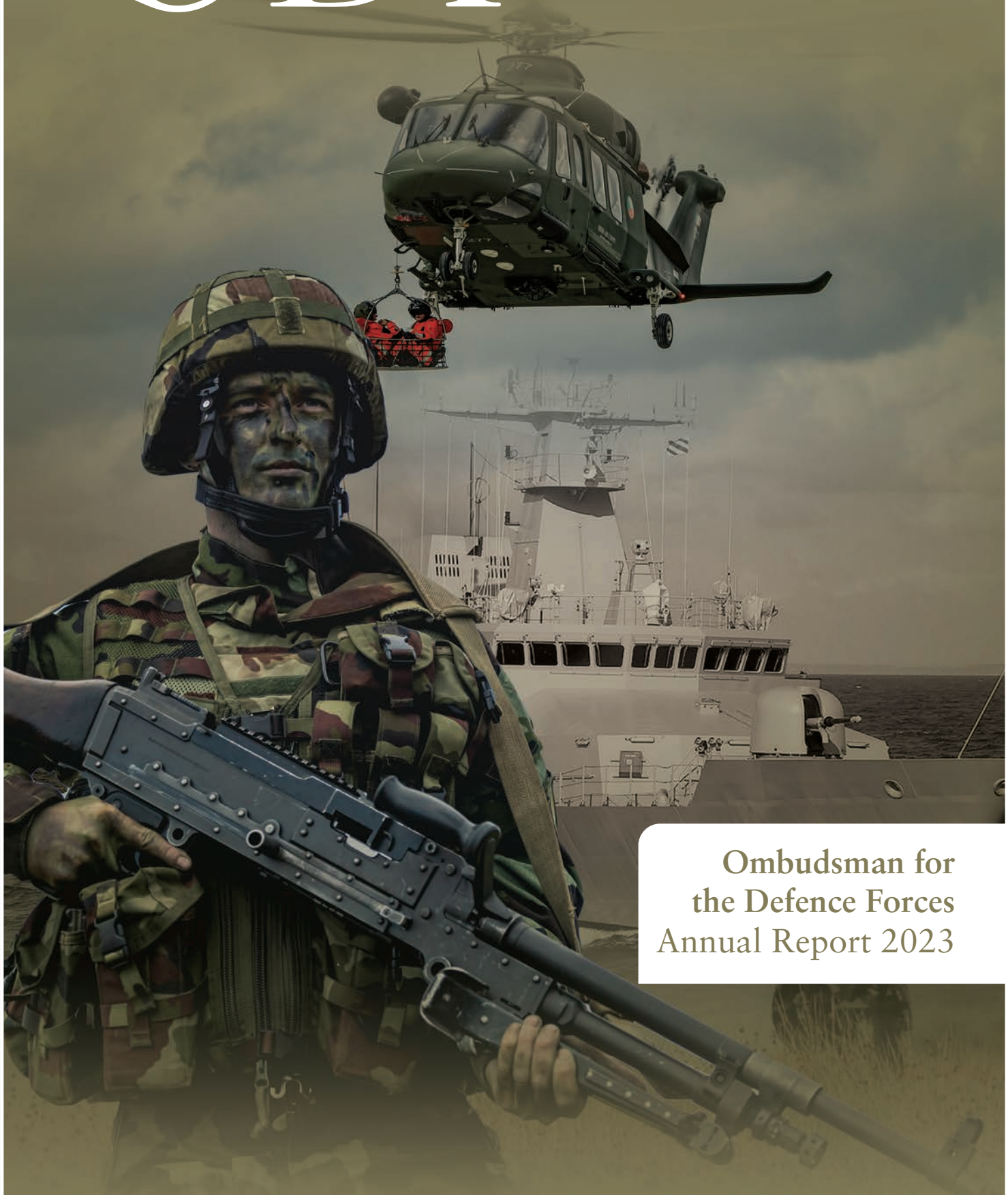
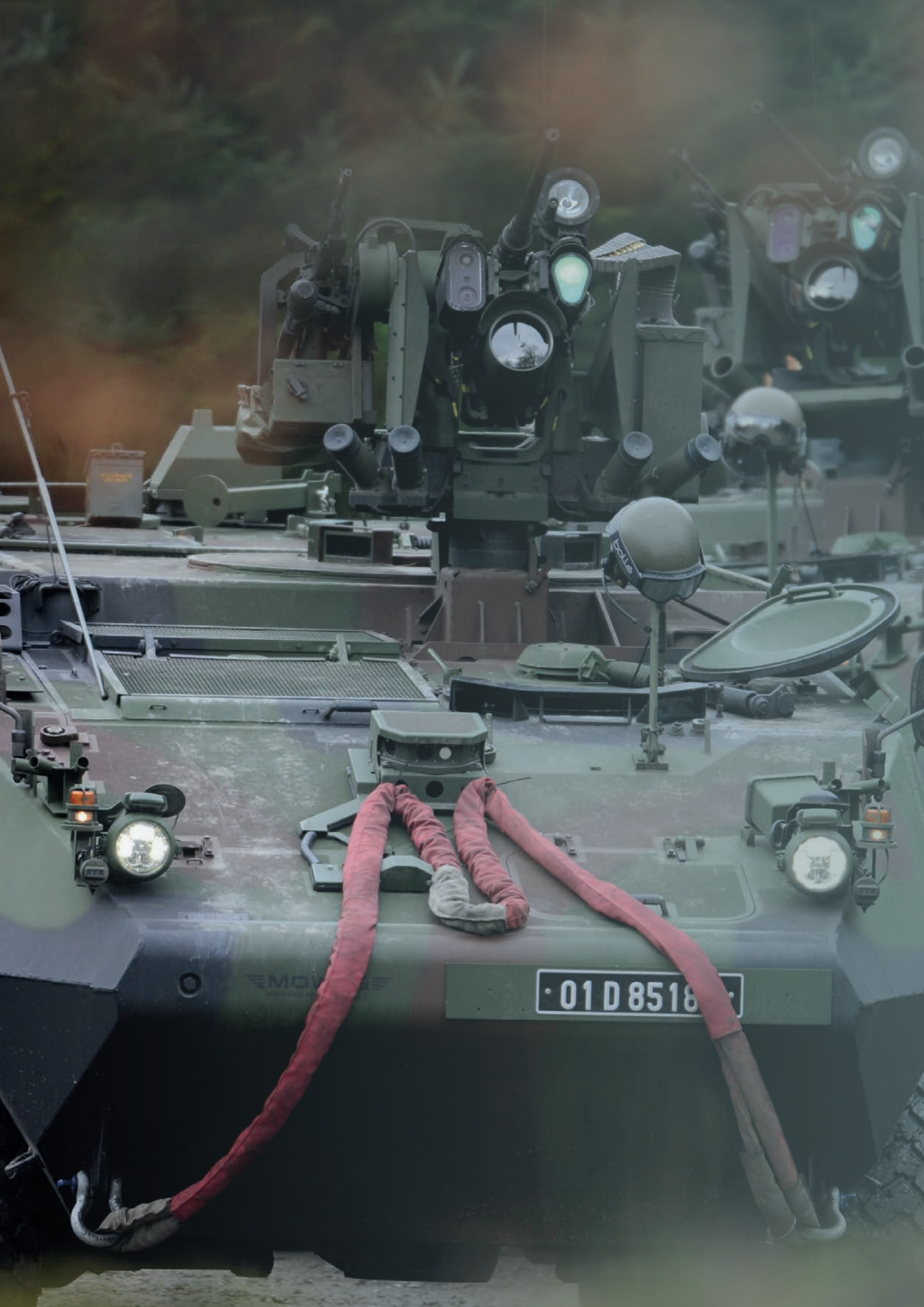


# ODDF



Ombudsman for  
the Defence Forces  
Annual Report 2023



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



# Glossary of Terms and Abbreviations used in the Report

DF	Defence Forces
AC	Air Corps
Bde	Brigade
Bn	Battalion
COMO	Commissioned Officers Management Office
COS	Chief of Staff
Coy Comdr	Company Commander
DCOS (Sp)	Deputy Chief of Staff, Support
DFHQ	Defence Forces Head Quarters
DFR	Defence Forces Regulation
DFTC	Defence Forces Training Centre
EPMO	Enlisted Personnel Management Office
FOCNS	Flag Officer Commanding Naval Service
GMO	Grievance Management Office
GOC	General Officer Commanding
IO/MIO	Military Investigating Officer
MO	Medical Officer
NCO	Non-Commissioned Officer
NS	Naval Service
OC	Officer Commanding
ODF	Ombudsman for the Defence Forces
OOM	Order of Merit List
PDF	Permanent Defence Forces
PDFORRA + RACO	Representative Associations for Serving Personnel
PO	Petty Officer (Naval Service)
RDF/FCA	Reserve Defence Forces
Recommendations	Recommendations made to the Minister for Defence as provided for in S7 of the Ombudsman (Defence Forces) Act 2004
RO	Routine Orders
ROW	Redress of Wrongs
Sec Coy	Security Company
Tech	Technician
Unit Comdr	Unit Commander



# Ombudsman for the Defence Forces

## Customer Charter

The Ombudsman for the Defence Forces was established by law to provide a statutorily independent appeals process whereby members of the Defence Forces who have processed a complaint through the Redress of Wrongs system, but remain dissatisfied with the outcome, may refer their grievance to the Ombudsman for review, and also to adjudicate on complaints made directly by serving and former members of the Defence Forces, subject to certain conditions.

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

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

The Ombudsman may also investigate complaints of penalisation for having submitted a Protected Disclosure (Section 20, Protected Disclosures Act, 2014).

Section 6(3) of the Act provides for time limits for the notification of a complaint to the Ombudsman for the Defence forces as follows: -

- (3) A complainant shall make a complaint referred to in subsections (1) and (2) not later than 12 months from –
  - (a) the date of the action concerned, or
  - (b) the date on which the complainant became aware of the action,
 Whichever is the later.

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

# 1 Introduction:

## Introduction to ODF Annual Report 2023

In the introduction to my Annual Report for last year, 2022, I remarked on the low take up of the entitlement (announced in 2021) of serving DF members to directly refer complaints to my office for investigation, and in so doing avoid the internal investigation route as provided for under Section 114 of the Defence Act 1954 (often referred to as Chapter Two complaints). Retired personnel must take the direct referral route.

It is important also to emphasise the entitlement of serving personnel to directly refer complaints of an interpersonal nature (such as, for example, bullying, inappropriate behaviour, harassment etc.), to my office for investigation as an alternative to the internal investigative route provided by the Defence Forces (known as “Chapter One” complaints). Such complaints can also be referred to my office directly in circumstances where the Chapter One process has already commenced, or indeed after it has concluded, if the complainant is unsatisfied with the outcome.

In 2022, less than 30% of Investigation Reports issued were in response to directly referred complaints. In 2021, only about 7% of Investigation Reports were directly referred complaints. In 2023, however, approximately 50% of completed Investigation Reports related to directly referred complaints. The trend of directly referring complaints to my office is undoubtedly upwards, and, based on investigations completed towards the end of 2023 and into early 2024, that trend is clearly continuing. It is unclear what is driving this trend. A possible explanation is some decrease in confidence that the internal Section 114 process is yielding satisfactory outcomes for complainants. Additionally, the IRG Report over 12 months ago did little to create confidence in the internal investigation process. The Section 114 (Chapter Two) route none-the-less remains of value, as I have previously pointed out, because it offers the best possibility for an early resolution of a complaint. This is particularly the case in circumstances where the complaint is relatively minor or straightforward.

There were 51 completed investigations (with Reports issued) in 2023, (plus, one Supplemental Report), a significant increase on the 2022 figure of 25. While, it is not best practice to read too much into one year’s figures, the significant increase in 2023, compared to 2022 (and, indeed, also 2021 when 36 Reports were completed), coupled with the fact that nearly 50% of complaints in 2023 were directly referred complaints rather than complaints that were first submitted under the Section 114 (Chapter Two) procedure, suggests that the option of directly referring complaints to my office is proving attractive.

In relation to Section 114 (Chapter Two) complaint referrals, the practice in my office, which commenced in early 2022, of writing “28 day” and “9 month” letters to complainants whose complaints were, respectively, at the point of approximately 28 days post submission, and/or, at the point of 3 months prior to the expiry of the 12 month limitation period for referring a complaint, appears to have largely solved the problem of complaints falling foul of the 12 month limitation rule by merely a few months. In 2023, a total of 5 complaints could not be investigated because of jurisdictional issues. One did not concern a late referral; one was a number of years out of time and three, while out of time to the extent of just months in each case, were referrals of complaints which long pre-dated the introduction of the 28 day and 9 month reminder letters. It would seem therefore that the problem of complaint referrals being out of time by just a number of months is more historical than current.

In almost 50% of the Reports issued in 2023 complaints were upheld or partially upheld, as compared to 40% in the previous year, and just over 30% in 2021.

Of the 51 completed investigations in 2023, 6 included complaints relating to inter-personal issues (Such as bullying, harassment, inappropriate behaviour). Numerically this represents a small increase compared to 2021, but, proportionately, it represents a decrease given the significant increase in the number of investigations completed in 2023 compared to 2022.



While the nature (or subject matter) of complaints investigated in 2023 touched upon a variety of issues, the largest categories – almost 50% - were concerned with either Promotion or Course Selection. Just 3 cases concerned issues relating to overseas service, 2 concerned transfers, and one fell into the category of a ‘Gender’ issue.

3 of the 2023 cases concerned issues relating to “Undertakings”. (Undertakings are agreements by service personnel to repay the State for the cost of education and training courses involving external education and training establishments, such as Universities and Colleges, in the event of early retirement or resignation from the Defence Forces). Liabilities for significant sums arise if personnel leave the Defence Forces in the years immediately following the completion of an educational course. These rules are, generally speaking, common throughout the public service. In the Undertaking complaints

investigated in 2023 (and in 2022) it became clear that three particular issues were causing problems. The first was the difficulty in obtaining details of an individual’s Undertaking liability on completion of his/her course of study or training, and, secondly, in circumstances where an individual wished to access these figures in order to consider retirement or resignation from the Defence Forces, but had not made a definite decision about leaving. The third was the delay in obtaining the relevant figures in a timely fashion in advance of a definite discharge date. I made Recommendations in some of these cases which, if accepted and implemented, should resolve many of these problems.

On 29 June 2023 I attended the Joint Committee on Public Petitions and Ombudsmen, at its invitation, at Leinster House. It resulted in an interesting exchange of views, and provided me with the opportunity to outline the type and nature of the investigative





**“It remains my strong view that it is important for the Defence Forces to maintain its own internal grievance management system as I believe that most complaints are capable of resolution at that level, and are in fact resolved at that level.**





work undertaken by my office in the previous year. I concluded my Opening Statement to the Committee with the following observation: -

*“It remains my strong view that it is important for the Defence Forces to maintain its own internal grievance management system as I believe that most complaints are capable of resolution at that level, and are in fact resolved at that level. I also believe that most Defence Forces members prefer to have complaints resolved internally where reasonably possible, but to also have the option to engage the services of the ODF when preferred or where required.”*

I visited Custume Barracks in Athlone in 2023, accompanied by Brian O’Neill of my office. Our host was Lt Col Mark Lennon, and I am grateful for the welcome extended to us by him and his colleagues. During our visit we had separate meetings with representatives of PDFORA and RACO, in the course of which we took the opportunity to emphasise and explain aspects of the work of my office. These exchanges were, I believe, very useful and informative for all concerned, ourselves very much included.

I expect 2024 to be a busy year in my office, including dealing with the difficult practicalities involved in moving our office to an address in nearby Earlsfort Terrace. Also, the Defence Forces are undergoing considerable changes and reforms, including in the area of grievance management, and there is the

expected commencement of a Tribunal of Inquiry relating to HR issues within the Defence Forces. Interesting times lie ahead!

Finally, I would like to extend my sincere thanks to my three staff members, Brian, Lorraine and John, for their hard work and dedication throughout 2023. There are times when my office comes under significant pressure, and they have always met those challenges.

I would also like to thank the Minister for Defence, Mr Michael Martin, the Secretary-General of the Department of Defence, Ms. Jacqui McCrum, her staff, the Chief of Staff, and the men and women of the Defence Forces, particularly the staff of the Grievance Management office in the Defence Forces with whom my office is in almost daily contact. They have always generously given of their time to responding promptly to our many requests for information and assistance and they provide a vital link between my office and the Defence Forces.

Alan Mahon  
Ombudsman for the Defence Forces  
31 March 2024

## How Does the ODF Conduct an Investigation?

1. No two cases are the same, so each investigation is conducted in a manner appropriate to the facts relevant to that complaint. Conducting a thorough, fair and efficient investigation is of primary importance. Most complaints require a speedy investigation if justice is to be done, and if any suggested resolution or recommendation is to have practical effect. By their nature, most complaints are urgent. Commonly, an investigation is concluded and a Report issued within weeks from the date of referral. If it takes longer, it is because of a delay in requested additional information or documentation being provided. Directly referred complaints tend to take a little longer than those which have already been partly or wholly investigated under the Section 114/Chapter Two process, because with the latter type referral my office receives the DF's full investigation file, and which generally provides a lot of immediate information relevant to the complaint.
2. The ODF is independent of both the Defence Forces and the Minister/Department of Defence. This independence is specifically and clearly laid down in the provisions of the Ombudsman (Defence Forces) Act 2004.
3. The ODF, in considering any complaint referral, must initially decide if he has jurisdiction to investigate. There are restrictions on jurisdiction in the 2004 Act, including a limitation period for complaint referrals. Section 6 (3) of the 2004 Act provides for a 12 month period in which a complaint must be referred by a complainant to the ODF, whereas no time limit applies to the submission of a complaint to the Defence Forces for internal investigation. The 12 month limitation period is measured from the date on which the matter complained of arises, or from the date on which a complainant becomes aware of it, whichever later occurs.

The ODF has no discretion to extend these limitation periods.

4. The ODF assembles an investigation file, including details of the complaint, statements, including witness statements, and relevant documentation (including DFRs and Administrative Instructions). The ODF will usually request the DF, or identified DF personnel to state their position in relation to particular issues or allegations, and will seek relevant paperwork from the Defence Forces, and where appropriate, the Department. The ODF is provided with documentation relevant to the ODF's internal investigation (if one has been carried out), including copies of Reports and Rulings of the appointed Military Investigating Officer (MIO), the complainant's General Officer Commanding (GOC) and the Chief of Staff (COS).

Generally, the ODF seeks and obtains relevant information and documentation from, and through, the Grievance Management Office (GMO), who are always helpful. When allegations of personal wrongdoing are alleged it is normal practice to inform the individual concerned and provide him/her with an opportunity to respond, and to make submissions in the event that an adverse finding is proposed to be made against the individual.

5. While most ODF investigations are conducted without a need to personally interview a complainant, the ODF does, on occasion, interview complainants, and possibly witnesses also.
6. On completion of his investigation the ODF issues his Report which will include his conclusions and, if appropriate, Recommendations. Recommendations are addressed to the Minister for Defence. In due course, the Minister acknowledges the Report and advises the ODF of his acceptance or rejection of a Recommendation. In practice, to date, the Minister has accepted the great majority of Recommendations made by the ODF.

## Who can refer a complaint to the ODF

7. The Ombudsman (Defence Forces) Act 2004 lists the categories of complaint that can be referred to the ODF. Only serving or former members of the Defence Forces can refer a complaint to the ODF. Serving members may choose between initially utilising the internal Defence Forces investigation process (Section 114 of the Defence Act 1956, as amended) and, at a later stage, if unsatisfied with the outcome of that internal process, referring the complaint to the ODF, or alternatively, directly referring the complaint to the ODF. It is important also to emphasise that complaints of bullying (or other interpersonal type issues) can also be referred directly to the ODF.

Former members of the Defence Forces must directly refer their complaint to the ODF.

Alleged penalisation following submission of a Protected Disclosure by a member of the Defence Forces can also be investigated by the ODF, following the enactment of the Protected Disclosures Act 2014. (Section 20).

## Who receives the ODF's Report?

8. Generally, the recipients of an investigation Report from the ODF are the complainant and the Minister for Defence. The Chief of Staff and the complainant's GOC also receive a copy, as does the GMO. Otherwise a Report is confidential. An individual against whom an adverse finding is made will also be advised of that finding and the relevant parts of the Report.

## Appeal

9. There is no appeal process available to a complainant from a Report issued by the ODF.
10. In practice, however the ODF will review his Report, and will amend or alter it when appropriate, or upon receipt of a written submission from a complainant or another interested party. This occasionally occurs where, subsequent to the issue of the Report, new information is provided to the ODF, or because of errors or mistakes in the Report.



## 2 Human Rights & Equality – Public Sector Duty

The Public Sector Duty is a legal obligation on public bodies, as provided for in Section 42 of the Irish Human rights and Equality Commission Act 2014, to have regard to the need to eliminate discrimination, promote equality of opportunity and to protect the human rights of public sector staff and service users. The ODF, as a public body, is committed to respecting and advancing this duty.

The ODF operates to clear principles of equality and non-discrimination in how it carries out all its work. This includes how it interacts with members of the Defence Forces who use its services and how it, as an

employer, interacts with its own staff, including how it recruits staff through an objective and bias-free process. Employees are supported in working in a safe and inclusive environment through the Department of Defence Dignity at Work Policy, learning and development opportunities and other Departmental supports.

The ODF undertakes investigations under the provisions of the Ombudsman (Defence Forces) Act 2004. Section 4 of the Act sets out the nature of the actions that may be investigated. In general terms, these actions are primarily administrative in

nature but can include actions that are ‘improperly discriminatory’. Whilst explicit reference to human rights protection is not reflected in the legislation establishing and governing the activities of the ODF, any human rights violations within the Defence Forces would constitute serious maladministration and a breach of fundamental rights.

Human rights are considered in every case considered by the ODF. In that regard, the Ombudsman and all ODF staff are guided by the Human Rights Manual produced jointly by the Northern Ireland Public Services Ombudsman and the Northern Irish Human

rights Commission, supported by the International Ombudsman Institute ([www.nipso.org.uk/service-providers/information-and-guidance](http://www.nipso.org.uk/service-providers/information-and-guidance)), in particular, the ‘Human Rights Based Approach to Assessing Complaints Screen Tool’.

Recognising the increasing diversity of Irish society, the ODF continues to develop its capacity to respond to the resulting diversity changes in the Defence Forces to ensure that it is available and accessible to everyone in the Defence Forces who needs its services and support.



## 3 Analysis of Complaints & Referrals - 2023

1. 45 Notifications of Complaint were received in 2023. This was a small 20% decrease on the 54 Notifications of Complaint received in 2022. A Notification of Complaint is generated at the time the complaint is initially submitted to the Defence Forces and a copy is forwarded to the ODF. It is NOT a referral of a complaint to the ODF. An investigation by the ODF will only commence if the complaint is not resolved (or withdrawn) in the course of the Defence Forces Internal Investigation process and the complainant requests that the matter be referred to the ODF. The majority of Notifications of Complaint usually do not require investigation by the ODF. (In 2023, 22 of these Notifications of Claims were subsequently referred to the ODF for investigation).
2. Of the 45 Notifications of Complaint received, 36 were in respect of Privates and NCOs and 9 were in respect of Officers.
3. 41 Direct Referrals were made to the ODF for Investigation. Direct Referrals can come from Serving Members and Retired Members. Serving

Members can make a Direct Referral if they, for various reasons, do not wish to, utilise the Defence Forces Internal Investigation process. Retired Members can only make Direct Referrals to the ODF for investigation. Of the 41 Direct Referrals made to the ODF, 5 were from Retired Members and 36 were from Serving Members.

4. 52 Reports were issued in 2023, one of which was a Supplemental Report. This represents a 108% increase in the number of cases concluded by the ODF in 2023 compared to the previous year.
5. The following tables set out the nature of complaints considered by this Office during 2023. It should be noted that complaints categorised as 'Maladministration' cover a variety of issues including complaints in respect of performance appraisal and issues related to discharge among others. Complaints categorised as 'Interpersonal Issues' include those where there appears to be elements of personality conflict or interpersonal difficulty, and may include allegations of inappropriate behaviour, bullying or exclusion.





### Cases by Military Formation

Of the 70 cases investigated during 2023, 51 of them concluded during the course of the year, and Reports issued (52 Reports issued one being a Supplemental Report and one Letter), with 19 cases partly concluded, or carried forward into 2024.

The following table outlines the number of cases, where Reports issued, arising in each Military Formation and those received from Retired Members.

Army	Air Corps	Naval Service	Retired Members
21	22	3	5

### Nature of Cases

The nature of the cases on hand with the ODF during 2023 can be broken down into the following broad issue categories –

Maladministration	Promotion	Course Selection	Interpersonal Issues	Gender	Medical
5	13	12	6	1	2

Discrimination/ Exclusion	Overseas	Transfer	Undertakings	Jurisdiction
3	2	2	3	8

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

Reports issued to females:	6 (including 1 Supplemental Report).
Reports issued to males:	46
Reports issued to Officers:	5
Reports issued to Privates/NCOs:	42
Reports issued to Retired personnel:	5

### Investigation Outcomes

Complaints Upheld or Partially Upheld by ODF*	Complaints Not Upheld by ODF *
24	27

\* Partially upheld complaints are complaints where the ODF did not uphold a complainant's case in its entirety.

\*\* Includes complaints outside ODF's terms of reference.

## Investigation Outcomes

Minister Accepts (up to end of 2023)	Minister Does Not Accept (up to end of 2023)
15*	1*

Footnotes:

1. Recommendations are not necessarily made in every ODF Report.
2. More than one Recommendation may be made in an ODF Report. The ODF may, or may not, include a Recommendation in his investigation Report. Recommendations are made to the Minister for Defence who may accept or reject them.
3. There is usually a significant delay, for a variety of reasons, in a notification to the ODF of an acceptance or rejection of a Recommendation by the Minister, hence the extent of acceptances/rejections from Recommendations made in a particular year will not be fully apparent by the date of publication of the Annual Report for that particular year. Because the Minister will usually have to engage with the COS, and possibly other agencies, prior to a decision to accept or reject a Recommendation, it is not normal that there will be an immediate decision made, and a communication of that decision made to my office. The average time taken for the Minister to respond with his decision is 3 months. This is considerably faster than pre 2020. However, on those few occasions where there is a significant degree of urgency with a Recommendation decision the Minister has responded without delay.





“

While most ODF investigations are conducted without a need to personally interview a complainant, the ODF does, on occasion, interview complainants, and possibly witnesses also.



**45 Notifications of Complaint were received in 2023. This was a small 20% decrease on the 54 Notifications of Complaint received in 2022.**

# 5 Case Summaries

## Introduction

Previous Annual Reports, from 2006 to 2022, have included a section in which details of, usually, 6 cases investigated in the relevant year are summarised, with the avoidance of information likely to easily identify the complainant, or, indeed, the identity of those complained about.

The necessary task of, on the one hand, providing a reasonably comprehensive summary and account of findings made, and, on the other hand, protecting the identities of all concerned, is often an extremely difficult one. Even with the best of efforts made in this regard it will probably still be the case that the identities of a complainant, and of others associated with the complainant, will be reasonably obvious to some colleagues, because of specific facts necessarily disclosed. It should be added however that this office has not to date received any complaints from individuals concerning the disclosure of potentially identifiable information in recent years.

The confidentiality of complaints, complainants and individuals named in association with complaints, is

of extreme importance, as any breach or potential breach of confidentiality seriously undermines the complaint investigation process.

In order to further enhance the appropriate and required degree of confidentiality properly expected of the complaint investigation process, this section of the Annual Report will, for 2023, reveal less information about the facts or background to particular complaints, but will concentrate on indicating conclusions and findings in a greater number of cases than the previous six per Annual Report. This will provide a greater flavour of the variation of issues which are the subject of complaints in any given year as well as indicating the outcomes in such cases.

As before, great care is taken to avoid the identification of individuals featuring in individual complaints. Names, dates, locations and other easily identifiable information may therefore be omitted or altered.



### “Undertakings” (3 complaints)

“Undertakings” (or “GUFs”, as they are often referred to) are agreements entered into by PDF personnel which facilitate their attendance at colleges and universities to study for qualifications and degrees at the States’ expense. They provide for the repayment to the Department of Defence of sums calculated in accordance with ascertained formulae in the event of personnel leaving the PDF within a stated number of years post qualification. Such agreements are common within the public service.

The three complaints received during 2023 all related to either the calculation of the amounts claimed as being due by the Department and/or delay or difficulty in obtaining notification of the amounts due.

Some of the ODF’s conclusions and observations in these cases were: -

- (i) There was a failure on the DF’s part in not providing the complainant with a “balancing statement” within a reasonable period after completion of his training scheme. This was required under the terms of CCR 446, and, if done, would have enabled the complainant to challenge its content should he have wished to do so, and also, importantly have provided him with essential financial information to plan and facilitate a subsequent decision to consider retirement from the DF.
- (ii) Clause 8 of CCR 425 imposes an obligation on the Defence Forces to provide the USAC participant with a “Balancing Statement” on completion of his studies. In the complainant’s case this should have occurred in 2013, and it did not. This was a significant omission. Had it been provided, the complainant would have had the opportunity to challenge its content (albeit, the ODF believes, with little chance of doing so successfully in this instance), and, more importantly, the opportunity to plan his future with the knowledge of his potential liability to the State in the event of a decision to take early retirement.
- (iii) The ODF expressed his satisfaction that the Department has a duty to accede to a request from a GUF signatory to provide an Undertaking calculation in circumstances where early retirement is being considered. In the

complainant’s case he states that such a request was rejected prior to his application to retire.

The ODF accepted that providing such calculations may result in an increased workload for the Department because such calculations require considerable time and effort. Nonetheless, the provision of such calculations, when requested, is necessary and reasonable in order to enable Defence Forces members make informed decisions relating to early retirement.

- (iv) The complainant has been wronged by the DF’s failure to provide him with a “Balancing Statement” within a reasonable period following the completion of his course in mid-2022.
- (v) The complainant has been advised that the provision of a “Balancing Statement” as a necessary prelude to discharge will take 6 months. While the ODF acknowledged that the preparation of a “Balancing Statement” is time consuming, he believed 6 months to be an unreasonably lengthy period where an individual has actually applied for discharge. A more reasonable period might be 2 to 3 months.
- (vi) The complainant has been advised (as others have also to my knowledge) that a “Balancing Statement” can only be prepared - albeit with a 6 month delay - in circumstances where discharge has been applied for. The ODF believed this ‘rule’ is wrong and unfair as it imposes an obligation on a DF member to seek his/her discharge before ascertaining his/her GUF liability, and also in circumstances where he/she may be undecided as to whether or not he/she intends to, or wants to, leave the DF. He/she may simply want to ascertain his/her GUF liability in order to decide if it is feasible to leave the DF.
- (vii) In the complainant’s case, he applied for discharge barely one month ago and also sought a “Balancing Statement”. The ODF believed it unreasonable to expect a “Balancing Statement” to be provided within a month.

In all three cases the ODF made a total of 7 Recommendations to the Minister for Defence designed to remove the deficiencies associated with the management of “Undertakings”. All 7 Recommendations have been accepted by the Minister.



### Flag Flying at Collins Bks, Cork

The ODF received a complaint from a retired member of the PDF in relation to the flying of the “Pride” flag at the entrance to Collins Bks in Cork. The ODF decided he lacked jurisdiction to investigate the complaint. He stated: -

- Section 6 of the 2004 Act stipulates the categories of persons who may make a complaint to the Ombudsman for the Defence Forces.
- In relation to former members of the Defence Forces (of which the complainant is one), Section 6(2) states as follows: -

“A former member of the Defence Forces may, subject to this Act, make a complaint to the Ombudsman concerning an action if it has affected that former member and was taken while he or she was a serving member of the Defence Forces by or on behalf of—

(a) a serving member of the Defence Forces,

(b) a former member of the Defence Forces while he or she was a serving member of the Defence Forces, or

(c) a civil servant.”

Section 6(3) states as follows: -

“A complainant shall make a complaint referred to in subsections (1) and (2) not later than 12 months from—

(a) the date of the action concerned, or

(b) the date on which the complainant became aware of the action, whichever is the later.”

- This complaint did not concern an “action” which occurred while the complainant was a serving member of the Defence Forces (i.e., on or before November 2019). The ODF was therefore unable to investigate the complaint by virtue of Sections 6(2) and 6(3) of the 2004 Act.

**Delay in completing personal documentation**

The complainant complained of a delay in completion of his AF667 (annual assessment) and his “performance appraisal” in said document.

The ODF found as follows: -

- (i) The Complainant’s AF667 for the year (in question) should have been completed and forwarded to the Officer I/C Records on or before 31 March (of following year), as per Admin Instr 1/96. This Requirement was not complied with, and the Complainant was not advised of its content until 06 June (of following year). While the delay was not excessive, it nonetheless constituted a wrong to the Complainant
- (ii) Based on the information provided to the ODF, the AF667 was reviewed and fairly revised following representation made by the Complainant. In particular, his overall assessment was changed from “Below Average” to “Above Average”.
- (iii) The allegation that (name of officer) “intentionally” underscored the Complainant in 4 key areas in his AF667 for (the year in question) because of an earlier and separate complaint by the Complainant against him was not proven.
- (iv) (Name of officer) did not breach confidentiality in discussing aspects of the Complainant’s performance with F/Sgt (blank) in relation to the compilation of the AF667 for (the year in question).





## Dissatisfaction with Promotion Board outcomes

One of the many complaints received in 2023 in relation to “Promotion” issues concerned the disappointment and disagreement of a candidate in a Promotion competition with his result.

The ODF found as follows: -

- (i) The convening and establishment of the Promotion/Selection Board in this instance was in accordance with the provisions of Admin Instrs Pt. 10.
- (ii) The documentation and information required to be on the complainant’s Promotion Sub-File, and available for inspection by the Selection Board was, with the exception of the (blank) AF 667, included in the Promotion Sub-File, and was available for inspection by the Selection Board. The ODF made this finding on the basis of the evidence provided by Capt. (blank), and as confirmed to the satisfaction of the complainant following his FOI application.
- (iii) The FOI released documentation indicates that the scores awarded to the complainant were awarded on the basis of a proper, independent and appropriate assessment and marking process.
- (iv) While the complainant is entitled to express his disappointment and rejection of what has been described by him as his “extremely poor score”, and his (blank) place in the OOM, it would be inappropriate for me to undermine or question or second-guess this outcome in the absence of clear evidence that the competition and/or interview process was defective or flawed either generally or in relation to the complainant. There is no evidence that it was either.
- (v) In these circumstances the ODF did not uphold this complaint.

## Jurisdiction Issue

The complainant referred a complaint to the ODF in June 2023 concerning an event (relating to Overseas Service) which occurred in 2014, prior to his retirement from the PDF in 2015. The ODF found that he did not have jurisdiction to investigate because the referral of the complaint fell foul of the limitation periods set forth in the Ombudsman (Defence Forces) Act 2004 for referring a complaint to the ODF.

The ODF stated, as follows: -

- (i) Section 6(3) of the Ombudsman (Defence Forces) Act 2004 provides:
  - “A complainant shall make a complaint referred to in subsections (1) and (2) not later than 12 months from—
  - (a) the date of the action concerned, or
  - (b) the date on which the complainant became aware of the action,
 whichever is the later.”
- (ii) The complainant was aware of the outcome of his ROW application in late 2014, and he retired from the Defence Forces on 31 May 2015, approximately 8 years prior to the referral of his complaint to my office. By any measure, the complainant failed to satisfy the limitation periods provided for in Section 6(3) of the Act of 2004, thereby depriving the ODF of jurisdiction to investigate the complaint.
- (iii) As a gesture of goodwill the ODF wrote to the Defence Forces requesting that a written decision of his 2014 ROW application be conveyed to the complainant as soon as possible.

## Covid-19 Vaccine

This complaint concerned DF efforts to persuade the complainant to take a vaccine booster.

The ODF arrived at the following conclusions: -

- (i) The evidence (and particularly that of CQMS (blank)) suggests that Capt (blank) endeavoured to ensure that all members of his Unit would receive Covid-19 vaccine boosters in order to enable their continuing to work in close proximity to other colleagues, including vulnerable individuals (in the context of Covid), as was CQMS (blank) at that time.
- (ii) Whether such efforts were or were not excessive is not the issue in this case, as the complainant

does not contend that he was inappropriately forced or coerced into being vaccinated. There is, in any event, no evidence which would reasonably suggest that Capt (blank)'s efforts in this regard were excessive. At most, it might be said that he put pressure on the complainant (and others) to get vaccinated, but a degree of pressure was undoubtedly justified in circumstances where he, in his capacity as Commander, had to have regard to the welfare of the men and women in his Unit.

- (iii) In the circumstances, and for the reasons explained above, the ODF was unable to uphold the complaint in this instance.

## Course Selection Issue

The complainant contended that he had been wronged in not being selected for a place on a specialist course conducted by an external college. The ODF upheld his claim, as summarised below: -

- He found that the complainant's marks in the four categories (as per the Scoring Matrix) of concern as detailed by him were unfairly assessed and computed. It is not possible, or he believed appropriate, for him to identify precisely the marks denied to the complainant, save to observe that the deficiency could be as great as 26, although a somewhat lower figure is more realistic. The ODF noted that the difference between the complainant's total score and that of the lowest successful candidate (Cpl (blank)) is approximately 12 marks, which is less than half of the potential mark deficiency of 26. It is likely therefore that the complainant would have made it into the top 6 in the OOM, and therefore achieved selection for the course, had he been questioned and marked fairly.
- At this point in time, some 4 months post the

competition, and just weeks before the course is due to commence, it is not practical to re-run the competition, nor would it be fair to those who were successful. It is, as the ODF indicated, impossible to accurately access the marks that should have been awarded to the complainant had the Scoring Matrix been correctly followed and adhered to in his case. What is clear, it appears to the ODF, is that the complainant has suffered an injustice in relation to his participation in the selection process, and it is imperative that steps be taken to rectify this injustice. One obvious step is to add the complainant to the list of successful candidates. This would obviously require the co-operation of the (course provider), the organiser of the course.

(The Minister accepted the ODF's Recommendation that the complainant be provided with a place on the next available similar course, commencing early in 2024. The complainant has been accommodated accordingly).

## Another Course Selection Issue

This complainant took issue with a stipulated criteria for entry into a particular NCO Course which required him to successfully complete a fitness test “within 12 weeks prior to the commencement of the course” (and which he was unable to satisfy because of an injury), and also a ‘tweaking’ of that criteria to facilitate a pregnant member of the DF.

The ODF’s observations and conclusions included the following: -

- (i) GRO 04/2015 was introduced on 4 March 2015 pursuant to DFR. It is designed (inter alia) to enable members of the DF who are pregnant to participate in DF activities to the greatest extent possible while pregnant in order to ensure minimal interference with their career prospects, and to ensure compliance with relevant legislation. By definition therefore, this means that, in particular situations – such as course entry criteria – different rules, or a relaxation of rules, may necessarily apply to, on the one hand male and non-pregnant female personnel, and, on the other hand, pregnant personnel.
- (ii) Essentially, the complainant’s contention is that the stated entry requirement for the NCO course of completion of a Fitness Test within a 12 month period, if relaxed or tweaked to facilitate the physical and health restrictions that are associated with pregnancy, constitute impermissible discrimination against him as a male (and by extension, also, against non-pregnant females). The ODF did not accept that this is a sustainable view, as there is a legal requirement for an employer to have in place proper provision to exclude discrimination against pregnant women. If the entry criteria rules were designed in a way that they could only be satisfied by able bodied and fully fit personnel this could amount to discrimination against pregnant women because of the physical limitations which usually accompany pregnancy, subject, necessarily, to the physical demands of the course being applied for. Such demands could, in particular circumstances, make such entry criteria unavoidable for all candidates, including pregnant candidates.





**A Notification of Complaint is generated at the time the complaint is initially submitted to the Defence Forces and a copy is forwarded to the ODF. It is NOT a referral of a complaint to the ODF.**





## Course Selection

The complainant's application for a place in a Snr. NCO Logs Course was rejected on the grounds (a) that it had not reached the appropriate office in sufficient time, (b) his required Manual Handling Course (MHC) qualification was out of date and would not be completed by the closing date for applications, and (c) a required fitness test would not be completed by that closing date.

In fact, the complainant's application was handed in 2 days prior to the advertised closing date, but he was informed that a directive in 2019 (RO No. 05/2019) required course applications to be submitted "at least 5 (five) working days prior to the closing date as published in Routine Orders (RO)".

However, the 2023 RO which advertised the Snr NCO Logs Course applied for by the complainant, and which was displayed on Ord Room Notice Board, specified the application closing date and made no reference to the 2019 directive that applications had to be submitted at least 5 days prior thereto.

The ODF ruled in favour of the complainant in relation to the closing date issue, the MHC issue and the fitness test requirement.

He stated: -

- (i) The complainant was entitled to prepare and submit his application for the 2nd Senior NCO Logs Course on the assumption that the content of the Notification in RO 32/2023 was accurate and correct, and would be adhered to, and more particularly that the closing date was, as stated, 16 August 2023 and in circumstances where a change or alteration in the closing date was not adequately brought to his notice.
- (ii) The failure to properly and adequately notify would be applicants for the course – including the complainant – that the "5 day rule" applied to all, or some categories, of applicants, was a serious failure of communication.
- (iii) Capt (blank), maintained that the 6/3/2019 notice had been displayed on the notice board outside Ord Room 5, but the complainant never saw it. Furthermore, the notice was not displayed on the notice board on 25 September 2023 (as established by photographs provided by the complainant), when checked at the request of the ODF.

- (iv) The ODF found therefore, on the balance of probability, that the 6/3/2019 notice was not so displayed on or close to 14 August 2023, and the complainant therefore had no reasonable, means or opportunity to learn of the “5 day rule”.
- (v) Even if the 06/03/2019 was displayed on the Notice Board at some stage prior to 14 August 2023, there was a duty on the part of those charged with the administration of the course (including all aspects of entry to the course) to ensure that would-be applicants were aware (and reminded) that the actual closing date was 5 days prior to the advertised date of 16 August 2023. The best, and most obvious, way of communicating this essential information was to include it in the body of the joining instruction document. An obscure notice on a Notice Board which might or might not be seen and read, and which may or may not have been on the Notice Board at the relevant time, (and which as a matter of probability was not there), did not satisfy that duty to sufficiently communicate such vital information.
- (vi) Having regard to the fact that the complainant’s application was unfairly rejected because it was late – having failed to satisfy the ‘5 day rule’-

the additional reasons given by the Ord Room for its rejection were rendered superfluous, namely, that the complainant’s manual handling course (MHC) was out of date and would not be renewed prior to the official closing date of 16 August 2023. This was incorrect information because, as per para 7(f) of Snr NCO Logs Course, TS Logs 67/2020, the MHC had to be completed prior to the course commencement date. In fact, the complainant secured this course well before the course commencement date.

- (vii) Equally, the suggestion that the required fitness test within 12 months would be measured up to the official application closing date was incorrect information, as the TS Logs 67/2020, which was stated would be used to determine Qualifying Criteria, stipulated that the 12 months would be measured up to the course commencement date, and which the complainant went on to satisfy.
- (viii) For the reasons stated above the ODF upheld this complaint and found that the complainant had been wronged, with significant immediate consequences for his career progression.

The ODF recommended that the complainant be provided with a place on the next NCO Logs Course “subject to the required criteria being satisfied.”



## Meritorious Promotion

DFRA A10 (para 38) and Admin Instr. Pt 10 (para 305) provide for promotion to the rank of Cpl for “meritorious service or distinguished conduct”, and where the DF member has given “long and loyal service”, and is considered unsuitable because of age to undergo a Potential NCO’s Course, a prerequisite to such promotion ordinarily.

The complainant (who had 42 years’ service in the DF), in this case took issue with the decision to refuse him a Meritorious Promotion because of his lack of overseas service. His one overseas deployment had occurred many years previously. He was also critical of the fact that he was informed of the refusal decision in, what he described as, a “ten second” phone call.

The ODF upheld this complaint. He commented as follows: -

- (i) The decision in December (year) to reject the complainant’s application for meritorious promotion has all the hallmarks of being arbitrary. It was a decision taken at CO level, thereby denying the complainant the possibility

that an overall assessment of his suitability for meritorious promotion by DCOS (Sp) may have had a positive outcome. Capt (blank)’s suggestion of the list of considerations likely to inform the DCOS (Sp) in his decision lists overseas service as just one of a lengthy list of such considerations, and does not indicate it as being essential.

- (ii) In addition to the December (year) decision appearing somewhat arbitrary, it is also a matter of disquiet that a member of the DF with over 40 years of loyal service would receive notification of his application for meritorious promotion in a “ten second” phone call. He deserved, at a minimum, a person to person meeting with his CO (or another officer), and a full explanation as to the reasons for his rejection. He, regretfully, did not receive this. Had this been done it is probable that the complainant would have been confident enough to try a second time.

The ODF Recommended that the complainant be permitted to re-apply and be afforded assistance in completing his application.

## Communication Issue

In relation to a complaint of a failure to inform an unsuccessful career course applicant of the reasons for the lack of success, the ODF stated: -

- (i) Issues arising from a failure to inform unsuccessful applicants for Career and Training Courses, and for Promotion Competitions, within a reasonable period of time, or, indeed on occasion, at all, of their application being unsuccessful, and, where appropriate, the reasons for such outcome, is a theme of a number complaints referred to my office over recent years. Unsuccessful candidates are entitled to be advised of the outcome and reason(s) for same within a reasonable time, as a matter of respect and fairness. The ODF suggested a reasonable time would normally be within 7 days. He also believed that it should be a basic requirement that the unsuccessful candidate be advised in writing by his OC or another officer

nominated for this purpose. Such a practice will likely forestall many of these complaints, and the sense of grievance or bitterness that often follows non-selection.

The ‘parading’ option may be appropriate in addition to the written notification, but parading may not always be practical or possible within a timely fashion.

- (ii) The ODF Recommended that the practice be adopted of unsuccessful applicants for selection for Career and Training Courses, and for Promotion Competitions, being advised in writing of the outcome of their application and the reasons for same within 7 days.

This Recommendation has been accepted by the Minister.

## Marks Awarded in Promotion Competition

The complainant was dissatisfied with marks awarded to him under specific category headings in a Promotion Competition.

The ODF did not uphold this complaint. The ODF noted the following: -

- (i) The process of scoring individual candidates under various category headings in a Promotion Competition is not an exact science, nor could it reasonably be expected to be. What is important is that the rules and guidelines built into the process are designed to ensure fairness and avoid discrimination and favouritism.
- (ii) While there is a significant difference between the File and Interview Scores for “Military Experience and Engagement” which might understandably give rise to a suspicion of error, or even unfairness, it is none-the-less possible that a candidate may perform exceptionally well at interview and thereby produce a markedly higher score than was achieved at File Review. The built-in safety factor of the three Board members separately and individually assessing files and then averaging the scores awarded by each member, and the added proviso that a significantly lower or higher score awarded by one member will be the subject of analysis and discussion by all three members, is designed to render the process as fair as possible.

In a separate, but broadly similar, complaint, a complainant received the following outcome from the ODF: -

- (i) While absolute consistency in marks awarded to a candidate in two separate course selection competitions (for similar courses) is an unreasonable and unattainable expectation having regard to the fact that the selection boards are differently constituted. Equally, in this case, the very significant reduction of marks in some criteria in a recent competition, compared to a similar competition just months previously is strongly suggestive that the marks awarded in the recent competition for those criteria do not, and cannot, represent a fair and reasonable outcome for the complainant.
- (ii) This conclusion is supported by the successful outcome of the complainant’s appeal of the marks,

awarded for some criteria, particularly the extent of the increases in marks awarded, on appeal, in the criteria of home Military Experience, Conduct and Overseas. Unfortunately, in the absence of a written appeal decision, the rationale for substantially increasing these marks (and for not increasing others) remains unknown.

- (iii) The complainant was wronged in not receiving a written decision of his appeal, as required by Para 505 (f) of Admin Instr A.10.
- (iv) The other possibility of course is that some of the previously awarded marks were entirely inaccurate and inappropriate (such a possibility was suggested by the MIO). However, such a scenario was unlikely, and was in any event not the subject of this investigation, nor indeed was it the subject of investigation by the MIO.

The ODF Recommended that this complainant be selected for the next similar course.

This Recommendation was accepted by the Minister.







41 Direct Referrals were made to the ODF for Investigation. Direct Referrals can come from Serving Members and Retired Members.



## 4 Corporate Affairs

### Staffing

The staffing of the ODF consists of:

- Brian O’Neill, Head of Office.
- Lorraine O’Dwyer, Case Manager.
- John Sheridan, Executive Officer.

### Review of Internal Financial Controls

In common with other publicly-funded Offices, the ODF conducted a formal review of Internal Financial Controls in 2022. 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.

### Freedom of Information

Under the provisions of the Freedom of Information (FOI) Act 2014 individuals have a right to:

- Access records held by a Government Department or certain public bodies, including the ODF;
- Request correction of personal information relating to an individual held by a Government Department or certain public bodies, including the ODF, where it is inaccurate, incomplete or misleading;
- Obtain reasons for a decision made by a Government Department or certain public bodies, including the ODF, where the decision affects an individual.

### What records can I ask for under FOI?

Subject to the provisions of the Ombudsman (Defence Forces) Act 2004 detailed below, an individual can ask for the following records held by the ODF:

- Any records relating to an individual personally, whenever created;
- Any other records created since the establishment of the ODF in December 2005.

A ‘record’ can be a paper document, information held electronically, printouts, maps, plans, microfilm, etc.



**Information precluded under Section 10 of the Ombudsman (Defence Forces) Act 2004**

Section 10 deals with the secrecy of information gathered by the ODF in relation to complaints investigated or being investigated. It states:

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

(a) the preliminary examination or the

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

*In simple terms, the Freedom of Information Act applies only to the administrative files held by the Ombudsman for the Defence Forces. Investigation files are not subject to the provisions of the FOI Act.*



# 4 OMBUDSMAN (DEFENCE FORCES) ACT 2004

Number 36 of 2004

OMBUDSMAN (DEFENCE FORCES) ACT 2004

## ARRANGEMENT OF SECTIONS

### Section

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

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

#### Acts Referred to

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

**Number 36 of 2004**

**OMBUDSMAN (DEFENCE FORCES) ACT 2004**

AN ACT TO PROVIDE FOR THE APPOINTMENT AND FUNCTIONS OF AN OMBUDSMAN FOR THE DEFENCE FORCES, TO AMEND THE DEFENCE ACT 1954 AND TO PROVIDE FOR RELATED MATTERS.

[10th November, 2004]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

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

“Act of 1954” means the Defence Act 1954;

“Act of 1980” means the Ombudsman Act 1980;

“action” means—

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

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

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

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

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

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

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

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

“military operation” means—

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

“Minister” means the Minister for Defence;

“Ombudsman” means the person appointed as Ombudsman for the

Defence Forces under *section 2(2)*;

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

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

(2) In this Act—

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

the provision in which the reference occurs, unless it is indicated that a reference to some other provision is intended, and

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

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

- (2) The appointment of a person to be the Ombudsman for the Defence Forces shall be made by the President on the recommendation of the Government.
- (3) Subject to this Act, a person appointed under *subsection (2)* shall hold office on such terms and conditions as the Minister may, with the consent of the Minister for Finance, determine.

(4) A person appointed to be the Ombudsman—

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

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

(6) If the person holding the office of the Ombudsman is—



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





- (2) Subject to this Act, the Ombudsman may investigate any action that is the subject of a complaint made by a person affected by the action if, having carried out a preliminary examination of the matter, it appears to the Ombudsman that—
- (a) the action has or may have adversely affected the complainant,
  - (b) the action was or may have been — (i) taken without proper authority, (ii) taken on irrelevant grounds, (iii) the result of negligence or carelessness, (iv) based on erroneous or incomplete information, (v) improperly discriminatory, (vi) unreasonable, notwithstanding consideration of the context of the military environment, (vii) based on undesirable administrative practice, or (viii) otherwise contrary to fair or sound administration,
  - (c) the action was not an order issued in the course of a military operation, and
  - (d) in the case of a serving member of the Defence Forces, the matter is not likely to be resolved and a period of 28 days has expired since the complaint was made under section 114 of the Act of 1954.
- (3) The Ombudsman may—
- (a) decide not to carry out an investigation under this Act into an action that is the subject of a complaint, or
  - (b) discontinue an investigation under this Act into an action that is the subject of a complaint, if he or she is of the opinion that—
    - (i) the complaint is trivial or vexatious,
    - (ii) the complainant has an insufficient interest in the matter,
    - (iii) satisfactory measures to remedy, mitigate or alter the adverse effect of the action on the complainant have been taken or are proposed to be taken, or



**Of the 41 Direct Referrals made to the ODF, 5 were from Retired Members and 36 were from Serving Members.**

- (iv) the complainant has not taken reasonable steps to seek redress in respect of the subject matter of the complaint or, if the complainant has taken such steps, he or she has not been refused redress.
  - (4) It shall not be necessary for the Ombudsman to investigate an action under this Act if he or she is of the opinion that the subject matter concerned has been, is being or will be investigated in a similar manner under another investigation by the Ombudsman under this Act.
  - (5) A preliminary examination or an investigation by the Ombudsman shall not affect the validity of the action investigated or any power or duty of the person who took the action to take further action with respect to any matters the subject of the preliminary examination or investigation.
  - (6) In determining whether to initiate, continue or discontinue an investigation under this Act, the Ombudsman shall, subject to the provisions of this Act, act in accordance with his or her own discretion.
  - (7) A member of the Defence Forces—
    - (a) who makes a complaint to the Ombudsman concerning an action taken by or on behalf of a civil servant shall not, subsequently, make a complaint about the same matter to the Ombudsman appointed under the Act of 1980, or
    - (b) who makes a complaint to the Ombudsman appointed under the Act of 1980 in relation to an action taken by or on behalf of a civil servant shall not, subsequently, make a complaint about the same matter to the Ombudsman.
  - (8) Nothing in *subsection (2)(a)* or *section 6* shall be construed as prohibiting the investigation by the Ombudsman of—
    - (a) an action that is the subject of a complaint by a complainant which, in the opinion of the Ombudsman, has or may have affected the complainant other than in an official capacity, or
    - (b) an action that is the subject of a complaint by a complainant which was carried out, or may have been carried out, by a person acting other than in an official capacity.
  - (9) The Ombudsman shall furnish to the Minister such information regarding the performance of his or her functions as the Minister may from time to time request.
- 5.—(1) The Ombudsman shall not investigate any complaint concerning an action referred to in *section 6(1)* or *6(2)*—
- (a) if the action is one in relation to which—
    - (i) the complainant has initiated legal proceedings in any civil court and the proceedings have not been dismissed for failure to disclose a cause of action or a complaint justiciable by that court whether the proceedings have been otherwise concluded or have not been concluded, or
    - (ii) the complainant has a right, conferred by or under statute, of appeal, reference or review to or before a court in the State (not being an appeal, reference or review in relation to a decision of a court),
  - (b) if the action has been or is the subject of an investigation under section 179 of the Act of 1954 or by a service tribunal and is not an action concerning delay or any other matter concerning the administration of such investigations,
  - (c) if the Ombudsman is satisfied that the action relates to or affects security or a military operation,
  - (d) if the action concerns—
    - (i) any matter relating to the terms or conditions of employment in the Defence



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

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

(e) if the action is one—

(i) involving the exercise of the right or power referred to in Article 13.6 of the Constitution or the remission of any forfeiture or disqualification imposed by a subordinate officer pursuant to section 179 of the Act of 1954 by a service tribunal or by the Courts Martial Appeal Court, or

(ii) that concerns the administration of military prisons or places of detention for the custody of members of the Defence Forces committed to custody by a service tribunal or otherwise,

(f) if the complaint concerned has not been

made within the period specified in *section 6(3)*, or

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

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

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

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

6.—(1) A serving member of the Defence Forces may, subject to this Act, make a complaint

to the Ombudsman concerning an action if it has affected that member and was taken by or on behalf of—

- (a) another serving member of the Defence Forces,
- (b) a former member of the Defence Forces while he or she was a serving member of the Defence Forces, or
- (c) a civil servant.

(2) A former member of the Defence Forces may, subject to this Act, make a complaint to the Ombudsman concerning an action if it has affected that former member and was taken while he or she was a serving member of the Defence Forces by or on behalf of—

- (a) a serving member of the Defence Forces,
- (b) a former member of the Defence Forces while he or she was a serving member of the Defence Forces, or
- (c) a civil servant.

(3) A complainant shall make a complaint referred to in *subsections (1) and (2)* not later than 12 months from—

- (a) the date of the action concerned, or
- (b) the date on which the complainant became aware of the action, whichever is the later.

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

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

- (a) the Minister and to all persons concerned with the complaint, and

(b) any other person to whom he or she considers it appropriate to send the statement.

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

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

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

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

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

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

(7) The Ombudsman shall, as soon as may be, but not later than 4 months after the end of


each year, cause a report on the performance of his or her functions under the Act to be laid before each House of the Oireachtas and may from time to time cause to be laid before each such House such other reports with respect to those functions as he or she thinks fit.

- (8) An annual report referred to in *subsection (7)* shall be in such form and regarding such matters as the Ombudsman thinks fit or the Minister may direct.
- (9) For the purposes of the law of defamation, any such publication as is hereinafter mentioned shall be absolutely privileged, that is to say—
  - (a) the publication of any matter by the Ombudsman in making a report to either House of the Oireachtas for the purpose of this Act, and
  - (b) the publication by the Ombudsman—
    - (i) to a person mentioned in *subsection (1)* of a notification sent to that person in accordance with that subsection,
    - (ii) to a person mentioned in *subsection (2)* of a statement sent to that person in accordance with that subsection,
    - (iii) to the Minister of a recommendation made to the S.7 Minister by the Ombudsman in accordance with *subsection (3)*, and
    - (iv) to the complainant of a notification given to the complainant by the Ombudsman under *subsection (4)*.

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

examination or investigation to furnish that information, document, part of a document or thing to the Ombudsman and, where appropriate, may require that person to attend before him or her for that purpose and the person shall comply with the requirements.

- (b) *Paragraph (a)* shall not apply to information, a document, part of a document or thing that relates to decisions and proceedings of the Government or of any committee of the Government and for the purposes of this paragraph a certificate given by the Secretary General to the Government certifying that any information, document, part of a document or thing so relates shall be conclusive.
- (c) *Paragraph (a)* shall not apply to information, a document, part of a document or thing that concerns any matter relating to security or a military operation and for the purposes of this paragraph a certificate given by the Minister, on the advice of the Chief of Staff, certifying that any information, document, part of a document or thing was so concerned shall be conclusive.
- (2) Subject to this Act, a person to whom a requirement is addressed under this section shall be entitled to the same immunities and privileges as if he or she were a witness before the High Court.
- (3) A person shall not by act or omission obstruct or hinder the Ombudsman in the performance of his or her functions or do any other thing which would, if the Ombudsman were a court having power to commit for contempt of court, be contempt of such court.
- (4) Any obligation to maintain secrecy or other restriction on the disclosure of information obtained by or furnished to a Department of State or civil servant imposed by the



“  
52 Reports were issued in 2023, one of which was a Supplemental Report. This represents a 108% increase in the number of cases concluded by the ODF in 2023 compared to the previous year.

Official Secrets Act 1963 shall not apply to a preliminary examination or an investigation by the Ombudsman under this Act and, subject to *section 10(3)*, the State shall not be entitled in relation to any such preliminary examination or investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

(5) The Ombudsman may, if he or she thinks fit, pay to the person affected by an action in respect of which an investigation is held by the Ombudsman and to any other person who attends or furnishes information for the purposes of the investigation—

- (a) sums in respect of travelling and subsistence expenses properly incurred by them, and
- (b) allowances by way of compensation for loss of their time, of such amount as may, with the consent of the Minister for Finance, be prescribed by the Minister.

(6) A statement or admission made by a person in a preliminary examination or an investigation under this Act shall not be admissible as evidence against that person in any criminal proceedings.

(7) Nothing in *subsection (3)* shall be construed as applying to the taking of any such action as is mentioned in *section 4(5)* of this Act.

(8) In this section “Chief of Staff has the meaning assigned to it by the Act of 1954.

9.—(1) An investigation by the Ombudsman under this Act shall be conducted otherwise than in public.

(2) Where the Ombudsman proposes to carry out an investigation under this Act into an action that is the subject of a complaint he or she shall afford the Minister, a civil servant, any member of the Defence Forces, the person who is alleged to have taken or authorised the action or on whose behalf the action is

alleged to have been taken or authorised, and any other person who, in the opinion of the Ombudsman, is appropriate, having regard to the complaint, an opportunity to comment on the action and on any allegation contained in the complaint.

(3) The procedure for conducting an investigation shall, subject to any regulations under *subsection (5)*, be such as is considered appropriate by the Ombudsman, having regard to all the circumstances concerned.

(4) The Ombudsman and any investigation officer shall have a right of access to any military installation for the purpose of conducting a preliminary examination or an investigation under this Act.

(5) The Minister may make regulations specifying the procedures, including notification procedures, to be applied to the exercise of the right of access referred to in *subsection (4)* for the purpose of conducting a preliminary examination or investigation under this Act.

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

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



(2) The Ombudsman or a member of the staff of the Ombudsman (including an investigation officer) shall not be called upon to give evidence in any proceedings, other than proceedings referred to in S.10 *subsection (1)(c)*, of matters coming to his or her knowledge in the course of a preliminary examination or an investigation under this Act.

(3) (a) The Minister may give notice in writing to the Ombudsman, with respect to any document, part of a document, information or thing specified in the notice, or any class of document, part of a document, information or thing so specified, that, in the opinion of the Minister, the disclosure (other than to the Ombudsman or a member of his or her staff including an investigation officer) of that document, that part of a document, that information or that thing or of documents, parts of a document, information or things of that class, would, for the reasons stated in the notice, be prejudicial to the public interest or to security.

(b) Where a notice is given under this subsection, nothing in this Act shall be construed as authorising or requiring the Ombudsman to communicate to any person or for any purpose any document, part of a document, information or thing specified in the notice or any document, part of a document, information or thing of a class so specified.

(4) Where a notice is given under *subsection (3)(a)*, the Ombudsman or a member of the staff of the Ombudsman (including an investigation officer) shall not disclose any—

(a) document, part of a document, information or thing specified in the notice, or

(b) class of document, part of a document, information or thing specified in the notice,

to any person or for any purpose and nothing

in this Act shall be construed as authorising or requiring the Ombudsman or a member of the staff of the Ombudsman (including an investigation officer) to disclose to any person or for any purpose anything referred to in *paragraph (a)* or *(b)*.

11.—(1) The Ombudsman shall, whenever required to do so by the Committee of Daíl Éireann established under the Standing Orders of Daíl Éireann to examine and report to Daíl Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to that Committee on—

(a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General which the Ombudsman is required to prepare under this Act,

(b) the economy and efficiency of the Ombudsman in the use of resources,

(c) the systems, procedures and practices employed by the Ombudsman for the purpose of evaluating the effectiveness of the operation of the office of the Ombudsman, and

(d) any matter affecting the Ombudsman referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993 or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in paragraph (a), (b) or (c)) that is laid before Daíl Éireann.

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

12.—(1) In this section “committee” means a committee appointed by either House of



Recognising the increasing diversity of Irish society, the ODF continues to develop its capacity to respond to the resulting diversity changes in the Defence Forces to ensure that it is available and accessible to everyone in the Defence Forces who needs its services and support.



the Oireachtas or jointly by both Houses of the Oireachtas (other than the committee referred to in section 11, the Committee on Members' Interests of Da'íl E'ireann or the Committee on Members' Interests of Seanad E'ireann) or a subcommittee of such a committee.

- (2) Subject to *subsection (3)*, the Ombudsman shall, at the request in writing of a committee, attend before it to account for the general administration of the Office of the Ombudsman.
- (3) The Ombudsman shall not be required to account before a committee for any matter which is or has been or may at a future time be the subject of proceedings before a court or tribunal in the State.
- (4) Where the Ombudsman is of the opinion that a matter in respect of which he or she is requested to account before a committee is a matter to which *subsection (3)* applies, he or she shall inform the committee of that opinion and the reasons for the opinion and, unless the information is conveyed to the

committee at a time when the Ombudsman is before it, the information shall be so conveyed in writing.

- (5) Where the Ombudsman has informed a committee of his or her opinion in accordance with *subsection (4)* and the committee does not withdraw the request referred to in *subsection (2)* in so far as it related to a matter the subject of that opinion—
  - (a) the Ombudsman may, not later than 21 days after being informed by the committee of its decision not to do so, apply to the High Court in a summary manner for a determination as to whether the matter is one to which *subsection (3)* applies, or
  - (b) the chairperson of the committee may, on behalf of the committee, make such an application, and the High Court may determine the matter.
- (6) Pending the determination of an application under *subsection (5)*, the Ombudsman shall not attend before the committee to account for the matter the subject of the application.

- (7) Where the High Court determines that the matter concerned is one to which *subsection (3)* applies, the committee shall withdraw the request referred to in *subsection (2)*.
- (8) Where the High Court determines that *subsection (3)* does not apply, the Ombudsman shall attend before the committee to give account for the matter.

13.—Section 114 of the Act of 1954 is amended—

- (a) in subsection (1), by the substitution of “Chief of Staff” for “Minister”,
- (b) in subsection (2), by the deletion of “who, if so required by the man, shall report on the matter of complaint to the Minister”, and
- (c) by the insertion after subsection (3) of the following subsections:

“(3A) The Chief of Staff shall cause every complaint seeking redress of wrongs under this section that is made in writing to be notified to the Minister and the Ombudsman for the Defence Forces as soon as practicable following the making of such complaint.

(3B) Where the Ombudsman for the Defence Forces has made a notification in writing in accordance with *section 7* of the *Ombudsman (Defence Forces) Act 2004*, that *section 5(1)(c)*, *section 5(1)(d)(ii)*, *section 5(1)(e)(ii)* or *section 5(1)(g)* of the *Ombudsman (Defence Forces) Act 2004* applies to a complaint made under that Act by an officer or a man, the officer or the man, as the case may be, may submit that complaint to the Minister for determination by him or her.

(3C) The Minister may make regulations concerning the manner in which a notification referred to in subsection (3A) of this section and a report on such notification are to be made and the manner in which a complaint is to be submitted under subsection (3B) and without prejudice to the generality of the foregoing, the regulations may—

- (a) specify a period or periods within which such reports are to be submitted and complaints referred, and

(b) the form and content of such notifications, reports and submissions.”.

14.—(1) The Minister may, with the consent of the Minister for Staff. Finance, appoint such and so many persons to be members of the staff of the Ombudsman as he or she may from time to time determine.

(2) A member of the staff of the Ombudsman shall be a civil servant in the Civil Service of the State.

(3) The appropriate authority, within the meaning of the Civil Service Commissioners Act 1956 and the Civil Service Regulation Acts 1956 to 1996 in relation to the staff of the Ombudsman shall be the Ombudsman.

(4) The Ombudsman may delegate to any member of the staff of the Ombudsman any function of the Ombudsman under this Act other than the functions referred to in *sections 7(5)*, *7(7)*, *11* and *12*.

(5) In this section “civil servant in the Civil Service of the State” means a person holding a position in the Civil Service of the State.

15.—(1) The Ombudsman may appoint in writing, either generally or in respect of any matter or event, such and so many members of the staff of the Ombudsman to be investigation officers for the purposes of all or any of the provisions of this Act and a person so appointed shall be referred to as an “investigation officer”.

(2) Every investigation officer appointed under this section shall be furnished with a warrant of appointment as an investigation officer, and when exercising any power conferred on him or her by this section as an investigation officer, shall, if requested by a person affected, produce the warrant or a copy of it to that person.

(3) The Ombudsman may revoke an appointment made under subsection (1).

(4) An investigation officer may, for the purpose

of obtaining any information which may be required in relation to the matter under investigation and in order to enable the Ombudsman to perform his or her functions under this Act, do any one or more of the following—

- (a) at all reasonable times enter any premises, including, subject to regulations under section 9(5), a military installation, in which there are reasonable grounds to believe that any activity in connection with a complaint is or has been carried on or that books, records or other documents in relation to a complaint are kept and search and inspect the premises and any books, records or other documents on the premises,
- (b) require a member of the Defence Forces or any other person to produce to the investigation officer any records and in the case of information that is kept in a non-legible form to reproduce it in a legible form or to give to him or her such information as the investigation officer may reasonably require in relation to any entries in such records,
- (c) inspect and take copies of or extracts from any such records, file, papers or electronic information system in, at or on the place, including in the case of information in a non-legible form, copies of or extracts from such information in a permanent legible form,
- (d) require any person to give to the investigation officer any information which the officer may reasonably require in relation to a preliminary examination or an investigation under this Act,
- (e) require any person to give to the investigation officer such facilities and assistance within his or her control or responsibilities as are reasonably necessary to enable the investigation officer to exercise any of the powers conferred on him or her by or under this Act, and
- (f) summon, at any reasonable time, any

person to give to the investigation officer any information which he or she may reasonably require and to produce to the investigation officer any records which are in the power or control of that person.

16.—(1) The Ombudsman shall keep in such form as may be approved by the Minister, with the consent of the Minister for Finance, all proper and usual accounts of moneys received or expended by him or her, including an income and expenditure account and a balance sheet and, in particular, shall keep all such special accounts as the Minister may from time to time direct.

- (2) Accounts kept in pursuance of this section shall be submitted, not later than 3 months after the end of the financial year to which they relate, by the Ombudsman to the Comptroller and Auditor General for audit and, immediately after the audit, a copy of the income and expenditure account, the balance sheet and of any other accounts kept pursuant to this section as the Minister, after consultation with the Minister for Finance, may direct and a copy of the Comptroller and Auditor General's report on the accounts shall be presented to the Minister who shall cause copies thereof to be laid before each House of the Oireachtas.

17.—Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next subsequent 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

18.—Any expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

19.—(1) This Act may be cited as the Ombudsman (Defence Forces) Act 2004.

(2) This Act comes into operation on such day or days as the Government may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes and different provisions.

### Protected Disclosures (Amendment of 2004 Act)

20. (1) Section 4 of the Ombudsman (Defence Forces) Act 2004 is amended by inserting the following subsection after subsection (3):

“(3A) If the complaint is that a person has penalised or threatened penalisation (within the meaning of the *Protected Disclosures Act 2014*) against, or caused or permitted any other person to penalise or threaten penalisation against, the Complainant for having made a protected disclosure (within the meaning of that Act), the Ombudsman—

(a) is not prevented from investigating any action that is the subject of the complaint,

and

(b) may not decide not to carry out, and may not decide to discontinue, an investigation into any such action, because no complaint has been made under section 114 of the Act of 1954.”.

(2) The amendment made by *subsection (1)* does not affect any right to complain, under section 114 of the Defence Act 1954, that a person has penalised or threatened penalisation against, or caused or permitted any other person to penalise or threaten penalisation against, the complainant for having made a protected disclosure or to submit any grievance in relation to such a complaint in accordance with regulations under subsection (4) of the said section 114.







Ombudsman for the Defence Forces  
15 Lower Hatch Street  
Dublin 2, Ireland

T: +353 1 663 3222  
F: +353 1 663 3223  
W: [www.odf.ie](http://www.odf.ie) E: [admin@odf.ie](mailto:admin@odf.ie)