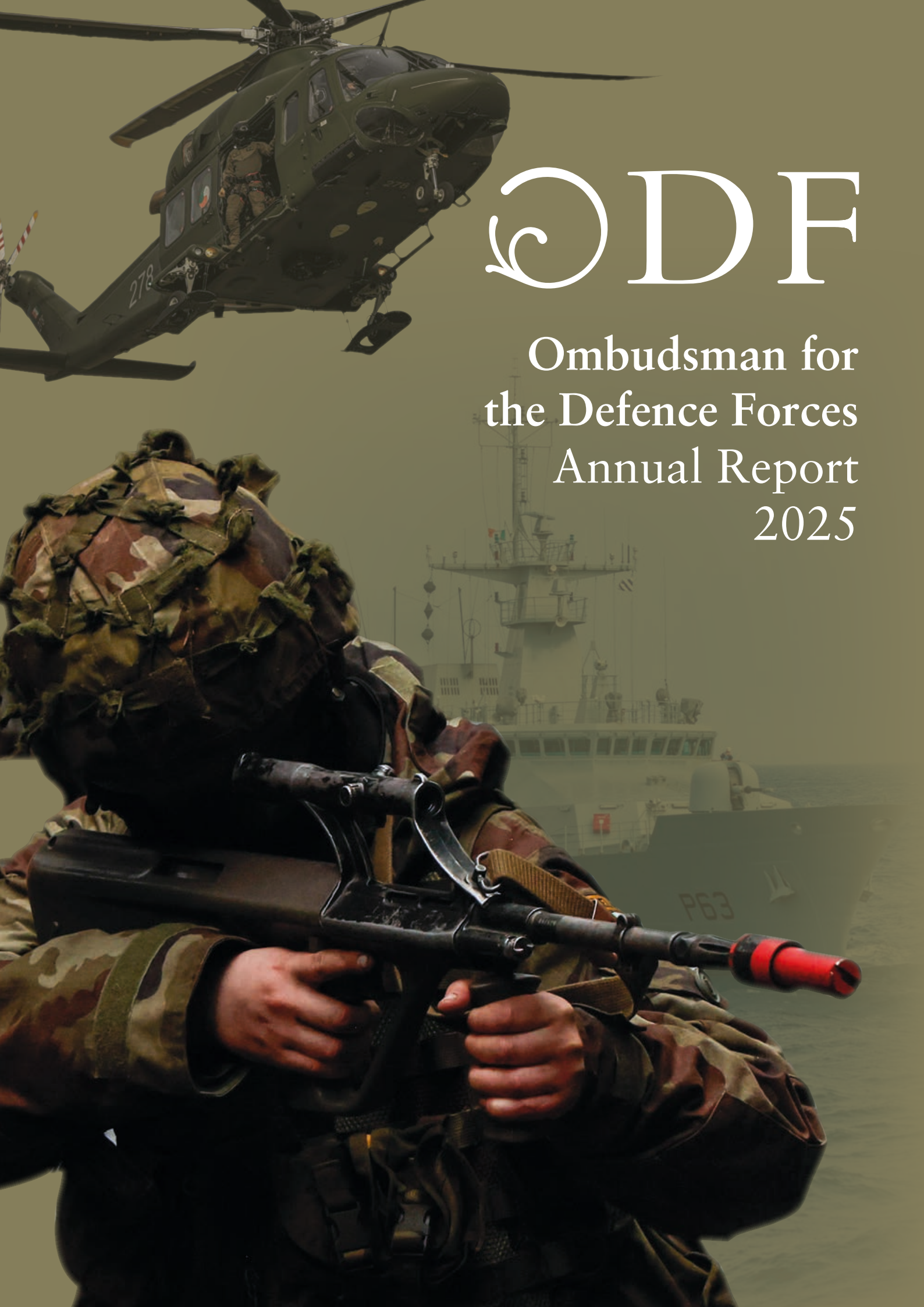




ODF

Ombudsman for
the Defence Forces
Annual Report
2025



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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:

2025 was a year of two halves in so far as complaint referral numbers were concerned. While the total number of complaint referrals to my office was 52, referral numbers were relatively low in the early months of the year, and relatively high in the second half of the year. This surge of new complaint referrals has continued into the first couple of months of 2026.

In 2024, approximately 80% of complaint referrals to my office were directly referred complaints, rather than complaints which emanated from the Defence Forces' internal investigation process (Section 114/A7 Chapt. 2 complaints). In this year, 2025, directly referred complaints increased to over 90% of the total of all complaint referrals. When these percentages are considered against a background of directly referred complaints comprising 50% of the total in 2023, 30% in 2022 and 7% in 2021, it is evident that the option to directly refer complaints to my office for investigation is now widely known within the Defence Forces, and is the preferred option of those seeking the services of my office.

My office provides advice on complaint referral options, and has an Online Complaint Form facility on its website (www.odf.ie). The staff of my office are always available to assist complainants if contacted by telephone, email or post.

As in previous years, the subject matter of complaints referred to my office varied greatly. While the largest categories of complaint relate to course selection and promotion (approximately 34% of the total), other complaints related to many different issues. Two complaints concerned overseas selection, while just 8 complaints involved interpersonal type issues, including bullying. Bullying was alleged in just three of the 52 complaint referrals in 2025. This relatively small number of interpersonal type complaint is fairly consistent with previous years. There is, I believe, one possible reason for the low number of bullying type complaints referred to my office, which, if accurate, is good news; it is that bullying is less of a problem now in the Defence Forces, compared with previous decades and that where it exists it is being dealt with more successfully at Unit level because of a generally greater awareness of its unacceptability within the Defence Forces. A more accurate picture of the true level of bullying complaints is likely known to the office of the Interim Grievance Manager (IGM) following upon the recently introduced non-statutory "*interpersonal behaviours*" less formal complaint process.

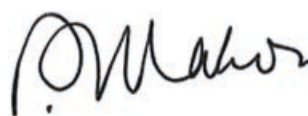


As was noted in the Annual Report for 2024, complaint referrals from Commissioned Officers had risen, unusually, to 47% of all referrals in that year. In 2025, however, the complaints from Commissioned Officers fell back to approximately 15% of the total, a percentage closer to the ‘norm’ in previous years. (For example, in 2023 the percentage was about 5%).

In 2024 the complaints’ breakdown for the Army, Air Corps and Naval Service was, respectively, 55%, 34% and 8%. In comparison, 2025 saw figures, again respectively, of 25%, 65% and 10%. Investigation Reports issued in 2025 were: Army, 11, Air Corps 19 and Naval Service 1.

4.5% of complainants in 2025 were from females, (approximately 7.5% of Defence Forces’ personnel are female).

I express my appreciation and thanks to all who assisted with the work of my office throughout 2025, including (in particular) my staff, David O’Connor, Lorraine O’Dwyer and John Sheridan whose dedication and hard work helped maintain and provide a high standard of service with efficiency to those Defence Forces’ personnel (both serving and retired) who referred their complaints to my office, and also the Minister for Defence, the Secretary General of the Department of Defence, Jacqui McCrum, and her staff. My thanks also to the COS, Lt General Rossa Mucahy and the men and women of the Defence Forces. A special word of thanks to the staff of the Grievance Management Office, based in Newbridge, who provided much assistance and information to my office on an almost daily basis.



Alan Mahon
Ombudsman for the Defence Forces
31 March 2026



While the largest categories of complaint relate to course selection and promotion (approximately 34% of the total), other complaints related to many different issues.

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.
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).
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.

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.

The ODF has no discretion to extend these limitation periods.

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.



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

3

Analysis of Complaints and Investigation in 2025

1. 44 Notifications of Complaint* (NOCs) to the Defence Forces' internal grievance management process were received in 2025. This was a significant increase on the 18 NOCs received in 2024.

20 NOCs submitted in 2025 were subsequently withdrawn.

*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 does NOT constitute 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 NOCs are not referred on for investigation by the ODF.

2. Of the 44 NOCs received, 34 were in respect of Privates (or equivalent rank) and NCOs, and 10 were in respect of Officers.
3. 45 Direct Referrals complaints were made to the ODF for Investigation. Direct Referrals can come from Serving Members or 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 45 Direct Referrals made to the ODF, 6 were from Retired Members with the remaining 39 being submitted by Serving Members.
4. 32 Reports were issued in 2025. This is a slight decrease from the 37 Reports issued in 2024
5. The following tables set out the nature of complaints investigated by the ODF in 2025.

- 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 under Investigation in 2025

There were 58 cases under Investigation during 2025, including 6 cases carried over from 2024.

- (I) 32 were concluded with Reports being issued.
- (II) 1 case was closed because the complaint was resolved shortly after its investigation commenced.
- (III) 1 case was paused by the complainant pending further developments.
- (IV) 4 cases have been unable to progress to date because complainants failed to provide additional requested information for upwards of 6 months. Their investigation will resume if, and when, the requested information is provided.
- (V) 1 directly referred complaint, from a former member, was deemed inadmissible and therefore no investigation was carried out.
- (VI) 19 active cases were carried over into 2026.

The 19 active investigations carried over from 2025 into 2026 consisted largely of cases referred to the ODF in the last quarter of 2025. 8 were concluded by end of March 2026, 2 were withdrawn by the complainants and the majority of the remainder are expected to be completed by May 2026.

Cases by Military Formation

The following table outlines the number of cases where Reports issued for personnel in each Military Formation, and additionally those issued to Retired Members.

Army	Air Corps	Naval Service	Retired Members
11	19	1	1

Nature of Cases

The nature and subject matter of the 52 newly referred cases (45 directly referred & 7 NOCs) investigated by the ODF during 2025 which resulted in an Investigation Report being issued were referred under the following broad issue categories –

Discharge	Promotion	Course	Bullying	Interpersonal Issues	Duties	AF667/AF43A	Failure by the DF to refer complaint to ODF within time	Medical
2	8	10	3	5	2	5	2	2

Allowances/ Payments	Overseas	Undertaking	Leave	Jurisdiction Issue	MIO Report COS Ruling	MP Investigation	Equality And Fairness
4	2	1	1	1	2	1	1

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

Reports issued to females:	2
Reports issued to males:	30
Reports issued to Officers:	7
Reports issued to Privates/NCOs:	24
Reports issued to Retired personnel:	1

Investigation Outcomes

Complaints Upheld or Partially Upheld by ODF*	Complaints Not Upheld by ODF **
8	24

* 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.

A total of 12 Recommendations were made to the Minister in 2025. The Minister responded to five of the Reports issued in 2025. The Minister accepted 2 of the Recommendations made and accepted all of the ODF's findings.

Number of Recommendations Accepted by the Minister (up to end of 2025)	Number of Recommendations Not Accepted by the Minister (up to end of 2025)
2	0

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 a single 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 her decision is approximately 3 to 4 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.





“

The Minister responded to five of the Reports issued in 2025. The Minister accepted 2 of the Recommendations made and accepted all of the ODF's findings.

4 Case Summaries From 2025

Introduction

In this section of the Annual Report information is provided about a selection of complaints which were investigated in 2025. 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 focus on the conclusions and findings in a selection of cases, rather than unduly concentrating on their facts. 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.





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.

I. Complaint Relating to Overseas Incident

- The complainant submitted a Section 114/Chapter 2/A7 complaint for internal investigation by the Defence Forces in relation to an incident which occurred while serving overseas.
- The internal investigation duly concluded, but the complainant was dissatisfied with its outcome, whereupon he requested its referral to the ODF for investigation. This request was made within the 12-month limitation periods for the referral of a complaint to the ODF as provided for in Section 6(3) of the Ombudsman (Defence Forces) Act 2004.
- Unfortunately, because of inadvertence, or human error, the complaint was not referred to the ODF. This failure to refer the complaint to my office was not discovered until 2024 following an inquiry by the complainant as to the outcome of the investigation to my office. By then, the 12-month limitation periods provided for in Section 6(3) of the 2004 Act had long since expired.
- The 2004 Act does not provide for extending the limitation periods in any circumstances, thereby making an investigation of his original complaint by my office legally impossible. However, the complainant referred his complaint of the non-referral of his original complaint to my office in 2024, and within the 12-month limitation for doing so, measured from the date he became aware of it.
- While, for the reasons explained above, the ODF was unable to investigate the original complaint, and conscious of the fact that no blame lay with the complainant for the error that had occurred, the ODF made the following Recommendation to the Minister for Defence: -

“I Recommend that an officer be directed to conduct a review of the evidence by the IO in his Report of 12 September 2019. This review should include updated interviews of relevant witnesses if deemed appropriate by the investigating officer.”



II. Complaint relating to Promotion Issue

- The complainant prepared 2 EOIs (Expression of Interest) in relation to 2 senior NCO vacancies for onward processing and transmission to senior authority.
- An error was made by an Orderly Room staff member resulting in just one of the EOIs being correctly transmitted. The related vacancy was subsequently filled by another candidate. The complainant would undoubtedly have been a strong contender for the position had his paperwork been properly managed.
- The Orderly Room staff member responsible for the error honestly admitted his responsibility and apologised to the complainant, who both accepted it, and the fact that an honest mistake had occurred.
- Recommendations were made, including that an AF667B be generated with its narrative acknowledging:
“... that the complainant applied for the promotion competition in good faith and was wronged due to human error and that he conducted himself with integrity from the point of identifying the error up until the interview process with the IO. The complainant remained professional throughout and must be commended for such deportment.”
- The purpose in doing so was to ensure the existence of a permanent record of the events that had occurred, and also to emphasise the fact that the complainant had conducted himself very honourably in difficult circumstances.



The complainant prepared 2 EOIs (Expression of Interest) in relation to 2 senior NCO vacancies for onward processing and transmission to senior authority.



III. Complaint relating to Sick Leave

- This (Officer) complaint arose from the deselection from a particular Course having been selected for the Course 2 weeks earlier. His OC had recommended the complainant for the course 7 months previously.
- The complainant's OC had recommended him for the Course, but then, subsequently, months later, decided to withdraw that recommendation, hence the deselection.
- The complainant's OC provided these reasons for the decision to withdraw his recommendation namely: -
 - * The loss of (the complainant) would have meant that the staff levels for officers in the unit would have been severely understrength. (Specific figures were provided in support of this statement.
 - * Losing (the complainant) will mean a serious decrease in supervision and governance and increased risk in the Unit.
- Having considered all aspects of the complaint, the ODF reached the following conclusions: -
 - (i) "Having considered the statement provided by Lt Col (X), and more particularly, the reasons outlined by him for the withdrawal of his

earlier recommendation for the complainant's selection in the (Course), I am satisfied that his decision was based on information and facts which confirmed that radical measures were required to deal with a significant under strength in his Unit, and which would, unless addressed, lead to significant operational difficulties in the period ahead. Lt Col (X)'s decision was therefore taken in accordance with his responsibilities as OC, and was appropriate. There is no evidence to indicate that Lt Col (X)'s decision was prompted by malice, bias, favouritism, or other improper motive, nor has any suggestion been made thereof."

- (ii) "My only criticism of these events is the significant delay between the recommendation of the complainant for the (Course), and the decision to withdraw that recommendation – a period of almost 7 months – in circumstances where lack of sufficient Unit strength would, or should have been, ascertainable much earlier, whereupon the necessary steps to manage this issue might have been taken at an earlier stage thereby permitting the complainant to manage his career accordingly, including availing of alternative opportunities."



IV. Complaint relating to Complaint relating to Career Break Request

- The complainant was a junior officer in the DF.
- He was denied approval for a 12-month career break (a period of special leave without pay and allowances) to enable himself and his partner (who had been granted a career break by her employer) in order to live and work in another country.
- The complainant had initially sought a 2-year career break. This had been refused because of its length, and it had been suggested to him at a senior level that a request for a career break for a shorter period would have a better chance of success. The complainant duly applied in respect of a 12 month period.
- The career break application was not recommended by the complainant's GOC and was not approved by D COS (Sp). The reason for non-approval by D COS (Sp) was the failure to satisfy the requirements for a career break as per Admin Instruction A 11.
- Under the heading "Eligibility for Career Breaks will be as follows", para 422 (f) of Admin Instr A. 11 provides: -

"(3) ... in the case of officers, the scheme is primarily directed at senior captains and commandants, all officers of the Permanent Defence Force who have completed 12 years' military service may apply for a career break. In exceptional circumstances an officer with less than 12 years' service may be granted a career break at the discretion of DCOS (Sp)",

and

"(4) The duration of a career break will not extend beyond the minimum retirement age prescribed for the rank of the applicant."

Para 422(g) makes the following provision for any outstanding Undertaking liability to the Department of Defence in relation to a career break: -

"(1) The financial liability to the Department of Defence, if any, of a member applying for a career break must not exceed the amount of gratuity, which would be appropriate to his or her service at that time under the Defence Force pension schemes.

(2) The granting of a career break to a member who has a financial liability to the Department of Defence will be subject to his or her consent to a deduction of the amount due from such gratuity should he or she be discharged from the Permanent Defence Force, retire or resign from the Permanent Defence Force during the period of the career break."

(In this case the existence of a small Undertaking liability was not identified by D COS (Sp) as a reason for his non-approval).

- The ODF did not uphold the complaint because of my conclusion that there was an absence of "exceptional circumstances" to justify the approval of a career break in this case.

The ODF stated as follows: -

"What amounts to "exceptional circumstances" justifying the general requirement that an Officer would have 12 years military service before seeking a career break will vary from case to case, and is, ultimately, in this case a matter for DCOS (Sp). It is a matter for him to make the necessary judgement as to whether "exceptional circumstances" exist, although in doing so he must act fairly and reasonably, and with due regard to the likely operational requirements of the DF over the relevant 12 month period, and military difficulties with retention and recruitment of personnel in the DF, and which are well known."

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

- This complaint arose from a refusal to meritoriously promote a Cpl to Sgt pursuant to para 42, Part 11, DFR A.10, which provides as follows: -

“A Corporal ... may be promoted to the rank of Sergeant because of meritorious service or distinguished conduct.”

- The applicant Cpl in this case had a lengthy career of exemplary service.
- Ultimately, notwithstanding the support of his GOC, the application for meritorious promotion was rejected because the applicant could not satisfy the criteria to fill an identified Sgt Vacancy.
- In the course of my investigation the ODF communicated with Comdt O’Sullivan, OiC EPMO, and, in response to a request for the criteria for a meritorious promotion in practice, having regard to the fact that no criteria is provided in DFR A.10, Comdt O’Sullivan advised the ODF that the following guidelines were adhered to and applied in relation to meritorious promotion applications: -

“As outlined previously, in accordance with the applicable Regulation (DFR A10), there are no specific, prescriptive criteria governing meritorious promotion. The regulation confers the authority upon DCOS (Sp) to make such a decision based on professional judgement and discretion.

Consequently, each application is assessed for meritorious service on a case by case basis, and must be considered sufficiently compelling to warrant a promotion, the practical effect of which is that an unqualified individual will hold an appointment at a higher rank.

While no formal criteria are prescribed, DCOS (Sp) may consider a range of factors, including but not limited to:

- (a) Number, nature and quality of testimonials. Successful applications will typically have numerous testimonials testifying to meritorious service or distinguished conduct.*
- (b) Quality and range of military experience at home and overseas, to include evidence of service in excess of the demands of regular service.*
- (c) Evidence of leadership competencies. Account is taken of evidence of leadership behaviour which could indicate a capacity to fulfil a junior leadership role on promotion.*
- (d) Periods of acting or substituting to the higher rank.*
- (e) Training and educational achievements.*
- (f) Disciplinary records and conduct rating.*

(g) Vacancy. A vacancy at the appropriate rank and stream (CCR609) must exist. Cognisance is also given to efforts already made to fill the proposed vacancy with a qualified person and the likelihood of qualified personnel coming available in the near future.

(h) As per Admin Instr Part 10, Para 305, consideration is given “to making the necessary recommendation to DCOS (Sp) in sufficient time prior to the retirement of the member to enable him to avail of the higher rate of pension and gratuity appropriate to the rank of Corporal”. For soldiers of Private rank with no prior experience in Acting Corporal Rank, this entails promotion one (1) year prior to the retirement of the member in question. Therefore, it would be prudent to examine the remaining time until the individual’s mandatory retirement age and how this might affect the duration for which a vacancy could remain effectively ‘blocked’.

While the decision to grant a meritorious promotion is inherently discretionary, these factors are likely to be taken into account to ensure that the decision is made in a manner that is transparent, impartial and aligned with the broader operational interests of the Organisation.

The appointment of DCOS (Sp) was vacant throughout Q1 and Q2 of 2025. As a result, no determinations on meritorious promotions were made during that period. Consequently, there were a number of determinations pending upon the appointment of the new DCOS (Sp). To account for this, the data provided below spans the past 24 months, rather than only the last 6 months.

YEAR	RANK	No of Meritorious Promotions
2024	CPL-SGT	3
2024	PTE- CPL	14
TOTAL 2024		17
2025	CPL-SGT	2
2025	PTE – CPL	7
TOTAL 2025		9

- Comdt X indicated specific reasons for the decision not to approve this application for meritorious promotion having regard to the criteria required to fill the specific vacancy identified. (These are withheld from this summary in order to protect the complainant’s identity.)
- This complaint was not upheld.



Ultimately, notwithstanding the support of his GOC, the application for meritorious promotion was rejected because the applicant could not satisfy the criteria to fill an identified Sgt Vacancy.

VI. Complaint relating to provision of AF667B to personnel

- This complaint arose from an unsuccessful application for an NCO promotion, and the failure to provide the applicant with a copy of his AF667B providing reasons for his lack of success.
- The ODF made a number of findings and observations in his Investigation Report, including the following: -
 - (i) “I accept the complainant’s contention that he should have received a physical copy of the AF667B, or, at a minimum a written statement of the reason(s) for not recommending him for promotion. I note the fact that Admin Instr 1/96 does not require that a physical copy of an AF667B be provided to the individual concerned. An AF667B (or another written account of reasons) enables/acts as an “aide memoire” for the purposes of preparing an appeal. I do not accept however that the failure to provide the complainant on this occasion with a copy of the AF667B denied him the opportunity to submit an appeal as I am of the firm belief that the complainant was, in general terms, aware of those reasons, and had an opportunity to discuss them in detail with (his CO).”
 - (ii) “Annex D (of Chapt. 13 Admin Instr 1/96) provides instructions and guidelines for the compilation of an AF667B. It lists the circumstances in which completion of an AF667B can be used, including Departure of Reporting Officer, 91 Day Attachment Special Duty, Exceptional Circumstances and FILE NOTATION. It is this latter user category which applies to CO’s AF667B dated (blank).”
 - (iii) “The AF667B can have 3 parts. Part ONE includes information identifying the subject NCO or Private, the Narrative (being the reporting matter), and the reporting officer’s signature and details. Part TWO is to facilitate the detailed assessments (and is required to be completed in respect of an NCO on attachment or Special Duty only). Part THREE facilitates the subject NCO or private recording his/her own comments and signature.”
 - (iv) “In this instance only Part ONE was required to be completed and signed by CO, as was done. There was no requirement to permit the complainant include his comments. In this case, it was CO’s responsibility to arrange for the AF667B to be placed on the complainant’s personal file, which was done.
- There was no requirement under ANNEX D that CO provide a copy of the AF667B to the complainant.”
 - (v) “Nonetheless, notwithstanding the fact that the provision of a copy of the AF667B to the complainant was not mandatory, it is my firm view that this practice should change, and that, in future, the subject NCO or Private should always be provided with a copy of a AF667B at the time of parading, or as soon as practicable thereafter.

The AF667B is an important personal record as it includes information which may be of critical importance to the individual, including information that might be essential or helpful to the formulation of an appeal, although in this particular case I have already indicated my belief that the complainant was provided with sufficient information verbally by CO to facilitate an appeal against the non recommendation for promotion.”

The ODF made the following Recommendation: -

“I recommend that a physical copy of an AF667B should always be made available (at the time of notification or as soon as practical thereafter) to the subject NCO or Private, and that steps be taken to amend Annex D of Chapter 13 of Admin Instr 1/96 accordingly.”



This complaint arose from an unsuccessful application for an NCO promotion, and the failure to provide the applicant with a copy of his AF667B providing reasons for his lack of success.

5 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. This review is provided to the Comptroller and Auditor General as part of their annual audit of the ODF Financial Statements. 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.





In common with other publicly-funded Offices, the ODF conducted a formal review of Internal Financial Controls. This review is provided to the Comptroller and Auditor General as part of their annual audit of the ODF Financial Statements.





- (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 that 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 that 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.”*



Data Protection and Freedom of Information Requests

In 2025 the Office of the Ombudsman for the Defence Forces received **two** Data Subject Access Request made pursuant to Article 15 of the General Data Protection Regulation.

Please see the Freedom of Information Disclosure Log (below) for 2025 during which the office of the Ombudsman for the Defence Forces received **one** FOI request. Please note that certain information is precluded from Freedom of Information requests 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.

Freedom of Information Disclosure Log 2025

ODF REF	Request Date	Requestor Category	Summary of Request	Decision and Date
2025001FOI	04/11/2025	Journalist	Risk and Audit Information	27/11/2025 - Refuse



6 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.



7 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 carparks 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.





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.



8 OMBUDSMAN (DEFENCE FORCES) ACT 2004

Number 36 of 2004

OMBUDSMAN (DEFENCE FORCES) ACT 2004

ARRANGEMENT OF SECTIONS

Section

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

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

Acts Referred to

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

Number 36 of 2004

OMBUDSMAN (DEFENCE FORCES) ACT 2004

AN ACT TO PROVIDE FOR THE APPOINTMENT AND FUNCTIONS OF AN OMBUDSMAN FOR THE DEFENCE FORCES, TO AMEND THE DEFENCE ACT 1954 AND TO PROVIDE FOR RELATED MATTERS. [10th November, 2004]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

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

“Act of 1954” means the Defence Act 1954;

“Act of 1980” means the Ombudsman Act 1980;

“action” means—

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

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

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

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

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

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

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

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

“military operation” means—

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

“Minister” means the Minister for Defence;

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

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

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

(2) In this Act—

- (a) a reference to a section is a reference to a section of this Act, unless it is indicated that a reference to some other enactment is intended,
- (b) a reference to a subsection or paragraph is a reference to the subsection or paragraph of the provision in which the reference occurs,

unless it is indicated that a reference to some other provision is intended, and

- (c) a reference to any enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment.

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

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

- (3) Subject to this Act, a person appointed under *subsection (2)* shall hold office on such terms and conditions as the Minister may, with the consent of the Minister for Finance, determine.

(4) A person appointed to be the Ombudsman—

- (a) may at his or her own request be relieved of office by the President,
- (b) may be removed from office by the President but shall not S.2 be removed from office except for stated misbehaviour, incapacity or bankruptcy where there is a recommendation for removal by the Government, and
- (c) shall, where *subsection (8)* applies, vacate the office on attaining the prescribed age.

- (5) Subject to this section, a person appointed to be the Ombudsman shall hold office for such term as may be specified in the instrument of appointment which term shall not exceed 7 years and such person may be eligible for re-appointment to the office for a second or subsequent term.



- (6) If the person holding the office of the Ombudsman is—
 - (a) nominated as a member of Seanad Éireann, or
 - (b) elected as a member of either House of the Oireachtas or to the European Parliament, or
 - (c) regarded, pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997, as having being elected to the European Parliament, or
 - (d) becomes a member of a local authority, that person shall thereupon cease to hold the office of Ombudsman.
 - (7) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein, or who is a member of the European Parliament or a local authority shall, while he or she is so entitled or is such a member, be disqualified from holding the office of Ombudsman.
 - (8) In respect of any person who is not a new entrant (within the meaning of the Public Service Superannuation (Miscellaneous Provisions) Act 2004) the Minister may, with the consent of the Minister for Finance, prescribe the age at which such a person shall vacate office pursuant to *subsection (4)(c)*.
 - (9) A person who holds the office of Ombudsman shall not be a member of the Defence Forces or a civil servant.
- 3.—(1) There shall be paid to the holder of the office of Ombudsman such remuneration and allowances for expenses as the Minister, with the consent of the Minister for Finance, may from time to time determine.
- (2) The Minister may, with the consent of the Minister for Finance, make and carry out, in accordance with its terms, a scheme or schemes for the granting of superannuation benefits to or in respect of persons who have held the office of Ombudsman as he or she thinks fit.
 - (3) A scheme referred to in *subsection (2)* shall fix the time and conditions of retirement for persons in respect of whom superannuation benefits are payable under the scheme, and different times and conditions may be fixed in respect of different classes of persons.
 - (4) The Minister may at any time, with the consent of the Minister for Finance, make and carry out a scheme or schemes amending or revoking a scheme under this section.
 - (5) No superannuation benefit shall be granted by the Minister nor shall any other arrangement be entered into by the Minister for the provision of such a benefit to or in respect of the person who holds the office of Ombudsman otherwise than in accordance with a scheme under this section or, if the Minister, with the consent of the Minister for Finance, sanctions the granting of such a benefit, in accordance with that sanction.
 - (6) A scheme under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.
 - (7) Where a dispute arises as to the claim of any person to, or to the amount of, any superannuation benefit in pursuance of a scheme or schemes under this section, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance, whose decision shall be final.
 - (8) In this section, “superannuation benefit” means a pension, gratuity or other allowance payable on resignation, retirement or death.



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

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

- (a) the action has or may have adversely affected the complainant,
- (b) the action was or may have been—
 - (i) taken without proper authority,
 - (ii) taken on irrelevant grounds,
 - (iii) the result of negligence or carelessness,

- (iv) based on erroneous or incomplete information,
- (v) improperly discriminatory,
- (vi) unreasonable, notwithstanding consideration of the context of the military environment,
- (vii) based on undesirable administrative practice, or
- (viii) otherwise contrary to fair or sound administration,

- (c) the action was not an order issued in the course of a military operation, and
- (d) in the case of a serving member of the Defence Forces, the matter is not likely to be resolved and a period of 28 days has expired since the complaint was made under section 114 of the Act of 1954.

- (3) The Ombudsman may—
 - (a) decide not to carry out an investigation under this Act into an action that is the subject of a complaint, or
 - (b) discontinue an investigation under this Act into an action that is the subject of a complaint, if he or she is of the opinion that—
 - (i) the complaint is trivial or vexatious,
 - (ii) the complainant has an insufficient interest in the matter,
 - (iii) satisfactory measures to remedy, mitigate or alter the adverse effect of the action on the complainant have been taken or are proposed to be taken, or
 - (iv) the complainant has not taken reasonable steps to seek redress in respect of the subject matter of the complaint or, if the complainant has taken such steps, he or she has not been refused redress.
- (4) It shall not be necessary for the Ombudsman to investigate an action under this Act if he or she is of the opinion that the subject matter concerned has been, is being or will be investigated in a similar manner under another investigation by the Ombudsman under this Act.
- (5) A preliminary examination or an investigation by the Ombudsman shall not affect the validity of the action investigated or any power or duty of the person who took the action to take further action with respect to any matters the subject of the preliminary examination or investigation.
- (6) In determining whether to initiate, continue or discontinue an investigation under this Act, the Ombudsman shall, subject to the provisions of this Act, act in accordance with his or her own discretion.
- (7) A member of the Defence Forces—
 - (a) who makes a complaint to the Ombudsman concerning an action taken by or on behalf of a civil servant shall not, subsequently, make a complaint about the same matter to the Ombudsman appointed under the Act of 1980, or
 - (b) who makes a complaint to the Ombudsman appointed under the Act of 1980 in relation to an action taken by or on behalf of a civil servant shall not, subsequently, make a complaint about the same matter to the Ombudsman.
- (8) Nothing in *subsection (2)(a)* or *section 6* shall be construed as prohibiting the investigation by the Ombudsman of—
 - (a) an action that is the subject of a complaint by a complainant which, in the opinion of the Ombudsman, has or may have affected the complainant other than in an official capacity, or
 - (b) an action that is the subject of a complaint by a complainant which was carried out, or may have been carried out, by a person acting other than in an official capacity.
- (9) The Ombudsman shall furnish to the Minister such information regarding the performance of his or her functions as the Minister may from time to time request.

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

(a) if the action is one in relation to which—

- (i) the complainant has initiated legal proceedings in any civil court and the proceedings have not been dismissed for failure to disclose a cause of action or a complaint justiciable by that court whether the proceedings have been otherwise concluded or have not been concluded, or
- (ii) the complainant has a right, conferred by or under statute, of appeal, reference or review to or before a court in the State (not being an appeal, reference or review in relation to a decision of a court),

(b) if the action has been or is the subject of an investigation under section 179 of the Act of 1954 or by a service tribunal and is not an action concerning delay or any other matter concerning the administration of such investigations,

(c) if the Ombudsman is satisfied that the action relates to or affects security or a military operation,

(d) if the action concerns—

- (i) any matter relating to the terms or conditions of employment in the Defence Forces, including any matter relating to the negotiation and determination of the rates of remuneration or allowances, which is within the scope of a conciliation and arbitration scheme referred to in section 2(6) of the Defence (Amendment) Act 1990, or

(ii) any matter concerning the organisation, structure and deployment of the Defence Forces,

(e) if the action is one—

- (i) involving the exercise of the right or power referred to in Article 13.6 of the Constitution or the remission of any forfeiture or disqualification imposed by a subordinate officer pursuant to section 179 of the Act of 1954 by a service tribunal or by the Courts Martial Appeal Court, or
- (ii) that concerns the administration of military prisons or places of detention for the custody of members of the Defence Forces committed to custody by a service tribunal or otherwise,

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

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

(2) Where for security reasons, the Minister so requests in writing (and attaches to the request a statement in writing setting out in full the reasons for the request), the Ombudsman shall not investigate, or shall cease to investigate, an action specified in the request.

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

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

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



7.—(1) Where, following the making of a complaint, the Ombudsman decides not to carry out an investigation or to discontinue an investigation, he or she shall notify the complainant and any person concerned with the complaint, stating the reasons, in writing, for the decision.

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

- (a) the Minister and to all persons concerned with the complaint, and
- (b) any other person to whom he or she considers it appropriate to send the statement.

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

- (a) that the action be further considered,
- (b) that measures or specified measures be taken to remedy, mitigate or alter the adverse effect of the action, or
- (c) that the reasons for taking the action be given to the Ombudsman,

and, if the Ombudsman thinks fit to do so, he or she may request the Minister to notify him or her within a specified time of a response to the recommendation.

(4) Where the Ombudsman carries out an investigation under this Act into an action that is the subject of a complaint he or she shall notify the complainant of the result of the investigation, the recommendation (if any) made under *subsection (3)* and the response (if any) made by the Minister.

(5) Where it appears to the Ombudsman that the measures taken or proposed to be taken in response to a recommendation under *subsection (3)* are not satisfactory, the Ombudsman may, if he or she so thinks fit, cause a special report on the case to be included in a report under *subsection (7)*.

(6) The Ombudsman shall not make a finding or criticism adverse to a person under this section without having provided that person with an opportunity to consider, and make representations in respect of, the finding or criticism to the Ombudsman.

(7) The Ombudsman shall, as soon as may be, but not later than 4 months after the end of each year, cause a report on the performance of his or her functions under the Act to be laid before each House of the Oireachtas and may from time to time cause to be laid before each such House such other reports with respect to those functions as he or she thinks fit.



(8) An annual report referred to in *subsection (7)* shall be in such form and regarding such matters as the Ombudsman thinks fit or the Minister may direct.

(9) For the purposes of the law of defamation, any such publication as is hereinafter mentioned shall be absolutely privileged, that is to say—

(a) the publication of any matter by the Ombudsman in making a report to either House of the Oireachtas for the purpose of this Act, and

(b) the publication by the Ombudsman—

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

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

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

(c) *Paragraph (a)* shall not apply to information, a document, part of a document or thing that concerns any matter relating to security or a military operation and for the purposes of this paragraph a certificate given by the Minister, on the advice of the Chief of Staff, certifying that any information, document, part of a document or thing was so concerned shall be conclusive.

(2) Subject to this Act, a person to whom a requirement is addressed under this section shall be entitled to the same immunities and privileges as if he or she were a witness before the High Court.

(3) A person shall not by act or omission obstruct or hinder the Ombudsman in the performance of his or her functions or do any other thing which would, if the Ombudsman were a court having power to commit for contempt of court, be contempt of such court.

(4) Any obligation to maintain secrecy or other restriction on the disclosure of information obtained by or furnished to a Department of State or civil servant imposed by the Official Secrets Act 1963 shall not apply to a preliminary examination or an investigation by the Ombudsman under this Act and, subject to *section 10(3)*, the State shall not be entitled in relation to any such preliminary examination or investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

(5) The Ombudsman may, if he or she thinks fit, pay to the person affected by an action in respect of which an investigation is held



Any obligation to maintain secrecy or other restriction on the disclosure of information obtained by or furnished to a Department of State or civil servant imposed by the Official Secrets Act 1963 shall not apply to a preliminary examination or an investigation by the Ombudsman under this Act

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 Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to that Committee on—

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

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

12.—(1) In this section “committee” means a committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the committee referred to in *section 11*, the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann) or a subcommittee of such a committee.

(2) Subject to *subsection (3)*, the Ombudsman shall, at the request in writing of a committee, attend before it to account for the general administration of the Office of the Ombudsman.

(3) The Ombudsman shall not be required to account before a committee for any matter



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.





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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