

ODF

Ombudsman for the Defence Forces
Annual Report 2020



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.

Section 6(3) of the Act provides for time limits for the notification of a complaint to the Ombudsman for the Defence forces as follows :-

- (3) A complainant shall make a complaint referred to in subsections (1) and (2) not later than 12 months from –
 - (a) the date of the action concerned, or
 - (b) the date on which the complainant became aware of the action,
Whichever is the later.

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	Battalion
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

1 Introduction

2020 was a difficult year for everyone, and for every organisation. Working at home became a feature for many, myself included. Fortunately, for the most part, working at home for the staff of this office was relatively straightforward, and easily enough organized from an administrative perspective. While initially it may have adversely affected productivity between approximately March and June, thereafter office activity returned to, and was maintained at, normal levels. My office provided an emergency contact number to facilitate contact with a member of staff during periods of the office closure.

I would like to laud the cohorts of frontline workers, including those providing healthcare, who, because of the nature of their work, were obliged to maintain high levels of contact with the public and with increased risk to their own health. Included in this frontline cohort was, of course, the Defence Forces who provided vital assistance in different areas of activity, notably with the task of contract tracing. As I write this introduction, the Defence Forces have embarked on an additional important role in relation to mandatory quarantine measures for those arriving into this country from particular areas of the world. It is both a credit to the Defence Forces, and an acknowledgement of their varied skills and sense of duty, that they are ready, willing and able to provide such valuable assistance to the community.

In 2020, 15 cases were referred to my office for full investigation, and in total 25 reports were issued, a number of which related to referrals from 2019. Some 12 Recommendations to the Minister for Defence were made in these Reports, and a number have been accepted to date. In the course of 2020, I was advised of 33 acceptances of Recommendations from the Minister. A number of these related to cases from 2019. I welcome the improved speed in the Minister's responses to my Reports and Recommendations which is evident in recent months.

I am happy to report that by the end of 2020 the backlog of cases awaiting investigation referred to in the Reports for 2017, 2018 and 2019 was almost cleared, and in excess of 95% of all new referrals are now fully investigated and reported on within two to four weeks from the date of referral. Especially urgent cases are dealt with within days of referral. The only reason for a longer delay, in a minority of cases, is where there is a need to seek additional information or documentation from either a complainant, or the Defence Forces, or from both.

Referrals in the first 5 months of 2021 indicate a significant increase in 2021 compared to 2020. So far this year 27 Reports have issued (compared to 25 for the whole of 2020).

This improved efficiency in the turn-around time for investigations is, I believe, essential, having regard to the nature of most of the

complaints which require timely outcomes if they are to be meaningful from a practical perspective.

A breakdown of the categories of cases referred to my office for investigation is provided elsewhere in this Report. It is, however, noteworthy that in 2020, well in excess of half of referrals related to issues concerning selection for Promotion Competitions or Courses, including in many cases the marks awarded for different aspects of such Competitions. While there has been an increase in the number of bullying type complaints coming through (in 2020 and the early months of 2021), I believe this is not necessarily because there is an increase

in the incidences of bullying in the Defence Forces in recent times, rather it is because of a greater awareness generally of such activity and of the availability of a more receptive and sensitive grievance process when it occurs. This is a positive development in the sense that it creates a more open Defence Forces and a greater confidence in the internal Defence Forces investigation system to investigate and resolve such matters, when they occur.

An interesting feature of referrals in 2020, and especially in the second half of that year, was the fact that referrals from Officers compared to those of Privates and NCO's (and their equivalents in the Naval Service)



increased, compared to previous years. This trend is significantly more apparent in case referrals in the early months of 2021.

I would like to express my sincere thanks to the staff of my office for their valuable input and assistance in 2020. I also wish to express my thanks and appreciation to the current Minister for Defence, and his predecessor, to the Defence Forces Liaison Staff whose assistance to my office is invaluable, and to both the former Secretary General and his recently appointed successor, and to the civil servants in the Department of Defence for their support and co-operation with my office. I extend my gratitude also to the Chief of Staff, Vice Admiral Mark Mellett DSM, and the men and women of the Defence Forces, and to RACO and PDFORRA also for their continued support. I wish the Chief of Staff every good wish in his imminent retirement following his distinguished career in the Defence Forces.



Alan Mahon
 Ombudsman for the Defence Forces
 21 June 2021







2 Highlights of 2020

80

NOTIFICATIONS OF COMPLAINT

were received in 2020. This was a 22% decrease on the 103 notifications received in 2019. A Notification of Complaint is generated at the time the complaint is initially submitted to the Defence Forces and a copy is forwarded to the ODF. A full investigation by the ODF will only commence if the complaint is not resolved in the course of the Defence Forces internal investigation process, (see below).

OF THE 80 NOTIFICATIONS OF COMPLAINT RECEIVED

62 were in respect of Privates and NCOs and 18 were in respect of Officers (including 1 from an officer Cadet).

15 NEW CASES

were referred to ODF for full investigation in 2020. This is an 11% decrease on the 17 new cases referred to ODF in 2019.

29 CASES

including pre 2020 referrals, were under review by the ODF during 2020.

25 cases

were brought to conclusion by the ODF during 2020 (including one supplementary report). This represents a 58% decrease in the number of cases concluded by the ODF in 2019 when successful targeted actions were implemented to eliminate a significant backlog in cases.

5 CASES

remained under review by the ODF on the 31 Dec 2020, a reduction of 70% compared to 1 Jan 2020.

3

Analysis of Complaints & Appeals - 2020

Notifications of Complaint

80 Notifications of Complaint were received by my Office from the Defence Forces during 2020. This is a 22% decrease on the 103 complaints notified to my Office in 2019. Of those complaints, 62 were from serving or former other ranks personnel while 18 were from serving or former commissioned officers.

Of the Notifications received during 2020, some 65 were withdrawn or resolved during the year and 9 were referred to the ODF for investigation. The ODF also received some 57 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 2020, no complaints were referred directly to this Office by former members.

Cases reviewed by ODF in 2020

On 1 Jan 2020, some 14 cases were carried forward under review by this Office. During 2020 some 15 new cases were received by this Office. The total number of cases under review by this Office during 2020 was 29. Of these, some 25 cases were brought to a final conclusion during 2020 (including a supplementary report). Some 5 cases remained under review on

31 December 2020 and were carried forward for consideration into 2021. This represents a 70% decrease on the numbers carried forward from 2019 into 2020.

Details of Complaints Investigated by ODF in 2020

The following Tables set out the nature of complaints considered by this Office during 2019, together 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/or allegations of inappropriate behaviour or bullying.

Total cases

The following table outlines the progression of the 29 cases during 2020 –

Preliminary Investigation Ongoing	Cases Concluded and Final Report Issued
5	25*

* Includes a supplementary report

Cases by Military Formation

Of the 25 cases investigated and concluded 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
Nil	4	Nil	3	7	11	25

Nature of Cases

The nature of the cases on hand with the ODF during 2020 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
5	15	2	3	Nil	25

Details of Cases by Formation

The following tables and charts set out the nature of cases on hand during 2020 by individual Military Formations –

1 Brigade – (Nil)

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

2 Brigade – (4)

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

Defence Forces HQ – (Nil)

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

Defence Forces Training Centre – (3)

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

Air Corps – (7)

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

Naval Service – (11)

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

Complaints Investigated and Reported on by ODF in 2020

Complaint Upheld or partially upheld by ODF	Complaint Not Upheld by ODF *
7	18

*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 2020

Minister Accepts	Minister Does Not Accept
33*	Nil

* Includes reports issued during 2019 which were considered by the Minister in 2020

Recommendations made by the ODF in 2020

NUMBER OF RECOMMENDATIONS (pursuant to Section 7(3) of the 2004 Act) in Reports finalised in 2020: 12

Footnotes: * recommendations are not necessarily made in every Report from the ODF.

* more than one recommendation may be made in some ODF Reports.

* there is usually a significant delay, for a variety of reasons, in a notification to the ODF of an acceptance or rejection of a recommendation by the Minister, hence the extent of acceptances/rejections from recommendations made in a particular year will not be fully apparent by the date of publication of the Annual Report for that particular year.

“

80 Notifications of Complaint were received in 2020. This was a 22% decrease on the 103 notifications received in 2019.

4 Case Summaries

The following case summaries set out details of some of the cases investigated by the Ombudsman for the Defence Forces during 2020. For reasons of confidentiality, the 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

Termination of Cadetship – Behaviour of Cadet – DFR A3 Cadets (2019) - Fair Procedures – Opportunity to resubmit appeal to DCOS (Sp) – Complaint Not Upheld

The complaint concerned the termination of the Complainant's cadetship. In October 2019, a Notification of Complaint was submitted by the Complainant in relation to the recommendation that the Complainant be withdrawn from cadetship. By way of redress the Complainant sought reinstatement into the Cadet Class. The DF conducted an internal investigation, up to COS level, the conclusion of which was that the Complainant ought to have an opportunity to resubmit his appeal of the decision to withdraw to the DCOS (Sp). However, as the Complainant failed to avail of this opportunity the withdrawal of the Complainant's cadetship was confirmed.

By way of background, the Complainant, a Private in the DF, had been a member of the Cadet Class in 2019. The Complainant was dismissed from the Cadet Class a number of weeks prior to the commission of his Class on foot of a recommendation for the withdrawal filed in September 2019 by the Comdt. OIC. The Complainant appealed the withdrawal to the DCOS (Sp) who upheld the decision. The Complainant was offered the opportunity to revert to his previous service engagement in a non-commissioned rank. The Complainant availed of this opportunity and returned to the rank of Private.

An internal DF investigation was undertaken, with reports prepared by an appointed MIO. The MIO confined the investigation to a consideration of the Complainant's criticisms of the appeal procedure in relation to the withdrawal of his cadetship. Specifically, the MIO considered: -

- Whether or not additional information, a training diary, ought to have been provided to the Complainant for filing his appeal; and,
- Whether or not an appeal based on that information may have resulted in a more favourable outcome to the Complainant.

The MIO concluded that the Cadet School adhered to DFR A3 Cadets (2019) in their processing of the withdrawal for cadetship. With respect to both complaints, the MIO concluded that the Complainant had not been wronged according to the regulations, but that fair procedures were not applied due to technical issues in the Cadet School at that time. The Complainant had requested his training diary for the purpose of filing his appeal, however the diary had not been provided in time to lodge the appeal. The MIO found it to be inconclusive whether or not the Complainant's drafting of the appeal would have benefitted from the training diary. While the MIO concluded that the redress was not proportionate, the MIO's overall recommendation was that the Complainant should be permitted to re-submit his appeal to the DCOS (Sp). A report was also prepared by the GOC who also concluded that the Complainant's right to appeal the decision to withdraw his cadetship may have been compromised by a delay in providing him with information which might be relevant to that appeal. The COS agreed with the views expressed by the MIO and GOC and directed that the Complainant be afforded the opportunity to resubmit his appeal to the DCOS (Sp). The Complainant failed to re-submit an appeal to the DCOS (Sp), as a result of which the withdrawal of cadetship remained confirmed.

The ODF was provided with the Complainant's written appeal to the DCOS (Sp) in October 2019, a written submission to COS of November 2019 and his written submission to the ODF of September 2020. In his submissions to the ODF the Complainant emphasised positive aspects of his character and abilities while taking issue with some of the criticism levelled against him. The Complainant raised the following points:

- That there was a lack of mentoring and support following his receipt of Probation Certificates.
- That he experienced difficulties in appealing the decision to withdraw his cadetship.
- That there were errors in the Cadet School records referring to himself; and,
- He acknowledged his own shortcomings, including his immature behaviour.

The Complainant's submissions included a number of supportive character references from cadet colleagues and the DF's Chaplain. They acknowledged the Complainant's physical courage, selflessness, keenness, loyalty, and honesty.

The ODF was also provided with four reports relating to incidents concerning the Complainant during his training which were critical of the Complainant on a number of grounds including inter alia: not having reached the standard required; his knowledge of drills and tactics; and, disrespectful behaviour. The ODF was provided with Probation Certificates which had been generated in relation to the Complainant.

Both certificates described these shortcomings as a “(f)ailure to demonstrate the required level of competence, participation, progress and improvement necessary for the successful completion of Stage II of Cadet Training to date.”

The ODF, in considering all reports, found the views expressed by School Commandant at the Cadet School was of particular importance, namely that the Complainant had not developed sufficient values and character required to be an Officer in the DF. The ODF found that there was no basis to undermine the views and conclusions expressed by the School Commandant. The ODF acknowledged that Cadet training is tough with high standards and stressed that unsuccessfully reaching the required standard should never be considered a failure. The ODF stressed that the Complainant deserved great credit for having been accepted to the Cadet Class and for having stayed the course for most of its duration.

In summary, the ODF found there was no evidence to suggest that the decision to withdraw the Complainant's cadetship was taken precipitously or in the absence of fair procedures. It was found that there was an appropriate level of consideration and assessment of all relevant information. The decision to withdraw the Complainant's cadetship at a late stage in the Cadet Course was taken only after due and fair consideration of all the facts, and after the Complainant had been afforded a reasonable opportunity to reach the required standards. The ODF did not uphold the complaint.



CASE SUMMARY 2

Air Corps – Cadet failed Instrument Rating Test – Removed from Cadets’ Pilots Wings Course – Complaint regarding adequacy of training and sufficiency of Supplementary Flights - Air Corps Terms and Conditions – Requirement to Complete each Stage of training

The Complainant joined the DF as a Cadet in October 2016. After completing Stage I of Military Training he completed the Ground School Stage II of his AC Cadetship in AC College and began flight training, Stage III. During the later stages of the flying syllabus the Complainant failed the flight Instrument Rating Test (IRT) twice following which the Complainant was removed from the CPWC. The complaint concerned the adequacy of training and the solutions provided to the Complainant following his removal from CPWC.

The Complainant submitted a ROW application on 15 May 2020. His then complaints were: -

- i. A failure to provide adequate course of training as per the AC Terms and Conditions of 2016 and failure to commission the Complainant as an officer into the PDF after 3 years and 4 months of training, and
- ii. A failure of sufficient supplementary flights for the CPWC and the non-standardisation of their distribution.

The redress sought was amended on 4 June 2020. The Complainant sought the following: -

- i. That he be commissioned immediately or following conduction of the AC proposed course and receive back pay from February 2020.
- ii. The option of joining the new USA based YO Pilots Wings Course was his priority.
- iii. A reduced contract as compensation of this situation, if the flying course is made available again. Current requirement being 12 years, following successful completion.

The Complainant’s written submission stated *inter alia* that following his removal from the CPWC he was informed that he could return to the Cadet School in January 2020 to complete training, with a view to being commissioned in February 2020.

However, the Complainant stated that he was then told that a February 2020 commission was no longer possible but that he may be commissioned in summer 2020. The Complainant then stated that a summer 2020 commission was rejected by J7, and he was told to return to the Cadet School in September 2020 to complete the final training stages in time for a commissioning in February 2021. The Complainant submitted that this was unsatisfactory as he had been training for in excess of three years but that the DF had not provided him adequate training facilities or the ability to complete his training. He submitted that since joining the DF, the AC Terms and Conditions had changed meaning that the AC Cadetship could be completed in a shorter timeframe and that should be taken into account in his circumstances.

The “Defence Forces, Syllabus of Training, Cadet Pilots’ Wings Course” details the following basic rules or guidelines:-

- i. *The Cadet Pilots’ Course is approximately 34 months in duration and is divided into 3 stages, namely, the Induction/Development phase, the Empowerment phase and the Synthesis phase.*
- ii. *Progression from one stage to the next stage requires minimum assessment grades.*
- iii. *To qualify for nomination for commissioning and to receive military pilots’ wings, a student “must obtain a minimum 50% of the total marks allotted to assessments carried out during Stage 3...”*
- iv. *There are 75 pages devoted to the “Assessment Philosophy and Grading System Unique to Military Pilot Training”.*

The DFR A.3 (New Series) Cadets 2019 contains the relevant regulatory regime applicable to Cadets and is relevant to the consideration of the candidates for commissioning.

In November 2019, a report in relation to the



Complainant was prepared by the GOC AC/Dir Mir Aviation for submission to the COS which suggested that the Complainant be permitted to commission in February 2020 having regard to his length of training to date and subject to undergoing rehearsals. This was also suggested by the Major General. However, in December 2019, a report was prepared for the COS by the DCOS (Ops). He noted that the Complainant: -

- Had not completed the entire standard Cadet Course i.e. Stages III and IV, which is a requirement for commissioning as an AC non-pilot officer.
- Had failed to complete the CPWC in the AC which in conjunction with Stages I and II of the standard Cadet Course is a requirement for commissioning as an officer pilot in the AC.

The report concluded that the Complainant had not completed any syllabi of training that would permit him to be commissioned as an officer in the DF. The report took issue with a February 2020 commission date noting that it would bypass the conventions by which all personnel progress in qualification and skill within the DF. The DCOS recommended that the Complainant be permitted to return to the Cadet School and complete Stages III and IV of the standard

Cadet Course following which he would be eligible for a commission in a non-flying appointment in the AC or another Corps. It was apparent to the ODF that the COS also agreed with the recommendation. This decision prompted the Complainant to activate the ROW procedure.

An internal DF investigation was carried out by an MIO. The MIO considered the Complainant's ROW application under two headings:-

- The adequacy and length of the Complainant's training and the failure to commission him after a period of 3 years and 4 months, and
- The complaint that there had been, in the Complainant's case, a "failure of sufficient supplementary flights for the Cadet Pilot Wings Course".

Regarding both complaints, the MIO found against the Complainant. In doing so, the MIO had regard to the DF Review Board's finding that the Complainant's flight training should cease immediately in the aftermath of having twice failed the WC087 IRT flight. While consideration had been given to the Complainant returning to Cadet School in January



2020 to facilitate his commissioning in February 2020, the MIO found that it had proved impossible to complete the necessary training within this short timeframe. He noted that in the circumstances the only option was to return to Cadet School in the autumn of 2020 to complete Stages III and IV of the standard Cadet Course and thereafter be commissioned in early 2021.

The GOC AC concurred with the MIO that the terms of DFR A3 were complied with and that it was correct that the Complainant was not recommended for commissioning. The GOC acknowledged that the Cadetship Terms and Conditions created an expectation of an approximate timeframe for the completion of the CPWC; however, it was not possible to meet this timeframe due to the external factors such as instructor availability, aircraft availability, weather,

class size and conflicting operational demands. The GOC also pressed that the criteria governing eligibility for commissioning is that as laid down in DFR A3 and that the Complainant had not completed these requirements. The GOC noted that arrangements had been made for the Complainant to return to the Cadet School in August 2020 to complete his Cadetship with a view to being commissioned in March 2021.

The COS also considered the complaint and concluded that while the Complainant had completed Stages I and II of the standard Cadet Course, he had not completed the entire standard Cadet Course. The Complainant failed to complete the CPWC in the AC which, in conjunction with Stages I and II of the standard Cadet Course, is a requirement for commissioning as a pilot officer in the AC. The COS rejected the Complaint.

The ODF accepted that the removal of a trainee from a training course in its very final stages because of failure of one particular test was tough. However, the ODF stressed that it is of vital importance that a would-be pilot pass the required IRT. The Complainant was provided with the opportunity, and additional training to pass the test at a second attempt but was, unfortunately, unsuccessful. The ODF reviewed the case and considered that the decision to remove the Complainant was not taken lightly and was decided at a high level.

The ODF noted that the Complainant unsuccessfully appealed his removal from the CPWC and complained that his appeal was not adequately assessed. The Complainant voiced his suspicion that the decision to remove him was influenced by the fact that by that stage there was inadequate time available to complete additional flights.

In relation to the length of the Complainant's training, the ODF acknowledged that the CPWC Syllabus of Training had indicated the duration of the CPWC was said to be "approximately" 34 months. There is a reference to the variation in duration "(d) ue to the nature and complexity of the objectives contained within the flights and simulator sorties on the course..." The ODF noted that the delays that occurred up to late 2019 were for reasons in line with those suggested by GOC/AC in his June 2020 report. The ODF acknowledged that the estimation of the course concluding in 34 /36 months was aspirational and was subject to a variety of unforeseen factors which might arise with the consequence of prolonging that duration, as indeed occurred in this instance.

The ODF found that there was no evidence to suggest that the Complainant's removal from the CPWC was unreasonable, unfair or inappropriate. The Complainant had twice failed a test that was of vital importance in determining if the Complainant had reached the necessary degree of competence as a pilot to warrant his qualification to fly. While the Complainant did not suggest that his failure of the test was unreasonable, unfair or inappropriate, he did argue that training facilities were inadequate, or had been reduced compared to previous classes, and that in consequence he was, in effect, denied the opportunity to reach the required standard. The ODF accepted that there was evidence that went some way

towards establishing that aspects of his training were curtailed for various operational reasons; however, the ODF concluded, in the absence of evidence to the contrary, that such decisions as were made were for good and essential reasons.

The ODF posed a number of questions to the DF in July 2020 for clarification. The ODF queried why the Complainant's commissioning could not have been facilitated in February 2020. The DF noted that the Complainant would not have had enough time to complete Stages III and IV of his cadet training cycle prior to commissioning in February 2020. The ODF asked for reasons why his commissioning could not have been facilitated between March and July 2020. The DF was unable to comment on the reasons why the Complainant did not return to training. Lastly, the ODF asked for the reasons why the Complainant's commissioning could not be facilitated between that date and the end of 2020. The DF suggested this might be a matter for the consideration and advice of GOC AC and / or Sch GOC DFTC

The ODF was unable to find fault with the refusal to permit the Complainant for commissioning in February 2020 as it was apparent that the Complainant would not have concluded Stages III and IV in sufficient time. The ODF acknowledged that it was unclear if the Complainant could have been commissioned by summer 2020; however, the ODF was unable to identify any evidence of an inappropriate reason or decision in delaying the Complainant's return to Cadet school until August 2020. The ODF concluded that this was not an unreasonable decision and was one which the DF authorities were entitled to make for operational and practical considerations. The ODF noted that it might have been helpful, and in ease of the Complainant's acceptance of the decision to require his return to the Cadet School in August 2020, if greater care had been taken to explain all the relevant circumstances behind the decision to the Complainant. The ODF stated that the option of joining a USA based YO Pilots' Course was entirely a decision for the DF authorities.

The ODF did not uphold the complaint, other than to suggest that the DF might have taken greater care to explain to the Complainant more clearly the reasons for their decisions.

CASE SUMMARY 3

Bullying Allegation by NCO made against colleagues within a particular Unit – Issue relating to the ODF’s jurisdiction to investigate – the definition of what constitutes “Bullying” – The DF’s Social Media Policy.

The Complainant identified nine separate incidents in the period mid 2018 – mid 2019 in his Notification of Complaint dated 26 August 2019. The nature of the allegations included misinformation relating to the Complainant’s work, the disclosure of confidential medical information, the complainant being advised that he was not wanted in his Unit, the alteration of the complainant’s duty rota to his detriment and a Facebook post about the complainant of a derogatory nature.

The ODF deemed himself absent of jurisdiction to investigate five of the nine complaints. He stated:-

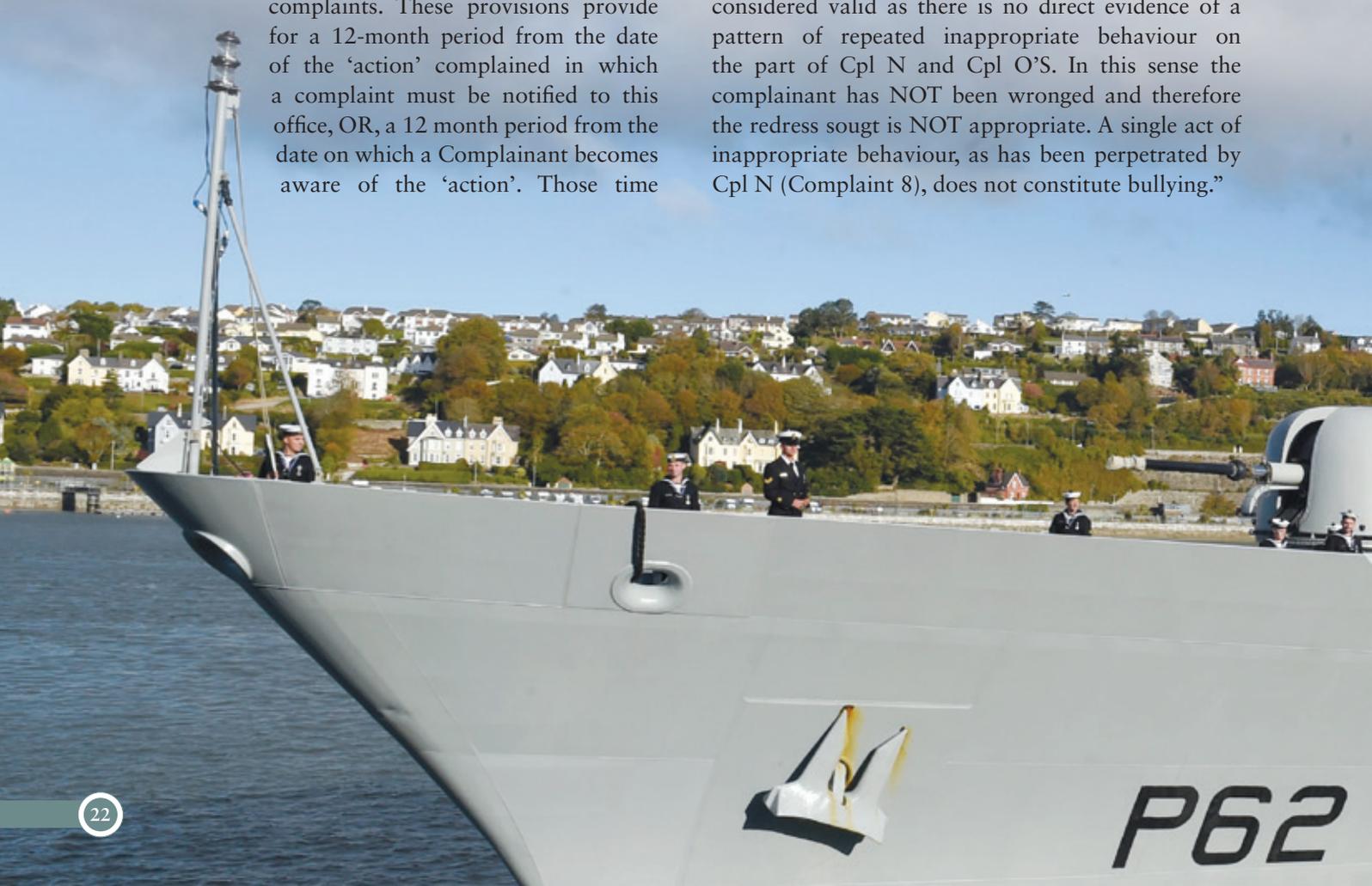
“S.6 (3)(a) and (b) of the Ombudsman (Defence Forces) Act 2004 is the legislation which provides me, as ODF, with jurisdiction to investigate complaints. These provisions provide for a 12-month period from the date of the ‘action’ complained in which a complaint must be notified to this office, OR, a 12 month period from the date on which a Complainant becomes aware of the ‘action’. Those time

limits only apply to referrals to my office, and not to complaints to the Defence Forces. The Act does not, unfortunately, grant any discretion to me to extend or ignore the dead-line, irrespective of the injustice that would occur in such circumstances.”

The Complaints were investigated internally by the Defence Forces between 5 December 2019 and 14 July 2020.

The appointed MIO found that the Facebook post complained of was a breach of the DF’s Social Media Policy, but did not constitute “Bullying”. Otherwise, he rejected the Complainant’s complaints because of, essentially, lack of evidence. He concluded as follows:-

“When considered in unison, this complaint is NOT considered valid as there is no direct evidence of a pattern of repeated inappropriate behaviour on the part of Cpl N and Cpl O’S. In this sense the complainant has NOT been wronged and therefore the redress sought is NOT appropriate. A single act of inappropriate behaviour, as has been perpetrated by Cpl N (Complaint 8), does not constitute bullying.”



A similar line was taken by both the GOC and the COS in their subsequent determinations.

The ODF did not uphold the four Complaints investigated by him, other than expressing his agreement with the DF internal investigation conclusion that comments made in Facebook by a named colleague were in breach of the DF's Social Media Policy. The ODF stated:-

“The final complaint concerns the allegations that Cpl N wrote derogatory words about him on Facebook. Undoubtedly, the words written were quite disturbing and suggested that the complainant was unwelcome in his workplace. Cpl N admitted (to the MIO) that he was the author of this statement. The MIO's Report does not provide any explanation from Cpl N for posting these words, and Cpl N himself has declined to provide me with any additional information.

The MIO correctly found that the posting of these words constituted a breach of the DF Social Media Policy. He went on to conclude that this incident, being the only complaint concerning Cpl N to be proven as wrongful, did not constitute “bullying”.

The ODF noted the DF's definition of “Bullying” in Chapter 1, Section 6 (130) of Admin Instr A7:-

“repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual's right to dignity at work. An isolated incident of the behaviour described in this definition may be an affront to dignity at work but as a once-off incident is not considered to be bullying.”

He went on to determine that the single allegation established as against a named colleague (i.e. the Facebook post) did not constitute “Bullying”, notwithstanding the fact that “it was entirely inappropriate and lacked any hint of justification.”

Finally, the ODF made the following recommendation:-

“I recommend that the current OIC of the (identified unit) undertake an immediate review of inter-personal relationships of (the Unit's) personnel to establish if there currently exists evidence of same being less than harmonious, and, if they are conducive to a reasonable working environment, and to report thereon to his/her GOC, and thereafter for the GOC to take appropriate action in relation thereto.”





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Of the 80 Notifications of Complaint received, 62 were in respect of Privates and NCOs and 18 were in respect of Officers (including 1 from an officer Cadet).

CASE SUMMARY 4

Naval Officer Promotion Competition – eligibility for inclusion in Promotion Competition – the issue of the required length in service in a current rank – what constitutes the “Competition Year” and the “Vacancy Year” – Admin Instr A15 – Complaints upheld by ODF.

Six Naval Officers submitted ROW applications in September 2019 in respect of the decision to deem them ineligible to participate in the 2019 Lt to Lt Cdr Promotion Competition on the basis that they had not “completed six years” continuous service in the rank of Lt (NS).

Admin Instr A15, S.8 (a) provides:-

“The required length of service of service in a current rank is deemed to be achieved in the year of competition for promotion to the next higher rank e.g. Lieutenant Colonels competing for promotion to Colonel compete a minimum three (3) years in the rank of Lieutenant Colonel in the year in which they complete for promotion to the higher rank. For example, to be eligible to compete in Competition Year 2014 for promotion to Colonel in Vacancy Year 2015, a Lieutenant Colonel must have been promoted to that rank no later than 31 Dec 2012.”

Admin Instr A15, S.1 (b) provides:-

“The year in which the competition is held is known as the “Competition Year”. The year in which the vacancies arise will be known as the “Vacancy Year”. Following promotions to fill vacancies arising in Vacancy Year 2005 it is the objective to complete promotion competitions before the end of the year prior to that in which the vacancies arise. **The ‘Competition Year’ for ‘Vacancy Year’ 2005 is deemed to be 2004; irrespective of the date competitions are held.**”

The complainants would have achieved the necessary 6 years continuous service at the Lt (NS) rank in 2019, and would have been eligible to participate in the Promotion Competition if 2019 was deemed the “Competition Year”. They would not have achieved the six years continuous service if the “Competition Year” was 2018, and it was this interpretation that was adopted by the DF, thereby excluding the complainants from the Competition.

The complaints were duly investigated by the DF internally, initially by an appointed MIO, and

thereafter by the FOCNS and the COS. The complaints were not upheld, and in due course the complainants requested the ODF to investigate.

The ODF identified as the core issue for determination to be whether the “Competition Year” was 2018 or 2019. If it was 2018 it followed that the Complainants could not satisfy the six year service at the lower rank criteria, whereas if it was 2019 they did so, and were eligible to participate in the Promotion Competition.

The ODF considered the circumstances relating to the previous, 2017, Lt (NS) to Lt Cdr Promotion Competition which was heavily relied upon by the Complainants as a precedent which would, if followed, result in 2019 the “Competition Year” in the 2019 Competition. However, the DF contended that the 2017 Competition should not be considered as a precedent. In his considered decision of 11 November 2019, the COS referred to the 2017 Competition as “a deviation from the prescribed time period for service in rank”, and that justification for the deviation was “difficult to determine in hindsight”, but observed that it has been made in good faith. There was no evidence of a formal prior authorisations for the 2017 “deviation” being made.

The ODF considered the background to the 2017 Competition. He stated:-

“The official explanation for what occurred in relation to the 2017 Competition is provided in some detail by Director of Human Resources Management (DHRM) in his Report of 24 September 2019. He does not suggest what happened on that occasion was a deviation or derogation from normal practice. Of particular relevance is his explanation (as being the basis for treating 2017 as the ‘Competition Year’) that the competition was being undertaken towards the end of the year (2017) and that “NO projected” vacancies were anticipated before 1 January 2018, AND that NO promotions could in any event be “progressed” until 2018. In his written submission of 11 December 2019, the COS suggests that this observation by DHRM is erroneous. For such a

‘deviation’ to have occurred the COS is of the belief that it must have been agreed as between NSHQ and DFHQ, and, possibly also, RACO, although there is apparently no record of this being so.”

He went on to say:-

“Arguably therefore, applying the same logic to the 2019 Competition, and in circumstances where the identification of the Vacancy Year (and by extension the Competition Year), it is not, on its face, unreasonable to conclude that the ‘Vacancy Year’ is 2020, and that the ‘Competition Year’ is therefore 2019. More specifically:-

- i. The next expected Lt Cdr vacancy is in August 2020.
- ii. The Competition was concluded at the end of September 2019. It was then highly unlikely that an expected Lt Cdr vacancy would occur in the final quarter of 2019 (and, in any event, even if the unexpected did occur in the closing weeks of 2019, the practicalities associated with filling the vacancy may not have been satisfied until early 2020). The position is therefore significantly similar to the circumstances arising at the time of the 2017 Competition.”

The ODF expressed his view that it was reasonable for the complainants to have operated on the basis that the 2019 Competition would follow the precedent of the 2017 Competition in so far as determining the “Competition Year” was concerned. In both cases, the Competition was being held in the latter part of the year (i.e. late 2017 and late 2019 respectively), and in circumstances where no expected vacancy would exist until the following year, and where even if an unexpected vacancy arose in the closing weeks of that year it could not realistically be filled until the following year, except, and if necessary, as an ‘Acting’ basis.

The ODF went on to find that in the 2019 Competition, 2019 was the “Competition Year”, thus qualifying the complainants for entry to the Competition. He stated the following:-

“I do not believe there is any impediment in either Admin Instr A15 or CCR 447 to designating in future officer promotion competitions, should it reflect the exigency of the DF at the particular time, that the year in which the promotion competition is being held is deemed to be both the ‘Competition Year’ and the ‘Vacancy Year’. Indeed, it appears absolutely sensible to adopt this approach. What is undoubtedly desirable is that in future competitions the ‘Competition Year’ and the ‘Vacancy Year’ are clearly indicated in promulgation documentation whether they be the same year or different years. [Emphasis Added]”

The following recommendation was made by the ODF:-

“In the interests of clarity, I recommend that in future officer promotion competitions the notification of the Promotion Board (pursuant to Part 11 of DFR A15 and Admin Instr A15) clearly specify both the ‘Competition Year’ and the ‘Vacancy Year’ to which it relates, including if such be the case, specifying that both are intended to be the same year.”

The Minister for Defence accepted the ODF’s Recommendation. The 2019 Competition was delayed until 2020 to await the ODF’s Report and, in time, the Minister’s decision in relation to the ODF’s Recommendation. The Competition was further delayed in 2020 for reasons including the Covid-19 restrictions. It is now scheduled to take place in the early months of 2021.



CASE SUMMARY 5

Promotion Competition – Eligibility – Capt to Comdt Promotion Competition 2020 – Service Years in Rank Eligibility Requirement – 2019 Derogation from Service Years in Rank Requirement – Application of 2019 Derogation to 2020 Competition – Definition of ‘Competition Year’ – Definition of ‘Vacancy Year’

Background

This Redress of Wrongs (ROW) complaint arose in the context of the Capt to Comdt (Army Line) Promotion Competition 2020. The Complainant sought to participate in the competition but was deemed ineligible on the grounds that he had not met the six-year service in rank requirement.

Notification of the Promotion Competition was made in Admin Circular 02/20 dated 2 July 2020, which set out the following eligibility criteria,

- A minimum of six continuous years’ service in the rank of Captain.
- Successful completion of the Junior Command and Staff Course, or certification by the COS

that the officer had successfully completed an acceptable alternative course or that the officer had otherwise reached a satisfactory standard as determined by the COS.

- Recommendation for promotion by the applicant’s commanding officer on their most recent AF 451.

The Complainant was promoted to the rank of Capt on 3 June 2014. Since promotion, the Complainant availed of a career break for educational purposes (SWLPA) for 360 days between 17 October 2016 and 12 October 2017.

The Complainant met the second two eligibility criteria, but was deemed ineligible for the competition on the first ground. In the Defence Forces ruling, the



Complainant was deemed ineligible, ‘Time in Rank’ was stated to be assessed at 31 December 2019, by which date applicants were required to have completed six years’ service in the rank of Capt. No derogation was granted to the Complainant from this requirement.

The Complainant made a ROW application arising from his ineligibility for the promotion competition, making several complaints in support of his request for redress in the form of inclusion as an eligible officer to compete in the 2020 Capt to Comdt (Army Line) Promotion. These complaints included:

1. For the 2019 Promotion Competition from Capt to Comdt, Admin Circular 11-19 (Ref C) provided a derogation in respect of time in rank of Capt for several cohorts who had not met the time in rank requirement. This derogation applied to a cohort of 31 individuals from the Complainant’s own 81st Cadet Class (81CC), 24 of whom were subsequently successful, as well as two individuals from 82CC. In 2019, the Complainant was advised by COMO that he was not included in the cohort of 81CC to whom the derogation applied as his SLWPA career break meant he did not meet the qualifying criteria for the derogation. The Complainant asserted that, based on the derogation given to the 81CC and 82CC Graduates in 2019, and his correspondence with COMO in June 2019, he had a reasonable expectation that he would be included in the 2020 competition.
2. The Complainant sought an interpretation of the terms “Competition Year” and “Vacancy Year,” as used in Admin Instr A 15. The Complainant cited Admin Instr A 15 as support for his position. In Admin Instr A15, the required time in rank is deemed to be achieved in the year of a competition for promotion to the next higher rank irrespective of the date in that year on which he achieved promotion. It also provides that the year in which the competition is held will be considered a full year at the lower rank, irrespective of the actual date in that year in which the competition was held. Admin Instr A15 goes on to state that the year in which the competition is held will be known as the “Competition Year” while the year in which the vacancies arise will be known as the “Vacancy Year.” The Complainant argued that it followed from Admin Instr A15

that the Competition Year for a Vacancy Year is deemed to be the year prior to the year in which the vacancies arose, irrespective of the date competitions are held. In these circumstances, the Complainant argued that 2020 was the Competition Year for the 2020 Competition, and that time in rank up to 31 December 2020 should be counted in determining eligibility.

3. The Complainant also argued that a named officer not meeting the second requirement was wrongly included in the list of eligible candidates. This error was admitted and rectified by the Defence Forces and the finding in this regard was accepted by the Complainant.
4. The Complainant received the outcome of his appeal against ineligibility for the competition on 15 July 2020. Interviews for the competition were scheduled to be completed by 24 July 2020. The Complainant argued that the timeline was too short to afford him due process and time to complete an appeal and a redress of wrongs investigation. The Complainant asked that the process be postponed pending appeal to the Ombudsman.

The matter was investigated internally by the Defence Forces, up to Chief of Staff (COS) level. The complaint was not upheld by the DF.

The Military Investigating Officer (MIO) found that J1 had stated that derogations are competition specific and as such are only applicable for the period of the competition. In this context the MIO found that it was not appropriate to grant redress on the basis that a derogation had been given to officers in the 2019 competition.

The MIO found that while an error had been made in including a named officer in the list of eligible candidates who had not met the eligibility criteria, this error had been rectified. The MIO found that redress in the form of deeming the Complainant eligible to compete was inappropriate as the Complainant’s service period, taking his SWLPA into account, had been correctly calculated.

The MIO found that the ‘Competition Year’ was not defined in Admin Circular 02/20. However, the MIO found that J1 stated, in a letter to the Complainant, that the Competition Year was 2019, in accordance



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15 new cases were referred to ODF for full investigation in 2020. This is an 11% decrease on the 17 new cases referred to ODF in 2019.

with the terms of Admin Instr A15. The MIO found that the Competition Year was defined in accordance with the terms of the Admin Instruction. No redress was found to be appropriate.

The General Officer Commanding (GOC) considered the MIO's Report and expressed his agreement with its conclusions and recommendations on 10 August 2020.

In a decision made on 4 November 2020, the COS also declined to uphold the complaint, making the following findings:

- The vacancies related to those occurring in 2020, therefore the Competition Year was 2019.
- For additional clarity, future Admin Circulars for such Promotion Competitions should clearly state both the 'Competition Year' and 'Vacancy Year' including, if it is the case, that both are intended to be the same year.
- For this Competition, time in rank was assessed from the 31 Dec 2019.
- The Complainant has not completed the necessary six years' time in rank of Captain, having accrued five years and six days as of the 31 December 2019.
- There is no mechanism to deviate from this criterion unless a derogation has been agreed by the respective parties, which is not the case in respect of this competition.

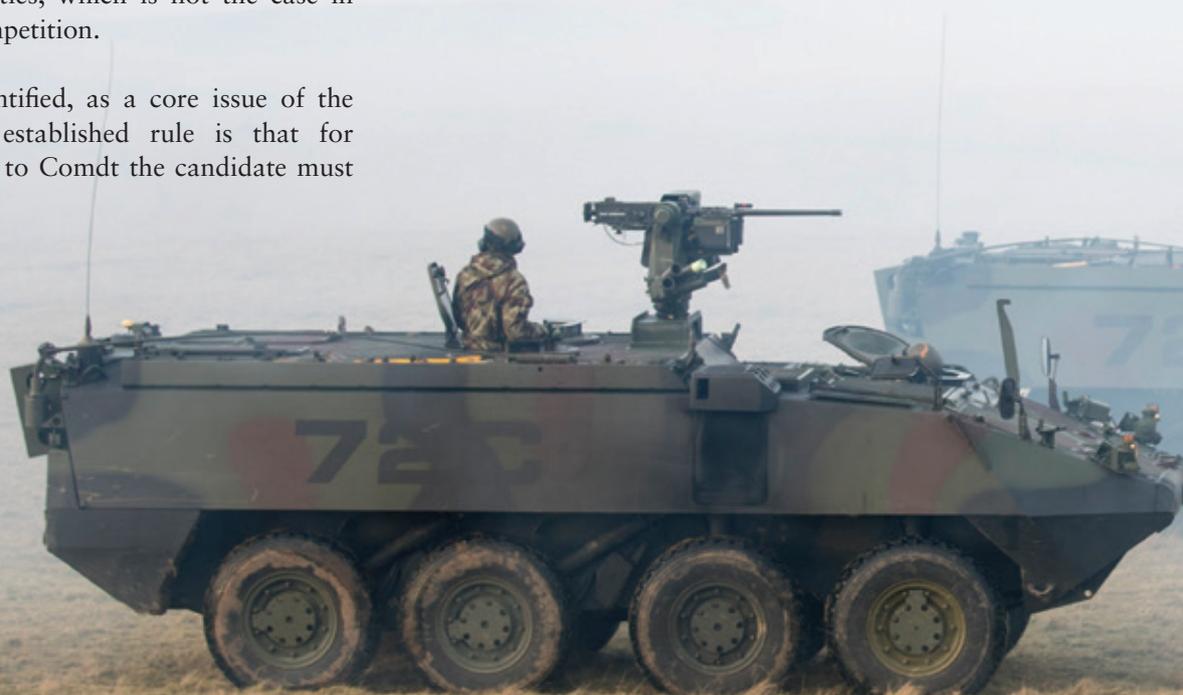
The Ombudsman identified, as a core issue of the complaint, that the established rule is that for promotion from Capt to Comdt the candidate must

have six years' service in the rank of Capt. The Ombudsman found that it is permissible to count both the year in which that rank is first achieved and the 'Competition Year' as full years irrespective of the dates in each of the years on which these events occurred.

The Ombudsman considered the issue of a derogation with reference to J1 which provided that,

"In general, derogations to qualifying criteria for promotion competitions are only considered in exceptional circumstances where an operational need exists, following consultation with DOD, Rep Assoc and J1. Derogations are specific to competitions or to specific cohorts within specific competitions. Derogations do NOT constitute a permanent change in the application of the relevant promotion regulation."

The Ombudsman noted that the Defence Forces' position was that the 2019 derogation was specific to the 2019 competition. The Ombudsman reviewed the documentation addressing this point and the context in which the 2019 derogation was granted. The Ombudsman found that the derogation was granted because of the need to expand the candidate numbers eligible for the 2019 Competition to facilitate the filling of vacancies in the rank of Comdt which were likely to arise in 2019 and early 2020, and which



would otherwise remain unfilled with serious practical consequences for Army operational management. The 2019 Competition successfully met this objective. The Ombudsman found that the 2019 derogation was designed to meet the exigencies of that time and could not be said to apply to subsequent competitions.

The Ombudsman went on to consider the definition of “Competition Year” as provided in Admin Instr A15,

“The required length of service is deemed to be achieved in the year of a competition for promotion to the next higher rank...

“The year in which the competition is held will be known as the “Competition Year.” The Year in which the vacancies arise will be known as the “Vacancy Year”. Following promotions to fill vacancies arising in Vacancy Year 2005 it is the objective to complete promotion competitions before the end of the year prior to that in which the vacancies arise. The ‘Competition Year’ for ‘Vacancy Year’ 2005 is deemed to be 2004; irrespective of the date competitions are held.”

The Ombudsman considered the formula for determining what constitutes the “Competition Year,” as requiring an initial determination of what the “Vacancy Year” is. Admin Instr A15 defines the

‘Vacancy Year’ as being the year in which the vacancies will arise. The 2020 Capt to Comdt Promotion Competition was designed to provide candidates to fill vacancies in the rank of Comdt in 2020 and in succeeding years, and the Ombudsman held that it followed that 2020 is the “Vacancy Year.”

On this basis, the Ombudsman determined that, based on Admin Instr A15, if the Vacancy Year was 2020, the “Competition Year” was 2019. As the “Competition Year” was 2019, it followed that the Complainant’s service in the rank of Capt fell short of the six years’ service required.

The Ombudsman found that the Complainant did not establish an entitlement to benefit from the 2019 derogation to 81CC. However, the Ombudsman did recommend that the derogation be extended to the Complainant in respect of the 2020 competition on compassionate grounds if it remained practical to include him in that Competition, and provided that the Complainant would not be listed in the OOM ahead of other candidates who had been deemed eligible for the Competition at the outset.

The compassionate grounds cited by the Ombudsman included the facts that the Complainant,

1. Genuinely believed that the 2019 derogation to 81CC extended to cover him for the 2020 Competition,
2. He would be left two years behind most of his cadet class on the promotion ladder if he was deemed ineligible for the 2020 competition, and
3. He had fallen short of the required years in service due to a leave of absence which was granted for educational purposes, the consequences of which will benefit the Defence Forces.



CASE SUMMARY 6

2019 Lt Col to Col (Med) Promotion Competition – Make-up of Interview Board – No medically qualified member of the Interview Board – Compliance with Admin Instr A15 and CCR 447 – Interview Board’s capacity to assess a medically qualified candidate for a specialist medical role

In this case, the Complainant, is a medical doctor attached to DMU. In 2019, he participated in the Lt Col to Col (Med) Promotion Competition seeking appointment to the position of Director of Medical Branch (DMB)/Chief Medical Officer of the Defence Forces. The action complained of occurred on 11 January 2019.

The Complainant sought redress to have the interview process re-examined and corrected. The complaint related to an alleged inability of the Interview Board to duly assess the Complainant’s specialist medical qualifications and experience. The Complainant submitted that there were no members on the Interview Board with any background medical qualifications even though the appointment to be filled was for the position of the DMB/Chief Medical Officer of the Defence Forces. The Complainant alleged that the Interview Board was not suitably qualified to give due consideration to his specialist medical qualifications and experience.

The Interview Board in question consisted of two Brigadier Generals and one civilian member nominated by the Public Appointments Service. None of the board members were medically qualified.

A Military Investigating Officer (MIO) was appointed to investigate the complaint on 9 October 2019. The MIO interviewed the Complainant who alleged that the Interview Board was not qualified to assess his medical experience, qualifications, and skills. The Complainant also alleged that the failure to include a medically qualified person on the Interview Board was inappropriate.

The MIO’s report referred to an ODF Report from the then Ombudsman (dated 24 January 2013) which recommended the inclusion of a medically qualified civilian in the composition of an Interview Board for future DMC appointments. The MIO noted that this recommendation was not accepted or acted upon.

The MIO found against the Complainant on the basis that the Board was correctly constituted in accordance with relevant regulatory provisions, The MIO further found no evidence pointing to any procedural or administrative unfairness in the promotion process referred to.

In his 6 November 2019 review of the MIO’s Report, the General Officer Commanding (GOC) agreed with the MIO. The GOC referred to DFR A15, Admin Instr A15 and CCR 447 which set out the requirements for the composition of Interview Boards and the methods of assessment and scoring candidates. An Interview Board, in the case of the Lt Col to Col (Med) competition, was required to consist of two Brigadier Generals (Army) and one civilian member appointed by the Minister for Defence. The GOC concluded that the Interview Board was convened as required by regulation and found no evidence that it had conducted its business in contravention of regulations. The GOC held that the Complainant had not been wronged.

The COS’s Ruling also finding against the Complainant on 11 December 2019. The COS considered the then ODF’s recommendation in his Report of 24 January 2013 that due consideration be given to the appointment of a medically qualified civilian Interview Board member in interviews for Director of the Medical Corps, and that the relative Administrative Instruction should be amended to require or allow for such an appointment.

The COS was satisfied that the then ODF’s 2013 recommendation was given due consideration by the Minister for Defence who noted that implementing such a recommendation would require negotiation with the Representative Associations. The COS was satisfied that the composition of the Complainant’s Interview Board, and its methods of assessment and scoring of the Complainant, was as provided for in Conciliation Council Report No. 447.

The Ombudsman considered the then ODF's 2013 recommendation in the context of the current Complainant's case. He noted that the ODF's 2013 recommendation was, "*for a review of the composition of the Interview Board for the appointment of Director of the Medical Corps.*" This recommendation arose in the context of a finding that the Promotion Competition in question in the 2013 Report was conducted in accordance with proper and fair procedures and in line with the provisions of Admin Instr. A15. The 2013 complaint was not upheld.

The then Minister for Justice Equality and Defence sought the views of the then COS of the Defence Forces on the recommendation of the ODF. On 26 June 2015, the then COS, Lt General O'Boyle, wrote to the Minister for Defence stating that "*I am not convinced that there is a necessity to appoint a medically qualified civilian Interview Board Member. The ODF report mentions the possibility of including a former retired Director of the Medical Corps as the civilian member of the Board.*"

The current Ombudsman found that the issue being addressed in the 2015 correspondence between the Minister for Defence and the COS was the then ODF's suggestion that a former retired Director of the Medical Corps fill the role of the civilian member of the Board in relation to such appointments. The Ombudsman noted that in 2015, the COS expressed his confidence in the manner in which Interview Boards were (and still are) composed. In the letter of 26 June 2015, the then COS concluded that a former Director of the Medical Branch was not a suitable Interview Board member for future competitions for the position of Director of the Medical Branch as the Interview Board's function was to assess the candidates' capacity for an administrative and/or supervisory role over a Branch of the Defence Forces, rather than to assess the candidates' medical professional competence as compared to other colleagues.

The Ombudsman noted that, in the letter of 26 June 2015, the then COS appeared to support the proposal that the composition of an Interview Board should be taken into account where 'specialist,' medical, and other appointments are being addressed.

The Ombudsman found that despite the 2013 ODF recommendation and the comments of the then COS

in the letter of 26 June 2015, no steps had been taken to adjust the composition of Interview Boards for senior medical appointments from that provided in Admin Instr A15 and CCR 447.

The relevant provision in Admin Instr A15 (Officer Promotions and Technical or Specialist Appointment Boards), replicated in CCR 447 (Promotion System for Officers up to and including rank of Colonel...), states as follows:-

"The Promotion Board will comprise of two (2) Colonels (Line), nominated by the Chief of Staff, one of whom will be from the HR function from within the Defence Forces, and a person, who is not a member or former member of the Defence Forces or the Department of Defence who has served in the rank/grade of Colonel/Principal Officer or above...."

The civilian member of the Board will be appointed by the Minister for Defence on the nomination of the Public Appointments Service.

The chairperson will be selected by the board from among the military representatives on the Board.

As far as possible, at least one member of the Board will be male and at least one will be female."

The Ombudsman found that the composition of the Complainant's Interview Board conformed administratively and procedurally with Admin Instr A15 and CCR 447. The Ombudsman found no evidence that the Board was biased or that it otherwise acted unfairly towards the Complainant. The Ombudsman therefore declined to uphold the Complaint.

However, the Ombudsman found that the Complainant's concerns were reasonable and recommended that steps be taken to amend Admin Instr A15 and CCR 447 to provide that "*as far as possible at least one member of the Board will be medically qualified*" in those instances where the appointment to be filled is one in respect of which medical qualifications and/or experience are essential criteria.

CASE SUMMARY 7

Mandatory selection for EU Battle Group - Admin Instr CS5 – Failure to parade and advise of mandatory selection - Allegation of forged Complainant signature – Medical Officer’s duties to DF versus Complainant

The Complainant took issue with being mandatorily selected for the EU Battle Group (EUBG) where he contended the provisions of Admin Instr CS5 were not adhered to, and in particular, he alleged the following:

- i. Documentation, apparently signed by him, within DF records indicated that he had been aware of his mandatory selection,
- ii. His signature was forged on Admin Instr CS5 App 7 to Annex D on the occasion of supposedly being paraded and advised of his mandatory selection, and,
- ii. The Medical Officer (MO) breached the normal doctor / patient confidentiality in his contact with a Lt Col in the course of attempts to mediate as between the Complainant and his superiors.

The Complainant was subsequently deselected for EUBG.

In any event, these allegations were investigated by the DF not upheld, and the Complainant was deemed not to have suffered any wrong. The allegation of forgery was investigated by the Military Police and ultimately An Garda Síochána Documents and Handwriting section. The outcome was inconclusive.

The Ombudsman’s investigation found as follows:

- i. The Complainant was wronged in the failure to parade him and inform him of his EUBG mandatory selection in accordance with Admin Instr CS5. He received an apology for same from the Lt Col, which the Ombudsman believed was both appropriate and sufficient in the circumstances.
- ii. The Complainant’s signature on the Annex D document was, as a matter of probability, forged. An appropriate investigation into this allegation was undertaken, including obtaining the opinion of a Garda handwriting expert. The investigation failed to identify the person responsible for the forgery.
- iii. The MO did not breach doctor / patient confidentiality. His involvement / contact with the Lt Col stemmed from a genuine concern on his part to assist the Complainant in relation to what were then significant issues of conflict between the Complainant and his superiors.



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29 cases, including pre 2020 referrals, were under review by the ODF during 2020.



CASE SUMMARY 8

2017 NCO Promotion Competition – Completed Senior NCO Courses – Interview timetabling - CCR 448B compliant scoring – candidate canvassed civilian board members – Scoring matrix discrepancies - AF725 Part 3 – personal career development - PD Performance Appraisal system

The Complainant took issue with the manner in which the 2017 NCO Promotion Competition was run, in which he was seeking promotion from PO to CPO Comop.

He alleged that:

- a. A number of individuals of the same branch as the Complainant competing in the competition did not have a Senior NCO Course completed, therefore rendering them ineligible.
- b. There was no timetable for interviews published in the Convening Order, and that changes in dates had a negative impact on his performance at interview.
- c. The Promotion Board did not score candidates in accordance with agreement CCR 448B, and as briefed by PMS prior to the competition.
- d. A fellow candidate in the competition was in a position to canvas civilian Board members prior to the competition by conducting the briefing for the civilian Board members on the competition process.
- e. There was a different scoring matrix used in Army and Air Corps competitions versus the Naval Service Competition and this possibly affected his score.
- f. The administration surrounding his AF725 Part 3 for his Standard NCO Course was not completed correctly and that he was not apprised of its contents until he reviewed his file prior to the competition.
- g. He had not been given sufficient variety in his personal career development despite requesting opportunities through the chain of command.
- h. The competition result had effectively ended his career in the Naval Service, when considering the age profile of promoted personnel and vacancies within branch.

As redress, the Complainant requested promotion to CPO/Commop rank.

The MIO's findings were as follows:

- a. All participants in the competition who had not

successfully completed a Senior NCO Course had satisfied the alternative requirement that they had reached a satisfactory standard of training as certified by the Corps Director concerned, and had satisfied the other specified criteria.

- b. The organising of interview dates and times had been in accordance with established guidelines.
- c. The Complainant had been correctly scored by the Competition Board (i.e. in compliance with Annex PP, Chapt 3, Admin Instr Pt. 10 in relation to file assessment and interview).
- d. (This allegation was outside the legislative remit of the Ombudsman.)
- e. There was no evidence that a different scoring matrix was used in relation to, on the one hand Army and Air Corps competitions, and on the other hand Naval Service competitions.
- f. The AF725 Pt. 3 as found on the Complainant's promotion sub-file was a "certified copy" of the original, and had not been "fabricated" nor was it "illegitimate". Furthermore, any discrepancies noted by the Complainant in his Annex WW form were present when he signed it.
- g. The MIO found that there were shortfalls in "guarantees" made in the course of previous ROW applications relating to career progression and had either not been followed through or ought not to have been made in the first place.
- h. The MIO did not agree with the Complainant's contention that his career had "effectively" been ended by the outcome of the 2017 Competition. The MIO noted that the Complainant remained eligible to continue to serve in the DF at his current rank until 2025, and if promoted further for an additional six years.

The MIO found no evidence to suggest that the competition in question was carried out in any way other than the procedure laid down in CCR 448B. Apart from the correction in the Annex EE score (which did not affect overall placing), there were no procedural errors with the board's conduct.



Furthermore, all files were checked by PMS and a final check by J1 staff before the Order of Merit was signed off. The Complainant attempted to engage with career enhancing opportunities with limited success and the MIO found in his favour in that regard. However, in the context of the 2017 PO to CPO Promotion Competition, the MIO found the Complainant had not been wronged and the redress sought was not appropriate.

The COS concluded that the Complainant had not suffered any wrong, but acknowledged that “some minor administrative shortcomings in the implementation of the promotion agreements” had been identified.

S. 6 (3) of the Ombudsman (Defence Forces) Act 2004, requiring the making of a complaint not later than 12 months from the date of the action concerned or the date on which the Complainant became aware of the action, prevented the Ombudsman accepting jurisdiction of allegations b. and d.

The Ombudsman found there were shortcomings in relation to the Promotion Competition, but he was not satisfied that he should impugn the competition process in relation to the Complainant, as he (the Ombudsman) could not identify any significant unfairness or fundamental breach of relevant rules or guidelines. There were technical flaws in the process, but those did not render the process as a whole flawed to the extent that it could be significantly undermined, or that, if it had been flawless the outcome was likely to have been more positive (in terms of the final result) for the Complainant.

The Ombudsman recommended as follows:

1. The review of the performance appraisal system be concluded without undue delay.
2. An officer of suitably senior rank review with the Complainant his career options and opportunities (including promotion) currently available to him or likely to become available to him in the foreseeable future.



“

25 cases were brought to conclusion by the ODF during 2020 (including one supplementary report). This represents a 58% decrease in the number of cases concluded by the ODF in 2019 when successful targeted actions were implemented to eliminate a significant backlog in cases.

CASE SUMMARY 9

Career course non-selection - 3rd Joint Senior Command & Staff Course – More junior member selected - Junior member from Air Corps filled Air Corps allocation - Complainant Naval Service - Covid-19 restrictions necessitated reduced numbers on course – Complainant excluded after recalibration of NS allocation – apportionment to three DF services, and two places to NS reasonable in circumstances

The Complainant took issue with his non selection for a 3rd Joint Senior Command & Staff career course where a more junior officer was selected, and by way of redress, sought a place on the current course or assurance in writing, of a place on the next course.

The 3rd Joint C&S Course was originally destined to have 24 students. DCOS (Sp) required students on the course from Army, Naval Service and Air Corps. The Complainant had been selected on a reserve basis, as one of six places allocated to the NS. Due to Covid-19 restrictions, it was necessary to reduce the course intake to 16 students, being 12 Army, 2 NS and 2 AC. The 2 NS students chosen were senior to the Complainant. One AC officer was junior to the Complainant, but he had filled one of the AC allocation, thereby justifying his place on the course.

The COS did not uphold the complaint.

The Ombudsman found that Covid-19 restrictions necessitated reduced numbers participating in the 3rd Joint C&S Course which resulted in originally chosen participants – including the Complainant – being disappointed. The decision to apportion slots to the three DF services, and in particular two slots to the NS, was reasonable and understandable in the circumstances having regard to the reduced capacity to cater for large numbers in many areas of activity both within the DF, and elsewhere.

The two NS participants were senior to the Complainant. The Army and AC students were eligible and each of those services were entitled to fill their complement of students from within their own ranks accordingly. The complaint was therefore not upheld and no recommendation was made.



5 Corporate Affairs

Staffing

The staffing of the ODF consists of:

- Brian O'Neill, Head of Office
- Michael O'Flaherty, Case Manager
- Lauren O'Donovan, Executive Officer

Review of Internal Financial Controls

In common with other publicly-funded Offices, the ODF conducted a formal review of Internal Financial Controls in 2020. 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.

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, micro-film, 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.

Protected Disclosures

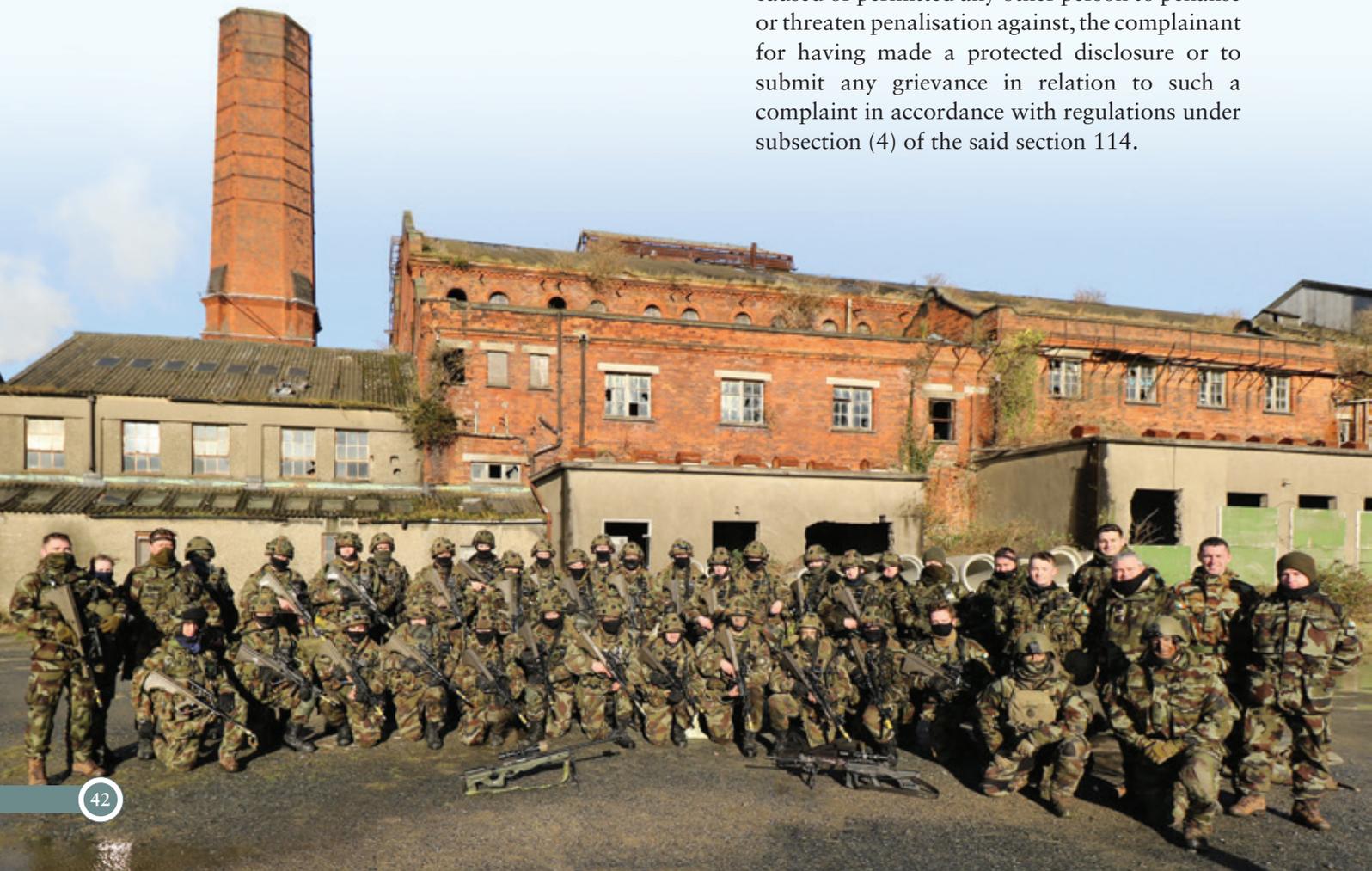
20. (1) Section 4 of the Ombudsman (Defence Forces) Act 2004 is amended by inserting the following subsection after subsection (3):

“(3A) If the complaint is that a person has penalised or threatened penalisation (within the meaning of the *Protected Disclosures Act 2014*) against, or caused or permitted any other person to penalise or threaten penalisation against, the complainant for having made a protected disclosure (within the meaning of that Act), the Ombudsman—

(a) is not prevented from investigating any action that is the subject of the complaint, and

(b) may not decide not to carry out, and may not decide to discontinue, an investigation into any such action, because no complaint has been made under section 114 of the Act of 1954.”.

(2) The amendment made by *subsection (1)* does not affect any right to complain, under section 114 of the Defence Act 1954 that a person has penalised or threatened penalisation against, or caused or permitted any other person to penalise or threaten penalisation against, the complainant for having made a protected disclosure or to submit any grievance in relation to such a complaint in accordance with regulations under subsection (4) of the said section 114.





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