

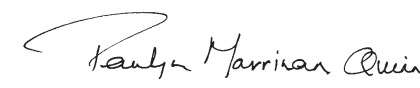


Ombudsman for the Defence Forces

Annual Report 2011

I hereby submit my Annual Report as Ombudsman for the Defence Forces for 2011 pursuant to section 7 of the Ombudsman (Defence Forces) Act, 2004.

This is the sixth Annual Report submitted in relation to the work of the Ombudsman for the Defence Forces since it was established on the 1st December, 2005.



Paulyn Marrinan Quinn, SC
Ombudsman for the Defence Forces

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I Introduction by the Ombudsman for the Defence Forces, Paulyn Marrinan Quinn, SC

Independent / Accessible / Impartial

*Providing independent review of grievances
and overseeing administrative processes in the
Irish Defence Forces.*

2011 was a busy and productive year for the Ombudsman for the Defence Forces (ODF).

As can be seen from the overview of operational activity contained in the ‘Analysis of Cases’ section of this Annual Report, activity across all key areas of activity, including Redress of Wrongs and my reports issued at the preliminary examination and adjudication stages remained high in 2011, and in many instances exceeded the volume dealt with in the previous year.

However, output figures alone cannot do justice to the achievements of an Ombudsman’s Office and 2011 witnessed significant progress on areas of vital interest to my Office that perhaps are not captured by bare statistics alone.

In my previous Annual Reports, I have consistently drawn attention to the long-term value that an Office of the Ombudsman for the Defence Forces can contribute to the institution over which it has oversight. Over time that civilian oversight, in a military context, can precipitate a culture of change in administrative procedures and human resource practices at the very heart of the organisation, particularly in how it operates its own internal dispute resolution mechanisms. I have also emphasised the persuasive influence that an Ombudsman can wield particularly when highlighting recurring systemic failings which give rise to a high number of grievances and where reform is necessary.

I am glad to report that 2011 again confirmed that my Office has continued to have an impact in both the areas outlined above.

For instance, in monitoring our operational statistics throughout the year, I was pleased to see a positive trend emerging whereby the percentage of Redress of Wrongs (RoW) grievances, initiated within the Defence Forces, which were appealed to my Office was decreasing. In 2009, for example, only 21% of RoWs initiated by serving members of the Defence Forces were resolved internally within the Defence Forces whereas last year this figure had increased to 46%.

Even when factoring in a tolerance for the individual nature of every RoW complaint there is no doubt that a positive trend is evident. More complaints are being resolved at an earlier stage in the dispute resolution process and this is good news for the Defence Forces and for individual Complainants. I believe it is safe to take a positive message from this development and that it is indicative of the Defence Forces being mindful of how issues and causes of complaint in previous cases were adjudicated by the ODF.

International evidence on the impact of an Office of Ombudsman indicates that the cumulative effect of an Ombudsman’s adjudications has a positive effect on how an institution addresses complaints internally at the early stages of its redress system. While reviewing a case in 2011, I was struck by comments contained in the report of a

Military Investigation Officer (MIO), who had been appointed by the General Officer Commanding to investigate a Redress of Wrongs. In conducting his investigation the MIO drew attention to the fact that the administrative procedures in a specific case failed to satisfy the criteria which establish objectivity and reasonability, and I found it noteworthy that he went on to comment that these are the judicial benchmarks which are contained in judicial reviews issued by my Office. An indication that the internal Defence Forces approach to grievances may now be guided by previous findings I have made is a most welcome development and serves to demonstrate the long-term impact that the Office of ODF is having on the day-to day reality of life in the Defence Forces.

Of course, the emergence of such a trend as this is only possible because the Ombudsman (Defence Forces) Act, 2004 specifically provides the ODF with a wide-ranging oversight of the Defence Forces internal dispute resolution systems and approach. The legislation requires the Defence Forces to notify the ODF of every Redress of Wrongs initiated under section 114 of the Defence Forces Act, 1954 (as amended) and I must be advised about the resolution or withdrawal of complaints. I established the practice whereby I must receive written confirmation from the Complainant that he or she is satisfied with the outcome reached. Serving members of the Defence Forces who are not satisfied with the outcome of a RoW process can appeal the Considered Ruling of the Chief of Staff to me for review. In reviewing a case, I may also examine and comment on any delays and the manner in which the complaint was handled through the internal redress process.

2011 also saw important progress in relation to reform of procedures and practices that I have, for some time, identified as an ongoing source of grievance. In 2011 cases investigated by my Office which related to complaints regarding the administration and management of the selection procedures for promotion remained high. This serves to confirm the well-established fact, identified in successive ODF Annual Reports since 2006 that, due to the interlinked nature of training and career courses and career development within the Defence Forces, the administration of promotion selection procedures are a consistent source of grievance. Since 2006, grievances regarding the administration and management of selection procedures for promotion accounted for 36% of all cases referred to my Office.

I am pleased to report that the Minister for Defence, Mr. Alan Shatter, TD, confirmed to me by letter recently that the negotiations that had been underway for some time through the Conciliation and Arbitration Scheme, involving the military representative organisations and the Department, have concluded and that a new Non-Commissioned Officer (NCO) promotion scheme was agreed in December 2011. There are also new provisions regarding Officer promotion procedures. I await sight of the new schemes and look forward to the final implementation of the new system.

I was also pleased that the work of my Office in highlighting issues of concern regarding administrative processes in areas such as career courses, training, overseas service and promotion, which are all interdependent and linked, was taken on board in devising the new promotion schemes when Minister Shatter informed Dáil Éireann in June 2011 that ‘the recommendations of the Ombudsman have informed the development of a new promotions scheme.’ In 2012 I look forward to monitoring how the new promotions schemes will impact on the number and type of cases initiated by members through the Defence Forces RoW procedures and likewise the impact on cases referred to my Office.

Interestingly, these two issues – policy changes following recommendations and oversight of existing complaint handling mechanisms – are important aspects of an office of military Ombudsman identified in a groundbreaking international study of Ombudsman institutions for armed forces published in 2011. *Comparative Perspective of Ombudsman Institutions for the Armed Forces*¹ is a pioneering survey of practices and policies of military Ombudsman institutions in 15 countries². Published by the Geneva-based Centre for the Democratic Control of Armed Forces (DCAF) in April 2011 the study provides, for the first time, an evidence-based international benchmark to judge the ODF’s statutory and operational framework.

The study reveals that our system of redress for serving and former members of the Defence Forces is robust and progressive by international standards. I believe that the ODF steadfastly adheres to the three underlying principles of a military Ombudsman identified in the study, namely i) to strengthen civilian and democratic control over defence forces ii) to better protect the fundamental freedoms and human rights of serving and former members by creating more effective mechanisms for complaints handling and redress iii) to create an independent quality control mechanism to oversee procedures, practices and policies within defence forces.

That said, the study also reveals areas where our legislative and operational framework would benefit from review and discussion to ensure that our system of oversight and redress maintains its position as a model of best international practice. For instance, the study reveals that the majority of military Ombudsman institutions have the capacity to initiate their own enquiries, generally known as ‘own-motion investigations’, rather than being dependent on a Complainant to refer a case before commencing an investigation.

¹ *A Comparative Perspective of Ombudsman Institutions for the Armed Forces* by Hans Born, Aidan Wills, and Benjamin S. Buckland is available online from www.dcaf.ch/Publications

² The countries and institutions that participated in the study were: Austria (Parliamentary Complaints Commission of the Austrian Armed Forces), Belgium (Inspector General Mediator of the Belgian Armed Forces), Canada (the Ombudsman for the Department of National Defence and the Canadian Forces), Estonia (the Office of the Chancellor of Justice), Finland (the Parliamentary Ombudsman of Finland), Germany (Parliamentary Commissioner for the Armed Forces), the Netherlands (Inspector General of the Armed Forces), Norway (the Parliamentary Ombudsman for the Armed Forces), Ireland (the Ombudsman for the Defence Forces), Poland (the Commissioner for Civil Rights Protection), Romania (People’s Advocate Institution), Serbia (Protector of Citizens), Slovenia (the Human Rights Ombudsman), Sweden (the Ombudsman), the United Kingdom (Service Complaints Commissioner).

This ‘own-motion’ capacity is seen as an important element in the operational independence of an Ombudsman and is a power exercised by 12 of the 15 Ombudsman institutions examined in the study, with Belgium, Ireland and the UK being the exceptions³.

I believe that eight years after the passage of the Ombudsman (Defence Forces) Act, and with six years practical experience of oversight, investigation and adjudication by my Office, it is now an opportune time to take stock of the how our system of oversight is firstly, fulfilling the original founding reasons and goals of the legislation, secondly, adapting to the challenges of Defence Forces personnel and thirdly, how it could benefit from extended powers enshrined in similar systems of redress in other jurisdictions.

With this in mind I have written to the Minister for Defence, Alan Shatter, TD, suggesting specific aspects of the Ombudsman (Defence Forces) Act, 2004, that may benefit from review, amendment and extension. I am glad to report that the Minister has responded in positive terms to my initiative and I look forward to progressing discussions in 2012.

To ensure that all stakeholders have an opportunity to contribute to this process I also intend to convene a seminar in 2012 to provide an opportunity for discussion about the workings of the past six years and to explore the benefit of a potential review and reform of the ODF’s legislative and operational framework with a view to learning from our own experiences and continuing to contribute to international standards of best practice.

The DCAF Policy Paper, *Comparative Perspective of Ombudsman Institutions for the Armed Forces*, confirms the recent burgeoning international interest in the work of Ombudsman institutions working in the military realm. April 2011 saw the 3rd International Conference of Ombudsman Institutions for Armed Forces (ICOAF) take place in Serbia. Entitled *Protecting the Human Rights of Armed Forces Personnel: Old and New Challenges*, the conference was organised by the Protector of Citizens of the Republic of Serbia, Mr Saša Janković, and DCAF, with the support of the Ministry of Defence of the Republic of Serbia.

I delivered papers on two of the three key themes of the conference (human rights of personnel in multinational missions and the relationship between the office of Ombudsman’s oversight and the internal military complaint handling mechanisms) and moderated the panel discussion on the third theme (representation of military personnel through unions and associations).

³ The UK model examined in the research paper is not an independent Ombudsman institution. The UK model of Services Complaints Commissioner operates within, as distinct to independent of, existing military grievance procedures.

The conference concluded with the signing of the ‘*Belgrade Memorandum*’ which asserted the valuable contribution that ICOAF is making in a rapidly changing military sphere. I was privileged to chair the Drafting Committee for that memorandum. ICOAF has also established a website, www.icoaf.org, which will prove a valuable source of information and provoke discussion amongst all those with an interest in independent civilian oversight and the protection of the human rights and fundamental freedoms of armed forces personnel.

The continued international interest in my Office was also confirmed by the statistics for www.odf.ie, which witnessed a 13% increase in the number of unique visitors, and recorded visits from 85 different countries during 2011. 2011 also saw the South African Ministry of Defence consult my Office in relation to the legislative framework for an office of military Ombudsman and issues regarding practical implementation of the role and remit. It was a privilege to brief a South African delegation from the Ministry of Defence and the South African armed forces during their visit to Dublin.

As I have mentioned above, and as will be clear from the various activities detailed in this Annual Report, 2011 was a busy and productive year. Ensuring that serving and former members of the Defence Forces receive an independent, impartial and fair adjudication from my Office is the cornerstone of my work. With that in mind, I must record the progress that both the Defence Forces and the Minister for Defence have made in reducing the response times to my Reports at preliminary examination stage and my adjudications in Final Reports to the Minister when I record my findings and recommendations.

In relation to the latter point I know that the former Minister for Defence, Mr. Tony Killeen, TD, had begun work on reducing the time taken to provide replies to my Final Reports. Minister Killeen left office in January 2011 and I would like to record here my acknowledgement and appreciation for the interest he showed when we discussed the objectives of the work of my Office during his tenure as Minister for Defence.

I would also like to record my appreciation for the commitment that Mr. Alan Shatter, TD, has demonstrated towards my Office since becoming Minister for Defence in March 2011 and I look forward to building on this positive working relationship with the Minister over the coming months.

The continued positive engagement with my Office by the Chief of Staff, Lieutenant General Sean McCann, and his senior command and staff, sustained my ability to perform my functions as Ombudsman for the Defence Forces and serve the interests of members, and former members, at all levels of the Defence Forces. I would like to place on record my appreciation for the consistent respect that is afforded to my Office and my staff in all dealings with the Defence Forces.

As I have referred to in previous Annual Reports, the enlightened and positive approach of the Chief of Staff, and his colleagues in the senior military command and staff, is pivotal to the operation of the ODF. Change cannot occur without leadership. Since the inception of the ODF there are strong indications that the Defence Forces have recognised the benefit which an Office of oversight can bring to their personnel and human resource procedures. This positive response has fostered a relationship built on mutual respect which ensures that the ODF can have an ongoing, beneficial effect on management practices and sound administration within the Defence Forces.

With that in mind, I would like to acknowledge the continuing co-operation that my Office receives from the Defence Forces Redress Section, the Office of the Director of Human Resource Management Section (D HRMS), the Enlisted Personnel Management Office (EPMO) and the Commissioned Officers Management Office (COMO). These sections of the Defence Forces have been centrally involved in reducing the response time to my reports at preliminary investigation stage and their co-operation in that regard, and across the other range of activities which relate to my Office, is significant and greatly appreciated.

In my 2009 Annual Report I referred to my audit of the recommendations for review, reform and redress contained in my Final Reports and the subsequent response by the Minister for Defence since the inception of my Office. I believe that this policy of monitoring and auditing the acceptance and implementation of recommendations is integral to the work of my Office. ODF maintains an accurate and up-to-date record of the recommendations for administrative and systemic reform. Minister Shatter has informed me that the commitments to reform administrative practices following on from my adjudications are part of the ongoing discussions by the military authorities and the Department of Defence and are listed as a standing item at monthly meetings of the Standing Committee on Defence Forces Personnel Policy Issues. I have requested that arrangements are agreed through which I can be provided with an update from the Standing Committee regarding the implementation status of reforms emanating from my recommendations.

Annual Reports serve an important role in accounting for the activity and initiatives of a public body in a given year. This ‘lookback’ function is important not just for transparency and accountability but also to inform external appraisal of the oversight, monitoring work and individual case adjudications of an Office such as the ODF and in recognising the value for money that such an Office provides. However, I hope this Annual Report, the sixth since I was appointed Ombudsman for the Defence Forces on 19th September 2005, will also encourage stakeholders to look forward and envisage the far-reaching benefits of a system of independent oversight, together with impartial and fair dispute resolution for the Defence Forces that is fit for purpose in the 21st century.

As I have mentioned there now exists a growing body of literature that draws together international experience and, largely through the endeavours of ICOAF, there is a vibrant network committed to improving standards and structures so that they meet the challenges presented by an ever-evolving security and institutional setting.

The initial ICOAF conference, convened in Berlin in 2009 by Mr. Reinhold Robbe, the then German Parliamentary Commissioner for the Armed Forces, provided a forum whereby similar institutions could explore their shared values and common goals. The momentum from that ground breaking conference was built upon at the 2nd ICOAF conference, organised by Dr. Anton Gaál, Executive Chairman of the Austrian Parliamentary Commission for the Federal Armed Forces, and DCAF. That conference focused on the role of military Ombudsman institutions in protecting and promoting the human rights of armed forces personnel. The 3rd ICOAF conference, held in Serbia in 2011, expanded on that theme, examining new and old challenges in the area of fundamental freedoms and human rights of armed forces personnel. The ICOAF framework provides an important forum for the exchange of experience and the promotion of standards of best practice.

Now with six years experience of investigating a wide range of issues giving rise to complaints and having built up a corpus of recommendations that are of benefit in identifying areas where reform has been effected to the benefit of members of The Defence Forces, the Office of ODF is well-placed to contribute to the ICOAF forum in defining standards of best practice in this field and, indeed, in highlighting areas where future legislative amendments may improve an already enlightened system of external oversight and independent adjudication of grievances.

While not wanting to be prescriptive I believe that consultation and debate on issues such as ‘own-motion’ powers, access of family members of Defence Forces personnel to the ODF, oversight powers in relation to Defence Forces places of detention or a military prison and the ability of the Ombudsman to use discretion in waiving timelines – especially in cases where the Complainant is serving overseas – would be timely and valuable. I am very pleased that Minister Shatter has agreed to my request for discussions about these issues and it is a piece of work I am determined to progress in 2012.

I hope this Annual Report will provide readers with an informed and insightful review of ODF activities in 2011. There are many strands to the work of my Office – oversight of internal military complaints handling, investigation and adjudication of cases, issuing of Final Reports and recommendations and contributing to the growing European and international discussion and work in developing standards of best practice for offices of military Ombudsman institutions and, through co-operation with the OSCE’s Office for Democratic Institutions and Human Rights, to provide advice and support to States interested in developing processes to safeguard the human rights and fundamental freedoms of members of their armed forces.

It is without doubt an exciting and eventful time to be involved in this important sphere, undertaking work that, however varied, will always strive to ensure that providing a fair, impartial and independent avenue of appeal for members of the Defence Forces is our top priority. I feel compelled to record my gratitude for the forbearance that members and former members of the Defence Forces have shown at a time when, due to fiscal constraints, the moratorium on recruitment and the reduction in overseas service, appropriate redress in cases where I have upheld a complaint may not be available in the short to medium term.

I would like to formally record my warm appreciation for the work of my staff in 2011 and also to extend my gratitude to all those who have been enthusiastically involved in the production of this Annual Report, which in itself is a substantial piece of work.



Paulyn Marrinan Quinn, SC
Ombudsman for the Defence Forces

Before referring a complaint to me serving members of the Defence Forces must first exhaust the Redress of Wrongs (RoW) procedure. Former members of the Defence Forces may contact me directly in writing or by submitting a complaint online through www.odf.ie.

II Highlights of 2011

- 32 new cases referred in 2011.
- 29 Final Reports containing adjudications and recommendations issued.
- A notable increase in the percentage of redress of wrongs complaints resolved within the Defence Forces own complaint handling process, confirming the beneficial impact the ODF is having in relation to the Defence Forces administrative processes and practices and its own complaint handling process by enforcing standards of best practice.
- A reduction in time taken by the Defence Forces to respond to my reports at preliminary examination stage.
- A reduction in the average number of days taken for a response to issue from the Minister and the Chief of Staff to adjudications contained in Final Reports.
- Confirmation that new schemes for NCO and Officer promotion have been agreed and will be implemented in 2012.
- Comprehensive monitoring and audit by ODF of recommendations for reform and remedy made in ODF Final Reports enhanced. Updated audit of recommendations presented to the Department of Defence and the Defence Forces. Active engagement in monitoring implementation continues.
- Proposal to engage with the Department of Defence in a review of primary legislation to discuss ODF suggested areas where reform can maintain standards of best practice and effectiveness initiated.
- Increase of 13% in the number of unique visitors to the ODF website, with visits from 85 different countries recorded in 2011.
- Ombudsman facilitates and briefs visiting delegation the South African Ministry of Defence and the South African Defence Forces on legislative structures for ombudsman institutions in a military context as part of South Africa's preparation for the establishment of a military ombudsman.
- Ombudsman served on the Working Group in preparation for the 3rd International Conference of Ombudsman Institutions for Armed Forces (ICOAF) held in Serbia in April 2011.
- At the suggestion of Ireland's Ambassador to the OSCE, His Excellency, Eóin O'Leary, the Department of Foreign Affairs and Trade invited the Ombudsman to address the OSCE Mediterranean Partners Conference in Budva, Montenegro. The Partners Conference, entitled *Democratic Transformation: Challenges and Opportunities in the Mediterranean Region*, saw representatives from Algeria, Egypt, Israel, Jordan, Morocco and Tunisia join representatives from OSCE states to discuss democratic and institutional challenges in the Mediterranean region. At the invitation of the host country, the Palestinian National Authority took part in the Conference. The Ombudsman addressed the topic of the role of the police and the armed forces in states in transition to democracy.

When I receive a complaint the first step is to conduct a preliminary examination of the issues. One of the first decisions which I have to make is whether the complaint comes within my jurisdiction.

III Analysis of Cases

My Office continually reviews the quality and format of information presented in Annual Reports and on www.odf.ie to ensure that it is relevant, accurate and accessible. My staff and I encourage feedback on our publications and use this dialogue to improve the information available to stakeholders and the wider public, with our goals always being clarity and accuracy.

This section of my Annual Report contains the headline statistics that provide an overview of my Office's core activity in relation to case investigation and adjudication in 2011. More detailed information related to the statistics, including, for instance, a breakdown on complaints and appeals received by service area, rank and gender, is available at www.odf.ie/publications and Appendix 1 to this Annual Report.

Also this Annual Report includes a new, separate heading that details complaints and appeals referred to my Office solely in 2011. This has been introduced to avoid any confusion between new cases referred and cases carried over from one calendar year to the next – all of which form part of the ODF's caseload during any given year and represent an area of work.

Notifications of complaints under section 114 of the Defence Act, 1954 (as amended)

Under section 114 of the Defence Act serving members of the Defence Forces have a legal right seek to have a complaint handled internally through the Defence Forces' Redress of Wrongs (RoW) procedures.

One of the most innovative aspects of the Ombudsman (Defence Forces) Act, 2004 is the oversight role it confers on the Ombudsman in relation to this internal military dispute resolution mechanism.

Every complaint that is lodged through the RoW process must be notified to my Office (and to the Minister for Defence). My Office actively monitors the progress of these complaints through the system. If, after a period of 28 days, the matter has not been progressed to the satisfaction of the Complainant or if he or she is not satisfied with the outcome they can formally refer the case to my Office after it has been ruled upon by the Defence Forces at Chief of Staff level.

The notification system enables my Office to have oversight of the internal grievance procedures within the Defence Forces and ensures that every individual complaint is processed within the established timeframe.

I received 78 Notifications of Complaint initiated by serving members of the Defence Forces between January and December 2011.

In addition to the 78 Notifications of Complaint recorded in 2011 my Office monitored 26 Notifications of Complaint that were initiated by serving members of the Defence Forces in 2010 and were still being dealt with by the Defence Forces in 2011.

Reviewing the figures for Notifications of Complaint over the past three years, a very interesting and positive trend emerges. In 2009 only 21% of Notifications of Complaint were resolved within the Defence Forces at the Redress of Wrongs stage. In 2011, this figure had increased to 46%.

This is a very welcome development and is an indicator that the Defence Forces, when dealing with RoW complaints, take cognisance of outcomes of previous cases I adjudicated and the recommendations that I issued.

Cases received directly by the Ombudsman for the Defence Forces

While serving members of the Defence Forces must invoke the RoW process before they can refer a case to my Office, former members of the Defence Forces can refer complaints directly to me, subject to certain conditions. A complaint in relation to an action taken by a civil servant, emanating from a serving or former member, can also be referred directly to my Office.

In 2011 eight complaints were directly referred to my Office.

Number of new cases for my consideration in 2011

32 cases, the origins of which were:

- 12 cases were appeals from RoWs initiated in 2011
- 10 cases were appeals from RoWs initiated in 2010 and appealed in 2011
- 8 cases were lodged directly with my Office
- 2 cases closed in 2010 were re-opened in 2011

Total number of cases under investigation in 2011

In addition to the 32 cases referred to above my Office continued work on 57 other cases which were in my system as of 31st December 2010, resulting in a caseload of 89 cases.

Of these 89 cases, six were deemed by me to be outside my terms of reference, resulting in my Office actively examining 83 cases in 2011.

Grounds and Causes of Complaint

The grounds and causes giving rise to complaint of these 83 cases were as follows:

- 37 related to the administration and management of selection procedures for promotion, such as performance appraisal reports and the composition of interview boards
- 13 related to the administration and management of selection procedures for career courses
- 23 related to maladministration of career-related procedures, such as issues related to discharge and performance appraisal reports
- 6 related to the administration and management of selection procedures for overseas service
- 4 related to alleged inappropriate behaviour or bullying

As in previous years, there were no complaints concerning sexual harassment referred to me in 2011.

Again in 2011 the most significant source of grievance related to the administration and management of selection procedures for promotion competitions. This confirms a well-established trend identified in successive ODF Annual Reports. Since the inception of my Office 36% of all cases referred to me related to the administration and management of selection procedures for promotion.

As I noted in my introduction I welcome the fact that the Minister for Defence, Mr. Alan Shatter, TD, has confirmed that the new promotion schemes will become effective in the near future and I hope that this reform will improve an important area which has consistently been a source of grievance for members of the Defence Forces.

Status of cases investigated in 2011

There are four main stages in an examination of a case referred to my Office.

- i) Preliminary Examination of the case is conducted to ensure it falls within the parameters of the Ombudsman (Defence Forces) Act, 2004.
- ii) Analysis of the case to establish facts and those disputed. Take account of the arguments proposed for and against the complaint.
- iii) The issuing of a report which may indicate preliminary findings and request clarifications and further documentary proofs where necessary. 32 of these reports were issued in 2011.

IV Lifecycle of a Complaint

- iv) Having considered the replies and any further submissions in response to my report at preliminary stage, I issue my Final Report, setting out my findings and recommendations, which is sent to the Minister for Defence, the Chief of Staff, the Complainant and any other person to whom I consider it appropriate to include in this list.

Of the 83 cases considered in 2011:

- 29 Final Reports with ODF adjudication were issued
- 17 Final Reports are pending as I am awaiting responses to reports at preliminary stage from Complainants and/or the Defence Forces
- 37 cases are at preliminary examination phase in the ODF system
- Of the 29 Final Reports issued I upheld the complainant in 17 cases, partially upheld the complaint in six cases and was unable to uphold the complaint in three cases. I had to decline jurisdiction in three remaining cases having considered the issues and the facts.

Ministerial response to Final Reports

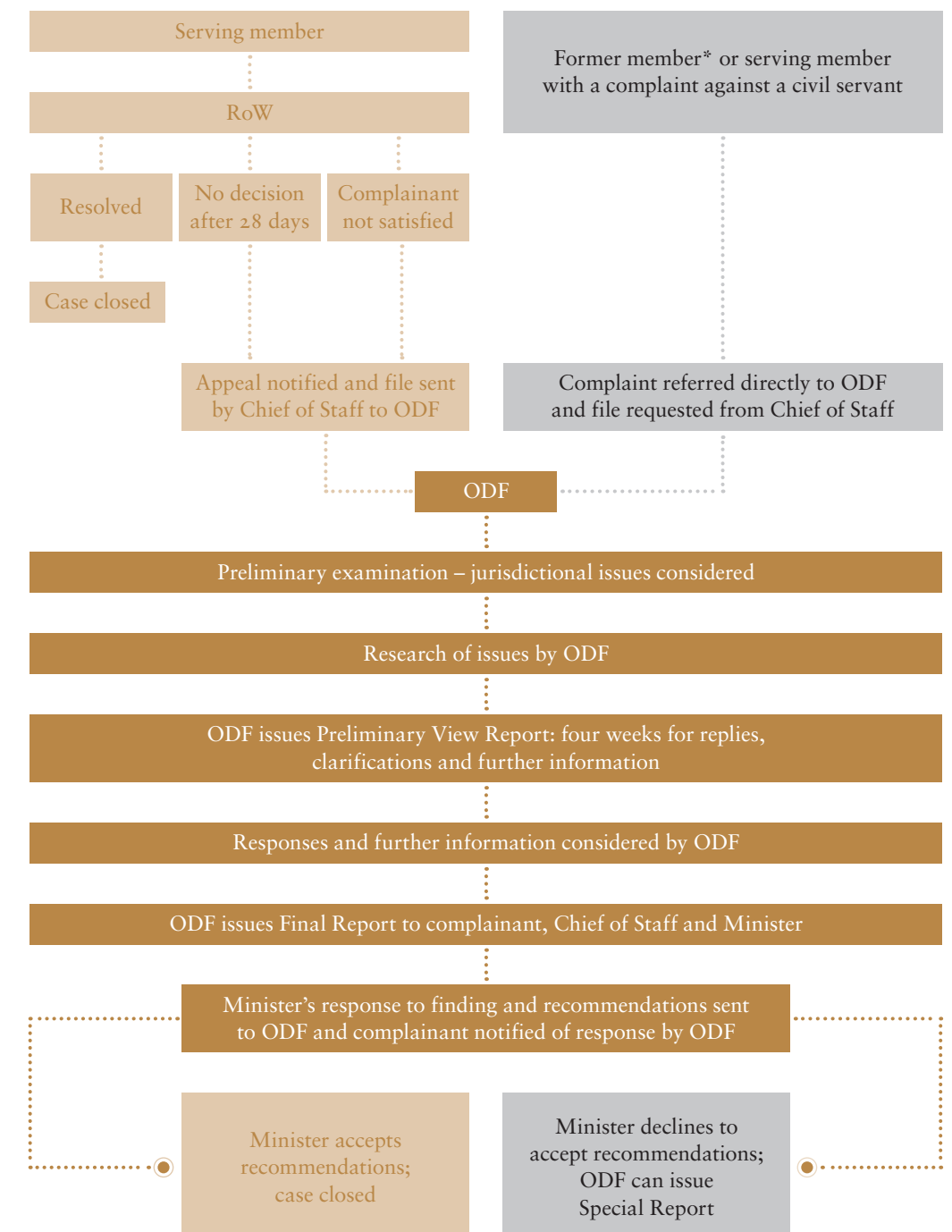
The response by the Minister for Defence in relation to adjudications in my Final Reports was as follows:

- 15 cases the Minister accepted recommendations and findings
- 4 cases the Minister did not accept recommendations and findings in my Final Reports
- 2 cases required no response from the Minister

As of the 31st December 2011, I was awaiting the Minister's response to eight Final Reports.

As noted in my Introduction, 2011 witnessed a significant improvement in the amount of time taken to receive a Ministerial response following the issuing of a Final Report. In 2010 the average length of time was 198 days, and this was reduced to 84 days in 2011. It should be noted that the Defence Forces have also reduced the length of time taken to respond to Preliminary View Reports – in 2011 the average time was 65 days, compared to 95 in 2010.

I wish to acknowledge, in particular, the work of the Staff in the Redress Section, of the Office of D HRMS, and extend my thanks to them for their contribution to these positive outcomes.



* A former member can lodge complaints in relation to alleged actions which occurred while he or she was a serving member. The person responsible for the alleged action and the complainant must have been serving members at the time of the alleged action.

V Commentary on Some Cases Adjudicated in 2011

After conducting my preliminary examination I issue a preliminary report in which I may set out initial findings and request further information or clarification, providing an opportunity for replies and further submissions.

Management of the administrative processes involving promotion competitions

As mentioned in my Introduction, I welcome the agreement of the new promotion schemes for Officer and NCO promotions and will monitor the implementation and outcomes closely over the coming months.

I am pleased that the adjudications made in my Final Reports have informed the framework of the new promotion schemes, an area which has been a source of grievance since the establishment of my Office. I would have welcomed an opportunity to contribute to discussions on the new promotion schemes as my Office is always available to provide insight and guidance and perhaps in the future a direct involvement of my Office during similar discussions and negotiations would be beneficial.

It is hoped that the new promotion schemes will be a positive development. However, as is clear from the case summaries included in this Annual Report, and indeed in previous Annual Reports, it is not just failings of the promotion scheme that engenders grievance. The failures in management and administrative processes surrounding a promotion scheme, or other selection processes, often give rise to cases referred to my Office.

For instance, in the case summaries provided in this Annual Report, the failure to accurately record a candidate's experience (Case Summary 3), the failure to properly apply administrative instructions (Case Summary 5), the composition of interview boards (Case Summary 6) and the consideration of an interview board of incomplete personal files (Case Summary 4) were aspects of cases on which I adjudicated.

These management and administrative issues can arise regardless of the framework of any promotion scheme. So while the introduction of new promotion schemes is to be welcomed it does not represent a panacea, and it may be the case that my Office will still be dealing with cases arising from the handling and administration of the promotion schemes.

State Stripe

In my 2007 Annual Report I included a case summary related to what is known as the 'State Stripe' (Case Summary 1, Annual Report, 2007). This issue again arose in 2011. Both cases involved members of the Defence Forces applying for this discretionary promotion after many decades of loyal and exemplary service.

The 'State Stripe' is awarded on merit for outstanding service or conduct and the Chief of Staff has maintained, logically, that it is not appropriate to lay down detailed criteria for these unique promotions as the actions that may lead to the 'State Stripe' are so above the ordinary as to defy categorisation.

While accepting the Chief of Staff's view, I have huge empathy with members at the rank of Private with very long service seeking recognition for their loyal service to the Defence Forces as they approach the end of their careers. I am concerned that there needs to be consistency and clarity about how this process works so as to avoid disappointment on the part of retiring members and their families.

I would also respectfully suggest that some formal award (that may not carry any pension-related benefit as in the case of the 'State Stripe') could be considered.

Issues regarding statutory time limits

In 2011 I accepted jurisdiction and adjudicated a case (Case Summary 5) that, on a strict interpretation, could be deemed Outside my Terms of Reference (OToR) due to the fact that it was referred to my Office outside the 12 month time limit specified in section 6 of the Ombudsman (Defence Forces) Act, 2004.

As the case summary demonstrates the responsibility for the late referral lay with the Defence Forces, and specifically the failure of the Defence Forces to transmit my expressed caution to the member that the statutory deadline was fast approaching.

This case underscores the need to look again at affording my Office discretion in relation to the enforcement of time limits, especially where the reason for a late referral is outside of the Complainants' control or the result of an administrative lapse. It is one of the issues that I have identified as in need of review to ensure that our legislative framework is a model of best practice and this is an area that I look forward to progressing in 2012.

This case also clearly demonstrates the immense value of ODF oversight of the Defence Forces RoW process. My Office closely monitors all Notifications of Complaint received from the Defence Forces and, in this instance, a lapse by the Defence Forces in transmitting information from my Office was identified when considering jurisdictional issues and gave rise to my belief that a legitimate grievance should be adjudicated by my Office. The decision of the Defence Forces not to contest my decision regarding jurisdiction was also welcome and noteworthy.

Enhanced opportunities for enlisted personnel

Case Summary 7 identifies a distinction between opportunities for commissioned and enlisted personnel, which seemed to discriminate against enlisted members in terms of career development where they had advanced their studies and skills.

I upheld this particular case, which involved the appropriate deployment of a member who had secured a first-class honours degree in electronic engineering. It is noteworthy that in accepting my recommendation contained in my Final Report, the Minister for Defence informed me that new procedures for filling technical or specialist officer appointments would be followed and that in the absence of a suitably qualified officer expressions of interest would be sought from enlisted personnel. This is in line with recommendations from the 'Doyle Reports', *The Challenge of a Workplace* (2002), and *Response to Challenge of a Workplace* (2004).

Access to personnel records

Access to personal records, and the accuracy of these records, has been a worrying and recurring source of grievance (see Case Summary 2, Annual Report 2007) and was an issue that I made specific reference to in my commentary on cases in my 2010 Annual Report where I suggested a system of verification, whereby a member could review their record held on file and raise any issues in advance of a promotion or selection interview board, should be introduced. I am pleased to report that this issue was advanced during 2011 and members of the Defence Forces must now verify the accuracy of their personal files and records before an interview board convenes.

It has been one of the significant advances since I became Ombudsman to reach the point where members have a right of access to inspect their personal records. It has been suggested, quite reasonably, by previous Chiefs of Staff that with that right should go the responsibility for members to check their records for accuracy in advance of a selection or promotion competition. This is both reasonable and wise.

Performance Appraisal System (AF 667)

Again this year the case summaries included in this Annual Report contain references to issues regarding performance appraisal reports (Case Summary 6).

In many cases, I have had reason to express my view about the unreliable nature of this system and the negative perception of the system among members. I have recommended a review of the performance appraisal system.

VI Case Summaries

Having considered additional information, clarifications and any further submissions arising from replies to my preliminary report, I issue a Final Report which is sent to the Minister for Defence, the Chief of Staff and the Complainant.

Case Summary 1: Complaint Upheld and Resolved

Promotion – Interview Report biased and understated career profile – CoS recommended promotion – Recommendation not accepted by Minister – Confusion for Complainant – New Minister accepted recommendation.

The Complainant instituted a Redress of Wrongs (RoW) application in relation to the decision of an Interview Board to promote another member rather than him. The Chief of Staff (CoS) found that the Complainant had been wronged in that the Interview Board Report appeared to “*denigrate his highly impressive and meritorious overseas service*”. The CoS ruled that, as a result of this, the Complainant had grounds for believing that the report understated his career profile and that it displayed a lack of balance, in wording and language, in favour of the selected candidate and to the detriment of the Complainant.

The CoS was also concerned that the Interview Board Report might appear to disclose a bias in favour of personnel with experience in a particular unit and that it placed too much emphasis on the qualifications of the successful candidate which, while impressive, were not the promulgated essential qualifications for the vacancy in question. The CoS stated that he intended to recommend to the Minister that the Complainant be promoted in a supernumerary capacity, with effect from the date of promotion of the selected candidate. He further recommended that a copy of his ruling be attached to the Interview Board Report in the Complainant’s area records file in order to ensure that future boards would not be unduly influenced by the comments therein.

When the Complainant did not hear anything further for a number of months he became concerned that the matter had, for some reason, not reached the Minister’s office and he referred the matter to me. From my investigations, I discovered that the Minister had advised the CoS that, in the light of his finding of a potential perception of bias, the natural conclusion was that a bias could be seen to have been held against all the other candidates. Given this, the Minister was of the view that the most equitable approach would be to re-run the competition with candidates limited to the three members who were unsuccessful in the original competition.

I wrote to the Minister asking that he reconsider the matter and pointing out that the Complainant was the only candidate who made a complaint in relation to the promotion competition. I further pointed out the serious implications which would arise if members could not rely upon facts stated in Considered Rulings from the CoS.

Following the change of Government, the newly appointed Minister for Defence wrote to me stating that he accepted the recommended means of settling the case and that he had written to the CoS requesting that the necessary arrangements be put in place.

Case Summary 2: Complaint Upheld

Interview Board – Allegations that Promotion improperly constituted -- Certain aspects of Complainant’s professional career considered – Informed of the reasons for the decision eight months after that decision was taken.

The Complainant was not selected for promotion and submitted a Redress of Wrongs (RoW) in respect of two grounds of complaint. The Complainant argued first, that the Interview Board was improperly constituted as there was no member of the Board from “*a unit where the vacancy exists*” contrary to A Admin Inst Part 10 Para 354 (b) (d) as amended on 2 February 2005. Secondly, the Complainant argued that his length and type of service were incorrectly identified and were not properly considered. The complaint also stated that it was unacceptable for the Complainant to have to wait for eight months for a decision. By way of redress, the Complainant sought promotion and correction of the Interview Board Report.

The Military Investigating Officer (MIO) Report had characterised the errors of the Interview Board in relation to the experience and nature of the service of the Complainant as “typographical” and in my Preliminary Report, I requested further submissions in relation to this while expressing the preliminary view that I was not satisfied that they were merely “typographical.”

I was of the view that, taking an overview of the various provisions, it seemed that only one of the Interview Board could come from “*the Unit/staff where the vacancy occurs*.” I had sought confirmation of the composition of the Interview Board, and, in particular, whether there was a President of the Board who was “*at least of Commandant Rank,... an Officer of the unit where the vacancy exists, or in the case of vacancy in staff, the Senior Staff Officer/OIC Section DFHQ*” as required under Paragraph 354.b. (2) of Admin Instr Part 10.

I requested further information and clarification as to the source of the findings by the MIO as regards the reasons that the preferred candidate was chosen over the Complainant for the vacancy. The conclusion of the MIO was that the replacement of the President of the Board was reasonable and that the typographical errors did not affect the Board’s decision-making process and selection.

I found that the Considered Ruling relied on an incorrect interpretation of Admin Instr Part 10 Para 354 (b)(3) in relation to the constitution of the Interview Board. It also found that while errors in relation to the Interview Board Report and the delay in the furnishing of the Board results were not satisfactory, these factors did not have any substantial influence on the decision of the Board. There was a direction that the

Interview Board Report be corrected, and that the Complainant should be paraded and shown the corrected Report.

The Complainant had challenged the interpretation of the Admin Instr Part 10 Para. 354 (b)(4) and was concerned with the use of the term “*typographical errors*” By way of response, the CoS stated that he had been misdirected in relation to the Administrative Instruction, but that, he remained satisfied that the Interview Board was substantially in compliance with the provisions of the Administrative Instruction and that it was therefore properly constituted.

I concluded that the decision not to promote the Complainant may have been based on erroneous or incomplete information and I found that the Complainant’s RoW was well-founded and reasonable having regard to all the circumstances and the nature of the complaint.

The Complainant had contended that he had no opportunity for career development and promotion without leaving his Unit and that therefore the consequences of his non-selection for the vacancy of Regimental Quartermaster Sergeant (RQMS) as advertised had a significant effect on his career. The length of time before he was informed of the decision, as well as the fact that, although he had been acting/paid for the role for which he had applied, he found it difficult to reconcile this with his non-appointment for the reasons given, specifically that the selected candidate had wider and greater experience.

The Complainant has undergone a number of specialist courses to qualify him for the many aspects and duties of a Military Police Officer. He had also delivered specific courses and training and it was therefore difficult for him to contemplate leaving this Unit in which he has invested so much time and service in order to get promotion.

The replies to my Preliminary View Report received from the Defence Forces were incomplete and inconsistent.

The MIO had stressed the “*unique*” nature of the particular appointment in order to justify the composition of the Interview Board, which essentially acknowledged that there was a breach of the relevant provisions of the Regulations. If it were such a “*unique*” position, the constitution of the Interview Board together with an explanation as to why the formal rules may not be satisfied should have been included in the Convening Order.

In relation to the errors concerning the length and nature of the service of the Complainant, I found that it was clear that the decision makers did not have the correct information recorded.

The decision taken in respect of the Complainant was based on the breadth, depth and variety of his experience, therefore, the inaccurate description of the post held by him could, and did, materially affect consideration of such general factors.

I noted that certain matters listed as having been considered were not initially listed as being considered in the first Report submitted by the MIO, but were listed in response to my preliminary enquiries. I was not prepared to accept the alterations of the basis of the review and conclusion between the MIO and my later request for information and clarification.

I concluded that there was a lack of transparency in relation to the application of criteria for appointment in relation to the vacancy, and a lack of transparency and consistency in the proper constitution of the Interview Board. The errors in relation to nature and length of service were significant errors given the seniority of the role, the seniority of the members of the Interview Board and the fact that the Complainant was acting in the role at the time of the Competition and had served for some 29 years in the Military Police Company, in contrast to the selected candidate who had never served in a Military Police Unit.

I found that the recording of such errors in the Interview Board Report cast a doubt over the administration of the decision-making process. The Complainant was ill-served in that there was no timely intervention attempted to remedy the mis-description in question at a time when any damage could have been avoided or mitigated. I took account of the fact that there was an eight month delay before the Complainant was advised of the Interview Board's deliberations.

I expressed my concerns about the facts of this case particularly in the context of a Senior NCO who was acting/paid in the job for which he was applying and who was treated with such disregard in relation to the information about his career and length of service. In circumstances where there was cause for concern about the administrative standards of the Interview Board and the accurate knowledge of the qualifications of the candidates, questions would reasonably arise about the decision-making process *per se*. On balance, I found that there was a doubt cast over the soundness of the decision taken in this case. I recommended that some means of mitigating the adverse effects that have been sustained by the Complainant needed to be considered. I suggested that the opportunity might arise to offer the Complainant the opportunity to retire with the benefit of the pension that he would have acquired had he been successful. I recommended this as a proportionate remedy in the circumstances.

Case Summary 3: Complaint Upheld

Promotion Competition – Failure to accurately record a candidate's experience, completed courses or overseas service – Meaning of Overseas Service – Failure to record details of the comparison carried out by the Promotion Interview Board of the candidate's records – Failure to maintain proper records – Failure to keep interview notes – Failure to keep notes of inquiries undertaken by the Military Investigating Officer.

This case brought to light a number of matters that caused me concern.

The complaint was made by a serving member of the Defence Forces who contended that the promotion competition for a vacancy at Coy Sgt level was flawed. The grounds upon which the complaint was based may be summarised as follows, first that the Promotion Interview Board did not accurately record the Complainant's experience, his completed Courses and his Overseas Service, second, that the interview process was too short and did not allow the Complainant a sufficient opportunity to expand on his experience, third, that the Promotion Interview Board wrongly focused on one aspect of the successful candidate's skills in making its decision, fourth, that the successful candidate was not attached to the Complainant's Corps, and fifth, that there was an unreasonable delay of six months between the date of interview and the date the Complainant was informed of the result of the promotion process.

The Military Investigating Officer (MIO), the General Officer Commanding (GOC) and the Chief of Staff (CoS) had ruled that the Complainant had not suffered a wrong requiring redress. However, it was accepted that the Interview Board Report did not accurately record the Complainant's experience and the Courses which he had completed. It was also accepted that there was an issue in relation to whether a six-week tour of duty, for which no medal had been awarded, constituted an Overseas Tour for the purposes of promotion and that guidance on this issue should have been sought by the Promotion Interview Board at the time. The Complainant referred the matter to me by way of appeal from the Considered Ruling by the Chief of Staff that he had not been wronged.

In my Report at the preliminary examination stage, I identified that the documentation that was submitted to me by the Defence Forces was deficient in that it did not include a copy of the Convening Order, the Promotion Interview Board Report, the interview notes taken by the Promotion Interview Board, the interview notes taken by the MIO during the course of the interviews he conducted during his investigation of the complaint for the GOC and the correspondence between the MIO and the Overseas Section Enlisted Personnel Section. I also noted that that the documentation did not include details on how the Report of the Promotion Interview Board had been mislaid "at higher authority," or details of how the Promotion Interview Board had conducted its assessments.

I requested details from the Defence Forces on the steps that had been taken to ensure that errors relating to the proper recording of candidates' experience for promotion competitions did not arise in the future. I also requested details of the steps taken to reduce the risk of Interview Board Reports being mislaid "at higher authority" in the future.

After considering the further information submitted after the preliminary examination stage, I found that the administrative errors and failings did not provide sufficient grounds for me to recommend that the decision of the Promotion Board be over-turned. However, I found that the Complainant was vindicated in submitting his complaint because it had brought to light a number of procedural matters and practices which the Defence Forces accepted were in need of review.

I noted that in his replies to my Preliminary Report, the Chief of Staff informed me that a new revised 'A' Administrative A8 had been issued which outlined the policy and procedure to be applied in relation to the maintenance of records in the organisation as well as a candidates' right to view their files prior to an interview. He also stated that he had instructed the Director of Human Resources Management Section (D HRMS) to compile a list of overseas missions that qualify as Overseas Service for the purpose of promotion selection interviews. The Chief of Staff also informed me that the NCO Promotion Agreement due to be signed off, is set to provide clarity as to the type of experience that will be taken into account in future competitions.

In my Final Report, I noted that this case had highlighted a need for clarity and transparency in the Interview Board's assessment of the candidates' qualification and performance against criteria for the promotion in question.

I recommended that these matters be addressed as a priority. It is imperative that decisions emanating from Promotion Boards can be objectively justifiable and I found that in order to avoid perceptions of bias or unfairness, all comparisons between the qualifications and criteria of the relevant candidates must be recorded. This is a matter which I have frequently referred to in my adjudications of cases.

I also noted that the Defence Forces were unable to explain how the Promotion Interview Board Report was mislaid "at higher authority." This was due to a failure to have consistency in relation to the handling of the Board Report.

I also noted that I have raised the issue of the retention of interview notes on a number of occasions and that it is vital for the oversight function and appeal process that notes of interviews and of enquiries carried out by a MIO during the course of the investigative process are retained.

No response to my Adjudication in this case has yet been received from the Minister for Defence.

Case Summary 4: Complaint Upheld

Delay in preparation of AF 451 – Interview Board considered incomplete personal file – Missing AF 451 – Failure of RoW to address issues highlighted by Complainant in ROW – Para 304(a) "Guidance Instructions on the Completion and Submission of the Performance Appraisal Report"

The Complainant took issue with his non-recommendation for promotion in the Comdt to Lt Col (Line) Competition 2007. The Complainant alleged that his AF 451 (Performance Appraisal Report) for 2006, was not completed in time for consideration at Phase 1 of the Promotion Competition, the 'file assessment' phase, and therefore the Promotion Interview Board considered an incomplete promotion file. The Complainant also alleged that the Interview Board considered DF HQ experience a prerequisite for promotion.

The Complainant alleged that the Redress of Wrongs (RoW) procedure failed to address issues highlighted by the Complainant in the course of that process. The Complainant was awarded an excellent rating in his AF 451 for 2005 for his Overseas Service in Ivory Coast. Because his results in the 2006 Promotion Competition showed great improvement, he approached the 2007 Competition with confidence. On the 1st November 2007, an incomplete AF 451 for 2006, which was missing the Part 3 Narrative, the excellent rating, and the signature of the Superior Reporting Officer, was sent from DF TC to DF HQ. On the 21st November 2007, the Director Human Resource Management, Officer in Command, Commissioned Officers Management Office (OIC, COMO), the Secretary of the Interview Board, knowingly submitted the Complainant's incomplete file, contrary to DF Regulations, for perusal by the Interview Board. The President of the Interview Board accepted the incomplete file and allowed it to be perused and marked.

The Defence Forces submitted that the Complainant had returned from Overseas Service on the 26th November 2007. The Complainant took issue with the approach taken by the Defence Forces in processing his RoW application. The Military Investigation Officer (MIO) did not interview the Complainant's Superior Reporting Officer, to ascertain whether he had signed the Complainant's AF 451. The Complainant pointed to the failure of the Defence Forces to address or answer any of his queries in relation to openness, fairness or transparency of the RoW process. He pointed to the apparent acceptance of unsubstantiated verbal evidence to establish that his AF 451 had been properly administered. It was also stated that it had been discovered that the Complainant's AF 451 for 2006 was missing from his file in April 2008.

The Defence Forces stated that it was extremely rare for an AF 451 to become mislaid as Officers' Personal Files cannot be removed from the secure storage area without the express permission of OIC COMO. By way of redress, the Complainant had sought a re-evaluation of his complete promotion file by a re-convened Interview Board.

The Chief of Staff (CoS) stated that the Complainant's file was perused and given an initial assessment mark during the file perusal period, which commenced, 21st November 2007. No precise date was given to the scoring of Phase 1, "*File Assessment*". It was stated that the Complainant's AF 451 for 2006 was present on the file at this stage but was unsigned by the Senior Reporting Officer. The CoS submitted that because his signature was missing, the file was given a preliminary mark and isolated by the President. It was stated that on the 3rd December 2007, the Board Secretary received the signed AF 451 from the Office of D CoS (Sp) and placed it back on the interview sub-file. His staff then advised that the file was re-examined by all Board members and given a final mark prior to the Complainant's interview. I noted that there was no record or proof of these meetings and actions. There was no written note of the movement of the file between the 31st October 2007/4th November 2007, and the 20th December 2007.

The newly appointed Reporting Officer conducted a performance appraisal interview with the Complainant and recorded an excellent rating for the Complainant in his AF 451 for 2006 on the 28th November 2007. However, this appears to have been after "File Assessment" of the Complainant's file. The new Reporting Officer's attempts to obtain the former Reporting Officer's endorsement on the Complainant's AF 451 for 2006 on several occasions between January/February 2007 and May 2007 were to no avail.

Para 304(a) of the "*Guidance Instructions on the Completion and Submission of the Performance Appraisal Report*" requires the completion of Part 1-3 of an AF 451 by the 14th of February of the year following that to which it relates. This has not been adhered to in this case, due to the promotion of the Reporting Officer to a new role, which involved a degree of Overseas Service. I found that this called into question proper adherence to the Instruction and highlights the systemic failing to complete the Complainant's AF 451 for 2006. I found that the delay in providing the Board with a complete AF 451 for 2006 had adversely affected the Complainant. The manner in which the Complainant's complaint was handled through the RoW process demonstrated a lack of proper regard for the necessary transparency and accountability in respect of the promotion interview process and has adversely affected the Complainant. I found that the failures in the administrative processes and the lack of necessary records to substantiate the process applied created doubts about the manner in which the Complaint had been treated.

Whereas the Minister accepted that there were omissions from the Complainant's AF 451, he did not accept my recommendation. The CoS had also been asked to explain and apologise to the Complainant for the delay in relation to the completion of the AF 451. The Complainant should be given the benefit of that doubt which was substantial.

Case Summary 5: Complaint Upheld

Competition for Promotion – Transparency of qualifying criteria – Fair Procedures – Seniority – Time-limited jurisdiction.

This was one of a number of complaints arising from the administration of the same competition. Two vacancies for SPO/Supply promotions had arisen and the Complainant was one of eight applicants. The Complainant took issue with the outcome of the competition, in which he was ranked fifth in the order of preference. At the core of this Complaint was the fact that one of the successful candidates was ineligible under the terms of the competition, because he had not fulfilled a requisite year-long posting as an account holder. The Complainant contended that the successful candidate had, in fact, been his 'understudy' for a year while he occupied the relevant role, but had not been the Account Holder himself.

The circumstances giving rise to this complaint arose when two streams of personnel were merged into one branch in or around 2000. The Complainant however contended that selection for the vacant posts improperly elevated seniority and general experience over logistical experience, which he stated was more relevant for the role.

I had to address a jurisdictional matter: the Complaint was referred to me nearly a year and three months after the interview board's decision had issued. I am precluded under section 6(3) of the Act from investigating a complaint after 12 months has elapsed from the impugned action, or the date the Complainant first became aware of the action. In this case, the Complainant delayed referring his Complaint to me pending the outcome of his Redress of Wrongs process, which took him outside the relevant time limits. However, in this case my Office had written to the Defence Forces as time limits became imminent and requested that the Complainant be informed of the impending cut-off point. The Defence Forces had failed to transmit this information. The Defence Forces did not challenge my jurisdiction to proceed to examine the Complaint.

I accepted that the Complainant filled all the criteria and requirements for the competition. His view was that one of the successful candidates did not so qualify.

In my Preliminary Report, I noted that there was ambiguity over the type of experience required. The level of misunderstanding was reflected in the different views expressed by the Complainant, the Military Investigation Officer and the Chief of Staff. It seemed to me on a preliminary view that the promotion process was contrary to desirable administrative practice. The methodology of the competition was neither transparent nor objectively justifiable. I had found that the Interview Board Report had referred to none of the “additional qualifications” sought in the Convening Order in respect of any of the candidates.

On balance, it appeared that seniority operated as a determining factor, contrary to the Administrative Instructions stating that this could only impact where all other criteria were equal between candidates. I found that the prevailing Administrative Instructions relevant to the competition had not been properly applied.

In my report at preliminary stage, I had recommended that an appropriate and proportionate remedy would be that the competition would be re-run. The Chief of Staff pointed out that as one of the successful candidates had since been promoted and another applicant had since retired, the same competition could not be re-run. While not accepting that any members had been wronged, the Chief of Staff did express willingness to hold a competition to fill two similar vacancies as a priority when the new Promotion Agreement was in place.

I viewed this as a fair and appropriate remedy. However, I also found that having not been promoted in the competition under consideration, the Complainant (and others in his position) had lost three years of seniority that he may otherwise have obtained. In recommending that some credit should be given for that factor, I had regard for the substantial amount of time the Complainant had lost in pursuing this Redress of Wrongs when there was clearly procedural maladministration.

Case Summary 6: Complaint Upheld

Promotion – Absence of Marking Matrix – Inability to objectively assess decision- issues in relation to applicant’s right to reply to author of adverse assessment reports – Review of AF 667 Procedures – Reporting Officer’s Presence on Interview Board.

This complaint had two strands. First, issue was taken with an Interview Board’s finding that a successful candidate had more relevant experience than the Complainant for the post of Coy Sgt MT Driver (Tech Group1). Second, the Complainant’s disagreement with a Reporting Officer’s finding in his AF 667s was not addressed due to a procedural flaw. Subsequently, this Reporting Officer (whose actions the Complainant viewed as

discriminatory) was placed on the Interview Board for the post relevant to the first limb of this complaint.

Undue delay was an element of this complaint. The Complainant requested that if the Redress of Wrongs (RoW) was not resolved in his favour prior to 28th November 2007, a year after the Interview Board’s decision, that the matter should be referred to me. In the event, the Chief of Staff’s (CoS) Considered Ruling issued on 13th December 2007. The Complainant confirmed that he requested my oversight. This delay was unsatisfactory. However, subsequent to issuing my Report at the preliminary examination stage with requests for clarification and further information from the Defence Forces, I found the responses I received to be scant. This necessitated further requests for clarification, causing substantial delay. Rarely had I encountered such a lack of attention to detail in providing information to me. The core of the complaint in respect of the competition for promotion was that the Interview Board unreasonably gauged the successful candidate’s experience as more relevant than the Complainant’s for the post of Coy Sgt MT Driver (Tech Group 1).

It was accepted that both candidates fulfilled the requisite and desirable criteria for the post. I have had to explain in many cases, that where an Interview Board has been properly constituted and has considered all relevant and accurate records and documents it is not my role to supplant the Interview Board’s decision. However, I have also repeatedly recommended that the marking system, as envisaged by the Equality Steering Group (2004), be implemented.

In my Preliminary Report I noted that the Complainant had completed all transport-related courses and at no point was the Complainant described as less able than the successful candidate. The responses from the Defence Forces had failed to address how the successful candidate’s experience was more relevant for the advertised post and in no way provided an explanation that could be objectively assessed.

In respect of his AF 667 of 14th June 2006, the Complainant took issue with assessments of seventeen criteria under Part 3, Qualities and Attributes. There was an admitted error in failing to take account of the Complainant’s recorded disagreement with the ratings on this AF 667 or to parade the Complainant when the Commanding Officer decided to adopt the Reporting Officer’s assessment, as required by Part 7 of the AF 667.

The Complainant’s concern was that a personal difference had influenced the Reporting Officer’s assessment, but the CoS found nothing in the manner in which the Report had been completed to suggest discrimination or unreasonableness. However, I found that there was a failure to give the Complainant the opportunity to discuss and resolve the issue in respect of the Report prior to the promotion interview at which it would be

available to inform. I further found that he had a legitimate concern that he had been unreasonably downgraded by the Report and was adversely affected by not being able to challenge it.

The Administrative Instructions for the Compilation of AF 667 (issued in July 1995) require that Reporting Officers' assessments should be reconciled by a particular process. I noted that only one Reporting Officer had assessed the Complainant. My Preliminary Report concluded such a panel would be administratively robust and its absence constituted a serious flaw. In response to this, the Defence Forces supplied the Annex C to Admin Instr 1/96, which appears to suggest that only one Reporting Officer is allocated to each sub-unit, and where Reporting Officers are mentioned in the plural it refers to those from each section. The stipulated reconciliation process seems to ensure consistency between the marks given by Reporting Officers under different sections to tally with the overall performance grade eventually given.

I found this system unsatisfactory and recommended that it would benefit from review and reform. The Complainant also took issue with the Reporting Officer, whose assessment he challenged, being on the Interview Board. The General Officer Commanding (GOC) pointed out that paragraph 354b of A Administrative Instruction requires a member of the Interview Board be a member of the unit in which the vacancy occurs, and the Reporting Officer fulfilled this requirement. There was a failure to address my query as to whether another member of the unit could have been appointed to the Interview Board. I recommended that this question should have been addressed.

I found that the complaint should have been upheld in that there was a reasonable expectation that competition procedures for the appointment of Coy Sgt MT Driver (Tech Group 1) would be administered in a manner which would leave no doubt about the fairness of the selection. The selection process fell below desirable standards of fairness, and as a consequence the Complainant had been adversely affected. Having pointed out that my finding must not be construed in any way to reflect on the standing of the successful candidate, I found that there had been maladministration at Interview Board. My finding was that on the balance of probability, if there had not been a breach of fair procedures, the outcome of the process may have been different and I recommended that the appropriate redress was that the Complainant be promoted on a 'personal to holder' basis.

In response, the Minister did not agree that the circumstances warranted that the Complainant be promoted on a personal-to-holder basis. He accepted that the Complainant be given an apology by the Commanding Officer who had signed off on the impugned AF 667 without affording the Complainant an opportunity to comment.

The Minister noted my recommendations in respect of a marking scheme or matrix, and while stating that there was no requirement for these under the prevailing regulations, he advised that the possibility of such a scheme was being addressed in the negotiations with the Representative Association about the new promotion scheme for enlisted personnel. In respect of my concerns and recommendation about the compilation of AF 667s proposed by Reporting Officer(s), the Minister undertook that he would request the CoS to review the process for the purposes of achieving a clear arrangement.

Case Summary 7: Complaint Upheld

Enlisted personnel - Specialist training and qualifications – Expectation of use of skills and training – Timely career guidance – Dignity in the workplace – Proper use of professional skills and training.

An enlisted Private obtained a first class honours degree in electronic engineering, having been selected for participation in the course by the Defence Forces. He contended that the skills he obtained on the four-year programme were not deployed. The Complainant believed that he had been adversely affected and that his self-esteem was eroded.

In January 2008 the Complainant initiated a Redress of Wrongs (RoW) complaining of a lack of appropriate work and career advancement opportunities. The Chief of Staff (CoS) ruled that the Complainant had not been wronged pursuant to section 114 of the Defence Act, 1954. The Complainant took issue with this finding, stating in his referral letter to me that his non-employment in a manner commensurate with the training he had received as a Defence Forces member was a misuse of public resources and did him considerable harm. The Complainant appealed the matter to me on the basis of alleged improper discrimination and omissions which were contrary to fair and sound administration. The Complainant completed his degree in electronic engineering with remarkable success, obtaining first-class honours. He was then returned to his previous employment in the Ordnance Corps and not employed as an engineer.

It was the Complainant's case that there was an onus on the Defence Forces to provide him with appropriate work and opportunity to use his specialist skills and knowledge. A central issue was whether the Complainant had a legitimate expectation that his training would be deployed. The prospect of the Complainant's commissioning and employment as an engineer had been discussed in qualified terms which could not be said to give rise to a legitimate expectation. However, the Complainant also contended that the case for funding a course for electronic engineers was based on there being suitable Officer vacancies at the time of the course completion. The Defence Forces stated that the rationale for the

course was broader, and that it was intended that he would be enabled to meet the extra challenges posed by the acquisition by the Defence Forces of modern electronic equipment.

More broadly however, the Complainant contended that training him in a specialist field and then failing to use the acquired skills was contrary to desirable and fair administration. This raised complex issues engaging the proper use of human resources, a topic in respect of which the Independent Monitoring Group (IMG) had issued recommendations to ensure dignity in the workplace. In contravention of his dignity, the Complainant believed that he was a target of ridicule by his peers on the basis that he had studied for a long period with no reward and rather than becoming more involved in technical tasks became more removed from them. In particular, he pointed out that while serving at the Curragh he was involved in routine tasks, whereas his qualifications and specific degree-level training made him particularly suitable for the Robot Workshop. Whereas that workshop had an ongoing project involving subject matter studied by the Complainant as part of his degree, his specialist skill had not been used. Further, the Complainant claimed that when told to apply for a transfer to the Curragh Camp, he did so on the assurance that it would benefit his career progress as an engineer, albeit that he had voiced concerns that the opposite effect would be achieved.

The Complainant stated that whereas the move to the Curragh was dressed up as utilising his skills, in fact his primary task involved changing batteries or other manual tasks.

In forming a preliminary view on this issue, I noted that the Independent Monitoring Group's Report of 2004 espoused a proper balance between the human resource policies and procedures to properly utilise potential and secure dignity of personnel. My preliminary view was that it seemed that such an objective had not been achieved.

The Defence Forces submitted that the Ordnance Base Workshops (OBW), at the Curragh, was the locus of specialist technical equipment and was the best location to use his skills. The Director of Ordnance (DOO) related an invitation to the Complainant to join a multi-disciplinary expert project team in the area of explosive ordnance disposal. I noted that the DOO submission detailed general opportunities within the OBW, however, it failed to enumerate specific tasks assigned to the Complainant or comment on the technical quality of those tasks. As such, the DOO submission did not address my query as to the differential between the Complainant's role and that of a technician. In comparison, the Complainant gave greater specificity, rendering more evidential weight. However, I sought further information on a Defence Forces proposal to employ the Complainant on a multi-disciplinary expert project team, seeking particularly to ascertain when the offer was made (as the CoS submitted that participation was thwarted by the Complainant's return to civilian life). No further detail of this was uncovered by the Defence Forces.

Nothing was produced in the submissions to my Preliminary Report to alter my preliminary finding that the Complainant's professional ability and potential had not been properly managed and that his claim to have been adversely affected was reasonable in the circumstances. In particular, during a lengthy RoW process, the Complainant was not properly consulted on why he could not be deployed as he wished, nor was he paraded to review his options. I found that the Complainant's career had been adversely affected by this maladministration and that his dignity at work was not given proper regard.

I found that the Complainant had conducted himself in a proper manner, by seeking appropriate guidance from the Director of Ordnance in January 2008. I expressed my concern that such an interview was not afforded to him until nine months after the request. The delay contributed to the Complainant's growing feeling that his skills would not be used in the Defence Forces and that he had no option but to leave the organisation to find appropriate work. Similar delays infused the RoW and Defence Forces responses to my investigations. While there is no evidence of a deliberate attempt to wrong the Complainant, I found that the careless disregard for proper communications and administrative procedures had caused great harm and resulted in a substantial loss to the Defence Forces.

While no legitimate expectation was established as such, I found that the Complainant could reasonably expect that the Defence Forces would soundly manage his career development and that, having spent four years in attaining a qualification, he would be appropriately used as a resource. Failure to utilise his skills properly runs counter to effective human resource administration and the recommendations of the Independent Monitoring Group.

An underlying theme in this Complaint was of a distinction between opportunities for Commissioned and Enlisted personnel, which seemed to discriminate against Enlisted members in terms of career development. The information submitted to me by the Defence Forces supported the Complainant's contention that enlisted personnel had not been eligible for recent direct entry intakes of graduate engineer or from competitions confined to Commissioned Officers. The DOO noted that this created a situation whereby Enlisted Officers failed to access these competitions, which may present a situation that would benefit from review. The CoS stated that a dedicated Commissioning from the Ranks competition might afford a suitable way forward to address this issue.

It is of particular note in this case that the Minister, in accepting the recommendation that the upset caused to the Complainant upon non-use of his hard-gained qualifications, flagged a positive change for future Enlisted members. The military authorities advised the Minister that new arrangements had been put in place for filling technical or

specialist officer appointments in a Service Corps in line with the recommendations of the Independent Monitoring Group. The upshot of this is that where no suitably qualified officer is available to fill a technical vacancy, expressions of interest will be sought from suitably qualified Enlisted personnel. The Minister expressed his hope that this would provide greater career enhancement opportunities for Enlisted personnel who acquire relevant qualifications in the future.

Case Summary 8: Complaint Upheld

Reserve Defence Force – Failure to fulfil training requirements – Placed on ‘non-effective’ list – Security clearance required to be returned to effective list – Not allowed to attend training during security clearance process and therefore denied opportunity to complete requisite further training – Work injury – Not informed of options – Placed on non-effective list again – Refusal to remove her – Denial of right of appeal – Unfair discharge – Lack of notice of intention to discharge – Recommendation that Complainant be allowed to re-enlist, keeping her rank.

The Complainant, a member of the Reserve Defence Force (RDF), was informed in writing that she had been placed on the ‘non-effective’ list as she had failed to attend the required number of training parades in the previous calendar year. On receipt of this letter, she applied in writing to be returned to the effective register, but her OC required that she be security cleared first and this process took over five months to conclude. The Complainant was not allowed to attend training parades during this period and, when she returned, she contended that there were not enough parades left to allow her to fulfil the yearly requisite of 48 hours of training. On top of this, shortly thereafter the Complainant suffered an injury at work and was not able to attend training for a period of two months. She submitted a note from her doctor in this respect.

In the beginning of the next year, the Complainant was notified that she had once again been placed on the ‘non-effective’ list as she had failed to complete the required training hours in the previous year. The Complainant submitted that her OC had overlooked the fact that she had only been returned to the register in May of the previous year and that she had spent a further two months on “sick leave”. She informed her OC of her willingness to be returned to the effective register, but her OC refused to accede to this request. The Complainant asked her OC for an opportunity to appeal the decision but this too was refused. Two months later, the Complainant was discharged from the RDF without notice.

The Complainant referred a complaint directly to me pursuant to section 6(2) of the Ombudsman (Defence Forces) Act 2004, taking issue with the fact that she had not been removed from the ‘non-effective’ list and claiming that she was unfairly discharged. By way of redress, she sought to be re-enlisted.

In a letter from the Chief of Staff (CoS) following my Report at the preliminary examination stage, in this matter, it was accepted that the OC had been wrong in requiring security clearance prior to removing the Complainant from the ‘non-effective’ list and allowing her back to training. However, the CoS also stated that no medical report had been received in relation to the Complainant’s injury. He went on to state that, if a medical report had been produced, it would have been on her personal file and it would have been taken into account in reviewing her training hours that year, in accordance with DFR R5, Para. 49(2).

In relation to the discharge of the Complainant, the CoS accepted that the correct procedure, as outlined in Admin Instr R5, Paras. 56 and 57, had not been followed. Specifically, the Complainant was not paraded and informed of the reasons for the discharge or informed in writing of the intention to discharge her.

The CoS had been of the view that the Complainant had not informed her OC of her willingness to be returned to the ‘effective list’, I found on the basis of the information that the OC would have been aware of the Complainant’s desire to be returned to the ‘effective list’. Further to this I highlighted my concern about the fact that the Complainant had been denied her right to appeal the decision. It was clear that there had been a number of occasions on which the OC could have informed the Complainant of his intention to discharge her, the reasons for this and advised her of her options. However, he had neglected to do so. I had noted that it was clear from the denial of the Complainant’s right to an appeal process that the OC was aware of her desire to continue in service. I found that this failing, along with the failure to follow the correct discharge procedure and the failure to advise her of her options when she was injured at work, supported the Complainant’s claim that she had suffered a wrong requiring redress.

I recommended that the Complainant be given the opportunity to apply to re-enlist in the RDF and that she should not lose her rank in the process.

The Minister accepted my recommendation and confirmed that he had asked the CoS to review and clarify the requirements and arrangements to be followed when a member was put on the ‘non-effective’ list and subsequently applied for re-engagement.

Case Summary 9: Complaint Upheld

Career Course - Module 3 Standard NCO Course – A Admin Instr Part 10 Chapter 3 – Essential Qualification – Maladministration and Undesirable Administrative Practices – Delay in Replies to Clarifications Sought - Certificate of Urgency.

As a result of a previous Redress of Wrong (RoW), the Complainant was to be deemed eligible for promotion to the rank of Sergeant, up to January 2008, without meeting the need to have completed Module 3 of the Standard NCO Course, or until such time as the syllabus for the Standard NCO Course was amended by a clear and unambiguous letter to accurately reflect the requirements of the Communication and Information Service (CIS) Corps. The promotion competition giving rise to this complaint was in January 2008, at which time the Complainant's waiver had expired whereas the Convening Order made no reference to the fact that Module 3 was "an essential qualification", it stated that the candidate must be qualified for promotion to Sgt in accordance with A Admin Instr. Part 10 Chapter 3.

The Complainant took issue with another Cpl being promoted to Sgt Com Op Clerk (Gp 2), CIS Sqn, in circumstances where that member had not completed Module 3. The Complainant had refrained from competing because she understood Module 3 was required and her waiver had just expired. I noted that the Complainant's OC had refused the Complainant's request for a Certificate of Urgency and I found that the OC had no grounds to refuse the Complainant a Certificate of Urgency particularly in view of the fact that the Considered Ruling of the CoS did not issue for a period of seven months. I had to make comment on the failure of the Defence Forces to provide replies to my request for further information and clarification in a timely manner. The guidelines and reasonable timeframes set out were seriously exceeded, without a request for an extension of time or any reason given for the length of time for the case to be progressed through the RoW process. I found that the unreasonable delay in the administration of the Complainant's RoW to have acted to the Complainant's detriment.

I noted that a review of the syllabus for the Standard NCO Course had been completed and issued on the 18th April 2007, which had retained the tri-modular criteria. There were no reasons provided to me as to why the Military Investigation Officer (MIO) and the Interview Board did not know that the successful Candidate was ineligible. I was somewhat concerned by the fact that the Complainant's waiver had expired just before this promotion competition was advertised. I recommended that the Complainant be given the opportunity of going for the promotion that she had been wrongly denied through the maladministration and undesirable administrative practices applied in the Competition giving rise to this RoW.

The Minister in his response to my Final Report stated that the Complainant would be offered the opportunity to complete her training on the next Standard NCO Course due to be run in the Defence Forces Training Centre on the 3rd of October 2011, so that she would be in a position to go forward for consideration for the next available vacancy. The Minister directed the CoS to make the necessary arrangement to permit the Complainant to participate in this course. I expressed my disappointment with the proposed remedy of offering the Complainant an opportunity to complete 'Module 3', which was due to commence on 3rd October 2011, in circumstances where the Complainant was due to leave the Defence Forces on the 29th October 2011 and she was on her Pre Discharge Leave (PDL). Furthermore, such a proposal provided the Complainant with one week preparation for a Course that would ordinarily warrant several months' preparation. As a resolution of a previous RoW, the Complainant was deemed eligible for promotion to the rank of Sergeant up to January 2008, without the need to complete Module 3. However, the Complainant had no opportunity to avail of this waiver as the next relevant promotional competition was held almost immediately after her waiver had expired. In the circumstances, it would appear that the Complainant's opportunity for redress had been thwarted yet again.

Case Summary 10: Matter Resolved Directly Through Minister

Apprenticeship – Training – Delay in qualification – Legitimate expectation – Pay agreement not complied with – No Redress of Wrongs – Matter brought to attention of Minister by ODF – Matter resolved through ODF intervention and damage limitation.

My Office was contacted by a member of an apprentice class who claimed that his class, as the first to have gone through since the closure of Naas Apprentice School, was being treated differently to previous classes in terms of the payment of their proper wages. The class members had not had their wages upgraded to the level of 3 Star Private, including Military Service Allowance, upon completion of four years of training, as laid out in the wage agreement which they had received prior to enlistment. On top of this, they were required to pay a weekly sum for rations and accommodation, which other classes had not had to pay following completion of four years of training.

I advised the Complainant that I would not be able to formally deal with the matter unless he first initiated a Redress of Wrongs application and processed it through the various internal stages. However, in the spirit of the underlying objective of my Office to avoid lengthy and protracted complaints, and having made a number of further enquiries I wrote to the Minister and brought the matter to his attention, in the hope that by timely intervention the situation could be regularised and losses mitigated.

The Minister asked the Chief of Staff (CoS) to inquire into the issues I had raised. The Minister subsequently informed me that the CoS had advised that, since the closure of Devoy Barracks, phases of apprentice technical training had been outsourced to FÁS. FÁS had been unable to deliver the technical training within the normal four year timeframe and this had resulted in a delay of approximately eight months in the qualification, and consequent pay upgrade, of the apprentices in this class.

However, the CoS had advised that the apprentices in question had, since my intervention, completed their training and that their pay level would be upgraded and backdated to the date of qualification. The Complainant was delighted with this outcome and informed me that my intervention had also spurred PDFORRA into action to press for further backdating of pay, in line with the apprentices' legitimate expectations.

Case Summary 11: Complaint Outside Jurisdiction of ODF (OToR)

Complaint relating to matter the subject of a Service Tribunal – Outside jurisdiction of ODF.

The Complainant's complaint related to a matter which had already been the subject of a Military Service Tribunal. As I am specifically excluded by section 5(1)(b) of the Ombudsman (Defence Forces) Act 2004, from investigating matters that have been considered through a Military Disciplinary process, I was unable to investigate this grievance. I did, however, receive an acknowledgment from the Defence Forces that it had taken 10 months for them to forward the Complainant's Redress of Wrongs to me. This was a significant administrative failure. As a result, I was informed that the Unit Headquarters involved had reviewed and revised its systems for managing and monitoring Redress of Wrongs files.

“... In conclusion, Ladies and Gentlemen, may I say that when I was reading about the many aspects of the work of a Military Ombudsman exercising civilian oversight of Military administrative matters, at the time of my appointment to this role, it was agreed by many commentators that a Military Ombudsman was a democratic corrective: some went further, and submitted that it was a democratic imperative. I respectfully propose that you consider the validity and value of this submission.”

Extract from presentation on *The Role of The Police and the Military in the transition to Democracy* by the Ombudsman to the OSCE Mediterranean Partners Conference – Budva October 2011

VII International and Domestic Engagement with Stakeholders

The ODF is committed to maintaining and enhancing positive relationships with a range of stakeholders at home and abroad.

During 2011 I engaged in discussions and consultations in a wide range of fora, often regarding the benefits of civilian oversight of military administration and the establishment of an office of military Ombudsman.

February 2011 – OSCE ‘Expert Round Table’, Yerevan, Republic of Armenia

I was invited by the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) to participate in an ‘Expert Round Table’ event on the subject of human rights and fundamental freedoms for armed forces personnel in Yerevan, Armenia. As was noted in previous Annual Reports I contributed to the publication of the OSCE/ODIHR and DCAF publication *‘The Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel’* which was launched by the OSCE in Vienna in May 2008 and has been translated into a variety of languages including Russian, Serbian, Georgian and Azeri.

Due to the fact that I was already involved in the Working Group preparing for the 3rd International Conference of Ombudsman Institutions for Armed Forces (ICOAF) I regrettably had to decline the invitation to attend. My address to the event was kindly delivered on my behalf by the Irish Honorary Consul to the Republic of Armenia, Mr. Jonathan Stark.

April 2011 – 3rd International Conference of Ombudsman Institutions for Armed Forces, Belgrade, Republic of Serbia

I was part of the Working Group, convened by Mr. Saša Janković, Protector of Citizens of the Republic of Serbia, to prepare for the 3rd ICOAF conference. The Working Group also involved Dr. Anton Gaál, Chairman of the Austrian Parliamentary Commission for the Federal Armed Forces, Mr. Kjell Arne Bratli, Parliamentary Commissioner for the Royal Norwegian Armed Forces and Hans Born, Senior Research Fellow, DCAF.

The ICOAF conference, entitled *Protecting the Human Rights of Armed Forces Personnel: Old and New Challenges*, took place from 13-15 April in Belgrade and three main themes were addressed:

- a) human rights of personnel in multinational missions,
- b) the relationship between external oversight and internal complaint handling mechanisms, and

- c) representation of military personnel through unions and associations. I delivered a paper on the first two themes and chaired the discussion on the third.

During my attendances in Belgrade for the meetings of the Working Group and for the conference I had the benefit of the support and assistance of Lt. Col Michael McCarthy, Ireland’s representative at the Office of the OSCE in Belgrade, which was greatly appreciated. His Excellency, Charles Sheehan, Ireland’s Ambassador in Athens whose remit also covers Serbia, attended the opening of the conference, adding to the significance of an importance conference attended by a wide range of diplomats and NGOs.

A report on the conference is available on www.odf.ie and the agenda, papers and agreed memorandum from the conference, the *Belgrade Memorandum*, is available from www.icoaf.org. I had the privilege of chairing the proceedings of the *Belgrade Memorandum* drafting committee at both the Working Group phase and at the conference itself.

www.icoaf.org also contains detailed reports on the two previous ICOAF conferences held in Berlin in 2009 and Vienna in 2010.

May 2011 – Opening of Cathal Brugha Barracks Visitor Centre, Rathmines, Dublin

I was privileged to attend the opening of the new visitor centre by Minister Shatter at Cathal Brugha Barracks, Rathmines, Dublin.

May 2011 – British and Irish Ombudsman Association Biennial Conference, Leicestershire, UK

The British and Irish Ombudsman Association (BIOA) biennial conference took place at Loughborough University in Leicestershire. I delivered a paper during the ‘Managing Complainer Expectations’ session of the two day working conference. I was a founding member of the BIOA in 1994, when I was serving as the founding Insurance Ombudsman of Ireland.

June 2011 – Briefing with Swiss defence attaché, Dublin

I briefed the Swiss defence attaché in Great Britain, Ireland and the Netherlands, Colonel Daniel Bader, in relation to the structures and operation of my Office and outlined its development and experiences to-date. Following the meeting I was pleased to be introduced to Colonel Bader’s successor, Colonel GS Hans Eberhart, PhD, who served at the OSCE for a considerable time.

September 2011 – Ombudsman briefs South African delegation, Dublin

I received a delegation from South Africa on 1st September 2011. The delegation, led by Lt. General Themba Matanzima, Chief of Joint Operations, South African National Defence Forces and Dr. Clarence Tshitereke, Chief Director for Research in the Ministry for Defence met with me to discuss the structure and operation of the ODF.

Lt. General Matanzima was interested in benchmarking and reviewing how my Office worked and served the interests of the Defence Forces. In advance of the meeting, at my request, Dr. Tshitereke had furnished draft legislation providing for the establishment of an Office of Military Ombudsman in South Africa which I had reviewed for discussion and commentary.

September 2011 – Briefing with Director of the Centre for Euro Atlantic Studies, Dublin

In September I provided a briefing on the founding goals of my Office and its operation to-date to Ms. Jelena Milic, Director, Centre for Euro Atlantic Studies (CEAS). The CEAS is a Belgrade-based think-tank charged with promoting understanding of the goals of European and American democratic values within Serbia. The briefing provided an opportunity for a mutually beneficial exchange of information. Ms. Milic subsequently addressed the Oireachtas Committee on European Affairs and the Institute of International and European Affairs.

October 2011 – OSCE Mediterranean Partners Conference, Budva, Montenegro

Ireland was chair of the Mediterranean Partners Conference in advance of Ireland taking over the chairmanship of the OSCE in 2012 and Ireland's Ambassador to the OSCE, His Excellency Eóin O'Leary, chaired the conference in Budva, Montenegro.

This meeting gathered together representatives from the OSCE participating states together with representatives from Algeria, Egypt, Israel, Jordan, Morocco and Tunisia. At the invitation of the host country, the Palestinian National Authority also took part in the Conference.

The theme for this year's conference was *Democratic Transformation: Challenges and Opportunities in the Mediterranean Region*. At the suggestion of Ambassador O'Leary, I was invited by the Department of Foreign Affairs and Trade, to deliver an address to the first session of the conference on the theme of the role of the police and the armed forces in democratic societies.

The Consolidated Summary Report of the Conference along with my contribution is available on www.odf.ie and further information on the OSCE Mediterranean Partners for Co-operation is available from www.osce.org

October 2011 – Meeting with PDFORRA Executive members, Dublin

I continued to develop the positive relationship I have established with the Defence Forces representative organisations and attended a meeting with members of PDFORRA to discuss the potential for mediation in the resolution of interpersonal workplace disputes.

November 2011 – Discussions with Austrian Parliamentary Commission for the Federal Armed Forces, Vienna

I was invited by Dr. Anton Gaál, Chairman of the Austrian Parliamentary Commission for the Federal Armed Forces to participate in discussions, referred to as The Vienna Talks, convened by Mr Paul Kiss, Executive Chairman of the organisation, to discuss the opportunities for better co-operation among military ombudsman institutions where members of armed forces are serving in multi-national peacekeeping missions.

The following day I was one of the guests of honour at the annual reception of the Austrian Parliamentary Commission for the Federal Armed Forces which was hosted in the Parliament Building, Vienna on 22 November 2011.

November 2011 – RACO biennial conference, Cork

In November I attended the RACO biennial conference held in Fota Island, Cork.

viii **Appendix**

This Appendix continues additional information that may prove valuable in assessing the trends in cases referred to my Office in 2011 and the reasons for case referral since the inception of the ODF on 1st December 2005.

Information which was previously contained in the ‘Corporate Affairs’ section of ODF Annual Reports is available on www.odf.ie

a) **Reasons for cases referred to ODF 2006–2011**

	2006	2007	2008	2009	2010	2011	Total	%
Alleged Inappropriate Behaviour/ Bullying	0	4	29	0	1	3	37	15.29%
Maladministration of Career- Related Procedures	5	17	16	4	11	9	62	25.62%
Administration and Management of Selection Procedures for Overseas Service	4	1	1	1	4	2	13	5.37%
Administration and Management of Selection Procedures for Career Courses	8	8	9	5	6	6	42	17.36%
Administration and Management of Selection Procedures for Promotion	9	25	13	22	11	8	88	36.36%
TOTAL	26	55	68	32	33	28	242	

b) **Cases referred by Permanent, Reserve and former members of the Defence Forces**

Of the 83 cases referred and accepted for adjudication in 2011

- 73 (88%) were from current members of the Permanent Defence Force
- 4 (5%) were from current members of the Reserve Defence Force
- 5 (6%) were from former members of the Permanent Defence Force
- 1 (1%) was from a former member of the Reserve Defence Force

c) **Gender of Complainants**

Of the 83 cases referred and accepted for adjudication in 2011:

- 79 (95%) were referred by male members and former members of the Defence Forces
- 4 (5%) were referred by female members and former members of the Defence Forces

d) **Breakdown of cases referred by service area**

- 63 (76%) came from members or former members of the Army
- 10 (12%) came from members or former members of the Air Corps
- 10 (12%) came from members or former members of the Naval Service

e) **Notifications of Complaint in 2011**

ACTIVE 2010	RECEIVED	CLOSED	ACTIVE 2011
26	80	73	33

f) Analysis of ODF case handling 2011

ACTIVE 2010	Appeals & Referrals	RoW Appeals	Direct Referral	OToR	Withdrawn	PVRs Issued	Final Report	ACTIVE 2011
1	Alleged Inappropriate Behaviour/Bullying	2	3	1	1	4	1	3
15	Maladministration of Career-Related Procedures	6	5	2	1	5	7	16
29	Administration and Management of Selection Procedures for Promotion	8	0	0	0	15	19	18
7	Administration and Management of Selection Procedures for Career Courses	6	0	0	0	6	2	11
5	Administration and Management of Selection Procedures for Overseas Service	2	0	0	1	2	0	6
57	TOTAL	24	8	3	3	32	29	54

IX Report of the Comptroller and Auditor General



Comptroller and Auditor General
Report for presentation to the Houses of the Oireachtas

Ombudsman for the Defence Forces

I have audited the financial statements of the Ombudsman for the Defence Forces for the year ended 31 December 2011 under the Ombudsman (Defence Forces) Act 2004. The financial statements, which have been prepared under the accounting policies set out therein, comprise the Statement of Accounting Policies, the Income and Expenditure Account, the Balance Sheet and the related notes. The financial reporting framework that has been applied in their preparation is applicable law and Generally Accepted Accounting Practice in Ireland.

Responsibilities of the Ombudsman

The Ombudsman is responsible for the preparation of the financial statements, for ensuring that they give a true and fair view of the state of the Ombudsman for the Defence Forces affairs and of its income and expenditure, and for ensuring the regularity of transactions.

Responsibilities of the Comptroller and Auditor General

My responsibility is to audit the financial statements and report on them in accordance with applicable law.

My audit is conducted by reference to the special considerations which attach to State bodies in relation to their management and operation.

My audit is carried out in accordance with the International Standards on Auditing (UK and Ireland) and in compliance with the Auditing Practices Board's Ethical Standards for Auditors.

Scope of Audit of the Financial Statements

An audit involves obtaining evidence about the amounts and disclosures in the financial statements, sufficient to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or error. This includes an assessment of

- whether the accounting policies are appropriate to the Ombudsman for the Defence Forces circumstances, and have been consistently applied and adequately disclosed
- the reasonableness of significant accounting estimates made in the preparation of the financial statements, and
- the overall presentation of the financial statements.

I also seek to obtain evidence about the regularity of financial transactions in the course of audit.

In addition, I read all the financial and non-financial information in the annual report to identify material inconsistencies with the audited financial statements. If I become aware of any apparent material misstatements or inconsistencies I consider the implications for my report.

Opinion on the Financial Statements

In my opinion, the financial statements, which have been properly prepared in accordance with Generally Accepted Accounting Practice in Ireland, give a true and fair view of the state of the Ombudsman for the Defence Forces affairs at 31 December 2011 and of its income and expenditure for the year then ended.

In my opinion, proper books of account have been kept by the Ombudsman for the Defence Forces. The financial statements are in agreement with the books of account.

Matters on which I Report by Exception

I report by exception if

- I have not received all the information and explanations I required for my audit, or
- my audit noted any material instance where moneys have not been applied for the purposes intended or where the transactions did not conform to the authorities governing them, or
- the information given in the Ombudsman for the Defence Forces Annual Report for the year for which the financial statements are prepared is not consistent with the financial statements, or
- the Statement on Internal Financial Control does not reflect the Ombudsman for the Defence Forces compliance with the Code of Practice for the Governance of State Bodies, or
- I find there are other material matters relating to the manner in which public business has been conducted.

I have nothing to report in regard to those matters upon which reporting is by exception.

Andrew Harkness

For and on behalf of the
Comptroller and Auditor General

10 April 2012



*“When we assumed the Soldier,
we did not lay aside the Citizen.”*

June 1775 — Address by George Washington to New York Legislature

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