



Ombudsman for the Defence Forces  
Annual Report 2009





I hereby submit my Annual Report as Ombudsman for the Defence Forces for 2009 pursuant to Section 7 of the Ombudsman (Defence Forces) Act 2004.

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



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

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# Section I

## Introduction

2009 was the fourth full year of operation for the Office of the Ombudsman for the Defence Forces (ODF) and it proved to be a productive and engaging year for my Office.

The statistics included in this Annual Report provide a snapshot of ODF activity during 2009. For the second year in a row more than 100 cases received detailed consideration by me and more than 30 Final Reports were issued.

These statistics confirm the central role that the ODF now plays in the resolution of grievances in the Defence Forces. After just four years of operation I think it is fair to say that the ODF has won the trust of members, and former members, of the Defence Forces who feel confident in referring their cases for an independent and impartial adjudication by my Office.

However, it is widely recognised that the impact and value-for-money provided by an Ombudsman cannot just be judged by statistical throughput over a defined timespan. The changes in practice, policy, and indeed culture, within an organisation that follow on from the very presence of the independent oversight provided by an Ombudsman have a long-term value that goes beyond the impact that can be described in an Annual Report based on one calendar year.

For instance, in 2009 a number of recommendations about systemic matters made by me in Final Reports were accepted by the Minister for Defence and the military authorities. The changes flowing from these recommendations will not only address the grievance in the individual case but will also ensure that other members of the Defence Forces will not encounter bad practices, or good practices poorly applied in the future.

My recommendations arising out of cases in 2009 have again proved to be the catalyst for change within the Defence Forces. For instance, the Minister for Defence and the military authorities have agreed to:

- Move to the use of a points table or marking matrix by interview boards so that all candidates may have an objective measure of their performance at interview;
- Examine a more in-depth and structured way to provide feedback for unsuccessful NCO candidates in selection processes;
- Ensure that Refresher/Revalidation courses are in future advertised and open to all qualified candidates;
- Provide candidates in selection competitions with reasonable notice of interview dates.

In last year's Annual Report I said that I would be carrying out an audit exercise on the implications of my recommendations and to monitor whether the changes have been properly implemented. I have therefore included a review of recommendations contained in my Final Reports since 2006, the response from the Minister and the military authorities and the impact of these changes in this Annual Report. I sincerely hope that this will provide ODF stakeholders with a more comprehensive account of the impact and value provided by my Office than can usually be communicated in a yearly account of activity contained in a traditional Annual Report.

Of course the work of an Ombudsman often reaches beyond the specific findings and recommendations in an individual case. As I have noted in previous Annual Reports the establishment of my Office attracted considerable international interest from those involved in the fair resolution of disputes in a military context. A recurring theme in exchanges with colleagues from abroad about the impact of an Office of Military Ombudsman Institution is the cultural change that the existence of an independent, impartial Office charged with oversight and investigation can produce. For some countries, where the protection of fundamental freedoms and human rights of members of the armed forces is not advanced, the presence of an independent legally-based Ombudsman has profound implications. The effectiveness of the Office of ODF in real terms is of interest to jurisdictions which are grappling with the legal and institutional challenges presented by the concept of independent oversight of military administrative procedures and practices.

For the past four years the ODF has worked hard at fulfilling the statutory mandate provided in the Ombudsman (Defence Forces) Act, 2004. In this Annual Report I must acknowledge the role that Willie O'Dea, TD, played as Minister for Defence during that time. The relationship between an Ombudsman, who may take a critical view of current practices and policies, and a Minister, naturally entails a degree of constructive tension. Willie O'Dea was Minister when I was appointed and during the early days of the start-up of what was a 'green field' operation. Minister O'Dea was supportive of the role and objectives of the ODF and treated my Office with respect. His contribution to the establishment of the ODF in the Irish military structure is widely appreciated. I look forward to developing a similar positive relationship with the recently appointed Minister for Defence, Tony Killeen, TD.

I would also like to publicly express my recognition of the ongoing co-operation of the Chief of Staff, Lieutenant General Dermot Earley, his Generals and the military command and staff during the course of 2009.

The Ombudsman (Defence Forces) Act, 2004 precludes me from initiating an investigation into complaints related to pension matters. In 2009 six such cases emerged through the RoW process or were directly referred to me by former members of the Defence Forces. While I was not able to accept the cases for investigation I did, however, liaise closely with the Pensions Ombudsman, Mr Paul Kenny, who was disposed to looking at the cases to see if they fell within his remit. I must thank the Pensions Ombudsman for his readiness to help and welcome this constructive co-operation.

In 2009, my Office had to deal with its second highest caseload, together with a number of other institutional challenges. At all times my primary focus is on the welfare of members and former members of the Defence Forces. I would like

to acknowledge in this Annual Report the contribution that my small staff made during 2009. Mr. Patrick Mulhall, Mr. Wesley Graham and Ms. Geraldine Keegan have had to work hard throughout 2009 and my expression of gratitude is owed to them.



## Section II

# Highlights of 2009

- Ongoing changes within the Defence Forces as a result of the Ombudsman's recommendations are clearly evident.
- Following the Ombudsman's recommendations, the Chief of Staff has directed that all Defence Force members now have a right to view information contained in their personal files.
- As a result of observations and findings made in the Ombudsman's examinations of cases, the Chief of Staff agreed to instigate a review of the present system of compiling and recording personal appraisal reports for enlisted personnel and non-commissioned officers.
- As a result of the Ombudsman's findings and recommendations in her investigation of individual complaints, the Minister for Defence and the Defence Forces have undertaken to review procedures used by promotion and selection boards and commit to adopting a points table or marking matrix, so that all candidates may have an objective measure of the performance at interview.
- The Ombudsman upholds 74 percent of complaints referred to her.
- An audit was conducted by the Ombudsman of the adoption and implementation of recommendations made by her since the inception of the Office on practices and procedures in the Defence Forces.
- A review of internal financial controls by the Office of the Ombudsman for the Defence Forces was satisfactorily completed.
- The Ombudsman was invited to give address at inaugural Conference for Military Ombudsman Institutions in Berlin, an event convened by the German Parliamentary Commissioner for the Armed Forces.<sup>1</sup>
- The Ombudsman addressed to an international audience on the 'Train the Trainers' course at the United Nations Training School Ireland (UNTSI), at the Defence Forces Training Centre, Curragh Camp. The address focused on the protection of human rights, fundamental freedoms and welfare of military personnel and was informed by the Ombudsman's experience as a member of the OSCE-ODIHR Expert Group convened by the Organisation for Security and Co-operation in Europe – Office of Democratic Institutions and Human Rights and the Geneva-based Centre for the Democratic Control of Armed Forces (DCAF).
- The Ombudsman for the Defence Forces liaised with the Pensions Ombudsman, Mr. Paul Kenny, in endeavours to establish if there was a remedy available for Complainants in pension-related disputes that the ODF is debarred from investigating.



## Section III

# Analysis of Complaints & Appeals

### Notifications of Complaints (NoCs) Received Under Section 114 of the Defence Act, 1954

Before a serving member of the Permanent Defence Force or the Reserve Defence Force can refer an appeal to my Office he or she must first lodge the complaint with the Defence Forces' Redress of Wrongs (RoWs) procedure which was established by the Defence Act 1954.

Section 13 of the Ombudsman (Defence Forces) Act, 2004, requires that the Ombudsman for the Defence Forces and the Minister for Defence are notified of all such complaints in writing by a Notification of Complaint (NoC) form. This mechanism provides a significant means of civilian oversight of the internal grievance process within the Defence Forces and ensures the safeguarding of all complaints submitted by members.

My Office closely monitors all NoCs received and actively follows up with the military authorities to keep track of the progress of every complaint within the RoW system. One of the first steps I took when I was appointed was to have a bespoke computerised complaint handling system created which would assist me in managing the cases. This has proved to be a significant resource and tool in enabling me to monitor and track complaints and cases.

In 2009, I was thus notified of 84 cases lodged through the RoW procedure.

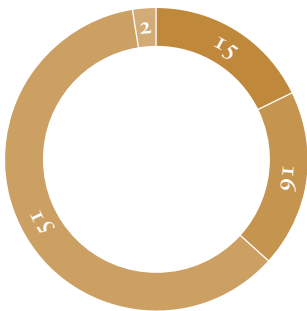
Of these 84 cases:

- 15 were appealed to me;
- 16 were resolved internally through the RoW process;
- 51 complaints were still active in the RoW process as of 31 December 2009;
- 2 complaints were closed by my Office as lapsed or expired.

These 84 cases represent a reduction in the Notifications of Complaint received by my Office in both 2008 and 2007.

The reduction this year may be evidence that reforms of certain administrative practices which were a cause of many of the grievances have been implemented as a result of my recommendations.

It is, of course, also the case that a significant proportion of complaints brought through the RoW process have related to disputes about promotion and overseas service competitions. As general activity in both these areas has decreased in the past 12 months principally due to the moratorium it is likely that this has contributed to the reduction in cases going through the RoW process.



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

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THE DEFENCE FORCES

Former members of the Defence Forces do not use the RoW process and can refer their complaint directly to my Office provided they were a serving member at the time of the alleged action and the person against whom the complaint is made was also a serving member at the time of the alleged action. They must refer the complaint to me no later than 12 months after the date of the alleged action or the time of becoming aware of the alleged wrong.

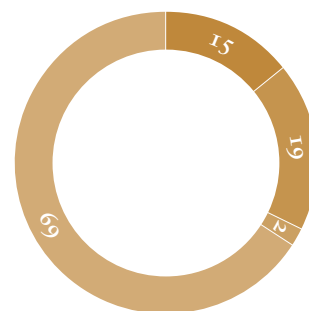
In addition, a complaint that concerns the alleged actions of a civil servant which may have adversely affected a current or former member of the Defence Forces, may be referred directly to me.

In 2009, 16 complaints were referred directly to my Office.

## Total number of complaints or appeals referred in 2009

In 2009, my Office investigated 105 cases.

- 15 cases emerged from complaints submitted through the RoW process in 2009;
- 19 cases emerged from complaints submitted through the RoW process in 2008 and appealed to my Office in 2009;
- 2 were complaints received directly by my Office;
- 69 were cases on hand as of 31 December 2008 and carried forward.



## Complaints or appeals deemed Outside Terms of Reference (OToR)

In addition to the 105 cases, I examined 15 cases which were ultimately deemed to be outside the terms of reference of my Office (OToR). Four other cases were withdrawn by the Complainant or closed.

Of the 15 cases deemed OToR:

- 2 cases were the subject of legal proceedings or Defence Forces' disciplinary proceedings;
- 2 cases were OToR as the Complainants didn't use the RoW process in the first instance;
- 2 cases were deemed OToR as the Complainant did not fall within the definition of a current or former member of the Defence Forces;
- 3 cases were deemed OToR as the alleged action was outside the timeframe set down in the Ombudsman (Defence Forces) Act. The Complaints have the right to take their complaint directly to the Minister for Defence;
- 6 cases related to disputes about pensions.



As noted in earlier Annual Reports it is well established in this field of work, that the decision as to whether a case falls outside an Ombudsman's jurisdiction can be more difficult than the decision in the case itself. This often proved to be case in 2009.

Establishing jurisdiction in a case can be a very complex and time-consuming exercise. This is especially true when an Ombudsman's jurisdiction is challenged, as occurred in 2009.

My Office has invested significant time in explaining the remit of the ODF to members and former members of the Defence Forces. I am glad to say that this

work, which has included the distribution of an explanatory leaflet, maintaining an up-to-date website and speaking at a wide range of conferences and seminars has paid dividends.

In the first year of operation for instance I found that many cases deemed OToR were due to a misconception of the powers and function of my Office. In the last year there has been a decline in this category. However, the cases in which I have declined jurisdiction of late have required detailed preliminary examination and consideration because they are more complex in nature.

The decision to find a case OToR is one that is never taken lightly. An extensive examination of the circumstances is undertaken and considerable effort needs to be invested in explaining to a Complainant why I cannot become involved or be of help.

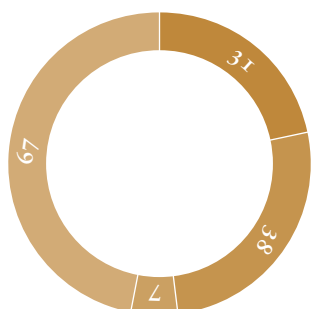
One case submitted in 2009 by a member of the Army Nursing Service (ANS) could not proceed to investigation as members of this service are not covered by the terms of the Ombudsman (Defence Forces) Act, 2004. I could be of no assistance to the Complainant.

While an internal dispute resolution system does exist within the ANS, members are not afforded the independent oversight of the system that my Office provides for members of the Defence Forces or indeed an impartial and independent forum for the adjudication of their complaint. This is a lacuna in the architecture of the military redress and independent appeal system that we have developed in recent years. I have written to the Minister drawing his attention to the issues.

### Status of complaints or appeals investigated in 2009

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 cases 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 and 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 105 cases which I deemed eligible and within my jurisdiction in 2009:

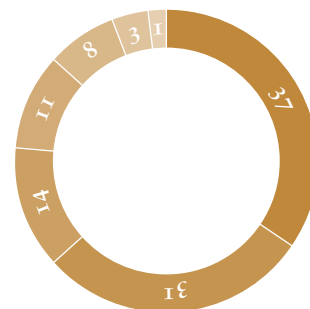
- 31 Final Reports were issued;
- 38 PVRs were issued;
- Responses to 7 PVRs were pending as of 31 December 2009;
- 67 complaints and appeals remained live in my system.

## Grounds for Complaints and Appeals

Of the 105 cases accepted for review and investigation in 2009:

- 37 related to selection procedures for promotion;
- 31 related to alleged inappropriate behaviour/bullying;
- 14 related to selection procedures for career courses;
- 11 related to career-related administrative procedures;
- 8 related to general maladministration;
- 3 related to selection procedures for overseas service;
- 1 related to an employment issue.

As in previous years there were no complaints concerning sexual harassment referred to me in 2009.



## Final Reports Issued

I issued 31 Final Reports in 2009.

Of these 23 (74%) upheld the complaint's case and in 6 cases (19%) the complaint's case was not upheld. One case was partially upheld and one other case was ultimately deemed OToR.

## Ministerial Response To Final Reports Issued in 2009

In respect of recommendations contained in the 31 Final Reports I issued in 2009 at the time of writing I am still awaiting the Minister's response to 16 Final Reports.

In relation to the 15 Final Reports where the Minister has replied my recommendations were accepted in 10 cases (66%) but not fully accepted in 5 cases (33%).

### SECTION III

#### ANALYSIS OF COMPLAINTS & APPEALS



## Section IV

# Corporate Affairs

### Staffing

The staffing level of my Office as of 31 December 2009 consisted of:

- 1 Investigation Officer (Assistant Principal Officer);
- 1 Case Administrator (Higher Executive Officer);
- 1 Clerical Assistant (Clerical Officer).

This is the same level of staffing as during the second half of 2008.

During 2009 my staff participated in training and further development programmes including a course on communications skills and a team building programme and one member of staff participated in an inaugural Investigation Officers Course organised by the British and Irish Ombudsman Association through Queen Margaret's University, Edinburgh.

### Audit Of Responses To My Recommendations Contained in Final Reports

Over my four year period as Ombudsman I have issued 110 Final Reports, 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 systematic flaws in procedures, processes or administration within the Defence Forces and call for review and reform.

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

This work was initiated in 2009 and forms the basis of the four year review section contained in this Annual Report.

The review was an enlightening exercise. Not only did it assemble in an accessible format the impact that my Office has had on a range of military administrative processes and procedures, but it also revealed cases where a substantial reply from the Minister for Defence was outstanding. I have written to the Minister for Defence in relation to these outstanding matters.

### Seminar on Human Rights, United Nations Training School

This year I gave an address, followed by an engaging questions and answers session, on the protection of human rights in the armed forces at the United Nations Training School Ireland (UNTSI), Defence Forces Training Centre, Curragh Camp.

The address was directly related to my work as a member of the Organisation for Security and Co-operation in Europe (OSCE-ODIHR) Expert Group on human rights and fundamental freedoms of armed forces personnel.

In 2008, the work of the Expert Group culminated in the publication of *'The Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel'*.

It was particularly gratifying to know that the work of the Expert Group in compiling the Handbook is having an effect on human rights dialogue in a United Nations context and the address to the Defence Force's UN Training School is just one example of this.

### Review of Internal Financial Controls

In common with other publicly funded Offices, I undertook to conduct a review of internal financial controls. This was conducted at the end of 2009 and will be available to the Comptroller and Auditor General at the time of carrying out his audit.

I am glad to report that the review of internal financial controls upheld the practices in place in the Office. The review identified a few matters where change would be an improvement. Most of these changes have been integrated and will be evident in my first quarter Management Accounts.

As noted in previous Annual Reports I am keenly aware of my duties as Accounting Officer for my Office and at all times strive to ensure that public funds are used efficiently and wisely.

### Conferences and Seminars

As Ombudsman I make every possible effort to attend events organised by the military authorities and Defence Forces' representative organisations as the dialogue and engagement at these events provides important feedback from key stakeholders on the effectiveness of my Office. In addition to these events I was invited to address or attend a number of events which were of particular significance.

The first Conference for Military Ombudsman Institutions, was convened by the German Parliamentary Commissioner for the Armed Forces, Mr. Reinhold Robbe, in Berlin. The conference focused on the challenges in protecting the welfare and human rights of members of armed forces in many different jurisdictions.

I addressed the Conference on the establishment of the Office of ODF and described the powers and functions set out in the legislation to participating countries who represented a wide range of interests from those who have designated Military Ombudsman Offices such as Germany and Canada, those with Military Inspectorates such as the U.S., France and the Netherlands to Argentina which was considering the benefits of the different approaches.

The 9th International Ombudsman Institute Conference was held to coincide with the 200th anniversary of the establishment of the Office of Ombudsman in Sweden.

### 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 and Safety

A Health and Safety statement for my Office is in place. The Health and Safety policy regarding the building in which the Office is currently accommodated is primarily the responsibility of the Department of Foreign Affairs.

### Irish Language Policy

As of 31 December 2009 my Office was not a prescribed body under the Official Languages Act, 2003.

However, in keeping with 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](http://www.odf.ie) is also presented in both languages.

### Freedom of Information Policy

As of 31 December 2009 the ODF was not as yet a prescribed body under the Freedom of Information Act.

In 2008, the ODF was consulted by 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 held by 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 were 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 ODF reports in relation to their cases.

It is expected that the FOI Act will be extended to cover the ODF. Whereas this is a welcome development, it will increase the management and administration workload on an already under-resourced office.

### Internet Usage Policy

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

### Confidentiality

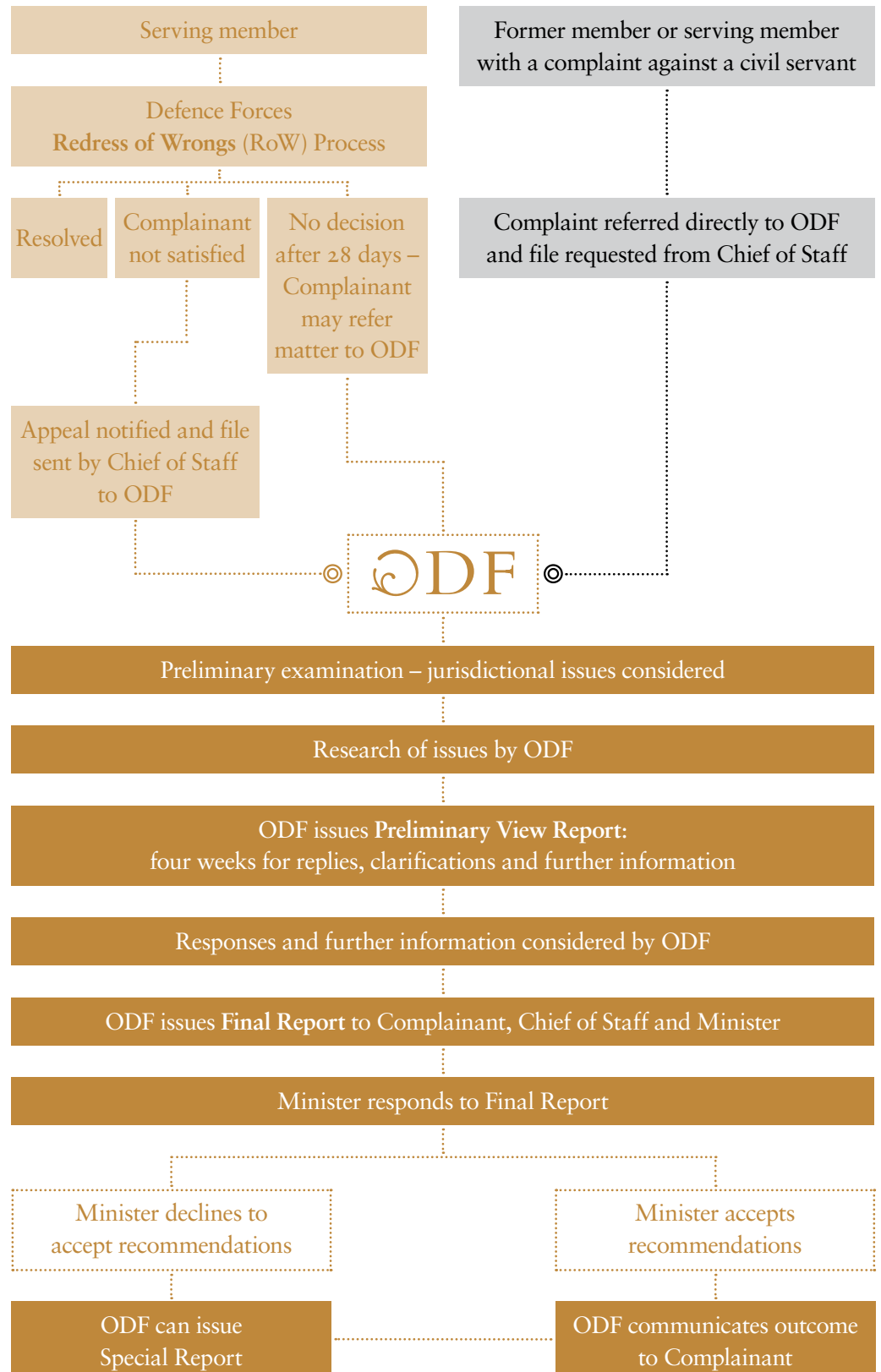
Trust and confidence in procedures for dealing with cases are essential to the successful work of an Ombudsman. Strict rules governing respect for the confidentiality of all cases received by my Office have been in place since its inception.

This is a practice that will continue to remain a priority in 2010.



## Section v

# Lifecycle of a Complaint





## Section VI

# Case Studies

### Introduction

This section contains summaries of a cross section of cases on which I adjudicated in 2009.

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 2009.

### **Jurisdiction – Not serving member at time of alleged incident – Outside jurisdiction of ODF**

The Complainant, a member of the Reserve Defence Force (RDF), made a number of allegations about how he was treated by serving members of the Defence Forces on a particular date. When the matter came to me, I was concerned that I might not have jurisdiction to deal with the case as there were question marks over whether or not the Complainant was a serving member at the relevant time.

My preliminary examination, and questions put to the Complainant and the Defence Forces, revealed that the Complainant had been put on the “non-effective list” due to non attendance and, by the time of the alleged incident, he had been discharged in accordance with procedures. He was thus not serving at the time of the incident which was the subject of the complaint. As a result, I did not have jurisdiction under S. 6(2) of the Ombudsman (Defence Forces) Act 2004, which deals with complaints by former members.

### **Case Study 2: Complaint Upheld**



**Pay – Promotion – Selection criteria – Requirement for overseas service –  
Amendment of criteria – Whether properly promulgated – Application of Admin.  
Instr. Part 26 – Waiver – Refusal to grant waiver – CIS Corps Procedure Instr.  
07/06 – Requirement to give reasons for refusal – No explanation provided –  
Adverse effect – Flawed administrative processes – Delay**

The Complainant was a technician and applied for promotion from Grade 5 to Grade 6 Technician Pay based on his CIS Corps Technician Star Test IT39/02 results. The Complainant was refused on the grounds that he had not met one of the criteria; Star Test 94 relating to overseas service as a Grade A Technician. The Complainant applied for a waiver of this requirement under CIS Corps Procedure Instr. 07/06, and this request was also refused. Following an unsuccessful Redress of Wrongs application he referred his case to me.

The Complainant raised a number of issues in relation to the requirement for overseas service and firstly submitted that the requirement was unfair due to his particular personal family circumstances. The Complainant also alleged that he had been wronged by the introduction of IT39/02 containing the requirement for overseas service as such service was not required under IT01/99 which was in operation when he commenced training. The Complainant submitted that he had not been made aware of the fact that the selection criteria had been amended. Finally, the Complainant asserted that he had been recently deployed overseas as a technician.

The Defence Forces investigated the complaint and the Military Investigating Officer (MIO) sought clarification regarding the decision refusing to waive Star Test 94 and expressed a view that the reasons for the decision should be explained to the Complainant.

However, the MIO concluded that the Complainant had not been wronged. The MIO also found that the Complainant had not served overseas for some

considerable time. The MIO in his report indicated that the usual procedure regarding briefing documents for a change in selection criteria was to post the documents on the Unit Personnel Board, although the CO of the CIS School could not comment on whether this had been done in relation to the position the Complainant had applied for. In my Preliminary View Report (PVR) I sought proof of the promulgation of the amendment and of the conclusion that other members of the Complainant's unit were informed of the amendment. However, I did not receive any assurances in this regard.

In my PVR I also found that the Commander did not recommend the waiver application when forwarding the application to the GOC. I could not find correspondence supporting the fact that the application had been sent forward to the GOC and noted that the CIS Corps Procedure Instr. 07/06 provided that the application was to be sent to the Deputy Chief of Staff (Sp). I sought an explanation as to why reference was made to the application having been made to the GOC which was a cause of concern. The reply to my PVR did not, however, alleviate this concern.

Following my PVR I received a letter from the School Comdt. CIS School invoking the provision for submission of a waiver based on the Complainant's personal circumstances and confirming that the Complainant had recently served overseas. I expressed concern as to whether the application for waiver had been duly considered and sought confirmation that the full submission from the Complainant setting out his personal circumstances had been considered. In reply to my PVR it was stated that there was no reference to any service overseas on the Complainant's personal file, however this fact was confirmed by the Complainant and other documentation. I noted my concern that the Office of the Chief of Staff (CoS) confirmed that they did not have a copy of the application for waiver. In my Final Report I found that I had not received sufficient assurances and could not find evidence to suggest that the full set of family circumstances had been communicated through the chain of command.

In addition, I sought an explanation as to why the reasons for the refusal of the Complainant's application for a waiver had not been communicated to him. I concluded that as a matter of fact the Complainant had been adversely affected by flawed administrative processes. I also expressed my serious concern about the length of time between my PVR and the replies received thereto. The Complainant had been further wronged by the delay, notwithstanding increases in the volume of cases within the redress system.

I recommended that the Complainant should be upgraded to Grade 6 Technician Pay effective from the date when the adjustment had been made to successful candidates who applied for such upgrade with the Complainant.

The Minister did not accept my finding that the Complainant had been wronged by the refusal of his request for a waiver. The Defence Forces maintained that overseas service, during which technicians are required to carry out work unsupervised and in an often hostile environment, was important in the assessment of applicants for this post. The Minister did not accept a direct relationship between Admin. Instr. Part 26 and the granting of a waiver in relation to CIS Technician Pay which requires the CO to take family circumstances into account when making selections for overseas service.

The Minister took the view that as the Complainant had commenced training prior to the introduction of Group 6 pay it could not be said that a reasonable

expectation had been created regarding this issue. Further the Defence Forces were not aware of any CIS member in receipt of Group 6 pay who had not served overseas as a technician. However, the Minister said that the CoS acknowledged that lessons could be learned from the manner in which the Complainant's application was dealt with and had directed that a contemporaneous note should be created regarding future decisions in relation to waiver applications and that the applicant member should be informed of the outcome. The Minister noted my recommendations and requested that the CoS ensure that the reasons for denial of waiver applications were communicated to the applicants. With regard to my concerns that I had not received confirmation that the Complainant's family circumstances had been properly communicated to D/CoS, the Minister said he had been assured that the D/CoS was aware of all facts at the time.

### Case Study 3: Complaint Upheld



#### **Appointment – Nomination for appointment – Essential criteria for selection – Non-selection – Failure to record qualifications – Failure to provide reasons for non-selection**

The Complainant was nominated by his Bde Manpower Officer for an appointment overseas. He was not selected and having a number of complaints regarding the nomination and selection process, initiated a Redress of Wrongs (RoW) application.

In this case the Complainant alleged that he was not qualified for the appointment for which he was nominated. He contended that the letter from the Enlisted Personnel Management Office (EPMO) stipulated that for this appointment “previous overseas as an NCO is essential”. However, he claimed that there were two other appointments available at that time for which he was qualified and questioned why he was not nominated for these appointments.

The Complainant further alleged that there was a failure to accurately record his qualifications on the PMS system and that consequently the decision not to select him was based on factually incorrect information.

Finally, the Complainant claimed that he had not been given adequate reasons in a timely manner for his non-selection. He claimed that having waited for a considerable time and not being informed of the outcome of the selection process, he made a Freedom of Information request for a copy of the Interview Board report, the Appendix which set out the grounds for the decision not to select him. Under the column of the Interview Board report headed “General Comments”, no reference had been made to his lack of overseas experience, and the only reason given for his non-selection was that he “[did] not possess the required qualifications (ECDL/OIS) on the PMS and subsequently was not selected for the appointment.”

My examination of the complaint established that the Complainant had in fact completed an ECDL course prior to his nomination. In my Preliminary View Report (PVR) I found that the fault for this erroneous or incomplete information lay with the Formation/Bde Manpower Office which did not enter the Complainant's qualifications into the PMS system and that the Complainant was entitled to have his records updated to reflect his qualifications.

In his response to my PVR, the Chief of Staff (CoS) acknowledged that “through no fault of [the Complainant’s] own”, there had been a delay in entering the Complainant’s ECDL results on the PMS system “and accordingly he was entitled to be aggrieved”. However, he argued that based on the evidence available from the PMS at the time, the statement by EPMO was factually correct. Whereas he acknowledged that the information on the system was not up-to-date at the time the decision was made, he asserted that all units are aware that personnel should verify their personal data prior to applying for career courses and overseas duty and that any notified errors or inaccuracies would immediately be corrected once verified. With regard to the reason given for his non-selection, it was submitted that this was not an exhaustive list and that there were other essential criteria which the Complainant did not fulfil. It was contended that the Complainant had not been wronged on the substantive issue of his non-selection and that the outcome would have been the same even if the information with regard to his ECDL qualifications had been accurate.

In my Final Report, I found that there had been an administrative failing with regard to the recording of the Complainant’s qualifications on the PMS system. I requested that the Defence Forces provide confirmation of plans to ensure that there was consistency in the allocation of responsibility for entering and checking the accuracy of information on the PMS system. I endorsed the recommendation of the Military Investigating Officer that all Comdrs should ensure personnel nominated for overseas appointments have the qualifications required and sought confirmation that steps had been taken to ensure that such practices were put in place.

I concluded that the Complainant had not been given adequate reasons in a timely and appropriate manner as to the reasons for his non-selection. I welcomed the statement by the CoS that he had directed D HRMS to ensure that the fullest possible information with regard to non-selection is promulgated to unsuccessful candidates subject to the exigencies of the service.

I accepted that the Complainant had reason to feel aggrieved, but concluded that in circumstances where all parties, including the Complainant, agreed that he was not qualified for the role for which he was nominated, the appointment of the Complainant to that position by way of redress, as originally sought him, was not appropriate. I found that he had been adversely affected by mal-administration in the incorrect recording of his ECDL status on his nomination information. While I accepted the CoS’s comments that nominating the Complainant for a position for which he was not qualified was not intended in any way to act to his detriment, I found that it acted to the prejudice of the Complainant in circumstances where there were other appointments available for which the Complainant would have been qualified.

The CoS took issue with the complaint’s submission as to the availability of other appointments for which the Complainant would have been qualified on the grounds that it was not part of the initial submission by the Complainant and hence was not the subject of an investigation prior to reference of the matter to me. I was satisfied, however, that this information was at all times within the knowledge of the Defence Forces and that the Complainant was not attempting to enlarge his complaint in raising it.

I recommended that in order to balance the difficulties which the Complainant encountered as a result of inconsistencies and errors in the administrative process, the Complainant should be given dedicated career advice and guidance from an

appropriate level as to how he could best position himself to be duly qualified for overseas service when the next opportunity to apply arose.

#### Case Study 4: Complaint Upheld



##### **Promotion dispute – Inaccurate information contained in Interview Board Report relating to conduct – Incorrect recording of prior disciplinary matters – Decision based on incorrect information – Disciplinary entries expunged from Complainant's record**

The Complainant applied for a promotion from Corporal to Sergeant but was not successful. The Complainant submitted a Redress of Wrongs (RoW) application taking issue with the refusal for promotion, in particular with the manner in which the interview and administration process had been conducted. He stated that due to administrative errors his conduct rating which had been recorded as “exemplary” on his special AF667 appraisal report for interview was incorrectly recorded as “very good” in the Interview Board Report which led to a lower conduct rating than the successful candidate and an incorrect finding by the Interview Board. He also stated that disciplinary charges had been incorrectly recorded on his electronic and paper AF43A which influenced the decision of the Interview Board. Furthermore, the Complainant submitted that the Interview Board was unfairly selective in its assessment of the Complainant's AF667As relating to periods of service some two decades prior to the interview.

The Chief of Staff's Considered Ruling on the matter conceded that the Complainant's conduct rating had been incorrectly recorded in the Interview Board Report but concluded that the Complainant had suffered no wrong as even if the true rating were reflected in the report, this fact would not have influenced the outcome of the competition as the successful candidate had an “exemplary” conduct rating. The Chief of Staff also ruled that prior disciplinary charges were correctly recorded in the Complainant's AF43A. Furthermore it was stated that the substantive reason behind the Interview Board's decision related to performance during a particular period of service by the Complainant. The Complainant stated that the question of his performance had not been raised in the interview.

I requested reasons as to why this had not been put to the Complainant or entered as a reason for his refusal for promotion together with details regarding the information upon which this decision was based. In my Preliminary View Report I found that the Complainant had not been afforded the opportunity of a fair interview where his perceived conduct rating had been based on incorrect information. I also found that the Complainant had been wronged by the use of incorrect information, incorrect procedures and unsound administrative practices.

Following the Chief of Staff's Considered Ruling, the Complainant had submitted a request under the Freedom of Information Act that a number of entries would be removed from his AF43A as the recording of the entries were in direct contravention of DFR A7 Para (xv) Para 87 and also that one of the charges listed was never in fact brought against him. Following this application he was advised that it would be recommended to the GOC that the entries would be expunged from his records. In my Preliminary View Report I requested that the Complainant's grievance be reviewed in light of this information, however I noted in my Final Report that this request had not been given serious consideration.

I found that one of the reasons given by the Board for the non selection of the Complainant was that his conduct assessment had been lower than the successful candidate. I was informed that an incorrect conduct rating had been placed on the AF235A and the special AF667 but that the correct rating was contained in the AF43A, the document upon which the Board made its assessment. However, in my Final Report I expressed concern that this document was dated after the Complainant's interview. The explanation for this was unreliable and caused considerable concern.

In my Final Report I noted that my investigation revealed that no regulatory guidelines were in place to govern the use of prior disciplinary records but that the information was generally assessed having regard to the length of time which had elapsed since the incidents. I welcomed assurances from the Chief of Staff that he had directed a review of the current provisions in the area. I recommended that this issue should be attended to as a matter of priority.

I found that there had been a lack of consistency, accuracy and reliability regarding the information relied upon by the Interview Board sufficient to give rise to a serious doubt regarding administrative practice and accordingly I upheld the complaint made.

In his response to my report the Minister for Defence accepted that there was evidence to suggest that the Complainant did not receive a fair assessment at his interview such that a fresh interview was warranted. However all promotions had been suspended due to budgetary constraints therefore the redress directed was that of a supernumerary promotion on an exceptional basis subject to sanction by the Department of Finance.

The Minister also requested the Chief of Staff to consider my recommendation for need to provide regulatory guidance regarding the use of prior disciplinary matters in the assessment of candidates for promotion. The Minister also confirmed to me that the disciplinary charges on the Complainant's AF43A had been duly expunged.

### **Case Study 5: Complaint Not Upheld**



**Jurisdiction of ODF – Conduct of complaint procedure – Complaint made in respect of treatment of members other than Complainant – Chain of Command – Insubordination – Failure to submit Notification of Complaint to ODF – Delay in replies to PVR – Alleged Bullying and Harassment – No evidence of Bullying and Harassment produced**

The Complainant was a member of a Unit into which a specific group of members had been re-located. It appeared that the working conditions of those members differed from the other members of the unit and that this had become a cause of some tension.

The Complainant alleged that two members of the unit had subjected the group to “unnecessary and inappropriate” questions about their working conditions and that those members had conducted unwarranted surveillance of them. The Complainant further claimed that he had requested that the specified group of members participate in a training course and that his request had been ignored. The Complainant claimed that his authority had been undermined.

The Complainant had made a complaint to the GOC regarding the conduct of the two members. He alleged that this complaint was not investigated within the requisite period of time. It was in those circumstances that a Military Investigating Officer (MIO) was appointed.

The Complainant was unhappy with the findings of the MIO and requested that the matter be forwarded to the Chief of Staff. The CoS found that the Complainant could not have had his authority undermined in respect of the specified group of members as he exercised no control over that group. He went on to state that there was nothing in the Complainant's original complaint to indicate that it constituted a formal complaint or an RoW. Whereas he accepted that there was a breakdown of effective communication between the Complainant and another member, he pointed out that there were a number of Defence Forces' measures in place to "support positive working relationships" which the Complainant could have used to resolve the matters at an earlier stage in the conflict.

The Complainant brought a separate Redress of Wrongs application maintaining that his authority was undermined by the conduct of a number of other members of the Defence Forces and that his authority was further undermined by the failure of the various superior officers to properly investigate his complaint in respect of that conduct.

In approaching this case I had to consider my jurisdiction to review this matter.

A question arose as to whether the Complainant could make a complaint in respect of a grievance suffered by other members, i.e. the specified group of members. I found that the Complainant could not initiate a grievance in respect of how the other members were treated. While the Complainant found the tensions within the unit upsetting, I found that there was no evidence that he had been treated unfairly or unreasonably by any action.

I found that an allegation of insubordination was a question for the Chain of Command and determinations in relation to these matters are internal matters for the Defence Forces. I did, however, point out that where the issue of insubordination arises in the context of a complaint of bullying or discrimination, envisaged by Administrative Instruction A7, I would not be precluded from dealing with it. There was no evidence sufficient to support the Complainant's allegations that he had been bullied.

The Complainant wished to bring a Redress of Wrongs to deal separately with the alleged failure of the Defence Forces to properly investigate his complaints. However, the proper and timely conduct of a RoW is essentially an integral part of every review I conduct. I was of the view that if the conduct of the RoW were brought as a separate complaint it could result in a cycle of complaints and other RoWs in respect of the same complaint. I expressed my concern about the risk of cyclical complaints which would be neither effective nor desirable.

In my Preliminary View Report (PVR) I had raised the matter of the failure of the Defence Forces to submit a Notification of Complaint (NoC) in accordance with S.114 of the Defence Act. I was of the view that this administrative error was a serious breach of procedures.

The Complainant made lengthy and detailed submissions in respect of my PVR however, nothing in his submissions produced further evidence to alter my view.

He failed to give a valid explanation as to why he had not engaged in the informal processes available within the Defence Forces to resolve his complaints. I expressed my concern that no action had been taken at an early stage given the strength of feeling of the Complainant.

I recommended that every effort be taken to ensure that communications in the unit were improved. I further recommended that constructive facilitative interaction to address the tension and the interpersonal difficulties in the unit be arranged.

I expressed my disappointment that replies to my Preliminary View Report were not received within the four week period which I had provided.

The Minister for Defence advised me that following on from my recommendation, all members of the unit in question had completed a Defence Forces Effective Interpersonal Skills for Leadership Course and the unit had achieved an “Excellence Through People” Accreditation. The GOC had advised that he did not believe that there were currently any interpersonal tensions within the unit.

### **Case Study 6: Complaint Upheld**



#### **Appointment of Commissioned Officers – Eligibility to apply for appointment – Reasonable expectation – Allegation of “glass ceiling” – Remedy**

Expressions of interest were sought for appointment as Ordnance Officers from suitably qualified Commissioned Officers who held a university degree in engineering in one of a number of stated subjects. The Complainant, being the holder of a university degree as stipulated, expressed an interest but was deemed ineligible to apply as he was not a Commissioned Officer. He took issue with this and issued a Redress of Wrongs (RoW) application.

The Complainant claimed that he should have been eligible to apply due to a number of factors. He submitted that the decision to even refuse him an interview was contrary to the policy, as stated under the terms of the Government White Paper, which provides “that regular schemes to commission enlisted personnel as Officers in the Army, Air Corps and Naval Service take place”. The Complainant contended that as a member of the Ordnance Corps for 18 years, and having furthered his education to B. Eng (Hons) level, he had a reasonable expectation of being considered for interview and appointment and sought by way of redress that he be given an opportunity to sit an interview for the Ordnance Officer course. I formed the view however that the White Paper went no further than to set out government policy to update a plan and was therefore too remote to support the view that this established a legitimate expectation.

The Complainant also contended that historically, enlisted personnel with the required educational qualifications had been put forward for interview to be commissioned as Ordnance Officers. The Military Investigating Officer (MIO) Report had cited Director of the Ordnance Corps who had confirmed that there were three Non Commissioned Officers (NCOs) in the past who had been commissioned into the Ordnance Corps. The Report went on to state that this had happened at a time when there was an inadequate pool of USAC graduates and the competitions for entry into the Ordnance Corps as an officer were a mix of direct entry and Commissioned Officer competitions. I noted the different circumstances,

but concluded that this history had given rise to a reasonable expectation on the part of the Complainant that he would have an opportunity of putting himself forward for interview.

The Complainant had referred to a statement of the Minister for Defence in the Dáil where he said that there should be no “glass ceilings” for enlisted personnel to become commissioned. The MIO had stated that there was a Potential Officer course run by the Military College but the Complainant responded that this course offered a chance for enlisted personnel to be commissioned as Infantry Line Officers only. It was the Complainant’s submission that a “glass ceiling” existed as there was no scheme in place for a technically qualified NCO such as the Complainant to go through a Potential Officer Course which would enable him to utilise his professional skills and that this discriminated against technical personnel.

The Chief of Staff (CoS) in his Considered Ruling had found that the Complainant had not been wronged but expressed the view that the direct entry selection process for Officers in the Ordnance Corps merited further review.

I found that, on balance, the Complainant had identified an anomaly in the process of recruitment of suitably qualified personnel as Officers in that it failed to provide a way through the “glass ceiling”, as it was described by the Minister. I noted that the views expressed by the CoS, in suggesting a review of the direct entry recruitment process, supported this finding.

On balance I sought further information as to the status of this review of the recruitment of direct entry Officers with professional qualifications and was pleased to learn that it was one of the items on the Agreed Programme for Government 2007-2012 and that it was also listed in the Action Plan under the Pay Agreement and Modernisation Agenda for the Defence Forces (2007). The CoS cautioned, however, that progressing this item would require consensus of all parties and that no progress had been made to date through the Conciliation and Arbitration process.

Whereas I was not in a position to provide a remedy in circumstances where the matters under review had been referred to the Conciliation and Arbitration process I was satisfied that the direct entry system of recruitment of Officers with professional qualifications merited review. I also took account of the fact that the CoS confirmed that he had directed the Director HRMS to initiate this work and to progress it through the Conciliation and Arbitration process.

### **Case Study 7: Complaint Upheld**



**Promotion – Competition – Complainant overseas and unavailable for interview – Assessment made with incomplete information – Burden of duty where candidate overseas and unavailable for interview – Failure to provide reasons for non-selection – Delay in forwarding file to Ombudsman – Remedy – Whether redress offered proportionate and appropriate – Lack of transparency**

The Complainant came seventh out of 14 candidates in a promotion competition. He was disappointed with this result and requested and was granted access to his Area Records personal file. Following a perusal of his file he brought a Redress of Wrongs (RoW) application challenging the decision of the Promotion Board.

The Chief of Staff (CoS) in his Considered Ruling had found that on the balance of probabilities, the Complainant had in fact been wronged. This finding was based on a number of factors. First, the Complainant had been overseas at the time of the interview and unavailable for interview. In addition, his overseas Unit Comdr had limited familiarity with him due to the short time that he had been in theatre. The CoS was also concerned that the President of the Interview Board did not peruse the Complainant's Area Records file and also the fact that the Complainant's AF 667s had not been completed by his then Unit Comdr in respect of the years 2003-2006.

The CoS found, however, that this probable disadvantage did not justify the Complainant's request to be promoted to the substantive rank of Sgt from a date prior to the promotion of the successful candidates. He offered instead, by way of redress, that the next competition for a vacancy in the rank of Sgt in MP Coy, DFTC should be limited to the unsuccessful candidates in this last competition and no member of the previous Interview Board would participate in this new Board. He also directed that in the interim, every effort should be made by GOC DFTC to have the missing AF667s completed and placed on the Complainant's file.

It had been submitted that in circumstances where the Complainant was on a Tour of Overseas Duty at the time of the assessment of candidates, it was in order that the Promotion Board assessed the Complainant on the basis of his file. I held, however, that where a candidate was not available for interview there was a heavy burden of duty on the Promotion Board to take all due caution to ensure that the records which they had available to them in relation to that candidate were complete and accurate. I found as a matter of fact that the Promotion Board did not have access to all of the information relating to the Complainant in that the records were incomplete and the President of the Promotion Board had not visited the Records & Data Management Office to review the Area Records of the Complainant. I also expressed my concern that one of the members of the Interview Board was aware of the missing AF667s from the Complainant's file but "considered that the file had more than sufficient information to make a considered opinion on the Complainant."

The Complainant was first in military seniority going forward for promotion. While it had been stated that seniority was not a determining factor in assessment of Applicants, it was also stated that where the Applicant recommended for promotion is not the most senior of the candidates, the reasons for not selecting each candidate senior to him/her shall be given, where the candidates are equal in other respects. There was no evidence that the Complainant had been given such reasons for his non-selection.

In light of the Complainant's experience, qualifications and records he would have had a reasonable expectation of being promoted. I held that for the reasons outlined above there were sufficient grounds to support my concerns as to the objectivity of the Promotion Board. There was reason for doubt about the transparency, objectivity and fairness of the promotion procedures.

Furthermore, it was three months before the file was given to me. No explanation was offered as to why such a delay arose. I found that the Complainant was prejudiced by this delay.

I held that the Complainant must be given the benefit of the doubt as to whether he would have been successful if the Promotion Competition process had been

free from the defects noted above. In light of this I found that the redress offered by the Chief of Staff did not go far enough to adequately and proportionately recompense him for the wrong which he had sustained.

I recommended that in order to properly recompense the Complainant he should be promoted to the rank of Sgt (SWA) dated to a date prior to the promotion of the successful candidates sufficient to protect his seniority. And that in respect of any future Promotion or Selection Board the Complainant's rating as No. 7 for the promotion in question should not be exhibited or made known to a Selection Board. I also recommended that the composition of any future Promotion or Selection Boards before which the Complainant may appear should be other than that which was established in respect of the competition in question.

Although the Minister accepted my finding that the Complainant was placed at a disadvantage in the promotion in question, he was not minded to follow my recommendation. He offered instead that if the Candidate should apply for one of the two vacancies for which it was anticipated that a competition would be held, and if successful, his appointment would be backdated to the date of promotion of the successful candidate in the original competition, but without rendering the Complainant senior to that candidate.

I expressed my concern to the Minister that in view of the fact that the Complainant was due to retire in the next two years and in light of the current Government policy of restricting promotions, the proposed redress had little prospect of remedying the wrong. The proposed redress was inadequate and impractical. The Minister was not minded to accept my recommendation.

### **Case Study 8: Complaint Upheld**



**Reserve Defence Forces – Potential Officers Course – Selection process – Return to Unit – Manner in which Complainant informed inappropriate – Fitness test – Incorrect information in Training Diary – Entries expunged**

The Complainant was selected for the 2nd Potential Officers Course with the Reserve Defence Force (RDF). The Complainant failed the initial fitness test and a subsequent fitness test and was dismissed from the Potential Officers Course. Following an unsuccessful Redress of Wrongs (RoW) application the Complainant referred the case to me.

The Complainant raised a number of issues in relation to the administrative process regarding the Return to Unit (RTU). The Complainant submitted that sufficient notice was not given to the RDF of the RTU and that there was a difficulty securing training in the period between the first and second fitness test. The Complainant submitted that she had reasonably believed that she would still be allowed to complete the course notwithstanding the failure to pass the fitness test.

The Military Investigating Officer (MIO) found that the Complainant was justified in feeling aggrieved that the manner in which the Complainant has been informed of the RTU had been wholly inappropriate. The MIO recommended that Complainant be allowed to attend a 3rd Potential Officers Course and be excused from the weekend work in view of the work already completed in preparation for the course from which she was dismissed. The GOC held that as the Complainant

had been made aware of the fitness test requirements which the Complainant did not pass, there could not have been a reasonable expectation that the Complainant could remain on the course. However, the GOC recommended a review of the co-ordination of fitness tests and the manner in which members of the RDF were notified of RTUs. The GOC stated he would recommend to the Director of the RDF that the Complainant be excused from completing modules already completed if selected for any further Potential Officers Course.

The Chief of Staff (CoS) in his Considered Ruling also found that the Complainant had not been wronged on the basis that adequate opportunities had been given to the Complainant to pass the fitness test and that no reasonable expectation could have been held that the Complainant could continue on the course having failed the said tests.

The Complainant objected to the finding of the CoS that no wrong had occurred and submitted that there was a lack of training for physical fitness or training programmes in the RDF units and also in relation to the time allowed to the RDF to complete training programmes for the RTU. In particular the Complainant had been given very short notice of acceptance on the Potential Officers Course and submitted that the selection process was rushed. The Complainant also submitted that the time frame of the course did not allow for sufficient time for physical training.

In my Preliminary View Report (PVR) I found that the redress sought by the Complainant in the RoW application had been met by recommendations of the Defence Forces. However, I found that the report of the MIO gave rise to considerable concern regarding administrative arrangements and communication regarding the RTUs, in particular that a large number of those attending such courses did not have their T1/2000 criteria completed. I supported the MIO's finding that the manner in which the Complainant had been informed of the RTU was inappropriate. I found the recommendations of the MIO that the Complainant be allowed to attend the next course and be excused from weekend work to be reasonable and proportionate. I welcomed the undertaking for a review of the administration of fitness tests for the RDF.

In response to my PVR the CoS advised that a review of the administrative processes in relation to RTUs and fitness tests for members of the RDF would be conducted by the Director of the RDF.

In my Final Report I recommended that the administrative processes and protocols in relation to applications by members of the RDF under the RoW procedure be examined. I also recommended that the Complainant should be afforded the opportunity of having the inaccurate and disputed entries in her training diary expunged.

I found that the complaint raised was well founded and that the Complainant had been wronged. I await the outcome of the review of the administrative processes regarding RTUs of the RDF.

**Specialist Training course – Selection policy – Discrimination – Whether policy of non-selection objectively justifiable – Whether policy on criteria was adequately promulgated**

The Complainant, a member of the Military Police (MP) Corps, applied to participate in an Advanced Investigator's/Scene of Crimes Examiner's (SOCE) course but was not selected. He issued a Redress of Wrongs (RoW) application, making a number of complaints about the selection process.

First, he complained that a disproportionate number of candidates were selected from other units relative to the number of MP personnel in those units. The Complainant noted that, as was conceded during the course of the investigation, no serving member of his unit had ever been selected for the SOCE course. He also complained that despite applying for the course in question every time it was published since 2002, he had never been selected and claimed that his inability to complete the course had implications for his career development. He also took issue with the selection of one member who he submitted was junior to him in service.

The Military Investigating Officer (MIO) found that there was a continued policy of giving priority to personnel from units which had a dedicated investigation role ahead of personnel serving in the Complainant's unit. He found that the opportunity to participate in this course was consistently being denied to personnel serving in the Complainant's unit and that without some opportunity to either transfer out of this unit or to undergo the course, the career development of the personnel of this unit was clearly diminished. He also found that the selection of the named junior member was not consistent with general policy. The GOC agreed with the conclusion drawn by the MIO that although the Complainant had not been wronged, there were grounds for the complaint and recommended that the policy was changed so as to treat all MP personnel on an equal basis.

The Chief of Staff (CoS) found that the Complainant had suffered no wrong requiring redress. He advised that the primary consideration was the relevance of the course to the present and future employment of the applicant and the operational use and benefit to the Defence Forces. He submitted that seniority was not a determining factor in making selections, but that since places on the course were at a premium, it was imperative that those personnel sent on the course utilised the skills acquired to increase the operational effectiveness of the Defence Forces at home and on overseas deployments. The CoS stated that he had directed that the current selection criteria were to be reviewed with a view to addressing any associated career issues and the points raised in the Complainant's RoW.

I found that the weight of this submission, that the course was not relevant to the Complainant, was diminished by the fact that the Complainant was serving overseas at the time it was being written. The Complainant would have benefited from the course if he had been permitted to do it.

The question which arose was whether the structure and process was objectively justifiable. It appeared on the basis of the facts presented, and which were not disputed, that the application of this policy could reasonably be construed as discriminatory.

The question which then arose was whether the arrangement or policy as administered was promulgated and made clear to those members to whom it would be relevant. Members should be made aware in advance of the implications of joining the unit. Members should also be told the policy in advance of the selection process for the course in question.

On a preliminary examination, there was no evidence to suggest that the arrangement or policy had been administered fairly. The Complainant was given this posting in 1990 and was never advised that his career path would be subject to restrictions.

While being conscious of my duty to be sensitive to the operational requirements of the Defence Forces, my function was to assess whether the balance between the rights of individual members and the organisation met an acceptable standard.

I found that this standard was not met and that the administration and management of the arrangement or policy which prevented the Complainant from being selected for the SOCE course amounted to undesirable administrative practice and was unfair.

The CoS submitted that this matter was outside my jurisdiction on the basis that the complaint was to do with a matter which is operational. I took account of the fact that this case could potentially be construed as coming within the “organisation, structure and deployment” preclusions to my jurisdiction as outlined in S.5 (1) (d) (11) of the Ombudsman (Defence Forces) Act 2004. However, I formed the view that since the arrangement in question clearly had the potential to operate unfairly generally and had done so specifically in relation to the Complainant it was capable of examination by me.

This Complainant along with two other Complainants from the same unit submitted their complaints in and around the same time, in all cases prior to the commencement of the course in question. The redress sought included the participation by the Complainants in the course and since time was of the essence, a Certificate of Urgency had been issued. Despite this, the Complainant experienced a substantial delay in the handling of his RoW.

I was pleased to note that the CoS expressed disappointment with the delay in processing the complaint. He submitted that, due to an oversight, EPMO had not been advised that a Certificate of Urgency had been issued in respect of this case. I welcomed the fact that he directed that every effort would be made in future to prevent such delays occurring again. Since the course in question had concluded before the CoS had responded to the complaint, I disagreed with his view that the Complainant had not been adversely affected by the delay. I held that given the length of time that elapsed in the processing of this complaint, further adverse effects had accrued to the Complainant.

I recommended that the existence of the policy of non-selection of members of the Complainant’s unit for the SOCE course should be made clear to the relevant personnel and promulgated broadly within the Defence Forces to ensure that members were aware of the implications of joining that unit. Members should be told in advance of the selection process for the course.

At the end of the year, I had received no response from the Minister.

**Promotion – Competition – Successful candidate allowed to wear incorrect rank – AF667 not before Interview Board – No detailed reasons given for decision – Factual inaccuracies in report of Interview Board – Lack of transparency – Appearance of bias**

The Complainant was unsuccessful in his application for appointment as Battalion Sergeant Major (BSM). Following an unsuccessful Redress of Wrongs application he referred his case to me. The Complainant raised a number of issues in relation to the competition.

Firstly, the Complainant alleged that the successful candidate was incorrectly allowed to wear the rank of BSM prior to, and immediately after, the interview for the appointment. It was contended that it was the President of the Interview Board, as the successful candidate's CO, who had permitted the successful candidate to wear the incorrect rank and that this was indicative of pre-determination of the selection of that candidate.

The Defence Forces acknowledged that the successful candidate had incorrectly been allowed to wear the rank but that this could not be perceived to have inappropriately influenced the Interview Board as the candidate wore his substantive rank markings and uniform during the interview process. The Chief of Staff (CoS) stated that the candidate had previously been in an Acting BSM role but had then ceased in that role and carried out the duties of BSM by way of receipt of substitution allowance. Under the relevant regulations he should have reverted back to his own rank and uniform on ceasing his role as A/BSM.

In my Preliminary View Report (PVR) I questioned how this had occurred and the CoS replied to the effect that he had asked the Director of Human Resource Management (DHRMS) to review the issue and report back to him. In my Final Report I found that, while the wearing of the BSM rank by the successful candidate may not have amounted to sound evidence of pre-determination in his favour, it may, in conjunction with other errors in the process, have reasonably resulted in a perception of bias on the part of the Complainant.

In addition, the Complainant submitted that his AF667 for 2006 had not been processed by the time the Interview Board convened in April, 2007. He felt that the interview board should, at the very least, have inquired as to where it was and construed this apparent lack of interest in a full appraisal of his performance as indicative of predetermination. He pointed out that the successful candidate's AF667 would have been written, or at least endorsed, by the President of the Interview Board. In my PVR I requested information and assurances as to the consistency in relation to the production of AF667s for candidates. The replies were unconvincing, referring to the preparation of a sub-file and the completion of an Annex FF Form. The CoS confirmed that the AF667 for neither candidate was before the Interview Board. However, I found that the President of the Interview Board, as the successful candidate's CO, would have had an intimate knowledge of that candidate's career history and would have been privy to all of his records from signing off on his Annex FF form.

The Complainant also alleged that there were factual inaccuracies in relation to his service record in the report of the Interview Board, in particular in relation his overseas service and the period of time he had spent as A/BSM. The CoS

acknowledged the latter error and stated that it was to be looked at by DHRMS. In addition to this, the Complainant claimed that the report did not give detailed reasons explaining why he had been unsuccessful. This, he felt, was particularly unfair in circumstances where he was senior to the selected candidate, had wide-ranging experience, both at home and abroad, in many different roles and had consistently received “outstanding” reports. The Complainant further took issue with the manner in which he was questioned by the President of the Interview Board. In particular, he alleged that he was asked how he thought a CS in the battalion would feel if an “outsider” got promoted in as BSM.

I questioned the manner in which the Interview Board had assessed and credited the candidates’ relative qualifications. A points table had not been employed. While it was difficult to say with certainty whether this would have led to a different outcome, it would have enabled the Interview Board to demonstrate a more objective and transparent basis of selection. I noted with concern that there did not appear to be consistent procedures for notification of non-selection for promotions or reasons for same and provision for follow-up/feedback, as recommended by the Equality Steering Group in 2004 and endorsed by me in many cases.

I concluded that a number of the concerns raised were well founded and that there was an element of doubt in relation to the competition arising from the lack of consistency in the information considered in respect of each candidate and the procedures adopted by the Board.

I recommended that there were grounds for the Complainant to receive an acknowledgement of those inconsistencies and to be granted an appropriate remedy. I further recommended that a time frame be set for the review by DHRMS of the issue of acting members wearing BSM rank.

Finally, I recommended that procedures for the notification of non-selection and provision of reasons for non-selection, as well as for feedback should be considered.

The Minister accepted my finding that the Board’s report had incorrectly attributed a shorter period of service as A/BSM to the Complainant than he had actually served, but he did “not believe that this error was a significant factor” in the result. In relation to the apparent inaccuracy in the Board’s report as regards the Complainant’s overseas experience, the Minister did not accept my finding that there was “evidence sufficient to conclude” that proper procedures were not followed. The Minister also disagreed with my finding in relation to the lack of reasons for the decision, stating that it was a “matter of judgement” and that the report was “typical of other reports” and “consequently... the requirement was met”.

However, the Minister confirmed that, in line with my recommendations, points tables and notification and feedback procedures had been incorporated into the new draft selection procedures. The Minister acknowledged that there were some inconsistencies in the record of the Board and in views about the wearing of the rank and that these, as well as other issues, may have caused the Complainant considerable upset.

The Minister informed me that the wearing of the stripes by acting members had since been reviewed and the relevant procedures had been revised so that acting up appointments might continue while a post was in the course of being filled, thus allowing the stripes to be worn. The Minister acknowledged that this was contrary to the Admin Instructions that were in force at the relevant time.

### Army Nursing Service – Jurisdiction – No independent review

A member of the Army Nursing Service (ANS) contended that she experienced significant interpersonal difficulties in her workplace which her representatives alleged amounted to bullying and/or harassment.

She raised the complaint under the internal grievance process outlined in Paragraph 19 of the Defence Force Regulations, A 14 for members of the ANS. She subsequently sought to refer her complaint to me. However, members of the ANS do not have access to my Office. I have brought the issue of the lack of access to an independent review of grievances for members of the ANS to the attention of the Minister for Defence. I look forward to discussing this further with him.





## Section VII

# Through the Lens: An Introduction to Four Years of Change

Since December 2005 the Office of the Ombudsman for the Defence Forces (ODF) has provided an independent, objective and accessible means of redress for individual members and former members of the Defence Forces in addition to maintaining oversight of administrative and systemic practices.

The Office of a military Ombudsman was established in Ireland in response to a clear demand among members of the Defence Forces for a transparent and fair redress procedure which was independent of the Defence Forces' chain of command, the departmental secretariat and the Minister for Defence.

Defence Force representative organisations, especially PDFORRA, were in the forefront of the campaign to establish the ODF. The need for an independent office to investigate complaints was made abundantly clear through the findings of the '*The Challenge of a Workplace*' report published in March 2002. That report, carried out by Dr. Eileen Doyle and her expert team, revealed a widespread and debilitating lack of confidence in the prevailing internal military redress procedures, known as Redress of Wrongs (RoW).

This situation was described at the time as troubling and worrying. It was clear that reform was necessary. Given the enormous risks that Defence Force personnel are prepared to undergo in fulfilling their duty it would be intolerable that their basic right to an independent appeal of their grievances would go unanswered.

In 2002, the Government responded to the call for an independent system to oversee the existing redress processes and published legislation to establish the Ombudsman for the Defence Forces. The legislation was extensively debated in the Oireachtas where it received all-party support. On 1st September 2005, I was appointed the first Ombudsman for the Defence Forces by President Mary McAleese and the Office became operational on 1st December that year.

In addition to dealing with cases that were referred to me from the very first day of establishment, the early months of the operation of my Office, were also focused on the effective communication of the role and remit of the ODF to the many publics which my Office serves, especially current and former members of the Defence Forces.

As the first member of staff was not assigned to my Office until June 2006 this was a particularly onerous task, but during those early months my Office signed off on a corporate identity, commissioned a specific computerised case monitoring system, produced and distributed 10,000 ODF information leaflets, and designed and launched [www.odf.ie](http://www.odf.ie). I was interested to see that in 2009 there were 2,512 visitors from 77 countries. I visited the Air Corps, Naval Headquarters and every Army Brigade and also attended numerous conferences and seminars to ensure that

stakeholders were informed about my Office and also provide me with feedback on a wide range of issues. I also attended briefings with senior members of the Defence Forces' command and staff.

From the outset I was determined that my Office would establish a reputation for openness, accountability and a willingness to engage in constructive dialogue with members of the Permanent and the Reserve Defence Forces and I have striven to ensure that these attributes remain central to the ethos of my Office in the subsequent years of operation.

Since becoming operational in December 2005 my Office has handled more than 380 individual cases and has also proved to be a significant catalyst for reform within the Defence Forces.

Within the first six months of operation of my Office the Defence Forces introduced new interim selection procedures in respect of overseas service and career courses. This reform, on foot of recommendations contained in the first Final Reports I issued as Ombudsman for the Defence Forces, had an immediate effect.

As early as March 2006, there was a swift and positive response to some of my first cases, in which I had found a lack of consistency in the criteria used in selection procedures. A Letter of Instruction, issued by the Deputy Chief of Staff (Support) directed that this issue be addressed immediately.

As evidence of the value of this response from the Defence Forces it is worth noting that in 2006 cases arising out of complaints about the processes used in the selection for career courses comprised 31 percent of cases. In 2007, the number had dropped to just 13 percent and it has remained consistently low.

It has been most reassuring that my Office won the trust and confidence of Defence Force personnel of many ranks. In 2007, just the second year of operation of the Office, more than 20 percent of cases eligible for investigation and review came from the rank of Lieutenant or higher. 2007 also saw the first cases brought by members of the Naval Service and Air Corps.

The Final Reports I issue not only adjudicate in respect of an individual member's case but my investigations also serve to highlight areas of Defence Forces' administration and human resource management practices in need of reform. I have been keenly monitoring the implementation of commitments given by the military authorities and the Minister for Defence in response to my recommendations in relations to such matters.

The following provides an overview of the areas where my Office has had a positive effect on a number of military administrative practices. As can be seen, my recommendations have been a catalyst for reform across a wide range of areas including access to information on the personal files of members, more transparent selection interview procedures and a review of performance appraisal assessments. It is safe to say that there have been changes which have a practical bearing on the daily working lives of members of the Defence Forces.

The work of an independent Ombudsman in overseeing the provision of services and in the protection of rights is rightly perceived to represent a championing of best practice within institutions over which an Ombudsman has jurisdiction.

When an Ombudsman's Office is established it may bring about immediate visible reforms but, as time passes, the on-going benefits accrue by virtue of the Office serving as a touchstone. The presence of a properly empowered office of independent oversight can influence how an institution conducts the management of its people and promotes acceptable stands in the treatment of its members.

This is especially true as regards an Ombudsman dealing with military grievances, a point that is widely noted with, for instance, the website of the German Parliamentary Commissioner for the Armed Forces, Reinhold Robbe, stating:

*“Experience has shown that the very existence of an independent commissioner to whom any member of the armed forces can have recourse has a positive effect on leadership behaviour.”*

However, in my experience, the effectiveness in real terms of such an Office depends on both political leadership and the leadership of the institutions over which an Ombudsman has oversight. In a Common Law setting it is safe to say that a statutory Ombudsman widens access to justice, but this function must be distinguished from the judicial system in that a statutory Ombudsman makes recommendations and is therefore dependent on the moral authority underpinning the establishment of the Office to ensure enforcement of remedies and redress. The founding Ombudsman for the Armed Forces in Canada, Mr. Andre Marin has referred to this as ‘moral-suasion’. The Ombudsman not only depends on the willingness of the institution under its remit to comply with the recommendations but also to have had the foresight to envisage the long term benefits to the institution.

This principle resonated with me recently when I was invited to speak at a conference organised by the Civil Mediation Council (CMC) in the UK which examined the benefits of mediation in workplace disputes. In the discussion that followed the delivery of a paper on the costs, at so many levels, to an institution and its people from workplace disputes in organisations reluctant to adopt non-adversarial options, Sir Henry Brooke, a former Court of Appeal Judge, and now Chairman of the CMC, made the observation wisely and with the authority of experience, that leadership was the key to meaningful institutional change and reform.

Effecting change in the approach to handling interpersonal disputes or grievances within an institution or workplace, particularly those with a distinct culture, requires leaders with vision, foresight and moral courage. Without this commitment to change in the long-term interest of an organisation little would ever change for the better.

During my presentation to the CMC conference I was pleased to be able to attribute a significant part of the progress in the work of my Office to the leadership in the Irish Defence Forces.

Since I was first appointed Ombudsman for the Defence Forces in September 2005, I have experienced not only an open mindedness but a willingness to engage with positive change from the two Chiefs of Staff who have held the post in that time. Both Lt. Gen Jim Sreenan and Lt. Gen Dermot Earley have contributed immensely by supporting the objectives of the Office of ODF. Both Chiefs of Staff have demonstrated an overriding concern with the well being and fair treatment of those who serve our country. They have both recognised the long-term benefit that flows

from reforms of practices that give rise to grievances and perceptions of unfairness.

It has been enlightening to witness such leadership in action over the critical phase of the 'start-up' years of the Office of the ODF.

As mentioned above one of the reasons for the establishment of my Office was a recognition that people who choose to serve their country in the Defence Forces, with all the attendant risks that may present, deserve to have their dignity and rights respected in the workplace, regardless of the unique requirements of military service in a chain of command structure. My Office strives to play a part in that goal here in Ireland.

It was timely that in the early days of setting up the Office in 2006 I was invited to become involved in a project directed by the Organisation for Security and Co-operation in Europe (OSCE-ODIHR) in conjunction with the Geneva-based Centre for the Democratic Control of Armed Forces (DCAF) approaching the issue of rights for military personnel from an international perspective, with the guiding concept of 'The Citizen in Uniform'.

I was invited to join the Expert Group which was convened to write a '*The Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel*'. Working with the Group on this project was most informative and made me acutely aware of the differences in the approaches in other countries to the rights and protections of members of Armed Forces in relation to the spectrum of subjects included in the study.

It was an honour to be invited to give a keynote address at the launch of the Handbook in May 2008. This Handbook is a valuable resource in providing an overview of the differing cultural and systemic approaches to the core issues pertaining to the rights and welfare of armed forces personnel in a number of jurisdictions.

I was most interested to be interviewed recently by an Irish Officer who has chosen this subject for his thesis on his Masters programme. I was also interviewed by an Irish Officer who had made the Redress of Wrongs process the subject of his thesis for his Masters degree. I do hope that I can provide an opportunity where these, and other pieces of research, can be presented and discussed.

The decision to establish a statutory independent Ombudsman for the Defence Forces was a major and timely development and places Ireland at the forefront of innovation in this area. The work of my Office is, primarily, guided by the founding principles of Ombudsmanship: fairness, impartiality, independence and accountability.

Since being appointed Ombudsman for the Defence Forces in September 2005 I have endeavoured to spend as much time as possible meeting members of the Defence Forces of all ranks and their representative organisations. Not only is this a vital element in promoting awareness and understanding of the role and remit of my Office but it also affords me the opportunity to receive vital feedback from those stakeholders.

As I mentioned earlier the publication of Dr. Eileen Doyle's '*The Challenge of a Workplace*' report was a milestone in instigating reform of culture, procedures, processes and human resource management in the Defence Forces. Following

publication of this report Dr. Doyle chaired two separate Independent Monitoring Groups which oversaw reforms initiated on foot of the *'The Challenge of a Workplace'* report and made further recommendations. Both Independent Monitoring Groups published reports, in September 2004 and December 2008 respectively, and both reports have proved invaluable in informing the work of my Office and have proved an essential reference point in the investigation and finalisation of an adjudication in many individual cases.

I am particularly honoured that Dr. Doyle has agreed to provide a postscript to this four year review of the impact of my Office. Dr. Doyle's contribution will be of great value to those with an interest in the issue of dispute resolution and adjudication in a military context and I am indebted to her for her contribution to this report.



## Section VIII

# Overview of Core Activity

The information below gives a brief overview of the core activity of the ODF in the four year period since becoming operational on 1 December 2005 to the end of December 2009.

### Notification of Complaint

Serving members of the Defence Forces cannot lodge a complaint directly with the Ombudsman for the Defence Forces. They must, in the first instance, submit their grievance through the Defence Forces' Redress of Wrongs (RoW) procedure. The Ombudsman (Defence Forces) Act requires that my Office is formally notified in writing of all such complaints, called a Notification of Complaint (NoC). This innovation provides an important independent oversight of the internal military grievance process.

The ODF received 589 Notifications of Complaint in the period covered by this report.

### Appeals lodged with the ODF by serving members of the Defence Forces

If a serving member of the Defence Forces is dissatisfied with the outcome of the RoW procedure he or she can appeal that decision to me.

131 appeals, which were deemed to be within the terms of reference of the ODF, were accepted by me for review from 1st December 2005 to 31 December 2009.

### Complaints made directly to the ODF

Former members of the Defence Forces can refer their grievance directly to me. In addition any complaint in relation to the alleged action of a civil servant is referred directly me.

49 direct complaints, which were deemed to be within the terms of reference of the ODF, were accepted for review between 1 December 2005 and 31 December 2009.

### Total number of cases proceeding to full review

180 appeals and complaints were accepted for my review between 1 December 2005 and 31 December 2009.

## Complaints and appeals referred to the ODF and deemed outside the terms of reference

In addition to the cases above a total of 205 other appeals and complaints were referred to the ODF during this period but were deemed outside the terms of reference or alternatively withdrawn by the Complainant.

## Grounds for complaints or appeals

For the four year period of activity covered by this report the following is the breakdown of grounds for complaint:

	PERCENTAGE
NON-SELECTION FOR PROMOTION	35
INAPPROPRIATE BEHAVIOUR / BULLYING	21
MALADMINISTRATION	17
NON-SELECTION FOR A CAREER COURSE	15
CAREER-RELATED ADMINISTRATIVE PROCEDURES	8
NON-SELECTION FOR OVERSEAS SERVICE	4

No complaints regarding sexual harassment occurred during the timeframe covered by this report.

## Total Number of Final Reports Issued

In the period covered by this four year review I issued a total of 110 Final Reports containing my findings and recommendations to the Minister for Defence.

## SECTION VIII

### OVERVIEW OF CORE ACTIVITY



## Section IX

# Achievements

### Making life in the Defence Forces better for all

The following is an overview of the main policy and administrative changes that have been introduced or are currently being considered by the Defence Forces following recommendations contained in Final Reports issued by me to the Minister for Defence and the Chief of Staff.

Reference to case studies contained in my Annual Reports 2006-2009 are included where relevant. The inclusion of case studies in my Annual Reports aims to provide an insight into the decision-making process involved in adjudicating on individual cases and the findings and recommendations.

The inclusion of these case studies in Annual Reports relies on the good will and co-operation of members and former members of the Defence Forces who refer cases to my Office. I am extremely grateful to the members and former members who have given permission to me to include studies of their individual cases in my Annual Reports.

### New interim selection procedures for career courses and overseas service

New interim selection procedures for career courses and overseas service were introduced by the Chief of Staff in July 2006 with immediate effect on foot of my recommendations. The new procedures addressed a number of issues identified for reform in my Final Reports.

This development had a tangible and immediate effect. In 2006, complaints or appeals related to selection procedures for Career Courses and Overseas Service accounted for 46% of all cases dealt with by me. Following the introduction of the new interim selection procedures there was a notable decrease in the number of cases referred in relation to these matters. For instance, in 2007 they had reduced to 17% of cases investigated.

*For further information see Case Study 2, Annual Report 2006, Case Study 4, Annual Report 2006 and Case Study 5, Annual Report 2006.*

### Access to personal files

In November 2007, administrative access was given, by direction of the Chief of Staff, to all ranks to review their personal files. This is an important development as many of the cases referred to me, particularly regarding non-selection for promotion, raised questions regarding the completeness and accuracy of information in personal files of members or former members, most particularly in relation to the completion of courses and other qualifying criteria.

It was a cause of concern to me, in the early days of the establishment of the Office of ODF, when I was examining cases that a number of Complainants had found it necessary to make Freedom of Information requests for very basic information. I am glad that, by right, members now have the right to check their personal files for accuracy.

### Transparent marking system for promotion competitions

As noted above cases related to the non-selection for promotion still remain a source of contention for many members of the Defence Forces and this is reflected in the fact that cases of this kind have comprised a substantial part of the my Office's caseload.

In 2006, I first made a recommendation regarding the introduction of a marking matrix for promotion procedures. A transparent marking matrix, which would be available to all candidates after the conclusion of the process, should go some way towards addressing many of the concerns raised in these types of complaints. Although nothing can dissolve the disappointment of unsuccessful candidates, a marking system should help in demonstrating objectivity and alleviate perceptions of bias.

I was pleased to report that the Chief of Staff had established a Study Group to consider appropriate marking systems in 2007. By 2008, I was advised that new draft regulations (Administrative Instruction A2), which will introduce a new promotion model for enlisted personnel, were in the final stages of consideration at the Conciliation and Arbitration forum.

In May 2009, in response to one of my Final Reports the Minister for Defence repeated his commitment to introduce such a structure.

*For further information see Case Study 3, Annual Report 2007, Case Study 2, Annual Report, 2008, Case Study 3, Annual Report 2008 and Case Study 10, Annual Report, 2009.*

### Communication of promotion interview results and feedback from selection process

A lack of consistency in this important area has been evident in many of the cases referred to me and the issue was highlighted in my Annual Reports of 2007 and 2008. The notification of results to candidates who are on leave or on overseas service merited particular mention.

It is an issue that I hope to see tangible progress on when the new draft regulations are promulgated.

*For further information see Case Study 1, Annual Report 2006 and Case Study 10, Annual Report 2009.*

### Appeals process for unsuccessful promotion candidates

My recommendation for a review of Section 114 of the Defence Act to facilitate the introduction of a fast-track appeals process for unsuccessful promotion candidates was endorsed by the Chief of Staff. In some instances members have not been advised of this right of appeal and, of course, it has been of no benefit if it falls outside the time for the filling of the appointment.

### Clarity in advertisement of promotion posts

From my investigation of a number of cases it has been clear that improvement in the manner in which posts are initially advertised is necessary. In particular the inclusion of all ‘essential’ and ‘desirable’ criteria for a post would bring a welcome degree of clarity.

The Minister for Defence has given his assurance that he fully supports the efforts by the Chief of Staff to address this issue.

### Reference in an interview to membership or involvement in a representative organisation

In 2008, the Chief of Staff undertook to direct the revision of procedures to ensure that this issue is not raised during an interview.

### Reform of performance appraisal reports

Performance appraisal reports – known within the Defence Forces as AF677 reports – are an important part of the promotion system and performance development structure within the Defence Forces.

A number of cases appealed to me have raised issues regarding the completeness and accuracy of AF677s and also how they are used during the selection procedure. Complainants often submit that the Commanding Officer filling out the AF677 may have had little contact or knowledge of the member.

In 2008, I recommended bringing clarity to this area. The granting of a right of access to personal files to members of the Defence Forces has contributed to improvement but the system of issuing appraisal reports needs to be revised.

### Cancellation of annual leave

The failure to provide reasons for the cancellation of annual leave or the cancellation of leave without hearing reasons why leave should not be cancelled has been the cause of grievance. It is also an issue that impacts directly on family life and personal arrangements of members of the Defence Forces.

Following on from a recommendation made by me in 2008 this issue is to be addressed in the new draft of Defence Force Regulation A 11 which is currently under review through the Conciliation and Arbitration Forum.

*For more information see Case Study 1 in Annual Report 2008.*

### Prior access to records before interview

Following on from my recommendations contained in a Final Report issued in 2006, all enlisted personnel now have access to their AF43A form prior to the compilation of a sub-file for an Interview Board. This procedure allows personnel to check the accuracy of their AF43A form and highlight any omissions or errors. I understand that it is now the responsibility of potential candidates for a selection process to check their files prior to the promotion competition or selection process.

*For more information see Case Study 2, Annual Report 2007.*

On foot of recommendations contained in my Final Report on a case submitted in 2006, the Minister for Defence and the Chief of Staff agreed with my recommendation that revised procedures for Military Investigating Officer Reports, compiled during the course of a RoW investigation, were required. I found that interviews conducted during these investigations should not be tape recorded.

## Appeals process for those not successful in selection processes

My recommendation that clarity should be brought to the timeframe, structure and procedures in relation to fast-track appeals for those not successful in selection processes was accepted with qualification by the Minister for Defence in 2007.

## Qualification for ‘State Stripe’

The ‘State Stripe’ is a promotion to Sgt. made in recognition of “*meritorious service or distinguished conduct*”. A case submitted for my review in 2007 led to a detailed examination of this issue and identified a distinct lack of clarity or definition in relation to what counted as meritorious service or distinguished conduct. My Final Report contained a recommendation that clarity needed to be brought to the terminology used in relation to the ‘State Stripe’, which is a discretionary promotion process, to avoid heightened expectations and bitter disappointment from those who believed that they would be eligible.

*For further information see Case Study 1, Annual Report 2007.*

## Retention of records from Interview Boards

A case brought for my review in 2008 raised the broader issue of the retention of records by Interview Boards.

In my Final Report in relation to this case I highlighted the issue particularly in light of the fact that I had adjudicated a case in the early days of the establishment of my Office, and the Minister had accepted my recommendation, that the Interview Board reports and notes should be retained for a period of five years. Yet in this case, in 2008, the practice had not been followed. The Chief of Staff subsequently directed that a regulatory review covering the retention of records of Interview Boards be conducted so as to ensure conformance with my previous recommendation.

## International contribution: OSCE Expert Group

In December 2006, I was invited to become a member of the OSCE expert group involved in a project derived from ‘*The Citizen In Uniform*’ initiative. The project was jointly directed by the OSCE’s Office for Democratic Institutions and Human Rights (ODIHR) and the Geneva-based Centre for the Democratic Control of Armed Forces (DCAF).

In May 2008, the project culminated with the publication of ‘*The Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel*’. I delivered a keynote address at the launch of the document at the headquarters of the OSCE in Vienna.

It is particularly gratifying that the work of the Expert Group is having an impact on military culture and attitudes towards human rights. The Second Report of the Independent Monitoring Group, which was established following Dr. Eileen Doyle's groundbreaking report '*The Challenge of a Workplace*', was published in December 2008, and used the Handbook produced by the Expert Group to inform elements of its work. In 2009, I was also privileged to give an address to the United Nations Training School Ireland (UNTSI), Defence Forces Training Centre, Curragh Camp, which examined the core themes covered by OSCE/ODIHR Expert Group in its Handbook.

The ODF's involvement in this project highlights the far-reaching nature of the Office and the work it is charged with. Ireland is one of a few nations to have established a statutory, independent Ombudsman to oversee military administrative practices and grievance procedures. Since its inception my Office has attracted significant international interest and has demonstrated a willingness to exchange information and experience with other jurisdictions which are considering revising their arrangements for oversight of complaints procedures or establishing an Ombudsman Office.



## Section x

# Postscript by Dr. Eileen Doyle



It gives me great pleasure to be associated with this transparent account of the first four years of the Office of the ODF. The Report is an historical record of a fairly unique legal and human service that aims to ‘make life better’ for those who serve Ireland in the military at home and overseas.

The ODF owes its existence to the perseverance and courage of PDFORRA in particular, of RACO, the military leadership and the Department of Defence, in pursuing organisational excellence. The openness and trust of those men and women who have used the ODF to date merits acknowledgement. All may be proud of what has been achieved since December 2005.

Progress has been made in the complex area of selection and promotions – though challenges remain. The effects of the Irish economy may impinge and the ripple effects of ‘non selection’ or perceived ‘failure’ may be more painful for individuals and their families. The Ombudsman clearly flags issues for continuing development, leadership and creativity. This Report is therefore a signpost for future development and accountability.

Already two officers have selected aspects of the ODF Office as thesis topics. This is commendable and in keeping with the Government emphasis on research and development.

The history of the Defence Forces of Ireland shows their ability to contribute nationally and internationally. The impact of these men and women far exceeds their numerical strength and resourcing. Similarly, the first ODF, Paulyn Marrinan Quinn, SC, is already having an influence on international developments, despite current economic constraints. She has achieved international recognition for the Office by contributing to the OSCE-ODIHR, DCAF, CMC, and the *‘The Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel’* (2008). A very high benchmark has been set for future holders of the Office of the ODF.

Organisational development often meets its greatest challenge in its second phase when the excitement and novelty of new beginnings have receded. The continuum of trust in an organisation or institution will be tested anew. By its nature the work of the ODF will never be complete because it seeks organisational excellence for and with people.

In conclusion, it is the ‘person’ who makes any ‘Office’. Ireland is well served in Paulyn Marrinan Quinn, SC – a woman of significant legal experience, proven sound judgement and deep understanding of human nature.





