

helping to achieve a public service which is...

# OPEN FAIR ACCOUNT- ABLE

annual report of the ombudsman 2000

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# HELPING TO ACHIEVE A PUBLIC SERVICE WHICH IS OPEN FAIR AND ACCOUNTABLE

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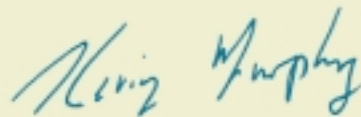
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## Foreword

I hereby submit my seventh Annual Report to the Dáil and Seanad pursuant to the provisions of Section 6(7) of the Ombudsman Act, 1980. This is the 17th Annual Report submitted in relation to the work of the Office of the Ombudsman since it was established in 1984.

A handwritten signature in dark ink, reading "Kevin Murphy". The signature is written in a cursive, flowing style.

Kevin Murphy  
Ombudsman

April 2001

# Chapter 1

## Introduction

HELPING TO ACHIEVE A PUBLIC SERVICE WHICH IS OPEN FAIR AND ACCOUNTABLE HELPING TO ACHIEVE A PU

# Introduction

This Report covers the final ten months of my first term as Ombudsman and also the first two months of my second term. I was reappointed by Her Excellency, Mary McAleese, President of Ireland, with effect from 1 November 2000 following resolutions, passed by Dáil Éireann and Seanad Éireann, recommending my appointment.

In Chapter Two I highlight a number of issues arising from complaints which are being examined by my Office. Chief among these is the difficulty I experience in examining local authority planning complaints in the current building boom. Coincidentally, the other issues which I raise in this Chapter also refer to local authorities.

In Chapter Three, entitled "The Ombudsman, the Law and the Citizen - a Values-based Approach, I reassess, in the light of what is referred to as the modernisation programme for the Irish public service, the role which the Office of the Ombudsman among others plays in supporting citizens in their interactions with the State. At the heart of the modernisation programme is the achievement of a fundamental change in public service bodies. Traditionally, these were highly centralised, rule-bound and inflexible and the task is to make them more adaptable and responsive to changing needs and demands. This will involve putting more emphasis on performance at both individual, team and organisation levels to achieve better outcomes and outputs. I attempt to assess the implications of these changes in the light of developments in administrative law by considering not only citizens' rights but also the values which underlie the relationship which the State should have with citizens. I also present accounts of some complaints which are relevant to these themes.

Chapter Four includes a more general range of cases which my Office dealt with during 2000 and Chapters Five and Six outline the details of the work of the Office together with statistical data and analysis of cases handled in 2000.

I am very grateful to my staff for their hard work and commitment throughout the year. I also wish to express my thanks to my Director General, Pat Whelan and to Tom Morgan and John Doyle for their work in the preparation of this Annual Report.

## Chapter 2

Issues arising in some current Complaints

**HELPING TO ACHIEVE  
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## Issues arising in some current Complaints

I am required to report annually to the Dáil and Seanad on the performance of my functions. In doing so I report on individual cases of interest or concern and I identify themes emerging from them. My Annual Report is also an opportunity to highlight systemic failures which I have identified and to put forward suggested remedies. From time to time I also comment on cases which serve to clarify my jurisdiction as this can be important from the point of view of prospective complainants. My Annual Report presents an opportunity to look back over the past year but also to highlight issues of on-going concern which will be receiving particular attention in the coming year.

In this Chapter I deal with the particular difficulties which planning complaints pose for my Office. I also clarify my jurisdiction in relation to the examination of complaints regarding certain fines. I then comment on the hardship being suffered by certain families with high interest local authority loans and my efforts to relieve the situation. Finally, I identify what I see as unacceptable policies being adopted by some local authorities in their handling of representations made to them on behalf of members of the public.

### Local Authority Planning Complaints

Ireland is experiencing a building boom at present. For instance, in 1989 local authorities received 41,924 planning applications. By 1999 this had risen to 80,261 applications. The boom has resulted in increasing numbers of planning complaints arriving in my Office as well as an increase in the number of day to day planning queries which my staff deal with over the telephone. My remit confines my role in planning matters to the examination of the administration of the planning process by local authorities and to their enforcement of the planning laws in instances where planning breaches arise. I cannot question decisions to grant or refuse planning permission as An Bord Pleanála provides an independent statutory appeals mechanism in relation to planning decisions.

From my point of view there are a number of factors which make it increasingly difficult to resolve planning complaints satisfactorily. The thrust of economic and political pressure is towards the completion of developments in as short a time frame as possible. In my view, what is being lost sight of is the very real adverse effect that building development can have on persons living in the neighbourhood of such developments. Industrial developments which are not tightly controlled can cause noise and air pollution. Unauthorised developments can encroach on the privacy of neighbouring properties. Unfinished housing estates can cause years of disruption and annoyance for householders. The individual cases I have seen confirm the extent and variety of the adverse effects which can arise.

To compound the difficulties faced by persons objecting to unauthorised developments, or developments which allegedly do not comply with planning permission, it is becoming all too apparent that very many local authority planning sections are understaffed. As a result the emphasis is on processing applications for planning permissions as opposed to policing breaches of planning permissions which have been granted or pursuing developers who have carried out unauthorised developments. Where it is evident that a breach has occurred or an unauthorised development is in place, I find that there is a marked reluctance on the part of local authorities to take developers to court. More often than not a hands off approach is adopted with developers being encouraged to apply for retention to regularise existing breaches, as opposed to being subjected to enforcement proceedings. While local authorities have discretion as to whether or not to take enforcement proceedings in individual cases, it seems to me that this discretion is very frequently exercised in favour of the developer. This, in turn, creates a climate which encourages developers to continue to breach the planning laws, particularly where full compliance is more costly and inconvenient for the developer. It also undermines public confidence in the

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planning process and increases public cynicism and the tendency to give credence to unfounded allegations of corruption and conflicts of interest on the part of public officials and public representatives.

Even the most basic elements of the services provided by planning sections are deteriorating. The public tell me that they are unable to make contact with staff to discuss their complaints, that it is increasingly difficult to arrange meetings with planning officials and that letters are not acknowledged or replied to. I am also concerned about the very considerable delays on the part of local authorities in furnishing reports to my Office on planning complaints. My overall impression is one of a system which is in a state of collapse.

The new Planning and Development Act, 2000 consolidates and revises all of the previous Planning Acts and introduces a range of new provisions, including some in the area of planning enforcement. These provisions are being brought into force over time and the full impact of the new Act is not yet clear. Our growing economy requires a fully functioning planning process which recognises and encourages balanced and integrated planning, on the one hand, while respecting the rights and quality of life of persons living adjacent to new developments. Legislative change alone will not bring this about without the provision of sufficient staff and other resources on the ground. I intend to monitor this area closely over the coming year and, if necessary, to highlight any systemic flaws I identify in the planning process as the new legislation takes full effect.

## **The Ombudsman's Jurisdiction and certain Fines**

From time to time I receive complaints which do not clearly fall within my jurisdiction. Jurisdictional issues arose during the year in relation to three separate pieces of legislation. The common aspect of all three was whether or not I could deal with the imposition of fines/penalties by

bodies within my jurisdiction. I decided to take legal advice on the matter.

The first case related to a decision by An Post to prosecute three tenants whom it believed did not have television licences. An Post advised the residents that each of them was to be summarily prosecuted under Section 77(b) of the Postal and Telecommunications Act, 1983. An Post argued that its actions in the matter did not come within the scope of Section 4(2) of the Ombudsman Act, 1980 and "were taken for the purpose of the enforcement of the criminal law and not in the performance of an administrative function." Section 4(2) of the Ombudsman Act, 1980 permits me to examine the administrative actions of bodies within my remit.

The advice I received in relation to this case was that the matter did fall within my jurisdiction and, with the co-operation of An Post, I am proceeding with my examination of the complaint.

The second complaint related to a decision by Dublin Corporation to impose a fine for an alleged breach of Section 3(1) of the Litter Pollution Act, 1997. The matter was appealed by the complainant to Dublin Corporation but he was informed that the fine would not be waived. He was informed that the Corporation would grant him a time extension to pay the fine before it referred the matter for legal proceedings.

The purpose of fixed penalty notices (or "on the spot fines") is to avoid the cost and effort of court proceedings for rather obvious and not too serious offences. A person to whom a notice applies may pay the "fine" within a period of 21 days, on a voluntary basis, and thereby avoid a prosecution for the alleged offence.

Arising from the second case, I also decided to seek legal advice on my jurisdiction in relation to complaints about "on the spot" fines which are imposed by local authorities

under the Road Traffic Act, 1994 for less serious offences, particularly parking offences, and for the non-display of a valid motor tax disc. An Garda Síochána is listed in Part 11 of the First Schedule to the Ombudsman Act, 1980 as being one of the bodies outside my remit and so I cannot examine complaints in relation to fines issued by the Gardai.

Apart from the question of whether the actions in question could be deemed to be administrative actions, my legal advisors also had to take into consideration Section 5 (1)(a)(ii) of the Ombudsman Act 1980 which provides that I cannot investigate any action where a person has a right of "appeal, reference or review to or before a court...".

The legal advice I received in relation to the second case and also in relation to the particular road traffic fines was that the actions in question were administrative in nature and also that such cases would not fall within the terms of the exclusion in Section 5 (1)(a)(ii) of the Ombudsman Act 1980.

Accordingly, I proceeded with my examination of the complaint against Dublin Corporation. The Corporation subsequently waived the fine.

## Local Authority Housing Loans

During the year a number of complaints I received highlighted the difficulties which have arisen for certain families who had taken out high interest rate local authority mortgages with no mortgage protection. An interest rate of 12.5% was applied to some local authority fixed rate house purchase loans issued in the late 1970s and early 1980s. The interest rate was related to the then prevailing cost of long-term funding and the rate was fixed for the life of the loan. In some cases loans were made available at slightly lower rates but the rates applied were still significantly higher than the interest rates prevailing in recent years.

Since July 1986 mortgage protection has been a mandatory part of such local authority loans. In

examining one complaint I discovered that, when the mortgage protection requirement was first introduced, it only applied to loans taken out on or after 1 July 1986. Persons with local authority mortgages prior to that were not allowed the option of buying into the mortgage protection scheme at the time and were not informed that such a scheme was being introduced for new applicants. As a result most would not have realised the potential benefits of mortgage protection and were not advised to seek their own cover. Indeed, over the years many of them assumed wrongly that they had mortgage protection until circumstances arose which led them to make enquiries with the local authority.

I asked the Department of the Environment and Local Government to request local authorities to alert all mortgagees with outstanding loans who had taken out their loans before 1 July 1986 that they had no mortgage protection as part of their local authority loans and to advise them to make their own enquiries about obtaining such protection. The Department duly contacted the local authorities. I believe the number of families in this position is quite considerable. Indeed Cavan County Council has over 1000 such mortgagees and Wexford County Council has nearly 300.

The financial impact of high interest rates combined with a lack of mortgage protection has resulted in very serious consequences for some families. In one case a couple took out a local authority loan in 1981 of £9,000 (€11,427.64) to be repaid over 30 years. The loan was at a fixed interest rate of 12.5%. The amount outstanding as of March 2000 was £7,306.99 (€9,277.96) and monthly repayments amounted to £96.29 (€122.26). The husband died in tragic circumstances in 1998 leaving the widow to fend for two young children. Her income was £110 (€139.67) per week. By the end of 2000 repayments on the loan amounted to £19,987 (€25,378.25). Over the full period of the loan repayments will amount to £34,578 (€43,905) which includes £25,578 (€32,477.36) in interest. Because the loan in question was taken out

before 1 July 1986 it did not include mortgage protection and she did not realise this until she contacted her local authority following the death of her husband.

In another case a couple took out a loan of £12,000 (€15,236.86) in 1985 to be repaid over 30 years. The loan was at a fixed interest rate of 12.0%. The husband fell seriously ill in 1998 and had to leave his employment. Shortly after his wife brought her complaint to my Office, her husband died. The widow was left with four children. Monthly repayments on the loan amounted to £129 (€163.80). By the end of 2000 total repayments on the loan amounted to £21,116 (€26,811.79). Over the full period of the loan repayments will amount to £44,435 (€56,420.81), which includes £32,435 (€41,183.95) in interest. Again, she did not realise she had no mortgage protection until she contacted her local authority.

I am concerned that these cases may reflect a more widespread problem affecting many other families caused by the particular combination of factors. I am sure that, unlike other mortgage holders, the option of converting their mortgages by switching to another mortgage provider, is not available to many families with local authority mortgages because of their low or uncertain incomes. I have written to the Department outlining my views and asked it to consider some form of relief scheme to provide assistance for such genuine hardship cases. One must periodically review schemes to see if they are achieving their objectives. The scheme of local authority housing loans was originally designed to assist those who would not be in a position to obtain loans on the commercial market.

### **Local Authorities Refusal to Reply to Correspondence**

The life blood which sustains a vibrant, healthy and fully functioning democracy is the free flow of information from public bodies into the public domain. Public bodies have a

duty to explain their decisions and to give information to the public on their rights and entitlements. It should be possible for every citizen to make representations either personally, through a public representative, through a group of which they are a member e.g. a residents' association or with the assistance of a third party of their choice e.g. a priest, doctor, social worker etc. Legislation and recent public service initiatives underpin these principles from a number of perspectives. The most obvious examples are the Freedom of Information Act, 1997 and the Strategic Management Initiative (SMI) which is now beginning to permeate the local authority sector. Indeed, in the context of the SMI process, the Department of the Environment and Local Government's publication *Modernising Government - The Challenge for Local Government* refers to the need for "pro-active information dissemination to customers".

Public bodies which seek to operate in a climate of secrecy, which provide partial information to citizens or which disseminate information on a selective basis, undermine these basic principles of openness and transparency. If a public body consciously erects barriers which serve to prevent or obstruct the free flow of information to the public then this has to be a cause for concern. Yet this is what I encountered in dealing with a number of complaints against Galway County Council and Leitrim County Council. I have been dealing with the individual cases for some considerable period of time and it has been suggested to me that the problem may not be confined to these two local authorities. In view of this I have taken up the matter with the Department of the Environment and Local Government.

Leitrim County Council had adopted a policy of replying only to representations from elected members of the Council and other elected persons representing the constituency of Sligo/Leitrim or Ministers and Ministers of State. The effect of the policy was that it would not reply to representations from, for example, community activists

who had failed to become elected members of the Council, doctors, priests etc. Following my intervention the Council set aside this policy.

Galway County Council has adopted a policy of replying in writing only to those representations which come from elected members of the Council or members of the Oireachtas on behalf of individuals or groups. The effect of the policy was that the Council would not reply to representations from an elected Town Commissioner and prospective County Councillor, from within County Galway, acting on behalf of his constituents and others. In my view this is an unacceptable policy. It was introduced specifically to confer an unfair advantage on elected Councillors and is an abuse of the democratic process in that it is an attempt to force constituents to channel their representations through those Council/Oireachtas members who already hold power. I have no doubt that one of the main purposes of the policy is to reduce competition from would-be Councillors. I have communicated my concern both to the Department and the Council but to date the Council has not set the policy aside. My examination of the issue is continuing.

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## Chapter 3

The Ombudsman, the Law and the Citizen - a Values-based Approach

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# The Ombudsman, the Law and the Citizen - a Values-based Approach

## Primary and Secondary Legislation

Public servants have a difficult task in administering a multitude of schemes and programmes which impinge on every aspect of life. The volume of legislation on the statute books is ever increasing and some of it, although antiquated, is still in force. Approximately 425 Acts of the Oireachtas were passed between 1990 and 2000. In addition, there has been a proliferation of secondary, or delegated legislation, with a lot of it coming from the European Union. In the last decade the average annual number of pieces of delegated legislation passed amounted to around 450. In 1998 alone 572 pieces of secondary legislation were enacted.

My views on secondary legislation are well known with the publication of my reports on Nursing Home Subventions and on Lost Pension Arrears. Such legislation is subjected to little or no scrutiny by the Houses of the Oireachtas. I have to acknowledge the utility of secondary legislation, in terms of the flexibility it provides for voluminous and often complex regulations and the virtual impossibility of the Houses scrutinising all such legislation. However, I have also made the point that penalties or burdens should only be imposed by regulation where it is clear that the Oireachtas intended in the relevant primary legislation that this should be the case. I have also suggested that the specific approval of the Houses should be required in the case of regulations which confer entitlements, require payments by, or otherwise impose penalties on, members of the public. The impact of such legislation can have a profound, and at times unexpected, impact. For instance, in my 1998 Annual Report (pages 20 -22) I cited the example of sections of the Housing (Disabled Persons and Essential Repairs Grants) Regulations, 1993 which resulted in tax compliant grant applicants being disqualified from their entitlements because the tax affairs of the builders doing the repairs were not in order.

From a public body's perspective, decision making has become an increasingly complex task which has to be

undertaken with the added pressure of time and budgetary constraints. I find that complaints are becoming more complex and on occasions, can require considerable legal and other research by my Office. To a certain extent I have the luxury of being able to allow time and resources to be committed to the detailed examination of the more complex complaints I receive and to communicate my considered views to the public bodies concerned as well as to the Houses of the Oireachtas. But it is equally important that I take the time to explain my approach and role in relation to complaints which hinge on the interpretation and application of legislation as my role is not always fully understood.

## A Values-based Approach to the State/Citizen Relationship

The powers and functions of public bodies are set out in law but in using their powers and exercising their functions, public bodies are nearly always allowed a considerable degree of discretion. In a democracy, it is essential that citizens have an assurance that public bodies will use their powers and exercise their functions not only in a proper and legal manner but also in a manner consistent with fairness and good administration. In my 1996 Annual Report, I published a Guide to Standards of Best Practice for Public Servants in their dealing with citizens which is available in leaflet form. In drawing up this guide, I had regard not only to the list of undesirable administrative actions set out in Section 4 of the Ombudsman Act 1980 but also to the general principles of administrative law as articulated by the Irish Courts, the European Court of Human Rights and the European Court of Justice.

In the past year or two, I have become increasingly aware that, without taking from their importance, these general principles, nevertheless, reflect a traditional view of the role of public bodies. They emphasise the constraints which are properly placed on public bodies when dealing with people and making decisions affecting them. In essence public bodies are required to avoid illegality,

irrationality, procedural impropriety and lack of proportionality - otherwise their decisions may be open to challenge by way of judicial review. Of course, these principles have developed significantly over time. They have been influenced by changes in society and in governance, generally, and, in particular, by developments relating to concepts of citizenship and democratic participation. But I am taken with the growing debate among academic lawyers about the values which underpin the principles enunciated in various court decisions relating to administrative law cases and to judicial review.

These values are often referred to as "background rights" but they are not themselves rights. Essentially, rights are the means to protect values. Whereas rights are related to the process and procedures of decision-making, values relate to the significance of the action or decision for the individuals who are affected by it. In other words, a decision may be procedurally correct and in accordance with the law, but in order to assess the values underpinning the decision it is necessary to focus on the outcome of the decision. One commentator<sup>1</sup> has referred to values as the "background moral view of how life in an organised society ought to be for individuals". Another<sup>2</sup> has identified five core values governing the state/citizen relationship which she expresses as the need to uphold the autonomy, dignity, respect, status and security of individuals.

In Chapter One I referred to the changing nature of public service organisations. Given this change, is there a need for a clearer statement of the values which the State should uphold and respect in its dealings with citizens? I would draw a distinction here between, on the one hand, the values which individual public servants are expected to have in performing their functions such as integrity, honesty, avoidance of conflicts of interests, accountability, fairness, openness and effectiveness and, on the other, the core values underlying the way in which they should treat citizens. I would also draw a distinction between these

core values and the principles of quality customer service set out in the Practical Guide for the Development of Quality Customer Service Actions Plans promulgated under the Strategic Management Initiative.

In summary, the well established principles of administrative law to which I referred earlier must be seen as essential means to an end rather than an end in themselves. It has become clear to me - and I highlighted this aspect in my recent report on Nursing Home Subventions - that public bodies often lose sight of the end result of many of their actions even actions which are initially well intentioned. The housing grants for people with disabilities referred to earlier in this chapter also illustrates the point.

I hope to develop these concepts by reference to future cases because it seems to me that it would be well worthwhile trying to assist public bodies to adopt a more values-based approach when dealing with people now that a human rights approach to service provision is becoming necessary. The five core values of autonomy, dignity, respect, status and security which I mentioned above are interlinked. But it is clear to me that values such as autonomy, dignity and respect are particularly important in the case of groups such as the elderly and people with disabilities who should be assured that they are of equal worth to other members of society. Status - by which I mean a person's position or standing in our society - will be important for marginalised groups who are unable to play an active role in influencing their own futures. Security - which involves protection against unwarranted and damaging change - may be threatened by actions taken by the State in pursuit of what it may see as the common good but which may impact adversely on particular individuals. I have referred earlier in my report to my concerns in the area of planning. Again, I must emphasise that these values are not the same as rights. They are intended to provide a means of focusing on the impact of decisions on individuals,



particularly where the outcome is an adverse one.

An important part of my role as Ombudsman is to introduce a human element into the relationship between the State and its citizens. I try to ensure that the law is applied correctly but I also try to soften an unduly rigid interpretation of the law where equity demands it and I draw attention to imperfections in the law which may adversely affect people's entitlements. Many of the cases which follow demonstrate how people have been adversely affected by an erroneous or harsh application of the law where a values-based approach would have avoided injustice.

#### Footnotes

1. N. McCormick *"Jurisprudence and the Constitution"* [1983].
2. Dawn Oliver *"The Underlying Values of Public and Private Law"* in Michael Taggart (ed.) *"The Province of Administrative Law"* [1997].

*In the following case the Department of Agriculture, Food and Rural Development adopted an unduly rigid interpretation of the Early Retirement from Farming Scheme in seeking to justify a decision to refuse a pension application.*

I received a complaint from a woman whose husband had submitted an application under the Early Retirement from Farming Scheme on the date of his death. It is a condition of the scheme that if a pensioner in receipt of an Early Retirement Pension dies, the balance of the pension may be paid to the spouse and/or dependants, subject to certain criteria being met. The Department of Agriculture, Food and Rural Development initially rejected the application on the basis that it was incomplete on the date it was submitted. In this instance, the Department took the view that an application could only be considered valid and approved when it was accompanied by all the required documentation. In this case, there was some essential documentation missing from the application.

I was aware, from examining other complaints, that the Department routinely accepted incomplete applications and regularly sought the outstanding documentation after an application had been submitted. When all missing documentation had been checked by the Department, that application was then deemed to be valid. In the light of this, I advised the Department that its position in this case was unnecessarily rigid. It then sought legal advice from the Office of the Attorney General (AG). The AG indicated that payment in this case could be made on the basis that the application was substantially complete at the time of the applicant's death and that the scheme provided for payment to be made to his widow if she met certain criteria. The AG also indicated that the Department was entitled to treat as exceptional the particular circumstances of the case. However, the Department felt that to accept the advice would constitute a departure from its standard practice and from the conditions of the scheme. It then

contacted the European Commission which advised the Department that, in revising its decision and granting the application as an exceptional matter, it would not be acting in a manner incompatible with the EU Regulations governing the scheme. As a result, the applicant finally obtained her pension of £618 (€784.70) per month and arrears which amounted to £15,871 (€20,152.01).

*Schemes which are designed to provide benefits must, of necessity, have rules which clarify entitlement and ensure fairness. I have been critical of public bodies which apply rules in so rigid a manner that they exclude those for whom the benefit was originally intended. In this context I believe that it is equally important to highlight instances where an enlightened and flexible approach has been taken by a public body which has led to a satisfactory outcome to a complaint. The following case involving the Office of the Revenue Commissioners is one such instance.*

The complaint concerned the scheme operated by the Office of the Revenue Commissioners whereby tax relief is available on a vehicle acquired for the transport of persons with disabilities. In this instance the foster parents of a profoundly mentally and physically handicapped girl had been granted full tax relief in respect of a motor vehicle which had been adapted to cater for the transport needs of their foster child. Respite care for the foster child was provided by a second person who also applied for tax relief in respect of a vehicle purchased by her for the transport of the girl while she was in her care. This application was refused on the grounds that it was a requirement of the scheme that the recipient of the tax relief be a family member residing with and responsible for the transportation of the person with the disability.

I asked the Revenue Commissioners to review the case. It concluded that its decision to refuse tax relief was correct but, in the particular circumstances of the case, it would allow the tax relief sought on a once-off basis provided

the foster parents undertook not to make a further claim under the scheme for two years after the relief was allowed in respect of the respite carer's vehicle. This proposal was acceptable to both parties and the respite carer received a refund of £2,048 (€2,600.42) in respect of Value Added Tax and Vehicle Registration Tax on the vehicle she had purchased.

*A decision taken by a public body which is strictly in accordance with the terms of the relevant scheme may, nonetheless, be open to question if inequity arises having regard to the individual circumstances. This arose in the following complaint against the Department of Social, Community and Family Affairs.*

A man had to take early retirement from work in July 1993 because of ill-health. He was not, at that stage, diagnosed as suffering from Alzheimer's Disease. In his particular circumstances he would have had an entitlement to either Disability Benefit (DB) or Invalidity Pension (IP) at the time he was forced to take early retirement. He was unaware that he had an entitlement to these benefits and, therefore, made no claim at the time. In May 1994, his wife was prompted to make enquiries of the local Social Welfare Services Office because of her husband's relatively small occupational pension. She was advised to make an application on her husband's behalf for DB and was paid six months arrears effective from November 1993. The Department refused to pay arrears of more than six months on the basis that the relevant legislation precluded this - irrespective of the reason why the claim was late. In November 1994 he was transferred to IP, a long-term payment which is higher than the DB rate and which is payable to those who are unable to return to the workforce because of illness or incapacity.

A question that arose was whether the Department, when examining late claims for DB, should apply the same principles and logic as applied in late claims to social welfare contributory pensions. If the failure to claim the

# STATE AND ITS CITIZENS. I TRY TO ENSURE

pension on time was directly attributable to this man's illness and an inability to manage his own affairs then the Department could have used an extra-statutory arrangement to pay full arrears of pension. This arrangement has since been formalised in legislation. The Department accepted that the man was unable to manage his own affairs but considered that as he had been an insured worker for a long number of years it was reasonable to expect that his wife would have dealt with his social welfare entitlements on his behalf. I did not accept this argument, particularly as his spouse had the added pressure of coping with her husband who was suffering from the onset of Alzheimer's Disease. I considered that the Department's actions in this case, while taken with proper authority, resulted in an outcome which did not take into account the special circumstances of the complainant.

As the Department appeared unwilling to move from its position, I notified it of my decision to commence an investigation.

In response the Department accepted that it should have been apparent from the medical evidence and correspondence available at the material time that the man was likely to have an immediate entitlement to IP, which could be back-dated beyond the six month period in accordance with the extra-statutory arrangement. If his claim had been dealt with in this manner, entitlement to an IP would ensue and arrears of pension could have been paid to him with effect from the commencement of his illness and the forced cessation of his employment. The Department accordingly awarded him an IP with effect from the commencement of his illness and arrears of £1,435 (€1,822.07) were paid to him. A further payment of £108 (€137.13) was made in respect of compensation for loss of purchasing power of the arrears. The Department also issued an apology to the man's wife. A further positive outcome of the case was the acceptance by the Department that arrangements for such arrears

payments should be set out clearly in legislation so that they will be clearly understood. The Department had previously argued that its experience did not suggest that legislation was warranted to deal with late claims for DB or IP.

I welcomed the Department's commitment to introduce new legislation to deal with the problems experienced in this case. This should help to ensure that those people who make late claims for DB or IP, because of a verifiable incapacity or *force majeure*, will have their claims considered from the date of the commencement of their illness or injury.

*In the following case the Valuation Office failed to meet a statutory deadline for determining a valuation leading to financial loss for the owners of a premises. It subsequently agreed that the circumstances of the case merited monetary redress.*

The Development Manager of a Citizens Information Centre (CIC) complained that his local authority was demanding full commercial rates for its premises. The premises was being used for a purpose which should have rendered it exempt from rates.

My examination of the complaint showed that the difficulty arose from the valuation placed on the premises by the Valuation Office (VO). The local authority did not have the necessary discretion to waive rates where the premises had been valued on the basis of its previous use as a public house and ancillary offices. When I questioned the VO, it explained that on 11 May 1998 it had received a request for revision of the valuation placed on the premises. Section 3(3) of the Valuation Act, 1988 provides that "... the Commissioner of Valuation shall cause every application made to him under subsection (1) of this section to be determined within six months after receiving the application or as soon as may be thereafter and as soon as practicable issue a list of determinations made in

*the quarter beginning on the commencement of this section or in any succeeding quarter within ten days after the end of that quarter."*

To comply with these statutory deadlines, the request for revaluation would have had to be processed and issued on or before 10 November 1998. Unfortunately, largely due to an industrial dispute which seriously affected the VO's output in 1998, the request was not processed in time to have effect in 1999. The property was inspected during 1999 and returned in the revised valuation lists to the local authority on 10 November 1999. Exemption from rates for the premises commenced on 1 January 2000. The initial revision request was received in May 1998, however, and had it been processed in accordance with the Valuation Act, 1988 the premises could have benefited from exemption from 1 January 1999. The VO expressed regret that it had been unable to process the case in 1998 and offered to make an *ex gratia* payment of £2258 (€2,867.07) to the CIC towards the rates liability in 1999.

I felt that the VO acted reasonably by accepting responsibility and in making the *ex gratia* payment. The complainant also found the offer to be acceptable.

*In this case the South Eastern Health Board failed to notify an applicant for a nursing home subvention of a statutory discretion available to the Chief Executive Officer in assessing such applications. It also followed unfair and inadequate procedures in assessing the application.*

In general, applications for subvention must be made before the person takes up residence in a nursing home. Otherwise, a person may not apply for a subvention within two years of the date of admission. There are two exceptions to this rule. The first is where the Chief Executive Officer (CEO), exercises a statutory discretion to accept an application. The second is where the health board is satisfied that the person needed to be admitted as

an emergency and the nursing home had no option but to admit the person at the time.

The complainant said that her father had entered a nursing home in advance of making the application. The South Eastern Health Board refused the application without advising the applicant of the discretion vested in the CEO. It had also refused to accept medical evidence supporting a claim of admission in emergency circumstances.

The complainant's father, who was 81 years of age and resided with her, had required a short period of care in one of the Board's hospitals. Prior to his discharge, his consultant physician indicated that he would have to be admitted to a nursing home as his daughter would not have been able to provide the necessary nursing care.

She applied later to the Board for a nursing home subvention on behalf of her father and explained the circumstances of his admission to the nursing home. She said that, on the day of his discharge from hospital, a staff member assisted her in making arrangements for his admission to the home. It was at that stage she found out about the subvention. She did not apply immediately as she thought her father's stay in the home would only be for a few weeks. His condition deteriorated, however, and he remained in the home until his death, three months later.

The Board refused the application for subvention, and a subsequent appeal, on the grounds that he had been admitted to the nursing home prior to the date of receipt of the application. The complainant made a request to have the application considered as an admission to the nursing home in emergency circumstances. The Appeals Officer refused stating that it was not an emergency admission because the man had already been an in-patient in the hospital prior to his admission to the nursing home.

Further supporting evidence was provided by the family GP. However, the Appeals Officer again refused the application, restating the original reasons for the refusal.

I asked the Board whether there had been a fundamental change in his condition after his admission to the nursing home which would have led him to become sufficiently dependent to require care in a nursing home. I also asked the Board if it would, in such circumstances, exercise its discretion to waive the two year restriction on making an application for subvention.

The Board rejected this approach stating that any patient in a nursing home would undergo changes in their medical condition over a period of two years. It argued that to award subventions to people who had become patients in nursing homes prior to seeking approval, on the grounds that their health had deteriorated subsequently, would mean that practically all such cases would have to be accepted, as the majority of such applicants could make a case on these grounds.

A subsequent report furnished by her father's consultant physician stated;

"...we let your father go from hospital only on condition that he was going to a Nursing Home. I don't think that in view of his overall condition at the time he was with us in hospital we would have been able to discharge or transfer him other than for care in a Nursing Home...It would have been impossible for you to provide this care on your own and he would have needed professional nursing care in a Nursing Home. "

I requested that the Board review the case in the light of this report. I asked whether the applicant had been advised of the discretion vested in the CEO to accept late applications, and if not, why he was not so advised.

The Board replied that the report from the consultant physician did not warrant a change in the decision. It

stated that, while the applicant had not been advised of the discretion vested in the CEO, it had considered the matter in that context but decided that it was not appropriate to use the discretion in the particular case. In addition, the Board did not consider the admission took place in emergency circumstances.

I was satisfied that there was *prima facie* evidence of maladministration on the grounds that the Board:

- refused the application without advising the applicant of the discretion vested in the CEO;
- appeared to have misdirected itself in relation to the discretion;
- failed to maintain adequate documentation of the reasons for decisions;
- refused, without reasons, to accept medical evidence supporting the claim of admission in emergency circumstances, and
- appeared to have inadequate appeals procedures.

Based on my conclusions the case was reviewed by the Appeals Officer. She concluded that the decision to refuse the application under emergency circumstances might not have been correct on the grounds that the covering letter accompanying the application indicated that the hospital was discharging the patient either to his own home, or a nursing home, thereby forcing his daughter to make a decision. In such circumstances, she considered that the actions of the hospital, one of the Board's institutions, had contributed to the decision to place the complainant's father in the nursing home.

The Appeals Officer also said that when the case was initially considered she had assumed that the nursing home was aware of the requirement of prior application,

but subsequently conceded that it may not have provided that information to the applicant. She was satisfied that the evidence now presented indicated that the complainant's father had been in need of nursing home care and she recommended that the application be accepted with payment effective from the date of application.

Following the resolution of a separate dispute in relation to the assessment of the family's means, payment was made effective from the date of application and the amount involved, based on the full subvention at the maximum dependency rate, was calculated at £1,646 (€2,089.99).

I was not satisfied that the procedures employed by the Board in respect of applications were adequate, or that a similar case might not recur. However, I acknowledge that this eventuality will be less likely having regard to the improved procedures which the CEO undertook to put in place. He directed that any person aggrieved by a decision of the Board on subvention was to be informed of the right of appeal to him. He also confirmed that, in general, he was encouraging officers of the Board to give the benefit of the doubt to the applicant in cases of borderline interpretation of the Regulations.

*In the following complaint against South Dublin County Council an incorrect interpretation of eligibility criteria under the statutory Tenant Purchase Scheme would, but for my intervention, have led to considerable adverse affect for the complainant.*

Where a person has been adversely affected by the incorrect actions of a body, everything possible should be done to ensure that the person is returned to the position he/she would have been in if the incorrect action had not taken place. The principle was relevant to a case where South Dublin County Council refused to allow a woman purchase her house when she applied in 1995 under the 1995 Tenant Purchase Scheme. She was not formally refused but was told over the phone that her application

could not proceed as in the view of the Council she occupied a type of house that was ineligible for sale under the terms of the scheme.

I established that the Council was incorrect in stating that it was prevented from selling the house to her under the scheme and following my intervention, it agreed to allow her purchase the house. However, she returned to me some time later to say that it had offered her the house at the 1998 price rather than the 1995 price. She felt this was unfair as the house had increased substantially in value since 1995, and it was not her fault that there had been a delay.

The Council argued that it was highly unlikely that she would have been allowed purchase in 1995 even if it had accepted her application because of financial and other circumstances. It also pointed out that she had not pursued her application since 1995 and had actually applied for the installation of central heating and an extension. It felt that this showed that she had lost interest in purchasing the house.

I examined the matter and made the following points to the Council:

- the complainant was incorrectly advised at the outset that the house she occupied was ineligible for inclusion in the 1995 Tenant Purchase Scheme. Although she did not receive a formal decision in the matter, the Council accepted that she was incorrectly advised at the time;
- because of the incorrect action in 1995, no proper examination of her circumstances, including ability to pay, was carried out at that time;
- her family would have assisted her financially had she encountered difficulties with repayments;

- while the Council argued that she did not pursue her application after 1995 she said that a significant element in her application for an extension in 1996 was the fact that, such extension would have changed the categorisation of the house and enabled her to purchase it. Had the correct decision been made at the outset, the question of an extension would not likely have arisen.

Given that the Council had not examined her application properly at the appropriate time, I considered that the complainant ought to be given the benefit of the doubt in relation to her ability to qualify on income grounds. The fact remained that South Dublin County Council had made serious administrative errors in the handling of her application.

The Council reconsidered the matter and agreed to sell her the house at the 1995 price.

*In the following case an incorrect application by Dundalk Urban District Council of Regulations governing the payment of a Disabled Persons Grant could have left the complainant at a financial loss.*

The complainant applied to Dundalk Urban District Council for a Disabled Persons Grant for the provision of ground floor accommodation for her mobility impaired elderly husband. During the examination of the complaint it emerged that the Council, over a period of three years, had sought several quotations for the necessary works but, as the quotations received exceeded the maximum grant payable, there was a considerable shortfall which would have to be met from other sources. The Council felt that the complainant would not be in a position to finance this shortfall and, in the circumstances, it did not process her grant application further.

The Council also said that the complainant's existing accommodation was a three bedroom, two storey, terraced

house with the bedrooms and bathroom upstairs. The Council pointed out that, in the past, the complainant had been offered a transfer to a two bedroom bungalow style house with all facilities at ground floor level and that she had refused to accept the transfer.

Having considered the matter in detail I drew the Council's attention to Article 4(2)(a) of the Housing (Disabled Persons and Essential Repairs Grants) Regulations, 1993 (S.I. No. 262 of 1993) which provides that:

*"A grant under this article shall not exceed - (a) the approved cost of the works in the case of a house let by a housing authority pursuant to any of their functions under the housing Acts, 1966 to 1992."*

The complainant was renting the house from the Council. She did not own it and the Council was aware of this. Therefore, the Regulations provided that the Council could pay a grant up to the approved cost of the works. In this case the approved cost of the works was £17,000 (€21,585.55). I took the view that the Council should not seek a contribution from the complainant towards the cost of the project on the basis that the Council, rather than the complainant, owned the house.

With regard to the Council's suggestion that the complainant and her husband avail of a housing transfer, I noted that, over the years, they had built up a social support system in their local community and, accordingly, I would not expect them to move house, against their will, at this stage of their lives. Accordingly, I asked the Council to consult with the Department of the Environment and Local Government on how it might finance the shortfall in the available grant funding.

Having reconsidered the matter, the Council did not deem it necessary to refer the matter to the Department. Instead, it obtained further tenders to undertake the required extension and the project was completed. The

Council financed it from the grant and from its own financial resources.

*In the following case Kilkenny County Council argued that it had no statutory power to make available certain planning documents for purchase by the public. I argued that it was not precluded and that a Department circular and good administrative practice suggested that the documents should be made available.*

The Council refused to make available, for purchase, copies of a planner's report and other documentation from a planning file. The complainant maintained that this was contrary to the recommendations of the Department of the Environment and Local Government that such documentation be made available.

The Council said that there is no statutory provision requiring a planning authority to furnish to a member of the public copies of any documentation other than an Environmental Impact Statement (EIS), a copy of a planning permission and the conditions attached. The Council maintained that a circular from the Department did not direct it to adopt a policy to supplement the statutory position.

Having considered the Council's response, I pointed out that the Department had issued the circular letter following the completion of a formal investigation of a complaint carried out by my Office in 1995. At that time I considered that the practice of refusing to make available planning documentation, for purchase, was at odds with the general thrust of the planning acts and regulations which are formulated in such a way as to allow full participation by members of the public in decisions relating to the proper planning and development of their local areas. The Department's circular requested planning authorities to *"put arrangements in place which will make copies of all or part of any document relating to a planning*

*application, other than a plan or other drawing or a photograph, available for purchase."*

I noted that there is currently no statutory provision requiring a planning authority to furnish to a member of the public copies of any documentation other than an EIS, a copy of a planning permission and the conditions attached. On the other hand, I indicated that there is no statutory provision which precludes a planning authority from making available the relevant documentation.

I advised the Council of my views and requested that arrangements be put in place to comply with the terms of the Department's circular. Following my suggestion the Council agreed to send the requested documents to the complainant.

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HELPING TO ACHIEVE A PUBLIC SERVICE WHICH IS OPEN FAIR AND ACCOUNTABLE

## Chapter 4

Selected Cases

# Selected Cases

## Department of Education and Science

### *Provision of Escorts for Special Needs Pupils*

I received a complaint against the Department of Education and Science regarding the provision of escorts for special needs pupils on school transport. The complainant's son first entered school in September 1999. As he suffered from autism, it was recommended that he be accompanied by an escort while travelling to school on the bus. The Department provides funding to schools for escorts in these circumstances but it has found that some schools have been unwilling to operate the escort scheme for various reasons. In this particular case, the school was unwilling initially to take responsibility for employing the escorts and Bus Éireann could not, therefore, take this pupil to school unescorted. His mother had to transport her son to school each day which involved a 92 mile round trip. The Department initially provided a grant of £7.54 (€9.57) per day towards the cost of her transport, which she appealed and was allowed an enhanced grant of £46 (€58.41) per day. The complainant regarded this as an interim measure, subject to resolving the difficulties with the provision of escorts on the bus service. She also complained that, as she had to collect her daughter from another school, her son had to leave school one hour early each day, which she regarded as detrimental to his development.

The Department told to me that the Board of Management (BOM) of the school had returned the funding it had been allocated on the basis that it felt that school transport was not its responsibility. It was not prepared to take on the administrative duties involved and was concerned about possible legal implications. The Department also stated that it was prepared to allow the BOM to use savings, which accrued to the school as a result of escort duties costing less than the grant paid, to acquire administrative assistance with the operation of the scheme. The BOM reconsidered but again rejected the proposal to operate the

scheme, for the reasons stated above and in addition citing health and safety issues and the adverse impact of the additional duties on the work of the Principal.

The Department met a delegation from the school in May 2000 to discuss its concerns. Issues of liability and the difficulties arising from the remote location of some of the bus routes were raised and the BOM agreed to reconsider its position. In September 2000, it agreed to operate the scheme and to engage escorts for the bus service.

While the Department's engagement with the BOM led to a satisfactory outcome to the complaint, I was concerned that the process took an entire year during which time the complainant had to travel long distances each day in order to ensure that her son received the education to which he was entitled. I consider that the issues raised by the school in this case in regard to the administration of the scheme, liability, health and safety issues, are of a nature which could have been adequately foreseen and dealt with at the time the grant was initially provided to the school.

## The Office of the Revenue Commissioners

### *Vehicle Seizure*

The complainant purchased a vehicle in Northern Ireland and subsequently brought it into the State. Registration of the vehicle and payment of the relevant Vehicle Registration Tax (VRT) would have been due by the end of the next working day following the arrival of the vehicle in the State. The complainant failed to comply with this requirement and as a consequence his vehicle became liable to seizure.

In April 1999 the vehicle was advertised in a magazine and prospective purchasers were requested to ring the complainant's number for further details. On 7 May 1999 a Revenue Mobile Service (RMS) Officer, posing as a

potential purchaser, rang him and expressed an interest in the vehicle and asked to see the vehicle in a car-park in the local town. The complainant was initially reluctant to proceed with this arrangement but eventually agreed to the RMS Officer's request to drive the vehicle to the car-park. Two other officers in the RMS, who were aware of the arrangement agreed between the complainant and the other RMS officer, stopped the complainant en route to the car-park and seized the vehicle.

The principal issue in this instance was not whether the complainant had complied with his legal obligations to register the vehicle and pay VRT but rather the methods employed by the RMS which led to the seizure of the vehicle. From the evidence available it appeared to me that the object of the arrangement whereby the complainant was persuaded to drive the vehicle to the car-park was solely to facilitate the seizure of the vehicle while it was being driven by him. The methods employed in this case which led to the seizure of the vehicle seemed to be in conflict with Revenue's Charter of Rights which sets out the fundamental standards of treatment which taxpayers can expect to receive in their dealings with Revenue. The Charter indicates that these standards should be achieved in a manner which fosters the highest degree of public confidence in Revenue's integrity, efficiency and fairness.

I felt that there were sufficient and adequate alternative enforcement powers available to the Customs and Excise to ensure compliance with VRT requirements and that the means used in this instance for the seizure of the vehicle amounted to an undesirable administrative practice and were contrary to fair or sound administration.

I suggested to the Revenue Commissioners that the procedure which led to the seizure of the vehicle in this instance should not be used in future and that they should issue a letter of apology to the complainant.

The Revenue Commissioners issued an apology and acknowledged to me that the circumstances surrounding the seizure of the vehicle did not meet the standards set down in the Charter of Rights. They added that the unsatisfactory manner in which enforcement action was taken had been brought to the attention of the officers concerned and that they intended to keep the matter under review.

## Department of Social, Community and Family Affairs

### *Protecting Clients' Privacy*

A man complained to me about the way the Department of Social, Community and Family Affairs had dealt with his complaint. He had been interviewed on a public street by a Social Welfare Inspector (SWI) about his entitlement to Disability Allowance.

I considered that the decision by the SWI to carry out the interview from his car on the public street was an example of poor administrative practice. The Department acknowledged that the SWI exhibited poor judgement on the occasion and it advised him accordingly and apologised to the complainant for any upset caused.

From my examination I was satisfied that the Department took a serious view of the complaint and conducted a thorough investigation of the matter. Notwithstanding this, I drew the attention of the Department to the Guide to Standards of Best Practice for Public Servants in which I outlined that dealing properly with people means dealing with them:

"sensitively, by having regard to their age, to their capacity to understand often complex rules, to any disability they may have and to their feelings, privacy and convenience".

I also asked the Department to address the issue of proper procedures relating to interviews with recipients of Disability Allowance. The Department advised that, subsequent to the incident complained of, all SWIs underwent an intensive training course which included training on interviewing skills. A substantial part of that course dealt with the issue of disability in general and, in particular, how SWIs should deal with persons with a disability. In addition, it was emphasised that they are expected to deal with the Department's customers with tact and courtesy and to respect their privacy.

#### *Eligibility for Contributory Old Age Pension*

A complainant was awarded a Non Contributory Old Age Pension (NCOAP) of £72.50 (€92.06) per week from 28 May 1999 but he asserted that he should have had an entitlement to Contributory Old Age Pension (COAP). He contended that the Department of Social, Community and Family Affairs had based its decision on an incorrect social insurance record and had used the wrong insurance number when tracing his social insurance contributions. He first applied for COAP on 18 November 1986. His date of birth was verified as 11 November 1921 making him aged 66 on 11 November 1987. The claim was refused because his yearly contribution average was only 16 per year over the 24 year period 1962 to 1986 and at the time, a yearly average of 20 was required for COAP. From November 1997, the minimum yearly average was reduced to 10 contributions. However, as an applicant needed 260 paid contributions in order to qualify under this relaxed rule and the complainant had only 205 paid contributions, he still did not qualify.

The initial response from the Department was based on the social insurance record as outlined above. However, when the records in the Central Records Section (CRS) were examined, I found that these contained additional credited contributions from 1973 to 1985/86 not previously included on the record obtained by the

Department's Pension Services Office. The Department explained that the credits were added to the complainant's record after its original decision in 1986 to refuse his pension application. A note on the Department's COAP file referred to unemployment credits for 1986 but there was no elaboration on previous years or when they were added to his social insurance record. The Department recalculated the complainant's contribution record and this resulted in a yearly average of 44.

As a result the Department awarded a retirement pension, payable from the complainant's 65th birthday, and he was awarded COAP from his 66th birthday. Total arrears issued in the sum of £73,875 (€93,801.90) made up of £61,588 (€78,200.63) COAP arrears and £12,287 (€15,601.27) compensation for lost purchasing power. These figures were net of NCOAP already paid to him.

#### *Voluntary Social Insurance Contributions*

When a person under age 60 is no longer covered by compulsory social insurance, he or she can choose to maintain cover by paying voluntary contributions. To avail of this facility the person must apply to the Department of Social, Community and Family Affairs within 12 months of the end of the tax year during which he last paid social insurance, or had a social insurance credit. In general, these contributions maintain the same level of cover which the person had previously enjoyed when last working and paying compulsory social insurance as an employee or a self-employed person.

I received complaints from a number of persons who had been self employed and paid their social insurance which was incorporated with their preliminary tax payments to the Revenue Commissioners. However, the Inspector of Taxes subsequently determined that they had no liability to tax and their preliminary payments, including the social insurance element were refunded. Income from self employment which is under £2,500 (€3,174.34) a year is

not liable for social insurance. However, at the time the refund was made the complainants were not advised of the possibility of becoming voluntary contributors.

When they sought to become voluntary contributors the Department refused them on the grounds that they had not applied within the required time limits. They argued, without success, that they could not comply with this requirement as the Revenue Commissioners had failed to advise them regarding the scheme.

I asked the Department to examine the arrangements it had in place with the Revenue Commissioners for advising people on incomes of less than £2,500 (€3,174.34) of the option of becoming voluntary contributors. The Department agreed to review its earlier decisions and decided to admit the complainants as voluntary contributors on the basis that they had not been advised of the possibility of paying voluntary contributions at the appropriate time.

The Department also stated that, in conjunction with the Revenue Commissioners, it would in future check self employed returns in order to identify people who had ceased compulsory insurance. This system, which entails cross checking against the previous years returns, will ensure that all self employed contributors, who in future cease compulsory insurance, will be correctly notified of their entitlements.

## **Meath County Council**

### *Breach of a Wayleave Agreement*

This complaint against Meath County Council revolved around the installation of a pipe across the land of an elderly man. The diameter of the pipe which the Council installed was larger than that specified in a 1988 Wayleave Agreement between the Council and the landowner.

The complainant, acting on behalf of his father, stated that a member of the engineering staff of Meath County Council (Mr A) approached his father saying that the Council wanted to put a 225 mm (9 inch) diameter pipe through his lands (from the main road to the River Boyne) to alleviate flooding on the main public road. The complainant was assured that the sole purpose of the pipe was to drain the public road. On these terms, his father agreed and accepted a payment of £1,000 (€1,269.74) for a wayleave through his land. The complainant stated he subsequently discovered that the Council had installed a larger size pipe (300 mm - 12 inches in diameter) than was specified in the Wayleave. This, he alleged, was done without his father's knowledge or consent and was in breach of the Council's written and verbal agreements. The installation of the pipe had been supervised by one of the Council engineers (Mr B).

The complainant claimed that, shortly after the Council had secured the Wayleave Agreement from his father, three sites were purchased across the road from his father's land. These sites were purchased by the Council Engineer (Mr A) who had negotiated the Wayleave Agreement with his father, another Council Engineer (Mr C) and a builder. Three houses were built on these sites. The complainant alleged that, contrary to the undertaking given to him these three houses were connected to the pipe.

The complainant added that, on 1 August 1995, the builder of two of these houses was granted planning permission for the construction of 65 houses on the same lands. One of the conditions of that grant of planning permission required the developer to submit a Wayleave Agreement to the Council for agreement, prior to commencement of the housing development. The complainant said that the builder had been in negotiations with his father regarding a Wayleave Agreement to facilitate the laying of a surface water drainage pipe across his father's land. However, in October 1995 and without consultation with his father, the Council waived the requirement imposed upon the builder under the relevant planning permission.

The complainant maintained that, had his father known that the Council were going to allow a housing development of 65 houses to connect into the pipe, he would not have agreed the original Wayleave on the terms negotiated.

While I do not propose to publish the full details of my investigation here, my main findings and recommendations were as follows:

- the negotiations surrounding the Wayleave Agreement, which were conducted between Mr A on behalf of the Council, and the complainant's father were carried out in good faith and there was a clear written commitment that the pipe, once installed, would be 225mm (9 inches) in diameter;
- Although the negotiations were carried out in good faith the complainant's father remained of the view that the pipe was intended to cater for surface water run off from the public road only and he accepted the compensation of £1,000 (€1,269.74) on this basis;
- by sending drawings to the local engineer some months earlier specifying a 225mm (9 inch) pipe, the Council clearly intended to install the 225mm (9 inch) pipe, even prior to entering into formal negotiations with the complainant's father;
- the Council's Mr B amended the drawings and revised the size of the pipe but did not consult properly with Mr A, about his proposal to install the larger, 300mm, (12 inch) diameter pipe, notwithstanding the fact that Mr A had negotiated the specific details of the Wayleave Agreement with the complainant's father;
- Mr B consulted with his superior Mr C who, without consulting Mr A, indicated that he had no objection to the installation of the larger size pipe;
- a day after the Wayleave Agreement stipulating the 225mm (9 inch) pipe was signed, Mr B contacted his suppliers, sought and received a quotation for the delivery of 300mm (12 inch) pipe; he was already aware of the corresponding quotation for 250 mm (9 inch) pipes;
- the Council did not act properly - legally or administratively - in laying the larger 300mm (12 inch) pipe without the knowledge or consent of the complainant's father;
- Mr B reassured the complainant's father that the pipe, once installed, would be used only for surface water drainage although he did not apprise him of the size of the pipe;
- the motivation of the complainant's father in drawing my attention to the fact that Mr C and Mr A had their private dwellings connected to the pipe under his land, was not out of concern about the particular connections but rather to gain advantage by embarrassing the officials concerned;
- while there is no evidence of impropriety on the part of the Council officials concerned in discharging the surface water from their own private houses through the Council's pipe on the complainant's father's land, the sequence of events, as outlined above, gives rise to serious concern. In particular, the Council did not have in place adequate administrative procedures for handling infrastructure projects which would allow it to withstand or refute an allegation, however remote, of a potential or perceived conflict of interest between the Council's staff, developers and third parties;
- there is no evidence to suggest that Mr B's decision to increase the size of the pipe was taken for other than technical and public interest reasons or was in anticipation of subsequent events;

- the Council did not go through the proper planning process before varying the condition in the grant of planning permission which referred to the Wayleave Agreement;
- the Council, by waiving this condition in the grant of planning permission, not only undermined the complainant's father's negotiating position with the developer, but adversely affected him by denying him the opportunity that otherwise should have arisen had the planning process been followed correctly, to appeal the matter to An Bord Pleanála;
- despite seeking written clarification from the Council on three occasions, the complainant's father only became aware of the Council's written decision to waive the relevant condition in the grant of planning permission after he had initiated legal proceedings against the developer and this resulted in his being adversely affected by having to incur legal and other expenses.

Based on my findings, I recommended that compensation of £30,000 (€38,094.14) be paid by the Council to the complainant. This included redress for a breach of the terms of the Wayleave Agreement, out of pocket expenses, legal fees, distress and inconvenience, and breaches of proper administrative and planning procedures. I also recommended that the Council put in place appropriate administrative procedures / guidelines for staff who are dealing with planning and infrastructure projects where a potential exists, however remote, of a potential or perceived conflict of interest. The Council accepted my recommendations.

I wish to highlight my concerns about the potential conflict of interest considerations which this case has exposed. The complainant made an allegation that senior Council personnel may have used their official position to their own advantage. While I found no evidence of impropriety on the part of the officials concerned, this case illustrates

how important it is for public officials to take great care to ensure that they are seen to behave ethically and correctly in all matters where they may stand to benefit from decisions which they have taken or are in a position to influence in the course of their work.

It is also important for local authorities to have in place procedures which safeguard against the possibility of a conflict of interest between their staff and other parties. On this point, I note that Part VII of the Planning and Development Act, 2000 details the requirements on members and employees of planning authorities in relation to interests they have, in particular in land, which may have implications for their work. I also note that ethical standards for members and employees of local authorities are being considered in the context of the review of local government legislation, which is currently being undertaken by the Department of the Environment and Local Government. New procedures are necessary to protect the general public and, equally importantly, Council staff members.

I sent a copy of my investigation report to the Department of the Environment and Local Government and I invited its comments or suggestions in relation to the issues which arose in this case. I await the Department's response.

## Mayo County Council

### *Entitlements Under a Mortgage Protection Policy*

In this case involving Mayo County Council the complainant had taken out a mortgage in 1986 with the Council which included a mortgage protection element.

She stopped working in September 1989 on health grounds and began to draw disability benefit. In 1991 she asked the Council about her mortgage protection entitlements. In April 1991 she received a letter from the Council which simply confirmed that she had mortgage protection and that it



covered her as the principal earner. It did not clarify her precise entitlements. She claimed she called to the Council after she got the letter and was told by an official that she was covered for death benefit only and not for disability benefit. Due to her financial situation she began falling behind in her loan repayments. At one stage she was threatened with legal proceedings by the Council. In 1994 she received a general information notice from the Council about mortgage protection, and it was only then that she realised that she had disability cover as part of her mortgage protection. The notice issued because all local authorities were instructed by the Mortgage Protection Committee in May 1994 to notify all of their mortgage holders about their mortgage protection entitlements. Local authorities were informed that:

***"It is vitally important that all borrowers are aware of the terms of the scheme and that local authorities can show that this information has been furnished to them. Presently there are a number of cases subject to legal proceedings where borrowers claim they were not aware of their entitlements and where insurers are refusing to accept their claims due to delay in notification."***

The notice also advised local authorities to put a system in place e.g. keep written receipts, to prove that they had given details of the mortgage protection scheme in each individual case. A further general warning notice on the same matter was issued by the Housing Finance Agency in 1996.

Having become aware of her full entitlements as a result of the 1994 notice, she then pursued an insurance claim. Through the intervention of the Insurance Ombudsman she succeeded in her claim under her mortgage protection policy but this was only admitted from September 1994 because of the delay in submitting the claim. In her report on the matter the Insurance Ombudsman pointed out that her jurisdiction confined her to examining the actions of

the insurance company only and that she could not comment on the alleged actions or omissions of other parties such as the local authority.

I examined the Council's files and also asked it to outline its procedures in relation to the notification of mortgage protection entitlements. The Council indicated that, generally speaking, mortgage applicants sign up with the Council when they take out a mortgage and it is the Council which is obliged to give them the relevant forms and documentation on the mortgage and the mortgage protection scheme. The Council said that applicants are advised verbally that mortgage protection covers their mortgage in the event of death or serious disability. On loan approval, a Certificate of Insurance is issued together with a principal earner Declaration Form which must be completed before the payment of any loan. If a claim does arise, it is the applicant who must make a claim direct to the insurance company and in the event of disability, the insurance company makes the decision regarding the specific disability entitlements.

The crucial aspect of the complaint was whether the complainant had received the Certificate of Insurance, which set out her full mortgage protection entitlements, when she first took out her mortgage. The complainant was adamant that she had not received a copy of the Certificate of Insurance or the Declaration Form in 1986. She said she recalled visiting the Council's offices and also the Council's solicitor's office in 1986 to sign various forms but she was not given either the Declaration Form or the Certificate of Insurance to take away. She said she was not shown a Certificate of Insurance during her visit. It was beyond dispute that she had signed the Declaration Form in 1986 as it was on the Council's file but I noted that there was no "date received" stamp on it which lent credence to the complainant's claim that it had not been sent to her in the post.

As a result of my examination I was satisfied that a number of matters were beyond dispute:

- the Council had a responsibility to inform mortgagees of their full mortgage protection entitlements;
- over the years and, at least up to 1996, there were problems generally within local authorities in relation to the administrative systems in place to inform mortgagees of their mortgage protection entitlements;
- the complainant had contacts with the Council in 1986 and 1991 in relation to her mortgage protection and was not given adequate information about it on either occasion;
- the Council was aware that she was having difficulties meeting her arrears arising from her circumstances;
- the complainant suffered considerable stress, inconvenience and financial loss arising from the delay in becoming aware of her entitlements;
- the complainant did not become aware of her full mortgage protection entitlements until 1994.

While it had not been possible to verify by means of documentary evidence whether the Certificate of Insurance did in fact issue in 1986, I was aware that the courts have held in favour of complainants where the local authority could not provide such documentary proof. Based on the established facts and on the balance of probabilities, I took the view that there were reasonable grounds for asking the Council to offer redress to the complainant. Having reviewed its position the Council agreed to provide £6,000 (€7,618.43) in compensation which was acceptable to me and the complainant.

## Wexford Corporation

### *Refuse Collection Charges*

A man who had cancelled his refuse collection service complained in 1998 that he continued to receive bills. When Wexford Corporation checked its financial records it found that his account had been cleared in October, 1996 and should have been designated as a null account for the following years. Due to an oversight, the account was not nullified and bills continued to issue to the complainant until 1998. When I drew the Corporation's attention to the situation, it arranged to have the account nullified and it also apologised to the complainant. I was satisfied that this was a reasonable response.

The complainant contacted my Office again in 1999. He informed me that he had received a further demand to pay the refuse collection charge. I was surprised at this situation so I contacted the Corporation again. I also suggested that it consider an appropriate form of redress in view of the inconvenience caused to the complainant. In response, the Corporation issued a further apology to the complainant and, as a gesture of goodwill, forwarded a cheque for £50 (€63.49) to compensate him for the continued inconvenience. The Corporation also advised my Office that his account has been inspected and that it was satisfied that the account had been nullified.

I was even more surprised when the complainant contacted my Office again in 2000. He told me that, notwithstanding the Corporation's earlier commitments, a further demand for the refuse collection charge issued to him in July 2000.

Having regard to the history of this case, I asked the Corporation to consider the question of further redress. In reply, the Corporation agreed to apologise again and to offer a payment of £100 (€126.97) to the complainant. This brought the total redress offered to £150 (€190.46).

This should have been a simple case to resolve, however, because of a basic administrative oversight the Corporation found itself, on two occasions, in a situation of having to offer an apology and compensation.

## **Kildare County Council**

### *Procedures for Repossession of Houses*

In 1998, a tenant of Kildare County Council was admitted to hospital. During her two week stay in hospital she became very worried about her house as she was in substantial arrears of rent and the house had been damaged during a break-in. She complained to me stating that while she was in hospital, she contacted the Council to say that she was not able to cope with the house. The Council then repossessed the house and boarded it up for security reasons. This left the complainant homeless.

The Council told me that the complainant visited its offices in July 1998 and indicated that she wished to surrender tenancy of her house. She was advised that she should not give up her house until she was absolutely sure about the consequences. She was also told that if she applied for rehousing to the Council, the fact that she had handed back a Council house would have to be taken into account.

Shortly afterwards, the Council considered the complainant for a swap of tenancies with another Council tenant who was living in overcrowded conditions in a one bedroom flat. However, the Council took the view that, because the complainant was in arrears of rent, totalling £941 (€1,194.82), and had vacated her house, it was not prepared to grant the house swap. Subsequently, the complainant made a new application for housing to the Council. The Council informed me that her housing application could not be approved because she was not eligible for re-appointment as tenant to her former house,

a 3-bedroomed house, on the basis that, as a single person, that house was more suitable for a family.

At the outset, I had some concerns about the Council's actions in taking possession of a house from one of its own tenants without her written consent. It was not clear to me when or how the Council took possession of the house. However, it was obvious that at no time did she give written consent, in the form of a Vacancy / Closure Order, to the Council, nor, it appears, was she asked to sign any. This was a serious administrative error by the Council.

I was concerned that the Council had taken possession of her home even though:

- she had recently been discharged from the acute psychiatric unit of a hospital;
- the Health Board had offered to carry out repairs to the house;
- she had been reducing the rent arrears on her house from £1,900 (€2,412.50) in 1991 to £940 (€1,193.55) in September 1998;
- she had not formally surrendered the house;
- the Council had not formally taken possession of it.

The primary question which arose was whether, at the time the complainant contacted the Council to surrender her house by word of mouth, she was capable, due to her illness, of understanding the implications of her actions. I was conscious that the Council knew of her temporary illness, or ought to have known, and, therefore, the Council should have taken more active steps to establish her actual state of health when she approached the Council and before it took possession of her house. I asked the Council to review the case and to consider the question of offering some form of redress to the complainant for the distress caused to her during the period in question.

In response the Council advised me that it had reviewed its procedures for taking possession of houses which have been handed back by former tenants. The Council also

allocated a one bedroom flat to the complainant and agreed to give her £300 (€380.92) in compensation for the alleged loss of some of her possessions during the period when it repossessed her former house.

Both the complainant and I were satisfied with the Council's offer.

### **Southern Health Board**

#### *Hospital Charges*

I received a complaint from an English national concerning the payment of private charges in respect of in - patient services at Tralee General Hospital. The complaint arose when her husband was admitted to Tralee General Hospital with suspected meningitis. The complainant furnished all relevant information concerning her husband on admission and subsequently received an invoice from the hospital in the amount of £903 (€1,164.57). She had been unaware that her husband had been treated in a private room during his hospitalisation. The hospital indicated that, on admission, the complainant had opted for a private room. However, she was adamant that she had never been told at any stage that private treatment was being provided nor was she presented with a schedule of charges for private treatment. However, a few days after the admission she was asked to sign a form and did so on the understanding that it was required to verify that her husband had adequate insurance to cover his treatment. The section marked "I wish to be treated in a private capacity under my health insurance" was ticked, but a section headed "Private Patients" was unmarked. This section commits the patient to liability for all consultants' fees and charges for private or semiprivate accommodation.

The Southern Health Board's interpretation of the form completed by the complainant was that she was opting on

her husband's behalf for private care. However, given the circumstances of the case, the Board agreed to accept an amount of £531 (€674.23) which had been subsequently paid by an insurance company in full settlement of the invoice. I concluded that the confusion in this case had been caused by the documentation in use at the time which outlined the charges and the options for those availing of private treatment. I confirmed that the relevant form was subsequently revised with a view to making it more transparent and understandable.

### **Mid-Western Health Board**

#### *Poor Standard of Care for Nursing Home Resident*

The Nursing Homes (Care and Welfare) Regulations, 1993 includes provisions which place an obligation on health boards to investigate complaints against private nursing homes. A health board must investigate the complaint and, where it is upheld, may issue a direction to the nursing home (which must be complied with) requiring specified action to be taken. While my remit does not allow me to investigate the actions of a private nursing home, I may examine the manner in which an investigation was carried out by a health board.

I received a complaint from a woman about the inadequacy of an investigation conducted by the Mid-Western Health Board into the care afforded to her late mother while resident in a nursing home in the weeks prior to her death. She further asserted that the conclusions drawn by the Board, together with a statement of the outcome which had issued to her, were inconsistent with the facts ascertained. She was unhappy with the treatment of her allegation that a catheter which was attached to her mother had been kinked over a forty-eight hour period prior to her death. She also rejected a claim made by the Board's investigation team that her mother suffered from Alzheimer's Disease.

The background to the case was as follows. Nursing home staff had informed the family that her mother was very ill, was not passing urine, that this indicated her kidneys were not functioning and she could not be expected to live very long. On the following day, in the course of a visit, the complainant discovered that her mother was still not passing urine. She subsequently asked her mother's GP to visit her. The complainant said that she was advised by telephone that evening, by a member of staff of the nursing home, that it had been discovered that the urine bag was kinked and when replaced her mother passed a significant amount of urine. She claimed that the following day she was advised by a staff member that such difficulty with the bag was quite normal.

The Board investigated the complaint and advised the complainant that at the time of her mother's death she had been suffering from Alzheimer's Disease and had extensive contractures and bedsores. They said she had been turned every two hours and was given a satisfactory standard of nursing care. The Board said that the nursing report generally indicated the amount of urine draining from the catheter and when it was replaced. It also stated that it was difficult to investigate the complaint as it was retrospective and circumstantial and that in order to investigate it was necessary to have received a complaint at the time of the incident.

At a subsequent meeting with the complainant and her son, officials of the Board said that the nursing report contained no evidence of kinking, but that there was a record of the catheter being changed with a subsequent output of 500 mls of urine. The complainant subsequently wrote to the Board indicating she was unhappy with the extent to which the blocked catheter incident was investigated and maintained that the conclusions were inconsistent with what she had observed. She also claimed that relevant persons involved had not been interviewed, and that the claim that her mother had Alzheimer's Disease was factually incorrect. The Board replied and rejected her claims.

Following my examination of the case, I gave the Board a report containing my preliminary findings. It was my view that there was *prima facie* evidence that the investigation carried out by the Board was inadequate and thus contrary to fair or sound administration. The Board replied stating that it accepted my observations in relation to the investigation and had arranged for an inspection to be carried out at the nursing home by a team from another Community Care Area.

The Inspection Team's report showed that it was satisfied that the catheter was blocked at the time it was changed and had been kinked earlier in the night. With regard to the diagnosis of Alzheimer's Disease the team found no documentary evidence to support this diagnosis. The Board subsequently apologised to the complainant for the error and any distress caused. The Investigation Team also made a number of recommendations requiring the nursing home to draw up written policies and procedures in relation to catheter management, the prevention of pressure sores, and the administration of medical preparations.

It was also clear that the evidence, upon which the Investigation Team based its conclusions, was readily available to those involved in the first investigation. I asked the Board to consider redress, in the form of an *ex gratia* payment and it agreed to make a payment of £750 (€952.30) to the complainant. This amount was designed to ensure that the Board provided reasonable redress to reflect the stress, anxiety, frustration, and inconvenience the complainant suffered as a result of the deficiencies of its investigation.

# HELPING A PUBLIC

## Chapter 5

The Year in Review

HELPING TO ACHIEVE A PUBLIC SERVICE WHICH IS OPEN FAIR AND ACCOUNTABLE

# The Year in Review

## North-South Implementation Bodies

In line with the Belfast Agreement of 1998, six new North-South Implementation Bodies have now been established. These new bodies operate in the areas of food safety, trade and business development, language, aquaculture and marine, special EU programmes and inland waterways. The British-Irish Agreement Act, 1999, establishes these bodies in this jurisdiction and brings them within the remit of my Office. Both Ombudsman Offices, North and South, have jurisdiction over the Implementation Bodies and the Act provides for liaison and co-operation between both Offices, in dealing with complaints against these bodies. The jurisdiction of my Office covers "actions taken in the State by or on behalf of" the bodies and a parallel provision applies in the case of the Northern Ireland Ombudsman.

## Ombudsman (Amendment) Bill

For the seventh year in succession I find it necessary to record in my Annual Report that the Ombudsman (Amendment) Bill has yet to be enacted. In 1999 the Government approved the heads of a Bill which would extend my remit to bodies in the wider public sector such as the public voluntary hospitals, FÁS and the Health and Safety Authority. Despite the Government's decision the draft legislation - which is quite simple and straightforward - has yet to be prepared and put before the Oireachtas.

I note that in relation to the Freedom of Information Act, 1997 it has been possible, several times, to increase the number of public bodies which are subject to my jurisdiction as Information Commissioner. In addition, and as mentioned above, the British-Irish Agreement Act, 1999 has brought North-South Implementation Bodies within my jurisdiction as Ombudsman. These developments render even more inexplicable the failure to enact the Ombudsman (Amendment) Bill.

## Strategic Management and Business Planning

The task of delivering public services has become increasingly complex and challenging. Public bodies need to constantly review their internal processes and procedures to ensure that public services are delivered effectively, efficiently and professionally. This also applies to the three areas of activity in which I and the staff of my Office are involved viz. the Office of the Ombudsman, the Office of the Information Commissioner and the secretariat to the Public Offices Commission. While each body exercises three separate independent statutory functions, they have the common aim, as expressed in our mission statement, of **"helping to achieve a public service which is open, fair and accountable."**

In June 2000 I launched the first business plan to cover the three statutory functions. The plan has two aspects. First, it outlines the mission statement, values and the key strategic priorities for the three offices as a whole. Second, it contains detailed business plans for each of the line functions within the total organisation.

The task of formulating the plan was a great challenge in itself. The plan focuses on practical and achievable objectives and puts a lot of emphasis on the implementation of the various elements within specified deadlines. Work on its implementation is now well advanced and I am confident it will further enhance our high standards of professionalism and the quality of service which we deliver to our clients.

## Reports on Specific Issues or Areas of Public Administration

In my 1999 Annual Report I indicated that I would continue the practice of submitting occasional reports to the Oireachtas on specific issues or areas of public administration. These reports usually focus on systemic or

# PUBLIC ACCESS AND AWARENESS

procedural deficiencies which have adversely affected large numbers of complainants. The reports have been very effective in securing redress for complainants and, indeed, for others who might not have complained to my Office but who were also adversely affected by the actions of the public body in question. Another positive outcome is the improvements to public administration standards generally when public bodies take steps to correct the procedural defects highlighted in these reports. Most importantly, these reports, together with my annual reports, are presented to the Oireachtas in order to assist and support it in its work.

In July 2000 I published and submitted to the Oireachtas a report on my "own initiative" investigation into the level of unrefunded overpayments on borrowers' local authority housing loan accounts. The investigation arose from my examination of an individual complaint against Meath County Council which had continued to accept payments from an elderly borrower in respect of a housing loan even though it had been fully paid up for almost two years. The case led me to believe that there may have been systemic weaknesses in the processing of such loan repayments in other local authorities. And so, I launched a local authority-wide investigation which I am empowered to carry out without the need for specific complaints. The report highlighted the extent to which many local authorities had continued to accept payments from borrowers on loans that had been paid in full and the failure of many local authorities to take any steps to refund the overpayments made on fully paid up loans. Following my investigation all overpayments were refunded together with compensation for loss of purchasing power of the amounts in question. The local authorities also agreed to introduce new procedures to ensure that this type of complaint would not recur.

I also completed a report of my investigation of complaints regarding the payment of nursing home subventions by health boards. Complaints about the subvention

regulations - in particular, the family assessment and "pocket money" provisions - have featured regularly in my Office's annual reports since 1993. My investigation focused on the underlying issues which gave rise to these complaints in the first place. It looked at the role of the Department of Health and Children in making the regulations and in overseeing the introduction and operation of the subvention scheme nationally.

I found that the Department and the health boards had acted in a manner which was "without proper authority", "improperly discriminatory" and generally "contrary to fair or sound administration". Action has since been taken by the Department to remedy the situation, substantial arrears, amounting to £6 million, are being paid and the subvention rates are to be increased from 1 April 2001.

The report also raises serious issues in regard to the relationship, on the one hand, between the Oireachtas and the Executive and, on the other, the relationships within the Executive between the political and administrative levels. These issues include the effective vetting of secondary legislation, the relationship between Ministers and senior civil servants, the funding of entitlements and human rights issues in relation to the elderly. In the report I outline how these issues might be progressed.

## Public Access and Awareness

Accessibility to my Office is a key element in the provision of our services to the general public. This is why over the years my staff have visited Citizens Information Centres (CICs) at a range of locations outside Dublin on a monthly basis as well as periodic visits to towns and cities throughout the country. These visits are preceded by intensive local publicity to highlight public awareness. Posters, flyers, press and local radio advertisements are employed in these publicity campaigns. In 2000 my Office arranged the distribution of information leaflets to over 195,000 households.



During 2000 my staff paid monthly visits to CICs in Cork, Limerick, Waterford, Galway, Portlaoise and Coolock. A total of 621 new complaints were received during these CIC visits of which 401 were valid and 220 (or 35%) were invalid. I wish to record my appreciation to the CICs for the continuing support they provide to my staff in the delivery of this service. Staff from my Office also made one-day visits to Letterkenny, Donegal, Sligo, Nenagh, Tipperary and Navan. A total of 326 new complaints were received as a result of these visits, of which 265 were valid and 61 (or 19%) were invalid.

The combined total of new valid complaints received as a result of the monthly and one-day visits amounted to 666. This valuable local service is continuing in 2001 and details are available from my Office's website at [www.irlgov.ie/ombudsman/](http://www.irlgov.ie/ombudsman/) on the Internet.

## **Contact with other Ombudsman Offices**

During the year I was delighted to receive visits from Mrs Nuala O'Loan, the newly appointed Police Ombudsman for Northern Ireland, Mr Antonius Sujata, of the Ombudsman Commission for Indonesia, the Russian Commissioner for Human Rights Mr Oleg Orestovich Mironov and Mr Tom Frawley, the newly appointed Assembly Ombudsman for Northern Ireland. In addition my Office arranged an intensive two-day course on Investigative Interviewing Skills in which staff from the Northern Ireland Ombudsman's Office also participated.

## **Relations with Bodies Within Remit**

I am very grateful for the high level of co-operation which I receive from the vast majority of public bodies within my jurisdiction. I acknowledge the very important role played by many liaison officers who, in the midst of the busy schedules of their own public bodies, ensure that the

priorities of my Office are addressed in a timely and comprehensive manner.

One of the ways in which I assess the degree of co-operation by public bodies is the number of Section 7 notices which my Office issues in the course of the year. A Section 7 notice is a statutory demand for the provision of information which my Office requires in examining a complaint. It is only issued in circumstances where there has been a lengthy delay on the part of the public body in providing the requested information. It is a mechanism which is used sparingly by my Office. I first began publishing statistics on the number of Section 7 notices issued by my Office in my 1998 Annual Report which recorded a total of 45 notices. In 1999 this was reduced to 27 and as can be seen from the figures given here the total number of notices issued in 2000 was 14. I welcome the reduction in the numbers of notices which it has been necessary to issue which reflects improved response rates to my Office. However, I am concerned that the Department of Education and Science, with three such notices, is at the very top of the list especially as the bulk of complaints about the Department concern delays or failure to reply to correspondence. While the overall number of notices which issued to local authorities has declined, I must also express a particular note of concern about the fact that they accounted for 11, or almost 80%, of the notices which issued in 2000. In fact, local authorities have accounted for the vast bulk of these notices over the past three years. I would like to see some concerted action taken by County Managers to address this disturbing trend.

Although my primary function is to investigate complaints, I also have a role in promoting higher standards of public administration. One of the ways in which I approach the latter role is to encourage public bodies to set up internal complaints systems. My Office now spends a considerable amount of time advising public bodies on the broad principles which underpin effective complaints systems.

# COMPLAINT STATISTICS

Body	No. of Section 7 Notices Issued
<b>Civil Service</b>	
Department of Education and Science	3
<b>Local Authorities</b>	
Fingal County Council	2
Galway County Council	2
New Ross Urban District Council	1
Roscommon County Council	1
South Dublin County Council	1
Thurles Urban District Council	1
Westpost Urban District Council	1
Wexford County Council	2
<b>Total</b>	<b>14</b>

## Complaint Statistics

During 2000 I received 5,102 complaints compared to 3,986 in 1999. In addition my Office dealt with 4,441 telephone queries from members of the public, other than telephone queries from complainants. Most of these callers require basic information or advice in relation to a wide variety of public services. Advice provided by my staff can range from how to make a complaint to a public body or where to obtain more comprehensive information about various services. The provision of advice has become a growing area of activity for my Office in recent years. We have committed more resources to it and we are very happy to provide this service to people who contact my Office with nowhere else to turn. I appreciate very much the great pride which my staff display, not only in successfully resolving a complaint, but also in advising a distressed caller on their rights and entitlements and the relevant body to contact for further information. Taking general enquiries and complaints into account my Office was contacted by over 9,500 people in 2000. The comparable figure for 1999 was 8,800.

Of the 5,102 complaints received in 2000 a total of 2,966, approximately 58%, were outside my jurisdiction, leaving a figure of 2,136 valid complaints received. The proportion of invalid complaints continues to increase annually. At one level these growing numbers indicate that citizens are becoming increasingly aware of their rights and have a greater propensity to complain when things go wrong. While this is a welcome development it also demonstrates the need by government and others to ensure that adequate complaint mechanisms are put in place to cope with this demand. As I said earlier in this chapter, my own Office's jurisdiction is excessively narrow in that, for no good reason, large areas of the public service are excluded from investigation. Citizens who complain unsuccessfully against these public bodies are left, in effect, with nowhere to turn. I am asking that this situation be remedied without further delay.

Other patterns are emerging in the statistics which I believe are mainly a reflection of current social and economic trends. Complaints against the Department of Social, Community and Family Affairs continue the recent pattern of decline, reflecting the decreasing numbers obtaining benefits from the Department. For example, statistics released by the Department indicated that the numbers on the Live Register for November 2000 were at their lowest level since November 1981. In 2000 there were 454 complaints against the Department whereas the totals for 1999, 1998 and 1997 were 665, 786 and 1007 respectively. This represents a decrease of 55% in such complaints since 1997. The Department has made a conscious effort in recent years to provide a more client focused service and has made improvements in areas such as the provision of information to clients on services and decisions. This has also contributed towards the decrease in complaints against the Department.

Again, as a reflection of social and economic trends, complaints against local authorities continue to rise and amounted to 787 in 2000 which was 37% of all complaints

received. Planning and housing complaints amounted to 487 in total which is 62% of all local authority complaints received. As will be seen from my remarks in Chapter 2 local authority complaints, and in particular planning complaints, are complex and time consuming and the processing of these complaints is very resource-intensive.

Complaints against health boards decreased from 387 in 1999 to 304 in 2000. Decisions by health boards in relation to Social Welfare Allowances are now appealable to the Social Welfare Appeals Office of the Department of Social, Community and Family Affairs and I have no doubt that this has led to the decrease in such complaints reaching my Office.

# ON SPECIFIC ISSUES OR PUBLIC ADMINISTRATION LESS AND AWARENESS WITH OTHER OMBUDSMAN

## Chapter 6

Statistics

HELPING TO ACHIEVE  
A PUBLIC SERVICE  
WHICH IS OPEN FAIR  
AND ACCOUNTABLE

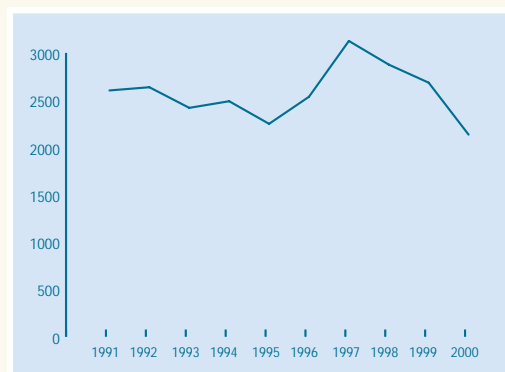
# Statistics

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23. **Analysis of Invalid Complaints Received in 2000**

1. Overview of 2000 complaints	
Complaints	Numbers
Received in 2000	5102
Outside Jurisdiction	2966
Total within Jurisdiction	2136
Carried forward from 1999	999
Total on hand for 2000	3135
Completed in 2000	2075
Carried forward to 2001	1060
Enquiries	4441

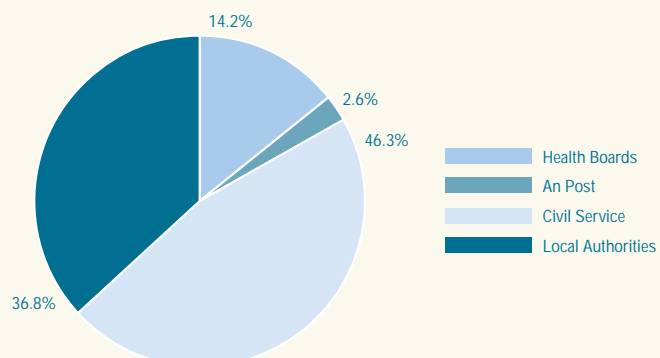
## 2. 10 Year Trend of Valid Complaints Received

1991	2603
1992	2637
1993	2419
1994	2489
1995	2250
1996	2536
1997	3126
1998	2876
1999	2685
2000	2136



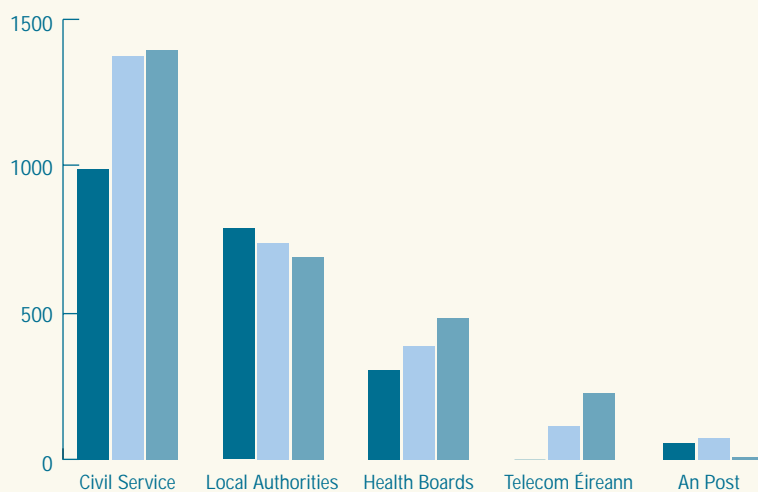
## 3. Analysis of Valid Complaints Received in 2000

Civil Service	989
Local Authorities	787
Health Boards	304
An Post	56
<b>Total</b>	<b>2136</b>



#### 4. Three Year Comparison - Valid Complaints Received

2000 total: 2,136      1999 total: 2,685      1998 total: 2,876



2000	989	787	305		56
1999	1375	737	387	113	73
1998	1396	690	482	227	8

#### 5. Civil Service - Valid Complaints in 2000

	Brought forward from 1999	Received in 2000	On hands for 2000
Social, Community and Family Affairs	147	454	601
Agriculture and Food	180	224	404
Education and Science	57	84	141
Revenue	47	88	135
Environment and Local Government	9	24	33
Health and Children	16	16	32
Marine and Natural Resources	14	12	26
Justice, Equality and Law Reform	9	15	24
Office of Public Works	4	8	12
Land Registry	5	6	11
Enterprise, Trade and Employment	4	5	9
Others	23	53	76
<b>Total</b>	<b>515</b>	<b>989</b>	<b>1504</b>

<b>6. Local Authorities - Valid in 2000</b>			
	Brought forward from 1999	Received in 2000	On hands for 2000
Carlow	1	7	8
Cavan	1	5	6
Clare	6	22	28
Cork Corporation *	14	36	50
Cork County *	17	46	63
Donegal *	11	41	52
Dublin Corporation	22	82	104
Dún Laoghaire - Rathdown	11	45	56
Fingal *	12	24	36
Galway Corporation *	10	24	34
Galway County *	15	21	36
Kerry	15	20	35
Kildare	14	18	32
Kilkenny	10	23	33
Laois *	4	25	29
Leitrim	3	2	5
Limerick Corporation *	9	25	34
Limerick County *	9	15	24
Longford	5	8	13
Louth	9	9	18
Mayo	28	33	61
Meath *	8	34	42
Monaghan	3	3	6
Offaly	9	9	18
Roscommon	12	18	30
Sligo *	7	13	20
South Dublin	15	34	49
Tipperary (NR) *	5	21	26
Tipperary (SR) *	5	17	22
Waterford Corporation *	4	9	13
Waterford County *	4	12	16
Westmeath	3	14	17
Wexford	22	39	61
Wicklow	16	33	49
<b>TOTAL</b>	<b>339</b>	<b>787</b>	<b>1126</b>

Complaints received against Borough Corporations, Urban District Councils and Town Commissioners are included in the County figures.

\* Monthly CIC visits or one-day visits were made to this County in 2000 and this is likely to have affected the number of complaints received.



7. Health Boards - Valid Complaints in 2000			
	Brought forward from 1999	Received in 2000	On hands for 2000
Eastern	26	45	71
Midland	8	18	26
Mid-Western	16	16	32
North Eastern	2	11	13
North Western	7	22	29
South Eastern	21	23	44
Southern	16	38	54
Western	24	50	74
*Northern Area	0	27	27
*East Coast Area	0	21	21
*South Western Area	0	32	32
** Eastern Regional Health Authority	0	1	1
<b>Total</b>	<b>120</b>	<b>304</b>	<b>424</b>

\* These three new Area Health Boards were established on 1 March 2000 and are now responsible for the former Eastern Health Board area.

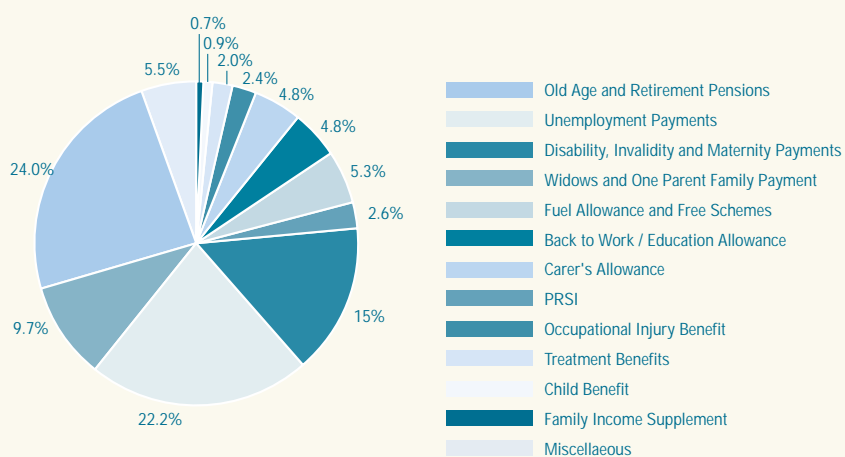
\*\* The Eastern Regional Health Authority was established on 1 March 2000 with responsibility for strategic planning for the three new Area Health Boards.

8. Telecom Éireann and An Post - Valid Complaints in 2000			
	Brought forward from 1999	Received in 2000	On hands for 2000
Telecom Éireann	13	0	13
An Post	12	56	68
<b>Total</b>	<b>25</b>	<b>56</b>	<b>81</b>

## 9. Department of Social, Community and Family Affairs

### Breakdown by Main Categories of Complaint Received in 2000

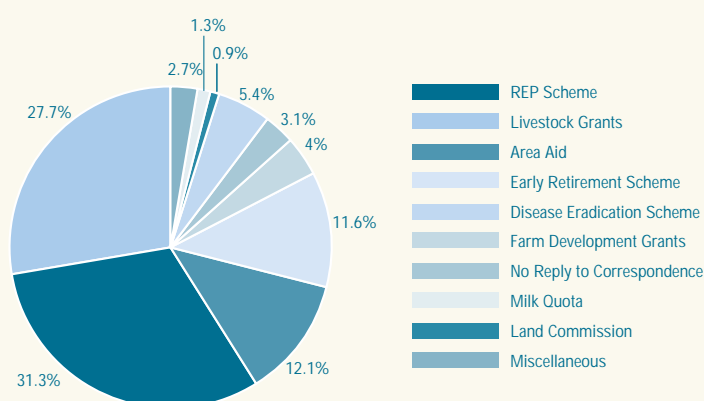
Old Age and Retirement Pensions	109
Unemployment Payments	101
Disability, Invalidity and Maternity Payments	68
Widows and One Parent Family Payment	44
Fuel Allowance and Free Schemes	24
Back to Work / Education Allowance	22
Carer's Allowance	22
PRSI	12
Occupational Injury Benefit	11
Treatment Benefits	9
Child Benefit	4
Family Income Supplement	3
Miscellaneous	25
<b>Total</b>	<b>454</b>



## 10. Department of Agriculture and Food

### Breakdown by Main Categories of Complaint Received in 2000

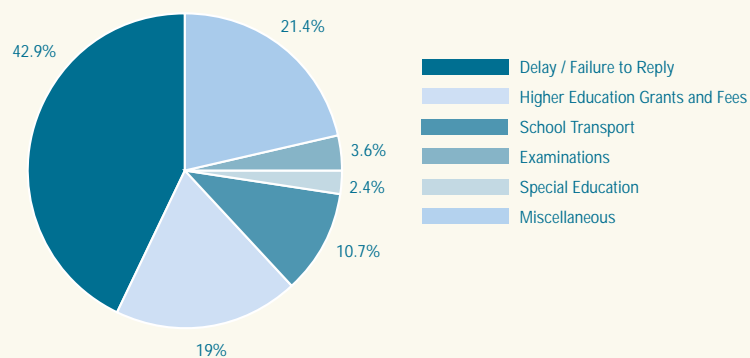
REP Scheme	70
Livestock Grants	62
Area Aid	27
Early Retirement Scheme	26
Disease Eradication Scheme	12
Farm Development Grants	9
No Reply to Correspondence	7
Milk Quota	3
Land Commission	2
Miscellaneous	6
<b>Total</b>	<b>224</b>



## 11. Department of Education and Science

### Breakdown by Main Categories of Complaint Received in 2000

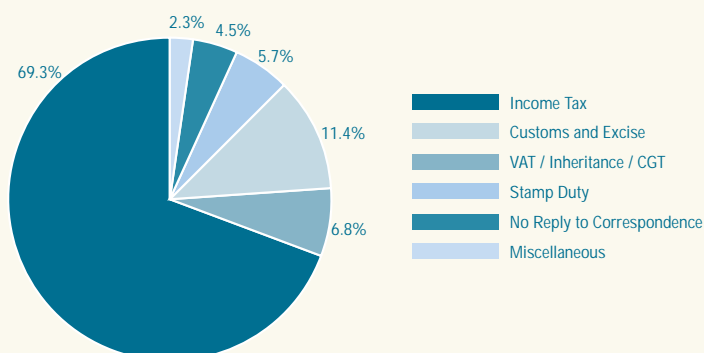
Delay / Failure to Reply	36
Higher Education Grants and Fees	16
School Transport	9
Examinations	3
Special Education	2
Miscellaneous	18
<b>Total</b>	<b>84</b>



## 12. Revenue Commissioners

### Breakdown by Main Categories of Complaint Received in 2000

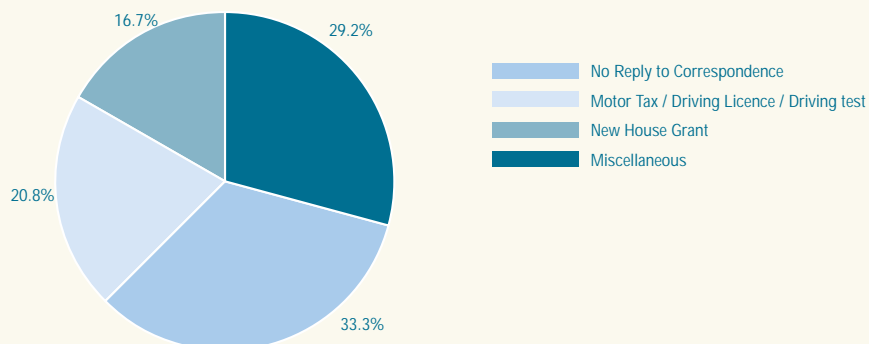
Income Tax	61
Customs and Excise	10
VAT / Inheritance / CGT	6
Stamp Duty	5
No Reply to Correspondence	4
Miscellaneous	2
<b>Total</b>	<b>88</b>



## 13. Environment and Local Government

### Breakdown by Main Categories of Complaint Received in 2000

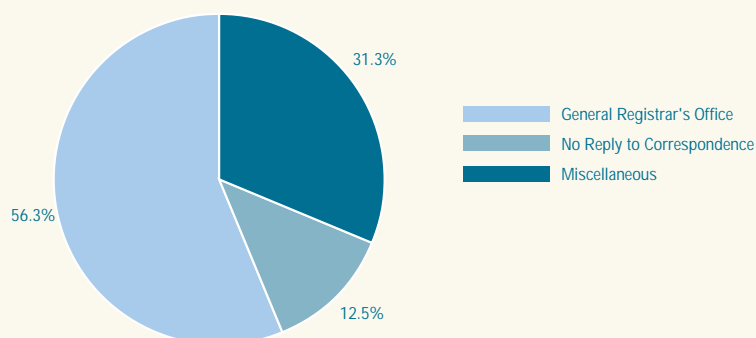
No Reply to Correspondence	8
Motor Tax / Driving Licence / Driving test	5
New House Grant	4
Miscellaneous	7
<b>Total</b>	<b>24</b>



#### 14. Department of Health and Children

##### Breakdown by Main Categories of Complaint Received in 2000

General Registrar's Office	9	
No Reply to Correspondence	2	
Miscellaneous	5	
<b>Total</b>	<b>16</b>	



#### 15. Local Authorities

##### Breakdown by Main Categories of Complaint Received in 2000

Housing			331
	Housing - Allocations and Transfers	164	
	Housing - Repairs	63	
	Housing - Loans and Grants	50	
	Housing - Sales	35	
	Housing - Rents	19	
Planning			156
	Planning - Enforcement	121	
	Planning - Administration	35	
Roads and Traffic			75
Delay - Failure to Reply			59
Sewerage & Drainage			31
Service Charge			20
Waste Disposal			15
Rates			12
Water Supply			12
Motor Tax and Driver License			11
Acquisition of land/rights			6
Access to Information on the Environment			4
Parks/Open Space			4
Miscellaneous			51
<b>Total</b>			<b>787</b>

## 16. Health Boards

### Breakdown by Main Categories of Complaint Received in 2000

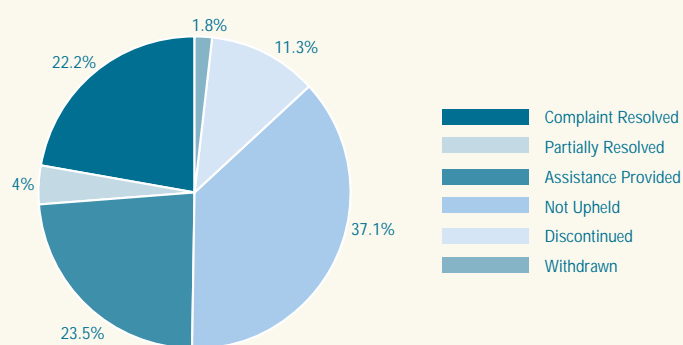
Supplementary Welfare Allowance			107
	Exceptional Needs Payment	53	
	Back to School - clothing and footwear allowances	23	
	Rent and Mortgage Allowances	20	
	Miscellaneous	11	
Health Services (General)			36
	Medical Card	29	
	Drugs, Medicines and Appliances	7	
Hospital Services			59
	Hospital Services - Nursing Homes/Long Stay	44	
	Miscellaneous	15	
Delay / Failure to Reply			21
Cash Payments (other than SWA)			14
Dental Service			13
Services for the Elderly - Housing Aid			11
Childcare / Social Work Services			11
Provision of Service			7
Hospital Charges			3
Administration of Superannuation Scheme			2
Miscellaneous			20
<b>Total</b>			<b>304</b>

### 17. Valid Complaints Received by County in 2000

Carlow	23
Cavan	17
Clare	52
Cork	217
Donegal	123
Dublin	531
Galway	143
Kerry	74
Kildare	51
Kilkenny	50
Laois	45
Leitrim	23
Limerick	89
Longford	22
Louth	26
Mayo	112
Meath	82
Monaghan	10
Offaly	28
Roscommon	35
Sligo	38
Tipperary	101
Waterford	42
Westmeath	38
Wexford	71
Wicklow	55
Outside Republic	38
<b>TOTAL</b>	<b>2136</b>

### 18. Analysis of Complaints Completed in 2000

Complaint Resolved	460
Partially Resolved	84
Assistance Provided	488
Not Upheld	770
Discontinued	235
Withdrawn	38
<b>Total</b>	<b>2075</b>



## 19. Civil Service - Complaints Completed in 2000

	Resolved	Partially Resolved	Assistance Provided	Discontinued	Withdrawn	Not Upheld	Total Completed
Social, Community and Family Affairs	78	11	119	33	5	193	439
Agriculture and Food	32	7	39	34	4	121	237
Education and Science	29	5	18	8	1	35	96
Revenue	18	6	27	13	2	18	84
Health and Children	8	1	10	2		4	25
Environment and Local Government	6		3	3		10	22
Marine and Natural Resources	4		6	1		8	19
Justice, Equality and Law Reform	4		9			5	18
Land Registry	2	1	3		2	2	10
Enterprise, Trade and Employment	1		4			3	8
Office of Public Works			2			1	3
Others	12	2	25	3		12	54
<b>Total</b>	<b>194</b>	<b>33</b>	<b>265</b>	<b>97</b>	<b>14</b>	<b>412</b>	<b>1015</b>



## 20. Local Authorities - Complaints Completed in 2000

	Resolved	Partially Resolved	Assistance Provided	Discontinued	Withdrawn	Not Upheld	Total Completed
Carlow	2	1	1	2			6
Cavan	1		2			1	4
Clare	1	1	3	3	1	7	16
Cork Corporation	6		2	5		12	25
Cork County	7	1	7	7	1	17	40
Donegal	10		6	7		8	31
Dublin Corporation	22	4	5	10	4	19	64
Dún Laoghaire - Rathdown	7	1	5			14	27
Fingal	8		2	4	2	8	24
Galway Corporation	7	1	4	3		8	23
Galway County	7	2	1	1		10	21
Kerry	5	2	5	3	1	6	22
Kildare	6	1	2	5	1	4	19
Kilkenny	6	1	7	4		5	23
Laois	3	1	3	7	1	3	18
Leitrim	2					1	3
Limerick Corporation	3		3	1		10	17
Limerick County	4	1	2	2		6	15
Longford	3		1	1		2	7
Louth	3	1	4	3		3	14
Mayo	9	3	6	3		12	33
Meath	4	3	7	4		2	20
Monaghan	1	1		1		2	5
Offaly	3		2	2		2	9
Roscommon	6		3	1		7	17
Sligo	5	2	1			5	13
South Dublin	10	2	5	3		14	34
Tipperary (NR)	3	2	7	1		5	18
Tipperary (SR)	6		3			5	14
Waterford Corporation	1	1	6	4		1	13
Waterford County	2		3	2		3	10
Westmeath	4		3	1		3	11
Wexford	16	3	9	6	1	5	40
Wicklow	7	4	6	6	1	6	30
<b>TOTAL</b>	<b>190</b>	<b>39</b>	<b>126</b>	<b>102</b>	<b>13</b>	<b>216</b>	<b>686</b>

## 21. Health Boards - Complaints Completed in 2000

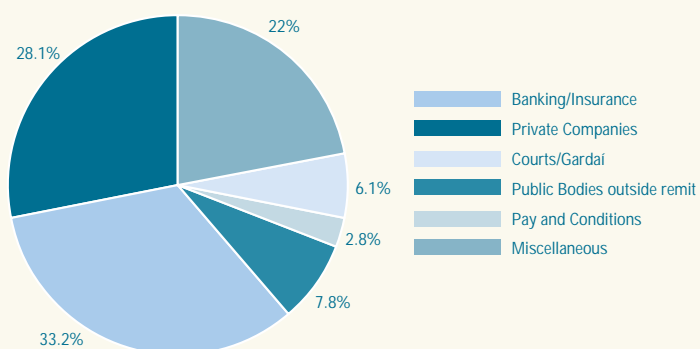
	Resolved	Partially Resolved	Assistance Provided	Discontinued	Withdrawn	Not Upheld	Total Completed
Eastern	10	2	7	7		41	67
Midland	7		6		1	7	21
Mid-Western	5		10	5	2	5	27
North Eastern	1		2		1	2	6
North Western	5		4	2	1	9	21
South Eastern	10		4	5		16	35
Southern	8	2	11	3	2	12	38
Western	11		20	7		5	43
Northern Area	3	1	4	1	1	6	16
East Coast Area			1	1	2	5	9
South Western Area			8		1	12	21
Eastern Regional Health Authority							
<b>Total</b>	<b>60</b>	<b>5</b>	<b>77</b>	<b>31</b>	<b>11</b>	<b>120</b>	<b>304</b>

## 22. Telecom Éireann/An Post - Complaints Completed in 2000

	Resolved	Partially Resolved	Assistance Provided	Discontinued	Withdrawn	Not Upheld	Total Completed
Telecom Éireann	3	4	3	1		1	12
An Post	13	3	17	4		21	58
<b>Total</b>	<b>16</b>	<b>7</b>	<b>20</b>	<b>5</b>	<b>0</b>	<b>22</b>	<b>70</b>

## 23. Analysis of Invalid Complaints Received in 2000

Banking/Insurance	984	
Private Companies	833	
Public Bodies outside remit	232	
Courts/Gardaí	181	
Pay and Conditions	82	
Miscellaneous	654	
<b>Total</b>	<b>2966</b>	



# Staff

## Director General

Pat Whelan

## Senior Investigators

Maureen Behan

Michael Brophy

Fintan Butler

David Waddell

## Investigators

Patricia Doyle

Geraldine Fitzpatrick

Eoghan Halpin

Ann Hayes

Brian McKeivitt

Matt Merrigan

Tom Morgan

Willy O'Doherty

Paddy O'Dwyer

Donal O'Sullivan

Bernard Rooney

David Ryan

## Support Staff

Catherine Boylan

John Doyle

Derek Finnegan

Phyllis Flynn

Ann Harwood

Evelyn Hernon

Paul Mallen

Fiona McCarney

Geraldine McCormack

Mary McGowan

Jacqueline Moore

Marian Mullen

Brian Murphy

Máire Ní Chatháin

Mary Pepper

Deborah Smyth

Kathleen Smyth

## Corporate Services Unit

Brendan O'Neill - Head of Corporate Services

Finbar Hanratty

Bernie Kelly

Edmund McDaid

Brian McKeon

Audrey O'Reilly

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