



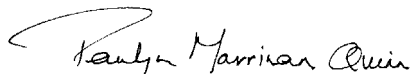
Ombudsman for the Defence Forces  
Annual Report 2007





I hereby submit my Annual Report as Ombudsman for the Defence Forces for 2007 pursuant to Section 7 of the Ombudsman (Defence Forces) Act 2004.

This is the second Annual Report submitted in relation to the work of the Ombudsman for the Defence Forces since it was established on 1st December 2005.



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Paulyn Marrinan Quinn, SC  
Ombudsman for the Defence Forces

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## I

## Introduction by the Ombudsman for the Defence Forces, Paulyn Marrinan Quinn, SC

It is with a sense of pride that I present this, my second Annual Report as Ombudsman for the Defence Forces. 2007 was a very busy, challenging and significant 12 months for the ODF.

Those of us with a passionate interest in the theory and practice of Ombudsmanship are ever aware that gaining the trust and confidence of the many customers and publics that the Office is established to serve is essential to the success of an Ombudsman's mission.

When President Mary McAleese appointed me as the founding Ombudsman for the Defence Forces in September 2005, one of my objectives was to ensure that all stakeholders, especially members and former members of the Defence Forces, were informed about the role and responsibility of the ODF, its powers and its limitations.

I had a relatively short time within which to convince members of the Defence Forces that complaints referred to me would be considered in an impartial, unbiased and fair manner.

In 2007 the number of cases which I received for my review increased by 192%. I believe this development signifies a growing awareness and trust which serving and former members of the Defence Forces have in the ODF.

Clearly, the increased workload has presented challenges in terms of staffing and resources. More importantly, however, it is an indication that the ODF has established a presence within the military community in a relatively short time.

In addition to the increased number of cases which were referred to me in 2007, four cases relating to allegations of bullying and harassment arose for the first time. This is a notable development as, arguably, it demonstrates that members and former members of the Defence Forces trust the ODF to deal with issues of a personal and very serious nature, with the utmost confidentiality and objectivity.

Little did I expect that, so soon after the ODF was established in this jurisdiction, I would be asked to provide assistance to those in other countries examining the role of an Ombudsman in a military context. In the past 12 months, I have briefed European and Asian officials from the fields of diplomacy and Ombudsmanship on the role and remit of my Office. It has been a great privilege to be involved in providing information and guidance to other countries about establishing such an Office from 'a green field' and sharing my knowledge and experience in this area.

This international interest in the ODF is an affirmation of the vision and commitment of those in the Defence Forces' representative organisations, the Defence Forces and those in the political sphere who supported the establishment on a statutory basis of the ODF. I firmly believe that the innovation heralded by the passage of the Ombudsman (Defence Forces) Act, 2004, will have a wide ranging influence as other countries examine their procedures for dealing with grievances in the context of their Armed Forces.

An Ombudsman must not only be independent and impartial but also must be perceived to be such. In attempting to adjudicate and resolve often contentious cases fairly and impartially, an Ombudsman depends, to a large extent, upon the good will and good faith

of both complainants and the organisation against which the complaint is made. This has been evident in the majority of cases referred to me and I am gratified that the regard, without which an Ombudsman could not function, is shown to my Office.

The progress and achievements of the ODF relies on the continuing co-operation and respect extended to my Office by the Defence Forces, under the command of Chief of Staff, Lieutenant General, Dermot Early, the Minister for Defence, Willie O'Dea, TD, and the officials at the Department of Defence. This co-operation is crucial to the efficient and successful delivery of the service and I would like to formally acknowledge their contribution in 2007.

The number of grievances processed through the Defence Forces' Redress of Wrongs (RoW) procedure more than doubled between 2006 and 2007, increasing from 76 to 168. In both 2006 and 2007, approximately 30% of all cases which were processed through the Defence Forces' RoW procedure were subsequently referred to me for consideration. 2007 also saw a significant growth in the number of cases referred directly to me by former members of the Defence Forces. Anticipating the challenges ahead, it is reasonable to forecast that the demands on my Office will increase over the coming years.

Following on from the strategic plan which I drew up for the ODF when I was appointed in 2005, I conducted an internal capacity review of staffing and resources of the Office in 2007 in light of the work undertaken in 2006 and the trends indicated by the first quarter of 2007.

This review was timely and it was intended to both ensure that the ODF could provide the requisite level of professional service and manage risks which might threaten the effectiveness of the Office. The review informed my submission to the Department of Defence for additional staff and office accommodation. I look forward to achieving progress in relation to these resources during 2008. Adequate staff and resources are essential so that my Office can deliver on its commitment to the highest standards of service.

In addition to these practical issues, one of the main policy challenges facing the ODF, and the whole area of dispute resolution in a military context, relates to the issue of remedy where procedures or processes are deemed to be unfair or wrongly applied.

As can be seen from the Analysis of Cases and Complaints section of this Report, many of the issues at stake are, in essence, connected with career advancement. A significant number of cases relate to issues regarding promotion, career courses and, to a lesser extent, overseas service. In 2007, for example, these causes of complaint accounted for 56% of all cases referred to my Office. Where a complaint or appeal of this nature is upheld in favour of the complainant, the issue of an appropriate remedy for the member concerned is often difficult and perplexing.

There is often a very short time between the results of a selection or promotion process being announced and the commencement of that career course or promotion. If an individual decides to appeal that decision through the RoW procedure and then appeals the decision of the Chief of Staff to me, the career course or promotion in question may have reached finality, a decision arrived at, an appointment made or a course commenced.

In that instance, if the complaint were upheld, it would be impractical, for a range of reasons, to reopen or overturn the original interview process or selection procedure as another member will be in the contested position.

Finding an alternative means of redress can often prove just as problematic. For instance, if the complaint refers to overseas service it may, to the casual observer, seem appropriate to ensure that the individual is considered for deployment on the next overseas posting. However, the skill set required for that overseas posting might not correspond to the skills and experience of the individual concerned. I am ever mindful of my obligation, under the Act, to have due regard for the operational needs of the Defence Forces.

One of the principles of adjudication is that a wronged person be provided with an appropriate remedy to mitigate the adverse affects of the action giving rise to the grievance that is proportionate and, as far as practicable, puts the person back in the position they were prior to the wrong arising or otherwise compensates for the original unfairness or maladministration. A number of the referrals to my Office are recorded under the category of ‘maladministration’ which covers a wide range of alleged errors and impropriety. Some are serious, some may not be so serious, but may have consequences disproportionate to the act itself.

I fully appreciate that finding a suitable remedy to compensate an individual who has, on the balance of probabilities, been adversely affected by unfair procedures or maladministration presents significant challenges to the military command. Of considerable cause of concern to me is that the remedy for one wrong might create a further wrong to another member. There are no simple solutions to this issue.

Looking ahead, I hope to engage in a constructive dialogue with all stakeholders on this issue with a view to devising an appropriate framework for delivering proportionate remedies, a framework which upholds the rights of a wronged individual to redress while having regard to the practicalities of the military environment.

This issue, along with many other aspects of civilian oversight of military procedures, is far from straightforward. However, the ODF has now been in operation for two years and, I think it is fair to conclude, that during this time the landmark decision to provide an impartial, independent system of appeal for alleged wrongs has been of benefit to all stakeholders.

There can be no doubt that the ODF provides value for money. A comparison as to the costs accrued in taking a challenge by way of Judicial Review in the High Court or other legal action is one way of assessing that value, as most of the cases relate to a challenge to decisions made by the military authorities with particular reference to whether or not those authorities had applied proper procedures.



It is true to say that an Ombudsman will resolve a case at a substantially lower cost but, of more significance, the ODF provides access to a means of appeal and review for all the members, and eligible former members, of the Defence Forces and, in that respect, is widening access to justice in a non-adversarial context. It affords complainants, who may be deterred from taking legal proceedings by the level of costs involved, an opportunity to bring their cases to an independent tribunal which they would otherwise not have.

Whereas an Ombudsman is not strictly bound by the rigours of legal precedent, over time an emerging jurisprudence is as inevitable as it is desirable as a means of preventing the recurrence of causes of complaint. That said, every case which is referred to me is considered on its own merits.

The progress achieved in the past two years could not have occurred without committed, confident leadership, particularly within the military command structure. One of the hallmarks of leadership in this context is the capacity to recognise the benefits of change, acknowledge flawed procedures and initiate appropriate reform. The presence of, and access to, an Ombudsman should be viewed as an asset to be utilised as intelligently as possible both by an organisation and its constituents.

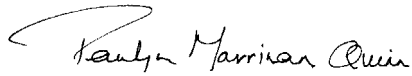
In that regard, the vision and wisdom demonstrated by former Chief of Staff, Lieutenant General Jim Sreenan, who was Chief of Staff until June of 2007, deserves to be formally acknowledged in this Annual Report. His support and progressive attitude to the work of the ODF was critical in establishing the standing of my Office during its first 18 months of operation and I know that the foresight he demonstrated significantly informed the attitude of the military towards the ODF. Lieutenant General Sreenan retired in June 2007 and I wish to extend warmest wishes to him from my Office for the future.

One of the acknowledged pillars of Ombudsmanship is accountability and I hope this Annual Report will provide the many publics that my Office serves with an accurate, accessible and comprehensive account of the work undertaken in 2007.

During 2007, my team and I strived to ensure that the principles of Ombudsmanship – independence, fairness and impartiality – guided our work. Internationally recognised standards of best practice for Ombudsmen have underpinned the work of the ODF at all times and we continually work to enhance those standards. I must convey my warmest thanks to all of those who have worked under pressure as part of my team in dealing with the cases at every stage in the process and, indeed, may I extend my thanks to those who have assisted me in the compilation of this Annual Report.

This Annual Report will enable people to reach their own conclusions as to the contribution and value the ODF made in 2007 towards discharging its important statutory responsibilities. I set out in the following Analysis of Complaints and Appeals section a breakdown of the cases received during the year, which are mirrored in the cross-section of anonymised case studies provided in a subsequent section of this Annual Report.

On a personal level, I am both humbled and daunted by the trust which is placed in me by people whom I have never met, but who readily reveal very personal details of their lives in the course of their cases. That trust must never be belittled nor betrayed. An Ombudsman can not provide a remedy when none exists, no more than she can make all well in an imperfect world. What an Ombudsman must strive to do is ensure that in the course of a case, all the parties are treated with due respect and dignity.



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**Paulyn Marrinan Quinn, SC**  
**Ombudsman for the Defence Forces**

## II

## Highlights of 2007

- 168 Notifications of Complaint of Redress of Wrongs {RoWs} received, a 121% increase on 2006.
- 76 cases referred to my Office, a 192% increase on 2006.
- 39 Preliminary View Reports {PVRs} issued.
- 29 Final Reports issued, with 20 cases upheld.
- Significant widening of the grounds on which individuals lodged an appeal or complaint with the ODF. My Office received its first complaints regarding alleged bullying and harassment in 2007.
- Notable increase in the use of my Office by senior ranks with 17 of the 76 cases referred to my Office coming from the rank of Lieutenant or higher.
- Cases received from members and former members of the Naval Service and Air Corps for the first time.
- Clear evidence that the remit of my Office is being clearly communicated with a reduction in the cases referred which were outside the ODF terms of reference due to time limitations or necessity to use Defence Forces' RoW procedure in the first instance.
- Substantial international interest in the establishment and role of my Office which resulted in detailed briefings with diplomatic and Ombudsman's representatives from Asia and Europe.
- ODF presence at British and Irish Ombudsman Association conference and at events organised by the Defence Forces representative organisations – RACO and ONET; presentations to students at Dun Ui Mhaoiliosa, Renmore, Galway and to commanders at the Defence Forces' Training Centre, Curragh Camp, Kildare.
- Continued development of website [www.odf.ie](http://www.odf.ie) and other communication tools. [www.odf.ie](http://www.odf.ie) received 19,420 individual visits in 2007.
- Capacity review on staffing and resources of the ODF conducted in light of first year of operation and trends in first quarter of 2007. This review informed submissions to the Department of Defence in relation to staffing and accommodation requirements.

*Before referring a complaint to me serving members of the Defence Forces must first exhaust the RoW procedure. Former members of the Defence Forces may contact me directly by writing or printing off a complaint form from [www.odf.ie](http://www.odf.ie)*



## III

## Analysis of Complaints & Appeals

### Notification of Complaints under Section 114 of the Defence Act

Before my Office can initiate an investigation, serving members of the Defence Forces must first lodge a complaint through the Defence Forces' Redress of Wrongs (RoW) procedure.

Section 13 of the Ombudsman (Defence Forces) Act, 2004, requires that all such complaints are notified to the Ombudsman for the Defence Forces and the Minister for Defence. This mechanism provides an important civilian oversight of the internal grievance process within the Defence Forces. My Office closely monitors the Notifications of Complaint received and actively follows up with the military authorities when the 28 day time limit for resolution under this provision elapses.

In 2007 I was notified of 168 complaints made through the RoW procedure by Permanent and Reserve members of the Defence Forces.

Notifications of Complaint under Section 114 of the Defence Act:

2007	2006	INCREASE
168	76	121%

Of these 168 cases 46 were appealed to my Office. This represents 27% of all cases brought through the RoW procedure.

73 cases (44%) were either resolved at, or withdrawn during, the RoW procedure. 49 cases (29%) were being addressed through the RoW procedure as of 31st December 2007.

### Complaints received directly by the Ombudsman for the Defence Forces

Former members of the Defence Forces can refer complaints directly to my Office, subject to certain conditions. In addition, any complaint in relation to an action taken by a civil servant is referred directly to my Office.

In 2007, 15 complaints were received directly by my Office, a significant increase on the two complaints received in this manner in 2006.

### Total number of complaints or appeals referred in 2007

76 complaints or appeals were referred to my Office in 2007. Of these:

- 46 cases were appealed following RoW consideration.
- 15 complaints were lodged directly with my Office.
- 15 cases were carried over from 2006.

Total number of complaints or appeals referred:

2007	2006	INCREASE
76	26	192%

### Status of complaints or appeals referred

Of the 76 cases referred in 2007:

- 39 Preliminary View Reports were issued to the relevant parties, equating to 51% of all cases referred.
- 29 Final Reports were issued following responses received to the Preliminary View Reports, equating to 38% of all cases referred.
- As of 31st December 2007 my Office was awaiting responses to 10 Preliminary View Reports issued in 2007.
- 36 cases were still under consideration as of 31st December 2007.
- 1 case in line for my review was withdrawn.

### Reasons for complaints and appeals

The grounds on which these 76 cases were based are as follows:

- 30 related to non-selection for promotion.
- 10 related to non-selection for a career course.
- 4 related to bullying and harassment.
- 3 related to non-selection for overseas service.
- 29 related to a variety of issues under the general headings of maladministration and the implementation of changes.

2007 saw a significant reduction in the number of cases referred which related to non-selection for a career course. In 2006 such cases accounted for 31% of all cases referred, while they accounted for 13% in 2007.



Similarly there was a notable reduction in the number of cases referred which related to non-selection for overseas service. These cases accounted for just 4% of all cases in 2007, compared with 15% of all cases in 2006.

Cases related to non-selection for promotion accounted for 39% of all cases referred in 2007, an increase from 35% in 2006.

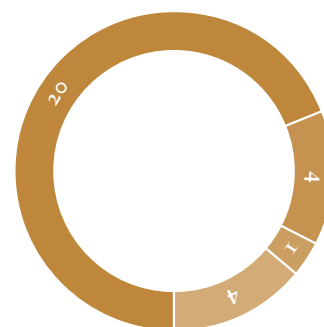
As noted earlier 2007 saw the first cases related to bullying and harassment referred to my Office. These cases accounted for 5% of all cases referred in 2007.

REASONS FOR COMPLAINT OR APPEAL	2007	2006	CHANGE 2007 - 2006
Non-selection for Promotion	30 {39%}	9 {35%}	+ 4%
Non-selection for Career Course	10 {13%}	8 {31%}	- 18%
Non-selection for Overseas Service	03 {4%}	4 {15%}	- 11%
Other Issues	29 {38%}	5 {19%}	+ 20%
Bullying and Harassment	04 {5%}	0	-
<b>Total</b>	<b>76 {100%}</b>	<b>26 {100%}</b>	<b>-</b>

#### Outcomes of cases where a Final Report was issued:

29 Final Reports were issued in 2007. Of these:

- 20 cases were upheld.
- 4 cases were not upheld.
- 1 case was partially upheld.
- 4 cases were deemed Outside Terms of Reference.



#### Complaints by Permanent, Reserve and Former members of the Defence Forces

Of the 76 cases referred to my Office in 2007:

- 67 were from current members of the Permanent Defence Forces.
- 1 was from a current member of the Reserve Defence Forces.
- 8 were from former members of the Defence Forces.

As in 2006 the vast majority of cases were referred by members of the Permanent Defence Forces. 88% of all cases referred in 2007 concerned members of the Permanent Defence Forces, which mirrors the 2006 figure exactly.

2007 did see an increase in the number of complaints from former members of the Defence Forces with these accounting for 11% of all cases referred in 2007 compared to just 4% in 2006.

Cases referred by members of the Reserve Defence Forces reduced considerably in 2007, with these referrals accounting for just 1% of all cases, compared to 8% of all cases in 2006.

### Gender of complainants

Of the 76 cases referred in 2007:

- 68 were referred by male members of the Defence Forces.
- 8 were referred by female members of the Defence Forces.
- 11% of all cases referred in 2007 came from female members of the Defence Forces, an increase on 2006 when the corresponding figure was 8%.

### Breakdown of complaints or appeals by service area

Of the 76 cases referred to my Office in 2007:

- 57 came from members or former members of the Army.
- 14 came from members or former members of the Air Corps.
- 5 came from members or former members of the Naval Service.

2007 saw the first cases referred to my Office by members of the Naval Service and Air Corps. In 2006 all cases were referred by members of the Army. In 2007 these cases accounted for 75% of all cases referred, with 18% of cases referred by members of the Air Corps and 7% of cases referred by members of the Naval Service.

### Complaints or Appeals Outside Terms of Reference

In addition to the 76 cases which were referred to my Office in 2007, 38 other cases were received which were outside my statutory terms of reference. As noted previously, 4 of these cases were so determined at Final Report stage on the grounds that they were connected to matters which were the subject of legal proceedings. The other 34 cases were deemed inadmissible for the following reasons:



- 7 cases related to an alleged action that occurred before 1st December 2005.
- 11 cases were connected to matters the subject of legal proceedings, service tribunal proceedings or were otherwise sub judice.
- 7 cases were received from individuals who were not serving members at the time of the alleged action.
- 4 cases related to issues regarding pay/pensions.
- 4 cases related to issues which must first be brought through the Defence Forces' RoW procedure.
- 1 case was referred by an individual who was not directly involved in the alleged action.

#### Policy Changes Following Recommendations

Through the investigation of individual cases I may identify procedures and practices within the Defence Forces that are out-of-date, badly administered or in need of reform.

When issuing a Final Report these issues are brought to the attention of the Minister for Defence, the Chief of Staff, the person who brought the complaint and other relevant personnel in the Defence Forces.

As noted in the 2006 Annual Report, procedures relating to the interview process for NCO career courses and overseas service were reformed, on an interim basis in July 2006, following recommendations contained in my Final Reports.

Consequent on this reform there has been a significant reduction in the number of complaints or appeals referred to my Office on these grounds. In 2007 17% of all cases referred to my Office related to non-selection for career courses and overseas service whereas cases of this nature accounted for 46% of all cases referred to my Office in 2006.

I am pleased to report that in 2007 interview procedures for promotion were reviewed through the Defence Forces' conciliation and arbitration procedures. Complaints in relation to non-selection for promotion accounted for 39% of all cases referred to my Office in 2007, up from 34% in 2006 and, it is clear that improvement in procedures is necessary.

#### Outside Terms of Reference Issues

As noted above 38 cases referred to the ODF in 2007 could not be considered as they were outside the terms of reference of my Office. This represents 27% of all cases brought to my Office in 2007 and is a significant reduction on the number of such cases brought in 2006, when 53% of all cases brought to my Office were deemed outside the terms of reference.

The number of cases brought to my Office which could not be considered as the alleged action occurred before 1st December 2005 represented 7% of all cases in 2007, compared to 31% in 2006.

Similarly, the number of cases which could not be considered as they should have been brought through the RoW procedure in the first instance represented 4% of all cases brought to my Office in 2007. The corresponding figure in 2006 was 13%.

This substantial reduction suggests that the role and remit of the ODF is being successfully communicated to serving and former members of the Defence Forces, a process in which my Office is continually engaged.

#### Submissions After Final Report Is Issued

During the past year some complainants have sought to make further submissions after I had issued my Final Report. These submissions cannot be considered. It is only in cases where new evidence, which was not available at the outset, becomes available, that I would consider re-opening a case.

Every effort is made to provide complainants with an opportunity of presenting evidence in support of their contentions while the case is under review.

It is also important to bear in mind that the process of examination and investigation by an Ombudsman often involves an adjudication, with findings and recommendations issuing. Complainants refer their complaints without prejudicing their legal rights and retain the right to pursue a case through the Courts if not satisfied by the outcome.

#### Establishing Jurisdiction

One of the first decisions an Ombudsman must make is which cases are eligible and which are not. Often this decision is more difficult than a decision on the merits of the cause of complaint itself.

Whereas the Ombudsman has discretion to decide whether or not to investigate a complaint, it is perfectly in order for the Minister or the Defence Forces to submit as to the admissibility of a case on the grounds that it is outside the jurisdiction of ODF. However, such views and submissions should properly be expressed, in the first instance, to the Ombudsman at the preliminary stage of my review of the matter. This occurred in the majority of cases where the issue arose in 2007. However, in a minority of cases issues regarding jurisdiction were raised at the latter stages of adjudication which I found unhelpful. At subsequent discussions measures to avoid this arising in the future were agreed.

### Ministerial Prerogative To Accept or Reject Findings or Recommendations

When a finding and/or recommendation in relation to a case is issued by the ODF in a Final Report, it is for the Minister to consider whether he is minded to accept or reject the outcome of the Ombudsman's review.

The Ombudsman {Defence Forces} Act, 2004 establishes the Minister's prerogative to decline to accept a finding or recommendation and during 2007 the Minister exercised this prerogative in a minority of cases.

In the event that the Minister declines to accept a finding or recommendation it is important that this decision is made as speedily as possible. The decision to decline to accept findings or recommendations is often of no comfort to a complainant and it is desirable that such news is delivered with all possible alacrity, as delay only serves to augment the understandable disappointment on the part of the complainant.

### Issues Related To Bullying and Harassment Allegations

As noted above 2007 saw the first cases regarding alleged bullying and harassment referred to the ODF.

The majority of these cases were referred by former members and, of course, such allegations must be supported by evidence because the serving member against whom such an allegation is retrospectively made is rendered very vulnerable as their good name and standing are exposed while such allegations hover.

Similarly, if such allegations are made against a former member certain difficulties can arise as to how that former member defends his/her good name and reputation now that he/she is a civilian.

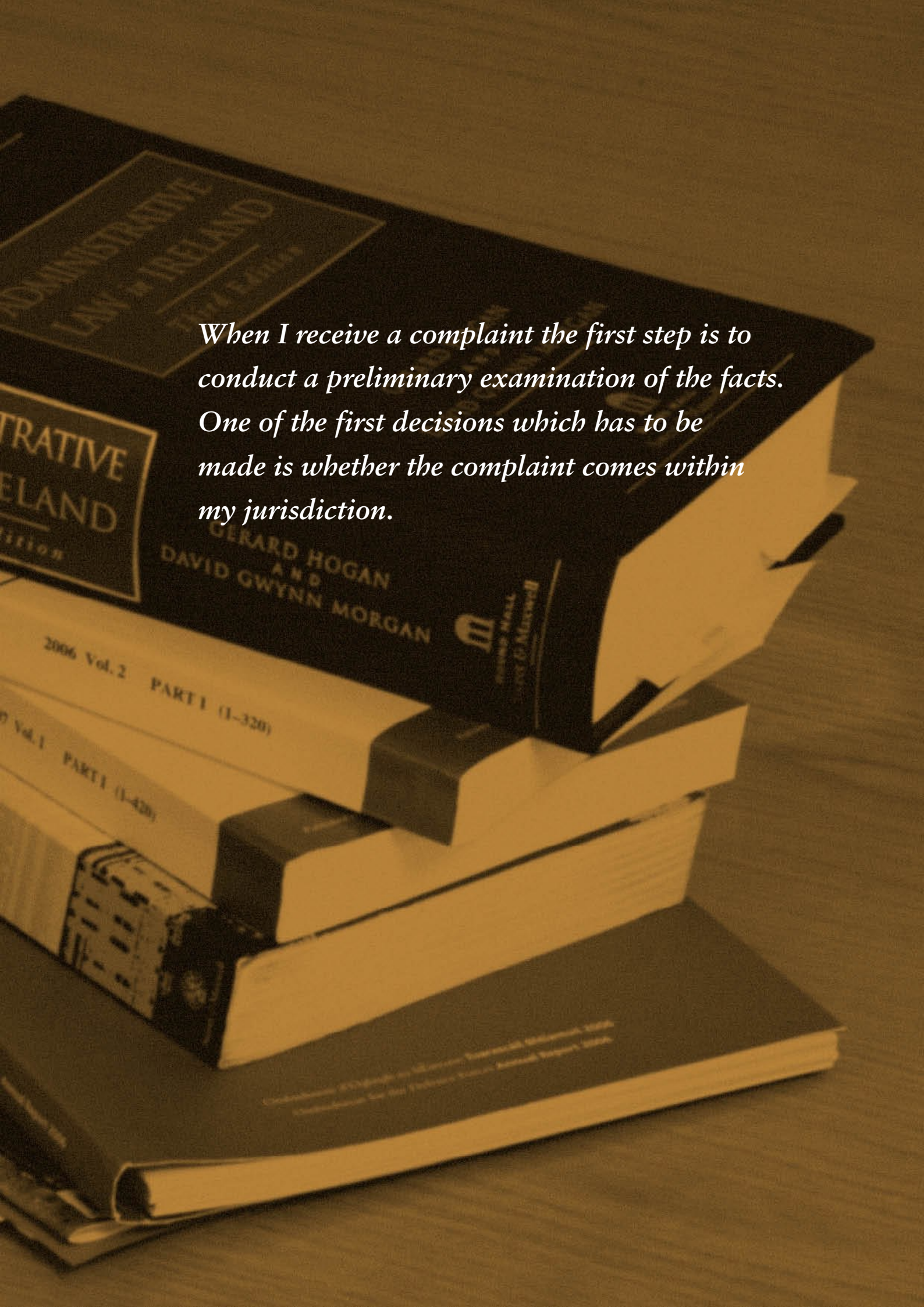
One such case caused me some concern during the year. I was unable to be of assistance as the allegations had been made by a serving member against a member who had left the Defence Forces, in relation to actions said to have occurred prior to the coming into operation of the Act. In these circumstances, I had no jurisdiction.

### Reduction In Time Taken To Issue Final Reports

The Customer Charter of the ODF commits my Office to providing a fair, user-friendly and accessible means of adjudicating cases, as speedily as possible. Whereas the time taken to conclude a case depends on many factors arising out of the complexity of the issues and causes of complaint, a speedy and effective resolution has been my stated objective from the outset.

Plans to reduce the time taken to issue Final Reports last year were thwarted in the main by the restraints imposed by the current office accommodation. I am pleased that the Minister is supporting my endeavours to get an office appropriate and fitting for ODF.



A stack of legal books is shown, with the top book being 'ADMINISTRATIVE LAW IN IRELAND' by Gerard Hogan and David Gwynn Morgan. The book is open, and its pages are visible. Below it, another book is partially visible, labeled '2006 Vol. 2 PART I (1-320)'. The books are resting on a wooden surface. A quote is overlaid on the image in a white, serif font.

*When I receive a complaint the first step is to conduct a preliminary examination of the facts. One of the first decisions which has to be made is whether the complaint comes within my jurisdiction.*

GERARD HOGAN  
AND  
DAVID GWYNN MORGAN

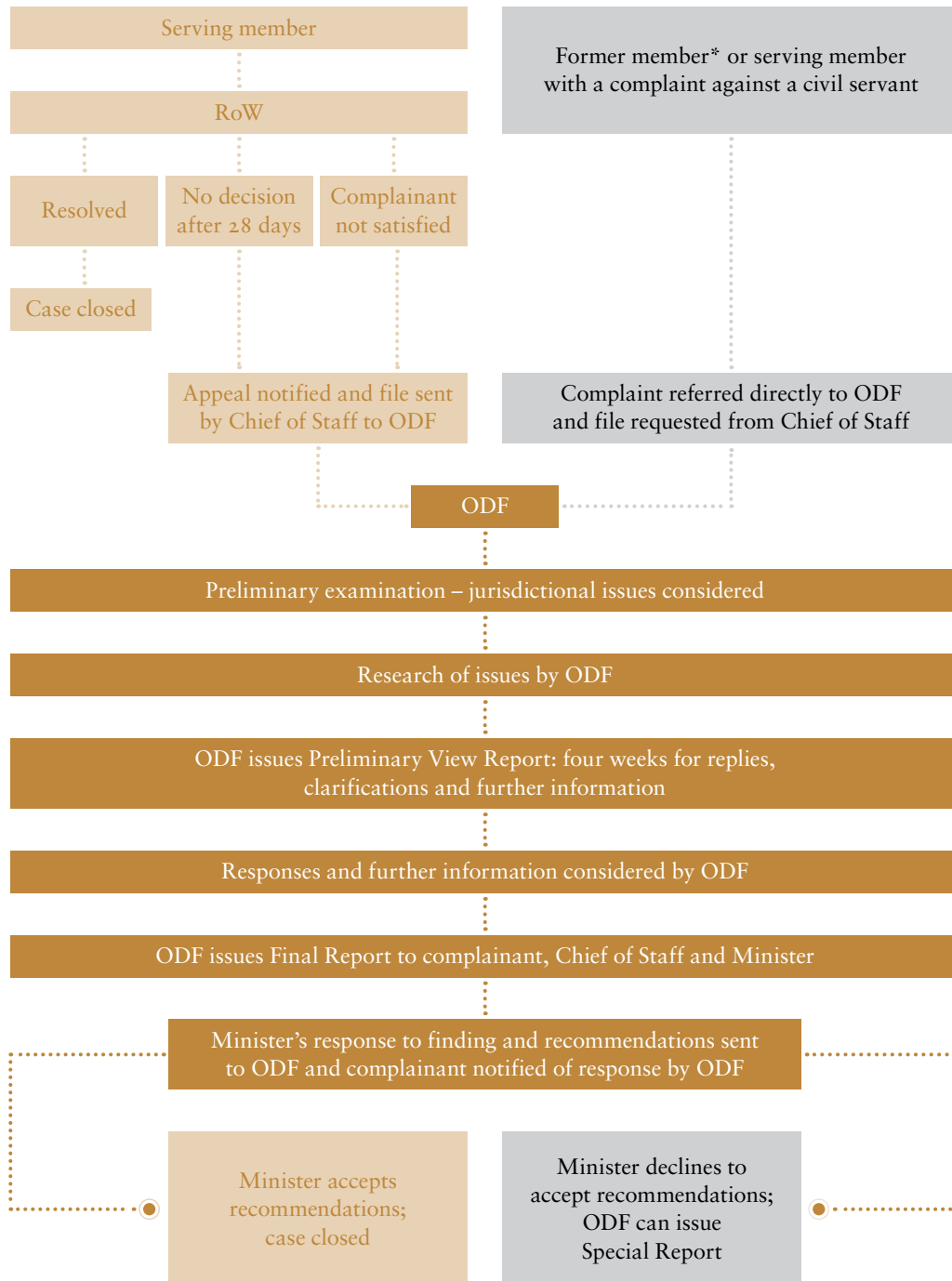


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## IV

## Lifecycle of a complaint



\* A former member can lodge complaints in relation to alleged actions which occurred while he or she was a serving member. The person responsible for the alleged action and the complainant must have been serving members at the time of the alleged action.

## Commentary On Cases Referred In 2007

The following issues have arisen from the cases submitted to me during 2007. I am pleased that the Minister has accepted my recommendations to review some of these matters. Many of these issues had arisen in 2006, and remained a source of contention for many former and serving members of the Defence Forces.

In essence there has been a failure, in some instances, to implement the recommendations arising from two key Reports:

- The Monitoring Group Report: *Response to the Challenge of a Workplace*. The Monitoring Group, which was chaired by Dr. Eileen Doyle, submitted its Report to the Minister for Defence in 2004.
- The Equality Steering Group: *Recommended Procedures for Interview and Selection Process for Courses, Promotions & Overseas Service, 2004, Appendix D* which relates to selection for career courses and promotion competitions.

The following are the most significant matters which arose in the course of cases I considered in 2007.

### Failure to provide a table of maximum points under qualifying criteria in competitions for promotion and career courses as recommended by the Equality Steering Group.

There have been a number of cases where the candidates who were close in qualification were seeking some assurance that they had been fairly assessed.

Arguably, the use of a marking matrix would provide a more objective and transparent basis for selection, thereby limiting a fear on the part of candidates of subjectivity or bias and indeed assisting the interview board.

I was pleased to be advised by the Chief of Staff that he had established a Study Group to consider appropriate marking systems, and at the time of going to print, I understand that this has been advanced.

### Failure to appoint a civilian member independent of the Defence Forces to interview boards.

In the interest of balance, the Equality Steering Group recommended that promotion interview panels should have two members from outside the Unit/Section involved, and one of these should be independent of the Defence Forces. Female inclusion on the interview panel is also recommended where there are female applicants. These recommendations have not always been observed.

**Lack of consistency and transparency when interviews were held for selection of candidates for career courses where the number of applicants was in excess of the number of places available.**

This issue arose in relation to a Senior NCO Course, details of which are given in the Case Studies section {CASE STUDY 6}.

**Lack of consistent procedures for notification of non-selection for promotions and career courses and failure to provide reasons for non-selection. Also, there was no provision for follow-up or feedback meetings available in all cases.**

In one case, the complainant was not provided with any reasons for his non-selection for a Senior NCO Course.

Following on from recommendations made in ODF Final Reports New Interim Selection Procedures regarding career courses and overseas service were introduced in 2006. An appeal process is provided for under these new procedures, but there is a lack of consistency regarding this process at present. There is also a lack of clarity as to how this appeal procedure links with RoW procedures.

Some cases of non-selection may have been resolved at an early stage if an adequate appeal process had been in place. In respect of one case no independent appeals process was afforded to an unsuccessful candidate who was not recommended for a career course.

**Failure to make any provision for an expeditious independent appeals process in cases where a candidate is not recommended by his/her Commanding Officer for a promotion or a career course and/or is not successful in an application for a promotion competition or career course.**

As I mentioned in my Introduction, the absence of an expeditious, independent appeal mechanism for unsuccessful candidates has negative consequences. Often by the time the unsuccessful candidate has exhausted the RoW procedures and/or had his/her complaint determined by my Office the appointment has usually been filled or the career course has been running for some time, making an appropriate redress exceptionally difficult.

**The on-going use of Administrative Instruction Part 10, Annex X, as a mechanism for promotion within the Defence Forces in light of the recommendations of the Equality Steering Group and my findings and recommendations has given rise to difficulties.**

Although some sections may have been updated, Administrative Instruction Part 10 Annex X is over twenty years old and does not appear to have been updated to take account of the restructuring by the Defence Forces' Review Implementation Plan {DFRIP} in 1998.



It is evident that such an administrative process cannot provide an appropriate guide to promotion. It could be contended that Annex X does not comply with the recommendations of the Equality Steering Group {Appendix D}, in the following regard:

*“In the case of excess of candidates or potential candidates, or where not all Applicants will be promoted, an objective and transparent basis for selection is required.”*

I was therefore pleased to receive assurances from the Chief of Staff that the process of organisational change in the Defence Forces, following DFRIP in 1998, is ongoing and that Annex X is currently under review as part of the NCO Promotion Review being conducted by DHRMS on behalf of D COS {Sp} and proposals are currently being negotiated between the Defence Forces, Department of Defence and Defence Forces’ representative organisations. In light of the recommendations of the Equality Steering Group, and my findings, progress on this review is welcomed.

#### **Differences in relation to Tri-Modular training courses were highlighted in some cases in 2007.**

I was assured by the Chief of Staff that a Review Board in the Directorate of Defence Forces Training was undertaking an examination of the area of Modularised Training.

#### **Lack of clarity and standardisation regarding the requisite qualifications for career courses and/or lack of opportunities for promotion of NCOs to commissioned ranks/roles.**

This issue arose in relation to a number of cases, one of which is included in the Case Studies section {CASE STUDY 8}. My jurisdiction to make findings regarding the requisite educational qualifications was challenged. However, I took the view that I could properly make findings regarding the procedures applied when informing members of the standards required and the manner in which the promulgation of the equivalency of the qualifications had been administered.

#### **Uncertainty about the accuracy of the records of qualifications and courses completed on the personal files of members.**

This issue gave rise to a number of appeals and therefore I welcomed the Chief of Staff’s ruling that members should be afforded the opportunity to review their own files in order to take up any questions about their accuracy, as regards qualifications and courses completed, with their Unit Commander. I have held that administrative failings which created doubt about the consistency of the information, as between candidates before an interview board, on the balance of probability, did have a material affect on the outcome.



**Appointment to Acting and Substitution roles, especially where there is a discretionary element to the appointment.**

This issue arose again in 2007, especially where there has been a discretionary element to an Officer Commanding making such appointments. I found that if this practice is employed then, as in the exercise of any discretionary power, it must be exercised fairly and seen to be so exercised and there needs to be clarity about the arrangement pertaining.

The use of discretionary power also came up in the context of the awarding of ‘The State Stripe’ and I accepted the Chief of Staff’s submission that such recommendations were not amenable to strict definitions as the actions giving rise to promotions were above the ordinary and defied categorisation.

However, the case also threw light on an issue which has arisen in other cases in relation to the difference between an exemplary “Conduct Rating” and outstanding ratings for individual qualities. I recommended that a review of the language of the different ratings assessing members of the Defence Forces would be timely and beneficial. I also noted, in the course of 2007, the many difficulties which can arise in relation to the AF667 appraisal reports. Some members raised the question of their Officer Commanding not knowing them well enough, in some instances, to give a comprehensive and accurate assessment.

*After a preliminary examination I issue a Preliminary View Report {PVR} which sets out findings so far and requests further information or clarification, providing four weeks for replies.*





## Case Studies

This section contains summaries of a cross section of cases on which I adjudicated in 2007.

Permission to use these selected cases was obtained from the people who referred their cases to me. Their assistance is greatly appreciated. As far as possible, specific details related to the cases have been deleted to maintain the anonymity of the complainants.

I hope these summarised reports of the cases will provide an insight into the nature, range and complexity of the complaints and appeals which I considered in 2007.

### Case 1: Not upheld

**“State stripe” promotion – Grounds of meritorious service or distinguished conduct not satisfied – No evidence suggesting unfairness – Detailed qualifying criteria not appropriate.**

The Complainant applied for promotion from Corporal to Sergeant shortly before his retirement on grounds of age. He submitted that, over the years, people of such an age had been granted the Sgt.’s stripe, or the “State stripe”, on grounds of meritorious service or distinguished conduct. The Complainant’s application was not supported by his CO and was thus refused by the Chief of Staff.

The Complainant submitted a Redress of Wrongs {RoW} application, taking issue with the refusal of promotion. He claimed that his CO was only posted two or three weeks before the application and did not know the Complainant, nor take the necessary steps to acquaint himself with the Complainant’s file and record. He also submitted that he had been blacklisted by the Sgt. Major in his unit and that the Sgt. Major had influenced both the CO and the Investigating Officer on the RoW application.

The Complainant further stated that he had had “exemplary” on his Conduct Rating for a consecutive number of years. In addition, the Complainant pointed out that a named NCO in a different Unit had been given the form of promotion the subject of his application the previous year.

I was informed by the Chief of Staff that the NCO in the other Unit had been found to have satisfied the requirements of DFR A10, para. 42{1}, whereas the Complainant had not. It was also pointed out that this form of promotion was extremely rare and that in the past 10 years 31 Corporals had retired from the Complainant’s Unit and none had been promoted to the rank of Sergeant under the terms of DFR A10, para. 42.

In response to the Complainant’s claims, it was stated that a Conduct Rating of “exemplary” was the norm for anyone of the Complainant’s length of service and that the Complainant’s character and reputation were never in dispute. It was stated that Performance Appraisal Reports {AF667As} were of more relevance in assessing performance and identifying individual strengths and weaknesses. It was pointed out that, while the Complainant may have, on occasion, received “outstanding” ratings for some individual qualities, in general his performance was “average” and, on a number of occasions, had been the subject of negative comments.

In relation to the claim that the CO did not know the Complainant well enough to make a fair appraisal, the Chief of Staff stated that there were sufficient mechanisms in place to assist a CO when making such a decision. Further, it was acknowledged that the Sgt. Major, as the Senior NCO in the Unit, was consulted by the CO due to his first hand knowledge of the Complainant. The Chief of Staff submitted that the suggestion by the Complainant that the Sgt. Major may have unduly influenced either the CO or the Investigating Officer was without foundation.

It was also pointed out that the Complainant had been medically excused from completing his Fitness Test for a number of years, and that this was a requirement for Overseas Service. The Complainant's health also meant that he could not perform armed duties. These factors had not helped his overall performance level.

While I had every sympathy with the Complainant's desire to gain the promotion at this late stage in his career, I could not overturn the decisions of the Chief of Staff and the Investigating Officer rejecting his claims unless there was evidence to substantiate the Complainant's assertion that he was unfairly treated or that the manner in which his application for the "State stripe" was handled was improperly conducted. I could find no such evidence.

I fully accepted the Chief of Staff's submission that any attempt to lay down detailed criteria for such promotions would merely negate against any individual being promoted on meritorious grounds, as such actions were so above the ordinary as to be impossible to quantify or categorise.

I did however suggest that his case had brought to light the confusion surrounding "State stripe" promotions which required clarification. In particular, the language of the different reports assessing the performance of members of the Defence Forces had caused confusion and the difference between "outstanding" ratings for individual qualities and an "exemplary" Conduct Rating required to be clarified.

## Case 2: Upheld

**Interview process – No consistent methodology applied – Number of courses completed in contention – Allegation that Complainant's complete records not before Interview Board – No reasons given by Interview Board for decision made – Courses taken into account for other candidates, but not for Complainant – Suggested redress not sufficient – Recommendation of ODF not followed.**

The Complainant unsuccessfully applied for three Sgt. vacancies advertised in Unit Routine Orders. The Complainant submitted a Redress of Wrongs application, claiming that he had been wronged in not being appointed to one of the vacancies. The Complainant was not provided with reasons for his non-selection and assumed that the record of his Artillery Courses was of relevance. He alleged that his records were not a true reflection of the courses which he had completed.

The Complainant further submitted that he had fulfilled all of the criteria and that he was equally capable of fulfilling the duties of the positions in question as the successful candidates. Specifically, in relation to one of the vacancies, the Complainant claimed that, while the Routine Order had stated that “no special requirements” were needed, the Interview Board had relied on the fact that the successful candidate had more A/Armour experience than the Complainant and disregarded the fact that the Complainant had more Instructor Courses completed and was senior in rank. By way of redress, the Complainant sought to be promoted to Sgt. effective from the date the vacancies were filled.

The GOC further found that, even if records of the disputed courses {as claimed by the Complainant should exist} had been before the Interview Board, the outcome would have been no different.

In my Preliminary View Report, I considered that this was not a sufficient response to the allegation that the Complainant’s record was incomplete and did not record fully or accurately the courses which he had done. The Considered Ruling of the Chief of Staff had stated that members should be afforded the opportunity to review their personnel file in order to have any matters regarding the recording of courses dealt with by their Unit Commander. I welcomed this and noted that for guidance on acceptable standards and principles applicable regard must be had to the Equality Steering Group’s Recommended Procedures for Interview and Selection Process for Courses, Promotions and Overseas Service. {Report submitted to the Minister for Defence 2004}

I highlighted that in cases such as this, where seniority was not a determining factor, the onus of objectivity was heavy when candidates believed themselves to be equally capable of performing the duties of the appointment. I found that in the absence of defined essential and desirable criteria and a matrix of marking against which applicants could judge their own performance, there was a greater risk of a perception of bias or inequity.

I noted that, while the Interview Board for one of the vacancies had acknowledged that the Complainant had had experience as Acting Sgt., the Interview Board for another had not. Notwithstanding the fact that Interview Boards were entitled to, rather than required to, have regard to such experience, I considered it a significant inconsistency, particularly in light of the fact that such experience appeared to have been noted in respect of some, but not all, of the candidates who were placed ahead of the Complainant.

Following my Preliminary View Report, the GOC advised that in all future promotion competitions all eligible candidates would be given an opportunity to view and verify their records. In addition a process of verification of all personal records was put in place and made available to all personnel in the Bde.

The Chief of Staff endorsed the views of the GOC that the Complainant had not been wronged and affirmed the view that, even if the Complainant had completed the courses in question, the lack of subsequent recorded training diaries, evidence of tests and evidence of recorded use indicated that the Complainant had not been actively using such qualifications since their acquisition. The Chief of Staff also submitted that the reasons for the non-selection of the Complainant were contained in the report of the Interview Boards, the relevant sections of which were placed in the Complainant’s file. It was stressed that he

had complete access to these portions of the reports. It was suggested that the Complainant be afforded the opportunity of undergoing the courses in question.

In my Final Report, I found as a matter of fact that the Investigating Officer's Report had not been furnished to the Complainant. Reasons had been offered as to why this occurred, but I did not find that they were adequate especially in circumstances where the Complainant did not receive the report for a further five months after it was furnished to me. The result was that the Complainant was denied the opportunity of addressing a number of matters in the report which he claimed to be inaccurate.

On the substantive issues, while I accepted the submission of the Chief of Staff that there was a distinction to be drawn between qualifications and the experience gained from their use and application, I pointed to the fact that the IO's report had concluded that the mere completion of A/Armour Courses by the successful candidate in one of the competitions had been taken into account. Further, no detailed explanations had been given as to why the Complainant had been overtaken in the competitions by candidates who were junior in rank to him.

I concluded that, in light of the failures in the system to address the obligation to provide the Complainant with reasons, in compliance with the Administrative Instruction, and to provide him with the IO's Report, the resolution proposed by the Chief of Staff fell short of a remedy proportionate to the adverse affects which the Complainant had sustained through no fault of his own.

In his response to my Report, the Minister for Defence stated that he confirmed my recommendations, but then went on to state that the Complainant would be offered by the Military Authorities the opportunity to undergo the courses in question and to avail of career guidance.

I expressed concern to the Minister that he had chosen not to follow my recommendations, but rather to pursue the remedy which I had found to be insufficient. I was disappointed to receive a response, some seven months later, from the Department of Defence, which reopened the underlying issues of the case in justifying the decision of the Minister. I expressed my disappointment that this was a case in which my recommendation had not been accepted.

The Minister responded by stating that adequate steps had been taken in response to my Final Report and that his response had been "based, primarily, on the judgment that the administrative difficulties in relation to the case did not have a material impact on the results of the selection competition". I responded by expressing my concern that there appeared to have been further investigation and adjudication of the matter after my Final Report had issued. I had already found that, on the balance of probabilities, the administrative failings had had a material impact on the results of the competition.

I closed the matter by conveying to the Complainant that the Minister was not in agreement with my findings.

### Case 3: Upheld

#### **Officer Promotion Competition – Absence of set marking system – Reasonable doubt as to computation of marks – balance of probabilities – No means of alleviating doubt.**

The Complainant was unsuccessful in the Comdt. to Lt. Col. Promotion Competition 2006. The Complainant submitted a Redress of Wrongs application, claiming that the Interview Board wronged him by incorrectly computing his marks awarded in Phase 1 {marks for performance and potential} of the competition.

He contended that his mark should have shown an increase from the previous year's competition, having regard to the fact that he was in receipt of an excellent AF451 report for the reporting year 2005, in which he was recommended for promotion by his GOC. He further contended that the Interview Board applied different assessment criteria, in awarding his 2006 file assessment mark, than to ten other successful candidates, who had been placed behind him in the order of merit in the 2005 competition.

He submitted that the Promotion Board had not given due regard to the criteria as listed in para. 7 of Admin. Instr. A15 in that he could reasonably expect that, as his results in the promotion competitions held in 2003, 2004 and 2005 showed clear year to year improvement, this trend would have carried forward into the 2006 competition, reflecting his excellent AF451.

The COS, in his Considered Ruling, accepted that, due to the fact that the relevant documentation was not kept, and was not required to be so kept, a computational error could not be ruled out. The COS was nonetheless satisfied that the Promotion Board had carried out its duties in accordance with Admin. Instr. A15.

However, I questioned this certainty in circumstances where there were no records of how marks were structured or awarded in the competition.

It appeared that a broad interpretation of the criteria as outlined at para. 7 of Admin. Instr. A15 was applied and that the Interview Board did not award set marks against each individual criterion.

I found that, in order to avoid the perception of subjectivity, it was necessary to have built into an interview process some means of alleviating doubts. This could be approached by demonstrating that a marking system of some sort was used so that an applicant could see the marks which he or she was awarded against the criteria. In addition, the absence of a set marking system denied an individual candidate the opportunity of receiving feedback and counselling as to his or her assessment and performance.

While Admin. Instr. A15 did not prescribe a marking system, it clearly stated that the briefing of a Promotion Board “will cover... the marking system to be applied by each Promotion Board”. This clearly required every Board to decide on a marking system.

I concluded, in my Preliminary View Report (PVR), that the Complainant had grounds for a reasonable doubt about the accuracy and outcome of the competition. He thus had a reasonable expectation of being provided with a reliable means of addressing his concerns that there had been an error made in the computation of the marks. In the absence of a pre-agreed marking system, this was not possible.

Following my PVR, the COS confirmed that the briefing on the marking system, provided for in para. 4 of Admin. Instr. A15, concerned the initial breakdown of the total marks available in the interview process and that there was no provision, within the Instruction, requiring the further breakdown of marks against the criteria outlined therein. The COS also outlined the system of computational checks undertaken prior to the release of the results. However, these checks were excluded from the record of the competition process.

In my Final Report, I welcomed the COS's decision to establish a Study Group to devise a marking system against the agreed criteria in Officer Promotion Competitions. As considerable time had elapsed, I noted the reservations of the COS about the viability of running a re-check of the competition files, I recommended as an alternative remedy, promoting the Complainant on a supernumerary basis.

I welcomed confirmation from the Minister for Defence that a new marking system for Officer Promotion Competitions was subsequently agreed. However, I was concerned to be informed that the Minister chose not to accept my recommendation that the Complainant be offered the opportunity of promotion on a supernumerary basis.

Instead, he ordered an independent review be conducted of a "representative sample" of the files from the marking phase of the 2006 competition with the aim of assessing whether the file assessment mark awarded to the Complainant was within an acceptable range when compared with marks awarded to other candidates. This was not one of the options recommended in my Final Report and I expressed my view that a review of a selection of the files was not sufficient.

The said independent review concluded that the Complainant had not been wronged.

The Complainant was however subsequently promoted through the 2007 competition, which was conducted under the new marking system, which involved assessing candidates against the agreed criteria.



#### Case 4: Not upheld

**Promotion – Acting – Substitution – Discretion of Commanding Officer – Claim that offered position not successful – New Selection Procedures put in place in interests of fairness and transparency.**

The Complainant was approached, along with two other NCOs by the RSM of his unit, on behalf of the Commanding Officer, for the purpose of enquiring as to his interest in a Substitution position. Following this approach, the Complainant was of the view that he had been offered, and accepted, the position.

The Complainant then went on holidays. On return from holidays, the Complainant was informed that the position in question was now to be an Acting position, rather than a Substitution position, and that an application and interview would now be required in line with prescribed the New Interim Selection Procedures. Having first applied for the position, the Complainant withdrew his application when he saw the selection criteria, as he could not meet them.

The Complainant issued a Redress of Wrongs application, claiming that he had been offered and accepted the Substitution position. The Complainant further claimed that he had been discriminated against because such positions had not been the subject of selection criteria and interviews in the past and he had not been advised of any change in practice. He also submitted that, shortly after being informed of the new selection criteria, he was wrongly removed for no stated reason from his position as Operational Sgt. of his unit, thereby prejudicing his position prior to applying for the position.

The principle question posed by this case was whether the circumstances in which the RSM sought indications from the three NCOs as to their interest in a placement in Substitution amounted to an offer of this position. I found that, on a reasonable interpretation, it appeared that the RSM was merely seeking to establish the Complainant's interest in the position with a view to the Commanding Officer ultimately making a recommendation, in accordance with the prevailing custom and practice.

In his submissions on this case, the GOC DFTC highlighted a serious concern as to the discretionary powers of a Commanding Officer being further eroded in circumstances where there would be set selection procedures for Acting or Substitution placements. I acknowledged that this raised a number of issues which merited further review and discussion.

I found that at the material time the applicable Administrative Instruction did not require Commanding Officers to do other than recommend an individual for Acting or Substitution. In the sequence of events in this case, when the Complainant returned from leave, criteria were drawn up for the selection of the Acting role in line with the New *Interim Selection Procedures for Career Courses and Overseas Appointments* promulgated by DCOS {Sp} in July, 2006. This decision was taken by the Commanding Officer and was duly advised to the potential candidates, including the Complainant, by the RSM.

I found no grounds to support the contention that the Complainant had been taken out of the job of Operational NCO improperly or that it was connected with, or would have had any bearing on, the Acting position.

This was a case where custom and practice, relied upon by the Complainant was caught in the upcoming tide of new selection processes. I emphasised that in such circumstances it was essential that it be made clear which procedure was being adopted. I accepted that when the Complainant left the meeting with the RSM, according to the old order of things, there may have been nothing unusual in his going away believing in his own mind, that he would have a reasonable chance of being offered the Substitution position. However, it later became apparent that it was, in fact, an Acting role and the Commanding Officer decided to adopt the selection procedure for the position in the interests of openness and fairness.

I recommended that the New Interim Selection Procedures, which were under review, and the Selection Procedures for Promotion, which were at discussion stage, should incorporate a review of Acting or Substitution placements. I further recommended that, if it were the agreed view that some discretionary powers should be reserved, directions as to how they would be applied should be incorporated into the new procedures with a view to eliminating doubt and uncertainty.

### Case 5: Upheld

**Transfer of Officer – Lack of transparency and openness – Lack of notice of proposed changes and opportunity to implement them himself – Reasonable fear that transfer would be viewed as ‘punishment posting’.**

The Complainant, an Officer in charge of a specialist Corps, was informed, at short notice, by his superior that he intended to transfer him. The Complainant appealed this decision. The appeal was supported by the Complainant’s GOC. The Complainant had served in the Defence Forces for nearly 40 years. The GOC stated that he had never received a criticism or complaint in relation to the Complainant’s performance and that the Complainant had an excellent record.

The Complainant contended that he had reasonably believed that he would be allowed to serve out his short remaining period until retirement in his post and that he had a reasonable expectation that he would not be informed at short notice that he was to be posted to a different location, causing particular distress to his family. He harboured the fear that the transfer would be perceived as a ‘punishment posting’ and was concerned that his reputation would be damaged as a result at the end his long years of service.

The COS did not accept that the Complainant had been wronged and, in his Considered Ruling, stated that, given the Complainant’s length of tenure in the position, the proposal that a new person be appointed was in the best interests of the Corps and the Defence Forces.

I found, as a matter of fact, that no prior proposals about a change in the manner in which the Complainant discharged his function had been discussed with the GOC or the Complainant. In addition, the Complainant had never been advised that his work was unsatisfactory or that it fell short in any way. I accepted and agreed with the finding of the Investigating Officer that the meeting at which the Director of the Corps informed the Complainant of the transfer was not structured nor conducted in accordance with best practice. I also accepted his finding that the GOC should have been in the first instance, advised of any pending transfer of his Officer for many reasons.

It appeared that there had been a misunderstanding between the relevant parties with regard to an undertaking to communicate the decision to the GOC.

I noted the comments made by the GOC, in support of the Complainant's appeal, that any change in appointment at this stage in the Complainant's career would not benefit his professional development nor improve his career prospects and that it was inequitable to transfer the Complainant without first giving him the opportunity to implement any agreed changes in the conduct of his business.

The Complainant had been given no proper or timely notice of the proposed changes to be implemented in his unit by his replacement. It was thus reasonable for him to draw an inference that there was a causal link between the comments about his performance which were only mentioned after he was told of the decision to transfer him. I further upheld the Complainant's contention that the manner in which his posting was handled was in contravention of DF HRM Strategy 2006 to 2010, in its lack of openness and transparency.

Having regard to all the circumstances of the case, I concluded that it was regrettable that the handling of the changes in the Complainant's unit had not been conducted in a more sensitive manner. Given his seniority and excellent record, it was reasonably foreseeable that the move, conducted in the manner that it was, would give rise to the fears expressed by the Complainant that it would be viewed as a 'punishment transfer' and that his professional standing could be cast in a negative light and his good name impugned. The Complainant had been treated in an unfair manner and in a way which was at odds with desirable administrative practice.

I was pleased to be informed by the COS that, following my findings, he had personally met with the Complainant in order to clarify the matter and to appraise the Complainant of his very satisfactory performance in the role. He explained that the posting was in no way intended to be a 'punishment posting' and expressed his sincere apologies at the sudden nature of the posting and the way in which it was communicated to the Complainant.

### Case 6: Upheld

**NCO Course – Selection process – Finding by COS that Complainant Wronged – Level of suggested remedy – Whether fair and proportionate – Need for clarity in operation of New Interim Selection Procedures on Career Courses.**

The Complainant's grievance related to his non-selection for a 30th Senior NCO course as fourth preference and first substitute in circumstances where two substitute roles {Technical and Line} were created retrospectively without any notice. The selected member withdrew with the direct consequence that the other substitute {5th in order of merit} took his place on the course in question. The Complainant had requested to be considered qualified for promotion to the rank of RSM without having completed the Senior NCO course.

The Complainant had processed his complaint through the Redress of Wrongs procedure. It was considered that the request by the Complainant to be considered qualified for promotion to the rank of RSM without having completed the Senior NCO Course was excessive. The grounds set out in support of this were reasonable having regard to the many implications and operational requirements of the Defence Forces. It was ruled by the Chief of Staff however that the process adopted was in breach of the New Interim Selection Procedures for Advanced Career Courses and that the Complainant had suffered a wrong requiring redress. The question which arose in this Appeal to me related to the nature and extent of the redress to be provided.

As a means of providing redress it was directed that the Complainant receive a place on the next Senior NCO Course, subject to his meeting the criteria for the Course as laid down in the relevant DDFT Course Syllabus. It was further directed that should a vacancy for RSM arise before the Complainant completed the next Senior NCO course the Complainant would be considered eligible to compete for the vacancy and would be considered as if he had successfully completed the Senior NCO Course. In circumstances where the Complainant was recommended for promotion, he would not however be promoted until such time as he had successfully completed the next Senior NCO course. It was further clarified that this did not prevent him from holding such a rank in an Acting capacity and that this would not result in any financial loss to the Complainant. Finally, the COS was willing to offset a loss in 'seniority', if it were to arise, by back-dating any such substantive promotion in the event of this occurring.

In light of the above and provided that the Complainant were to be in receipt of the RSM rate during the time when he was in the Acting role, I endorsed and recommended this as a fair and appropriate remedy in the circumstances.

I expressed my concern at the lack of precise structures, procedures and time-frames for the conduct of the appeals in the New Interim Procedures Selection and the lack of clarity as to how this appeals procedure would link into the Redress of Wrongs procedure. I recommended clarification in relation to this point and the setting out of time-frames for the conduct of those appeals.

I recommended that comprehensive, accurate and timely communications should be agreed and enforced when selecting and nominating personnel for Career Courses and that, as soon as practicable, members be advised of the outcome in order to facilitate the acceptability of results and career management.

The Minister for Defence in his response noted the intention to carry out an overall review of the New Interim Selection Procedures in the near future.

### Case 7: Complaint Upheld

**Assignment Board – Senior appointment – Administrative error – Removal from post – Re-assignment – Adverse effects – Judge in own cause – Further dialogue.**

In October 2005, an Assignment Board convened by GOC 1 S Bde assigned members of 1 S Bde Reserve to appointments in 31 Res MP Coy. Initially a CS was posted into the appointment of CS Investigation Section 31 Res MP Coy and the Complainant was posted as Coy CS in the same Unit. As a result of a Redress of Wrongs on 10th October 2005, the first named CS pursued a claim that the appointment of Coy CS was a senior appointment and that given his seniority he should have been assigned to that appointment. In the course of the investigation into the complaint, the President of the Assignment Board acknowledged that a clerical error had occurred and that this CS should have been assigned to that appointment. As a consequence of this, on 8th February 2006, the GOC 1 S Bde ruled that the administrative error should be corrected by changing the appointments in question. The Complainant was removed from the post and moved to another.

The Complainant claimed that on the 6th March 2006, he was informed that he had been removed from the appointment of Coy. Sgt. and was assigned to the Investigation Section. The Complainant stated that he had been advised that this re-assignment had arisen as a result of the Redress of Wrongs of the other CS referred to above.

The Complainant submitted that he had been wronged in that he had fulfilled all the duties of CS competently since his posting to the original position and listed his career path, course skills, qualifications and promotion throughout his career in the Reserve Force (all of which were supported and endorsed in the Considered Ruling of the COS) in support of his eligibility and service to fulfil the appointment. The Complainant contended that being removed from the appointment of Coy CS and re-assigned to CS Investigation Section 31 Res MP Coy, without his consent, after five months in the appointment was tantamount to demotion and would have been viewed as a bad reflection of his character and service. He also pointed to his upcoming retirement and that he considered the removal would be a grievous matter and an unfitting end to his career.

I pointed out that it is not within my remit to examine matters arising prior to 1st December 2005.

It was submitted that the members of the Board were highly experienced and merely made one error in handling a large number of reassignments. Whereas this demonstrated a good record in handling a large number of reassignments it was not persuasive in establishing that there was no error in the handling of the Complainant's assignment.

It was pointed out to me that paragraph 18(c) of Admin. Instr. R 5 provides that "in all instances NCO's who apply for a specific appointment will be given precedence in the filling of those appointments over NCO's who do not apply for the appointment". It was noted that this appears on the part of the Admin Instruction entitled "NCO Assignment – General" but does not appear in the part of Admin Instruction entitled "Assignment NCO's {BFM, BQME, CS and CQMS}". It appeared however to be fairly established that there was a prescribed duty on the part of the Assignment Board to give precedence on the basis of preference.

In light of the fact that the Complainant found himself in the role which was indicated as his first preference the question as to the "adverse effect" which he sustained had to be considered. It was established by the COS that there was no doubt about the standing and calibre of the Complainant and the contribution he made to the Reserve Defence Forces over a long number of years. The COS also brought attention to the observations of GOC 1 S Bde. who had personally reassured the Complainant of the high esteem in which he is held. It was also pointed out that the Complainant and the other member who was also reassigned, being members of the Reserve Defence Forces, would sustain no career disadvantage as both have already reached the highest possible NCO rank in the RDF Military Police.

With regard to the issues surrounding the question of a GOC being a judge in his own cause, this relates to the structure of the Redress of Wrongs Procedures and forms part of an on-going discussion about this issue. This would benefit from some further thought about ways in which the GOC can be distanced from a decision in circumstances where s/he has taken action which is the subject of the complaint. The principles discussed in the High Court decision of Mr. Justice Barron in *Healy v. Minister for Defence* {Unreported, High Court, 7th July 1994} serve to underpin the need for fair procedures in relation to selection and promotion processes generally in the Defence Forces and is not restricted solely to circumstances where "advancement" is an issue.

This Complaint centred on the fact that the Complainant was removed from an assignment in circumstances where he had not been consulted.

In the circumstances, the Complainant's own view of how such a reassignment would be perceived by his peers was one which was difficult to measure from the outside particularly in light of the facts presented about the Complainant and the other member in question having attained the highest possible NCO rank in the RDF Military Police.

Following my Preliminary View Report, the GOC 1 S Bde. directed his Executive Officer and Personnel Support Officer to engage in further dialogue with the Complainant as soon as practicable in order to find some satisfactory form of closure. The COS endorsed this approach.

Having regard to all the circumstances surrounding this matter, I considered it reasonable and prudent to resolve the matter in the manner outlined and sought confirmation of the outcome in due course.

The Minister for Defence accepted my recommendations, that GOC 1 S Bde arrange further dialogue with the Complainant with a view to finding some satisfactory form of closure. I was pleased to be informed later that the issue had been discussed with the Complainant and he had accepted the apology offered by the authorities.

### Case 8: Complaint Upheld

**Potential Officers Course – Minimum education qualification – Equivalency of education qualification – Administration of selection process – Certificate of urgency – Mitigation of adverse effect of decision.**

The Complainant's complaint arose in circumstances where he had submitted an application to be considered for the 9th Potential Officers Course {POC} being run to commission enlisted personnel as Officers within the Defence Forces. He was not recommended by his OC Shore Operations, CDR NC, on the basis that he did not possess the minimum education qualification required to be considered for the course, stated as being either a minimum Grade D in 5 Higher or Ordinary Level papers in a single sitting of the Leaving Certificate or a third level qualification equivalent to HETAC Level 7 or above. The Complainant holds qualifications equivalent to HETAC Level 6 {equivalent to an Ordinary Bachelor Degree on the FETAC/HETAC Framework} and otherwise met all the qualifying criteria.

The Complainant submitted a complaint through the Redress of Wrongs Procedure {RoW} and, at all levels, it was held that he had not been wronged. The Complainant also submitted that he had been denied the opportunity to undergo the Leaving Certificate within the Defence Forces. It was contended that the Complainant had never availed of the Refund of Fees Scheme to undergo a Leaving Certificate within the Defence Forces. According to the Complainant, he had never been afforded such an opportunity owing to his specific work commitments within the Defence Forces.

The central question was whether there was any reasonable rationale or justification for the refusal to recommend the Complainant for the 9th POC. I had to consider whether the Complainant had a reasonable expectation of having his application to be allowed to enter the POC accepted. I also had to form a view as to whether the selection procedures were conducted in accordance with fair procedures and desirable administrative practices and whether they were discriminatory.



I highlighted with regard to the handling of the Complainant's RoW the lack of appropriate speed applied in processing the case to me after the COS's Considered Ruling had issued. Although the Considered Ruling issued on 7th June 2007, I did not receive the Complainant's referral and file until the 2nd July 2007. I considered this a matter worth noting in light of the rarity of the POC, the fact that it was due to commence in July 2007 and the lack of reference to a Certificate of Urgency being issued in this case on the file.

I indicated in my Preliminary View Report (PVR) that it appeared that the Minister for Defence's reply to a question in the Dáil regarding whether third level qualifications could be considered for selection for the course in question had been misinterpreted when it was drafted into an amendment to the Educational Qualification criteria of 26th April 2007. This interpretation of the Minister for Defence's reply was relied on to refuse the Complainant a recommendation for selection on the POC. It appeared that the document entitled 'Clarification of Educational Criteria 9th Potential Officers Course' was issued on the 26th April 2007 without any prior agreement to limit and confine the third level qualifications to HETAC Level 7. In fact, the agreement confirming same (entitled 'Conciliation and Arbitration Scheme for the Permanent Force – Conciliation Council Report No. 343 (Meetings Between January 2006 and March 2007) – Representative Association of Commissioned Officers – 9th Potential Officers Course' was formally adopted on 29th May 2007, subsequent to the refusal of the Complainant's application for the course in question.

It was difficult to comprehend, on an objective view, how reliance upon a formal agreement adopted some weeks after the refusal to recommend the Complainant as eligible to compete on education grounds could have been consistent with fair procedures. Furthermore, no evidence was submitted confirming any negotiation with PDFORRA (representing the enlisted personnel affected) regarding the decision to limit educational criteria to HETAC Level 7. There were no submissions to suggest what, if any, negotiations, took place with the representative organisations after the Minister's response in Dáil Éireann and before the issuing of the 'Clarification of Educational Criteria 9th Potential Officers Course' two days later. It was also significant that in the present case, the decision to refuse the Complainant's recommendation preceded the question in the Dáil.

The FETAC/HETAC Framework, under the National Qualifications Authority of Ireland, was established to facilitate a fair means of determining equivalent Third Level qualifications, both National and non-National, and in fact was devised to enable standardisation of qualifications. I was satisfied that from the FETAC/HETAC Framework (Document 2), Level 4 or 5 were deemed equivalent to the Leaving Certificate, Level 6 equivalent to an Advanced or Higher Certificate and Level 7 equivalent to an Ordinary Bachelor Degree. Nowhere throughout the selection or investigation process was any rationale or justification proffered to justify the decision to limit qualification for the course in question to without regard to HETAC Level 6.

I found no reasons offered to the Complainant as to why higher or further educational qualifications for the POC were gauged to HETAC Level 7 when a Leaving Certificate is agreed to be equivalent to FETAC Levels 4 and 5. I accepted the Complainant's contention that due to his specific duties and being sea-going, he was not afforded an opportunity to undergo the Leaving Certificate. This compounded the unfairness of the refusal of his application to compete for the Course in question.

In my PVR, I recommended that a review be conducted of fair and just equivalence in determining minimum educational qualifications for entry to a POC with particular regard to the likely Higher and Further educational qualifications which NCOs are likely to have achieved where, for whatever reasons, they have not completed the Leaving Certificate. If there were more places and more regular POCs, an appropriate remedy might have been to accommodate the Complainant on the existing or future POC with an undertaking not to exclude him on the basis of age and/or that he is compensated for loss of promotion to date. Having regard to the practicalities, I recommended that options for redress be explored as speedily as possible. I was disappointed that no options were provided or suggestions put forward as to how this might be achieved.

Following the issuing of my Final Report, I received correspondence from the Minister for Defence requesting that I consider the submissions from the Office of the COS which had overlapped with the issuing of the Final Report. In light of the further submissions, comments and clarifications put forward by the COS I was not of the view that the responses revealed any new information which would have altered my findings. I was further informed by the Office of the COS that my jurisdiction to deal with the subject matter of the complaint as regards the merits or otherwise of the actual nature or content of the education standard was challenged. In response to the challenge which was raised about my jurisdiction I was satisfied that the complaint did not fall within section 5(1)(d)(a) of the Ombudsman (Defence Forces) Act, 2004 having regard to all of the circumstances.

The correspondence also informed me that the COS did not concur with my finding that the Complainant suffered a wrong requiring redress within the meaning of section 114 of the Defence Act 1954 (as amended). I had taken account of the procedures applied in making known the qualifying standards to the members and the manner in which the promulgation of the equivalency of the qualifications had been administered.

### Case 9: Complaint Upheld

**Transfer – Disestablishment – Loss of technician pay – No formal disestablishment – Alleged discriminatory treatment – Recommendation not followed by Minister.**

It was decided at ministerial level to reduce the DFTC Band in size and then disestablish it. The DFTC Band was thus reduced significantly in numbers and was effectively amalgamated with the No. 1 Band, Defence Forces School of Music {DFSM}. However, it was never formally disestablished by the Minister. The members of the DFTC Band were transported from the Curragh to DFSM in Dublin on a daily basis. They were attached to SSU, DFTC for administrative and logistics purposes but operated under DFSM for technical direction and employment.

The Complainant, a member of the DFTC Band, sought permission from Director DFSM to take up a position as a barman in the Officer's Mess Military College on a trial basis, with a view to possible employment there. Director DFSM acceded to this request and informed the Complainant that, should he want to remain in that position on a permanent basis, he would have to transfer out of the DFTC Band.

Over a year later, the Complainant was informed that he was to either return to work in DFSM or seek an immediate transfer to the Catering Services Military College, with the consequential loss of his technician pay. The Complainant initiated a Redress of Wrongs, RoW, claiming that he should be allowed to continue in the barman position but retain his technician pay and allowances pending the formal disestablishment of the DFTC Band.

The Complainant submitted that the DFTC Band had in effect been disestablished and that he was thus “serving without appointment”, consistent with the spirit of LOI 1/98. Under para. 6 of LOI 1/98, personnel serving without appointment who were in receipt of technician pay would “remain in receipt of such pay on a personal to holder basis”. The Complainant also raised para. 8 which provided that personnel serving without appointment as a result of structural reorganisation who were willing to be relocated would be facilitated where possible.

The Complainant contended that Logs Base Dublin had also been effectively disestablished, yet not formally disestablished, and that the personnel unwilling to travel to the DFTC had been accommodated as “serving without appointment” in Dublin Bks and retained their technician pay despite moving to a line appointment. As a result of this, the Complainant contended that he had been treated unfairly.

The counter submissions from the military authorities claimed that the DFTC Band had not yet been disestablished and that therefore the Complainant was not “serving without appointment” and the provisions of LOI 1/98 did not apply. They also refuted the claim of the Complainant that he had been “relocated compulsorily to Dublin”.

In my Preliminary View Report (PVR) I addressed the question of my jurisdiction on two grounds. Firstly, I queried whether the matter was one appropriate to be dealt with under the Conciliation and Arbitration (C & A) process and thus excluded by s. 5(1)(d)(i) of the Ombudsman (Defence Forces) Act 2004. Secondly, I questioned whether the matter concerned the organisation, structure and deployment of the Defence Forces and thus fell outside of my jurisdiction pursuant to s. 5(1)(d)(ii). However, I was satisfied that the matter came within my jurisdiction and I did not receive any submissions from the authorities to the contrary.

I issued a Final Report in the matter, following further submissions and clarifications from the authorities. However, it transpired that the Complainant did not receive either of my reports as the address I had been given for the Complainant was incorrect. As a result, I allowed the Complainant an opportunity to make further submissions and issued a Supplemental Final Report.

I found that the Complainant had not been compulsorily relocated to Dublin as the daily commute had no adverse effects on him in terms of time or finance. I further accepted that the Complainant had been given a choice as to a career move and that, if this were consistent with arrangements for other members, there would be no grounds sufficient to support the Complainant's claim that he had been unfairly treated.

The Complainant had contended that special arrangements had been made for other members in similar circumstances, and in spite of being given two opportunities to clarify the nature of these alleged arrangements for personnel in Logs Base Dublin, the military authorities did not make any replies or submissions on the matter. I concluded that the Complainant had put forward a strong and convincing argument about the lack of fairness and consistency and I recommended that it would be appropriate and fair to accede to the Complainant's request that he be permitted to avail of a similar arrangement. Further, given the delay that had been caused by the provision of the incorrect address, I recommended that every effort be made to resolve the matter as soon as possible.

I was very disappointed to receive a letter from the Department of Defence almost three months after I had issued my Supplementary Final Report questioning, for the first time, my jurisdiction in the matter on the basis of s. 5(1)(d)(i) and (ii). I informed the Department that I had alluded to these issues in my PVR and that no submissions had been made in that regard on behalf of the Minister within the reasonable period allowed for that purpose.

I closed the case as one in which my recommendation had not been followed by the Minister.

### Case 10: Upheld

#### **Selection for Overseas Posting – New criterion for posting not made known to Complainant – Grievance procedure – Admin. Instr. Part 26 – Undesirable administrative practice.**

The Complainant's grievance arose out of the fact that when the list for KFOR was released he was not paraded nor informed as to whether he was on the panel for the overseas posting. The Complainant was subsequently informed that he was not likely to be on the main list because he had not served in Liberia. It was the Complainant's submission that he was informed that the precedent which he believed to be the governing principle of "last back, first out" no longer applied. As the Complainant had not been on an overseas tour of duty in 8 years he had relied on the accepted precedent that, all things being equal, the "longest back" would be "first out". It was the Complainant's contention that at no time was the new criterion promulgated nor otherwise made known to the Complainant as a condition or criteria for the overseas posting in question.

The Redress of Wrongs procedure in this case raised some concern as it had been established that the GOC, who had issued the Considered Ruling, was also the Selecting Authority. In such circumstances, it could be argued that he was acting as a judge in his own case which would be a breach of fair procedures. It was, however, submitted, by way of replies to my Preliminary View Report (PVR) that the GOC had delegated the task of the selection process to his staff which allowed him to consider and decide on any conflicts that might arise due to non-selection.

I found that, as a matter of fact, the information about the criteria and necessary qualifications for selection had not been made known to the Complainant in advance. The failure to make known the qualifying criteria amounted to an undesirable administrative practice and fell short of the Equality Steering Group's Recommendations.

I recommended that the criteria for Overseas Service be promulgated, in line with the New Interim Selection procedures, leaving no room for doubt as to the criteria applicable and, where special criteria were applied, that they be included in the list. I also recommended that it be made clear to those placing their names on a list of volunteers for Overseas Service that such a step did not guarantee them with a specific posting.

A question arose about the right of appeal from non-selection to DCOS (Sp). It was submitted that paragraph 107 of Admin. Instr. Part 26 was invoked where a dispensation to established practice and/or Administrative Instruction was being sought. It was also submitted that whereas DCOS (Sp) was accordingly the final authority for selection for Overseas Service, it would not be practicable nor efficient if every case of non-selection in a Bde./Formation were referred to him for consideration.

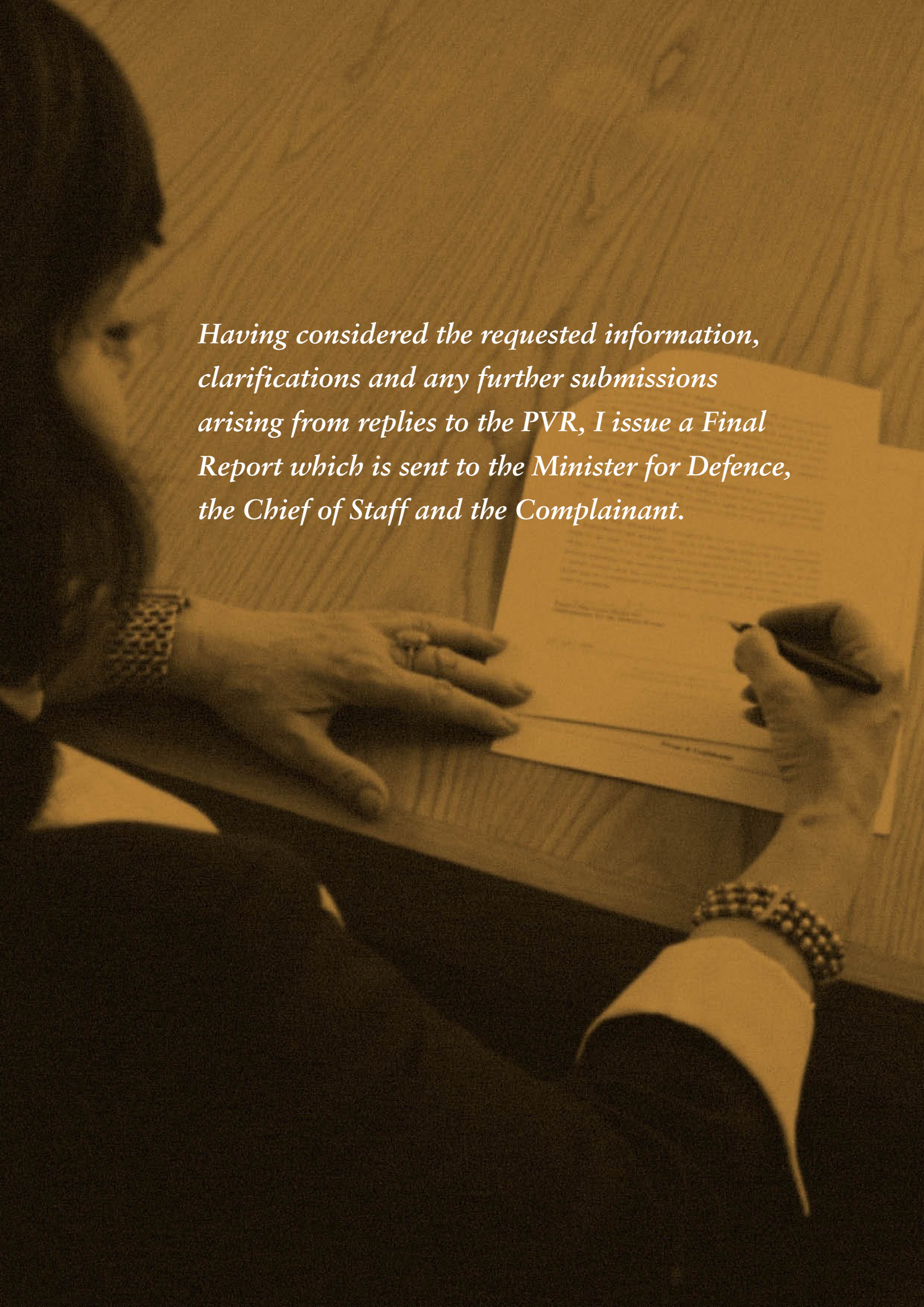
I found that the wording of the paragraph, as it stood, was open to different interpretations. If this provision were amended to reflect accurately its objective and scope it could avoid misunderstandings as to how and when it could be invoked. I recommended that this be considered.

The Chief of Staff suggested that the most suitable method of providing redress in the Complainant's case was by acknowledging that the procedures used were not in accordance with best practice but that the New Interim Selection Procedures had improved the procedures and any future applications for Overseas Service would be properly considered in line with those new procedures.

I found that there had been a lack of clarity in the procedures used in the for selection of members for Overseas Service in this case. I highlighted that it would ultimately be to the benefit of all that the Complainant had drawn attention to these shortcomings as he did and, in that respect, his complaint was justified. I accepted the submission of the COS that the Complainant had not suffered adversely in terms of his career profile and that the new procedures for selection for serving overseas would provide him with opportunities to be selected.

The Minister for Defence accepted my recommendations and findings and confirmed that Admin Instruction Part 26 would be amended and clarified. He stated that it would be re-drafted as part of the review and update of Defence Forces Regulations that is currently underway.



A person wearing a dark suit and a patterned bracelet is seated at a desk, writing on a document with a pen. The document is open, and the person's hands are visible. The background is a light-colored wall with a subtle pattern.

*Having considered the requested information, clarifications and any further submissions arising from replies to the PVR, I issue a Final Report which is sent to the Minister for Defence, the Chief of Staff and the Complainant.*



## VII

## Corporate Affairs

### Attendances and Presentations to Stakeholders

In the first full year of operation of the ODF I endeavoured to attend and speak at as many conferences and fora as possible. This was essential to ensure that members and former members of the Defence Forces were aware of the role and remit of my Office.

In 2007 I continued with this policy of engagement and among the fora attended were:

- British and Irish Ombudsman Association conference.
- RACO event.
- ONET event.
- Presentation to students at Dun Ui Mhaoiliosa, Renmore, Galway.
- Presentation to commanders at DFTC, Curragh Camp, Kildare.

### OSCE Working Group

As noted in last year's annual report, I was honoured to participate in the Organisation for Security and Co-operation in Europe {OSCE} Expert Group on the human rights and fundamental freedoms of armed forces personnel.

The project is jointly directed by the OSCE's Office for Democratic Institutions and Human Rights {ODIHR} and the Geneva based Centre for Democratic Control of Armed Forces {DCAF}.

I am pleased to report that a handbook, entitled '*The Citizen in Uniform*', will be produced in May of 2008 as a result of the Expert Group's work.

### Staffing

The staffing level of my Office as of 31st December 2007 consisted of:

- 1 Assistant Principal Officer.
- 1 Higher Executive Officer.
- 1 Clerical Officer.

This is the same level of staffing as 2006.

As mentioned earlier in this report, my Office received an exponential caseload increase in 2007 and I would like to formally record my appreciation and thanks to my small team for the tremendous dedication and commitment they demonstrated throughout the year in coping with the enhanced workload.

### Internal Capacity Review

In the first quarter of 2007 it was clear that the workload of my Office would be considerably higher than in 2006.

An internal capacity review to ensure that the ODF has the capability to respond to this increasing workload was conducted in 2007.

The review was the basis of my submissions for additional staff and appropriate accommodation to the Minister for Defence in the summer of 2007.

Initial discussions regarding the need for additional resources have taken place. I sincerely hope that progress can be made in acting on the specific and urgent needs in 2008.

### Office Premises

My Office moved into premises at 13/15 Hatch Street, Dublin 2 in December 2006. The premises consist of three rooms on the first floor of the building.

In my last Annual Report I stated that these premises were proving unsuitable and that remained the case in 2007. In particular space for staff is insufficient, there are no adequate facilities to receive visitors, and a number of serious design issues with the building persist.

Efforts to secure appropriate accommodation in 2007 failed to produce results.

The ODF requires a permanent premises and this is an issue which must be addressed and a solution found in 2008.

### Briefings with Overseas Organisations

In 2007 a range of overseas organisations from the fields of diplomacy and Ombudsmanship contacted my Office seeking a briefing on a range of practical and theoretical issues.

I facilitated a number of briefings in 2007 and I hope that my experience in establishing and operating the ODF will prove of value as other countries examine the role of Ombudsmanship in a military setting.

### Data Protection

The ODF is registered with the Data Protection Commissioner.

My Office is also registered under the Direct Professional Access Scheme of the Bar Council.

### Health and Safety

A Health and Safety statement for my Office is in place. Health and Safety policy regarding the building in which my Office is currently located is the responsibility of the Department of Finance.

### Irish Language Policy

As of 31st December 2007 my Office was not a prescribed body under the Official Languages Act, 2003.

However, in keeping with best practice across the public service, my Office endeavours to provide information in both Irish and English. ODF Annual Reports are published in both languages and [www.odf.ie](http://www.odf.ie) is also available in both languages.

### Budgetary Matters

The annual accounts for 2007 were completed and presented to the Comptroller and Auditor General in early 2008. At the time of going to print the audit has been completed and the C&AG has kindly issued his certificate for inclusion in this Annual Report. I am indebted to him and his staff for processing this in time with my publication deadline and recognise the additional work pressure this created.

I am keenly aware of my responsibilities as Accounting Officer for the Office and endeavour at all times to ensure that public funds are used wisely and efficiently.

At present the ODF operates as a subhead in the Department of Defence estimates. In keeping with the general principles of Ombudsmanship, and the necessary requirement that my Office is seen to be independent, impartial and autonomous it would be more appropriate for my Office to have its own vote and be entirely accountable for its own budget. I hope to achieve progress on this issue during 2008.

### Freedom of Information Policy

As of 31st December 2007 the ODF is not a prescribed body under the Freedom of Information Act.

Since its inception my Office treated all requests for information in an open and transparent manner in keeping with the spirit of the FOI Act. As a matter of policy, complainants receive a copy of all ODF reports in relation to their cases.

It is expected that the FOI Act will be extended to cover the ODF in 2008 and this is a welcome development.

#### Internet Usage Policy

A policy on internet usage by staff of my Office is in place.

#### Confidentiality

Trust and confidence in procedures are essential to the successful work of an Ombudsman. Strict rules governing the confidentiality of all cases or enquiries received by my Office are in place.

It is an issue that will continue to remain a priority in my Office in 2008.

## Report of the Comptroller & Auditor General

### OMBUDSMAN FOR THE DEFENCE FORCES

#### Report of the Comptroller and Auditor General for presentation to the Houses of the Oireachtas

I have audited the financial statements of the Ombudsman for the Defence Forces for the year ended 31 December 2007 under the Ombudsman (Defence Forces) Act 2004.

The financial statements, which have been prepared under the accounting policies set out therein, comprise the Statement of Accounting Policies, the Income and Expenditure Account, the Balance Sheet and the related notes.

#### Respective Responsibilities of the Ombudsman and the Comptroller and Auditor General

The Ombudsman is responsible for preparing the financial statements in accordance with the Ombudsman (Defence Forces) Act 2004, and for ensuring the regularity of transactions. The Ombudsman prepares the financial statements in accordance with Generally Accepted Accounting Practice in Ireland. The accounting responsibilities of the Ombudsman are set out in the Statement of Responsibilities of the Ombudsman for the Defence Forces.

My responsibility is to audit the financial statements in accordance with relevant legal and regulatory requirements and International Standards on Auditing (UK and Ireland).

I report my opinion as to whether the financial statements give a true and fair view, in accordance with Generally Accepted Accounting Practice in Ireland. I also report whether in my opinion proper books of account have been kept. In addition, I state whether the financial statements are in agreement with the books of account.

I report any material instance where moneys have not been applied for the purposes intended or where the transactions do not conform to the authorities governing them.

I also report if I have not obtained all the information and explanations necessary for the purposes of my audit.

I review whether the Statement on Internal Financial Control reflects the Ombudsman's compliance with the Code of Practice for the Governance of State Bodies and report any material instance where it does not do so, or if the statement is misleading or inconsistent with other information of which I am aware from my audit of the financial statements. I am not required to consider whether the Statement on Internal Financial Control covers all financial risks and controls, or to form an opinion on the effectiveness of the risk and control procedures.

I read other information contained in the Annual Report, and consider whether it is consistent with the audited financial statements. I consider the implications for my report if I become aware of any apparent misstatements or material inconsistencies with the financial statements.

### **Basis of Audit Opinion**

In the exercise of my function as Comptroller and Auditor General, I conducted my audit of the financial statements in accordance with International Standards on Auditing (UK and Ireland) issued by the Auditing Practices Board and by reference to the special considerations which attach to State bodies in relation to their management and operation. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures and regularity of the financial transactions included in the financial statements. It also includes an assessment of the significant estimates and judgments made in the preparation of the financial statements, and of whether the accounting policies are appropriate to the Ombudsman's circumstances, consistently applied and adequately disclosed.

I planned and performed my audit so as to obtain all the information and explanations that I considered necessary in order to provide me with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming my opinion I also evaluated the overall adequacy of the presentation of information in the financial statements.

### **Opinion**

In my opinion, the financial statements give a true and fair view, in accordance with Generally Accepted Accounting Practice in Ireland, of the state of the Ombudsman's affairs at 31 December 2007 and of the income and expenditure for the year then ended.

In my opinion, proper books of account have been kept by the Ombudsman. The financial statements are in agreement with the books of account.



**Gerard Smyth**  
**For and on behalf of the**  
**Comptroller and Auditor General**  
 8 April 2008







