



ODF

Ombudsman for
the Defence Forces
Annual Report 2024



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



Glossary of Terms and Abbreviations used in the Report

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



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, and also to adjudicate on complaints made directly by serving and former members of the Defence Forces, subject to certain conditions.

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

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

The Ombudsman may also investigate complaints of penalisation for having submitted a Protected Disclosure (Section 20, Protected Disclosures Act, 2014).

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.

1 Introduction:

Since the introduction of the facility for senior members of the Defence Forces to directly refer a complaint to my office for investigation, as an alternative to first engaging with the internal Defence Forces statutory complaint investigation process, often referred to as the Section 114/Chapter 2 process, there has been a steady and increasing year on year trend to directly refer complaints. This is easily done by using the Online Complaint Form on www.odf.ie. In 2024 approximately 80% of all complaints investigated by my office were directly referred complaints. (In 2023 the figure was 50%; in 2022 the figure was 30%, and in 2021 the figure was 7%).

Another interesting statistic for 2024 is the noticeable increase in complaints referred by Commissioned Officers, as a percentage of all complaints. In 2024, complaints referred from Commissioned Officers equated to approximately 40% of all complaints, compared to previous years where the percentages were well below 10%. For example, the relevant figure for 2023 was approximately 5%. A possible explanation is that officers may have been reluctant to use the internal Defence Forces statutory complaint process (Section 114/Chapter 2), the only option open to them until recently, because that process involves the appointment of a fellow officer as the Military Investigation Officer (MIO), to take charge of the investigation of the complaint.

The breakdown between the Army, Air Corps and Naval Service for complaints' investigations in 2024, was 55%, 34% and 8% respectively. The figures for 2023 were 42%, 44% and 6% respectively. (These figures exclude the very small number of Reserve and retiree complainants).

I upheld or partially upheld approximately 47% of complaints in 2024 (compared to 50% in 2023, 40% in 2023 and 30% in 2021).

In 2024, the majority of complaints received were concerned with promotion, course selection and assessment, leave issues, allowances and overseas issues, with just 2 complaints deemed inadmissible for reasons of jurisdiction. The jurisdiction issue in

relation to one of these was the fact that the 'action' complained of did not occur while the complainant was a member of the Defence Forces (Section 6(2) of the Ombudsman (Defence Forces) Act 2004). The jurisdiction issue in the other arose because the 'action' complained of occurred some 4 years prior to the referral of the complaint (Section 6(3) of the 2004 Act).

In 2024, there were only 3 of what might loosely be termed interpersonal type complaints, one of an allegedly offensive remark, one of alleged harassment and disrespect, and one of allegedly making false accusations. This relatively small number of "interpersonal" complaints (being approximately 9% of the total for the year) is broadly similar to the previous year, being 12% of the total. Figures in 2023 and 2022 were 25% and 10% respectively.

While the need to make even a single interpersonal type complaint is regrettable, and while I expect that many minor interpersonal type issues are resolved at local level, the fact that such complaints to my office are relatively few in number might suggest that there is, over the past couple of years, an increased awareness within the DF of the value in maintaining good working relationships with colleagues, and, particularly on the part of senior NCOs and Officers, coupled with a need to move quickly and effectively to resolve interpersonal difficulties where they do occur.

A review of the interpersonal complaint "Chapter 1" process was recommended in the IRG Report (published March 2023) to be the subject of "immediate reform". The IRG recommended that members of the DF should have "access to an independent, external, complaints service delivered by a professional provider for as long as it takes to put a trusted internal system in place". The establishment of a non-statutory process for interpersonal type complaints is, I understand, imminent, and this is to be welcomed.

This new process will not however interfere with the right of a member of the DF (or a retired member), to refer his or her complaint directly to my office.

I have often been asked if, in the course of my role as ODF over a number of years, I have noticed any particular, what might be described as, common denominators, in complaints. There is certainly one, namely, ‘communication’, or, more accurately, lack of communication. Examples of non-communication are to be found in a number of complaint investigations in any year. I use the term ‘non-communication’ to describe a failure on the part of senior DF personnel (both senior NCOs and Officers) to adequately communicate and/or engage with personnel when those personnel raise issues of concern, or make complaints. Based on my experience as ODF, greater care needs to be taken to provide the reasons for a particular decision that impacts an individual, such as a negative decision in relation to course selection, overseas selection, promotion (including to Acting roles), allowances, leave or other administrative matters. In a significant number of complaint investigations a failure to explain the basis for a

decision, or to give reasons for a decision, or to otherwise engage with the affected individual, was a major contributing factor behind the submission of the complaint.

Over the past 30 years or so the right of an employee to be informed of the detail and nature of decisions by their employers and which may negatively impact them has become the norm in most types of employment. However, in my experience, the evidence suggests that the culture, historically prevalent in all military settings, whereby decisions and orders were expected to be accepted and acted upon without question (and without an explanation or in the absence of engagement with those affected), continues to some degree in the Defence Forces.

I should like to express my appreciation to Brian O’Neill, the ODF’s Head of Office, who retired at the end of October 2024, following 12 years of loyal





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and dedicated service, having served under all ODFs to date. His passionate interest in all things military made his service to my office invaluable. I wish him many happy years of retirement.

Brian's successor as Head of Office is David O'Connor who has joined the office on a mobility move from the Courts Service where he was a Registrar of the High Court. His experience in the Courts, as well as his ten years' service in the Defence Forces (until approximately ten years ago) will, I have little doubt, prove to be of significant benefit in his new role. I also express my appreciation to my other two staff members, Lorraine O'Dwyer and John Sheridan for their continued hard work and dedication.

I also express my thanks to the Chief of Staff, Lt General Seán Clancy, and all the personnel of the Defence Forces for their cooperation with, and assistance to, my office in its work during 2024. I

wish the Chief of Staff every good wish in his new and prestigious European appointment. A special thanks to the staff of the Defence Forces Grievance Management Office for all their invaluable assistance in 2024.

Finally, I would also like to express my appreciation to the Secretary General of the Department of Defence, Ms Jacqui McCrum, and the civil servants in the Department, for their always willing and necessary involvement and interaction with my office.

Alan Mahon
Ombudsman for the Defence Forces
18 March 2025

2 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 requested additional information or documentation being provided. Directly referred complaints tend to take a little longer than those which have already been partly or wholly investigated under the Section 114/Chapter Two process, because with the latter type referral my office receives the DF's full investigation file, and which generally provides a lot of immediate information relevant to the complaint.
2. The ODF is independent of both the Defence Forces and the Minister/Department of Defence. This 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, whereas 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 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 DFRs and Administrative Instructions). The ODF will usually request the DF, or identified DF personnel to state their 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, and to make submissions in the event that an adverse finding is proposed to be made against the individual.

5. While most ODF investigations are conducted without a need to personally interview a complainant, the ODF does, on occasion, interview complainants, and possibly witnesses also.
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 lists 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 1954, as amended) and, at a later stage, if unsatisfied with the outcome of that internal process, referring the complaint to the ODF, or alternatively, directly referring the complaint to the ODF. It is important also to emphasise that complaints of bullying (or other interpersonal type issues) can

also be referred directly 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. Generally, the 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 will usually also receive a copy, as does the GMO. Otherwise a Report is confidential. An individual against whom an adverse finding is made will also be advised of that finding and the relevant parts of the Report.

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.

Confidentiality

1. The work of the ODF and his office is subject to a strictly observed Code of confidentiality, as provided for in Section 10 of the Ombudsman (Defence Forces) Act, 2004.

Independence of the ODF

1. The ODF is independent of the Defence Forces and the Department of Defence. Section 4 (1) of the Ombudsman (Defence Forces) Act 2004 provides: -

"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."



ODF Public Sector Equality and Human Rights Duty Strategic Plan 2025-2028

All public bodies have a legal obligation under Section 42 of the Irish Human Rights and Equality Commission Act, 2014 (The 2014 Act) to eliminate discrimination, promote equality of opportunity and protect the human rights of members of the public and staff. The ODF is committed to respecting and advancing this duty.

There is a three step process which public bodies must take to comply with Section 42 of the 2014 Act. A public body must carry out an assessment of the human rights issues which are relevant to its functions and purpose. Plans, policies and actions must then be identified and implemented to address the issues previously highlighted. Finally the public body must report on the progress of these actions in its annual report.

Assessment/ Plans

1. The ODF is cognisant that members of the public will expect the organisation to be compliant with Section 42 of the 2014 Act. To ensure that the human rights of members of the public along with staff can continue to be vindicated ODF staff will be undergoing the IHREC One Learning Course in Human Rights to maintain a standard of service delivery in compliance with the 2014

Act and to also ensure that staff have their rights upheld.

2. Complainants to the ODF may, on occasion, allege infringement of their human rights, or otherwise indicate the possibility of such rights being infringed. In some cases the details of a complaint may indicate possible breaches of human rights. The ODF conducts investigations fully cognisant of issues of matters relevant to the human rights of complainants. The ODF always conducts investigations independently and impartially.
3. Staff in the ODF will be guided by the Human Rights Manual produced jointly by the Northern Ireland Public Services Ombudsman and the Northern Irish Human Rights Commission supported by the International Ombudsman Institute to further assist with the commitment to advancing the duty to eliminate discrimination and promote equality of opportunity.
4. The ODF will continue to carry out its business with human rights being observed in all actions taken by the organisation as well as observing the Protected Grounds as found in the Equal Status Acts 2000 (as amended) to ensure that equality and inclusion are being promoted.



“The ODF will continue to carry out its business with human rights being observed in all actions taken by the organisation as well as observing the Protected Grounds as found in the Equal Status Acts 2000 (as amended) to ensure that equality and inclusion are being promoted.

3 Analysis of Complaints and Investigation in 2024

1. 18 Notifications of Complaint were received in 2024. This was a significant decrease on the 45 Notifications of Complaint received in 2023.

*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. It is NOT a referral of a complaint to the ODF. An 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 and the complainant requests that the matter be referred to the ODF. The majority of Notifications of Complaint usually do not require investigation by the ODF. 8 NOCs were withdrawn in 2024.

2. Of the 18 Notifications of Complaint received, 12 were in respect of Privates (or equivalent rank) and NCOs, and 6 were in respect of Officers.
3. 29 Direct Referrals of complaints 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 utilise the Defence Forces Internal Investigation process. Retired Members can only make Direct Referrals to the ODF for investigation. Of the 29 Direct Referrals made to the ODF, 3 were from Retired Members and 26 were from Serving Members.

4. 37 Reports were issued in 2024. This represents a 27% decrease in the number of cases concluded by the ODF in 2024 compared to the previous year, but a significant increase on cases concluded in 2022.
5. The following tables set out the nature of complaints considered by this Office during 2024. It should be noted that complaints categorised as 'Maladministration' cover a variety of issues including complaints in respect of performance appraisal and issues related to discharge among others. Complaints categorised as 'Interpersonal Issues' include those where there appears to be elements of personality conflict or interpersonal difficulty, and may include allegations of inappropriate behaviour, bullying or exclusion.



Cases by Military Formation

Of the 50 cases investigated during 2024, 37 of them concluded during the course of the year with Reports issued.

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

Army	Air Corps	Naval Service	Retired Members
19	13	3	2

Nature of Cases

The nature and subject matter of the cases investigated by the ODF during 2024 can be broken down into the following broad issue categories –

Maladministration	Promotion	Course Selection	Interpersonal Issues	Gender	Medical
1	13	6	6	2	1

Discrimination/ Exclusion	Overseas	Transfer	Undertakings	Jurisdiction
4	2	1	3	4

(Some cases may include issues which fall under more than one of the categories listed above).

Reports issued to females:	2
Reports issued to males:	35
Reports issued to Officers:	14
Reports issued to Privates/NCOs:	20
Reports issued to Retired personnel:	2
Reports issued to Reserve Personnel:	1

Investigation Outcomes

Complaints Upheld or Partially Upheld by ODF*	Complaints Not Upheld by ODF **
17 (47%)	20

* Partially upheld complaints are complaints where the ODF did not uphold a complainant's case in its entirety.

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

ODF's Recommendations to the Minister in 2024: (18 in total)

Minister Accepts (up to end of 2024)	Minister Does Not Accept (up to end of 2024)
2	1

Footnotes:

1. Recommendations are not necessarily made in every ODF Report. The ODF however makes 'findings' or reaches 'conclusions' in almost every Report.
2. More than one Recommendation may be made in an ODF Report. The ODF may, or may not, include a Recommendation in his investigation Report. Recommendations are made to the Minister for Defence who may accept or reject them.
3. 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. Because the Minister will usually have to engage with the COS, and possibly other agencies, prior to a decision to accept or reject a Recommendation, it is not normal that there will be an immediate decision made, and a communication of that decision made to my office. The average time taken for the Minister to respond with his decision is 3 months. This is considerably faster than pre 2020. However, on those few occasions where there is a significant degree of urgency with a Recommendation decision the Minister has responded without delay.



18 Notifications of Complaint were received in 2024. This was a significant decrease on the 45 Notifications of Complaint received in 2023.



Of the 18 Notifications of Complaint received, 12 were in respect of Privates (or equivalent rank) and NCOs, and 6 were in respect of Officers.

5 Case Summaries From 2024

Introduction

In this section of the Annual Report information is provided about a selection of complaints which were investigated in 2024. Some background information has been altered or changed in order to protect the identity of complainants, and of those complained about.

The necessary task of, on the one hand, providing a reasonably comprehensive summary and account of findings made, and, on the other hand, protecting the identities of all concerned, is often an extremely difficult one. Even with the best of efforts made in this regard it may still be the case that the identities of a complainant, and of others associated with the complainant, will be reasonably obvious to some colleagues, because of specific facts necessarily disclosed. It should be added however that this office has not to date received any complaints from individuals concerning the disclosure of potentially identifiable information in recent years.

The confidentiality of complaints, complainants and individuals named in association with complaints, is of extreme importance, as any breach or potential breach of confidentiality seriously undermines the complaint investigation process.

In order to further enhance the appropriate and required degree of confidentiality properly expected of the complaint investigation process, this section of the Annual Report will concentrate on indicating conclusions and findings in a selection of cases. This will provide a flavour of the variation of issues which are the subject of complaints in any given year as well as indicating the outcomes in such cases.

As earlier stated, great care is taken to avoid the identification of individuals featuring in individual complaints. Names, dates, locations and other easily identifiable information may therefore be omitted or altered.



I. Complaint Relating to AF 451 Narrative Statement

1. The AF 451 is a comprehensive annual and permanent record for Officers of the DF, and is of special significance in relation to promotion.
2. Part 3 of the AF 451 is normally compiled by an individual's CO, it must be completed in accordance with 'A' Admin Instruction 1/96. Its para 603 (Ch. 14) states: -

"The narrative assessment of the subject officer is a vital part of the AF 451 and is constantly referred to by higher authority when reviewing an officer's performance in a reporting period. The task is to describe the officers qualities and performance, honestly and vividly so that monitoring and reviewing officers can gain a realistic picture and arrive at a balanced judgement."

3. In this case, the complainant contended that some of the commentary in the Narrative Assessment was grossly unreasonable, inaccurate and unfair, and was detrimental to his record and future

promotional opportunities. He also maintained that he had not been given a reasonable opportunity to consider, and respond to, the Narrative Assessment.

4. The ODF examined the basis on which the Narrative Assessment was prepared by the CO, and the information available to the CO, and he concluded that it was unfair and personally damaging to the complainant. He concluded that if left unedited specific comments in the Narrative Assessment would cause long term reputational damage to the complainant.
5. The ODF Recommended that *"the complainant's AF 451 Narrative Assessment be destroyed and replaced with a version in accordance with my findings in paras (x) and (y)."*
6. This Recommendation was accepted by the Minister and was duly implemented.



II. Complaint relating to the MIO's Investigation of a Section 114 (Chapt. 2.) Complaint

1. The complainant, an officer, submitted a number of complaints for investigation through the internal DF grievance process, pursuant to Section 114 of the Defence Act 1954 and Admin Instr. A 7 (often referred to as a Chapter 2 complaint).

2. A Military Investigation Officer (MIO) – a senior officer - was duly appointed to investigate the complaints. In due course the MIO produced a lengthy Report, and did not uphold any of the complaints.

3. The complainant then directly referred a complaint to the ODF that the MIO's investigation was inadequate, insufficient, unfair, biased and had reached conclusions unsupported by evidence.

4. Detailed and lengthy submissions were made by the complainant in support of his contention that the MIO's Report was deficient, and, similarly detailed submissions were made by the MIO in defence of his Report, and his investigation of the various complaints.

5. The ODF identified his role in this investigation in the following terms: -

"It is important that I, at this junction, emphasise what my role in this case is as ODF, namely, the investigation of a complaint that the appointed MIO failed in his obligation to adequately and impartially investigate 4 complaints originally submitted by the complainant on (date) in accordance with the provisions of Section 114, Defence Act 1954, and Admin Instr A7 (Chapter 2). It is not my role to accept or reject the MIO's Report simply because I agree or disagree with the MIO's findings and conclusions. Rather, my task is to consider and evaluate the investigative steps undertaken by the MIO having regard to all the relevant circumstances, including all the information gathered by him in the course of his investigation."

6. The ODF did not uphold this complaint. He arrived at a number of conclusions, including the following: -

- "In the circumstances of this particular case I do not find that the MIO failed in his duty to comprehensively investigate the complainant's*

complaints in accordance with the provisions of Admin Instruction A7, Chapter 2. In turn, the GOC's duty to manage the investigation of these complaints was discharged on his acceptance of the MIO's Report."

- "To the extent that it is alleged or suggested, expressly or by implication, that the MIO lacked impartiality, or that he conducted his investigation in a biased manner, I am satisfied that there was no evidence of any lack of impartiality or bias. In arriving at this conclusion it is noteworthy that I had access to the many questions and responses which were carefully recorded as between the MIO and, on the one hand, the complainant, and, on the other hand, Lt Col X."*

- "I should also record my belief that the complainant's motivation to formally lodge a complaint relating to the internal DF investigation of his RoW Chapter 2 complaints has been prompted by his genuinely held sense of frustration and dissatisfaction of the investigation of those complaints, and was not motivated by malice."*

7. The following observation was made by the ODF in relation to the complainant's allegation of bias (a complaint which the ODF did not uphold): -

- "While there is no evidence of actual bias or lack of impartiality on the part of the MIO, it is understandable that 'objective bias' or 'perceived bias' would have been a suspicion from the complainant's perspective because of the fact that the appointed MIO and the person against whom all complaints were directed were both of the same rank, namely Lt Cols., and were almost certainly known to each other."*

- "Similar issues have been raised in a number of other complaints referred to me for investigation, although raised essentially by way of comment rather than, as in this case, a formal complaint directed at a Section 114/Chapter 2 investigation."*

[Note: since this Report the military authorities have implemented a programme for the improved training of MIO's]

III. Complaint relating to Sick Leave

1. In this case a Private in the DF was given 28 days Sick Leave by a civilian GP employed by the DF. This grant of Sick Leave was rejected by the complainant's CO, and he was advised to report for duty later that day, or he would be marked absent. He did, as instructed, later that day attend St Bricins Military Hospital for a scheduled appointment. He was examined by a Medical Officer (MO), and his grant of Sick Leave was approved. However, his CO was not prepared to sanction the Sick Leave. The complainant was instructed that he could only attend a named MO, and that a recommendation of Sick Leave from any other medical practitioner would not be accepted.
2. The complainant consented in writing to relevant medical information being released to the ODF. All requested medical information was duly provided.
3. In the course of his investigation of this complaint it was necessary for the ODF to consider the regulatory framework in relation to Sick Leave in the DF. In this regard, the following is relevant: -
 - Defence Force Regulation (DFR) A. 11, para 7:-

“(2) When a non-commissioned officer or private on annual or special leave is prevented through illness from rejoining his or her unit on the expiration of the leave, the non-commissioned officer or private shall immediately notify his or her commanding officer. He or she shall report in person to the nearest military post where arrangements will be made by the Officer Commanding to have him or her medically examined.

(3) Where for any reason a non-commissioned officer or private is prevented through illness from reporting to the nearest military post as prescribed



in subparagraph (2), the non-commissioned officer or private shall notify his or her commanding officer to that effect and shall, at the same time and at his or her own expense, forward a certificate from a civilian medical practitioner indicating the illness from which he or she is suffering, that he or she is unfit to travel, and the probable date on which he or she will be fit to travel. On receipt of a medical certificate in such circumstances, the commanding officer shall immediately notify the Formation Medical Officer for any action which he or she may consider necessary.”

- Admin Instruction A.12, para 905 (c) (1) states: -

“When an Enlisted Soldier becomes ill and considers that he/she shall thereby be prevented from re-joining his/her Unit on the expiration of local, annual, special or sick leave, he/she shall immediately (i.e. within 24 hours), arrange to have his/her Commanding Officer informed of that fact by the quickest available means no matter at what stage during his/her leave the illness occurs.”

- Para 905 (5) and (6) provides: -

“When a Commanding Officer receives a report that a member of his/her Unit considers that he/she will be too ill to rejoin their Unit at the expiration of leave, and that the Enlisted Soldier is unable to report to the nearest Military Post, the Commanding Officer shall immediately report that fact to the relevant SMO; when the Commanding Officer receives a Medical Certificate to that effect he/she shall immediately notify the SMO of its contents and seek his/her recommendation on the acceptance or otherwise of the certificate.”

“On receipt of the report of a Commanding Officer and the other information referred to in para (5) above, the SMO may arrange to have the Enlisted Soldier medically examined by the nearest Medical Officer of the Medical Corps who may, within his/her discretion:

a) Recommend that the Enlisted Soldier be given a period of sick leave or an extension of sick leave as the case may be.”

- Para 908 provides: -

“b. There is an onus on MOs to keep commanders

informed of the significance of the patient’s condition particularly with regard to the member’s ability to render effective military service. While the MO should not discuss matters which are of a confidential medical nature, he/she shall inform the Unit Commander as to which personnel are unfit to perform certain military duties, or of other concerns in relation to the following:

- 1. Safety to carry arms;*
- 2. Safety to colleagues and himself/herself;*
- 3. Safety to public;*
- 4. Health implications of tasking personnel with certain duties;*
- 5. Chronic conditions;*
- 6. Psychological or psychiatric conditions;*
- 7. Domestic difficulties;*
- 8. Matters provided for in DFR A8 Part VI.”*

- DFR A.12 Article 29(1) states: -

“On the recommendation of a Medical Officer of the Medical Corps a Commanding Officer shall grant sick leave to any non-commissioned officer or private for a period not exceeding the number of days specified in the Medical Officer’s recommendation. Where examination by a Medical Officer of the Defence Forces is not practicable, a Medical Officer of the Medical Corps may recommend sick leave on the recommendation of certification of a civilian medical practitioner.”

4. The core issue in the investigation of this complaint was the extent to which a CO was entitled (under the relevant regulations) to refuse to grant Sick Leave which had been recommended by a MO.

5. The ODF arrived at the following conclusions: -

- “Comdt X, in his capacity as CO, does not have authority to refuse sick leave if it is recommended by a MO. DFR A.12 (29) (1) is clear; “A Commanding officer shall grant sick leave to any non-commissioned officer or private for a period not exceeding the number of days specified in the MO’s recommendation”.

- “It is therefore important to point out that the authority to grant sick leave recommended by a MO, on the part of a CO, is an authority intended to be exercised for administrative



purposes. A CO is not entitled to overrule, alter or cancel sick leave recommended by a MO.”

6. A secondary issue that arose in this case was whether it was appropriate for a CO to insist that a DF member physically present himself to the CO in order to enable the CO fulfil his/her obligations to grant a MO’s recommended Sick Leave.
7. Noting that in some instances it would be entirely inappropriate to make such a demand (e.g. in case of serious illness or injury), the ODF referred to an unrelated earlier investigation of another complaint. He stated: -

“In an unrelated Investigation Report (in 2021), one issue concerned an order given by a senior officer to a NCO to physically parade himself before his CO in order to be granted sick leave recommended by a MO. When asked his view as to the basis for issuing such an order the Lt Col responded as follows: -

“There is no legal requirement to underpin a routine meeting between commander and subordinate that takes place in order [to] implement an existing regulation.”

8. On the issue as to whether a CO could compel a member of the DF to attend a particular doctor when a need for medical attention arose, the ODF found as follows: -

- *“The complainant contends that he was ordered by Comdt that ‘under no circumstances (was he) allowed to attend any other medical practitioner, other than Capt ... and that a grant of sick leave from any other doctor would not be accepted.’ If such directions were given to the complainant, they are not sustainable.”*
- *“The granting of sick leave by a civilian doctor is permissible where an examination by a MO is not practical, but it is subject to review by a MO (see DFR A12, para 29(1)).”*

IV. Complaint relating to loss of Border Allowance (BDA)

1. The complainant, a senior NCO, complained that he had been unjustly deprived of his Border Allowance (BDA), having received it for in excess of 30 years, following his transfer to a non-border unit – at his request.
2. The BDA – currently in excess of €100 weekly – was introduced in 1972 in order to cater for the need to transfer personnel to the border areas for extended periods during the “Troubles”. That need largely reduced from the late 1990s.
3. In the course of the ODF’s investigations into this complaint he was advised by Conciliation & Arbitration Branch on 29 December 2023 of a document or circular headed “Guidance Regarding the Retention/Loss of Border duty Allowance”.

It stated, as follows: -

“Regarding the above issue, the Adjudication Report, dated 28 August 2009 refers, with particular reference to the adjudicator’s finding “those in receipt of Border Duty Allowance (up to the date of its being discontinued by the Department in February 2009) should retain it on a Personal-To-Holders basis, with the usual conditions applying.”

The purpose of this communication is provide guidance on, and to reiterate the understood, condition where the Border Duty Allowance can be retained.

Arising from this, personnel who held border allowance on 3 February 2009 or are mentioned as exceptions, should continue to hold Border Duty Allowance ‘on a personal to holder basis’ under the following conditions:

1. *Where they transfer or are posted between or within units/ subunits which formerly (up to the 3 February 2009) were in receipt of border allowance or are co-located with such units.*
2. *Where they are posted from an overseas unit to a border unit having previously held border allowance immediately before moving to the overseas unit.*
3. *When attached or posted to an EU Battle*

Group unit or for preparation/training for same, provided no other additional allowances associated with participation in EU Battle Groups are paid or negotiated for payment for the duration of the posting. If BDA is lost at any stage in the posting it will be reinstated on return to border unit. In the case of operational deployment of an EU Battle Group, paragraph 2 above will apply.

4. *Where attached or posted on a temporary basis, to a non-border unit e.g. periods of instruction in BTC or periods as students on courses. Border duty will be paid for the first 90 days of these postings. If BDA is lost at any stage during the posting, it will be reinstated on return to border unit.*
5. *Where they are detached, transferred or posted away from a border unit, on an involuntary basis, or on promotion and return on attachment, transfer or posting to a border unit within 18 months.*
6. *Where they are promoted on an acting or substantive basis within a border unit or co-located ‘attached support element e.g. CIS, MP, Eng etc. having previously held border allowance immediately before the promotion appointment. This provision will apply only in relation to Border Duty Allowance and to persons holding Border Duty Allowance on a ‘personal to holder basis’ and will not be used to set any precedents in relation to any future potential buyout of any other allowances. This provision is ‘Red Circled’ in relation to Border duty allowance and those holding Border Duty Allowance on a ‘personal to holder’ basis*

In order to add clarity to the above it should be noted that:

- *Border Duty Allowance is not paid concurrently with Security Duty Allowance or with any other duty allowance, and*
- *Border Duty allowance is not paid when personnel are on pre-discharge leave.*

If any member of the PDF who holds Border Duty, on a personal to holder basis, accepts an

offer of a buyout of this allowance pending the resolution of discussions in this regard with the Representative Associations, their entitlement to the payment of Border Duty Allowance, on a personal to holder basis, will cease with effect from the date the offer of said buy-out is accepted by that individual.

Where the above conditions are not met Border Duty Allowance will NOT be retained.

Please bring this communication to the attention of all appropriate personnel.”

4. While it was contended that this circular had been communicated to Military Management “on several occasions”, the complainant maintained that he was unaware of it until it was provided to all Units on 29 March 2023, subsequent to his challenge to the decision to cease payment of the BDA to him.
5. Evidence of circulation of the content of this circular was provided by reference to a circular prepared by PDFORRA in 2011. This circular was headed “Border Allowance Understanding

4th July 2011”, and reflected the content of the Department’s circular referred to in para. 3 above.

The complainant was not a member of PDFORRA in 2011, and did not see the circular prepared by it.

6. The ODF was satisfied that the conditions for the continued payment of BDA had been reviewed in, or prior to, 2011, but that they had not been sufficiently or adequately circulated.

The ODF made the following finding: -

“It is unfortunate and regrettable, and a disservice to a long serving member of the DF, as is the complainant, that he was never made aware of relevant (and apparently agreed) conditions for the retention of the BDA allowance until 2023, and well after his promotion which necessitated his moving away from his border unit.”

The ODF made the following Recommendation: -

“... that the “Guidance” document be immediately circulated to all border unit DF members, individually.”



V. Complaint relating to delay in Promotion

1. This complaint concerned the delay in the promotion of a Medical Officer from Capt to Comdt in circumstances where the complainant had completed 3 years service as a Capt a number of months previously, with consequential loss of pay and pension entitlements.
2. The ODF noted that decision to promote, or not to promote, officers in the DF, are matters reserved to the Minister for Defence pursuant to the provisions of the Defence Act, 1954 (as amended), and are generally not open to review by the ODF.
3. The ODF therefore restricted his investigation to an inquiry into the steps taken in the aftermath of a statement by a government Minister in relation to fixed Period Promotions for Medical Officer on 17 November 2023, and which prompted the complainant's expectation of promotion.
4. In response to queries raised by the ODF, on 29 April 2024 and 1 May 2024, OIC COMO provided the following information: -
 - *"There are currently four (4) medical officers awaiting Fixed Period Promotion from Capt to Comdt as a result of the announcement in November last. For these promotions to happen, DoD have been required to amend DFR A.15 and subsequently produce a special series DFR to allow for the retrospective nature of these promotions. From liaison with C&A (DoD) COMO has been informed that this required paperwork has been completed and remains with the office of An Tánaiste."*
 - *"J1 Branch and C&A (Mil), as well as RACO, have been regularly requesting updates from C&A (DoD) throughout this process, and will continue to do so. Please note that the length of time taken for documents to be returned from the office of An Tánaiste is outside control the control of COMO, and there are a number of submissions which J1 Branch are awaiting returns on."*
 - *"C&A (DoD) recently confirmed to C&A (Mil) that they have "assured RACO that there is no impediment to this FPP implementation"."*
 - *"It's the understanding of COMO that the promotions following the amendment of MO FPP to three (3) years as Capt took effect from 14 November 2023 (the date of An Tánaiste's announcement of this amendment) in all cases where officers were eligible on or before that date. All cases eligible after that date are to be promoted on reaching three (3) years in the rank of Capt."*
 - *"For clarity, the dates submitted to C&A (DoD) by COMO following the announcement were as per the dates on which individual officers had reached three (3) years in the rank of Capt i.e. Comdt X's date as submitted by COMO was [date]. It's COMO's understanding however that C&A (DoD) confirmed to RACO at some point following the announcement that the date of 14 Nov would be used as the 'start point' for these promotions. Therefore the three (3) officers who reached three (3) years in the rank of Capt prior to [date] had their promotions to Comdt effective from the date of [date]."*
5. On 2 May 2024 the ODF received the following information from the Minister for Defence: -
 - "Following this announcement, significant efforts were undertaken to draft, consult and finalise an amendment to Defence Force Regulation A.15 Officers (Appointments, Promotions, etc.) to include a legal provision that would give effect to the new interim promotion arrangement."*
 - "I am pleased to announce that this process has reached its conclusion, and the amendment to Defence Force Regulation A.15 has been recently signed by me."*
 - "With the legal framework now in place, I am delighted to confirm that, in response to Capt. (Dr) X, I have sanctioned his promotion effective from Monday (Date) 2024. The promotion will be applied retrospectively with the effective date for promotion to the rank of Commandant backdated to 14 November 2023."*
6. The complainant was duly promoted.

VI. Complaint relating to use of Social Media

1. The basis of the complaint in this case was a direction by a senior NCO to remove certain LinkedIn posts of a complainant receiving a particular Certificate or Award from a private company. The private company had an association with a branch of the Defence Forces.
2. The senior NCO was acting on the direction of a senior officer.
3. In the course of his investigation, the ODF considered the DF's Social Media Policy document, a 12 page document providing guidelines on the use of Social Media by DF personnel. He noted one of its introductory paragraphs as stating: -

"When utilising social media, the lines between public and private, personal and professional are blurred. By simply being identifiable as a member of the Defence Forces, perceptions can be created about your expertise and authority to speak on behalf of the Defence Forces."

The ODF also considered as relevant "A" Admin Instr A.7. (Chapt 4) "Defence Forces Intranet E Mail and Intranet Acceptance Usage Policy".

4. In relation to the complainant's Social Media Posts in question, the ODF concluded as follows: -
 - *"The material posted by the complainant, copies of which have been provided to me, are relatively benign in terms of their potential to compromise security. However, on the other hand, the photographs identify personnel (albeit not by name), equipment and surveillance activity, software and maps and it is understandable therefore, that from a security perspective, some of these images might be of concern to the DF authorities."*
 - *"The DF Social Media Policy, by its nature, is non-specific and is couched in general terms, and its application to particular situations and circumstances will often err on the side of caution. I believe this is what occurred in this case and which understandably resulted in a sense of anger and frustration on the part of the complainant."*





29 Direct Referrals of complaints 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 utilise the Defence Forces Internal Investigation process.



4 Corporate Affairs

Staffing

The staffing of the ODF consists of:

- Brian O'Neill, Head of Office (to October 2024).
- Lorraine O'Dwyer, Case Manager.
- John Sheridan, Executive Officer. (David O'Connor joined the office as Head of Office in early 2025).

Review of Internal Financial Controls

In common with other publicly-funded Offices, the ODF conducted a formal review of Internal Financial Controls in 2024. This review has been provided to the Comptroller and Auditor General. A comprehensive budgetary system is in operation and expenditure trends are reviewed on a quarterly basis in association with the ODF's external accountants.

Data Protection

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

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

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

- (a) the preliminary examination or the investigation concerned,
- (b) the making, in accordance with this Act, of any statement, report or notification on that

preliminary examination or that investigation, or

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

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

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

Bar Council of Ireland

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

Health & Safety

The ODF has a Health & Safety Statement in place.

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?

In general 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.





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.

5 Irish Language

The office of the ODF is committed to the provision of services in Irish, in accordance with legislation. In 2024, the Office of the ODF worked to raise awareness among staff in relation to the additional Irish language requirements as contained in the 2021 Amendment Act.

In compliance with Section 10A (Advertising by Public Bodies) of the Official Languages (Amendment) Act, the office of the ODF from 2025 onwards will place advertisements in the Irish language.

With respect to the requirement that a public body shall ensure that at least 20 per cent of any advertising placed by the body in a year shall be in the Irish language, going forward 50 per cent of

advertisements placed by the office of the ODF will be in the Irish language, with the remaining 50 per cent in the English language.

With respect to the requirement that at least 5 per cent of any monies spent on advertising by the body in any year shall be in the Irish language through Irish language media, going forward 50 per cent of the advertising spend will be in the Irish language through Irish language media.

In 2024, the office of the ODF worked to raise awareness among staff in relation to the additional Irish language requirements as contained in the 2021 Amendment Act, and to make staff aware of available Irish language training opportunities.



5 Climate Action Roadmap

The ODF's Climate Action Roadmap was approved by the Defence Forces Ombudsman, on the 6th day of March 2025.

The Government through its Public Sector Climate Action Mandate obliges public sector bodies complete a Climate Action Roadmap. This Climate Action Roadmap is being completed with the resources of the ODF being taken into account. The ODF is comprised of the Ombudsman and three civil servants.

The ODF does not meet the descriptor of a Large Public Body at paragraph 1.3 of the Public Sector Bodies Climate Action Roadmaps Guidance 2024.

The ODF is aware of the legal requirements placed upon it by the following legislation and statutory instruments:

- Climate Action and Low Carbon Development (Amendment) Act 2021, which requires all public bodies to perform their functions in a manner consistent with Ireland's climate ambition.
- SI393/2021 Energy Performance of buildings, which requires installation of Building Automation and Control by 2025 for buildings with HVAC rated output over 290kW; requires installation of electric vehicle charging points in car parks for new or refurbished buildings with more than 10 car parking spaces.
- SI381/2021 Clean Vehicles Directive, which sets targets for the procurement of clean light and

heavy-duty vehicles, with the first target falling in 2025 and the second in 2030. The definition of clean vehicle changes to zero emission vehicles in 2025.

- SI4/2017 Energy Performance of Buildings, which requires all new public sector buildings built since 2018 to be "nearly zero emissions".
- SI646/2016, which requires that public bodies only procure energy-using products and vehicles that are on the Triple E register.
- SI426/2014, which requires the public sector to demonstrate exemplary energy management and requires public bodies to undertake energy audits every four years, and also requires that the public sector can only lease or buy buildings with BER A3 or higher.

In 2024, the ODF moved premises from Hatch Street in Dublin 2, to the current location of the office at 6 Earlsfort Terrace, Dublin 2, D02 W773. The ODF has been allocated space at this location by the Office of the National Ombudsman, Mr. Ger Deering. It is in a managed building with modern energy saving initiatives such as air conditioning and automatic sensor lights. The ODF currently does not directly manage any of the facilities or associated functions at this location but continues to be mindful of the obligation to reduce emissions.

The office of the Ombudsman for the Defence Forces Climate Action Roadmap is available online at www.odf.ie/publications



6 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



Retired Members can only make Direct Referrals to the ODF for investigation. Of the 29 Direct Referrals made to the ODF, 3 were from Retired Members and 26 were from Serving Members.



- (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.
 - (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



37 Reports were issued in 2024. This represents a 27% decrease in the number of cases concluded by the ODF in 2024 compared to the previous year, but a significant increase on cases concluded in 2023.

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 Daíl Éireann.

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

12.—(1) In this section “committee” means a committee appointed by either House of



In 2024 there was a noticeable increase in complaints referred by Commissioned Officers, as a percentage of all complaints. In 2024, complaints referred from Commissioned Officers equated to approximately 40% of all complaints, compared to previous years where the percentages were well below 10%.



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

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

- (a) specify a period or periods within which such reports are to be submitted and complaints referred, and

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

14.—(1) The Minister may, with the consent of the Minister for Staff. Finance, appoint such and so many persons to be members of the staff of the Ombudsman as he or she may from time to time determine.

(2) A member of the staff of the Ombudsman shall be a civil servant in the Civil Service of the State.

(3) The appropriate authority, within the meaning of the Civil Service Commissioners Act 1956 and the Civil Service Regulation Acts 1956 to 1996 in relation to the staff of the Ombudsman shall be the Ombudsman.

(4) The Ombudsman may delegate to any member of the staff of the Ombudsman any function of the Ombudsman under this Act other than the functions referred to in *sections 7(5)*, *7(7)*, *11* and *12*.

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

15.—(1) The Ombudsman may appoint in writing, either generally or in respect of any matter or event, such and so many members of the staff of the Ombudsman to be investigation officers for the purposes of all or any of the provisions of this Act and a person so appointed shall be referred to as an “investigation officer”.

(2) Every investigation officer appointed under this section shall be furnished with a warrant of appointment as an investigation officer, and when exercising any power conferred on him or her by this section as an investigation officer, shall, if requested by a person affected, produce the warrant or a copy of it to that person.

(3) The Ombudsman may revoke an appointment made under subsection (1).

(4) An investigation officer may, for the purpose

of obtaining any information which may be required in relation to the matter under investigation and in order to enable the Ombudsman to perform his or her functions under this Act, do any one or more of the following—

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

person to give to the investigation officer any information which he or she may reasonably require and to produce to the investigation officer any records which are in the power or control of that person.

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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