



# ODF

Ombudsman for the Defence Forces  
Annual Report 2017 & 2018



# Ombudsman for the Defence Forces

## Customer Charter

The Ombudsman for the Defence Forces was established by law to provide a statutorily independent appeals process whereby members of the Defence Forces who have processed a complaint through the Redress of Wrongs system, but remain dissatisfied with the outcome, may refer their grievance to the Ombudsman for review.

The Ombudsman for the Defence Forces also accepts complaints made directly by former members of the Defence Forces, subject to certain conditions.

Pursuant to sections 4 and 6 of the Ombudsman (Defence Forces) Act 2004 the Ombudsman may, with certain exceptions, investigate an action taken by a member of the Defence Forces or a civil servant of the Department of Defence, which

- (a) has or may have adversely affected a complainant, where
- (b) the action was or may have been –
  - (i) taken without proper authority,
  - (ii) taken on irrelevant grounds,
  - (iii) the result of negligence or carelessness,
  - (iv) based on erroneous or incomplete information,
  - (v) improperly discriminatory,
  - (vi) unreasonable, notwithstanding consideration of the context of the military environment,
  - (vii) based on undesirable administrative practice, or
  - (viii) otherwise contrary to fair or sound administration,
- (c) the action was not an order issued in the course of a military operation, and
- (d) in the case of a serving member of the Defence Forces, the matter is not likely to be resolved and a period of 28 days has expired since the complaint was made under section 114 of the Act of 1954.

The Ombudsman for the Defence Forces strives to provide a fair, user-friendly and accessible means of adjudicating cases.







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The Ombudsman for the Defence Forces wishes to thank the Defence Forces Press Office for the use of the photographs contained in this Annual Report.







# Glossary of Terms and Abbreviations used in the Report

DF	Defence Forces
ODF	Ombudsman for the Defence Forces
Bde	Brigade
Bn	Batallion
DFHQ	Defence Forces Head Quarters
DFTC	Defence Forces Training Centre
MO	Medical Officer
MIO	Military Investigating Officer
OC	Officer Commanding
GOC	General Officer Commanding
COS	Chief of Staff
NCO	Non-Commissioned Officer
RDF/FCA	Reserve Defence Forces
DFR	Defence Forces Regulation
Unit Comdr	Unit Commander
FOCNS	Flag Officer Commanding Naval Service
ROW	Redress of Wrongs
PO	Petty Officer (Naval Service)
DCOS (Sp)	Deputy Chief of Staff, Support
Tech	Technician
Coy Comdr	Company Commander
Sec Coy	Security Company
AC	Air Corps
NS	Naval Service
Recommendations	Recommendations made to the Minister for Defence as provided for in s7 of the Ombudsman (Defence Forces) Act 2004
EPMO	Enlisted Personnel Management Office
COMO	Commissioned Officers Management Office



# Introduction:

I am pleased to present the combined 12th and 13th Annual Reports of the Ombudsman for the Defence Forces (ODF) for the years 2017 and 2018. This Report reflects the work of this Office for the twelfth and thirteenth full years since it was established on the 1 Dec 2005. It is also the first Report issued by me since my appointment as Ombudsman on the 6th July 2018. The preparation of an Annual Report for 2017 in the year 2018 was not possible as my predecessor's term of office ended in November 2017, and the position remained vacant until my appointment by the President of Ireland on 6 July 2018. I was appointed following an open competition process conducted by the Public Appointments Commission in the early months of 2018.

The specific details of cases referred to my office and cases concluded in 2017 and 2018 respectively are set out in this Report in an easily understood format. A brief summary is as follows:-

1. Cases for full investigation carried over from 2016 into 2017: 113
2. Cases referred to my office for full investigation in 2017: 19
3. Cases concluded and Reports issued in 2017: 32
4. Cases for full investigation carried over from 2017 into 2018: 100
5. Cases referred to my office for full investigation in 2018: 9
6. Cases concluded and Reports issued in 2018: 52
7. Cases for full investigation carried over from 2018 to 2019: 34

Of immediate concern to me following my appointment on 6 July 2018 was the significant number of cases awaiting investigation, many of them going back a number of years and which had gradually built up to a figure of 100 notwithstanding the strenuous efforts and the excellent quality of the work of my predecessor, Tony McCourt. I believe there are a number of reasons for this backlog of cases including the practical legal restraints on the activities of the office arising from judicial review proceedings

challenging Mr. McCourt's 2012 appointment in the High Court, initiated in November 2012.

A judgment dismissing the proceedings was delivered in late November 2013, but was appealed to the Supreme Court (the appeal was later transferred to the Court of Appeal following its establishment in 2014). The appeal had not been heard prior to Mr. McCourt's departure in November 2017.

Also, the almost 8 month gap in the period November 2017 to July 2018 during which the position of the Ombudsman lay vacant, and during which time no cases could be progressed or concluded, contributed to an already acute backlog problem.

In August 2018 I wrote to the complainants in approximately 77 of the 100 cases awaiting conclusion (these cases predated end 2017) informing them of my appointment and inviting them to confirm their desire to have their cases proceed to conclusion. I was conscious of the possibility that some complainants, particularly in the older cases, might prefer to withdraw their complaint because of the passage of time. Just 3 of those written to responded with a withdrawal of their complaint. Approximately 20 did not respond and were again written to some two months later. Ultimately 20 have never responded. Their cases will be reopened if requested and if a reasonable excuse for not responding is provided. The remainder expressed their wish that their cases proceed to conclusion. This process left 77 live cases. In the period between my appointment and 31 December 2018, 52 cases have been concluded and reported on, an increase of 62% compared to the previous year. During this period 9 new referrals for full investigation have been submitted to my office, so that as at the commencement of this year, 2019, there were 34 cases awaiting investigation and conclusion.

My expectation is that by later this year all outstanding cases (as of early this year) will have been concluded and reported on. I hope thereafter to conclude and report on all cases within 6 to 8 weeks of their referral for full investigation, save in exceptional



circumstances. I believe this timeline to be an essential part of the service provided by my office. The nature of complaints require, in almost every case, a quick decision. Issues relating to promotion, discharge and selection for courses, to name but a few, especially require a speedy outcome. Cases involving bullying and similar type complaints also require an early resolution as delays in dealing with such complaints only serve to fester, prolong and exacerbate problems in the work place. Commencing this summer every complainant will be written to and advised as to the likely timeline for the investigation of their complaint being concluded. I have noticed a slight increase in bullying type complaints being referred to my office over the past few months. Only time will tell if this trend will continue. I am also particularly anxious to ensure that cases which are submitted to my office with a 'Certificate of Urgency' be henceforth reported on quickly.

In the period between 6 July 2018 and 31 December 2018 I have entirely upheld approximately 6 %

of concluded cases. In that period I partly upheld complaints in approximately 31 % of cases. In the same period I have made 52 recommendations and of these 22 have been accepted by the Minister and have either been implemented or are in the course of being implemented. As of 31 December 2018, a response was awaited from the Minister in the remaining cases.

The Defence Forces redress system is now in excess of sixty years in operation. It is an elaborate process and provides members of the Defence Forces with a complaints resolution process which must be the envy of civilian employees including those in large corporations. It permits a member of the Defence Forces to have his or her complaint considered by a Military Investigating Officer in the first instance, then by his/her GOC and finally by the Chief of Staff, and since 2005, if he/she so wishes, ultimately by the independent Ombudsman for the Defence Forces (subject to the provisions of the Ombudsman (Defence Forces) Act 2004). While I on occasion disagree with the findings and conclusions of the







Military Investigating Officers in individual cases the extent and detail of their investigations are often impressive.

While many, I expect, incorrectly assume I completely lacked any previous military experience when I assumed my role in mid-2018 I am proud of the fact that I was an active FCA member in the late 1960s (for one year and 171 days) and was discharged as a three star Private! I accept of course that this short, but nonetheless valuable experience, only provided me with a limited exposure to military life. It did however create an abiding interest in the Defence Forces generally, and a sense of pride in what has been achieved by its three branches over many decades, and often in difficult circumstances. The training, work and commitment of our Defence Forces at sea, in the air and on the ground, and particularly in overseas missions and on humanitarian operations is impressive and admired by many at home and abroad.

It is with a view to achieving a greater understanding and appreciation of what the Defence Forces do

that I expressed an interest in visiting a number of Barracks and other installations and talking to men and women members of the Defence Forces on the ground. In 2018, and in the early months of this year, I visited Cathal Brugha Barracks in Dublin, the Curragh, Casement Aerodrome, Baldonnell and Cork's Collins Barracks. I am very grateful for the kind reception I received in these venues and the trouble taken by many in each to assist me to understand and appreciate the work of the Defence Forces, as well as providing an insight into the problems and difficulties that the organisation and individual Defence Forces members face on an ongoing basis. I hope to continue with this programme in 2019 and look forward to visiting Haulbowline in Cork, Stephens Barracks in Kilkenmy, Custume Barracks in Athlone, Finner Camp in Donegal and Aiken Barracks in Dundalk.

Finally I would like to express my thanks and appreciation to a number of people for their valuable assistance and support to me over the past few months in what for me is an entirely new role, including my office staff Lauren O'Donovan, Michael O'Flaherty



and Brian O'Neill, the Minister with Responsibility for Defence Mr Paul Kehoe TD, the staff of the Department of Defence, the DF Liaison Officer for my office Capt. Peter Dunne and Vice Admiral Mark Mellett DSM, Chief of Staff.

I hope that as 2019 progresses and into the following year, that members of the Defence Forces will have confidence in my office to provide a worthwhile service for the resolution of complaints. It is important to remember, and to emphasise, that I am independent in the manner in which I exercise my functions as

Ombudsman for the Defence Forces. I am happy to confirm that that independence is fully respected by the Minister, the Department of Defence and the military authorities.



Alan Mahon  
Ombudsman for the Defence Forces





## 2 Highlights of 2017

### 69 NOTIFICATIONS OF COMPLAINT

were received in 2017, including 1 directly referred by a former member of the Defence Forces.

### OF THE 69 NOTIFICATIONS OF COMPLAINT

received, 64 were in respect of Privates and NCOs and 5 were in respect of Officers. 7 of these notifications were from female members or retired members of the Defence Forces

This was a  
**16%**  
reduction on the 82 notifications received in 2016 and a **38% reduction** on the 111 notifications received in 2015.

### 19 NEW CASES

were referred to ODF for full investigation in 2017. This includes 1 case that was directly referred to this Office. This is an 18% increase on the 22 new cases referred to ODF in 2016.

**32 cases** were brought to final conclusion by the ODF during 2017. This represents a 33% increase in the number of cases concluded by the ODF in 2016. A further 2 cases were withdrawn by the Complainants, including one deemed to be outside the provisions of the Ombudsman (Defence Forces) Act 2004.

The former ODF's term of Office expired on 6th November 2017 and the position remained vacant for the remainder of the year.

### 132 CASES

including pre 2017 referrals, were under review by the ODF during 2017.

### 100 CASES

remained under review by the ODF on the 31 Dec 2017, a reduction of 11% from 1 Jan 2017.









## Analysis of Complaints & Appeals - 2017

### Notifications of Complaint

68 Notifications of Complaint were received by my Office from the Defence Forces during 2017, as well as 1 direct referral, making a total of 69. This is a 16% decrease on the 82 complaints notified to my Office in 2016. Of those complaints, 76 were from serving or former other ranks personnel while 6 were from serving or former commissioned officers.

Of the Notifications received during 2017, some 24 were withdrawn or resolved during the course of the year and 15 were referred to the ODF for investigation. 3 other complaints, notified in 2016, were also referred to ODF for investigation during 2017 along with 1 direct referral.

The ODF also received some 75 direct contacts from members of the Defence Forces or members of the public in relation to queries, concerns or information requests. There were also numerous direct contacts between the ODF and the Military Authorities and individual members in respect of individual cases, however, such contacts are not recorded for statistical purposes.

### Direct referrals to ODF

Serving members of the Permanent and Reserve Defence Forces must initially process their complaints through the statutory (section 114 Defence Act 1954) Redress of Wrongs procedure and exhaust the internal Defence Forces process before referring their complaint to this Office. Former members of the Defence Forces may refer their complaints directly to this Office, subject to the provisions of the Ombudsman (Defence Forces) Act 2004.

In 2017, only 1 complaint was referred directly to this Office. The complaint was from a former commissioned officer.

### Cases reviewed by ODF in 2017

On 1 Jan 2017, some 113 cases were carried forward under review by this Office. During 2017 some 19 new cases were received by this Office. The total number of cases under review by this Office during 2017 was

132. Of these, some 32 cases were brought to a final conclusion during 2017. Some 100 cases remained under review on 31 December 2017 and were carried forward for consideration into 2018. This represents a 12% decrease on the numbers carried forward from 2016.

### Details of Complaints Investigated by ODF in 2017

The following Tables set out the nature of complaints considered by this Office during 2017 along with details of complaints by military formation. It should be noted that complaints categorised as 'Maladministration' cover a variety of issues including complaints in respect of performance appraisal and issues related to discharge among others. Complaints categorised as 'Interpersonal Issues' include those where there appear to be elements of personality conflict and allegations of inappropriate behaviour or bullying.





## Total cases

The following table outlines the progression of the 132 cases during 2017 –

Preliminary Investigation Ongoing	Cases Concluded and Final Report Issued
100	32

## Cases by Military Formation

Of the 132 cases on hand during the course of the year, the following table outlines the number of cases arising in each Military Formation.

1 Brigade	2 Brigade	Defence Forces HQ	Defence Forces Training Centre	Air Corps	Naval Service	Total
18	36	9	14	30	25	132

## Nature of Cases

The nature of the cases on hand with the ODF during 2017 can be broken down into the following broad categories –

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting	Total
45	47	12	8	20	132

## Details of Cases by Formation

The following tables and charts set out the nature of cases on hand during 2017 by individual Military Formations –

### 1 Brigade – (18)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
7	4	1	2	4

### 2 Brigade – (39)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
12	9	8	2	5



Defence Forces HQ – (9)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
2	6		1	

Defence Forces Training Centre – (14)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
4	2	1		7

Air Corps – (30)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
18	3	3	3	3

Naval Service – (25)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
5	19		1	

Complaints Investigated by ODF in 2017

Complaint Upheld by ODF	Complaint Not Upheld by ODF *	Complaint Partially Upheld by ODF **
Nil	30	2

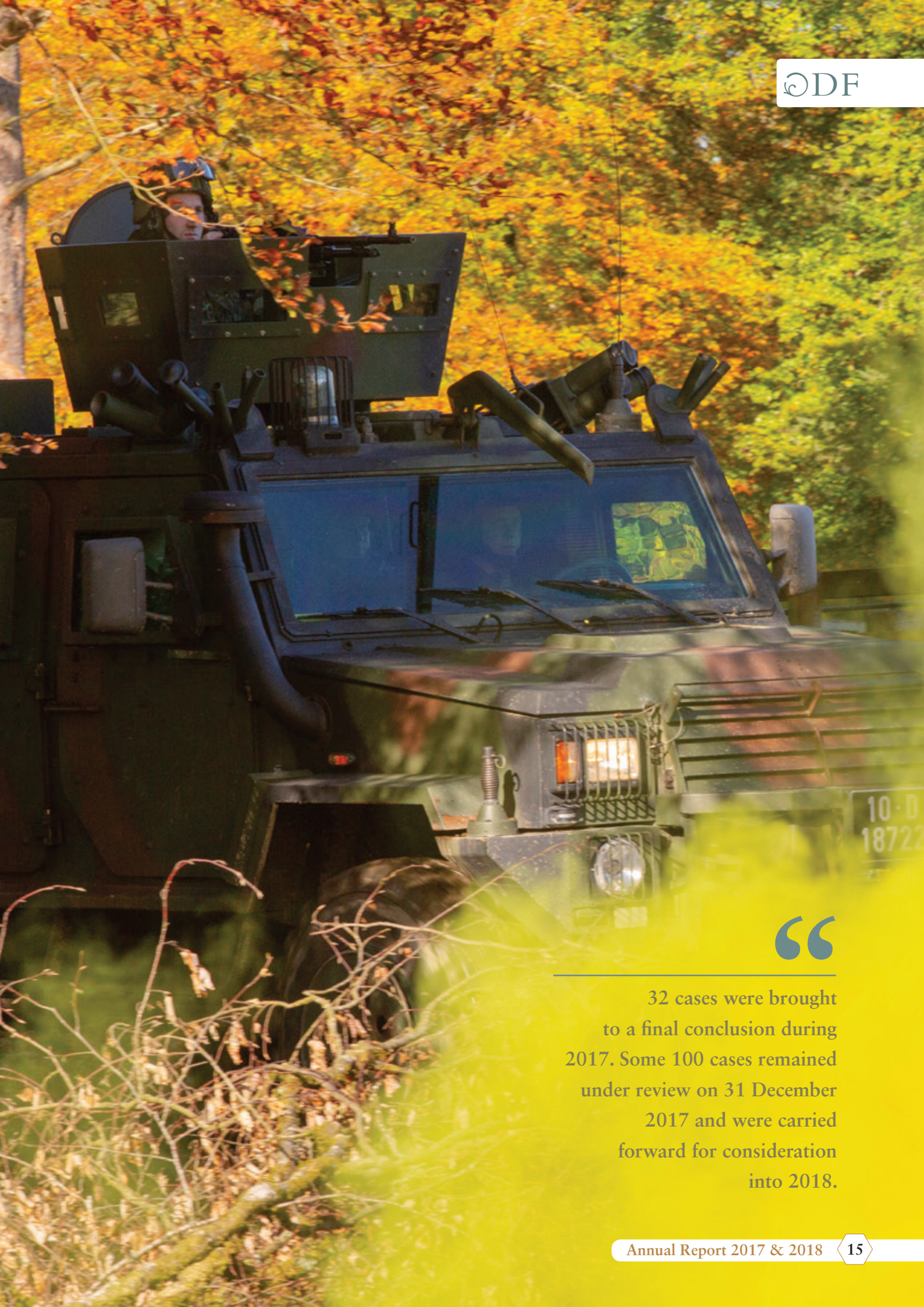
\*Includes complaints outside ODF's terms of reference.

\*\* Partially upheld complaints are complaints where the ODF did not uphold a complainant's case in its entirety and cases in which the complaint has not been upheld but where a recommendation was made none the less.

ODF's Recommendation to Minister in 2017

Minister Accepts	Minister Does Not Accept
28	4





“

32 cases were brought to a final conclusion during 2017. Some 100 cases remained under review on 31 December 2017 and were carried forward for consideration into 2018.







## 4

## Highlights of 2018

The position of ODF was vacant for the first half of 2018. The current ODF was appointed to the office on 6<sup>th</sup> July 2018 by the President of Ireland following an open competition process undertaken by the Public Appointments Commission.

**76**  
NOTIFICATIONS  
OF COMPLAINT

were received in 2018, including 1 directly referred by a former member of the Defence Forces.

OF THE 76  
NOTIFICATIONS  
OF COMPLAINT  
received, 72 were in  
respect of Privates and  
NCOs and 4 were in  
respect of Officers.

**9**  
NEW CASES

were referred for investigation to ODF in 2018. This is a significant 53% decrease on the 19 new cases so referred in 2017.

This was a  
**10%**  
increase on the 69  
notifications received  
in 2017.

**109**  
CASES IN ALL  
WERE UNDER  
REVIEW BY THE  
ODF DURING  
2018.

**23 CASES**

have been closed/  
put on hold following  
ODF writing to the  
complainants.

**52 CASES**  
were brought to final  
conclusion by the ODF  
during 2018 from the date  
of his appointment  
on 6th July 2018.

**34 CASES**  
cases remained  
under review by the  
ODF on the  
31 Dec 2018.



## Analysis of Complaints & Appeals - 2018

### Notifications of Complaint

76 Notifications of Complaint were received by my Office from the Defence Forces during 2018. This is a 10% increase on the 69 complaints notified to my Office in 2017. Of those complaints, 72 were from serving or former other ranks personnel while 4 were from serving or former commissioned officers.

Of the Notifications received during 2018, some 46 were withdrawn or resolved during the course of the year and 9 were referred to the ODF for investigation.

The ODF also received some 58 direct contacts from members of the Defence Forces or members of the public in relation to queries, concerns or information requests. There were also numerous direct contacts between the ODF and the Military Authorities and individual members in respect of individual cases, however, such contacts are not recorded for statistical purposes.

### Direct referrals to ODF

Serving members of the Permanent and Reserve Defence Forces must initially process their complaints through the statutory (section 114 Defence Act 1954) Redress of Wrongs procedure and exhaust the internal Defence Forces process before referring their complaint to this Office. Former members of the Defence Forces may refer their complaints directly to this Office, subject to the requirements of the Ombudsman (Defence Forces) Act 2004.

In 2018, no complaints were referred directly to this Office.

### Cases reviewed by ODF in 2018

On 1 Jan 2018, some 100 cases were carried forward under review by this Office. During 2018 some 9 new cases were received by this Office. The total number of cases under review by this Office during 2018 was



109. Of these, some 52 cases were brought to a final conclusion during 2018. 23 cases were closed/put on hold following the ODF writing to complainants to ascertain whether they wished to continue with their complaints. Some 34 cases remained under review on 31 December 2018 and were carried forward for consideration in 2019. This represents a large 66 % decrease on the numbers carried forward from 2017.

### Details of Complaints Investigated by ODF in 2018

The following Tables set out the nature of complaints considered by this Office during 2018 along with details of complaints by military formation. It should be noted that complaints categorised as 'Maladministration' cover a variety of issues including complaints in respect of performance appraisal and issues related to discharge among others. Complaints categorised as 'Interpersonal Issues' include those where there appear to be elements of personality conflict or allegations of inappropriate behaviour or bullying.



## Total cases

The following table outlines the progression of the 109 cases during 2018 –

Incompleted Investigations	Cases Concluded and Reports Issued
57*	52

\*34 when one takes account of the 23 cases closed/put on hold.

## Cases by Military Formation

Of the 109 cases on hand during the course of the year, the following table outlines the number of cases arising in each Military Formation.

1 Brigade	2 Brigade	Defence Forces HQ	Defence Forces Training Centre	Air Corps	Naval Service	Total
13	30	6	11	28	21	109

## Nature of Cases

The nature of the cases on hand with the ODF during 2018 can be broken down into the following broad categories –

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting	Total
34	38	14	8	15	109

## Details of Cases by Formation

The following tables and charts set out the nature of cases on hand during 2018 by individual Military Formations –

### 1 Brigade – (13)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
3	2	1	2	5

### 2 Brigade – (30)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
7	6	10	2	5



Defence Forces HQ – (6)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
2	4			

Defence Forces Training Centre – (11)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
4	2	2		3

Air Corps – (28)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
18	3	3	3	1

Naval Service – (21)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
4	17			

Complaints Investigated by the ODF in 2018

Complaint Upheld by ODF	Complaint Not Upheld by ODF *	Complaint Partially Upheld by ODF **
3	33	16

\*Includes complaints outside ODF's terms of reference.

\*\* Partially upheld complaints are complaints where the ODF did not uphold a complainant's case in its entirety and cases in which the complaint has not been upheld but where a recommendation was made none the less.

ODF's Recommendation to Minister in 2018

Minister Accepts	Minister Does Not Accept
22	Nil

Note: A Ministerial response was awaited in 30 cases at 31st December 2018

NB: Recommendations are not made in every case, nor are they always made in cases in which complaints are entirely or partly upheld.



## 6

## Case Summaries

The following case summaries set out details of some of the cases investigated by the Ombudsman for the Defence Forces during 2017 and 2018. For reasons of confidentiality names of complainants and other information which might assist in their identification are withheld. In some instances, and for the same reason, some factual information has been changed.

### Case Summary 1

**Ministerial Direction - Appointment of another NCO of a different unit as Programmer in Complainant's Unit – TI 04/02 'Army Trainee Technician Scheme' – Criteria for entry – No legitimate expectation of promotion - Complainant entitled to compete for any promotion vacancy in NCC– Promotion**

The complainant took issue with the implementation by FOCNS of a ruling by the Minister for Defence, regarding the appointment of another NCO of a different unit to be a Programmer in the NCC - the Complainant's unit - and the manner of the implementation of the Minister's direction.

There were four elements to the complaint:

1. The first element was in relation to a 'requirement' which he claimed existed up to the date of action, that entry to the unit (NCC) 'for all members of the NCC, for entry and career progression, commenced at AB rank.' He also referred to it as 'a requirement of all previous entrants together with the requirement of TI16 to revert to AB rank.' With this, the Complainant claimed it was a breach of regulations that this was not applied to the other NCO upon entering the NCC.
2. The second element was that by offering the other NCO a position within the NCC, it impacted the Complainant's career path negatively and affected his rights and entitlements under the regulations, including his legitimate expectations in respect of seniority, promotion and other service matter.
3. The third element was that he claimed 'the original ROW application by the other NCO was resisted by FOCNS on the basis that it would impact unfairly on the present incumbents of the NCC and that apart from legal rights and entitlements it would deliver a great injustice to the Complainant'.
4. The fourth element was the 'strong opinion of the Complainant that the decision to offer redress to

the other NCO could not be vindicated by simply saying that the NS had to comply with an ODF decision (being the ROW Application referred to in (3) above). The Complainant added in that regard that 'by complying, the NS indicated its willingness to disregard the Complainant's legitimate expectations in order to protect those of the other NCO. i.e. by granting the other NCO redress they took away from the Complainant's legitimate expectations.

By way of redress the Complainant sought that the other NCO not be afforded the opportunity to compete for promotion within the NCC.

MIO found that TI 04/02 'Army Trainee Technician Scheme' was the system which personnel received the training and education that qualified them to serve as programmers in the NCC. Applicants for that scheme had to hold Corporal or 3 Star rank with a minimum of two years' service. MIO noted that Corporals who wished to enter the scheme had to revert to Pte rank – the scheme did not refer to POs (which position the other NCO held). MIO noted that the establishment of the NCC provided for 4xPO/Programmers and 2x CPO/Programmers – at that time there was no vacancies for CPO/Programmers in the NCC. The Complainant sought redress by way that the other NCO 'not be afforded an opportunity to compete for any future promotion within the NCC unless he fulfils the criteria for entry into the NCC.'

MIO noted that TI 16 dealt exclusively with the

requirements for advancement and promotion of programmers, which were not to be confused with those for entry into the NCC.

While TI16 outlined the requirements to be an AB/Prog, MIO found that it did not state that those requirements were to be fulfilled exclusively by way of the Trainee Technician Scheme. He concluded that regardless of current practice (that the majority of the NCC received their education under that scheme) there was no requirement under regulation that Programmers who entered the NCC must do so as an AB and that there was no requirement that Programmers who entered the NCC must have received their qualifications through the Trainee Technician Scheme only.

Further, MIO found that neither he nor the Complainant could identify any rights or entitlements in regulations which had been affected by the other NCO's placement in NCC. MIO found that the placement of the other NCO in the NCC was not contrary to any regulation and that no service person, regardless of rank or seniority had a 'legitimate expectation' of promotion. He was of the opinion that in a competitive promotion selection system a 'legitimate expectation' cannot include a guarantee. MIO considered that the FOCNS acted on the Minister's ruling when he placed the other NCO in the NCC and entitled him to '*compete in any future promotion vacancy*' and that it was not now in the FOCNS's power to reverse that placement. The placement of the other NCO in the NCC did not prevent the Complainant from competing in any future promotion competition. – therefor the Complainant had not been wronged. FOCNS concurred with the findings of MIO.

COS agreed with MIO and found that the Complainant had not been wronged in the matter Complainant of. COS found that the direction of FOCNS that the other NCO be 'afforded the opportunity to compete for promotion within the NCC' flowed directly from the decision of the Minister. COS found that the decision to offer the other NCO a career path in the NCC had 'not infringed on the rights of the Complainant'. COS also stated that '*no member of the Defence Forces has a legitimate expectation to be promoted in circumstances where they have not applied for promotion.*' COS also noted that no competition was presently being held for the vacancy in the NCC.

Following the outcome of a promotion competition for the rank of CPO/Programmer in the NCC, where the other NCO was placed above the Complainant on an Order of Merit list, the Complainant requested that his ROW application be forwarded to this Office.

The Complainant also raised new issues/concerns:

- he was still of the opinion that the other NCO was not professionally qualified to hold the rank of CPO or PO Programmer, as laid down in TI16 and CS 4;
- his concern at the poor marks (1 out of 25) he himself received in the competition in the section of 'relevant service at sea' in circumstances where, due to his specialisation in the NCC, the opportunity to serve at sea was not afforded to him. He further claimed, that gave an unfair advantage to the other NCO who had experience at sea in his previous appointment;
- the other NCO had less than 12 months in the NCC whereas he himself had over 14 years' service in the NCC.

Having considered this matter, including previous reports, ODF did not support the redress sought by the Complainant. Further, the other NCO was considered as being in the position of PO/Programmer since February 2008 (not just from 2011) as per the Minister's ruling, and as such was a qualified member to apply for the promotion.

The restrictions sought by the Complainant would be *administratively unsound, unreasonable, and improperly discriminatory* if such were granted. ODF therefore found no evidence to support the Complainant's claim of a *legitimate expectation* of promotion in circumstances where vacancies were filled by a competitive process. FOCNS was acting to implement the instruction of the Minister, not on the (previous) recommendation of ODF and there is no evidence that this impacted on any '*legitimate expectation*' of the Complainant.

Finally, ODF re-affirmed that it does not have a role in overseeing the '*determination*' of promotional policy in the Defence Forces or the '*determination*' of the procedures thereof.



## Case Summary 2

**AF667 – AF 667b – Performance assessment - ‘Average’ rating – A Admin Instr 1/96 Ch13, Annex A – Appropriate Signatory to Part 6 of AF 667 – Delay in receiving AF667 and AF667b – unrecorded interim verbal feedback – No parading**

The Complainant took issue with the assessment of his performance recorded in his AF667, in which he received an “above average” in one of the headings, “average” under 15 of the headings and a “below average” on one heading. His overall performance was “average” and he assessed his “Potential for Promotion” as “Has reached his ceiling”.

In the ‘Narrative’ of the report, it was noted that it had been a particularly busy year and that it was an opportunity for the Complainant to “display his knowledge, organising, and problem solving skills and leadership”. It was concluded that while the Complainant did perform his duties to the best of his ability, he did “not seize the opportunity”. The Reporting Officer also noted that the Complainant appeared to be distracted by ‘personal issues’ and he lacked motivation. The Reporting Officer elaborated on the comment regarding promotion, stating that “based on his performance that year it appeared he had reached his ceiling as an NCO”. The Complainant refuted the comments made by his Reporting Officer in their entirety.

CO concurred with the Reporting Officer’s report, and awarded the Complainant a ‘Final Performance Assessment’ of ‘Average’. The Complainant was not paraded by his CO. The Complainant sought redress

by the following:

- His AF 667 be removed from his record and that a new document be prepared and replace the current AF667 and that any reference to him reaching his ceiling be removed;
- That the remarks in his AF667 be in accordance with the directions contained in ‘Objectives of AF667’ for the compilation of Annual Reports given in A Admin Instr 1/96 Ch13, Annex A;
- Due to the fact that the Complainant was given no interim feedback, via an AF 667B, that his AF667 be removed from his records and a new one prepared to reflect the tasks he was assigned during that period;
- The signatory to Part 6 of his AF 667 should be the Formation EO rather than the OC A Admin – as the Reporting Officer was senior to his Commanding Officer, rendering it unlikely that the content of his report would be overturned by his Commanding Officer.

MIO formed the opinion that despite a number of procedural anomalies the Complainant was not wronged in relation to his complaints. MIO further noted that the AF667 carried an ‘Average’ rating and that was not an overtly negative report and that did not imply that the Complainant’s work was either below average or inadequate. The Complainant



further commented to MIO that he was extremely dissatisfied with the delay in receiving his AF667.

GOC was in general agreement with the conclusions of MIO and found that the Complainant had not been wronged. GOC agreed with the MIO that there was no recommendations for personal improvement in the assessment, which would follow best practice. GOC found that it would have been preferable if the Complainant had been paraded during the reporting period and informed that his performance was a matter of concern for the Reporting Officer. GOC noted that the overall performance assessment of 'Average' meant that his performance met the expectations asked of him. GOC was satisfied that the Complainant's AF667 should remain in his personal file as the record of his service for that reporting period. GOC also adopted MIO's recommendation that the Complainant should be paraded by his CO as soon as possible, to allow him read the relevant Part 6 of the AF667 and to afford him an opportunity to respond in accordance with Admin Instr 1/96, Ch 13, Annex A. GOC directed that the Complainant be paraded and informed of the content of his ruling and that he be given a copy of his ruling and MIO's report.

COS was in agreement with the conclusion of MIO and found that the Complainant had not been wronged, and agreed with GOC that the Complainant should have been paraded by his CO and afforded an opportunity to append any additional comments he wished to make at Part 7 of the AF667. Regarding the issue of the signatory to Part 6, COS agreed with GOC and MIO that in this instance the Form was completed by the correct and appropriate Reporting Officer and CO.

The Complainant further noted that he received the report eight months late, he was not given an AF667b in a timely manner, which would have served as a warning of his low performance.

MIO concluded that the Complainant received no feedback by way of either formal parading or AF667b. However, it was confirmed to the MIO that the Reporting Officer gave informal verbal feedback to the Complainant, including tasks that had not been completed, the need for accuracy and timelines in completing work and the standards expected of an NCO of his rank. The MIO concluded that a formal written record should have been made of any parading in relation to the Complainant's performance.

MIO found that the Complainant had not been wronged on any of the four grounds on which were identified in his complaint. MIO did find that the late delivery of the AF667 was not acceptable, and this reduced the time for the Complainant to correct or consider his shortcomings. MIO further found that the Complainant's CO did not paraded him in order to give him an opportunity to append his further comments to Part 7 of the AF667 for 2012 –MIO recommended that this be addressed at the earliest opportunity. MIO recommended that a greater emphasis be placed on timely completion of AF667 reports throughout the Defence Forces. MIO also recommended that guidelines should be developed regarding interim AF667bs and when they should be completed.

ODF could not find a basis to uphold the Complainant's complaints regarding his assessment. ODF confirmed that MIO provided an independent report as she found procedural irregularities and inadequacies and recommended that they be addresses/changed. ODF did not uphold the complaints made and does not recommend any of the forms of redress sought by the Complainant.

With regard the delay in finalising the AF667, ODF found that it was contrary to fair or sound administration and recommended that the Complainant be given a suitable expression of regret by his CO or a senior Formation HR officer and that measures are taken to ensure future compliance with time guidelines for AF667s. ODF flagged that the 'personal issues' mentioned twice in the report, were not elaborated on, and the Complainant neither confirmed nor denied any such personal issues and did not seek to rely on same to mitigate for his lower than hoped for performance assessment. ODF further found that whilst the final report gave the Complainant an 'Average' rating, it could not be considered to be an 'Unsatisfactory' report. As such there was no clear sign that an AF667b was required, although in hindsight it would have been of assistance to the Complainant to focus (re-focus) on and address areas in which he could have improved. ODF found that satisfactory measures had already been taken, or had been proposed by GOC and COS in their considered findings, to remedy, mitigate or alter the adverse effect of any of the procedural inadequacies identified in this report on the Complainant.





### Case Summary 3

**RDF – Discharge - Discharge from RDF for no-activity subsequently declared void – Camp and gratuity allowances – Means of informing RDF members of training – Non effective registers - Jurisdiction – Time limit – Ombudsman for the Defence Forces Act 2004, s. 5 - DFR R5, paras 39, 40, 49, 50, 71, 75 and 91**

The Complainant in this case sought to recover camp and gratuity entitlements for three years during which he had been discharged from the RDF. The Complainant maintained that he had never requested discharge and on the matter being enquired into by the DF his discharge was declared void *ab initio* as no personal application for discharge could be found.

The Complainant then sought payment of camp and gratuity allowances for the three years during which he was discharged. The Complainant had not been active in the RDF during this period. The Complainant's CO noted that the Complainant had not met the requirements of DFR R5 para 91 in that he did not complete a continuous period of seven days training during the years he was seeking to recover for. The MIO also concluded that having not attended training or camp he was not eligible to be paid for duties which he did not carry out and as he did not complete the minimum of seven days training provided for in DFR R5 para 40 he did not qualify for payment of a gratuity under para 91. The Formation OC concluded that the Complainant had not been wronged and the COS concluded that any wrong in the Complainant's discharge had been remedied by his re-engagement. Both the MIO and COS noted that the method by which members of the RDF be informed of upcoming training needed to be addressed and the COS directed that an inspection of non-effective registers throughout the RDF and a

review the regulations regarding informing personnel of upcoming training be undertaken.

The Complainant requested referral of his complaint to ODF. ODF noted that the referral to it was made well outside the statutory limit of 12 months from the date upon the Complainant became aware of his discharge. As such, ODF concluded that the Complainant's complaint as regards his discharge was not within its jurisdiction. In any event ODF noted that his re-instatement without breach of service and with retention of rank could have constituted a satisfactory measure to remedy, mitigate or alter the adverse effect of the action complained of and to have provided an adequate remedy.

In so far as his complaint as regards non – payment was concerned, this could be considered to be a continuing action from the point of him becoming aware of his discharge on and was therefore within ODF's jurisdiction. ODF noted that DFR R5 para 75 required attendance at courses of training or instruction or engagement on security duties in order to render a member eligible for pay and gratuities. As the Complainant had not met these criteria due to his non-activity within the RDF during the relevant period he had not been wronged. ODF did recommend that the Minister consider requesting a follow up report from the COS on any actions taken on foot of the complaint.







## Case Summary 4

**Logistics Accountancy Course – Marking criteria – Different methodologies used by different Unit Comds – Disparity in marks awarded relative to actual experience – Absence of explanation for marks awarded to candidates - Whether exclusion of overseas service in acting rank because of time limit arbitrary - Whether criteria consistent -**

This complaint concerned the Complainant's non-selection for a Logistics Accountancy Course. The Complainant maintained that he had been unfairly marked under a number of headings and that the competition was subject to a marking system which was inconsistent and unregulated. The Complainant sought to be offered a place on the next similar course irrespective of any changes in qualification criteria in the interim (ODF understands that since initiating his complaint the Complainant has successfully completed the course in question). The Complainant was also, very understandably, critical of the delay in ODF in concluding its investigation in the case.

The MIO concluded that there appeared to be different methodologies used by Unit Comds in assessing candidates. He noted that as a result of this a number of candidates who had less experience and service than the Complainant received higher marks from their Unit Comds, leading to different results across the same criteria. He concluded that there was a large disparity between the marks allocated and the means / criteria as to how those marks were allocated to the candidates concerned. The MIO concluded that there was a disconnect between the methodology used at Unit level and that used at Bde / Selecting authority level and that the Complainant would have been selected for the Logs Accountancy Course if his marks in the contentious areas were higher. He found that the Complainant had been wronged as a result.

The Complainant's GOC effectively reversed the majority of the MIO's findings and decided that the Complainant had suffered no wrong. He did, however, make a number of observations and recommendations and directed the Logs Officer 1 S Bde to review selection procedures with particular reference to overseas experience and marking schemes and to look favourably on any future application by the Complainant for the course in question. The COS largely agreed with the GOC's Report though he noted that the complaint highlighted an issue with the current document regarding the selection of personnel

for career courses and that D COS (Sp) Letter of Instruction dated 31 July 2006 was currently under review.

ODF noted the findings of the MIO and the fact that they were not specifically challenged by the GOC in his report on the matter. ODF also noted the MIO's criticism that the Complainant's service with TChad as an A/CQMS for a period of three months was apportioned no marks whatsoever. This could not be said to be an unreasonable criticism as three months service in Chad ought to attract some recognition in terms of marks awarded. It seemed that a cut-off point of four months was somewhat arbitrary and ignored potentially relevant experience when compared to such service for periods in excess of four months.

ODF further noted with concern the findings of the MIO as to the variation in marking by Unit Comds which indicated a dysfunction in the marking system as it then existed. The MIO's reference to "numerous examples" of candidates receiving high marks without any explanation or justification appearing in the 'Remarks' column of the assessment documentation was further evidence of that marking system being, at least in part, dysfunctional.

ODF found that the marking system for this particular course was unfit for purpose and failed to adequately and fairly assess the Complainant's application for the course. The marking system was incapable of providing the information necessary to permit the fair selection of candidates for the course because of the inconsistencies referred to by the MIO. ODF expected that, some 6 years after the complaint arose, steps had been taken to ensure that the flaws and inconsistencies identified by the MIO in his Report had been corrected. If they have not ODF strongly recommended that such steps be now taken.

## Case Summary 5

### Air Corps – Flying duties – Medical care outside DF — Safe Flight Operations

The Complainant, a Flight Officer of the rank of Cpt, challenged his removal from flying duties and the manner in which he was removed, alleging it was an “unfair and unjustified removal from flying duties” He sought by way of redress, reinstatement to flying duties “with immediate effect”.

The complaint was made against a background of what the Complainant described as “a non-standard medical examination in 2009” and a request to have a medical examination conducted by a doctor other than the Medical Officer (MO) designated to conduct same, which was not subject to a ROW application. The Complainant remained dissatisfied with how that matter was dealt with, and voiced his concerns on a number of occasions between 2009 and 2015. The Complainant alleged that a report issued (within the DF) in relation to that matter was in the style of a cover-up.

An MIO was appointed but he ultimately found that he was not in a position to determine the matter. In particular he could not determine if the Complainant’s OC was justified in his actions nor was he qualified to determine if he was fit to fly.

The MIO found that the Complainant had been wronged in the manner in which he was advised of the detail relating to his removal, and in relation to engagement with his following the positive results of his medical examination undertaken by MO and his conclusion that there was “no medical reason making him unfit to perform his duties.” MIO recommended that the Complainant be provided with “a detailed explanation of the reasons for continued removal from flying duties”.

The GOC broadly agreed with MIO’s Report and Conclusion. In relation to the substantive issue of the decision to remove the Complainant from flying duties, GOC found that the Complainant had not been wronged. COS expressed his “full” agreement with the MIO’s findings but was critical of the timing of the decision to suspend him from flying duties, and he expressed his unreserved apology to him in relation thereto.

The ODF outlined that a decision regarding the suitability of pilots to fly is one that must take into account relevant criteria to ensure public safety including the safety of those on board the aircraft and the pilots themselves, and if necessary to err on the side of caution. Periodic medical examinations of pilots is a necessary aspect of their profession. The assessment conducted by the MO was based on routine medical examination based on medical information as presented by the Complainant and did not (and could not) exclude other relevant considerations in the assessment of his suitability to fly.

The ODF found that the Complainant’s complaint could not be upheld and agreed with the DF conclusion regarding the initial failure to communicate with the Complainant as to the reasons for the decision. This communications issue was subsequently rectified. The ODF noted that the decision to suspend the Complainant from flying was made for operational and safety reasons in respect of a particular period of time (approximately three months). It did not disqualify him as a pilot indefinitely and left him free to resume flying following his retirement from the DF subject to the rules and procedures pertaining to civil aviation generally, including a medical assessment.





## Case Summary 6

Training Course – Successful application and aptitude test - Interview offer withdrawn – Not recommended by superior officers before aptitude test– 2009 Formation Commander’s Directive – DF delayed referring ROW - Advertising course Outside Formation – Advertising course Without Qualification - Administrative Error

The Complainant took issue with being excluded from attending for interview for a particular military course of training due to be conducted by another Service Formation of the Defence Forces, in circumstances where he was initially invited to apply and applied for the course, successfully underwent aptitude tests, and was shortlisted for interview, despite being ‘not recommended’ by his CO. By way of redress the Complainant sought that he be afforded an opportunity to be interviewed for a place on the course.

The Complainant was not recommended by his superior officers in his own Service Formation as he had previously applied for and been selected for lengthy and expensive training as a Computer Programmer. His superiors considered his expensively acquired skills were in short supply and to then consider extensive and expensive retraining in an entirely new discipline would be a waste of limited human and financial resources, and contrary to any reasonable concept of value for taxpayers’ money. The application to undertake the course was nonetheless forwarded to the other Formation, the Complainant was invited to undertake the aptitude test and was successful in it. The Complainant was subsequently given notification, both orally and by email, by a senior NCO of his own Formation that he was to attend for the interview. Two days later, the Complainant received an email from a senior officer of his own Formation, to which was attached an email from the OIC EPMO, which outlined a direction, or order, from the DCOS (Sp) that the Complainant would not be interviewed for the course. The same direction, or order, was applicable to the other two applicants from his Formation. No reason for that direction, or order, was given to the Complainant at that time. It later transpired that the Formation Commander had directed that *‘COs are not to recommend applicants for transfer, or for courses which will lead to transfer to [other Service Formations]. Transfers of individuals on compassionate grounds will only be approved in exceptional circumstances.’* He added that the reason for such non-recommendation would then

be recorded as *‘due to the exigencies of the Service’*. Investigations revealed a Formation Commander’s directive in 2009 that ordered COs not to recommend personnel for courses that would lead to transfers out of the particular Service Formation in order to prevent a negative impact on operational ability, rotations and to prevent key expensive and long term skills being lost to his Service Formation. CO’s non-recommendation of the Complainant’s application for the course in question was in keeping with the aforementioned directive. MIO noted that the calling of the Complainant for aptitude testing was a *‘breakdown of the system’*, in circumstances where he had not been recommended both on policy grounds and on the current *‘exigencies of the service’*. MIO noted that although the Complainant had been briefed on both the policy and exigencies considerations he had chosen to assume that receiving notice that he was to report for aptitude testing had superseded the policy and exigency considerations. MIO found that DCOS (Sp) directive clarified the situation for the Complainant. He also noted that the Complainant stated that he was not disputing the right of DCOS (Sp) to make such an order but felt that he should be given an explanation. The Complainant did not accept that his employment in the Defence Forces was in his Service Formation as had been explained to him. The Complainant also felt that the current shortage of manning and particularly the issues of personnel with a heavy investment of funds and time into their qualification should not be taken into account when assessing an application for a course that might lead to a transfer out of his Service Formation. MIO opined that the Complainant had suffered no wrong. The Service Formation Commander concurred with the findings of MIO. COS was in general agreement with the conclusions of MIO and he found that the Complainant had not been wronged. There was a seven month delay in forwarding the ROW application to this Office, which delay was attributed to an ‘administrative error’, for which a full apology issued to the Complainant and a review of office procedures conducted to ensure that such delay is not repeated.

In response to ODF's invitation to the military authorities to advise whether any additional reservations or qualifications for personnel applying for the course, such as operational requirements, skills shortages or inter Formation transfer restrictions, were published when the course was advertised in ROs, the military authorities confirmed that 'it does not appear that any ... such ... restrictions were published'. The military authorities confirmed that such reservations were addressed in the Formation Commander's directive issued in 2009. It was acknowledged by the military authorities that 'the appropriate action at the time would have been to advertise the course in ROs with additional reservations'. MIO confirmed that the Complainant 'was briefed by his CO and by his unit Commander on the 2009 policy, the exigencies at the time and the reasons for the non-recommendation of his application'.

In response to ODF's invitation to the military authorities to advise him whether any reservation was appended to the Complainant's application to undergo the course when it was being forwarded to the other Formation, he was informed that no such reservation was appended, other than that the application itself indicated that the Complainant had not been recommended. The military authorities accepted that allowing a non-recommended application to go forward led to some confusion, which was clarified by the directive of the DCOS (Sp) shortly afterwards. ODF was not offered any explanation as to why the Complainant's candidature was not halted prior to the aptitude test. The military authorities advised that it was likely that the Complainant's Formation superiors were aware at the time that he had been invited to attend for aptitude tests. However they have been unable to clarify the matter due to time elapsed and changes of appointments since then. The military authorities were clear 'that the invitation to attend the aptitude tests was extended in circumstances where the Complainant had already been advised by his superiors of the non-recommendation of his application, the policy in place and the exigencies of the service at the time'.

The Complainant failed to respond to ODF's query as to whether he was made aware of the reasons for not permitting his candidature to continue. The military authorities stated that '*the Complainant was advised by his superior officers of the reasons for the non-recommendation of his application when his*

*application was received*'. The Complainant failed to inform ODF as to whether he was aware of any of the reasons given for the non-recommendation of his application for the course prior to, or at the time of, his application for it.

The Complainant was of the view that he was severely restricted in terms of his future prospects in the Defence Forces as a result of undertaking the Trainee Technician Scheme courses completed by him. The military authorities were dissatisfied that '*the Complainant was afforded a valuable opportunity to undertake a full-time degree and, having developed his skills ... qualified as a ... technician in receipt of Tech 5 pay*'. In such circumstances the military authorities '*do not agree that the Complainant's completion of the Trainee Technician Scheme can be viewed as having restricted his future prospects in the Defence Forces*'.

ODF made the following findings and recommendations:

No explanation was offered as to why the Course in question was advertised at all in the Complainant's Formation ROs or, if the Formation was required or directed to do so, why the restrictions later imposed were not signaled in the RO advertisement.

Advertising the Course, without qualification, in Formation ROs in 2011, in circumstances when there already existed a 2009 Formation directive precluding the participation of practically all personnel of the Formation in courses which could lead to transfers out of the Formation, was an '*administrative error*'. If repeated it could constitute an '*undesirable administrative practice*'.

The Complainant was aware of his Formation Commander's 2009 directive, at the latest, when his application was not recommended at Formation level.

Considering the specialist skill set requirements of the Complainant's Service Formation, operational requirements did exist. It might reasonably have been expected that the Complainant would not or could not have been considered as a candidate for the initial aptitude test without the prior recommendation of his CO and/or of his senior Service Formation authorities. Relevant factors in the granting of such a recommendation could reasonably have included the



operational requirements, the particular skills of the Complainant and/or a notified “pay-back” period for the course previously undertaken before the expiry of which he could not expect to be considered for a further course.

There was no evidence that the decision of the Complainant’s CO, for the reasons given by him, not to recommend the Complainant’s application to undergo the Course was either unfair or unreasonable.

There was no evidence that the directive of the Complainant’s Service Formation Commander, issued in 2009 for the reasons given therein, was either unfair or unreasonable.

There was no evidence that the administrative decision/direction of the DCOS (Sp), not to allow the Complainant to attend for interview for that course, was either unfair or unreasonable. In the military exercise of an administrative authority resulting in a ‘decision’ or ‘direction’, this Office recommended that reasons for the ‘decision’ or ‘direction’ be given whenever possible. ODF was not persuaded that an ‘order’ was issued by the DCOS (Sp), but if it was,

reasons for such an ‘order’ would not have been necessary.

Whenever an administrative decision or direction is made which has a serious potential to adversely effect the future career prospects of a serving member of the Defence Forces, ODF recommended that consideration be given to providing for an integral administrative appeal/review process against the unfavourable decision or direction where appropriate.

The advertising of the external course in Formation ROs, without mention of pre-existing Formation specific restricting criteria, was unfair to applicants from the Formation. Formation applicants were allowed to become candidates for the course. Their hopes of selection were allowed to rise, *albeit* not to the level of a ‘*legitimate expectation*’, when there was no realistic possibility from the beginning that they would be permitted to undertake the course.

To allow the Complainant’s candidature to progress as far as being called for interview was an ‘*administrative error*’, which this Office recommended be acknowledged to the Complainant by a senior Formation HR officer.



### Case Summary 7

**Promotion competition – RDF – Interviews held but no promotion ever made – Promotions stalled pending outcome of Value for Money Report on RDF – RDF subsequently reorganised - Reasonable expectation of promotion – Failure to inform candidates of reasons for delay - Whether obligation to complete promotion once interviews held**

This complaint concerned the Complainant's participation in a promotion competition for the rank of Comdt in the RDF. A Convening Order for the position was made and candidates were interviewed, however, the position in question was not ultimately filled. This occurred in circumstances where a stay was placed on all RDF promotions pending the conclusion of Value for Money Report on the RDF undertaken with a view to its reorganisation. A reorganisation of the RDF was subsequently implemented involving the reassignment of some RDF personnel in the light of the report's finding that there was a significant surplus of certain officer ranks in the RDF, including that of Comdt. Previously intended promotions were not proceeded with, including the promotion from the competition in which the Complainant participated.

The Complainant maintained that there was an expectation that he had a considerable chance of being promoted due to his seniority, his senior appointment held, his extensive experience and skill

sets gained in commissioned rank. He noted that no explanation was given as to why the process was not completed and that he was not notified as to the outcome of the convening boards findings or of why this had happened. Indeed he only became aware of the reason during the ROW process. He sought by way of redress that the findings of the Convening Board be published and the successful candidate be promoted. He asked that if that candidate was himself and that if no that no vacancy now existed as a consequence of the reorganization of the RDF that he either be promoted to serve on the General List without an appointment or that he continue to serve in his present rank and appointment until reaching the age of retirement applicable to Comdt. rank. The Complainant subsequently retired from the RDF on age grounds and asked as further redress that his relinquishment of commission was amended to read Comdt. instead of Capt.

The MIO concluded that it was "unfortunate" that no





explanation had been provided to the complainant as to the delay. He also found that it was understandable and unavoidable that due to circumstances outside the control of the Defence Forces that the reorganisation of the Defence Forces including the RDF would result in a delay in dealing with promotions for RDF officers. The MIO therefore found that the Complainant had not suffered any wrong either by reason of his expectation for promotion or the delay in notification of the outcome of the interview process. Both the Complainant's GOC and COS essentially agreed with the MIO's conclusions. The COS noted that simply being interviewed did not afford a right to any individual to be promoted.

ODF agreed with the COS's observation that simply being interviewed did not afford a right to promotion. ODF also found that a Promotion Competition or Interview process intended to identify a suitable candidate for promotion or to fill a specific position was not absolutely bound to produce a result in the sense of a successful candidate or candidates. This position was as true in the military setting as in the civilian world. It might be the case, for example, that no suitable candidate was identified or for some other reason the selection of a candidate became impossible. ODF also noted that the outcome in this process was outside the control of the DF and that it did not appear to be the case that the promotion

process was initiated or interviews conducted in the knowledge that its intended conclusion would be rendered impossible.

ODF did find however that the Complainant (and indeed the other candidates) ought to have been informed of the outcome to the Promotion Competition within a reasonable period of time. This was only done belatedly and as a consequence of him pursuing a ROW. In this case, the Complainant should have been advised that the Promotion Competition would not produce a winning candidate for the reasons now known. To this limited extent, ODF was satisfied that the Complainant was wronged. ODF recommended that in circumstances where a Promotion Competition does not reach a conclusion within a reasonable timeframe the participating candidates should be advised of the reasons for either there being no conclusion or a delayed conclusion. This was in the interests of fairness, transparency and to ensure continued personnel respect for the promotion processes within the DF.

ODF also acknowledged, with regret, that there had been a significant delay in the investigation and provision of a Report by ODF. However, it was to be noted that the ROW outcome would not have been different even if it had been dealt with at a significantly earlier stage.









## Case Summary 8

**Non-Promotion to A / Capt rank – Finding of Medical Board that Complainant below DF Medical Standards - DCOS recommendation of retirement from DF – Failure to promptly inform Complainant of non-recommendation – Failure to inform Complainant of reasons for non-recommendation – Letter of non-recommendation not giving reasons for same – Potential consequences for civilian employment - Defence Act 1954, s. 18 (1) (a) - Admin Instr A15 (e) / Annex E**

The Complainant in this case sought to redress his non-promotion to the rank of A / Capt. His GOC had not recommended him for promotion as he had previously recommended the Complainant's retirement following the results of a Medical Board assessment of him as "Below Defence Forces Medical Standards". That medical grading was the subject of an unsuccessful appeal by the Complainant. The DCOS was, as a result of this medical assessment, recommending the Complainant's retirement to the COS. The Complainant maintained that as no decision had been made on his future in the Defence Forces and his case was still being dealt with within the structure of the DF it was unfair to deny his promotion based on an outcome which was still pending a final decision. The Complainant was also critical of the manner in which he was advised of the decision not to promote him, claiming that this left him feeling poorly treated.

The MIO concluded that the GOC's non-recommendation of the Complainant for promotion was reasonable and logical. The MIO also commented that, in his view, the Complainant ought to have been familiar with the restrictive effect on his promotion prospects arising from his medical grading. The COS essentially agreed with the conclusions of the MIO.

ODF noted that even if there had been no recommendation for early retirement in existence at the relevant time promotion would have not been possible because of the Complainant's medical grading, owing to Admin Instr A15(e). The two issues, the medical grading and the retirement recommendation, were clearly inextricably linked, and separately, or together, proved fatal to the Complainant's expectation of promotion. ODF was therefore satisfied that the Complainant's substantive complaint of non-promotion could not be upheld.

ODF did however have some concerns relating to the manner in which relevant information was

conveyed, or not conveyed, to the Complainant. The Complainant did not appear to have been advised of his negative recommendation for promotion at the time or indeed until several months after it was made. Presumably, the Complainant's fate (in terms of his expected promotion) was sealed and known by those in authority well before he was so informed. In those circumstances, and in the interests of fairness, the Complainant ought to have been advised, even informally, that he should not expect promotion at that time.

It might well be the case that the Complainant may have been, or ought to have been, aware that his medical grading rendered his promotion impossible at that time. However, expecting the worst was no substitute for being properly informed by his superiors that he was not to be promoted. ODF recommended that formal decisions not to recommend promotion for any reason be communicated without delay (i.e. as soon as is practicable after they have been made) to DF members affected together with the reason(s) for same.

ODF further recommended that a senior officer write to the Complainant stating that the reason for his non-promotion in 2016 was the fact that his GOC had recommended his early retirement from the DF because of his medical grading determined in 2015. As the original letter to the Complainant made no specific mention of the medical grading being the reason for the recommendation that he be retired early it, on its face, allowed for uncertainty and / or speculation as to why the Complainant's career and promotion prospects were shortened and compromised respectively. It might, therefore, create a difficulty for the Complainant in securing civilian employment. It was likely that any potential civilian employer would want an explanation as to why the Complainant left the DF early and at a relatively junior rank and the letter recommended by the ODF might assist in this regard.

## Case Summary 9

**Discharge – Non-recommendation for re-engagement – Military Conduct Rating ‘Unsatisfactory’ – Complainant absent and non-effective for significant periods – ‘Temporary Good’ rating – Personal difficulties – Whether DF required to allow Complainant further opportunity to serve on a ‘temporary good’ basis – ‘Serving without engagement status’ – Jurisdiction – Ongoing complaint – DFR A8, para. 40 (2), A10 – Defence Act 1954, ss. 53, 63, 64 and 69**

The Complainant in this case submitted a ROW arising from a decision by his CO not to recommend his re-engagement to complete 21 years’ service on the termination of his then 12 years’ service engagement. In support of his non-recommendation, the Complainant’s ‘military conduct rating’ was assessed by his CO as being ‘Unsatisfactory’. The Complainant had a significant level of absenteeism over a considerable portion of his first 12 years engagement in the Permanent Defence Force. There had been a previous request from the Complainant’s Coy Comdr to his CO in 2010 for his discharge from the DF on the basis of ‘a significant pattern of non-effective service’. The 2010 discharge request was not implemented at that time but the Complainant was later paraded and informed that his absence record may have implications for his ‘conduct rating’ as per DFR A 8, Para 38, which in turn may have negative consequences on any future Extension of Service. The Complainant’s CO ultimately certified the Complainant’s ‘military conduct rating’ as being ‘Unsatisfactory’ and for that reason did not recommend the Complainant’s application for Re-Engagement.

For his part the Complainant alluded to a number of personal difficulties he had experienced leading to difficulties with alcoholism. He acknowledged that he had succumbed to his difficulties which resulted in a record of absence. However, he claimed that he had a good record for the previous nine months and had not been absent or disciplined during that period. He asked that his period of sobriety, the progress he had made and the testimonials of work colleagues be given due recognition and that he be permitted to remain in service. He also referred to the ‘Temporary Good’ rating permitted under para. 40 (2) of DFR A8. He asked to be afforded the opportunity to further prove himself. He acknowledged that his conduct had led to the situation he was then in and emphasised the strides he had made to rehabilitate himself. The Complainant further maintained that he had not previously been

made aware of the potential consequences of his behavior for any extension of his service.

The GOC found ‘numerous references’ to the Complainant being informed of the consequences of him being assessed as ‘Unsatisfactory’ in his AF 667Bs which were contained in his file. From those entries the GOC found that he could not agree with the Complainant that he had not been warned of the consequences of him being assessed as ‘Unsatisfactory’. The GOC also noted that the Complainant had more recently again been charged with a number of absences. The GOC stated that the Complainant did not meet the criteria for ‘Good’ in accordance with DFR A 8 Para 38 (c). Neither did he meet the criteria for ‘Temporary Good’ in accordance with DFR A 8 Para 40(2). In the circumstances the GOC recommended that the Complainant’s application for re-engagement should not be approved. The Records and Data Management Officer, as the ‘Prescribed Military Authority’ in accordance with DRF A 1 Para 6, then issued his decision not to approve the Complainant’s application for re-engagement. DCOS, having considered the Complainant’s appeal, directed his discharge.

The Complainant submitted a ROW, maintaining that he had not been permitted to serve on a ‘serving without engagement status’ which would have permitted the Defence Forces to discharge him with immediate effect should he transgress during that period. He maintained that he was not given adequate time to repair his reputation prior to the initiation of his discharge proceedings and that the current regulatory provisions were so inflexible as to require his discharge, without considering his current status *vis a vis* his current health. DCOS directed that the Complainant’s GOC should not be involved in the ROW process as he had already been involved in the decision not to re-engage the Complainant in 2015. DCOS further directed that the discharge



proceedings be halted pending the outcome of the ROW application.

The MIO found and noted four AF 667Bs on the Complainant's file which recorded that the reporting officer had informed the Complainant that his conduct rating had been downgraded to 'Unsatisfactory' and that such a rating would have repercussions for his future re-engagement in the Defence Forces as laid down in DFR A 10. In each case the MIO noted that the Officer involved had stated that the complainant had acknowledged the awarding of the conduct rating and what it would mean for his career thereafter. The MIO concluded that Complainant had not been wronged and that the Defence Forces had already retained him in service for a period of 12 Months on a serving without engagement basis.

The MIO also concluded that the Complainant had transgressed during the time leading up to the end of his engagement which prohibited the awarding of a 'Temporary Good'. Because there were no applications for overseas service on the Complainant's file the MIO concluded that he had not applied for any overseas tour of duty since 2004 which resulted in him not meeting the criteria laid down in DFR A 10 in that regard. The MIO tried to contact the Complainant by phone to inform him of his recommendations. Having failed to make contact with him the MIO contacted the Complainant's unit and was informed by his Coy Sgt that the Complainant had been absent from his place of work for the previous days. Both the GOC and DCOS found themselves in agreement with the MIO's finding that the Complainant had not been wronged.







The Complainant referred the matter to ODF. ODF noted that while a period of more than 12 months had elapsed between the recorded date of the alleged action and the date of referral of the complaint to it, ODF was satisfied that the Complainant's ROW application comprehended, by implication, all of the subsequent actions of the military authorities in investigating same and, as such, the complaint was referred to it within the time limit. Having reviewed the legislation pertaining to re-engagements, ODF noted that Section 64 of the Defence Act clearly specified two conditions precedent to re-engagement after service of the term of a member's original enlistment. Firstly, the member must have the recommendation of his Commanding Officer and secondly, he must have the approval of the prescribed military authority. It appears clear that the Complainant did not meet either of those conditions. ODF noted that DFR A10 required that re-engagement shall not be authorised unless the member's military conduct was assessed not lower than "Good".

On reviewing the Complainant's case ODF found no evidence of unfair procedures or of a denial of the principles of natural justice. ODF was of the opinion that there was no evidence to suggest that any of the statutory, regulatory or administrative requirements in this regard were not fully complied with. Having regard to the prior cautions given to the Complainant in his AF 667Bs, ODF was of the view that he could not have been under any doubt as to the seriousness of his situation. In the view of ODF there was no administrative failure or unfairness on the part of the military authorities in this regard. ODF could not substitute its view for that of the military authorities as to the appropriateness or otherwise of a decision to apply for the discharge of a serving member. Neither was it the role of ODF to provide a further avenue of appeal against a decision of an authorised military authority to order the discharge of a serving member where due process has taken place. ODF's role was limited to oversight of compliance by the relevant military authorities with the applicable provisions of the Defence Act and of the DFRs and the fairness of the administrative actions taken in that regard. In this regard, having considered the Complainant's complaint, ODF concluded that there was no evidence of non-compliance with same and the Complainant had not been wronged.



## Case Summary 10

**Non-Selection for Posting– Selection Criteria - No previous Service, then Seniority – successful candidate had service – Conflict of Evidence as to selection criteria communicated orally – Clarity on Criteria recommended.**

The Complainant was one of three applicants for Pte General Duties with No. 1 Security Coy, 1 S Bde. He and another applicant were paraded and informed by Comdt. that they were not selected and that the criteria for selection was no previous service, and then seniority. The Complainant maintained that Comdt. stated that as all candidates had not previously served with No. 1 Security Coy the most senior candidate was selected. Following this he overheard the other unsuccessful candidate say that both he and the successful candidate had previously served with No. 1 Security Coy in 1993. He believed that information was not presented to the Interview Board and as a result, he suffered a wrong in the selection process.

The Complaint informed the Interview Board of the previous service with No. 1 Security Coy of the other two candidates. The Interview Board opted to remain with the original decision as all three candidates were eligible for appointment and were ranked according to seniority. The Interview Board did not feel that it was fair to exclude the successful candidate on the basis of similar service 17 years previously and at a time when the appointment was not as financially lucrative. Comdt. stated that he may have said that the senior man would get the job unless he had served in Security Coy ‘previously’ or ‘recently’. He was unable to recall which word he used but he meant ‘recently’ as that was the actual criterion used. It was noted that previous service of the other two candidates with Security Coy was clearly recorded on the AF43A’s and therefore the Interview Board was aware of that previous service. It was concluded that the Interview Board made their decision in possession of all relevant and necessary information, that the criteria was applied in a fair consistent and objective manner and that consequently the Complainant suffered no wrong requiring redress. MIO recommended that to avoid similar misunderstandings in the future where criteria additional to that laid down by Routine Orders was used it should be clearly specified. MIO also recommended that in future unsuccessful candidates should be informed of the result of a Competition

individually rather than collectively. COS was satisfied that the Complainant had not been wronged. However, he accepted that a misunderstanding had occurred which was caused by Comdt. stating “all things being equal, the senior man would get the job, unless he had been in previously or recently.”

ODF considered there to be a clear conflict of evidence as to what precisely was said by Comdt. as to the relevant criteria for the selection process. This Office confirmed that there was nothing to suggest that there was any predetermination of the competition or intentional exclusion of the Complainant on the part of Comdt. ODF accepted the Complainant’s recollection of what was said by Comdt.

ODF was satisfied that the Complainant was wronged in that specific selection criteria for the competition as expressly advised to candidates (including the Complainant) was not followed and that probably resulted in the Complainant’s failure to secure the position.

Therefore, ODF recommended that if the Complainant had not applied for selection to serve in 1 Security Coy since July 2010, he be apprised of his entitlement to seek selection (assuming that he satisfies relevant selection criteria) and that his candidacy be favourably considered.

Finally, it was recommended that vague terminology be avoided where possible in circumstances where it is deemed necessary or appropriate to indicate selection or qualifying criteria for vacant positions/promotions and that, unless impractical, it be recorded in written format.



## Corporate Affairs

### Staffing

The staffing of the ODF consists of:

- Brian O'Neill, Head of Office
- Michael O'Flaherty, Case Manager
- Lauren O'Donovan, Administrative Assistant

### Review of Internal Financial Controls

In common with other publicly-funded Offices, the ODF conducted a formal review of Internal Financial Controls in 2017. This review has been provided to the Comptroller and Auditor General. A comprehensive budgetary system is in operation and expenditure trends are reviewed on a quarterly basis in association with the ODF's external accountants.

### Data Protection

The Office of the ODF is registered with the Data Protection Commissioner.

It should also be noted that secrecy of information provisions are applied to the ODF under section 10 of the Ombudsman (Defence Forces) Act 2004 as follows:

10.—(1) The Ombudsman or a member of the staff of the Ombudsman (including an investigation officer) shall not disclose any information, document, part of a document or thing obtained by the Ombudsman or an investigation officer in the course of, or for the purpose of, a preliminary examination or an investigation under this Act except for the purposes of—

- (a) the preliminary examination or the investigation concerned,
- (b) the making, in accordance with this Act, of any statement, report or notification on that preliminary examination or that investigation, or
- (c) proceedings for an offence under the Official Secrets Act 1963 that is alleged to have been committed in respect of information or a document, part of a document or

thing obtained by the Ombudsman or an investigation officer by virtue of this Act.

- (2) The Ombudsman or a member of the staff of the Ombudsman (including an investigation officer) shall not be called upon to give evidence in any proceedings, other than proceedings referred to in *subsection (1)(c)*, of matters coming to his or her knowledge in the course of a preliminary examination or an investigation under this Act.
- (3) (a) The Minister may give notice in writing to the Ombudsman, with respect to any document, part of a document, information or thing specified in the notice, or any class of document, part of a document, information or thing so specified, that, in the opinion of the Minister, the disclosure (other than to the Ombudsman or a member of his or her staff including an investigation officer) of that document, that part of a document, that information or that thing or of documents, parts of a document, information or things of that class, would, for the reasons stated in the notice, be prejudicial to the public interest or to security.
- (b) Where a notice is given under this subsection, nothing in this Act shall be construed as authorising or requiring the Ombudsman to communicate to any person or for any purpose any document, part of a document, information or thing specified in the notice or any document, part of a document, information or thing of a class so specified.
- (4) Where a notice is given under *subsection (3)(a)*, the Ombudsman or a member of the staff of the Ombudsman (including an investigation officer) shall not disclose any—
  - (a) document, part of a document, information or thing specified in the notice, or







(b) class of document, part of a document, information or thing specified in the notice, to any person or for any purpose and nothing in this Act shall be construed as authorising or requiring the Ombudsman or a member of the staff of the Ombudsman (including an investigation officer) to disclose to any person or for any purpose anything referred to in *paragraph (a) or (b)*.

### Bar Council of Ireland

The ODF is registered under the Direct Professional Access Scheme of the Bar Council of Ireland. The ODF utilises the services of barristers to review case files in appropriate circumstances.

### Health & Safety

The ODF has a Health & Safety Statement in place. The Health & Safety Policy regarding the building, in which the ODF is accommodated in, is primarily the responsibility of the Department of Foreign Affairs and Trade.

### Freedom of Information

Under the provisions of the Freedom of Information (FOI) Act 2014 individuals have a right to:

- Access records held by a Government Department or certain public bodies, including the ODF;
- Request correction of personal information relating to an individual held by a Government Department or certain public bodies, including the ODF, where it is inaccurate, incomplete or misleading;
- Obtain reasons for a decision made by a Government Department or certain public bodies, including the ODF, where the decision affects an individual.

### What records can I ask for under FOI?

Subject to the provisions of the Ombudsman (Defence Forces) Act 2004 detailed below, an individual can ask for the following records held by the ODF:

- Any records relating to an individual personally, whenever created;
- Any other records created since the establishment of the ODF in December 2005.

A 'record' can be a paper document, information held electronically, printouts, maps, plans, microfilm, etc.





## Information precluded under Section 10 of the Ombudsman (Defence Forces) Act 2004

Section 10 deals with the secrecy of information gathered by the ODF in relation to complaints investigated or being investigated. It states:

“10.-(1) The Ombudsman or a member of the staff of the Ombudsman (including an investigation officer) shall not disclose any information, document, part of a document or thing obtained by the Ombudsman or an investigation officer in the course of, or for the purpose of, a preliminary investigation or an investigation under this Act except for the purposes of-

- (a) the preliminary examination or the investigation concerned,
- (b) the making, in accordance with this Act, of any statement, report or notification on that preliminary examination or that investigation, or
- (c) proceedings for an offence under the Official Secrets Act 1963 that is alleged to have been committed in respect of

information or a document, part of a document or thing obtained by the Ombudsman or an investigation officer by virtue of this Act.”

**In simple terms, the Freedom of Information Act applies only to the administrative files held by the Ombudsman for the Defence Forces. Investigation files are not subject to the provisions of the FOI Act.**



## Notes

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.







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