Annual Report of the Ombudsman 1998

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Foreword

I hereby submit my fifth Annual Report to the Dáil and Seanad pursuant to the provisions of Section 6(7) of the Ombudsman Act, 1980. This is the 15th Annual Report submitted in relation to the work of the Office of the Ombudsman since it was established in 1984.

Kevin Murphy
Ombudsman

March 1999

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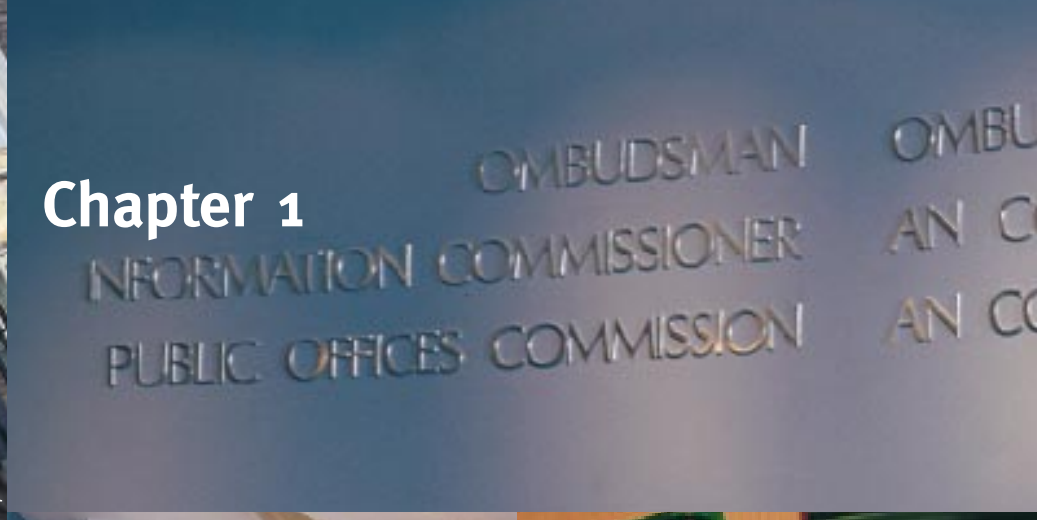


Introduction

This Annual Report covers the fourth full year of my tenure as Ombudsman. My Office had another busy year in 1998 with the volume of complaints received and dealt with being broadly in line with those for 1997. As always, I am extremely grateful to my Director and staff without whose hard work this could not have been achieved. My special thanks also go to Fintan Butler and Aimée Tallon for their excellent work in preparing this Annual Report. My appointment as Information Commissioner, under the Freedom of Information Act, 1997, took effect from April 1998 and this new Office necessarily required a great deal of attention in its initial set-up period. My membership of the Referendum Commission also created considerable demands both on my Office and myself in the first half of the year. Despite this, I am very pleased that the work output of the Ombudsman's Office did not suffer; indeed, the results for 1998 represent an increase in output of almost 5% over 1997.

I believe my Annual Report should not simply describe the work undertaken during the year but should also help promote good administrative practice. Every day thousands of administrative decisions are taken by the public service. These decisions directly affect both individual members of the public as well as corporate bodies and organisations. It is very important, as I have stressed in earlier Annual Reports, that public servants treat those affected by their decisions properly, fairly and impartially and that their decisions are taken in accordance with the principles of good and sound administration. But it is equally important that these decisions are seen to be taken soundly and that the public has confidence in public administration. Access to information under the Freedom of Information Act, 1997 will, over time, help to build up that confidence. But the best way for a public body to promote confidence among its clients is to operate an open and effective communications policy which will explain the reasons for, and the background to, decisions.

Many of the complaints which I receive arise because the public body concerned has not communicated effectively with its client. The result is that the client is not adequately informed and this, in turn, can lead to a complaint to the public body and, ultimately, to my Office. Problems in communication is the main theme of this Report and at Chapter Three I describe some of the complaints which I dealt with in the past year where communication was less than adequate. Effective communication is one of the fundamentals of good public administration and it requires

constant attention. It is clear that the Ombudsman Act and the Freedom of Information Act will complement one another very effectively in this area.

I have also taken the opportunity, at Chapter Two, to reflect a little on the role of Ombudsman offices generally and on the role of my own Office in particular. This reflection is prompted by a number of considerations. Most important of these, perhaps, is that the Office has been functioning now for 15 years and some stock taking at this point is useful. Also, proposals to amend the Ombudsman Act, 1980 are to be considered soon by the Oireachtas. In this regard, some comparative material in relation to Ombudsman offices internationally, and particularly elsewhere in Europe, should be of interest.

At Chapter Four I present accounts of my examination of a selection of complaints dealt with during the year. In presenting these accounts I have tried to identify the principle of good administration, or the point of good practice, raised by each of the cases. Finally, at Chapter Five I set out some details on the work of the Office during 1998 including statistical data and analysis of cases handled.

Chapter 2

Role of the Ombudsman –Taking Stock




I understand that work is now well in hand on an Ombudsman (Amendment) Bill which will extend the range of issues and of public bodies subject to examination by my Office. Accordingly, this seems a good time to take stock of what an Ombudsman generally does and of how my own Office compares with Ombudsman Offices elsewhere. There is a considerable degree of communication and co-operation between Ombudsman Offices internationally, at European level and, more particularly, between my Office and the various UK Ombudsman institutions. In the case of Northern Ireland, the existing close links - for example, members of my staff have recently availed of training with their Northern Ireland counterparts - are likely to develop further as we may share a joint jurisdiction in relation to some of the North-South Implementation Bodies being created under the 1998 Belfast Agreement.

Essential Characteristics of an Ombudsman's Office

An Ombudsman is someone who investigates grievances of individuals or organisations arising from the actions (including failure to act) of the bodies subject to the Ombudsman's jurisdiction. Where an Ombudsman finds that the complaint made is justified, and that the action complained of involves maladministration, then the Ombudsman recommends redress. The overriding essential requirement for an Ombudsman is that he or she is entirely independent and impartial. Impartiality requires independence and independence, in turn, requires statutory or legal underpinning, security against arbitrary removal, the power to issue and publish reports with the protection of legal privilege and, finally, adequate resources to do the job. At the international level, these requirements are recognised by the International Ombudsman Institute (IOI) as essential attributes of an Ombudsman's office. The British and Irish Ombudsman Association (BIOA), of which my Office is a member, has laid down similar requirements - adapted to take account of the non-statutory nature of the private sector or industry type Ombudsman - for its members.

An Ombudsman provides an alternative dispute resolution mechanism - alternative, that is, to the courts - and has a valuable role in ensuring accountability and promoting good administrative practice by the organisations within his or her jurisdiction. At present, the IOI has more than one hundred national Ombudsman-type institutions affiliated to it.

Initially, Ombudsman offices were invariably public sector institutions. Indeed, it is easy to see that the essential requirements of an Ombudsman, as outlined above, are most easily met in the context of the public sector. In recent years there has been a growth internationally in the private sector, or industry type, Ombudsman and there is concern that the term "Ombudsman" is being used by institutions which may not satisfy all of the basic requirements. For this reason, some countries have given statutory protection to the term "Ombudsman" to ensure that it is used only by institutions which satisfy the basic criteria. As I suggested in earlier Annual Reports, we may now need to take action to protect the use of the term "Ombudsman" in Ireland.

Ombudsman Offices throughout Europe

A national, public sector Ombudsman is now the norm in nearly all European countries, including very many of the former Eastern bloc countries. The typical European national Ombudsman deals with a similar range of public bodies and functions as does my own Office but generally with some additional responsibilities. The typical, additional areas of jurisdiction include the administration of the prison service (and of people in custody generally), the administration of the law in relation to refugees, asylum seekers, citizenship and naturalisation and also the wider public service (i.e. the equivalent of the non-commercial state sector in Ireland). In some cases the Ombudsman's jurisdiction includes the police and the army. Of course the wider brief of these offices is reflected in their staff structure and organisation. Recent research - reported on at the Sixth Round Table of the Council of Europe and of European Ombudsmen in October 1998 - showed that of 16 European countries surveyed, only the Ombudsmen of Ireland and of Greenland did not have jurisdiction in relation to people in custody i.e. people in police detention, remand prisoners and prisoners. (The 16 countries in question were: Austria, Bosnia and Herzegovina, Denmark, Finland, Greenland, Hungary, Iceland, Ireland, Israel, Lithuania, Malta, Norway, Portugal, Spain, Sweden and Slovenia.) Similarly, Ireland is one of the few European countries where the Ombudsman does not have jurisdiction in relation to asylum seekers and naturalisation.

Since the 1980s the Council of Europe has been promoting non-judicial means for the protection and promotion of human rights. Whereas the courts will always remain the ultimate arbiter of human rights questions, the Council of Europe has identified a value in the creation of non-judicial means for dealing with complaints in the human rights area. The Council recognises the advantage to the individual of a complaints system which, by comparison with the courts, is speedier, more accessible and less formal. These are the attributes of an Ombudsman office and, not surprisingly, the Council of Europe has been promoting the inclusion of the human rights area within the scope of Ombudsman offices.

The need for measures to promote and protect human rights in Ireland has been highlighted in a number of ways in the past few years. The Report of the Constitution Review Group specifically referred to the need to create a Human Rights Commission on a statutory basis. In the context of North-South relations, the Belfast Agreement now requires the establishment of a Human Rights Commission. I am aware that some consideration has already been given to the role of the proposed commission. In particular, it might be sensible - as is envisaged in the Council of Europe's approach to human rights - to accommodate, in addition to the courts, a non-judicial complaints mechanism while the commission itself would concentrate on an advisory, educational and promotional role. A proliferation of bodies dealing with citizens' and human rights - as has occurred in some countries - results in a lack of focus and confusion among the general public.

Some Misconceptions about the Ombudsman's Role

It seems to me that there are some misconceptions regarding the role of the Ombudsman in relation to investigating alleged instances of what might be called major maladministration - as against minor and more isolated instances of maladministration affecting only individual people - within the public service.

Typically, an Ombudsman deals with the complaints which are made to his or her Office. There is no statutory restriction on the involvement of the Ombudsman simply by reference to the scale of the alleged maladministration or, more crudely perhaps, by reference to the financial implications of the issue. For example, for a number of years my Office had been pursuing with the Department of Social, Community and Family Affairs (DSCFA) the question of non-payment of arrears of contributory pensions to people who failed to claim the pension at the earliest relevant time. As a result of my involvement the Minister, in February 1998, introduced improved arrangements for payment of such arrears at an estimated additional cost of £3.4m for 1998 and £1.7m per year thereafter. Furthermore, in the Budget of December 1998 the Minister for Finance provided a sum of £10m to the DSCFA to provide for payment of partial pension arrears to those pensioners who were not covered by the improvements of February 1998. I think it is fair to characterise this as an instance of major maladministration with very significant financial implications. My Office dealt with it, over a number of years, because the issue was raised by the affected pensioners or their representatives.

Despite the DSCFA cases referred to above and some other cases of this nature dealt with by my Office, it is true that, over the years, not many complaints have been made involving allegations of deliberate and large-scale maladministration whether involving significant levels of financial loss or otherwise. But if there is a perception that the Ombudsman is precluded from dealing with such instances, then this would be incorrect. Complaints alleging that people were adversely affected by administrative decisions taken without proper authority or which are, for example, improperly discriminatory are clearly within my remit unless court proceedings have been initiated. Instances of alleged public service maladministration are also amenable to examination by way of a tribunal of inquiry, or by the Comptroller and Auditor General (C&AG). For example, a tribunal may be appropriate where the actions being probed include those of public representatives, private individuals or bodies as well as those of a public body, or where actions of a criminal nature may be involved. But the scale, as opposed to the source, of the alleged maladministration is not a factor when deciding whether it is appropriate for my Office to be involved. The powers given to me under the Ombudsman Act - in terms of my right to see documents and to seek answers to all relevant questions - are substantial and are equally capable of being deployed in relation to the big issues as they are in the case of the more routine issues.

Amendment of Ombudsman Act

During the year my Office had detailed discussions with the Department of Finance regarding proposals for the amendment (including the taking of additional public bodies into jurisdiction) of the Ombudsman Act, 1980. The Government decided recently to proceed with the drafting and publication of a Ombudsman (Amendment) Bill. I am hopeful that these proposals will result in appropriate amendments to the Act in the course of 1999. In recent Annual Reports I have set out the reasons why the Act needs to be amended and earlier in this chapter I set out some comparative information regarding the remit of national Ombudsman offices throughout Europe.

Complaint Numbers - Future Trends

The Ombudsman (Amendment) Bill proposals for the inclusion of additional, public bodies in my jurisdiction will inevitably lead to an overall increase in complaint numbers. I am hopeful that the development of internal complaints systems within public bodies - a subject which I dealt with at length in last year's Annual Report - will, in time, leave my Office free to concentrate on the more complex cases.

As of now, there is no sign of a downward trend in complaint numbers. Although the number of complaints received in 1998 is lower by 4% than the 1997 figures, they are still higher than those received in any other year since 1987. And the 1985-1987 figures were in themselves exceptionally high because of the large numbers of Telecom Éireann complaints received by the Office in that period.

Over time, as the whole process of Government

has become more complex, so too has the nature of the complaints coming to my Office. This is partly because good quality standards of public administration are not frozen in time. I find that, by working in co-operation with the public bodies within my jurisdiction to remedy the more routine systemic defects, we are inevitably driven by the complaints which we receive, to strive for higher and better standards. This is as it should be but it also highlights once again the need for effective, internal complaints systems and appeal mechanisms within the bodies themselves.

Information Commissioner Role

I was honoured to be appointed by Her Excellency, Mary McAleese, President of Ireland to the office of Information Commissioner with effect from 21 April 1998. My situation in discharging dual functions as Ombudsman and Information Commissioner is by no means unique. Other Ombudsmen also hold similar dual appointments most notably the Chief Ombudsman of New Zealand and the Ombudsman of Queensland, Australia. Coincidentally, both are fellow directors of the International Ombudsman Institute and this has facilitated a sharing of experience, at first hand, which I have found most useful.

I have already highlighted the complementary nature of the Ombudsman and Information Commissioner offices despite their separate statutory identities. Perhaps this complementarity is best illustrated by one of the three new, legal rights created under the Freedom of Information Act, viz. the right of members of the public to be given reasons for decisions affecting themselves. I have said several times that lack of information and the failure to give proper reasons is at the heart of many complaints against public bodies which my Office receives. Indeed, this is a theme which I explore in more detail at Chapter Three of this Report. And in my 1994 Annual Report I published a list of citizens' rights (including the right to reasons for decisions) which I asked public bodies to bear in mind in their dealings with the public.

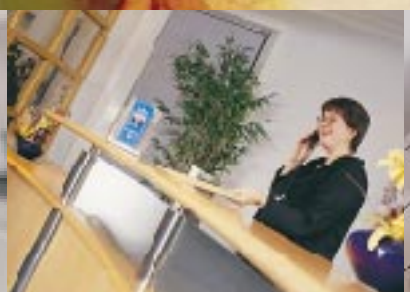
Before the Freedom of Information Act, 1997 came into effect many complainants had no option but to rely on the Ombudsman's Office to pursue this important right on their behalf. The great thing about the 1997 Act is that it gives citizens direct access to the bodies with which they are dealing without the need for an intermediary such as the Ombudsman. It gives an entitlement (subject to certain exemptions) to see records, to be given assistance, to be given reasons for decisions and to have their rights of appeal explained to them. I feel strongly that there is a responsibility on particular groups such as the media, the legal profession, other professional bodies, the statutory and voluntary organisations which provide support and advice to citizens and especially the disadvantaged in society, to publicise and utilise the provisions of the Act on behalf of citizens.

My experience as Information Commissioner is that people who pursue requests for personal information are motivated by more than mere curiosity. Frequently, the request is made in order to establish why a decision was taken or if that decision was justifiable. Certainly, once the requester has obtained access to the information he or she is in a better position to assess the merits of the case and to make a cogent argument to the public body in question and, if unsuccessful, to complain to me in my capacity as Ombudsman.

An important part of my statutory functions as Information Commissioner is to foster an attitude of openness among public bodies by encouraging the voluntary publication by them of information on their activities which goes beyond what they are obliged to publish under the Act. It is a function which sits very well with that of an Ombudsman investigating complaints of maladministration.

Chapter 3

Communicating with the Public

Problems arising from poor communication give rise to a significant number of complaints to my Office. I made the point in a previous Annual Report that many of the complaints reaching my Office result from a lack of openness on the part of public bodies or from a failure to give appropriate reasons or explanations for actions taken. I am returning to this theme because my experience in the meantime suggests that poor communication continues to give rise to a significant level of complaint.

As the process of reforming and modernising the Irish public service proceeds, there is an increasing emphasis on the quality of services provided. Central to the various quality initiatives being pursued by many public bodies is an acceptance of the need to give public service clients all the information, explanations and reasons they might need in order to understand entitlements, pursue their cases (where necessary) and, ultimately, be satisfied that they have been dealt with fairly and openly. If these initiatives are extended and sustained across the wider public service then, perhaps, we can hope for considerable improvements in communication with clients.

Another milestone in the process of modernising the public service was the implementation of the Freedom of Information Act, 1997. The Act commenced in April 1998 for the civil service and in October 1998 for the health boards and local authorities. The 1997 Act confers an explicit right on the clients of public bodies to be given (1) a statement of the reasons for an act which materially affects them and (2) a statement of "any findings on any material issues of fact made for the purposes of the act". A related right conferred by the 1997 Act is the right to have personal information, held by a public body, amended where it is "incomplete, incorrect or misleading". In my capacity as Information Commissioner under the 1997 Act, I have a role in seeing that these provisions are properly applied. However, these are rights which must be invoked by the individual client before the public body is legally obliged to respond.

As Information Commissioner I am anxious to encourage public bodies to anticipate the information needs of their clients and, to the greatest extent possible, provide their clients with all relevant explanations and findings without being specifically required to do so under the 1997 Act. This will help to dispel any suspicions on the part of the public that those "in the know" are treated more favourably. It will also ensure that public servants do not misuse their decision-making powers or exercise them in an arbitrary fashion. Accordingly, I am motivated by the desire to promote openness and transparency. Openness, as has frequently been said, "is the natural enemy

of arbitrariness" and, accordingly, is an indispensable check on possible injustice.

What ultimately legitimates the actions of public servants in our style of Western democracy is the acceptance by the public that public servants are acting in the overall *public interest* rather than in the *self-serving interests* of their own organisations. It would be very wide of the mark to suggest that public bodies are generally acting other than in the public interest. However, as the pace of the public service modernisation programme quickens, and as more attention is paid to the quality of service provided, public bodies will be doing much more to show that they are actually there to serve the public. A critical factor in this will be the attention public bodies give to communicating with their clients. Some public bodies have made very significant progress in this direction; but for some other bodies there is much progress yet to be made.

There are very tangible benefits to the client when a public body is open in its dealings. For example, where a full explanation for an action is given the person, even if adversely affected by the action, is more likely to understand and appreciate the body's position. Or, if there are grounds for the client to lodge an appeal, this is more likely to be evident where the reasons for the decision are given. Where the person chooses to appeal or complain, and does so on the basis of the facts and reasons given, the appeal or complaint is likely to be more focused and less wasteful of time and energy all around. I sometimes find that people can misunderstand the consequences of an action of a public body and remain unnecessarily apprehensive in the absence of a full explanation of what has been done.

While the access rights created under the 1997 Act can help to address some of these deficiencies from the client's perspective, the ultimate measure of the success or otherwise of the Act will be the effect which it has on the attitude of public servants to decision making, to the exercise of administrative discretion and to the dissemination of information.

The cases I cite below illustrate instances of communications failures which were to the detriment of the public body's client. Few, or perhaps none, of these cases would have ended up in my Office had the bodies concerned been more attentive to the need for good communication with their clients.

A series of complaints against the Department of Education and Science illustrates the necessity for public bodies to publish in full the rules or criteria governing schemes they administer. More particularly, these complaints show the absolute need to publish the grounds on which exceptions may be made to the standard rules. Where this is not done, the public may well feel that the scheme is being administered in an unfair or discriminatory manner. It is very important that the public can have confidence that it has been told all of the criteria governing the particular scheme. The complaints in question related to the school transport scheme and, in a more general way, to the non-statutory schemes administered by the Department.

The following is an excerpt from the *Today with Pat Kenny* programme on RTÉ Radio One in which a parent aired her complaint about school transport.

Pat Kenny: All right. Let's tell people who may not have heard your original story exactly what happens every morning in your house.

Parent: Every morning in our house what happens is, John boards the bus here adjacent to our house right, and then I drive Mary 10 miles after the same bus before she is allowed to board the same bus at this pick-up point.

Pat Kenny: Yeah, so he gets on the bus, you get into your car with Mary and you trail the bus and 10 miles on the bus stops and Mary gets on the same bus where her brother is already luxuriating.

Parent: Yes exactly.

Pat Kenny: The logic of this of course is that he's entitled to go to [name of school] ... because there isn't an alternative boys' school.

Although it is by no means evident, there is a logical explanation to this family's plight and, indeed, I have considerable sympathy for the

many cases where the operation of the catchment area provisions of the school transport scheme results in situations which, on the face of it, are almost impossible to justify.

While it would be easy for me to get kudos by recommending exceptions in hard cases (such as the one outlined above), I am concerned to maintain the integrity of the scheme in its totality. The scheme has contributed enormously to the development of education in Ireland. It is constructed on the basis that pupils should not be provided with free transport to schools of their choice if there are suitable schools in their catchment area. I accept that it is not economically possible for the Department to provide a service which brings all children directly from home to school. (Though this comment does not include the cases of children with special needs). If the service meets reasonable standards, I cannot suggest that an exception to the general rule be made in a particular case, unless the circumstances are in some way unusual, or my examination brings to light evidence which indicates an error has been made by the Department.

Clearly, as in any scheme, the need for exceptions arises. My concern is that exceptions should be made on an objective and impartial basis, for example on medical grounds or because of a pupil's special needs such as the need for remedial teaching. However, I have come across cases where exceptions were made on grounds which the Department has been unable to explain to my satisfaction. I have had similar experiences in relation to other schemes administered by the Department.

This has led me to repeat a request, which I first made to the Department in 1996, to bring forward proposals to put the school transport scheme, and other non-statutory schemes which it administers, on a statutory basis. I have also suggested that formalised, internal appeals systems should be introduced in respect of these schemes. I feel that these measures are necessary to safeguard against future instances of unfair discrimination and to reduce the level of misinformation which, in my view, is undermining public trust and confidence in the Department's decision-making processes.

Among the instances which gave rise to my concern, and which I have drawn to the Department's attention, are the following:

- three families complained about the refusal of transport for their daughters to a particular school while two other girls in the same area had received the transport denied to the complainants and the basis for their being granted the transport was not at all clear.

- I noted, in another locality, that transport was granted to a particular pupil who, on the face of it, was ineligible under the rules of the scheme. The transport was granted apparently as a result of Ministerial intervention. A similar reason was given for a concession in another case which I had handled two years previously.

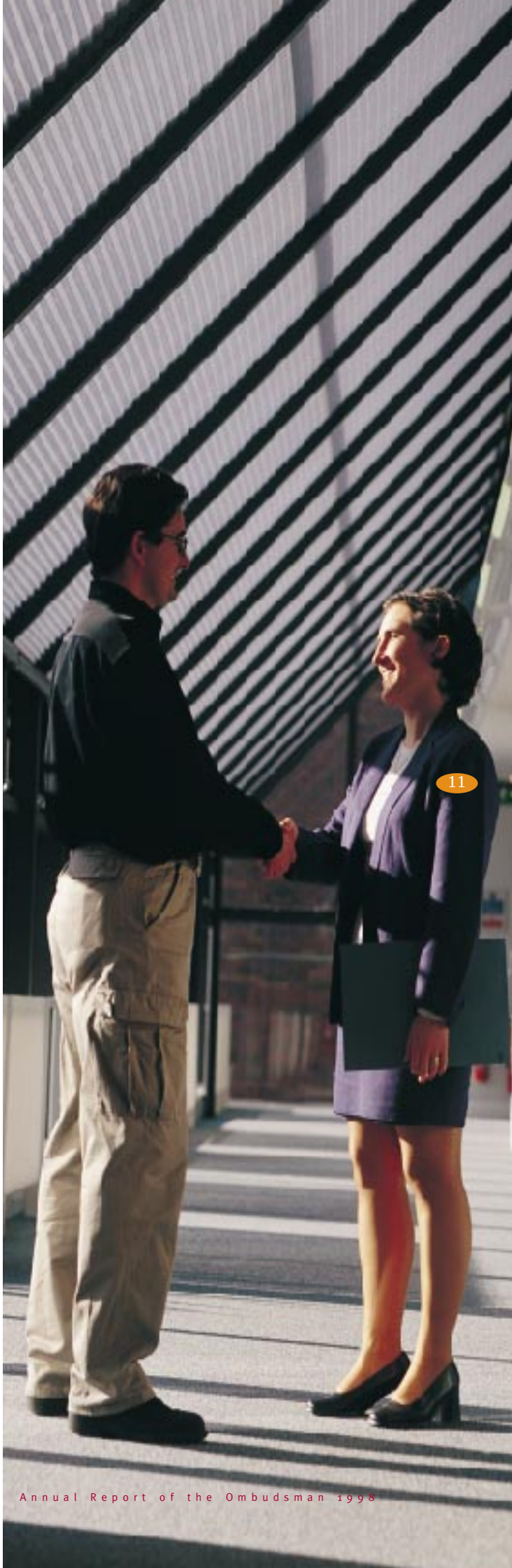
I also have reservations about the extent to which the Department delegates the administration of the transport scheme to school Boards of Management. In one case, the Department initially sought to place responsibility for granting concessionary transport on the Board of Management of the local school. In another similar case, the school management had given permission for the child of one family to travel to a school which was not his nearest, while refusing this concession to the child of another family. The Department stood by the school's refusal to clarify the decisions on the basis of the school's right to preserve confidentiality.

Clearly, the Boards of Management have a role to play with their knowledge of local circumstances. However, I believe that the Department must retain overall responsibility to ensure that the school transport scheme is administered in an open and fair manner. I have asked the Department to consider whether a structure should be put in place to oversee the decisions of such Boards in relation to the school transport scheme to ensure that they are both consistent and fair.

Turning to other schemes administered by the Department, in a particular case involving the funding of school buildings the Department ultimately accepted that the complainant had been treated less favourably than some other similar cases and that there were no objective grounds for the preferential treatment of the other cases. In the circumstances, and only after the preferential treatment had been established and acknowledged, the Department agreed to treat my complainant's case in a like manner.

This is not the first time I have expressed these concerns. In my 1995 Annual Report, under the heading of "Unfair Discrimination", I described two complaints where the Department had failed to treat like cases in like manner. The Department's approach in these cases resulted in unfair and inconsistent decision-making and I expressed this view to the Department at that time.

The above examples leave me with the apprehension that little has changed in the last few years in relation to the administration of the school transport scheme, or other schemes of the Department, and that it is still possible for the "flexibility" of a non-statutory scheme to be used to grant exceptions to the rules for reasons which are not objective and are not set out in the scheme. This is why I have asked the Department to bring forward proposals to put the schemes on a statutory basis and to introduce formalised internal complaints systems.



A case involving the Department of Social, Community and Family Affairs illustrates how an elderly man was seriously disadvantaged as a consequence of the Department failing to communicate with his accountant. The man had been self-employed but by 1995, aged 73 years, his business was effectively gone and he was in financial difficulty. He had no experience of dealing with the Department and it appears he was unable to manage his own affairs. His accountant, recognising the man's difficulties, undertook to apply for a pension on his behalf. Indeed, the accountant was providing his services without charge, in view of the man's circumstances. In September 1995 the accountant applied on his behalf for the Survivor's Contributory Pension. This claim was unsuccessful and in May 1996 the accountant applied on his behalf for the Non-Contributory Old Age Pension (NCOAP). This claim was refused in August 1996 as the man had failed to provide information requested. But the accountant was not told of this decision nor of the reasons for it. Between August 1996 and January 1997 the accountant wrote to the Department on four separate occasions but the Department failed to respond. The accountant was under the impression that the Department had whatever details it needed and that the claim had not yet been decided.

In March 1997 an inspector from the Department visited the man and sought further details on his means. At this point, apparently out of frustration at the delay, the man actually withdrew his application. But, again, the Department did not inform the accountant of this. Normally one would expect the client to inform his accountant of such a development - but in this case the accountant was involved precisely because the ex-client was not able to manage his affairs. In fact, the accountant did not discover what had happened until August 1997 when he re-applied for the NCOAP. This re-application was successful and the pension was awarded from early September 1997. However, the accountant then complained to my Office that the Department should have paid a pension from an earlier date and that the delays which had arisen could have been avoided.

Following detailed discussions, the Department ultimately agreed to pay the man NCOAP from the date of the first application, which was for Survivor's Pension, in September 1995. Arrears of more than £7,000 were paid. However, had the Department communicated directly with the accountant, and in particular responded to his letters, the matter would have been resolved at a much earlier date.

Two unrelated child care cases involving the Southern Health Board (SHB) illustrate how unnecessary anxiety and trauma can result from a misunderstanding between a public body and members of the public. The background to the two cases - one finalised in 1997 and the other in 1998 - is remarkably similar. In both, a young school boy was alleged to have sexually abused another child. The SHB in both cases was made aware of the allegations and thus became involved. In one of the cases the SHB notified the Gardaí that a named child was alleged to have been abused; in the other case, the parents of the child, the alleged victim, contacted the Gardaí. Ultimately, the SHB judged that there was not a sufficient basis to be concerned about the allegations or about the future behaviour of either of the two boys - and it appears the Gardaí felt there were no grounds either for on-going involvement. However, the parents in both cases felt that it was unfair on their sons to have had allegations made which the SHB had neither upheld or rejected. In both cases, relations between the SHB's social work staff and the parents deteriorated when it became clear that the SHB was not going to “clear” the names of the boys. Effectively, the complaints to my Office were that the SHB had disadvantaged the two boys by virtue of its failure to find either for or against them.

I could not uphold the complaints, mostly because it is not a function of a health board to decide on the guilt or innocence of any person accused of child abuse. In discussions with the parents, however, it emerged that their underlying concern was that their sons' names were recorded on some kind of list of potential child abusers. Unfortunately, this underlying anxiety had never been put to the SHB, most likely because of the breakdown in communication which marked both cases. When my staff discussed these concerns with the SHB, it emerged that they were quite unfounded. At our request,

the SHB wrote to both sets of parents to clarify that their respective sons were not, and had never been, on any such list maintained by the Social Work Department. Furthermore, the SHB was able to clarify that neither boy's name was on any list maintained by the Gardaí; indeed, in one of the cases, the Gardaí had not even been given the name of the alleged abuser.

A housing complaint against one of the smaller local authorities (name withheld to protect the complainant's identity) illustrates the point that clear communication is essential in ensuring fair procedures. The complainant, a young woman with two young children, was on the housing list for ten months when she approached my Office. She said she had been given a number of verbal reasons as to why she had not been offered housing, including a reference to the fact that the father of her children allegedly had an involvement with drugs. She maintained that this was an irrelevant consideration as she was separated from her ex-partner and the housing application did not include him. The key background consideration here is the Housing (Miscellaneous Provisions) Act, 1997 under which a local authority can refuse or defer a letting to a person where it considers that he or she "is or has been engaged in anti-social behaviour or where it considers that a letting would not be in the interest of good estate management".

In its response to the complaint, the local authority explained that in processing this housing application it had made enquiries with the local Gardaí "in relation to the applicant's character etc." The authority explained that it had "an informal arrangement with the Garda Síochána that any proposed housing allocations are notified to them for their comments". Any information given by the Gardaí, explained the authority, is given "in the strictest confidence and is never in writing". In this case the Gardaí told the local authority that the applicant was involved with a man known to be a drug addict and dealer and that she was actually living in his mother's house. The applicant agreed that she was living in the family home of her ex-partner, with the grandparents of her children, but that this was an emergency arrangement and that her ex-partner was not living there. Subsequently, the authority made further enquiries with the Gardaí and were advised that my complainant was, to the best of their knowledge, no longer involved with her ex-partner and that she had no convictions for drug taking. On this basis the local authority housed the woman and her two children subject to specific conditions relating to the exclusion of her ex-partner from the house.

This case raises an important issue in relation to the operation of certain aspects of the 1997 Act. I appreciate that the provisions in that Act, in relation to anti-social behaviour, are there to address genuine estate management problems. I have concerns, however, that the basis for decisions of local authorities, made in the interests of good estate management, may not always be communicated properly to unsuccessful housing applicants. It seems to me that if a local authority is relying on information obtained from any source, they ought to disclose, either verbally or in writing, the nature of the information they are relying on to refuse/defer the application, so that the person affected by the decision has an opportunity to explain, challenge or correct the information, as appropriate.

To be given reasons for a decision is a fundamental right recently enshrined in the Freedom of Information Act, 1997 and I will continue to monitor the operation of the Housing (Miscellaneous Provisions) Act, 1997 in the context of complaints to my Office primarily to ensure that housing applicants are not treated unfairly under the Act.

A number of complaints involving the Department of Education and Science illustrate the importance of proper planning for information campaigns, including adequate training for the staff concerned. The complaints relate to the decision to abolish fees for third level education, the so-called "Free Fees Initiative".

The decision to abolish third level fees was announced in the Budget of February 1995. The Department undertook an immediate information campaign, including the operation of a Free Phone service, in relation to the Initiative. The Initiative, as originally announced, appeared to apply to all undergraduate students; 50% of fees would be waived for the 1995/6 academic year and full fees to be waived thereafter. In early July

1995 the Department decided that certain categories of undergraduate would not be eligible under the Initiative. Essentially, the Initiative would benefit undergraduates studying for a first degree and provided they were not repeating a year. This meant that students taking a second primary degree would not benefit. The difficulty with this decision of July 1995 was that the information which the Department had been giving under its information campaign - and which apparently was being passed on by the third level colleges - did not refer to any such restriction.

Subsequently, my Office received a number of complaints from students who claimed to have made decisions based on a clear understanding that the Initiative applied to all undergraduates. They claimed to have been misled by the Department in this regard. I found in favour of a number of these complainants who were able to provide me with evidence of their contact with the Department. At my request, the Department gave the benefit of the Initiative to these students.

One complainant, already a graduate, needed to acquire a medical degree in order to pursue a particular specialisation. She was in England and could have taken the degree there without paying tuition fees. From contacts with the Free Phone service, and from the details in the Department's information brochure, she understood that she would benefit under the Initiative. Accordingly, she opted to take the degree course in Dublin. She had completed the first year of her course before she discovered that the Initiative did not apply to her. Initially, I decided that I could not uphold her complaint as she had no hard evidence of having been misled by the Department. Subsequently, the Department told me that new information had come to light which confirmed that this complainant had, in fact, been misled. She had been told by a senior official in the Department that the Initiative would apply to her. In the light of this, I considered it highly likely that anyone contacting the Department would have been similarly misled. Accordingly, I asked the Department to review two earlier complaints which I had initially been unable to uphold. On review, the students in question had the benefit of the Initiative extended to them. The Department agreed to review other complaints in relation to the Initiative that it had received but which had not been made to my Office. It also undertook to discuss its approach to these other complaints with my Office.

I appreciate that public bodies will always wish to publicise new schemes, and modifications to existing schemes, at the earliest opportunity. But the lesson from this episode must surely be that no public body should undertake a publicity campaign in relation to a new scheme until such time as all the details of the scheme have been finalised. Furthermore, staff involved in operating an information service must always be fully briefed on the details of the scheme. Failure to abide by these basic rules will inevitably result in complaints such as have arisen in relation to the "Free Fees Initiative".

A number of complaints against Telecom Éireann (TÉ) raised the issue of TÉ's failure to communicate with clients regarding delays in providing service. These were cases in which the complainant had applied for a telephone line, paid a deposit and was then left waiting for service for a considerable period of time with no information on the delay, or the reason for the delay, being given. In some of these cases, the deposit was returned to the applicant after a time with a notification that the application was cancelled, leaving the applicant no wiser as to the reason for this move. Nor, in these cases, did TÉ clarify whether the applicant would have to re-apply for a telephone line.

I have put it to TÉ that this is an untenable situation. While there may, at times, be valid reasons for such delays, it is poor administrative practice not to keep the applicant informed from the outset of the cause of delay and give an indication of when a service is likely to be provided. I have serious concerns regarding TÉ's practice of cancelling applications for service without prior communication with the applicant.

Under the terms of the TÉ Customer Charter, the company is committed to connecting a new line within 15 working days of accepting an application and it gives a credit of £20 (two months rental charge) if it fails to do so. Telecom Éireann will not award the credit where the delay

is caused by factors outside its control. In instances where the delay is greater than two months, however, I believe this credit is inadequate and in the case of a number of complaints received I have recommended credits of £10 per month for each month of delay after the first month. These recommendations have been implemented by Telecom Éireann. However, I have asked the company to clarify its approach in one particular complaint which I received where the company itself gave a substantially higher credit to a business subscriber in respect of a nine month delay in the provision of service.

While my complainants were all eventually provided with a service and were given compensatory credits, the problem of TÉ's inadequate communication with its clients remains. I acknowledge that the current expansion of the market for services is posing difficulties for the company. However, I do not accept that clients who have applied for service should remain uninformed of delays which arise in providing that service. I have written to TÉ asking it to review its practices, specifically its approach to relaying information to applicants for service as speedily as possible. I understand that a project is underway aimed at improving communications between the company and its clients and I intend to monitor TÉ's progress in the matter.

The common factor in the cases outlined above is a failure on the part of the body concerned to consider fully the consequences for the individual, or the wider public, of what it actually said or what it omitted to say. It is easy to see why these mistakes occurred. Clearly the message must be that, even in the most routine of administrative functions, public servants must always think carefully about what their clients need to be told in order to be satisfied that they have been dealt with fairly and openly.

Chapter 4

Selected Cases and General Issues

The cases and issues outlined in this chapter have been selected on the basis that they may be both of general interest and of interest to bodies seeking to attain high standards of public administration. In introducing each case I have tried, where appropriate, to identify the point of good practice or the principle of good administration raised by that particular case.

CIVIL SERVICE

Department of Social, Community & Family Affairs

Lost Contributory Pension Arrears

Once again, the issue of lost arrears of contributory pensions featured during 1998. People who are late in making claims for contributory pensions - whether for old age, retirement or widowhood - have been losing out on substantial levels of pension arrears over the years. Up to 1997, the maximum arrears being paid in the event of a late claim was for the period of six months prior to the claim. This was the case virtually irrespective of the reason why the claim was made late. This is a complex issue on which I have reported over a number of years, including by way of a specific investigation report published in March 1997. In last year's Annual Report I referred to an improvement in the situation whereby, with effect from 1 January 1997, the first 12 months arrears are paid in full and a proportion of the balance is paid. (The proportion of arrears after the first 12 months is on a reducing, sliding scale starting with 50% for Year 2 and reducing to 10% for Year 6 and subsequent years.) These improved arrangements apply only to cases where the claim was first made after 1 January 1997.

In the Budget of December 1998 the Minister for Finance provided a sum of £10m to fund the payment of partial pension arrears to people who had not benefited from the improved arrangements. The Department estimates that more than 4,000 people (including about 80 people whose cases I have been examining) will benefit from this. The level of arrears paid under this arrangement is 50% of that available under the improved arrangements which apply since 1 January 1997. I think it is fair to say that this development was in response to suggestions I had been making to the Department for some time. It does not represent an ideal outcome for the people concerned but it

does amount to a partial resolution of a very difficult problem. I shall be publishing a separate report on this general issue later this year.

Insurance Record Miscalculated

Dealing properly with people includes dealing with them correctly and being particularly careful where a claimant misses an entitlement by the smallest of margins.

My complainant's husband died at the very young age of 28 years in 1992. Her claim for Contributory Widow's Pension was refused on the grounds that her late husband's social insurance record totalled only 155 contributions, whereas a minimum of 156 paid contributions was necessary. She qualified for the means-tested One-Parent Family Allowance but in 1996 re-applied for the pension as it was payable at a higher rate. This application was rejected for the same reason. The woman felt that her late husband's social insurance might not have been fully recorded so in 1997 she complained to my Office.

In examining the case it was clear that the crucial year, from the point of view of the late husband's insurance record, was 1984/5. The Department's records showed that he was initially recorded as having paid 21 contributions in that year on the basis of having ceased employment on 24 August 1984. However, when the Department itself re-investigated the situation in 1996 it accepted that the late husband actually ceased employment on 7 September 1984. But the Department neglected to amend his insurance record to reflect this fact and the pension was again refused. When my staff pointed out this error to the Department it immediately accepted its mistake, amended the insurance record and awarded the pension with effect from 1992. My complainant was paid arrears of £1,829 (being the difference between the pension and the allowance already paid) and was also given compensation of £97.

Revenue Commissioners

Non-Resident Landlords - Tax Deductions

Dealing fairly with people involves accepting that rules and regulations should not be applied so inflexibly or rigidly as to create inequity. The Revenue Commissioners recognised this in its final response in the case of a tenant who was unaware that she should have been withholding tax from rent paid to a non-resident landlord.

Since 1969 it has been a requirement of Irish tax law that a person paying rent to a non-resident landlord should deduct income tax at the standard rate from the gross rental income and pass on the deduction to the Revenue Commissioners. This form of withholding tax applies both in the case of residential and commercial property rental. My complainant, probably like the vast majority of people, was quite unaware of this provision. In early 1998 she became aware of her possible entitlement to income tax relief on rent paid and she applied to the Inspector of Taxes for this relief. The Inspector notified her that she was due a tax refund in respect of rent paid totalling £265 for the years 1996/7 and 1997/8. However, the Inspector also informed her that, as her landlord resided outside the state, she (the tenant) should have been withholding income tax from the rent being paid. Where such tax is not withheld, the tenant is liable for payment of the tax instead. Accordingly, the Inspector told my complainant that she owed an amount of £801 for the years 1996/7 and 1997/8 which, after deduction of the tax relief otherwise due to her, meant that she owed a net amount of £536.

The woman subsequently complained to my Office on the grounds that the Inspector's decision was inequitable and also on the grounds that the Inspector had failed to explain fully the basis for the decision. On the former point, she felt it unreasonable that she should be penalised for her ignorance of a fine point of tax law; and on the latter point, she claimed the information leaflet on the matter - which she did not see until after the event - did not make clear that the tenant becomes liable where he or she fails to withhold tax from the rent payments. My complainant's sense of grievance was added to by the fact that

her sister, with whom she co-rented the house, and who applied at the same time and giving the same information, was given the full tax relief on rent paid. In responding to the complaint, the Revenue Commissioners decided to waive the outstanding amount of £536 on the grounds that my complainant clearly was not aware of the requirement to deduct tax from the rent payments and also because payment of the tax would be a financial burden on her. All of this was contingent on my complainant complying with the tax requirement in the future - in fact, she found alternative accommodation before the case was resolved.

Whereas I was pleased with the ultimate outcome in this case, it does raise the general issue of whether it is reasonable to expect ordinary residential tenants to act as tax collectors in the case of non-resident landlords. I appreciate that the provision may have validity in the case of lettings to commercial or business organisations. But is it reasonable to expect a residential tenant, who may be elderly or have little experience of tax affairs, to be either aware of, or have the capacity to manage, this type of requirement? Indeed, tenants may not even be aware that the landlord's "usual place of abode is outside the State" (which is the technical term used in the law). These are questions which might be considered in any review of the current legislation.

LOCAL AUTHORITIES

Meath County Council

Overpayment of Housing Loan

Poor internal communication caused Meath County Council to continue collecting repayments on a loan for 22 months after it had been fully paid off. My complainant, now a pensioner, got a housing loan of £2,500 from the Council in 1981. The loan was repayable over a period of 15 years at a fixed interest rate of 12.5%. The loan term expired in 1996. In January 1998 my complainant called to the Council to enquire about redeeming the loan and was informed that his account had been paid in full since March 1996. However, he also learned that repayment by bank standing order had continued in the intervening 22 months and that he had overpaid the loan by £683. The Council refunded the overpayment but refused to pay interest on the overpayment received. At that point he complained to my Office regarding the Council's handling of his case, pointing out that it had not notified him that the loan had been paid off, that it had not issued any loan account statements and that it had benefited from his overpayment but was refusing to pay any interest to him.

My examination of this complaint suggested that the Council did not have a formalised, internal reporting procedure between its Housing Loans Section and its Accounts Section and this meant the Loans Section was unaware that repayments continued long after the loan had been repaid. This deficiency was largely responsible for the failure to detect the overpayment at an earlier stage. However, I felt the Council was not entirely to blame given that my complainant knew the loan was for a fixed 15 year period and that the repayments had continued due to his failure to cancel the standing order with his bank. In the event, the Council agreed to pay the bank charges arising from the standing order over the 22 month period. I felt this was a reasonable outcome.

On a wider note, the Council informed me that it was now complying with the provisions of the Consumer Credit Act, 1995 - which came into effect for local authorities on 1 September 1997 - and which provides for the issuing of annual loan statements to borrowers. Furthermore the Council said it was, in consultation with other housing authorities and the Local Government Computer Services Board, seeking to improve its financial reporting systems.

I asked the Council to check whether similar, undetected loan overpayments might have occurred with other such clients. On checking, the Council found six other accounts where loan repayments had continued to be made after the loan had been fully repaid. The overpaid sums ranged from £116 to £424; in one case repayments continued to be made, unnecessarily, for more than two years. The Council refunded these clients in full and advised them to cancel their bank standing orders.

I was concerned that this particular problem might well be arising with other local authorities, particularly those operating financial reporting mechanisms similar to those of Meath County Council. Accordingly, I asked the Department of the Environment and Local Government to alert all local authorities of the potential problem. The Department agreed to my request and notified all the relevant authorities. I remain anxious, however, to establish whether this problem has arisen in other local authorities. Accordingly, I have initiated an investigation into the matter using my powers under Section 4 of the Ombudsman Act, 1980 which enables me to investigate the matter on my own initiative (without any particular complaint having been received).

Westmeath County Council

Deprived of Planning Appeal Right

Public bodies must be particularly careful to ensure that people are not deprived of statutory rights as a result of some failing or inaction on the body's part. In this case, my complainant was deprived of her statutory right to appeal a planning decision to An Bord Pleanála because of a failure on the part of Westmeath County Council.

Mrs. H. lodged an objection with the Council in relation to two separate, proposed developments at a factory near her home. The proposed developments consisted of (1) an extension to the factory building and (2) the erection of a crane. The Council, in due course, granted planning permission for both developments. However, whereas the Council did notify Mrs. H. of its decision in relation to the factory extension, it failed to notify her of its decision to allow the erection of the crane. By the time she became aware of this decision, the statutory time limit for lodging an appeal with An Bord Pleanála (the independent planning appeals board) had elapsed and Mrs. H. was deprived of the opportunity to lodge an appeal against the permission to erect the crane. (She did appeal to An Bord Pleanála in relation to the permission to extend the factory building.) As someone who had lodged an objection with the Council in relation to the crane application, the Council was under a statutory obligation to notify her, within three working days, of its decision to grant permission.

My examination showed that a series of administrative errors within the Council resulted in the failure to notify Mrs. H. - and other objectors to the proposed development - of the decision to permit the erection of the crane. At the time the planning decisions were taken, the Council's computerised planning administration system did not automatically generate, and issue, a notification of the decision taken to all objectors; this required a manual intervention by Council staff. Since then, the Council has upgraded its computer system and notifications of planning decisions are now automatically issued to all objectors.

Mrs. H.'s complaint was that the Council had effectively deprived her of her right to appeal to An Bord Pleanála. Whereas the complaint caused the Council to improve its systems, I was conscious that this was little consolation from the complainant's perspective. While the Council is obliged in law to notify objectors of its decision on a planning application, the law does not provide for a penalty or redress where the Council fails in this duty. I felt nevertheless that the Council should take some steps to mitigate the adverse consequence for Mrs. H. of its failure to meet its statutory obligation. In suggesting to the Council that it might think along these lines, I drew its attention to a very similar case (involving another local authority) which my Office had investigated and reported on in my 1994 Annual Report. In that case my Office had recommended monetary redress for the loss of the complainants' statutory rights and to compensate them for the time and effort in dealing with the Council involved.

The Council's response was to say that "..the Manager....does not see that [a] payment to the person involved would be appropriate in all the circumstances of the case". I felt this response was unfortunate and did not take full account of the 1994 Annual Report investigation case mentioned above. When a second request to the Council to re-consider its position did not result in any change, I decided to investigate the complaint under the formal procedures of the Ombudsman Act. The findings of this investigation were similar to the factual situation as out-

lined above. I recommended to the Council that it send Mrs. H. a written apology and that it pay her compensation of £500 for the loss of her statutory right of appeal and for the time and effort spent in pursuing her complaint. The Council accepted these recommendations and acted accordingly.

I expect that public bodies will take account of the general principles which emerge from a reported investigation and will apply these principles where appropriate. An Ombudsman investigation is a lengthy and resource intensive process. It should not be necessary to duplicate the investigation process in a situation where the same facts and circumstances, broadly speaking, have already been the subject of an investigation. Regrettably, Westmeath County Council chose not to accept this logic and I was left with no alternative but to investigate this case under the Ombudsman Act.

Donegal County Council

Housing Grant Refused - Contractor's Tax Clearance

Dealing properly with people means dealing with them sensitively by having regard, for example, to their age and their capacity to understand complex rules. Dealing fairly with people means accepting that rules should not be applied inflexibly where to do so would create an inequity. The following complaint, against Donegal County Council, raises issues in relation to both of these areas.

Mr. B. was in his eighties when he applied to the Council for an Essential Repairs Grant in March 1995. The estimated cost of the essential repairs to his house was £12,200 and the expected grant would amount to £3,300. In June 1995 the Council wrote to Mr. B. to say that his application had been approved and that it was in order for him to begin the works. However, the Council did say that it would not be able to pay the grant until the works had been completed and until it had received details of the contractor's tax clearance certificate (C2). In the belief that the C2 would be provided, Mr. B had his contractor commence work and in due course, in February 1996, a Council engineer certified that the works had been satisfactorily completed. However, Mr. B. had not supplied the Council with the contractor's C2 number and the Council withheld the grant pending its receipt. Mr. B. says that he chose the particular contractor as he was well known locally and, he believed, had carried out Council contracts in the past. Mr. B. was not able to get the contractor to provide his C2 number and, accordingly, he was in a position of stalemate with the Council. In September 1996 Mr. B.'s nephew complained on his behalf to my Office.

In responding to the complaint, the Council said that its refusal to pay the grant arose from a particular provision in the regulations governing the grants scheme. This provision says that a grant shall not be paid unless the Council is furnished with details of the contractor engaged for the work and the details must include, *inter alia*, the number and expiry date of a tax clearance certificate issued by the Collector General. It was the Council's position that, in the absence of the C2, it could not pay the grant. From the information available, I felt the difficulty with the contractor's C2 was not primarily of Mr. B.'s making. Moreover, bearing in mind his age, and the fact that people in rural Ireland may not always have a real choice in engaging a building contractor, I felt that the Council's position was rather inflexible.

The requirement to produce details of the contractor's tax clearance status has become a feature of most housing grants in recent years. On the face of it, this seems a reasonable proposition. Arising from some other complaints received over the past few years, I have some reservations about its application in practice (see below). In this case, however, I decided to explore a particular option. Section 38 of the Housing Act, 1966, provides that the Minister for the Environment (with the consent of the Minister for Finance) may authorise payment of a grant to an applicant who has acted in good faith notwithstanding that a requirement of the grant scheme has not been satisfied. At my suggestion, the Council approached the Department of the Environment and Local Government (DOELG) to seek its authorisation to pay the grant. When the DOELG refused this authorisation, I contacted

the Department directly and asked it to review this decision. I made the following points to the Department:

- Mr. B. was quite elderly and had no previous experience of the scheme;
- when difficulties regarding the C2 first arose, which was before any work had started, Mr. B. informed the Council in writing and sought guidance on how to proceed;
- Mr. B. had good reason to believe the contractor's tax affairs were in order as he believed the contractor had done work for the Council itself;
- the Council had advised Mr. B. (in June 1995) that he could proceed with the work, even though he had not yet got the contractor's C2;
- it appeared that Mr. B. had been misled by the contractor and he was now being exposed to a significant financial loss;
- the requirement to provide the contractor's C2 number is potentially flawed in that the grant applicant cannot verify the contractor's tax position with the Revenue Commissioners.

Ultimately, the DOELG agreed to seek the consent of the Department of Finance (DOF) to the payment of the grant. Unfortunately, its response was negative the DOF taking the view that it is for the grant applicant to ensure that the contractor's tax affairs are in order and that any departure from this position would undermine the operation of the tax clearance requirements generally. As this response seemed unreasonable, and may not have been based on a full understanding of all the facts, I asked the DOF to reconsider its position. In so requesting, I set out the facts and the arguments in support of a flexible and proportionate response to the circumstances of the particular case. I made it quite clear that it was not my intention that the tax clearance measures should be in any way undermined. The DOF then agreed that, in the circumstances of the individual case, a grant could be paid to Mr. B.

Comment

Having regard to my opening comments about dealing properly and fairly with people, I must draw attention to the fact that I had to engage with three separate public bodies, over a period of 19 months, to achieve an outcome based on flexibility and common sense. Given the initial insistence of these bodies that the letter of the law must be obeyed, it is perhaps worth looking at what the law actually requires.

The question of the contractor's tax clearance details arises from the Housing (Disabled Persons and Essential Repairs Grants) Regulations, 1993. In practice, it seems this provision is operated in a manner which limits the payment of grants to instances where the contractor has a C2. I am not aware of any provision in the relevant primary law which authorises this type of restriction. In any event, what the Regulations stipulate is that the contractor's name, address, tax reference number, tax district " .. and the number and expiry date of a certificate of authorisation....or of a tax clearance certificate issued .. by the Revenue Commissioners" must be provided.

It may also be worth reflecting on the overall objective of the tax clearance provisions in the administration of such grants. It appears this type of provision was first raised in the Budget Speech of 1986 when the Minister for Finance, in the context of measures to help prevent tax evasion, announced that a contractor doing work under the House Improvement Grant Scheme must furnish his tax number. Clearly, the intention was to counter tax evasion. But neither then, nor subsequently to my knowledge, has the rationale of the measures introduced been clarified. The intention can hardly have been to penalise grant applicants who, through chance perhaps, engage contractors whose tax affairs are not in order. The reality of dealing with contractors, in this context, is that the grant applicant cannot insist on seeing a C2 and has no means of checking on the tax status of the contractor. Does it not seem more likely that the intention was to detect "rogue" contractors than to penalise grant applicants? (There are separate provisions for ensuring that grants are limited to those applicants whose own tax affairs are in order.)

The overall point is that if there are to be penalties imposed by regulation then the authority to make the regulation must be clear and the nature and intended target of the penalty must be equally clear.

South Dublin County Council

Right to Tender in Irish

A complaint against South Dublin County Council raised interesting issues regarding the right to use the Irish language in a tendering process governed by the EU public procurement directive.

In January 1997 the Council was purchasing machinery whose cost exceeded the threshold for the purposes of the EU Supplies Directive. This meant the tendering process was governed by the Directive and the Council was obliged to advertise it in the EU's Official Journal. It was also advertised in the national press in Ireland. The Council specified that tenders should be submitted in the English language. When a particular supplier wished to submit his tender in Irish, the Council told him this was not possible as Irish is not one of the official languages of the EU and the Directive provides for tendering only in one or more of the official languages. The supplier was aggrieved in that this amounted to the exclusion of Irish from a tendering process operated by an Irish public body and, if the Council were correct, this exclusion would apply across the board to all public bodies subject to the Directive.

In responding to the complaint made by the supplier, the Council said it had received advice from the European Commission's Dublin Office that tenders could only be accepted in one or more of the official languages of the European Union (as specified in the tender invitation). This had the effect of excluding any language, Irish included, which is not an official language.

I felt that this position was not necessarily the correct one. Clearly, the Directive does require that the notice in the Official Journal must be in one of the official languages and that tenders may be made in one at least of the official languages (as specified). However, I felt that the Directive does not prohibit the acceptance of a tender in another language provided the requirements of the Directive are otherwise met. As the Council was relying on advice from the European Commission, I decided to ask the European Ombudsman, Mr. Jacob Söderman, (who has jurisdiction in this area) to raise the issue with the Commission. On considering the matter further, the Commission agreed that its initial advice to the County Council was incomplete and it accepted my view i.e. that there is nothing in the Directive to prevent a public authority from accepting tenders in another language, such as Irish or Basque, provided it does not require that tenders be in this other language.

From my perspective, the significance of this case is that while the Directive is concerned with promoting the internal market, this need not be at the expense of national measures to promote and respect languages which are not official languages of the European Union. I informed the Department of the Environment & Local Government of the outcome and requested that it ensure that local authorities and other relevant bodies would be made aware of it. That Department subsequently informed me that it issued a circular on the matter in November 1998. I also informed the Department of Finance of the case and asked that it inform public bodies generally of the outcome.

There is further comment on the wider issue of the provision of service in Irish at the conclusion of this chapter.

HEALTH BOARDS

North Eastern Health Board

Misuse of Powers in Collecting Hospital Charges

One of the principles of good administration is that powers must be used only for the specific purpose for which they are given. Any other use of powers is likely to constitute an abuse. The principle arose in this complaint against the North Eastern Health Board (NEHB).

My complainant was a widow and a former

NEHB employee. She was being paid an occupational pension by the Board. A dispute arose with the NEHB regarding unpaid hospital charges, amounting to £120, incurred by her late husband. The NEHB sought payment from the widow whereas she argued the debt lay against her late husband's estate and was the responsibility of the executors of his will. The NEHB decided that, given the widow's failure to co-operate (as they saw it), it would be reasonable to recover the debt from her occupational pension. Accordingly, the NEHB deducted £20 per fortnight from her pension until the debt was cleared. This action was taken without the widow's consent. When she protested, the NEHB told her it was "..incongruous that a pension is being paid to you by the Board while this debt is outstanding". In its initial response to the complaint, the Board told me that it felt it was acting reasonably in all the circumstances even though it acknowledged it had no statutory power to act in this way.

My concern in all of this was that the NEHB should not use its position, as paymaster of the widow's pension, to force payment of a disputed debt which actually related to a third party. I felt that what the Board was doing constituted an abuse of power and that it should not exploit the widow's position as a NEHB pensioner - whatever debt collection arrangements are used generally should be applied in this case also. Ultimately, the NEHB accepted that its action was untenable and refunded the £120 already deducted. I regard the principle that powers may not be used, other than for the purpose for which they are given, as extremely important. Public bodies must resist the temptation to use powers, given for one purpose, to deal with a perceived problem in an unrelated area.

Southern Health Board

Discrimination against Cohabiting Couple

Dealing impartially with people means avoiding bias based, for example, on marital status. Difficult issues continue to arise regarding the treatment of cohabiting couples where more favourable treatment is available to married couples. In some of these instances, the unfavourable treatment is institutionalised in primary legislation and public bodies have no discretion. The treatment of cohabiting couples vis à vis married couples for tax purposes is one such example. However in other instances, including the case reported below involving the Southern Health Board (SHB), public bodies do have the flexibility to avoid unfair bias.

My complainants were a couple, cohabiting as man and wife, but not married to each other. Each partner was eligible for, and availed of, the Drug Cost Subsidisation Scheme. This Scheme subsidises the costs of drugs and medicines for people who do not have a medical card or a long-term illness book and who are certified as having a long-term medical condition with a regular and ongoing requirement for prescribed drugs and medicines. Persons who qualify for the Scheme pay only the first £32 for all of their prescribed drugs and medicines in any one month. In this case the SHB regarded the complainants as two single people and therefore each was liable for the first £32 per month (£64 between the two of them) spent on drugs and medicines. Had they been a married couple in similar circumstances, they would have to pay only the first £32 per month between the two of them. The couple regarded this as unfair discrimination against people in their circumstances.

When I contacted the SHB it felt it was operating the Scheme in accordance with Departmental guidelines and, accordingly, referred my correspondence to the Department of Health and Children. In the absence of any clarification of the issue in health legislation, the Department took the view that it would be reasonable to adopt a practice provided for in social welfare legislation. Under social welfare law, and for a range of specified purposes, a couple regarded as cohabiting are treated in exactly the same manner as is a married couple. The Department accepted that, for the purposes of the Scheme, a cohabiting couple should be treated as one family unit and should, therefore, be liable only for the first £32 per month of joint medical and drug costs. On this basis the couple's complaint was resolved. They received a refund of £1,000 to cover the extra costs incurred in the two years prior to the new ruling. I asked the Department of Health and Children to ensure that all health boards are informed of this clarification.

Western Health Board

Mistake with Hospital Record

Dealing properly with people requires, amongst other things, the maintenance of proper records. Perhaps nowhere are mistakes in record management potentially more damaging than in the case of hospital patient charts.

A man complained that, on admission to Castlebar General Hospital, his late mother had been treated for a period of time on the basis of another patient's hospital records. As a result, and despite the fact that she was not a diabetic, he claimed that his mother had been administered insulin and morphine. He claimed that a nurse had confirmed that she had received insulin. In support of his case, he claimed that his late mother's temperature chart indicated that insulin and morphine had been administered. He also claimed that medical staff only became aware of the mistake when he drew their attention to it.

The Western Health Board (WHB) accepted that an incorrect patient chart had been provided by the medical records staff. However, when the mistake was pointed out, according to the WHB, the new records which had been applied to the incorrect chart were removed and transferred to the correct chart. Given that an incorrect hospital record had been extracted, I had one of my staff visit the Hospital to examine the particular chart and to examine the record retrieval system in place at that time. It was apparent that the mistake arose as a result of a failure to do proper cross-checking of the patient details at the point of retrieving the chart. In the meantime, the Hospital has introduced a new computerised records system and is confident this will eliminate the possibility of similar errors occurring in the future.

I was satisfied from my examination that the available evidence supported the WHB's contention that, while the patient had initially been treated on the basis that she was a diabetic and had her sugar levels monitored, she had not been given either insulin or morphine. I was also satisfied that there was no evidence to support the assertion that a nurse had told the complainant that his mother had received insulin.

I was aware that the Chief Medical Officer (CMO) of the Department of Health and Children had also investigated the case. I established that the CMO also took the view that, despite the admitted mistake with the hospital chart, there was no evidence that insulin or morphine had been administered to the patient.

I recognise that the complainant and his family suffered considerable anguish as a result of the Hospital's mistake. There was, however, a direct conflict between his version of events and that of the Hospital. The documentary evidence on the hospital files did not support the complainant's contentions. I found no reason to doubt the veracity of the hospital records (that is, those records created after the mistake had been discovered) or to suspect that they had been tampered with in any way. In all the circumstances, I decided I could not uphold the complaint.

SERVICE IN IRISH

During 1998 I received 15 complaints regarding failure to provide service in Irish. These were very much in line with the type of complaint regarding poor, or non-existent, service in Irish which my Office has been receiving over the years. In my Report for 1996 I set out the difficulties presented by these complaints and mentioned that I was reviewing my approach to them. The major difficulty in this area is that, whereas Article 8.1 of the Constitution establishes Irish as the "first official language", there is nothing in statute law to give practical effect to this constitutional provision.

In undertaking the review, I found that I was left with a series of unanswered questions rather than with a set of clear standards which I should seek to have implemented. Amongst these were quite fundamental questions such as: is the public sector obliged to provide a service in Irish to the public generally? does it have any special obligation in relation to service in Irish in Gaeltacht areas? having regard to considerations of cost and language competence, should the public service concentrate on the provision in Irish of a range of essential services? Normally an Ombudsman is not unduly fettered where standards of service are not set out in statute law; he or she can draw on what is the prevailing consensus. The difficulty in relation to service in Irish is that there is no clear consensus which I might seek to enforce. From my experience in this area, I am clear that the provisions of Article 8 of the Constitution require to be given operational definition in statute law.

I suggested in previous Annual Reports that the enactment of a Language Act would be very helpful. A Language Act could specify the level of service in Irish which the public service would be required to make available to those choosing to do business in Irish.

Accordingly, I welcome the commitment of the present Government (as announced by the Minister of State at the Department of Arts, Heritage, Gaeltacht and the Islands) to the enactment during its term of a Language Equality Act. This is in line with the recommendations in the First Report of the Joint Oireachtas Committee on the Irish Language, published in April 1997. The Minister of State has indicated that the proposed Act will contain a clear statement of the citizen's language rights and of the equality of Irish speakers vis à vis English speakers; that it will place a statutory obligation on Departments and other public bodies to plan for the provision of services in Irish at a level equal to that of services delivered in English; and the Act will make special provision for the delivery of public services in Irish in Gaeltacht areas. As I understand it, the Minister envisages that individual complaints regarding service in Irish will continue to be investigated by my Office.

A related provision has been formulated for inclusion in the proposed Ombudsman (Amendment) Bill. The proposal outlines the administrative procedures to be followed by public bodies in order to ensure that people are dealt with properly, fairly, impartially and expeditiously. In this context, "dealing with the public" would explicitly include providing a service in Irish to the public. Whereas this provision is not directed solely at the question of service in Irish, it is clear that, if approved, it would go some way towards filling the current vacuum which exists regarding the requirement in that area.

I welcome both of these proposed developments. However, nobody should underestimate the scale of the challenge facing the public service in meeting the language equality requirement. Providing a service in Irish, encompassing written and oral communication to the same standard as in English, requires a high level of language competence. At present, it is probable that most public bodies simply do not have the capacity to provide a competent service in Irish. It seems to me that public bodies are not going to have staff with the necessary level of language competence unless this requirement is specifically identified at the recruitment stage - something which has not been the case in recent decades. Furthermore, one must seriously question whether our educational system is currently producing sufficient numbers of skilled Irish language speakers to provide the level of service envisaged in the Language Equality Act.

My comments above may be perceived as being unnecessarily negative. My intentions are entirely positive as regards the language rights of Irish speakers. My comments are made only to ensure that the task of protecting these language rights takes full account of all the difficulties which lie ahead.

Chapter 5

The Year's Work

In early 1998 my Office moved to new premises at 18 Lr. Leeson St. in Dublin which now houses the staffs of the Ombudsman, the Information Commissioner and of the Public Offices Commission. I was particularly honoured with the visit of Her Excellency, President Mary McAleese, who performed the official opening of my new offices on 18 May 1998. I very much appreciated the President's supportive remarks regarding the important work of the three offices involved.

Public Access and Awareness

During 1998 I received a total of 3,779 complaints compared to a total of 3,929 in 1997. Full details on complaint statistics are given in Chapter Six.

My Office paid monthly visits to Citizens Information Centres (CICs) in Cork, Galway, Limerick, Waterford and, for the first time in 1998, to Portlaoise. These visits, designed to facilitate people who might wish to make a complaint in person rather than in writing, were a great success. In all, there were 716 callers at these CIC visits which represents an increase of 46% over the previous year's figure of 491 callers. 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 from the public were made by my staff to Letterkenny, Sligo, Mullingar and Swords. A total of 207 people called to these centres. The visit to Swords was part of a programme, which I began in 1997, to make my Office more accessible to people in the Greater Dublin Area. The results were disappointing with only 11 people calling. This highlights again the difficulty of reaching people in the capital as opposed to those in provincial cities and towns.

As I said in last year's Report, I believe that the Area Based Partnerships can assist in facilitating access by their clients to the services of my Office. As part of my initiative in this regard, my Office recently addressed a national conference of the Area Based Partnerships.

Market research, which I reported on last year, indicated that while 81% of respondents said that they had heard of the Office, only 34% were aware that it can deal with complaints from the public. Clearly, much remains to be done to increase public awareness. Within the limits of

my budget, any public awareness initiatives are necessarily selective and are targeted at those sections of the community which I feel are most likely to require the services of my Office. Information on the Office, including details of the planned programme of regional and CIC visits for 1999, is published at www.irlgov.ie/ombudsman/ on the Internet.

Relations with Bodies within Remit

Relations with the public bodies within my jurisdiction remain generally very good and I receive a high level of co-operation from them. I am grateful to the liaison officers appointed by the bodies - and more particularly to those liaison officers in the bodies with whom I have most contact - for the part they play in ensuring that complaints can be examined expeditiously. In a small number of cases each year it becomes necessary to invoke Section 7 of the Ombudsman Act in order to get the body concerned to provide a response or relevant information in relation to a complaint. A Section 7 notice requires the provision of a response or information (including attendance before me, where deemed necessary) by a specified date. Such a notice is issued only as a last resort after both verbal and written reminders have failed to elicit a response. In last year's Report I said that, beginning with the 1998 Report, I would publish details of Section 7 notices sent to each public body. In all, 45 Section 7 notices were issued during 1998. Details of the bodies concerned, and of the percentage represented by the Section 7 cases of total complaints received by my Office against that body, are given below.

Body	No. of Section 7 Notices	As % of complaints rec'd.
Civil Service		
Dept. Agriculture & Food	13	7%
Dept. Education & Science	1	1%
Revenue Commissioners	1	1%
Local Authorities		
Mayo County Council	6	19%
Wexford County Council	4	33%
Galway County Council	3	15%
Clonmel Corporation	2	17%
Cork County Council	2	6%
Roscommon Co. Council	2	17%
South Dublin Co. Council	2	6%
Ballina U.D.C.	1	11%
Cork Corporation	1	6%
Galway Corporation	1	4%
Kildare County Council	1	7%
Laois County Council	1	2%
Limerick Corporation	1	5%
Sligo County Council	1	11%
Wexford Corporation	1	16%
Health Boards		
Eastern Health Board	1	1%
TOTAL	**45**	**-**

I prefer to deal with complaints without invoking my statutory powers. But, where necessary, I will issue Section 7 notices and publish details of such notices each year.

Contacts with other Ombudsman Offices

During 1998 my Office continued its active participation in international Ombudsman activities through membership of the International Ombudsman Institute (IOI) and of the British and Irish Ombudsman Association. On the European level, I attended the Council of Europe's Sixth Round Table with European Ombudsmen, held in Malta, which focused on human rights issues. On the wider international level, I attended (in my capacity as one of the four Regional Directors for Europe) a meeting of the IOI Board of Directors held in Islamabad. At the invitation of the Turkish Government, I visited Ankara in February to meet with Ministers and members of the Parliamentary Committee on Human Rights to discuss the operation of the Ombudsman

institution both here in Ireland and internationally. I was also pleased to be of some assistance to my Greek colleague, Professor Nikiforos Diamandouros, who was appointed as Greece's first national Ombudsman during 1998. At his invitation, I visited Athens in December to participate in a workshop with the staff of his newly established Office.

My contacts with the European Ombudsman, Mr. Jacob Söderman, continue and during the year I referred two complaints to him. An account of one of these cases is given in Chapter Four.

Finally, I would like to say how encouraged I am by the messages of support received from other Ombudsmen and, in particular, by their complimentary remarks about the quality of my Annual Reports. Some of my colleagues sought my permission to produce a guide similar to my "Guide to Standards of Best Practice for Public Servants", or to draw from my "Guide to Internal Complaints Systems", and I was pleased to facilitate them.

Strategic Management Initiative

As I indicated in the Introduction to this Report, the establishment of the Office of the Information Commissioner and my involvement with the Referendum Commission imposed considerable demands on my staff and myself during 1998.

Up to now, strategic planning in the Office has concentrated on my core function as Ombudsman. But, as with any organisation which takes on a substantial range of additional responsibilities, my staff and I have now started to develop an overall strategy for our various functions which, in turn, will lead to the development of specific plans at business unit level.

In common with many other Government Departments and Offices, my Office recently established a Partnership Committee which has an active involvement in the implementation of the Office's strategic plans and the change management programme.

North-South Implementation Bodies

Among the issues provided for in the Agreement reached in the Multi-Party Negotiations in Belfast in 1998 were areas for North-South co-operation and arrangements for implementation of that co-operation. The proposed North-South Implementation Bodies, as they are called, will discharge public administration functions which will impact on the people of Northern Ireland and of the Republic of Ireland. One of the issues arising in relation to their establishment is the provision of a complaints resolution mechanism.

Following consultation with my Office and that of my colleague, Mr Gerry Burns, Ombudsman of Northern Ireland, proposals have been formulated whereby both of our Offices would have jurisdiction in relation to complaints of maladministration against the Implementation Bodies.

Perhaps the most interesting feature of the proposals is the provision for both Ombudsmen to submit joint annual reports to their respective legislatures on the performance of their functions in relation to the Implementation Bodies. In the hope that it proves possible to bring this, and all the other important elements of the Agreement to fruition, I look forward in this context to further developing our close working relationship with our colleagues in the Northern Ireland Ombudsman's Office.

Complaint Statistics

During 1998 I received a total of 3,779 complaints compared to a total of 3,929 received in 1997. This represents a decrease of approximately 4% over the 1997 figure. However, the 1997 figure itself represented an increase of 24% over the previous year's total of 3,181 - the figure for complaints received in 1995 was 2,879. Of the 3,779 complaints received in 1998 it transpired that 903 of them were not within my remit. This left a balance of 2,876 valid complaints received. It is of some interest that the level of invalid complaints received in 1998 increased by 12% by comparison with the figure for 1997. In part, this may reflect a perception that my Office already deals with areas of the wider public sector which are, pending amendment of the Ombudsman Act, currently outside my remit.

In looking at the details of valid complaints received during 1998, almost 50% of them related to civil service bodies; 24% related to local authorities and 17% related to health boards. Of the complaints against civil service bodies, 56% related to the Department of Social, Community and Family Affairs; 14% involved the Department of Agriculture and Food; 10% were against the Department of Education and Science while 9% related to the Revenue Commissioners.

There are some interesting features to note in analysing the valid complaints received against individual bodies and areas. Complaints against the Department of Social, Community & Family Affairs (DSCFA) are down roughly 22% by comparison with the 1997 figure. However, the 1997 complaints figure for that Department represented an increase of more than 50% on the previous year's figure; and the 1998 DSCFA complaints figure remains well above the figures for the three years prior to 1997. Complaints against local authorities are down by about 9% and Telecom Éireann complaints are reduced by about 13%. On the other side, however, complaints against the health boards are up by 20% relative to 1997 and there was a 6% increase in valid complaints against the Department of Education and Science.

In terms of the outcome of valid complaints completed during 1998, the overall pattern is similar to that of last year. Of the 3,052 complaints completed in 1998, 503 were resolved and in 1,066 cases assistance was provided. This means that in 1,569 cases (51% of the total) the complainant received some form of redress. In recording the outcome of complaints, my Office has for many years used the category "Assistance Provided" to cover a range of outcomes in which complaints have not been fully upheld ("Resolved") but in which the complainant has benefited as a result of having made the complaint. From 1999 onwards I will be employing an additional category, "Partially Resolved", which perhaps more accurately reflects the outcome of many the cases currently categorised as "Assistance Provided".

A detailed statistical analysis of complaints received, and of the outcome on complaints completed, is given at Chapter Six. My Office has some additional statistical material, not published below, which will be provided on request.

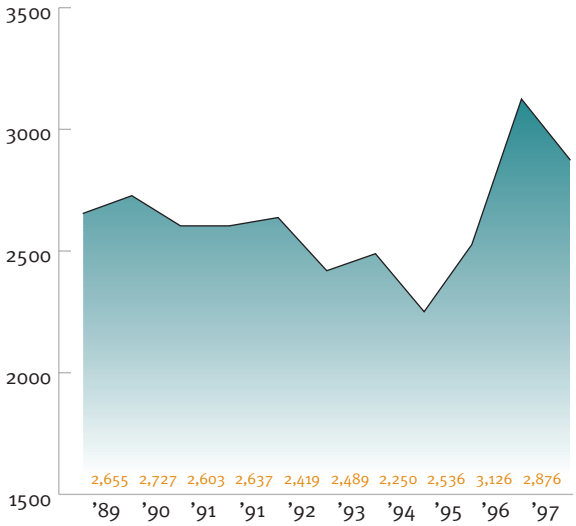
Chapter 6

Statistics

1. Overview of 1998 Complaints

Complaints	Numbers
Received in 1998	3,779
Outside jurisdiction	903
Total within jurisdiction	2,876
Carried forward from 1997	1,093
Total on hands for 1998	3,969
Completed in 1998	**3,052**
Carried forward to 1999	917

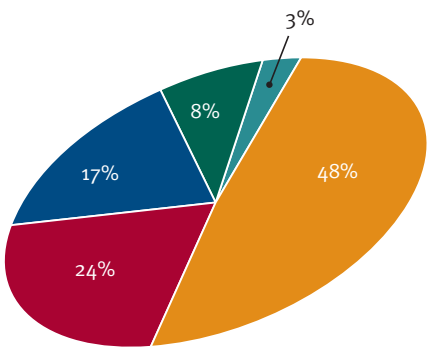
2. 10 Year Trend of Valid Complaints Received



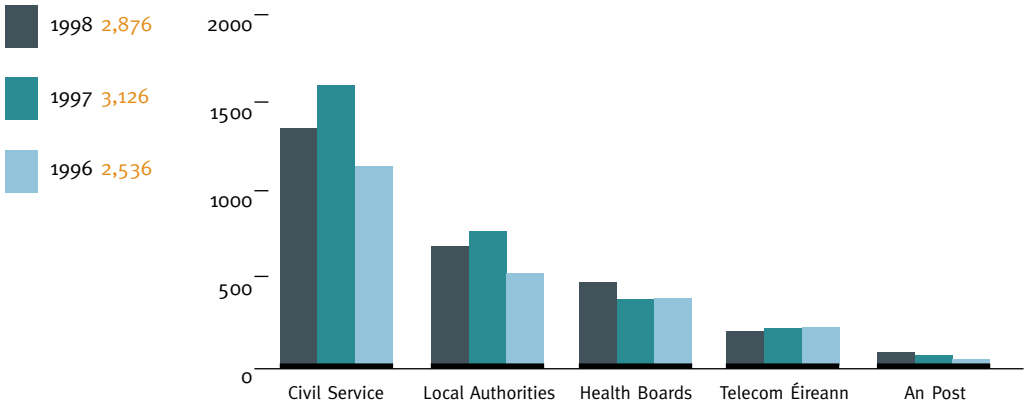
3. Analysis of Valid Complaints Received in 1998

- Civil Service 1396
- Local Authorities 690
- Health Boards 482
- Telecom Éireann 227
- An Post 81

TOTAL 2,876



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



5. **Civil Service** - Valid Complaints in 1998

	Brought forward from 1997	Received in 1998	On hands for 1998
Social, Community and Family Affairs	278	786	1,064
Agriculture and Food	159	198	357
Education and Science	58	143	201
Revenue	53	123	176
Environment and Local Government	9	25	34
Health and Children	4	19	23
Land Registry	0	15	15
Marine and Natural Resources	7	14	21
Justice, Equality and Law Reform	5	11	16
Enterprise, Trade and Employment	2	12	14
Office of Public Works	0	10	10
Others	27	40	67
TOTAL	**602**	**1,396**	**1,998**

6. **Local Authorities** - Valid Complaints in 1998

	Brought forward from 1997	Received in 1998	On hands for 1998
Carlow	3	4	7
Cavan	4	10	14
Clare	8	16	24
Cork Corporation	3	16	19
Cork County	16	35	51
Donegal	11	34	45
Dublin Corporation	14	59	73
Dún Laoghaire - Rathdown	9	23	32
Fingal	7	33	40
Galway Corporation	8	24	32
Galway County	15	24	39
Kerry	7	27	34
Kildare	9	14	23
Kilkenny	2	8	10
Laois	5	41	46
Leitrim	2	10	12
Limerick Corporation	4	20	24
Limerick County	0	18	18
Longford	1	6	7
Louth	13	14	27
Mayo	19	41	60
Meath	9	13	22
Monaghan	6	9	15
Offaly	1	9	10
Roscommon	2	12	14
Sligo	5	15	20
South Dublin	9	31	40
Tipperary (NR)	4	9	13
Tipperary (SR)	3	16	19
Waterford Corporation	4	21	25
Waterford County	4	6	10
Westmeath	4	23	27
Wexford	8	18	26
Wicklow	7	31	38
TOTAL	**226**	**690**	**916**

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

7. **Health Boards** - Valid Complaints in 1998

	Brought forward from 1997	Received in 1998	On hands for 1998
Eastern	49	159	208
Midland	8	50	58
Mid-Western	8	47	55
North Eastern	17	23	40
North Western	4	29	33
South Eastern	15	36	51
Southern	28	73	101
Western	18	65	83
TOTAL	**147**	**482**	**629**

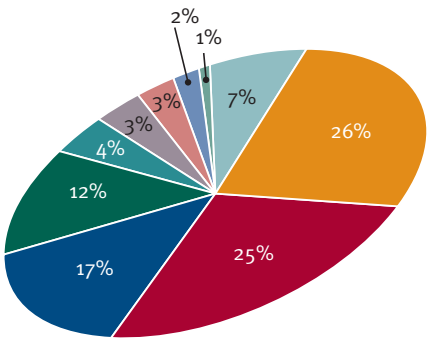
8. **Telecom Éireann and An Post** - Valid Complaints in 1998

	Brought forward from 1997	Received in 1998	On hands for 1998
Telecom Éireann	106	227	333
An Post	12	81	93
TOTAL	**118**	**308**	**426**

9. **Department of Social, Community and Family Affairs**
Breakdown by Main Categories of Complaints Received in 1998

- Old Age Retirement Pensions 208
- Unemployment Payments 194
- Disability and Invalidity Payments 133
- Widows and One Parent Family Payments 92
- Social Insurance 31
- Fuel Allowance and Free Schemes 26
- Carers Allowance 23
- Family Income Supplement 14
- Child Benefit 7
- Miscellaneous 58

TOTAL 786

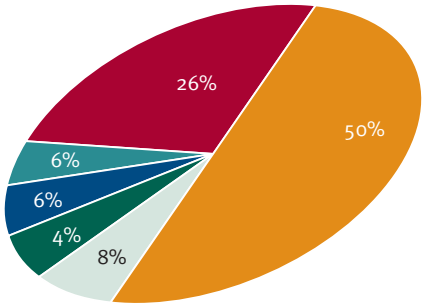


10. Department of Agriculture and Food

Breakdown by Main Categories of Complaints Received in 1998

- Livestock Grants 99
- R.E.P. Scheme 15
- Early Retirement Scheme 12
- No Reply to Correspondence 12
- Milk Quota 9
- Miscellaneous 51

TOTAL 198

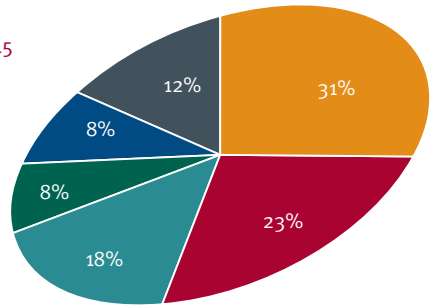


11. Department of Education and Science

Breakdown by Main Categories of Complaints Received in 1998

- Higher Education Grants and Fees 45
- School Transport 33
- Delay/Failure to Reply 26
- Special Education Facilities 11
- Examinations 11
- Miscellaneous 17

TOTAL 143

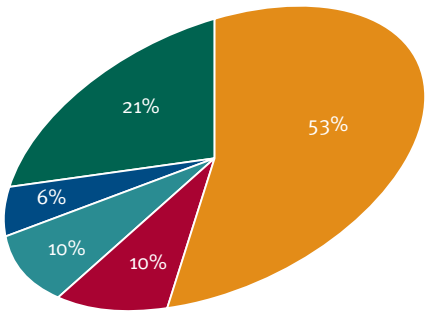


12. Revenue Commissioners

Breakdown by Main Categories of Complaints Received in 1998

- Income Tax 66
- No Reply to Correspondence 12
- Customs & Excise 12
- Value Added Tax 7
- Miscellaneous 26

TOTAL 123



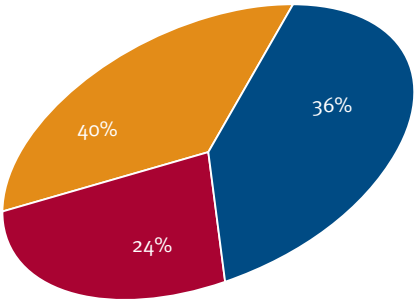
13. Department of the Environment and Local Government
Breakdown by Main Categories of Complaints Received in 1998

New House Grant 9

No Reply to Correspondence 6

Miscellaneous 10

TOTAL 25



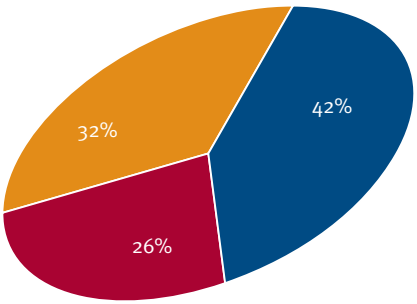
14. Department of Health and Children
Breakdown by Main Categories of Complaints Received in 1998

General Registrar's Office

No Reply to Correspondence 5

Miscellaneous 6

TOTAL 19



15. Local Authorities
Breakdown by Main Categories of Complaints Received in 1998

Housing		282
- Allocations & Transfers	101	
- Repairs	73	
- Loans & Grants	51	
- Sales	43	
- Rents	14	
Planning		162
- Enforcement	118	
- Administration	44	
Roads/Traffic		65
Delay/Failure to reply		45
Motor Tax & Driver Licence		24
Service Charges		19
Sewerage & Drainage		17
Water Supply		16
Waste Disposal		9
Acquisition of land/rights		9
Air and Noise Pollution		8
Rates		7
Access to Information on the Environment		5
Miscellaneous		22
TOTAL		**690**

16. Health Boards

Breakdown by Main Categories of Complaints Received in 1998

Supplementary Welfare Allowance		154
- Rent and mortgage allowances	74	
- Exceptional needs payments	40	
- Back to school - clothing/footwear allowance	6	
- Miscellaneous	34	
Health Services (General)		72
- Medical cards	36	
- Access to medical records	20	
- Drugs, medicines and appliances	13	
- Miscellaneous	3	
Hospital Services		62
- Nursing homes/long-stay	36	
- Miscellaneous	26	
Child Care/Social Work Services		32
Dental Services		29
Delay/Failure to Reply		25
Cash Payments (other than SWA)		21
Services for the Elderly		20
- Housing aid	12	
- Home help	8	
Miscellaneous		67
TOTAL		**482**

17. Valid Complaints Received by County in 1998

18. Analysis of Complaints Completed in 1998

Complaints Resolved 503

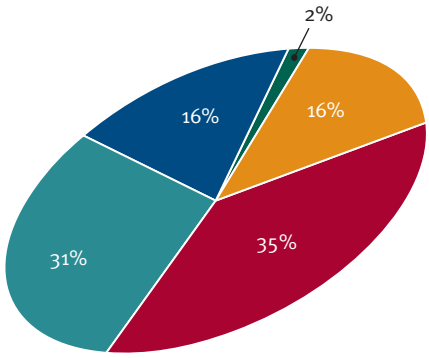
Assistance Provided 1,066

Not Upheld 939

Discontinued 501

Withdrawn 43

TOTAL 3,052



19. Civil Service - Complaints Completed in 1998

	Resolved	Assistance Provided	Discontinued	Withdrawn	Not Upheld	Total Completed
Social, Community and Family Affairs	87	416	148	14	223	888
Agriculture and Food	6	61	39	2	123	231
Education and Science	35	21	38	3	52	149
Revenue	7	30	44	3	55	139
Environment and Local Government	6	3	7	0	9	25
Health and Children	5	4	5	1	1	16
Justice, Equality and Law Reform	1	8	1	-	3	13
Land Registry	6	1	3	-	2	12
Marine and Natural Resources	1	7	-	-	1	9
Enterprise, Trade and Employment	-	3	3	-	2	8
Office of Public Works	-	2	1	-	2	5
Others	3	20	2	1	15	41
TOTAL	**157**	**576**	**291**	**24**	**488**	**1,536**

20. **Local Authorities** - Complaints Completed in 1998

	Resolved	Assistance Provided	Discontinued	Withdrawn	Not Upheld	Total Completed
Carlow	2	4	-	-	-	6
Cavan	1	2	1	-	6	10
Clare	7	6	3	-	6	22
Cork Corporation	6	2	3	-	4	15
Cork County	5	12	7	-	13	37
Donegal	11	8	6	-	12	37
Dublin Corporation	17	17	6	-	21	61
Dún Laoghaire - Rathdown	13	4	5	-	3	25
Fingal	14	6	1	1	9	31
Galway Corporation	11	3	1	-	9	24
Galway County	14	3	5	-	4	26
Kerry	8	6	5	1	9	29
Kildare	8	2	1	-	1	12
Kilkenny	2	1	2	-	2	7
Laois	11	8	7	-	11	37
Leitrim		1	3	-	4	8
Limerick Corporation	7	3	3	-	4	17
Limerick County	2	2	3	-	6	13
Longford	2	2	-	-	1	5
Louth	5	10	3	1	4	23
Mayo	15	5	6	-	16	42
Meath	6	2	2	-	5	15
Monaghan	1	4	4	-	2	11
Offaly	3	1	-	-	4	8
Roscommon	2	2	2	-	4	10
Sligo	7	2	1	-	3	13
South Dublin	15	2	9	-	5	31
Tipperary (NR)	2	4	-	-	3	9
Tipperary (SR)	2	4	4	-	5	15
Waterford Corporation	9	5	3	1	4	22
Waterford County	-	3	1	-	3	7
Westmeath	5	4	5	1	6	21
Wexford	4	7	3	-	2	16
Wicklow	9	11	2	-	7	29
TOTAL	**226**	**158**	**107**	**5**	**198**	**694**

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

21. **Health Boards** - Complaints Completed in 1998

	Resolved	Assistance Provided	Discontinued	Withdrawn	Not Upheld	Total Completed
Eastern	22	89	19	3	43	176
Midland	7	19	9	2	6	43
Mid-Western	7	33	4	1	2	47
North Eastern	5	13	4	0	13	35
North Western	4	14	2	0	7	27
South Eastern	7	21	5	0	4	37
Southern	11	32	10	2	23	78
Western	9	33	9	5	13	69
TOTAL	**72**	**254**	**62**	**13**	**111**	**512**

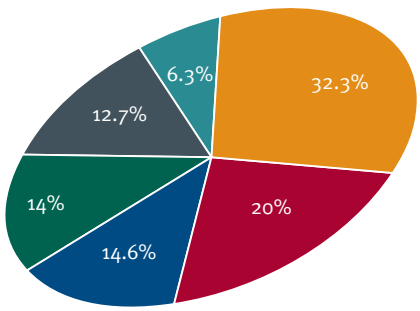
22. **Telecom Éireann/An Post** - Complaints Completed in 1998

	Resolved	Assistance Provided	Discontinued	Withdrawn	Not Upheld	Total Completed
Telecom Éireann	47	44	31	1	114	237
An Post	1	34	10	0	28	73
TOTAL	**48**	**78**	**41**	**1**	**142**	**310**

23. Analysis of Invalid Complaints Received in 1998

- Private Companies 292
- Banking/Insurance 181
- Public Bodies outside remit 132
- Pay and Conditions 126
- Courts/Gardaí 57
- Miscellaneous 115

TOTAL 903



Staff

Director

Pat Whelan

Senior Investigators

Maureen Behan
Michael Brophy
Fintan Butler
David Waddell

Investigators

John Conlon
Patricia Doyle
Geraldine Fitzpatrick
Eoghan Halpin
Ann Hayes
Matt Merrigan
Tom Morgan
Willy O'Doherty
Paddy O'Dwyer
Bernard Rooney
David Ryan
Paddy Walsh

Support Staff

Catherine Boylan
Shirley Donohue
John Doyle
Jackie Durkan
Shane Finlay
Phyllis Flynn
Ann Harwood
Evelyn Hernon
Dan Kelleher
Damien Markey
Fiona McCarney
Liam McCormack
Jacqueline Moore
Donal O'Sullivan
Stephen Rafferty
Aimée Tallon

Administration Unit

Brendan O'Neill - Head of Administration
Anna Duggan
Finbar Hanratty
Geraldine McCormack
Brian McKeon
Audrey O'Reilly
Mary Pepper

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