



Ombudsman for the Defence Forces
Combined Annual Report
2013 and 2014



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.

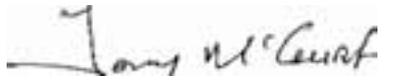
The Ombudsman for the Defence Forces also accepts complaints made directly by former members of the Defence Forces, subject to certain conditions.

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 combined 2013 and 2014 Annual Reports of the Ombudsman for the Defence Forces pursuant to Section 7 of the Ombudsman (Defence Forces) Act, 2004. This is a combined report incorporating the 8th and 9th Annual Reports submitted in relation to the work of the Ombudsman for the Defence Forces since it was established on the 1 December, 2005.



Patrick Anthony McCourt
Ombudsman for the Defence Forces



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

<https://www.flickr.com/photos/dfmagazine>

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Introduction:

I am pleased to present this combined report, incorporating the 8th and 9th Annual Reports of the Ombudsman for the Defence Forces (ODF). For reasons outside of my control the preparation of the 2013 report was delayed. It now appears to me appropriate, in the interests of efficiency, to combine the 2013 and 2014 Annual Reports in respect of my first and second full years in the role of Ombudsman for the Defence Forces (ODF). This is also my combined 2nd and 3rd Annual Report since my appointment as Ombudsman for the Defence Forces with effect from the 7th November 2012. Given that my appointment occurred near the end of the calendar year of 2012, my first report focused solely on the work of my predecessor. This combined 2nd and 3rd Annual Report is in respect of the work undertaken by me and my staff in my first and second full years in office.

I am satisfied that the electronic publication of the 2012 Annual Report was a success. Having regard to the continuing trends in communications technology generally, Annual Reports of this Office will continue to be published in electronic format. I record my thanks to the Chief of Staff of the Defence Forces who kindly agreed to make my Annual Reports available to all members of the Defence Forces through the Defence Forces Intra-Net. I am grateful for and acknowledge his assistance in this regard. Electronic copies will also be made available to various interest groups and individuals by the ODF. These Annual Reports will also be published on the ODF web-site. A small print run will be undertaken as may be necessary for record purposes. These arrangements will, I believe, ensure economic efficiencies and easier level of access to the Report.

In this combined Report my first task is to acknowledge that there was a significant impediment to my operational activities and those of my Office during 2013, caused by a High Court legal challenge to my appointment, initiated in November 2012. All necessary affidavits and submissions were filed by all of the parties

including my Office in late 2012 and throughout 2013. A High Court hearing date was set in late 2013. After a two day Judicial Review hearing in the High Court before Mr Justice Hedigan, the Court reserved judgment. Shortly thereafter, on the 21 Nov 2013, the High Court issued its decision. I was pleased to note that the validity of my appointment to the Office of Ombudsman for the Defence Forces was upheld by Mr Justice Hedigan, in the judgment he issued on that date. In his judgment, he decided, in summary, that;

- a. Nothing precludes a former member of the Defence Forces from holding the post of Ombudsman for the Defence Forces,
- b. The appointment of a former member of the Defence Forces does not give rise to a reasonable apprehension of bias, and
- c. The Minister [for Defence] did not act ultra vires in deciding that the Office of Ombudsman for the Defence Forces should be a part-time one.

A copy of the full judgment of the High Court may be found on the website of the Courts Service at, <http://www.courts.ie/Judgments.nsf/0/A5A90796A2086E2780257C4000341CC8>

In December 2013 the High Court decision of Mr Justice Hedigan was the subject of an appeal to the Supreme Court. Under recent legislation establishing a Court of Appeal the appeal to the Supreme Court has now been transferred to the jurisdiction of the Court of Appeal. To the end of 2014 there was no progression of that appeal. From the perspective of this Office the fact that the High Court decision remains under appeal to the Court of Appeal is unsatisfactory and I hope that an early final decision will be pursued by the appropriate State authorities.

Secondly, I wish to record and acknowledge my sincere thanks and appreciation to Lt. Gen. Sean McCann, who retired as Chief of Staff of the Defence Forces in the

summer of 2013, for the welcome he extended to me on my appointment and for his commitment to maintaining effective channels of communications between our respective Offices and our staffs with a view to expediting the resolution of complaints referred to my Office. I also take this opportunity to congratulate Lt. Gen. Conor O’Boyle on his appointment as Chief of Staff in 2013. I wish to thank him for meeting with me shortly after his appointment as Chief of Staff and for agreeing to continue the very good relationship between our respective Offices, focusing on the early resolution of complaints whenever possible. This commitment has been fully honoured during 2014 and I am very pleased with the ongoing level of communication and cooperation between my Office and the various Military Authorities with whom my Office needs to be in contact with.

The statistics included in this combined Annual Report provide an overview of the ODF activity during 2013 and 2014. The total number of complaints notified to my Office for the two year period was 236. Due primarily to legal constraints on the activities of this Office related to the ongoing High Court proceedings the number of cases on hands, at various stages of consideration, increased from 55 on the 1 Jan 2013 to 100 on the 31 Dec 2014. A total of 34 cases were brought to a final determination during the same two year period.

During 2013 my office received from the Defence Forces some 114 Notifications of Complaints 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 2013. In addition I received 10 direct referrals of complaints during 2013. The total number of complaints notified to my Office for 2013 was, therefore, 124. This showed a minor year on year reduction of 3 on the 127 notifications received during 2012. However, the number of notifications of complaints received in 2013 was still a significant increase on the 78 recorded in 2011 and the 62 recorded

in 2010. Of the 114 notifications received from the Defence Forces some 85 were resolved or withdrawn during the course of the year.



55 cases under review by this Office, at various stages of consideration, were carried forward from 2012 into 2013.

During 2014 my Office received from the Defence Forces 109 Notifications of Complaints 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 2014. In addition I received 3 direct referrals of complaints during 2014. The total number of complaints notified to my Office for 2014 was 112. This showed a year on year reduction of 12 (almost 10%) on the 124 notifications received during 2013. The number of notifications of complaints received in 2014 reflected a modest decrease on the 127 recorded in 2012 and the 124 recorded in 2013, although there continued to be a significant increase on the figures for 2011 (78) and 2010 (62). Of the 109 notifications received from the Defence Forces some 49 were resolved or withdrawn during the course of the year.

55 cases under review by this Office, at various stages of consideration, were carried forward from 2012 into 2013. During 2013 an additional 45 new cases were referred to the ODF. Accordingly, some 100 cases were under review by the ODF during 2013. This was a significant 30% increase on the 77 cases under review in 2012 and a more modest 12% increase on the 89 cases under review in 2011. During 2013, 19 of the cases under review were brought to a final determination notwithstanding the constraints imposed by the ongoing



High Court proceedings. Formal Final Reports were issued in a small number of a selected class of those cases. This resulted in 81 cases remaining under review on the 31 Dec 2013. (Progress was also achieved during 2013 in a further 15 of the remaining cases under review, including the issuing of 2 Preliminary View Reports.)

81 cases under review by this Office, at various stages of consideration, were carried forward from 2013 into 2014. During 2014 an additional 34 new cases were referred to the ODF. Accordingly, some 115 cases were under review by the ODF during 2014. This was a 15 % increase on the 100 cases under review in 2013 and a very significant 49 % increase on the 77 cases under review in 2012. During 2014, some 15 cases under review were brought to a final determination and formal Final Reports were issued. In addition 6 Preliminary View Reports were issued. This resulted in 100 cases remaining under review on the 31 Dec 2014.

Preparation of a major report into aspects of the 2012 NCO Promotion Competition is ongoing. Its conclusion will significantly reduce the unacceptably high backlog of cases.

Having regard to the continuation in 2013 and 2014 of the increased level of notifications of complaints received during 2012, relative to 2010 and 2011, it was to be expected that the ongoing number of cases under review would remain at or exceed the levels applicable in 2012. As I recorded in my report for 2012, it continued to appear to me that the downward trend in the number of complaints referred to the ODF, as reflected in the 2011 Annual Report of my predecessor, was unlikely, at least in the short term, to be sustained. Furthermore, as flagged in my 2012 report, the implementation of new promotion procedures for both Officers and NCOs and the further re-organisation of the Defence Forces in 2012 contributed significantly to the referral of complaints to this Office.

I have also had regard to the modest reduction in the

number of notifications of complaints received by my Office during 2014 relative to 2013. It may well be the case, that after further consideration of the new promotion procedures for officers and NCOs, and of the adjustments made to them by further amendment of the DFRs and/or of the Administrative Instructions for the 2014 Promotion Competition, and now that the re-organisation of the Defence Forces has been consolidated, that complaints related to such issues will reduce. However, we shall have to wait and see what transpires in that regard. More detailed case statistics are provided elsewhere in this Annual Report.

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 interaction of the Office of the ODF with the Defence Forces together with the responses of the Military Authorities to case reports issued in recent years, as well as initiatives taken by the Military Authorities themselves, have together contributed to a general improvement in the standards of administration within the 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 as well as the rights of all of its serving and former members. I acknowledge and commend the Military Authorities for their positive responses to inquiries from and reports issued by the ODF. I shall continue to encourage the early resolution of Redress of Wrongs applications within the Defence Forces system wherever that appears possible and also at the Preliminary Examination stage of their consideration by the ODF whenever I consider it appropriate to do so.

I appreciated the Department of Defence's consultation with my Office in late 2014 regarding its draft proposals for updating the existing Redress of Wrongs process, as provided for in section 114 of the Defence Act. I reiterate

my offer that if my Office can contribute further in any way to an earlier resolution of complaints, at any stage of the Redress of Wrongs process, either on a formal basis consequential to the amendment of the agreed procedures or otherwise through agreed informal interventions, I would be glad to be of assistance. I am pleased to note that my views with regard to the desirability of the early resolution of complaints where possible are shared by the current Chief of Staff.



I am strongly of the opinion that the present system still includes delays which are unacceptable and that a coordinated effort to reduce those delays is necessary.

I believe that the influence of the independent civilian office of the ODF since it was established in Dec 2005, in the resolution of complaints within the Defence Forces, has been positive. However, in looking to the future, consideration must be given to the past. In that regard I acknowledge the positive engagement and leadership shown by the Minister for Defence, Mr. Simon Coveney T.D., his predecessor Mr. Alan Shatter T.D., and by their Departmental officials during the period of this report. I also acknowledge the support and cooperation of the former and current Chiefs of Staff, Lt. Gen. Sean McCann and Lt. Gen. Conor O’Boyle, as well as that of their Senior Staff Officers, members of the Irish Defence Forces and their representative bodies. I have noted a firm willingness on the part of the Military Authorities to engage with my Office with a focus on bringing complaints to a satisfactory and acceptable resolution, having regard to observations and recommendations of my Office. There is a general

acceptance of the desirability of resolving complaints at the earliest possible opportunity. For this I commend both the Military and Departmental Authorities. In this context and having regard to my own previous recommendations, those of my predecessor and of the IMG report I am prepared to engage with the Military and Departmental Authorities in further discourse on changes to the existing system which would facilitate earlier effective resolution of complaints. I am strongly of the opinion that the present system still includes delays which are unacceptable and that a coordinated effort to reduce those delays is necessary. I am also of the opinion that a significant reduction in the extent of the current reliance on lengthy formal reports by my Office, to conclude consideration of complaints referred to me, is both necessary and achievable, if the current delays in the system are to be reduced having regard to existing resource levels. Such a reduction could be facilitated by, inter alia, promoting the notion of a resolution based on informal contacts with this Office, my formal preliminary views and by better use of electronic means of communication between my Office, complainants, military and civil authorities. This and other changes may, of course, require amendment to the legislative and regulatory framework.

I believe that it is essential that complaints and administrative procedures for the Irish Defence Forces continue to be subject to the external scrutiny of an independent and impartial civilian authority which has a degree of knowledge, understanding and competence in such matters. Members of the Irish Defence Forces are in a unique position as citizens of the State. Our ‘citizens in uniform’ are subject, not only, to all of the ordinary laws of the State, but also, to a strict code of military law and discipline provided by the Defence Act 1954, Defence Force Regulations, Administrative Instructions and orders of superiors, both written and verbal, which code is applicable only to 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. Subject to a 12 month time limit, the Ombudsman may investigate an ‘action’ [defined in the 2004 Act as including a failure to carry out an act or make a decision] by a serving or former member of the Defence Forces or by a civil servant of the Department of Defence, where it appears to the Ombudsman 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, even though the complainant may be perfectly entitled to complain about them under the Redress of Wrongs scheme provided by section 114 of the Defence Act by virtue of the use of the unlimited term “any matter”. The actions excluded from the remit of the Ombudsman are those 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, an action relating to or affecting security or a military operation (as defined in the Act), an action relating to the terms or conditions of employment in the Defence Forces, including an action relating to the negotiation and determination of rates of remuneration or allowances, which is within the scope of a conciliation and arbitration scheme referred to in section 2(6) of the Defence (Amendment) Act 1990, actions concerning the organisation, 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.

The Office of the Ombudsman for the Defence Forces is ten years in existence this year. I am of the opinion that aspects of the ‘actions’ excluded from its jurisdiction by the Act should be reviewed in the light of that experience. There is a need to further clarify the limits or extent of the statutory exclusions and to reconsider whether it is actually militarily or otherwise necessary to exclude them totally. In that context I pose the following question; *in circumstances where maladministration is a primary consideration for an Ombudsman, why should any administrative aspect of most, if not all, of the excluded matters be outside the jurisdiction of the Ombudsman?* I offer two examples. Firstly, a member or former member of the Defence Forces can submit a complaint regarding ‘any matter’ under the Redress of Wrongs (ROW) provisions of section 114 of the Defence Act in circumstances where once the Redress of Wrongs process is exhausted the complainant has a right to have his complaint referred to the Ombudsman, who may have no jurisdiction to investigate his complaint because of the provisions of section 5 of the 2004 Act. *Is that a reasonable provision in circumstances where the powers of the ODF are limited to the making of a non-binding recommendation to the Minister?* Secondly, a member or former member of the Defence Forces may complain to this Office about an ‘action’ taken by a civil servant of the Department of Defence, in circumstances where such a complaint is not admissible under the Redress of Wrongs provisions of the Defence Act and where there is no similar complaints procedure within the Department of Defence. *Is it not readily apparent that there is a need to have an internal complaints procedure within the Department of Defence for the purpose of addressing, and wherever possible speedily resolving, complaints relating to ‘administrative actions’ of civil servants affecting members or former members of the Defence Forces?* I am of the opinion that practically all ‘administrative actions’ of the military authorities and those of civil servants of the Department of Defence,

including failures to act or to make a decision, are, or ought to be, reviewable by the Ombudsman, unless there is another independent and transparent forum to which an appeal may be directed. *Having regard to developing human rights norms, where a member of the Defence Forces dies or is killed in circumstances attributable to his or her military service, I am supportive of their next of kin being granted access to the complaints procedure of this Office.* I, therefore, recommend that these matters should be addressed and clarified in a review of the legislation, i.e., the Defence Act 1954 and/or the Ombudsman (Defence Forces) Act 2004. I also recommend that in any such review consideration be given to the adoption of measures which would facilitate a shortening and speeding up of the Defence Forces ROW and Complaints processes. In this regard I propose the consideration of a 90 day target for the resolution of complaints referred to the ODF, similar to that contained in the EU Alternative Dispute Resolution (ADR) Directive 2013 on consumer rights and having regard to existing available resources. Current practices and procedures do not facilitate the achievement of such a time line in most cases.

In the absence of this Office as an independent investigative authority for a complaint by a member or former member of the Irish Defence Forces, such a complaint could, and in some cases would, be addressed by way of Judicial Review in the High Court with resultant significant legal costs for the complainant and for the State.

I believe that it is in the best interests of complainants, the Military Authorities and the Department that complaints and concerns regarding administrative procedures and practices are dealt with in the non-adversarial structure provided by the ODF. Present ROW arrangements allow for the maintenance of good interpersonal relationships and facilitate direct engagement between the parties, to resolve the ‘action’ complained of, if possible. In that regard, having regard

to the resourcing levels available, I believe that although the Office of the ODF provides value for money, we could and should do more.

When a complaint is referred to the ODF a complainant who believes s/he has been wronged or unfairly treated is entitled to expect that a remedy will be available in the event that his/her complaint is upheld. Remedies recommended may concern promotion, being provided with a place on a career course, or a particular posting or duty. Effecting such a remedy may prove problematic where the promotional opportunity is now gone, where the course has already commenced or even finished, or where a particular duty, such as an overseas duty may have already departed. 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 an appropriate remedy in certain instances, they were pleased that their grievance was investigated and upheld and that they were vindicated in their complaint.

The absence of a suitable remedy may be due to the time delay between the action complained of taking place and the issuing of Final Reports and recommendations by the ODF. Despite the very limited resources, both financial and staff, available to the ODF a review of internal practices and procedures during 2013 and 2014 was undertaken 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. Notwithstanding that, it is the continuing policy of the ODF to intervene directly and early in any case where it appears that such intervention may contribute to an earlier resolution of the matter between the parties. The ODF is satisfied that with continuing good will,

improved information exchanges and an open minded approach by all parties, complaints could be resolved at an earlier stage than heretofore, while suitable remedies remain available. The ODF believes that any early intervention initiative benefits not only individual complainants but also the civil and military authorities in the context of maintaining and building on good working environments and human resource relationships.

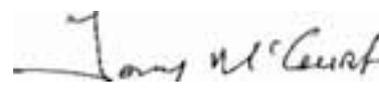
ODF Annual Reports have previously included recommendations for administrative and systemic reform. Monitoring the implementation of such recommendations, once accepted by the Minister for Defence, remains a function of the ODF. I am pleased to acknowledge that the Department of Defence provides the 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 too long. In 2013 and 2014, the ODF in association with the Department of the Defence audited outstanding administrative and systemic reforms and agreed, where appropriate, timescales for undertaking and completing internal Military/Departmental reviews and implementing such reforms. I record and acknowledge my appreciation for the support and assistance of the Department of Defence in this regard.

During 2013 and 2014 the ODF continued its engagements with the Ombudsman Association (OA) – the organisation for Ombudsman and Complaint Handler Office Holders in the UK and Ireland. The ODF membership of the OA was re-accredited in 2013/2014 following a review of all members of the Association. The OA recommended consideration of a minimum term of Office of five years for all Ombudsmen and I have already passed that recommendation to the Department of Defence. The ODF also continued its membership of the International

Ombudsman Institute (IOI). The ODF continued to engage with the International Conference of Ombudsman Institutions for Armed Forces (ICOAF) – the international grouping of Offices of Ombudsman or Inspectorates in the Armed Forces. The ODF has also engaged in the establishment and activities of the Irish Ombudsman Forum. This Forum of Ombudsman Institutions within Ireland was established in December 2013 and pursued matters of common interest to Ombudsman institutions during 2014.

2013 and 2014 witnessed the outcomes of significant changes introduced in the Irish Defence Forces in 2012. The new 2012 promotion agreements for both Officers and NCOs were implemented. Competency based assessments formed part of the new arrangements. NCO promotion vacancies were filled from panels established at national level with inevitable disappointments for unsuccessful candidates. The new 2012 promotion system contributed to an upward movement in complaints notified to this Office. The Government and the military authorities also implemented significant changes in the structure of the Defence Forces in late 2012, which also impacted on the caseload of this Office.

This Office continued to monitor developing trends throughout 2014 having due regard to further modifications to the 2012 NCO promotion agreements. During 2014 it seemed unlikely that the reorganisation of the Defence Forces would have any further impact of the caseload of this Office. Only time will tell the extent to which, if any, the new modified 2014 promotion system will impact further on the continuing caseload of the ODF.



Patrick Anthony McCourt
Ombudsman for the Defence Forces

2 Highlights of 2013

124 Notifications of Complaint received in 2013. This was almost on a par with the 127 notifications received in 2012 and is a continuation of the significant increase on the 78 notifications received during 2011 and the 62 received during 2010.

55

existing cases under review, an increase of 2 on the previous year, were carried forward from 2012 into 2013.

45 new cases were referred to ODF in 2013. This is a very significant increase on the 24 new cases referred to ODF in 2012. It also confirms the reversal of the previously reported downward trend in complaints referred to ODF, as evidenced by the significant increase in complaints notified to ODF in 2012.

100

cases in all were under review by the ODF during 2013. This is a significant 28% increase on the 77 cases under review in 2012 and a smaller 11% increase on the 89 cases which were under review in 2011.



On the 21 Nov 2013 the Judicial Review proceedings in the High Court were determined by Mr Justice Hedigan, who issued his judgment, refusing the reliefs sought by the applicants and upholding the legality of the appointment of the incumbent Ombudsman. The High Court Order refusing the reliefs sought was perfected on the 5 Dec 2013. However, in December 2013 the High Court decision was appealed to the Supreme Court but no progress was made towards the hearing of the appeal.

19 cases were brought to final conclusions by the ODF during 2013. This number was adversely influenced by the ongoing High Court legal proceedings involving the office of the ODF. In addition, progress was achieved during 2013 in 15 of the remaining cases under review.

The downward trend in the number of complaints submitted under the Redress of Wrongs provisions of the Defence Act 1954, as noted in the 2011 and 2010 Reports, was reversed in 2012 and again in 2013. The number of complaints notified in 2013 remained almost at the 2012 level. There was no evidence to suggest any significant change in future trends.

81 cases remained under review by the ODF on the 31 Dec 2013.

3 Analysis of Complaints & Appeals - 2013

Notifications of Complaint

124 Notifications of Complaint were received by my Office from the Defence Forces or were directly referred by complainants during 2013. 114 of those were in respect of complaints from serving or former other ranks personnel while 10 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 121 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.



Direct referrals to ODF

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 2013 some 10 complaints were referred directly to this Office. This compares with the 5 complaints referred directly in 2012. I do not attribute any particular significance to the difference in this respect between 2012 and 2013 as 7 of these complaints originated from a single individual.



Cases reviewed by ODF in 2013

On 1 Jan 2013 some 55 cases were carried forward under review by this Office. During 2012 some 45 new cases were received by this Office so that the total number cases under review by this Office during 2013 was 100. Of these some 19 cases were brought to a conclusion during 2013. 81 cases remained under review on 31 December 2013 and were carried forward for consideration in 2014.

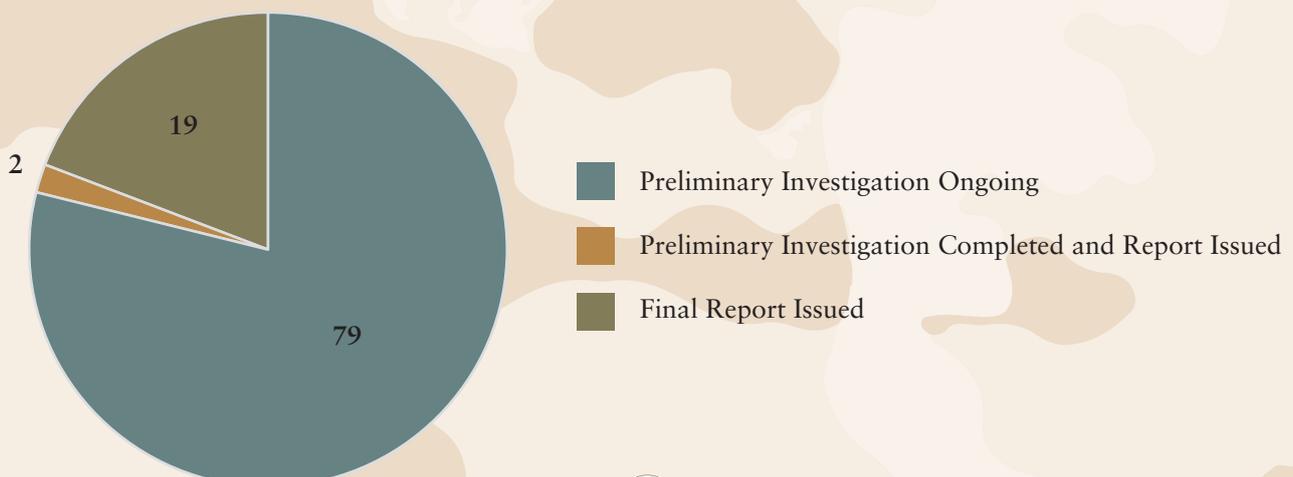
Details of Complaints Investigated by ODF in 2013

The following Tables set out the nature of complaints considered by this Office during 2013 along with details of complaints by military formation. It should be noted that complaints categorized as ‘Maladministration’ cover a variety of issues including complaints in respect of performance appraisal and issues related to discharge among others. Complaints categorized as ‘Interpersonal Issues’ include those where there appears to be elements of personality conflict, inappropriate behaviour or alleged bullying.

Total cases

The following table outlines the progression of these 100 cases during 2013 –

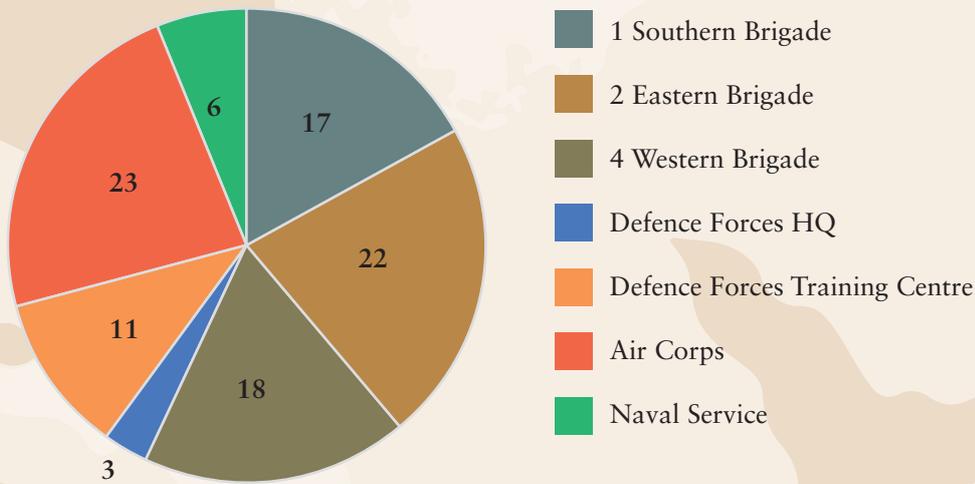
Preliminary Investigation Ongoing	Preliminary Investigation Completed and Report Issued	Final Report Issued
79 (79%)	2 (2%)	19 (19%)



Cases by Military Formation

Of the 100 cases on hand during the course of the year, the following table outlines the number of cases arising in each Military Formation.

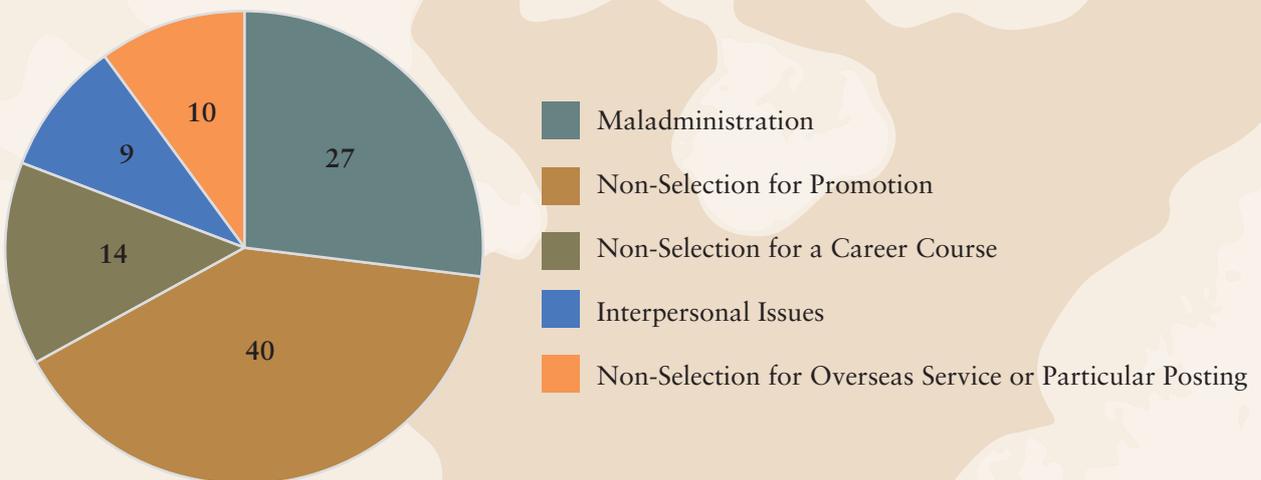
1 Southern Brigade	2 Eastern Brigade	4 Western Brigade	Defence Forces HQ	Defence Forces Training Centre	Air Corps	Naval Service	Total
17 (17%)	22 (22%)	18 (18%)	3 (3%)	11 (11%)	23 (23%)	6 (6%)	100



Nature of Cases

The nature of the cases on hand with the ODF during 2013 can be broken down into the following broad categories –

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
27 (27%)	40 (40%)	14 (14%)	9 (9%)	10 (10%)

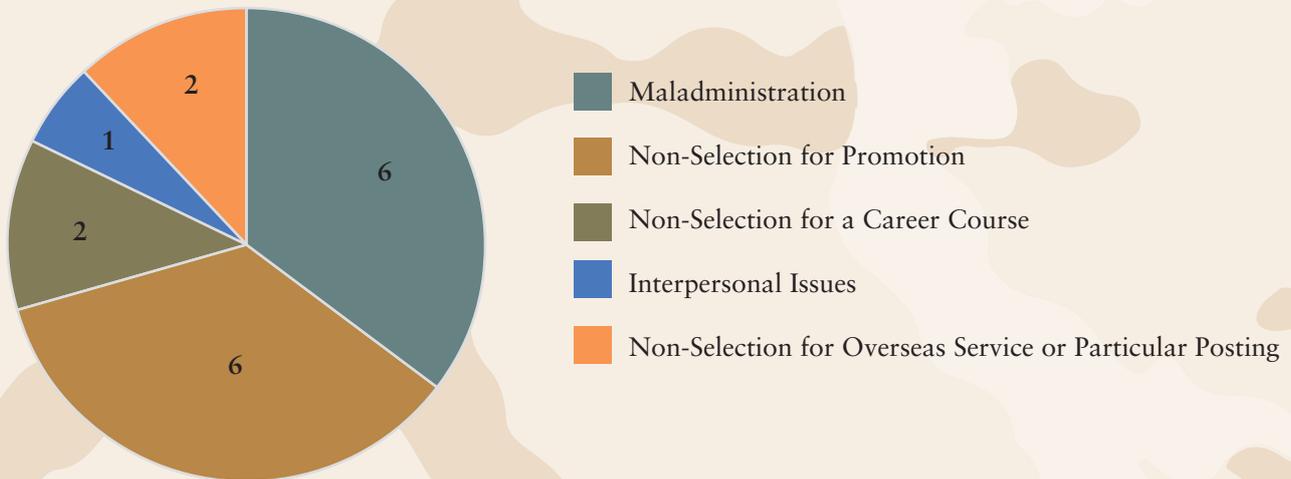


Details of Cases by Formation

The following tables and charts set out the nature of cases on hand during 2013 by individual Military Formations –

1 S Brigade – (17)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
6 (35%)	6 (35%)	2 (12%)	1 (6%)	2 (12%)



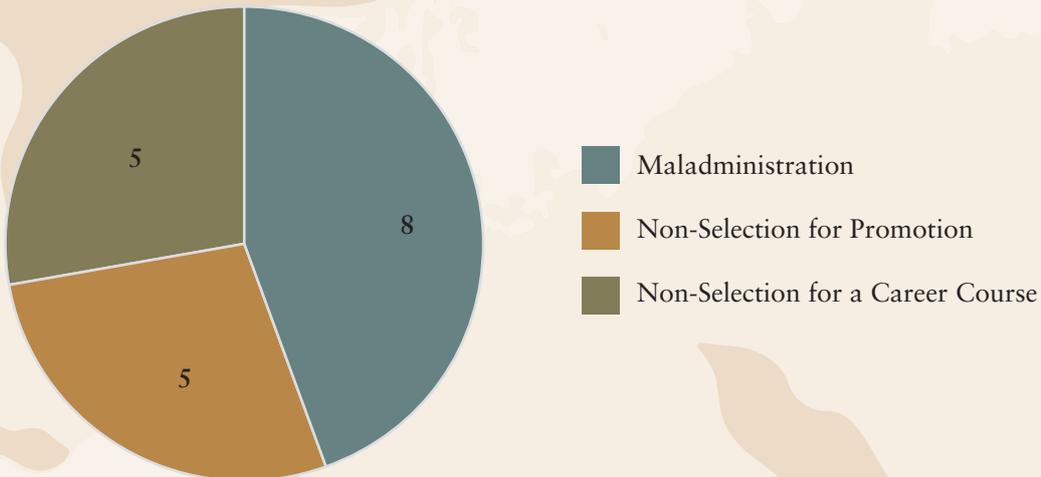
2 E Brigade – (22)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
6 (27%)	10 (45%)	4 (18%)	1 (5%)	1 (5%)



4 W Brigade – (18)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
8 (44%)	5 (28%)	5 (28%)	-	-



Defence Forces HQ – (3)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
-	3 (100%)	-	-	-



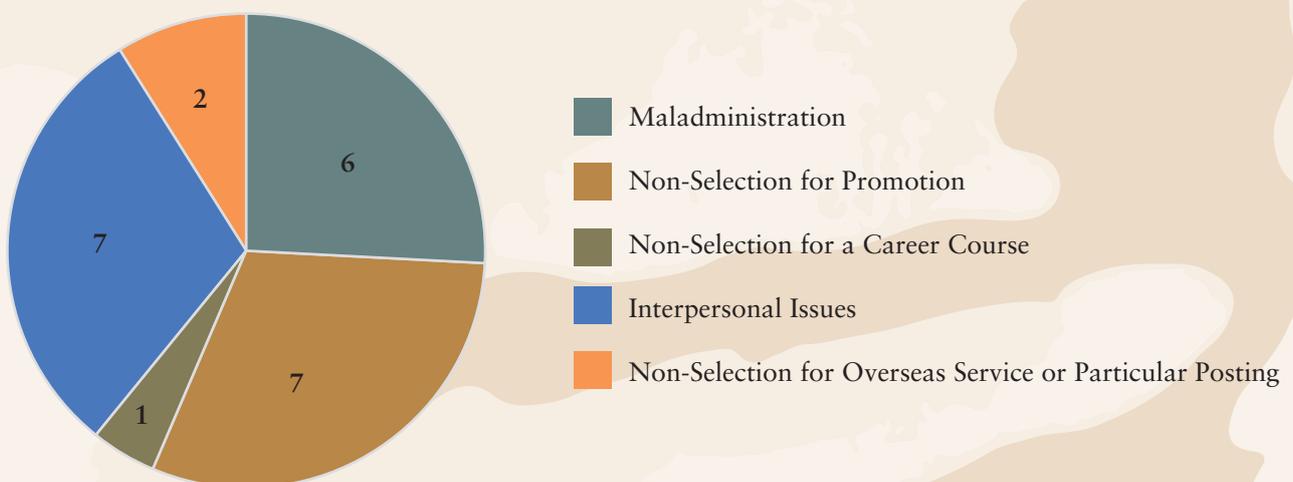
Defence Forces Training Centre – (11)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
1 (9%)	6 (55%)	-	-	4 (36%)



Air Corps – (23)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
6 (26%)	7 (30.5%)	1 (4%)	7 (30.5%)	2 (9%)



Naval Service – (6)

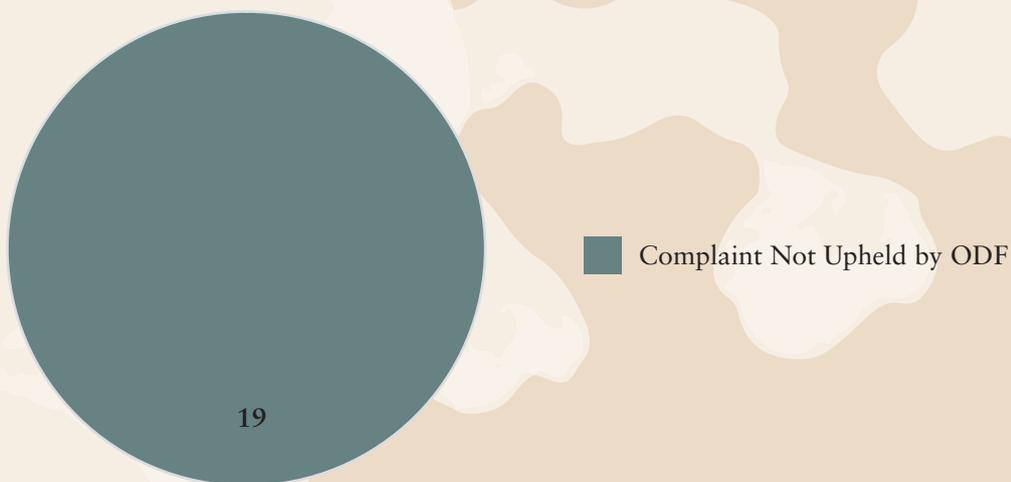
Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
-	4 (66%)	2 (34%)	-	-



ODF Recommendations

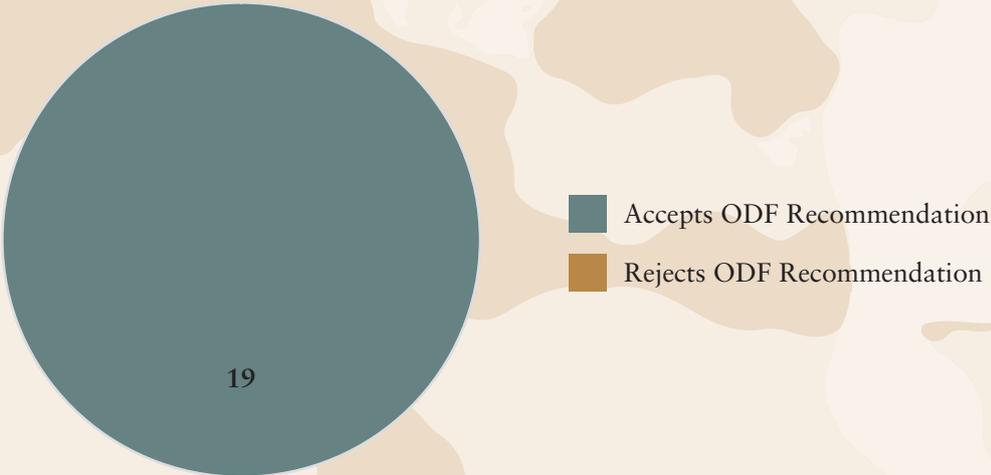
Complaint Upheld by ODF	Complaint Not Upheld by ODF
-	19*

*Includes complaints outside ODF's terms of reference



Minister's Response To ODF's Recommendation

Minister Accepts	Minister Does Not Accept
19	-



4

Highlights of 2014

112

Notifications of Complaint received in 2014. This was almost 10% less than

with the 124 notifications received in 2013. This number remains significantly higher than earlier years.

81

existing cases under review, an increase of 26 on the previous year, were carried forward from 2013 into 2014.

34

new cases were referred to ODF in 2014. This is a very significant 24% decrease on the 45 new cases referred to ODF in 2013 whilst remaining significantly higher than the 24 new cases referred in 2012.

115

cases in all were under review by the ODF during 2014. This is a 15%

increase on the 100 cases under review in 2013 and a significant 49% increase on the 72 cases which were under review in 2012.

100

cases remained under review by the ODF on the 31 Dec 2014 which is some 23% higher than the 81 cases remaining under review at the end of 2013.

The number of complaints notified in 2014 remained similar to the 2012 and 2013 levels and continues the reversal of the downward trend noted in previous Annual Reports.

15

cases were brought to final conclusions by the ODF during 2014. In addition, Preliminary View Reports were issued in 6 of the remaining cases under review during 2014.



5 Analysis of Complaints & Appeals - 2014

Notifications of Complaint

112 Notifications of Complaint were received by my Office from the Defence Forces (or were directly referred by complainants) during 2014. 109 of those were in respect of complaints from serving or former other ranks personnel while 3 were in respect of serving or former commissioned officers.

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 have arranged for the inclusion of some additional information on the NOCs received by my Office in this context.

In addition to the numerous direct contacts between the ODF and the Military Authorities, the ODF also received some 91 direct contacts from members of the Defence Forces or members of the public in relation to queries, concerns or information requests. Whilst this number is somewhat lower than the 121 level recorded in 2013, it remains significantly higher than earlier years.



Direct referrals to ODF

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 2014 some 3 complaints were referred directly to this Office. This compares with the 10 complaints referred directly in 2013. However, as previously stated, I do not attribute any particular significance to the difference in this respect between 2014 and 2013 as 7 of the 2013 complaints originated from a single individual.

Cases reviewed by ODF in 2014

On 1 Jan 2014 some 81 cases were carried forward under review by this Office. During 2014 some 34 new cases were received by this Office so that the total number of cases under review by this Office during 2014 was 115. Of these, some 15 cases were

brought to a conclusion during 2014. 100 cases remained under review on 31 December 2014 and were carried forward for consideration in 2015.

Details of Complaints Investigated by ODF in 2014

The following Tables set out the nature of complaints considered by this Office during 2014 along with details of complaints by military formation. It should be noted that complaints categorized as ‘Maladministration’ cover a variety of issues including complaints in respect of performance appraisal and issues related to discharge among others. Complaints categorized as ‘Interpersonal Issues’ include those where there appears to be elements of personality conflict, inappropriate behavior or alleged bullying.

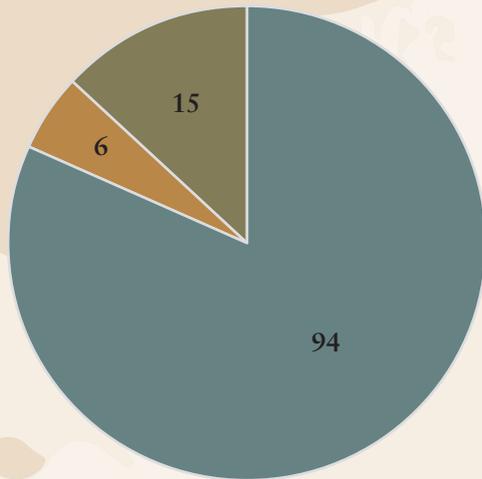
It should be noted that following the re-organisation of the Defence Forces at the end of 2012, the 4 W Bde was disbanded and its members were subsumed into the remaining military formations, primarily the 2 E Bde. ROWs originating from officers and men serving with 4 W Bde are, for the purposes of 2014 reporting, reflected in the figures of the formations where they are now serving.



Total cases

The following table outlines the progression of these 115 cases during 2014 –

Preliminary Investigation Ongoing	Preliminary Investigation Completed and Report Issued	Final Report Issued
94 (82%)	6 (5%)	15 (13%)

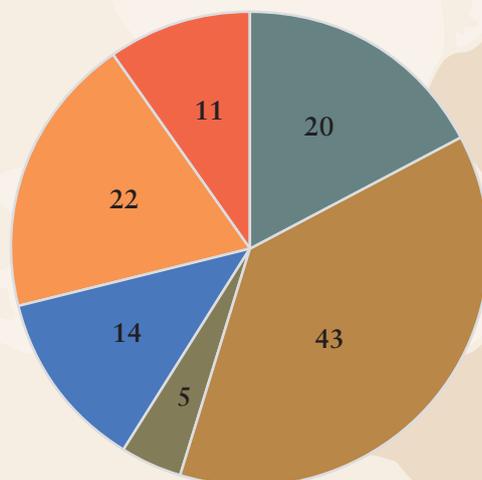


- Preliminary Investigation Ongoing
- Preliminary Investigation Completed and Report Issued
- Final Report Issued

Cases by Military Formation

Of the 115 cases on hand during the course of 2014, the following table outlines the number of cases arising in each Military Formation.

1 Southern Brigade	2 Eastern Brigade	Defence Forces HQ	Defence Forces Training Centre	Air Corps	Naval Service	Total
20 (17.5%)	43 (37.5%)	5 (4.5%)	14 (12%)	22 (18.5%)	11 (10%)	115

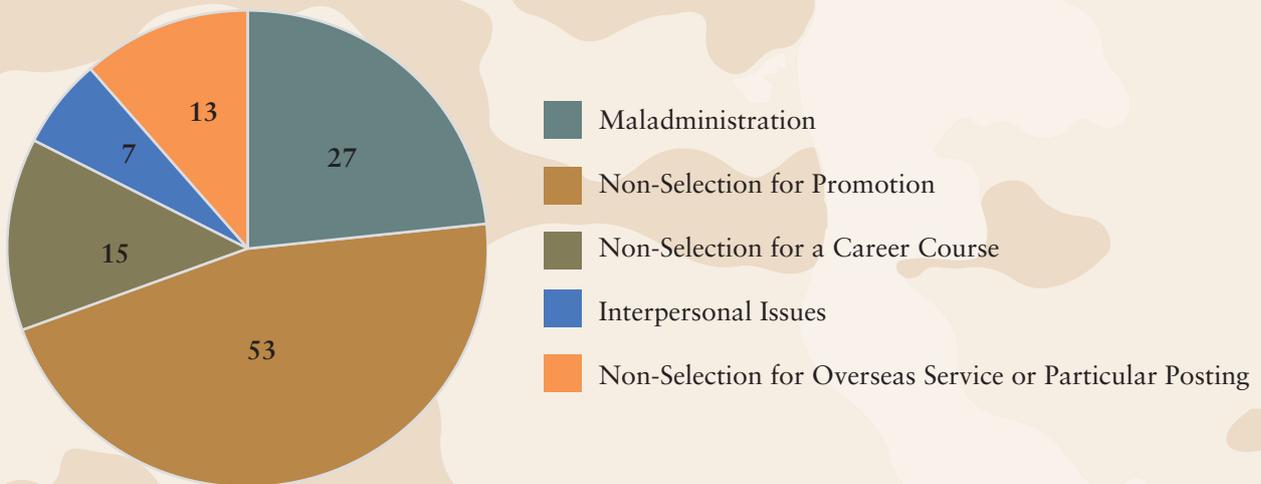


- 1 Southern Brigade
- 2 Eastern Brigade
- Defence Forces HQ
- Defence Forces Training Centre
- Air Corps
- Naval Service

Nature of Cases

The nature of the cases on hand with the ODF during 2014 can be broken down into the following broad categories –

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
27 (23.5%)	53 (46%)	15 (13%)	7 (6%)	13 (11.5%)

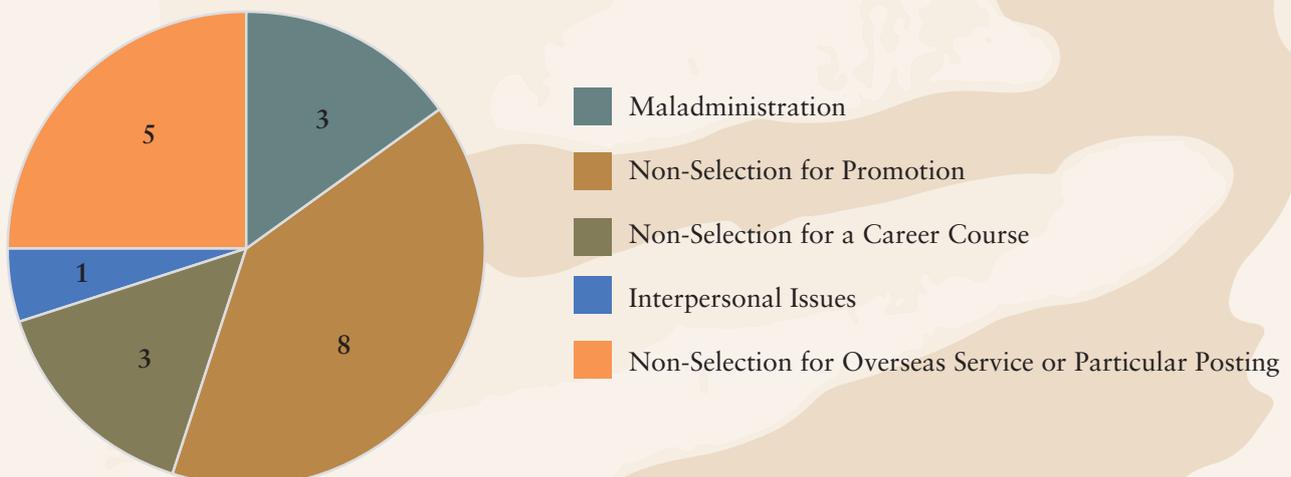


Details of Cases by Formation

The following tables and charts set out the nature of cases on hand during 2014 by individual Military Formations –

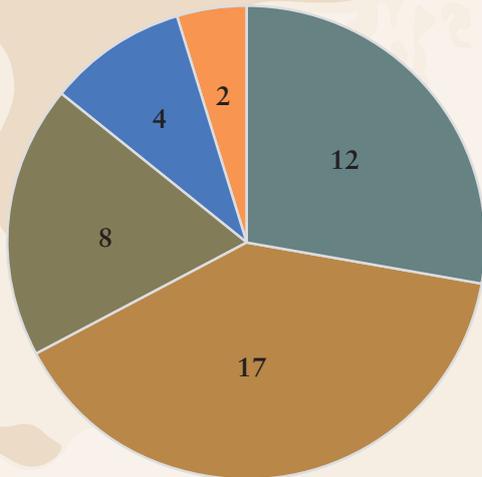
1 S Brigade – (20)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
3 (15%)	8 (40%)	3 (15%)	1 (5%)	5 (25%)



2 E Brigade – (43)

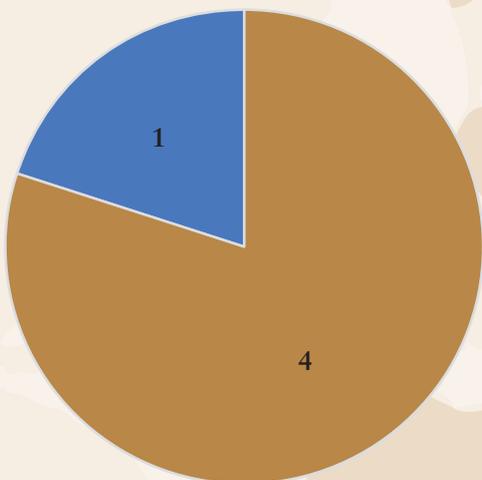
Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
12 (28%)	17 (39.5%)	8 (18.5%)	4 (9.5%)	2 (4.5%)



- Maladministration
- Non-Selection for Promotion
- Non-Selection for a Career Course
- Interpersonal Issues
- Non-Selection for Overseas Service or Particular Posting

Defence Forces HQ – (5)

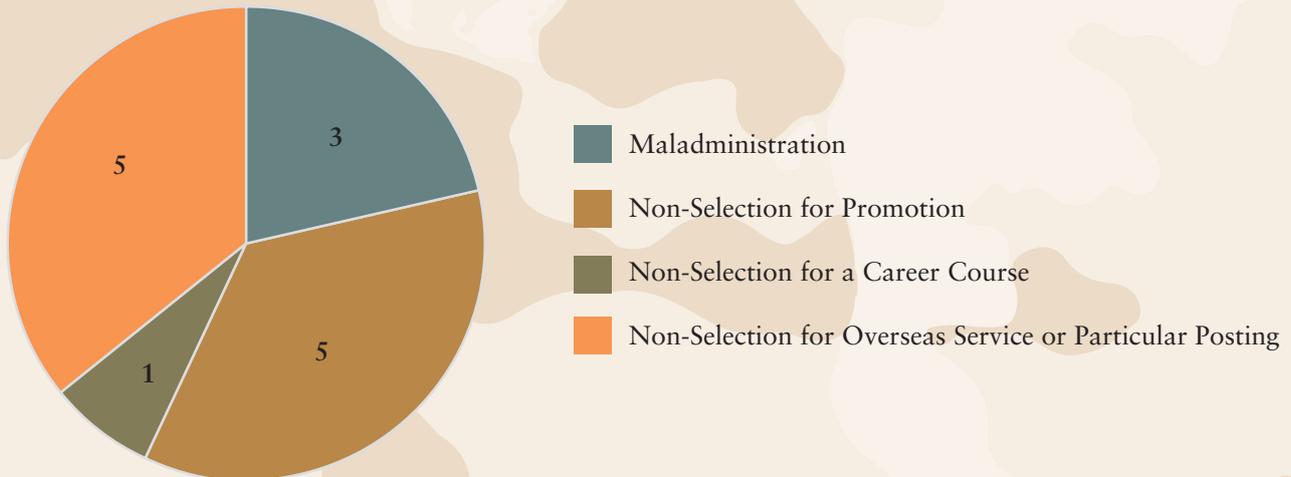
Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
-	4 (80%)	-	1 (20%)	-



- Non-Selection for Promotion
- Interpersonal Issues

Defence Forces Training Centre – (14)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
3 (22%)	5 (35%)	1 (8%)	-	5 (35%)



Air Corps – (22)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
8 (36%)	10 (45%)	1 (4.75%)	1 (4.75%)	2 (9.5%)



Naval Service – (11)

Maladministration	Non-Selection for Promotion	Non-Selection for a Career Course	Interpersonal Issues	Non-Selection for Overseas Service or Particular Posting
-	9 (81%)	2 (19%)	-	-

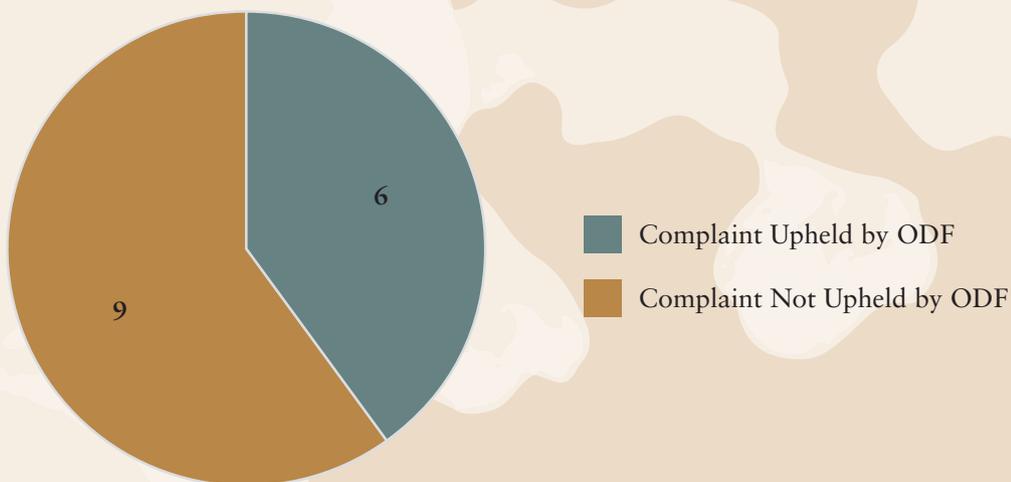


ODF Recommendations

Complaint Upheld by ODF	Complaint Not Upheld by ODF
6*	9**

*Includes 1 complaint that was resolved between the parties following intervention of ODF

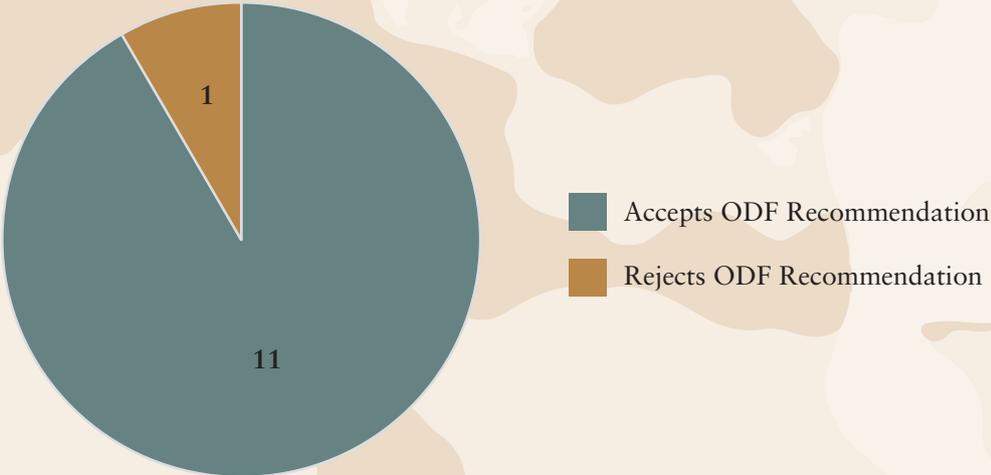
**Includes 2 complaints outside ODF's terms of reference



Minister's Response To ODF's Recommendation

Minister Accepts	Minister Does Not Accept
11*	1

*The Minister's response is awaited in 3 complaints.



6

Case Summaries

The following case summaries set out details of some of the cases investigated by the Ombudsman for the Defence Forces during 2013 and 2014.

Case Summary 1

Promotion – Selection competition – Whether experience and achievements taken into account – Proper procedures followed – All candidates eligible for competition at relevant time – Lack of medically qualified board member in competition for medical role – Recommendation to review – Length of service – No evidence of bias on part of interview board – Admin Instr A15.

The Complainant unsuccessfully applied for a senior position in the Medical Corps. He brought a RoW application, based on a number of grounds. His complaint was not upheld by the Defence Forces and the complaint was referred to this Office.

The first ground relied upon was that the marks awarded to the Complainant by the interview board were not reflective of his wide range of experience and achievements in the Defence Forces. In the Ombudsman's Final Report, he emphasised that it is not his job to second-guess decisions of an interview board, but rather to assess whether the board was properly and appropriately composed and had conducted itself in accordance with proper and fair procedures and relevant and promulgated regulations, instructions and agreed procedures. It is also essential that the board has before it all true, accurate and up-to-date information in relation to the candidates and that it can demonstrate that it acted in a fair, transparent and unbiased manner. The ODF could not find any defect in the board's decision in these regards. The documentation demonstrated that the placings of the candidates reflected the objective views of the

board as to the relative merits of the candidates based on their consideration of the candidates' files and interviews. Further, the marks awarded to the candidates were consistent with the methodology for evaluation of candidates provided in Admin Instr A15.

Secondly, the Complainant contended that, had the competition been held at the time that the vacancy arose, a number of other candidates, including the successful candidate would not have been eligible to apply. The competition had been delayed due to the moratorium on public sector recruitment. The ODF found that the Complainant was wrong in this regard. The other candidates were eligible in the "*year of competition for promotion to the next higher rank*", in accordance with para. 8.a. of Admin Instr A15.

Thirdly, the Complainant complained that no member of the interview board held a medical qualification. The ODF found that the board was composed in accordance with the relevant requirements. The composition of the board was consistent with the last two competitions for the post in question and reflected the fact that, since

the highest rank available for a medical officer was that of Colonel, the board for this appointment could not include the outgoing Director of Medical Services.

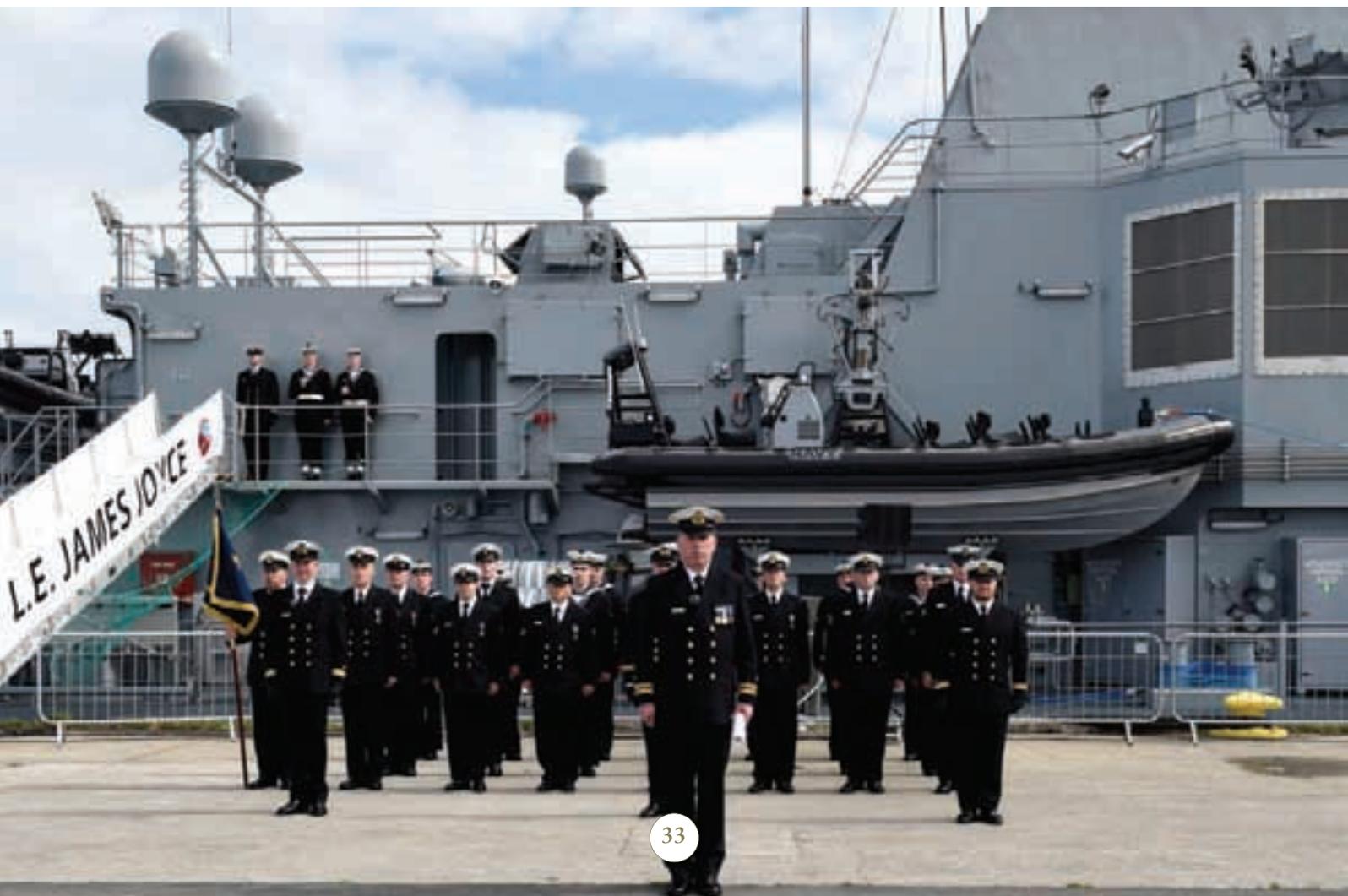
The fourth ground relied upon was that the successful candidate had only 2 years' experience in his current rank, of which 1 ½ years had been spent in what had formerly been a junior ranked post. The ODF noted that the Complainant, as the most senior candidate, had benefitted from the highest score in terms of length of service, and emphasised that all the candidates were qualified to compete in the competition.

Fifthly, the Complainant submitted that a previous RoW application he had brought had resulted in bias against him in the competition. The ODF could find no evidence to support the Complainant's concerns in this regard. The military members of the board were not aware of the previous application and all efforts were made to ensure that that was the case.

In the circumstance, while the ODF could understand the Complainant's disappointment, He could not find that he had been wronged and this Office could not therefore uphold his complaint.

The ODF recommended that consideration be given to the suggestion that the board in such competitions should contain a medically qualified member, perhaps a retired Director of the Medical Corps.

It was also noted that the MIO had been hampered in his investigation by the fact that he had not been entitled to access to other candidates' assessments in the selection process. The ODF recommended that consideration be given to appointing investigating officers at a higher level to ensure that they have access to the relevant records and documents in a competition in order to investigate a complaint in relation thereto.



Case Summary 2

Career Course - Senior NCO Course – Non-Selection - Conduct Rating – AF 43A – “Very Good” versus “Exemplary” – Re-Assessment of Conduct Rating - Annual Appraisal Report - AF 667 – Para. 37(1) of DFR A8 - Para. 38(a)(ii)(II) of DFR A8 - Para. 40A of DFR A8

The Complainant was not selected for a Senior NCO Course in 2010, which he attributed to an incorrect Conduct Rating of “*Very Good*” in his AF 667 (annual Performance Appraisal Report), whereas he believed it should have been “*Exemplary*”.

By way of redress, the Complainant sought to have:

- The Conduct Rating on his AF 667s since promotion to Sergeant in 2006, up-graded to “*Exemplary*”;
- Alternatively, that a notation be placed on his Personal File reflecting the comment that previous AF 667s in the substantive rank of Sergeant read as having a Conduct Rating of “*Exemplary*” for any calculations of an overall Conduct Rating; or
- To be placed as No. 1 candidate from his Unit for the next Course once he meets all the laid down criteria.

A member’s conduct rating is recorded in an AF 43A (Record Sheet, referencing conduct) and thereafter reflected in the member’s AF 667. On foot of para. 37(1) of DFR A8, the conduct rating for an enlisted member, such as the Complainant, would remain the same until his re-assessment upon application for an extension of his service, *i.e.* after 21 years’ in service. However, para. 40A of DFR A8 permits a COS (Sp), on the recommendation of the CO and GOC, to authorise an assessment of military conduct one grade higher in the case of enlisted members whose military conduct, subsequent to the date of the current assessment has merited re-consideration. Para. 38(a)(ii)(II) of DFR A8 refers to the requirement that an enlisted member has “*given excellent example to his comrades*” to warrant an “*Exemplary*” conduct rating.

The MIO found:

- The Complainant’s AF 43A reflected an assessment of *very good* for his conduct when he was promoted Sergeant in 2006, which was the last time his conduct was re-assessed;

- The Complainant had been consistently graded as *very good* in all his AF667s since 2005, which was a valid assessment; and
- DFR A8 explicitly lays down when a conduct assessment can be reviewed.
- There were no specific mentions of instances of “*excellent example*” in support of his claim to have his Conduct Assessment graded as “*Exemplary*”.

COS advised that while DFR A8 clearly outlines the area of conduct assessment, it was being reviewed in the context of a draft Administrative Instruction A2 document.

The ODF found there to be no evidence supporting the Complainant’s assertion that he had given excellent example to his comrades to warrant a “*Exemplary*” conduct rating and there was no positive obligation on the CO to advise him of what he needed to do to achieve such a grade. The ODF did not recommend the modes of redress suggested by the Complainant.

However, the ODF made the following recommendations:

- Consideration should be given to a periodic (perhaps every 2 or 3 years), review of conduct ratings, which review would be based on the factors already provided in DFR A8, and a consideration of performance assessment in AF667s in the determination of the level of ‘example’ given to comrades.
- Guidance should be provided as to the criteria to be considered by CO’s in their determination as to what constitutes “*excellent example*”, as opposed to “*very good example*”, or “*good example*”, in circumstances where such criteria will decide whether a “conduct rating” is “*Exemplary*” or “*Very Good*” or “*Good*”.
- In any review of DFR A8, consideration should be given to the provision of an appeal mechanism for a member who is unhappy with the “conduct rating” awarded by his CO.

Case Summary 3

Overseas service – Selection competition – Over prescribed age limit of 45 – Over upper limit of 50 years of age for consideration in special circumstances - Only qualified for special selection at higher rank – Provisions confusing and not properly promulgated and explained – ‘A’ Admin Instr, para. 209 b.

The Complainant was unsuccessful in an application for selection for overseas service on the ground that he was over the prescribed age limit. He issued a Redress of Wrongs application, complaining that other NCOs had been selected for the relevant overseas mission despite being over the prescribed age limit.

The MIO did not uphold the complaint. He found that there were no grounds to uphold the contention that other personnel had been treated more favourably than the Complainant. The appointment of personnel over the prescribed age limit was a matter which was guided by individual circumstances in each case. Further, he found that, as the Complainant had not appealed the decision not to select him for overseas service, he had missed the opportunity for a fresh appraisal of his application on its merits. These findings were upheld by the Chief of Staff. By the time the ODF came to consider the matter, the Complainant had retired from the Defence Forces.

In his Final Report the ODF noted that the Complainant had already served overseas at a time when he was over the prescribed age limit, though this was not mentioned by the Complainant. There was no information available to this Office to indicate that the reasons for the selection of the other NCOs in the competition in question were any more or less meritorious than those which previously allowed the Complainant to serve overseas while over the prescribed age limit.

It appeared that, at the time of selection for his previous overseas appointment, the Complainant had been over the prescribed age of 45, but under 50 years of age. In the circumstances, he had qualified under the provisions of para. 209 b. (4) of ‘A’ Admin Instr, which allows for consideration of appointments “*up to the age limit of 50 years*” where the applicant had passed a Life Test and his or her application had been approved by the GOC.

By contrast, at the time of his unsuccessful application he had reached 50 years of and was therefore ineligible for appointment overseas in his rank. In “*exceptional circumstances*”, and with the same provisos, he could have served overseas in a higher rank, pursuant to para. 209 b. (5), if he had been successful in an application submitted pursuant to the provisions of para. 209 b. (6), however no such application had been made.

The ODF found, however, that these provisions had the potential to cause confusion and he welcomed the fact that they were under review. It was clear that the provisions had not been explained to the Complainant at the time. The confusion and failure of promulgation was reinforced by the fact that the Complainant’s GOC had recommended his selection for the overseas service in question.

While the ODF could not uphold the Complainant’s complaint, he expressed regret that an NCO of the Complainant’s rank and service had retired believing that he had been wronged by his superiors, even if he was not correct in that belief.

While the ODF could not recommend any redress for the Complainant, he recommended that ‘A’ Admin Instr be reviewed to ensure that any such misunderstandings were avoided in future and that some form of acknowledgement of the Complainant’s service to the Defence Forces be accorded to him.



Case Summary 4

Selection – Career Course - Logs Accountancy Course – Length of Service – Overseas Service – Missing AFs 667

In 2008 and early 2010, the Complainant was first on the Unit Order of Merit ('OOM') in Logs Accountancy Course ('LAC') Selection Competitions, but the Unit was not allocated a place on the LAC in either of those years. In the 2009 LAC selection competition, he was placed 2nd on the Unit OOM, where only one place on the LAC was allocated to his Unit. In the December 2010 LAC Selection Competition, the Complainant took issue with being ranked third in the Unit OOM, asserting that his placing did not reflect his experience and seniority in his Unit. By redress, he sought to be placed first on the Unit OOM and that if his Unit was granted a place on the Course that he be given that place.

Firstly, the MIO confirmed that every Selection Board ('Board') must be independent and a new assessment and OOM was required for every LAC. Secondly, in respect of the marks awarded for Criterion 2, 'Length of Service', the December 2010 Board incorporated service as a Corporal and Sergeant when determining the marks to be awarded for this criterion, yet previous Boards awarded marks on the basis of the candidate's length of service in the substantive rank held at the time of the interview. The Complainant scored 'extremely high' in all areas, except Criterion 7 (Range of Military Experience Overseas/PSO Service) where he was noted to have 'limited' overseas service, which impacted significantly on his OOM placing, where the other candidates had considerably more overseas service and scored much higher in that criterion. Thirdly, the Complainant's AFs 667 for the years 2002 and 2004 were missing from his file. MIO concluded that taking the Complainant's submissions at their height the overall marks would not be sufficient for the Complainant to top his Unit OOM at that time.

GOC directed that the length of reckonable services should be calculated using the substantive

rank of Sergeant only, that the Complainant be informed that all candidates would have their scores adjusted for 'Length of Service' and that adjustments to the Unit OOM be made as appropriate. Criterion 2 would be immediately re-examined and amended as necessary to recognise the fact that Corporals and Sergeants could apply to undergo LACs but that rank *seniority* must also be recognised.

The ODF recognised that there was a lack of clarity in the guidelines issued to the Board with regard to the methodology used by the Board that assessed the Complainant, but he was satisfied with GOC's directions and the consequent change to the OOM. Regarding the missing AFs 667s, if both reports were available and were 'Outstanding' the adjustments to his competition score would not have impacted significantly enough on the OOM placing for the Complainant to secure a place on the LAC. The ODF attributed the Complainant's OOM placing to be due to his lack of overseas service, rather than any error attributable to the missing AFs 667s or to the length of service marks. The ODF flagged that the failure to maintain complete and accurate files in relation to members had been a feature of many cases previously adjudicated by this Office, and there had been recommendations in a previous case to ensure that the problem would be eliminated. The ODF opined that it would not have been fair to the other candidates if the redress that was sought in January 2011 had been granted at that time, nor did he believe that such action was warranted at that time. The ODF recommended that the Complainant receive an apology in respect of the initial inappropriate marking of length of rank service by the Board, and that two AFs 667s remained missing at the time of the competition. In January 2011, the LAC commenced without the Complainant, but he completed a LAC in 2012.

Case Summary 5

Discharge – Complainant sought to cancel discharge after discharge had taken place – Refused by Minister

The Complainant applied to be discharged from the Defence Forces and was so discharged. The day after his discharge he contacted a superior and sought to have the discharge cancelled. He was advised that it was too late. The Complainant made representations to the Minister through a politician but the Minister decided that the discharge must stand. The Complainant then applied to this Office for a recommendation that the Minister reconsider his decision. This Office could find no basis upon which it would be appropriate for the ODF to so recommend, however it did write to the Minister and the military authorities to inform them that there appeared to be a need for a greater degree of clarity to be provided to members with regard to the procedures to be followed in respect of discharge from the Defence Forces.



Case Summary 6

Promotion – Selection – President of Interview Board Biased – Second Ranked Candidate Promoted Supernumerary – Third Ranked Complainant - Promotion Supernumerary Redress Sought - Suspension of ROW – Delayed Referral to Ombudsman - s6 Ombudsman (Defence Forces) Act 2004

In a December 2008 Promotion Competition, the Complainant ranked third of four candidates for a vacancy of Coy Sgt, where his Unit Personal File was reviewed by an Interview Board ('the Board'), as he was serving overseas in December 2008. In May 2010, COS found the President of the Board to have been biased in favour of the successful candidate and recommended the supernumerary promotion of the second ranking candidate from the date of the promotion of the successful candidate. The Minister for Defence concluded that there was a bias against all of the other candidates, including the Complainant, and recommended the re-running of the competition with candidates limited to the three unsuccessful candidates to fill one supernumerary appointment. In June 2010, the Complainant's ROW alleged

the Board acted in a biased and unfair manner in the way it:

- a. Considered the courses completed by the Complainant;
- b. Considered the Complainant's experience;
- c. Favoured personnel who had prior experience in a Brigade CIS appointment;
- d. Recorded its comments on the Board Report, in relation to the Complainant's length and nature of service, overseas experience and general CIS experience.

A week later, the Complainant suspended his application for ROW pending the outcome of the second ranking candidate's ROW until May 2011, when he reactivated his complainant and sought promotion to Coy Sgt supernumerary. By July 2011, the second ranked candidate was promoted to Coy Sgt supernumerary.

Subsequently, the MIO upheld the complaint, finding the Board to have acted in a biased and unfair manner toward the Complainant in failing to acknowledge the Complainant's qualifications and experience at home and abroad and using wording and language that denigrated the Complainant's

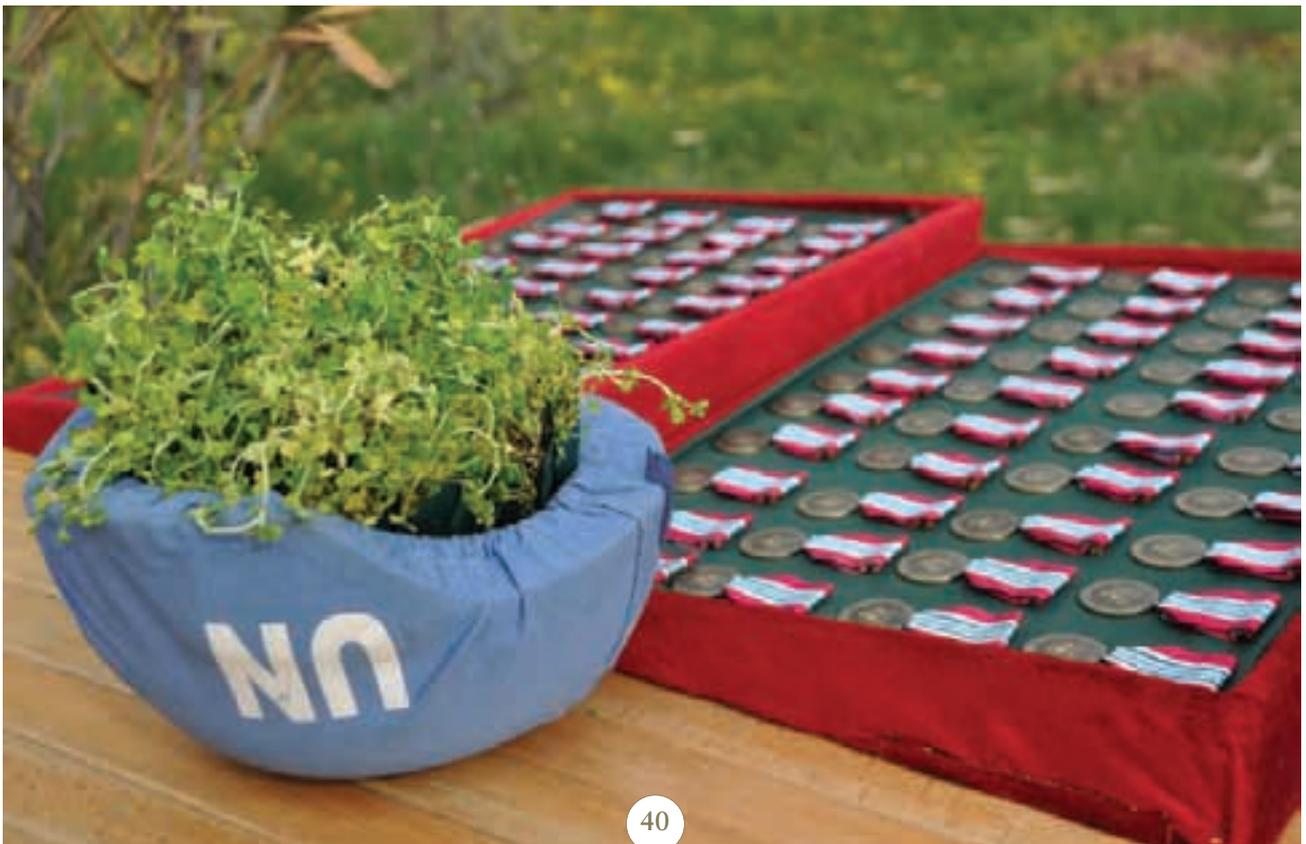


home and overseas service by understating his career profile. The MIO recommended the promotion of the Complainant on a supernumerary basis. COS held that the Complainant had suffered no wrong requiring redress as there was only one vacancy for promotion and the second ranked candidate should have been promoted into the vacancy. COS asserted that the Complainant would have been in the same position had the bias never occurred and refused the Complainant's application for supernumerary promotion.

Despite the complaint to this Office being after the 12 month statutory period provided for by s.6 Ombudsman (Defence Forces) Act 2004, the ODF accepted jurisdiction as the delay was due to the suspension of the ROW on the advices of A/Personnel ACHQ pending the outcome of the parallel ROW and in an attempt to utilise investigative resources most efficiently. Once reactivated, any delay in referring the matter to this Office was outside the Complainant's control, and any steps required of him to progress his ROW were taken with all due expedition.

The ODF deemed the actions of the Board to have adversely impacted the Complainant, although not adversely affecting his prospects of promotion. The

Board's actions were based on erroneous or incomplete information and were improperly discriminatory. However, since there was no evidence that the Complainant was treated less fairly than the second ranked candidate and considering that the Complainant was placed below that candidate, the ODF accepted that the Complainant's supernumerary promotion would be an inappropriate remedy. Since that competition, a new revised procedure for the selection of NCOs for promotion within the Permanent Defence Force was implemented through amendment of 'A' Administrative Instruction Part 10. By way of redress, the Ombudsman deemed the Complainant entitled to an acknowledgement of the wrong done to him, and secondly an apology by an appropriate Military Authority, such as the Convening Authority of the Board which was found to have been biased in favour of the successful candidate in respect of that bias. Thirdly, it was recommended that the apology be recorded in the records of the Complainant in a manner to be directed by the COS. Fourthly, it was recommended that some means of mitigating any potential adverse effects of the narrative contained in the Board Report should also be considered, in order to ensure that those comments do not prejudice the Complainant in any future circumstances.





Case Summary 7

Reorganisation of Defence Forces – Appointment downgraded in rank – Adverse effect on Complainant – Complaint not brought within 12 months of action concerned – Complaint related to organisation, structure and deployment of Defence Forces – Outside jurisdiction of ODF.

The complaint related to the re-organisation of the Defence Forces in 1998 and, specifically, to the downgrading of the rank of the appointment to which the Complainant was subsequently appointed. For two reasons, the complaint fell outside the ODF's jurisdiction.

Firstly, the complaint was not brought within 12 months of the action concerned, as required by s. 6(3) of the 2004 Act. While the ODF accepted that there ought to be some flexibility in this regard in certain circumstances, in particular where the Defence Forces were partly to blame for the delay, he found that in this case the time limit had not been complied with principally due to the unexplained nine month delay of the Complainant in bringing his Redress of Wrongs application following his promotion to the relevant

appointment. Furthermore, the Defence Forces had only taken four months to process his application through to the Chief of Staff's considered ruling.

Secondly, the complaint was excluded from jurisdiction under s. 5(1)(d)(ii) of the 2004 Act as it concerned "*the organisation, structure and deployment of the Defence Forces*". It was clear to this Office that the essence of the complaint related to the undoubtedly potential adverse effect on the complainant's promotional prospects arising from an amendment to the organisation and structure of the Defence Forces (which became a reality on his appointment to the role in question).

In the circumstances, the ODF ruled the complaint outside jurisdiction and discontinued further consideration of it.

Case Summary 8

Physical Training Supervisors Course - Omission of minimum rank requirement - Air Corp Weekly Routine Order 28/12 - Defence Forces Annual Training Directive (ATD) 2012 - Certificate of Urgency - DFR A 7, Part 1, Para 3 - Onus on members to be acquainted with regulations - inadequate administrative processes - degree of carelessness - unfair and unreasonable - undesirable administrative practice and/or contrary to fair or sound administration

The Complainant, an Airman, applied for Physical Training Supervisors Course published in Air Corp Weekly Routine Order 28/12 (RO), which course commenced 15 Oct 2012. His CO recommended his application and he was selected as a nominee. On the 10 Oct 2012, he received Joining Instructions. On the 11 Oct 2012, he was deselected on the basis that the RO omitted the requirement, pursuant to Defence Forces Annual Training Directive (ATD) 2012, that the minimum rank for the course concerned was NCO. That day, he submitted an application for redress of wrongs (ROW) seeking to be allowed complete the course on the basis that he met all of the essential qualifying criteria stipulated in the RO; he had been recommended and selected for the course; he had a large range of relevant qualifications and had already successfully completed the Potential NCO course. A Certificate of Urgency was also sought that day.

MIO considered the omission on the RO to be an administrative error, highlighted the requirements of ATD 2012 and found that the Complainant had not been wronged. Concurring with MIO, A/OC added that it was regrettable that the application was processed at both unit and ACHQ level, despite the Complainant being unqualified, and he directed that the unit Commander must ensure that personnel who apply for courses are qualified before nominating them for selection.

On referral to COS, the Complainant further contended that it was only on the 1 Nov 2012 that he was informed that his application for a Certificate of Urgency had been refused; he had been refused a copy of the CO's ruling; there was a delay in the investigation; the Complainant did not receive MIO's report before his ruling; and there was a delay in receiving the MIO report. In

upholding A/OC's ruling, COS referred to the onus on all members of the Defence Forces to make themselves acquainted with all regulations and orders published for their information, as per DFR A 7, Part 1, Para 3. COS acknowledged the importance of all complainants being kept informed of all aspects of their application for ROW. The delay in the certificate of urgency was an 'unfortunate oversight'.

The ODF found the administrative processes within the Air Corp to be inadequate in respect of the totality of the selection and deselection process for the course, which was also considered to amount to a 'degree of carelessness'. The attempt to fix responsibility of the rank requirements for the course solely on the Complainant was deemed to be 'unfair and unreasonable'. The manner in which this ROW application was dealt with at a number of levels within the Air Corp, as referred to COS, was deemed to be 'undesirable administrative practice' and/or 'contrary to fair or sound administration'. The ODF highlighted his difficulty in understanding why, when there were four days between the ROW application and the start of the course, a Certificate of Urgency could not issue within that time. The ODF proposed that the DF could offer to inform the Complainant when the next PT Supervisors Course was to be held and to reserve for him a place on it, if he still wished to avail of it. DHRMS adopted the suggested approach. The Complainant accepted and availed of the opportunity in Oct 2013 and completed the course in November 2013.

Case Summary 9

Bullying – Complaint submitted four and a half years after incident – Beyond 1 year time limit – Outside jurisdiction of ODF.

The Complainant complained of a number of incidents of undermining in the work place, inappropriate behaviour and bullying, by a named member of the Defence Forces. The complaint was not submitted to my Office until some four and a half years after the incidents

took place. In circumstances where the complaint was submitted a considerable period of time after the one year time limit in s. 6(3) of the Ombudsman (Defence Forces) Act 2004, without any explanation for such delay, the ODF declined jurisdiction.



Case Summary 10

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 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.

The ODF in his Preliminary View Report 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 this Office, the ODF 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.

Case Summary 11

Career Course - Senior NCO Course 2008 - Non-selection – Complaint upheld – Remedy Proposed - Place made available on 2010 Course – Overseas for 2010 Course – Lengthy Delay before next course – Promotion desired - Course a prerequisite for Promotion

In 2009, the ODF upheld the Complainant's complaint that he was not selected for the 2008 Senior NCO Course ('Course') where he had satisfied the qualifying criteria, and certain other NCOs had not satisfied the qualifying criteria yet were selected. It was recommended that some means of mitigating the adverse effects be explored, being mindful of the Complainant's service in Afghanistan and the timing of his return in March 2010. COS proposed making an additional place available for the Complainant on the next Course following his return from overseas duty. He returned from overseas in March 2010. This complaint was initiated in March 2012 where the resolution proposed by the COS had yet to take effect as there had been no opportunity for the Complainant to partake in a Course – the next one being scheduled for September 2012 - as a result of which, he could not apply for promotion, despite many promotion opportunities arising that would soon be filled, meaning there would be no more vacancies for a very long time.

By way of redress, the Complainant sought:

- Eligibility to immediately compete for promotion as if he had successfully completed the 2008 Course, without being substantively promoted until he had completed a Course.
- If allowed enter the promotion competition, and if selected for promotion to Coy Sgt, that his loss of seniority be offset by backdating substantive promotion to the date of the Board's recommendation for promotion and not the completion date of the Course.
- Should he qualify for promotion, that his qualification be backdated to the termination date of the 2008 Course.
- Where his ROW application extended beyond the period of the upcoming competition, that he be promoted to Coy Sgt (Line) supernumerary before undertaking a Course.

In support of his complaint, the Complainant referred to a number of previous complaints by other DF members where those complainants were permitted, subject to certain restrictions, to partake in various career course competitions or promotion competitions without having qualifications prerequisite for partaking in those competitions.

The MIO found that there had been no administrative error which prevented the Complainant from attending a Senior NCO Course in the interim period since the 2008 Course and that even if the Complainant had been wronged, there was no provision in Conciliation Council Report No 448 (and/or Admin Instr A 10) for the DF to certify/deem a Sergeant to be qualified for promotion to Coy Sgt without having completed the Course. In reference to the Complainant's reliance on precedents, COS flagged that each ROW was examined on its own merits, and while the DF was cognisant of past administrative consistencies, it was not bound by previous rulings, and distinguished this case from the precedents on the basis of differing circumstances and a change following CCR No. 448 regarding the eligibility criteria for Sergeants seeking promotion to Coy Sgt. The Complainant successfully completed the Course in December 2012.

Therefore, the ODF recommended:

- An undertaking be given that he will be afforded an opportunity, before the end of 2014, to have his suitability for promotion assessed by an NCO Promotion Board, established pursuant to the provisions of 'A' Admin Instr Part 10 or otherwise as may be directed by the Minister, under the same criteria as those applied in the 2012 NCO Promotion Competition or those to be applied

in the 2014 Competition, applying whichever criteria are more advantageous to the Complainant.

- Should the 2014 Board deem him suitable for promotion he should be promoted in his turn on the Order of Merit established by the Board. Should it be a Board specially established at the direction of the Minister and it deems the Complainant suitable for promotion, he should be promoted without delay, absorbed into the current establishment of the PDF, and made substantive in his rank.
- If he is promoted, his relative seniority in his new rank, for future promotion competition purposes, should be deemed to be such as may be directed by the Minister. For seniority and remuneration purposes, he should be considered to have been promoted as of the date he completed his Senior NCO Course and was eligible for promotion.
- His pay scale point of entry for his new rank should reflect the wrong suffered by him since 2008 and his acceptance in March 2010 of the redress offered by the then COS.



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Corporate Affairs

Staffing

The staffing level of the ODF as of the 31st December, 2014 consisted of:

- Brian O’Neill, Head of Administration / 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 2014. 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.





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