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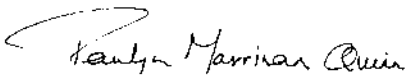
Ombudsman for the Defence Forces
Annual Report 2010

I hereby submit my Annual Report as Ombudsman for the Defence Forces for 2010 pursuant to Section 7 of the Ombudsman (Defence Forces) Act, 2004.

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



Paulyn Marrinan Quinn, SC
Ombudsman for the Defence Forces

ODF

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THE OMBUDSMAN FOR THE DEFENCE FORCES

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It gives me considerable pride to present this, my fifth Annual Report as Ombudsman for the Defence Forces. 2010 was, as always, a challenging and sometimes difficult 12 months for the ODF.

In spite of the fact that 2009 was the 200th Anniversary of the establishment of the Office of Ombudsman in Sweden – a date that did not pass without recognition and celebration – people could be forgiven for often asking what is it that an Ombudsman does exactly and why is the presence of an Office of Ombudsman so cherished universally.

There are many ways of answering those questions but, in essence, it is true to say that an Ombudsman in the exercise of administrative oversight provides an independent appeal for those who have exhausted the prevailing grievance procedures.

Over time, the very presence of the Ombudsman becomes a rich resource for the department, institution, or organisation within its jurisdiction. They are minded to gain the maximum benefit from the presence of an Ombudsman. Through the investigation and Adjudication of a range of cases, the Ombudsman is well positioned to comment upon and shed light on systemic failures which may arise from the use of lax practices.

The peripheral benefits of an Ombudsman's Office, which are often overlooked, are that through the exercise of its powers of investigation and oversight it contributes and helps to encourage accountability.

Of course, in the Adjudication of individual grievances in which Complainants believe that they have been wronged and unfairly treated as a result of maladministration it is both understandable and reasonable that they expect the remedy to be available if their complaint is upheld.

In the case of members of the Defence Forces very often the remedy may involve being promoted or provided with an opportunity to serve overseas or to have a place on a career course which they were improperly or incorrectly denied. In these difficult times and, particularly since the moratorium of 2009, it has not always been possible for these remedies to be effected. I must therefore acknowledge the patience and enduring acceptance of certain realities which members and former members of the Defence Forces have demonstrated.

In some respects that sense of realism has been reflected in the number of cases referred to me during the past year. It is also reflected in the response of many members who provide feedback to my Office and say they were pleased at least to find that their appeal was upheld and that they were vindicated in pursuing their grievance.

Another fact that may be often taken for granted is that members of the Irish Defence Forces have both a legal right to initiate a complaint through the Redress of Wrongs procedures and, since the establishment of ODF, have a legal right to have that matter reviewed by an Ombudsman who is both independent of the Defence Forces and of the Department of Defence.

It is a tribute to the vision of those who campaigned for and introduced the Ombudsman (Defence Forces) Act, 2004 that my Office has been centrally involved in the development of the theory and practice of military Ombudsmanship over recent years, and this was an important feature of our work in 2010.

It has been my privilege over the last number of years to work with the International Conference of Ombudsman Institutions for Armed Forces – the grouping of Offices of Ombudsman or Inspectorates in the Armed Forces, initiated in 2009 by the then German Parliamentary Commissioner for the Armed Forces, Reinhold Robbe and to play a central role in drawing up the Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel produced by the OSCE's Office for Democratic Institutions and Human Rights in cooperation with the Geneva Centre for the Democratic Control of Armed Forces (DCAF).

I am very glad to confirm that the Handbook has been translated into a number of languages and is proving to be a useful resource when the discussion about the need to protect the human rights of armed forces personnel is on the agenda.

I am also pleased to report that I addressed the 2nd International Conference of Ombudsman Institutions for Armed Forces during the year which was hosted by President Anton Gaál, Executive Chairman of the Austrian Parliamentary Commission for the Federal Armed Forces.

Reporting on my second year of operation in 2007, I recorded that I had briefed European and Asian officials from the fields of diplomacy and Ombudsmanship on the role and remit of my Office and, since that time, the interest from overseas on the experience of establishing this Office has been extensive. 2010 again saw this interest reflected in the traffic to *www.odf.ie* which had visitors from 106 different countries, and increase of 38% from 2009.

Of the additional work which I did in the course of the year it was a great honour to be invited by Dr. Nilda Garré, the former Minister for Defence in Argentina, to contribute to a publication that the National Office on Human Rights and International Humanitarian Law in the Argentine Ministry of Defence intended to publish last year. The section to which I was invited to contribute related to human rights and civil-military relations.

I was invited to contribute a chapter on the role of Ombudsman institutions in the military sector and the role of such an Office in the protection of the human rights of military personnel. The Argentine Government has examined models in other jurisdictions, most notably in Germany.

The former Minister for Defence Dr. Garré attended the 1st International Conference of Ombudsman Institutions for Armed Forces convened by the then German Parliamentary Commissioner for the Armed Forces, Mr. Reinhold Robbe and co-hosted by Ambassador Theodor H. Winkler, Director of DCAF which took place in Berlin in May 2009. Since then, there has been a change in the administration in Argentina and I have been advised that the work on this interesting and significant publication is continuing.

In 2010 I was invited to Congress House, the home of the Advisory, Conciliation and Arbitration Service (ACAS) in London to address a Conference about the benefits of mediation in workplace and interpersonal disputes. I was pleased to see that one of the other speakers on the programme for this Conference was a Brigadier of the British Army and I was interested to learn from his presentation that the British Armed Forces had been considering the use of mediation recently. In launching my Annual Report for 2007, I made reference to a need for further thought and discussion about the possibilities of what I described as "early intervention" in relation to some disputes and complaints which are amenable to an early resolution.

I am pleased to record that during the course of 2010 substantial support was received from the General Officer Commanding, 4 Western Brigade and his Commanders in approaching a case through mediation. The willingness of all participants in this matter to accept and positively engage with the mediation model in good faith was particularly gratifying. Another case in which there were extenuating circumstances was satisfactorily resolved following direct enquiries from the Ombudsman to the Defence Forces.

I greatly appreciate the open-minded approach which was taken by all in relation to this process and I believe it is in the interests of all to encourage further use of early intervention in this way. Another significant benefit of mediation is evident in cases where discussion and an exchange of information may contribute to an understanding from both sides to the matter about the perception of actions or words and how if these are not addressed they can ferment and cause great damage to the persons involved and to the working relationships not only of those directly involved but of the peer group and the working environment.

One of the universally accepted cornerstones of an Ombudsman is accountability and I hope this Annual Report will provide the many publics that my Office serves with an accurate accessible and comprehensive account of the work undertaken in 2010. I have

developed the practice over the last five years of presenting the information in a similar format and layout in order to facilitate ease of reference and also for comparison of information over the years.

The Customer Charter of the ODF commits my Office to providing a fair, user-friendly and accessible means of adjudicating cases as speedily as possible. Indeed, the time taken to conclude a case clearly depends on many factors arising out of the complexity of issues and causes of complaint. A speedy and effective resolution has been my stated objective from the outset. Due to resourcing constraints, over the last five years, it has been a source of concern to me that I have been unable to provide as speedy a turnaround as the members of the Defence Forces deserve.

As far as the performance of my Office is concerned, having conducted a comparative review of output having regard to the ratio of ODF staff to the number of members of the Defence Forces and then comparing this data to other jurisdictions, I remain of the view that given the resourcing levels every effort is being invested in our objective and that the ODF continues to provide value for money.

It has been a cause of concern and merited comment in my last two Annual Reports that the time taken to receive a Ministerial response, after the issue of my Final Report and recommendations to the Minister for Defence, has been lengthening. I reported this in my Annual Report for 2009 and I am pleased that every effort was made by the Department of Defence to provide responses to the cases which I had adjudicated in 2009. Unfortunately, 2010 saw a considerable stretch in the time taken to provide the Ministerial response. I have raised this matter and I have been assured that every effort is being made to expedite the responses as soon as possible.

During 2010 Mr. Tony Killeen TD was appointed Minister for Defence and I welcomed the opportunity of discussing the progress of the Office of ODF with him. I was very pleased to encounter the interest he displayed in the role and objectives of the Office. May I take this opportunity of conveying my best wishes to him for the future.

At the time of writing Mr. Alan Shatter TD has been appointed Minister for Justice, Equality, and Defence and I look forward to engaging positively with Minister Shatter in the coming months.

I must also in this Annual Report record my appreciation for the support and engagement that the Chief of Staff Lieutenant General Sean McCann has given to the work of my Office during 2010. General McCann was appointed Chief of Staff in June and I was pleased to have an early meeting with him to discuss the ongoing positive relations between the Defence Forces and my Office. As I have said to the Defence Forces at every opportunity provided, ODF is here to support and assist the Defence Forces.

I said at the outset of this introduction that the year was both interesting and difficult. I must add that it was indeed a year that carried with it deep sadness at the passing of the former Chief of Staff of the Irish Defence Forces, Lieuteneant General Dermot Earley. Lt. Gen. Earley was a powerful force for positive change and modernisation in the Irish Defence Forces, and was one of the champions of the establishment of an Ombudsman for the Defence Forces.

Under his stewardship, many of the administrative and practical reforms which I had recommended received prompt attention from him when he was in the role of Deputy Chief of Staff (Support) and as Chief of Staff. His passing creates a huge void. He set standards and a trail to be followed. Being witness to the widespread praise and appreciation offered by so many whose lives had been touched by him in his lifetime, one can only begin to imagine the grief and loss sustained by his wife and family.

I take this opportunity of expressing on behalf of my staff in the Office of Ombudsman for the Defence Forces our heartfelt condolences to his family and to his colleagues in the Defence Forces. It was a huge privilege and defining experience to have seen at close hand his way with people and his inspiring prowess in leadership.

I have said on previous occasions that one of the advantages of the Ombudsman process is that it is not strictly bound by the rigours of legal precedent, but as the Office develops, an emerging jurisprudence and ethos is as inevitable as it is desirable. Notwithstanding the fact that every case which is referred to me is considered on its own merits, it is desirable to maintain a degree of consistency. In that regard, I am very pleased to confirm that we brought to conclusion in 2010 plans, which were afoot for some time, to establish a Case Digest Report resource. This is a bespoke closed case reporting system designed to record the cases which are then searchable by topic and subject. I anticipate that this will greatly enhance the work of my Office and look forward to developing and perfecting this system over the coming year.

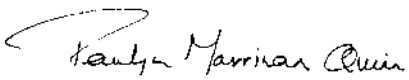
During the course of 2010 the secondment of the case administrator, Mr. Wesley Graham, came to an end and we wish him well in his new job. I was pleased to welcome his replacement Mr. Conor Gallogly. The work of my Office could not progress without the support of a committed and loyal team and I wish to record my thanks to them for the work and time that they invest. I would also like to thank those who have worked with my Office in producing this publication.

This Annual Report will enable people to reach their own views as to the contribution and value that the Office of ODF represented in 2010 in discharging its statutory function.

I set out in the following Analysis of Complaints and Appeals section a breakdown of the cases received during the year, which are mirrored in the cross-section of anonymised case studies provided in a subsequent section of this Annual Report.

I am pleased to include in my Annual Report for 2010, the Report of the Comptroller & Auditor General with reference to the Financial Statements for 2010. I must thank the Office of Comptroller & Auditor General for the work done in assisting me to meet the deadline for this publication, in particular, Mr. John Crean and his team at that Office.

May I say on a personal level how in awe I have been, over the last few difficult years, with the patience and understanding of members of the Defence Forces in circumstances where the Minister has either taken a long time to respond to my Reports and/or has not been inclined to accept my recommendations for a remedy. Since having the honour of doing this job and establishing the Office, it has become very clear to me that members of the Defence Forces do not initiate a Redress of Wrongs lightly. When they do so, that step is guided primarily by an interest in ensuring that systems are improved to benefit other members and prevent others from being adversely affected by maladministration or systemic failures.



Paulyn Marrinan Quinn, SC
Ombudsman for the Defence Forces

II Highlights of 2010

- 116 cases referred to the Ombudsman, resulting in the initiation of 105 investigations.
- Final Reports issued in relation to 48 cases – highest number of Final Reports issued in a year.
- Non-selection for Promotion remains issue triggering the largest proportion of complaints or appeals to the Ombudsman.
- Continued reform and change in Defence Forces procedures and practices evident as a result of recommendations contained in Ombudsman's Final Reports.
- ODF mediation process utilised to resolve issue in 4 Western Brigade.
- Case Digest Report system successfully deployed which will facilitate greater monitoring and cross-referencing of individual cases, causes of complaint and case histories.
- Record number of visitors to *www.odf.ie*
- Visitors from 106 different countries accessed *www.odf.ie*
- Continued engagement by the Ombudsman with European and International Ombudsman organisations concerned with the protection of fundamental freedoms and human rights of armed forces personnel.
- Ombudsman outlines role and remit of her Office to a range of domestic audiences including PDFORRA, the Association of Garda Sergeants and Inspectors and the Civil Service Forum.

Before referring a complaint to me serving members of the Defence Forces must first exhaust the RoW procedure. Former members of the Defence Forces may contact me directly in writing or by submitting a complaint online through www.odf.ie.

III Analysis of Complaints & Appeals

Notification of complaints under Section 114 of the Defence Act

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

Section 13 of the Ombudsman (Defence Forces) Act, 2004, requires that all such complaints are notified to the Ombudsman for the Defence Forces and the Minister for Defence.

This mechanism provides an important civilian oversight of the internal grievance process within the Defence Forces. My Office closely monitors the Notifications of Complaint received and actively follows up with the military authorities when the 28 day time limit for resolution under this provision elapses.

In 2010 I was notified of 62 complaints made through the RoW procedure by Permanent and Reserve members of the Defence Forces.

Of these 62 cases:

15 (24%) were appealed to my Office;

24 (39%) were either resolved internally within the Defence Forces, withdrawn or covered by earlier redress;

23 (37%) complaints were still active in the RoW process as of 31st December 2010.

Complaints received directly by the Ombudsman for the Defence Forces

Former members of the Defence Forces can refer complaints directly to my Office, subject to certain conditions specified in Section 6(2) of the Ombudsman (Defence Forces) Act, 2004.

In addition, any complaint in relation to an action taken by a civil servant is referred directly to my Office.

In 2010 8 complaints were received directly by my Office.

Total number of complaints and appeals referred in 2010

116 complaints or appeals were referred to my Office in 2010. Of these:

15 (13%) cases were appealed following RoW consideration;

8 (7%) complaints were referred directly to my Office;

93 (80%) cases were carried over from 2009.

Total number of complaints or appeals referred:

2006	2007	2008	2009	2010
55	110	229	124	116

Status of complaints and appeals referred

There are four main stages in an ODF investigation and examination of a case referred to me.

i) Preliminary Examination of the case is conducted to ensure it falls within the requirements of the Act. I also take a view as to whether it is an appropriate complaint for my intervention.

ii) Detailed investigation of the case to establish facts and take account of the arguments proposed for and against the complaint.

iii) The issuing of a Preliminary View Report (PVR) which sets out the preliminary findings. The PVR may request clarifications and documentary evidence where necessary.

iv) Having considered the replies to the PVR, I issue my Final Report, setting out my findings and recommendations, which is sent to the Minister for Defence, the Chief of Staff, the Complainant and any other person to whom I consider it appropriate to include in this list.

Of the 116 cases referred in 2010:

- 26 Preliminary View Reports were issued to the relevant parties, equating to 22% of all cases referred.
- 48 Final Reports were issued following replies received to the Preliminary View Reports, equating to 41% of all cases referred.
- As of 31st December 2010 my Office was awaiting responses to 1 Preliminary View Report issued in 2010.
- 57 cases were still under consideration as of 31st December 2010.
- 11 cases in line for my review were withdrawn, closed by me or deemed outside my terms of reference.

Reasons for complaints and appeals

Of the 116 complaints and appeals referred to me in 2010, 105 were accepted for examination, and as noted above 11 were withdrawn, closed by me or deemed outside my terms of reference (OToR). As noted elsewhere in this Annual Report and in previous Annual Reports the decision to deem a case OToR is not taken lightly and often involves lengthy and onerous consideration of the grounds for the complaint or appeal and related circumstances.

The grounds on which the 105 cases accepted for examination were as follows:

Reasons for Complaint or Appeal	2010	Change from 2009
Non-selection for promotion	37 (35%)	No change
Alleged inappropriate behaviour/ bullying	28 (26.6%)	-3%
Career-related administrative processes	14 (13.3%)	+3%
Non-selection for a career course	11 (10.4%)	-3%
Maladministration	9 (8.5%)	-1%
Non-selection for overseas service	6 (5.7%)	+3%

As in 2009, there were no complaints regarding sexual harassment referred during the period covered by this report.

Outcomes of cases where a Final Report was issued

As noted above 48 Final Reports were issued in 2010. Of these:

- 18 (38%) cases were upheld/partially upheld;
- 3 (6%) cases were not upheld;
- 27 (56%) Ombudsman decides to discontinue investigation.

Multiple Complaints or Appeals received in 2010

Of the 105 cases accepted for investigation in 2010, 27 cases emanated from one Complainant.

In outlining the statistics below in relation to the service status, gender and service area of Complainants, we work from the basis of the 79 individuals who submitted complaints, rather than the 106 individual cases investigated.

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

Of the 79 individual Complainants in 2010:

- 71 (90%) were current members of the Permanent Defence Force;
- 3 (4%) were current members of the Reserve Defence Force;
- 5 (6%) were former members of the Defence Forces.

Gender of Complainants

Of the 79 individual Complainants in 2010:

- 74 (94%) were male members and former members of the Defence Forces.
- 5 (6%) were female members and former members of the Defence Forces.

Complaints or appeals from female members and former members of the Defence Forces

2006	2007	2008	2009	2010
8%	11%	8%	6%	6%

Breakdown of complaints or appeals by service area

Of the 79 individual Complainants in 2010:

- 55 (70%) were members or former members of the Army;
- 13 (16%) were members or former members of the Air Corps;
- 11 (14%) were from members or former members of the Naval Service.

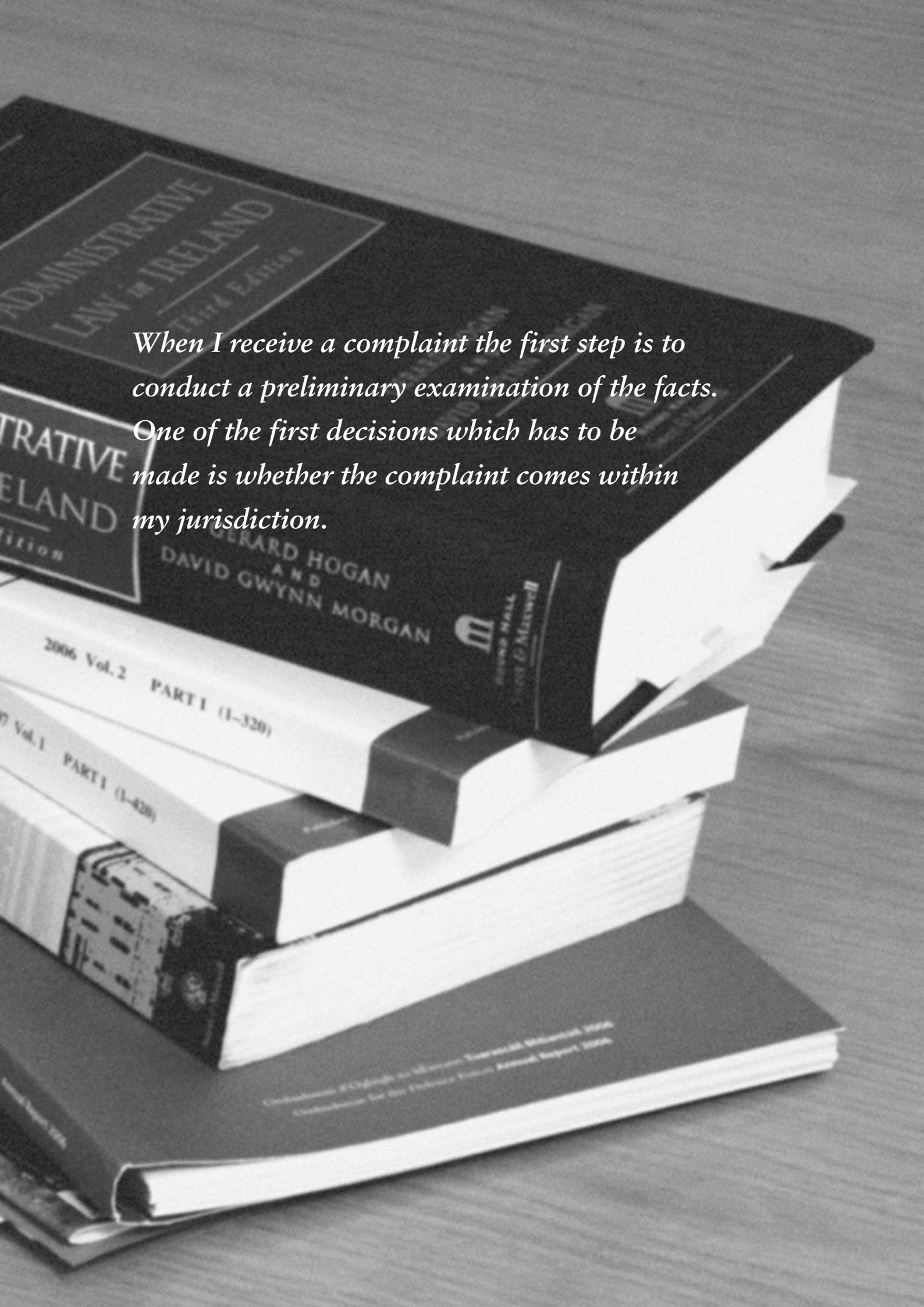
Complaints or appeals by service area 2006 – 2010

Service area	2006	2007	2008	2009	2010
Army	100%	75%	83%	78%	70%
Air Corps	0%	18%	14%	13%	16%
Naval Service	0%	7%	4%	9%	14%

Complaints or appeals Outside Terms of Reference (OToR)

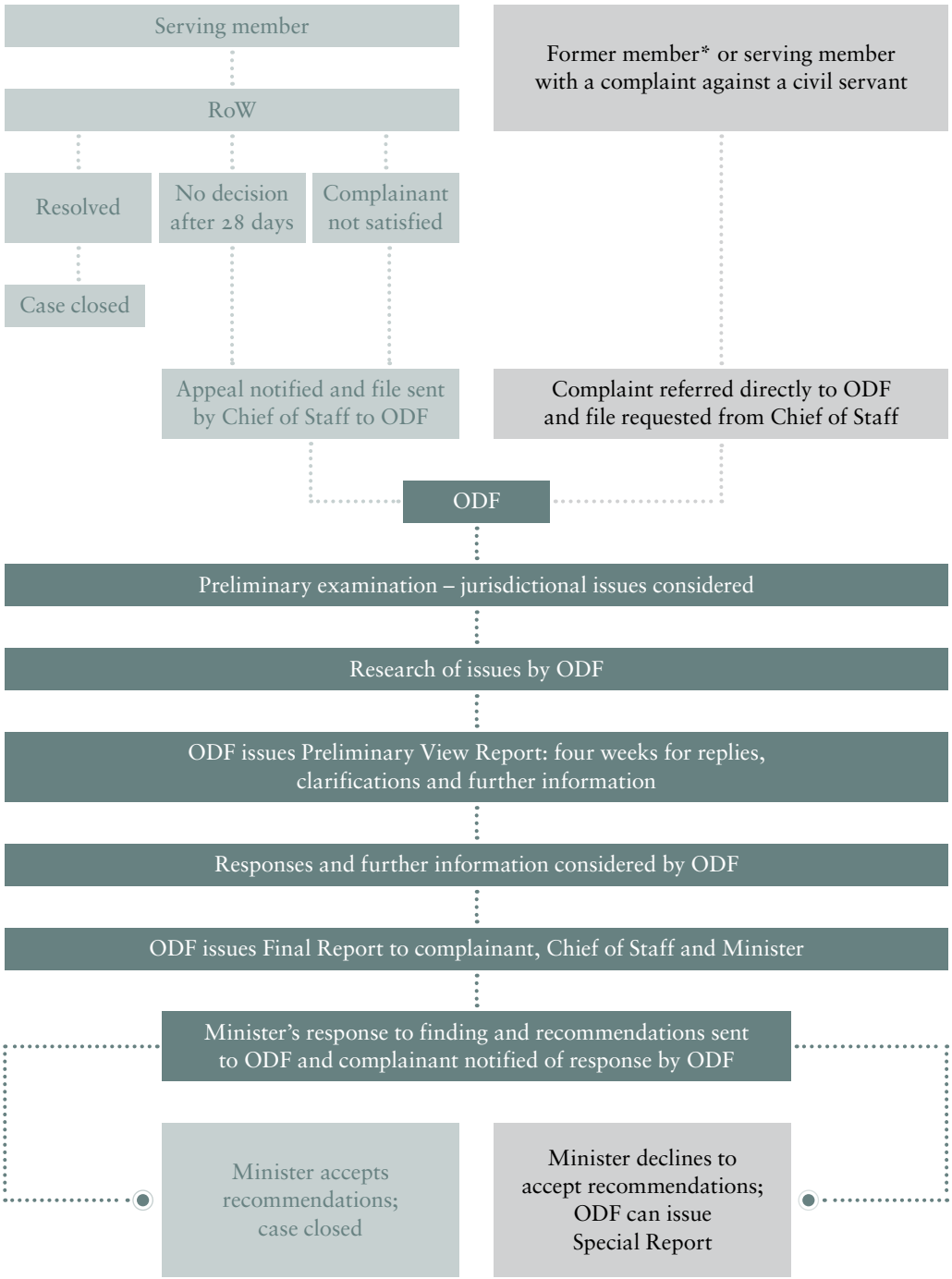
In addition to the 105 cases which were investigated by my Office in 2010 a further 11 cases were received which were withdrawn, closed by me or deemed outside my terms of reference. These 11 cases were deemed inadmissible for the following reasons:

- 5 cases were withdrawn by the Complainants;
- 1 case was closed by me due to lack of response/action by Complainant;
- 5 cases were deemed by me to be outside my remit in the course of the Preliminary Investigation;
    - 1 case related to issues which should first have been brought through the Defence Forces' RoW procedure;
    - 1 case was received from an individual who was not a serving member at the time of the alleged action;
    - 3 cases related to alleged actions which predated the coming into force of the Act.



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

IV Lifecycle of a Complaint



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

V Commentary on Cases

Administrative and Process Changes Following Recommendations and Tracking Implementation of Same.

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

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

This process has resulted in positive reform within the Defence Forces since the early days of the inception of my Office.

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

Consequent on this reform there has been a significant reduction in the number of complaints or appeals referred to my Office on these grounds. In 2010 17% of all cases referred to my Office related to non-selection for career courses and overseas service whereas cases of this nature accounted for 46% of all cases referred to my Office in 2006.

In 2007, following recommendations in a number of my Final Reports, interview procedures for promotion were reviewed through the Defence Forces' conciliation and arbitration procedures. Complaints in relation to non-selection for promotion accounted for 37% of all cases referred to my Office in 2010, confirming the trend over previous years that this is a significant area of grievance. It is clear that improvement in procedures is necessary and I would welcome the speedy conclusion of the review and the introduction of an improved and more transparent system.

During 2010 the Minister for Defence, in response to my Final Reports, many of which issued in 2009, gave a number of commitments regarding reformed procedures across a wide variety of areas. Among the 12 specific administrative and process reform commitments were:

- Chief of Staff to ensure that AF 43As are issued to applicants as soon as possible after an interview board has reached its decision.
- All GOC/Formation Commanders to receive an instruction regarding the provision of Military Investigation Officer's reports to all Complainants.
- Defence Forces to review the current procedures relating to the promulgation of selection criteria in advance of competitions, in the interests of avoiding any ambiguity.

My Office tracks these ministerial commitments and in 2010 I wrote to the Minister for Defence requesting an update on the status of implementation of various commitments. This is an important element of civilian oversight of the military authorities that I will continue to pursue in 2011. It is vital that any Ombudsman is not only effective, but also seen to be effective. Monitoring the implementation of administrative and process changes arising from my Final Reports and accepted by the Minister for Defence is an important measure in maintaining confidence in the role and purpose of the ODF and I look forward to working on this issue in 2011 with the Department of Defence and the military authorities.

Audit of Responses to my Recommendations contained in my Adjudications and Final Reports to the Minister for Defence.

Over my five year period as Ombudsman, I have issued Final Reports in relation to 158 cases, which contained findings and recommendations. Some recommendations may refer to specific measures to provide redress in an individual case, while other recommendations arise as a result of systemic flaws in procedures, processes or administrative matters within the Defence Forces that require review and reform.

In my Annual Report for 2008 I gave an undertaking to initiate a project which would review my recommendations in my Final Reports and track the responses to these recommendations from the Minister for Defence and military authorities with a view to assessing the implementation and effectiveness of these recommendations.

This work was initiated in 2009 and gave rise to the Four Year Review section included in my Annual Report for 2009.

The review was the most worthwhile exercise because not only did it assemble in an accessible format the impact that my Office has had on a range of Defence Forces administrative processes and procedures, but it also revealed cases where a substantial reply from the Minister for Defence was outstanding.

This initiative has been continued and developed during 2010 and our enhanced Case Digest Report system, designed to track recommendations contained in Final Reports and ministerial responses, is now an integral part of my Office's complaint handling system.

As noted in my 2009 Annual Report my Office was still awaiting a ministerial response in respect of 16 of the 31 Final Reports I issued that year. In 2010 I received responses to all these outstanding Final Reports.

However, the alacrity to which ministerial responses are forthcoming remains an area where improvement is necessary.

Of the 48 Final Reports I issued in 2010 ministerial responses to 19 Final Reports were still outstanding as of 31st December 2010. I received a response from the Minister in relation to 29 cases, 27 of which were cases in respect of which I had taken the decision to discontinue investigations.

I sincerely hope that 2011 will see a marked improvement in time taken to deliver ministerial responses to my Final Reports, particularly where the findings or recommendations of these Final Reports have important implications for individual Complainants and/or relate to more profound reform in administrative procedures and practices.

Access to personnel records

I noted in a Case Study in my Annual Report of 2007 (Case Study 2 – Annual Report 2007) that following the issuing of my Preliminary View Report in that case, the GOC advised that in all future Promotion Competitions all eligible candidates would be given an opportunity to view and verify their records. I must say that this continues to be a problem in cases which I adjudicate when the complaint is about the non-selection or non-promotion of the Complainant. It appears to me that a system of verification is to be recommended in order that errors and omissions are identified prior to an Interview Board's determination. I was advised by the Chief of Staff that he had directed this tactic to be implemented. Given the perceived problems in altering Interview Board Reports a practical solution may be to affix a front-page addendum to Interview Board Reports when such errors have been identified.

Perceptions of bias and unfairness in Promotion Competitions

From the cases which I have considered over the past year, there is no doubt that the perception of unfair selection processes remains a problem within the Defence Forces. It is now a considerable length of time since the Equality Steering Group in its Report of 2004 recommended a marking system in Promotion Competitions. I have highlighted the significance of this matter in many cases that I have reviewed over the last five years and I am saddened to find that a marking or matrix system for Promotion Competitions has not yet been agreed. I must therefore repeat my previous recommendations regarding the marking system and recommendations that efforts should be made to expedite the work being done on the promotion module of the draft Regulations.

Promotion Interview Board Reports

I cannot emphasise the need for Promotion Interview Board Reports to properly state how the successful candidates in the Competition met the criteria and qualifications required. It is inevitable in circumstances where candidates have comparable or other experience and qualifications that they will believe themselves to be adequately or even more experienced or suitable for the promotion than their fellow competitors. It is therefore essential that Promotion Interview Boards clearly delineate their assessments and evaluation of the candidates against the defined criteria and, where necessary, describe how they arrived at their conclusions of their evaluations relative to the candidates' qualifications and experience.

Submissions After Final Report Is Issued

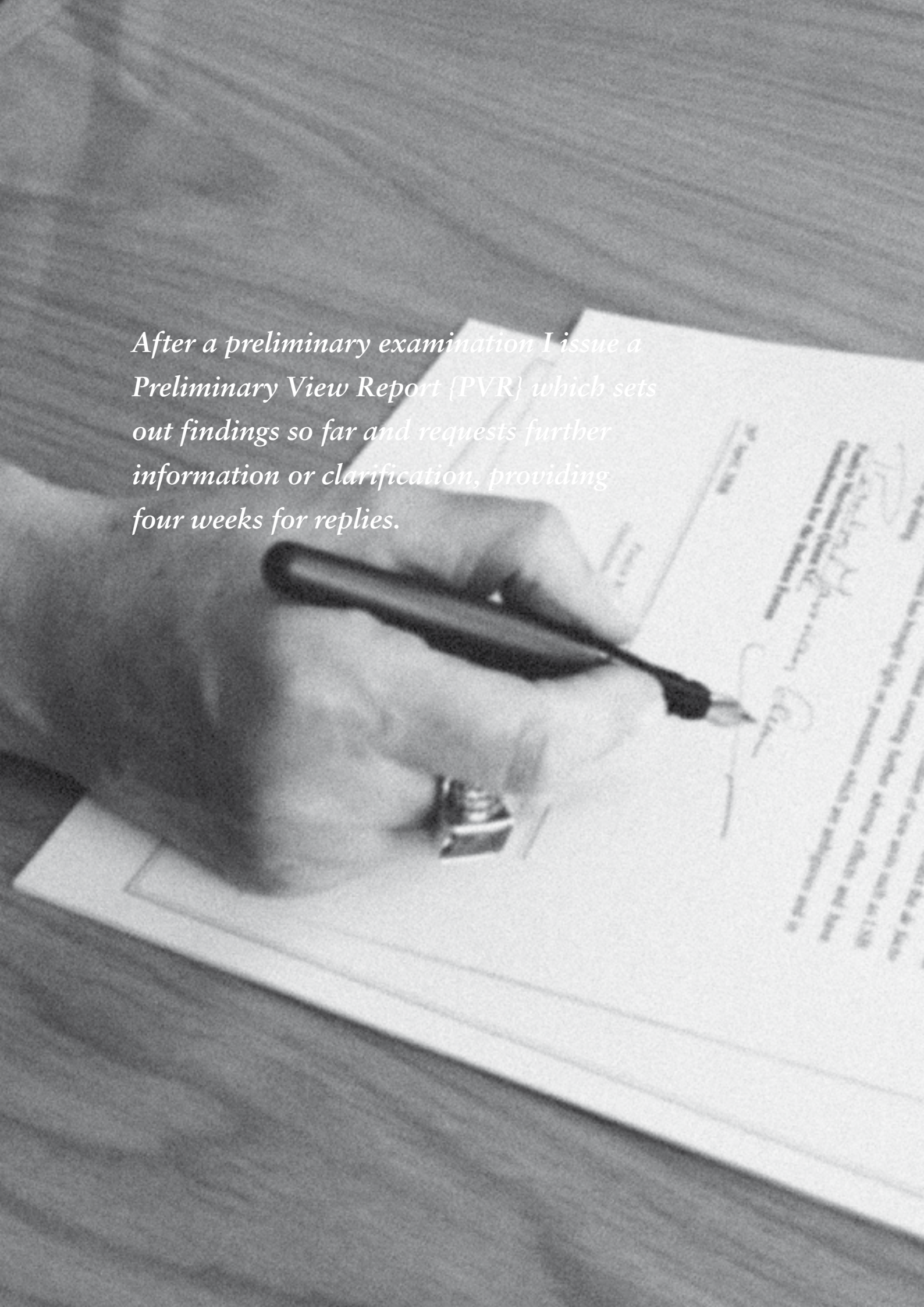
During the past year some Complainants have sought to make further submissions after I had issued my Final Report. These submissions cannot be considered. It is only in cases where new evidence, which was not available at the outset, becomes available, that I would consider re-opening a case. Every effort is made to provide Complainants with an opportunity of presenting evidence in support of their contentions while the case is under review.

Jurisdiction

One of the first decisions an Ombudsman must make is whether a case is eligible or not. Often this decision is more difficult than a decision on the merits of the cause of complaint itself.

The decision to find a case 'Outside Terms of Reference' is one that is not taken lightly by my Office. An extensive examination of the matter is undertaken and considerable effort is subsequently invested in explaining to a Complainant why my Office cannot become involved or be of help.

In 2010 11 cases were deemed 'OToR'.



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

VI Case Studies

This section contains summaries of a cross section of cases on which I adjudicated in 2010.

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

I hope these summarised reports of the cases will provide an insight into the range of the cases which I considered in 2010.

Case Study 1: Complaint Upheld

Jurisdiction – time limits – ongoing complaint – alleged discriminatory lack of promotional opportunity – legitimate expectation of promotion or redress – jurisdictional exclusion of Conciliation and Arbitration Scheme – jurisdictional exclusion Defence Force organisation and structure – administrative unfairness of delay and lack of outcome for redress procedure.

The essence of this Complaint was alleged discrimination against Officers of the Defence Forces School of Music (DFSM) by virtue of limited promotional opportunities, further restricted by a Defence Force reorganisation in 1998 which had removed the rank of Colonel from the DFSM. The Complainant stated that despite 20 years of exemplary service her rank was effectively capped at the level of Captain.

I came to consider the case after the Chief of Staff had issued his Considered Ruling. The Complainant's application, submitted to me in September 2009, revealed that her case had first been outlined in May 2006 when a Board was convened, and made recommendations regarding DFSM officer opportunities. A second initiative to resolve the issue, undertaken by the Military Conciliation and Arbitration (C&A) Scheme in 2007, did not issue a reply until March 2009.

Early on in the preliminary examination, I had to divide the issues into the "substantive complaint", being the impugned lack of promotional opportunities, and the "procedural complaint", being how the matter had been addressed at various levels administratively within the Defence Forces.

In keeping with previous decisions I have made, I found that despite the Defence Forces reorganisation having taken place in 1998, its impact (i.e. on limiting promotional opportunities) was ongoing and therefore fell within my time-limited jurisdiction of a year from the date of action or awareness of it, set out in section 6(3)(b) of the Ombudsman (Defence Forces) Act, 2004.

As regards the substantive Complaint, a complicated issue arose as to whether I had jurisdiction. Section 5(1) (d)(i) of the Act excludes from my purview matters relating to terms or conditions of employment within the Defence Forces that are within the scope of C&A Scheme. However, a conclusion of the Military Investigation Officer (MIO) report within the Redress of Wrongs (RoW) process was that formal C&A procedures had not been followed in this case because the DFSM Officers were not members of one of the representative organisations. The MIO view was that the C&A Principle Officers's (PO) decision in the matter had been ultra vires. An examination of the C&A machinery document disclosed that whereas a non-represented member of the Defence Forces may make representations to the Conciliation Council of the C&A Scheme, no such recourse was available to the Arbitration limb of the scheme to non-represented members. I therefore sought clarification as to the procedures for non-represented members of the Defence Forces within the C&A Scheme. By way of response, the PO Military C&A submitted that his decision had not been under the C&A Scheme (which would come through the representative organisations) but by way of chain of command in the Defence Forces, issues such as this being within the remit of the C&A Branch as noted in the Branch's Business Plan for 2010 which sets out the Branch's responsibility for Officer promotions. On this basis the PO strongly disputed the MIO's contention that his decision was ultra vires and my preliminary view that the decision could have been taken without proper authority.

In keeping with previous cases I have adjudicated, my preliminary view was that any jurisdictional insulation of matters such as promotional opportunities falling under the scope of the C&A Scheme ended at the point at which their administration personally impacted on the Complainant. Therefore whether representations had been made to the Complainant on commissioning or thereafter which would amount to her legitimate expectation that she would achieve a rank higher than Captain arose. In the preliminary matter I noted a similar case in which I had adjudicated that a member who had been "acting up" in a particular rank and fulfilled the duties of the rank was subsequently denied promotion to that rank (see Case Summary 4 – ODF Annual Report 2008). In that case I decided that it was the manner in which the promotional opportunities had been hindered rather than the re-structuring itself that gave rise to unfairness upon which I have jurisdiction to adjudicate. Similarly in this case I sought submissions as to whether representations that promotional opportunities would arise had been unfairly withdrawn, particularly in light of statements in the MIO report (which it was not clear if it had been put to the Complainant) that she had been aware of limited promotional opportunities upon engagement.

In her replies to the PVR, the Complainant disputed that it was 'common knowledge' that there were limited promotional opportunities pre- and post- reorganisation. The

Chief of Staff pointed out that Regulations rather than legitimate expectation define the circumstances in which promotional opportunities arise, and these Regulations are clearly found in Admin Inst A15. Further, he pointed out that whereas the Complainant was restricted in her promotional opportunities to the DFSM stream it was due to her pertinent qualifications and experiences which would debar others from seeking appointment in that stream.

A further element of the substantive issue which could engage administrative oversight was the MIO's acceptance of the invalidity of the Complainant's comparison with promotional prospects of Commissioned from the Ranks (CFR classes which had been ring-fenced in consultation with representative bodies). The PO stated that this was for the "good of the Defence Forces", a position that the MIO accepted, but the nature of the operative "good" remained obscure and I sought clarification on this point. In reply the PO supplied me with extracts from the Gleeson Report which expressly declines to recommend the extension of fixed period promotion to Officers not currently covered by such a scheme.

On weighing the Complaint and the responses to my PVR, I found that the substantive matter related to matters within the organisation of the Defence Forces and as such I lacked jurisdiction in that aspect of the Complaint.

As regards the procedural issue, on preliminary examination it transpired that following the Defence Forces reorganisation a three-person Board was convened to review promotional opportunities for Technical Officers (including the Complainant) within the DFSM. In 2006 this Board recommended a fixed-period promotion to rank of Comdt after nine years in the rank of Captain. A further report emanating from C&A Office (Military) in September 2007 made similar recommendations. A reply to this, which did not sanction fixed period promotions, issued in March 2009.

I requested clarification on the regulatory basis of these recommendations and whether any action had been taken on foot of them. I received no replies to this issue, which is a matter of considerable concern. In my PVR I also highlighted that the delay in addressing the Complainant's grievance and the failure to keep her informed of its progress was unsatisfactory. The Defence Forces responses failed to address these concerns. It is unsatisfactory that issues I raise in my PVR are ignored.

I noted that two reporting bodies had recommended fixed period promotion to officers in the Complainant's position. While I accepted the Defence Forces submissions suggesting the Complainant would have had knowledge of her promotional opportunities, the fact remained that D COS (Sp) convened a Board to consider this very matter. It would not have been unreasonable for the Complainant at that point to

have expected the possibility of a positive outcome. I found that it fell below the desired administrative standard that the Complainant was not given an explanation of the process applied to this consideration, nor the date and outcome of the recommendations of the Board. I therefore found that the Complainant was entitled to be given the reasons for the outcome of those recommendations.

At the end of the year, four months after I issued my Final Report in this case, I have received no response from the Minister for Defence.

Case Study 2: Complaint Upheld

Convening of Medical Board – interference – principle of autonomy – delay in Redress of Wrongs – failure to forward Notification of Complaint to Ombudsman within time limits – Breach of procedures -parallel Conciliation and Arbitration process – suggestion of insubordination – unfair administrative procedures.

The Complainant in this case was the Brigade Medical Officer (BMO) who properly and legally convened a (BMO) Medical Board which was prevented from proceeding by having the member of the Board and the Subject, ordered not to attend at the time and location directed by the Complainant. The reason given for the order to discontinue the Board was said to have been as a consequence of discussion initiated by PDFORRA about the implications of the use of the BMI gauge and medical classification as prescribed at para 32. of the DMC Instructions for Medical Officers No. 4, referred to as "the New Instructions". The concerns expressed by PDFORRA were that this was in conflict with agreed Report No. 79 C&A, which provided assurances that no changes would be made to Defence Forces Regulations that would alter the status quo in relation to further periods of service for serving members and reduce manpower. The issue had gone before Conciliation and Arbitration. PDFORRA cited the subject as an example of a member who would be treated adversely under "the New Instructions".

I found that the manner in which this matter was handled, from the outset, fell far below desirable administrative practice. I pointed out in my Preliminary View Report that there were substantial delays in relation to the "suspension" of the Medical Board pending the outcome of the Conciliation and Arbitration process. After the Complainant's decision to convene the Medical Board had been over-ridden, there followed a period during which there were conflicting directions and recommendations from the military authorities. I found that there had been unreasonable delay and poor communications in relation to a matter of such significance.

There had been causes for concern about the named member who was the subject of the Medical Board. The Complainant had convened the Board at the request of the named member's Medical Officer. It was his view that it would have been unsafe for the named member to carry out the minimum regimental duties. It was his view that to leave the member incorrectly medically classified in circumstances where concern had been expressed about his health, created a risk. At no time had it been suggested that the member due to go before the Medical Board would have faced automatic discharge as a result of medical re-classification.

I found that the Complainant in this case was prejudiced and adversely affected as a result of the manner in which the Medical Board, which he had properly convened, was the subject of interference. The Complainant's authority in his capacity as BMO had been undermined. In wider terms, the principle of the autonomy of the Medical Board in the exercise of its medical duty came into focus.

I had been advised by the Chief of Staff in his replies to my Preliminary View Report that following the matter being raised at Conciliation and Arbitration and having gone before an Adjudicator, a solution had been agreed which involved making minor amendments to the contentious paragraphs of the DMC Instructions. I then expressed my trust that the agreed amendments would be duly promulgated and that any Medical Boards affected by this dispute would resume their function without fear of interference.

In my Final Report I expressed my concern that a submission had been made, at a late stage of the Redress of Wrongs (RoW) process that the Complainant's action in initiating his RoW would amount to insubordination. The Complainant had been advised of the Chief of Staff's displeasure at his having used the RoW process to bring light on these matters. The Complainant had been adversely affected by the suggestion that his bringing the complaint would amount to insubordination and that to do so was an abuse of the RoW process. I recommended that this suggestion be retracted.

I was further concerned about the manner in which the Complainant's Redress of Wrongs had been administered. I noted that a significant breach of procedures had occurred in that no Notification of Complaint had been furnished to me within the time frame laid down in the legislation.

I was advised by the Office of the Chief of Staff that the reason for the delay was due to attempts to resolve the matter at the lowest possible level. I noted that this breach of procedures was to be regretted and highlighted then that the notification requirement provides a valuable safeguard against complaints going astray or not being properly administered. I accepted the explanation provided and I am advised of the Chief of Staff's decision to take action to ensure compliance in the future.

A further concern regarding the handling of the RoW was that I had not been made aware of the progress in relation to the reference of the "claim" to Adjudication under the Conciliation and Arbitration Scheme, in a timely manner. After receiving the file in the case, I learned that a meeting had been held to progress the outstanding issues and an agreed solution had been arrived at. Given the relevance of this information to the underlying cause of the complaint, a question arose as to why I had not been briefed on the outcome of the Adjudication process. I had cause to note my concern in this regard in my Final Report to the Minister.

I upheld the Complainant's complaint as being well founded and reasonable in the circumstances. I found that the Complainant had been adversely affected by the action to stop the Medical Board, which he had properly convened in pursuit of his duty and obligation as the Brigade Medical Officer. I recommended that due regard should be had for the upset which the Complainant had sustained and some means of mitigating the adverse affect should be considered.

At the end of the year, six months after issuing my Final Report, I have not received a response from the Minister for Defence to my Adjudication.

Case Study 3: Complaint Upheld (Early Resolution)

Course – Complainant qualified – Requirements changed – Unqualified candidates selected – Confusion over application closing date – Error in advertisement – Selection process cancelled and reconstituted – Unqualified applicants given chance to attain qualification – Personal file not complete – Complainant adversely affected – Validity of grievance accepted by Defence Forces – Satisfactory resolution – Place on next course offered.

The Complainant applied for a place on a Senior NCO Course but was unsuccessful. He brought a Redress of Wrongs application challenging the selection process. He highlighted a number of procedural flaws in the process.

The Complainant was placed third in the order of merit of nominations from his unit despite the fact that one of the candidates, nominated ahead of him, had not completed a Personnel Management Systems (PMS) Course, as was required in the advertisement for the Senior NCO Course. On examination of the sequence of events, I found that the day after the advertised closing date for the selection process, an email had been sent out purporting to delete this requirement. The Defence Forces' position was that this email was designed to correct an error in the original advertisement, but failed to do so. In addition, there was major confusion as to the closing date for the competition. The Complainant had contended that applications were taken after the advertised closing date.

Subsequently the entire selection process was cancelled and a new PMS Course was advertised and filled in the space of 35 minutes. Three members of the Complainant's unit, who had been candidates for the Senior NCO Course but ineligible due to the PMS Course requirement, were nominated for the new PMS Course. The result was that, when the selection process for the Senior NCO Course was reconstituted these candidates were rendered eligible.

The Complainant had contended that by cancelling the course and facilitating those unqualified personnel, the Defence Forces deprived members, like the Complainant, of the benefits of having shown the initiative to complete the necessary courses and fulfil the criteria in advance.

The Defence Forces said that the only way to rectify the defect in the process was to cancel and reconstitute the selection process. In relation to the Complainant's qualification, his Officer Commanding submitted that his qualifications could only have been taken into account under the heading of "general suitability" and that the Complainant had scored maximum marks under that heading.

In my Preliminary View Report, I found that the Complainant's contentions were sound and carried weight, calling into question the proper management and administration of the selection process. At the very least, there was an unsatisfactory degree of confusion in and around the conduct of the selection process.

As a matter of fact, I found that by dint of the cancellation and rescheduling of the course, the Complainant was prejudiced and put to a disadvantage in circumstances where he had duly endeavoured to satisfy the criteria in pursuit of his career advancement.

I therefore recommended that some means of mitigating the adverse effects sustained by the Complainant should be explored.

The Chief of Staff responded positively to my Preliminary View Report. He accepted my finding that the errors during the initial selection procedure for the NCO Course had placed the Complainant at a disadvantage. He proposed a means of mitigating the adverse affect sustained by the Complainant by making an additional place available for him on the next Senior NCO Course following his return from overseas duty.

The Complainant was satisfied to accept this resolution. I am pleased to report that the case was resolved satisfactorily at this early stage. I greatly welcomed the positive response to my preliminary findings.

Case Study 4: Complaint Upheld

Promotion – Application for promotion not properly processed – Complainant not called for interview – Loss of opportunity having serious consequences for the Complainant's career in the Defence Forces – Whether Complainant wronged within meaning of Redress of Wrongs process – Delay in awaiting Considered Ruling of the Chief of Staff – Serious contradiction on face of Defence Forces file.

The circumstances of this case and the consequences for the Complainant have been a cause of concern to me throughout my review of the case.

The Complainant applied for a vacancy in his Unit and his Unit Commanding Officer (CO) recommended him for the position when forwarding the Complainant's application to the Convening Authority. Through no fault of his own, the Complainant's application for promotion and his CO's recommendation were not properly processed. As a result, the Complainant was overlooked for the position in question and the position was filled even though the Complainant was not interviewed.

The Complainant brought a Redress of Wrongs (RoW) application claiming that the filling of the position in question in circumstances where the Complainant was not interviewed for the vacancy was unfair and contrary to natural justice. The Military Investigating Officer (MIO) was unable to determine conclusively what happened to the Complainant's application and his Unit CO's letter of recommendation; he stated that the documentation in question had never been traced and he was unable to find any individual personally culpable for mislaying or losing the documentation. The MIO ultimately concluded that he had not been "wronged" within the meaning of Section 114 of the Defence Act 1954. The General Officer Commanding the Brigade (GOC) agreed with the MIO's conclusion and found that the Complainant had not been "wronged" within the meaning of the 1954 Act. The Complainant was unsatisfied with the GOC's finding and requested that the RoW be referred to the Chief of Staff (CoS). Although he accepted that the Complainant "has been disadvantaged by this administrative error, in that he has been deprived of the opportunity to compete for this vacancy", the CoS ultimately ruled that the Complainant had suffered no "wrong" requiring redress within the meaning of the 1954 Act.

On a review of the case, the first aspect that troubled me was the fact that the Complainant had to wait a substantial length of time before the Considered Ruling issued from the CoS's Office: on the 7th August 2008 the Complainant requested that the matter be referred to the CoS but the Considered Ruling of the CoS did not issue until the 13th February, 2009. Despite repeated requests for an explanation for this delay, none has ever been provided to me.

Apart from that issue of delay in the administration, I was also concerned with an apparent contradiction on the face of the Defence Forces file. The complaint was first investigated by the Unit's Ord Room Sgt. On completion of that initial investigation, the Unit CO confirmed in a letter dated the 26th June, 2008 that the Complainant's recommended application for the vacancy was correctly forwarded to the Convening Authority. The significance of the Unit CO's letter, as I pointed out in my Preliminary View Report, was that six documents were originally appended to that letter, including the Complainant's original application for the vacancy and the Unit CO's letter recommending the Complainant for the position. In other words, it appeared that the said documents were still in existence on the 26th June, 2008 while the MIO concluded in his report of the 9th July, 2008 that the documents in question had never been traced.

This apparent contradiction raised serious questions, not least the question whether the documentation in question had "disappeared" between the 26th June, 2008 and the 9th July, 2008. I expressly requested the Defence Forces to provide further information and clarification together with an explanation as to how the contradiction arose. I was disheartened to find that, despite highlighting in my Preliminary View Report the seriousness of this apparent contradiction and the need for an explanation, the Defence Forces failed to address my enquiries. In my Final Report, I observed that the failure by the Defence Forces to address this critical aspect of the investigation was unhelpful and far from satisfactory.

Quite apart from the two issues outlined above, I took the view that this complaint was serious. The Complainant believes that his future within the Defence Forces has been adversely impacted by the loss of his application for the vacancy. The consequences for the Complainant's career have been acknowledged several times by the Defence Forces as being serious. The MIO acknowledged that the Complainant was an outstanding NCO. and that his service record clearly demonstrated that he had good reason to believe that, if he had been interviewed, he would have been successful ahead of the selected candidate. Because of the limited opportunities for promotion within the Complainant's Corps, the MIO had surmised that the Complainant's career "may have been harmed by the system failure" and he expressed the view that the subject matter of the complaint was "a major setback in an otherwise promising career".

In other words, it was clear to me that the consequences of his not being included in the Competition represent a substantial threat to the Complainant's progress, career development and (because of his contract status) his future within the Defence Forces. Accordingly, I continue to find it very difficult to comprehend how the Defence Forces concluded that the Complainant was not "wronged" within the meaning of the 1954 Act. I was satisfied that the loss of the Complainant's application documentation must

be characterised as being the result of carelessness or negligence on the part of the administrative processes. The Complainant's difficulty in seeking redress was, and remains, that he does not know the specific identity of any member(s) responsible. In such circumstances, it would seem fair that a member of the Defence Forces should be able to complain to his Coy Comdr that he has been wronged by the actions of an unidentified member of the Defence Forces. I was and remain of the view that the language and spirit in Section 114 (2) is amenable to such an interpretation.

Overall, given the adverse consequences suffered by the Complainant through no fault of his own, I was very concerned that the Complainant had been drawn through the RoW process and subject to indefensible delay. I found it equally disappointing that no attempt had been made to mitigate the damage suffered by the Complainant and to resolve the difficulties caused to him at various stages of the RoW process.

Having regard to all of the circumstances of the case and my observations and findings, I recommended that some means of mitigating the adverse effects be addressed and that the Complainant be provided with an appropriate and proportionate remedy. I found that the Complainant should be given an opportunity for promotion with due regard being observed for the time which he has lost since the action giving rise to his complaint which fell below desirable administrative standards.

I made these recommendations to the Minister for Defence. At the end of the year, three months after issuing my Final Report in this case, I am not in receipt of a response from the Minister.

Case Study 5: Complaint Upheld

Overseas service – Error in non-selection of Complainant – Error accepted by Defence Forces – Sufficiency of redress – Complainant unable to avail of proposed redress due to personal circumstance – Delay in investigation of RoW – Certificate of Urgency granted.

The Complainant in this case had applied for an overseas posting at Sgt rank but was unsuccessful. The Defence Forces at all levels up to Chief of Staff (CoS) accepted that the Complainant's non-selection had been in error and that he had been wronged, In my Preliminary View Report I noted my concerns at the substantial effort which had been made to defeat the Complainant's complaint at its earliest stages.

The Military Investigating Officer (MIO) appointed by the General Officer Commanding (GOC) had recommended that the Complainant be afforded the opportunity to serve overseas in the same, or an equivalent, appointment. The Complainant was offered an

appointment but at a time which did not suit his family circumstances. He contended that the redress proposed by his GOC had been an offer of one of the next two rotations of the given overseas posting and that the offer of only one of the given postings constituted a dilution of this proposed redress. He also took issue with the delay in the processing of his Redress of Wrongs (RoW) and the prejudice that accrued to him as a result. Finally, the Complainant was of the view that the successful candidate had acted in a superior rank during his posting and he maintained that he had therefore been denied this opportunity which would have been of benefit to his career advancement.

This case therefore turned on whether the redress offered to the Complainant was sufficient. The Complainant having rejected the earlier offers of redress referred the matter to the CoS. The CoS directed that the Complainant be offered a suitable overseas mission and that a list of all proposed Sergeant positions for 2009 be made available to him. The Complainant was by this point no longer eligible for a Sgt rank appointment and he rejected the offer from the CoS on the basis that it was not the position for which he had applied.

In my Final Report I ruled that the Complainant's legitimate expectation had been that he would be given an opportunity to serve overseas in the same position that had been on offer in the selection process. I found that the considered ruling of the CoS represented a proportionate and appropriate resolution of the Complainant's complaint having regard to all the circumstances. In addition, I ruled that the Complainant was entitled to have recognition of the difficulties which he had been caused as a result of the errors in the selection process and he was entitled to an apology for the delay in processing his RoW and for the failure to resolve his complaint at an earlier stage.

At the end of the year, five months after I submitted my Final Report, I had received no response from the Minister.

Case Study 6: Complaint Upheld

Interview Process – Destruction of Interview Notes – Undesirable Administrative Practice.

This case brought to light a number of administrative matters that caused me concern.

The Complainant contended that the manner in which interviews were conducted to fill the vacancy of Coy Sgt and the decision-making process arising therefrom was flawed and unfair. I have repeatedly pointed out that it is not my role to stand in the shoes of Interview Boards and that I will only overturn a decision where there is evidence that the Interview Board failed to act fairly and properly. I have also pointed out that in order

to ascertain whether a process was fair, it is necessary to have sufficient information available to demonstrate objectively that the Interview Board had all relevant and accurate material in relation to the candidates, that this material was duly considered and that the composition of the board was such to dispel any fear of bias or unfairness.

I accepted jurisdiction in this case notwithstanding that the complaint was not received by me within the 12 months specified by section 3 of the Ombudsman (Defence Forces) Act 2004 on the basis that a significant portion of the 16 month period between the date of the alleged action and the notification to my Office was due to the administration of the complaint by the Defence Forces.

In this case, the Complainant's Officer Commanding stated that the Convening Order for the vacancy listed the minimum education qualifications required but did not specify any "desirable qualifications." He stated that the Complainant possessed the minimum education qualifications. He also stated that the interview board stated that the Complainant's academic record was not at the same level as the successful candidate who had obtained a Masters' Degree in Information Systems. He also stated that the Complainant's overseas service appeared to have been given little weight by the Interview Board which did not make any comparison between the Complainant and the successful candidate in that regard. He also expressed the view that the rating system used in the interview was too subjective and not transparent. He also stated that the Complainant's Squadron HQ had not received notification of the result of the competition nor any advice to candidates that there was a delay of two months in finalising the Interview Board Report.

The Military Investigating Officer (MIO) concluded that the Complainant had not been wronged. He stated that education was not a deciding factor in the selection process and that the Interview Board did not use a points system and had applied a qualitative assessment using the criteria of length of service, seniority, courses completed, experience, recommendation of CO, conduct and overseas service. He also stated that the Interview Board Report was compiled within the specified two month period and that the Complainant was not paraded because his Squadron HQ had not been notified. He stated that the notes taken by the Interview Board were used contemporaneously in the compilation of the Report and were destroyed soon afterwards. In his Considered Ruling, the Chief of Staff ruled that the Complainant had not been wronged.

I issued a Preliminary Review Report (PVR) on 25 January 2010. I expressed my serious concern that the MIO had stated that interview notes had been destroyed in circumstances where I had adjudicated a number of cases going back to 2005 where interview notes had been a critical issue and where, as a result of my findings, the Minister for Defence had directed that interview notes be retained for period of five

years. I requested a full explanation as to why the Interview Board destroyed the interview notes as they were a critical part of the interview process. I also requested comments of the issue of the Interview Board taking account of Non-Military Courses in its evaluation of candidates. I also requested an explanation of why the Complainant was not paraded and informed officially of the outcome of the competition.

The Complainant replied to my PVR on 23 March 2010. He stated that he was never given an opportunity to review and update his 43A prior to the selection/promotion process. The Defence Forces replied to my PVR on 6 April 2010. The Defence Forces did not deal with my request for an explanation as to why the Interview Board destroyed the interview notes. The Defence Forces did not respond to my request for comments in respect of the Interview Board taking account of Non-Military Courses in its evaluation of candidates nor did they respond to my request for an explanation as to why the Complainant was not paraded and informed officially of the outcome of the competition. I am satisfied that these failures amount to a contempt for the process.

I was satisfied that as a result of the destruction of the interview notes that there was no way of objectively assessing the weight given by the Interview Board to the Complainant's overseas service. I was also satisfied that the destruction of the notes meant that there was a cause for concern about the balance of the process. I was also satisfied that the Complainant's OC was correct in his analysis that the rating system was too subjective and not transparent. I was also satisfied that the Complainant was not given an opportunity to review and update his 43A record and that the failure to parade the Complainant to inform him officially of the outcome of the competition amounted to a breach of the regulations. I requested advices about the policy and practice of having Officers on interview boards who have conducted assessments in respect of some of the applicants.

I recommended that the Complainant receive appropriate recognition for having been at the receiving end of these failings and an acknowledgment of the failure to advise him of the outcome of the promotion process in a timely and appropriate manner and the failure to give him access to his 43A prior to the competition.

At the end of the year, three months after issuing my Final Report in this case, I had not received a response from the Minister for Defence.

Case Study 7: Complaint Upheld

Acting rank – Complainant's appointment to acting rank revoked – Complainant appointed in substitution – Grounds for decision – Whether decision objectively justifiable – Legitimate expectation – Hierarchy of regulatory provisions.

This Complainant's case related to his unexpected demotion from acting rank to a substitution rank. The Complainant was aggrieved because he would be prejudiced in terms of both his pay and pension entitlements as a result of this. The Complainant had served in the Defence Forces for forty years and was due to retire shortly after this cause of complaint arose.

The Complainant had served in acting rank for a period of two years and had already been appointed to serve in such rank for a further year when the Defence Forces revoked this appointment and directed that he should receive substitution allowance instead. The substantive vacancy had been open for twenty years and the Complainant was the only person in his unit with the required qualification to fill the post. The Complainant had held acting rank under A 10 Para 326 (c). As a basis for revoking the appointment of acting rank, the Defence Forces submitted that a recent examination of the Complainant's case had established that the Complainant was not eligible to hold acting rank as he had not completed a standard NCO course. No issue had been raised prior to this.

I was concerned that a decision which would clearly have significant consequences for a member's rank, status and remuneration would be reversed in this manner. In such circumstances, the requirement for objective justification of such a decision was all the greater.

In my Preliminary View Report I had noted a number of my concerns as to the purported rationale for the Defence Forces actions, specifically; that it was not apparent why DFR A10 overrode Admin Instr A10 para 326 (c) as contended; why the Defence Forces had not previously been aware of the Complainant's purported ineligibility to hold acting rank in circumstances where there was no evidence of the Complainant having misrepresented his qualifications; that para 325 appeared to state that it was not necessary that an appointee to acting rank should hold the qualifications necessary to hold the substantive rank; that the previous holder of the position had not completed a standard NCO course either; that the form to be completed for the purposes of applying for acting rank clearly envisaged that a nominee might not be qualified to hold the substantive rank; that the Defence Forces purported reliance on a Letter of Instruction, to explain the hierarchy of the various provisions was not borne out by the terms of that and subsequent Letters of Instruction.

I sought clarification of these issues and also asked the Defence Forces to comment on whether they accepted that the Complainant had a reasonable and a legitimate expectation having regard to all the circumstances that he would continue to hold acting rank.

In my Final Report I noted that the Defence Forces had either failed to respond to these concerns or that their responses did not provide sufficient objective justification for the decision in question and that the inconsistencies in the reasoning purportedly justifying the actions had not been addressed adequately or at all.

The Complainant had also applied for appointment to substantive rank on the basis of 'distinguished conduct and meritorious service'. At the time of my Final Report, I noted my concerns that the Complainant had not heard anything in relation to this application notwithstanding that the Defence Forces had informed me that this application had been unsuccessful.

I found that the Complainant had been wronged by the manner in which he had been demoted from acting rank and recommended that he receive acting rank pay back-dated from the time of the revocation to his discharge from the Defence Forces, which had taken place by the time of my Final Report in the matter.

At the end of the year, seven months after submitting my Final Report, I had not received a reply from the Minister.

Case Study 8: Complaint Upheld

Interview Board – Non-Compliance with Admin Instr A10 Para 360 – Failure to give reasons – Delay – Undesirable Administrative Practice.

This case brought to light a number of matters that caused me serious concern.

The complaint related to the Complainant's participation in an interview process. In January 2008, the Complainant's Commanding Officer (CO) attempted to resolve the Redress of Wrongs (RoW). The CO concluded that the Interview Board acted contrary to Admin Instr A10 Para 360 in its questioning of the Complainant. In light of the fact that the Interview Board Report was written on the basis of information elicited from the Complainant during the non-compliant interview process, the CO concluded that the comments contained in the Interview Board Report were invalid and directed pursuant to section 114(3) of the Defence Act that they should be deleted. This direction was not complied with on the basis that the CO had acted beyond his remit. In his RoW, the Complainant sought confirmation that the material contained in an official record had been expunged in accordance with the direction issued by his CO and, if not, requested clarification regarding the precise legal basis for the failure to comply with the CO's decision.

I issued a Preliminary Review Report (PVR) on 18 May 2010. As the Complainant had indicated that he had made requests for information under the Freedom of Information legislation, I requested confirmation from the Complainant that he had exhausted the appeals process under the Freedom of Information legislation as section 5(1) (a) (ii) of the Ombudsman (Defence Forces) Act 2004 precluded me from investigating any matter in respect of which the Complainant has a right of appeal under a different statute. I also expressed my dissatisfaction with the delay of the Defence Forces in dealing with the complaint. I had to request the file in this matter six times before I received it. I also expressed my dissatisfaction with the fact that when I eventually received the file I discovered that the chronology had been removed from the file and that it was missing at least 37 documents. As a result of the number of missing documents, I stated that it was not possible for me to review the case. This was totally unsatisfactory and I am satisfied that it amounted to an obstruction of the Complainant's right to an independent review of his RoW and his right of access to my Office.

Based on the information provided, I noticed a number of inconsistencies between the Complainant and the Defence Forces in relation to the progress of the RoW. Accordingly, I requested an account of the details of the Complainant's meetings with the MIO in connection with the complaint, of which the Complainant said there were 15. I also requested a document from the Defence Forces setting out the steps it took to deal with the complaint, the reason for the various delays, the actions taken to notify the Complainant of those delays, the actions taken to notify me of the reasons for the various delays, the reason for the various inconsistencies in the letters to me explaining the various delays, details of any actions taken in the Defence Forces to ensure that a similar situation will never arise again, details of any administrative practices that may have been in force during the currency of the complaint or are still in force regarding the manner in which situations such as this are dealt with, whether any actions were taken against members of the Defence Forces in connection with the delays and the failure to adhere to the time lines and processes, and confirmation as to what steps were taken to provide the Complainant with information as to why his RoW was not dealt with in February 2010. I also sought suggestions from the Defence Forces as to (1) how the complaint could have been resolved before my PVR and (2) why there was confusion at the various stages of the RoW about the status of complaint handling within the RoW.

The Defence Forces responded to my PVR on 25 June 2010. The General Officer Commanding Air Corps advised that the Complainant's CO did not have the authority to issue a direction to have the material contained in the Complainant's record expunged. He stated that the CO should have advised the Complainant to lodge an appeal under the Freedom of Information legislation. The GOC took the view that as no appeal had been lodged the Complainant had not exhausted due process in this case. As a means of

avoiding further delay, the GOC proposed parading the Complainant and informing him why the record in question had not been expunged as he had sought. The GOC stated that he would establish whether the Complainant had exhausted the appeals process under the Freedom of Information legislation. And if so, he would assign one of his Staff Officers to assist in whatever way possible. The Complainant met with the Staff Officer and was unhappy with the outcome which he stated advanced the matter no further than it was in 2008.

I was satisfied that the Complainant was entitled to be told in what way and under which Defence Forces Regulations or section of the Defence Act, his CO had acted beyond his authority. He was entitled to clear and unambiguous reasons as to why he could not rely on the steps taken and the recommendations made by his CO at the earliest opportunity. I noted that requests for information under the Data Protection and Freedom of Information legislation was recently set out in DFR A8 – Admin Instr A8 which was signed in early 2010. In light of all of the circumstances of the case including the unacceptable delays on the part of the Defence Forces I recommended that (1) the said record in the Interview Board Report be expunged and (2) the Complainant be informed of the legal basis for the conclusion that the CO acted beyond his authority together with an explanation as to how these matters are now covered in DFR A8.

I have not received a response from the Minister for Defence to my recommendation at the end of the year, three months after issuing my Final Report in this case.

Case Study 9: Complaint Upheld (Early Resolution)

Course – Complainant not recommended for course on basis that had to serve "pay back period" employing skill learnt in skills course – Principle not promulgated – Lack of transparency – Early intervention by Defence Forces for resolution and case settled.

The Complainant wished to undertake a particular Course which would lead to his joining a different unit. His Commanding Officer (CO) did not recommend him for the course, with the result that he was not given a place on it. The Complainant brought a Redress of Wrongs application challenging the decision of his Commanding Officer.

The Complainant had recently completed a skills course and it appeared that his CO had refused to recommend him primarily on the basis that he was expected to complete a "pay back period," of at least one year, carrying out his new skill in his current unit. The Complainant submitted that he was unaware of such a policy and that it was not made known to him either before undertaking the skills course or in the advertisement for the new course.

I requested clarification from the Defence Forces as to the criteria applied in deciding whether a member should be recommended for a Course. The Chief of Staff (CoS) replied that there were no set down criteria, but rather it was at the discretion of the Commanding Officer. The CoS stated that, while undertakings were not sought from participants on skills courses as to future roles, it was, however, considered best practice that personnel who successfully completed a Course would be deployed to maximise their new skill and build up experience in it before further progression.

In my Preliminary View Report I recalled that the issue of the discretionary power of COs to recommend members had arisen in a number of cases referred to me. In every such case I had highlighted the importance of the perception of fairness in the exercise of that discretionary power.

While the "pay back" policy appeared reasonable, I found that it was not common knowledge within the Defence Forces. In order to avoid disappointment and conflict, it is essential that there be no ambiguity giving rise to expectations. The Defence Forces should officially identify and promulgate the policies underpinning the decision making which affects the career development of members and include the relevant information and references to such policies on all course and selection advertisements.

In my Preliminary View Report I was able to record that the CoS had said that it was envisaged to run the course which the Complainant had applied for in the near future. I proposed that the Complainant be given an opportunity to apply again to be recommended for the course.

Following my Preliminary View Report, the Complainant was recommended for the course, as I had suggested. He subsequently withdrew his grievance and I was pleased that the case was resolved at this early stage.

Case Study 10: Complaint Upheld

Extension of Leave of Absence – Split Civil/Military Contract – Legitimate Expectation – Undue Procedural Delay – Adverse Effects – Undesirable Administrative Practice.

This case brought to light a number of procedural and systemic matters that caused me concern.

The complaint was made by a now retired member of the Defence Forces who held the rank of Comdt in the Army Medical Corps (AMC).

By 2000 the Complainant had given 15 years' service to the Defence Forces. At that time, like most Army Medical Officers, he was not on the specialist register of medical

practitioners. This was a situation that was becoming increasingly inappropriate and irregular within medical practice in Ireland (cf The Medical Practitioners Act). The Complainant maintained that there was no plan forthcoming from the Minister to correct this irregular situation. Being committed to Military Service, the Complainant perceived the only way forward was to seek leave of absence and train up to specialist registration in an appropriate specialty. He chose anaesthesia because of its key role in the management and transport of critically ill and injured soldiers. He achieved eligibility for specialist registration at end December 2007, seven years being the minimum training period required. Mindful of the impossibility of maintaining hard won skills in anaesthesia should he return full time to the AMC, he formally requested the Military Authorities to explore the possibilities for a joint civilian/military appointment on completion of training. This request was submitted in August 2006, well in advance of the anticipated date for the completion of training

The Complainant had been granted an 18-month Leave of Absence (without pay and conditions) effective from 1 January 2001. This Leave of Absence was extended, on several occasions up to 30 June 2008. On 22 February 2008, the Complainant was informed by OIC Commissioned Officers Management Office (COMO) that he should either return to duty on 1 July 2008 or submit an application to retire.

The Complainant submitted a Redress of Wrongs on 1 April 2008. Initially, the Complainant sought a further extension of his Leave of Absence to facilitate an arrangement being reached between the Defence Forces and the HSE, which would enable him to return to the Defence Forces on a split military/civilian contract. This was overtaken by events. The Military Investigating Officer (MIO) recommended that a decision be made by a higher authority on the issue and that a further effort should be made to meet with the HSE in advance of 1 July 2008 to discuss joint appointments in an effort to guarantee competency in the field of anaesthetics while retaining the Complainant as a member of the Army Medical Corps. However, this was never done and no reasons were ever advanced as to why this recommendation was not accepted. In his Considered Ruling, the Chief of Staff ruled that the Complainant had not been wronged.

I issued a Preliminary View Report to the Complainant, the Minister for Defence, the Chief of Staff and to the Conciliation & Arbitration Section, Department of Defence, on 26 May 2009. I provided a period of four weeks for replies to the issues I had identified as requiring further proofs, clarification, information and documentation. The Minister for Defence acknowledged receipt of my Preliminary Review Report on 5 June 2009 and responded to some of these issues on 27 July 2009. The Minister accepted that I was entitled to review (a) the issues and procedures adopted in refusing the Complainant a further extension to his Leave of Absence and (b) whether the Complainant was misled

into believing there was a commitment to provide a split military/civilian contract. The Minister also expressed the view that aspects of my Preliminary Review Report covered issues concerning the organisation, structure and deployment of the Defence Forces, which were not within my remit pursuant to section 5(1) (d) (ii) of the Ombudsman (Defence Forces) Act 2004. However, the Minister did not identify what these issues were and why they should be excluded. The Minister also stated that the Chief of Staff had asked him to raise the jurisdictional issue with me.

This was a cause of serious concern to me as the normal approach would have been for the Chief of Staff to raise a question of jurisdiction with me.

The Conciliation & Arbitration Section, Department of Defence acknowledged receipt of my Preliminary View Report on 19 June 2009 and asked for, and was granted, an extension of time to respond to my request for further information on the grounds of the ill-health of the relevant member of personnel. I heard nothing further. I wrote again on 22 October 2009 and 7 December 2009 reiterating my request for the requested information. The member of the Conciliation & Arbitration Section replied on 4 January 2010 and advised that he expected to be in a position to respond to my request within 10 days. He also referred to a letter dated 31 July 2009 in which he stated he had notified me that he would be unable to respond to my request for further information until after the discussions proposed by the Minister in his letter of 27 June 2009. This was a very troubling development and a matter of considerable concern to me as (a) I had never received this letter and (b) the reason advanced in it for the delay in responding to my request for further information was at odds with the previous reasons advanced and accepted by me.

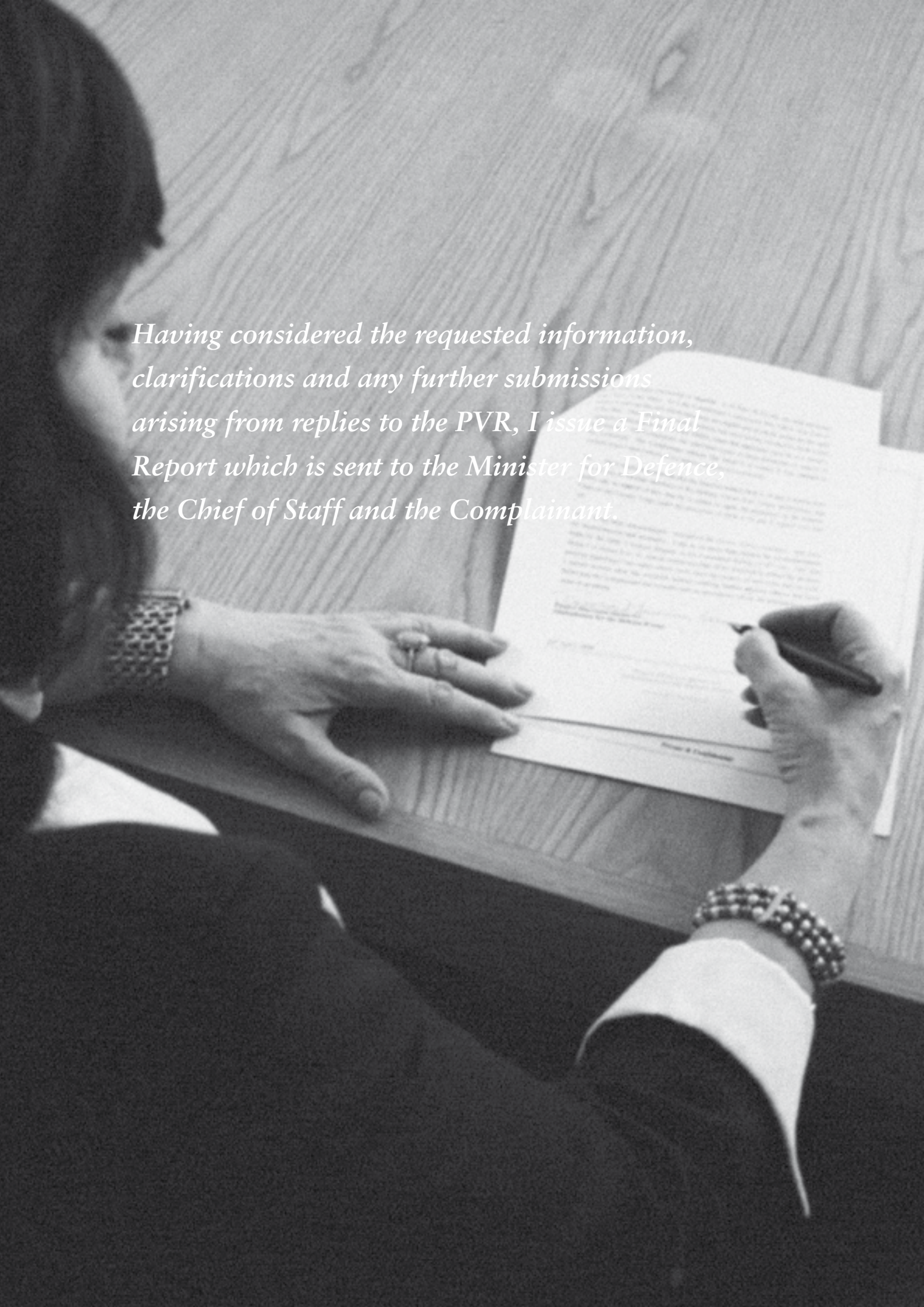
I did not receive a substantive reply from the Conciliation & Arbitration Section until 5 February 2010. I am satisfied that the failure of the Defence Forces and the Department of Defence to comply with the reasonable time limits laid down by me for responding to the questions raised in my Preliminary View Report was an affront to my Office which could reasonably be perceived as an obstruction to the performance of my function. I was also concerned that the failure of the Chief of Staff to communicate his challenge to my jurisdiction directly to me was a departure from the prevailing arrangements for direct and open communication and as such was a potential threat to the timely investigation of the complaint.

I found that the Complainant in this case was treated in a manner which fell below a desirable and acceptable standard of administrative practice. While I was not satisfied that there was evidence sufficient to support the case that the Complainant had a legitimate expectation that the Defence Forces would provide an arrangement which would enable him to return to the Defence Forces on a split military/civilian contract, I was satisfied that there were grounds giving rise to a legitimate expectation that the Defence Forces would try to construct such an arrangement. This expectation arose from the following facts. On 27 July 2006, D HRMS had stated that the issue of a part-time arrangement would be considered. On 9 August 2006, the Deputy COS (Sp) confirmed that the Defence Forces would try to introduce a part-time contract. The Director of the Medical Corps (DMC) Report of 7 September 2006 urged the Department to pursue the matter. The Department arranged a meeting with the HSE in September 2007 to discuss the Complainant's case. However my investigation revealed that the Complainant's case was not discussed at this meeting and no further attempts were made to progress the issue.

In my Final Report I recommended that further action be considered to properly comply with the original representations, I recommended that the Defence Forces and the Department of Defence recognise the damage caused by the manner in which the Complainant's Redress of Wrongs was handled. I also recommended that an apology be tendered to the Complainant for the failure to properly pursue and exhaust the options to come up with an arrangement which would be to the benefit of all in line with the representations and recommendations of D. HRMS, D.MC and D. CoS (Sp).

The Complainant had been wronged in this case. There was a marked disregard for accountability and adherence to proper procedures in the handling of the matter from the time of the representations to the Complainant which amounted to a reasonable expectation that best endeavours would be used to find an arrangement which would benefit the Defence Forces Medical Services.

Unfortunately, when writing up this summary at the end of the year, seven months after I issued my Final Report in this case. I must report that I have received no substantive response from the Minister for Defence.



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

VII Corporate Affairs

Corporate Affairs

Staffing

The staffing level of my Office as of the 31st December, 2010 consisted of:

- One Investigation Officer (Assistant Principle Officer);
- One Case Administrator (Higher Executive Officer);
- One Administrative Assistant (Clerical Officer).

This is the same level of staffing that I have had since the second half of 2008.

My Office is committed to the continued professional development of staff and previously my staff have benefitted from communication and team building courses and one staff member participated in the inaugural Investigation Officers Course organised by the British and Irish Ombudsman Association through Queen Margaret's University, Edinburgh.

In 2010 one member of staff commenced the inaugural Advance Lawyer-Linguist and Legal Translation Diploma offered by Kings Inns, Dublin.

Conferences, Seminars and Expert Group Participation

ACAS – London, March 2010

On 17th March I was one of a panel of speakers invited to the headquarters of the Advisory, Conciliation and Arbitration Service (ACAS) in London, to address the subject of the use of mediation in workplace disputes. ACAS performs a similar function to the Labour Relations Commission in Ireland and the conference was initiated by the Civil Mediation Council which monitors high standards in alternative dispute resolution.

The Conference was chaired by Karl Mackie, Chief Executive of the Centre for Effective Dispute Resolution, and a pioneer of civil mediation in the UK. The conference was attended by a number of public service executives and senior British Army officers.

One of the speakers at the Conference was a Brigadier who spoke of the British Armed Forces' intention to develop the use of mediation in interpersonal disputes.

In the course of my presentation about the operation of ODF, I included the graphic of the *"life cycle of a complaint"* which drew considerable attention from the Chairman and the delegates who expressed interest in the manner in which ODF was *"linked"* to the internal grievance procedures in the Defence Forces (RoW) an innovation which contributes significantly to the monitoring and oversight function of ODF.

European Organisation of Military Associations (EUROMIL) – Berlin, March 2010

On 18th March last year at the invitation of Mr. Emanuel Jacob, President of the European Organisation of Military Associations (EUROMIL), I participated on the expert panel during a workshop on the theme of *"the need for a European Military Ombudsman"*.

EUROMIL promotes and represents the social and professional interests of approximately 500,000 European soldiers of all ranks and their families. The organisation currently consists of 35 representative associations from 26 European countries. EUROMIL is the main Europe-wide forum for the cooperation and exchange of experiences among professional military associations on issues of common concern.

The past President of the European Parliament, Hans Gert Pottering, called for the creation of the Office of a European Military Ombudsman at the 8th Congress for European Security and Defence Organisations in December, 2009 in Berlin.

In view of the fact that his concept touched on issues with political and policy implications my contribution confined itself to discussing the many challenges that arise in establishing an Office of Military Ombudsman that is meaningful and effective. Such an Office must be legally established and supported with sufficient legal powers in the exercise of its oversight function, in providing remedy and redress in individual cases and in making recommendations for reform arising from systemic issues.

2nd International Conference of Ombudsman Institutions for Armed Forces – Vienna, April 2010

I was invited to speak at the 2nd International Conference of Ombudsman Institutions for Armed Forces organised in close cooperation between the Austrian Parliamentary Commission for the Federal Armed Forces and the Geneva-based Centre for Democratic Control of Armed Forces (DCAF).

The theme of the conference was the role of the Ombudsman institutions in promoting and protecting the human rights of soldiers and veterans. There were a number of challenging topics addressed by the speakers from the participating States who have diverse legislative, regulatory, and institutional measures to protect the rights of service personnel.

I spoke on the panel tasked with addressing the role of Ombudsman institutions in promoting and protecting the human rights of armed forces personnel along with speakers from Bosnia and Herzegovina, France, and the USA. The subjects discussed were the right to freedom of expression, the right of association and assembly of armed

forces personnel, managing diversity in the armed forces, gender, sexual orientation, ethnicity and religion, support to families of armed forces personnel, veterans affairs and post-traumatic stress disorder (PTSD).

Association of Garda Sergeants and Inspectors – Athlone, October 2010

In October 2010 I was pleased to accept an invitation by the Association of Garda Sergeants and Inspectors (AGSI) to address its Autumn Seminar Series convened in Athlone.

I provided information about the function and powers of the Office of the Ombudsman for the Defence Forces and drew a distinction between the roles of Ombudsman Institutions that are established to deal with complaints against a Police Force as opposed to an Ombudsman whose role is to exercise oversight of administrative and human resource functions in the management of the Police Force.

I was aware that I was speaking to a group of people who are pledged to uphold the welfare of their members at a time when the economic crisis and its impact are understandably at the forefront of everybody's mind. However, to allow our national conversation to be dominated solely by the economy would be short-sighted and do a disservice to the many other matters which should command attention. Matters to do with wellbeing and welfare of members of the Force which were important yesterday are no less important today because of the financial crises. It is of particular significance to keep in focus the issues that are at the very root of the protection and welfare and fairness in organisations at the front line of public service. Those who put themselves in danger for the public good, whether they are Gardai, fire officers or members of the Defence Forces are unlike other professionals. They are individuals who regard their daily rota as more than simply a job. They are men and women guided by a vocation to serve and protect the people of Ireland. There are people who are willing to stand between danger and the public. Such people are the vanguard of our republic.

Civil Service Forum – Dublin Castle, December 2010

I was particularly interested to accept an invitation to speak on the subject of mediation in the Civil Service as a means of resolving inter-personal and workplace disputes at the invitation of the Civil Service Forum which is convened on a quarterly basis to consider all human resource management related policy proposals and implementation.

The Department of Finance is the custodian of the bullying and harassment policy for the Civil Service and holds responsibility for the disciplinary and grievance procedure for the Civil Service.

Arising from an initiative from one of the Forum's members, the hypothesis advanced was that firstly the Forum could do more to promote the use of mediation as an alternative dispute resolution process (ADR) within the State system. As matters stand, Departments and Offices have in-house investigators trained in investigating bullying and harassment allegations. In such circumstances there would be great potential in identifying those within the relevant organisations who would be prepared to mediate in relation to inter-personal disputes. There can be no doubt that early warning notification of relational disputes followed by the relevant ADR intervention should be the norm and not the exception. As matters stand within the Civil Service responsibility for invoking processes in response to allegations of bullying or harassment, in addition to disciplinary matters, is vested in the Personnel Officer.

PDFORRA, District Committee 4 Western Brigade, Athlone – February 2010

I was pleased to accept an invitation from the Chairman of the District Committee of PDFORRA to meet members of the District Committee of the 4 Western Brigade in Custume Barracks. It was a welcome opportunity for an interesting exchange of information and discussion about the powers and limitations of my role. The Committee members raised a number of issues of concern and I took the opportunity of explaining how the cases are processed through my Office.

I was also pleased to accept the invitation to a meeting with the General Officer Commanding, Brigadier General Hegarty.

Review of Internal Financial Controls

In common with other publicly-funded Offices I conducted a formal review of Internal Financial Controls in 2009. I am satisfied that the ODF's small organisational structure has enabled adequate monitoring of activities and that my Office has processes in place to enable an effective flow of information.

I can report that my Office has had a budgetary system in operation since establishment and expenditure trends are reviewed on a quarterly basis.

Data Protection

The Office of the ODF is registered with the Data Protection Commissioner. My Office is also registered under the Direct Professional Access Scheme of the Bar Council of Ireland.

Health & Safety

A Health & Safety Statement from my Office is in place. The Health & Safety Policy regarding the building in which my Office is accommodated is primarily the responsibility of the Department of Foreign Affairs.

Irish Language Policy

As of the 31st December, 2010, my Office was not a prescribed Body under the Official Languages Act, 2003.

However, in keeping with the practice across the Public Service, my Office endeavours to provide information in both Irish and English. My Annual Reports are published in both languages and *www.odf.ie* is also presented in both languages.

Freedom of Information Policy

As of the 31st December, 2010, the ODF was not, as yet, a prescribed Body under the Freedom of Information Act.

In 2008, I consulted with officials from the Department of Finance in relation to the extension of FOI to the Office. One of the issues addressed was the importance of recognising the confidentiality and privacy of individual case files in the possession of my Office and how the necessary protections would be enshrined in FOI Regulations. Discussions properly addressed how these matters could be safeguarded in the FOI Regulations which would be agreed.

Since its inception, my Office has treated all requests for information in an open and transparent manner in keeping with the spirit of the FOI Act. As a matter of policy and practice since the outset, Complainants receive a copy of all my Reports in relation to their cases.

It is expected that the FOI Act will be extended to cover the Office of ODF. Whereas this is a welcome development, it will increase the management and administration workload on a staff ratio which is under-resourced.

Internet Usage Policy

A policy of internet usage by staff of my Office has been in place since the establishment of my Office.

Confidentiality

Trust and confidence in procedures for dealing with cases are essential ingredients to the successful work of an Ombudsman. Strict rules governing respect for the confidentiality of all cases received by my Office have been in place since its inception.

This is a practice which will continue to remain a priority in 2011.

VIII Report of the Comptroller & Auditor General

Comptroller and Auditor General

Report for presentation to the Houses of the Oireachtas

Ombudsman for the Defence Forces

I have audited the financial statements of the Ombudsman for the Defence Forces for the year ended 31 December 2010 under the Ombudsman (Defence Forces) Act 2004. The financial statements, which have been prepared under the accounting policies set out therein, comprise the Statement of Accounting Policies, the Income and Expenditure Account, the Balance Sheet and the related notes. The financial reporting framework that has been applied in their preparation is applicable law and Generally Accepted Accounting Practice in Ireland.

Responsibilities of the Ombudsman

The Ombudsman is responsible for the preparation of the financial statements, for ensuring that they give a true and fair view of the state of the Ombudsman for the Defence Forces affairs and of its income and expenditure, and for ensuring the regularity of transactions.

Responsibilities of the Comptroller and Auditor General

My responsibility is to audit the financial statements and report on them in accordance with applicable law.

My audit is conducted by reference to the special considerations which attach to State bodies in relation to their management and operation.

My audit is carried out in accordance with the International Standards on Auditing (UK and Ireland) and in compliance with the Auditing Practices Board's Ethical Standards for Auditors.

Scope of Audit of the Financial Statements

An audit involves obtaining evidence about the amounts and disclosures in the financial statements, sufficient to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or error. This includes an assessment of

- whether the accounting policies are appropriate to the Ombudsman for the Defence Forces circumstances, and have been consistently applied and adequately disclosed
- the reasonableness of significant accounting estimates made in the preparation of the financial statements, and
- the overall presentation of the financial statements.

I also seek to obtain evidence about the regularity of financial transactions in the course of audit.

In addition, I read all the financial and non-financial information in the annual report to identify material inconsistencies with the audited financial statements. If I become aware of any apparent material misstatements or inconsistencies I consider the implications for my report.

Opinion on the Financial Statements

In my opinion, the financial statements, which have been properly prepared in accordance with Generally Accepted Accounting Practice in Ireland, give a true and fair view of the state of the Ombudsman for the Defence Forces affairs at 31 December 2010 and of its income and expenditure for the year then ended.

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

Matters on which I Report by Exception

I report by exception if

- I have not received all the information and explanations I required for my audit, or
- my audit noted any material instance where moneys have not been applied for the purposes intended or where the transactions did not conform to the authorities governing them, or
- the information given in the Ombudsman for the Defence Forces Annual Report for the year for which the financial statements are prepared is not consistent with the financial statements, or
- the Statement on Internal Financial Control does not reflect the Ombudsman for the Defence Forces compliance with the Code of Practice for the Governance of State Bodies, or
- I find there are other material matters relating to the manner in which public business has been conducted.

I have nothing to report in regard to those matters upon which reporting is by exception.

Andrew Harkness

For and on behalf of the
Comptroller and Auditor General

May 2011

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