annual report of the Ombudsman 2001

annual report of the Ombudsman 2001

May 2002

Office of the Ombudsman
Oifig an Ombudsman

Helping to achieve a public service that is open, fair and accountable

Office of the Ombudsman
18 Lower Leeson Street
Dublin 2
tel: 01 6395600
fax: 01 6395674
email: ombudsman@ombudsman.gov.ie
internet: www.gov.ie/ombudsman/

To be purchased directly from the Government Publications Sales Office, Sun Alliance House, Molesworth Street Office, Sun Alliance House, Molesworth Street, Dublin 2 or by post from Government Publications, Postal Trade Section, 4-5 Harcourt Road, Dublin 2

ISBN 0-7557-1218-8

ISSN 1393-192X

Price: €6.00

PN: 11329

Contents

Foreword		2
Chapter 1	Introduction	3
Chapter 2	Issues of continuing concern	7
Chapter 3	Redress - Getting it wrong and putting it right	13
Chapter 4	Selected cases	21
Chapter 5	The year in review	33
Chapter 6	Statistics	41
Staff		58
Index		59
Publications		60

Foreword

I hereby submit my eighth Annual Report to the Dáil and Seanad pursuant to the provisions of Section 6(7) of the Ombudsman Act, 1980. This is the 18th Annual Report submitted in relation to the work of the Office of the Ombudsman since it was established in 1984.

Kevin Murphy
Ombudsman

May 2002

Chapter 1

Introduction

This is my eighth Annual Report. The year 2001 marked the 21st anniversary of the passing of the Ombudsman Act, 1980 by the Oireachtas. The period since its enactment has seen unprecedented social and economic change and growth in our society and has witnessed the emergence of a country which is prosperous, outward looking and confident of its place in the world economy. These developments have also presented public bodies with new challenges and responsibilities in adapting to an ever-changing economic and social environment while at the same time ensuring that the rights and entitlements of the users of public services are protected.

In Chapter Two of the Report, I comment on a number of issues of continuing concern. Some of these arise out of investigations previously carried out by my Office and some relate to matters of an on-going nature.

During my tenure as Ombudsman I have, in addition to resolving individual complaints, also tried to raise the overall standard of public administration. In conjunction with my Annual Report for 1995, I set out the *Principles of Good Administration* and suggested that public bodies should apply these principles in exercising their powers. In 1997, I published a checklist highlighting standards of best practice underlying good public administration, *The Ombudsman's Guide to Standards of Best Practice for Public Servants*, and in 1998, I published a guide to internal complaints systems, *Settling Complaints*, with a view to assisting public bodies in improving the quality of the service they provide.

This year, in Chapter Three of the Report, I offer some thoughts on the principle of redress and its importance in contributing to better public administration. Public bodies are involved in a myriad of daily transactions with their clients, the vast majority of which are processed efficiently and effectively. But sometimes errors do occur and mistakes are made by public bodies which are to the detriment of the client. From my experience of dealing with complaints, it is clear to me that some public bodies become over-defensive when things go wrong. They are afraid to admit that an error was made and are reluctant to apologise fearing, often unreasonably, that litigation may ensue. Their defensiveness further fuels suspicion and mistrust on the part of the aggrieved client.

When things go wrong there is an obligation on the public body to take appropriate action so as to restore the client, in so far as this is possible, to the position he/she would have been in if the error or mistake had not occurred. Citizens need, and good public administration demands, a public sector which is responsive to the demands of its clients and which engenders a sense of confidence among those it is required to serve. The recipients of services need to have confidence that public bodies operate in a manner which is balanced, fair, inclusive and responsive to their needs. This confidence can be secured only if public bodies are open, fair and accountable and if there are effective mechanisms in place to ensure this. The existence of a delineated system of redress is one of the ways in which a public body can enhance its relationship with its client.

Redress can take a number of forms and I have gone into some detail on this aspect in Chapter Three. It may involve a financial payment or the restoration of a benefit from which the client was previously excluded. But in many cases the simplest, most satisfying and most lasting redress can be achieved when a body acknowledges that it has erred and issues an apology. Many opportunities are lost for an early and complete resolution of a dispute because of a failure to apologise.

Chapter Four contains details of selected cases and Chapter Five highlights the most significant events of the year 2001 for the Office of the Ombudsman. Chapter Six contains statistical data and analysis of cases handled in 2001.

The Annual Report provides us with an opportunity to review events and to take stock of circumstances. Activities during 2001 once again brought home to me how very lucky I am to have in my Office a most talented and dedicated group of people. Without their assistance, loyalty and dedication, the success which the Office of the Ombudsman has enjoyed and the high regard in which it is held could not have been sustained. Sadly, one member of staff, Catherine Boylan, died during 2001. Her tragic death, at such an early age, was very upsetting for all of us as colleagues and especially for her family to whom I wish again to offer my deepest condolences.

One of the most respected members of my investigative staff, Ms Ann Hayes, chose to retire in 2001. Her good humour, effervescent personality and happy demeanour will be missed around the Office. I wish her well in her retirement.

Finally I would like to take this opportunity to express my thanks to my Director General, Pat Whelan and to Matt Merrigan and Derek Finnegan for their assistance in the preparation of this Annual Report

Chapter 2

Issues of continuing concern

Planning and Development issues - Matters arising from Annual Report 2000

In my Annual Report 2000, I characterised the state of the planning system in local authorities as being "a system which is in a state of collapse". Not surprisingly, there was considerable media coverage of my comments and while I am sure local authorities were not pleased with my remarks, they generated a significant response from members of the public who sought my assistance to deal with their on-going complaints against local authorities for their failure to enforce the planning code.

There was a significant increase in the number of telephone calls to my Office in the weeks following publication to the Report and a 39% rise in complaints to my Office during 2001 about planning matters. While some local authority officials told my staff that they agreed with my comments, two County Managers wrote to me expressing surprise or disappointment with my remarks. Of course, each Manager expressed his opinion based on his experience of planning enforcement in his functional area and, while I accept that a few local authorities may have been making greater efforts than others to ensure compliance with planning laws, my comments were based on a national perspective built up over recent years from complaints from all parts of the country about failure, on a consistent basis, to take action against developers who did not adhere to the terms of planning permissions given to them or who engaged in other unauthorised environmental/planning activities. Indeed, the public and my Office have been very frustrated that such actions have not been pursued with sufficient vigour, including court action, where appropriate.

I can only recommend to a local authority that it should take a particular course of action; I cannot compel it to do so. In the past my Office has expended considerable energies trying to persuade local authorities to take an appropriate course of action or, alternatively, to justify their reasons for not taking action against unauthorised development. The outcome of a protracted complaint examination process has not always been to the satisfaction of the complainant or my Office. Accordingly I am reviewing the effectiveness of my Office's procedures for dealing with enforcement issues with a view to taking a more critical approach to failure by a local authority to act properly and without delay when a complaint is made about serious breaches of the planning laws.

To a certain extent my concerns may be allayed by the coming into force in March of this year of sections of the Planning and Development Act, 2000. This Act strengthens considerably the powers of local authorities in relation to the enforcement of planning but it also imposes obligations on them to act within specified timeframes. The proper implementation of the enforcement provisions of the new Act will call for a considerable shift in the mindset of local authorities which will be obliged to respond within six weeks of receipt of representations or a complaint from the public about enforcement. While a local authority will have discretion not to take enforcement action after carrying out an investigation, details of such a decision and any decision concerning an enforcement notice issued under the Act, must be entered in a planning register which will be available to the public. This will bring greater transparency to the process. However I wish to put all local authorities on notice that I will be highly critical of any local authority that, in my view, fails to use the provisions of the Act effectively to ensure compliance or to initiate court proceedings in cases of non-compliance. I know that, in some quarters, the planning laws and processes may be viewed as potential impediments to growth and the development of infrastructure. One cannot rule out, however, that failures in enforcement may be an important factor in engendering opposition to planning developments in the first place. Certainly public confidence in the planning process is a pre-requisite for an efficient planning system.

The new Planning and Development Act, 2000, to which I referred above, and regulations made under the Act (Planning and Development Regulations 2001) together consolidate all planning and development legislation. I am pleased to note that certain defects in previous legislation about which I had written to the Department of the Environment and Local Government, have been addressed in the new consolidated legislation. These included:

- the ability of a developer to lodge a second application for planning permission with a local authority while a previous application in relation to the same development was under consideration by An Bord Pleanála without the public being alerted properly to the application. Such application will now require that the site notice be in a different colour background (yellow) from the first notice which would have a white background.
- irregularities concerning the placing of site notices in obscured or inaccessible places. The new regulations require that a site notice be placed in a conspicuous position or near the main entrance to the land or structure and, where there is more that one entrance, on or near all such entrances.

There are implications for an applicant for planning permission who does not comply with the requirements of the regulations regarding site notices. If, on inspection, the authority considers that the requirements have not been met, the application is invalid and all documents will be returned together with the fee. Details of invalid applications must also be entered in the planning register.

The provisions dealing with the abuses outlined above will help to ensure that circumvention of regulations will be less likely to occur in the future and that the application process is even more open and transparent.

Local Authorities and Public Accountability

Last year I also reported on a long running complaint against Galway County Council which had adopted a general policy of replying in writing only to those representations which came from elected members of the Council or members of the Oireachtas on behalf of individuals or groups. In the particular case, the Council would not reply to representations from an elected Town Commissioner, from within County Galway, acting on behalf of his constituents and others.

I highlighted the complaint as I felt it was an important one in view of the systemic issues which it raised. There was not only the undoubted adverse affect suffered by the complainant in seeking to act on behalf of members of the public but, of course, the adverse affect suffered by those members of the public who had requested him to act on their behalf. A range of important principles was at stake in terms of openness, transparency, public accountability and the free flow of information from public bodies into the public domain. These issues were of concern to me not only as Ombudsman but also as Information Commissioner.

I am glad to report that the Council has now finally decided to set aside its policy and is no longer applying its previous restrictions. I will continue to pursue complaints with the utmost vigour where a public body is found to be erecting barriers to the free flow of information to the public or to persons representing members of the public.

Flexibility and Fairness

In my Annual Report for 1996, I said that public bodies in striving for the highest standards of administration in their dealings with the public should ensure that citizens are dealt with properly, fairly and impartially. I said that dealing fairly with people means accepting that rules and regulations, while important in ensuring fairness, should not be applied so rigidly or inflexibly as to create inequity. I also stressed that dealing properly with people required extra sensitivity in the case of older people or people with special needs. While schemes and services administered by public bodies must have eligibility criteria and other standard conditions underpinning them, it is equally

important that public bodies should be able to accommodate unusual or special cases or unforeseen circumstances. They need to develop flexibility so that benefits or services are not unjustly withheld from people because of some technical requirement. The following case highlights this issue.

I received a complaint on behalf of a widow who was in her 80s and had been refused a waiver or reduced rate refuse charge by Limerick County Council. The woman in question was in receipt of a Non-Contributory Widow's Pension from the Department of Social, Community and Family Affairs. She was also living on her own and in receipt of a medical card. The full rate charge was €203 (£160) and the reduced rate was €127 (£100).

The Council held that she could not be allowed a reduced charge as she did not come within the conditions imposed by the Council resolution allowing for the reduction. The resolution read as follows:-

> *" Reduced refuse collection charge of £100 for Old Age Pensioners, on non-contributory pension, living alone, with a medical card."*

Because the complainant was not in receipt of Non-Contributory Old Age but rather a Non-Contributory Widow's Pension, the Council's interpretation of the resolution meant that she did not qualify. They had suggested that she change her pension from a widow's to an old age one in order to qualify.

In my view the resolution was open to a different interpretation. I considered that the expression "Old Age Pensioner", used in the way it was in the resolution, was simply meant to cover those members of the population over the age of 66. The phrase "Old Age Pensioner" is in common use and is not generally considered to mean only those in receipt of Non-Contributory Old Age Pension. To follow this logic through therefore, the complainant would qualify as she was over age 66, in receipt of a non-contributory pension, lived alone and had a medical card.
I impressed on the Council that it would, in my opinion, impose a hardship on this woman to ask her to change her pension at this time in life. This could involve lengthy correspondence with the Department of Social, Community and Family Affairs for the sole purpose of qualifying for the reduced refuse charge. There is no monetary difference between the maximum rate of either pension, so the complainant would gain nothing except the reduced refuse charge but would have to go through a process which might create anxiety on her part.

I did not consider that my interpretation would have a very high cost to the Council and the objective of the resolution, that those over 66 in receipt of a non-contributory pension etc. qualify for a reduced refuse charge, would not be prejudiced.

After considering my request, the Council agreed to accept my interpretation of its resolution and to refund the difference between the full and reduced charge to my complainant, and to all others in a similar situation to her.

Local Authority Mortgages - Fixed Interest Rates - Lack of Mortgage Protection

Last year I referred to the difficulties experienced by families who had taken out high interest local authority mortgages. These mortgages were fixed for the life of the loan and in a period of falling interest rates represented a significant burden for the mortgage-holder. In addition there was potential for further hardship arising because prior to July 1986 these mortgages were not subject to mandatory mortgage protection. I referred to the serious consequences for some families resulting from a combination of high interest rates and a lack of mortgage protection. During 2001, I wrote to the Department of the Environment and Local Government expressing my views on these issues. On the matter of the high fixed interest rates, the Department has advised me that it has carried out some research and has estimated that the cost of reducing the high interest rate of 12.5% to the current local authority fixed rate of 5.3% would be in the region of €14 million (£11 million) in the first year

declining thereafter as loans are paid off. It has requested approval from the Department of Finance for its proposal to reduce the high fixed interest rate but its request has been turned down. I have since written to the Department of Finance and, at the time of writing, I am awaiting a response to my request for a review of its decision.

Concerning the failure to offer mortgage protection to persons who borrowed prior to July 1986, the Department has advised me that arrangements are being made to devise a scheme to cater for all existing borrowers who meet certain eligibility criteria. As the age limit for joining the Local Authority Mortgage Protection Scheme is under 55 it is likely that a number of existing borrowers will not be eligible, on age grounds. The Department is also examining ways in which some form of relief can be offered to those people who suffer extreme hardship in meeting loan repayments. It hopes to have a scheme in place in 2002.

Hospital Services

My Office has always received a lower level of complaint against the health sector relative to those received against other sectors within remit. This undoubtedly reflects the exclusion of clinical judgement and the fragmented nature of my remit in relation to hospital services, which has resulted in a low level of public awareness of my role in relation to complaints within the hospital system. While I can examine complaints against health board hospitals, e.g., Cork University Hospital and Galway University Hospital, I cannot examine similar complaints against public voluntary hospitals, e.g., Beaumont Hospital or St James's Hospital in Dublin, even though they are all publicly funded.

The public voluntary hospitals and a whole range of health bodies are now within my jurisdiction as Information Commissioner. However, notwithstanding the reference to the issue in ***"Quality and Fairness - A Health System For You"***, the new national health strategy, the same bodies have yet to be brought within the jurisdiction of the Ombudsman. Thus, when things go wrong, a patient within a health board hospital, can complain, free of charge to the Ombudsman. However, if he or she is admitted to a public voluntary hospital, I cannot be of assistance. Such patients have to consider the prospect of costly litigation before the courts.

However, the inclusion of these bodies within the jurisdiction of the Information Commissioner is beginning to have a positive impact in raising awareness of my role as Ombudsman and, indeed, highlighting the anomalies in relation to my jurisdiction. And there is evidence that people are becoming more aware of my role as Ombudsman in relation to complaints about hospital services. The following case illustrates this point.

Southern Health Board - Tralee General Hospital

This case involved an investigation of a complaint against Tralee General Hospital (TGH) which lies within the functional area of the Southern Health Board (SHB).

A family wrote to me and said that their father had been admitted to hospital complaining of severe pain in his lower back and legs. In the following days he was examined by various doctors and had blood samples taken. Throughout this period his pain and discomfort increased with no relief and he became increasingly agitated. His family became concerned and distressed and sought explanations as to the cause of his pain and discomfort. The family was dissatisfied with the response of a particular doctor to their concerns which they felt was dismissive and uninformative. Their father was subsequently the subject of an emergency transfer to another hospital where he died shortly after admission.

The family were aggrieved that they were not informed of the nature and severity of their father's condition and the standard of medical care he received until his emergency admission to another hospital. They were also very upset at the way the complaint they made after their father's death was handled. They indicated, when complaining to my Office, that they simply wanted to find out what had happened to their father.

I investigated the complaint but found that the paucity of available records made it difficult to establish what precisely had happened. The standard of medical note-taking that is expected of medical staff following their contact with patients left a lot to be desired in this case. The relevant medical consultant accepted that, if the family's observations regarding their father's condition were correct (viz., that he was in continuing severe pain which was not being alleviated by the drugs administered, that his right leg was getting numb and cold and that there was discoloration in his lower back/front torso region), then "something catastrophic must have been going on". Given those circumstances he would have expected the doctor on duty, if he made those observations, to contact a more senior doctor immediately. [Note: Because the Ombudsman is precluded, by law, from investigating decisions of persons when acting on behalf of health boards and, in the opinion of the Ombudsman, solely in the exercise of clinical judgement in connection with the diagnosis of illness or the care or treatment of a patient, the investigation could not consider whether it would have been appropriate for the junior doctor to consult a senior doctor earlier than he did.]. However, the family's observations regarding the continuing severe pain were supported by the nursing observations recorded by nursing staff.

I upheld the complaint about the inadequacy of the care afforded to the family's late father and about the response to concerns expressed by them. I also concluded that TGH needed to review its approach to complaint handling and to train and equip all staff in the practice of good complaint handling.
I recommended

- that a member of the senior management of the SHB and the hospital visit the family to apologise for the shortcomings identified in the report and to explain what action would be taken on foot of the findings and recommendations contained in the report;

- that the hospital, in co-operation with the SHB, should review its procedures with regard to record keeping and complaint handling procedures.

I also recommended that the SHB take action to ensure that all the hospitals under its control carry out a review their record keeping and complaint handling procedures .

Finally, while recognising that I am precluded from examining matters of clinical judgement I called on the SHB, the hospital and the medical staff to bring greater clarity to the working relationships between junior and senior medical staff. In particular, I suggested an administrative protocol outlining the circumstances in which a junior member of a medical team should consult with his or her consultant when a patient's condition gives cause for concern, and the corresponding obligation on consultants to be accessible for such consultation. The SHB accepted my recommendations.

This case underlined the importance of timely communication with patients' relatives by medical and administrative staff. It also illustrated that, when things go wrong, a proper complaints system is essential if relatives' concerns are to be addressed in an open and positive way. The complaints system should have the support of both medical and administrative staff. It was also evident from this case that the adoption of a negative and adversarial approach by hospital staff only fuels relatives' suspicions that the hospital has good reason for attempting to withhold the details of what actually happened.

Chapter 3

Redress - Getting it wrong and putting it right

I am empowered by the Ombudsman Act, 1980, to examine or investigate complaints against certain public bodies. If, as a result of my intervention, I find that a complainant has been adversely affected by some unfair or improper action on the part of the public body, I may ask it to offer redress. In many instances the body will acknowledge that, as a result of its actions, the complainant has suffered some detriment and will be anxious to remedy the adverse affect.

In 1997 when I published *The Ombudsman's Guide to Standards of Best Practice for Public Servants* I said that dealing ***fairly*** with people included treating people in similar circumstances in like manner. As an extension of this principle public bodies should seek to ensure that similar complaints, when upheld, should attract similar remedies.

In this chapter I underline the obligation on public bodies to provide appropriate redress. I also give some guidelines and examples of redress with a view to assisting public servants to develop a consistent approach to its application across the public service.

Redress and public administration

Public bodies are responsible for delivering a vast range of services to the citizen. Where, as a result of poor administration, the service is not delivered satisfactorily, the citizen usually has nowhere else to turn for an alternative service provider. An obvious example here is in the provision of welfare payments or social housing. A basic tenet of the Government's Strategic Management Initiative is the provision of a high quality service to its clients. It follows, therefore, that where there is a shortfall in this standard, and the fault lies with the public body, it should remedy the shortfall through the provision of redress.

As I mentioned earlier, the objective of redress is to put the individual back in the position he/she would have been in but for the administrative failure. It has been the trend in the recent past for public bodies to publish charters of rights in which they set out their goals in terms of the services provided to their clients. Many of these charters include target times for schemes, programmes and repayments. I welcome these targets as a positive development in the provision of a quality customer service. However, I feel that the value and credibility of charters and protocols would be greatly improved if they were to encompass a commitment from the public body to provide redress when the standards and targets to which the bodies are committed are not met.

Apologies and explanations

A person may be adversely affected by the action of a public body in a variety of ways - through loss of a particular benefit, service, a financial payment or the loss of an opportunity to exercise a right. Where this happens good administration demands, in the first instance, an acknowledgement by the body concerned that a wrong has occurred and that steps need to be taken to offer redress for the loss. A detailed explanation and/or a genuine apology by the public body should form part of the redress proposals and these measures in themselves have a significant role to play in alleviating the sense of grievance felt by the complainant.

Explanations and apologies should incorporate the following:

- the reasons why the service cannot be provided immediately;
- an apology for the inconvenience caused;
- details, where applicable, of alternative services available in the short term;
- an indication as to when the service requested will be provided.

Apologies should be given where a service to which a person has an entitlement has not been provided, has only partially been provided or has been delayed, as a result of a fault on the part of the public body. Letters of apology must:

- be genuine and sincere;
- accept responsibility for the fault which has occurred;
- acknowledge that hurt/inconvenience/hardship has occurred;
- undertake to make good any loss which may have resulted.

Through the examination and investigation of complaints I come across instances where public bodies have failed to deliver a service. The public bodies may be quick to accept that they have erred and may even offer an appropriate remedy. However, they tend to be unwilling to extend an apology to the person affected. My experience is that the more open and progressive a public body is, the more likely it is to look after the entitlements of its clients and to acknowledge its responsibility when problems arise and it is at fault.

Some public bodies tend to consider that apologies are not necessary if corrective action is taken in respect of the service. They are mistaken. The absence of an apology undermines good relations, trust and confidence between the body and the client and is detrimental to good public administration. Between these two extremes there are those public bodies which will not acknowledge that they have been at fault but which grudgingly accept that an apology is required. I have encountered a number of examples of this approach where the 'apology' from the body takes the following form

> *"we do not accept that we have been at fault but if we have, please accept our apologies"*

Responses of this nature are unsatisfactory and there is an urgent need for bodies which adopt this stance to think again about their responsibilities and obligations to their clients.

A major reason why public bodies are reluctant to apologise is the question of legal liability. Of course legal liability is usually not an issue in the majority of cases where things go wrong. Indeed, the failure to apologise or to explain is often the trigger which sets litigation in motion. I am convinced that it is possible, in most cases, to provide detailed explanations and apologies in ways which do not involve admission of liability. Where litigation can be reasonably anticipated, public bodies clearly have the right to protect their interests. In that context I note with interest the suggestion put forward by the New South Wales Ombudsman, Mr Bruce Barbour in his Annual Report 2000 - 2001. He suggested that

> *"... legislation be introduced to make apologies or expressions of sympathy or regret given by public sector officials to help resolve a complaint inadmissible in any civil proceedings.*
>
> *This would not be detrimental to the rights or interests of members of the public who have legitimate legal claims against an agency as in practice, without legislation of this kind, an aggrieved person would probably receive no apology - and consequently, no admission of responsibility - at all.*

In contrast, the practical consequence of introducing legislation of this kind should be that more public sector officials would be encouraged to say 'sorry' and more members of the public are more likely to feel satisfied that their grievance has been taken seriously. An apology shows an agency taking moral, if not legal, responsibility for their actions and the research shows that most people would be satisfied with that."

The health area is one where there is considerable concern about the possible admission of responsibility. I would commend my Australian colleague's suggestion to the Department of Health and Children for consideration in the context of the new statutory complaints system proposed in the national health strategy.

Compensation for loss of purchasing power

Where refunds or payments of benefits have been delayed or withheld over an extended period of time as a result of an error, misinterpretation, oversight or other similar action on the part of a public body, the principle of redress, and good administrative practice, demands that a general scheme of compensation should be in place to cater for the loss of purchasing power of the payments made.

Over the years I have encouraged public bodies when making retrospective/late payments to clients, also to provide compensation for loss of purchasing power. For the last 15 years, the Department of Social, Community and Family Affairs has administered such a scheme in cases where the Department itself was solely or significantly to blame for the delay. Under this arrangement there is a standard period of twelve months - sometimes known as the "fallow period" - within which the application/entitlement/benefit might be expected to be processed. Compensation only becomes an issue where the application is not processed within this period. In certain circumstances the Department should pay compensation for loss of purchasing power to clients who were late in claiming an entitlement. This can arise where, for example, a person was given wrong information by the Department when enquiring about entitlements. The Department has made Regulations giving this scheme legislative status but it had operated previously under delegated sanction from the Department of Finance.

Other public bodies have also introduced arrangements for the payment of compensation in certain circumstances:

- The Department of Education and Science pays compensation in respect of loss of purchasing power in cases where payment of higher education grants has been delayed.
- The health boards have also agreed to the introduction of a national compensation scheme.
- Following an investigation carried out by my Office into the level of unrefunded overpayments on borrowers' loan accounts, local authorities accepted my recommendation that they pay the borrowers compensation for loss of purchasing power on the amounts in question.

As I have mentioned earlier the underlying principle governing redress is that the complainant should be restored to the position he/she would have been in before the wrongdoing took place. The arrangements adopted by the public bodies to compensate for loss of purchasing power satisfy the redress principle. However one organisation which has been conspicuous in its resistance over the years to making such compensation payments is the Office of the Revenue Commissioners.

Revenue's view is that, apart from a number of specific instances, there is no legislative provision which would allow such payments to be made. I have never been convinced of this argument and I believe that there is latitude within the care and management provisions of the Tax Acts for such payments to be made. However my greater concern in this matter is that there appears to be an underlying unwillingness on the part of the Revenue to acknowledge an

obligation to provide redress in cases or to put any mechanism in place to cater for redress. This issue had previously been raised with the Revenue and it had agreed to carry out a review. However there has been no progress on the matter to date.

The year 2002 will see the finalisation of my investigation into complaints against the Revenue's refusal to compensate eight taxpayers for the loss in value of delayed refunds of income tax. The investigation report will also address the question of whether a general scheme of compensation should be introduced to cater for such overpayments.

A more positive approach was adopted in the following case by the Department of Education and Science:

I received a complaint from a former teacher from whom incorrect deductions of PRSI had been made. She had been widowed since 1970 and, therefore, should have been paying Class D2 PRSI (Class A2 from April 1995). However, deductions were made initially at the D1 rate (and then at the A1 rate from April 1995). Having applied to the Department of Social, Community and Family Affairs (DSCFA), refunds in respect of the incorrect deductions were made to her. She also sought compensation for the loss of purchasing power involved and complained to my Office when this had been refused. The DSCFA said that while it had paid out the refund in respect of the incorrect deductions, the responsibility for the error was that of the employer, and not the Department.

In this case, the Department of Education and Science (DES) paid the salary of the teacher on behalf of her employer, the board of management of the school. Accordingly, my Office asked the DES to examine the complaint in respect of compensation for loss of purchasing power. The DES initially said that the responsibility for informing it of any changes in circumstances which would warrant deductions at the D2 rate rather than at D1, such as holding a medical card, receiving a lone parent allowance or widow/widower's allowance, lay with the teacher. It also considered that the responsibility for compensating her for loss of purchasing power lay with the DSCFA which had made the refund of incorrect deductions.

On further examination of the complaint, I established that the DES's Personnel Section was aware that the complainant was widowed. However, the DES said that that Section would not necessarily be aware of any potential implications for PRSI contributions arising from this information. Having reviewed the matter, I considered that the DES held sufficient information to allow it to make the correct deductions. The fact that the information was held in its Personnel Section rather than its Salaries Section could not be regarded as an adequate defence as it should have organised its information systems in such a way as to ensure that all relevant information was made available to whichever Section required it. I concluded that the DES was at fault in failing to act on the information available to it and that the complainant should be awarded appropriate compensation for loss of purchasing power in respect of the incorrect deductions made from her salary. I considered that, in line with similar cases across the public service, the amount of compensation should be calculated by reference to increases in the Consumer Price Index over the relevant period. The DES accepted my views and appropriate compensation was paid to the complainant.

Restoration of a lost non-monetary benefit or service

Many public bodies provide non-monetary benefits or services, e.g., school transport, housing repairs, refuse and water supply, hospital services, facilities for people with disabilities etc. Where these services are wrongly denied to a person as a consequence of a fault of the relevant public body and are subsequently provided, the public body should provide redress in respect of the period prior to their provision.

In some cases a payment can be made to cover the client's costs. For example, where a local authority, without good cause, fails to carry out essential repairs to the roof of a tenant's house which results in internal damage necessitating re-decoration, the local authority should consider funding or part-funding the costs involved. Similarly, where access to school transport is wrongly refused and parents incur costs in making alternative arrangements they should be refunded these costs if entitlement to the service is subsequently established. In some cases a payment or a deferment of future costs or charges which may be due should be made in acknowledgement of the fact that the person was wrongly deprived of the service.

Loss of opportunity

An action of a public body can have the effect of preventing an individual from taking advantage of special arrangements or participating in a particular scheme. The following case serves to illustrate this issue:

A couple was advised by Carlow County Council that they could purchase their house for €25,331 (£19,950). At the time they had insufficient funds available to proceed immediately with the purchase but they continued to seek loan approval. When they finally got loan approval they were advised that they were too late to purchase the house at the price of €25,331 as the time limit for taking up the offer had expired. They were advised that the revised purchase price was €41,274 (£32,506).

On examination I found that the original letter of offer, which issued to the complainants on 14 May 1999, made no reference to the claim that the valuation was for a limited period only. Furthermore, Part 7 of Circular Letter HRT 6/95, which issued from the Department of the Environment and Local Government relating to the house sales scheme, states:

> *"On notification of valuations to tenants, they should be advised that the valuation will stand for such period, not exceeding 12 months, as the authority see fit and that tenants who wish to purchase should, within this period, agree in writing to proceed with the purchase".*

Given that the complainants were not informed in May 1999 of a cut off date on the Council's original offer, they had a reasonable expectation that the offer was open ended until such time as they secured the loan approval which they were allegedly seeking in the period June 1999 to June 2000.

My Office asked the Council to review the case. The Council undertook, on receipt of documented evidence that the complainants were making a genuine attempt to secure a mortgage during 1999/2000, to re-open the sale of the house at the original offer price of €25,331 (£19,950) for a limited period of 3 months. I felt that this was a reasonable position to adopt.

In addition, the Council amended its procedures and documentation to prevent a similar type of problem arising in the future.

Opportunity to appeal denied

In the area of planning administration, I have received complaints concerning the failure of planning authorities to notify interested parties of planning decisions in sufficient time to allow them to lodge appeals against these decisions. In such cases it has been my practice to ask the planning authority to review its actions and to consider the question of offering some form of redress to the complainant in respect of the loss of the opportunity to exercise their statutory right of appeal to An Bord Pleanála. Among the issues I might expect a planning authority to consider are:

- an acknowledgement by the planning authority of its responsibility for the oversight in failing to notify the interested party or parties;
- offering an apology for the oversight;
- a review of its procedures for logging objections against planning applications and notifying objectors of decisions;
- payment either directly to the complainant for costs incurred by him/her in pursuing the matter with the planning authority or a contribution towards some community works or planting in the area in which the complainant lives;
- financial compensation for the loss of opportunity to lodge an appeal.

In relation to the loss of an opportunity to appeal I made the following comment in my 1999 Annual Report:

> *"Financial compensation cannot adequately compensate where the opportunity to object to a proposed development - which is a fundamental aspect of our planning system - has been lost. I will take a very critical approach in future if similar practices come to light in this or any other local authority."*

I have taken the view that the loss of such an opportunity is serious maladministration for which compensation should be payable as a means of providing at least some degree of redress for the planning authority's omission. Typically, I have recommended payments up to €700 where I have found that interested parties have been deprived of the opportunity to lodge an objection to a planning decision because of an administrative failing on the part of the planning authority. I have not yet encountered a case where there was *prima facie* evidence that a planning permission might not have succeeded at the Bord Pleanála stage or may have been subject to particular conditions if an objection had been lodged by a person adversely affected by the permission. Obviously this would raise more complicated questions in relation to appropriate redress.

Compensation for costs incurred

When a person feels aggrieved at a decision of a public body and decides to make a complaint he/she engages in a process which sometimes can be daunting and which may require persistence and conviction to achieve a resolution. There will often be a formidable power imbalance in this type of process and, depending on the nature of the complaint, the person taking on the public body may need to seek professional advice perhaps from a solicitor, accountant, architect or engineer in order to vindicate his or her position. If, at the end of this process, the decision of the body is reversed or varied the question of refunding costs incurred in obtaining professional advice should form part of the public body's redress proposals.

Time and trouble payments

Writing letters, making telephone calls, carrying out interviews, research and getting legal or other professional advice are integral parts of the complaint process. These and other related activities involve time and trouble on the part of the complainant. These activities can also give rise to costs in the form of postage and telephone charges, travel expenses and the purchase of materials. Compensation in the form of payments for time and trouble reasonably expended in pursuing the complaint and associated vouched costs should always form part of any proposed compensation arrangement. The level of time and trouble payments would normally range from €100 up to €500 but could in exceptional circumstances go beyond this range. An important factor in considering such payments would be the attitude and approach of the public body in dealing with the initial complaint and whether or not it objectively reviewed its original decision.

The absence of an apology undermines good relations, trust and confidence between the body and the client and is detrimental to good public administration.

Conclusion

I have set out above as a guide some instances where redress should apply - there are many others. Redress should be available to all individuals who have a justified complaint and not only to those who make a complaint to me. In considering what type of redress might be appropriate in any given situation, public bodies should take into account what steps are required to restore the party concerned to the position he or she would have been if the fault had not occurred. Imagination and creativity should be employed in providing suitable redress and, indeed, I have complimented particular public bodies in this and in previous Annual Reports for adopting an innovative approach to redress. In some cases it may not always be possible to reach agreement between the body and the affected person as to the most appropriate level of redress. I have had cases where the complainant's level of expectation has been unreasonably high and where my recommendations for redress have not proved acceptable. There may be cases, from time to time - whether involving my Office or not - where the gap between the public body's estimation of redress and the complainant's may require the use of professionally qualified mediators or arbitrators rather than resulting in a "stand off" with litigation being the only alternative.

Chapter 4

Selected cases

Selected cases

Department of Agriculture, Food and Rural Development/Dúchas

Compensation for loss of grant under the Rural Environment Protection Scheme

A farmer joined the Rural Environment Protection Scheme (REPS) in 1997. Under this scheme applicants receive a premium if they manage their land within the terms of a management plan approved by the Department of Agriculture, Food and Rural Development. Under REPS an additional premium is payable if any part of the land comes within the boundaries of a Special Area of Conservation (SAC) or a National Heritage Area (NHA). SACs are designated by Dúchas, the Heritage Service, in the Department of Arts, Heritage, Gaeltacht and the Islands under the European Council Directive on the Environment, 92/43/EEC.

In 1997 the farmer enquired of Dúchas if any of his land came within the boundaries of an NHA or an SAC. He was informed that none of his land did. However, in 1999 he was told that Dúchas had erred and that, in fact, a small portion of his land came within a NHA. He then sought retrospective payment of the additional premia for the three years during which he had been a participant in REPS. The Department refused to pay the additional premia claiming that it could not make retrospective payments under the terms of REPS.

The Department took the line that the farmer had been paid in accordance with the terms and conditions of REPS and that there was no provision within the scheme for retrospective payments. The Department had paid the additional premium once it had been advised of the correct position and, it argued, had acted correctly. I then turned my attention to Dúchas and I asked it for a report outlining its role in the case. I concluded that the error by Dúchas gave rise to the loss of three years premia and that, in the interests of good administration, the complainant should be compensated by Dúchas. This was accepted by Dúchas and it made a payment of €4673 (£3,680) to the farmer on an *ex gratia* basis.

Department of Social, Community and Family Affairs

Re-instatement of Deserted Wife's Benefit

I received two complaints regarding the failure of the Department to advise claimants fully of the negative implications of switching from one social welfare payment to another. In both cases, the complainants had asked the Department to transfer them from Deserted Wife's Benefit (DWB) to One Parent Family Payment (OPFP) in order to allow them participate on Community Employment (CE) schemes, as DWB was not a qualifying payment for participation.

OPFP is payable to a person with a dependent child, i.e., a child under 18 years of age (or 22 years of age if in full-time education). It is also means tested, unlike DWB. Both women lost their entitlement to OPFP when their youngest child reached 18 years of age, as they were no longer in full-time education. They argued that this was unfair, as their DWB payment was awarded because they were deserted, and this remained the position. Both complainants found themselves without financial support for their unchanged status for over a year. They said that they would not have transferred to OPFP if the Department had provided them with full information on the adverse consequences of the transfer.

I raised these issues with the Department and requested a review of both cases. It said that both complainants' DWB entitlement had been restored as a result of an agreement with the Department of Enterprise, Trade and

Employment on 5 November 2000 to relax the qualifying criteria for participation on CE schemes. This allowed DWB recipients with children to qualify. However, the Department did not address the fact that both complainants had been without a social welfare payment for a period of at least 12 months despite still meeting the qualifying conditions for DWB.

I pointed out to the Department that the only reason why the complainants had transferred from DWB to OPFP, was to meet the requirements of the CE scheme. I believed that they had been adversely affected by virtue of having to satisfy these requirements, and by the failure of the Department to advise them in advance of the implications of the transfer from DWB. The Department reviewed both cases and re-instated their DWB entitlement from the date they transferred to OPFP. The arrears amounted to €4,773 (£3,759) and €3,681 (£2899) respectively. In addition the Department advised that it would review any other similar cases and pay appropriate arrears to those individuals also.

Pre-1953 Pension Awarded.

Since 5 May 2000, people over 66 years of age, with at least 260 (5 years) PRSI contributions paid either solely before 1953 or both before and after 1953, may qualify for the special half-rate Contributory Old Age Pension (COAP). At least one contribution had to be paid or credited before 1953. In a case brought to me a woman had over 260 PRSI contributions but none were paid or credited before 1953. As a result, her claim for the pension was refused.

The complainant said that she had worked prior to 1953 and I asked the Department to check her records. Central Records Section traced an old insurance number, with pre-1953 contributions, which it believed to be the complainant's. However, before a decision could be made they needed her to verify insurance details recorded at the time the contributions were made. The information provided by the complainant matched that on the record. As a result the Department awarded a pre-1953 COAP together with arrears of €4,734 (£3,728).

Disability Benefit

Over the past year I have received a small number of complaints concerning the entitlement of individuals to retain payment of Disability Benefit (DB), while at the same time engaging in part-time work in the nature of rehabilitation or occupational therapy. One particular complaint provides an example of the problems which can arise.

The woman in question was in receipt of DB from the Department. She was anxious to return to the workplace on a part-time basis, with a view to resuming full-time work as soon as possible thereafter. The regulations governing the payment of DB provide that a person may work part-time and continue to receive DB in certain circumstances, provided the Department has granted exemption from Rule 5 of the *Rules of Behaviour* governing the receipt of DB. She applied for the exemption but was refused.

Rule 5 of the *Rules of Behaviour* provides that a person shall not engage in work while claiming DB unless it is, for example, light work for which no remuneration is paid, work undertaken primarily as a part of treatment while an inpatient in a hospital or similar institution or work that is charitable in character and the weekly pay is less than €42.28 (£33.30). Article 15(3)(b) of the regulations provides that a person may, with the prior written permission of an officer of the Minister, be exempted from the operation of Rule 5 for a specified period in which he/she is engaged in part-time work in the nature of rehabilitation or occupational therapy. The nub of the complaint was whether the part-time work which the applicant had undertaken could be classified as being in the nature of rehabilitation or occupational therapy. The decision was one for an officer of the Minister rather than for a Deciding Officer whose decision would be appealable to the Social Welfare Appeals Office.

The position adopted by the Department was that a decision, as to whether any particular work is regarded as rehabilitative or therapeutic in the context of an individual application, is based on the advice of the Chief Medical Adviser (CMA) who is the arbiter of any medical opinion furnished by an applicant. The regulations do not provide any guidance as to how work in the nature of rehabilitation or occupational therapy should be interpreted, nor do they specify that any such interpretation is a matter solely of medical opinion. In my examination of the case, I noted that the administrative staff did not attempt to balance the advice of the CMA against the opinions furnished by the applicant's medical advisers. The Department's officials took the view that, as they have no medical expertise, they cannot challenge the advice of the CMA in cases such as this. This appeared to be in conflict with the Department's guidelines to its staff in the matter which provide that:

> *"When the completed forms, etc., are received in Disability Benefits Section they are forwarded with the claim papers to the Department's Chief Medical Adviser for his opinion on the rehabilitative aspect of the proposed employment/training. An Officer in Disability Benefits will then make a decision based on all the facts of an individual case, including advice from the Chief Medical Adviser, the person's GP, letter from employer/training organisation and any recommendation received from the National Rehabilitation Board. The decision is an administrative one."*

The position adopted by the administrative staff meant that there was no effective independent appeal against a decision to refuse an application for exemption, since any appeal is referred back to the person who effectively made the original decision (the CMA) and the administrative staff, again, accept his advice/decision.

Following an investigation I concluded that the original decision to refuse the application for exemption from the *Rules of Behaviour* was not unreasonable. However, in relation to subsequent reviews by administrative staff, regard was had only to the advice of the Department's CMA and did not give adequate consideration to the additional evidence submitted on behalf of the applicant. This appeared to be inconsistent with the procedures set out in the Department's guidance notes, resulting in the evidence put forward by the complainant, to the effect that the job in question was rehabilitative in character, not being addressed in any convincing manner by the Department.

Following further discussion with the Department, it decided to introduce improved procedures for dealing with such cases. In future, when an applicant seeks a review of a decision to refuse exemption:

- the reasons for the opinion of the Medical Assessor (MA) or CMA will be set out in full and notified to the applicant;
- the applicant's consent to contact the employer will be sought where appropriate;
- the MA or CMA will contact the applicant's doctor/consultant in relation to medical reports submitted in support of the application, if considered appropriate;
- if the reasons for the opinion of the MA/CMA are unclear or seem inconsistent, the officer deciding the case will ask for clarification before making a decision.

The Department also reviewed its decision in relation to the complainant and because of the special circumstances of her case, agreed to pay to her DB estimated at €1,778 (£1,400).

Department of Education and Science

Superannuation Rules

My Office examined a complaint against the Department of Education and Science concerning the application of the superannuation rules to a former teacher employed by a particular Vocational Education Committee (VEC). Under the Ombudsman Act, 1980 my Office cannot examine complaints regarding the rules governing superannuation. However complaints concerning the administration of these rules are within remit.

The complainant was a teacher with a VEC who had taken early retirement on health grounds. He was granted 1.043 years of added service for having to retire on grounds of infirmity. Under the terms of an agreement with teacher unions under the *Programme for Competitiveness and Work*, teachers were granted a Long Service Allowance of €1,270 (£1,000) per annum which the teacher was in receipt of when he retired. As this allowance does not form part of incremental salary its inclusion in pensionable remuneration is subject to averaging, viz. if it has been held for the last three years of pensionable service it is included in full with basic salary; if it has been held for a lesser period the amount included in pensionable remuneration is the amount of the allowance multiplied by No of days held ÷ 1,095

The complainant argued that, in calculating the number of days he had held the allowance, account should have been taken of the 1.043 years of added service. The Department initially rejected this contention on the basis that the rules did not permit a departure from the requirement that allowances must be averaged over the last three years of actual service even where an officer retires on ill-health grounds. My Office requested that the Department review its position on the basis that Article 84(2)(b)(ii)(II) of S.I. 455 of 1998 (Local Government Superannuation) (Consolidation Scheme, 1998) provides that the annual average of the allowance to be used would be that which *'would have been so determined if... he or she had continued in office until the attainment of the minimum retiring age'.*

The Department accepted this argument and decided to sanction the inclusion of the period between the teacher's retirement and the date at which he reached the minimum retirement age in the averaging of his entitlements. It advised the VEC of this and it has now issued a comprehensive information booklet about the Vocational Teachers Superannuatiuon Scheme which makes it clear that in the case of a teacher who dies in service or retires on ill health an allowance will not be averaged if the teacher has sufficient potential service to age 60 to avoid averaging.

School Transport

My Office examined a complaint against the Department of Education and Science from the parents of a child who had been refused free school transport on the grounds that the family lived less than two miles from the school. The Primary School Transport Scheme allows free transport to pupils who live more than two miles from the nearest suitable national school.

The parents disputed the Department's conclusion and maintained that they lived more than two miles from the school. The Department said that the distance had been measured by Bus Éireann, which provides the service, on two occasions with a van and that on both occasions it found that the distance was under two miles. The parents were not satisfied with the accuracy of the measurement. They obtained a calibrated wheel, which they maintained provided a more accurate measurement and informed the Department of the results. The Department informed them that it accepted Bus Éireann's measurements and that, accordingly, the child was not entitled to free school transport.

I believe that parents are entitled to have confidence that, where a distance is required to be measured in order to determine whether an application meets the eligibility criteria of a scheme, the method of measurement used should be seen to be fair and accurate. Where a dispute arises in relation to a distance which has been measured and is found to have only marginally failed to meet the necessary criterion, as in this case, I consider that any appeal lodged should be dealt with by an independent third party using an accurate method of evaluation. Accordingly, I requested the Department to obtain an independent measurement in this case. I also asked it to apply this procedure in any other marginal cases where the distance involved was in dispute.

The Department responded by saying that, in view of the length of time involved and in order to avoid any further distress to the family, its measurement would be accepted and the children would be deemed to be fully eligible for school transport. The Department also agreed that, where the distance from home to school is marginally under the two mile limit and is the subject of dispute, the services of an independent third party will be used to resolve the matter in the future.

The Revenue Commissioners

Tax credit refused

A man applied for the Home Carer's tax credit in respect of his wife who was wheelchair bound. This tax credit may be claimed by a married couple where one spouse cares for one or more dependent persons. The complainant was informed by Revenue that he was not entitled to the credit because the dependent in his case was his spouse. The complainant was afforded the opportunity of challenging Revenue's interpretation through an appeal to the Appeal Commissioners.

The Revenue explained that 'dependent person' is defined in section 466A of the Taxes Consolidation Act, 1997 and means a person 'other than the spouse of a qualifying claimant' caring for a child, a person aged 65 years or over or a person permanently incapacitated by reason of mental or physical infirmity. I accepted that the ruling of the Revenue Commissioners in this instance appeared to be accordance with the relevant legislation, however I remain concerned that some carers are being discriminated against solely because the dependent person for whom they care is a spouse. I have conveyed my views to the Revenue Commissioners.

Capital Acquisitions Tax.

Two people wrote to me about difficulties they had experienced with regard to Capital Acquisitions Tax. Both individuals had been reared as adopted children but, in one case, a technical problem prevented the child from being legally adopted and, in the other, documentation certifying that he had been adopted could not be found.

Both inherited property on the death of their 'adoptive' parents. However, because of the problems associated with the 'adoption' in each case they were not entitled to the tax-free threshold entitlement of a child in relation to the inheritance received. In one case this resulted in an Inheritance Tax liability in excess of €63,487 (£50,000). In the other it meant that the beneficiary incurred a liability of €4,315 (£3,398) when he inherited the house in which he had lived for twenty years and in which he continued to live. In the latter case, because of the complainant's straitened circumstances, the Revenue had already agreed to postpone the collection of the tax but it also advised that it could not postpone the collection indefinitely.

I wrote to the Revenue about both cases and I am pleased to say that, having reviewed the circumstances of each case it agreed that both complainants should be entitled to the full tax free threshold which exempted both from liability to Capital Acquisitions Tax on their inheritance.

Health Boards

Western Health Board

This complaint centred on the care given to the complainant's mother in Merlin Park Regional Hospital, Galway. There were two aspects viz. a sore which her mother developed while she was in hospital and the manner in which she was discharged from the hospital.

(i) The sore

Sores, such as the one in question, generally develop as a result of pressure on vulnerable parts of the body, even in a patient who is not bed-ridden. It is recognised that hospital patients, particularly if they are elderly, are especially vulnerable to pressure sores which can sometimes develop even if the patient is given appropriate care.

An internationally recognised and widely used system for preventing and treating pressure sores is the "Waterlow Pressure Sore Prevention/Treatment Policy". This involves assessing regularly how likely a patient is to develop pressure sores by reference to recognised risk factors such as age, immobility, being under/overweight, etc. Once the patient's "risk category" has been established, appropriate pressure relieving aids and nursing procedures can be employed.

The hospital advised my Office that it had detailed procedures in place using the Waterlow system at the material time. It further advised that a Waterlow Scale assessment had been carried out on the complainant's mother on the day that she was admitted to hospital. Unfortunately, the hospital was not able to locate this assessment. However, the nursing notes, which were provided to and examined by my Office, were very comprehensive and indicated that her skin was inspected when she was admitted and that no broken areas were found. Her pressure areas were subsequently checked and appeared to be satisfactory. Subsequently a water cushion was used as a pressure-relieving aid. Another Waterlow Scale assessment was carried out, a special "Nimbus" mattress was brought into operation and regular dressings were carried out as prescribed by the doctors. The nursing notes for the remainder of her stay show that close attention continued to be paid to the pressure area and prescribed treatment continued to be given.

I understood the complainant's concern that her mother developed a pressure sore while she was in the hospital, particularly as it continued to cause her problems for a long time after her discharge. However, I was satisfied that the hospital had appropriate procedures in place for the prevention and treatment of pressure sores and that these were properly implemented.

(ii) Discharge from hospital

The complainant considered that her mother had been discharged from hospital before she was medically fit. Decisions about whether a patient is fit to be discharged from hospital are made by doctors in the exercise of their clinical judgment. By law, I cannot investigate actions taken by persons acting on behalf of health boards and solely in the exercise of clinical judgement. However, I considered whether proper procedures had been followed in discharging the complainant's mother from hospital.

It is good practice to start planning in good time for a patient's discharge by assessing how well he/she will be able to cope, what support he/she will need and discussing this, as appropriate, with those involved in their care. It appeared from the available evidence in this case that the decision to discharge took proper account of her mother's mobility, whether the public health nurse would be able to dress her pressure sore, her need for continued medication and was discussed beforehand with her family. In the circumstances I was satisfied that the decision to discharge her mother from hospital was properly made, within accepted procedures, by doctors in the exercise of their clinical judgement.

Northern Area Health Board

This complaint involved interaction between my Office, the Northern Area Health Board (NAHB) and Beaumont Hospital. A man complained to me about the admittance of his wife through the Accident and Emergency Unit (A & E) at Beaumont. He said she had been prematurely discharged and, on the advice of a consultant, had undergone tests at the Mater Private Hospital which resulted in her being charged the sum of €914 (£720). His wife was subsequently re-admitted through A & E at Beaumont on a number of occasions before the cause of her illness was diagnosed. The complainant was a pensioner and was having great difficulty in meeting the costs incurred, or receiving a satisfactory response from either the Hospital or the Board in the matter.

While Beaumont Hospital is a public hospital, being a body set up under the Health (Corporate Bodies) Act, 1961 it is not within the my jurisdiction. Furthermore, although located in its functional area, the NAHB does not have direct management responsibility for the hospital. However, the NAHB is subject to the jurisdiction of the Ombudsman. Furthermore, there has been a shift in responsibilities in relation to the provisions of hospital services in the greater Dublin area following the enactment of the Health (Eastern Regional Health Authority) Act, 1999. The Authority is charged with the strategic planning, commissioning and funding of services through service agreements with the new area health boards, the public/voluntary hospitals and other voluntary agencies. It is also charged with monitoring and evaluating the services provided by these bodies. The NAHB is charged with the delivery, within its functional area, of the services previously provided by the Eastern Health Board. Having regard to the foregoing I approached the NAHB with a request that it review the matter. It responded by confirming that it had investigated the circumstances surrounding the consultation at Beaumont and the subsequent decision of the complainant's wife to avail of treatment in the Mater Private Hospital. The NAHB also arranged for the Superintendent Community Welfare Officer to visit the complainant. In the light of his report on the personal and financial circumstances of the complainant, the NAHB agreed to refund the cost of the treatment in the Mater, with the proviso that should similar circumstances arise in the future, the complainant should avail of the in-patient care available in the public hospital and comply with arrangements made by the public hospital regarding care or referrals.

While this was a satisfactory outcome insofar as the complainant was concerned, it highlights once again the difficulties faced by any individual in pursuing a complaint with me about publicly funded hospital services provided by hospitals which are outside my jurisdiction.

Local Authorities

Compassionate approach taken by local authority to grant application

Due to her husband's illness and her own personal circumstances, an elderly woman forgot to apply to Louth County Council for a Disabled Person's Grant. The grant was for the provision of a bedroom/en-suite at the ground floor level to accommodate her invalid husband. The work was commenced while her husband was alive but he died one week after the work was completed. The complainant applied to the Council for a Disabled Person's Grant five months after her husband had died. The cost of the project was €20,316 (£16,000). The Council refused the application.

Disabled Persons Grant Scheme

Article 4 of the Housing (Disabled Persons and Essential Repairs Grants) Regulations, 1993 (S.I. No. 262 of 1993) provides that:

"(1) A housing authority may pay a grant to a person for the provision of additional accommodation or the carrying out of works of adaptation that, in the opinion of the authority, are reasonably necessary for the purpose of rendering a house more suitable for the accommodation of a member of the household who is..

(a) physically handicapped and the works are necessary for his proper accommodation ..."

It was clear that the Council in refusing the grant was complying strictly with the terms of the Disabled Persons Grant Scheme, particularly Article 4 of the Regulations. Notwithstanding this, I tended to the view that the Council, in exercising its discretionary powers, should not lose sight of the human dimension to this complaint.

The facts of the case were that:

- the complainant undertook major capital works to her private house prior to notifying the Council that she intended carrying them out,
- she completed the works prior to having applied to the Council for the relevant grant,
- she seemed to have done this on foot of a suggestion from her doctor, in order to accommodate her ailing husband,
- she did not apply for the grant while the works were underway or immediately the works were completed,
- she applied for the grant five months after her husband had passed away.

There is no doubt about the requirement that capital works, carried out before a prior inspection by a local authority, do not qualify for a grant under the scheme and it is not my intention to have this requirement undermined in any way. However, I feel that the merits of each case should be carefully assessed before reaching a decision and, in my experience, this was a unique case. In the circumstances, I felt that the Council should take a more flexible, compassionate, humane and less legalistic approach in this particular instance.

In this particular case I felt that the complainant:

- acted in good faith and in the best interests of her late husband in undertaking the project,
- simply did not apply in time for the grant due to her mental and physical state, (a fact confirmed by her doctor),
- lost her husband one week after the project was completed,
- was on a very low income,
- in poor health and
- faced extreme economic hardship in repaying a Credit Union loan of €7,618 (£6,000) and the balance of €12,697 (£10,000) due to the builder.

In the circumstances, I asked the Council to review its earlier decision particularly having regard to the economic hardship and the unique conditions which this case presented. The Council agreed and made arrangements to pay the appropriate grant of €14,284 (£11,250) to the complainant. This is a clear example of a Council using its discretion to adopt a compassionate approach to a deserving and unique case. I compliment the County Manager and his staff for adopting such a compassionate approach. This is an example of the type of approach I recommended in my *Guide to Standards of Best Practice for Public Servants* where I encouraged public bodies to acknowledge that rules and regulations, while important in ensuring fairness, should not be applied so rigidly or inflexibly as to create inequity.

Refusal to sell a house to local authority tenants

A family from the travelling community applied to their local authority, in February 2000, to purchase the Council house in which they were living. At that stage, they had been residing in the property for almost five years. They had also carried out extensive improvements to the property at their own expense. These repairs included the installation of new double glazed windows, new driveway, new bathroom and fitted kitchen. The Council refused to sell the house to the family on the basis that it wished to maintain control of the house through the tenancy agreement. The house was located in a rural area.

Houses are sold by local authorities in accordance with the provisions of Section 90 of the Housing Act, 1966, as substituted by Section 26 of the Housing (Miscellaneous Provisions) Act, 1992. Under the relevant legislation the decision to sell a house to a tenant is at the Council's discretion.

With the assistance of the Council's files, photographs and a site map, I briefed myself on the history of the tenancy. I noted that, over the years, the tenancy had been the subject of complaints and their previous tenancy in a housing estate had provoked some local disturbances involving other residents in that housing estate. As a consequence of this, the Council wished to retain control of the complainants' current house through the tenancy agreement. It said that this was to enable it to deal with any issues that might arise. However, I was concerned that the Council did not give any indication as to how long it wished to maintain this control. It appeared to me that, if the Council persisted with this line of argument, the complainants might never be allowed to purchase the house for fear of some future action. I was concerned that the Council's decision to refuse to sell the house to the complainants could be perceived as being disproportionate when set against the observed and recorded experience of the complainant's use of the property over the past few years. On this point I noted that the last complaint the Council received about the family was in 1997, three years earlier, and involved the keeping of dogs on the site.

Circular letter HRT6/95 of the Department of the Environment and Local Government provides that local authorities may, at their discretion, exclude houses from the tenant purchase scheme which, in their view, ought not be sold for reasons of good estate management. From my examination of the Council's file, I had a number of concerns as to whether there was sufficient or reasonable evidence before the Council for it to refuse the sale of the property on estate management grounds. I tended to the view that the investment made by the family in repairing and improving the house, at their own expense, was not the action of a family intent on creating or promoting anti-social activity in its neighbourhood.

In addition, from an examination of the photographs and site location map, it was clear to me that the house is located in a remote rural area, where there is a dispersed settlement pattern and very few, if any, close neighbours. Accordingly, I was concerned that the Council's decision to refuse to sell the house, for reasons of good estate management, was not soundly based.

Another of my concerns about this case was whether the Council was applying a higher threshold of compliance by the family to the terms of their tenancy agreement than it would apply to tenancies generally. In the circumstances, I arranged for some of my staff to meet with the Council to convey my preliminary views on the case and to explore the various issues which the complaint had highlighted.

Following that meeting, the Council agreed to sell the house to the family, subject to the inclusion of a special condition in the transfer order. This condition stipulated that no animals, including horses, were to be kept on the site. I was satisfied that this condition was not unreasonable having regard to the history of the case.

River erosion

I received a complaint from a woman whose garden was being eroded as a result of work which, she alleged, was undertaken by Laois County Council on the Owenbeg River which runs at the end of her garden.

In 1994, the Council carried out some drainage works on the Boleybeg River Drainage District. The Council indicated that, when this drainage work was completed, there was a surplus in the Council's budget. It decided to spend this money to remove silt and stones which were blocking two of the opes of the Garrintaggart Bridge, which spans the Owenbeg River. During the course of these latter works, the Council carried out further drainage works 300 to 400 metres up river from the bridge, including that section of river outside the woman's property. This section of river does not form part of the Boleybeg Drainage District. One of the effects of the Council's actions was to cause the river water to flow directly towards her property, thus undermining the boundary ditch, her garden fencing and the garden itself where her septic tank and percolation area was located. A major concern was that, if the septic tank percolation area was eroded, there was the possibility of pollution to the river.

It appeared to me that, while the Council had a statutory duty to drain the Boleybeg River Drainage District, it did not have any statutory authority to carry out the specific drainage works to the Owenbeg River in the vicinity of the complainant's property. This is because the Owenbeg River is outside the Boleybeg Drainage District Area. In the circumstances, having regard to the impact these works were having on the complainant's garden, I asked the Council to outline the plans it would be prepared to consider, possibly in consultation with the complainant, to minimise the river erosion activity which was affecting her property.

The Council considered my request and stated that the works were carried out in good faith and were specifically designed to alleviate difficulties which were being experienced at the Garrintaggart Bridge at that time. However, it indicated that it was prepared to carry out remedial works on the section of the river alongside the complainant's garden on a strictly "without prejudice", once off basis. This involved the restoration of the garden to its original state and the reinforcement of the river bank with large boulders.

I cite this case as an good example of a local authority being prepared to arrive at a mutually agreeable solution to a genuine complaint. In this particular case the objective was to try to match, as carefully as possible, the complainant's needs and circumstances to the remedy that was most appropriate to the situation while at the same time recognising the Council's claim that, at all times, it acted in good faith in undertaking the works in the vicinity of the Garrintaggart Bridge.

Chapter 5

The Year in Review

The Year in Review

Business Plan 2000-2001

The business plan embraces the Office of the Ombudsman, the Office of the Information Commissioner and the Secretariat to the Standards in Public Office Commission. The plan defines our purpose which is: "Helping to achieve a public service which is open, fair and accountable". The plan identified five key strategic priorities for 2000-2001 period. These, together with the steps taken to achieve those priorities and the performance indicators employed were as follows:

Improve the quality, efficiency and effectiveness of the service to our clients.

Under this heading, we decided to develop an improved case management system and improve client communications. Considerable progress was made in reviewing and refining our complaint screening and categorisation procedures. A staff workgroup reviewed all standard written communications with clients and significant improvements were made paying particular attention to the use of plain and simple language.

In relation to efficiency of complaint examination, our main target for 2001 was to increase the number of cases dealt with by 5% compared with 2000. In fact we increased the number of cases finalised by just 1%. One of the reasons which prevented us from reaching this target was the additional work associated with an 18% increase in complaint numbers received and there was significant staff turnover during the target period. In addition, substantial staff time was taken up with training for and implementation of the Performance Management and Development System (PMDS). However, as will be seen from what follows, substantial progress was made in achieving other business plan targets. The Business Plan for 2002-2003 will refine the complaint examination targets and our performance will be reported in future annual reports.

Increase public awareness.

As a first step in this area, we decided to develop a public awareness strategy, work on which was completed in 2001. One of the main features of the strategy is to devise methods of reaching clients in disadvantaged areas who are unaware of the existence of the Office of the Ombudsman and the services it provides. Further detailed work on the strategy is planned in the context of the development of the Business Plan 2002 - 2003 which is now underway.

Develop influence with key stakeholders.

The objective was to monitor legislative and other developments as they affected the Office of the Ombudsman (and, of course my other statutory functions) and to offer comments and suggestions to the sponsoring Departments. I gave observations to the Department of Health and Children in relation to the Ombudsman for Children Bill and I had informal contact with the Department of Defence in relation to the Ombudsman (Defence Forces) Bill. My Office also made a contribution to the recently launched public consultation document *"Towards Better Regulation"* in relation to arrangements for scrutiny of secondary legislation, the proposals for an Administrative Procedures Act, the relationship between the Ombudsman and the Courts and the role which the Ombudsman can play in ensuring the accountability of regulators.

Among the other issues on which I gave observations was the Agricultural Appeals Act, 2001 which brings the new Agricultural Appeals Office within the Ombudsman's remit. This will enable me to examine final decisions of the Office where the appellant is dissatisfied with the outcome.

Build relationships and increase impact with public bodies within remit.

In May 2001, my Office hosted a seminar for the Quality Customer Service Officers' Network. Under the Quality Customer Service Initiative, each Government Department/Office has appointed a Quality Customer Service Officer responsible for the preparation and implementation of its Customer Service Action Plan. My staff and members of the network engaged in dialogue about the barriers to provision of quality customer service and much of the seminar was devoted to exploring the provisions of the Ombudsman Act, 1980, and the principles of good administration which I bring to bear in deciding on the complaints which come before me. My staff devised a number of case studies which the delegates had an opportunity to work on and which illustrated some of these principles. The Director General of the Office of the Ombudsman, Pat Whelan, described the desirable features necessary for fair and effective internal complaints systems and the essential elements of redress.

In October 2001, my Office hosted a seminar attended by representatives from Government Departments/Offices. The seminar, which was well attended, explored the approach taken by my Office in examining and investigating complaints against public bodies. It also dealt with some of the key issues which I have addressed in recent years and with how my Office has been working with the civil service and other public bodies to improve the overall quality of public administration. The seminar provided an opportunity for a lively exchange of views as well as a greater understanding of how my Office works. As part of the seminar, the Liaison Officer for the Department of Social, Community and Family Affairs, Mr Joe Madden, gave a thought-provoking paper on the perceptions of my Office among senior officials in that Department. As a result of the feedback received from those who attended, I intend to arrange a number of follow-up events, including some workshops for Departments and Offices using some case studies of complaints to my Office.

One of the views expressed at the seminar was that the Ombudsman was overly negative in his criticisms of Government Departments and that I should also recognise the many positive developments which have taken place. This is a point which is often made to me but, unfortunately, it does not adequately recognise that my Office is complaint driven. By its very nature, my work tends to concentrate on the failings of public bodies and when I uphold a complaint it is because some act of maladministration has adversely affected a member of the public. My criticisms are well-meant, however, and are made with a view to achieving a degree of systemic change so that similar complaints will not recur. Also I do highlight cases in my annual reports where public bodies, on referral of complaints to them by my Office, have moved quickly to offer redress to complainants.

Performance Management and Development

Greater clarity of objectives, effective communications and individual accountability is being fostered by Government and much of the impetus for this is coming from within organisations themselves through the Strategic Management Initiative. In line with these developments the implementation of an effective performance management development system (PMDS) is among the key objectives of the public service modernisation programme as set out in the *Programme for Prosperity and Fairness* as negotiated by the Government and the Social Partners. Essentially, PMDS is a way of managing each individual's work performance, career and development needs, by way of a shared understanding about what is to be achieved, how it is to be achieved and an approach to managing and developing people that increases the probability of achieving success. The aim of PMDS is to contribute to continuous improvement across the Office by linking individual performance to the strategy and values of the Office as set out in the Business Plan. Each member of staff received five days training throughout the year in the various phases of PMDS which is now successfully embedded and operational on an annual basis for all staff of the Office.

Public Access and Awareness

During 2001 it was necessary, due to Foot and Mouth Disease restrictions, to curtail the practice of my staff visiting Citizens Information Centres (CICs) and other local centres. However, visits were made to CICs in Limerick, Galway, Portlaoise, Cork, Waterford and Coolock in Dublin and as a result a total of 368 valid complaints were received. Staff from my Office also made visits to Killarney, Tralee, Castlebar, Roscommon and Longford which resulted in a total of 279 valid complaints being received.

New Logo

As part of the process of change and renewal almost every organisation both private and public has developed its own unique corporate identity or branding for all forms of communication. My Office is no exception to this, particularly in the light of the expansion of my responsibilities in recent years to cover Freedom of Information and other areas. During the year we decided to review our letter stationery and other business items. The outcome of the review was a new logo which can be seen throughout this Report. It is a simple design representing our purpose in the matters of openness, fairness and accountability. It will also serve as a constant reminder of the sense of duty which my organisation has towards three of its most important stakeholders viz. the citizen, the public bodies and the Oireachtas. The new logo is transposed on all forms of documentation coming from the Offices of the Ombudsman and Information Commissioner.

Notices issued under Section 7 of the Ombudsman Act, 1980

Each year since 1998 I have published in my Annual Report statistics on the number of Section 7 notices issued by my Office. These notices, which are issued only as a last resort and after a series of verbal and written reminders have issued, are statutory demands for the provision of information to my Office in connection with the examination or investigation of a complaint. My 1998 report recorded a total of 45 notices issued. In subsequent years the totals declined to 27 (1999) and 14 (2000). This year's total of 19 represents a small increase over the previous year and is broken down as follows:

Body	No. of Section 7 Notices Issued
Department of Education & Science	3
Office of Public Works	2
Civil Service and Local Appointments Commission	1
Registrar of Friendly Societies	1
Dúchas	1
Dun Laoghaire-Rathdown County Council	1
Leitrim County Council	1
South Dublin County Council	1
Arklow Urban District Council	1
Kildare County Council	1
Kilkenny County Council	1
Fingal County Council	1
Kerry County Council	1
Wexford County Council	1
Cork Corporation	1
Mallow Urban District Council	1

I am concerned that the overall number of notices issued in 2001 has increased and I am particularly disappointed that the Department of Education & Science continues to be at the top of the list and that local authorities continue to account for the bulk of notices issued each year. The message it conveys to me is that these bodies are either unwilling or unable to take steps to address serious delays on their part in the provision of information to my Office.

Relations with local authorities

Following media reports on my comments that I was dissatisfied with the level of response from local authorities to complaints from my Office, I accepted an invitation to meet with the Minister for the Environment and Local Government and gave him an account of the major issues of concern to me in relation to aspects of local government. The Chairman of the County and City Managers' Association wrote to me and at a meeting with him assured me of the willingness of County and City managers to co-operate with my Office. I had a further meeting with representatives of the Association during the year and agreed a framework on which to build better working relations with my Office. Part of that framework includes providing my staff with opportunities to communicate with significant numbers of local authority staff in a learning/training environment with a view to providing a better level of service to my Office and also to the public. I will continue to meet with representatives of the Association as often as necessary and my Office will continue to urge local authorities to accelerate the pace of administrative reform, including the introduction of internal complaints systems. Such systems, if effective, should reduce the level of complaint to my Office because many complaints would be dealt with at local level in the first instance. Having met representatives of the County and City Managers' Association, I am reassured by their commitment and I am optimistic that, with their co-operation, the level and quality of service to my Office can be improved in the near future.

During the year new management structures were put in place in local authorities. Directors of Service have been appointed in the main functional areas in order to provide for clearer accountability and responsibility through the abolition of the dual administrative/technical structures. This development should also contribute to improving the level of service to my Office through a more effective use, when necessary, of Directors of Service where previously such an overarching administrative structure did not exist.

Nursing homes subventions - Report of the Ombudsman 2001

During 2001 I continued the practice of submitting to the Oireachtas, reports of investigations of specific issues or areas of public administration. In January 2001 I published my report on my investigation of the payment of nursing home subventions by the health boards. The report examined the operation of the subvention scheme by the health boards, the role of the Department of Health and Children in making regulations and overseeing the introduction and operation of the scheme nationally, and considered the relations between those public bodies and the Oireachtas.

The report identified a failure to allow a pocket money provision in the calculation of the elderly person's means and the erroneous calculation of family circumstances in the calculation of those means. As a result of my investigation fundamental changes, which mirrored my concerns, were made to the Regulations and appropriate arrears were paid in affected cases.

In the course of the investigation I drew attention to uncertainty surrounding the eligibility of older people for long term residential care.

The definition of in-patient services, as provided at Section 51 of the Health Act, 1970, means institutional services provided for people while maintained in a hospital, convalescent home or home for persons suffering from mental or physical disability, or in accommodation ancillary thereto. As well as covering acute hospital stays, the term self-evidently includes wider categories of service such as the long-stay care of elderly or disabled people. There is a view, therefore, that any elderly person who needs long-stay nursing home type care - which typically includes nursing care, supervision, assistance with daily activities such as feeding and dressing and which may also include services such as physiotherapy or occupational therapy - is entitled to have this service provided by the relevant health board as an aspect of in-patient services. From my consideration of the matter, I came to the view that the

relevant legislation provides that everybody resident in the State has an entitlement to be provided with in-patient services, where necessary, by the relevant health board. Where the patient is covered by a medical card then the service should be free of charge. However, in the context of nursing home type care the practice is, invariably, to withdraw the entitlement to the medical card to facilitate the raising of charges.

The Department of Health and Children disputes the view that the Health Acts confer a legally enforceable entitlement to hospital in-patient services. The Department has argued that the law is unclear as to whether people have a statutory right to be provided with nursing home type care by a health board. It adds that the Health Act, 1970 distinguishes between the terms "eligibility" and "entitlement" and that the former, in the context of the Health Act, provides for eligible people to avail of services. However, as the Health Act does not define the manner in which, or the extent to which, in-patient services should be provided, the Department argues that the extent of any health board's legal obligation in this regard is unclear.

Since the publication of my report the situation has become even more complex with extension of full medical card eligibility to persons normally resident in the State who are not less than seventy years of age. This has resulted in over 67,000 additional individuals becoming so entitled. In November 2001 the Department published ***Quality and Fairness - A Health System For You***, the new national health strategy. Under the National Goal of Fair Access, the strategy provides for the simplification and clarification of entitlement to medical cards. In this context the strategy noted my observations in relation to the eligibility of older people for long-term residential care and confirmed that special attention would be given to these observations in a proposed general review of legislation on entitlement. The strategy provides that new legislation will be enacted to provide for clear statutory provisions on such entitlement with a Bill introduced in 2002. In view of the large number of people who have approached my Office about this matter I intend to look at it again when the legislative proposals have been published.

Passengers with Disabilities Report

In August 2001 I published an investigation report into the refusal by the Revenue Commissioners to grant tax relief on vehicles adapted for the transport of passengers with disabilities. The report gave details of how three carers, responsible for the transport of close family members suffering from a qualifying disability, were refused the tax reliefs available under the Disabled Drivers and Disabled Passengers (Tax Concessions) Regulations, 1994.

Arising out of the investigation I made a number of recommendations which the Revenue Commissioners accepted in full:

- I recommended that each of the three complainants should be regarded by Revenue as eligible for the tax reliefs available, and applied for, under the Regulations.
- In addition, I recommended that documentation relating to the scheme should be reviewed with a view to giving more information on the scheme and that administrative procedures and documentation used in the processing of applications and informing applicants of the result of their applications be urgently reviewed and amended, where necessary, to reflect good administrative practice and the Revenue Commissioners' own ***'Charter of Rights for Taxpayers'.***
- I also recommended that Revenue should carry out a review of other cases where applicants were refused the reliefs available under the Regulations on grounds which were similar to those applicable in the cases investigated.

With regard to the latter recommendation, I asked Revenue to report back to me within six months on progress in regard to implementing this recommendation. The review carried out by the Revenue involved an examination of 10,500 files. Of these, 103 files were selected for further investigation where the circumstances were similar to those applying in the cases investigated.

It emerged that 25 of the persons involved were now deceased. A family member in one of these cases made an approach to Revenue in the light of the publicity which the report had received. Revenue examined the claim and payment was made in full. Revenue also indicated that the remaining 24 cases would be looked at further to see if there was a way in which they could be re-examined in a sensitive manner so as to determine entitlement to the tax reliefs and to enable the families of the person with disabilities to benefit from the scheme.

The remaining 78 cases were examined and divided into two categories. The first category was those applications where there was already sufficient information on file to satisfy the Revenue Commissioners that the grounds for the application were similar to those cases which gave rise to my report. A total of 24 such cases were identified. The remaining 54 cases were those where little or no additional information was available to establish the underlying circumstances of the case. These people were invited to make a case for entitlement in the light of my report.

In addition special arrangements were made by Revenue to deal with repayment of fuel consumed in qualifying vehicles between the date of application and the granting of the relief. Rather than insisting on the production of receipts, as is normally the case, Revenue said arrears due would be agreed informally on the basis of actual vehicle mileage. Insofar as exemption from road tax was concerned arrangements were made with the Department of the Environment and Local Government for appropriate refunds to be made.

Of the cases reviewed Revenue said that while it was not possible to give an exact statement of the amounts involved, based on the current average claim size for disabled passengers, the total repayment involved in respect of those applicants who had so far responded to its approaches under the review was of the order of €590,000 (£464,663). When the review process is finally completed Revenue estimate that the final amount repaid, including fuel repayment and repayment of road tax will be of the order of €850,000 (£669,429).

Visits to the Office

One of the most gratifying aspects of the work of the Office is the high regard with which it is held throughout the European Community and beyond. One consequence of this high regard is the fact that the Office receives requests to provide assistance to other Ombudsman Offices in relation to work practices and operational issues. During the course of 2001 the Office hosted groups from the Office of the Greek Ombudsman, a relatively newly established Office and representatives of the Scottish Local Government Ombudsman, the Scottish Housing Ombudsman's Office and the Parliamentary Commissioner's Office for Scotland. During the course of these visits the Office provided detailed briefing on the manner in which we examine complaints, operational issues, human resource management issues, personnel practices and our information technology system with the emphasis on case management. I also met the Deputy Prime Minister of the Slovak Republic and in addition the Office hosted a seminar with a similar theme for a group of Polish students of public administration as part their placements with public bodies in Ireland.

Office of the Appeal Commissioners

In 2001 the Minister for Finance invited submissions from relevant parties on proposed legislation to provide a new statutory footing for the body charged with the hearing of appeals by taxpayers against decisions of the Revenue Commissioners concerning taxes and duties, viz. the Office of the Appeal Commissioners.

The proposed legislation envisaged an expansion of the Commissioners' role to include appeals against administrative actions or decisions of the Revenue Commissioners. I wrote to the Minister indicating that, if it is the intention to expand the role of the Appeal Commissioners to include appeals relating to administrative actions or decisions of the Revenue Commissioners, then a provision should be made in the proposed legislation which will allow the Ombudsman to examine/investigate complaints relating to such decisions. I pointed out that my Office already has substantial statutory powers to enable it fulfil this role.

Department of Social, Community and Family Affairs - Guide to Complaint Handling

In conjunction with my 1997 Annual Report I published a guide to internal complaint systems. My Office has advised individual public bodies as to how to set up such systems and I am encouraged by the number of public bodies which recognise that effective complaint handling is a necessary part of the delivery of a quality service to their clients.

The Department of Social, Community and Family Affairs recently published a guide to complaint handling for its staff which identifies the benefits of good complaint handling and promotes a positive approach to dealing with complaints. I understand that the production of the guide is to be complemented with a staff training programme and I would like to commend the Department for producing, what, in effect, is a model of best practice which other public bodies could usefully follow.

The Department of Social, Community and Family Affairs recently published a guide to complaint handling for its staff which identifies the benefits of good complaint handling and promotes a positive approach to dealing with complaints.

Chapter 6

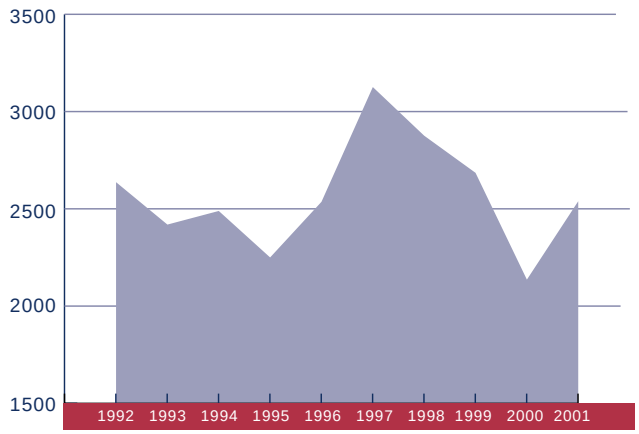
Statistics

1. Overview of 2001 complaints

Complaints	Numbers
Received in 2001	3451
Outside Jurisdiction	912
Total within Jurisdiction	2539
Carried forward from 2000	1060
Total on hand for 2001	3599
Completed in 2001	**2085**
Carried forward to 2002	1514
Enquiries	15459

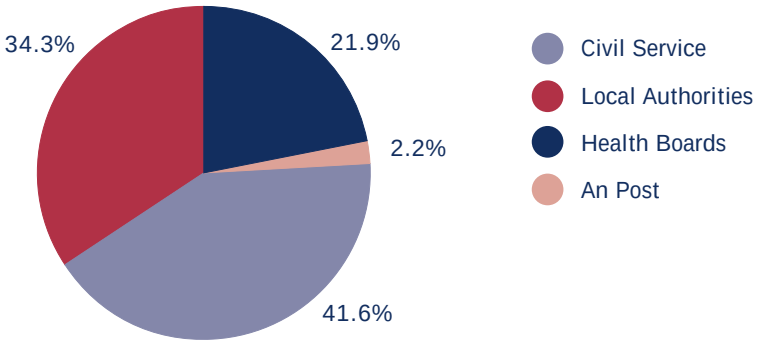
2. 10 Year Trend of Valid Complaints Received

1992	2637
1993	2419
1994	2489
1995	2250
1996	2536
1997	3126
1998	2876
1999	2685
2000	2136
2001	2539



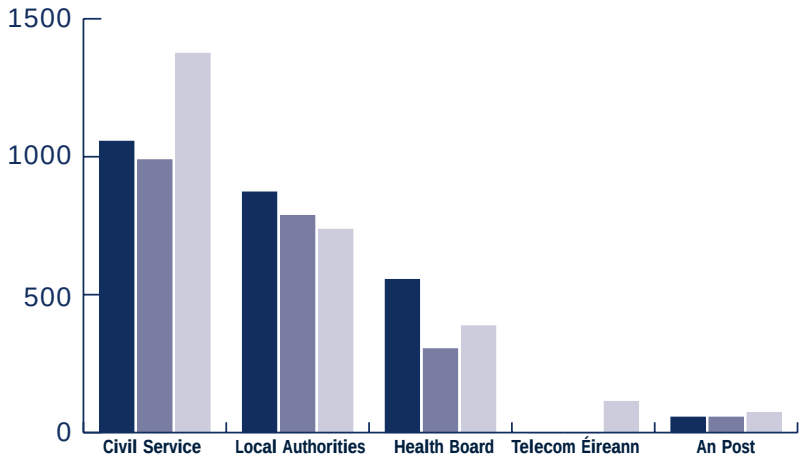
3. Analysis of Valid Complaints Received in 2001

Civil Service	1056
Local Authorities	872
Health Boards	555
An Post	56
Total	2539



4. Three Year Comparison - Valid Complaints Received

2001 total: 2,539 2000 total: 2,136 1999 total: 2,685



	Civil Service	Local Authorities	Health Board	Telecom Éireann	An Post
2001	1056	872	555	0	56
2000	989	787	304	0	56
1999	1375	737	387	113	73

* Telecom Éireann fell outside my remit from 15 July 1999.

5. Civil Service - Valid Complaints Received in 2001

	Brought forward from 2000	Received in 2001	On hands for 2001
Social, Community and Family Affairs	162	477	639
Agriculture, Food and Rural Development	167	202	369
Education and Science	45	112	157
Revenue	51	102	153
Environment and Local Government	11	35	46
Health and Children	7	14	21
Land Registry	1	13	14
Marine and Natural Resources	7	22	29
Justice, Equality and Law Reform	6	19	25
Enterprise, Trade and Employment	1	8	9
Office of Public Works	9	6	15
Others	22	46	68
Total	489	1056	1545

6. Local Authorities - Valid Complaints Received in 2001

	Brought forward from 2000	Received in 2001	On hands for 2001
Carlow	2	12	14
Cavan	2	13	15
Clare	12	26	38
Cork Corporation*	25	44	69
Cork County*	23	42	65
Donegal	21	26	47
Dublin Corporation	40	87	127
Dún Laoghaire - Rathdown	29	36	65
Fingal*	12	30	42
Galway Corporation*	11	31	42
Galway County*	15	29	44
Kerry*	13	60	73
Kildare	13	25	38
Kilkenny	10	19	29
Laois*	11	30	41
Leitrim	2	6	8
Limerick Corporation*	17	19	36
Limerick County*	9	18	27
Longford*	6	16	22
Louth	4	20	24
Mayo*	28	49	77
Meath	22	31	53
Monaghan	1	0	1
Offaly	9	11	20
Roscommon*	13	11	24
Sligo	7	11	18
South Dublin	15	39	54
Tipperary (NR)	8	18	26
Tipperary (SR)	8	13	21
Waterford Corporation*	0	8	8
Waterford County*	6	12	18
Westmeath	6	14	20
Wexford	21	29	50
Wicklow	19	37	56
TOTAL	440	872	1312

Complaints received against Borough Corporations, Urban District Councils and Town Commissioners are included in the County figures. The names of some local authorities have changed and these changes will be reflected in next year's Report.

* Monthly CIC visits or one-day visits were made to these counties in 2001 and this is likely to have affected the number of complaints received.

7. Health Boards - Valid Complaints Received in 2001

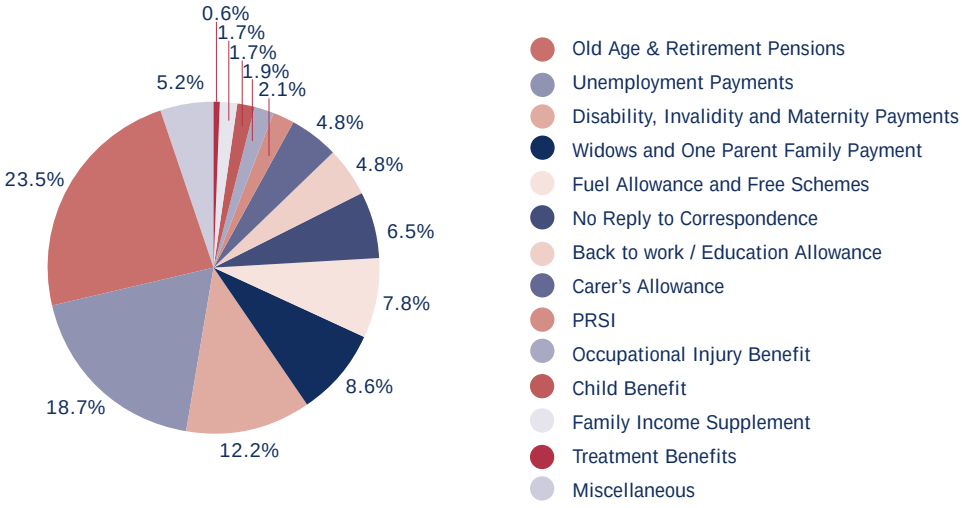
	Brought forward from 2000	Received in 2001	On hands for 2001
Midland	5	45	50
Mid-Western	5	63	68
North Eastern	7	28	35
North Western	8	23	31
South Eastern	9	58	67
Southern	16	83	99
Western	31	62	93
Northern Area	12	71	83
East Coast Area	12	50	62
South Western Area	14	70	84
Eastern Regional Health Authority	1	2	3
Total	120	555	675

8. An Post - Valid Complaints Received in 2001

	Brought forward from 2000	Received in 2001	On hands for 2001
An Post	10	56	66
Total	10	56	66

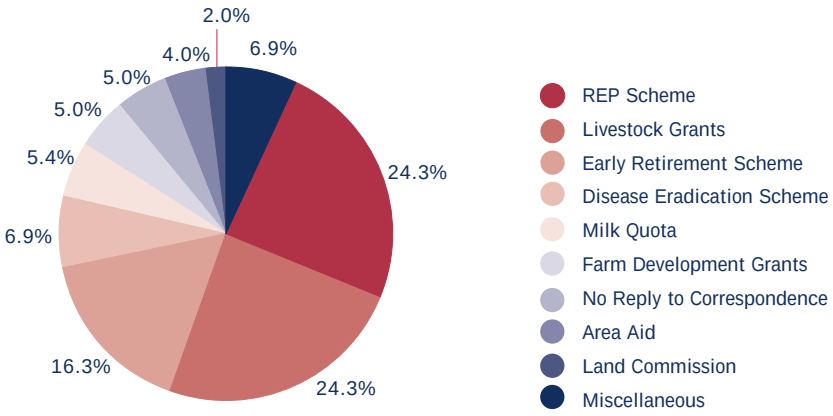
9. Department of Social, Community and Family Affairs

Breakdown by Main Categories of Complaint Received in 2001	
Old Age & Retirement Pensions	112
Unemployment Payments	89
Disability, Invalidity and Maternity Payments	58
Widows and One Parent Family Payment	41
Fuel Allowance and Free Schemes	37
No Reply to Correspondence	31
Back to work / Education Allowance	23
Carer's Allowance	23
PRSI	10
Occupational Injury Benefit	9
Child Benefit	8
Family Income Supplement	8
Treatment Benefits	3
Miscellaneous	25
Total	477



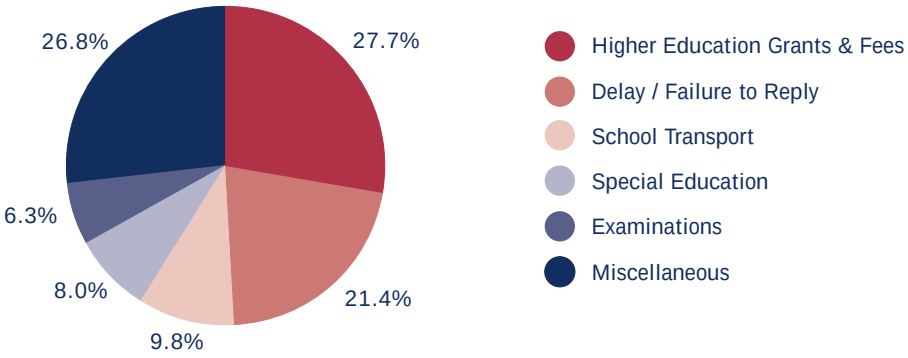
10. Department of Agriculture, Food and Rural Development

Breakdown by Main Categories of Complaint Received in 2001	
REP Scheme	49
Livestock Grants	49
Early Retirement Scheme	33
Disease Eradication Scheme	14
Milk Quota	11
Farm Development Grants	10
No Reply to Correspondence	10
Area Aid	8
Land Commission	4
Miscellaneous	14
Total	202



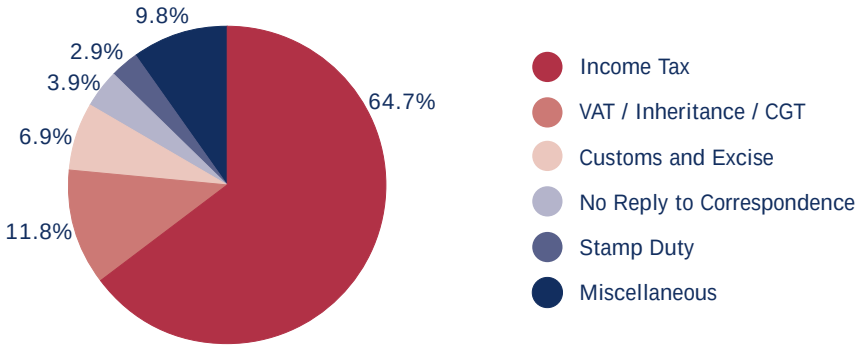
11. Department of Education and Science

Breakdown by Main Categories of Complaint Received in 2001	
Higher Education Grants & Fees	31
Delay / Failure to Reply	24
School Transport	11
Special Education	9
Examinations	7
Miscellaneous	30
Total	112



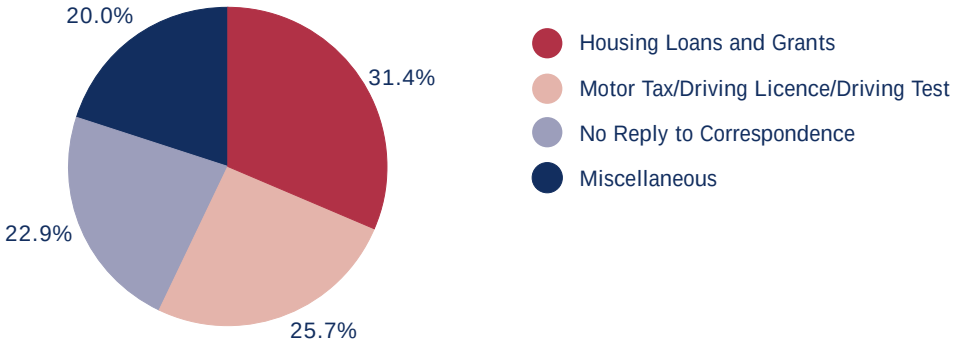
12. Office of the Revenue Commissioners

Breakdown by Main Categories of Complaint Received in 2001	
Income Tax	66
VAT / Inheritance / CGT	12
Customs and Excise	7
No Reply to Correspondence	4
Stamp Duty	3
Miscellaneous	10
Total	102



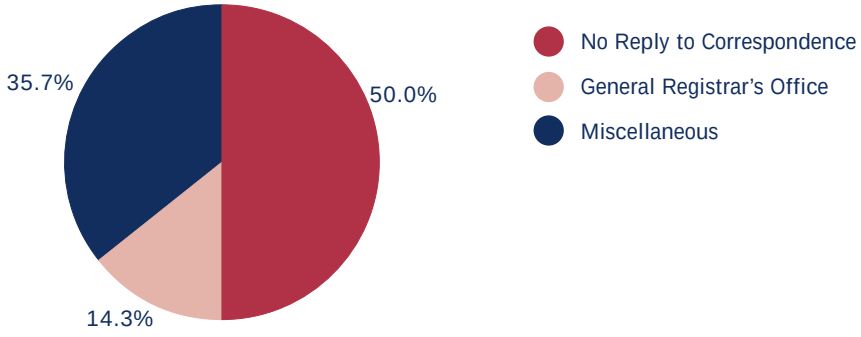
13. Department of the Environment and Local Government

Breakdown by Main Categories of Complaint Received in 2001	
Housing Loans and Grants	11
Motor Tax/Driving Licence/Driving Test	9
No Reply to Correspondence	8
Miscellaneous	7
Total	35



14. Department of Health and Children

Breakdown by Main Categories of Complaint Received in 2001	
No Reply to Correspondence	7
General Registrar's Office	2
Miscellaneous	5
Total	14



15. Local Authorities

Breakdown by Main Categories of Complaint Received in 2001			
Housing			364
	Allocations & Transfers	192	
	Loans & Grants	68	
	Repairs	58	
	Sales	23	
	Rents	23	
Planning			217
	Enforcement	142	
	Administration	75	
Roads and Traffic			96
Delay - Failure to Reply			75
Waste Disposal			24
Water Supply			18
Sewerage and Drainage			14
Service Charges			11
Motor Tax & Drivers Licence			11
Rates			5
Acquisition of land/rights			5
Access to Information on the Environment			5
Parks/Open Space			5
Miscellaneous			22
Total			872

16. Health Boards

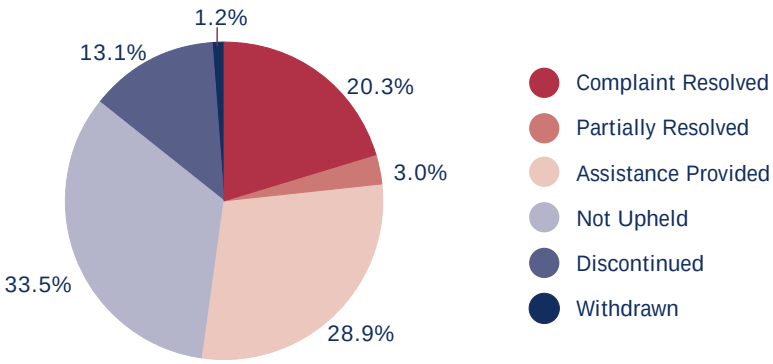
Breakdown by Main Categories of Complaint Received in 2001			
Supplementary Welfare Allowance			86
	Exceptional Needs Payment	27	
	Rent and Mortgage Allowances	26	
	Back to School		
	- Clothing/footwear Allowance	13	
	Miscellaneous	20	
Health Services (General)			40
	Medical Card	35	
	Drugs, Medicines and Appliances	5	
Hospital Services			241
	Nursing Homes/Long Stay	213	
	Miscellaneous	28	
Delay / Failure to reply			51
Hospital Charges			22
Cash Payments (other than SWA)			20
Provision of Service			20
Dental Service			15
Services for the Elderly - Housing Aid			15
Childcare / Social Work Services			5
Miscellaneous			40
Total			555

17. Valid Complaints Received by County in 2001

Carlow	28
Cavan	36
Clare	69
Cork	268
Donegal	59
Dublin	583
Galway	168
Kerry	185
Kildare	60
Kilkenny	52
Laois	71
Leitrim	21
Limerick	118
Longford	52
Louth	46
Mayo	144
Meath	73
Monaghan	11
Offaly	31
Roscommon	43
Sligo	32
Tipperary	94
Waterford	76
Westmeath	48
Wexford	61
Wicklow	77
Outside Republic	33
TOTAL	2539

18. Analysis of Complaints Completed in 2001

Complaint Resolved	424
Partially Resolved	62
Assistance Provided	602
Not Upheld	698
Discontinued	273
Withdrawn	26
Total	2085



19. Civil Service - Complaints Completed in 2001

	Resolved	Partially Resolved	Assistance Provided	Discontinued	Withdrawn	Not Upheld	Total Completed
Social, Community and Family Affairs	44	1	159	51	7	171	433
Agriculture, Food and Rural Development	29	4	19	18	1	135	206
Education and Science	34	5	16	12	0	23	90
Revenue	27	1	29	12	2	25	96
Environment and Local Government	12	0	4	5	1	7	29
Health and Children	3	0	8	1	0	1	13
Land Registry	4	0	4	2	0	1	11
Marine and Natural Resources	1	0	9	2	1	3	16
Justice, Equality and Law Reform	2	0	9	2	0	4	17
Enterprise, Trade and Employment	2	0	2	1	0	1	6
Office of Public Works	0	0	4	1	0	4	9
Others	7	0	24	5	0	8	44
Total	165	11	287	112	12	383	970

20. Local Authorities - Complaints Completed in 2001

	Resolved	Partially Resolved	Assistance Provided	Discontinued	Withdrawn	Not Upheld	Total Completed
Carlow	4	0	0	1	0	2	7
Cavan	2	0	1	0	0	3	6
Clare	3	2	9	2	0	8	24
Cork Corporation	6	1	9	5	1	18	40
Cork County	4	3	11	4	0	9	31
Donegal	5	2	8	5	1	6	27
Dublin Corporation	28	2	19	14	0	24	87
Dún Laoghaire - Rathdown	13	1	5	8	0	12	39
Fingal	9	0	3	4	0	6	22
Galway Corporation	8	2	4	2	0	3	19
Galway County	4	1	8	2	0	4	19
Kerry	12	0	6	6	0	11	35
Kildare	7	0	3	3	0	2	15
Kilkenny	3	3	5	4	0	6	21
Laois	6	3	12	3	0	4	28
Leitrim	1	0	1	1	0	1	4
Limerick Corporation	6	1	7	0	0	10	24
Limerick County	3	1	3	3	1	3	14
Longford	4	0	1	0	0	3	8
Louth	5	0	1	5	0	2	13
Mayo	8	4	7	4	0	13	36
Meath	10	1	12	6	0	7	36
Monaghan	0	0	0	0	0	0	0
Offaly	3	3	2	1	0	2	11
Roscommon	1	1	3	2	0	3	10
Sligo	2	1	3	2	0	0	8
South Dublin	8	2	7	8	1	9	35
Tipperary (NR)	1	2	3	1	1	5	13
Tipperary (SR)	1	2	6	1	0	5	15
Waterford Corporation	2	0	1	0	0	2	5
Waterford County	3	0	5	2	0	0	10
Westmeath	7	0	1	0	0	2	10
Wexford	6	0	11	5	1	3	26
Wicklow	11	1	10	2	0	10	34
TOTAL	196	39	187	106	6	198	732

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

21. Health Boards - Complaints Completed in 2001

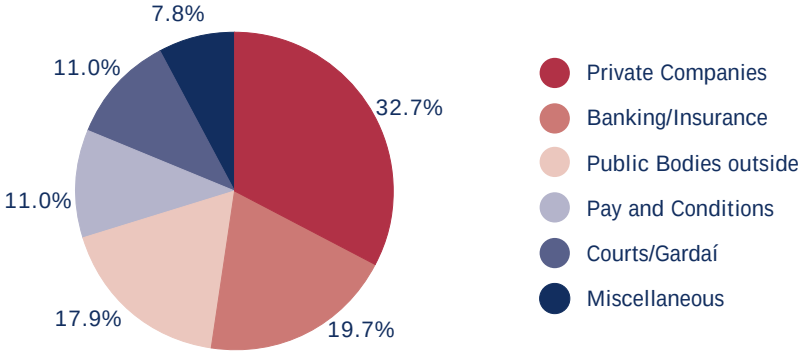
	Resolved	Partially Resolved	Assistance Provided	Discontinued	Withdrawn	Not Upheld	Total Completed
Eastern	0	0	1	0	0	3	4
Midland	2	1	9	4	1	12	29
Mid-Western	6	1	4	7	0	3	21
North Eastern	4	1	9	3	0	3	20
North Western	2	0	6	3	0	7	18
South Eastern	3	0	8	4	1	8	24
Southern	10	1	18	12	1	6	48
Western	10	5	11	5	0	10	41
Northern Area	3	0	16	7	1	15	42
East Coast Area	3	0	17	1	2	12	35
South Western Area	4	1	14	6	2	19	46
Eastern Regional	0	0	0	0	0	1	1
Total	47	10	113	52	8	99	329

22. Telecom Éireann/An Post - Complaints Completed in 2001

	Resolved	Partially Resolved	Assistance Provided	Discontinued	Withdrawn	Not Upheld	Total Completed
Telecom Éireann	0	1	0	0	0	0	1
An Post	16	1	15	3	0	18	53
Total	16	2	15	3	0	18	54

23. Analysis of Invalid Complaints Received in 2001

Private Companies	298
Banking/Insurance	180
Public Bodies outside remit	163
Pay and Conditions	100
Courts/Gardaí	100
Miscellaneous	71
Total	912



Staff, Index, Publications

Staff

Director General
Pat Whelan

Senior Investigators
Maureen Behan
Michael Brophy
Tom Morgan
David Waddell

Investigators
Geraldine Fitzpatrick
Patsy Fitzsimons
Edel Higgins
Brian McKevitt
Matt Merrigan
Willy O'Doherty
Paddy O'Dwyer
Anne O'Reilly
Donal O'Sullivan
Bernard Rooney
David Ryan

Support Staff
Roseanne Browne
Joseph Byrne
Elizabeth Culhane
Robert Cullen-Jones
Marion Dillon
Phyllis Flynn
Anne Harwood
Jim Hayes
Iris Kilby
Paul Mallen
Fiona McCarney
Mary McGowan
Barry Meskell
Jacqueline Moore
Brian Murphy
Elaine Nolan
Deborah Smyth
Jean Sullivan

Corporate Services Unit
Brendan O'Neill - Head of Corporate Services
Mairead Collins
Finbar Hanratty
Bernie Kelly
Fiona McCarney
Sheila McCarthy
Geraldine McCormack
Edmund McDaid
Brian McKeon
Marian Mullen
Audrey O'Reilly
Mary Pepper

I.T. Unit
Eoghan Halpin - Investigator
John Doyle
Derek Finnegan

Index

Carlow County Council
Housing sales 18

Department of Agriculture, Food and Rural Development
Rural Environment Protection Scheme 22

Department of Education and Science
Compensation awarded 17
Compensation scheme 16
School transport 25
Superannuation rules 25

Department of the Environment and Local Government
Local authority mortgages 10
Planning and Development 8

Department of Social, Community and Family Affairs
Compensation scheme 16
Contributory Old Age Pension 23
Deserted Wife's Benefit 22
Disability Benefit 23
Guide to Complaint Handling 40

Dúchas
Rural Environment Protection Scheme 22

Galway County Council
Responses to representations 9

Laois County Council
River erosion 31

Limerick County Council
Refuse charges 10

Louth County Council
Disabled Person's Grant 28

New South Wales Ombudsman
Annual Report 2000 - 2001 15

Northern Area Health Board
Beaumont Hospital - patient care 28

Ombudsman
Business Plan 2000 - 2001 34
New Logo 36
Notices issued under Section 7 of the Ombudsman Act, 1980 36
Nursing Home Subventions - Report of the Ombudsman 2001 37
Office of the Appeal Commissioners 39
Passengers with Disabilities Report 38
Publications 60
Redress - Getting it wrong and putting it right 14
Relations with local authorities 37
Statistics 41
Staff 58
Visits to the Office 39

Revenue Commissioners
Capital Acquisitions Tax 26
Home Carer's tax credit 26
Passengers with disabilities report 38

Southern Health Board
Tralee General Hospital - patient care 11

Western Health Board
Merlin Park Hospital - patient care 27

Publications by the Office of the Ombudsman

Annual Reports

The Annual Report of the Ombudsman has been published each year since 1984.

Investigation Reports

Investigation Report on the non-payment of arrears of contributory pensions (March 1997)

Investigation Report on the provision of school transport for a child with disabilities (February 1998)

Lost Pension Arrears - a review of complaints regarding unpaid arrears of contributory pension where the claim is made late (June 1999).

Local Authority Housing Loans - an investigation into the level of unrefunded overpayments on borrowers loan accounts (July 2000).

Nursing Home Subventions - an investigation into the payment of nursing home subventions by health boards (January 2001).

Passengers with Disabilities - an investigation about the refusal of the Revenue Commissioners to grant tax relief for cars adaptered or constructed for use by passengers with disabilities (August 2001).

Information

Can the Ombudsman help you ? - an information leaflet on the role of the Ombudsman.

Office of the Ombudsman - Information Manual published in accordance with the requirements of Section 15 of the Freedom of Information Act, 1997.

Office of the Ombudsman - Internal Rules and Procedures, published in accordance with Section 16 of the Freedom of Information Act, 1997.

Guidance Notes

Public Bodies and the Citizen - the Ombudsman's Guide to Standards of Best Practice for Public Servants.

Settling Complaints - the Ombudsman's Guide to Internal Complaints Systems.

Redress - Getting it wrong and putting it right - the Ombudsman's Guide to the provision of redress