remand prisons in the course of 2022 in order to investigate how new remand prisoners are being guided on their rights and the conditions of their stay in remand.

**23 February**

**Far too long processing times in authorisation applications from foreign national doctors**

When a foreign national medical doctor from a country outside the EU/EEA applies for authorisation to work in Denmark, it takes approximately three years from when the Danish Patient Safety Authority receives the application until the Authority carries out an assessment of whether the doctor's medical training is suited to be tested in practice. The assessment itself generally only takes from two to five days. This is evident from an investigation carried out by the Parliamentary Ombudsman.

**1 March**

**Unjustified to suspend students for nine months due to invitation to 'Slutty Fall Break' party**

Copenhagen Business School's (CBS) reaction was too severe when the university suspended six students for almost nine months as a sanction for having sent out a party invitation with sexual references and references to consumption of alcohol on Facebook. The invitation was to a so-called *Slutty Fall Break* party in a nightclub in Copenhagen, and, among others, it was directed at students for whom the six had just been intro guides.

**30 June**

**The Danish Parliamentary Ombudsman's Annual Report for 2021 has been published**

Again in 2021, the COVID-19 pandemic and restrictions impacted the work of the Ombudsman Office, in particular as monitoring visits were initially postponed and later by necessity held in online meeting rooms. However, in 2021 staff from the Parliamentary Ombudsman were able to travel to Greenland on a 16-day monitoring visit. An article in the newly published Annual Report covers the visit, which comprised six Prison and Probation Service institutions, large and small, and fourteen police detention facilities and municipal bailiffs.

**4 July**

**Thematic report on children and young people in secure residential institutions**

In 2021, the Ombudsman's Children's Division carried out monitoring visits to Denmark's eight secure residential institutions. The monitoring visits focused especially on use of physical force, solitary confinement, search of person and room as well as drugs tests.

**6 July**

**The Ombudsman: Focus needed on observing the rules on force in the psychiatric sector**

In 2021, the Ombudsman investigated the use of force and non-statutory interventions in connection with monitoring visits to 10 psychiatric wards. The investigation showed that there is a need for continued focus on preventing and reducing the use of force and to ensure that the legal framework for use of force and non-statutory interventions is complied with.

**3 October**

**Japanese nationals' permits to work in Danish sea farms were not exempt from access**

...

A citizen requested to be informed of the number of foreign national workers, especially from Japan, working for a number of businesses in the slaughtering season 2021/22.

...

The Agency for International Recruitment and Integration and the Ministry of Immigration and Integration refused to provide information about the number of [residence and work] permits per sea farm. According to the authorities' assessment, the information about permits per sea farm would involve a risk of identification of individuals and thus be subject to section 30(i) of the Access to Public Administration Files Act, which exempts information about private matters from access.

**7 October**

**Documents about the authorities' tackling of COVID-19 did not fall under the Environmental Information Act**

Access to certain documents about the authorities' management of the corona pandemic was not to be assessed under the Environmental Information Act but under the Access to Public Administration Files Act, the Ombudsman concludes in a new statement.

**10 November**

**Civil service assistance for posts on ministers' private social media profiles raises fundamental issues**

A citizen complained because he had been blocked from the Facebook and Twitter profiles of the, now acting, Minister of Climate, Energy and Utilities. The two profiles were created by the Minister as a private individual before he became minister, but in the citizen's opinion they were now in reality being managed by him in his capacity as minister, and they were therefore covered by the general rules of administrative law in relation to, among other things, blocking users.

**25 November**


**Processing times at the Immigration Appeals Board still too long**

The Immigration Appeals Board still takes too long to make decisions in its cases. This is evident from a new own-initiative investigation carried out by the Parliamentary Ombudsman.

**6 December**

**The Ellebæk Centre for Foreigners is in better condition but there is still a need for improvement**

'Much has been done to improve the material conditions at Ellebæk in recent years. Though the work on the outside areas is not completed, conditions have improved markedly. Beyond this, there may be grounds for continuing to focus on the tone of communication.' So says Parliamentary Ombudsman Niels Fenger following a monitoring visit to the Ellebæk Centre for Foreigners in North Zealand. (...)



# **Statement of revenue and expenditure 2022**

## The Ombudsman's ordinary activities

	DKK
<b>Revenue</b>	
Sales of goods etc.	52,000
Non-recurring amount for payment of frozen holiday funds	7,600,000
<b>Total revenue</b>	<b>7,652,000</b>
<b>Expenditure</b>	
Wages and salaries, pension costs	80,361,000
Rent	5,922,000
Staff and organisation, including staff welfare	380,000
Continuing training/education	725,000
Books and library	81,000
Specialist databases	1,429,000
Newspapers and journals	243,000
Communication	684,000
Computer systems – operations and development	2,556,000
Computer hardware	462,000
Telephony and internet	659,000
Premises – repairs and maintenance	845,000
Furniture, fixtures and fittings	389,000
Cleaning, laundry and refuse collection	311,000
Premises – other expenditure	198,000
Heating and electricity	667,000
Travel	300,000
Entertainment and meals	92,000
Contribution to financial support scheme for trainees; etc.	475,000
Stationery and office supplies	147,000
Other goods and services	947,000
<b>Total expenditure</b>	<b>97,875,000</b>
<b>Total expenditure (net)</b>	<b>90,223,000</b>
Government appropriation	94,300,000
<b>Result for the year</b>	<b>4,077,000</b>

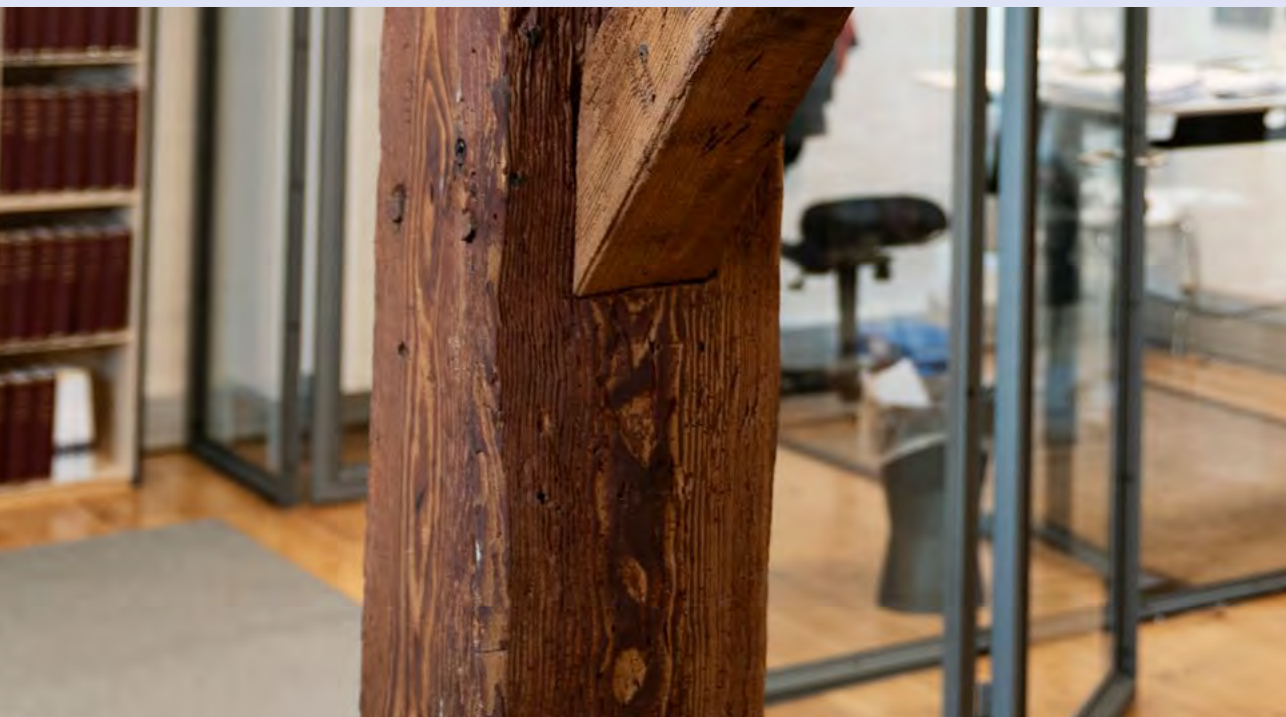
## Public service pensions

	DKK
Revenue	1,566,000
Expenditure	2,677,000
<b>Result for the year</b>	<b>-1,111,000</b>

## Collaboration agreement with Ministry of Foreign Affairs

	DKK
Revenue	656,000
Expenditure	656,000
<b>Result for the year</b>	<b>0</b>

Note: Due to rounding, some totals may not correspond with the sum of the separate figures.



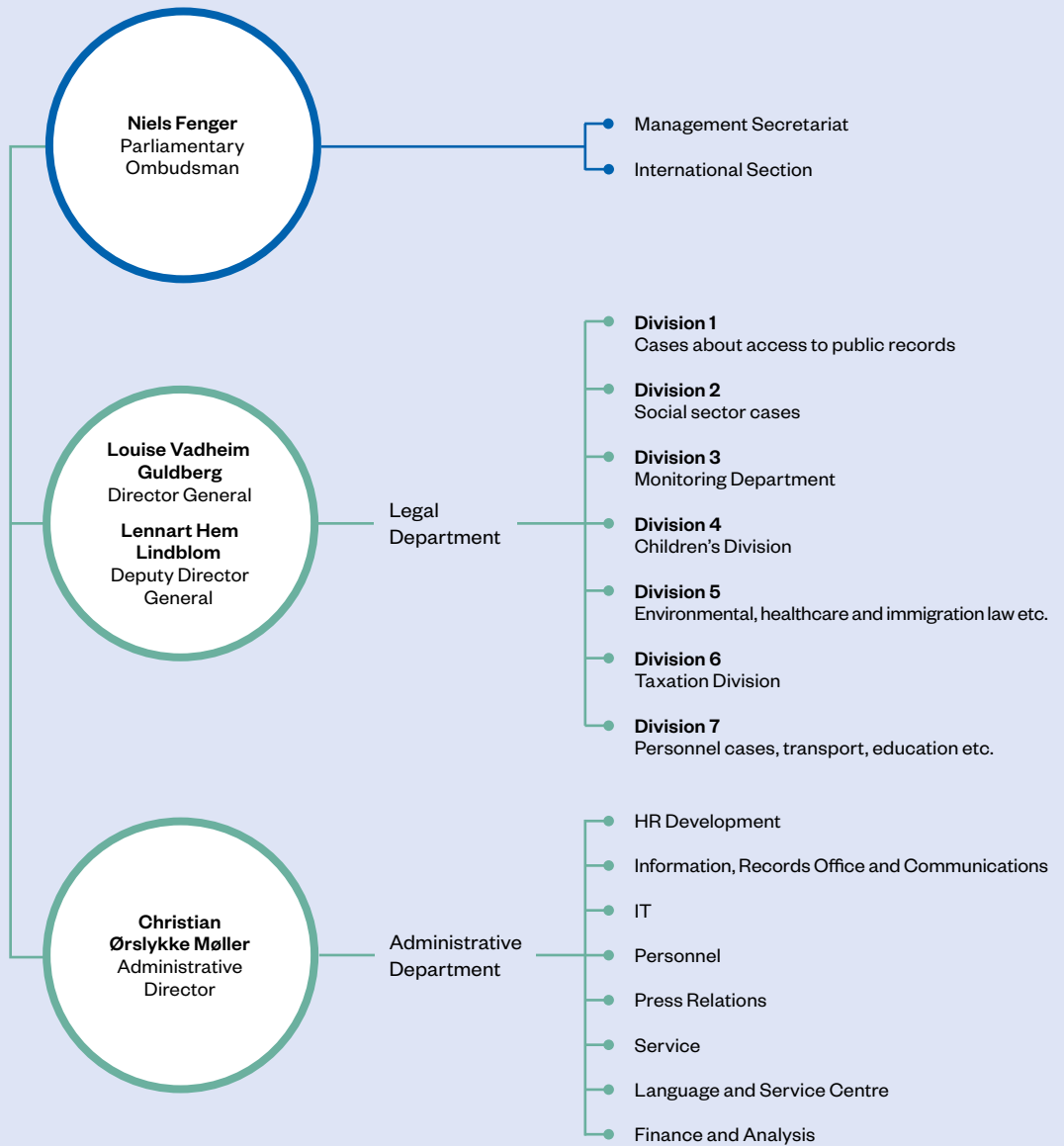




# Organisation

As at 31 December 2022











## **Whistleblowing system**

The Parliamentary Ombudsman established an internal whistleblowing system with effect from 17 December 2021 in accordance with the Act on Protection of Whistleblowers (Act No. 1436 of 29 June 2021). A whistleblowing unit and an electronic mailbox have been set up, and the whistleblowing system is announced and described on the Ombudsman's intranet.

No concerns have been reported to the whistleblowing unit since the establishment of the whistleblowing system.



## Employees and core responsibilities as at 31 December 2022

### Management

Niels Fenger, Parliamentary Ombudsman  
Louise Vadheim Guldberg, Director General  
Lennart Hem Lindblom, Deputy Director General  
Christian Ørslykke Møller, Administrative Director

### Management Secretariat

Mai Gori, Management Coordinator  
Jannie Svendsen, Executive Secretary

### International Section

Klavs Kinnerup Hede, Director of International Relations  
Camilla Schroll, Legal Case Officer

### Division 1

#### Cases about access to public records

Kirsten Talevski, Senior Head of Division  
Martin Dyhl-Polk, Deputy Head of Division  
Pernille Bjørnholt, Deputy Head of Division  
Klaus Tranbjerg Toftgaard, Special Legal Advisor  
Christine Hagelund Petersen, Legal Case Officer  
Jakob Liebetrau, Legal Case Officer  
Jimmi Hilkeb, Legal Case Officer

#### Key subject areas of cases handled

- Cases about access to public records
  - The Access to Public Administration Files Act
  - The Environmental Information Act
  - The Radio and Television Broadcasting Act
  - Selected cases involving the Administration of Justice Act
  - Selected cases about press handling etc.

### Division 2

#### Social sector cases

Karsten Loiborg, Senior Head of Division  
Christina Ladefoged, Deputy Head of Division  
Marte Volckmar Kaasa, Deputy Head of Division  
Helle Sidenius, Special Legal Advisor  
Rikke Ilona Ipsen, Special Legal Advisor  
Kirsten Broundal, Legal Case Officer  
Rikke Malkov-Hansen, Legal Case Officer  
Tove Nørkær Nielsen, Legal Case Officer  
Barbara Eyðfinsdóttir Saxov, Legal Student Assistant

#### Key subject areas of cases handled

- Social security and labour market law

### Division 3

#### Monitoring Department

Morten Engberg, Senior Head of Department  
Ann Thagård Gregersen, Deputy Head of Department  
Bo Ruby Nilsson, Deputy Head of Department  
Camilla Bang, Deputy Head of Department  
Jørgen Hejstvig-Larsen, Deputy Head of Department  
Ulla Birgitte Frederiksen, Special Legal Advisor  
Franz Amdi Hansen, Legal Case Officer  
Lucienne Josephine Lokjær Bak, Legal Case Officer  
Marta Warburg Schmidt, Legal Case Officer  
Mette Elisabeth Grumløse Hjelmsø, Legal Case Officer  
Morten Bech Lorentzen, Legal Case Officer  
Sabine Heestermans Svendsen, Legal Case Officer  
Signe Brehm Jensen, Legal Case Officer  
Jeanette Hansen, Senior Administrative Officer  
Johan Klingberg Müller, Legal Student Assistant

#### The Monitoring Department is in charge of the Ombudsman's monitoring activities in relation to adults, which involve in particular

- State prisons
- Local prisons
- Halfway houses
- Police detention facilities for intoxicated persons
- Psychiatric wards
- Social and social psychiatric residential facilities
- Asylum centres
- Non-discrimination of persons with disabilities
- Forced deportations of foreign nationals

**The Monitoring Department especially handles specific cases involving**

- Sentence enforcement and custody
- Psychiatric healthcare and conditions for psychiatric patients
- Social institutions

## Division 4

### Children's Division

Susanne Veiga, Senior Head of Division  
 Kristine Holst Hedegaard, Deputy Head of Division  
 Lise Bitsch, Deputy Head of Division  
 Sidsel Kathrine Møller, Senior Consultant  
 Irene Rønn Lind, Special Advisor on Children's Issues  
 Mette Ravn Jacobsen, Special Legal Advisor  
 Lea Rosenlind Nielsen, Legal Case Officer  
 Nikoline Halling-Overgaard, Legal Case Officer  
 Peter Kersting, Legal Case Officer  
 Tina Andersen, Legal Case Officer  
 Emil Würtz Maassen, Legal Student Assistant  
 Laura Høygaard Faldt, Legal Student Assistant

**The Children's Division carries out monitoring visits to public and private institutions for children, such as**

- Residential institutions and private accommodation facilities for children placed in residential care
- Foster families
- Asylum centres
- Hospital wards and psychiatric wards for children

**The Children's Division especially handles specific cases involving**

- Support measures for children and young people
- Social services for children
- Family law matters
- Primary and lower secondary schools, continuation schools and private schools
- Institutions for children
- Other cases with a particular bearing on children's rights

## Division 5

### Environmental, healthcare and immigration law etc.

Jacob Christian Gaardhøje, Senior Head of Division  
 Adam Abdel Khalik, Deputy Head of Division  
 Stine Marum, Deputy Head of Division  
 Eva Vindsebæk Sjøgren, Special Legal Advisor  
 Janne Lundin Vadmand, Special Legal Advisor  
 Hanne Nørgård, Legal Case Officer  
 Laura Ulrich Østergaard, Legal Case Officer  
 Mai Vestergaard, Legal Case Officer  
 Sebastian Dunge Rasmussen, Legal Case Officer  
 Yasaman Mesri, Legal Case Officer  
 Nikita Risager Øbakke, Legal Student Assistant

**Key subject areas of cases handled**

- Environment and planning
- Building and housing
- Energy
- Food and agriculture
- Municipalities and regions etc.
- The non-psychiatric healthcare sector
- Foreign nationals
- The law of capacity, the law of names, foundations and the law of succession
- The Guide for Authorities on the Ombudsman's website

## Division 6

### Taxation Division

Lisbeth Adserballe, Senior Head of Division  
 Stephan Andreas Damgaard, Deputy Head of Division  
 Lise Puggaard, Senior Consultant  
 Linette Granau Winther, Special Legal Advisor  
 Sofie Hedegaard Larsen, Special Legal Advisor  
 Helene Qvist Petersen, Legal Case Officer  
 Lene Levin Rybtke, Legal Case Officer  
 Marie Helqvist, Legal Case Officer  
 Mette Kildegaard Hansen, Legal Case Officer  
 Nanna Flindt, Legal Case Officer  
 Sverre Dehnfeld Kjeldgaard, Legal Case Officer  
 Julie Glerup, Legal Student Assistant  
 Professor Jan Pedersen, LLD, External Consultant

**Key subject areas of cases handled**

- Direct taxes
- Indirect taxes, including value-added tax, etc.
- Levying and collection of taxes
- Cases within certain other fields, including industrial injury cases

## Division 7

### Personnel cases, transport, education etc.

Johannes Martin Fenger, Senior Head of Division  
Anne Djurhuus, Deputy Head of Division  
Vibeke Lundmark, Deputy Head of Division  
Michael Gasbjerg Thuesen, Senior Consultant  
Anna-Sophie Bager, Legal Case Officer  
Marie Nyborg Kvist, Legal Case Officer  
Marjanne Kalsbeek, Legal Case Officer  
Pernille Helsted, Legal Case Officer  
Stine Harkov Hansen, Legal Case Officer  
Maria Thostrup Jakobsen, Legal Student Assistant

### Key subject areas of cases handled

- Public employment law
- Transport, communication, roads, traffic etc.
- Education and research
- The Prosecution Service and criminal cases etc.
- Passports, weapons etc.
- Elections, registration of individuals etc.
- Ecclesiastical affairs and culture
- Trade and industry etc.

## Administrative Department

### Core responsibilities

- Personnel
- Finance and analysis
- HR development
- Organisational development
- Information and communications
- Proofreading and other linguistic services
- Press relations
- IT
- Service and maintenance
- Records office

Christian Ørslykke Møller, Administrative Director

### HR Development

Lisbeth Kongshaug, Head of HR and Development  
Mai Gori, Legal Case Officer  
Jannie Svendsen, Senior HR and Development Administration Officer  
Neel Aggestrup, Senior HR and Development Administration Officer

### Information, Records Office and Communications

Karen Nedergaard, Head of Information, Records Office and Communications  
Anna Skov Fougst, Librarian  
Julie Gjerrild Jensen, Senior Communications Officer  
Eva Jørgensen, Senior Communications Officer  
Denise Schärfe, Senior Records Officer  
Harriet Lindegaard Hansen, Senior Records Officer  
Charlotte Charboe Andersen, Senior Records Assistant  
Julie Roland, Senior Records Assistant  
Stina Valentin, Senior Records Assistant

### IT

Seyit Ahmet Özkan, IT Administrator  
Uffe Larsen, IT Officer

### Personnel

Mette Vestentoft, Special Legal Advisor  
Lone Gundersen, Senior Personnel Officer  
Stine Holst Gamain-Nørgaard, Senior Personnel Officer

### Press Relations

Martin Østergaard-Nielsen, Special Communications Advisor

### Service

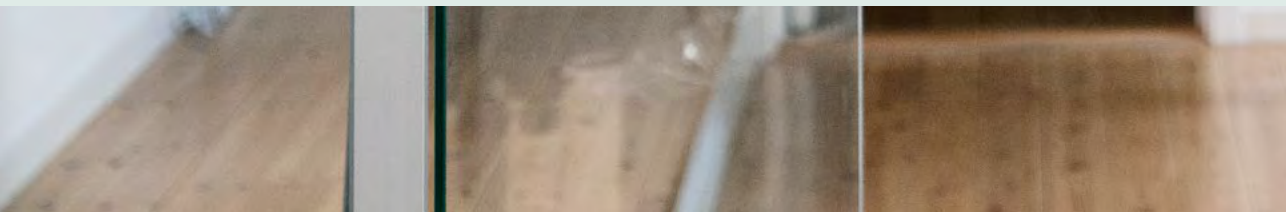
Jeanette Schultz, Head of Service  
Elisabeth Olsen, Receptionist  
Annitta Lundahl, Service Assistant  
Charlotte Jørgensen, Service Assistant  
Flemming Wind Lystrup, Service Assistant  
Ghenet Teklemicael Tesfaslasie, Service Assistant  
Katarzyna Sztukowska-Thomsen, Service Assistant  
Kirsten Morell, Service Assistant  
Niels Clemmensen, Service Assistant  
Suphaporn Nielsen, Service Assistant

### Language and Service Centre

Mette Vestentoft, Special Legal Advisor  
Lisbeth Nielsen, Senior Language Officer  
Sara Krogsgaard-Hjorth, Senior Language Officer

### Finance and Analysis

Camilla Nexø Klitgaard, Head of Finance and Analysis  
Jeanette Schultz, Head of Service  
Carl Andreas Kampmann, Finance and Analysis Student Assistant









**Appendix**

**General information  
about the Danish  
Parliamentary  
Ombudsman and  
about monitoring  
visits under the  
OPCAT mandate**

# 1

## General information about the Danish Parliamentary Ombudsman

### The task of the Parliamentary Ombudsman

The Danish Parliamentary Ombudsman was established in 1955 following a constitutional amendment in 1953. The general background to introducing a Parliamentary Ombudsman was a wish to improve the protection of citizens' legal rights vis-à-vis public authorities.

The primary task of the Parliamentary Ombudsman is to help ensure that administrative authorities act in accordance with the law and good administrative practice, thus protecting citizens' rights vis-à-vis the authorities. An additional function of the Ombudsman is to support and promote good administrative culture within the public administration.

The Parliamentary Ombudsman is not the National Human Rights Institution of Denmark. The Danish Institute for Human Rights carries out this mandate.

### Relationship to Parliament and jurisdiction

The Parliamentary Ombudsman is governed by the Ombudsman Act.

The Parliamentary Ombudsman is organisationally linked to the Danish Parliament. After each general election and whenever a vacancy occurs, Parliament elects an Ombudsman. Further, Parliament may dismiss the Ombudsman if the person holding the office no longer enjoys

its confidence. However, the Ombudsman Act stipulates that the Ombudsman is independent of Parliament in the discharge of his functions.

Under the Ombudsman Act, the jurisdiction of the Parliamentary Ombudsman extends to all parts of the public administration: the state, the regions, the municipalities and other public bodies.

Parliament – including its committees, the individual members of Parliament, the Administration of Parliament and other institutions under Parliament – is outside the Ombudsman's jurisdiction. Thus, the Ombudsman is generally precluded from considering complaints regarding the isolated effects of a statutory provision or its compliance with the Constitution and international law. However, if any deficiencies in existing statutes or administrative regulations come to the Ombudsman's attention in specific cases, the Ombudsman must notify Parliament and the responsible minister. Further, the Ombudsman Act states that the Ombudsman must monitor that existing statutes and administrative regulations are consistent with, in particular, Denmark's international obligations to ensure the rights of children, including the UN Convention on the Rights of the Child.

Courts of justice are outside the Ombudsman's jurisdiction, and the same applies to court-like bodies and tribunals that make decisions on disputes between private parties. Subject to a few exceptions, the Ombudsman cannot consider complaints about private establishments either.

The Danish Parliamentary Ombudsman is located in Copenhagen and has no branch offices. The Faroe Islands and Greenland both

have their own ombudsman, with jurisdiction in relation to issues falling under the remit of the home rule administration in the case of the Faroe Islands and the self-government administration in Greenland's case. Issues relating to the Faroe Islands and Greenland which fall under the remit of central administrative authorities of the Realm of Denmark are within the jurisdiction of the Danish Parliamentary Ombudsman.

### Working methods

The Ombudsman investigates complaints, opens investigations on his own initiative and carries out monitoring visits. Investigating complaints from citizens is a core function of the Ombudsman.

### Complaint cases

In general, anybody can complain to the Ombudsman, also if they are not a party to a case. Complaining to the Ombudsman is free. A complainant cannot be anonymous.

The Ombudsman considers complaints about all parts of the public administration and in a limited number of situations also about private institutions, an example being complaints about conditions for children in private institutions.

The Ombudsman does not consider complaints about courts, nor about court-like bodies or tribunals which make decisions on disputes between private parties.

The Ombudsman's task is to ensure that the authorities have observed the applicable rules. For this reason, the Ombudsman cannot consider cases before the authorities; he can consider a complaint only if the case has been considered by the relevant authority – and by any appeals bodies.

There is a deadline of one year for complaints to the Ombudsman.

When the Ombudsman receives a complaint, he first determines whether it offers sufficient cause for investigation. In some cases, the Ombudsman is unable to consider a complaint, whereas in other cases, he chooses not to open an investigation, for instance because he would not be able to help the complainant achieve a better outcome.

In a large proportion of complaint cases, the Ombudsman helps the citizen by providing guidance or by forwarding the complaint to the relevant authority, for instance in order that the authority will be able to consider the complaint or give the citizen more details of the grounds for a decision which it has made in the case.

In a number of cases, the Ombudsman discontinues his investigation because the authority chooses to reopen the case, for instance after being asked for a statement on the matter by the Ombudsman.

In some complaint cases, the Ombudsman carries out a full investigation, which, among other things, involves obtaining statements from the authority and the complainant. The investigation may result in the Ombudsman choosing to criticise the authority and, for instance, recommend that it make a new decision on the matter.

### Own-initiative investigations

As mentioned above, investigating complaints from citizens is a core function of the Ombudsman. However, opening investigations on his own initiative is also a high priority for the Ombudsman.

The Ombudsman may open the following types of investigation on his own initiative:

- investigations of specific cases
- general investigations of an authority's processing of cases

An example of a topic for a general investigation could be whether an authority's interpretation and application of specific statutory provisions or its practice in a specific area is correct.

#### *Objectives of own-initiative investigations*

One of the main objectives of also giving high priority to own-initiative investigations is to identify recurring errors made by authorities. Investigations of this type can have a great impact on the case processing by authorities, thus helping a large number of citizens at the same time.

In an own-initiative investigation, the focus is not only on errors that the authority may already have made – but also on preventing errors being made in the first place.

In addition, the Ombudsman opens investigations on his own initiative of specific cases of a more one-off nature if he finds cause to look further into a case.

#### *Backgrounds to opening own-initiative investigations*

In practice, the Ombudsman mainly opens own-initiative investigations of themes and within areas with one or more of the following characteristics:

- There is an aspect of fundamental public importance.
- Serious or significant errors may have been made.

- They concern matters which raise special issues in relation to citizens' legal rights or are otherwise of great significance to citizens.

Specific complaint cases or monitoring visits may give rise to suspicion of recurring errors etc. and be the launch pad for an own-initiative investigation. When the Ombudsman is investigating a specific case, his focus is therefore, among other things, on problems which characterise not only that particular case.

Media coverage of a case may also cause the Ombudsman to open an investigation on his own initiative. The Ombudsman monitors both local and national media.

Further, external parties – such as professional committees for practising lawyers or accountants or interest groups – can be useful sources of knowledge about recurring errors etc. on the part of authorities.

In addition, the Ombudsman chooses some general themes each year for the institution's monitoring activities in relation to adults and children and for the Taxation Division.

#### *What characterises the Ombudsman's work on own-initiative investigations?*

The Ombudsman's own-initiative investigations comprise a variety of activities with the common denominator that they are not centred on a complaint in a specific case as the focus is usually expanded beyond specific problems to a more general level, with emphasis on any general and recurring errors or problems.

Further, own-initiative investigations typically have a more forward-looking focus, centring on how the authorities involved can handle and rectify errors and problems.

In some own-initiative investigations, the Ombudsman reviews a number of specific cases from an authority.

In others, the Ombudsman asks an authority for a statement about, for instance, its administration, interpretation of the law, practice or processing times within a specific area.

The Ombudsman is working on an ongoing basis on a variety of own-initiative investigations where he considers, based on, for instance, specific complaint cases, legislative changes or media coverage, whether there is a basis for further investigation of a matter. Thus, the Ombudsman decides on an ongoing basis which issues or areas give cause for investigation and how to prioritise them.

In some cases, the Ombudsman's own investigation leads to the conclusion that there is no cause to contact the authorities involved, and the case can be closed without a full Ombudsman investigation. The Ombudsman may also decide to close a case without a full investigation after contacting the authorities.

### Monitoring visits

The Ombudsman carries out monitoring visits to places where there is a special need to ensure that citizens are treated with dignity and consideration and in accordance with their rights by the authorities – because the citizens are deprived of their liberty or otherwise in a vulnerable position.

Monitoring visits are made to a number of public and private institutions etc., such as

- Prison and Probation Service institutions
- psychiatric wards
- social residential facilities
- residential institutions for children and young people

In addition, the Ombudsman monitors

- forced deportations of foreign nationals
- forced deportations arranged by other EU member states at the request of the European Border and Coast Guard Agency, Frontex

Finally, the Ombudsman monitors the physical accessibility of public buildings, such as educational establishments, to persons with disabilities.

The Ombudsman's monitoring obligations follow from the Ombudsman Act and from the rules governing the following special responsibilities which the Ombudsman has been assigned:

- The Ombudsman carries out monitoring visits in accordance with section 18 of the Ombudsman Act to especially institutions where people are deprived of their liberty.
- The Ombudsman has been designated 'National Preventive Mechanism' (NPM) under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The task is carried out in collaboration with DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights (IMR), which contribute with medical and human rights expertise.
- The Ombudsman has a special responsibility to protect the rights of children under the UN Convention on the Rights of the Child etc.
- The Ombudsman monitors developments regarding equal treatment of persons with disabilities at the request of Parliament.
- The Ombudsman has been appointed to monitor forced deportations of foreign nationals.

A monitoring visit is a physical visit by a visiting team, who speak with users, staff and the management and look at the physical environment.



The monitoring of a forced deportation involves a member of the Ombudsman's staff being present during the whole or part of the deportation. The Ombudsman also reviews the case files of a number of the deportation cases concluded during the preceding year.

Monitoring visits are carried out by Ombudsman staff, in many cases with participation of external collaborative partners or consultants. Depending on the type of monitoring visit, the Ombudsman collaborates with

- medical doctors from DIGNITY – Danish Institute Against Torture
- human rights experts from the Danish Institute for Human Rights
- a consultant who has a mobility disability
- a consultant who has a visual disability

During monitoring visits, the Ombudsman often makes recommendations to the institutions. Recommendations are typically aimed at improving conditions for users of the institutions and in this connection also at bringing conditions into line with the rules. Recommendations may also be aimed at preventing, for instance, degrading treatment.

In addition, monitoring visits may cause the Ombudsman to open own-initiative investigations of general problems.

## Powers

### Tools of investigation

Under the Ombudsman Act, the Ombudsman has a set of tools at his disposal when carrying out investigations. Firstly, authorities etc. within the Ombudsman's jurisdiction are required to furnish the Ombudsman with such information and to produce such documents etc. as he may demand. Secondly, the Ombudsman may

demand written statements from authorities etc. within his jurisdiction. Thirdly, the Ombudsman may inspect authorities etc. within his jurisdiction and must be given access to all their premises.

### Assessment and reaction

The Ombudsman's assessment of a case is a legal assessment. In connection with monitoring activities, however, the Ombudsman may also include universal human and humanitarian considerations in his assessment. The Ombudsman only considers the legal aspects of cases and not matters which require other specialist knowledge, such as medical matters. Further, the object of the Ombudsman's investigations is the acts or omissions of public authorities, not the acts or omissions of individual public servants.

Under the Ombudsman Act, the Ombudsman may express criticism, make recommendations and otherwise state his views of a case, typically by criticising a decision or recommending that the authority change or review its decision. The authorities are not legally obliged to comply with the Ombudsman's recommendations, but in practice, they follow his recommendations.

The Ombudsman may recommend that a complainant be granted free legal aid in connection with any matter within his jurisdiction.

If the Ombudsman's investigation of a case reveals that the public administration must be presumed to have committed errors or derelictions of major importance, he must notify Parliament's Legal Affairs Committee and the relevant minister or municipal or regional council.

## Organisation

Under the Ombudsman Act, the Ombudsman engages and dismisses his own staff. The Ombudsman currently employs roughly 120 people, about 60 per cent of them law graduates.

The management of the institution consists of the Ombudsman, the Director General, the Deputy Director General and the Administrative Director. A management secretariat and an international section support the management.

The Ombudsman's office consists of two departments, a legal department and an administrative department, which are further divided into a number of divisions and units, respectively.

The Ombudsman's annual budget is approximately EUR 12.7 million.

## 2 General information about monitoring visits under the OPCAT mandate

In 2009 the Danish Parliament passed an amendment to the Ombudsman Act enabling the Ombudsman to act as National Preventive Mechanism (NPM) under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). In the same year, the Ombudsman started carrying out the functions of the NPM.

### Is the NPM independent?

The functions of the NPM are carried out as an integral part of the Ombudsman's work. The Ombudsman is independent of the executive power and is appointed by the Danish Parliament. The Ombudsman is independent of Parliament in the discharge of his functions.

### Does the NPM have the necessary professional expertise?

The members of the Ombudsman's staff primarily have legal expertise. However, the Ombudsman's special advisor on children's issues participates in monitoring visits to institutions etc. for children. The Danish Institute for Human Rights contributes with human rights expertise, and DIGNITY – Danish Institute Against Torture contributes with medical expertise.

### Does the NPM have the necessary financial resources?

The costs of exercising the functions of the NPM are financed via the overall Government appropriation for the Ombudsman.

### Are monitoring visits carried out on a regular basis?

Approximately 30 monitoring visits to institutions for adults and 10 to 12 visits to institutions etc. for children are carried out per year.

### What types of institutions are monitored?

**The Ombudsman monitors, among others, the following types of institutions where adults may be deprived of their liberty:**

*State prisons* are run by the Prison and Probation Service and receive convicted persons who are to serve a sentence. State prisons may be closed or open. Closed prisons are characterised by a high degree of security and control, whereas inmates in open prisons may be able to work or take part in training or education outside the prison. However, there are also clear limits to inmates' freedom of action in open prisons.

*Local prisons* are run by the Prison and Probation Service and receive arrestees, remand prisoners and in certain cases convicted persons



who are to serve a sentence. Local prisons are characterised by a high degree of security and control.

*Halfway houses* are run by the Prison and Probation Service and are used especially for the rehabilitation of convicted persons who are serving the last part of their sentence. Compared to prisons, halfway houses may have a high degree of freedom.

*Immigration detention centres* are run by the Prison and Probation Service and receive foreign nationals who are to be detained, as a general rule not for a criminal offence but for reasons relating to the Aliens Act.

*Departure centres* are run by the Prison and Probation Service and receive rejected asylum seekers, persons sentenced to deportation and persons with tolerated residence status. The residents are not under detention and are therefore free to come and go. As a general rule, however, they are required to reside at the centre, including to spend the nights there.

*Asylum centres* are run by municipalities and the Danish Red Cross and comprise, among others, reception centres, where asylum seekers stay the first weeks after arrival, and residential centres, where they stay while the authorities are considering their application for asylum.

*Police detention facilities* are used to detain persons who are unable to take care of themselves, for instance due to intoxication.

*Police custody reception areas* are used for detentions of very short duration without overnight stays of arrestees.

*Psychiatric wards* are run by the regions and receive psychiatric patients. Wards may be open (with unlocked outer doors), closed (with locked outer doors) or integrated (with outer doors or doors to certain sections being locked according to patients' needs). There are also forensic psychiatric wards, which receive, among others, patients sentenced to placement or treatment in a psychiatric ward.

*Social residential facilities* are run by regions, municipalities or private parties and receive persons with impaired cognitive or physical functioning. In addition, they receive persons sentenced to placement in a social residential facility. Outer doors are unlocked, except in secure units.

*Care homes* are run by municipalities or private parties and receive persons with an extensive need for personal care, healthcare and extra support in their daily lives.

**The Ombudsman monitors, among others, the following types of institutions etc. where children and young people may be placed:**

*Open residential institutions* are run by municipalities or regions and receive children and young people belonging to the target group for which the institution has been approved. The target group may be defined in terms of age but may also be defined in terms of needs, diagnoses or disabilities.

*Partly closed residential institutions and partly closed units of residential institutions* are run by municipalities or regions and receive children and young people with criminal behaviour, substance abuse or other behavioural problems. In these institutions and units, residents may be detained by periodic locking of windows and outer doors.

*Secure residential institutions and high secure units of residential institutions* are run by municipalities or regions and receive children and young people in order to prevent them harming themselves or others or for observation or treatment. These institutions and units may also receive, among others, young people to be remanded in non-prison custody during investigation of their case or convicted young people who are to serve a sentence. Windows and outer doors may be constantly locked, and placements of short duration in a seclusion room are permitted.

*Accommodation facilities* are run by private parties, such as foundations or enterprises, and receive children and young people belonging to the target group for which the facility has been approved.

*Foster families* are either general, reinforced, specialised or network foster families. A foster family may foster children and young people belonging to the target group for which it has been approved. Reinforced foster families may foster children and young people with moderate to high support needs, whereas specialised foster families may foster children and young people with high support needs.

*24-hour units of child and adolescent psychiatric wards* are run by the regions and receive children and young people for examination or treatment of psychiatric disorders.

*Asylum centres for unaccompanied underage asylum seekers* are run by municipalities and the Danish Red Cross and are residential centres where unaccompanied underage asylum seekers stay while the authorities are considering their application for asylum.

## How are monitoring visits carried out?

A monitoring visit is a physical visit. Before or following the visit, the Ombudsman will ask for various information, for instance reports of incidents involving use of force, records of statements taken prior to the sanction of placement in a disciplinary cell being imposed, or information from parents or other relatives. During the visit, the Ombudsman's visiting team will speak with users, staff and the management.

The Ombudsman has designated the following general focus areas for his monitoring visits:

- use of force and other interventions and restrictions
- interpersonal relations
- work, education and leisure time
- health-related issues
- user safety
- sector transfers

The prioritisation of the individual focus areas depends on the place visited. During specific monitoring visits, the Ombudsman may also focus on other issues, for instance buildings in a poor state of repair.

In most cases, recommendations are made to the management of the institution already during the monitoring visit.

Following the visit, the visiting team will prepare a memorandum of the visit, and the Ombudsman will subsequently send a concluding letter to the institution and the responsible authorities with his recommendations.

DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights normally take part in preparing, carrying out and following up on the monitoring visits.

Each year, the Ombudsman chooses, together with DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights, one or more themes for the year’s monitoring visits. The majority of the monitoring visits to be carried out during the year will be to institutions etc. where the themes will be relevant. A theme could be, for instance, disciplinary cells or younger children placed in social care.

After the year’s monitoring visits have been carried out, the Ombudsman prepares a separate report on the year’s work in relation to each of the themes for the Ombudsman’s monitoring visits to institutions etc. for adults and children. The reports summarise and present the most important results in relation to the themes. Results may be general recommendations to the responsible authorities, for instance a recommendation to see that institutions draw up policies on prevention of violence and threats among residents. The reports are also used as a starting point for discussions with key authorities about general problems.

Monitoring visits may cause the Ombudsman to open cases on his own initiative, with, among others, the authorities which have the remit for the relevant areas. This may be the case, for instance, with general problems which affect not only the specific institution visited. An example of such a case opened on the Ombudsman’s own initiative was an investigation of whether it was permitted to initiate various types of interventions in relation to psychiatric patients without statutory authority.

### **Does the Ombudsman submit proposals and observations regarding existing legislation or drafts for legislation?**

The Ombudsman monitors that the authorities observe the conventions within the framework of Danish legislation.

The more politico-legal and advisory tasks in relation to the legislature are carried out by other bodies, such as the Ombudsman’s collaborative partners in the discharge of his functions as NPM (i.e. the Danish Institute for Human Rights and DIGNITY – Danish Institute Against Torture). According to an established practice, the Ombudsman does not submit consultation responses on bills, with the exception of bills affecting matters which relate to the Ombudsman’s office itself.

The Ombudsman may notify the responsible minister and Parliament if a statute or the state of the law in a specific area is not consistent with Denmark’s international obligations and a legislative change may therefore be required.



