

DÁIL ÉIREANN

AN COMHCHOISTE UM IMSCRÚDUITHE, FORMHAOIRSIÚ AGUS ACHAINÍO- CHA

JOINT COMMITTEE ON INVESTIGATIONS, OVERSIGHT AND PETITIONS

Dé Céadaoin, 29 Feabhra 2012

Wednesday, 29 February 2012

The Joint Committee met at 16.00 p.m.

MEMBERS PRESENT:

Deputy Charles Flanagan.	Senator Jimmy Harte,
Deputy Michael Healy-Rae,	Senator Susan O’Keeffe.
Deputy Peter Mathews,	
Deputy Michael McCarthy,	
Deputy Charlie McConalogue,	
Deputy Derek Nolan,	
Deputy Aengus Ó Snodaigh,	
Deputy John Paul Phelan,	
Deputy Mick Wallace,	

DEPUTY PEADAR TÓIBÍN IN THE CHAIR.

Business of Joint Committee

Chairman: Tá quorum againn ag an bomaite, so táimid chun feidhmiú i seisiún poiblí. I remind all present, including members of the media and those in the Gallery that mobile telephones and BlackBerry devices must be turned off completely because they interfere with the sound system even when in silent mode. Undoubtedly, one will go off later on in the meeting anyway. I note we will have a new member of the joint committee as Deputy Seán Ó Feargháil will replace Deputy Dara Calleary. I thank the latter for his contribution to, and work in, the committee to date.

The joint committee will be pleased to welcome Ms Paulyn Marrinan Quinn, SC, Ombudsman for the Defence Forces, who will brief members on the work of her office. We will await her arrival.

Deputy Charles Flanagan: Is this joint committee awaiting a sitting of another committee regarding its terms of reference? I take it all that has been done.

Chairman: The Committee on Procedure and Privileges has met to discuss the Standing Orders but, as proposed, a letter was sent from this committee last week to ascertain whether the Chairman and Vice Chairman could appear before the Committee on Procedure and Privileges in an effort to discuss the power of requiring people, papers and records for investigations into non-ombudsman related inquiries. We are yet to receive a reply from CPP. We should receive a reply from it within the next few days.

Deputy Charles Flanagan: It is all very lengthy.

Chairman: Is is disappointing because we were hoping to have the entire process up and running in February. I believe the Committee on Procedure and Privileges met in the last couple of weeks.

Senator Susan O’Keeffe: I seek clarification in this regard. I sit on the Committee on Procedure and Privileges for the Seanad. I have attended its meetings and unless this matter was discussed at the single meeting I missed, I have no recollection of it being discussed.

Chairman: We will discuss this matter under any other business, if that is acceptable. As the joint committee’s visitor is present, members might take advantage of this opportunity. However, we certainly will go through the detail under any other business.

Role and Functions: Discussion with Ombudsman for the Defence Forces

Chairman: I welcome our guest, Ms Paulyn Marrinan Quinn, SC, Ombudsman for the Defence Forces. Before going through the presentation and discussion, I note that by virtue of section 17(2)(l) of the Defamation Act 2009, the witness is protected by absolute privilege in respect of the evidence she is to give this committee. If she is directed by the committee to cease giving evidence in respect of a particular matter and continues to so do, she is entitled

thereafter only to a qualified privilege in respect of her evidence. The witness is directed that only evidence connected with the subject matter of these proceedings is to be given and she is asked to respect the parliamentary practice to the effect that, where possible, she should not criticise nor make charges against any person or persons or entity by name or in such a way as to make him, her or it identifiable.

I invite Ms Marrinan Quinn to address the joint committee.

Ms Paulyn Marrinan Quinn: I thank the Chairman and congratulate him and this new committee because it is early days for it and it is embarking on new territory. Having been in that position in my professional life when I was given the job of setting up this office in 2005, I am aware the road ahead will be quite challenging for members. I have forwarded three items of information to the joint committee. The first is a short PowerPoint presentation that sets out the main powers and functions of the Ombudsman for the Defence Forces. The second document is entitled, A View Through the Lens of the Founding Years of Change in the Irish Defence Forces. It pertains to the foundation of the Ombudsman for the Defence Forces and the impact it had on the Defence Forces.

Finally, to demonstrate to members the international and human rights dimension of the office over the last six years, I have included an extract from a book on intergovernmental and military relationships and democracy in Argentina. The then Minister of Defence in Argentina, Dr. Nilda Garré, was trying to push through this monumental piece of work. Dr. Garré who is no longer a Minister there, invited me to write a chapter of the book. I have included it to demonstrate how the military ombudsman institution can provide two significant things, namely, democratic oversight and the protection of human rights and fundamental freedoms of armed forces personnel, which clearly is highly significant in the development of the relationship between the Government and the military in the aforementioned state.

I have been told to speak for about 15 minutes. I hope a big bell will go off because this is a subject that is dear to my heart. I have worked on it for many years and could rattle on at length.

The Office of the Ombudsman for the Defence Forces was established in 2005 in response to an identified need for a military ombudsman. PDFORRA, the representative association for other ranks, had been campaigning for a military ombudsman's office. This was mainly from the perspective of ensuring that it had access to an independent appeal in redresses it brought through its own internal grievance procedure.

The Ombudsman (Defence Forces) Act 2004 had all-party support. I was appointed at the end of 2005 and the office became legally operational from 1 December 2005. My first member of staff was not sent to me until June 2006, so it was really a solo run for the first few months. However, a substantial amount was achieved during that period.

In essence, this office provides a neutral third party to investigate complaints by members and former members of the Defence Forces. It is entirely independent of the Minister for Defence, the secretariat and the military authorities. Serving members can make a complaint, as can former members, members of the Permanent Defence Force and the Reserve Defence Force, and all the services therein.

The ombudsman is empowered to investigate a complaint about actions allegedly taken by another serving member of the Defence Forces or a former member, or civil servant. That is another reason the office has to ensure that its independence is copper-fastened because there

is legal and legislative jurisdiction over the Department of Defence. That is why it has to sit alone, be entirely independent and be perceived as such.

Actions include any action that might have been taken without proper authority, taken on irrelevant grounds, as the result of negligence or carelessness, based on wrong or incomplete information, an action that was improperly discriminatory or contrary to fair and sound administration. We found that is a satisfactorily comprehensive list. There is nothing missing from it that ought to be there.

From the beginning, I have been on record as saying that this is a strong piece of legislation which is impressive and powerful. I have had the pleasure and honour of being in this job for six years. I have had two three-year terms from 2005 to 2008 and from 2008 to 2011. The current Minister renewed my term for one further year, but I do not know if he is disposed to continuing it.

In that six-year period, I have been able to witness that for once Ireland has done something at the forefront of innovation and creativity. In establishing an office of such power it has attracted much international attention. In 2011, our website was visited by inquirers from up to 80 countries. Over the years, we have received requests for information, guidance and briefings from places as far apart as South Korea, India and the United Kingdom. The UK was grappling with this idea for a number of years but did not put in place a fully-fledged ombudsman.

Most recently, we have had requests to go to Azerbaijan and Armenia. Last year, we were also asked to help Serbia in the development of a major conference on human rights protection. In the last year, we had a delegation from the South African department of defence which sent over one of their generals, Lieutenant-General Matanzima, who wanted to consult with us. He wanted to see how the office would be constructed and operate because they were under substantial pressure to establish an office of military oversight. The interesting thing is that the South African Minister for defence sent representatives to Ireland first. Following that visit, they went to Canada to study that system. I had studied the Canadian system in the early days. In 2008, I was blessed to be welcomed profusely by the founding military ombudsman in Canada. I went for a working trip to that office to study those systems. They would envy us in many ways because that office, although seen internationally as one of the best and most powerful, operates under a series of mandates. Therefore, they would envy our legislation.

At this time in my career, having done the job for six years, I have identified a number of areas where the legislation could be improved and expanded. That is not to say in any way that I am registering a complaint about it. However, simply because we are seen to be at the forefront of developing this kind of office, I see great potential for improving it slightly. The Minister has acceded to my request to meet with his officials to put forward some ideas. I was pleased and told my small staff this week that this was the best news we have had for a long time. I have already done that work to propose certain amendments to the legislation.

By engaging with people from other states who have shown an interest in the way this office was established in Ireland, I have identified another reason for such international interest. It was something I had not realised myself until having spent about one year in the job. That was that many states and jurisdictions do not allow their soldiers to have a legal right to a complaint. In that respect, Ireland was ahead of the posse because by virtue of the 1954 Act, every member of the Irish Defence Forces has a legal right to make a complaint. Therefore, we were starting ahead and while that might seem like the most basic right to us here, it has been quite noteworthy that other jurisdictions did not provide it.

In enacting this legislation, legislators here did some innovative and clever things, which have been the subject of comment by a number of countries. In their wisdom, legislators in this jurisdiction linked the existing redress of wrongs system within the military to the ombudsman, so that the establishment of the new Ombudsman for the Defence Forces was linked in. The graph on page 4 shows the route through which complaints can be made. Complainants go first to their company commander and then to the commanding officer if it is not resolved at a lower level. They then go to the brigade commander, and once they go to the GOC, who makes a considered ruling, if they are not happy with the outcome, they have a right to refer the matter to the Chief of Staff. The Chief of Staff issues a considered ruling, which is a formal written document. Members of the joint committee can see that in their wisdom, legislators inserted tight timeframes in that it must be done within 28 days.

On St. Patrick's Day 2010, I spoke at a London conference at ACAS, the UK's equivalent of the Labour Relations Commission. At the end, various people at the forefront of dispute resolution, mediation and ombudsman-type set-ups, said they were extremely impressed by this 28-day timeframe. That provides an emergency button for complainants. It augments their rights in that if within 28 days, the Defence Forces have failed to review the complaint, a member can refer the matter directly to the ombudsman.

When I was first appointed, I went out to the brigades to meet all the members. I told them not to push that button too quickly because I thought then that it was remarkably short. The then Chief of Staff and the subsequent Chief of Staff, the late Lieutenant-General Earley, were pleased about that. They said they would endeavour to keep within the 28 days but, clearly, there were occasions when more time might be needed.

It is tightly timeframed. The complainant has a safety net of coming directly to the ombudsman if the Defence Forces do not deal with the matter within 28 days, or do not look as if they are about to do anything meaningful. The complainant then has a right to refer the matter to the ombudsman.

Prior to the establishment of this office, the complainant would be able to refer the matter to the Minister for Defence who appointed a complaints inquiry officer. It would have been dealt with in that way.

The system is well constructed now. The Act provides that the ombudsman will be independent in the performance of his or her functions. Serving members can take a complaint directly to the ombudsman if the 28-day limit has been overrun. Former members of the Defence Forces may refer their complaint directly to the ombudsman. Clearly, they have left the Defence Forces and so do not have to go through the military chain of command or the redress of wrongs procedures.

Do they have to make a complaint within a particular timeframe? Yes, within 12 months of the alleged action arising, or within 12 months of their becoming aware of the alleged action. However, I cannot investigate matters that arose prior to the establishment of the office. There were people who sought to have me investigate pre-existing complaints. In the three months between September 2005 when I was appointed and before the operative date of 1 December 2005, I received a substantial caseload of people who had long-standing grievances that they would have liked to have opened. I was not in a position to do that, however.

As to the exclusions of the jurisdiction of my office, I have already said the ombudsman's jurisdiction is powerful, sensible and well-guided by those who wrote it up. The exclusions are

that the ombudsman cannot become involved in examining security or military operations or investigating complaints about matters relating to the organisation, structure and deployment of the Defence Forces. That is an area that sometimes involves a discussion or a debate. For example, if someone complains about not getting an inter-unit transfer, it might tinge on organisational and structural matters. Questions of jurisdiction have to be teased out carefully. Terms and conditions of employment are excluded explicitly. These are complaints that would come within the ambit of the conciliation and arbitration scheme that is there to deal with terms and conditions of employment. Another matter excluded is the administration of military prisons.

Apart from these exclusions, the ombudsman is empowered to request any documentation. For an office of oversight to be worth its salt, it must have unfettered access to documentation and strength in its mandate to examine installations or procure or request any documentation relevant to an investigation. The legislation is good in that respect. If, for example, the Minister for Defence or the chief of staff were to say some information should not be examined, there is an opportunity for the matter to be remitted for a decision by the High Court.

What became abundantly clear within months of my appointment and the establishment of this office was that there was a huge movement abroad examining the concept that is known as citizens in uniform. Various agencies, particularly under the aegis of the Geneva-based Centre for the Democratic Control of Armed Forces, were examining how members of defence forces, their human rights and fundamental freedoms could be protected. In September 2006 I was invited by the Office for Democratic Institutions and Human Rights of the OCSE to join an expert group to develop a handbook, which was later published, on human rights and fundamental freedoms for members of armed forces personnel. The production of this handbook examines all aspects of human rights in defence forces across a wide range of issues and how these are treated in other jurisdictions.

Sitting in on this, I became aware Ireland was very advanced in this area of work. I was given three chapters to review in the handbook - access to an independent appeals system, complaints handling processes and freedom of religious beliefs. That led to the publication of this book in Vienna at which I was invited to make the keynote address. Since then, there have been meetings in Armenia, Budva, Montenegro and Azerbaijan. This book has been translated into Russian and all other languages of the Caucasus where such rights would be pivotal and centre stage.

From a democratic perspective, in 2005 the newly emerging jurisdictions and EU accession countries were beginning to study their human rights records and protections. I would be the first to argue such study should start with how one treats one's army members. These countries were also examining the concept of a military providing military oversight of administrative matters and a democratic corrective as well as a protection for democracies.

Last year, Ireland was the chair of the Mediterranean partners group in the OSCE and the group's conference was held in Budva, Montenegro, which included all the Mediterranean countries including the Arab Spring countries. Our ambassador, the OSCE and the Department of Foreign Affairs and Trade asked me to speak on the issue of the role of the police and the military in the transition to democracy which I was very pleased to do. Several ambassadors asked if what they were told at the address represented best practice to which I replied it was. We are in a position to say that the operation of the for the Defence Forces office and its powers are best practice, a cause of huge pride for which we do not often get an opportunity. Members, as legislators, have every reason to be proud of establishing legislation that is seen to be a working model from an international perspective.

I told this story of best practice to several young officers of captain rank when I attended the RACO conference in Cork last Christmas. One of the officers replied the Defence Forces does best practice every day. He mentioned anecdotally that he had been on a foreign mission recently. During the course of a sensitive house search in a Muslim area with a multinational mission, the other soldiers commended the Irish personnel for how they conducted the search respectfully. That is an example of what we have in our Defence Forces.

Chairman: The committee's Standing Orders, which are still to be decided, may contain a provision that it may liaise with other ombudsmen, regulatory bodies or bodies established for the purpose of redress as the committee considers appropriate. Hopefully, we will be engaging with Ms Paulyne Marrinan Quinn regularly in the future.

Senator Susan O'Keefe: I thank Ms Paulyne Marrinan Quinn for her interesting presentation. It is not a matter about which we hear often. It is good to hear about the enormous international reputation of the Ombudsman for the Defence Forces which she has helped to build. It is important in a way that is perhaps not always obvious.

I have two more brief questions. I do not know the scale of the ombudsman's workload. Obviously Ms Marrinan Quinn inherited a number of issues which she was unable to deal with. Is her office overburdened or is she able to keep up with her work? I do not intend this as a criticism.

Ms Paulyne Marrinan Quinn: We get a steady stream of cases throughout the year. I will provide a snapshot of the figures from my annual report for 2011, which I am currently preparing. As of the second reporting period in 2011, I received 691 notifications of complaints for the period from December 2005 to the middle of June 2011.

I suggested earlier that the legislators were wise to link the ombudsman's office to the existing redress of wrongs system. A notification of complaint is the formal written notice that a member of the Defence Forces makes about a complaint. One of the strongest features of the legislation is the requirement that every complaint must be noted to the Ombudsman for the Defence Forces and the Minister for Defence. That offers an enormous safeguard because it means complaints do not go into a dark corner.

The percentage of notifications of complaint referred to the ombudsman by way of appeal have varied over the years. Last year and this year we have noticed that while notifications of complaint are at more or less the same level, the numbers referred to the Ombudsman have decreased. I take a positive message from these figures. The ombudsman is sometimes likened to a sleeping policeman. By the very existence of the office, the body over which it has jurisdiction will be minded to respond to the ombudsman's findings and observations if it is intelligent, forward looking and well-led. Over the long term the ombudsman contributes to improvements in standards and best practice at administrative level.

Senator Susan O'Keefe: Ms Marrinan Quinn indicated that she inherited a number of cases which she was unable to address because her office had only just been established. We are familiar with the concept of cold cases and the technological advances that allow police forces to revisit cases that were previously unsolved. Was it felt that some of the cases would never be solved or was there an acceptance that Ms Quinn could not solve them at that stage given that she had just put on her new hat, so to speak?

Ms Paulyne Marrinan Quinn: Many of the cases and referrals were from family members

who had grievances. From 1992 to 1998 I was the first Insurance Ombudsman, which originated as a private sector scheme. I was allowed to go back one year, which proved logistically difficult in those days. Some offices start out by establishing a three or six month cut off period for pre-existing cases.

People were disappointed because they had hoped that I would be able to examine their cases but they understood the position. One of my earliest contacts was from the families involved in the Deepcut case. A Labour Party MP from Birmingham who had been supporting the case of the mysterious deaths at Deepcut barracks in England asked me to speak with the families involved. However, I indicated that if I did so I would raise false hopes that I could intervene in the case. English MPs believed that the establishment of my office put it up to the UK Government to do likewise. The then British military attaché pointed out to me that my first report was read avidly across the water.

However, the UK Government subsequently decided to establish a commissioner for complaints rather than a full military ombudsman. That suggests how easily we could have gone wrong if legislators had not the wisdom to construct my office properly. Last year the UK commissioner stated publicly at a conference of military ombudsmen in Belgrade that she wished she had my office's jurisdiction and construction. By offering an option between the commissioner or the old system, the UK has in effect established parallel complaint systems, which is quite wasteful. Furthermore, the commissioner was not given powers of investigation, the right to demand documents or an adjudicative role.

Deputy Michael Healy-Rae: I thank Ms Marrinan Quinn for her excellent presentation. A question arose last week regarding a request that the committee investigate a case involving the Office of the Ombudsman. If somebody approached us with a complaint about the Ombudsman for the Defence Forces, would we have the power to investigate?

Ms Paulyne Marrinan Quinn: I do not think the committee possesses such a power. That issue never arose during the six years I have worked as the founding Insurance Ombudsman, the six years I have spent in my current position or in the context of various international ombudsman institutions and conferences with which I have been involved. It is not seen as a difficulty in that the very word, "ombudsman", is understood from its Scandinavian origin as a commissioner who is above reproach or a person who occupies an independent role. The role is similar to that of a juror. It is rare that a complaint arises about the ombudsman. There may be complaints about the service the office provides. If the office is understaffed cases may not be dealt with as expeditiously as possible but, with the benefit of my experience and wisdom, I would say that is a road which should not be left wide open because, at the end of the day, people will always be aggrieved if they do not get what they want.

I was a founding member of the British and Irish Ombudsman Association, which had an interesting birth in London. It was formerly the United Kingdom Ombudsman Association but Michael Mills contacted me soon after my appointment to advise me to join it. Along with the other two Irish ombudsmen who were then in office, I attended its conference of the association in Warwick University in 1993. I do not know if we were welcomed by everybody but were given a warm welcome by some. Two motions were passed at the following year's AGM in May 1994 to admit the three Irish ombudsmen to full membership and change the name of the association to reflect our involvement. By sitting at the high table in terms of the work being carried out in other places we were able to learn quickly to the degree that our systems became even better than theirs.

Centres for ombudsman studies had been established in English universities by that stage and a significant number of academics used to deliver papers at our biannual conferences. Research into oversight of and complaints about the ombudsman system which was by one noted academic found that those who did not get what they wanted brought complaints. There has to be a point at which we can say we did our best.

I brought with me a press cutting about a recent High Court judgment of which I am sure members are aware. In it, Mr. Justice Gerard Hogan raised the question as to whether it is timely to examine where the role of an ombudsman and the courts differ. It is something of which I have been very conscious from the beginning.

The office of an ombudsman should provide, without prejudice, easy and free access to an opportunity of having an alternative way of examining a case. Universally, an ombudsman works in an inquisitorial approach rather than a non-adversarial one. We live in an adversarial legal system; an ombudsman is the opposite of that. One has to manage these expectations.

When I was the Insurance Ombudsman, I was seeking records in a particular case but the insurance company in question would not give them to me on advice from its senior counsel. It turned out the senior counsel, who I later discovered was very eminent, believed the documents would be passed between all parties involved, just like discovery in the legal system. I explained to the senior counsel, through the insurance company, that the ombudsman looks at each side and forms a view on the matter so as to keep it out of the adversarial system.

Deputy Michael Healy-Rae: In asking that question, I was in no way insinuating we want that matter to become an investigation.

Ms Paulyn Marrinan Quinn: The Deputy's question was well made. Independence, fairness, effectiveness and accountability are the four founding principles of ombudsmanship. Accountability is an important element of which I am a great proponent. My annual report just does not blind with statistics but gives case examples of my work and its outcomes. It is incumbent on every ombudsman to produce an annual report that is easily accessible and understandable. It should allow the public to ask if a good and value for money service is provided and acts in an independent and fair manner.

Deputy Aengus Ó Snodaigh: I thank Ms. Paulyn Marrinan Quinn for her presentation and apologise for being absent during some of it. Like Deputy Healy-Rae, I hope she does not take my questions as a slight on herself or her officers. These are questions to probe the boundaries of her work.

Serving members of the Defence Forces and the reserve can make complaints to the Defence Forces ombudsman. However, it excludes members of the public making complaints about Defence Forces members when carrying out their duties. Sometimes there may be incidences in which a soldier, acting in support of the Garda authorities, may overstep the mark. What is the mechanism of complaint in such cases, not that I have heard many that would stand up?

Has there been any incident in which the work of the ombudsman has been frowned upon? On occasions the Garda representative associations have publicly frowned on the work of the Garda ombudsman. I have not heard of it in the case of the Office of the Ombudsman for the Defence Forces. I have friends and relatives in the Defence Forces who have nothing but praise for her office, which I hope will continue.

When Michael Mills was Ombudsman, he described it in Irish as Fear an Pobal, an apt title.

Have the investigative restrictions for the Office of the Ombudsman for the Defence Forces hampered any investigations to date? If they have, then the legislators may need to extend the scope of the legislation without interfering with the operations of the Defence Forces. In the past, some soldiers contacted me about the administration of the anti-malarial drug, Lariam, and adverse reactions to it. I have been back and forth to the Minister about it but I understand it would not fall within the ombudsman's remit. Should cases of this be included in her remit?

Ms Paulyn Marrinan Quinn: Regarding the perceptions of an ombudsman's office, it will depend on whether the ombudsman is there to deal with internal grievances. If an ombudsman, like the military one, is there to deal with complaints and grievances and adding to the protection of the fundamental freedoms and human rights of members of a force or agency, it will be seen as a welcome office so long as it does its job robustly and correctly. An ombudsman, such as the Garda ombudsman which replaced the Garda complaints system, provides an opportunity for the public to make a complaint about alleged abuses by members of An Garda Síochána. It is a very different operation and it is debatable whether the term "ombudsman" should be used to describe such an office as it is more a commission for complaint.

When I made a presentation to the Garda Representative Association and the Association of Garda Sergeants and Inspectors, I made the mistake of not being clear about this distinction. These organisations would be interested in having my type of ombudsman system to deal with their cases of alleged bullying and harassment. I understand attempts have been made to bring this forward.

Is there an equivalent body for members to make complaints about actions of members of the Defence Forces? That does not come under my remit. That would be a military disciplinary matter. In those circumstances a direct complaint to the chief of staff and through the military chain of command would bring about a prompt response.

The Deputy may not have present when I informed the committee that I am pleased the Minister has accepted my request to meet his officials. I got a letter from him on Monday stating he thought it was a good idea. I have been six years in the job and I do not know if I will be in it next year. Before I leave, I would like to ensure the jurisdictional issues that have proved troublesome can be resolved. I have drawn up proposals for amendments to tweak the legislation which I will give to the officials when I meet them next week. I have worked on proposals for amendments to the legislation where I believe it could be tweaked and improved. I stated this in my opening comments. It is in no way to be interpreted as a criticism. We have everything to be proud of. The legislators had their hands on this and great tribute must be paid to PDFORRA and Dr. Eileen Doyle who conducted seminal work in 2002 into alleged bullying in the Defence Forces in The Challenge of a Workplace report. She did a very clever thing in 2004, which was to review all of its recommendations in Response to the Challenge of a Workplace, which was brilliantly constructed and has attracted international attention because of how it dealt with the matter. The 2004 report found the lack of trust in the Defence Forces in the complaint system was troubling and worrying. When the report was issued in 2004 it was the final impetus to introduce legislation to establish my office, which had been on the backburner for approximately ten years.

I believe I have answered all of the questions. I am not very good at counting back.

Deputy Aengus Ó Snodaigh: I made a comment on Lariam.

Ms Paulyn Marrinan Quinn: Under the legislation I am not able to deal with this issue.

Chairman: I have a number of questions. What issues make up the bulk of the work of the ombudsman's office? Does Ms Marrinan Quinn have sufficient resources to carry it out? I know she hopes to meet officials from the Minister's office but does the ombudsman's office have as part of its activities a policy or legislation suggestion system whereby it can advise legislators on issues it investigates and understands with regard to how legislation or policy could be changed to deal with them.

Ms Paulyne Marrinan Quinn: We do so with regard to policy but not legislation. The bulk of the cases is made up of good practice, administrative practice, management and human resource issues. Over the years we have received complaints about promotion procedures, career development and career courses. To explain to people who do not understand the military structure, the military does its own training and career courses, overseas training, overseas service and promotion are all linked because the promotion process is linked to whether one has certain courses or qualifications. One cannot go to the next stage until one has them. Without a senior NCO course one is not eligible for promotion to a certain level. When promotion opportunities arise, how many times one has served overseas and all parts of one's record are taken into account. These areas formed part of the initial complaints we received.

The Defence Forces do not need me as they are very well able to speak for themselves, but it would be remiss of me not to mention the response to the Defence Forces to this office. An office such as this can be established with all of the best structures, but if the leadership in the institution or state is not willing to properly take it on board it could easily be thwarted and be to no avail. The Defence Forces responded extremely positively and very quickly.

In the first three months of operation I brought out five adjudications and reports. The director of human resource management and the deputy chief of staff support, who was General Early, spotted all of the cases were about lack of consistency in the criteria for selection. Therefore the brigades were not consistent in their approach. Within days it was altered and an administrative instruction went out to state as a result of the ombudsman's cases with immediate effect the criteria had to be synchronised and this was done. By July of that year the deputy chief of staff support stated the ombudsman had repeatedly stated in reports that promotion procedures were not transparent and something needed to be done about it. He introduced new interim selection procedures with immediate effect from 31 July 2006. There was a very prompt response to the work of the office.

In many ways this indirectly responds to one of the questions asked by Deputy Ó Snodaigh which I may not have properly answered. Adjudications have led to changes being made to policies, procedures and practices. A number of Ministers for Defence have, in the Dáil and in answer to questions, acknowledged human resource management issues and administrative matters. In answers to a recent question the Minister stated new promotion procedures will be introduced for officers and enlisted personnel and that these new procedures have been informed by the ombudsman's decisions and recommendations.

Chairman: With regard to resources does the ombudsman feel the office has enough resources to carry out the level-----

Ms Paulyne Marrinan Quinn: I would have to say no. I do not like complaining about anything in the present climate and I feel sick to the gut to be speaking about not having enough staff and inadequate premises but I will mention them because it is a matter of fact that when the office was established I did not receive the staff I sought and there was no recession then. I did a blueprint for the office and stated what I needed because I had worked as an insurance

ombudsman previously and knew what was likely to be needed.

I did not obtain the staffing I required and I have been struggling with regard to premises. The premises are inadequate. It is always on the agenda and I wrote to the Department recently about it. I do not like to complain about resources in the present environment, but it is important to state these issues were not a priority in 2005 and 2006 and yet I was left without staff. The first member of staff did not arrive until June the following year. I had to run the office on my own. I did not obtain a senior member of staff until September of that year and I did not obtain a clerical officer until the following January. It was January 2007 before the three people I was being given were in the same place at the same time and it was not the composition I had sought. I am not grumbling about it; we have struggled through and managed. The people working for me have worked hard and endeavoured to make it happen.

Chairman: It is very important for offices such as that of Ms Marrinan Quinn to be properly resourced. It is one thing to provide the infrastructure to allow the system to work but another major issue is to ensure it has the ability to action policy. If the resources are not there neither is this ability.

Ms Paulyn Marrinan Quinn: Very much so.

Deputy Peter Mathews: I welcome Ms Marrinan Quinn. I speak with the experience of having been a corporal in the 6th Field Military Police Company in Fórsa Cosanta Áitiúil many years ago. What she has laid out in this document is very illuminating. She is like the internal referee for the Army. Is this a layman's way of describing it?

Ms Paulyn Marrinan Quinn: Yes, that is what an ombudsman does. One blows the whistle.

Deputy Peter Mathews: She referees any complaints such as those involving career courses and promotion. These areas had accounted for 31% of complaints but this has been reduced to 13% so it is working. The fact the office is known to be there is itself a way of having self-resolution before an issue comes to the ombudsman and this is also very good.

With regard to the restrictions on page 7 is there ever a disingenuous placing of an excuse not to bring forward a case for the consideration of the ombudsman? Would somebody suggest a matter cannot be examined because of security or being a military operations matter when it might not be or could be borderline? Do people use these as a fig leaf to excuse not dealing with a matter?

Ms Paulyn Marrinan Quinn: No. I do not know whether Deputy Mathews was a member of the Dáil when the legislation-----

Deputy Peter Mathews: No, I am a new boy.

Ms Paulyn Marrinan Quinn: The credit must be laid where it is due and a very good provision of the legislation is that by law every Irish soldier has the right to make a complaint under section 114 of the 1954 Act. When a notification of complaint is put down it must be logged, that is *pro forma*. Under the Ombudsman (Defence Forces) Act 2004 the Ombudsman must be notified of this. I receive the complaint. I do not know what it is about but I know Private So-and-so on the blank date of blank made a complaint and alleged something had happened on another date. This goes into our system and we track it for 28 days. After 28 days the complainant can come directly to me if nothing has been done in the timeframe set down under internal

procedures. If I do not hear from the complainant I write to the person. The Defence Forces will inform me the GOC has made its considered ruling and the complainant is considering it. The complainant has the right to go the whole way up to the Chief of Staff to get a considered ruling. This is all done in writing and there is a written record. I cannot emphasise how good this is because other jurisdictions do not have these measures.

In regard to whether an injustice could be done to someone or if something could be hedged over or put into a dark corner, our written record in this area is excellent. I often wish that others in other jurisdictions could see it. Where an adjutant advises that a complainant has requested that a matter go to the ombudsman the full file is sent to me. In response to Deputy O’Keeffe’s question in regard to volume, it is important to note that while I finalised 40 or 50 cases, other cases come before me in respect of which I must make a decision in terms of whether they came within my remit or are outside my jurisdiction. This involves a huge amount of work. In fact many ombudsmen would agree that deciding whether a case is within one’s remit or not is often more difficult than dealing with the case itself.

On Deputy Mathews’s point, the Chief of Staff will send a file to me stating that a private has asked that the matter be referred to me but that he does not believe the matter is within my remit. Where this is done, which I encourage, the matter is then raised and debated.

Deputy Peter Mathews: So it does not slide into either direction without discussion.

Ms Paulyne Marrinan Quinn: That can never happen.

Deputy Peter Mathews: That is good.

Ms Paulyne Marrinan Quinn: It is something to be proud of.

Deputy Peter Mathews: It is. If the complainant or person referring a matter to the ombudsman’s office wants to have an oral hearing is that possible?

Ms Paulyne Marrinan Quinn: The Deputy is touching on the decision of Mr. Justice Hogan prior to Christmas in respect of a case in the High Court involving the Financial Services Ombudsman.

Deputy Peter Mathews: Yes.

Ms Paulyne Marrinan Quinn: It is interesting that in that case Mr. Justice Hogan said that it may now be time to look at the dividing line between the ombudsman and the courts.

Deputy Peter Mathews: I had the pleasure of that in respect of an insurance matter I raised.

Ms Paulyne Marrinan Quinn: Yes. Mr. Justice Hogan also made the point that this will put huge pressures on the ombudsman’s resources in these times of austerity, which is true. He wisely said that it may be time to throw up the debate as to where one ends and the other begins because billionaires could be using the ombudsman’s office.

In terms of people asking for oral hearings, I am glad to say again that the legislation clearly provides that the ombudsman is independent in the exercise of his or her functions. It also states - this is a powerful provision in the legislation - that the ombudsman has discretion in determining how a case is dealt with. When I was insurance ombudsman I allowed oral hearings on-----

Deputy Peter Mathews: I had an oral hearing with Ms Marrinan Quinn when she was ombudsman for insurance.

Ms Paulyn Marrinan Quinn: I am glad to say I do not remember that.

Deputy Peter Mathews: The ombudsman was fair and professional.

Ms Paulyn Marrinan Quinn: Thank you. I am delighted to hear that.

Deputy Michael Healy-Rae: I am surprised Deputy Mathews did not make more of an impression.

Deputy Peter Mathews: I will agree to that being on the record.

Ms Paulyn Marrinan Quinn: Where a conflict in respect of evidence arises I would suggest an oral hearing. For example, I would bring together parties such as an insurance company which was trying to repudiate liability on a death policy by virtue of the fact that a farmer had not informed it he had been to the doctor three months previous and was diagnosed with high blood pressure and a widow being depriving of a small and paltry amount due on an industrial policy which had cost her and her husband a fortune. I dealt with many such cases. However, I cannot allow them as often now as I would like given we are in circumstances wherein there is a difficulty in terms of resourcing. I do allow oral hearings. I have spoken about this to PDFORRA which is interested in promoting mediation, an area in which I am very involved having set up a post graduate diploma in Trinity ten years ago. I firmly believe that there are opportunities here for early intervention. I often refer to this when launching an annual report.

The only time I have seen this addressed better - I say this reluctantly - was during a visit to Canada which, with a small amount of complaints, delegates down the authority to make decisions. While there would be a chain of command difficulty with some matters most are dealt with at local level. Although the Irish Defence Forces, with all its structures, is committed to dealing with matters at as low a level as possible, and does so, I believe there is room for more work in this area, including, perhaps, mediation. I know that a group from PDFORRA proposes to undertake a pilot in this regard. Everything is on the move. PDFORRA is a robust organisation. It comprises some of the most dynamic people I have ever met. It never lets the grass grow under its feet and is constantly trying to forge out new ideas.

Deputy Peter Mathews: I would like to touch on the point made by Ms Marrinan Quinn in regard to overseas courses and so on. Would Ms Marrinan Quinn agree that the Army is a fantastic place for people to improve and develop their talents and abilities?

Ms Paulyn Marrinan Quinn: Yes, at every level. I spoke recently with a person who has specialist skills, developed over the years. Many of the people who work at NCO level in specialist units give up time to train others, although this is not recorded anywhere. One cannot put a value on that learned experience.

Deputy Peter Mathews: They encourage people to become lawyers, accountants, doctors and so on.

Chairman: While this is an interesting debate, we must move on. I call Deputy McConalogue.

Deputy Charlie McConalogue: Go raibh maith agat. I thank the ombudsman for taking the time to attend this meeting today to outline to us her work on a daily basis. It is important

that the committee has regular contact with her.

My apologies for being late but I was watching on my monitor. I note from the ombudsman's documentation that when her reports are not accepted by the Minister, the ombudsman has the option of issuing special reports. Has that happened much?

Ms Paulyne Marrinan Quinn: No. Section 7 of the Act states that the ombudsman can write to the Minister and give an explanation as to why something was done, offer a specific remedy or ask that a matter be reviewed again. Section 7(5) provides that if the ombudsman is not satisfied with the remedy offered by the Minister, he or she can make a special report. Often when ombudsmen make recommendations that are not followed up difficulties can arise. Under the Act I have the power to lodge a special report into the Houses of the Oireachtas. Where that would go next, I am not sure. Perhaps the committee might provide a good outlet in that regard.

Deputy Mick Wallace: I apologise for being late. The ombudsman is permitted to take action as a result of negligence or carelessness. Deputy Ó Snodaigh referred to the drug given to some soldiers prior to going to Africa. Soldiers are now complaining it had detrimental effects on their health. Would the ombudsman be allowed to investigate that complaint?

Ms Paulyne Marrinan Quinn: I have not received a request to investigate it.

Deputy Mick Wallace: If the ombudsman receives such a request will she be allowed to investigate?

Ms Paulyne Marrinan Quinn: It was mentioned in the course of a case that a soldier had raised an issue but he has not yet made a complaint about it.

Deputy Mick Wallace: Would the ombudsman have the authority to deal with such complaint, if made?

Ms Paulyne Marrinan Quinn: That may be a jurisdictional discussion. There is nothing that I can see on the face of the Act thus far that indicates I could not. I have no doubt there may be an interesting discussion about that.

Chairman: Ag an bpointe seo, ba mhaith liom míle buíochas a ghabháil le Ms Marrinan Quinn as an eolas fíor-shiomiúil a thug sí dúinn. I thank the ombudsman for attending today and for her informative contribution. We look forward to working with her again in the near future.

Ms Paulyne Marrinan Quinn: I apologise for not being able to respond in Irish. As the child of an emigrant, I grew up in England and did not learn the language. I wish I could respond in Irish but I cannot.

Chairman: We are pleased with the ombudsman's response.

Ms Paulyne Marrinan Quinn: Thank you.

Deputy Peter Mathews: I apologise for being late.

Ms Paulyne Marrinan Quinn: I would welcome an opportunity to meet again with the committee to explore what we can do together better. Thank you.

The joint committee went into private session at 5.10 p.m. and adjourned at 5.30 p.m. until

ROLE AND FUNCTIONS: DISCUSSION WITH OMBUDSMAN FOR THE DEFENCE FORCES

4 p.m. on Wednesday, 7 March 2012.