



Ombudsman for the Defence Forces
Annual Report 2015



Ombudsman for the Defence Forces

Customer Charter

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

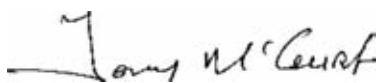
The Ombudsman for the Defence Forces also accepts complaints made directly by former members of the Defence Forces, subject to certain conditions.

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

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

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

I hereby submit the 2015 Annual Report of the Ombudsman for the Defence Forces pursuant to Section 7 of the Ombudsman (Defence Forces) Act, 2004. This is the 10th Annual Report submitted in relation to the work of the Ombudsman for the Defence Forces since it was established on the 1 December, 2005.



Patrick Anthony McCourt
Ombudsman for the Defence Forces



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

<https://www.flickr.com/photos/dfmagazine>

1 Introduction:

In this historic commemorative year of 2016, I am pleased to present the 10th Annual Report of the Ombudsman for the Defence Forces (ODF) for the year 2015. This Annual Report reflects the work of this Office for the tenth year of its existence since it was established on the 1 Dec 2005. This is the 4th Annual Report issued by me since my appointment as Ombudsman for the Defence Forces on the 7th November 2012. It covers my third full year in the role of Ombudsman for the Defence Forces (ODF). My initial term of appointment was for three years and I was re-appointed by the President for a second term of two years from the 7th Nov 2015.

Reassured by my experience to date, I intend to continue my policy of the electronic publication of the Annual Reports of this Office. In that context, I record my sincere thanks and appreciation to the Chief of Staff of the Defence Forces who has kindly agreed to make my Annual Reports available to all members of the Defence Forces through the Defence Forces Intra-Net. I am very grateful for his assistance in this regard. Electronic copies will also be made available to various interest groups and individuals by the ODF. My Annual Reports are also published on the ODF web-site. A small print run will be undertaken as may be necessary for record purposes. These arrangements will, I believe, ensure economic efficiencies and easier level of access to the Report.

Following a High Court legal challenge to my appointment, initiated in November 2012, the validity of my appointment to the Office of Ombudsman for the Defence Forces was upheld by Mr Justice Hedigan in his decision of the 21 November 2013. That decision was appealed to the Supreme Court in Dec 2013. The appeal to the Supreme Court was subsequently transferred to the jurisdiction of the Court of Appeal upon its establishment. To the end of 2015, the appeal had yet to be listed before the Court. From an operational

perspective, the fact that the appeal had not been progressed by the end of 2015 was unsatisfactory. I hope that the matter will be finalised without further delay.

I wish to record and acknowledge my sincere thanks and appreciation to Lt. Gen. Conor O'Boyle, who retired as Chief of Staff of the Defence Forces in September 2015, for his continued commitment to maintaining effective channels of communications between our respective Offices and our staffs with a view to expediting the resolution of complaints referred to my Office. I wish him well in his retirement. I also take this opportunity to congratulate Vice Admiral Mark Mellett DSM on his appointment as Chief of Staff in Sep 2015 and to wish him every success in that onerous Office. I greatly appreciated that he found time in his busy schedule to meet with me shortly after his appointment as Chief of Staff and agreed to continue the very good relationship between our respective Offices, with a focus on the early resolution of complaints whenever possible. This commitment has been fully honoured during 2015. I am very pleased with the ongoing level of communication and cooperation between my Office and the various Military Authorities with whom my Office needs to be in contact with.

The statistics included in this 10th Annual Report provide an overview of the ODF activity during 2015. During 2015 my office received from the Defence Forces some 108 Notifications of Complaints in respect of Redress of Wrongs applications, pursuant to section 114 of the Defence Act 1954, initiated by serving members of the Defence Forces. In addition my office received 3 direct referrals of complaints during 2015. The total number of complaints notified to my Office for 2015 was, therefore, 111. This was a marginal year on year reduction of 1 on the 112 notifications received

during 2014. However, the 111 notifications of complaints received in 2015, when compared with 112 for 2014, 124 for 2013, 127 for 2012, 78 for 2011 and 62 for 2010, clearly indicates that while the number of such complaints peaked in 2012 and reduced gradually thereafter, they continued at a level significantly above that for 2010 and 2011. Of the 108 notifications received from the Defence Forces during 2015 some 29 (27%) were resolved or withdrawn during the course of the year.

The number of cases on hands, at various stages of consideration, increased from 100 on the 1 Jan 2015 to 115 on the 31 Dec 2015. A total of 17 cases were brought to a final determination during the year. During 2015 an additional 32 new cases were referred to the ODF. Accordingly, some 132 cases were under review by the ODF during 2015. This was a 15% increase on the 115 cases under review in 2014 and a more significant 32% increase on the 100 cases under review in 2013. During 2015, some 17 cases were finalised by the issue of 16 Final Reports and 1 case was withdrawn. In addition 9 Preliminary Reports were issued. This resulted in 115 cases remaining under review on the 31 Dec 2015. Consideration and analysis of a selection of complaints related to various aspects of the 2012 NCO Promotion Competition reached the stage where a small number of such complaints were brought to Preliminary View Report (PVR) stage. The unacceptably high backlog of cases on hand is primarily due to the large number of such cases.

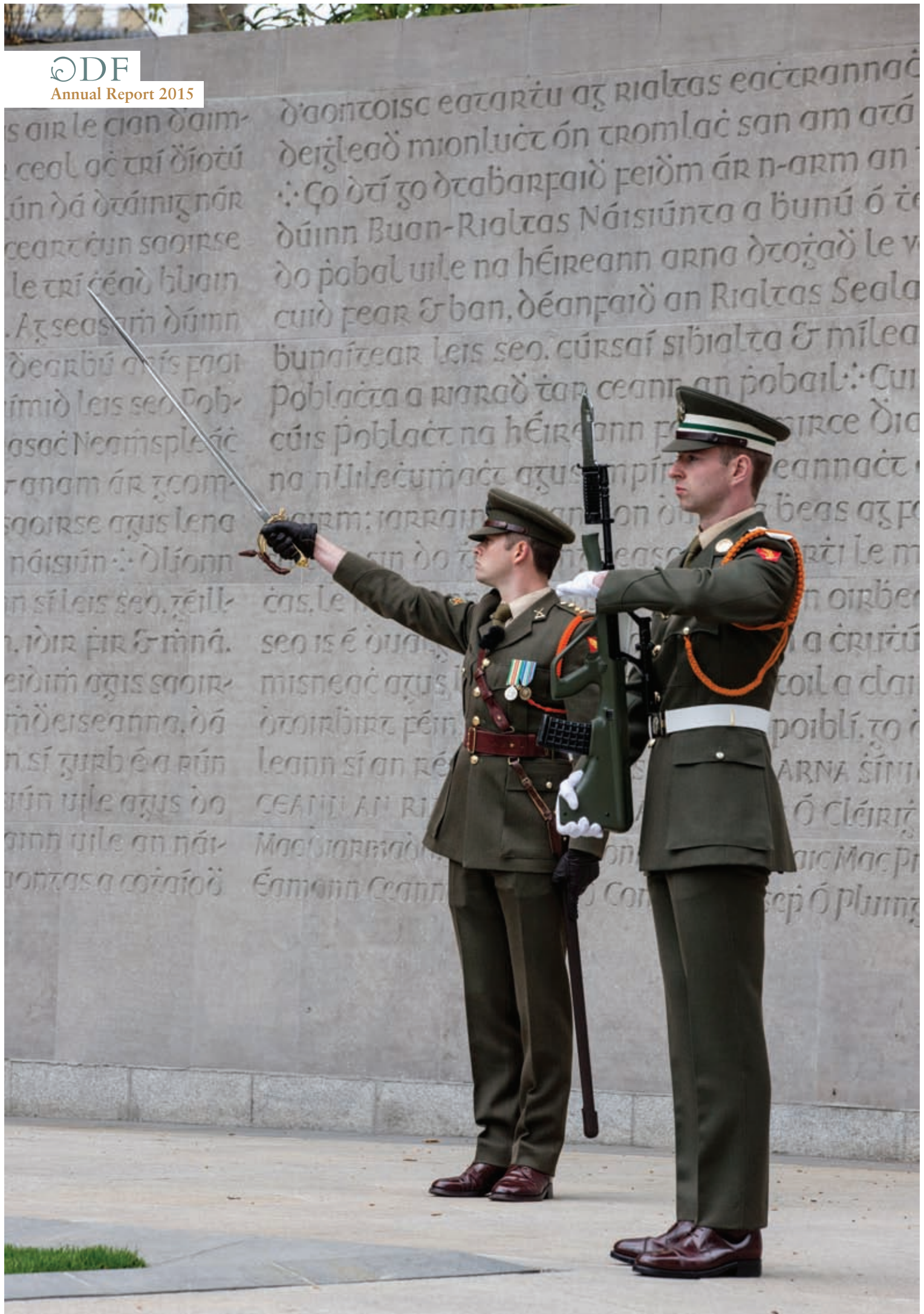
Having regard to the continuation in 2015, of the high level of notifications of complaints received since 2012 relative to 2010 and 2011, without additional resources, it was expected that the ongoing number of cases under review would remain at or exceed the levels applicable in 2012. As I recorded in my report for 2012, it continued to appear to me in 2015 that the downward trend in

the number of complaints referred to the ODF, as reflected in the 2011 Annual Report of my predecessor, was unlikely, at least in the short to medium term, to be sustained. Furthermore, as flagged in my 2012 report, the administration of revised promotion procedures for both Officers and NCOs and the further re-organisation of the Defence Forces have contributed significantly to the referral of complaints to this Office. I have had regard to the insignificant variation in the number of notifications of complaints received by my Office during 2015 relative to 2014. There is no indication that the current level of complaints is likely to decline.



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The ODF remit is to provide an independent, impartial and accessible mechanism for reviewing complaints and overseeing administrative processes and practices in the Irish Defence Forces. The interaction of the Office of the ODF with the Defence Forces together with the responses of the Military and Departmental Authorities to case reports issued in recent years, as well as initiatives taken by those Authorities themselves, have together contributed to a general improvement in the standards of administration within the Defence Forces. The ODF plays a continuing key role in ensuring that complaints are dealt with in a manner which, while having due regard at all times to operational requirements, respects the nature of the Irish Defence Forces as well as the rights of serving



and former members. I acknowledge and commend all Authorities for their positive responses to inquiries and reports issued by the ODF.

I believe that the influence of the independent civilian office of the ODF, since it was established in Dec 2005, in the resolution of complaints within the Defence Forces, has been positive. However, in looking to the future, consideration must be given to the past. In that regard, I acknowledge the positive engagement and leadership shown by the Minister for Defence, his Departmental officials and his predecessors, during the period of this report. I also acknowledge the support and cooperation of the former and current Chiefs of Staff, Lt Gen Conor O'Boyle, and Vice Admiral Mark Mellett, DSM, as well as that of their Senior Staff Officers, members of the Irish Defence Forces and their Representative Associations. I have noted a particular willingness on the part of the Military Authorities to engage with my Office with a focus on bringing complaints to a satisfactory and acceptable resolution, having regard to observations and recommendations of my Office. There is general acceptance of the desirability of resolving complaints at the earliest possible opportunity. For this, I commend both the Military and Departmental Authorities. In this context, and having regard to my own previous recommendations, those of my predecessor and of the IMG report, I have engaged with the Military and Departmental Authorities in discourse on changes to the existing system which would facilitate earlier effective resolution of complaints. I am strongly of the opinion that the present system includes delays which are unacceptable and that a coordinated effort to reduce those delays is necessary. I am also of the opinion that a significant reduction in the extent of the current reliance on lengthy formal reports by my Office, to conclude consideration of complaints referred to me, is both necessary and achievable, if the current delays in the system are to be reduced

having regard to available resource levels. This could be facilitated by, inter alia, promoting the notion of a resolution based on informal contacts with this Office at the Investigation Officer's report stage, my formal preliminary views and by better use of electronic means of communication between my Office, complainants, military and civil authorities. Such changes may require amendment to the legislative and regulatory framework.

In the context of an ongoing review of the Defence Forces Redress of Wrongs system, I continued to encourage the use of early resolution procedures within the Defence Forces system, including the earlier involvement of my Office wherever that could be of assistance. I acknowledged and appreciated the Department of Defence's consultation with my Office in late 2014 regarding its draft proposals for updating the existing Redress of Wrongs (ROW) process, as provided for in section 114 of the Defence Act. In response, I offered the formal or informal assistance of my Office in any circumstance where it might contribute to the early and speedier resolution of complaints. I have proposed that agreed consultation and interaction with my Office at the Investigation Officer's report stage, on either a formal or informal basis, in appropriate cases could significantly contribute to the earlier resolution of complaints.

I believe that it is essential that complaints regarding the administrative procedures of the Defence Forces and those of the Department of Defence continue to be subject to the external scrutiny of an independent and impartial civilian authority which has a degree of knowledge, understanding and competence in such matters. Members of the Irish Defence Forces are in a unique position as citizens of the State. Our 'citizens in uniform' are subject, not only, to all of the ordinary laws of the State, but also, to a strict code of military law and discipline provided by the

Defence Act 1954, Defence Force Regulations, Administrative Instructions and orders of superiors, both written and verbal, which code is applicable only to a disciplined body with a chain-of-command structure. It is in such unique circumstances that independent civilian oversight of complaints is vested in the ODF by section 4 of the Ombudsman (Defence Forces) Act 2004. Subject to a 12 month time limit, the Ombudsman may investigate an ‘action’ [defined



I continued to encourage the use of early resolution procedures within the Defence Forces system

in the 2004 Act as including a failure to carry out an act or make a decision] by a serving or former member of the Defence Forces or by a civil servant of the Department of Defence, where it appears to the Ombudsman that the action complained of has or may have adversely affected a member or former member of the Defence Forces and where the action was, or may have been, taken without proper authority, taken on irrelevant grounds, the result of negligence or carelessness, based on erroneous or incomplete information, improperly discriminatory, unreasonable (even in the military context), based on undesirable administrative practice, or otherwise contrary to fair or sound administration, in circumstances where the action complained of was not an order issued in the course of a military operation.

Certain ‘actions’ are excluded by law from investigation by the Ombudsman pursuant to section 5 of the Act of 2004, even though the complainant

may be perfectly entitled to complain about them under the current Redress of Wrongs scheme provided by section 114 of the Defence Act by virtue of the use of the unlimited term “any matter” in the statute. The actions excluded from the remit of the Ombudsman are those in respect of which the complainant has initiated legal proceedings in a civil court, actions which have been or are the subject of an investigation or punishment under the code of military law, an action relating to or affecting security or a military operation (as defined in the Act), an action relating to the terms or conditions of employment in the Defence Forces, including an action relating to the negotiation and determination of rates of remuneration or allowances, which is within the scope of a conciliation and arbitration scheme referred to in section 2(6) of the Defence (Amendment) Act 1990, actions concerning the organisation, structure and deployment of the Defence Forces, actions concerning the administration of military prisons or places of detention, or actions taken before 1 December 2005.

The Office of the Ombudsman for the Defence Forces marked ten years in existence during 2015. I recommend that aspects of the ‘actions’ excluded from its jurisdiction by the 2004 Act should be reviewed in the light of that experience. There is a need to further clarify the limits or extent of the statutory exclusions and to reconsider whether it is actually militarily or otherwise necessary to exclude them totally. In that context I pose the following question:

In circumstances where maladministration is a primary consideration for an Ombudsman, why should any administrative aspect of most, if not all, of the excluded matters be outside the jurisdiction of the Ombudsman?

Consider two scenarios. Firstly, a member or former

member of the Defence Forces can submit a complaint regarding ‘any matter’ under the Redress of Wrongs (ROW) provisions of section 114 of the Defence Act in circumstances where once the Redress of Wrongs process is exhausted the complainant has a right to have the complaint referred to the Ombudsman, who may have no jurisdiction to investigate his complaint because of the exclusion provisions of section 5 of the 2004 Act. In the light of experience to date:

Are those exclusions necessary and reasonable in circumstances where the powers of the ODF are limited to the making of a recommendation to the Minister?

Secondly, a member or former member of the Defence Forces may complain directly to this Office about an ‘action’ taken by a civil servant of the Department of Defence, in circumstances where such a complaint is not admissible under the Redress of Wrongs provisions of section 114 of the Defence Act, and where there is no complaint investigation procedure prescribed within the Department of Defence.

Is it not readily apparent that there is a need to have an internal complaints procedure within the Department of Defence to receive and address, and where possible speedily resolve, complaints relating to ‘actions’ of civil servants affecting members or former members of the Defence Forces, before decisions are appealed to this Office?

Further to the aforementioned, additional jurisdiction has now been assigned to my Office pursuant to section 20 of the Protected Disclosures Act 2014. Under that whistleblower legislation the Ombudsman may also investigate a complaint, referred directly to him by a Complainant who claims that s/he has been penalised or threatened with penalisation for having made a protected disclosure under that Act, when the complaint is not one submitted under the Defence



Forces Redress of Wrongs legislation. In such sensitive circumstances:

Would it be helpful to establish and agree appropriate investigation arrangements with the Department of Defence, including procedures for compliance with the production of information provisions of section 8 of the Ombudsman (Defence Forces) Act 2004?

Generally, all ‘administrative actions’ of the military authorities and of civil servants of the Department of Defence, including failures to act or to make a decision, are, or ought to be, reviewable by the Ombudsman. I recommend that these matters be addressed and clarified in an urgent review of the legislation, i.e., the Defence Act 1954 and the Ombudsman (Defence Forces) Act 2004. I recommend that in such a review consideration be given to the adoption of measures which would facilitate a shortening and speeding up of the Defence Forces ROW and Complaints processes. I also propose consideration of a 90 day target for the resolution of complaints referred to the ODF, similar to that contained in the EU Alternative Dispute Resolution (ADR) Directive 2013 on consumer rights. Consideration should also be given to existing available resources. Current practices, procedures and resources would not facilitate the achievement of the proposed time line in many cases.

In the absence of this Office as an independent investigative authority for a complaint by a member or former member of the Irish Defence Forces, such a complaint could, and in some cases would, be addressed by way of Judicial Review in the High Court with resultant significant legal costs for the complainant and for the State.

I believe that it is in the best interests of complainants, the Military Authorities and the Department that complaints and concerns regarding

administrative procedures and practices are dealt with in a non-adversarial structure where possible. The ROW and ODF systems allow good interpersonal relationships to be retained and facilitate direct engagement between the parties, to resolve the ‘action’ complained of. In that regard, having regard to the resource levels available, I believe that the Office of the ODF provides value for money and with amended procedures and additional resources it could do more.

When a complaint is referred to the ODF, a complainant who believes s/he has been wronged or unfairly treated is entitled to expect that a remedy will be available in the event that his/her complaint is upheld. Remedies recommended may concern promotion, being provided with a place on a career course, or a particular posting or duty. Effecting such a remedy may prove problematic where the promotional opportunity is now gone, where the course has already commenced or even finished, or where a particular duty, such as an overseas duty may have already departed. In that regard, the ODF acknowledges the patience, realism and enduring acceptance of reality which members and former members of the Irish Defence Forces have demonstrated. Complainants have informed the ODF that, notwithstanding the absence of an appropriate remedy in certain instances, they were pleased that their grievance was investigated and upheld and that they were vindicated in their complaint.

The absence of a suitable remedy may be due partly to the time delay between the action complained of taking place and the issuing of Final Reports and recommendations by the ODF. Each case is different, some are more complex, legally and administratively, than others. Whilst it may be possible to progress one case speedily, it may not be possible with another. Notwithstanding that, it is the continuing policy of the ODF to offer direct and early

intervention in any case where it appears that such intervention might contribute to an earlier resolution of the matter between the parties. The ODF is satisfied that with continued good will, improved information exchanges and an open minded approach by all parties, complaints could be resolved earlier than heretofore, while suitable remedies remain available. The ODF believes that the ongoing review of the ROW process provides an opportunity for serious consideration of early intervention initiatives, which would contribute to improved outcomes.

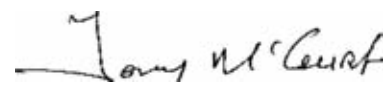
ODF Annual Reports have previously included recommendations for administrative and systemic reform. Monitoring the implementation of such recommendations, once accepted by the Minister for Defence, remains a function of the ODF. I am pleased to acknowledge that the Department of Defence provides the ODF with regular updates from the Standing Committee on Defence Forces Personnel Policy Issues on the implementation status of reforms arising from ODF recommendations. However, it appears to me that in some instances the implementation of reforms takes too long. In 2015, the ODF in association with the Department of the Defence audited outstanding administrative and systemic reforms and agreed, where appropriate, timescales for undertaking and completing internal Military/Departmental reviews and implementing such reforms. I record, and acknowledge my appreciation for, the support and assistance of the Department of Defence in this regard.

During 2015, the ODF continued its engagements with the Ombudsman Association (OA) – the organisation for Ombudsman and Complaint Handler Office Holders in the UK and Ireland. The ODF membership of the OA was re-accredited in 2013/2014 following a review of all members of the Association. *The OA recommended a minimum*

term of Office of five years for an Ombudsman. I have commended that recommendation to the Department of Defence. The ODF also continued its membership of the International Ombudsman Institute (IOI). The ODF continued to engage with the International Conference of Ombudsman Institutions for Armed Forces (ICOAF) – the international grouping of Offices of Ombudsman or Inspectorates of Armed Forces. The ODF has also continued its engagement with the Irish Ombudsman Forum. This Forum of Ombudsman Institutions within Ireland was established in December 2013 and pursues matters of common interest to Ombudsman Institutions in Ireland.

2015 witnessed the outcome of the revised 2014 NCO Promotion Agreement which has addressed issues which were the subject of complaints to this Office regarding the 2012 Agreement. Competency based assessments now appear to be more acceptable to members of the Defence Forces as provided for in the new arrangements. NCO promotion vacancies continued to be filled from panels established at national level with inevitable disappointments for unsuccessful candidates. While the 2012 promotion system contributed to an upward movement in complaints notified to this Office, the 2014 revised arrangements do not appear to have had as significant an impact on the level of complaints to this Office.

In conclusion, I recommend that unrealised career expectations need to be addressed as a Defence Forces policy issue.



Patrick Anthony McCourt
 Ombudsman for the Defence Forces



2 Highlights of 2015

111

Notifications of Complaint received in 2015, including 3 directly referred by former members of the Defence

Forces. This was almost on a par with the 112 notifications received in 2014 and is a continuation of the significant increase on the volume of notifications received in earlier years.

32

new cases were referred to ODF in 2015. This includes 3 cases that were directly referred to this Office. This is on par with the 34 new cases referred to ODF in 2014 and a significant 29% reduction on the 45 new cases referred in 2013.

Of the

111

Notifications of Complaint received,

88

were in respect of Privates and NCOs and 23 were in respect of Officers.

132

cases in all were under review by the ODF during 2015. This is a 15% increase on the 115 cases under review in 2014.

17

cases were brought to final conclusions by the ODF during 2015. In addition, progress was achieved during 2015 in 9 of the remaining cases under review.

115

cases remained under review by the ODF on the 31 Dec 2015.

3

Analysis of Complaints & Appeals - 2015

Notifications of Complaint

108 Notifications of Complaint were received by my Office from the Defence Forces during 2015, as well as 3 direct referrals for a total of 111. This is on par with the 112 Notifications received in 2014. 89 of those complaints were from serving or former other ranks personnel while 23 were from serving or former commissioned officers.

Of the Notifications received during 2015, some 29 were withdrawn during the course of the year and some 20 were referred to the ODF for investigation. 12 other complaints were referred to ODF for investigation.

The ODF also received some 117 direct contacts from members of the Defence Forces or members of the public in relation to queries, concerns or

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

Direct referrals to ODF

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



In 2015, some 3 complaints were referred directly to this Office. This is the same as the number of complaints referred directly in 2014. 2 of these complaints were from former other ranks personnel and the remaining complaint was from a former commissioned officer.

Cases reviewed by ODF in 2015

On 1 Jan 2015, some 100 cases were carried forward under review by this Office. During 2015 some 32 new cases were received by this Office so that the total number of cases under review by this Office during 2015 was 132. Of these, some 17 cases were brought to a conclusion during 2015. 115 cases remained under review on 31 December 2015 and were carried forward for consideration in 2016. This represents a 15% increase on the number of cases carried forward from 2014.

Details of Complaints Investigated by ODF in 2015

The following Tables set out the nature of complaints considered by this Office during 2015 along with details of complaints by military formation. It should be noted that complaints categorised as 'Maladministration' cover a variety of



issues including complaints in respect of performance appraisal and issues related to discharge among others. Complaints categorized as 'Interpersonal Issues' include those where there appears to be elements of personality conflict, inappropriate behaviour or alleged bullying.

It should be noted that following the re-organisation of the Defence Forces at the end of 2012, the 4 W Bde was disbanded and its members were subsumed into the remaining military formations, primarily the 2 E Bde. ROWs originating from officers and men serving with 4 W Bde are, for the purposes of 2015 reporting, reflected in the figures of the formations where they are now serving.

Total cases

The following table outlines the progression of these 132 cases during 2015 –

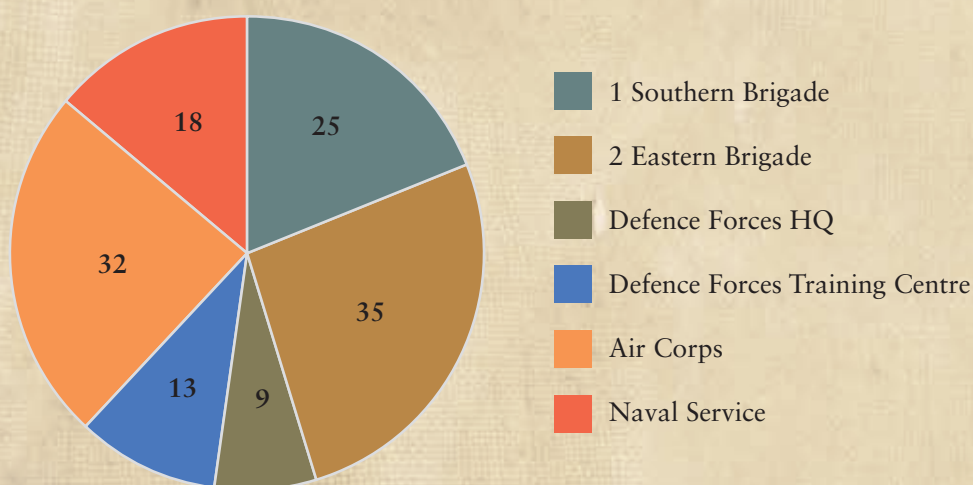
Preliminary Investigation Ongoing	Preliminary Investigation Completed and Report Issued	Final Report Issued
106 (80%)	9 (7%)	17 (13%)



Cases by Military Formation

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

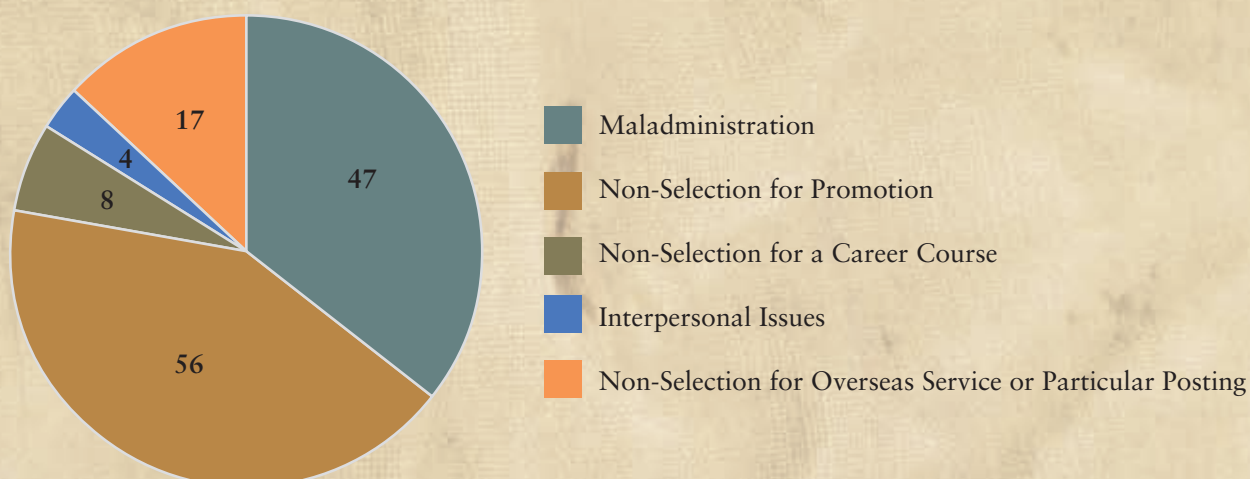
1 Southern Brigade	2 Eastern Brigade	Defence Forces HQ	Defence Forces Training Centre	Air Corps	Naval Service	Total
25 (19%)	35 (26.5%)	9 (7%)	13 (10%)	32 (24%)	18 (13.5%)	132



Nature of Cases

The nature of the cases on hand with the ODF during 2015 can be broken down into the following broad categories –

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
47 (35.5%)	56 (42.5%)	8 (6%)	4 (3%)	17 (13%)

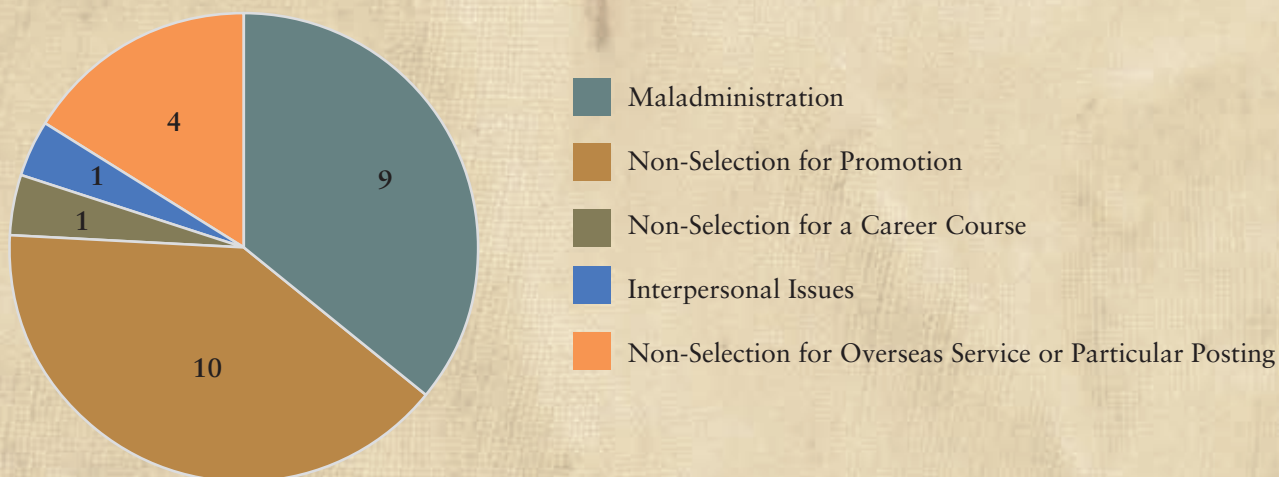


Details of Cases by Formation

The following tables and charts set out the nature of cases on hand during 2015 by individual Military Formations –

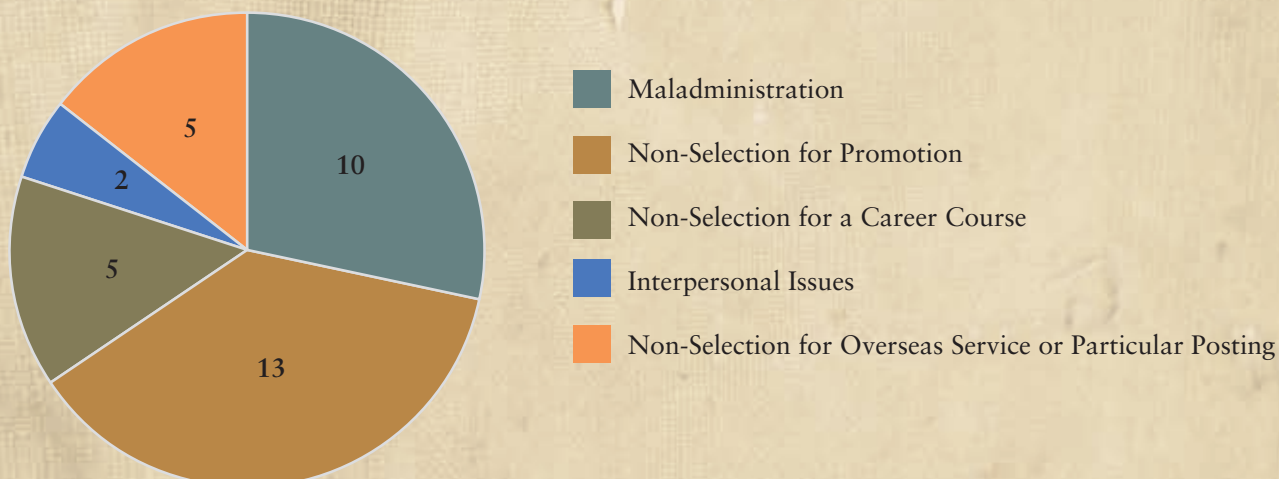
1 S Brigade – (25)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
9 (36%)	10 (40%)	1 (4%)	1 (4%)	4 (16%)



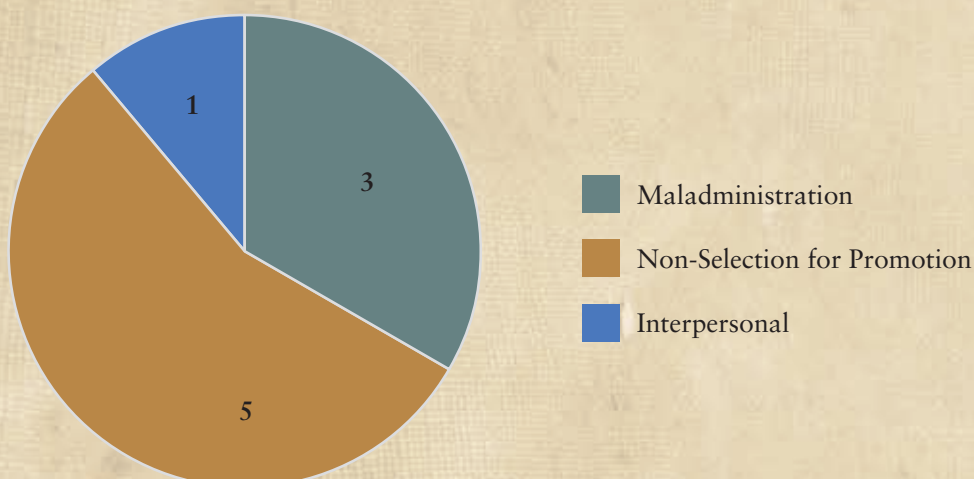
2 E Brigade – (35)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
10 (28.5%)	13 (37%)	5 (14.5%)	2 (5.5%)	5 (14.5%)



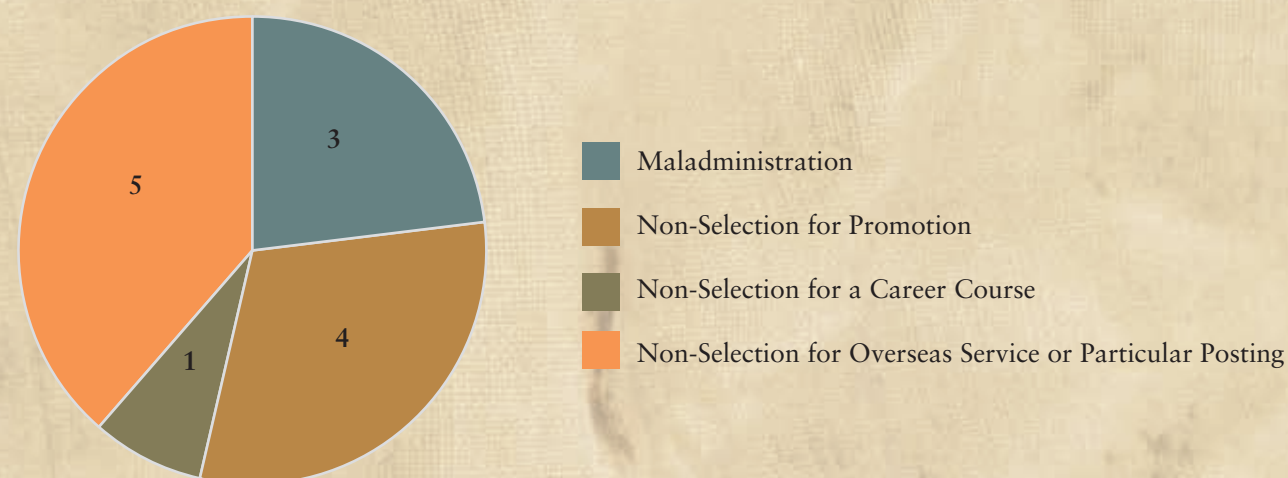
Defence Forces HQ – (9)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
3 (33.5%)	5 (55.5%)		1 (11%)	



Defence Forces Training Centre – (13)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
3 (23%)	4 (31%)	1 (7.5%)		5 (38.5%)



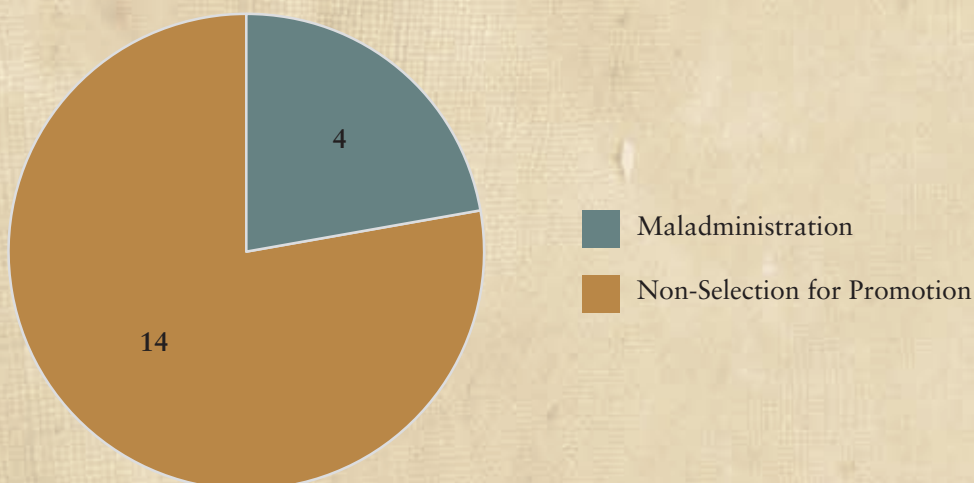
Air Corps – (32)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
18 (56.5%)	9 (28.5%)	2 (6%)	1 (3%)	2 (6%)



Naval Service – (18)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
4 (22%)	14 (78%)			

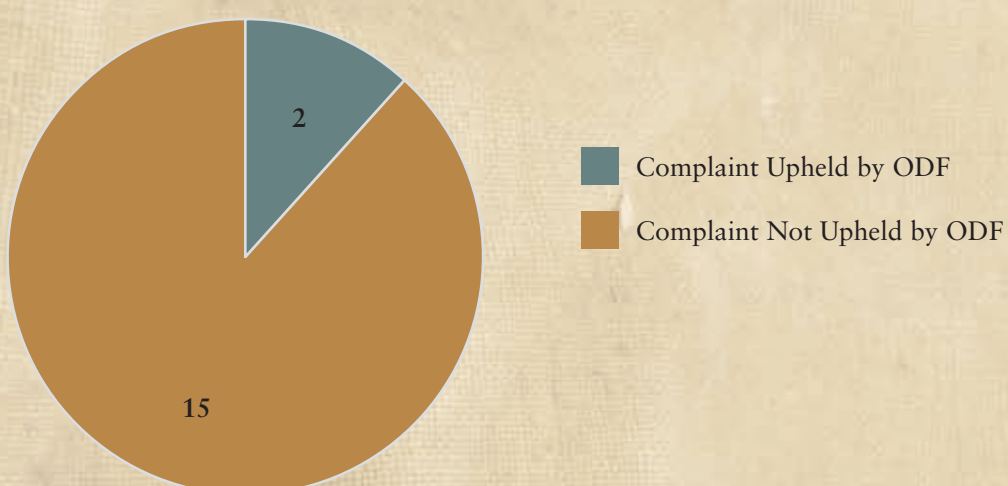


ODF Recommendations

Complaint Upheld by ODF	Complaint Not Upheld by ODF
2	15*

*Includes 1 complaint outside ODF's terms of reference and 1 complaint which was withdrawn.

It should be noted that in many cases where the ODF did not uphold a complainant's case, the ODF did make recommendations for administrative or system changes in circumstances where current procedures appeared to be contributory to the original complaint.



Minister's Response To ODF's Recommendation

Minister Accepts	Minister Does Not Accept
16	1



4 Case Summaries

The following case summaries set out details of some of the cases investigated by the Ombudsman for the Defence Forces during 2015.

Case Summary 1

Career Course – Refusal to award Pass of Module 3 Standard NCO Course 2003 due to service-training-related injury preventing completion of course – TS INF 04/2002 - Delay in Notification of outcome of request for review – Refusal of Appeal to DDFT - Delay in submission of ROW – Jurisdiction

Complaint Findings: OTOR but queries raised and recommendations made.

As a result of sustaining a back injury in the course of training for Module 3, Standard NCO Course 2003, the Complainant missed four days of that course, yet was informed on the last day of the course that he had not passed that Module due to those absences, despite having passed all other relevant tests, and was later informed that he needed to repeat Module 3.

The Complainant took issue with:

- The decision not to award him a Pass in Standard NCO Course 2003, Module 3, despite having passed his test subjects and appointments during Module 3, and having since performed Private and/or Corporal roles missed through injury in Module 3, and the consistent support of the case by his Company Officer, Commanding Officer and Formation EO;
- The delay in notifying him of the outcome of his request for review of that decision; and
- The outcome of his appeal to DDFT.

The Complainant submitted an application for ROW in February 2010, explaining the reason for the delay in making a submission was that he

was awaiting the outcome of his applications for a “review of” and subsequent “appeal against” the decision not to award him a Pass in Module 3. The result of his “review” request was notified to him on 19 May 2008, and the outcome of his subsequent “appeal” was notified to him on 1 April 2009. His “appeal” against the earlier “review” was not upheld. He claimed that the six-year delay in the process denied him his career opportunity.

By way of redress, he requested that he be credited with Module 3; that he be awarded a Pass for the complete Course; and that he be promoted to the rank of Sgt in his present unit.

COS found there to be no reasonable explanation for the delay in dealing with the case, and acknowledged the Complainant was owed a full apology. However, COS deemed the Complainant to have missed too much of the course in order to get a complete assessment of his performance at a crucial phase of the module, and as a result, refused the redress sought on the basis that it was not in the interests of the Defence Forces to qualify an individual for

promotion to higher rank and responsibility simply on the basis that his appeal of the decision not to qualify him was delayed. COS reiterated the offer to the Complainant to complete Module 3 on the next Standard NCO Course.

The Ombudsman noted that while the Complainant's Personal Record recorded that the Complainant was paraded and informed four days before the end of the course that he had not passed that Module due to absence, those entries were neither initialed nor signed by the Complainant.

The Ombudsman noted the absence of any comment, endorsement or explanatory notes on the Course Report as to why the Complainant was required to repeat Module 3 having regard

to his actual and recorded performance on the course. Moreover, it was noted that the Complainant's Course Personal Record failed to record what the consequences were, or might be, for his time missed through injury. Finally, it was noted there was no information recorded on the Complainant's Course Report to indicate why, or by whom, the decision was made that he must repeat Module 3. The Ombudsman queried whether that was a mandatory or discretionary decision, who made it and what reason(s) if any were recorded to support that decision.

As a result, consideration was given to the content and effect of TS INF 04/2002, which provides, *inter alia*, "Students will be apprised of their status as such a situation develops and will receive a warning prior to being returned to their unit." Furthermore, TS INF 04/2002 provides



that “*personnel who do not complete Module 3 successfully may, on the recommendation of the Comdt, The Infantry School, return and attempt Module 3 only on a subsequent course.*” The Ombudsman commented that the file indicated the Complainant passed all specified mandatory elements of Module 3 and there were no formal written tests on that phase. He queried the criteria applied by, and the degree of discretion available to, the *Comdt, The Infantry School*, in his decision not to pass the Complainant, where the Complainant suffered a service-related injury.

In any event, where the Ombudsman deemed each of the three elements of the Complainant’s ROW application to fail to meet the statutory time limits within which to refer a matter to the Ombudsman, set by section 6(3) of the Ombudsman (Defence Forces) Act 2004, the Ombudsman had no option but to refuse jurisdiction in respect of all three elements of the ROW application.

Notwithstanding the jurisdictional issue, the Ombudsman raised the following queries for the Minister:

- Regarding TS INF 04/2002, what discretion was available and to whom, with regards to the making of the decision not to pass a student in circumstances such as the Complainant’s? Might another person have come to a different decision in the same circumstances? Could that decision be revisited?
- Was any serious consideration given to the Complainant’s submission? If so, when, by whom and where was this recorded? If not, why not?
- Why did the delay occur in completing the Complainant’s course report, in giving him his report, in finalising the report, in dealing with the Complainant’s request for “review” and in dealing with his further request to “appeal” the “review” decision?
- Was any offer made to the Complainant to re-do Module 3 before 2010? If so, when and by whom and what was his response? If not, why not?

Finally, the Ombudsman made the following recommendations for consideration by the Minister:

- The Ombudsman recommended a review of procedures in respect of the absence of the Complainant’s initials or his signature on his Personal Record entries pertaining to him being paraded and informed four days before the end of the course that he had not passed that Module.
- Having regard to the provisions of the TS INF 04/2002, which provides that students would be apprised of their status as such a situation develops and receive a warning prior to being returned to their unit, the Ombudsman stated that it would be reasonable to expect that the issuance of such a “warning” would be carefully and clearly recorded and confirmed by the student’s written acknowledgement.
- The Ombudsman recommended the Minister ask the military authorities to again re-examine this complaint, having regard to the details of TS INF 04/2002, the consistent recommendations of the Complainant’s case by his military superiors, the circumstances in which the Complainant sustained his injury during the course, the unexplained and unreasonable delay in deciding on the Complainant’s request for a ‘review’ and his subsequent ‘appeal’ of the decision and the totality of the Complainant’s service record, with a view to reconsidering what discretion, if any, could have been exercised in a different way. Such a review could be carried out on a “without prejudice” basis, and any finding in favour of the Complainant should not be considered as establishing a precedent.

Case Summary 2

Promotion – Competition – Agreed criteria not incorporated into Promotion Framework – Lack of transparency – Length of service – Higher placed candidates awarded higher marks than entitled to – Administrative error

Complaint Findings: Complaint Upheld, appropriate gesture to be made.

The Complainant was unsuccessful in a promotion competition. He issued a Redress of Wrongs application complaining that the Length of Service (LOS) marks awarded to two higher placed candidates had been too high. He claimed that the two candidates had been “parachuted” into their rank in an earlier competition and pointed to paragraph (7)(b) of Conciliation Council Report (CCR) No. 295, which states:

“the inclusion of candidates in senior classes for promotion purposes should have ceased after the candidates had availed of the facility once.”

The Military Investigating Officer (MIO) did not uphold the Complaint. He found that the LOS marks had been consistently applied on the basis of *“an interpretation and extrapolation of the relevant provisions of the existing administrative instruction and related promotion agreements”*. The two candidates had been awarded LOS marks on the basis that they were *“junior qualified”*. He noted that the scheduled review of the 2004 promotion system, after five years, had not taken place and thus Administrative Instruction A15 (Admin Instr A15) had not been amended to make clear this interpretation.

The Complainant’s Commanding Officer and the Chief of Staff (COS) agreed with the MIO. The COS explained that *“junior qualified”* meant that the date of their promotion to the rank they held at the time of the competition was the relevant factor in determining their LOS marks. The COS agreed with the MIO that there was a need for clarity in the use of the term *“junior qualified”* and that candidates should be furnished with their LOS marks prior to the commencement of competitions.

The ODF questioned whether this amounted to a desirable administrative practice and queried why

Admin Instr A15 had not been amended in the interests of fairness, openness and transparency. The military authorities responded that the amendment had been delayed as it could not be made prior to Defence Forces Regulation A15 (DFR A15) being amended. The ODF further invited comment on the effect of the related provisions of CCR 447 which set out the criteria for assessment of officers and stated that *“the sections of the 2004 agreement dealing with the cadet class association will be deleted as they are no longer relevant given the new length of service in the rank criteria”*. The military authorities responded that that provision corroborated their view on the LOS marks awarded to the candidates.

The ODF found that there was no authority within the promotion framework, as it then was, for the two candidates to be awarded the maximum LOS marks available as they had been. The ODF analysed the three tiers of the promotion framework for officers of the Permanent Defence Forces; the statutory provisions (the Defence Act 1954), the regulatory provisions (DFR A15) and the administrative provisions (Admin Instr A15). The awarding of LOS marks was clearly part of the assessment process, which was the responsibility of the promotion board established for that purpose, and was governed by Admin Instr A15. Admin Instr A15 made no reference to the provisions of CCR 447, which military authorities relied upon and was *“currently being transposed into the Admin Instr”*. While paragraph 7C of DFR A15 referred to CCR 447, it made no reference to the assessment process. Furthermore, the provisions of Admin Instr A15 were inherently contradictory and, therefore, contrary to fair and sound administration.

The ODF noted that DCOS (Sp) was authorised to make any necessary updating amendment to the LOS marking system in Admin Instr A15, pursuant



to the powers vested in him by paragraph 3A of DFR A15, but had failed to exercise this power. The ODF could not find any legal reason why Admin Instr A15 had not been amended by DCOS (Sp) to reflect the updated LOS provisions agreed in CCR 447. It transpired that the DFR A15 had in fact been amended three days before the convening order for the promotion competition, however, the military authorities stated that it was not possible to transpose CCR 447 into the Admin Instr immediately. The ODF took the view that the amendments should have been prepared in advance and the failure to implement them in time for the promotion competition meant that key operational vacancies were filled on the basis of informal extrapolation of unimplemented LOS marking provisions. This was an undesirable administrative practice.

The ODF could find no authority in Admin Instr A15 to support the use of “*date of promotion*” to calculate LOS marks. The ODF was advised that DHRMS had determined that the maximum LOS marks would be awarded to senior and junior qualified members who competed in a previous competition four years earlier. However, the two candidates whose LOS marks were being challenged were not qualified to compete, and were not in fact candidates, in the previous competition.

The ODF found that the Complainant, along with all other candidates, was not aware, at the time of the competition, of the DHRMS decision to award LOS marks in accordance with the unimplemented CCR 447, rather than Admin Instr A15. In circumstances where the impact of the award of

such marks was so significant, this lack of awareness reflected an absence of transparency in the competition process which was unnecessary, procedurally unfair and contrary to fair and sound administration.

The ODF found that the two other candidates should not have been awarded the maximum LOS marks, either on the basis of their length of commissioned service or on the basis of their association with any other class of candidate as “*junior qualified*”. There was no authority to support their marks, even if the provisions of CCR 447 had been transposed into the promotion framework.

The ODF therefore upheld the complaint, finding that the Complainant had not been recommended for promotion due to an administrative error in the promotion competition. The ODF recommended that the administrative error be acknowledged with regret and that some gesture be made to the Complainant in respect of the wrong that he had suffered. In particular, the ODF recommended that the losses particularised by the Complainant be considered by the military authorities. However, the ODF was not in a position to recommend the nature of the appropriate gesture.

The ODF also recommended that CCR 447 be fully transposed, if not yet done, without delay and before any further promotion competition. He further recommended a review of the administrative methodology for the incorporation or transposition of agreed proposed measures into the promotion framework.

Case Summary 3

Complaint arising out of handling of prior complaint – No evidence of incorrect handling – Issues should have been raised during investigation of prior complaint – Interview with COS – Entitlement to personal interview on occasion of general inspection – Official visit but not general inspection – Lack of clarity

Complaint Findings: Not upheld

The Complainant submitted six complaints in relation to five of his superior officers. Five of the complaints concerned the handling of a previous complaint by each such superior officer, while the sixth concerned a refusal by one of the superior officers to allow the Complainant to have a personal interview with the COS during an official visit by the COS to the Complainant's military base.

The previous complaint related to an annual performance appraisal. The ODF had found that the Complainant had to accept responsibility for his informed acceptance of the appraisal when he signed his AF 451 without question or reservation. However, the ODF found that the complaint was, in any event, outside the time limit provided for under s.6(3) of the 2004 Act and therefore outside the ODF's terms of reference. The Complainant had based the complaint on an academic paper which he claimed to have only become aware of recently.

Despite the Complainant's previous experience of complaints to the ODF, five of the six complaints were submitted to the military authorities between 10 and 12 months after the alleged actions complained of. Having regard to s. 4(2)(d) of the Act, which provides that a matter cannot be referred to the ODF until a period of 28 days has expired since the complaint and only where it is "*not likely to be resolved*", and s. 6(3) of the Act, which excludes the ODF from hearing a complaint if more than 12 months have passed from the date of the action concerned, the military authorities were left with very little time to deal with the complaints.

This was compounded by the fact that, given the Complainant's rank, the nature of the complaints and the history of his previous complaint, the

authorities had difficulty appointing members to deal with the complaints. In the event, the Complainant sought to refer three of his complaints "*directly*" to the ODF. One such complaint was submitted just before the expiry of the 12 month period, while the other two were after that period. The other three complaints were referred to the ODF by the authorities after the expiry of the 12 month period. However, following consultation with the parties, and as dictated by the equity of the situation, it was agreed, on an exceptional basis, that the ODF would deem each complaint to be within the statutory time frame. Further, time was given to the authorities to attempt to resolve the complaints.

Arising from the unique difficulties in investigating the complaints due to the Complainant's seniority and the nature of the complaints, the authorities appointed the Deputy Chief of Staff (Support) (D COS (Sp)) as, in effect, final military adjudicator in relation to the complaints. In the opinion of the ODF, this was a fair, reasonable and pragmatic approach, however he recommended that a review should be carried out to establish procedures for such situations in the future. The ODF further recommended that consideration be given to ensuring that Complainants are kept apprised of the progress of the investigation of their complaints by the military authorities. Furthermore, the ODF recommended that the authorities would be more pro-active in keeping his office informed of such progress, perhaps by the appointment of an appropriate 'point of contact' at Formation level.

The first complaint was against the Military Investigation Officer (MIO) in the prior complaint. The Complainant contended; (1) that

the MIO's findings had been incorrect and misleading; (2) that while the MIO read his report to the Complainant he had declined to allow him to read it or have a hard copy of same; (3) that the MIO had made an unreasonable leap of logic in asserting that the Complainant should have known of the existence of the academic paper before he said he had; (4) that the MIO ought not to have raised the issue of the ODF's jurisdiction in his report (even if his comment was correct). The D COS (Sp) found that the Complainant had not been wronged.

The ODF took the view that any issues the Complainant had with the MIO's report should have been raised immediately (rather than almost a year later) so that the GOC could consider them in his considered ruling. Further, there was a second opportunity to raise the issues when the complaint was referred to the COS. In this case, the Complainant did in fact set out his concerns in a letter to the COS and they were considered by the COS in his considered ruling. The ODF found that the MIO's report did not pre-determine the outcome of a complaint. It was subject to both internal and external review. The ODF further found that the Complainant had, in effect, reformulated elements of his prior complaint which had been determined to be outside the jurisdiction of the ODF. It would be quite exceptional to allow a Complainant to re-open such a complaint through a later complaint. The ODF was satisfied that the MIO had not mislead the COS, had acted entirely within the authority given to him and had not wronged the Complainant in any way. The ODF therefore decided to exercise his discretion under s. 4(6) of the Ombudsman (Defence Forces) Act 2004 to discontinue investigation of this complaint on the basis that the Complainant had not taken reasonable steps at the relevant time to seek redress in respect of the subject matter. However, the ODF did recommend that consideration be given to the adoption of a standard practice whereby, with the GOC's consent, a copy of the MIO's report is given to a Complainant at the same time as it is furnished to the GOC.

The second complaint was against the officer to whom the MIO's report was provided, as the higher authority, for considered ruling. The

complainant claimed that that officer had wronged him by simply finding that he was in "*general agreement*" with the MIO's findings. He claimed that the officer was obliged to address each complaint and the grounds upon which it was made, and to provide an analysis of and a justification for his ruling on each complaint. The D COS (Sp) did not uphold the complaint, finding that the officer had based his rationale for his decision on the MIO's report, which provided sufficient analysis and justification for the ruling.

The ODF did not uphold this complaint. However, he acknowledged that the term "*general agreement*" was potentially confusing and recommended that officers express full agreement with the MIO's report if that is their finding. In this case, the ODF was satisfied that the officer was in agreement with the MIO's reasoning and was not required to re-state same. Further, the ODF found that any concerns with the content of a GOC's considered ruling should be dealt with in the context of the complaint, not by way of separate complaint at a later stage.

The third complaint was that a particular officer should not have been on a promotion board for a competition in which the Complainant was a candidate. The Complainant claimed that the officer had a personal and professional interest in the outcome of the competition as he was the officer who had given the appraisal, the subject of the prior complaint by the Complainant. The prior complaint remained under investigation by the Chief of Staff (COS) at the time of the promotion interview. The D COS (Sp) found against the Complainant on the basis that the board was constituted correctly and carried out its procedures within the terms of the relevant promotion agreements and regulations.

The ODF could find no evidence that the Minister, the D COS (Sp) or the officer concerned had not acted in accordance with the provisions of the promotion framework. The ODF agreed with the D COS (Sp) that the Redress of Wrongs (ROW) procedure was an administrative procedure separate and distinct from that of a promotion framework. The ODF was not persuaded that there was any conflict of interest

or bias, especially in circumstances where the officer would have carried out assessments of all of the candidates and he had recommended the Complainant for promotion.

The fourth complaint was about the refusal to grant the Complainant a personal interview with the COS. The Complainant relied in this regard on para. 11C of Defence Forces Regulation A7 (DFR A7) which provides that “*any person subject to military law may submit personally any grievance to any of the officers mentioned hereunder on the occasion of a general inspection by such officer of a unit or military installation*”. The officer to whom the request had been made (who was also the subject of the third complaint) refused the request on the ground that the visit of the COS was not a “*general inspection*”, but rather an “*official visit*”. The D COS (Sp) agreed and found that the Complainant had not been wronged.

The ODF found that the COS’s branch had advised that the visit was not “*to inspect the formation*”. Further, there had not been a full formation on parade, as would normally be associated with, and indicative of, a general inspection. The ODF did, however, find some merit in the complaint as there was a lack of communication from the COS branch as to the nature of the visit. He therefore concluded that the Complainant’s sense of grievance was understandable. However, the ODF found that the personal interview which his office had arranged for the Complainant with the D COS (Sp) was a sufficient and effective redress to this complaint. The ODF recommended that in future any “*general inspection*” by the COS be clearly flagged as such and that any other official visit be flagged accordingly.

The fifth complaint was that another officer authorised the removal of a document from the Complainant’s sub-file for a promotion competition, without his consent, without authority and contrary to section 2A(1)(a) of the Data Protection Acts 1988-2003. The document was a letter which had been placed on his file to satisfy a previous complaint by the Complainant. The Complainant contended that the removal of the letter had the effect of reversing an agreed

solution to the previous complaint. The D COS (Sp) found that the officer had not removed the letter, rather the letter had not been placed in the Complainant’s sub-file. Further, he found that the officer, as the relevant data controller, had the authority to refuse to allow the letter to be placed on the sub-file. Finally, he found that the contents of a promotion sub-file were prescribed by A Admin Instr A15, para. 31d. He therefore could not find that the Complainant had been wronged.

The ODF found that the alleged actions of the officer were consistent with the provisions of the Admin Instr and the legislation. In not upholding the complaint, the ODF noted that the D COS (Sp) had, at the interview with the Complainant, advised him as to how the content of the letter (which remained on the Complainant’s file) could be included in the interview process.

The sixth complaint was that an officer failed to process the prior complaint in a timely manner and in accordance with Admin Instr A7, Chapter 2, para. 206. He claimed this had a detrimental effect on a promotion competition he was involved in. The D COS (Sp) did not uphold this complaint either, finding that the delay had not had the effect claimed.

The ODF could find no evidence that the delay alleged, or the existence of the prior complaint itself, had acted to the Complainant’s detriment or disadvantage. Again, the ODF found that the ROW procedure was an administrative process which did not interfere with or impact on other ongoing routine procedures, including the holding of promotion competitions. The complaint was not upheld.



Case Summary 4

Complainant redeployed to main unit after detachment – Allegation that redeployment due to reporting incidents – Allegation of no action taken on foot of complaint - Redeployment found reasonable - Interpersonal issues unsubstantiated – Absence of Independent Witnesses – Extra hour guard duty not inordinate in the circumstances - A Admin Instr A7 Ch.1 more appropriate than ROW - Allegations of actions warranting referral of certain complaints to MP – Jurisdiction

Complaint Findings: Partially OTOR, not upheld.

The Complainant took issue with being redeployed to his main unit after a period of detachment, which redeployment, he maintained, was due to his reporting a number of incidents to his superiors on the 26th May 2013. He maintained that no corrective action was taken on foot of his reporting those incidents. Furthermore, the Complainant alleged that:

1. Correspondence from him to his CO was withheld by persons at unit HQ, which prevented him from meeting his CO.
2. A senior NCO inappropriately subjected him to unsubstantiated allegations, harassment and abrasive comments.
3. His detachment commander engaged in activity in relation to alleged verbal statements about a superior NCO which should have been subjected to military justice.
4. He was left on gate guard duty for an inordinate period of time without relief on the 26 May 2013.
5. His detachment commander asked another NCO to make a false report in relation to the alleged destruction of electronic data on a computer.
6. His CO made a decision in relation to the Complainant being moved to Dublin, based on his character, and on false statements by a Senior NCO and an equal ranking colleague.

By way of redress the Complainant sought:

- a. A thorough independent investigation into his allegations.
- b. That consideration be given to a potential

detachment from his present unit until the investigation was completed.

- c. If his complaint was upheld, that he be allowed transfer to another unit.

In respect of each of the allegations, MIO concluded:

1. The delay in the Complainant's interview with his CO was due to the deployment of the CO and the demands of his appointment and not the result of any inappropriate activity.
2. It was impossible to substantiate the Complainant's allegations, as there were no independent witnesses to the alleged unsubstantiated allegations, harassment or abrasive remarks.
3. No such comments were made.
4. One extra hour on the gate on the night in question could not be considered an inordinate period.
5. It was impossible to substantiate the Complainant's allegations, as both the detachment commander and another equal ranking NCO denied that one asked the other to make a false report about the Complainant.
6. There was no evidence of any false statements by anyone having influenced the Complainant's CO in his decision to move the Complainant back to his main unit or as to his opinion of the Complainant's character. CO stated that he was redeployed based exclusively on the Defence Force's requirements.

MIO proposed that the Complainant's concerns

might, more appropriately, have been investigated under A Admin Instr A7 Ch.1, as opposed to ROW. GOC concurred with the findings of the MIO.

COS directed that allegations relating to the making of a false report by two serving members in respect of the alleged destruction of electronic data on a computer (allegation 5), and relating to verbal statements made by a serving member, that the complainant contended should be subject to military justice (allegation 3) were matters more appropriate for an investigation by the Military Police (MP).

In respect of the balance of the issues, COS concurred with the findings of the MIO, and that the matter would, more appropriately have been investigated under A Admin Instr A7 Ch.1. He found that the Complainant had not been wronged in respect of any of the issues raised and so no redress was appropriate.

The Ombudsman upheld the finding of there being no wrong requiring redress and opined:

1. Regarding the redeployment of the Complainant to his main unit, no specific time frame was sought or fixed for the detachment. CO acted within his authority and competence, and redeployed the Complainant for reasons that the CO considered adequate, and which did not appear unreasonable. The detachment did not carry with it any promise or undertaking as to its duration, and did not create any reasonable administrative expectation, right or entitlement for the Complainant to continue to serve indefinitely in the detachment. There was no evidence of malfeasance, unfairness, maladministration or abuse of authority. The Complainant was not wronged by the termination of his detachment. Moreover, the Ombudsman opined that a complaint concerning detachment was probably outside the remit of his Office, by virtue of section 5(1)(d)(ii) of the Ombudsman (Defence Forces) Act 2004 ('the Act').
2. The Ombudsman deemed further investigations by him in respect of the complaint relating to false allegations, to be



unwarranted, unnecessary and inappropriate where the complaint was the subject of an investigation by the MP, and therefore refused jurisdiction.

3. Regarding the balance of the allegation, the Ombudsman considered those matters to be outside the statutory time limit for complaint that could be investigated by the Ombudsman, pursuant to section 6(3) of the Act. In any event, the Ombudsman exercised his discretion, pursuant to section 4 of the Act, not to further consider those matters, as he considered satisfactory measures to have been taken by the COS to investigate those allegations.

The Ombudsman recommended that the Complainant reconsider his approach to his superior authorities' opinions as to how best he might resolve any remaining interpersonal issues within his unit, and perhaps undergo career counseling or coaching by a suitable HR officer. The Ombudsman opined that the Complainant's transfer to another unit, as mooted by the Complainant, might be in his best interests, however, it might also result in some career disadvantages. The Ombudsman also recommended that the Complainant consider accepting career counseling or coaching from a suitable HR officer from outside his unit before he decided what course of action to adopt in this regard and before he submitted any application for a transfer to another unit.

Case Summary 5

Discharge – Apprentice scheme – Failure of exams – Disciplinary charges – Sick record – Refusal of transfer to line – No breach of fair procedures – No breach of Act or Regulations.

Complaint Findings: Not upheld, recommendation that military authorities review the Complainant's service since the discharge decision.

The Complainant, a member enlisted under a technical training apprentice scheme, was ordered to be discharged from the Defence Forces pursuant to paragraph 58(r) of Defence Forces Regulation A10 (DFR A10). He was furnished with an AF 97B setting out the grounds for his proposed discharge as follows; (1) failure to pass the FÁS course; (2) unacceptable sick record while on the course; (3) unsatisfactory conduct as an apprentice; (4) he had been the subject of three disciplinary charges. The Complainant challenged the discharge and sought to be allowed to transfer and serve as a line soldier.

The Complainant stated that his conduct rating was "good" and his medical classification was the highest appropriate. He claimed that he failed his exams because of an illness which required hospitalisation and surgery. He further claimed that his application to transfer from technical training to the line should be recommended and that his continued service as a line soldier would not be jeopardised. As regards the disciplinary charges, the Complainant stated that they were minor in nature and that he was never warned that they could jeopardise his continued service in the Defence Forces. The Complainant complained that he was not allowed to transfer to the line, despite others who had failed technical exams being permitted to do so. Finally, he complained that the reliance upon paragraph 58(r) of DFR A10 to discharge him was inappropriate as it was a discreditable discharge disentitling him to entitlements and protections in his statutory contract.

The Military Investigation Officer (MIO) found that the Complainant's proposed discharge had been due to the cumulative effect of the four reasons given in the AF 97B. The Complainant had been given ample opportunity to pass the exams, sitting them four times and was warned of the

consequence of failing them. The MIO further found that the Complainant had an unacceptable disciplinary record for an apprentice. He concluded that the Complainant had not been wronged. The GOC and the Chief of Staff (COS) agreed with the MIO. The COS noted that the Complainant's primary function in the organisation was to pass his exams and successfully complete his apprenticeship, which he had failed to do. This was the principal reason for the discharge decision, with the poor disciplinary record and the amount of time on sick leave also being taken into consideration. The COS further stated that there was no obligation on the Defence Forces to transfer an individual who failed his apprenticeship to the line. Rather, the Army Apprentice Scheme (TI 7/2007) made clear that the apprenticeship was a probationary period of service and unsatisfactory performance might lead to discharge.

The Complainant had brought a judicial review in the High Court challenging the decision to discharge him, however the parties had, with the approval of the court, decided to strike out the proceedings and instead to process the complaint through the Redress of Wrongs procedure. In the circumstances, the ODF took the view that he was not excluded from considering the matter under s. 5(1)(a)(i) of the 2004 Act. Further, the ODF found that the period taken up by the court proceedings should be discounted in considering whether the application was out of time.

The ODF found, on the balance of probabilities, that the Complainant had been briefed on the contents of TI 7/2007. Further, he was at all times subject to the provisions of the Defence Act and the Defence Forces Regulations. The ODF made clear that he could not substitute his view for that of the military authorities as to the appropriateness or otherwise of a decision to apply

for the discharge of a serving member. The role of the ODF was to consider whether the authorities had complied with the applicable provisions of the Act and Regulations, as well as the requirements of fair procedures.

The ODF did not find support for the Complainant's contention that he was told that he would be allowed to transfer to the line if he failed his exams, nor for his holding an expectation that he would be allowed to do so. Rather, the ODF found, on the balance of probabilities, that the Complainant had been put on notice that he would not be eligible for transfer to the line without his Commanding Officer's recommendation and that the reasons for refusing his transfer request were communicated in writing and were not unreasonable. The authority to transfer him to the line was discretionary rather than mandatory and the authorities were not persuaded that it would be in the best interests of the service to transfer him to the line. The provisions of TI 7/2007 meant that a member who did not complete his or her apprenticeship could be discharged without any additional reasons, provided fair procedures were followed.

While it was a matter solely for the authorities to decide the statutory basis for a proposed discharge, the ODF expressed the view that paragraph 58(r), "services no longer required", was an appropriate basis. The ODF did not share the view of the Complainant that that constituted a "discreditable discharge", but recommended that the reasons for the discharge would be amplified, as was allowed for under that provision.

The ODF could find no procedural unfairness in the decision to refuse the Complainant's transfer request and the decision to discharge, nor could he find any breach of the Act or the Regulations. In the circumstances, the ODF did not uphold the complaint. However, he noted that there had been inordinate delay in disposing of the complaint with the result that the Complainant had served an additional five years in the Defence Forces since the Complainant's discharge was proposed. The ODF recommended that the authorities review the Complainant's service in that period, but noted that he was again out on long-term sick leave and had been restricted in carrying out his duties before going on leave. These factors would, the ODF acknowledged, likely weigh heavily against reviewing the decision to discharge him.





Case Summary 6

Medical fitness to perform military duties - Alteration of Medical Book (LA30) - *“Fit for HQ guard, and gate duties only”* amended to *“Fit for HQ guard, and gate duties only”* – Failure to inform of amendment to LA 30, contrary to fair or sound administration – Lack of adherence to DFR A8 paragraph 65 - Care and custody of Medical Documents – Range of medical notations - Appropriate content of LA 30s

Complaint Findings: Not Upheld, recommendation to review medical notations available to MO's.

The Complainant claimed that in the course of a medical review by a Medical Officer (MO), it was recorded in the Complainant's Medical Book (LA 30) and clinical notes within his medical file (AF 722), that he was *“Fit for HQ guard, and gate duties only”*. The Complainant claimed that he was subsequently informed by a senior NCO that he was *“not fit for guard duties”*. Upon reviewing the LA 30, the Complainant found the entry to have been amended with the word 'Guard' struck through. The Complainant claimed that he received no information as to how this alteration had occurred and he was concerned that the alteration of the LA 30 could impact on his future in the Defence Forces, or that an adverse inference might be taken by a future MO regarding the Complainant's handling of his LA 30.

An informal investigation revealed the MO amended the LA 30 and AF 722 and subsequently initiated the amendment. Dissatisfied with those informal findings, the Complainant requested a formal investigation. When that request went without a response for almost three months, the Complaint submitted a ROW application, in which he sought, by way of redress:

- A formal investigation into the circumstances

surrounding the defacement/alteration of his LA 30.

- Answers to various questions posed in previous correspondence.
- A written apology from the person who altered his LA 30 without his knowledge.
- If the person who alters the LA 30 did not have Authority to do so, the Complainant requested that disciplinary action be taken against him to reflect the seriousness of his actions.

The delay in dealing with the complaint before and during the ROW process was due to the reorganisation of the Defence Forces during that period.

The MIO made the following findings:

- The LA 30 was amended by the MO on the evening of the initial entry, and that it was amended in the presence of the Medical NCO, by reason of the Medical NCO's explanation to the MO that a person who is excused from wearing a helmet and flak jacket could not be fit to perform guard and security duty; and
- The MO did not alter the entry in the Complainant's AF 722A until later, as the alteration on the LA 30 did not alter the Complainant's medical status. However, the AF



722 was altered to justify the MO's decision to amend the LA 30.

The Complainant took issue with the lack of signing in or out record for LA 30's in his unit.

The MIO recommended that the unit address the proper signing in and out of official administrative records and the Complainant should have been made aware of the changes made to his LA 30 by his unit authorities. GOC agreed with MIO's conclusions and found the Complainant had not been wronged.

When referring his complaint to COS, the Complainant raised a number of issues, most notably, DFR A8, paragraph 65 or Admin Instr A8, paragraph 235, pertaining to the care and custody of Medical Documents.

COS agreed with the conclusions of the MIO and found that the Complainant had not been wronged. With regard to the redress sought by the Complainant, COS determined:

- A full formal investigation had taken place and the issues raised by the Complainant clearly addressed;
- The Complainant's CO had initiated a formal investigation, as sought by the Complainant, before ROW was submitted;
- MO altered the LA 30, was authorised to do so, and did so in the best interests of the Complainant having regard to the organisation's duty of care to all of its members;
- MO was not aware, when he made the original notation regarding duties in the Complainant's LA 30, that the Complainant could not perform armed duties where he was excused from wearing a helmet and flak jacket;
- The Complainant was not wronged by MO's

failure to inform him of the amendment and that the redress sought was not appropriate.

COS directed that his unit acknowledge to the Complainant the failure to parade and inform him of the alteration to his LA 30. COS noted the Complainant's concern at the lack of adherence to DFR A8 paragraph 65, specifically, the lack of care and custody of Medical Documents.

The Ombudsman was satisfied with the findings of MIO, and concurred with the reasoning and determination of COS in finding that the Complainant suffered no wrong requiring redress. However, the Ombudsman recommended:

- A review of procedures regarding the alteration of LA 30's;
- A review of the current administrative controls of important and personal medical records at unit level, and in particular the Complainant's, where there was a lack of adherence to DFR A8, paragraph 65;
- A more fulsome expression of regret for the administrative and communications failures at unit level be given to the Complainant by his CO, together with a full acknowledgement of any worry and angst he may have been caused by the lack of appropriate and timely communication with him;
- Consideration be given to reviewing the range of medical notations available to MOs when making an entry in LA 30s having regard to all the professional medical requirements and the military demands on members of the Defence Forces. MOs should then be briefed on appropriate content to record on LA 30s and other medical documents, as the recommendation is to COs with regard to the military employment of service personnel.



Case Summary 7

Detachment from MP Coy to Infantry Battalion - Compliance with Admin Instr 1/96 Ch. (2) and (3) - Taskings given on return to MP Coy – Medical Disposals – “Light Duties” – Treatment by and taskings given before and after detachment – Alleged Bullying and Harassment – Opportunity to Address under Admin Instr A7 Ch1 - Jurisdiction under section 6(3) of the Act

Complaint: Majority OTOR, with residue of complaints not upheld.

The Complainant took issue with:

1. His detachment to an Infantry Battalion from his parent unit, a Military Police Company (MP Coy);
2. The taskings given to the Complainant after his return to the MP Coy;
3. His treatment by, and the taskings he received from, a Sgt of his unit, before and after his detachment to the Infantry Battalion.

By way of redress the Complainant sought:

- a. A full apology for the way the Capt 2 i/c of his unit had treated him.
- b. A full apology from the Sergeant and that he refrain from placing the Complainant on tasks until he was cleared by a MO of the Defence Forces to carry out such tasks.
- c. That a comprehensive investigation be

undertaken into the circumstances surrounding his posting to the Infantry Battalion and that he be given a copy of any report generated.

The Complainant was discharged, at his own request, from the Defence Forces before the matter was considered by COS.

COS offered the Complainant an apology for the time frame within which his complaint was processed, and noted his recent discharge from the Defence Forces. In respect of each of the issues raised by the Complainant:

1. COS noted the considerations on which the CO based his decision to detach the Complainant from his parent unit to an infantry unit in the same barracks having

regard to his medical status at the time and the need to find him gainful employment in the same location during the period he was restricted to 'Light Duties'. It was noted that the Complainant's move to an infantry unit was in accordance with procedures laid down in routine orders and Admin Instr 1/96 Ch. (2) and (3).

2. COS noted the CO considered the tasks given to the Complainant to be non-arduous in nature and to be appropriate and in line with his medical condition and were given to him in an attempt to ensure that he remained engaged as a member of his unit. The tasks were identified at unit level and they were not manual in nature, or armed, or requiring of physical exertion. COS was satisfied that the Detachment Commander had carried out sufficient liaison with his unit HQ in that regard prior to detailing the Complainant.
3. COS acknowledged the difficulties encountered by the MIO in verifying the allegations made by the Complainant regarding the treatment the Complainant contended he received from his Detachment Commander. COS was satisfied that the Complainant had been apprised by the MIO and GOC of the opportunity to address this issue under Admin Instr A7 Ch1.

COS found that the Complainant had not been wronged in respect of any of the issues raised by the Complainant and so no redress was appropriate.

In his submission to the Ombudsman, the Complainant alleged that he had been moved from his unit to an infantry unit because he had been medically downgraded; he had been bullied and harassed by his unit commander and his Detachment Commander; and the investigation was not properly executed, witnesses were not interviewed and evidence had been ignored. He added that he believed that he had evidence that he was bullied and harassed and that he was given tasks that were contrary to the MO's orders. The Ombudsman was satisfied with the findings of MIO, and concurred with the reasoning and determination of COS in finding that the Complainant suffered no wrong requiring redress. However, he recorded that the DFR provisions did

not appear to provide adequate guidelines for MOs in the recording of their medical disposals, and he opined that clarification of the appropriate entries to be made by MOs would help avoid further such difficulties.

The Ombudsman deemed the complaint in relation to the Complainant's detachment to the Infantry Battalion from his parent unit, a Military Police Company (MP Coy); the taskings given to the Complainant before his return to the MP Coy; and the complaint in respect of his treatment by and the taskings he received from the Sgt of his unit, before his detachment to the Infantry Battalion to fall outside the jurisdiction of the Ombudsman, as being complaints in respect of matters which occurred outside the statutory time limits of section 6(3) of the Act.

The Ombudsman deemed the complaint in respect of his treatment by and the taskings he received from the Sgt of his unit, after his detachment to the Infantry Battalion to fall within the jurisdiction of the Ombudsman. The Ombudsman did not uphold the Complainant's claim that he was wronged by the nature of the taskings given to him after his return to his parent unit. The Ombudsman opined that the position should have been properly explained to the Complainant by an appropriate superior and he recommended that further clarification of medical disposal be considered. Any misunderstandings by the Complainant regarding his taskings or treatment after he acquired his non-service related injury could and should have been immediately clarified by his unit superiors for him.

The Ombudsman recommended:

- In addition to the apology of COS regarding the five-month delay in dealing with his ROW, an expression of regret that the Complainant may not have fully understood the employment implications of his medical disposal be offered to be Complainant;
- Consideration be given to offering him a letter of appreciation for his 26 years' service in the Defence Forces;
- An expression of regret be offered to him that it was not possible to finalise or resolve his ROW complaint prior to his discharge date;
- Wishing him well in his retirement.

Case Summary 8

Jurisdiction - promotion competition - timing of competition - legitimate expectation - competition arising due to expected retirement of another member - date ultimately set rendered Complainant ineligible - anomaly in regulations - Conciliation and Arbitration (C&A) scheme - Ombudsman (Defence Forces) Act 2004 section 6(1)(c) - of the Defence Act 1954 section 114 - DFR A 15, Appendix A Footnote Number 2

Complaint Findings: Not upheld.

This Complainant submitted a complaint to ODF under the provisions of section 6(1)(c) of the Act having been advised by the DF that his complaint was outside the scope of the Redress of Wrongs provisions. Section 6(1)(c) of the Act provides for the making of a complaint to ODF by a serving member of the Defence Forces concerning an action if it has affected that member and was taken by or on behalf of a civil servant of the Department of Defence.

The Complainant's grievance related to a decision setting the closing date for a competition for promotion. The decision as to the closing date was apparently taken by a civil servant within the Department. This promotion arose because of a retirement and the Complainant maintained that he had a legitimate expectation that the other member would retire by a given date because of the potential adverse pension implications for that member in serving after that time. He stated that the member in question had indicated his intention to retire before this date. The Complainant maintained that, arising from a Government decision to extend the grace period for retirement under the Haddington Road Agreement, the other member continued to serve until his retirement on age grounds. The Complainant maintained that he had been disadvantaged by this because, as a result, the closing date that would be set rendered him ineligible to compete for the promotion due to his age. A relevant birthday having passed in the intervening period meant he would not be in a position to complete the required level of service in the vacated position. The Complainant stated that the particular date appeared to have been set on the basis of Footnote Number 2 of Appendix A to DFR A 15, which he stated was only applicable to

competitions for promotion to another rank and had no relevance to the intended competition. By way of redress, the Complainant sought to be included in the particular intended competition and to have the eligibility date for the competition in question set on the earlier anticipated date.

As the intended promotion competition date was then fast approaching, the ODF sought an urgent response from the Department of Defence to the matters complained of and the Department was commended for its prompt and comprehensive response to that request.

After consideration of the relevant provisions of DFR A 15, the ODF noted that the regulation was silent on the manner in which a closing date should be determined and that reliance on footnotes in the DFR for authority as to how a closing date was to be set could not be satisfactory. The ODF also noted how, rather strangely, the Complainant nonetheless remained eligible to compete for promotion to an even *higher rank* for a further year, notwithstanding the passing of the key birthday in question. It also appeared to be the case that to compete for the even higher rank the Complainant would, firstly, have to compete for the lower rank, for which he was no longer actually eligible. This appeared to the ODF to be anomalous.

The Department stated that the DFR clearly provided that for a person to be eligible for promotion to the particular rank they must, on the closing date of the competition, have served for a set period in the rank of eligible candidates and be able to serve a set period in the rank applied for. The Department advised that the policy requirement was that a person should have served a period in the lower rank, against

which their potential for advancement could be measured, and have the capacity to serve a minimum period in the higher rank, during which they could contribute to the strategic mission of the organisation. While the service time periods actually required were specified in the DFR, the ODF found that it would be useful and prudent to include full particulars of these or any further, policy requirements in the DFR.

The Department expressed a concern that in the absence of a fixed procedure for setting the date, management could materially and arbitrarily adjust the date in a manner which might include some and exclude others. The Department also stated that in consulting with the Representative Association on the scheme, this was a specific requirement on which both parties agreed. The ODF found that the agreed objectives in this regard were fair and reasonable. Unfortunately, the arrangements at issue in this case allowed for the possibility of such arbitrariness, which could adversely affect potential candidate(s). The present provisions of the DFR and the footnotes thereto permitted a degree of uncertainty and arbitrariness, which potential candidates could not predict until a vacancy actually occurred, or must occur on age grounds. The ODF recommended that the DFR should ensure that such service criteria were clear and unambiguous in the interests of fairness and the avoidance of arbitrariness. This was particularly so in the determination of a key date such as that at issue in this case. The ODF further recommended that the existing uncertainty or ambiguity be clarified by an appropriate amendment of the DFR itself and not by reliance on an existing footnote or the addition of a further footnote.

Having considered the complaint, the ODF found that there was no basis within the framework for promotion on which the Complainant's proposed closing date could have been warranted or sustained.

The ODF further found that the Complainant did not have a 'legitimate expectation', as that phrase is defined by case law, of eligibility to compete in the promotion competition. However, the ODF found that the fact that the Complainant, who had forty years' service in the

Permanent Defence Force, was left in such an uncertain situation as he approached the final years of a long and successful career was unsatisfactory. After forty years of service a member deserved a more considered approach to, what for the individual was a very important and perhaps final such opportunity for promotion. This was not, in the opinion of the ODF, reflective of good, fair or efficient HR management or sound administration of any such promotion scheme.

The Department also raised a jurisdictional concern to the effect that "*Promotion Schemes are a matter of policy in relation to terms and conditions of employment and that the determination of promotion policy and the procedures therefor clearly fall outside the remit of the ODF*".

The ODF fully accepted that the determination of Promotion Policy is outside of its remit. Promotion Schemes which as a matter of policy in relation to terms and conditions of employment, negotiated and agreed with Representative Associations pursuant to a conciliation and arbitration (C&A) scheme, are also not within the remit of the ODF. However, such schemes must clearly be administered within the parameters of and not be inconsistent with the aforementioned legal framework and once it has been decided to hold a promotion competition pursuant to such a policy, the manner in which it is done must be in conformity with the provisions of the DFR. The arbitrariness with which a decision could be made on a 'closing date' for any promotion competition and the imprecision in the DFR as currently drafted with regard to when, how and by whom such a 'closing date' could be decided as well as the earlier mentioned ambiguity associated with the service period requirements, resulted in an undesirable, and in the opinion of the ODF, unnecessary degree of uncertainty with regard to members' career expectations. Any such arbitrariness could, in the opinion of the ODF, be considered to be 'unreasonable', 'based on undesirable administrative practice' or 'contrary to fair or sound administration'.

The letter purporting to set the closing date for

the competition, from its content, appeared clearly to have been an administrative action taken by a civil servant subsequent to the making of a decision, by or on behalf of the Minister, to hold the competition at that time. While such a decision was, on that account, not reviewable, all subsequent administrative actions pursuant to the provisions of the DFR must, logically, be reviewable by the ODF to ensure that they were in conformity with the terms of the DFR, in circumstances where any such action affected a complainant. Nonetheless, in the circumstances, the ODF limited its determinations with regard to this complaint to the administrative actions of the promotion competition in question having regard to the existing statutory and regulatory promotion framework.

The ODF found that the Complainant was not wronged by anything contained in the letter issued by the Department purporting to set a closing date for the promotions competition. The Complainant did not have a 'legitimate expectation' of an earlier date. The ODF found that this complaint fell within its jurisdiction only in so far as it concerned the alleged action of a civil servant of the Department of Defence in respect of an administrative act in the setting of the 'closing date' for the promotion competition. However, the functions of the ODF and its oversight role clearly comprehend administrative actions, those taken or not taken, as the case may be, by both Departmental and Military officials in that regard.



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Corporate Affairs

Staffing

The staffing of the ODF consists of:

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

Review of Internal Financial Controls

In common with other publicly-funded Offices the ODF conducted a formal review of Internal Financial Controls in 2015. This review has been provided to the Comptroller and Auditor General. A comprehensive budgetary system is in operation and expenditure trends are reviewed on a quarterly basis in association with the ODF's external accountants.

Data Protection

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

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

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



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

document, information or thing of a class so specified.

- (4) Where a notice is given under *subsection (3)(a)*, the Ombudsman or a member of the staff of the Ombudsman (including an investigation officer) shall not disclose any—
- (a) document, part of a document, information or thing specified in the notice, or
 - (b) class of document, part of a document, information or thing specified in the notice, to any person or for any purpose and nothing in this Act shall be construed as authorising or requiring the Ombudsman or a member of the staff of the Ombudsman (including an investigation officer) to disclose to any person or for any purpose anything referred to in *paragraph (a)* or *(b)*.

Bar Council of Ireland

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

Health & Safety

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

Freedom of Information

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

- Access records held by a Government Department or certain public bodies, including the ODF;

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

What records can I ask for under FOI?

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

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

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

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

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

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

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

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





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