

Annual Report of the Ombudsman 1997

Baile Átha Cliath
Arna Fhoilsiú ag Oifig an tSoláthair
© Government of Ireland 1998

Le ceannach díreach ón
Oifig Dhíolta Foilseacháin Rialtais
Teach Sun Alliance,
Stráid Theach Laighean,
Baile Átha Cliath 2

nó tríd an bpost ó
Foilseachín Rialtais, An Rannóg Post-Tráchtá,
4 - 5 Bóthar Fhearchair,
Baile Átha Cliath 2
Teil: 01 661 3111, fo-líne 4040/4045
Facs: 01 475 2760
nó trí aon díoltóir leabhar

Dublin
Published by the Stationary Office

To be purchased directly from the
Government Publications Sales Office,
Sun Alliance House,
Molesworth Street,
Dublin 2

or by mail order from
Government Publications,
Postal Trade Section,
4 - 5 Harcourt Street,
Dublin 2
Tel: 01 661 3111 ext 4040/4045
Fax: 01 475 2760
or through any bookseller

Office of the Ombudsman
18 Lower Leeson Street,
Dublin 2
Tel: 01 678 5222
Fax: 01 661 0570
Lo-call: 1 890 223 030
Email: ombudsman@ombudsman.irlgov.ie
www:<http://www.irlgov.ie/ombudsman/>

Price £5.00



Foreword

I hereby submit my fourth Annual Report to the Dáil and Seanad pursuant to the provisions of Section 6(7) of the Ombudsman Act, 1980. This is the 14th Annual Report submitted in relation to the work of the Office of the Ombudsman since it was established in 1984.

Kevin Murphy
Ombudsman

APRIL 1998

Contents

Chapter 1 - Introduction	2
Chapter 2 - The year's work	4
Number of Complaints	4
Public Access and Awareness	8
Market Research	8
Strategic Management Initiative	8
Relations with Bodies within Remit	9
Government Plans for the Office	9
Relocation to 18 Lower Leeson Street	10
Freedom of Information	10
Contact with other Ombudsman Offices	10
The European Ombudsman	11
Protection of the term "Ombudsman"	11
Chapter 3 - Dáil and Seanad Debates on the Ombudsman's Annual Reports	12
Chapter 4 - Internal Complaints Systems	14
The Need for Internal Complaints Systems	15
Appeals against Local Decisions	16
Fairness and Independence	16
Speed and Efficiency	17
Reasons for Decisions	17
Flexibility	17
An Opportunity for Feedback	19
Accessibility	20
Chapter 5 - Selected cases and general issues	22
Civil Service	
Department of Arts, Heritage, Gaeltacht and the Islands	22
Department of Justice, Equality and Law Reform	23
Department of Social, Community and Family Affairs	24
Department of Education and Science	26
Local Authorities	
Carlow County Council	26
Wexford County Council	27
Dublin Corporation	27
Traveller Accommodation	28
Health Boards	
Western Health Board	29
Southern Health Board	30
Telecom Éireann	30
Chapter 6 - Statistics	32
Staff	43
Index	44

Introduction

“I was very pleased when last year's Annual Report was debated in both Houses of the Oireachtas. I value the support given by individual members to the work of my Office and, for the first time, I have included in this Report my comments on some of the issues which they raised in those debates.”



This Annual Report covers the third full year of my tenure as Ombudsman. It has also been my busiest year to date with a 24% increase in the number of complaints received and 21% increase in the number of cases completed. I have also been occupied with preparations for my additional role as Information Commissioner under the Freedom of Information Act, 1997 which is effective from April of this year. As Ombudsman, I am a member of the Public Offices Commission and the Constituency Commission, both of which were very active during the course of the year. I was also involved with a further Ad hoc Commission on Referendum Information, this time in relation to cabinet confidentiality. That I was able to cope with these tasks is a tribute to the great support I get from the Director and staff of my Office.

I was very pleased when last year's Annual Report was debated in both Houses of the Oireachtas. I value the support given by individual members to the work of my Office and, for the first time, I have included in this Report my comments on some of the issues which they raised in those debates.

I am anxious that my Annual Reports should not simply be accounts of the cases and activities which engage my Office in the course of the year. I also want to promote higher standards of public administration. Last year I published my "Guide to Standards of Best Practice for Public Servants" encouraging them to deal properly, fairly and impartially with members of the public. This year I am publishing a guide for public bodies on how to set up their own internal complaints systems. I am doing this because, before I deal with a complaint, I insist on the complainant giving the public body concerned a chance to put the matter right. But I would like to be satisfied that the bodies concerned have carried out genuine reviews of the original decisions. I have arranged for the guide to be distributed with each copy of my Annual Report. Additional copies of the guide are available from my Office.

The guide, although cast in general terms, sets out the features which are crucial to an effective complaints system. In Chapter 4, I illustrate their importance by reference to cases which I have dealt with in the past year.

The year's work

Number of complaints
 Public Access and Awareness
 Market Research
 Strategic Management Initiative
 Relations with Bodies within Remit
 Government Plans for the Office
 Relocation to 18 Lower Leeson Street
 Freedom of Information
 Contact with other Ombudsman Offices
 The European Ombudsman
 Protection of the Term "Ombudsman"

Number of Complaints

During 1997 I received a total of 3,929 complaints compared to a total of 3,181 complaints in the previous year. This represented an increase of 24% in the number of complaints received. Of these, 803 were outside my remit leaving a balance of 3,126 valid complaints. If a case cannot be dealt with by my Office, every effort is made to direct the complainant to some other service which might provide assistance or information. In addition to the new complaints I received, there was a carry-over of 948 complaints from 1996 resulting in a case-load of 4,074 to be dealt with in 1997. During the year, 2,981 of these were brought to a conclusion leaving a balance of 1,093 to be carried forward to 1998.

Of the 2,981 cases finalised in 1997, 523 were resolved and in 802 cases assistance was provided which means that in 1,325 (over 44%) cases some form of redress was obtained for the complainants. A total of 989 complaints was not upheld and a further 667 cases were either discontinued or withdrawn by the complainants.

In terms of the overall breakdown of complaints within my jurisdiction dealt with during the year, 50.2% concerned civil service departments and offices. Of

these, 62% involved the Department of Social, Community and Family Affairs, 13.5% concerned the Department of Agriculture and Food and 9.9% were against the Revenue Commissioners. Of the remaining 49.8% of complaints, 25% involved local authorities, 13.5% related to health boards, 9% concerned Telecom Éireann and 2.3% An Post.

In addition to examining and investigating complaints, a significant portion of my staff's time is spent in advising members of the public of their rights and entitlements when they write, phone or call to the Office. It is understandable that not everyone will be familiar with the limits of my jurisdiction, in which case my staff will clarify matters and, if necessary, advise the complainant to redirect his or her complaint to the appropriate organisation. This "behind the scenes" work by my staff often goes publicly unrecognised but provides a very helpful service for members of the public especially when informing them of their rights. The increase in the number of complaints closed during the year was possible only because of the continued commitment, hard work and professionalism of all my staff whom I would like to thank sincerely. My special thanks is due to Paddy Walsh and Matt Merrigan for their excellent work in preparing this Annual Report and the Guide to Internal Complaints Systems.



Complaints handled in 1997

Complaints	Numbers
Received in 1997	3,929
Outside jurisdiction	803
Total within jurisdiction	3,126
Carried forward from 1996	948
Total for 1997	4,074

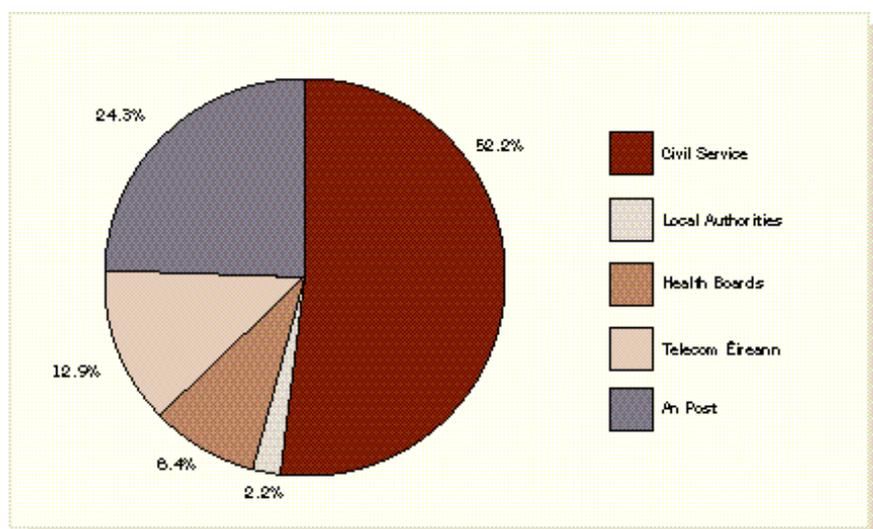
Breakdown of complaints within jurisdiction handled in 1997

Body	Numbers
CIVIL SERVICE	2,098
Social, Community and Family Affairs	1,206
Agriculture and Food	361
Revenue Commissioners	201
Education and Science	171
Environment and Local Government	34
Other Civil Service Departments and Offices	125
LOCAL AUTHORITIES	972
HEALTH BOARDS	549
TELECOM ÉIREANN	374
AN POST	81
TOTAL	4,074

Complaints finalised in 1997

Complaints	Numbers
Finalised	2,981
Of which:	
Complaints Resolved	523
Assistance Provided	802
Not Upheld	989
Discontinued	629
Withdrawn	38
Carried Forward to 1998	1,093

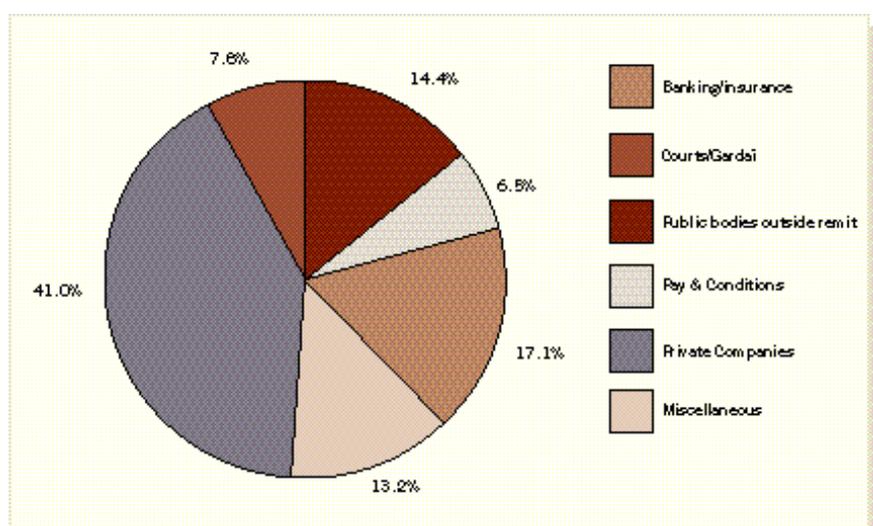
Complaints within jurisdiction in 1997 = 3,126



Invalid complaints received in 1997

Body	Numbers
Private Companies	329
Banking/Insurance	137
Public Bodies outside remit	116
Pay and Conditions	63
Courts/Gardaí	52
Miscellaneous	106
TOTAL	803

Invalid complaints received in 1997 = 803



Public Access and Awareness

During 1997 my Office paid monthly visits to Citizen Information Centres [CICs] in Cork, Galway, Limerick and Waterford. Over the year there were 491 callers to these centres. I would like to thank all those involved, including the National Social Service Board and the CICs for their continued support in publicising these services.

One-day visits to take complaints were made by my staff to Enniscorthy, Dundalk, Drogheda, Bray, Cavan, and Monaghan. A total of 318 people attended.

In order to make my Office more accessible to people in the greater Dublin area, a programme of one-day visits to the main towns commenced with the visit to Bray, where a total of 51 people attended. A similar visit to Swords is planned for the first half of 1998. The network of CICs has been very useful in promoting public access to and awareness of my Office outside of Dublin. I intend to work towards establishing similar linkages with the Dublin Area-Based Partnerships with a view to providing access to those people living in disadvantaged areas of the city. I am conscious that the services of my Office are not being availed of by such people. A physical presence by my Office in their locality on a monthly basis is not in itself sufficient. They need the support and guidance of those currently delivering social and community services in these areas who know how the system works, and where the Ombudsman fits in.

Information on the Office, including details of the planned programme of regional and CIC visits for 1998 is published on the Internet ([url:http://www.irl-gov.ie/ombudsman/](http://www.irl-gov.ie/ombudsman/))

My Office can now be reached from any part of the State for the price of a local call.
The number is 1-890-223030

Market Research

I commissioned Lansdowne Market Research to survey the opinions on the Office of a representative sample of 805 adults nation-wide during October 1996. The results of this exercise proved very interesting and will allow my Office to target the limited publicity budget more effectively in future. While it is difficult to compare these results with surveys conducted by Ombudsman Offices abroad, the survey indicates that there is a higher level of awareness here of the existence of the Ombudsman, and of his role, than in many

other countries. The survey also confirms that there is much work to be done in increasing public awareness and access to the Office of the Ombudsman in Ireland.

Some of the main results are as follows:

34% of respondents were aware that the Ombudsman can deal with complaints from the public;

23% indicated that they would go to the Ombudsman if they wished to complain about a state organisation;

81% said that they had heard of the Office of the Ombudsman, but of these only **6%** said that they had ever actually contacted the Office;

56% thought the Ombudsman was independent whereas a sizeable **25%** thought the Office was controlled by the Government;

90% agreed that it is good that there is an independent organisation which can help with complaints;

70% agreed that if they knew more about the Office they would be more inclined to contact it.

Questions in relation to the powers of the Ombudsman yielded conflicting results and some confusion among the public is evident. **Sixty eight per cent** were aware that the Ombudsman could investigate decisions made by Government Departments; **64%**, however, thought that the Ombudsman could investigate private companies or businesses, which is not the case. **Eighty per cent** of the sample said that they would like to have more information about the Ombudsman.

My Office has analysed the survey results and I intend to put in place specific awareness-raising programmes to meet identified shortcomings.

Strategic Management Initiative

In February 1997, I published a Statement of Strategy which charts the development of my Office for the period up to 1999. The Statement stresses the importance of providing an independent, accessible, fair and effective complaints examination service and it sets out a number of strategies under each of these headings.

Among the strategies addressed in 1997 were a market research exercise which is reported above; a new performance assessment system has been developed and implemented for all staff; investigation procedures and the categorisation of complaint outcomes have been

reviewed; an interpersonal skills staff training programme was completed and implementation of a new Office Information System was commenced.

The Public Service Management Act, 1997 provides, among other things, for the preparation of strategy statements by Government departments and offices in accordance with Government guidelines and policies. Given the statutory independence of my Office and in accordance with an option in the Act available to mine and certain other offices, I have elected not to be subject to its statutory provisions. The public perception of the independence of my Office is highly important. I could not subscribe to a provision which would subject my Office to Government direction in relation to my Office's preparation of a Statement of Strategy. However, I fully support the spirit and intent of the Act and I am exploring ways of giving effect to its other provisions outside of the legal framework.

In relation to Strategic Management throughout the wider public service, I welcome the increased emphasis on quality customer service and in particular the provision by many public bodies of customer action plans and internal complaints systems. However, I would sound a note of caution. The customer concept is a useful one, but it should not be forgotten that the citizen has rights in dealing with public bodies and that they, in turn, have corresponding obligations to the citizen. Unlike a customer in the private sector, the citizen has no choice of supplier when dealing with the public service and this imposes special obligations on public bodies. In particular, citizens have the right not only to quality service but also to fair treatment.

Relations with Public Bodies within Remit

Many of my talks to public bodies in the course of the year were given in my capacity as Information Commissioner Designate. I gave a presentation to Secretaries General of Government departments and I addressed the Civil Service Annual Information Technology Seminar. Health service professionals and administrators have demonstrated a keen interest in freedom of information and I have spoken at several seminars organised by the health boards and other health service agencies. "Accountability to the Citizen" was the title of a paper covering all of my functions as Ombudsman and Information Commissioner Designate which I presented to the National Conference of the Institute of Public Administration.

As indicated in my Office's Statement of Strategy 1997-1999, I see public talks as an important means of promoting and developing good relations with the bodies within my jurisdiction. My staff also gave many presentations to individual Government departments, local authorities and health boards. Members of staff also serve on a number of outside bodies, e.g. the International Bar Association, the Central Applications Office Appeal Board, the Irish Society for Quality in Health Care and the Registrar's Committee of the Incorporated Law Society (which deals with complaints against solicitors).

The level of co-operation which I receive from public bodies is generally excellent and I greatly appreciate the efforts which most of them make to comply with my procedures. However, in some instances it has been necessary for my Office to invoke Section 7 of the Ombudsman Act 1980 in order to obtain a report from a body in relation to a complaint. A Section 7 notice requires public officials to furnish me with information relevant to a complaint by a specified date and, if necessary, to attend before me for that purpose. Such a notice is issued only as a last resort after both oral and written reminders have failed to elicit a response.

In an effort to improve response times, I have notified each public body that, with effect from 1 January 1998, my Office will be keeping a record of the number of Section 7 notices issued annually to each body. I intend to publish the details in my Annual Reports beginning with the 1998 Report. In recognition of the fact that some public bodies are the subject of more complaints than others, the Annual Report will also detail, in the case of each public body, the number of Section 7 notices issued as a percentage of total complaints against that body.

Government Plans for the Office

In last year's report I expressed my disappointment at the lack of progress by the Department of Finance in preparing an Ombudsman (Amendment) Bill to extend the powers and remit of my Office. However, I was pleased to learn that the preparation of the Bill was re-activated during 1997 and that the Department will be bringing proposals to Government shortly to increase the powers of my Office and extend my remit to vocational education committees, the public voluntary hospitals and the non-commercial state bodies.

Relocation to 18 Lower Leeson Street

Because of the anticipated additional workload arising from my role as Information Commissioner, the proposed extension of my remit and the staffing implications of the statutory Referendum Commission, it has been necessary to move from my Office at 52 St Stephen's Green to a new location at 18 Lower Leeson Street. My Office's telephone and fax numbers and e-mail address, remain unchanged.

Freedom of Information

In April the Oireachtas passed the Freedom of Information Act, 1997 which creates the new office of Information Commissioner. I was honoured to be invited to be the first holder of this new office which will come into being, with the commencement of the Act, on 21 April 1998. My proposed appointment as Information Commissioner will be in addition to, and separate from, my existing role as Ombudsman. The Freedom of Information Act confers important new statutory rights in the area of access to officially held information. From 21 April 1998 the Act will apply to all Government Departments and to certain designated public bodies (e.g. the Environmental Protection Agency, the Blood Transfusion Service Board). Six months later, in October 1998, the Act will be extended to the health boards and the local authorities. In addition, there is provision in the Act for other public bodies to be designated, by regulation, as coming within its scope.

The Information Commissioner will have a wide range of functions and powers under the new Act. These functions include the making of binding appeal decisions; promoting good practice; monitoring performance; investigating practices as well as reporting (both to the Oireachtas and to the bodies concerned). Arrangements for the establishment of the new Office have been under way for the past few months. At a broader level, the Central Policy Unit of the Department of Finance has been very active in encouraging public bodies to make the preparations necessary for the successful implementation of the Act.

I am looking forward to the challenge which will be presented by my new role as Information Commissioner. I am particularly encouraged by the very active support already being offered by the Department of Finance. Ultimately, this Act is about opening up the processes of government to the people and increasing their capacity to participate on the basis of hard information. It will be the job of the Information Commissioner to see that the Act is implemented in a way which enables this to happen.

Contact with other Ombudsman Offices

I maintain regular contact with my Ombudsman colleagues in the United Kingdom through the British and Irish Ombudsman Association and I attended its biennial conference in November 1997. I chaired the business session of the European National Ombudsman Conference in Jerusalem and in my capacity as one of four Regional Directors for Europe, I attended a Board Meeting of the International Ombudsman Institute in Copenhagen. In Strasbourg I participated in a seminar which examined the possibility of establishing a Council of Europe Commissioner for Human Rights. My Office was represented at a conference on Administrative Justice co-hosted by the Lord Chancellor's Department and the University of Bristol.

Among those who visited the Office in 1997 were a delegation including the Chinese Ambassador to Ireland and the Chinese Minister for Supervision; the Turkish Ambassador to Ireland; the Northern Ireland Ombudsman and his Deputy; a representative of the State Services Commission of New Zealand; representatives of the Office of the Attorney General, Australia; a Director of the United Kingdom Health Service Commissioner's Office and the President of the European Ombudsman Institute.

The European Ombudsman

In my Annual Report for 1996 I referred to the evolving relationship between the European Ombudsman and my Office and its role in strengthening the opportunity for Irish citizens, as citizens of Europe, to air their grievances against those institutions of the European Union (EU) or bodies which are within the European Ombudsman's remit. In accordance with agreed arrangements, National Ombudsmen can refer complaints against the institutions of the EU directly to the European Ombudsman who, in turn, may pursue them with the institution or body concerned.

In the course of 1997 I referred three cases to the European Ombudsman. All three involved interpretations of EU Directives by the European Commission. Two of the cases related to the Department of Agriculture and Food and the third related to South Dublin County Council. As I was not satisfied with the Commission's interpretations, I took up the cases with the European Ombudsman who has jurisdiction over the Commission. In one case it indicated that a test case was before the Court of First Instance and that it would review the matter in the light of the Court's judgment. The Commission is still examining the other case. My examination of the County Council case is continuing.

During the year a liaison network was established between the Offices of National Ombudsmen in the member states of the EU and the Office of the European Ombudsman. I find this network to be a useful source of information in relation to the application of EU law and the relevant principles of European administrative law.

Protection of the term "Ombudsman"

I was encouraged to find that my remarks about the protection of the term "Ombudsman" were supported in the course of the Oireachtas debate on my previous Annual Report. Together with my Ombudsman colleagues, both here in Ireland and abroad, I am anxious to ensure that the term "Ombudsman" is confined to those who satisfy the essential requirements of an Ombudsman. Otherwise there is a danger that those calling themselves "Ombudsman", who do not meet the criteria, will devalue the role and standing of those who do.

The Ombudsman of New Zealand for many years has had statutory authority under that country's Ombudsman Act to set the criteria against which to consider applications for the use of the term "Ombudsman". Following a recent amendment to the Danish Ombudsman Act, the term "Ombudsman" can be used in Denmark only if approved by Parliament. The Irish Ombudsman Act closely follows both the New Zealand and Danish models.

Dáil and Seanad Debates on the Ombudsman's Annual Reports

The Ombudsman Act requires me to make an Annual Report to each House of the Oireachtas. I am encouraged by the level of interest shown by deputies and senators in my Reports, all three of which have been debated in either, or both, Houses. I was particularly heartened by the fact that my last report was the subject of extensive debate in both Houses and the recognition and support given by individual members to the work of my Office and my staff. I value their comments and, indeed, criticisms as an important form of feedback on the performance of my Office.

I strongly believe that the independence and powers of my Office together with my role in relation to the citizen and the public service can be strengthened and developed with the support of the Oireachtas. Indeed, one of the key strategies of my Office, as outlined in its Statement of Strategy 1997-1999, is to continue to promote and develop good working relations with the Oireachtas and it is in this context, also, that feedback on my Annual Reports is especially useful.

I have read carefully the contributions of members on my last report and it might be useful to set out some comments on the issues raised.

Many members felt that public awareness of the Office is still quite low and suggested that additional funds should be allocated to publicising it, both on radio and television. The suggestion is well-founded given that the market research which I commissioned last year showed that only 34% of citizens are aware of the existence of my Office and its purpose. I am not happy with this figure and I am concerned that many people, through lack of awareness, may be deprived of the opportunity to pursue their grievances with my Office. While the

number of valid complaints received by my Office in the past two years has increased by almost 40%, it seems to me that many complaints are not proceeded with because of lack of awareness of my Office.

Within the limits of our budget, we have had to be selective in the type of publicity undertaken. The Office's annual programme of regional visits to local centres and the monthly visits to a number of Citizens Information Centres (CICs) have been effective in increasing awareness and meets, if only in a limited way, the calls by some members of the Oireachtas for regionalisation of the Office. Last year the total number of callers to the regional centres was 318 while the number who called to the CICs was 491. One member commented that the latter figure represented an annual average of only 80 callers to each CIC which in his view was very low by comparison with the number of callers to his constituency office. The comparison, however, is not a valid one - due to limited resources my Office has allocated one staff member to take complaints in each of the designated CICs *for one day only* in each month.

Another member expressed the view that the Office had not reached its full potential and called for a review of the Ombudsman Act and an immediate extension of my jurisdiction. He pointed to what he described as an alarming decline in the capacity of the Office to handle complaints and said that confidence in it had been undermined. He spoke of a decline in the number of complaints received, from almost 5,500 in 1985 to almost 2,500 in 1995. I cannot accept that the above figures support the member's contention. Firstly, there has been an increase of almost 40% in the number of valid complaints received since 1995. Secondly, the 1985 figures are in respect of the year in which the



Office's jurisdiction was extended to local authorities and health boards and typically one would expect disproportionately high numbers in that year. Thirdly, the figures do not take account of the fall in the number of complaints against Telecom Éireann from almost 1,500 in 1985 to 262 in 1997. This was due to the introduction of itemised billing which, by putting more information in the hands of subscribers, has substantially reduced their grounds for complaint. I should also mention that market research which I commissioned last year, the results of which are described elsewhere in this report, showed that 80% would like to have more information about the Office - hardly an indication of a lack of public confidence in the organisation. I am always wary of putting undue emphasis on the numbers of complaints received and finalised by my Office because such figures do not do justice to the often time-consuming and complex nature of the work which comes before me and my staff. The activities of this Office over the last decade, and the greater emphasis being put by public bodies on providing better service to the public, have combined to filter out many of the less complex complaints. The volume of complaints processed by my Office is very similar to that of the New Zealand Office, even though the Ombudsman's remit there extends to prisons, immigration and school boards.

Another member, while expressing the view that the service provided by my Office represented good value for money, asked about the performance indicators I have set for my staff. The Statement of Strategy 1997-1999 for my Office encompasses four key objectives. My staff and I are striving to promote and develop the independence of the Office, public access to it, and the fairness and effectiveness of our complaints examination service. With the assistance of a new performance assessment

system which my Office has developed, individual staff members have devised and agreed performance indicators which will assist in the attainment of the Office's objectives. The indicators are designed to ensure that a balance is achieved between examining complaints quickly and comprehensively and promoting systemic change in the public service by developing and promulgating principles of "Ombudsman jurisprudence".

In my previous Annual Report in dealing with the principle of impartiality, I stated that no significant case involving bias or prejudice had come to my attention during 1996. One member expressed surprise stating that, in his experience, bias and racial prejudice were on the increase as Dublin became a more pluralist capital. Another member referred to the manner in which asylum seekers were being treated in Dublin. The administration of the law in relation to aliens or naturalisation is outside my jurisdiction. A group of citizens who are at risk of suffering from bias or prejudice is the travelling community and I deal later on in this report with the problems I face when examining their complaints. Some complainants do make allegations of bias and prejudice against public officials. I have to say, however, that very rarely do I find evidence to sustain these allegations. That is not to say that the public body or its officials have been exonerated. Rather it means that I have found that the complaint was justified on grounds other than bias or prejudice.

I was encouraged by the support of the members for my proposals that the term "Ombudsman" should be protected and limited to those organisations which meet the essential criteria of an Ombudsman. I deal in more detail with this matter earlier in this Annual Report.

Internal Complaints Systems

- The need for internal complaints systems
- Appeals against local decisions
- Fairness and independence
- Speed and efficiency
- Reasons for decisions
- Flexibility
- An opportunity for feedback
- Accessibility

Over the past few years I have encouraged public bodies to establish their own internal complaints systems. At first sight it may seem strange that an Ombudsman, whose function it is to examine complaints against public bodies, would run the risk of making himself redundant by advocating such an approach! I see my role not only as obtaining redress for the people who have been treated improperly by public bodies but promoting higher standards of public administration so that such complaints do not recur. I regard my Annual Reports as a valuable method of conveying feedback on cases which have come to my attention and as an opportunity to outline general principles for public servants which relate to what I call "Ombudsman jurisprudence".

Two years ago I outlined in my Annual Report the Principles of Good Administration which I take into account in my examination of complaints. Last year I published my "Guide to Standards of Best Practice for Public Servants" to assist public servants in applying these principles to their everyday work. This year I am focusing on internal complaints systems which will enable individual public bodies to check that their clients are being treated properly. I hope that public bodies will see internal complaints systems as an opportunity for feedback which will lead to improvements in the quality of services at local level. Not

every complaint can be resolved at local level but, if an impasse is reached, the internal complaints system should provide for a referral, where appropriate, to the Ombudsman. This will be of significant benefit to the complainant in that, unlike the situation which exists at present, it will present a clear pathway for the complainant to independent third party adjudication. It will also have the benefit of creating a new method of increasing public awareness of the role of my Office.

The introduction of internal complaints systems is timely for many other reasons. Firstly, the Freedom of Information Act, 1997, which comes into effect on 21 April 1998, puts a very strong emphasis on the concept of internal review before decisions are referable to independent review by the Information Commissioner. Given that the public bodies which will be subject to the Act are devising such internal appeals systems at present, it would also be appropriate to plan for complaints systems in respect of their other functions. Secondly, internal complaints systems would serve to complement the Government sponsored Strategic Management Initiative, particularly the strong emphasis on citizens and their needs as clients or consumers of public services. There is now a commitment by Government Departments and Offices to the Principles of Quality Customer Care produced under the Government's Strategic



Management Initiative. These bodies have agreed to establish well-publicised, accessible, transparent and simple-to-use systems for dealing with complaints about the quality of service provided and they have also agreed to introduce formalised systems of redress for customers who are dissatisfied with decisions.

Accordingly, I am circulating with this Annual Report a copy of my guide entitled "Settling Complaints - The Ombudsman's Guide to Internal Complaints Systems".

The guide outlines the prerequisites for a good internal complaints system and gives guidance on its implementation. I attempt to illustrate the importance of some of these features in the following pages by reference to cases which I have dealt with in the past year.

The need for internal complaints systems

Some complaints are reviewed and resolved by the public bodies concerned on their own initiative shortly after they have been notified of the complaint by my Office. In other cases, having undertaken a preliminary examination of a complaint, my Office may present its perspective and request bodies to carry out a review of the original decision. These reviews have the advantage of giving the body itself

the opportunity to rectify cases of possible maladministration without the need for an investigation of the complaint. I would like to acknowledge the cooperation of those bodies which have acted upon requests from my Office to review decisions. However, some cases highlight the need for a complaints system within the public body itself whereby the complaints could be resolved internally without the complainant first coming to my Office. The following is one such case.

In a case involving the **Land Commission**, a woman complained about an alleged failure to honour an agreement made with her late husband regarding the purchase of land. She said that in 1978 her late husband acquired 4.5 acres of land from the Land Commission. It was intended that the land would be paid for by annuity payments over a period of 29 years but, at the time, her husband was promised that he would be given the option to purchase the land outright for the agreed sum of £1,400 when some difficulties relating to the title to the land had been resolved. However, in November 1981, when these difficulties had been sorted out, no outright purchase option was offered by the Land Commission. By the time the complainant approached my Office the total amount which had been paid to the Land Commission was £2,576 and a further £1,819 remained payable in respect of full redemption of the annuity.

The Land Commission's file contained a note by an official dated 27 January 1978 which referred to the fact that the complainant's late husband had indicated that he wished to purchase the land outright when it was feasible to do so. It appeared that this request had been overlooked when the title difficulties had been sorted out. As there was no evidence to indicate that the complainant's late husband had subsequently withdrawn his request, I suggested to the Land Commission that it might wish to review its position. The Commission later advised me that, having obtained the consent of the Minister for Finance, they were prepared to write off the remaining annuity of £1,819. This offer was accepted by the complainant.

Appeals against local decisions

The delegation of decision making to local level does not obviate the need for an avenue of appeal to the delegating authority, as the following case illustrates.

In September 1996 the **Department of Education and Science** delegated to Principals and Boards of Management of primary schools the function of granting certificates of exemption from the study of Irish. In a case which I dealt with during the year, I considered the terms of the circular outlining the delegation arrangements and noted with concern the absence of an appeal mechanism. I pointed this out to the Department and expressed the view that decisions on exemption from the study of Irish should remain a function of the Department, the operation of which has been delegated to local level within defined parameters. There should be a right of appeal to the Minister and this should be specified in the circular. The Department welcomed my suggestion and said that it would be given serious consideration in the context of a review of the circular.

Fairness and independence

Where an internal complaints system exists, it is imperative that it is operated independently of the person or body responsible for the original decision, if the system is to have the confidence and support of complainants. It is, in my view, extremely important, therefore, that any credible internal complaints system should have vested in it the authority, independence and capacity to carry out a full review of decisions and to reverse these decisions where necessary.

This issue arose in a complaint against the **Department of Agriculture and Food**. A woman had been refused payment of a livestock grant. She had appealed the decision to the Department's Headage and Premia Appeals Unit and the original decision had been upheld. She then wrote to my Office and in the course of the examination of her case I requested the Department's file dealing with her grant application.

It appeared from an examination of the Department's file that the Appeals Unit had decided to reverse the original decision relating to the woman's grant entitlement. This decision was then referred to the original decision-makers for their observations. They responded indicating that the original decision should be upheld. Following receipt of this response, the original decision to refuse payment was reinstated by the Appeals Unit.

While I was satisfied that the decision to refuse payment was justified, it was not clear that the decisions of the Appeals Unit were made independently of the influence of the original decision-makers. When my staff met with officials from the Appeals Unit it became evident that the reason the Appeals Unit changed its decision was not because of the observations made by the original decision-makers, but because additional information had subsequently become available.

I stressed the importance of internal complaints systems having the capacity to make decisions independently and objectively. The Appeals Unit indicated that steps had been taken to ensure that it was entirely separate and distinct from the sections in which the original decisions were made. In particular, decisions of the Appeals Unit were no longer referred back to the original decision-makers for observations. It was now their practice to notify the appellant directly of the decision and the section was obliged to implement this decision. All decisions of the Appeals Unit were now accepted within the Department as final although they remained open to examination by my Office.

I must compliment the Department, first of all, for setting up the Appeals Unit and then, when I pointed out some deficiencies in the process, being prepared to ensure its independence in hearing appeals.

Speed and efficiency

Speed and efficiency are among the essential characteristics underlying a good internal complaints system. It is a matter of concern that many of the complaints made to me arise because the complainants are frustrated by the failure of the body dealing with their cases to respond to requests for information.

In one such case a farmer had made numerous written and verbal contacts with the **Department of Agriculture and Food** over a three month period in relation to payment of a disease eradication grant. Seven months after he had contacted my Office, the farmer's case was reviewed by the Department and he was paid the grants which he had sought.

While the review showed a willingness on the part of the Department to be fair to the complainant, there was an excessive delay in carrying it out. I was also unhappy about the delay of over four months in obtaining an initial report on the case from the Department, an experience which is not confined to this case.

Members of the public are entitled to comprehensive and prompt responses to valid enquiries made of a public body. An internal complaints system, where it exists, will not be effective if the complainant is not able to make his or her case due to inadequate details of the basis for the decision made.

Reasons for decisions

An internal complaints system must produce a result which, even though it may not be acceptable to the complainant, is capable of being understood by him/her. He/she must be reassured that the case has been fully considered and accordingly, reasons for not upholding the complaint must be given.

This problem was highlighted by a complaint made by a parent against the **Department of Education and Science**. The Department has an established complaints procedure in cases where a complaint is made against a teacher. The process itself is reasonable and seeks to give all parties concerned an opportunity to state their case before a decision is made by the Department on whether there is need for any action against the teacher. The complaints procedure which is currently in operation concludes:

"Where it is considered that no action is warranted against a teacher, s/he and the Board of Management are informed that the matter has been investigated and that no further action is being taken. The parents/complainants are also told that the investigation has been completed, but are not told what action, if any, was taken, on the basis that their being so told might reduce the teacher's standing in the community and thus his/her effectiveness."

Clearly, the parent who has made a complaint of this nature to the Ombudsman will not always be satisfied with a notification from the Department that the investigation has been completed. A parent who received a letter on these lines from the Department complained to me as she was not satisfied that the Department had investigated her case properly.

When I examined the case, I was of the opinion that the Department's investigation was thorough and the conclusion reached was reasonable. I could sympathise, however, with the complainant's dissatisfaction with the uninformative letter she had received at the close of the investigation. While I appreciated the Department's concerns about the preservation of confidentiality in matters concerning a teacher's standing in his or her place of employment and community, I was not happy that merely notifying the complainant that the investigation had been completed was sufficiently informative to represent a fair outcome from her point of view. I asked the Department to consider giving more information to the complainant at the conclusion of the investigation. The Department agreed to do so in the context of an impending review of the complaints procedure.

Flexibility

It is important that, where an internal complaints system is set up, it is staffed by people who are prepared to look at the complaint from the point of view of the complainant. They should bear in mind that rules and regulations, while important in ensuring fairness, should not be applied so rigidly as to create inequity. The following two cases illustrate the point.

Maintenance Payments by a Separated Husband

I received a complaint concerning a couple who were legally separated and, as part of the separation agreement, the husband was required to pay maintenance in respect of the three children. The husband became unemployed and received Unemployment Assistance at the rate appropriate to a single man. The **Department of Social, Community and Family Affairs** refused pay-

ment of Child Dependant Allowance (CDA) in respect of the children on the grounds that he was not contributing substantially to their maintenance. This refusal was upheld on appeal. He argued that in the absence of the CDA he was unable to maintain them.

Article 7(6) of the Social Welfare (Consolidated Payments Provisions) Regulations, 1994 provides that where a qualified child is resident with one parent, and that parent is living apart from the other parent and not claiming or in receipt of benefit or assistance, the child, for social welfare purposes, will be regarded as resident with the other parent if that other parent is contributing substantially to the child's maintenance.

In this case the children were residing with the wife who was in employment and, therefore, not claiming from the Department. For social welfare purposes, therefore, the children could be regarded as resident with the father, and he could be paid CDA, if he was shown to be contributing substantially to their maintenance.

The Appeals Officer, when deciding the appeal, interpreted the expression "contributing substantially" as meaning an amount equivalent to the relevant CDA, and did not consider that this condition was satisfied in the present case. She also considered that the fact that the children spent weekends with their father did not alter the situation.

Having examined the details of the case, I was not satisfied that the decision to refuse CDA was reasonable. It seemed that in order to qualify for CDA, the husband would have had to contribute at least £13.20 per child per week or £39.60 in respect of the three children. It also appeared that if he had six children he would have had to contribute more than his actual income from Unemployment Assistance.

I considered that the purpose of the provision was to assist parents contribute to the maintenance of their children and suggested that the requirement might be satisfied where a parent could be shown to continue to contribute the CDA to the maintenance of the children, once the CDA was awarded. It seemed unreasonable to me to require an applicant to pay an amount equivalent to the CDA, in advance, where the rate of social welfare in payment to him was only intended to meet his own needs.

The Appeals Officer agreed to review the case, provided the complainant could show that he had contributed maintenance while previously on a FÁS scheme. Evidence was subsequently provided in this

regard and the Appeals Officer decided to revise her original decision and allow the appeal on the grounds that he had demonstrated his willingness to contribute substantially to the maintenance of his children.

I am continuing to pursue with the Department the general issue of the interpretation of "contributing substantially" in order to ensure consistency in the manner in which the term is interpreted.

Substandard House

A couple complained that the house they had purchased under the Shared Ownership Scheme was substandard. Before they purchased the house, it had been inspected and certified by **Galway County Council** as being free from structural defects and they relied on this certification when purchasing the house. Under the scheme, applicants acquire a minimum 50% share in the house and rent the remainder from the local authority. The house cost £27,000. The complainants claimed that the roof, ceilings, walls and sewerage system were in need of repair.

When the complainants brought the matter to its attention, the Council said that it was not liable under the law. It was relying on the provisions of Section 22 of the Housing (Miscellaneous Provisions) Act, 1992 which provides that the granting of assistance by a housing authority in respect of a house shall not imply any warranty on the part of the authority in relation to the state of repair or condition of the house or its fitness for human habitation.

Following protracted correspondence with my Office, the Council made an offer to buy out the complainants' share of the house, but this was not acceptable to the couple. An inspection of the house by the Council showed that there were repairs needed which would cost almost £22,000 to carry out. It also obtained legal advice which indicated that the Council could, in the event of legal proceedings, claim exemption from liability but suggested that in the circumstances of the case the courts might find in favour of the complainants. In continuing to maintain a legalistic approach to the complaint rather than dealing with it on its merits, the Council claimed that it was exempt from liability and suggested that the matter was proper for the courts to decide.

At this point I initiated an investigation of the case. I considered that there was evidence of administrative shortcomings in the Council's dealings with the complainants and that no reasonable form of redress had been offered. It was clear that the complainants had

entered the purchase agreement relying solely on the certification by the Council as to the condition of the house. Subsequent evidence clearly showed that the house was in very poor condition. There was no evidence to suggest that the Council had at any time notified the complainants of the terms of Section 22 of the Housing (Miscellaneous Provisions) Act, 1992 so they were unaware of its implications. I pointed out that the case breached a number of standards in the Guide to Standards of Best Practice for Public Servants, in particular, the need for public servants to avoid adopting an adversarial approach where there may be a fear of litigation. It seemed to me that the Council had maintained a legalistic approach to the complaint throughout and did not deal with it on its merits.

Subsequently, the Council offered to carry out the full repairs to the house, to be financed by a contribution of £5,000 from the Council's own resources and the balance of £17,000 to be provided under the Improvement Works in lieu of Local Authority Housing Scheme. The £17,000 would be registered as a charge against the property and the complainants' repayments in respect of loan and rent would increase by £10.50 per week for a period of 15 years based on their financial circumstances. The complainants were happy to accept the offer and accordingly, I discontinued the investigation.

An opportunity for feedback

An internal complaints system should be seen by public bodies in a positive light as an opportunity to get feedback on the quality of service provided and to rectify any defects in their administrative procedures. The following two cases resulted in changes which were of benefit to many others and not just the original complainants.

Overpayments of Invalidity Pension

During the period 1994/1995 my Office examined a small number of complaints relating to assessments of overpayment in the case of people receiving Invalidity Pension from the **Department of Social, Community and Family Affairs**. These complaints all arose from decisions to disallow Adult Dependant Allowance (ADA) payable with the Pension; and in each case there was a related decision to recover the amount paid by way of ADA for the previous few years. Typically, amounts of about £2,000 were being recovered. The general context was that a pensioner could not claim his spouse as his dependant where the spouse had earnings above a specified level. Having dealt with a number of these complaints, in which the Department accepted that the decisions were unsound and that moneys already recovered should be refunded, I had

concerns about the general standard of decision-making relating to such overpayments.

The complaints arose from decisions taken in the period 1990/1991. While I accepted that these decisions might not reflect the current standard of practice, I was concerned that a significant number of other pensioners might have been adversely affected. Accordingly, I set out my general concerns to the Department. In doing so I outlined the specific procedural and other defects noticed from the small sample of cases dealt with by my Office. These defects included:

- Failure to make a formal decision as is required by law;
- Failure to explain the grounds for the overpayment decision;
- Failure to refer appeals made to the Social Welfare Appeals Office;
- Failure to consider fully all of the relevant legal provisions;
- Provision of inaccurate information to pensioners and to their representatives;
- Mistakes regarding the calculation of the overpayment involved.

On the basis of my concerns, the Department undertook a review of decisions which had given rise to Invalidity Pension overpayments during the period in question. The review dealt in particular with the withdrawal of ADAs. The Department subsequently advised that it had identified 344 cases in which the ADA had been withdrawn during the relevant period and which the Department had decided to recover ADA already paid for specified periods. According to the Department, this review concentrated on whether the disallowance of ADA in these cases was procedurally correct and, in particular, whether the decisions exhibited any or all of the deficiencies outlined above. According to the Department, of the 344 cases examined, it concluded that proper procedures were **not** followed in 210 cases. The Department concluded that, whereas it was correct to have disallowed the ADA in these cases, it felt that there was inadequate evidence to have warranted making the decisions retrospective i.e., to have sought to recover amounts already paid. Accordingly, the Department undertook the task of reviewing each individual case and calculating the amounts to be refunded to each pensioner. The eventual outcome of the review was as follows: refunds were made in 193 cases (for other reasons, not all of

the 210 cases were found to be due a refund); the refunds ranged from a minimum of £32 to a maximum of £4,800; the total value of the refunds made amounted to about £246,000.

It is to the Department's credit that it undertook a detailed review on foot of the concerns expressed. This review revealed a series of defects in the Department's decision-making in relation to ADA in the case of Invalidity Pension. What is perhaps most striking is the absence of an internal review mechanism which would have picked up on such errors. One might expect that the existence of the independent Social Welfare Appeals Office would be sufficient to alert the Department to a pattern of error in a particular area of decision-making. There are two comments to be made in this regard.

Firstly, one of the procedural errors involved was a failure to refer cases on to the Appeals Office even where applicants had clearly indicated a desire to appeal. Secondly, the Appeals Office would have been likely to deal only with the actual decision and would have had regard primarily to the case being made by the appellant. In a situation where appellants had not already been given full information as to the grounds of the initial decision, and where the relevant law was quite complex, the likelihood of an appellant being able to articulate a reasoned argument would have been limited.

Perhaps the lesson to be drawn here is that the Department should have had internal procedures in place to assure itself of the quality of its decision-making. The existence of the independent Social Welfare Appeals Office is an important protection of the rights of the individual claimant; but it is not an alternative to good internal quality control.

Refund of Motor Tax

The following case highlighted a problem with an application form. On 21 September 1995 a motorist paid £320 to renew the tax on his car for one year operative from 1 October 1995. On 24 September 1995 the vehicle was badly damaged in an accident. The following day he enquired of the Motor Tax Office of **Kerry County Council** about a refund of motor tax as the operative date had not yet arrived. He alleged that he was informed that he would qualify for a refund of tax only if the chassis was cut in two places and Garda verification was obtained. As he did not know at that particular time whether the car was a write-off, he did not pursue the matter further.

He said that some considerable time later he was informed by an official in the Motor Tax Office that he should have lodged his "taxation documents" and windscreen disc at least three months before the date of expiry of the licence in order to qualify for a refund of the car tax. As he had not done so, he could not now obtain a refund.

He felt very aggrieved that he had been denied his £320 refund, due to the incorrect information which he alleged had been given to him by an official of the Motor Tax Office.

When I examined the regulations governing refunds of motor tax, and the relevant application form, I found that the form did not list all the qualifying conditions for a refund of motor tax. In fact, the form was misleading and it was possible that a staff member, believing that the form contained all the relevant conditions to qualify for a refund of tax, may have given incomplete information to the complainant. When I pointed this out to the Council, it agreed to accept an application for a refund from the complainant and to amend its application form for a refund of duty to incorporate all the provisions of the regulations under which a refund may be claimed.

Accessibility

In many of the complaints which my Office receives, the basic problem is a failure on the part of the complainant and the public body concerned to communicate properly. An internal complaints system, if it were publicised and accessible to all, can help in identifying such cases and resolving them locally.

This case illustrates the problem where there is a lack of communication between two public bodies and a member of the public is caught in the middle. The complainant had been allocated tenancy of a Dublin County Council house in 1973 and applied to purchase it under the Tenant Purchase Scheme in 1986. There was a crack in the rear wall of the house which, he understood, the Council had undertaken to repair and on that basis he proceeded to purchase the house in 1988. In 1997 he complained to me that, despite contact by himself, his solicitor and a public representative on a number of occasions, no work had been carried out to repair the crack and, as a result, water had been penetrating the rear walls of the house for some years.

Following the reorganisation of local government in the Dublin region, the house is now within the functional area of **Dún Laoghaire-Rathdown County Council**. It advised that under the terms of the Tenant Purchase Scheme, where disagreement arose between a housing authority and the applicant regarding the structural condition of a dwelling, the applicant had a right to apply to the Minister for the Environment for a determination as to whether the house was in good structural condition. If the Minister determined that a house was not in good structural condition he could order the housing authority to carry out specified remedial works. The complainant in this case had applied to the Minister for a determination order and the Council was contacted by the Department regarding the matter in February 1989. The Council had no record of a determination having been made by the Minister and consequently had not carried out any work to the complainant's house. Despite the enquiries made by the complainant and on his behalf, the Council had not contacted the Department of the Environment to enquire if the determination order had been made.

When my Office contacted the Department, it acknowledged that the complainant had applied to the Minister for a determination order and that the house had been inspected. However the complainant's file had been put away in error some years earlier and no decision had ever been made on the matter. The Department then undertook to carry out a further inspection of the dwelling and to make a decision on the request for a determination order. Following a review of the case, the Minister made a determination order directing the Council to carry out works to eliminate water penetrating the rear wall of the house.

In this case the complainant used the appeal mechanism available and, had a decision been made in his case at the time, the problem would have been resolved within a short period. However because of the lengthy delay in the making of a decision, and the failure of the Council to follow up on the case, he was obliged to live with the problem of water ingress to his house for a further nine years after making the appeal.

Selected cases and general issues

Civil Service

Department of Arts, Heritage, Gaeltacht and the Islands
 Department of Justice, Equality and Law Reform
 Department of Social, Community and Family Affairs
 Department of Education and Science

Local Authorities

Carlow County Council
 Wexford County Council
 Dublin Corporation
 Traveller Accommodation

Health Boards

Western Health Board
 Southern Health Board

Telecom Éireann

CIVIL SERVICE Department of Arts, Heritage, Gaeltacht and the Islands

Refusal to pay a Gaeltacht house building grant

A complaint against the Department of Arts, Heritage, Gaeltacht and the Islands raised interesting issues in relation to the right of a Department to suspend the operation of a statutory scheme.

In 1993 the complainant applied to the Department for a Gaeltacht house building grant. His application was refused on the grounds that he was already the owner of a house in which he lived with his family. The complainant was aggrieved as the Department had already agreed, in principle, to pay a Gaeltacht improving grant in respect of the complainant's old family home (in which he was not actually living). When the complainant decided to build a second house, rather than restore the old family home, he assumed this project would be grant-aided. The complainant decided not to proceed with the renovation of the old home as he felt this would be a waste of money. His point was that, since the Department had agreed in principle to grant-aid the renovation of the old home, it should, in all common sense, agree to provide at least the same level of grant aid towards the building of a new house on the same site.

The relevant law - the Housing (Gaeltacht) Acts, 1929-1979 - authorises the payment of a house building grant in a case where the applicant is already "the occupier of a dwelling house". The Acts also authorise the payment of a house improvement grant in respect of a second house. This particular case showed that, whereas the Department was willing to pay the improvement grant in respect of a second house, it was not willing to pay a building grant in respect of a second house.

The Department explained that a decision had been taken to suspend payment of building grants in respect of second houses with effect from 1 January 1983. The reasons for this decision related to budgetary considerations and evidence of widespread abuse of the particular grant scheme. The Office was concerned that a decision had been taken at an administrative level to suspend the operation of a statutory scheme, a decision which was not within the competence or authority of the Department to take. The Acts do not provide for such an administrative decision nor, during the period since 1983, had any move been made to have a relevant amendment passed by the Oireachtas and it was never publicly announced that the scheme was being suspended indefinitely.

Following an investigation, the Office found, among other things, that the Minister had exceeded his juris-



diction under Section 3(7)(b) of the Housing (Gaeltacht) Act, 1929 in refusing to pay a grant to the complainant. Following the Ombudsman's recommendation the Department processed the 1993 application in accordance with the procedures which would have been in place had the scheme not been suspended and paid the complainant a grant of £4,000. In addition, the Department published notices - in the context of an announcement of a general review of all the provisions of the Housing (Gaeltacht) Acts - to say that building grants in respect of second houses were now available from the Department.

Department of Justice, Equality and Law Reform

Refusal to pay legal costs

A man complained that, due to an error on the part of the Department of Justice, Equality and Law Reform, the Minister wrote to him on 21 June 1996 stating that he (the complainant) had written a letter to her in which he had made representations on behalf of a person serving a sentence for serious fraud and that she found his letter to be "unwise and intimidatory towards my statutory powers". The complainant immediately telephoned the Minister's Private Secretary and was given a verbal assurance that the letter had issued in error and that it was accepted that he had not written

the offending letter to the Minister. He considered the matter to be of a very serious nature and he instructed his solicitor to approach the Minister seeking a formal acknowledgement that he was not the writer of the letter, confirmation that it had not been passed to any third party, that his name be removed from all records and that his solicitor's fees be settled by the Minister. The complainant received a letter from the Minister on 18 December 1996 which addressed the points raised by the solicitor but it did not accept that the Minister would settle the solicitor's charges.

When the man complained to the Office in May 1997 it asked the Department to review its decision in relation to the complainant's legal costs. The Office was satisfied that the complainant had suffered adverse affect as a result of an undesirable administrative practice on the part of the Department. However, the Department maintained that this was an action of the Minister in relation to a private constituency matter and added that the Department held no records in relation to the correspondence. The Office's view was that the correspondence related to functions assigned by law to the Minister and that this was not a private constituency matter. The Office also expressed some doubt as to the legal basis for the Department's argument that there was a distinction between the actions of the Minister and the actions of the Department.

Following further correspondence, the Department agreed to pay the reasonable legal costs incurred by the complainant.

Department of Social, Community and Family Affairs

Private Pension Plans

The Office received a complaint from a man who worked for a company which did not provide an occupational pension scheme for its workers. To make provision for his future, the complainant had taken out a private pension plan. However, he then discovered that while he was allowed tax relief in respect of the contributions he made for the private pension plan, he was not allowed relief from Pay Related Social Insurance (PRSI) as the contributions were not paid through his company. In addition he discovered that while contributions made to an occupational pension scheme are deductible from income when applying for Family Income Supplement (FIS), his private pension plan contributions were not.

An examination of the issue showed that the Department of Social, Community and Family Affairs had correctly applied the relevant legislation. Only contributions made under a net pay arrangement scheme, i.e. deducted at source, were allowable for PRSI exemption and as deductions from income for FIS.

Many employees in companies which do not provide an occupational pension scheme retire having only a Contributory Old Age Pension. Concern has been expressed recently about the difficulties of maintaining the State pension at an adequate level in an aging society. There seems to be a growing consensus that people who have no occupational scheme should be encouraged in their efforts to make independent provision for their retirement. There would seem to be no logical reason to differentiate between deductions through a company and those made privately in circumstances such as this.

The same point applies to allowable deductions for FIS. It is anomalous to allow superannuation contributions made to an occupational pension scheme as deductible for FIS purposes, but not allow private contributions made in the absence of an occupational pension scheme.

The Office wrote to the Department of Social, Community and Family Affairs and it has agreed to take this anomaly into account when the report of the

National Pensions Policy Initiative is published in 1998.

Scheme of Compensation for loss of Purchasing Power

Since 1986 the Department of Social, Community and Family Affairs has administered a scheme under which claimants, whose social welfare payments have been excessively delayed, are compensated for the loss of purchasing power arising from the delay in payment. This scheme was first introduced in response to a complaint from a widow who was granted compensation of £4,000 because of a seven year delay in awarding her a pension (see Annual Report for 1986). Having regard to other similar complaints dealt with in the intervening period, in 1996 the Office made a number of suggestions to the Department for improvements in the scheme. As a result the Department made a series of changes which took account of many of the concerns already expressed by the Office and included:

- a reduction from two years to one year in the so-called "fallow" period i.e. the period within which the Department must deal with the claim without triggering the compensation mechanism;
- a change in the basis for compensation from one based on the Department being **solely** at fault to one where the Department is **solely or significantly** at fault, i.e. some fault on the part of the claimant will not rule out compensation provided it is not a significant factor;
- a commitment that the Department will seek automatically to identify cases warranting compensation without the need for the claimant expressly to seek compensation;
- payment of up to £50 to meet costs actually and necessarily incurred by the claimant due to the delay in making the payment.

The Department intends to put the scheme on a statutory basis.

Lost Contributory Pension Arrears

A recurring theme in successive Annual Reports has been the inequity and lack of proportionality inherent in the penalties imposed on people who have been late in claiming contributory pensions. Up to 1997, where a person was late in claiming such a pension, the maximum arrears being paid was for the six months immediately prior to the date of claim. This practice resulted in major losses of pension arrears in individual cases - as much as £40,000 in one case this Office has dealt

with. The Social Welfare Act, 1997 improved matters somewhat by increasing the maximum arrears payable in such cases from a maximum of six months to an automatic 12 months' arrears, irrespective of the reason for the failure to claim on time. That Act also provided for the making of regulations, by the Minister, to extend "...subject to such conditions and in such circumstances as may be prescribed.."the maximum arrears period. At the time of writing, regulations under this heading have not been made.

In March 1997, the Office published the report of an investigation of three individual complaints against the Department in relation to lost pension arrears. As this report has already been published, it is not dealt with here in any comprehensive way. However, some aspects of the report, and its aftermath, are worth noting.

Extra-Statutory Arrangements

In the course of the investigation it emerged that the Department has had a long-standing arrangement whereby it can pay pension arrears, outside of the six months limit, on an extra-statutory basis. The arrangement covers a variety of situations, many of which would have been relevant to complaints made to this Office since 1985.

In 1993 the previous Ombudsman was unable to uphold the complaint of a widow who had lost arrears of pension for the period 1984 - 1993. At that stage, the question of a payment being made on an extra-statutory basis did not arise as this Office was not aware such an arrangement existed. Fortunately, this woman again contacted the Office in 1996. It became evident that she could legitimately argue financial hardship - one of the grounds for making an extra-statutory payment - as a consequence of having lost out on almost eight years of pension arrears. The Office asked the Department to consider an extra-statutory payment on these grounds and it agreed to pay £7,000 - roughly three years arrears - on the grounds of hardship.

The extra-statutory arrangement allows for payment of pension arrears on grounds of equity. Where the failure to claim on time can be shown to have arisen because of an incapacity to act, due to ill health, the Department may accept that arrears should be paid on grounds of equity. In one case, a widow had failed to claim the pro rata Contributory Widow's Pension on its introduction in 1988. She had Alzheimer's Disease and was not able to manage her affairs. Her family eventually applied on her behalf in 1996 and the pension was awarded. Arrears for six months only were

paid. The Office, aware of the widow's inability to manage her affairs, advised the family to claim full arrears on the grounds of equity. The Department accepted the argument and paid arrears of about £17,000.

Claim for one Payment Satisfies Requirement to Claim Another Payment

Another outcome of the investigation was that the Department agreed that, in certain situations, it could treat an existing claim for one payment as satisfying the requirement to have claimed some other payment. This is relevant in a situation where a person has been claiming a particular social welfare payment during a period when s/he could have been claiming a different, higher-rate payment.

This change has benefited quite a few complainants. In three very similar cases women, who had been on widow's pension when they might have been on old age pension, received arrears of about £1,000 each. The Office understands the Department is now applying this new approach as a matter of course when such cases come to light.

A related and very welcome development is that the Department now accepts that receipt of some other payment, up to the point of reaching pension age at 66 years, may be treated as satisfying the requirement to have claimed the old age pension at 66 years. In effect, a person who is a "client" of the Department on reaching 66 years will be deemed to have claimed the old age pension at 66 years. In one particular case a woman had not been paid contributory old age pension on reaching 66 years in 1983. She claimed to have applied, and been refused, in 1983 and again some time later. An application made in 1990 was successful but the Department had no record - nor had the applicant - of the earlier applications. This meant that the woman had lost out on about six years arrears of pension. However, the Department accepted the Office's suggestion that the woman's existing claim for Disability Benefit at age 66 could be deemed to be a claim for the old age pension. On this basis, arrears of £17,800 were paid to this woman.

Civil Servant refused Unemployment Assistance

The Office received a complaint concerning the refusal of the Department of Social Community and Family Affairs to pay Unemployment Assistance (UA) to a civil servant who was awaiting re-employment in the civil service at the expiry of her career break.

The career break was initially for one year from September 1990 but was subsequently extended, by mutual agreement between the applicant and her

department, for two further periods of 12 months. However, in April 1993 when the civil servant wrote to the department saying that she wished to return to work at the end of her career break in September 1993, the department told her that there was no immediate vacancy. In the event no vacancy arose until she was offered a position which she took up in May 1994. In the interim period, she applied to the Department of Social, Community and Family Affairs for UA and signed on at her local employment exchange. Her application for UA was refused by the Department and she lodged an appeal to the Social Welfare Appeals Office but was not advised of the rejection of her appeal until April 1994. Despite her contacts with the Department of Social, Community and Family Affairs during this period, she was not advised to claim Supplementary Welfare Allowance (SWA). She had no income between September 1993 and March 1994 when she fortuitously became aware of the SWA scheme and was awarded payment.

On examination of the case it was clear to this Office that the Social Welfare Appeals Office, in refusing the appeal, drew upon advice which it had received some years previously from the Attorney General. This advice was to the effect that civil servants on career breaks were not unemployed within the meaning of the Social Welfare Acts and, therefore, did not have entitlement to UA. However, it appeared to this Office that the advice dealt only in a general way with the status of civil servants on career breaks. It was not clear that it should be relied upon in the present case and accordingly the Office asked the Social Welfare Appeals Office to return to the Attorney General for further clarification of his advice in the light of the circumstances of this case. The Office also raised the more general issue of the employment status of those civil servants who, although the specified period of their career break had expired, were, through no fault of their own, precluded from resuming their employment in the civil service, because no vacancy was available at the time or for a considerable period thereafter.

On reviewing the issues, the Attorney General advised that, in the given circumstances of the case cited, the civil servant was entitled to claim UA. The Social Welfare Appeals Office revised the earlier decision and allowed payment of UA to the civil servant from September 1993.

The outcome of this case has implications for other civil servants who take career breaks and who cannot be taken back for some time after the end of the career break. Accordingly, the Department of Finance, at the Office's request, wrote to all Civil Service Personnel Officers

notifying them of this development so that they in turn would advise individuals in any similar case which might arise of their possible social welfare entitlements.

Department of Education and Science

School Transport Service for Children with Disabilities

The Office investigated a complaint against the Department of Education and Science concerning the provision of a school transport service to a child with multiple disabilities. The Office found that the child concerned had not been treated fairly by the Department and that the school transport scheme, as it applies to children with special needs, did not meet the requirements of fair and sound administration, since it was both undocumented and unpublished.

The Office recommended that the child's family be paid compensation of £6,800 for the period during which the child had an inadequate transport service and that the Department devise and publish a school transport scheme which would incorporate principles which the Office considered to be essential in order to ensure fair treatment. The Department accepted the recommendations. The Office published the report of this investigation in February 1998.

LOCAL AUTHORITIES

Carlow County Council

House repossessed without consent of one spouse

A complainant and her husband had purchased their house from Carlow County Council. Following domestic difficulties she moved out of the house with her daughter. Her husband then wrote to the Council claiming that he was not in a position to pay the tenant purchase annuities. Following legal advice, the Council acceded to his implied request to surrender the house to the Council and revert to tenancy on a weekly rent. The complainant said that she was not made aware of the surrender of the house until more than two years after the event. As her complaint about the matter proved unsuccessful, she complained to this Office.

The Council said that the complainant had left the dwelling and was in default of the terms of the Order transferring the house to her husband and herself. She did not take the trouble to advise the Council that she had done so or where she had gone to live. The Council was not aware of the reasons why she left the house. It said that its main concern was the ability of the complainant's husband, the occupant of the house, to meet the repayments. The decision to allow the

house to revert to rent was made in the light of his financial circumstances and the fact that he had been the tenant since August 1976. The complainant had not made any offer to meet the repayments.

The Council considered that it had taken a sensible approach to the resolution of an impending financial difficulty associated with the inevitable failure by the complainant and her husband to honour their tenant purchase arrangements. This failure would have resulted in the repossession of the house. If the repossession of the dwelling had taken place, a likely outcome would have been the appointment of the complainant's husband as tenant. The complainant, in the event of a repossession, would not have any say in the matter and indeed would not have any basis for a complaint. While there could be a possible technical difficulty in relation to its termination of the Transfer Order, the complainant did not comply with her contractual obligations to the Council. It acknowledged that it did not have regard to the provisions of the Family Home Protection, Act 1976 [FHPA] when making its decision on the matter.

Following an investigation the Office found, among other things, that the Council, in proceeding to accept the surrender of the house, acted without proper authority in that it failed to take into account that, by virtue of the Transfer Order, the complainant was the joint owner in fee simple of the house and together with her husband, was entitled to "the entire beneficial interest" in the house. Notwithstanding the Council's failure to address correctly the fundamental question of the fee simple ownership of the house, the Office also found that the Council, in proceeding to accept the surrender of the house occupied by the complainant's husband, acted improperly by failing to obtain the consent, in writing, of the complainant as is required under the FHPA.

While the complainant, in the interim, had been rehoused by a voluntary housing group, the Office could not ignore the manner in which the Council, over a six year period, had dealt with the complainant and her interest in the family home. Accordingly, in consideration of her surrendering her interest in the family home to the Council, in order to enable the Council to regularise its title to the property, the Office recommended that it pay the complainant the sum of £5,000, which included a compensation element for her time and trouble over the years in pursuing the complaint against the Council. The Office also recommended that the Council review its procedures for dealing with future cases of this nature.

The Council accepted the recommendations.

Wexford County Council

Pollution

A complainant alleged that on 23 December 1995 an agent of Wexford County Council unloaded a tanker of raw sewage onto a field adjoining her land. Later that week, there was a heavy fall of rain which caused flooding in the area. She claimed that this rain caused the sewage to drain onto her land and contaminate a well which was the source of her drinking water. The woman told the Office that she had reported the matter to the Council in early January 1996 but that it did not respond. She said that, later, she called in person to the Council's office and was told that the Council would contact the person who allegedly had dumped the untreated sewage on the land and instruct him not to repeat the dumping.

The complainant subsequently disinfected the well and, after tests, the water was found to be suitable for human consumption. She had incurred various expenses and suffered substantial inconvenience as a result of the dumping incident. She complained to the Office about the unsatisfactory manner in which the Council responded to the incident.

The Office sought and received a copy of the Council's file dealing with the incident and asked the Council to indicate what action it proposed to take to resolve the complaint.

The Council responded by saying that it wished to apologise to the complainant for the inconvenience and disruption caused to her and her family. It was also prepared to reimburse the complainant for the expense which she had incurred in disinfecting the well, subject to a maximum of £100 and, as a gesture of goodwill, it would make a further payment of £100 to her. The Office regarded this response as reasonable and welcomed the Council's clear acknowledgement of its responsibility to the complainant for the initial incident. In particular, the Council is to be commended for not adopting an adversarial approach to the complaint and for acting in accordance with the spirit of the Office's Guide to Standards of Best Practice for Public Servants.

Dublin Corporation

Use of Irish on Voting Documentation

A man complained that he had been denied his right to vote by the failure of Dublin Corporation to send him a polling card with his name and address in Irish.

Dublin Corporation claimed that it was unable to issue, by computer, polling cards with the man's name and address fully in Irish, without going to considerable

expense. The Corporation said that the computer system was designed to produce polling cards by reference to the register of electors. Addresses were detailed on the register on the basis of the official designation of the street name. If a street was designated in Irish, all electors from that street would have their polling cards addressed in Irish. The official designation of the complainant's street was in English. Accordingly, the computer produced his polling card with the English address. The Corporation undertook to issue polling cards manually to the complainant with the address in Irish but he was not satisfied with this as, in his view, he was being treated differently from others.

When the Office became aware that Cork Corporation had overcome a similar problem without any major difficulty, Dublin Corporation was asked to review its position. It then agreed to change its method of operation and, in future, persons wishing to have the Irish version of their address on their polling card will be facilitated.

Last year's Annual Report underlined the contribution which a Language Act could make to a more effective complaints examination system and outlined the difficulties which the Office faces in this area in the absence of such an Act. The Office's review of its approach to such complaints is continuing.

Traveller Accommodation

Complaints relating to the provision of accommodation by local authorities for members of the travelling community present unique difficulties for the Office. Typically, such complaints from members of the settled community relate to objection to local authority proposals to build halting sites for traveller families in their area; complaints that the local authority is not taking effective action to remove traveller families from unauthorised sites in built up areas; complaints against decisions by local authorities to offer houses to travellers in their area; or that the local authority has not taken action against travellers in local authority houses who are alleged to be engaged in anti-social activities.

On the other hand, the Office receives complaints from travellers, or their representatives, claiming that they have been discriminated against in relation to their unsuccessful housing applications when others in seemingly better conditions have been successful; that their halting sites are in poor condition; or that they are being forced to move by a local authority but that no suitable alternative accommodation is being offered. Complaints by travellers in relation to delays in carrying out house repairs or the provision of house extensions have also been received. In one particular case a local authority was threatened

with legal action by a member of the settled community because a traveller family was camped illegally adjacent to his property while at the same time a nearby residents group had also threatened legal proceedings against the local authority because it proposed to move the same family into a house in their estate.

In March 1996 the Government adopted a National Strategy on Traveller Accommodation. In line with the Strategy, a Traveller Accommodation Unit has been set up in the Department of the Environment and Local Government. New and amending legislation is being brought forward to include such provisions as a requirement that local authorities, in consultation with travellers, prepare and adopt five year programmes to meet the existing and projected accommodation needs of travellers in their areas. It is envisaged that the legislation will oblige local authorities to take the appropriate steps to secure implementation of such housing programmes. Some local authorities have already begun work on drafting their five year plans in advance of the legislation.

Funding for the provision of traveller specific accommodation, i.e. special group housing and halting sites, but excluding standard local authority houses which are funded as part of the normal housing programmes, was increased from £6.5m in 1996 to £11m in 1997.

While there is evidence of an increased political willingness at national level to try to tackle the traveller accommodation problem, through the targeting of resources, the development of national policies and the amendment of legislation, the Office's experience in dealing with individual complaints at local level is that the political will to grapple with the problem is not as evident on the ground.

The Office has found that some local authorities draw up lists of priority cases on a geographical basis within their area and will give preference to traveller families within each designated geographical district over travellers in other districts. Thus, traveller families who move from place to place within a county boundary will find it more difficult to get themselves established as priority cases within a particular district and will have little chance of being offered accommodation if their first choice of location is in a separate district from where they are located. To complicate the matter further, some local authorities have adopted a policy of setting a ratio of traveller families to settled families in individual housing estates and, once the quota has been filled, traveller families will not be considered for further vacancies which arise in such estates.

It seems, therefore, that the administrative structures and procedures which are in place to provide public housing serve, in some instances, to militate against traveller families getting accommodation. With the number of traveller families seeking accommodation over the coming years projected to increase, it suggests a need to consider special, separate, administrative structures to deliver accommodation for traveller families throughout the country. At the very least, it would seem advisable that there should be a co-ordinated approach between clusters of adjacent local authorities, in addition to urban authorities within each administrative county, to the planning and delivery of accommodation for travellers. The Department of the Environment and Local Government has, in the past, pressed for such a development and this Office would welcome any measures to bring it to fruition.

The issue of the provision of accommodation for travellers is somewhat akin to the human rights concerns being expressed in relation to the rights of refugees and asylum seekers in that they are a marginalised group, lacking a political voice, and enjoying little favour or sympathy among the public at large. In such circumstances there is an increased danger that they will be denied their human rights by public bodies in social, economic and health matters. The acid test for the quality of our democracy is how we treat such marginalised groups. Indeed, the proposed Equal Status Bill being prepared by the Department of Justice, Equality and Law Reform is expected to prohibit discrimination in relation to the provision of accommodation for travellers. The Bill is being reviewed as parts of it were deemed unconstitutional by the courts but it is anticipated that the revised Bill will be published in 1998. The issue of the accommodation rights of travellers is one which is worthy of increased debate and analysis. Any such debate needs to be an informed one and the Office will continue to highlight the issue and contribute to the debate.

It is perhaps noteworthy that the issue of this country's treatment of the travelling community has now become the focus of international scrutiny. The European Commission against Racism and Intolerance (ECRI), which examines the problems of racism and intolerance in each member state of the Council of Europe, published its first eleven-country report in late 1997 in which it commented on the situation of the travelling community in Ireland. The report states, inter alia, that the travelling community faces serious problems of discrimination. The ECRI welcomed the various measures adopted by the Government to resolve the accommodation needs of travellers and expressed the hope that they would be rapidly implemented.

HEALTH BOARDS

Western Health Board

Nursing Homes Subventions

The Office has received a number of complaints regarding the assessment of means for a subvention under The Nursing Homes (Subvention) Regulations, 1993. These Regulations provide that a subvention is payable where the applicant is considered sufficiently dependent to require maintenance in a nursing home, and able to pay none or only part of the cost of that maintenance. Three categories of dependency are provided for with a maximum payment in respect of each category.

In order to determine ability to pay all or part of the cost of maintenance, the Regulations provide for the assessment of the applicant's means. Broadly speaking, a health board, in determining such means, may take into account any income, and the imputed value of any assets. In calculating the means, however, the Regulations oblige a health board to disregard income equivalent to one fifth of the weekly rate of Non-Contributory Old Age Pension (NCOAP) payable at the time, such sum to be retained by the applicant for her own personal use. This provision was designed to allow old people in nursing homes to retain some personal disposable income, even if only of a very limited amount (approximately £12 per week at the time in question).

One particular complaint received related to the Western Health Board where the Board had not made the appropriate disregard as outlined above. In its report on the case, the Board said that it had written to the Department of Health and Children for clarification. The Department's response formed the basis for the Board's subsequent assessment of means and of the amount of subvention payable. The outcome for the applicant, an elderly woman, was to the effect that she did not have the full amount of the £12 disregard available to her.

In the course of the Office's examination of this and similar cases, it transpired that other health boards were also adopting a similar practice based on the advice from the Department of Health and Children. The Office was not satisfied that this advice was a correct interpretation of the Regulations and took up the matter with that Department. After taking legal advice, the Department proposed to amend the regulations so as to ensure that there would be no confusion in the matter and, in December 1996, wrote to all health boards asking them to ensure that qualifying applicants be allowed to retain one fifth of the pension pending the amendment of the Regulations, which has not occurred at the time of writ-

ing. The Western Health Board subsequently advised that, as a result of this notification from the Department, it had reviewed the complainant's case resulting in a net gain to her of £6.24 per week.

Treatment of a Hospital Patient

The Office received a complaint from a woman about her treatment while a patient in Merlin Park Regional Hospital, Galway. She had complained to the Western Health Board about a number of matters and felt that the reply she had received was unsatisfactory. Among other things, she was concerned about an alleged mix-up in relation to a prescription which resulted in her receiving twice the prescribed dosage.

The role of the Office is to investigate administrative actions. Its remit does not extend to the investigation of persons who when acting on behalf of health boards are, in the opinion of the Ombudsman, doing so solely in the exercise of clinical judgement in connection with the diagnosis of illness or the care or treatment of a patient.

In this particular instance, therefore, the Office was limited to establishing whether and how the alleged mix-up had occurred, and if so, the steps taken by the Health Board to ensure that it would not happen again in the future. The Board acknowledged that there had been a mix-up. The medication prescribed had been in unit numbers rather than dosage amount. The problem arose when the medication strength was increased. The Board pointed out that the consequences in this case would not have been clinically significant. The hospital has since changed its procedures and medication can now only be administered and dispensed in measured quantities rather than in unit amounts.

Southern Health Board

Dealing with a Sexual Abuse Allegation

The Office received a complaint that the Southern Health Board had failed to take appropriate action following notification of an alleged sexual assault on a child by his peers while attending school; that there was undue delay in carrying out an assessment of the child and a subsequent failure to provide for his psychological and educational welfare.

As the Ombudsman was not satisfied with the Board's response to the complaint, he carried out an investigation. The Office's role in the case was confined to an investigation of the administrative actions of the Board in relation to the matters outlined in the complaint. The Office did not seek to establish whether the alleged incident of sexual abuse took place or who the perpetrator might have been. In responding to the draft investigation report, the Board argued that the Ombudsman was

operating in an area outside the scope of his jurisdiction and that he was interfering in the exercise of clinical and professional judgement in social work matters. In his reply, the Ombudsman advised the Board that, while he accepted that social workers regularly exercised professional judgement in the course of their work, he did not accept that they exercised clinical judgement within the meaning of the legislation under which he operates. He also stated that none of the actions investigated by his Office related to clinical judgement. He further pointed out that actions relating to professional (as opposed to clinical) judgement were not excluded from his jurisdiction but that normally he would not query such judgements when properly taken. He had to bear in mind, however, that actions relating to professional judgement were not always solely professional in nature but might also have administrative elements.

Among the Ombudsman's recommendations, all of which were accepted by the Health Board, were that it should:

- review its procedures in relation to representation at case conferences;
- put in place an effective case management procedure to provide for regular formal review of cases which would include a letter to the family/client when a case is concluded or to indicate no further action, with reasons;
- put in place a formal appeal procedure with regard to decisions of the Family Centre (Sexual Abuse Unit); the family concerned to be advised of their right to appeal;
- initiate contact with the Department of Health and Children with a view to developing an integrated policy for dealing with serious bullying of children by children, with or without a sexual element. The Health Board was also asked to consider consultation with the Department of Education and Science in the development of such a policy;
- send a letter of regret to the parents of the child involved in this case for any distress they had suffered arising from misunderstandings during the processing of their complaint;
- report to the Ombudsman on progress with regard to the implementation of the recommendations.

TELECOM ÉIREANN

Emergency Operator Service

A complainant rang the 999 emergency service for an ambulance early on 7 May 1997 when her baby had developed serious breathing difficulties. The Telecom Éireann operator connected her call to the Gardai rather than the ambulance service and she also claimed that she was treated in an abrupt fashion (she said that

she was told to "keep her hair on"). She had to dial 999 again and another operator connected her to the ambulance service. Tragically, her baby died in hospital later that morning although the delay which occurred was not a contributory factor.

On 29 May 1997, she rang Telecom Éireann to complain about her treatment at the hands of the operator. She had difficulty in registering her complaint and after a number of phone calls she was eventually asked to write to Telecom Éireann's Operator Services Head Office. She did so on 29 May 1997 but her letter was delayed in the post and did not arrive until 9 June 1997. By the time Telecom Éireann had investigated the incident, the tape recording of her dealings with the operator had been erased (this happened on 5 June 1997) and vital evidence relating to her complaint was lost.

The complainant approached the Office seeking an apology for the incident, a full explanation as to what had transpired on the morning in question, and an explanation as to what had happened to her complaint. She also sought reassurance that an incident of this type could never happen again. However, she expressed satisfaction that the Chairman of Telecom Éireann had telephoned her personally about the matter.

The Office's examination of the complaint showed that Telecom Éireann's procedures had failed in a number of important respects. In particular, the company's ISO 9002 documented complaints procedure had not been followed. Telecom Éireann amended its procedures as a result of the case.

The Office concluded that there was not sufficient evidence to establish that the operator was rude to the complainant. However, it was shown that the complainant's call was connected in error to the Gardaí on at least one occasion on that morning. The difficulties experienced by her in attempting to lodge her complaint were caused by the company's failure to follow its own complaint procedures. In addition, crucial evidence was lost because of the delay in investigating her complaint.

While the Office accepted that the case was quite complex, it was not happy that the company had adequately explained the chain of events to the complainant. In the circumstances, the Office recommended that the company should:

- convey the operator's apology to the complainant and in addition should itself unreservedly apologise for the poor standard of service which she had received;
- clearly explain the sequence of events which led to the operator error and the subsequent mishandling of her complaint;

- inform the complainant of the steps which had been taken to ensure that there would be no repeat of such incidents and
- make a donation of £5,000 to the Irish Sudden Infant Death Association in recognition of the distress caused to the family.

Telecom Éireann accepted the recommendations.

Maritime Radio Licence

The holder of a maritime radio licence complained that in 1995 and again in 1996 he was wrongly refused the facility of making a radio link call from his vessel. He said that he was told over the airwaves by an officer at the coastal station that he was "blacklisted". He contended that this was an error on the part of Telecom Éireann as he was at all times the holder of a valid maritime radio licence and his accounts were paid by direct debit. He was distressed by the message that he was "blacklisted" which was made over the airwaves and regarded it as damaging to his good name in the community in which he conducted his business.

The Office examined the complaint, which involved both Telecom Éireann and the former Department of Transport, Energy and Communications. The complainant had attempted to make radio link calls from his vessel in the summer of 1995 and again in June 1996. The local coastal station had incorrectly assumed that he did not hold a valid radio licence and told him, over the radio, that he was on the blacklist and could not be given service. It appeared likely that the word "blacklist" was in fact used by the officer in the coastal station as this is the term occurring on Telecom Éireann records and was customarily used in cases where service was being denied. It was also considered likely that the message was heard by others in the area, who may have been able to identify the person to whom it was addressed. It was probable that "being blacklisted" was understood to mean that the man was in debt to Telecom Éireann or some other party, which was not the case.

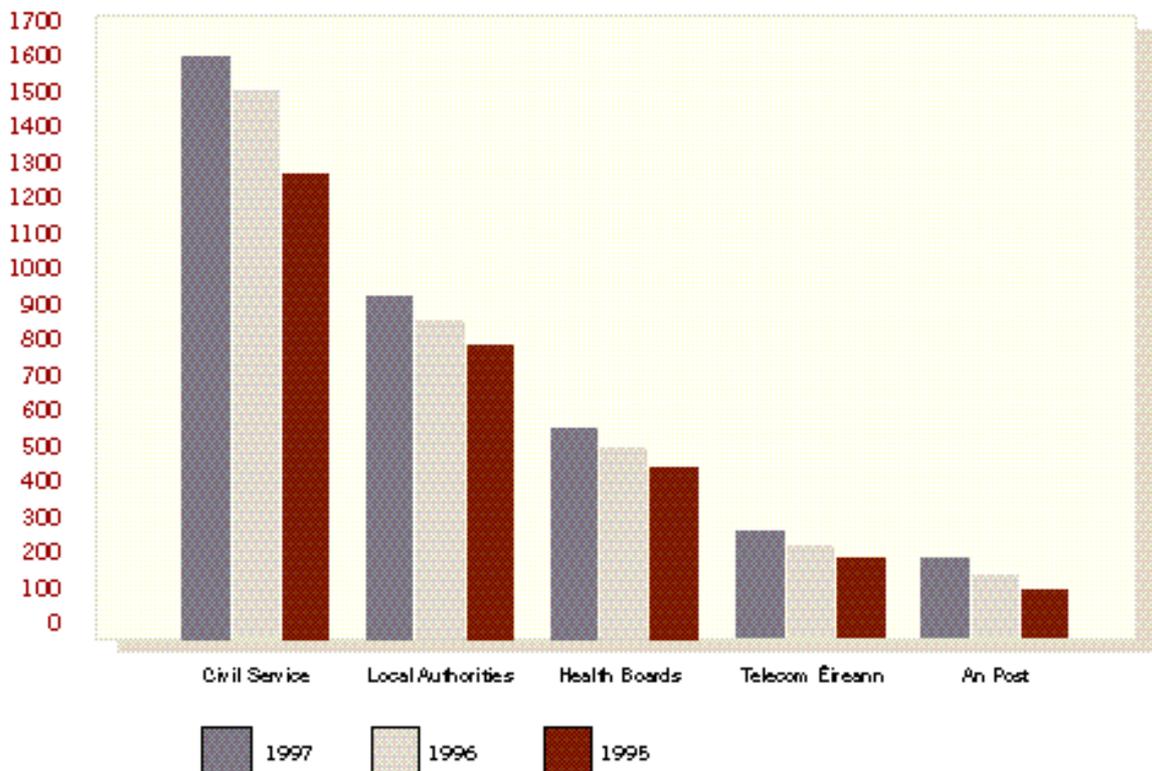
The evidence indicated that the preponderance of fault in relation to the recording of inaccurate information lay with Telecom Éireann. Telecom Éireann accepted the Office's recommendations that a payment of £100 be made to the complainant for the erroneous refusal of service and that a further payment of £2,000 be made to him in recognition of the adverse affect suffered in having the fact that he was on a "blacklist" broadcast from a coastal station. The Office also asked Telecom Éireann to ensure that the Department of the Marine and Natural Resources' coastal stations are notified of changes in call signs in the future and that the term "blacklisted" is avoided in dealing with cases where service is to be denied.

Statistics

Staff
Index

Complaints received within jurisdiction

1997 total: 3,126 1996 total: 2,536 1995 total: 2,250





Complaints within jurisdiction - CIVIL SERVICE

	Brought forward from 1996	Received in 1997	On hands for 1997	Resolved	Assistance provided	Dis-continued	Withdrawn	Not upheld	Total completed	Carried forward to 1998
Social, Community and Family Affairs	199	1007	1206	88	307	274	9	250	928	278
Revenue	66	135	201	16	41	29	2	60	148	53
Environment and Local Government	9	25	34	3	4	3	0	15	25	9
Agriculture and Food	138	223	361	15	41	50	4	92	202	159
Education and Science	36	135	171	21	16	33	1	42	113	58
Others	18	107	125	12	36	10	1	21	80	45
TOTAL	466	1632	2098	155	445	399	17	480	1496	602

Breakdown by category of totals completed for Department of Social, Community and Family Affairs

Old Age Pension	227
Unemployment Assistance	96
Disability Benefit	83
Unemployment Benefit	48
PRSI	43
Widow's Pension	40
One Parent Family Payment	38
Free Schemes	35
Disability Allowance	34
Survivor's Contributory Pension	28
Back to Work Allowance	26
Disablement Pension	24
Carer's Allowance	24
Invalidity Pension	22
Deserted Wife's Allowance	19
Fuel Allowance	18
Equal Treatment Arrears	17
Retirement Pension	14
Family Income Supplement	12
Living Alone Allowance	7
Student's Summer Job Scheme	7
Pre-Retirement Allowance	6
Maternity Benefit	6
Occupational Injury Benefit	5
Child Benefit	4
Treatment Benefit	4
No reply to correspondence	4
Blind Person's Pension	3
Use Of Irish	3
Miscellaneous	31
TOTAL	928

Breakdown by category of totals completed for Revenue Commissioners

Income Tax	111
Customs & Excise	15
No reply to correspondence	5
Value Added Tax	2
Capital Gains Tax	2
Inheritance Tax	2
Residential Property Tax	1
Stamp Duty	1
Use Of Irish	1
Miscellaneous	8
TOTAL	148

Breakdown by category of totals completed for the Department of Agriculture and Food

Headage & Other Livestock Grants	140
Land Commission	9
Milk Quota	8
No reply to correspondence	7
Compensation Losses	7
Early Retirement Scheme	6
Farm Development Grants	2
R.E.P Scheme	2
Forest Premium Scheme	2
Delay	1
Miscellaneous	18
TOTAL	202

Breakdown by category of totals completed for the Department of Education and Science

Higher Education Grant	42
School Transport	17
No reply to correspondence	12
Special Education Facilities	3
Re-check of Exam	3
Fees	2
Delay	2
Use Of Irish	2
School Buildings	1
Miscellaneous	29
TOTAL	113

Breakdown by category of totals completed for the Department of Environment and Local Government

New House Grant	9
Housing Loans & Grants	4
Motor Tax\Licence	4
Register of Electors	2
Delay	2
No reply to correspondence	1
Planning Enforcement	1
Driving Test	1
Miscellaneous	1
TOTAL	25

Complaints within jurisdiction - LOCAL AUTHORITIES

	Brought forward from 1996	Received in 1997	On hands for 1997	Resolved	Assistance provided	Discontinued	Withdrawn	Not upheld	Total completed	Carried forward to 1998
Carlow	2	6	8	3	0	2	0	0	5	3
Cavan	1	15	16	1	1	3	0	7	12	4
Clare	2	19	21	7	3	2	0	1	13	8
Cork Corp.	1	15	16	4	2	2	0	5	13	3
Cork County	14	42	56	7	9	10	0	14	40	16
Donegal	10	19	29	6	5	4	0	3	18	11
Dublin Corp.	26	85	111	42	18	10	1	26	97	14
Fingal	3	28	31	7	6	4	0	7	24	7
South Dublin	3	20	23	4	3	2	0	5	14	9
Dún Laoghaire/Rathdown	4	36	40	13	7	3	1	7	31	9
Galway Corp.	6	32	38	6	11	3	0	10	30	8
Galway County	13	37	50	10	7	4	0	14	35	15
Kerry	5	29	34	10	3	4	0	10	27	7
Kildare	11	20	31	8	7	3	0	4	22	9
Kilkenny	6	9	15	3	5	2	0	3	13	2
Laois	20	24	44	13	12	4	0	10	39	5
Leitrim	1	6	7	0	1	1	0	3	5	2
Limerick Corp.	3	24	27	5	5	5	0	8	23	4
Limerick County	3	9	12	3	3	1	0	5	12	0
Longford	3	8	11	6	1	2	0	1	10	1
Louth	1	49	50	7	10	7	0	13	37	13
Mayo	16	33	49	7	6	4	0	13	30	19
Meath	4	24	28	4	7	6	0	2	19	9
Monaghan	0	13	13	1	1	1	0	4	7	6
Offaly	4	7	11	3	0	1	0	6	10	1
Roscommon	6	5	11	5	0	2	0	2	9	2
Sligo	4	9	13	3	0	1	0	4	8	5
Tipperary (NR)	5	18	23	5	4	4	1	5	19	4
Tipperary (SR)	3	9	12	2	2	3	0	2	9	3
Waterford Corp.	12	15	27	6	5	2	0	10	23	4
Waterford County	2	10	12	1	2	2	0	3	8	4
Westmeath	7	13	20	3	4	1	0	8	16	4
Wexford	5	35	40	13	10	4	0	5	32	8
Wicklow	5	38	43	9	10	9	2	6	36	7
TOTAL	211	761	972	227	170	118	5	226	746	226

Breakdown by category of totals completed for **Local Authorities**

Housing Allocation & Transfers	129
Housing Repairs	108
Planning Enforcement	105
Roads/Traffic	70
Planning Administration	41
Housing Loans & Grants	35
Housing Sales	34
Motor Taxation/Driver Licensing	31
No reply to correspondence	27
Service Charges	23
Housing Rents	20
Sewerage/Drainage	19
Water Supply	18
Waste Disposal	11
Access to Information on the Environment	10
Rates	10
Register of Electors	9
Transfer of Title	7
Use Of Irish	7
Acquisition of Land/Rights	6
Parks/Open Spaces	6
Travellers' Rights	4
Derelict Sites	4
Burial Grounds	3
Parking Fines	2
Miscellaneous	7
TOTAL	746

Complaints within jurisdiction - HEALTH BOARDS

	Brought forward from 1996	Received in 1997	On hands for 1997	Resolved	Assistance provided	Discontinued	Withdrawn	Not upheld	Total completed	Carried forward to 1998
Eastern	35	138	173	22	44	15	3	40	124	49
Midland	15	28	43	4	14	4	0	13	35	8
Mid-Western	5	31	36	5	16	2	2	3	28	8
North Eastern	6	49	55	7	16	4	1	10	38	17
North Western	6	18	24	5	3	4	0	8	20	4
South Eastern	10	39	49	8	8	9	2	7	34	15
Southern	25	58	83	10	10	15	3	17	55	28
Western	44	42	86	13	29	12	2	12	68	18
TOTAL	146	403	549	74	140	65	13	110	402	147

Breakdown by category of totals completed for Health Boards

Supplementary Welfare Allowance		158
- rent and mortgage allowances	65	
- exceptional needs payments	39	
- diet allowances	1	
- back to school - clothing/footwear allowance	12	
- miscellaneous	41	
Health Services (General)		47
- medical cards	31	
- access to medical records	4	
- miscellaneous	12	
Hospital Services (General)		41
- nursing homes/long-stay	27	
- hospital charges	6	
- waiting lists	1	
- miscellaneous	10	
Dental Services		33
Disabled Person's Maintenance Allowance		19
Child Care		18
Domiciliary Care Allowance		13
No Reply to correspondence		10
Housing Aid for the Elderly		6
Mental Health Services		6
Medical Appliances		4
Drugs Refund Scheme		4
Drugs Cost Subvention Scheme		3
Treatment Abroad		3
Home Births		2
Mobility Allowance		2
Home Help		2
Motorised Transport Grant		1
Miscellaneous		27
TOTAL		402

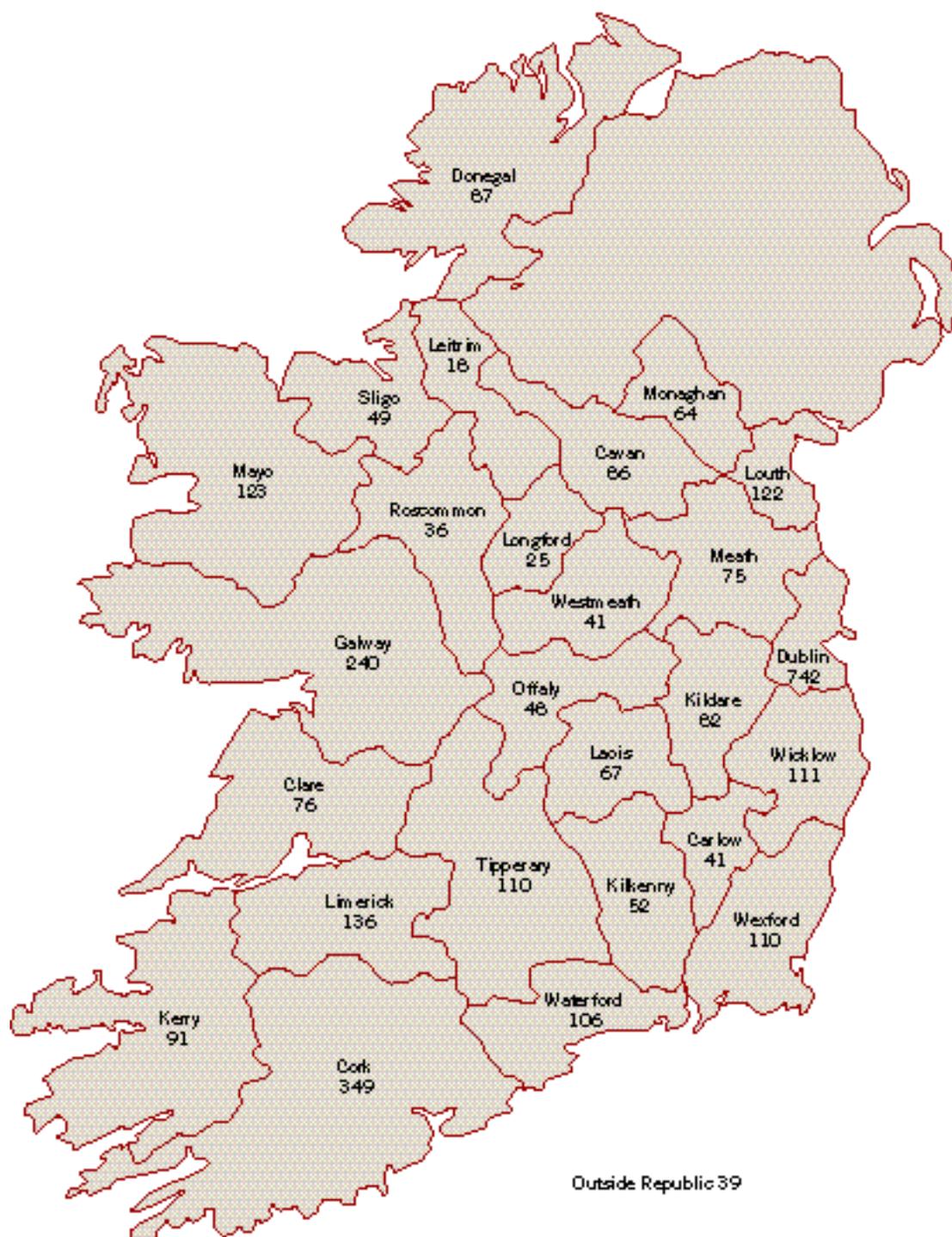
Complaints within jurisdiction - TELECOM ÉIREANN

	Brought forward from 1996	Received in 1997	On hands for 1997	Resolved	Assistance provided	Discontinued	Withdrawn	Not upheld	Total completed	Carried forward to 1998
Accounts	87	181	268	36	16	23	3	117	195	73
Quality of Service	1	11	12	2	1	2	0	1	6	6
Request for Guarantor	1	0	1	1	0	0	0	0	1	0
Provision of Service	6	15	21	7	2	1	0	3	13	8
Standard Charges	3	10	13	3	5	1	0	4	13	0
Other	14	45	59	13	7	7	0	13	40	19
TOTAL	112	262	374	62	31	34	3	138	268	106

Complaints within jurisdiction - AN POST

	Brought forward from 1996	Received in 1997	On hands for 1997	Resolved	Assistance provided	Discontinued	Withdrawn	Not upheld	Total completed	Carried forward to 1998
Delivery of Correspondence	11	27	38	1	9	4	0	20	34	4
Savings Service	1	24	25	4	7	4	0	6	21	4
TV Licence	0	1	1	0	0	1	0	0	1	0
Use of Irish	0	4	4	0	0	0	0	1	1	3
Miscellaneous	1	12	13	0	0	4	0	8	12	1
TOTAL	13	68	81	5	16	13	0	35	69	12

Geographical distribution of complaints within jurisdiction received in 1997



STAFF

Director

Pat Whelan

Senior Investigators

Brian Allen (Secretary to Public Offices Commission)

Maureen Behan

Michael Brophy

David Waddell

Investigators

Fintan Butler

Patricia Doyle

Geraldine Fitzpatrick

Eoghan Halpin

Ann Hayes

Eamon Mansfield

Matt Merrigan

Tom Morgan

Marie O'Brien

Willy O'Doherty

Paddy O'Dwyer

Bernard Rooney

Paul Ryan

Paddy Walsh

Support Staff

Catherine Boylan

Patricia Connolly

John Doyle

Jackie Durkan

Antoinette Fanning

Niall Forde

Evelyn Heron

Colman Hickey

Paul Mallen

Fiona McCarney

Liam McCormack

Betty McCullagh

Jacqueline Moore

Donal O'Sullivan

Lorraine Redmond

David Ryan

Aimée Tallon

Martina Toner

Alan Worthington

Administration Unit

Brendan O'Neill (Head of Administration)

Philip Carr

Finbar Hanratty

Geraldine McCarthy

Audrey O'Reilly

Mary Pepper

Index

		Galway County Council Substandard house	18
Accessibility	20	Government Plans for the Office	9
Appeals against local decisions	16	Internal Complaints Systems	14
Carlow County Council Home repossessed without consent of one spouse	26	Kerry County Council Refund of Motor Tax	20
Contact with other Ombudsman Offices	10	Land Commission Failure to honour agreement	15
Dáil and Seanad Debates on the Ombudsman's Annual Reports	12	Market Research	8
Department of Agriculture and Food Delay in paying disease eradication grant Refused payment of a livestock grant	17 16	Need for Internal Complaints Systems Opportunity for feedback	15 19
Department of Arts, Heritage, Gaeltacht and the Islands Refusal to pay a Gaeltacht house building grant	22	Protection of the term "Ombudsman"	11
Department of Education and Science Certificates of exemption from study of Irish Complaint against a teacher School transport service for children with disabilities	16 17 26	Public Access and Awareness Reasons for decisions Relations with Bodies within Remit	8 17 9
Department of Justice, Equality and Law Reform Refusal to pay legal costs	23	Relocation to 18 Lower Leeson Street Southern Health Board Dealing with a sexual abuse allegation	10 30
Department of Social, Community and Family Affairs Lost contributory pension arrears Maintenance payments by a separated husband Overpayments of Invalidity Pension Private pension plans Scheme of compensation for loss of purchasing power Civil Servant refused Unemployment Assistance	24 17 19 24 24 25	Speed and efficiency Staff Statistics Strategic Management Initiative	17 43 32 8
Dublin Corporation Use of Irish on voting documentation	27	Telecom Éireann Emergency operator service Maritime radio licence	30 31
Dún Laoghaire-Rathdown County Council Tenant Purchase Scheme	20	Traveller accommodation	28
European Ombudsman	11	Western Health Board Nursing home subventions Treatment of a hospital patient	29 30
Fairness and independence	16	Wexford County Council Pollution	27
Flexibility	17		
Freedom of Information	10		