



Ombudsman for the Defence Forces
Annual Report 2012



Ombudsman for the Defence Forces

Customer Charter

The Ombudsman for the Defence Forces was established by law to provide a statutorily independent appeals process whereby members of the Defence Forces who have processed a complaint through the Redress of Wrongs system, but remain dissatisfied with the outcome, may refer their grievance to the Ombudsman for review.

The Ombudsman for the Defence Forces also accepts complaints made directly by former members of the Defence Forces, subject to certain conditions.

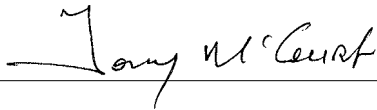
Pursuant to sections 4 and 6 of the Ombudsman (Defence Forces) Act 2004 the Ombudsman may, with certain exceptions, investigate an action taken by a member of the Defence Forces or a civil servant of the Department of Defence, which

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

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

I hereby submit the 2012 Annual Report of the Ombudsman for the Defence Forces pursuant to Section 7 of the Ombudsman (Defence Forces) Act, 2004.

This is the 7th Annual Report submitted in relation to the work of the Ombudsman for the Defence Forces since it was established on the 1st December, 2005.

A handwritten signature in black ink, reading "Patrick Anthony McCourt", written over a horizontal line.

Patrick Anthony McCourt
Ombudsman for the Defence Forces

Contents

I	Introduction	7
II	Highlights of 2012	15
III	Analysis of Complaints & Appeals	17
IV	Case Summaries	26
V	Corporate Affairs	35

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

www.flickr.com/photos/dfmagazine



I Introduction

2012 was a year of significant change for the Office of the Ombudsman for the Defence Forces (ODF). My predecessor, Ms. Paulyne Marrinan Quinn S.C., completed her term of office as Ombudsman on 18th September 2012, having served with distinction for a total of seven years as the first Ombudsman for the Defence Forces, from the date of her appointment in late 2005.

I am very pleased to present this, the 7th Annual Report of the Ombudsman for the Defence Forces (ODF). This is also my 1st Annual Report since my appointment as Ombudsman for the Defence Forces by the President, on the recommendation of the Government, with effect from the 7th November 2012. My appointment occurred so close to the end of the calendar year 2012, that while I had familiarized myself with the office and had commenced but not concluded consideration of the ongoing caseload during 2012, I did not determine any complaints or issue any reports before the close of the year. The initiation of Judicial Review proceedings in the High Court in connection with my appointment as Ombudsman also contributed to my decision not to publish any investigation reports in 2012. This Annual Report, therefore, reflects the work of my predecessor during the reporting year.

Having due regard to the current economic climate, the 2012 Annual Report is, for the first time, being primarily produced in electronic format. While hard copies may be preferable so that they can be physically perused in each and every unit throughout the Irish Defence Forces, as well as by interested parties and the public in general, it is the case that, having regard to the present circumstances, the ODF must strive to reduce costs in all areas whenever and wherever practicable. It appears to me that the most cost efficient and expedient method of production of this Annual Report is by electronic means, hence the change. I have asked the Chief of Staff of the Defence Forces to make this Annual Report available to all members of the Defence Forces through the Defence Forces Intra-Net and he has kindly agreed to do so. Electronic copies will also be made available to various interest groups and individuals by the ODF and this Annual Report will also be published on the ODF web-site. This new arrangement will, I believe, ensure a greater and easier level of access to the report.

My first task in this report is to pay tribute to my predecessor as Ombudsman, Paulyne Marrinan Quinn, S.C., for her contribution and commitment to the work of the ODF since her appointment as the first Ombudsman in September 2005. From the date of her appointment she worked tirelessly with enthusiasm and determination, bringing to bear the experience she had acquired from her previous role as Insurance Ombudsman, to put in place the structures and systems necessary to enable the ODF fulfill its statutory functions. Ms. Marrinan Quinn served seven years in the Office as Ombudsman and she can be justly proud of her achievements in that time. She undertook the challenging

task of putting flesh on the bones of the Ombudsman (Defence Forces) Act 2004, which established this Office. I do not think that the participating parties in 2005 could have had a clear and agreed vision as to how the Office of the Ombudsman would grow and develop over the intervening years. More importantly it was clear from the start that there was a willingness by all parties to make it work. From the beginning the military authorities provided full co-operation with the Office and adopted the view that an external review, by an independent civilian Office holder, of unresolved complaints under the Redress of Wrongs system could only be a positive development. For this progressive and positive disposition the Irish military authorities of the day must be given great credit. I have no doubt that my predecessor's previous experience and the professionalism with which she approached her new role at that time were crucial to the early development of the Office.

From the outset, she rightly set standards for the Office at the highest level. Over the course of her term as ODF she investigated a significant number of complaints made to the ODF. Such investigations were carried out in an exemplary fashion having due regard to the legislative provisions governing not only the ODF but also those governing the Irish Defence Forces. My predecessor has always acted with the utmost diligence and integrity. This is reflected in the respect and esteem she is held in by the members, senior Commanders and Staff of the Permanent and Reserve Defence Forces. Her Annual and individual reports over the past seven years have been very carefully considered by the Minister for Defence and his officials and by the Military Authorities. Her reports, whether she upheld or refused to uphold a complaint, have contributed in a positive manner to the resolution of complaints by serving and former members of the Defence Forces as well as to significant improvements in administration within the Defence Forces. For this she is to be complimented. Her reports will stand as a permanent record and a fitting testament to the contribution she has made to bringing recognition, respect and high regard for the Office of Ombudsman for the Defence Forces at both national and international level. I wish my predecessor every success in whatever new challenges she chooses to undertake in the future and I hope during my term of Office to further develop and build on her achievements.

The statistics included in this Annual Report provide an overview of the ODF activity during 2012. My office received 122 Notifications of Complaints (NoCs) in respect of Redress of Wrongs applications, pursuant to section 114 of the Defence Act 1954, initiated by serving members of the Defence Forces during 2012. In addition there were 5 directly referred complaints received. This total of 127 notifications for 2012 shows a significant year on year increase on the 78 recorded in 2011 and the 62 recorded in 2010. Of the 127 notifications received some 47 (37%) were resolved or withdrawn during the course of the year. I have also noted that while 58 NoCs were received during the year,

up to the date of the retirement from office of my predecessor on 19 September 2012, a further 69 NoCs were received during the remainder of the year, providing further evidence of an upward trend in complaints during 2012.

Some 77 cases were under review by the ODF during 2012. This was a reduction from the 89 cases under review in 2011. However, having regard to the 63% increase in notifications of complaints received during 2012 and the reduction from 46% in 2011 to 37% in 2012 of the number of complaints resolved within the Defence Forces at the Redress of Wrongs stage, it would appear that the downward trend in the number of complaints referred to the ODF, as reflected in the 2011 Annual Report of my predecessor, has not been sustained. Furthermore, as noted later in this introduction, the recent implementation of new promotion procedures for both Officers and NCOs and the further re-organisation of the Defence Forces, may well, at least in the short to medium term, add to rather than diminish the referral of complaints to this Office. More detailed case statistics are provided elsewhere in this Annual Report.

There can be no doubt that any reduction in the number of cases referred to the ODF in recent years does reflect positively on improved standards of administration within the Defence Forces and the contribution of the ODF in that respect over the last seven years. The ODF remit is to provide an independent, impartial and accessible mechanism of reviewing complaints and overseeing administrative processes and practices in the Irish Defence Forces. The ODF plays a continuing key role in ensuring that complaints are dealt with in a manner which, while having due regard at all times to operational requirements, respects the nature of the Irish Defence Forces and the rights of all of its serving and former members.

The influence of the independent civilian office of the ODF in the resolution of complaints within the Defence Forces has undoubtedly been positive. Since the establishment of the ODF, it was to be expected that complaints would be more likely to be resolved internally at an early stage within the Defence Forces. This focus on early resolution is fully endorsed by the ODF and supported by the military authorities and individual members taking on board the views and findings of the ODF in individual previous cases. It would be remiss of me not to acknowledge that this has occurred only because of the positive engagement and leadership shown by the Minister for Defence, Mr. Alan Shatter T.D. and his predecessors, the Chief of Staff, Lt. Gen. Sean McCann, his predecessors and his Senior Officers along with all the members of the Irish Defence Forces and their representative bodies. I would encourage renewed focus on the early resolution of complaints within the Redress of Wrongs system. I commend the Defence Forces generally on the standard of reports produced by the Military Investigating Officers (MIO's) and the care and detail with which the military authorities record their

decisions at all stages. I recommend that consideration be given to measures which would enhance the independence of MIO's. While I am cognizant of the difficulties which may be caused by the 28 day timeline for the resolution of complaints specified in section 4(2) (d) of the Ombudsman (Defence Forces) Act 2004, I believe that generally such a limited timeframe promotes the necessary urgency with which complaints need to be addressed and is conducive to the early resolution process. Nonetheless, I wish to re-emphasise that it is only in circumstances where a complaint is not likely to be resolved and a period of 28 days has elapsed since the complaint was made that I have jurisdiction to investigate the action complained of. Keeping in mind the requirement to exhaust all available remedies at the lowest level possible I would urge complainants to understand that the mere passage of 28 days from the submission of an application for Redress of a Wrong, on its own, does not trigger an automatic right on their part to refer the complaint to this Office. If after 28 days the military authorities are actively engaging in the Redress of Wrongs process I would advise every complainant that it is in his/her best interests to await the recommendations of the MIO and the considered rulings of the relevant GOC and of the Chief of Staff before seeking to appeal their complaint to this Office, unless such delay would create jurisdictional difficulties. A request for referral of a complaint to this Office prior to that could result in a suspension of the military consideration of the complaint which may not be in the complainant's best interests, including circumstances where an early resolution might still be possible.

However, notwithstanding my Office's interest in the promotion of the early resolution process, I believe that it remains essential that complaints and administrative procedures of the Irish Defence Forces remain subject to the independent scrutiny that the ODF provides. Members of the Irish Defence Forces are, like all other citizens, subject to the civil and criminal law of this country. However, unlike other citizens, our 'citizens in uniform' are also subject to the code of military law provided by the Defence Act 1954, Defence Force Regulations, Administrative Instructions and the orders of superiors, both written and verbal, which are applicable only in a disciplined body with a chain-of-command structure. It is in such unique circumstances that independent civilian oversight of complaints is vested in the ODF by section 4 of the Ombudsman (Defence Forces) Act 2004. The Ombudsman may, subject to a 12 month time limit, investigate an action by a serving or former member of the Defence Forces or by a civil servant of the Department of Defence, where it appears to him or her that the action complained of has or may have adversely affected a member or former member of the Defence Forces and where the action was, or may have been, taken without proper authority, taken on irrelevant grounds, the result of negligence or carelessness, based on erroneous or incomplete information, improperly discriminatory, unreasonable (even in the military context), based on undesirable administrative practice, or otherwise contrary to fair or sound administration, in circumstances where the action complained of was not an

order issued in the course of a military operation. Certain actions are excluded from investigation by the Ombudsman pursuant to section 5 of the Act of 2004. These are actions in respect of which the complainant has initiated legal proceedings in a civil court, actions which have been or are the subject of an investigation or punishment under military law, actions which relate to or affect security or a military operation (as defined in the Act), actions relating to the terms and conditions of service, actions concerning the organization, structure and deployment of the Defence Forces, actions concerning the administration of military prisons or places of detention, or actions taken before 1 December 2005. In the absence of the ODF as an independent office investigating any such complaint by a member or former member of the Irish Defence Forces, such complaint could, and in some cases would, be addressed by way of Judicial Review in the High Court with resultant substantial legal costs for the complainant and for the State. Furthermore, I believe that complaints and concerns over procedures and practices are best dealt with in the non-adversarial structure provided by the ODF as it allows for the maintenance of interpersonal relationships and facilitates the direct engagement of the parties involved. In that regard, having regard to the resourcing levels available, I believe the ODF continues to provide excellent value for money.

While the Redress of Wrongs system has been available to all members of the Defence Forces since the foundation of the State, the relatively recent introduction of independent external review by a civilian Ombudsman has been welcomed by all of the parties. In a disciplined organization such as the Irish Defence Forces, with more than 10,000 men and women, it is important to have a formalized system for the investigation and resolution of complaints which does not impede the organization in the fulfillment of its role. Logically there have to be aspects of military life, as indicated above and provided for in the legislation establishing this office, which are outside the jurisdiction of the Ombudsman. However, the investigation and issuing of reports on complaints which are within the jurisdiction of the Ombudsman should be considered as a positive contribution to the development and improvement of fair and sound administrative practices and improved human rights norms within a progressive professional military force. Members and former members of the Irish Defence Forces can be reassured that a genuine complaint will be listened to with improved prospects of it being resolved internally and if not so resolved that it will be considered in an independent and impartial manner by this Office. Complaints represent a key tool for the military authorities to gain insight and feedback on processes and procedures which may not be working as well as they ought to be or which could be improved. Complaints may reasonably be considered to be useful drivers of innovation and change, particularly where they uncover system and procedural failures. Through the investigation and adjudication of a range of cases, the ODF should be considered to be a valuable resource for positive improvement in administration within the Irish Defence Forces.

When grievances are referred to the ODF it is usual for complainants, who believe that they have been wronged and unfairly treated, to expect a remedy to be available in the event that their grievance, if found to be justified, is upheld. Given the nature of the cases referred to the ODF the remedy may involve being promoted or being provided with a place on a career course or a particular posting or duty. On occasions, effecting such a remedy may prove difficult as the particular course may have already commenced and finished, a particular duty, such as an overseas duty, may have already departed, or new promotion agreements may have resulted in promotional vacancies being already filled. In that regard, the ODF acknowledges the patience, realism and enduring acceptance of certain realities which members and former members of the Irish Defence Forces have demonstrated. Complainants have informed the ODF that, notwithstanding the absence of a remedy in certain instances, they were pleased that their grievance was investigated and upheld and that they were vindicated in the matter.

The absence of a suitable remedy can often be due to the time delay between the action complained of taking place and the issuing of final findings and recommendations from the ODF. Despite the very limited resources, both financial and staff, available to the ODF it is intended to review internal practices and procedures during 2013 with a view to streamlining procedures and where possible introducing efficiencies to improve case progression. Each case is different and some are more complex, both legally and administratively, than others. Therefore, whilst it may be possible to progress one case speedily, it may not be possible with another case. Notwithstanding, it will be the policy of the ODF to intervene directly and early in every case where it appears that such intervention may contribute to the early resolution of the matter between the parties. The ODF is satisfied that with good will and an open minded approach by all parties, grievances, in many cases, can be resolved at an early stage where suitable remedies remain available. The ODF believes that any early intervention initiative is of benefit not only to individual complainants but also to the military authorities in the context of maintaining and building on good working environments and relationships.

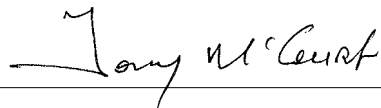
As previously noted in ODF Annual Reports, recommendations for administrative and systemic reform have been made over the period since the establishment of the ODF. Monitoring the implementation of any such recommendations accepted by the Minister for Defence remains a function of the ODF. I am pleased to acknowledge that the Department of Defence provides the ODF with regular updates from the Standing Committee on Defence Forces Personnel Policy Issues on the implementation status of reforms arising from ODF recommendations. However, it appears to me that in some instances the implementation of reforms can take an excessively long period. In 2013, therefore, it is hoped that the ODF in association with the Department of the Defence

will audit outstanding administrative and systemic reforms and agree, where appropriate, timescales for undertaking and completing internal Military/Departmental reviews and implementing such reforms.

During 2012 the ODF continued to engage with the International Conference of Ombudsman Institutions for Armed Forces (ICOAF) - the grouping of Offices of Ombudsman or Inspectorates in the Armed Forces.

The ODF would like to record appreciation for the support and engagement that the Chief of Staff Lt. Gen. Sean McCann along with his colleagues in the Office of the Director of Human Resources Management Section (D HRMS), the Enlisted Personnel Management Office (EPMO), and the Commissioned Officers Management Office (COMO) have given and continue to give to the work of the ODF. I also acknowledge the support and co-operation of the Minister for Defence, Mr. Alan Shatter, T.D. and his Departmental Officials during 2012.

2012 was a year that saw significant changes introduced in the Irish Defence Forces. New promotion agreements were introduced for both Officers and NCOs. These agreements underpinned promotion competitions during the year. The introduction of any new system, and particularly a new promotion system, inevitably brings with it new challenges. Allied to that, the Government and military authorities introduced significant changes in the structure of the Irish Defence Forces which also has the potential to impact on the caseload of this Office. This Office will closely monitor any developing trends but only time will tell whether or not the new promotion system or the reorganisation of the Defence Forces actually impacts on the workload of this Office.



Patrick Anthony McCourt
Ombudsman for the Defence Forces



II Highlights of 2012

- 127 Notifications of Complaint received in 2012. This figure includes 5 complaints directly referred to ODF. This is a significant increase on the 78 notifications received during 2011 and the 62 received during 2010.
- The previously recorded downward trend in the number of complaints notified to this Office, as reported in the 2011 Report, appears to have been reversed in 2012. This may be indicative of a future increase in the number of complaints which will be referred to this Office for adjudication. This trend will need to be monitored to determine whether it is a short term or longer term reversal of the previously reported downward trend.
- 53 existing cases under review were carried forward from 2011 into 2012.
- 24 new cases were referred to ODF during 2012. This was a significant reduction on the 32 new complaints referred to ODF in 2011.
- 77 cases were under actual review by the ODF during 2012. This is a decrease on the 89 cases which were under review in 2011. Having regard to the increase in complaints notified during the year this decrease appears unlikely to be maintained in 2013.
- 22 Final Reports were issued during 2012. They contained adjudications and recommendations.
- 14 Preliminary View Reports were issued during 2012. These contained preliminary views and requests for additional information and observations.
- At the end of 2012 a total of 55 cases remained under review by the ODF.
- The First Ombudsman for the Defence Forces, Ms Paulyn Marrinan-Quinn S.C. completed her term of Office on the 18 September 2012.
- The Second Ombudsman for the Defence Forces, Patrick Anthony McCourt, was appointed by the President of Ireland, on the recommendation of the Government, with effect from 7 November 2012, for a term of three years. The terms and conditions of the appointment, as determined by the Minister, included that the appointment would be remunerated on a part-time, three days a week, basis.
- Judicial Review proceedings were initiated in the High Court on the 21 November 2012 in relation to the appointment of the Ombudsman for the Defence Forces.



III Analysis of Complaints & Appeals

Notifications of Complaint

127 Notifications of Complaint (including directly referred complaints) were received by my Office from the Defence Forces during 2012. 115 of those were in respect of complaints from serving or former other ranks personnel while 12 were in respect of serving or former commissioned officers. This was a significant 63% increase on the comparable figure of 78 NOCs for 2011. It also represents a reversal of the previously reported downward trend in complaints submitted.

The present administrative arrangements, between my Office and the Defence Forces, do not facilitate early identification by my Office of the reasons for this increase. The increase may well be related to the implementation of the new NCO promotion competition agreement in 2012 and/or the re-organisation of the structure of the Defence Forces. I shall explore the possibility of the inclusion of some additional information on the NOCs received by my Office in this context.

In addition, the ODF also received some 37 direct contacts from members of the Defence Forces or members of the public in relation to queries, concerns or information requests. There were also numerous direct contacts between the ODF and the Military Authorities and individual members in respect of individual cases, however, such contacts are not recorded for statistical purposes.

With regard to the number of such complaints which were either withdrawn or resolved within the Defence Forces, my predecessor reported that from an analysis of the previous three years she noted that while in 2009 only 21% of Notifications of Complaint were resolved within the Defence Forces at the Redress of Wrongs stage, in 2011 this had risen to 46%. The comparable figure for 2012 was 37%. This reflects a modest reversal of the previous year's figure and it appears to be too early to predict any particular trend on the basis of the 2012 figures alone.

Direct referrals to Office

Serving members of the Permanent and Reserve Defence Forces must initially process their complaints through the statutory (section 114 Defence Act 1954) Redress of Wrongs procedure and exhaust the internal Defence Forces process before referring their complaint to this Office. Former members of the Defence Forces may refer their complaints directly to this Office, subject to the requirements of the Ombudsman (Defence Forces) Act 2004.

In 2012 some 5 complaints were referred directly to this Office. This compares with the 8 complaints referred directly to my predecessor in 2011. I do not attribute any particular significance to the difference in this respect between 2011 and 2012.

New Cases received by ODF in 2012

On 1 Jan 2012 some 53 cases were carried forward under review by this Office. During 2012 some 24 new cases were received by this Office. They were as follows:

- 9 cases were appeals from RoWs initiated in 2012.
- 10 cases were appeals from RoWs initiated in 2011 or earlier and appealed in 2012.
- 5 cases directly referred to this Office during 2012 of which 2 cases were deemed to be outside of the ODF's terms of reference.

Total number of cases under review during 2012

In addition to the 24 new cases referred to this Office during 2012, the ongoing consideration of 53 cases carried forward from 2011 continued, so that the total number cases under review by this Office during 2012 was 77.

Of these some 22 cases were brought to a conclusion during 2012. Two cases were concluded as being outside the terms of reference of my predecessor and twenty cases were the subject of formal Final Reports. 55 cases remained under review on 31 December 2012 and were carried forward for consideration in 2013.

Details of Complaints Investigated by ODF in 2012

The following Tables set out the nature of complaints considered by this Office during 2012 along with details of complaints by military formation. It should be noted that complaints categorized as 'Maladministration' include a variety of issues including complaints in respect of performance appraisal and issues related to discharge among others. Complaints categorized as 'Interpersonal Issues' include any complaints where there appears to be elements of personality conflict, inappropriate behavior or alleged bullying.

Total cases

The following table outlines the progression of these 77 cases during 2012.

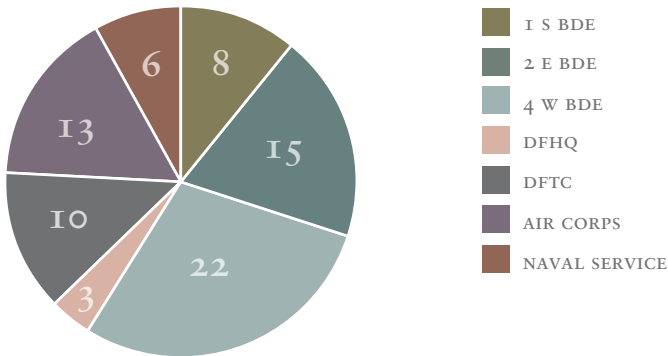
PRELIMINARY INVESTIGATION ONGOING	PRELIMINARY INVESTIGATION COMPLETED AND REPORT ISSUED	FINAL REPORT ISSUED
41 (53%)	14 (13%)	22 (34%)



Cases by Military Formation

Of the 77 cases on hand during the course of the year, the following table outlines the number of cases arising in each Military Formation.

1 SOUTHERN BRIGADE	2 EASTERN BRIGADE	4 WESTERN BRIGADE	DEFENCE FORCES HQ	DEFENCE FORCES TRAINING CENTRE	AIR CORPS	NAVAL SERVICE	TOTAL
8 (11%)	15 (19%)	22 (29%)	3 (4%)	10 (13%)	13 (16%)	6 (8%)	77



Nature of Cases. The nature of the cases on hand with the ODF during 2012 can be broken down into the following broad categories.

MALADMINISTRATION	21 (27%)
NON-SELECTION FOR PROMOTION	23 (30%)
NON-SELECTION FOR A CAREER COURSE	15 (19%)
INTERPERSONAL ISSUES	8 (11%)
NON-SELECTION FOR OVERSEAS SERVICE OR PARTICULAR POSTING	10 (13%)



Details of Cases by Formation. The following tables and charts set out the nature of cases on hand during 2012 by individual Military Formations.

1 S BRIGADE

MALADMINISTRATION	2 (25%)
NON-SELECTION FOR PROMOTION	2 (25%)
NON-SELECTION FOR A CAREER COURSE	1 (12.5%)
INTERPERSONAL ISSUES	1 (12.5%)
NON-SELECTION FOR OVERSEAS SERVICE OR PARTICULAR POSTING	2 (25%)



2 E BRIGADE

MALADMINISTRATION	4 (26%)
NON-SELECTION FOR PROMOTION	3 (20%)
NON-SELECTION FOR A CAREER COURSE	4 (26%)
INTERPERSONAL ISSUES	2 (14%)
NON-SELECTION FOR OVERSEAS SERVICE OR PARTICULAR POSTING	2 (14%)



4 W BRIGADE

MALADMINISTRATION	9 (40%)
NON-SELECTION FOR PROMOTION	6 (27%)
NON-SELECTION FOR A CAREER COURSE	5 (23%)
INTERPERSONAL ISSUES	1 (5%)
NON-SELECTION FOR OVERSEAS SERVICE OR PARTICULAR POSTING	1 (5%)



DEFENCE FORCES HQ

MALADMINISTRATION	NIL
NON-SELECTION FOR PROMOTION	2 (66.6%)
NON-SELECTION FOR A CAREER COURSE	1 (33.3%)
INTERPERSONAL ISSUES	NIL
NON-SELECTION FOR OVERSEAS SERVICE OR PARTICULAR POSTING	NIL



DEFENCE FORCES TRAINING CENTRE

MALADMINISTRATION	3 (30%)
NON-SELECTION FOR PROMOTION	1 (10%)
NON-SELECTION FOR A CAREER COURSE	NIL
INTERPERSONAL ISSUES	1 (10%)
NON-SELECTION FOR OVERSEAS SERVICE OR PARTICULAR POSTING	5 (50%)



AIR CORPS

MALADMINISTRATION	4 (30%)
NON-SELECTION FOR PROMOTION	5 (38%)
NON-SELECTION FOR A CAREER COURSE	1 (8.5%)
INTERPERSONAL ISSUES	1 (8.5%)
NON-SELECTION FOR OVERSEAS SERVICE OR PARTICULAR POSTING	2 (15%)



NAVAL SERVICE

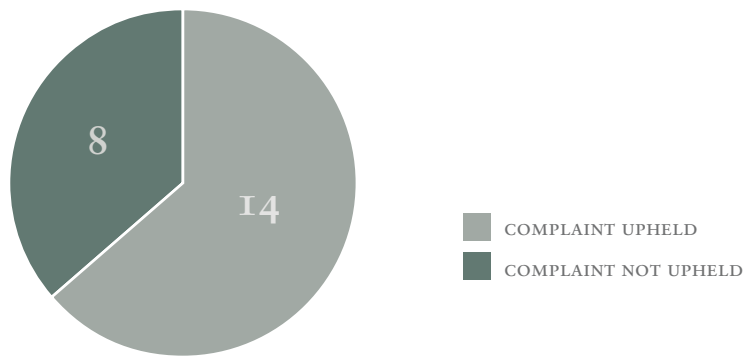
MALADMINISTRATION	NIL
NON-SELECTION FOR PROMOTION	3 (50%)
NON-SELECTION FOR A CAREER COURSE	3 (50%)
INTERPERSONAL ISSUES	NIL
NON-SELECTION FOR OVERSEAS SERVICE OR PARTICULAR POSTING	NIL



ODF Recommendations

COMPLAINT UPHELD BY ODF	14
COMPLAINT NOT UPHELD BY ODF	8*

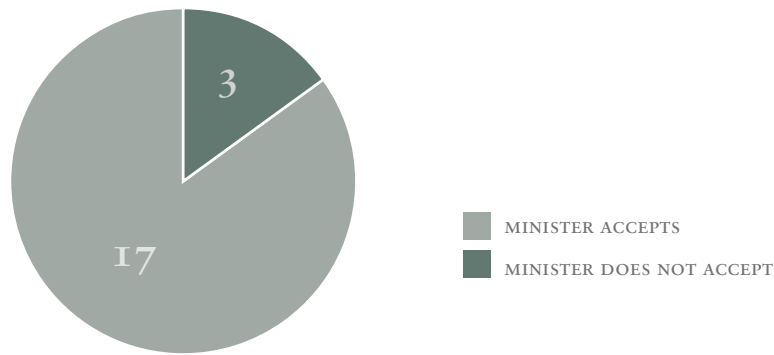
*INCLUDES 2 COMPLAINTS OUTSIDE ODF’S TERMS OF REFERENCE



Minister’s Response To ODF’s Recommendation

MINISTER ACCEPTS	17*
MINISTER DOES NOT ACCEPT	3

*A FURTHER 2 COMPLAINTS WERE OUTSIDE ODF’S TERMS OF REFERENCE AND NO RECOMMENDATION WAS MADE TO MINISTER





IV

Case Summaries

The following case summaries set out details of some of the cases investigated by the Ombudsman for the Defence Forces during 2012 along with the response of the Minister for Defence to the Ombudsman's findings and recommendations.

Case Summary 1

NCO Promotion selection process – BQMS rank – whether full range of experience taken into account – seniority – overseas service – AF 667A rating – DFR A 10 – Admin Instr. Part 10 – Interview Board – absence of agreed and transparent marking system – failure to retain notes.

The Complainant applied for a BQMS vacancy and was unsuccessful. The Complainant's grievance was that he had been unfairly penalised for not having served overseas on a more regular basis and that his full range of experience and level of responsibility had not been given due consideration.

In the course of the Preliminary View Report, the ODF observed that she had been taken aback by a comment by the Defence Forces that the members of the Interview Board had used their own individual points system. ODF requested clarification as to how this had been administered and found that the response was lacking in substance. She noted that at the time a new NCO promotion system had been long awaited but that this did not justify there being no co-ordinated and agreed methodology used by the Board in the interim.

The ODF noted that the Complainant had previously made an application for a period as Acting BQMS but had received no reply from the military authorities. ODF found that it was highly unsatisfactory to leave the Complainant without a response in a manner that showed little regard for the significance of the enquiry and the hurt caused by such a lack of regard.

ODF also examined the range of the Complainant's experience referred to in the Board Report. She noted that this was referred to in general terms making it difficult to say with certainty whether every aspect was taken into account and observed that a controversial Overseas Report from many years ago recorded the Complainant as being "unsuitable for future Overseas Service".

ODF found that she could not properly recommend that the Complainant be granted the redress he sought, namely promotion to the rank of BQMS as there was insufficient evidence to support a claim of unfairness or biased treatment. ODF did however find that there had been a lack of transparency in the administration of the Selection Process.

She acknowledged the significant service done by the Complainant in bringing to attention the need for long overdue reform of the NCO Promotion Selection Procedures. ODF also acknowledged the Complainant's legitimate concerns that he had not had an opportunity to raise questions about an adverse comment in an AF667A report on his file which could be read in the intervening years in a way that would have given rise to an adverse view of his record.

ODF recommended that there be a review of the practice directions given to Interview Boards with regard to the retention of notes. She highlighted that this had arisen in a number of cases and was the subject of recommendations by the Independent Monitoring Group and the Minister for Defence.

The Minister for Defence has since advised that the formulation of a new NCO promotion agreement had been agreed which addressed the issue of an agreed marking system and retention of notes.

Case Summary 2

Promotion Interview Board – decision to re-run competition – delay in convening new Interview Board due to outside factors – legal proceedings – PDFORRA intervention – moratorium on recruitment – inadequate communication.

The Complainant was one of five candidates found suitable for promotion by an Interview Board in 2006. He was placed third in order of preference. Following certain concerns raised, a decision was made to re-convene the Interview Board to ensure impartiality and fairness. All five candidates were advised of this decision. A number of “outside actions” arose which resulted in the matter being protracted over a number of years. First, one of the candidates initiated legal proceedings. Second, PDFORRA made representations seeking an assurance that the competition would be run in accordance with A Admin Instr. Part 10. Third, a Moratorium on Recruitment and Promotions in the Public Service was implemented by the Department on Finance in March 2009. The Complainant's grievance was that a) he was kept in the dark for long periods of time; b) other promotions took place within the Air Corps after the Moratorium had taken effect. He claimed that he had been wronged by not being promoted.

ODF found that the Complainant had good grounds for complaint due to the inadequate processes of communications with him giving rise to a protracted period of uncertainty about the outcomes, the reasons for the delays and the status of the Competition. ODF was unable to recommend that he be granted the redress sought however as while the failure to keep him informed was a part of his grievance, it did not go to the root of his

cause of complaint which was the administration of the Promotion Competition in 2006.

ODF found that whereas the Complainant may reasonably have considered that he would have been the appointed candidate had the competition been re-run, this could not be known with certainty. ODF acknowledged the Complainant's disappointment at being denied the opportunity to go forward for promotion and his frustration with the fact that the re-run of the competition had not gone ahead at the time of his complaint.

ODF sought replies from the Defence Forces as to the number of promotions that had taken place since the Moratorium had been imposed. ODF found that the Defence Forces provided a comprehensive response explaining that eight such promotions had taken place within the Air Corps which were sanctioned by the Department of Finance on the basis that the competition processes had been concluded prior to the commencement of the Moratorium.

The Complainant further took issue with the fact that the Military Investigating Officer in this case had sight of copies of previous Redress of Wrongs on his personal file. ODF found that no allegation of wrong doing arose in this regard and that the inclusion of RoWs on the personal file was in line with prevailing practice.

ODF found that the Defence Forces had provided her with the necessary information regarding the handling of promotions in what were very difficult circumstances. She found that the circumstances which arose were outside the control of the Defence Forces. As such, she could not properly recommend the redress sought. ODF did recommend that there be a review of internal communication practices particularly with regard to where the responsibility lies for conveying information to candidates who are awaiting the outcome of a promotion or selection procedure that impacts on career development.

The Minister for Defence accepted the ODF's findings and advised that a new NCO promotion procedure was agreed on 27 February 2012 which put in place robust procedures for communication of information regarding competitions to candidates and clearly outlined responsibilities in the chain of command in this regard.

Case Summary 3

Non-selection for overseas service – Terms of Letter of Instruction – whether consistent record of applying relevant – mandatory selection procedure – lead Bde concept – maladministration.

The Complainant applied for overseas service within the 102 Inf Bn due to serve in Chad. He was unsuccessful in his application. He alleged that he was wronged by the

maladministration of the selection criteria.

In her Preliminary View Report the ODF sought clarification from the Defence Forces about a number of issues, chief among them, whether D Cos (Sp)’s Letter of Instruction (LoI) dated 31 July 2006 (New Interim Selection Procedures) had been applied in this case and whether the “mandatory selection procedure” referred to in letter dated 27 September 2007 from the OiC of the Conciliation and Arbitration Scheme had been operative.

ODF was advised by the Defence Forces, in relation to the first issue, that the Military Investigating Officer had confirmed that the selection procedures were correctly applied in this case. ODF found this response to be unsatisfactory in that it failed to consider the MIO’s conclusion from an independent standpoint. ODF noted that Par 5(f) (3) of the LoI provided that “those who have not yet served overseas or who have a consistent record of applying for Overseas Service or the longest back from Overseas Service will be considered in that order”.

ODF could not accept the conclusion of the MIO to the effect that, the fact that the Complainant’s record of applying for Overseas Service was more consistent than that of those selected, was not relevant in this case. ODF found that not only was this clearly relevant, it was more relevant than a consideration of whether any other applicant was longer home than the Complainant (which seemed to have been the determining factor in selecting the other applicants ahead of the Complainant). ODF found that there had been a failure to apply the strict wording of the LoI.

ODF was advised by the Defence Forces in relation to the second issue that the mandatory selection procedure was in place at the time of the Complainant’s application. This procedure outlined in the letter dated 27 September 2007 provided that “volunteers are sought from the lead Bde” and it is only if no such volunteers are forthcoming that volunteers are sought from elsewhere in the Defence Forces. The lead Bde concept was repeated in the Raising and Concentration order for 102 Inf Bn MINURCAT OPOrd 13/09. ODF noted that 3 of the 4 Sgt Appointments at the time had been filled by personnel from outside of the Lead Bde, when volunteers existed within the Lead Bde. ODF found that the Complainant’s submission that the wording of the relevant LoI coupled with the Lead Bde concept should have secured him at least one of the appointments for this mission, to be a reasonable one.

ODF also had cause to record her concern that much time had been lost to the detriment of the Complainant and that it was difficult to find a means of providing a remedy. ODF recommended that every effort be made to find some means of mitigating the adverse effect sustained by the Complainant by the mismanagement and maladministration

of the selection procedure. ODF recommended that the Complainant be given an opportunity to apply for overseas service at the next opportunity without encountering any disadvantage by time taken in pursuing his complaint.

The Minister for Defence accepted the ODF's recommendation as to the substantive issues. The Minister informed ODF that he had requested the Chief of Staff to prioritise the Complainant's next application for overseas service to the extent possible, subject to his meeting the general criteria for the post. The Minister also requested a review of the Letter of Instruction criteria and principles to be carried out to provide greater clarity to volunteers in the future. The Minister noted that there had been no significant delay on the part of the military authorities in processing the case.

Case Summary 4

Potential NCO Course – qualifying criteria – change in medical classification standard – candidates over forty years of age excluded – TS 155/2009 – exemption removed – whether change in criteria adequately promulgated – whether change in accordance with Defence Forces Regulations.

The Complainant was unsuccessful in an application for the 54th Potential NCO Course because he did not meet the required medical classification standard. His grievance lay in the fact that previous NCO courses had been open to candidates who were over forty years of age provided they were medically fit. The qualifying criteria for the 54th Course however excluded candidates over forty years of age.

ODF found that notification of the 54th Course had been published in Air Corps Routine Orders Annex B and that this was in accordance with the terms of Defence Forces Training Syllabus, Potential NCO Courses, TS Inf. 155/2009, issued by the Director of Defence Forces Training (D DFT). Both documents included a requirement that candidates have a medical classification of not lower than YY11424. ODF found that the very issuing of TS 155/2009 was itself a promulgation of the change and this was further carried out in Routine Orders advertising the course.

In her Preliminary View Report the ODF asked for clarification about the basis upon which the Director of Defence Forces Training was authorised to effect the change in criteria. As a result of the responses received it appeared that the authority to change the criteria flowed directly from the Chief of Staff through his designated Officers. It appeared from the responses received that the decision as to the Medical Grade required for entry to the course, was the result of consultation between the Training and Medical Directorates. Course qualifying criteria were said to be the preserve of D DFT with the

exception of qualifying Medical Grade which is recommended by DMC and inserted by D DFT into the relevant training syllabus.

ODF found that the Complainant was unfortunate in that he had been badly affected by the change in policy and practice with regard to the Medical Grading for Potential NCO Courses and now had to accept the qualifying criteria as they stood. ODF noted the submissions made by the Defence Forces that the Complainant had notice at the time of making his application of those changes. ODF recommended in general terms that all changes in criteria should be made known to those to whom it will have a direct effect on in the planning and development of their career progression within the Defence Forces.

The Minister for Defence accepted the ODF's findings.

Case Summary 5

Promotion – Selection competition – Missing AF 667s – Administrative failing not adequately dealt with – Conclusions and assessments imputed.

The complaint related to the Complainant's unsuccessful application for a vacancy. He maintained that one of his AF 667A annual reports was missing, as well as an AF 667B report, and that his application was therefore not properly assessed by the interview board. The Complainant contended that, if this information had been before the board, he would have been selected for promotion. The summary of the interview board report referred to a seven year old AF 667 which gave him an "average" grading. He further contended that the missing AF 667B found "superior levels of focus and initiative" and would have been a strong separating factor between him and the other candidates.

The MIO found that an AF 667A was missing, but that it contained an "above average" rating, which was consistent with the Complainant's other reports and would not have altered the ranking of the candidates. In her Preliminary View Report the ODF questioned this finding, which was based on the recollection of the reporting officer. The MIO further found that the president of the interview board was aware of the omission and had taken steps to redress the balance by considering an AF 667 "for promotion" written during 2006 which gave an "outstanding" rating. However, this had not altered the ranking of the candidates. The MIO further stated that he had located the missing AF 667B report and could not locate any reference to "superior levels of focus and initiative". The AF 667B graded the Complainant as "above average". The MIO concluded that the Complainant had not been wronged.

The Flag Officer Commanding the Naval Service (FOCNS) also concluded that the Complainant had not been wronged. He stated that the AF 667B was not, per para. 360 of Admin Instr Part 10, part of the assessment process and that the issue of the missing AF 667A had been accounted for and was to the Complainant's advantage. The Complainant responded to this ruling by pointing out that the interview board had not had the benefit of speaking to the officer who prepared the missing AF 667A and clarifying that the reference to "superior levels of focus and initiative" had in fact appeared in an AF 667A which had been before the interview board.

The Chief of Staff (CoS) also found against the Complainant. While he accepted that it was undesirable that the AF 667A was missing, he took the view that the Complainant was adequately compensated by the consideration of the AF 667 "for promotion" which gave him a higher rating.

ODF found that this was a clear case of administrative failings resulting in a Complainant being justifiably aggrieved. It had been accepted that two documents in relation to the Complainant were missing. However, ODF was unable to properly investigate the response to this failing as the notes of the interview board had not been kept. Indeed, the Defence Forces complaint file was lacking in a number of respects.

ODF concluded that the Complainant was adversely affected by the maladministration of the promotion procedure by a failure to take appropriate steps in circumstances where an AF 667 was missing. The interview board had not had before it all the information necessary to form an objective and fair decision, rather it had decided it would impute or substitute conclusions or assessments.

ODF recommended that the Complainant be provided with an opportunity of going forward for the next promotion opportunity. More generally, ODF recommended that the practice in relation to the retention of notes be addressed and that selection process interview notes should be kept on the official Defence Forces file. She also recommended that the guidelines for the completion of AF 667s that were to be drawn up once the new NCO promotion agreement was finalised should include guidelines to distinguish between "outstanding", "above average" and "average", as well as guidelines for reporting officers when they say they know a candidate "well" or "very well".

The Minister for Defence accepted the ODF's findings.

Case Summary 6

Unit posting – Posted to different unit after commissioning – Whether legitimate expectation that would not be posted away from unit – Not assigned any work – Failure in human resources management – Question of bullying – Matter resolved through discussion.

The Complainant had been an NCO in a training unit in the RDF for a number of years. He was nominated for the Potential Officers Course (“POC”) and was commissioned. However, despite assurances that he would not change unit, he was then posted to a different unit, not involved in training. He had no work to do in his new unit and felt side-lined and isolated. He brought a Redress of Wrongs application.

The Military Investigating Officer (“MIO”) found against the complainant and recommended that he remain in his current unit, which could benefit from his skills. He noted that two other students on the POC had not been assigned to their original units. The CoS concurred with this decision, finding that the GOC had the prerogative to appoint an officer of the reserve to such service corps as he may determine.

The situation subsequently went from bad to worse. He was to have been granted a transfer that was formally sanctioned but the transfer documentation was lost and he was left with no unit to which he could parade. He was then put on the non-effective list.

In her Preliminary View Report, the ODF found that the Complainant had been unfairly treated and that he had been adversely affected by administrative practices falling well below the standard that he could reasonably expect. There was strong evidence of a legitimate expectation that the Complainant would not be posted out of his unit when he became an officer, as he subsequently was. There also appeared to have been breaches of the Human Resources Management Strategic Objectives and the case was verging on bullying, as defined in the *Response to the Challenge of a Workforce* document.

Following the intervention of the ODF, she was subsequently informed that discussions had taken place and the matter had been resolved in a manner acceptable to all parties. This Office was very pleased with this outcome, which was indicative of the benefit of early intervention in such cases.



Corporate Affairs

Staffing

The staffing level of the ODF as of the 31st December, 2012 consisted of:

- Brian O'Neill, Investigation Officer (Assistant Principal Officer)
- Conor Gallogly, Case Manager (Higher Executive Officer)
- Geraldine Keegan, Administrative Assistant (Clerical Officer)

Review of Internal Financial Controls

In common with other publicly-funded Offices the ODF conducted a formal review of Internal Financial Controls in 2012. This review has been provided to the Comptroller and Auditor General. A comprehensive budgetary system is in operation and expenditure trends are reviewed on a quarterly basis in association with the ODF's external accountants.

Data Protection

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

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

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

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

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

Bar Council of Ireland

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

Health & Safety

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

