

ODF



Ombudsman for
the Defence Forces
Annual Report 2022



Ombudsman for the Defence Forces

Customer Charter

The Ombudsman for the Defence Forces was established by law to provide a statutorily independent appeals process whereby members of the Defence Forces who have processed a complaint through the Redress of Wrongs system, but remain dissatisfied with the outcome, may refer their grievance to the Ombudsman for review. The Ombudsman for the Defence Forces also accepts complaints made directly by serving and former members of the Defence Forces, subject to certain conditions.

Pursuant to Sections 4 and 6 of the Ombudsman (Defence Forces) Act 2004, the Ombudsman may, with certain exceptions, investigate an action taken by a member of the Defence Forces, 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.

An amending provision in the Protected Disclosures Act 2014 provided an additional category of complaint to Section 4, namely penalisation of a person following a submission of a protected disclosure.

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

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

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



Table of Contents

Glossary of Terms and Abbreviations used in the Report	4
Introduction	5
How Does the ODF Conduct an Investigation?	8
Highlights of 2022	10
Analysis of Complaints & Referrals - 2022	11
Case Summaries	15
Corporate Affairs	25
Review of Internal Financial Controls	25
Data Protection	25
Bar Council of Ireland	27
Health & Safety	27
Freedom of Information	27
OMBUDSMAN (DEFENCE FORCES) ACT 2004	29
Protected Disclosures (Amendment of 2004 Act)	47

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



Glossary of Terms and Abbreviations used in the Report

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

1 Introduction:

Introduction to ODF Annual Report 2022

2022 was an eventful year for the Defence Forces, with the publication of the Report of the Commission on the Defence Forces and the Government announcement of plans to significantly increase expenditure on the Defence Forces. It also saw the establishment of the Independent Review Group (IRG) in the aftermath of the “Women of Honour” RTE programme, and its Report has recently been published. I gave evidence to the IRG shortly after its establishment.

Notifications of Complaint submitted to the Defence Forces’ internal grievance process, (pursuant to Section 114 of the Defence Act 1954, as amended) are routinely copied to my office. However, they only become the subject of investigation in my office, if subsequently, the complaint is referred to me for investigation by the complainant. In the majority of cases, the complaint is resolved (or withdrawn) within the Defence Forces’ internal grievance process. While a serving member of the Defence Forces may directly refer a complaint to my office and in so doing by-pass the Defence Forces’ internal grievance process, the vast majority of complainants continue to utilize the internal grievance process. For example, in 2022 only two serving members of the Defence Forces chose to directly refer their complaints to my office.

This low take up of the entitlement to directly refer is understandable, as taking the internal grievance route carries the real possibility of a relatively early resolution of a complaint. The Direct Referral option may, however, be more attractive for those who delayed for many months in submitting their complaint, or where the investigation of the complaint is especially urgent.

Section 6 (3) of the Ombudsman (Defence Forces) Act 2004 provides that the referral of a complaint to the ODF must take place within 12 months of the date on which the action or matter complained of occurred, or 12 months from the date on which the

complainant became aware of such event, whichever later occurs. There is no power or discretion to extend these periods in any circumstances.

The limitation period of 12 months is, in my view, too short, particularly in circumstances where a complainant’s preference is to allow the Internal Defence Forces Grievance process to complete its investigation into a complex complaint and which was initially submitted some number of months after the event. In such a case, there is a real risk that a referral of the complaint to the ODF, after the internal process has been completed, may fall foul of the 12-month limitation period.

In an effort to minimize this occurring my office now writes two specific letters to complainants; the first letter being sent approximately 28 days after the complaint was initially submitted to the Defence Forces internal process, advising that the complainant may now request the ODF to investigate the complaint (Section 4(2) (d) of the 2004 Act) (i); the second letter being sent approximately 3 months prior to the expiry of 12 months from the date of the action/matter complained of, warning that if the ODF is to investigate he/she must refer the complaint to the ODF before that deadline expires.

Both these steps will, hopefully, act to reduce the small number of instances where referrals to my office fall outside the statutory limitation periods. In 2022, at least one referral to my office was prompted by a “28 day letter”, and at least three referrals were received after sending the 9 month reminder letter, two relating to 2021 NOCs and one relating to a NOC received in 2022, where the action occurred almost one year previously, in February 2021.

In 2022, 25 investigation Reports were completed, a significant drop compared to 2021 when 36 investigation Reports were produced. Interestingly however, in the first 4 months of this year, 2023, the number of completed Reports is very significantly up compared to the same period in 2022. Based on current trends the number of investigation Reports

likely to be completed in 2023 will even outnumber those completed in 2021.

In 2022, there were 54 Notices of Complaint copied to my office compared with 106 in the previous year, 2021 (and compared to 80 in 2020). Over the years the NOC numbers vary significantly from year to year without any obvious explanation for doing so. The significant drop in 2022 (54 as compared to 106 in 2021) is possibly partly explained by the fact that 2022 saw a reduction in Promotion Competitions at all ranks, compared to 2021. Promotion Competitions have always prompted a spike in complaint numbers. Of the said 54 Notifications of Complaint, 7 of them had, by the end of 2022, been referred to my office for investigation.

Another notable statistic is that complaints from former members of the Defence Forces numbered 9

in 2022 (36% of the total completed investigations in 2022), whereas in 2021 there were only 2 such referrals (or 6% of the total completed investigation in that year), and in 2020 there were none.

As for Direct Referrals to my office from serving members of the Defence Forces, there were 2 in 2022, compared to none in 2021. It is likely that 2023 will see an increased number of Direct Referrals.

In 2022 I attended the 14th International Conference of Ombuds Institutions for the Armed Forces (ICOAF) in Oslo, which brought together Military Ombuds Representatives from all over the world, providing a valuable forum for discussion and ideas' sharing relevant to the work of the Military Ombudsman. The conference was particularly timely in circumstances where the war in Ukraine, with its enormous civilian and military death toll and destruction, has become,





54 Notifications of Complaint were received in 2022. This was a 49% decrease on the 106 notifications received in 2021.

and remains, daily news, and where there is an increased focus on issues of national and international Defence.

Once again I pay tribute to, and express my appreciation to, the staff in my office numbering 3 in total, whose dedication and hard work have enabled me to continue to complete almost all investigations within weeks of referral. I also express my thanks and appreciation to Lieutenant General Seán Clancy, Chief of Staff, and the men and women of the Defence Forces with whom I and my office staff had contact in 2022, and especially the personnel of the Grievance Management Office who were, as usual, always exceptionally helpful.

Finally, I express my thanks and appreciation to Ms. Jacqui McCrum, Secretary General of the Department of Defence, and the Minister for Defence (during most of 2022), Mr. Simon Coveney T.D. for their assistance and support. I look forward to working with the new Tánaiste and Minister for Defence, Mr. Michael Martin T.D. during the current year.



Alan Mahon
Ombudsman for the Defence Forces
28th April 2023



- (i) The ODF may decline to investigate, (or delay investigation), at the 28 day stage if it appears likely that the matter complained of may be resolved within the Defence Forces.

How Does the ODF Conduct an Investigation?

1. No two cases are the same, so each investigation is conducted in a manner appropriate to the facts relevant to that complaint. Conducting a thorough, fair and efficient investigation is of primary importance. Most complaints require a speedy investigation if justice is to be done, and if any suggested resolution or recommendation is to have practical effect. By their nature, most complaints are urgent. Commonly, an investigation is concluded and a Report issued within weeks from the date of referral. If it takes longer it is because of a delay in additional information or documentation being provided.
2. The ODF is independent of both the Defence Forces and the Minister/Department of Defence. Its independence is specifically and clearly laid down in the provisions of the Ombudsman (Defence Forces) Act 2004.
3. The ODF, in considering any complaint referral, must initially decide if he has jurisdiction to investigate. There are restrictions on jurisdiction in the 2004 Act, including a limitation period for complaint referrals. Section 6 (3) of the 2004 Act provides for a 12 month period in which a complaint must be referred by a complainant to the ODF. (No time limit applies to the submission of a complaint to the Defence Forces for internal investigation). The 12 month limitation period is measured from either the date on which the matter complained of arises, or from the date on which a complainant becomes aware of it, whichever later occurs.

The ODF has no discretion to extend these limitation periods.

4. The ODF assembles an investigation file, including details of the complaint, statements, including witness statements, and relevant documentation (including DFR's and

Administrative Instructions). The ODF will usually request the DF to state its position in relation to particular issues or allegations, and will seek relevant paperwork from the Defence Forces, and where appropriate, the Department. The ODF is provided with documentation relevant to the ODF's internal investigation (if one has been carried out), including copies of Reports and Rulings of the appointed Military Investigating Officer (MIO), the complainant's General Officer Commanding (GOC) and the Chief of Staff (COS).

Generally, the ODF seeks and obtains relevant information and documentation from, and through, the Grievance Management Office (GMO), who are always helpful. When allegations of personal wrongdoing are alleged it is normal practice to inform the individual concerned and provide him/her with an opportunity to respond.

5. While most ODF investigations are conducted without a need to personally interview a complainant or witnesses, the ODF does, on occasion, conduct such interviews.
6. On completion of his investigation the ODF issues his Report which will include his conclusions and, if appropriate, recommendations. Recommendations are addressed to the Minister for Defence. In due course, the Minister acknowledges the Report and advises the ODF of his acceptance or rejection of a Recommendation. In practice, to date, the Minister has accepted the great majority of Recommendations made by the ODF.

Who can refer a complaint to the ODF

7. The Ombudsman (Defence Forces) Act 2004 list the categories of complaint that can be referred to the ODF. Only serving or former members of the Defence Forces can refer a complaint to the ODF. Serving members may choose between initially utilising the internal Defence Forces investigation process (Section 114 of the Defence Act 1956, as amended) before, later, if unsatisfied with the outcome of that internal process, referring the complaint to the ODF, or alternatively, directly referring the complaint to the ODF.

Former members of the Defence Forces must directly refer their complaint to the ODF.

Alleged penalisation following submission of a Protected Disclosure by a member of the Defence Forces can also be investigated by the ODF, following the enactment of the Protected Disclosures Act 2014, Section 20.

Who receives the ODF's Report?

8. The primary recipients of an investigation Report from the ODF are the complainant and the Minister for Defence. The Chief of Staff and the complainant's GOC also receive a copy, as does the GMO. Otherwise a Report is confidential.

Appeal

9. There is no appeal process available to a complainant from a Report issued by the ODF.
10. In practice, however the ODF will review his Report, and will amend or alter it when appropriate or upon receipt of a written submission from a complainant or another interested party. This occasionally occurs where, subsequent to the issue of the Report, new information is provided to the ODF, or because of errors or mistakes in the Report.



2

Highlights of 2022

54 Notifications of Complaint

were received in 2022. This was a 49% decrease on the 106 notifications received in 2021.

A Notification of Complaint is generated at the time the complaint is initially submitted to the Defence Forces and a copy is forwarded to the ODF. A full investigation by the ODF will only commence if the complaint is not resolved (or withdrawn) in the course of the Defence Forces Internal Investigation process. The great majority of Notifications of Complaint therefore do not require investigation by the ODF.

Of the 54 Notifications of Complaint received,

49

were in respect of Privates and NCOs and

5

were in respect of Officers.

11 Direct Referrals

were made to the ODF for Investigation. Direct Referrals can come from Serving Members and Retired Members. Serving Members can make a Direct Referral if they, for various reasons, do not wish to, or cannot, go through the Defence Forces Internal Investigation process. Retired Members can only make Direct Referrals to the ODF for investigation. Of the 11 Direct Referrals made to the ODF, 9 were from Retired Members and 2 were from Serving Members.

19 new cases

were referred to ODF for full investigation in 2022. This is a 44% decrease on the 34 new cases referred to ODF in 2021. The first four months of 2023, however shows a significant increase in referrals.

A total of 28 cases,

including pre 2022 referrals, were under review by the ODF during 2022.

25 Reports

were issued in 2022.

This represents a

30% decrease

(from the 36 Reports issued in 2021) in the number of cases concluded by the ODF in 2022 compared to the previous year. In the first four months of 2023

19 completed Reports

have been issued, indicating that the full number of completed investigations in 2023 will significantly outnumber the figure for 2022 and very likely the figure for 2021.

3 Analysis of Complaints & Referrals - 2022

New Notifications of Complaint received in 2022

54 new Notifications of Complaint were received by my Office from the Defence Forces during 2022. This is a 49% decrease on the 106 complaints notified to my Office in 2021. Of those complaints, 49 were from serving other ranks personnel while 5 were from serving commissioned officers.

Of the Notifications of Complaint received during 2022, some 6 were withdrawn or resolved during the year, and 4 were referred to the ODF for investigation.

There were also numerous and usually daily 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.

Referrals received from pre 2022 Notifications of Complaint

9 referrals from pre 2022 Notifications of Complaint were received in this office all these referrals were fully investigated and resulted in a Final Report being produced.

Direct Referrals to ODF

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

In 2022, 11 Direct Referrals were referred directly to this Office by serving and former members. 2 of those complaints were referred by Serving Members and 9 were referred by Former Members.

Cases reviewed by ODF in 2022

The total number of cases under review by this Office during 2022 was 28. Of these, some 25 cases were brought to a final conclusion during 2022 and 3 cases remained under review on 31 December 2022, and were carried forward for consideration into 2023.

Details of Complaints investigated by ODF in 2022

The following tables set out the nature of complaints considered by this Office during 2022, together with details of complaints by military formation. It should be noted that complaints categorized as 'Maladministration' cover a variety of issues including complaints in respect of performance appraisal and issues related to discharge among others. Complaints categorized as 'Interpersonal Issues' include those where there appear to be elements of personality conflict and/or allegations of inappropriate behaviour or bullying.



Total cases

The following table outlines the progression of the 28 cases during 2022 –

Preliminary Investigation Ongoing	Cases Concluded and Final Report Issued	Preliminary Reports Issued
3	25	0

Cases by Military Formation

Of the 28 cases investigated, 25 of them concluded during the course of the year, and 3 cases were carried forward into 2023.

The following table outlines the number of cases arising in each Military Formation and those received from Retired Members.

1 Brigade	2 Brigade	Defence Forces HQ	Defence Forces Training Centre	Air Corps	Naval Service	Retired Members	Total
1	10	0	2	6	0	9	28

Nature of Cases

The nature of the cases on hand with the ODF during 2022 can be broken down into the following broad categories –

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Total
13	5	2	8	28

Details of Cases by Formation

The following tables set out the nature of cases on hand during 2022 by individual Military Formations –

1 Brigade – (1)

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

2 Brigade – (10)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
6	1	1	2	Nil

Defence Forces Training Centre – (2)

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

Air Corps – (6)

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

Retired Members – (9)

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

Complaints Investigated and Reported on by ODF in 2022

Complaint Upheld or partially upheld by ODF**	Complaint Not Upheld by ODF *
11	14

* Includes complaints outside ODF's terms of reference.

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

ODF's Recommendations to the Minister in 2022

Minister Accepts	Minister Does Not Accept
4*	Nil

*Includes reports issued during 2021 which were considered by the Minister in 2022

Recommendations made by the ODF in 2022

NUMBER OF RECOMMENDATIONS (pursuant to Section 7(3) of the 2004 Act) in Reports finalized in 2022: 18

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



Of the 54 Notifications of Complaint received, 49 were in respect of Privates and NCOs and 5 were in respect of Officers.





11 Direct Referrals were made to the ODF for Investigation. Direct Referrals can come from Serving Members and Retired Members.

5 Case Summaries

The following case summaries set out details of some of the cases investigated by the Ombudsman for the Defence Forces during 2022. For reasons of confidentiality names of complainants and other information which might assist in their identification are withheld. In some instances, and for the same reason, some factual information has been changed.

Case Summary 1

DRIVING TESTER COURSE – complainant removed from course before completion following allegation of AWOL – allegation that another course student treated more favourably – allegation that a text sent by complainant was inappropriate. Complaint mostly upheld.

The complainant alleged that he was wrongfully suspended from a Driving Tester Course for being Absent Without Leave (AWOL), disobeying a lawful order and for sending an “intimidating” text message to a senior colleague.

The complainant was also critical of the manner in which an investigation was conducted by a senior officer, and the fact that a Report on that investigation was forwarded to his GOC without any opportunity for him to see it, or respond to it, and in the absence of an interview with him by the investigating officer.

The complainant was also advised that formal charges were being processed, but none were in fact processed eight months later.

The AWOL issue related to, in effect, one afternoon out of an (approximately) three-week course. The complainant had originally formally sought annual leave for a 2-day period to facilitate an important family event, and had understood this to have been granted. His completed AF 118 leave document was subsequently altered – the complainant insisted this was done without his knowledge – to, in effect, one and a half days’ leave. It was accepted that the leave document was subsequently altered (from 2 days leave to 1.5 days leave) but in circumstances where the altered period was not made known to the complainant. Unaware that his leave period had, in effect, been reduced, the complainant did not return to the course until 2 full days leave had expired. He was marked AWOL for the second afternoon. The

complainant found it remarkable that he was not contacted during the period of the second afternoon when his superiors believed he ought to have returned to the course, but which he understood himself to be still on leave, to check why he was absent. They had his mobile phone number. Because of his absence for half a day the complainant was removed from the course.

The (then) COS ruled that the complainant’s removal from the course was justified because he had failed to honour his leave conditions.

The “intimidating” text message to a senior colleague was suggested as having been intended “to initiate an in-person confrontation the following morning. Its content related to a request to check certain officially recorded information about the complainant’s leave application. It was also alleged that the text had been sent to the senior colleague at an inappropriately late hour (i.e., 9:40pm).

The ODF upheld the complaint. His conclusions included the following: -

1. (Noting that there was a conflict in evidence as to the actual period of leave sought and granted to the complainant):

While it is not possible to resolve this conflict of evidence with any degree of certainty, it is improbable that an experienced and long serving NCO, as the complainant was, and is, would

knowingly and intentionally absent himself without leave from work, and more specifically in circumstances where his unauthorised absence would be easily and immediately detected, having regard to the potential penalties for so doing, including the risk to his completing the course which was of significant importance for his career.

2. On (a particular date), according to his Training Diary, the complainant was stated to have *“passed his written test and may now proceed onto the practical driving assessment.”*

This entry would suggest that the fact that he had missed 4.5 hrs of practice testing on the previous day was not then considered a major hurdle to his continued participation in the course. In any event, the complainant’s reduced driving training, had it been of great significance would itself have been put to the test in the scheduled mandatory assessment.

3. The Training Diary entry for (a particular date) (co-signed by (a named officer) and (a named officer)) stated that the complainant was being suspended from the course *“pending the outcome of an investigation into his absence on (a particular date)”*. The Report of that Investigation was completed on the same date (a particular date) and immediately forwarded to GOC DFTC. However, the complainant is certain that he was never interviewed as part of that Investigation, nor did he receive a copy of the completed Investigation Report, nor was he afforded an opportunity to respond to what were, in reality, seriously adverse findings I am satisfied therefore that this Investigation was not comprehensive and fair in those circumstances. A proper Investigation required, as a minimum, and in the interests of natural justice, a one-to-one interview with the complainant, the subject of that Investigation, particularly having regard to the potentially serious outcome for the complainant, and the provision to him of the report, and its findings and, finally, an opportunity afforded to the complainant to respond thereto in writing.
4. The complainant was advised by his superiors within a short time after the events of (a particular date) that he was to face charges. (Unspecified, but presumably related to being AWOL). As

recently as (a particular date) it is stated (in the Ruling of the COS) that these charges were being “processed”. At this remove, (some 8 months after the events), the charges have not yet been preferred against the complainant. For a member of the DF, facing or awaiting charges which have been indicated to him are definitely coming down the line, and with continuing and repeated assurances that the charges are being processed, is stressful and worrying, because of the potential penalties involved, and the potential adverse effect on the individual’s career and career record. It was wrong that the complainant has had to wait for an unduly lengthy period, (and continues to await), a determination of these charges.

5. The ODF did not accept that the complainant’s text to (a named senior NCO) was inappropriate in its tone, or content, or that it was intimidating. The complainant, along with other students on the course, had been advised on the first day of the course that this person was the senior NCO in charge of the course, and that relevant issues should be raised with him. The ODF did not accept that sending the text to this individual at 9:40pm was unduly late, albeit, outside normal office hours.

The ODF Recommended that the complainant *“be facilitated, as soon as practically possible, with an opportunity to enrol in another Driving Testers Course, and that he be afforded credit for those modules of the course already completed by him.”*



Case Summary 2

Multiple complaints from recently discharged soldier with lengthy service record – Many of them upheld by ODF.

This complainant submitted multiple complaints, numbering 23 in total. A number of them were inter-related.

The Defence Forces' internal investigation of these complaints resulted in a 76 page Report which was comprehensive and clearly involved a great deal of work on the part of the appointed Military Investigating Officer (MIO).

The MIO however rejected all 23 complaints.

The complaints covered many topics, including defamation, discharge from the DF, the alleged bias of a senior medical officer, sick leave, the mandatory wearing of a face mask and the content of AF 667bs.

The ODF upheld many of the main complaints submitted by the complainant. He summarized his conclusions in the following terms: -

- (i) This investigation has proved to be lengthy and complex. Significant additional information was necessarily sought, and provided, by the complainant, (a named officer), (a named officer) and (a named medical officer) and for which I am grateful.
- (ii) I am satisfied that the complainant was wronged in relation to a number of issues, including:
 - The delay in granting him sick leave following its recommendation by a MO (Medical Officer), because of an insistence that the complainant physically attend before his superiors for the purpose of sick leave being granted, when such physical presence was not absolutely necessary for that purpose.
 - The primary purpose of parading the complainant was not to grant sick leave, but rather to advise the complainant of a pending Medical Board referral. The Option of contacting the complainant by telephone, because of COVID-19 concerns, as advised and suggested by (a named officer) was not adopted.

- Marking the complainant AWOL was, in the circumstances, inappropriate and unfair. It is clear that its true purpose was to pressure the complainant to physically attend before his superiors for the purpose of notification of the referral to a Medical Board. As a consequence of being marked AWOL the complainant's pay was stopped for a period of time and he was forced to borrow money from relatives in order to provide for his family.
- The decision to press serious charges on the complainant's first day back to work on a phased basis and for light duties, was unnecessary and unfair, both in the light of the email from (a named medical officer) to (named officer) on (a particular date), and the view expressed by (a named senior NCO) in his email of (a particular date) to (a named medical officer).
- The failure to provide the complainant with the opportunity to read, and respond on the record to, adverse/negative commentary by senior officers on his AF 667s, especially in circumstances where it was known that such commentary would, in all probability, adversely reflect on him in the context of decisions to be made in relation to his continued service in the DF was unfair.
- The inappropriate erection of a notice and photograph in the (particular location), and which clearly identified the complainant, thereby understandably humiliating him was wrong.
- While, undoubtedly, a number of the individual decisions taken in relation to the complainant were in compliance with Regulations, Admin Instructions and with established practice, and while also acknowledging the fact that the

issues concerning the complainant presented his superiors with significant management difficulties from a HR perspective, the overall impression from the evidence available is that the complainant, with over 20 years of loyal and distinguished service in the DF to his credit, and who had attained a senior NCO position, ought to have been dealt with with greater consideration and compassion, particularly having regard to his health difficulties throughout 2019 and 2020. Of particular concern was the manner in which the complainant was marked AWOL with consequential loss of income, the unnecessary haste to press serious charges against him, the failure to permit him record a response to the very negative Reports in AF 667s, and the insensitive posting of his photograph and personal details on (a particular location). I am satisfied that, while the detail of those health issues were known only to the DF medical staff and had not been inappropriately divulged to any third party, nor had they been inappropriately sought by any third party, it was widely known within the complainant's unit that during this period he suffered from, and was being treated for, particular health problems.



Case Summary 3

Delayed Promotion Air Corps – Loss of earnings and pension, loss of seniority. Jurisdiction issue for the ODF. – Complaint not upheld.

Two junior officers separately complained that they should have been promoted approx. 9 months prior to lodging their complaint. There were adverse consequences for their pay, pension and promotion because of the failure to promote them.

The appointed MIO found that the (then) DCOS Sp had signed the necessary promotion instrument at the appropriate time, and had forwarded it to the Department of Defence in the usual way. GOC AC stated, in his Report dated 12 November 2021: -

“The paperwork is still currently with Department of Defence for consideration. Military Conciliation and Arbitration Branch, along with staff of J1 through ACHQ, have been in constant contact with Department of Defence on this matter and I am hopeful that the situation will be brought to a satisfactory conclusion in the near future.”

The ODF concluded that as the power to promote was reserved to the Minister for Defence, and because the provisions of the Ombudsman (Defence Forces) Act 2004 did not permit him to investigate or review the Minister’s decision to delay, or defer, a promotion, or a decision not to promote, as the case may be.

The ODF stated the following in his Report: -

- Decisions to promote personnel within the DF are reserved to the Minister for Defence. My jurisdiction, as Ombudsman for the Defence Forces, is governed by the provisions of the Ombudsman (Defence Forces) Act 2004, and, in particular, (in the context of these complaints), Section 6(1) and (2) of that Act, which state: -
 “(1) A serving member of the Defence Forces may, subject to this Act, make a complaint to the Ombudsman concerning an action if it has affected that member and was taken by or on behalf of—

- (a) another serving member of the Defence Forces,
- (b) a former member of the Defence Forces while he or she was a serving member of the Defence Forces, or
- (c) a civil servant.”

(Subsection (2) is similar, but relates to former members of the DF).

- The DF has sought the promotion of the complainants, and it would appear that the necessary documentation in support of that request has been submitted to the Department of Defence since last year. The DF is therefore not responsible for the delay in the promotion of the complainants.
- The letter from the Department’s Assistant Secretary dated 4 March 2022 suggests that the process necessary to implement the promotions is underway, and is at an advanced stage. It is to be hoped that the promotion of both complainants will be effected without delay, and that sympathetic consideration will be given to backdating them to 23 March 2021.

Subsequently, the ODF was advised by the Minister that the complainants were promoted, and their promotion was appropriately backdated.

While the complaints in these cases were not upheld by the ODF there was, ultimately, a satisfactory outcome for both complainants.

Case Summary 4

Retired Sgt – Living Abroad – difficulty in completing twice yearly Pensions Declaration Form.
– Complaint upheld.

The retired Defence Forces' member lives in Spain. He is required to complete a Pension Declaration Form twice a year, for the Department of Defence, to ensure continued payment of his pension. The Pensions Declaration Form is required to be signed in presence of an individual who holds a specific office or qualification (e.g.: doctor, police officer, magistrate, lawyer, notary etc.), and who is based in the foreign country, in this case Spain.

The Pensions Declaration Form was only available in English or Irish. A serious practical problem arose for the complainant because the individuals qualified to witness and sign the Pensions Declaration Form in his locality in Spain insisted that, in future, the form must be in Spanish, otherwise it would not be witnessed.

The Irish authorities were unaware of similar difficulties with many other Irish pensioners living in Spain, and in other foreign countries, but pointed to the fact that providing the form in either English or Irish had been the established practice for many years. The complainant had requested that the form be provided in Spanish, but without success.

The ODF was satisfied he had jurisdiction to investigate this complaint under Sections 6 (2) (c), 6 (3) (b) and 4 (2) (a) and (b) (v) and (viii) of the Ombudsman (Defence Forces) Act 2004.



The ODF found in favour of the complainant. He concluded, as follows:

- It was understandable, and foreseeable, that Spanish citizens and officials would decline to witness and sign an English version of the Pensions Declaration Form, unless fluent in English. Additionally Subsection 5(2) of the Appropriation Act 1962 creates a criminal offence for making a declaration which is known to be untrue. The Spanish individuals were understandably reluctant to lend their signature to a document in a language in which they lacked proficiency.
- Ireland is a member of the EU, as is Spain. The EU has 24 'official' languages, inclusive of English, Irish and Spanish. The EU country (other than Ireland) with the largest number of resident Irish pensioners is Spain, and it was likely also to be the country in the non-English speaking world with most resident Irish pensioners.

- The ODF considered that the complainant's request for a Pensions Declaration Form in Spanish, accompanied by a translation in English, be provided to him was a reasonable request, notwithstanding the practical and cost implications involved for the Department. However, such practical and cost implications will likely be one off issues and are therefore unlikely to be significant.

The ODF recommended that the Department's Pension Section provide a Pensions Declaration Form in Spanish to pensioners living in Spain, when so requested, and, also, that the form be made available in any other of the 24 EU 'Official' languages (including English and Irish), when so requested.

This complaint was upheld by the ODF.





19 new cases were referred to ODF for full investigation in 2022. This is a 44% decrease on the 34 new cases referred to ODF in 2021.





Case Summary 5

Promotion – Direct Referral by serving DF Member to ODF – Not promoted due to Non-Recommendation of COS – Charges pending – Compliant not upheld

Complainant claimed that his promotion was prevented when COS declined to recommend him “at this time” because of charges relating to alleged offences (all of which were rigorously denied by the complainant) remained outstanding and had yet to be resolved.

Issue as to the authority of the COS to decline to recommend for promotion, and the provisions of Defence Forces Regulation A.15.

In the COS’s communication to the complainant informing him of his decision (not to recommend his promotion), the COS made it clear that this was his decision “at this time”, and that “this certification will be subject to review on determination of the relevant authority into these charges”.

It had been suggested to the COS on behalf of the complainant that the decision not to recommend the promotion suggested “a bias or prejudice” against him, and that it constituted a denial of the “Constitutional presumption of innocence.”

The COS had emphasised that his decision was prompted by his consideration that the complainant “was the subject of a charge sheet”, “arising from not insignificant matters”, and that the decision “was temporal” pending the determination of the charges.

The ODF found as follows: -

- The COS was entitled to consider that the complainant was not “fitted to fill an appointment” to the rank of Comdt in circumstances where the complainant was facing a determination of serious criminal charges in the foreseeable future, and particularly where they had arisen in the interregnum between the decision of the Promotion Board deeming the complainant suitable for promotion, and the promotion vacancy actually occurring. The position might, arguably, be different if the charges were very minor in nature, or if there was serious delay in their prosecution, but neither was the case here.
- If it transpires that either the charges are dropped, or following a trial, are dismissed, the complainant can again seek the recommendation of the COS for his promotion. The COS stated clearly that his current “non-certification was “temporal and would of course be subject to review on determination of the relevant authority into those charges”. It would be open to the complainant in those circumstances to request a backdating of his promotion, and it will be a matter for the Minister to consider the merits of such an application.

The complaint in this case was not upheld by the ODF.

Case Summary 6

Delay/Failure to provide DF Retiree with his Discharge book since discharge – complaint upheld.

Complaint that Discharge Book had not been provided to the complainant within period of excess of one year from his date of discharge.

ODF advised by the Department as of 17 November 2022 (14 months after discharge) that Discharge Book was forwarded to complainant on that date.

ODF found no evidence that Discharge Book had been deliberately or intentionally withheld because

complainant had made other complaints, or because he had previously submitted a Protected Disclosure.

The ODF concluded that the delayed non-delivery of the Discharge Book constituted a wrong. He commented “Greater efficiency in its delivery to the complainant was his entitlement, and it is appropriate that this wrong has been rectified albeit belatedly.”

This complaint was upheld by the ODF.



4 Corporate Affairs

Staffing

The staffing of the ODF consists of:

- Brian O'Neill, Head of Office.
- Lorraine O'Dwyer, Case Manager.
- John Sheridan, Executive Office.

Review of Internal Financial Controls

In common with other publicly-funded Offices, the ODF conducted a formal review of Internal Financial Controls in 2022. 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



A total of 28 cases,
including pre
2022 referrals, were
under review by
the ODF during
2022.

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

Bar Council of Ireland

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

Health & Safety

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

Freedom of Information

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

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

What records can I ask for under FOI?

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

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

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



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

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

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

- (a) the preliminary examination or the investigation concerned,
- (b) the making, in accordance with this Act, of any statement, report or notification on that preliminary examination or that investigation, or
- (c) proceedings for an offence under the Official Secrets Act 1963 that is alleged to have been committed in respect of

information or a document, part of a document or thing obtained by the Ombudsman or an investigation officer by virtue of this Act.”

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



4 OMBUDSMAN (DEFENCE FORCES) ACT 2004

Number 36 of 2004

OMBUDSMAN (DEFENCE FORCES) ACT 2004

ARRANGEMENT OF SECTIONS

Section

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

[No. 36.] Ombudsman (Defence Forces) Act 2004 [2004.]

Acts Referred to

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

Number 36 of 2004

OMBUDSMAN (DEFENCE FORCES) ACT 2004

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

[10th November, 2004]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

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

“Act of 1954” means the Defence Act 1954;

“Act of 1980” means the Ombudsman Act 1980;

“action” means—

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

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

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

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

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

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

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

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

“military operation” means—

- (a) active service within the meaning of section 5 of the Act of 1954,
- (b) active service as provided for in section 4(1) of the Defence (Amendment) (No. 2) Act 1960,
- (c) operational duties at sea, or
- (d) the provision of aid to the civil power;

“Minister” means the Minister for Defence;

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

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

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

(2) In this Act—

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

2.—(1) There is established the office of Ombudsman for the Defence Forces and the holder of the office shall be known as the Ombudsman for the Defence Forces.

- (2) The appointment of a person to be the Ombudsman for the Defence Forces shall be made by the President on the recommendation of the Government.

- (3) Subject to this Act, a person appointed under

subsection (2) shall hold office on such terms and conditions as the Minister may, with the consent of the Minister for Finance, determine.

- (4) A person appointed to be the Ombudsman—
 - (a) may at his or her own request be relieved of office by the President,
 - (b) may be removed from office by the President but shall not S.2 be removed from office except for stated misbehaviour, incapacity or bankruptcy where there is a recommendation for removal by the Government, and
 - (c) shall, where subsection (8) applies, vacate the office on attaining the prescribed age.
- (5) Subject to this section, a person appointed to be the Ombudsman shall hold office for such term as may be specified in the instrument of appointment which term shall not exceed 7 years and such person may be eligible for re-appointment to the office for a second or subsequent term.

- (6) If the person holding the office of the Ombudsman is—
 - (a) nominated as a member of Seanad Éireann, or
 - (b) elected as a member of either House of the Oireachtas or to the European Parliament, or
 - (c) regarded, pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997, as having being elected to the European Parliament, or
 - (d) becomes a member of a local authority, that person shall thereupon cease to hold the office of Ombudsman.
- (7) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein, or who is a member of the European Parliament or a local authority shall, while he or she is so entitled or is such a member, be disqualified from holding the office of Ombudsman.
- (8) In respect of any person who is not a new



entrant (within the meaning of the Public Service Superannuation (Miscellaneous Provisions) Act 2004) the Minister may, with the consent of the Minister for Finance, prescribe the age at which such a person shall vacate office pursuant to *subsection (4) (c)*.

- (9) A person who holds the office of Ombudsman shall not be a member of the Defence Forces or a civil servant.

3.—(1) There shall be paid to the holder of the office of Ombudsman such remuneration and allowances for expenses as the Minister, with the consent of the Minister for Finance, may from time to time determine.

- (2) The Minister may, with the consent of the Minister for Finance, make and carry out, in accordance with its terms, a scheme or schemes for the granting of superannuation benefits to or in respect of persons who have held the office of Ombudsman as he or she thinks fit.

- (3) A scheme referred to in *subsection (2)* shall fix the time and conditions of retirement for persons in respect of whom superannuation benefits are payable under the scheme, and different times and conditions may be fixed in respect of different classes of persons.

- (4) The Minister may at any time, with the consent of the Minister for Finance, make and carry out a scheme or schemes amending or revoking a scheme under this section.

- (5) No superannuation benefit shall be granted by the Minister nor shall any other arrangement be entered into by the Minister for the provision of such a benefit to or in respect of the person who holds the office of Ombudsman otherwise than in accordance with a scheme under this section or, if the Minister, with the consent of the Minister for Finance, sanctions the granting of such a benefit in accordance with that sanction.

- (6) A scheme under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly

but without prejudice to the validity of anything previously done thereunder.

- (7) Where a dispute arises as to the claim of any person to, or to the amount of, any superannuation benefit in pursuance of a scheme or schemes under this section, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance, whose decision shall be final.

- (8) In this section, “superannuation benefit” means a pension, gratuity or other allowance payable on resignation, retirement or death.

4.—(1) The Ombudsman shall be independent in the performance of his or her functions, and shall at all times have due regard to the operational requirements of the Defence Forces.

- (2) Subject to this Act, the Ombudsman may investigate any action that is the subject of a complaint made by a person affected by the action if, having carried out a preliminary examination of the matter, it appears to the Ombudsman that—

- (a) the action has or may have adversely affected the complainant,
- (b) the action was or may have been—
 - (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.

- (3) The Ombudsman may—



- (a) decide not to carry out an investigation under this Act into an action that is the subject of a complaint, or
- (b) discontinue an investigation under this Act into an action that is the subject of a complaint, if he or she is of the opinion that—
 - (i) the complaint is trivial or vexatious,
 - (ii) the complainant has an insufficient interest in the matter,
 - (iii) satisfactory measures to remedy, mitigate or alter the adverse effect of the action on the complainant have been taken or are proposed to be taken, or
 - (iv) the complainant has not taken reasonable steps to seek redress in respect of the subject matter of the complaint or, if the complainant has taken such steps, he or she has not been refused redress.
- (4) It shall not be necessary for the Ombudsman to investigate an action under this Act if he or she is of the opinion that the subject matter concerned has been, is being or will be investigated in a similar manner under another investigation by the Ombudsman under this Act.
- (5) A preliminary examination or an investigation by the Ombudsman shall not affect the validity of the action investigated or any power or duty of the person who took the action to take further action with respect to any matters the subject of the preliminary examination or investigation.
- (6) In determining whether to initiate, continue or discontinue an investigation under this Act, the Ombudsman shall, subject to the provisions of this Act, act in accordance with his or her own discretion.
- (7) A member of the Defence Forces—
 - (a) who makes a complaint to the Ombudsman concerning an action taken by or on behalf of a civil servant shall not, subsequently, make a complaint about the same matter to the Ombudsman appointed under the Act of 1980, or
 - (b) who makes a complaint to the Ombudsman appointed under the Act of 1980 in relation to an action taken by or on behalf of a civil servant shall not, subsequently, make a complaint about the same matter to the Ombudsman.



25 Reports were issued in 2022. This represents a 30% decrease in the number of cases concluded by the ODF in 2022 compared to the previous year.

- (8) Nothing in *subsection (2)(a)* or *section 6* shall be construed as prohibiting the investigation by the Ombudsman of—
 - (a) an action that is the subject of a complaint by a complainant which, in the opinion of the Ombudsman, has or may have affected the complainant other than in an official capacity, or
 - (b) an action that is the subject of a complaint by a complainant which was carried out, or may have been carried out, by a person acting other than in an official capacity .
- (9) The Ombudsman shall furnish to the Minister such information regarding the performance of his or her functions as the Minister may from time to time request.

5.—(1) The Ombudsman shall not investigate any complaint concerning an action referred to in *section 6(1)* or *6(2)*—

- (a) if the action is one in relation to which—
 - (i) the complainant has initiated legal proceedings in any civil court and the proceedings have not been dismissed for failure to disclose a cause of action or a complaint justiciable by that court whether the proceedings have been otherwise concluded or have not been concluded, or
 - (ii) the complainant has a right, conferred by or under statute, of appeal, reference or review to or before a court in the State (not being an appeal, reference or review in relation to a decision of a court),
- (b) if the action has been or is the subject of an investigation under section 179 of the Act of 1954 or by a service tribunal and is not an action concerning delay or any other matter concerning the administration of such investigations,
- (c) if the Ombudsman is satisfied that the action relates to or affects security or a military operation,
- (d) if the action concerns—
 - (i) any matter relating to the terms or conditions of employment in the Defence Forces, including any matter relating

- to the negotiation and determination of the rates of remuneration or allowances, which is within the scope of a conciliation and arbitration scheme referred to in section 2(6) of the Defence (Amendment) Act 1990, or
 - (ii) any matter concerning the organisation, structure and deployment of the Defence Forces,
- (e) if the action is one—
- (i) involving the exercise of the right or power referred to in Article 13.6 of the Constitution or the remission of any forfeiture or disqualification imposed by a subordinate officer pursuant to section 179 of the Act of 1954 by a service tribunal or by the Courts Martial Appeal Court, or
 - (ii) that concerns the administration of military prisons or places of detention for the custody of members of the Defence Forces committed to custody by a service tribunal or otherwise,
- (f) if the complaint concerned has not been made within the period specified in *section 6(3)*, or
- (g) if the action is taken before the commencement of this Act.
- (2) Where for security reasons, the Minister so requests in writing (and attaches to the request a statement in writing setting out in full the reasons for the request), the Ombudsman shall not investigate, or shall cease to investigate, an action specified in the request.
 - (3) Where the Ombudsman receives a request under *subsection (2)*, he or she may apply to the High Court for a declaration that the matter concerned is not of such gravity to warrant such request.
 - (4) If the High Court is satisfied that it is appropriate to do so it shall make the declaration and the Minister shall withdraw such request.
- 6.—(1) A serving member of the Defence Forces may, subject to this Act, make a complaint to the Ombudsman concerning an action if it has affected that member and was taken by or on behalf of—
- (a) another serving member of the Defence Forces,
 - (b) a former member of the Defence Forces

while he or she was a serving member of the Defence Forces, or

(c) a civil servant.

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

(a) a serving member of the Defence Forces,

(b) a former member of the Defence Forces while he or she was a serving member of the Defence Forces, or

(c) a civil servant.

(3) A complainant shall make a complaint referred to in subsections (1) and (2) not later than 12 months from—

(a) the date of the action concerned, or

(b) the date on which the complainant became aware of the action, whichever is the later.

7.—(1) Where, following the making of a complaint, the Ombudsman decides not to carry

out an investigation or to discontinue an investigation, he or she shall notify the complainant and any person concerned with the complaint, stating the reasons, in writing, for the decision.

(2) Where the Ombudsman conducts an investigation under this Act into an action that is the subject of a complaint, he or she shall send a statement in writing of the results of the investigation to—

(a) the Minister and to all persons concerned with the complaint, and

(b) any other person to whom he or she considers it appropriate to send the statement.

(3) Where, following an investigation under this Act into an action that is the subject of a complaint, it appears to the Ombudsman that the action adversely affected the complainant and is an action falling within subparagraphs (i) to (viii) of section 4(2)(b) he or she may recommend to the Minister—

(a) that the action be further considered,



- (b) that measures or specified measures be taken to remedy, mitigate or alter the adverse effect of the action, or
- (c) that the reasons for taking the action be given to the Ombudsman, and, if the Ombudsman thinks fit to do so, he or she may request the Minister to notify him or her within a specified time of a response to the recommendation.
- (4) Where the Ombudsman carries out an investigation under this Act into an action that is the subject of a complaint he or she shall notify the complainant of the result of the investigation, the recommendation (if any) made under *subsection (3)* and the response (if any) made by the Minister.
- (5) Where it appears to the Ombudsman that the measures taken or proposed to be taken in response to a recommendation under *subsection (3)* are not satisfactory, the Ombudsman may, if he or she so thinks fit cause a special report on the case to be included in a report under *subsection (7)*.
- (6) The Ombudsman shall not make a finding or criticism adverse to a person under this section without having provided that person with an opportunity to consider, and make representations in respect of, the finding or criticism to the Ombudsman.
- (7) The Ombudsman shall, as soon as may be, but not later than 4 months after the end of each year, cause a report on the performance of his or her functions under the Act to be laid before each House of the Oireachtas and may from time to time cause to be laid before each such House such other reports with respect to those functions as he or she thinks fit.
- (8) An annual report referred to in *subsection (7)* shall be in such form and regarding such matters as the Ombudsman thinks fit or the Minister may direct.
- (9) For the purposes of the law of defamation, any such publication as is hereinafter mentioned shall be absolutely privileged, that is to say—
 - (a) the publication of any matter by the Ombudsman in making a report to either House of the Oireachtas for the

purpose of this Act, and

- (b) the publication by the Ombudsman—
 - (i) to a person mentioned in *subsection (1)* of a notification sent to that person in accordance with that subsection,
 - (ii) to a person mentioned in *subsection (2)* of a statement sent to that person in accordance with that subsection,
 - (iii) to the Minister of a recommendation made to the S.7 Minister by the Ombudsman in accordance with *subsection (3)*, and
 - (iv) to the complainant of a notification given to the complainant by the Ombudsman under *subsection (4)*.

8.—(1) (a) Subject to paragraphs (b) and (c), the Ombudsman may, for the purposes of a preliminary examination or an investigation under this Act require any person who, in his or her opinion, is in possession of information, or has a document, part of a document or thing in his or her power or control, that is relevant to the preliminary examination or investigation to furnish that information, document, part of a document or thing to the Ombudsman and, where appropriate, may require that person to attend before him or her for that purpose and the person shall comply with the requirements.

- (b) *Paragraph (a)* shall not apply to information, a document, part of a document or thing that relates to decisions and proceedings of the Government or of any committee of the Government and for the purposes of this paragraph a certificate given by the Secretary General to the Government certifying that any information, document, part of a document or thing so relates shall be conclusive.
- (c) *Paragraph (a)* shall not apply to information, a document, part of a document or thing that concerns any matter relating to security or a military operation and for the purposes of this

paragraph a certificate given by the Minister, on the advice of the Chief of Staff, certifying that any information, document, part of a document or thing was so concerned shall be conclusive.

- (2) Subject to this Act, a person to whom a requirement is addressed under this section shall be entitled to the same immunities and privileges as if he or she were a witness before the High Court.
- (3) A person shall not by act or omission obstruct or hinder the Ombudsman in the performance of his or her functions or do any other thing which would, if the Ombudsman were a court having power to commit for contempt of court, be contempt of such court.
- (4) Any obligation to maintain secrecy or other restriction on the disclosure of information obtained by or furnished to a Department of State or civil servant imposed by the Official Secrets Act 1963 shall not apply to a preliminary examination or an investigation by the Ombudsman under this Act and, subject to section 10(3), the State shall not be entitled in relation to any such preliminary examination or investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.
- (5) The Ombudsman may, if he or she thinks fit pay to the person affected by an action in respect of which an investigation is held by the Ombudsman and to any other person who attends or furnishes information for the purposes of the investigation—
 - (a) sums in respect of travelling and subsistence expenses properly incurred by them, and
 - (b) allowances by way of compensation for loss of their time, of such amount as may, with the consent of the Minister for Finance, be prescribed by the Minister.
- (6) A statement or admission made by a person in a preliminary examination or an investigation under this Act shall not be admissible as evidence against that person in any criminal proceedings.
- (7) Nothing in *subsection (3)* shall be construed

as applying to the taking of any such action as is mentioned in section 4(5) of this Act.

- (8) In this section “Chief of Staff has the meaning assigned to it by the Act of 1954.

9.—(1) An investigation by the Ombudsman under this Act shall be conducted otherwise than in public.

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

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 S.10 *subsection (1)(c)*, of matters coming to his or her knowledge in the course of a preliminary examination or an investigation under this Act.
- (3) (a) The Minister may give notice in writing to the Ombudsman, with respect to any document, part of a document, information or thing specified in the notice, or any class of document, part of a document, information or thing so specified, that, in the opinion of the Minister, the disclosure (other than to the Ombudsman or a member of his or her staff including an investigation officer) of that document, that part of a document, that information or that thing or of documents, parts of a document, information or things of that class, would, for the reasons stated in the notice, be prejudicial to the public interest or to security.
- (b) Where a notice is given under this subsection, nothing in this Act shall be construed as authorising or requiring the Ombudsman to communicate to any person or for any purpose any document, part of a document, information or thing specified in the notice or any document, part of a document, information or thing of a class so specified.
- (4) Where a notice is given under *subsection (3)(a)*, the Ombudsman or a member of the staff of the Ombudsman (including an investigation officer) shall not disclose any—
- (a) document, part of a document, information or thing specified in the notice, or
 - (b) class of document, part of a document, information or thing specified in the notice,
- to any person or for any purpose and nothing in this Act shall be construed as authorising or requiring the Ombudsman or a member of the staff of the Ombudsman (including an investigation officer) to disclose to any person or for any purpose anything referred to in *paragraph (a)* or (b).
11. — (1) The Ombudsman shall, whenever required to do so by the Committee of Daíl Éireann established under the Standing Orders of Daíl Éireann to examine and report to Daíl Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to that Committee on—
- (a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General which the Ombudsman is required to prepare under this Act,
 - (b) the economy and efficiency of the Ombudsman in the use of resources,
 - (c) the systems, procedures and practices employed by the Ombudsman for the purpose of evaluating the effectiveness of the operation of the office of the Ombudsman, and
 - (d) any matter affecting the Ombudsman referred to in a special report of the Comptroller and Auditor General under section

11(2) of the Comptroller and Auditor General (Amendment) Act 1993 or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in *paragraph (a)*, (b) or (c)) that is laid before Da'il E'ireann.

- (2) In the performance of his or her duties under this section, the Ombudsman shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

12. — (1) In this section “committee” means a committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the committee referred to in section 11, the Committee on Members’ Interests of Da'il E'ireann or the Committee on Members’ Interests of Seanad E'ireann) or a subcommittee of such a committee.
- (2) Subject to *subsection (3)*, the Ombudsman shall, at the request in writing of a committee, attend before it to account for the general administration of the Office of the Ombudsman.
- (3) The Ombudsman shall not be required to account before a committee for any matter which is or has been or may at a future time be the subject of proceedings before a court or tribunal in the State.
- (4) Where the Ombudsman is of the opinion that a matter in respect of which he or she is requested to account before a committee is a matter to which *subsection (3)* applies, he or she shall inform the committee of that opinion and the reasons for the opinion and, unless the information is conveyed to the committee at a time when the Ombudsman is before it, the information shall be so conveyed in writing.
- (5) Where the Ombudsman has informed a committee of his or her opinion in accordance with *subsection (4)* and the committee does not withdraw the

request referred to in *subsection (2)* in so far as it related to a matter the subject of that opinion—

- (a) the Ombudsman may, not later than 21 days after being informed by the committee of its decision not to do so, apply to the High Court in a summary manner for a determination as to whether the matter is one to which *subsection (3)* applies, or
- (b) the chairperson of the committee may, on behalf of the committee, make such an application, and the High Court may determine the matter.
- (6) Pending the determination of an application under *subsection (5)*, the Ombudsman shall not attend before the committee to account for the matter the subject of the application.
- (7) Where the High Court determines that the matter concerned is one to which *subsection (3)* applies, the committee shall withdraw the request referred to in *subsection (2)*.
- (8) Where the High Court determines that *subsection (3)* does not apply, the Ombudsman shall attend before the committee to give account for the matter.
13. — Section 114 of the Act of 1954 is amended—
- (a) in *subsection (1)*, by the substitution of “Chief of Staff” for “Minister”,
- (b) in *subsection (2)*, by the deletion of “who, if so required by the man, shall report on the matter of complaint to the Minister”, and
- (c) by the insertion after *subsection (3)* of the following subsections:
- “(3A) The Chief of Staff shall cause every complaint seeking redress of wrongs under this section that is made in writing to be notified to the Minister and the Ombudsman for the Defence Forces as soon as practicable following the making of such complaint.
- (3B) Where the Ombudsman for the



In the first four months of 2023 19 completed Reports have been issued, indicating that the full number of completed investigations in 2023 will significantly outnumber the figure for 2022, and very likely the figure for 2021.





Alan Mahon - Ombudsman for the Defence Forces attending the 14th International Conference of Ombuds Institutions for the Armed Forces (ICOAF) held on 3-4 October 2022 in Oslo, Norway.

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

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

(a) specify a period or periods within

which such reports are to be submitted and complaints referred, and

(b) the form and content of such notifications reports and submissions.”.

- 14.— (1) The Minister may, with the consent of the Minister for Staff. Finance, appoint such and so many persons to be members of the staff of the Ombudsman as he or she may from time to time determine.
- (2) A member of the staff of the Ombudsman shall be a civil servant in the Civil Service of the State.
- (3) The appropriate authority, within the meaning of the Civil Service Commissioners Act 1956 and the Civil Service Regulation Acts 1956 to 1996 in relation to the staff of the Ombudsman shall be the Ombudsman.
- (4) The Ombudsman may delegate to any member of the staff of the Ombudsman

any function of the Ombudsman under this Act other than the functions referred to in sections 7(5), 7(7), 11 and 12.

- (5) In this section “civil servant in the Civil Service of the State” means a person holding a position in the Civil Service of the State.

- 15.— (1) The Ombudsman may appoint in writing, either generally or in respect of any matter or event, such and so many members of the staff of the Ombudsman to be investigation officers for the purposes of all or any of the provisions of this Act and a person so appointed shall be referred to as an “investigation officer”.
- (2) Every investigation officer appointed under this section shall be furnished with a warrant of appointment as an investigation office, and when exercising any power conferred on him or her by this section as an investigation office, shall, if requested by a person affected, produce the warrant or a copy of it to that person.
- (3) The Ombudsman may revoke an appointment made under *subsection (1)*.
- (4) An investigation officer may, for the purpose of obtaining any information which may be required in relation to the matter under investigation and in order to enable the Ombudsman to perform his or her functions under this Act, do any one or more of the following—
- (a) at all reasonable times enter any premises, including, subject to regulations under section 9(5), a military installation, in which there are reasonable grounds to believe that any activity in connection with a complaint is or has been carried on or that books, records or other documents in relation to a complaint are kept and search and inspect the premises and any books, records or other documents on the premises,
- (b) require a member of the Defence

Forces or any other person to produce to the investigation officer any records and in the case of information that is kept in a non-legible form to reproduce it in a legible form or to give to him or her such information as the investigation officer may reasonably require in relation to any entries in such records,

- (c) inspect and take copies of or extracts from any such records, file, papers or electronic information system in, at or on the place, including in the case of information in a non-legible form, copies of or extracts from such information in a permanent legible form,
- (d) require any person to give to the investigation officer any information which the officer may reasonably require in relation to a preliminary examination or an investigation under this Act,
- (e) require any person to give to the investigation officer such facilities and assistance within his or her control or responsibilities as are reasonably necessary to enable the investigation officer to exercise any of the powers conferred on him or her by or under this Act, and
- (f) summon, at any reasonable time, any person to give to the investigation officer any information which he or she may reasonably require and to produce to the investigation officer any records which are in the power or control of that person.

- 16.—(1) The Ombudsman shall keep in such form as may be approved by the Minister, with the consent of the Minister for Finance, all proper and usual accounts of moneys received or expended by him or her, including an income and expenditure account and a balance sheet and, in particular, shall keep all such special accounts as the

Minister may from time to time direct.

- (2) Accounts kept in pursuance of this section shall be submitted, not later than 3 months after the end of the financial year to which they relate, by the Ombudsman to the Comptroller and Auditor General for audit and, immediately after the audit, a copy of the income and expenditure account, the balance sheet and of any other accounts kept pursuant to this section as the Minister, after consultation with the Minister for Finance, may direct and a copy of the Comptroller and Auditor General's report on the accounts shall be presented to the Minister who shall cause copies thereof to be laid before each House of the Oireachtas.

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

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

19.—(1) This Act may be cited as the Ombudsman (Defence Forces) Act 2004.

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

Protected Disclosures (Amendment of 2004 Act)

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

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

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

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

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



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