



Ombudsman for the Defence Forces
Annual Report 2019





Ombudsman for the Defence Forces Customer Charter

The Ombudsman for the Defence Forces was established by law to provide a statutorily independent appeals process whereby members of the Defence Forces who have processed a complaint through the Redress of Wrongs system, but remain dissatisfied with the outcome, may refer their grievance to the Ombudsman for review.

The Ombudsman for the Defence Forces also accepts complaints made directly by former members of the Defence Forces, subject to certain conditions.

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

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

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

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

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



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



Glossary of Terms and Abbreviations used in the Report

| | |
|-----------------|--|
| DF | Defence Forces |
| ODF | Ombudsman for the Defence Forces |
| Bde | Brigade |
| Bn | Battalion |
| DFHQ | Defence Forces Head Quarters |
| DFTC | Defence Forces Training Centre |
| MO | Medical Officer |
| MIO | Military Investigating Officer |
| OC | Officer Commanding |
| GOC | General Officer Commanding |
| COS | Chief of Staff |
| NCO | Non-Commissioned Officer |
| RDF/FCA | Reserve Defence Forces |
| DFR | Defence Forces Regulation |
| Unit Comdr | Unit Commander |
| FOCNS | Flag Officer Commanding Naval Service |
| ROW | Redress of Wrongs |
| PO | Petty Officer (Naval Service) |
| DCOS (Sp) | Deputy Chief of Staff, Support |
| Tech | Technician |
| Coy Comdr | Company Commander |
| Sec Coy | Security Company |
| AC | Air Corps |
| NS | Naval Service |
| Recommendations | Recommendations made to the Minister for Defence as provided for in Section 7 of the Ombudsman (Defence Forces) Act 2004 |
| EPMO | Enlisted Personnel Management Office |
| COMO | Commissioned Officers Management Office |

1 Introduction:

I am pleased to present the 14th Annual Report of the Ombudsman for the Defence Forces (ODF) for the year 2019, and my second Annual Report since my appointment in mid-2018. (Last year's Annual Report, in fact, covered two years, 2017 and 2018). Its publication has been delayed because of Covid-19 restrictions in the first half of this year.

In the Annual Report for 2017/2018 I stated:-

“My expectation is that by later this year all outstanding cases (as of early this year) will have been concluded and reported on. I hope thereafter to conclude and report on all cases within 6 to 8 weeks of their referral for full investigation, save in exceptional circumstances.”

What in fact occurred in 2019 was, that by the end of that year, all outstanding cases as of early 2019 were either concluded and reported on, or were in the course of being finalised, save in respect of two complainants whose cases (numbering 14 in total) were the subject of active investigation which had not concluded by year's end. One of these complainants had two separate complaints dating between 2013 and 2018. The second complainant had (12) separate complaints dating between 2014 and 2018. In both cases, a number of the complaints were linked or closely associated with each other. Further information is awaited in respect of two complaints, and in 12 active steps are underway to explore a resolution.

In relation to all other cases – being those carried over from 2018, and new cases in 2019 – the target of concluding and reporting “on all cases within 6 to 8 weeks of their referral for full investigation” (or from the date of the receipt of additional information, if sought) was achieved by the final quarter of 2019, and has continued into 2020. With the exception of those cases referred to in the preceding paragraph in respect of two complainants, there is now no significant backlog of cases, and this turnaround period of 6 to 8

weeks in respect of current and new cases is the norm in 2020.

In 2019, I reported in 60 cases (as compared to 52 in 2018). I upheld or partially upheld complaints in 28 cases (approximately 47% of all cases referred to my office; The statistic for 2018 was 37%).

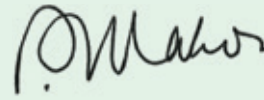
One important matter I wish to address by way of addendum to this Annual Report introduction concerns an important issue relating to my jurisdiction. It is particularly relevant to complainants who are members of the Defence Forces at the time of lodging their complaint, rather than complainants who have left the Defence Forces, and which constitute a very small percentage of complaints annually.

I am happy to report that the assistance provided to my office by the Defence Forces continues at a generous level and that every effort is made to provide additional information and documentation when requested. I wish to express my appreciation to Capt. Peter Dunne who was the DF Liaison Officer for my office until recently when he was posted overseas to Kosovo, for his valuable assistance. I would also like to welcome on board his successor in this important role, Capt. Darren Reilly and look forward to working with him.

In 2019, I visited Collins Barracks, Cork and the Naval Base at Haulbowline. Both were memorable experiences and I am grateful to Brigadier General Patrick Flynn (GOC, 1 Brigade) and Commodore Mick Malone (Flag Officer Commanding Naval Service), and the men and women of all ranks who looked after my staff and I on both visits. A planned visit to Stephen's Barracks, Kilkenny was postponed and will hopefully take place in 2020. Overall, I have found these visits, as well as those previously undertaken to Cathal Brugha Barracks, the Curragh Camp and Casement Aerodrome to be particularly educational and very useful for my work. During 2019, I also enjoyed visits to RACO's offices in Citywest and their annual dinner at Kilashee House Hotel, Naas and that of PDFORRA at Mount Wolseley Hotel, Tullow.

Finally, I would like to express my thanks and appreciation to my staff, Brian O'Neill, Michael O'Flaherty and Lauren O'Donovan for their help, dedication and support in 2019. I also express my thanks and appreciation to Mr. Paul Kehoe TD, the former Minister with Responsibility for Defence and Mr. Leo Varadkar TD, former Minister for Defence. My thanks also to the Secretary General Mr. Maurice Quinn (whom I wish well on his imminent retirement), and the staff of the Department of Defence and the Chief of Staff, Vice Admiral Mark Mellett DSM. I take this opportunity to congratulate Mr. Simon

Coveney TD on his appointment as Minister for Foreign Affairs and Defence. I also congratulate Ms. Jacqui McCrum on her appointment as Secretary General of the Department of Defence and wish her well in her new and important role.



Alan Mahon
Ombudsman for the Defence Forces
August 2020



Addendum to Introduction to 2019 Annual Report

My jurisdiction to investigate a complaint is governed by the provisions of the Ombudsman (Defence Forces) Act 2004, and more particularly Sections 4, 5, 6 and 7 thereof.

Section 6 (3) provides as follows:- “A complainant shall make a complaint referred to in subsections (1) and (2) not later than 12 months from –
(a) the date of the action concerned, or
(b) the date on which the complainant became aware of the action,
Whichever is the later.”

This provision is unequivocal to this extent; the complaint to the Ombudsman must be notified to his or her office within 12 months from the date of the ‘action’ (being the matter or event complained of), or within 12 months of becoming aware of same, whichever is the later. There is unfortunately no provision for extending these limitation periods in any circumstances whatsoever.

What is of concern to me, is the manner in which the date of the complaint to my office is determined. In the vast majority of cases, no difficulty arises, but in a very small number it can, and has arisen.

In practice, when a Complainant (who is at the time is a serving member of the Defence Forces) lodges a complaint it is subjected to an internal Defence Forces’ review or investigation which may proceed as far as the Chief of Staff. By virtue of S. 4 (2) (d) of the Act of 2004 my office cannot investigate such a complaint until at least 28 days have expired since the making of the complaint and “the matter is not likely to be resolved.” Again, in practice, the Defence Forces internal review/investigation of the complaint takes longer – and often a lot longer – than 28 days to conclude, and generally in my experience these delays are justified and understandable for a variety of reasons, for example, the complexity of the

matter, and/or a large number of witnesses need to be contacted, and the fact that in many instances one or more witnesses (or, indeed, the complainant himself/herself) is serving overseas. In the great majority of cases the complaint is resolved within this Defence Forces’ internal review/investigation process and does not trouble my office, and this fact is very much to the credit of that internal process. It also, I believe, serves the best interests of individual complainants, and the Defence Forces generally, that as many complaints as possible are resolved in this manner.

The procedures relevant to the lodging of complaints and their investigation by the Ombudsman are to be found in Defence Forces Administrative Instruction A7, Chapter 2. They essentially adopt the provisions of Section 114 of the Defence Act 1954, as amended.

The initiating document in a Section 114 complaint is called a “Notification of Complaint” (“NOC”). Paras 219 and 220 of Admin Instr A7, Chapter Two state as follows:-

“219. On receipt of a complaint in writing, seeking a redress of wrongs pursuant to section 114 of the Defence Act, the Commanding Officer shall, within a time guideline of Seven (7) days, cause a ‘Notification of Complaint’ to be dispatched to the Chief of Staff, (Annex A refers), through the normal military channels (EPMO/COMO), with a copy to the GOC of the Brigade/Formation concerned or equivalent.

220. On receipt of a ‘Notification of Complaint’ pursuant to Section 219 above, D HRMS shall, on behalf of the Chief of Staff, shall within a time guideline of Seven (7) days, cause such a notice to be dispatched to the Minister and to the Ombudsman for the Defence Forces.”

The net result of that procedure is that within a period of some 14 days of the date of submission of the complaint a copy of the NOC is sent to the

Ombudsman whereupon the Ombudsman now becomes aware of the ‘action’ complained of and is provided with a brief explanation of the complaint and redress sought. This is the process which occurs in practice. The position therefore is that my office regularly receives NOCs and duly files them. Because most of these complaints are resolved within the Defence Forces’ internal review/investigation system they are not ultimately reviewed or investigated by the Ombudsman. Only that small number which are not internally resolved are investigated by my office. In practice the request to my office to investigate will often be made many months after the NOC submission, and only after the internal Defence Forces investigation process has been exhausted.

Until this year my office has operated on the basis that the determining date for the purposes of Section 6 (3)(a) of the Act of 2004, (i.e. the date from which the 12 month period for making a complaint to the Ombudsman is measured), is the date when the complainant elects to trigger an investigation by the Ombudsman, usually many months after the date on which the initialising NOC is notified to my office.

However, and it is this aspect which is of concern to me, that date (i.e. many months after the NOC is

furnished to my office) will occasionally be more than 12 months after the date of the ‘action’, particularly in cases where the complainant initiates the Section 114 complaint a number of months after the date of the ‘action’. For example, an incident or ‘action’ occurs on 14 January 2019; the complainant submits his/her NOC on 20 July 2019; and the NOC is duly “dispatched” to my office on 2 August 2019. For a variety of reasons, for example, non-availability of witnesses, or the temporary unavailability of the appointed Military Investigating Officer because of annual leave and/or overseas service, and/or the complexity of the matter and/or the need to seek legal clarification from the Defence Forces Legal Services Branch, the internal Defence Forces review/investigation does not conclude until 10 February 2020, whereupon because of his/her dissatisfaction with the outcome the complainant elects to have the matter investigated by the Ombudsman. In this hypothetical example my office receives notification of the complainant’s election on 16 February 2020, thus triggering the commencement of an investigation of the complaint. This is however well in excess of 12 months after the date of the ‘action’ complained of, and, (based on past practice), falls foul of the 12-month limitation period provided for in Section 6 (3)(a) of the Act of 2004.



In this example, it would surely be entirely unreasonable and unfair to blame the complainant for either the delay in his/her submitting a complaint in the first instance (he/she may have been serving overseas at the time, or may have attempted to resolve the matter informally, or indeed may simply have taken time to think about what he/she wanted to do), or the delay in the conclusion of the internal Defence Forces review/investigation. This is against a backdrop of there being no time limit for submitting a complaint to the Defence Forces.

I do not believe this interpretation to be fair, or indeed what was intended by the legislature when it enacted the Act of 2004. Is there any lawful reason why the initial notification of the NOC to my office – usually occurring within 14 days after being submitted by the complainant – should or does not constitute the making of “a complaint to the Ombudsman...” as per Section 6 of the Act of 2004? It is undoubtedly the case that the Ombudsman has been advised of the complaint from the time of this initial notification.

Because of my concern in relation to this issue I sought the opinion of Senior Counsel on this issue. I believe it

appropriate and useful to quote the following extract from that opinion:-

“I am instructed that in practice the normal way in which a complaint is made to ODF is that a notification of complaint is generated within the Defence Forces pursuant to Section 114 of the Defence Act 1954 which is copied to the Minister and to ODF in accordance with Section 3 (a) of the 1954 Act as inserted by Section 13 (c) of the 2004 Act.

I am also instructed that if the Complainant is still serving within the Defence Forces, the complaint is first investigated by an Officer and at the option of the Complainant, the finding of that Officer can be appealed to the Complainant’s General Officer Commanding and ultimately to the Chief of Staff. If at any stage in that process the Complainant is satisfied with the findings or decision made, the matter goes no further. If the Complainant is dissatisfied with the findings or decision of the Chief of Staff, the Complainant can request ODF to investigate.

My opinion is sought on whether in those circumstances for the purpose of determining whether a complaint



has been made to ODF within the prescribed 12 month period, the complaint to ODF should be regarded as having been made on the date on which the original notice of complaint is forwarded to ODF or on the date on which ODF is notified of the decision by the Complainant to request ODF to investigate.

I have no doubt or difficulty in advising that the date upon which the original notice of complaint is notified to ODF is the relevant date.”

He also observed:-

“...in the practice which is actually followed, ODF is in fact notified of the complaint when he receives a copy of the notification of complaint. There is nothing in the provisions of the 2004 Act which, in my view, would make it necessary or sensible not to regard this as the relevant date for the making of a complaint to ODF.

On the other hand, if the date of the ultimate request by a Complainant to ODF to investigate following the exhaustion of his remedies within the Defence Forces was regarded as the relevant date, there could be all sorts of potential difficulties. The 2004 Act

clearly contemplates that a reference should only be made to ODF for investigation after all internal avenues for redress have been exhausted. This is reflected in the provisions of Section 4 (3)(iii) and (iv). If the processing of the complaint within the Defence Forces took longer than 12 months from the date of the action complained of and the Complainant waited until after that process had been completed before requesting ODF to investigate, it would clearly be highly unreasonable and contrary to the overall intention of the Act that ODF should be unable to investigate the complaint. It would be an equally unfortunate result if a Complainant, in order to avoid losing the opportunity to complain to ODF, requested ODF to investigate within 12 months from the date of the action but before the internal Defence Force process had been completed, in which case ODF might have to refuse to investigate on the very basis that the internal Defence Forces process had not been completed.”

It is a matter for me, as Ombudsman, to determine in individual cases if I have jurisdiction to embark on an investigation, and in that regard, I am entirely subject to the provisions of the Act of 2004. Any such decision I make in relation to jurisdiction is subject also to Judicial Review by the High Court, should it be challenged.

Accordingly, I propose in future cases to treat the date of the receipt by my office of the Notification of Complaint as being the relevant date for the calculation of the 12 month period as provided for in Section 6 (3)(a) of the Act of 2004, subject to consideration of any written submissions received from the Minister, the Chief of Staff, PDFORRA and RACO should any of them wish to make any. I have written to these interested parties accordingly.

I believe however that my proposed change is in the interests of the Defence Forces and is in ease of would be complainants, and is in the interests of justice, and fairly represents the intention of the legislature in its enactment of the Act of 2004.



Alan Mahon
Ombudsman for the Defence Forces
August 2020



2 Highlights of 2019

103

NOTIFICATIONS OF COMPLAINT

were received in 2019,

This was a 36% increase on the 76 notifications received in 2018. A Notification of Complaint is generated at the time the complaint is initially submitted to the Defence Forces and a copy is forwarded to the ODF. A full investigation by the ODF will only commence if the complaint is not resolved in the course of the Defence Forces internal investigation process

OF THE 103 NOTIFICATIONS OF COMPLAINT

received, 81 were in respect of Privates and NCOs and 22 were in respect of Officers (including 1 from an officer Cadet). In the context of Complaints from Officers this represents a significant increase of 550% on the 4 complaints received in 2018.

17 NEW CASES

were referred to ODF for full investigation in 2019. This is an 89% increase on the 9 new cases referred to ODF in 2018.

74 CASES

including pre 2019 referrals, were under review by the ODF during 2019.

60 cases were

brought to final conclusion by the ODF during 2019. This represents a **15%** increase in the number of cases concluded by the ODF in 2019.

14 CASES

remained under review by the ODF on the 31 Dec 2019, a reduction of 75% from 1 Jan 2019.



3

Analysis of Complaints & Appeals - 2019

Notifications of Complaint

103 Notifications of Complaint were received by my Office from the Defence Forces during 2019. This is a 36% increase on the 76 complaints notified to my Office in 2018. Of those complaints, 81 were from serving or former other ranks personnel while 22 were from serving or former commissioned officers.

Of the Notifications received during 2019, some 35 were withdrawn or resolved during the year and 17 were referred to the ODF for investigation. The ODF also received some 86 direct contacts from members of the Defence Forces or members of the public in relation to queries, concerns or information requests. There were also numerous direct contacts between the ODF and the Military Authorities and individual members in respect of individual cases, however, such contacts are not recorded for statistical purposes.

Direct referrals to ODF

Serving members of the Permanent and Reserve Defence Forces must initially process their complaints through the statutory (section 114 Defence Act 1954) Redress of Wrongs procedure and exhaust the internal Defence Forces process before referring their complaint to this Office.¹ Former members of the Defence Forces may refer their complaints directly to this Office, subject to the provisions of the Ombudsman (Defence Forces) Act 2004.

In 2019, no complaints were referred directly to this Office by former members.

¹ *Serving members may request the ODF to commence investigation if the Defence Forces internal investigation has not concluded within 28 days of the making of a complaint.*

Cases reviewed by ODF in 2019

On 1 Jan 2019, some 57 cases were carried forward under review by this Office. During 2019 some 17 new cases were received by this Office. The total number

of cases under review by this Office during 2019 was 74. Of these, some 60 cases were brought to a final conclusion during 2019. Some 14 cases remained under review on 31 December 2019 and were carried forward for consideration into 2020. This represents a 75% decrease on the numbers carried forward from 2018 into 2019.

Details of Complaints Investigated by ODF in 2019

The following Tables set out the nature of complaints considered by this Office during 2019, together with details of complaints by military formation. It should be noted that complaints categorised as ‘Maladministration’ cover a variety of issues including complaints in respect of performance appraisal and issues related to discharge among others. Complaints categorised as ‘Interpersonal Issues’ include those where there appear to be elements of personality conflict and/or allegations of inappropriate behaviour or bullying.



Total cases

The following table outlines the progression of the 74 cases during 2019 –

| Preliminary Investigation Ongoing | Cases Concluded and Final Report Issued |
|-----------------------------------|---|
| 14 | 60 |

Cases by Military Formation

Of the 103 cases on hand during the course of the year, the following table outlines the number of cases arising in each Military Formation.

| 1 Brigade | 2 Brigade | Defence Forces HQ | Defence Forces Training Centre | Air Corps | Naval Service | Total |
|-----------|-----------|-------------------|--------------------------------|-----------|---------------|-------|
| 7 | 21 | Nil | 9 | 14 | 9 | 60 |

Nature of Cases

The nature of the cases on hand with the ODF during 2019 can be broken down into the following broad categories –

| Maladministration | Non-Selection for Promotion | Non-Selection for a Career Course | Interpersonal Issues | Non-Selection for Overseas Service or Particular Posting | Total |
|-------------------|-----------------------------|-----------------------------------|----------------------|--|-------|
| 17 | 22 | 8 | 6 | 7 | 60 |

Details of Cases by Formation

The following tables and charts set out the nature of cases on hand during 2019 by individual Military Formations –

1 Brigade – (7)

| Maladministration | Non-Selection for Promotion | Non-Selection for a Career Course | Interpersonal Issues | Non-Selection for Overseas Service or Particular Posting |
|-------------------|-----------------------------|-----------------------------------|----------------------|--|
| 3 | 2 | 1 | Nil | 41 |

2 Brigade – (21)

| Maladministration | Non-Selection for Promotion | Non-Selection for a Career Course | Interpersonal Issues | Non-Selection for Overseas Service or Particular Posting |
|-------------------|-----------------------------|-----------------------------------|----------------------|--|
| 4 | 7 | 4 | 3 | 3 |

Defence Forces HQ – (Nil)

| Maladministration | Non-Selection for Promotion | Non-Selection for a Career Course | Interpersonal Issues | Non-Selection for Overseas Service or Particular Posting |
|-------------------|-----------------------------|-----------------------------------|----------------------|--|
| Nil | Nil | Nil | Nil | Nil |

Defence Forces Training Centre – (9)

| Maladministration | Non-Selection for Promotion | Non-Selection for a Career Course | Interpersonal Issues | Non-Selection for Overseas Service or Particular Posting |
|-------------------|-----------------------------|-----------------------------------|----------------------|--|
| Nil | 2 | 2 | 2 | 3 |

Air Corps – (14)

| Maladministration | Non-Selection for Promotion | Non-Selection for a Career Course | Interpersonal Issues | Non-Selection for Overseas Service or Particular Posting |
|-------------------|-----------------------------|-----------------------------------|----------------------|--|
| 8 | 5 | Nil | 1 | Nil |

Naval Service – (9)

| Maladministration | Non-Selection for Promotion | Non-Selection for a Career Course | Interpersonal Issues | Non-Selection for Overseas Service or Particular Posting |
|-------------------|-----------------------------|-----------------------------------|----------------------|--|
| 1 | 7 | 1 | Nil | Nil |

Complaints Investigated and Reported on by ODF in 2019

| Complaint Upheld or partially upheld by ODF ** | Complaint Not Upheld by ODF * |
|--|-------------------------------|
| 29 | 31 |

* Includes complaints outside ODF's terms of reference.

** Partially upheld complaints are complaints where the ODF did not uphold a complainant's case in its entirety and cases in which the complaint has not been upheld but where a recommendation was made none the less.

ODF's Recommendation to Minister in 2019

NUMBER OF RECOMMENDATIONS (pursuant to Section 7(3) of the 2004 Act) in Reports finalised in 2019: 48

#NUMBER OF 2019 RECOMMENDATIONS NOTIFIED TO THE ODF BY THE MINISTER AS HAVING BEEN ACCEPTED (to 31 July 2020): 8

#NUMBER OF 2019 RECOMMENDATIONS NOTIFIED TO THE ODF BY THE MINISTER AS HAVING BEEN REJECTED (to 31 July 2020): Nil

Footnotes: * recommendations are not necessarily made in every Report from the ODF.

* more than one recommendation may be made in some ODF Reports.

* there is usually a significant delay, for a variety of reasons, in a notification to the ODF of an acceptance or rejection of a recommendation by the Minister, hence the extent of acceptances/rejections from recommendations made in a particular year will not be fully apparent by the date of publication of the Annual Report for that particular year.



“

60 cases were brought to a final conclusion during 2019. Some 14 cases remained under review on 31 December 2019 and were carried forward for consideration into 2020.

4 Case Summaries

The following case summaries set out details of some of the cases investigated by the Ombudsman for the Defence Forces during 2019. For reasons of confidentiality the names of complainants and other information which might assist in their identification are withheld. In some instances, and for the same reason, some factual information has been changed.

CASE SUMMARY 1

Involuntary discharge – Criminal conviction – “Unsatisfactory” conduct assessment - failure to keep AF667s – Jurisdiction – DFR A10, Paragraph 58 – Lawful discharge for conviction by a civil authority - Paragraph 38(e)(i) of S. II Part III of DFA A. 8 - Complaint Partly Upheld

The Complainant was a Private with 10 years successful service before his involuntary discharge on 30 August 2017 as a result of a conviction by the civil authority. His conduct assessment in his AF97B and LA89 was noted as “Unsatisfactory”.

He complained that:

- i) his discharge was illegal and did not conform with the relevant statutory provisions and regulations; his previous requests for a ‘voluntary’ discharge were wrongfully ignored or missing; and that he had been denied the right to appeal the proposed involuntary discharge before it became effective;
- ii) the record of “Unsatisfactory” for his conduct assessment did not accurately reflect his previous assessments; and,
- iii) there was a failure to generate or maintain AF667s (annual personal records) for him for the years 2014 – 2017.

In submissions to the ODF, he confirmed he became aware he would be ‘forced discharged’ on 27 July 2017. He became aware of the “Unsatisfactory” conduct assessment on receipt of his ‘Discharge Certificate of Service’ around the end of September 2017. He became aware of the failure of the DF to keep AF667s for 2014 – 2017 on 26 June 2018. On 24 September 2018, the Complainant requested

the ODF to undertake an investigation into certain matters.

Under Section 6 of the Ombudsman (Defence Forces) Act 2004, a Complainant is requested to make a complaint to the ODF no later than 12 months from (a) the date of the action concerned or (b) the date of which the complainant became aware of the action, whichever is later. As such, the ODF deemed himself not to have jurisdiction in respect of complaint i), which was outside the 12-month period. It was noted that section 6(3)(a) and (b) do not provide for an extension of time, even for a relatively short period such as that with which the Complainant was faced. However, the ODF commented as an observation only that the provisions of DFR A10, Paragraph 58 allows for the lawful discharge of a member of the DF “as a result of a conviction by Civil Power”. Paragraph 58 also states that “if the conviction carries a suspensory sentence the discharge, if directed, will be carried out as soon as possible after the case has been dealt with by the Civil Power.”

In respect of the complaint of “Unsatisfactory” conduct assessment not accurately reflecting his 10 years’ service, the ODF was satisfied that this aspect of his complaint fell marginally within the 12 months provided for under Section 6(3)(b) of the 2004 Act, and that its investigation was within his jurisdiction. The ODF concluded that the assessment of “Unsatisfactory” was appropriate as paragraph

38(e)(i) of S. II Part III of DFA A. 8 states that where a non-commissioned officer or private has been sentenced to a term of imprisonment by court-martial or by a Civil Court in the two years before the report, an assessment of “Unsatisfactory” shall be recorded. The fact that the sentence was suspended did not alter its status as a sentence of imprisonment.

Regarding the Complainant’s AF667s for 2014 to 2017, it appeared that they were never completed due to “staffing difficulties”. The ODF stated that AF667s are detailed annual reports for all DF members and include assessments of performance

and conduct, and that they are important documents, especially for former Defence Force members seeking civilian employment. The ODF found that the fact that a number of AF667s were not prepared for the Complainant was a matter of concern and indicated a wrong had been suffered by him. The ODF observed that it might not be practical for all missing AF667s to now be prepared given the lapse of time that had occurred. However, he recommended that an AF667 for 2017, being his last full year in the DF, be prepared on the basis that this would likely be the record of most interest to a civilian employer.



CASE SUMMARY 2

Line Officer – Overseas – Engr Corps – Seniority – Technical Officer – Process – Line Appointment - Complaint Not Upheld

The Complainant is a Captain in the Defence Forces (DF) and a member of the Engineer Corps since January 2012. Prior to that date he was a Line Officer in the Inf. Corps. He volunteered for selection for overseas service in 2013 but was not selected. His complaint refers to the selection process in that he, given his level of experience, ought to have been selected above those that were selected (three officers were selected for the position/role for which the Complainant applied). At the time of the complaint, he had never served overseas, but had nine years' service with the DF.

On 9 August 2013, he submitted a Notification of Complaint, pursuant to Section 114 of the Defence Act 1954, and on 24 July 2014, the complaint was referred to this Office. He sought redress in respect of his non-selection to fill one of the three appointments and clarification of the selection criteria that was followed in the selection of candidates. He maintained that he should have been selected by reason of his seniority over those who were selected.

The role the Complainant sought to be selected for was that of a Line Officer. The Complainant was not a 'Line Officer' at the relevant time of his volunteering for the position or at the time of submitting the complaint. He was sufficiently experienced and qualified to fill the role of Line Officer having served as Line Officer for a period up to a date in 2012, at which point, he transferred to the Engineer Corps and was from that point deemed to be a 'Technical' or 'Special Service' Officer, as opposed to a Line Officer.

The MIO concluded that no precedence existed whereby a Technical/Special Service Officer was selected before a volunteering Line Officer, regardless of seniority in the rank (such as the position the Complainant found himself in). The MIO concluded that the Complainant had not been wronged in this instance and that the redress sought was not appropriate. The MIO further stated that it was

normal practice to give preference to Line Officers for Line Officer appointments overseas, rather than appoint a Technical Officer/Special Service Officer ahead of a volunteering Line Officer (regardless of seniority in the rank).

The matter was then reviewed by COS.

In his response to the Reports of the MIO and the GOC, the Complainant raised the following issues. (The COS's responses in relation to each are in brackets):-

1. Was the DJ1 policy in keeping with the Admin Instr CS 5? And where same are in conflict, which prevails?

(The COS had confirmed that DJ1 policy was in keeping with CS5. However, the present complaint had shown that misinterpretation could occur and that should be reviewed to clarify any ambiguities that may arise.)

2. That the ground rejecting selection of a Technical/Special Service Officer for overseas mission due to the requirement to retain sufficient personnel within the category at home should not be a relevant consideration where such an Officer is recommended for overseas service by his/her Corps Director, as had occurred in this case.

(The COS had stated that selecting Technical Officers for Line appointments could hinder the operational capabilities of Corps units at home).

3. If seniority was not a consideration in selection process, then what factors were?

(The COS referred back to the point that where practicable, it is in the organisations interests that suitably qualified Line Officers fill Line Officer vacancies.)

4. That Engr Officers are at a disadvantage if they are effectively denied the opportunity to serve overseas as Lts.

(The COS pointed to the benefits of serving overseas and the development of the individual and that it assists in achieving a higher rank. However, positions should be filled by the appropriate Officers. This also goes that Technical Appointments should be filled by Technical Officers.)

The ODF considered the D HRM Policy Document and Admin Instr. C.S.5 (New Series) and found that they were essentially identical provisions, both stating that in the selection process of officers, regard should be had to seniority in rank or that seniority should be taken into account. However, the ODF considered that neither of the provisions stated above were determinative factors. Therefore, the selection panel should consider seniority of an applicant, such as the Complainant, and nonetheless proceed to discount it for good reason. Seniority was not a determinative factor.

The ODF pointed to the fact that there was a sufficient number of volunteers for the Line Officer position who were suitably qualified Lt Line Officers. The Complainant was not a 'Line Officer' at the relevant time (although equipped with the necessary experience and qualifications). The ODF confirmed that the normal practice had then, and since then, been followed in not considering an Officer for selection who was not at the time a Line Officer. It was then and remained the practice that Line Officers had a reasonable expectation that they would fill such appointments/posts.

The ODF further stated that the practice in place of not facilitating Technical Officers to serve overseas if doing so had the potential result of leaving an insufficient number of such qualified personnel in home bases was important. The ODF echoed the position of the COS that Line Appointments should be filled by Line Officers and Technical Appointments by Technical Officers.

The ODF concluded that the Complainant was not wronged and that the practices followed in 2013 were best practice at the time and now.



CASE SUMMARY 3

Applications for overseas service misfiled or destroyed – Minimum of three applications over preceding three years required to show consistency of application for overseas service – Despite missing applications Complainant met minimum requirement - Whether the Complainant was disadvantaged by the misfiling or destroying of applications - Complaint Substantially Upheld

This complaint concerned an ‘action’ which occurred over a five-year period from 2009-2014. The Complainant submitted that during that period, his personnel file was missing 34 overseas applications under DFR A8. The Complainant submitted that the missing applications had been misfiled or destroyed. The failure to correctly maintain all of the Complainant’s overseas applications in his file resulted in an inaccurate record of his consistency of application for overseas service which had negatively impacted the Complainant’s chances of being selected for overseas service. The Complainant was not selected for overseas service during the period and the Complainant sought redress in the form of being selected for overseas service.

The Complainant’s OC conducted a review of the complaint on 17 June 2014. The review found that the Complainant had generated 65 overseas applications in the period 2009-2014. He found that 13 overseas applications were missing from the Complainant’s file with a further four letters to DENG also missing. (A memo of 20 June 2014 stated that 66 applications had been made with over 33 applications missing from the file). The file review found some duplication in that some overseas applications were for the same mission.

The Complainant’s OC identified relevant extracts from Admin Instr C.S.5 as follows:

- i. Annex D, Para 301 j & m:
 - “All overseas applications recommended or non-recommended shall be placed in unit personnel file.”
 - “Enlisted personnel may volunteer for any appointments within overseas contingent for which they fulfil the nomination criteria laid down in Para 1...”

ii. Annex D, Para 303 d:

- (5)(d)ii – “Only one application for each specific mission deployment or rotation shall be counted. Recommended and non-recommended applications shall be counted.”
- (5)(d)iii – “Regardless of the total missions applied for by an individual, only those personnel who have applied for three or more missions (i.e. specific deployments or rotations) in the five-year period being assessed, with the exception of (d) v. below, shall be considered as having consistency of application for overseas service.”
- (5)(d) iv – “Only those applications submitted for appointments in the substantive rank and fulfilling the qualifications required for the appointment applied for shall be counted.”

An internal DF investigation was carried out by a MIO. The MIO reported that ‘a number of applications were missing.’ The MIO concluded that as the Complainant’s file contained more than three applications for overseas service, the Complainant met the criteria for having consistency of application for overseas service and the Complainant’s missing applications therefore did not place him at a disadvantage.

Following a successful challenge by the Complainant of the choice of MIO due to a conflict of interest, a second MIO was appointed in his place. He found that there were a number of overseas applications missing from the Complainant’s personnel file due to misfiling by No. 4 Ops Wing Orderly Room staff. The MIO found that the Orderly Room staff had filed the applications in a way which they believed was correct and that the misfiling was not intentional. The MIO concluded that the absence of the overseas applications from the Complainant’s file had not disadvantaged the Complainant as he still had in excess



“

103 Notifications of Complaint were received by my Office from the Defence Forces during 2019. This is a 36% increase on the 76 complaints notified to my Office in 2018.

of 30 applications when only three were required for consistency of application. The MIO concluded that the Complainant had not been wronged and rejected the redress sought.

The MIO noted that the Orderly Room staff had been instructed by the Complainant's CO to place a list of all overseas applications made by the Complainant in the Complainant's file and were directed that all subsequent applications should be administered as per Admin Instr C.S.5.

The GOC, AC in his Report of 17 October 2014 agreed with MIO's findings and conclusions.

In his determination of 23 March 2015, the DCOS made the following conclusions:

- Overseas applications were missing from the Complainant's personal file. This misfiling was not intentional but occurred as Orderly Room staff members believed that applications which they believed were ineligible and should not be placed on files. The DCOS noted that the Complainant's CO had addressed this aspect of complaint by direction to the Orderly Room staff.
- The DCOS noted that the number of overseas applications actually recorded on the Complainant's file for the period exceeded

the number required to meet the criteria for consistency of application for overseas service. The DCOS concluded that the Complainant had not been disadvantaged and had not suffered a wrong.

- The DCOS noted that the Complainant had been informed that he would be afforded opportunities to complete further courses. The DCOS found this to a reasonable resolution of the Complainant's concerns regarding eligibility for future courses.

The Complainant wrote to the ODF on 4 April 2016 complaining that he had still not been selected for overseas service and had not received confirmation regarding three recent applications. By 9 May 2016, the Complainant's tally of unsuccessful applications for overseas service stood at 77 (the Complainant made a further four applications in 2017 and was selected for overseas service in Mali in 2018).

In a further letter of 17 July 2016 to the ODF, the Complainant queried why he was not being selected for overseas service and why he was being treated differently to other Sergeants in the DF who seemed to be having no trouble in being selected for overseas service. The ODF noted that the Complainant's continued failure to secure selection for overseas service was having an adverse effect on the Complainant and his family.

The ODF noted that the DF acknowledged that a number of the Complainant's applications for overseas service were missing and/or were inappropriately



recorded or filed. The Complainant considered that the missing applications had disadvantaged him and led to the loss of potential earnings and points for promotion.

He believed that the fact of the missing files was not accidental and believed that he had been the subject of “victimisation...at unit level or higher.”

The ODF considered Admin Instr C.S.5 Part 2, Section 2, para 2009 which provides the selection process for overseas service as follows:

“To be eligible for nomination for overseas deployment...enlisted members...must meet the nomination criteria as laid down in Part 1 of Annex ‘D’ to this Instruction.”

The ODF then considered the provisions of C.S.5 Para 303 d (5)(d) ii -iv referred to above. He noted that DF findings included:

- (i) Only one application per overseas mission is counted. An unspecified number of the complainant’s applications were duplicate applications for the same mission.
- (ii) The missing applications made no difference to the assessment of the Complainant’s consistency of application for overseas service as just three applications in the last five years met the necessary requirement. The ODF noted that this suggested that applications in excess of this number were

irrelevant as is the fact of applications going missing or unrecorded.

- (iii) An unspecified number of the Complainant’s applications were/would have been disregarded as he was unqualified for the positions applied for.

The ODF found that the DF interpretation of C.S.5 Para 303 d (5)(d)iii is misleading to the extent that it appears to suggest that applications exceeding three in number are irrelevant. The ODF found that this interpretation did not accurately reflect Para 303 d (5)(d)iii which provides that there must be at least three applications in the five-year period to establish consistency of application. The ODF found that applications in excess of three may be a relevant factor in particular circumstances.

The ODF referred to “Volunteer Selection – Overseas Service. Enlisted Personnel” to be read in conjunction with the letter of 31 July 2006 from Maj Gen Earley DCOS which stated,

“In any specific list of nominees being assessed, and having considered all the aforementioned criteria, those who have not yet served overseas or who have a consistent record of applying for overseas service or the longest back from overseas service will be considered in that order for selection.” [emphasis added by the ODF].

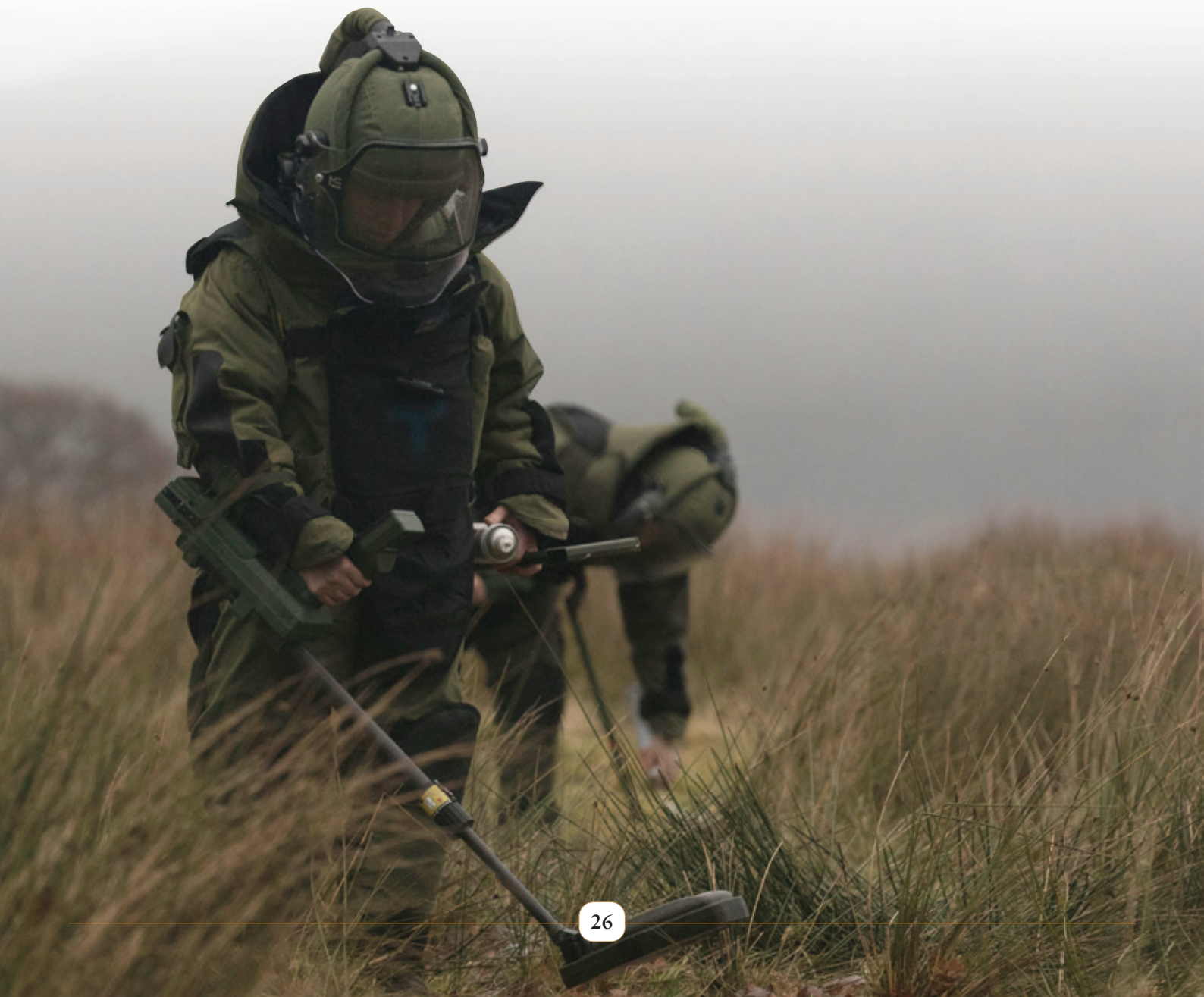


The ODF noted an absence of evidence to indicate that the Complainant suffered any disadvantage because a number of his applications were missing or unrecovered. However, the ODF found that the missing applications had the potential to cause him disadvantage in relation to selection for overseas service, and possibly for promotion.

The ODF found that the Complainant was entitled to have his applications for overseas service maintained on his file. There was no entitlement on the part of any person, without the Complainant’s express consent, to destroy or fail to file applications even in circumstances where it was believed that the applications were surplus to requirements, or defective, or where it was believed that no disadvantage would accrue to the Complainant by their non-recording.

The ODF concluded that the Complainant had been wronged by the destruction or misfiling of a number of applications for overseas service. He found insufficient evidence to conclude that this had caused or contributed to his failure to be selected for overseas service. The ODF noted that the redress sought had been satisfied by the Complainant’s overseas service in Mali in 2018.

Finally, the ODF found that the Complainant had been wronged in the inadequacy of the steps taken to explain, inform and advise him as to the likely reasons for his prolonged failure to be selected for overseas service.



CASE SUMMARY 4

Sensitive discussions between a male officer and a female subordinate ought not to take place in the absence of an independent third party witness – Upholding aspects of the Dignity Charter for the Defence Forces - Threatening” or “intimidating” or “uncomfortable” work environment – Referral to Medical Board on grounds of fitness resulted in discharge from DF - Whether OC acted unfairly – Complaint Not Upheld.

The Complainant served as a Private in the DF for 17 years prior to her discharge on 20 October 2015. Whilst her military conduct was found to be “good” she was discharged because the Medical Board found her to be below DF medical standards due to an injury. The Complainant unsuccessfully appealed against her medical grading and her discharge was duly effected. Separately, a notification of complaint had been submitted to the DF in 2012, two years prior to her discharge, and was multi-faceted. A detailed report was compiled by the MIO upholding some of the seven complaints made. It is not clear whether the GOC and COS prepared subsequent reports. In July 2014, after her discharge from the DF, a detailed submission with respect to the various complaints was made to the ODF by the Complainant.

Complaints 1, 2 and 3 related to the Complainant’s request for breastfeeding breaks following her return to work from maternity leave after the birth of her first child. There was a conflict between the Complainant and her OC about what was said or not said. It was alleged that she was granted breastfeeding breaks initially, however that this was cancelled after she told her OC that she was pregnant for a second time. It was alleged that a doctor’s note was provided by the Complainant to the effect that she could not express milk, but despite this, breastfeeding breaks were refused. It was alleged that the OC suggested that breastfeeding breaks were impacting on her work, but this was denied by the OC. It was alleged that the OC invited her to express milk in a file room adjacent to a gent’s toilet and store her milk in a communal fridge, but this was denied by the OC who suggested that he offered to renovate a room for her, install heating, curtains and a fridge. It was alleged that her OC stated that she was not in Norway or Sweden where such breaks were more fitting, which comment the OC denied. The MIO was unable to determine the truth or accuracy of the Complainant’s allegations. However, because of the specificity of the words and because the Complainant had nothing to gain by making false allegations against her OC,

the ODF found on the balance of probabilities that such words were stated to the Complainant. This was found to be a breach of Para 417 (n) of Admin Instr A11 which permits breastfeeding breaks without loss of pay and allowances until a child is two years old. The ODF found that save in exceptional or unavoidable circumstances a discussion on such a sensitive subject as breastfeeding as between a male officer and a female subordinate ought not to take place in the absence of an independent third party witness, and it was clearly in the OC’s control to arrange for the attendance of an independent witness at the meetings held with the Complainant. Whilst the ODF found that the OC was not aware that his refusal to allow breastfeeding breaks was in conflict with Para 417 (n), his words and general attitude to the Complainant on the subject of breastfeeding and the welfare of her child were inappropriate and were not conducive to upholding the “right to each individual to dignity in their work environment” as stipulated in the ‘Dignity Charter for the Defence Forces’. Given that the complaint had been upheld and given the passage of time since the events, the ODF did not recommend that the OC write a letter of apology to the Complainant.

Complaints 4, 5 and 6 related to the circumstances in which the Complainant maintained that she was wrongfully moved from her appointment in one unit to an appointment in another unit in January 2012. The MIO report concluded that the Complainant had stated that the complaint had been dealt with and she did not wish to pursue it any further and therefore the complaint had been deemed to be resolved. In those circumstances the ODF deemed it unnecessary to make any determination in respect of these complaints.

Complaint 7 related to words used by the Complainant in relation to her work in one unit and her relationship with her work colleagues in that unit in November 2011. Her OC said that the Complainant had indicated that she found the working environment “threatening” or “intimidating”,



whereas the Complainant insisted that she used the word “uncomfortable”. Again, unfortunately there were no independent witnesses as to what words or terms were stated by the Complainant to her OC. The ODF determined that whichever of the words were used, they were broadly similar in meaning in the context of the complaint made by the Complainant to her OC about the atmosphere she had experienced in the workplace. The ODF noted that in the absence of agreement about the words that had been used the OC’s suggestion that the Complainant write a letter stating that she had not felt “intimidated/threatened” by her co-workers and working environment to place on her personal file, was a reasonable and sensible suggestion and he noted that the Complainant had rejected this suggestion as insufficient

The ODF’s recommendation in respect of these complaints made in 2011/12 was that that senior officers in the DF be advised that it is good practice to ensure, in so far as it is possible and practical to do so, that one or more independent witnesses be present in circumstances where it is deemed necessary or appropriate to address sensitive subjects (such as gender related issues) between personnel, particularly where one is the subordinate of the other.

The submission in July 2014 that was made directly to the ODF was made after the Complainant had been discharged from the DF. Whilst the complaints that occurred in 2011/12 (discussed above) were referred to in the submission, the focus of the submission was against a different OC who took up that role in the last quarter of 2012. Whilst the nature of the complaints were different, they took place against a common background in relation to the birth of the Complainant’s two children in 2010 and 2012, her associated maternity leave and a significant injury from a fall in December 2012 that left her medically unfit for work, culminating in her medical downgrading in April 2014 and, ultimately, her discharge from the DF in June 2014.

The Complainant’s submission alleged that her OC accused her of ‘constructing’ her then recent knee operation to ‘coincide well’ with her ‘return to work’; that he was ‘accusing, impatient and exceedingly insensitive’ and at times angry towards her; and that he had made ‘inappropriate and disparaging remarks’ to her at a meeting in April 2014. Although these complaints were from a time when she was still in the DF, the Complainant does not appear to have pursued any complaint prior to her discharge from the DF.

Therefore, there was no internal DF investigation into these separate complaints, and consequently no MIO report. As a result, the OC in question did not become aware of these allegations until he was notified by the ODF in April 2019. He responded in June 2019 rejecting the allegations, maintaining that he was surprised at the allegations as he felt that he ‘was cordial and professional at all times’ during his interactions with the Complainant. The OC acknowledged that a number of issues had arisen between him and the Complainant at the time in question and that he was aware of her knee injury and the effect on her fitness and other service standards. He stated that he had referred her to the Medical Board because of her poor attendance record and ‘her failure to meet the minimum acceptable standards for continued service’ in the DF.

In respect of these later complaints against the second OC, the ODF found that the OC in question had acted in accordance with regulations and normal procedure in referring the Complainant to a Medical Board for the purposes of ascertaining her medical fitness to continue service in the DF having regard to her work attendance record and there was no evidence to suggest he acted unfairly in so doing. That OC was not further involved in the decision to discharge

the complainant from the DF for medical grading reasons. There was a complete conflict as between the Complainant’s account of her dealings with the OC and the OC’s own account and there was an absence of independent evidence to support either version of events, in particular because no complaint had been made at the time and there had not been any internal DF investigation. Further delays occurred in the ODF Office due to a backlog in cases.

The ODF found that the delay in affording the ‘accused’ person the opportunity to provide his account of events might undermine that person’s right to defend himself and thus potentially give rise to an unjust outcome, and therefore it was not a case that was appropriate to make a determination and the allegations were deemed unproven. Separately, the ODF did not identify any fault in the process leading to the Complainant’s discharge from the DF: the Complainant had suffered a genuine leg/knee injury close to the time when she had planned to return to normal duties following her maternity leave and that that injury resulted in an unacceptably poor medical grade and unfortunately the consequent discharge from the DF.



CASE SUMMARY 5

Application to join Logistical Accounting Module I Course – Additional criteria required not set out in qualifying criteria – Delay in notification of unsuccessful application – DF internal investigation justified additional criteria on basis that it is the prerogative of DFTC to ensure that the DFTC can be logistically supported – Complaint Partly Upheld

This complaint concerned the Complainant’s non-selection for a training course - Logistical Accounting Module I Course - to be held from 11 – 22 June 2018. The Complainant described non-selection for the course as “denying the right to just selective process and also denying the right to appeal.”

The Complainant’s application for the Course was based on the Course Notification and Joining instructions issued on 18 April 2018. There were seven ‘Pre-Course Qualifying Criteria’ all of which the Complainant satisfied. The Complainant’s application was approved by the Defence Forces School of Catering (DFSC) and forwarded to EO J4 Logistics Branch.

The Complainant was not included in the list of nominated participants for the Course issued by EO J4 Logistics Branch on 22 May 2018. He was not notified that his application had been rejected until 30 May 2018, the day of the Initial Course Assessment. The Complainant was only advised that he was unsuccessful after an enquiry was made on his behalf, and that the reason for his lack of success was because he had not previously held a logistics appointment. The Complainant received an emailed notification of the list of successful candidates on 8 June 2018, one working day prior to commencement of the Course.

The Complainant sought redress by way of:

- Immediate selection for the current Course, or
- The running of an additional Module I Course prior to the Module II Course to be held in September 2018 to allow the Complainant to apply for the additional Module I Course to enable application for and completion of the Module II Course before the next promotional board hearing.

The Complainant further outlined the complaint in written submissions which stated that:-

- The application for the Course was approved and forwarded by the DFSC. The Complainant was successful in all of the areas set out by letter of requirements.
- The Complainant was informed on the day of the initial screening test conducted by the Military College that he was unsuccessful due to not being in a logistics appointment. This requirement was not indicated in the seven pre-course qualifying criteria.
- The effect of the denial of the Complainant’s application was to prevent him applying for the upcoming Module II Course in September 2018 and denied him the opportunity to sit the next interview board.
- The Complainant would have been placed in the top two most senior applicants.
- The Complainant did not receive the list of successful applicants until after the initial screening test and one day prior to commencement of the Course. As the Complainant was not notified in advance of his unsuccessful application, he was thereby denied an opportunity to appeal which was in breach of fair procedures and transparency.

Internal DF investigation of the complaint was carried out by an appointed MIO. The MIO concluded that the Complainant had not been wronged in principle on the following basis:

- While the Complainant did meet the essential criteria as per the course notification and joining instructions, the Complainant was not selected on a combination of essential and additional criteria applied by G4 DFTC.



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In relation to all other cases – being those carried over from 2018, and new cases in 2019 – the target of concluding and reporting “on all cases within 6 to 8 weeks of their referral for full investigation” was achieved by the final quarter of 2019

- As this was not a career advancement course as per A Admin Instr Part 10 Chapter 5, there is no requirement for G4 DFTC to apply the requirements of this Chapter.
- The additional criteria applied by G4 DFTC were justified as it is the prerogative of G4 DFTC to ensure that the DFTC can be logistically supported. The same additional criteria were applied to all applicants.

The GOC and the COS, in their respective Considered Rulings, also found that the Complainant had not been wronged.

The ODF concluded that the Course Notification and Joining Instructions of 18 April 2018 clearly and unequivocally set out the qualifying criteria for the Course. The ODF found that the Complainant had a legitimate expectation that these were the only criteria to be met. Yet, G4 DFTC applied additional criteria including past logistics experience without notice to the Complainant or the other applicants.

The ODF did not take issue with the justification for the requirement for previous logistics experience sufficient to maintain “operational capability at Unit/GP level.” However, the ODF found that there was a failure to ensure all required criteria was

sufficiently identified in the Course Notification and Joining Instructions. The ODF found that the criteria stipulated in the Course Notification and Joining Instructions were not sufficiently transparent to indicate to the Complainant that service in a logistics appointment was a requirement.

The ODF also found there to have been unnecessary delay in advising the Complainant that his application had been rejected, particularly as additional qualifying criteria had been applied. The delay was unjustified and had the practical effect of denying the Complainant the opportunity to appeal.

The ODF found that the wrong suffered by the Complainant was the inadequate and insufficient notification of qualifying criteria for the Module I Course and the delay in advising him of the outcome of his application.

The ODF recommended that greater care be taken to ensure that notification of qualifying criteria for courses (career courses or otherwise) is accurately and comprehensively stated. Finally, the ODF recommended that the Complainant should be assisted, guided and facilitated to the greatest practical and possible extent to enable his participation in the Logistics Accountancy Courses, Modules I and II, or equivalent, within a reasonable timeframe.



CASE SUMMARY 6

CMT Course – Medical Technician – DMB – 3* Medic Course – Essential Qualifications – DMB – Entry Medical Course – Promotion – Annex XYZ of A Admin Instr. Pt. 10 – Complaint Partly Upheld

The Complainant enlisted in the DF in 2000 and was a Cpl and qualified paramedic who returned from overseas duty. The Notification of Complaint, dated 14 February 2019 related to his desire to be promoted to the rank of Sgt within the Medical Corps on the basis that his qualification of paramedic superseded the clinical level of Combat Medical Technician (CMT) and that the course required to satisfy the criteria was no longer available. The DF conducted a comprehensive internal investigation up to COS level, the conclusion of which was that the Complainant had not been wronged. The matter was referred to the ODF on 13 August 2019.

By way of background, the Complainant completed an Emergency Medical Technicians course in 2014 and acquired a paramedic's qualification in 2018. He held the qualifications of Military First Response (MFR)(Instructor Level) and in Cardiopulmonary Resuscitation. He applied for the CMT course in 2014 but was unsuccessful. He successfully achieved a position in the CMT course in 2015. However, unfortunately, he had to drop out of the course due to family reasons. He could not apply for the course in the years 2016/17 and 2017/18, as at that time, he was enrolled in another Paramedics Course. In 2018/19, he could not apply as he was serving overseas. No further CMT courses were organised nor were any expected to be organised in the foreseeable future.

The Complainant sought promotion to the rank of Sgt in the Medical Corps but was deemed ineligible due to his lack of a CMT qualification. He accepted that he did not have the CMT qualification, but contended that his eligibility for promotion should be confirmed under Annex XYZ to Admin Instr Pt. 10 'Essential Qualifications' heading:

“CMT or 3* Medic Course and Ambulance Skills Course or an entry medical course approved by DMB” (Director Medical Branch).

By letter of 11 February 2019, he sought information in relation to the scheduling of CMT Courses or

alternative criteria approved by the DMB. He received a response that:

...Currently, the only entry medical course approved by the D MB is the CMT/Diploma in Military Medical Care Course... This had been communicated by D MB to the CMU HQ, and he has recommended that you be facilitated with a place on such an entry level course at the earliest convenience... It was further stated that his Paramedic Qualifications were recognised to be of a higher grade than the EMT component of the CMT Course, however, the Complainant had not completed other modules of the CMT Course.

The DF internal review of the Complainant's ROW concluded that there were no current No 3* medic courses conducted by the DF nor were any planned for the future. Further, no contract existed to enable CMT qualification with an outside agency, and there was no clarity provided in relation to what outstanding modules the Complainant needed to complete in order to meet the 'entry medical course' approval of DMB. As such, the Complainant was “unable to meet his career through NO fault of his own.” It was recommended that he receive the training opportunity to overcome this deficiency and that he complete the training before the conclusion of that competition.

The MIO concluded that:

- The only active qualifying criteria for the entry into promotion for the rank of Sgt in the Medical Corps was the CMT Course;
- The Complainant held a number of qualifications, but they did not meet the requirements in the area of non-emergency care, surveillance, support and administration as required by DMB and encompassed in the CMT Course. He did not meet the requirements as set out in Annex XYZ and was therefore ineligible for promotion to the rank of Sgt in the Medical Corps; and,
- The contract for the CMT Course expired after the 2018/2019 CMT Course concluded. The CMU indicated that the DF did not currently



have any plans to run further CMT Courses in the short term.

The MIO further concluded that the Complainant had not been wronged, but that the qualifying criteria ought to be reviewed having regard to the fact that no CMT Courses were planned in the short term. The matter was referred to the GOC and then to the COS. Both the GOC and the COS upheld MIO's conclusion. The COS stated: *I believe that there is a requirement to have a process in place to allow {the Complainant} (and others who may have similar circumstances) qualify for promotion within the CMU going forward.*

The ODF was satisfied that the Complainant was not eligible for promotion due to non-completion of a CMT Course and that his qualifications did not meet those of the CMT Course. He was in a state of 'limbo' as there was no CMT Course listed, and no other similar course was approved by the DMB. The ODF

stated that the DMB had a duty to approve 'an entry medical course' if it did not intend to schedule another CMT Course within a reasonable time frame, in order to satisfy the Complainant's (and others) expectations for reasonable promotion prospects within the MU.

The ODF did, however, also observe that the running of a CMT Course was not a certainty in any circumstances and that had the next course merely been delayed to the year 2020, the Complainant would not have a basis for a complaint.

The ODF recommended that the DMB be requested to approve and identify an alternative 'entry medical course' in the context of Annex XYZ of A Admin Instr. Pt. 10, without delay (if the CMT course has in fact been abandoned or that such a course will not be scheduled within the immediate future), and that interested parties, including the Complainant, be notified.

CASE SUMMARY 7

Interview for promotion to Flight Sgt – Questions asked perceived to indicate bias – Complainant referred to as a ‘Guru’ – Complainant asked why he had left EPMO – Interviewer referred to a prior personal grievance with EPMO in interview – Complainant perceived criticism of EPMO to be directed at him personally – Manner of initial greeting of Complainant perceived to indicate negativity towards him – Complaint Not Upheld

This complaint concerned the manner of the interviewing of the Complainant in relation to his application for promotion to Flight Sgt. The substance of the complaint was that the Interview Board did not follow and adhere to A Admin Instr Pt 10 / Personnel Matters, CCR 448-A and the NCO Promotion Competition Assessment Guide.

The Promotion Competition was conducted under the auspices of CCR 448-A. Candidates were provided with a copy of the NCO Promotion Competition Assessment Guide to the interview process which advised that all competencies listed would be assessed at interview, although not all competencies would be specifically discussed. Where a competency was not raised specifically, it would be assessed globally during the interview. The Competencies were listed as:

- Leadership
- Team Work
- Planning and Organising
- Motivation
- Decision Making and Problem Solving
- Military Experience and Engagement
- Communication

The Complainant’s written submission supporting his complaint criticised the interview and, in particular, three questions asked therein, as follows:

- The President of the Interview Board asked the Complainant why he had left the Enlisted Personnel Management Office [EPMO].
- The President of the Interview Board asked the Complainant how he felt now that he was not the ‘Guru’ anymore (as he had left EPMO).
- A Board Member asked the Complainant why so much information which had come from EPMO was incorrect. The Board Member then stated that he had submitted a personal application for serving overseas while over the prescribed age

limit, which was not recommended.

- These questions and comments had the effect of breaking the Complainant’s train of thought as they were outside the competency-based system of the interview.
- The question regarding the ‘Guru’ led the Complainant to believe that the Interview Board was biased against him because of his previous employment with EPMO, and that he could not therefore be fairly interviewed by them.
- The question concerning incorrect information emanating from EPMO led the Complainant to believe that he was being held personally responsible for the perceived failings of EPMO and that he would not receive a fair assessment from the Interview Board.

An internal DF investigation was carried out by a MIO. The MIO interviewed the Interview Board President and members and reviewed their handwritten interview notes. None of the Interview Board had previously known or met the Complainant.

The President of the Interview Board acknowledged that he had asked the Complainant why he had left EPMO as the Complainant had referred to his considerable EPMO experience in answering a question concerning the Leadership Competency. The President denied using the term, ‘Guru.’

An Interview Board Member acknowledged asking the Complainant about the accuracy of information emanating from EPMO as the Complainant had commented that all information from EPMO had to be 100% accurate. The Board Member acknowledged that he had made the comment regarding his personal selection for overseas service broadly in line with the Complainant’s complaint. The Board Member asserted that the questions put by him could not have been construed as being critical of the Complainant or as suggesting that the Complainant was personally



responsible for EPMO providing incorrect information.

The Complainant further complained of a comment made by the Interview Board President when the two met minutes prior to the interview, wherein the President said, “It is good to put a face to the name.” The Complainant maintained that this had been said in a negative manner and that it had left him ‘on edge’ during the interview. The President accepted that he had made the comment but insisted that he had said it in a friendly manner designed to put the Complainant at ease.

The MIO rejected the complaints and found that the Complainant had not been wronged. This finding was also found by the subsequent reports of the GOC and of the DCOS. The GOC report noted that the MIO had found that the questions asked of the Complainant were in line with the guidance and training provided to the Interview Board. The DCOS concluded that the Complainant’s perception of bias towards him by the Interview Board based on his prior employment in EPMO was not an accurate reflection of the interview. The DCOS found that the interview was carried out in a professional and unbiased manner.

In his review of the complaint the ODF did not find fault with the first two interview questions complained of. The ODF found that the first question was appropriate in the context of probing the Complainant’s Leadership skills where the Complainant had emphasised his valuable experience in EPMO. The ODF found that the use of the word ‘Guru’ was probably used but found that the word, and the context in which it was used, was not offensive and had merely suggested expertise or experience. The ODF found that the word was used to emphasize the Complainant’s level of expertise in EPMO operations.

The third question, asked by the Interview Board Member, was potentially capable of being interpreted as suggesting some level of animosity towards EPMO. The ODF found that given the Complainant was part of EPMO at the relevant

time, it was understandable that this question may have made the Complainant uneasy. The ODF found that the raising of a personal grievance by the Board Member was inappropriate.

The ODF found that it was reasonable for the Complainant to suspect bias against him because of his previous association with EPMO. However, the ODF found that this was perceived bias rather than actual bias as there was no evidence of actual bias on the part of the Board Member. The ODF also noted that that Board Member in question only 25% of the Interview Board.

The ODF read the handwritten notes of the interview. He concluded that it did not appear that questions were asked which could reasonably be described as unfair or inappropriate or likely to unsettle the Complainant beyond the degree of stress expected at any interview.

The ODF could not identify any question or topic raised which could reasonably indicate actual bias. The ODF did observe that interviewers should avoid directly introducing personal experiences into an interview.

The ODF also considered the Complainant's issue with the Interview Board President greeting him with "it is good to put a face to the name", and concluded that the greeting was not offensive, nor did it indicate bias, aggression or other negative attitude. The ODF found the comment to be a neutral statement.

The ODF acknowledged that the Complainant had genuine concerns with aspects of his interview but could not find fault with the interview or in relation to the issues raised by the Complainant other than as indicated.



CASE SUMMARY 8

Alleged failure to appoint to a position following reorganisation of the DF - Appointment of another person to the position instead - Out of time to lodge appeal against appointment decision - section 61 of the Defence Forces Act 1954 permits a transfer to another corps with the consent of the transferee - No actual financial loss as a consequence of the events - Greater care could have been taken in advising the Complainant on the appointment – Complaint Not Upheld

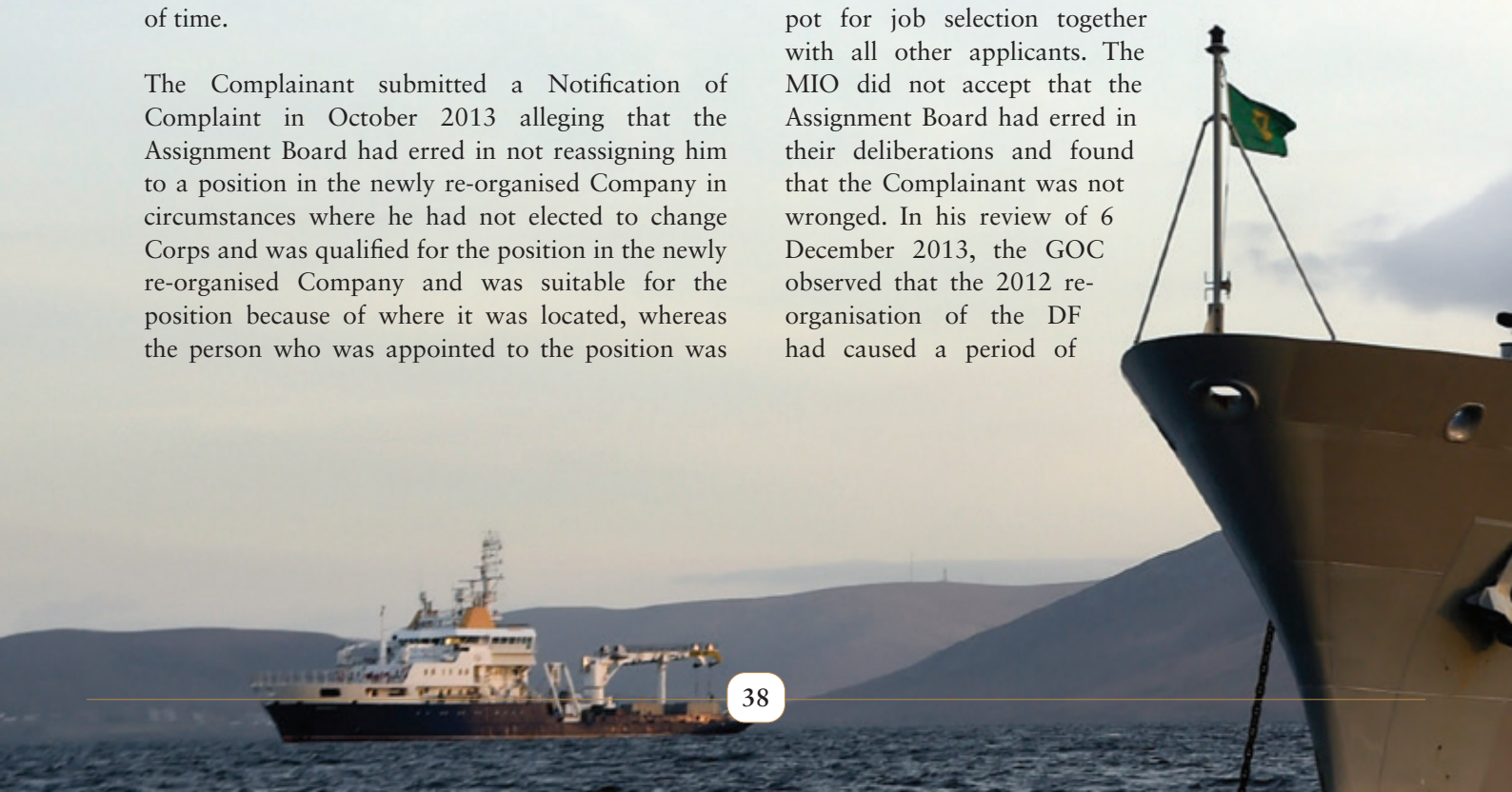
The complaint in this case concerned an alleged failure to appoint the Complainant to the position of driver in his Company, following a reorganisation of the DF, and the appointment of another person to fill that position instead.

The Complainant had joined the DF in 1985 and had worked with the RDF since 2002. At the time of the DF re-organisation in 2012 the Complainant was an assigned driver with a Company that subsequently was re-organised into a new Company, however the Complainant’s position as driver did not survive the re-organisation. The Complainant claimed that at a meeting in December 2012, his OC indicated to him that he had been appointed to the position as driver in the new Company. The Complainant’s OC denied appointing the Complainant as driver and maintained that he would not have had authority to have done so. In any event, the Complainant was formally advised about two months later that he was not to be appointed and another person was to be appointed in his place. He was also advised at this time that the decision could not be appealed because of the passage of time.

The Complainant submitted a Notification of Complaint in October 2013 alleging that the Assignment Board had erred in not reassigning him to a position in the newly re-organised Company in circumstances where he had not elected to change Corps and was qualified for the position in the newly re-organised Company and was suitable for the position because of where it was located, whereas the person who was appointed to the position was

from a different Corps and a different location. The Complainant alleged that this was in breach of section 61 of the Defence Forces Act 1954 and Admin 02/2012. The Complainant stated that he had suffered disadvantage because he had remained working with the RDF and that he faced potentially losing his RDF allowance as a result of the decision of the Appointments Board. By way of redress, the Complainant sought to be appointed to the position of driver with the newly re-organised Company.

A full internal DF investigation was undertaken with reports prepared by a MIO, the GOC and the COS between 14 November 2013 and 10 June 2014 with the result that the complaints were not upheld. The MIO’s report, with which the GOC and the COS agreed, found that section 61 should not be interpreted to mean that as part of the re-organisation all Corps positions would be prioritised for existing Corps personnel. This was not how Admin 02/2012 worked in practice. Section 61 sought to clarify whether applicants consented to transfer Corps, whereupon they went into the melting pot for job selection together with all other applicants. The MIO did not accept that the Assignment Board had erred in their deliberations and found that the Complainant was not wronged. In his review of 6 December 2013, the GOC observed that the 2012 re-organisation of the DF had caused a period of



upheaval for many serving members and their families. The re-organisation involved the significant restructuring of the DF including the disestablishment of some units and the amalgamation of others.

The ODF found it surprising that the MIO did not interview other persons who were identified by the Complainant as having been in attendance at the meeting in December 2012. However, he concluded that while the OC did not (as he maintained) have the authority to appoint the Complainant to the driver position the OC had led the Complainant to believe

that the position was his. The ODF acknowledged that when the Complainant discovered at the end of January 2013 that this was not the case, it was a great disappointment to him, and it also meant that he was out of time to appeal the issue (the timeframe for lodging an appeal having expired within 7 days).

The ODF found that it was clear that the person who was appointed to the position was entitled to transfer to another Corps, as section 61 of the 1954 Act permitted such a transfer with the consent of the transferee. The Complainant was not transferred as, in effect, his old Company had been replaced by the new Company. The ODF referred to the COS's report of 10 June 2014 finding that whilst the person appointed to the position had been based in a different location, the Company did work between the two locations, both where the person had been based prior to his appointment and where the new Company was based. The ODF found that it was reasonable, where two individuals enlisted on the same day and remained at the same rank, to proceed on the basis that the person with the lower or earlier enlistment number was deemed the senior person. The ODF noted that the Complainant's allowance continued to be paid to him post 2012 and that he had not therefore suffered any actual financial loss as a consequence of these events.

In summary, the ODF found that with the exception of the complaint in relation to the right of appeal, he was satisfied that the decision to appoint the other person to the Driver position was permissible. However, he noted that it was understandable that the Complainant found that decision harsh in light of his prior valued service with the RDF Company in question, and that greater care could have been taken in advising the Complainant on the appointment and the circumstances which favoured the colleague who was ultimately appointed.



“

By later this year all outstanding cases will have been concluded and reported on. I hope thereafter to conclude and report on all cases within 6 to 8 weeks of their referral for full investigation, save in exceptional circumstances.”

CASE SUMMARY 9

Ineligibility to participate in Potential Officers Course - Missed medical appointment - Only 2 days' notice - Unreasonable - Overseas on work at the time – Ought to have been foreseeable - Greater effort could have been made to facilitate - recommended participation in a similar course – Complaint Upheld.

The Complainant is a member of the Naval Reserve and was selected for participation in the NSR Potential Officers Course 2018. The Complainant failed to get a place on the Course because he missed a medical assessment appointment. His complaint was that he was not given enough notice of the date of the medical assessment. By way of redress he sought the place on the Course that had been originally offered to him.

The Course was advertised in April 2018 and eligibility criteria included a medical assessment within the previous 12 months. This medical classification had to be assessed on the basis of a medical examination conducted internally in the DF rather than a civilian medical examination which was otherwise sufficient for RDF personnel. The Complainant was abroad on a work-related trip on 30 May 2018 when he received notification of his medical examination on 1 June 2018, a notice period of only 2 days. He was unable to attend and following his return to Ireland he attempted to obtain another appointment prior to the end of June 2018, but no appointment could be arranged. He was advised that PDF recruits and overseas appointees took priority over RDF members for these appointments. He obtained a medical examination from his own GP at his own cost, but this was unacceptable under DF rules.

As a consequence of the Complainant not receiving his required medical classification in sufficient time, he was deemed ineligible to participate in the Course. His subsequent application to join the course shortly after its commencement and when he had attained the necessary medical classification was rejected. His complaint was that as a result of missing the Course his career in the NSR had stalled and he had no prospect of participating in a future similar course because of his age.

The Report of the MIO concluded that the Complainant was aware from early February 2018

that the course was planned for later in the year, and he had received by email dated 6 February 2018 notification of general provisional availability for medical appointments on dates in March, April and May 2018. It was not mandatory to take an appointment on one of those dates. The Complainant claimed that he was precluded in seeking the required medical examination until after the course was advertised in on 18 April 2018. The MIO concluded that the Complainant had not been wronged and the FOCNS who reviewed the case agreed with the MIO. The COS was also satisfied that the Complainant had been provided with ample notice of the requirements of the course and suitable opportunity to fulfil them.

The ODF found that while there was an opportunity for the Complainant to take up a medical appointment in March, April or May 2018, there was no requirement to do so, and no warning that a failure to do so might disentitle him to an appointment at a later date. The fact that he was offered an appointment on 1 June 2018 confirmed that this was the case. The ODF found that two days' notice of a medical appointment some 6 weeks after the advertisement of the NSR course was, arguably, unreasonably short notice, particularly where the Complainant was a Reservist with external work commitments. This ought to have been foreseeable to the course organisers and a greater effort could have been made to find an alternative date in the week or so following his return from abroad.

The ODF noted that it was reasonable for the Defence Forces to refuse to allow the Complainant to join the course after it had commenced in order to ensure the integrity of the course. In terms of redress, there was a practical difficulty as the course in which the Complainant had sought to participate had long since concluded. In upholding the complaint, the ODF recommended that steps be taken, if possible and practical, to facilitate the Complainant's participation in a similar course at the earliest opportunity.

5 Corporate Affairs

Staffing

The staffing of the ODF consists of:

- Brian O’Neill, Head of Office
- Michael O’Flaherty, Case Manager
- Lauren O’Donovan, Executive Officer

Review of Internal Financial Controls

In common with other publicly funded Offices, the ODF conducted a formal review of Internal Financial Controls in 2019. This review has been provided to the Comptroller and Auditor General. A comprehensive budgetary system is in operation and expenditure trends are reviewed on a quarterly basis in association with the ODF’s external accountants.

Data Protection

The Office of the ODF is registered with the Data Protection Commissioner.

It should also be noted that secrecy of information provisions are applied to the ODF under section 10 of the Ombudsman (Defence Forces) Act 2004 as follows:

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

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

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

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

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

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

- (a) document, part of a document, information or thing specified in the notice, or
- (b) class of document, part of a document, information or thing specified in the notice, to any person or for any purpose and nothing in this Act shall be construed as authorising or requiring the Ombudsman or a member of the staff of the Ombudsman (including an investigation officer) to disclose to any person or for any purpose anything referred to in *paragraph (a) or (b)*.



Bar Council of Ireland

The ODF is registered under the Direct Professional Access Scheme of the Bar Council of Ireland. The ODF utilises the services of barristers to review case files in appropriate circumstances.

Health & Safety

The ODF has a Health & Safety Statement in place. The Health & Safety Policy regarding the building, in which the ODF is accommodated in, is primarily the responsibility of the Department of Foreign Affairs and Trade.

Freedom of Information

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

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

What records can I ask for under FOI?

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

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

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

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

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

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

(a) the preliminary examination or the investigation concerned,

(b) the making, in accordance with this Act, of any statement, report or notification on that preliminary examination or that investigation, or

(c) proceedings for an offence under the Official Secrets Act 1963 that is alleged to have been committed in respect of information or a document, part of a document or thing obtained by the Ombudsman or an investigation officer by virtue of this Act.”

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

Protected Disclosures

The Ombudsman (Defence Forces) Act 2004 is amended by Section 20 of the protected Disclosures Act 2014 as follows :-

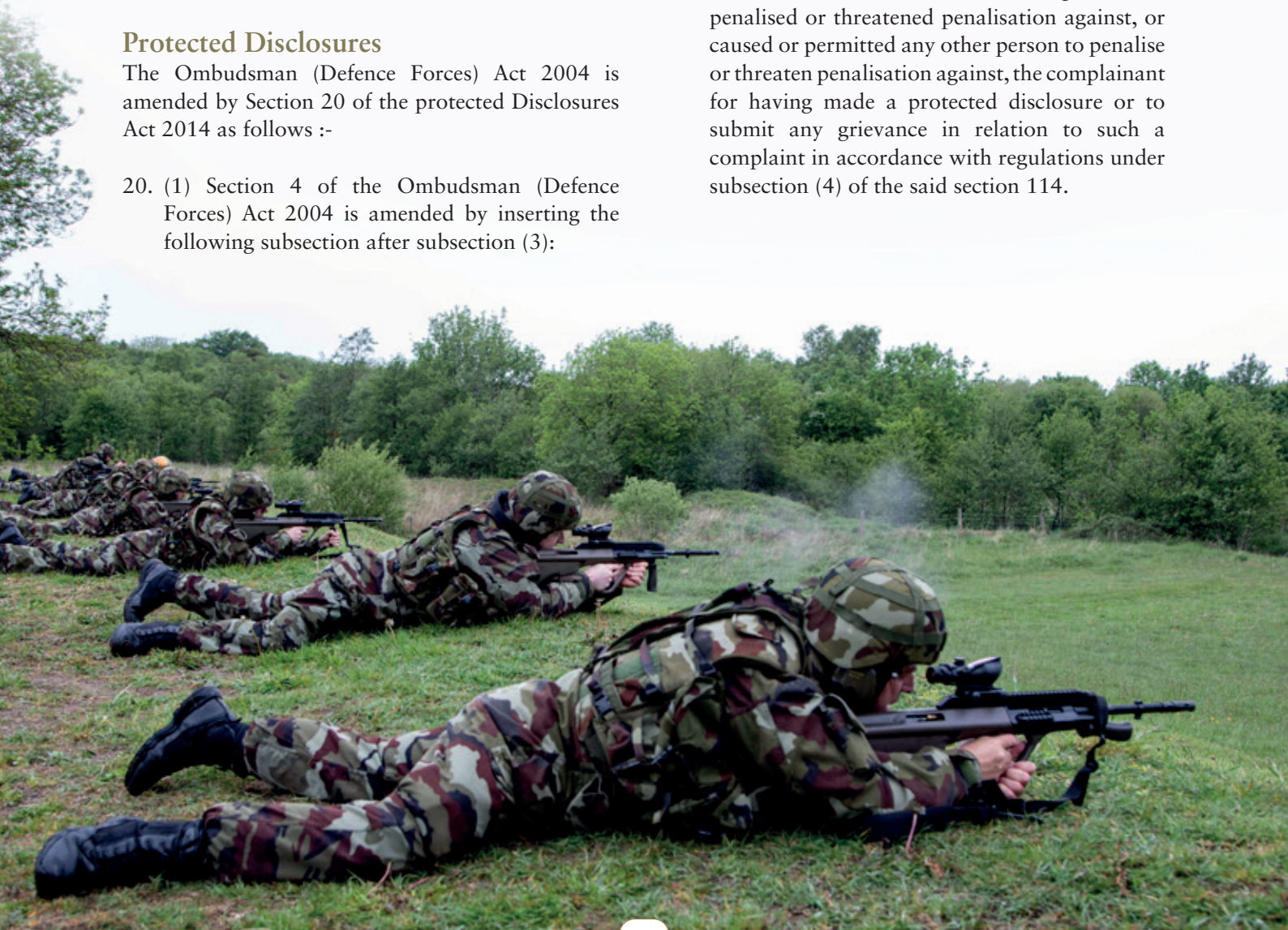
20. (1) Section 4 of the Ombudsman (Defence Forces) Act 2004 is amended by inserting the following subsection after subsection (3):

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

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

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

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





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