



ODF

Ombudsman for  
the Defence Forces  
Annual Report 2021







## Ombudsman for the Defence Forces Customer Charter

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

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

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

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

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

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

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







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







## Glossary of Terms and Abbreviations used in the Report

DF	Defence Forces
ODF	Ombudsman for the Defence Forces
Bde	Brigade
Bn	Battalion
DFHQ	Defence Forces Head Quarters
DFTC	Defence Forces Training Centre
MO	Medical Officer
IO/MIO	Military Investigating Officer
OC	Officer Commanding
GOC	General Officer Commanding
COS	Chief of Staff
NCO	Non-Commissioned Officer
RDF/FCA	Reserve Defence Forces
DFR	Defence Forces Regulation
Unit Comdr	Unit Commander
FOCNS	Flag Officer Commanding Naval Service
ROW	Redress of Wrongs
PO	Petty Officer (Naval Service)
DCOS (Sp)	Deputy Chief of Staff, Support
Tech	Technician
Coy Comdr	Company Commander
Sec Coy	Security Company
AC	Air Corps
NS	Naval Service
Recommendations	Recommendations made to the Minister for Defence as provided for in S7 of the Ombudsman (Defence Forces) Act 2004
EPMO	Enlisted Personnel Management Office
COMO	Commissioned Officers Management Office
PDFORRA + RACO	Representative Associations for Serving Personnel



# 1 Introduction

In my introduction to the Annual Report for 2020 my opening remarks referred to that year being difficult for everyone, because of COVID-19 related restrictions. I also paid tribute to frontline workers, specifically mentioning those in the Defence Forces, who provided invaluable service in the fight against the virus.

Unfortunately, 2021 has again proved to be a difficult year, for essentially the same reasons. Again, I pay tribute to all who worked and provided various essential services throughout the year, including, again, Defence Forces' personnel, who provided significant levels of assistance, and continue to do so into 2022. Let us hope that 2022 will see better things.

2021 was a busy year for my office. It saw the completion of 36 Reports. (In 2020, 25 Reports were completed). Just 3 cases were carried over from 2021 to 2022, all because further information was awaited. In 2021, 15 Recommendations were made to the Minister for Defence, compared to 12 in the previous year. All 12 (from 2020) were accepted by the Minister by end 2021. Of the 15 recommendations made in 2021 Reports, 4 have been accepted to date, and none have been rejected. It is expected that the Minister will respond to the remaining eleven in the coming months. As many of the Recommendations require assessment and research on the Minister's part, and liaison between the Minister and the DF, there is, understandably, a significant time lag between making a Recommendation, and its acceptance, or rejection, as the case may be.

In 2021 there were 5 cases in which I was obliged to decline to investigate because of jurisdictional issues. Of the 34 cases in which I issued Final Reports approximately 35% of complaints were upheld or partially upheld, compared to approximately 25% in the previous year. (Of those 5 cases, 3 resulted in a Report, and 2 resulted in correspondence with the Complainant.)

Commonly, the turnaround time between receipt

of a complaint for investigation and production of a Report is three to four weeks (often less). Any delay beyond that timeline is normally because further information or documentation has been sought, and is awaited. Additional information and/or documentation sought from the Defence Forces is generally provided speedily, and for this I am grateful.

The categories of cases referred to my office for investigation are broadly similar to recent previous years. Issues relating to Promotion Competitions, eligibility for promotion and for courses, many of which are necessary for promotion, continue to dominate. The expected increase in bullying type complaints which I suggested looked likely last year, has not materialized. Hopefully, this is because issues of that nature are now better managed in the Defence Forces than, perhaps, they were in the past.

There are summaries of a number of cases concluded in 2021 set out in this Report. These are intended to be merely illustrative of some of the investigative work undertaken. Some details are tweaked or redacted in order to satisfy the important need for confidentiality, and, indeed, for this reason summaries of some cases have had to be excluded because even a heavily edited summary would too easily identify a Complainant, a witness or an individual against whom a complaint is made.

In correspondence with the Minister in 2021 I have identified three matters which, in my view, might usefully be considered with a view to improving the service provided by my office. Each would require amending legislation. They are:

- i. An extension of the limitation period of 12 months as provided for by Section 6 (3)(a) of the 2004 Act, which requires a Complainant to refer his/her complaint to my office within 12 months of the date of the occurrence (or action) being complained of. This period is, I believe, too short, especially if a Complainant seeks to exhaust the internal Defence Forces' complaint investigation process





first. Doing so is preferable, as that process more often than not provides a resolution. The current legislation does not permit me, as Ombudsman, to extend the 12 month period in any circumstances. I have suggested that this 12 month limitation period be extended to 24 months. Section 6 (3)(b) of the 2004 Act allows for the limitation period to be measured from the date a Complainant becomes aware of the occurrence, or action, and although increasing this also to 24 months is, perhaps, of less concern, it may be appropriate to increase the 12 months to 24 months in both Section 6 (3)(a) and (b).

ii. I have also asked that consideration be given to extending the list of categories of action in respect of which I have jurisdiction to investigate in the 2004 Act, particularly in so far as interpersonal issues are concerned,

and,

iii. I have also recommended that consideration be given to extending my jurisdiction to include “own initiative” (“own motion”) investigations, in other words, investigations that would not be dependent on an actual complaint being referred to my office. Such a power, which I believe would be used sparingly, would be beneficial for Defence Forces’ personnel, and for the Defence Forces generally. It would permit the Ombudsman to target for investigation matters in a proactive manner, detached from any particular complaints. Examples might be an investigation into an issue which frequently arises in individual complaints, or into systemic administration failures. Such a power is available to many Ombud Institutions globally, including, the Irish (Public Services) Ombudsman, GSOC, the NI Public Services Ombudsman, the Canadian Defence Ombudsman, as well as Ombuds Institutions in Australia and New Zealand, to name but a few.



Earlier this year, I provided the Minister with suggested draft amendments to the legislation, and I am aware that the Minister and the Department are now considering these.

This year, for the first time in an Annual Report, the full text of the Ombudsman (Defence Forces) Act 2004 is reproduced for the convenience of readers.

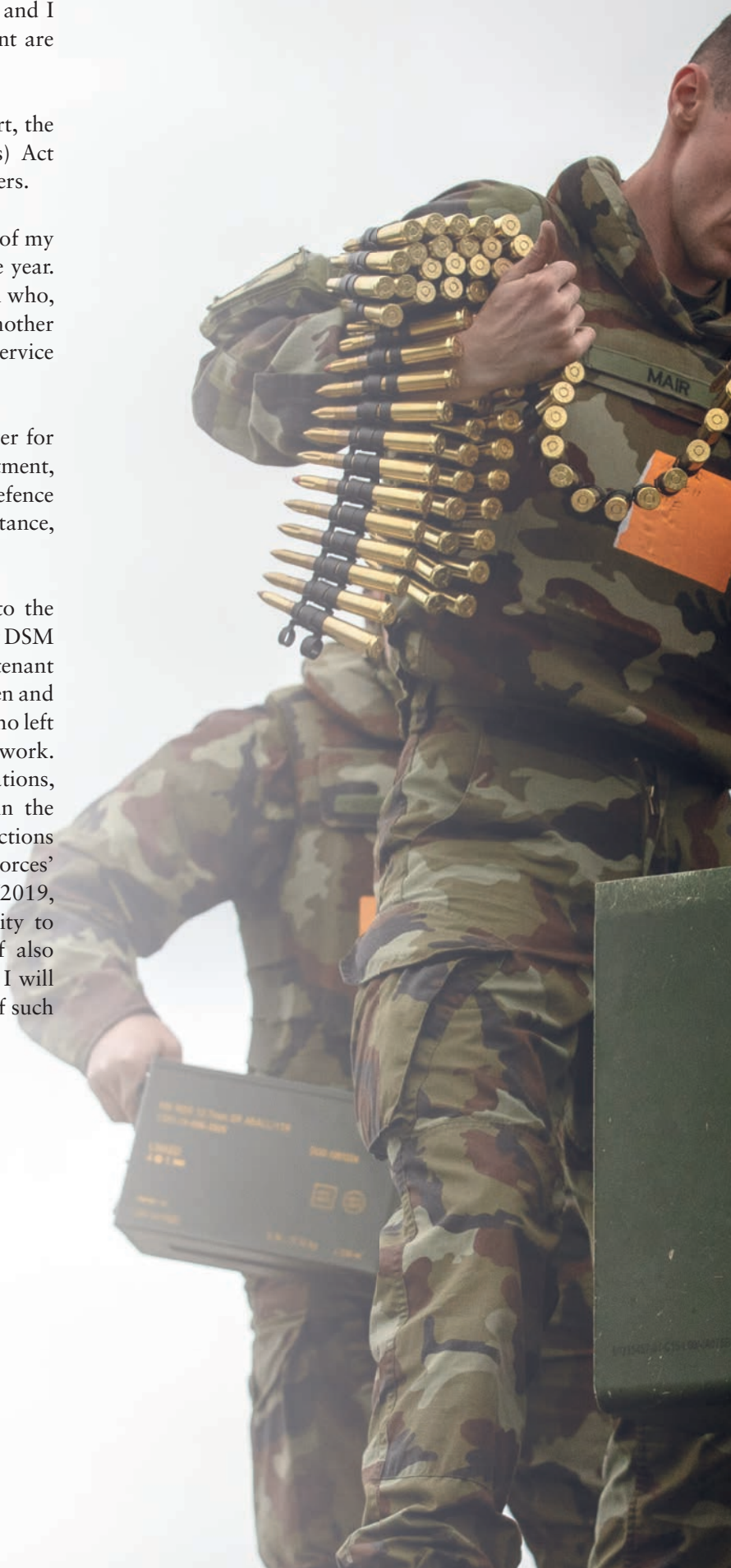
Finally, I express my sincere thanks to the staff of my office for their efforts and assistance during the year. A special word of thanks to Lauren O'Donovan who, during the year, transferred from my office to another part of the Public Service, for her invaluable service over a number of years.

My thanks and appreciation also to the Minister for Defence, the Secretary General of the Department, the civil servants of the Department and the Defence Forces liaison staff for their continuing assistance, support and cooperation.

I also extend my gratitude and good wishes to the former Chief of Staff, Vice Admiral Mark Mellett DSM who retired in 2021, and his successor, Lieutenant General Sean Clancy. I salute and support the men and women of the Defence Forces, including those who left the Defence Forces in 2021, for their important work. I am also grateful to the representative organisations, RACO and PDFORRA, for their assistance in the course of my work. Covid-19 related restrictions necessarily paused my visits to Defence Forces' barracks and bases which commenced in 2018/2019, and which I felt presented a useful opportunity to meet with personnel on the ground. I myself also found such visits to be educational. Hopefully, I will be in a position to undertake at least a couple of such visits later in 2022.



Alan Mahon  
Ombudsman for the Defence Forces  
31 March 2021





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There are summaries of a number of cases concluded in 2021 set out in this Report. These are intended to be merely illustrative of some of the investigative work undertaken.





# Highlights of 2021

## 3 CASES

remained under review by the ODF on the 31 Dec 2021, a significant reduction compared to 31 December 2020, and all are expected to be concluded in early 2022.

## 106 NOTIFICATIONS OF COMPLAINT

were received in 2021. This was a 32% increase on the 80 notifications received in 2020. A Notification of Complaint is generated at the time the complaint is initially submitted to the Defence Forces and a copy is forwarded to the ODF. A full investigation by the ODF will only commence if the complaint is not resolved (or withdrawn) in the course of the Defence Forces internal investigation process. The great majority of Notifications of Complaint therefore do not require investigation by the ODF.

## 39 cases

including pre 2021 referrals, were under review by the ODF during 2021.

## 34 NEW CASES

were referred to ODF for full investigation in 2021. This is a 100% increase on the 17 new cases referred to ODF in 2020.

## 36 Reports

were issued in 2021, 34 of those Reports were Final Reports and brought those cases to a conclusion, one was a Supplementary Report, and one was a Preliminary Report. This represents a 40% increase in the number of cases concluded by the ODF in 2021 compared to the previous year.

## OF THE 106 NOTIFICATIONS OF COMPLAINT RECEIVED,

74 were in respect of Privates and NCOs and 32 were in respect of Officers.







# 2 Analysis of Complaints & Referrals - 2021

## Notifications of Complaint

106 Notifications of Complaint were received by my Office from the Defence Forces during 2021. This is a 32% increase on the 80 complaints notified to my Office in 2020. Of those complaints, 74 were from serving or former other ranks personnel while 32 were from serving or former commissioned officers.

Of the notifications received during 2021, some 28 were withdrawn or resolved during the year, and 34 were referred to the ODF for investigation.

There were also numerous direct contacts between the ODF and the Military Authorities and individual members in respect of individual cases, however, such contacts are not recorded for statistical purposes.

## Direct Referrals to ODF

Serving members of the Permanent and Reserve Defence Forces may (and usually do) initially process their complaints through the statutory (Section 114 Defence Act 1954) Redress of Wrongs procedure and exhaust the internal Defence Forces process before referring their complaint to this Office, but they are entitled to refer them directly to the ODF. Utilising the internal DF investigation system has the benefit of an early resolution of a complaint. Former members of the Defence Forces must refer their complaints directly to this Office, subject to the provisions of the Ombudsman (Defence Forces) Act 2004.

In 2021, two complaints were referred directly to this Office by former members.

## Cases reviewed by ODF in 2021

On 1 January 2021, some 3 cases were carried forward under review by this office. During 2021 some 34 new cases were received by this Office. The total number of cases under review by this Office during 2021 was 39. Of these, some 35 cases were brought to a final conclusion during 2021, one Supplementary Report and one Preliminary Report was also issued in 2021. 3 cases remained under review on 31 December 2021 and were carried forward for consideration into 2022. This represents a 20% decrease on the numbers carried forward from 2020 into 2021.

## Details of Complaints investigated by ODF in 2021

The following tables set out the nature of complaints considered by this Office during 2021, together with details of complaints by military formation. It should be noted that complaints categorized as 'Maladministration' cover a variety of issues including complaints in respect of performance appraisal and issues related to discharge among others. Complaints categorized as 'Interpersonal Issues' include those where there appear to be elements of personality conflict and/or allegations of inappropriate behaviour or bullying.





## Total cases

The following table outlines the progression of the 39 cases during 2021 –

Preliminary Investigation Ongoing	Cases Concluded and Final Report Issued	Preliminary Reports Issued
3	35*	1

\*Includes a Supplementary Report

## Cases by Military Formation

Of the 39 cases investigated, 35 of them concluded during the course of the year, while in 1 case a Preliminary Report was issued, 3 cases were carried forward into 2022.

The following table outlines the number of cases arising in each Military Formation.

1 Brigade	2 Brigade	Defence Forces HQ	Defence Forces Training Centre	Air Corps	Naval Service	Total
1	4	2	14	12	6	39

## Nature of Cases

The nature of the cases on hand with the ODF during 2021 can be broken down into the following broad categories –

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting	Total
10	20	5	3	1	39

## Details of Cases by Formation

The following tables and charts set out the nature of cases on hand during 2021 by individual Military Formations –

### 1 Brigade – (1)

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

### 2 Brigade – (4)

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



#### Defence Forces HQ – (2)

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

#### Defence Forces Training Centre – (14)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
1	13	Nil	Nil	Nil

#### Air Corps – (12)

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

#### Naval Service – (6)

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

### Complaints Investigated and Reported on by ODF in 2021

Complaint Upheld or partially upheld by ODF**	Complaint Not Upheld by ODF *
11	25

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

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

### ODF's Recommendations to the Minister in 2021

Minister Accepts	Minister Does Not Accept
16*	Nil

\*Includes reports issued during 2020 which were considered by the Minister in 2021

#### Recommendations made by the ODF in 2021

NUMBER OF RECOMMENDATIONS (pursuant to Section 7(3) of the 2004 Act) in

Reports finalized in 2021: 15

Footnotes:

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



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The total number of cases under review by this Office during 2021 was 39. Of these, some 35 cases were brought to a final conclusion during 2021



# 3 Case Summaries

## Introduction to Summary Section of Report

Set out below are summaries of a selection of cases investigated by the Ombudsman for the Defence Forces during 2021. They are illustrative of the types of cases investigated, but are far from exhaustive of the topics covered in all the investigations undertaken. A number of interesting case summaries have necessarily been omitted in the interest of confidentiality.

In the interest of confidentiality names of Complainants are withheld, as is other information which might identify Complainants. For this reason also some factual information may be altered or changed. Section 10 of the 2004 Act includes provisions to protect confidentiality.

### CASE SUMMARY 1

Unit Commander's decision not to recommend Senior NCO for a particular course – impact on career progression – Unit's Operation Needs.

Although qualified to participate in a career advancing course in 2020, his Unit Commander declined to recommend him for it because, essentially, his absence on the course would cause operational difficulties. The Unit Commander's recommendation was an essential requisite for the course. The Senior NCO complained that the DF had failed in its duty to facilitate his career expectations. He also pointed to the fact that he had been posted overseas on a number of occasions, each occasion resulting in an absence of a number of months, and could not therefore understand why his absence on a course would cause operational difficulty.

The Complainant had also previously been refused recommendation for the same course, apparently for similar reasons.

The ODF found that the decision on this occasion to deny the Complainant the recommendation to undertake the course was “objectively justified in the particular circumstances prevailing at the time”. He also concluded, however, that denying the Complainant the opportunity to undertake this course – for which he was otherwise qualified – for a prolonged or indefinite period would be unfair. He noted that the fact of his previous absences for lengthy periods on overseas duty suggested that his absence from his normal work for periods of time was manageable by his superiors, if known and planned for in advance.

The ODF recommended that the Complainant be facilitated as soon as possible to undertake the course in question.





## CASE SUMMARY 2

Promotion competition – Cancellation of course required for Promotion because of COVID-19 – Eligibility issue.

The Complainant was one of a number of Complainants who sought to compete in an officer Promotion Competition, but were deemed ineligible because they had not completed a Land Command and Staff Course (LCSC) in sufficient time. A six-month LCSC was scheduled to commence in the previous year (2020) and would have been expected to conclude in sufficient time for the Complainants to participate in the Promotion Competition (assuming he successfully completed the course). However, the course was cancelled because of practicalities associated with nation wide COVID-19 restrictions introduced in 2020.

None of the Complainants were in a position to satisfy either of two alternatives to successfully completing the LCSC Course, namely, completing an alternative acceptable course, or being certified as having “otherwise reached a satisfactory standard as determined by the Chief of Staff (COS).”

In relation to the cancellation/postponement of the

relevant LCSC because of COVID-19 issues, the ODF concluded as follows: -

*“I am unable to conclude that the necessary postponement of the 2 LCSC, for reasons associated with the COVID-19 pandemic and therefore outside of the Defence Force’s control (and which were unforeseeable), should have reasonably required the postponement of a separate event (namely, the Capt to Comdt (Army Line) Promotion Competition). The decision to so proceed cannot be reasonably impugned in circumstances where it was deemed necessary for the Promotion competition to proceed in order to cater for the immediate and foreseeable operational needs of the Defence Forces, while at the same time ensuring that candidates for promotion were suitably trained and experienced.”*

The ODF further concluded that any decision to deem the Complainants (or any of them) to have successfully completed an alternative acceptable course, or to have reached a “satisfactory standard” were matters for decision by the COS.





### CASE SUMMARY 3

Deployment – COVID-19 Vaccine refusal – Overseas deployment – de-selection followed by re-selection in a different role – complaint not upheld.

The Complainant, a junior officer, was selected to fill a particular role with an overseas UN deployment. Her selection for overseas service was initially reversed when she declined to take the COVID-19 vaccine for reasons based on research undertaken by her, and explained to the Medical Officer.

The Complainant appealed the decision to de-select her. This appeal was successful, and she was re-selected, but this time in a different role, and one which the Complainant believed was less prestigious and less valuable for career progression. She lodged a complaint to the effect that her original selection for a specific role had been unfairly denied to her.

The DF argued that the original role involved significantly greater contact with fellow personnel and with local people in the operational area compared to the role she was subsequently chosen to fill, and that it was reasonable and appropriate to make the change having regard to its duty of care to DF personnel and

local people, and more particularly, to reduce the risk of the spread of COVID-19 as much as possible.

In his considered Ruling, the Chief of Staff (COS), in rejecting the complaint stated: -

*“The Defence Forces owes a duty of care to all of its personnel serving overseas and to ensure that any risk mitigation that can take place in such situations is necessary to enable IRISHPOLBATT to function effectively in accordance with their overseas requirements. I am satisfied that such decisions are necessary and given the unprecedented effect COVID-19 has on operations and training in the Defence Forces, these decisions are in the best interests of all personnel.”*

The ODF noted that the original DF decision to de-select the Complainant from the overseas deployment had been revoked, so that vaccination was not mandatory for overseas service (as of mid-2021), and that in fact 3% of the personnel deployed on this occasion were not vaccinated.





The ODF agreed with the DF's stated position that it had a duty of care to its personnel and the local civilian population to mitigate the risk of the spread of COVID-19. He stated, as follows: -

*"It is now generally accepted (as it was in May/June this year also) that fully vaccinated people may still pick up COVID-19, but, because of their vaccination, are very less likely to become seriously ill, and even less likely to die from the virus. The extent of the significant protection afforded by full vaccination is now well recorded, and accepted internationally. It has not been established that vaccinated persons will not get the virus or transmit it to others. The world Health Organisation (WHO) advise that the vaccines currently available "provide some protection from infection and transmission", but the extent to which they do is still under review.*

*It is unquestionably the case that the DF have a duty of care to limit the risk, as far as reasonably and practically possible, to its own personnel, and to others with whom its own personnel have contact, from COVID-19. The fact that the vast majority of its personnel (97% in the case of 118 Bn) have been fully vaccinated largely satisfies that duty of care. The fact that a small minority (including the Complainant) are not vaccinated, irrespective of the reasons for*

*their non-vaccination, requires careful and sensitive management, both in the interests of the individuals concerned, their colleagues with whom they work, and others with whom they are in contact. Additionally, the DF must have regard to the difficulty and cost of repatriation, and the availability of medical facilities, in the case of service overseas."*

While the ODF ultimately found that the Complainant had not been unfairly or unreasonably treated, he did find that it would have been fairer to the Complainant, if: -

- (a) her decision to remain unvaccinated had been ascertained at an earlier stage, and prior to her assignment to a particular role, and
- (b) steps had been taken to provide her with a clearer explanation and reasons for the decision not to confirm her appointment as originally assigned.

In a final paragraph in his Report the ODF expressed his acceptance that the Complainant's refusal to take the vaccination was a decision taken by her after due research by her, and for understandable personal reasons.

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**In a final paragraph in his Report the ODF expressed his acceptance that the Complainant's refusal to take the vaccination was a decision taken by her after due research by her, and for understandable personal reasons.**



## CASE SUMMARY 4

Discrimination – Impact on career opportunities because of pregnancy and maternity leave – consequential limitation on sea duties for Naval personnel – recommendations to adopt training for pregnant personnel and those on Maternity Leave.

The Complainant was restricted in the extent to which she was available for, and assigned to, sea duties in the Naval Service (NS), because of pregnancy and related Maternity Leave. Of particular concern was a requirement to have 20 months of sea duty in order to qualify for a particular NS course, and in turn, promotion to a higher rank. A further issue was the NS restriction on sea duties for up to two years for the mother of a baby whose spouse/partner was also in the NS, whereas no such restriction applied to the father of a baby whose spouse/partner was in the NS.

GRO 04 of 2015 (Defence Forces Maternity Policy) includes the following at para 20: -

*“a. Personnel returning from maternity leave must consult and meet with their Unit Commander/ Head of Branch to discuss returning to work and give four (4) weeks’ notice of their intent to return. As part of this notice they will discuss their family care plan or in other words, they inform their Unit Commander/Head of Branch that they have a plan to cater for their child’s care and the care that will be in place to enable them to return to seagoing duties. The “family care plan” is the individual’s plan to provide childcare for her child to enable her to return to work and to seagoing duties for NS personnel and overseas with regard to Army/ AC/Navy.*

*b. On returning to work the Commanding Officer/ Head of Branch will interview the individual. Early engagement will allow the service member the opportunity to discuss her career aspirations and her next assignment.*

*d. In the case of the NS, it is important that the person returning to work indicates that they are either ready to return to sea or that they will request to remain ashore up until the child is two (2) years of age. In the case of NS personnel remaining ashore for any period, up to a maximum of the child reaching two (2) years of age, this period will be taken as a timeline to allow the mother to care for the child as part of a family friendly guide prior to*

*returning to seagoing duties. If it is requested to remain ashore for any period up to a maximum until the child is two years of age, the Head of Branch will discuss this with the individual and make every effort to ensure it is facilitated. Three (3) months prior to the end of this time period (i.e. once the child is 21 months old) they must meet and discuss their family care plan with their Unit Commander/Head of Branch with a view to returning to full operational readiness i.e. overseas or seagoing. For NS personnel they will confirm that they will be in a position to return to seagoing duties in three (3) months’ time (i.e. when the child is two (2) years of age).*

*e. In relation to dual service families, the Defence Forces will endeavour not to deploy both serving parents of dependent children at the same time (unless they request otherwise), where this does not affect operational capability. It is the service members’ obligation to make their situation known to their G1 branch as soon as possible so that the situation can be examined in order to avoid unnecessary hardship on dual military families. Once all periods of deployment deferral are complete, she will become fully liable for operational deployment and sea service.” (emphasis added).*

The appointed MIO (Military Investigating Officer) recommended that GRO 04 of 2015 be reviewed in respect of dual service families. FOCNS (the NS Senior Officer) also supported this recommendation. In his Report in this case the ODF stated the following (inter alia): -

*“Because of pregnancy and related maternity leave a female NS member is probably restricted / prevented from going to sea for approximately 12/14 months. Almost half of this period – 6 months – is in respect of maternity leave during which the female NS member is unavailable for any duties or training. These facts unavoidably mean that a female NS member, while pregnant and on maternity leave, will almost certainly,*



*when compared to their male colleagues, lose out to some extent in the ability to fulfil all normal duties and training during these periods. This does not necessarily establish the existence of discrimination, or lack of equality, or lack of opportunity. What does point to the existence of discrimination, or lack of equality, or lack of promotion is a failure on the part of the NS to make reasonable provision for female NS members who are pregnant and awaiting maternity leave, or have recently completed maternity leave, to fulfil experience and training requirements differently to their male counterparts in order to ensure that any delay in the opportunity to qualify for courses / promotion is (when compared to their male colleagues) minimal, if not eliminated altogether.”*

The ODF also made the following Recommendations:

*“It is my recommendation that immediate steps be taken by the NS authorities to examine and implement steps to ensure that pregnant NS members and those returning from maternity leave be provided with viable and practical alternatives to off shore sea duties in order to gain the experience and training sufficient for qualification for Comms 3 course (and similar type courses) for the purpose of minimising the loss of opportunity in comparison with female NS colleagues who are not pregnant or on maternity leave, and male NS colleagues.*

*The purpose of this recommendation is to cater for female NS members who, because of pregnancy and Maternity Leave, have less opportunity to gain off-shore experience for a prolonged period of time.*

*In making this recommendation I acknowledge and accept that,*

*It may not be possible or practical to replicate on-shore all aspects of sea duties, and the experience and training derived there from.*

*It may not be possible to avoid entirely loss of opportunity to satisfy essential work experience and training for pregnant NS members for the duration of their pregnancy and Maternity Leave, when compared to their non-pregnant female, and male, colleagues.*

*Ultimately, overall levels of work experience and training deemed appropriate and essential for any course or promotion should determine eligibility for*

*that course or promotion, including in circumstances where pregnancy and Maternity Leave necessarily dictate restricted duties or work absence.*

*I recommend that NS members be afforded priority for the assignment to sea duties upon their return to work from Maternity Leave, should they so request.*

*I recommend that every possible step be taken to enable the Complainant fulfil the necessary requirements for the next available Comms 3 course.”*





## CASE SUMMARY 5

Jurisdiction issue – complaint of inappropriate behaviour and abuse of rank – Section 6(3) of the Ombudsman (Defence Forces) Act 2004.

This complaint arose as a result of a verbal altercation at the gates of an army barracks between an officer and a Corporal, in the course of which the officer threatened to bring charges against the Corporal. There were no witnesses. No charges or disciplinary action were taken subsequently against the Corporal.

The internal DF investigation of the complaint found that no wrong had been suffered by the Complainant within the meaning of S.114 of the Defence Act 1954, as amended.

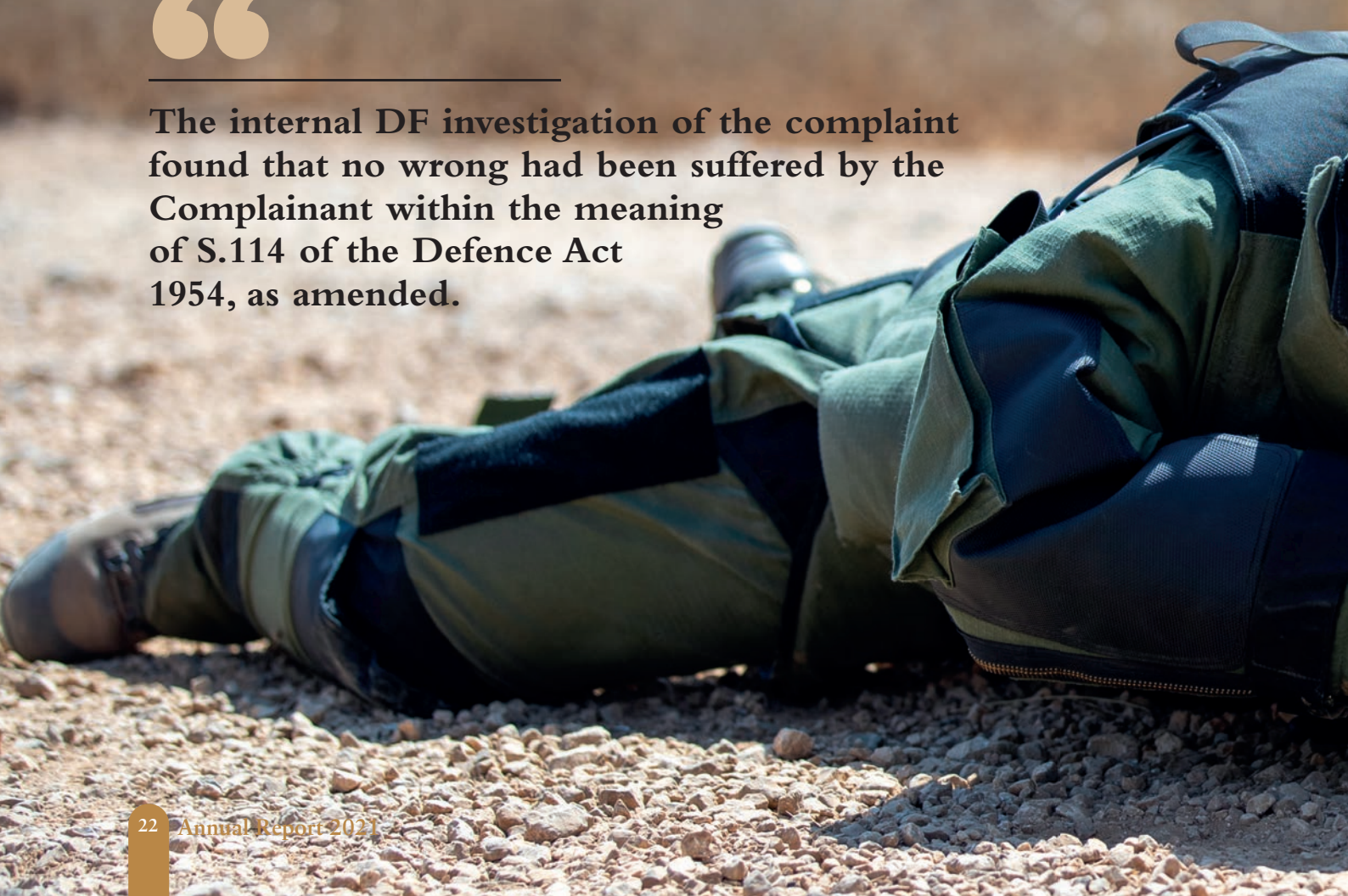
The incident (or ‘action’) complained of occurred on 3 June 2018. As the matter was first referred to the ODF for investigation well after 3 June 2019, and because of the provisions of Section 6(3)(a) of the Ombudsman (Defence Forces) Act 2004, the investigation request was rejected.

- Section 6 “(3) A complainant shall make a complaint referred to in subsections (1) and (2) not later than 12 months from –
  - (a) The date of the action concerned, or
  - (b) The date on which the complainant became aware of the action, whichever is the later”

Included in the ODF’s Report in this case to the Minister for Defence was a Recommendation that Section 6 of the 2004 Act be amended to provide for a longer limitation period than the twelve months provided for. It is suggested that a limitation period of 24 months would be more appropriate.

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**The internal DF investigation of the complaint found that no wrong had been suffered by the Complainant within the meaning of S.114 of the Defence Act 1954, as amended.**





## CASE SUMMARY 6

Jurisdiction issue – alleged inappropriate handling of disciplinary action against a junior colleague as sought and recommended by the Complainant, a senior NCO – subsequent transfer of the Complainant with negative consequences for him – Section 6(3) of the Ombudsman (Defence Forces) Act 2004.

The Complainant submitted his complaints to the DF on 2 December 2020 relating to matters which occurred on/before October 2016, almost four years earlier. The complaints were investigated within the DF by an appointed MIO (Military Investigating Officer) in December 2020, and by a more senior officer by way of review, in January 2021. The complaints were not upheld, save for an “undue delay” issue.

The Complainant then requested the ODF to investigate. However, the ODF declined to do so by reason of Section 6(3) of the 2004 Act, as over four years had elapsed since the occurrence of the subject matter of the complaints.

- Section 6 “(3) A complainant shall make a complaint referred to in subsections (1) and (2) not later than 12 months from –
  - (a) The date of the action concerned, or
  - (b) The date on which the complainant became aware of the action, whichever is the later”

*(See also Case Summary 5).*





## CASE SUMMARY 7

Removal and transfer from a particular position – no reasons given despite promise of an investigation.

The complaint in this case arose from the Complainant's removal from a specific position within an army barracks. He stated that his removal was "very degrading, humiliating and very unprofessional." He further complained that notwithstanding a promise in 2018 to investigate the circumstances of his removal from the particular position, no such investigation had taken place.

The ODF found that the lack of the promised investigation was unsatisfactory and unfair. He noted that the reasons for the Complainant's removal from a particular position remained a mystery some four years after the event, and that he was entitled to be advised of the reasons for his removal.

The ODF believed that a proper investigation of the complaint was, at least in the first instance, best achieved by an expeditious internal DF investigation conducted by a newly appointed Military Investigating Officer (MIO), not previously associated with the case. He recommended that this investigation be conducted, without delay.





## CASE SUMMARY 8

Exclusion from promotion competition- current/forthcoming promotion competition should be a new 2021 competition, rather than a re-run of the 2019 competition.

The Complainant contended that an officer promotion competition scheduled for 2021 was a new competition and not, as maintained by the DF, a re-run of an earlier competition originally commenced in 2019, but subsequently abandoned.

If the promotion competition was a new competition (as contended for by the Complainant), the Complainant had sufficient years' service at the lower rank to qualify him for inclusion in the Competition. If, on the other hand, the scheduled promotion competition was a 're-run' of the 2019 competition, the Complainant fell short of the lower rank service requirement. The ODF, in a series of Reports in 2020 in relation to the 2019 promotion competition, found that certain candidates for that competition had been

wrongly excluded from it. Based on those decisions, and on Recommendations made by the ODF in those cases to the Minister for Defence, the Minister directed that the Chief of Staff "make arrangements to re-run (the 2019 competition) ..."

Accordingly, the ODF believed it "logical, reasonable and necessary to re-run (the 2019 competition) without delay."

The ODF concluded that as the Complainant did not satisfy the criteria for participation in the 2019 promotion competition he could not therefore participate in what in reality was the same promotion competition, albeit it was now scheduled in 2021.





## CASE SUMMARY 9

Objection to comments in personal file – adverse effect on scoring in promotion competition – complaint that civilian on Promotion Competition Board had a working relationship with successful candidate.

The Complainant was critical of negative comments in his 2013 AF451 (annual personal DF Record) written by a senior officer, his Corps Director. This AF451 was one of a number considered by a Promotion Board. Subsequent AF451s considered by the Board included positive remarks about the Complainant and were also written by the same senior officer.

The appointed MIO found in the Complainant's favour to the extent that the Complainant had wrongly not been afforded the opportunity to record his response to the recorded negative comments. He did not however agree with the Redress sought, namely the removal of the comments from the 2013 AF451. The MIO also rejected the suggestion of bias alleged against the senior officer. He declined to investigate the allegation that the Board's civilian member had a working relationship with the successful candidate, as he believed himself unable to do so because that individual was a civilian, and not a DF member.

The ODF noted that all AF451s subsequent to 2013 were "particularly positive and complementary of and about the Complainant", and that they included a number of positive comments from the senior officer in question. He also expressed the view that in all probability the adverse effect of the comments in an AF451 six years previously would have greatly receded in the interim. The ODF found no evidence of bias on the part of the senior officer.

The ODF's investigation of the conflict arising by reason of the alleged former "working relationship" between the Board's civilian member and the successful candidate did not reveal evidence to support that allegation. The evidence was to the effect that the civilian member had, on a previous occasion, sat on a Promotion Board (as a civilian member) with the successful candidate as one of two military nominees. The ODF regarded this working relationship as merely being of a fleeting nature. Furthermore, the Board in the Complainant's case consisted of three individuals, the said civilian member, and two senior officers, one of whom was particularly experienced

and was Chairperson. This suggested that the risk of favouritism towards one candidate on the part of one of the three resulting in an unfair result was remote, and in any event there existed no evidence of favouritism in this particular instance.

The ODF also expressed the view that as the appointment of the civilian member of a Promotion Board was the preserve of the Minister for Defence, a review of that decision was not amenable to the internal DF investigation process, nor indeed was it reviewable by the ODF under the provisions of the 2004 Act.

The ODF recommended (a) that the Complainant be permitted to include his comments on his AF451 in response to those of the senior officer, and (b) that a civilian appointee to a Board be provided with a list of candidates seeking promotion, and then required to confirm any (actual or likely) conflict of interest "on the grounds of personal familial relationships, working relationships or other reasons."









“

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



# 4 Corporate Affairs

## Staffing

The staffing of the ODF consists of:

- Brian O'Neill, Head of Office.
- Michael O'Flaherty, Case Manager.
- John Sheridan, Executive Officer, who replaced Lauren O'Donovan during 2021.

## Review of Internal Financial Controls

In common with other publicly-funded Offices, the ODF conducted a formal review of Internal Financial Controls in 2020. This review has been provided to the Comptroller and Auditor General. A comprehensive budgetary system is in operation and expenditure trends are reviewed on a quarterly basis in association with the ODF's external accountants.

## Data Protection

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

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

10. (1) The Ombudsman or a member of the staff of the Ombudsman (including an investigation officer) shall not disclose any information, document, part of a document or thing obtained by the Ombudsman or an investigation officer in the course of, or for the purpose of, a preliminary examination or an investigation under this Act except for the purposes of —
  - (a) the preliminary examination or the investigation concerned,
  - (b) the making, in accordance with this Act, of any statement, report or notification on that preliminary examination or that investigation, or
  - (c) proceedings for an offence under the Official Secrets Act 1963 that is alleged to have been committed in respect of information or a document, part of a document or thing obtained by the

Ombudsman or an investigation officer by virtue of this Act.

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



in this Act shall be construed as authorising or requiring the Ombudsman or a member of the staff of the Ombudsman (including an investigation officer) to disclose to any person or for any purpose anything referred to in *paragraph* (a) or (b).

### Bar Council of Ireland

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

### Health & Safety

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

### Freedom of Information

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

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

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

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

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

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

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

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

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

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

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





Number 36 of 2004

## OMBUDSMAN (DEFENCE FORCES) ACT 2004

### ARRANGEMENT OF SECTIONS

#### Section

1. Interpretation.
2. Appointment of Ombudsman.
3. Remuneration and superannuation.
4. Functions of Ombudsman.
5. Exclusions.
6. Complaint to Ombudsman.
7. Reports.
8. Production of documents, information, etc.
9. Conduct of investigations.
10. Secrecy of information.
11. Committee of Public Accounts.
12. Oireachtas committees.
13. Amendment of section 114 of Act of 1954.
14. Staff.
15. Investigation officers.
16. Accounts and audits.
17. Regulations.
18. Expenses.
19. Short title and commencement.

[No. 36.] Ombudsman (Defence Forces) Act [2004.]	2004 Acts Referred to
Civil Service Commissioners Act 1956	1956, No. 45
Civil Service Regulation Act 1956	1956, No. 46
Civil Service Regulations Acts 1956 to 1996	
Comptroller and Auditor General (Amendment) Act 1993	1993, No. 8
Defence Act 1954	1954, No. 18
Defence (Amendment) Act 1990	1990, No. 6
Defence (Amendment) (No. 2) Act 1960	1960, No. 44
European Parliament Elections Act 1997	1997, No. 2
Official Secrets Act 1963	1963, No. 1
Ombudsman Act 1980	1980, No. 26
Public Service Superannuation (Miscellaneous Provisions) Act 2004	2004, No. 7





Number 36 of 2004

## OMBUDSMAN (DEFENCE FORCES) ACT 2004

AN ACT TO PROVIDE FOR THE APPOINTMENT AND FUNCTIONS OF AN OMBUDSMAN FOR THE DEFENCE FORCES, TO AMEND THE DEFENCE ACT 1954 AND TO PROVIDE FOR RELATED MATTERS.

[10th November, 2004]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

### 1

(1) In this Act, unless the context otherwise requires —

“Act of 1954” means the Defence Act 1954;

“Act of 1980” means the Ombudsman Act 1980;

“action” means —

(a) any act that is carried out or any decision made by or on behalf of a person referred to in paragraph (a), (b) or (c) of section 6(1) or paragraph (a), (b) or (c) of section 6(2), or

(b) a failure by or on behalf of a person referred to in paragraph (a), (b) or (c) of section 6(1) or paragraph (a), (b) or (c) of section 6(2) to carry out an act or make a decision,

but does not include an act or decision referred to in paragraph (a) or a failure to carry out an act or make a decision referred to in paragraph (b) that relates to or affects security or a military operation;

“civil servant” has the meaning assigned to it by the Civil Service Regulation Act 1956 but for the purposes of sections 4(7), 6(1)(c), 6(2)(c) and 9(2) a reference to a civil servant shall be construed as a reference to a civil servant who is or was employed as a civil servant in the Department of Defence and for the purposes of section 6 an action taken by or on behalf of a civil servant shall concern the performance of administrative functions by that civil servant in the Department of Defence;

“complainant” means a person who makes a complaint under section 6;

“complaint” means a complaint made in accordance with section 6;

“Defence Forces” means the Permanent Defence Force referred to in section 19 of the Act of 1954 and the Reserve Defence Force referred to in section 20 of the Act of 1954;

“functions” includes powers and duties and a reference to the performance of a function shall include, with respect to powers, a reference to the exercise of a power;

“investigation officer” has the meaning assigned to it by section 15;

“military operation” means —

(a) active service within the meaning of section 5 of the Act of 1954,

(b) active service as provided for in section 4(1) of the Defence (Amendment) (No. 2) Act 1960,

(c) operational duties at sea, or

(d) the provision of aid to the civil power;

“Minister” means the Minister for Defence;

“Ombudsman” means the person appointed as Ombudsman for the Defence Forces under section 2(2);

“security” means the security or defence of the State;

“service tribunal” has the meaning assigned to it by section 161 of the Act of 1954.

(2) In this Act —

(a) a reference to a section is a reference to a section of this Act, unless it is indicated that a reference to some other enactment is intended,



- (b) a reference to a subsection or paragraph is a reference to the subsection or paragraph of the provision in which the reference occurs, unless it is indicated that a reference to some other provision is intended, and
- (c) a reference to any enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment.

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## 2

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- (1) There is established the office of Ombudsman for the Defence Forces and the holder of the office shall be known as the Ombudsman for the Defence Forces.
- (2) The appointment of a person to be the Ombudsman for the Defence Forces shall be made by the President on the recommendation of the Government.
- (3) Subject to this Act, a person appointed under *subsection (2)* shall hold office on such terms and conditions as the Minister may, with the consent of the Minister for Finance, determine.
- (4) A person appointed to be the Ombudsman —
  - (a) may at his or her own request be relieved of office by the President,
  - (b) may be removed from office by the President but shall not S.2 be removed from office except for stated misbehaviour, incapacity or bankruptcy where there is a recommendation for removal by the Government, and
  - (c) shall, where *subsection (8)* applies, vacate the office on attaining the prescribed age.
- (4) Subject to this section, a person appointed to be the Ombudsman shall hold office for such term as may be specified in the instrument of appointment which term shall not exceed 7 years and such person may be eligible for re-appointment to the office for a second or subsequent term.
- (5) If the person holding the office of the Ombudsman is —
  - (a) nominated as a member of Seanad E'ireann, or

- (b) elected as a member of either House of the Oireachtas or to the European Parliament, or
- (c) regarded, pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997, as having being elected to the European Parliament, or
- (d) becomes a member of a local authority, that person shall thereupon cease to hold the office of Ombudsman.

- (5) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein, or who is a member of the European Parliament or a local authority shall, while he or she is so entitled or is such a member, be disqualified from holding the office of Ombudsman.
- (6) In respect of any person who is not a new entrant (within the meaning of the Public Service Superannuation (Miscellaneous Provisions) Act 2004) the Minister may, with the consent of the Minister for Finance, prescribe the age at which such a person shall vacate office pursuant to *subsection (4)(c)*.
- (7) A person who holds the office of Ombudsman shall not be a member of the Defence Forces or a civil servant.

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## 3

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- (1) There shall be paid to the holder of the office of Ombudsman such remuneration and allowances for expenses as the Minister, with the consent of the Minister for Finance, may from time to time determine.
- (2) The Minister may, with the consent of the Minister for Finance, make and carry out, in accordance with its terms, a scheme or schemes for the granting of superannuation benefits to or in respect of persons who have held the office of Ombudsman as he or she thinks fit.
- (3) A scheme referred to in *subsection (2)* shall fix the time and conditions of retirement for persons in respect of whom superannuation benefits are payable under the scheme, and different times and conditions may be fixed in respect of different classes of persons.

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





- (4) The Minister may at any time, with the consent of the Minister for Finance, make and carry out a scheme or schemes amending or revoking a scheme under this section.
  - (5) No superannuation benefit shall be granted by the Minister nor shall any other arrangement be entered into by the Minister for the provision of such a benefit to or in respect of the person who holds the office of Ombudsman otherwise than in accordance with a scheme under this section or, if the Minister, with the consent of the Minister for Finance, sanctions the granting of such a benefit, in accordance with that sanction.
  - (6) A scheme under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.
  - (7) Where a dispute arises as to the claim of any person to, or to the amount of, any superannuation benefit in pursuance of a scheme or schemes under this section, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance, whose decision shall be final.
  - (8) In this section, “superannuation benefit” means a pension, gratuity or other allowance payable on resignation, retirement or death.
- (i) taken without proper authority,
  - (ii) taken on irrelevant grounds,
  - (iii) the result of negligence or carelessness,
  - (iv) based on erroneous or incomplete information,
  - (v) improperly discriminatory,
  - (vi) unreasonable, notwithstanding consideration of the context of the military environment,
  - (vii) based on undesirable administrative practice, or
  - (viii) otherwise contrary to fair or sound administration,
- (c) the action was not an order issued in the course of a military operation, and
  - (d) in the case of a serving member of the Defence Forces, the matter is not likely to be resolved and a period of 28 days has expired since the complaint was made under section 114 of the Act of 1954.
- (5) The Ombudsman may—
    - (a) decide not to carry out an investigation under this Act into an action that is the subject of a complaint, or
    - (b) discontinue an investigation under this Act into an action that is the subject of a complaint, if he or she is of the opinion that—
      - (i) the complaint is trivial or vexatious,
      - (ii) the complainant has an insufficient interest in the matter,
      - (iii) satisfactory measures to remedy, mitigate or alter the adverse effect of the action on the complainant have been taken or are proposed to be taken, or
      - (iv) the complainant has not taken reasonable steps to seek redress in respect of the subject matter of the complaint or, if the complainant has taken such steps, he or she has not been refused redress.

#### 4

- (1) The Ombudsman shall be independent in the performance of his or her functions, and shall at all times have due regard to the operational requirements of the Defence Forces.
- (2) Subject to this Act, the Ombudsman may investigate any action that is the subject of a complaint made by a person affected by the action if, having carried out a preliminary examination of the matter, it appears to the Ombudsman that —
  - (a) the action has or may have adversely affected the complainant,
  - (b) the action was or may have been —
    - (3) It shall not be necessary for the Ombudsman to investigate an action under this Act if he or she is

of the opinion that the subject matter concerned has been, is being or will be investigated in a similar manner under another investigation by the Ombudsman under this Act.

- (4) A preliminary examination or an investigation by the Ombudsman shall not affect the validity of the action investigated or any power or duty of the person who took the action to take further action with respect to any matters the subject of the preliminary examination or investigation.
- (5) In determining whether to initiate, continue or discontinue an investigation under this Act, the Ombudsman shall, subject to the provisions of this Act, act in accordance with his or her own discretion.
- (6) A member of the Defence Forces—
  - (a) who makes a complaint to the Ombudsman concerning an action taken by or on behalf of a civil servant shall not, subsequently, make a complaint about the same matter to the Ombudsman appointed under the Act of 1980, or
  - (b) who makes a complaint to the Ombudsman appointed under the Act of 1980 in relation to an action taken by or on behalf of a civil servant shall not, subsequently, make a complaint about the same matter to the Ombudsman.
- (7) Nothing in *subsection (2)(a) or section 6* shall be construed as prohibiting the investigation by the Ombudsman of—
  - (a) an action that is the subject of a complaint by a complainant which, in the opinion of the Ombudsman, has or may have affected the complainant other than in an official capacity, or
  - (b) an action that is the subject of a complaint by a complainant which was carried out, or may have been carried out, by a person acting other than in an official capacity.
- (8) The Ombudsman shall furnish to the Minister such information regarding the performance of his or her functions as the Minister may from time to time request.

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## 5

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- (1) The Ombudsman shall not investigate any complaint concerning an action referred to in section 6(1) or 6(2)—
  - (a) if the action is one in relation to which—
    - (i) the complainant has initiated legal proceedings in any civil court and the proceedings have not been dismissed for failure to disclose a cause of action or a complaint justiciable by that court whether the proceedings have been otherwise concluded or have not been concluded, or
    - (ii) the complainant has a right, conferred by or under statute, of appeal, reference or review to or before a court in the State (not being an appeal, reference or review in relation to a decision of a court),
  - (b) if the action has been or is the subject of an investigation under section 179 of the Act of 1954 or by a service tribunal and is not an action concerning delay or any other matter concerning the administration of such investigations,
  - (c) if the Ombudsman is satisfied that the action relates to or affects security or a military operation,
  - (d) if the action concerns—
    - (i) any matter relating to the terms or conditions of employment in the Defence Forces, including any matter relating to the negotiation and determination of the rates of remuneration or allowances, which is within the scope of a conciliation and arbitration scheme referred to in section 2(6) of the Defence (Amendment) Act 1990, or
    - (ii) any matter concerning the organisation, structure and deployment of the Defence Forces,
  - (e) if the action is one—
    - (i) involving the exercise of the right or power referred to in Article 13.6 of the





Constitution or the remission of any forfeiture or disqualification imposed by a subordinate officer pursuant to section 179 of the Act of 1954 by a service tribunal or by the Courts Martial Appeal Court, or

(ii) that concerns the administration of military prisons or places of detention for the custody of members of the Defence Forces committed to custody by a service tribunal or otherwise,

(f) if the complaint concerned has not been made within the period specified in *section 6(3)*, or

(g) if the action is taken before the commencement of this Act.

(6) Where for security reasons, the Minister so requests in writing (and attaches to the request

a statement in writing setting out in full the reasons for the request), the Ombudsman shall not investigate, or shall cease to investigate, an action specified in the request.

(7) Where the Ombudsman receives a request under *subsection (2)*, he or she may apply to the High Court for a declaration that the matter concerned is not of such gravity to warrant such request.

(8) If the High Court is satisfied that it is appropriate to do so it shall make the declaration and the Minister shall withdraw such request.

## 6

(1) A serving member of the Defence Forces may, subject to this Act, make a complaint to the Ombudsman concerning an action if it has affected that member and was taken by or on behalf of—

- (a) another serving member of the Defence Forces,
  - (b) a former member of the Defence Forces while he or she was a serving member of the Defence Forces, or
  - (c) a civil servant.
- (2) A former member of the Defence Forces may, subject to this Act, make a complaint to the Ombudsman concerning an action if it has affected that former member and was taken while he or she was a serving member of the Defence Forces by or on behalf of—
- (a) a serving member of the Defence Forces,
  - (b) a former member of the Defence Forces while he or she was a serving member of the Defence Forces, or
  - (c) a civil servant.
- (3) A complainant shall make a complaint referred to in *subsections* (1) and (2) not later than 12 months from—
- (a) the date of the action concerned, or
  - (b) the date on which the complainant became aware of the action, whichever is the later.

## 7

- (1) Where, following the making of a complaint, the Ombudsman decides not to carry out an investigation or to discontinue an investigation, he or she shall notify the complainant and any person concerned with the complaint, stating the reasons, in writing, for the decision.
- (2) Where the Ombudsman conducts an investigation under this Act into an action that is the subject of a complaint, he or she shall send a statement in writing of the results of the investigation to—
  - (a) the Minister and to all persons concerned with the complaint, and
  - (b) any other person to whom he or she considers it appropriate to send the statement.
- (3) Where, following an investigation under this Act into an action that is the subject of a complaint, it appears to the Ombudsman that the action adversely affected the complainant and is an action falling within *subparagraphs* (i) to (viii) of *section 4(2)(b)* he or she may recommend to the Minister —
  - (a) that the action be further considered,
  - (b) that measures or specified measures be taken to remedy, mitigate or alter the adverse effect of the action, or
  - (c) that the reasons for taking the action be given to the Ombudsman,
 and, if the Ombudsman thinks fit to do so, he or she may request the Minister to notify him or her within a specified time of a response to the recommendation.
- (4) Where the Ombudsman carries out an investigation under this Act into an action that is the subject of a complaint he or she shall notify the complainant of the result of the investigation, the recommendation (if any) made under *subsection* (3) and the response (if any) made by the Minister.
- (5) Where it appears to the Ombudsman that the measures taken or proposed to be taken in response to a recommendation under *subsection* (3) are not satisfactory, the Ombudsman may, if he or she so thinks fit, cause a special report on the case to be included in a report under *subsection* (7).
- (6) The Ombudsman shall not make a finding or criticism adverse to a person under this section without having provided that person with an opportunity to consider, and make representations in respect of, the finding or criticism to the Ombudsman.
- (7) The Ombudsman shall, as soon as may be, but not later than 4 months after the end of each year, cause a report on the performance of his or her functions under the Act to be laid before each House of the Oireachtas and may from time to time cause to be laid before each such House such other reports with respect to those functions as he or she thinks fit.
- (8) An annual report referred to in *subsection* (7) shall be in such form and regarding such matters as the Ombudsman thinks fit or the Minister may direct.



- (9) For the purposes of the law of defamation, any such publication as is hereinafter mentioned shall be absolutely privileged, that is to say—
- (a) the publication of any matter by the Ombudsman in making a report to either House of the Oireachtas for the purpose of this Act, and
  - (b) the publication by the Ombudsman—
    - (i) to a person mentioned in *subsection (1)* of a notification sent to that person in accordance with that subsection,
    - (ii) to a person mentioned in *subsection (2)* of a statement sent to that person in accordance with that subsection,
    - (iii) to the Minister of a recommendation made to the S.7 Minister by the Ombudsman in accordance with *subsection (3)*, and
    - (iv) to the complainant of a notification given to the complainant by the Ombudsman under *subsection (4)*.
- (c) *Paragraph (a)* shall not apply to information, a document, part of a document or thing that concerns any matter relating to security or a military operation and for the purposes of this paragraph a certificate given by the Minister, on the advice of the Chief of Staff, certifying that any information, document, part of a document or thing was so concerned shall be conclusive.
- (2) Subject to this Act, a person to whom a requirement is addressed under this section shall be entitled to the same immunities and privileges as if he or she were a witness before the High Court.
- (3) A person shall not by act or omission obstruct or hinder the Ombudsman in the performance of his or her functions or do any other thing which would, if the Ombudsman were a court having power to commit for contempt of court, be contempt of such court.
- (4) Any obligation to maintain secrecy or other restriction on the disclosure of information obtained by or furnished to a Department of State or civil servant imposed by the Official Secrets Act 1963 shall not apply to a preliminary examination or an investigation by the Ombudsman under this Act and, subject to *section 10(3)*, the State shall not be entitled in relation to any such preliminary examination or investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.
- (5) The Ombudsman may, if he or she thinks fit, pay to the person affected by an action in respect of which an investigation is held by the Ombudsman and to any other person who attends or furnishes information for the purposes of the investigation—
- (a) sums in respect of travelling and subsistence expenses properly incurred by them, and
  - (b) allowances by way of compensation for loss of their time, of such amount as may, with the consent of the Minister for Finance, be prescribed by the Minister.
- (6) A statement or admission made by a person in a preliminary examination or an investigation

under this Act shall not be admissible as evidence against that person in any criminal proceedings.

- (7) Nothing in *subsection (3)* shall be construed as applying to the taking of any such action as is mentioned in *section 4(5)* of this Act.
- (8) In this section “Chief of Staff has the meaning assigned to it by the Act of 1954.

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## 9

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- (1) An investigation by the Ombudsman under this Act shall be conducted otherwise than in public.
- (2) Where the Ombudsman proposes to carry out an investigation under this Act into an action that is the subject of a complaint he or she shall afford the Minister, a civil servant, any member of the Defence Forces, the person who is alleged to have taken or authorised the action or on whose behalf the action is alleged to have been taken or authorised, and any other person who, in the opinion of the Ombudsman, is appropriate, having regard to the complaint, an opportunity to comment on the action and on any allegation contained in the complaint.
- (3) The procedure for conducting an investigation shall, subject to any regulations under *subsection (5)*, be such as is considered appropriate by the Ombudsman, having regard to all the circumstances concerned.
- (4) The Ombudsman and any investigation officer shall have a right of access to any military installation for the purpose of conducting a preliminary examination or an investigation under this Act.
- (5) The Minister may make regulations specifying the procedures, including notification procedures, to be applied to the exercise of the right of access referred to in *subsection (4)* for the purpose of conducting a preliminary examination or investigation under this Act.

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## 10

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- (1) The Ombudsman or a member of the staff of the Ombudsman (including an investigation officer) shall not disclose any information, document, part of a document or thing obtained by the Ombudsman or an investigation officer in the

course of, or for the purpose of, a preliminary examination or an investigation under this Act except for the purposes of—

- (a) The preliminary examination or the investigation concerned,
  - (b) the making, in accordance with this Act, of any statement, report or notification on that preliminary examination or that investigation, or
  - (c) proceedings for an offence under the Official Secrets Act 1963 that is alleged to have been committed in respect of information or a document, part of a document or thing obtained by the Ombudsman or an investigation officer by virtue of this Act.
- (2) The Ombudsman or a member of the staff of the Ombudsman (including an investigation officer) shall not be called upon to give evidence in any proceedings, other than proceedings referred to in *S.10 subsection (1)(c)*, of matters coming to his or her knowledge in the course of a preliminary examination or an investigation under this Act.
  - (3)
    - (a) The Minister may give notice in writing to the Ombudsman, with respect to any document, part of a document, information or thing specified in the notice, or any class of document, part of a document, information or thing so specified, that, in the opinion of the Minister, the disclosure (other than to the Ombudsman or a member of his or her staff including an investigation officer) of that document, that part of a document, that information or that thing or of documents, parts of a document, information or things of that class, would, for the reasons stated in the notice, be prejudicial to the public interest or to security.
    - (b) Where a notice is given under this subsection, nothing in this Act shall be construed as authorising or requiring the Ombudsman to communicate to any person or for any purpose any document, part of a document, information or thing specified in the notice or any document, part of a document, information or thing of a class so specified.
  - (4) Where a notice is given under *subsection (3)(a)*, the Ombudsman or a member of the staff of the



Ombudsman (including an investigation officer) shall not disclose any —

- (a) document, part of a document, information or thing specified in the notice, or
- (b) class of document, part of a document, information or thing specified in the notice,

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

## 11

- (1) The Ombudsman shall, whenever required to do so by the Committee of Daíl Éireann established under the Standing Orders of Daíl Éireann to examine and report to Daíl Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to that Committee on—

- (a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General which the Ombudsman is required to prepare under this Act,
- (b) the economy and efficiency of the Ombudsman in the use of resources,
- (c) the systems, procedures and practices employed by the Ombudsman for the purpose of evaluating the effectiveness of the operation of the office of the Ombudsman, and
- (d) any matter affecting the Ombudsman referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993 or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in paragraph (a), (b) or (c)) that is laid before Dáil Éireann.

- (2) In the performance of his or her duties under this

section, the Ombudsman shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

## 12

- (1) In this section “committee” means a committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the committee referred to in section 11, the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann) or a subcommittee of such a committee.
- (2) Subject to *subsection* (3), the Ombudsman shall, at the request in writing of a committee, attend before it to account for the general administration of the Office of the Ombudsman.
- (3) The Ombudsman shall not be required to account before a committee for any matter which is or has been or may at a future time be the subject of proceedings before a court or tribunal in the State.
- (4) Where the Ombudsman is of the opinion that a matter in respect of which he or she is requested to account before a committee is a matter to which *subsection* (3) applies, he or she shall inform the committee of that opinion and the reasons for the opinion and, unless the information is conveyed to the committee at a time when the Ombudsman is before it, the information shall be so conveyed in writing.
- (5) Where the Ombudsman has informed a committee of his or her opinion in accordance with *subsection* (4) and the committee does not withdraw the request referred to in *subsection* (2) in so far as it related to a matter the subject of that opinion—
  - (a) the Ombudsman may, not later than 21 days after being informed by the committee of its decision not to do so, apply to the High Court in a summary manner for a determination as to whether the matter is one to which *subsection* (3) applies, or
  - (b) the chairperson of the committee may, on behalf of the committee, make such an application, and the High Court may determine the matter.

- (6) Pending the determination of an application under subsection (5), the Ombudsman shall not attend before the committee to account for the matter the subject of the application.
- (7) Where the High Court determines that the matter concerned is one to which *subsection (3)* applies, the committee shall withdraw the request referred to in *subsection (2)*.
- (8) Where the High Court determines that *subsection (3)* does not apply, the Ombudsman shall attend before the committee to give account for the matter.

## 13

- Section 114 of the Act of 1954 is amended -

- (a) in subsection (1), by the substitution of “Chief of Staff” for “Minister”,
- (b) in subsection (2), by the deletion of “who, if so required by the man, shall report on the matter of complaint to the Minister”, and
- (c) by the insertion after *subsection (3)* of the following subsections:

“(3A) The Chief of Staff shall cause every complaint seeking redress of wrongs under this section that is made in writing to be notified

to the Minister and the Ombudsman for the Defence Forces as soon as practicable following the making of such complaint.

(3B) Where the Ombudsman for the Defence Forces has made a notification in writing in accordance with *section 7 of the Ombudsman (Defence Forces) Act 2004*, that *section 5(1)(c)*, *section 5(1)(d)(ii)*, *section 5(1)(e)(ii)* or *section 5(1)(g)* of the *Ombudsman (Defence Forces) Act 2004* applies to a complaint made under that Act by an officer or a man, the officer or the man, as the case may be, may submit that complaint to the Minister for determination by him or her.

(3C) The Minister may make regulations concerning the manner in which a notification referred to in subsection (3A) of this section and a report on such notification are to be made and the manner in which a complaint is to be submitted under subsection (3B) and without prejudice to the generality of the foregoing, the regulations may —

- (a) specify a period or periods within which such reports are to be submitted and complaints referred, and
- (b) the form and content of such notifications, reports and submissions.”.





## 14

- (1) The Minister may, with the consent of the Minister for Staff, Finance, appoint such and so many persons to be members of the staff of the Ombudsman as he or she may from time to time determine.
- (2) A member of the staff of the Ombudsman shall be a civil servant in the Civil Service of the State.
- (3) The appropriate authority, within the meaning of the Civil Service Commissioners Act 1956 and the Civil Service Regulation Acts 1956 to 1996 in relation to the staff of the Ombudsman shall be the Ombudsman.
- (4) The Ombudsman may delegate to any member of the staff of the Ombudsman any function of the Ombudsman under this Act other than the functions referred to in *sections 7(5), 7(7), 11 and 12*.
- (5) In this section “civil servant in the Civil Service of the State” means a person holding a position in the Civil Service of the State.

## 15

- (1) The Ombudsman may appoint in writing, either generally or in respect of any matter or event, such and so many members of the staff of the Ombudsman to be investigation officers for the purposes of all or any of the provisions of this Act and a person so appointed shall be referred to as an “investigation officer”.
- (2) Every investigation officer appointed under this section shall be furnished with a warrant of appointment as an investigation officer, and when exercising any power conferred on him or her by this section as an investigation officer, shall, if requested by a person affected, produce the warrant or a copy of it to that person.
- (3) The Ombudsman may revoke an appointment made under *subsection (1)*.
- (4) An investigation officer may, for the purpose of obtaining any information which may be required in relation to the matter under investigation and in order to enable the Ombudsman to perform

his or her functions under this Act, do any one or more of the following —

- (a) at all reasonable times enter any premises, including, subject to regulations under section 9(5), a military installation, in which there are reasonable grounds to believe that any activity in connection with a complaint is or has been carried on or that books, records or other documents in relation to a complaint are kept and search and inspect the premises and any books, records or other documents on the premises,
- (b) require a member of the Defence Forces or any other person to produce to the investigation officer any records and in the case of information that is kept in a non-legible form to reproduce it in a legible form or to give to him or her such information as the investigation officer may reasonably require in relation to any entries in such records,
- (c) inspect and take copies of or extracts from any such records, file, papers or electronic information system in, at or on the place, including in the case of information in a non-legible form, copies of or extracts from such information in a permanent legible form,
- (d) require any person to give to the investigation officer any information which the officer may reasonably require in relation to a preliminary examination or an investigation under this Act,
- (e) require any person to give to the investigation officer such facilities and assistance within his or her control or responsibilities as are reasonably necessary to enable the investigation officer to exercise any of the powers conferred on him or her by or under this Act, and
- (f) summon, at any reasonable time, any person to give to the investigation officer any information which he or she may reasonably require and to produce to the investigation officer any records which are in the power or control of that person.

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## 16

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- (1) The Ombudsman shall keep in such form as may be approved by the Minister, with the consent of the Minister for Finance, all proper and usual accounts of moneys received or expended by him or her, including an income and expenditure account and a balance sheet and, in particular, shall keep all such special accounts as the Minister may from time to time direct.
- (2) Accounts kept in pursuance of this section shall be submitted, not later than 3 months after the end of the financial year to which they relate, by the Ombudsman to the Comptroller and Auditor General for audit and, immediately after the audit, a copy of the income and expenditure account, the balance sheet and of any other accounts kept pursuant to this section as the Minister, after consultation with the Minister for Finance, may direct and a copy of the Comptroller and Auditor General's report on the accounts shall be presented to the Minister who shall cause copies thereof to be laid before each House of the Oireachtas.

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## 17

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Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next subsequent 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

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## 18

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Any expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

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## 19

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- (1) This Act may be cited as the Ombudsman (Defence Forces) Act 2004.
- (2) This Act comes into operation on such day or days as the Government may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes and different provisions.

### PROTECTED DISCLOSURES (AMENDMENT OF 2004 ACT)

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## 20

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

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

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

and

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

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







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