



### WELCOME TO THE NORTHERN IRELAND OMBUDSMAN'S DIGEST



Tom Frawley, NI Ombudsman

The Northern Ireland Ombudsman investigates complaints made by individuals who believe that public bodies in Northern Ireland have not acted properly or fairly towards them. He can investigate the actions of most public bodies in Northern Ireland including Government Departments, local Councils as well as housing and health and social care providers.

If, having investigated a complaint, he decides that a complaint was justified he can recommend that the body complained about remedies the injustice identified. He may also recommend that a body make improvements in procedures and processes so as to improve the service to the public. This is the 6<sup>th</sup> Case Digest published by the Northern Ireland Ombudsman and it provides a record of some of the significant cases he has investigated in the period October to December 2012 together with case work statistics. The digest also reports on details of other relevant developments in the field of administrative justice during that period.

### OMBUDSMAN'S COMMENTARY

I am pleased to present this case digest which I have focused on investigations concluded by me in my role as Assembly Ombudsman for Northern Ireland. I have selected those cases which I consider best illustrate the importance of the principles of good administration and how they are increasingly acknowledged as part of the fabric of public administration. In particular, the importance of 'getting it right', the first principle, is highlighted by the complaint brought to my office by a complainant on behalf of the Presbyterian Mutual Society (PMS) savers in relation to the actions of DETI in relation to the Department's responsibility for the registration of industrial and provident societies in Northern Ireland. I have included a case summary of this case in this edition of the case digest because of its potential public interest and mindful of the need for openness and transparency which is another key principle of good administration. I have been asked by a number of individuals and groups to publish my report on the results of my extended and complex investigation into the PMS complaint. However, the legislation underpinning my role does not permit such publication. That legislation is currently under review by the OFMDFM Committee and I have asked the Committee to consider including in new legislation a discretion for the Ombudsman to publish a report where he considers such publication to be in the public interest.

In this digest I have highlighted key developments which will impact on the work of my office, such as a joint initiative with PRONI in which it is intended to highlight again the importance of the principles of good administration in the context of accurate documentation and records management. I have also recorded the number of enquiries and complaints received by my office in the period April to December last year. I hope the reader will also find this information to be of interest.

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## OMBUDSMAN NEWS

### PRONI AND NI OMBUDSMAN'S GUIDANCE ON GOOD RECORD KEEPING

My Office is currently working with the Public Record Office of Northern Ireland (PRONI) to develop a joint publication on the importance of good record keeping as a fundamental part of good public administration. The guidance will be based on the PHSO Principles of Good Administration (outline below) and will include case studies from previous published NI Ombudsman investigations to illustrate the importance of each of the principles in the context of good records management.

It is anticipated that the guidance will be published in the Autumn, and launched through a series of stakeholder events across Northern Ireland. Further information will be included in future case digests and on the Ombudsman and PRONI websites.

### PRINCIPLES OF GOOD ADMINISTRATION

These Principles were established through the collective experience of public sector Ombudsmen affiliated to the British and Irish Ombudsman Association (now known as the Ombudsman Association). They have been accepted by government as representing the standard of performance expected of government officials. They are also endorsed in the DFP document Managing Public Money in Northern Ireland. The Principles serve as a benchmark of good administrative practice against which the actions and standard of service provided by a public body against which any given complaint brought to my Office can be tested. A summary of the Principles are outlined below.

#### Getting it right

- Acting in accordance with the law and with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

#### Being customer focused

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances.
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

#### Being open and accountable

- Being open and clear about policies and procedures, and ensuring that information and any advice provided is clear, accurate and complete.
- Stating its criteria for decision-making and giving reasons for decisions.
- Handling information properly and appropriately.
- Keeping proper and appropriate records.
- Taking responsibility for its actions.

#### Acting fairly and proportionately

- Treating people impartially, with respect and courtesy.
- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

### **Putting things right**

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure which includes offering a fair and appropriate remedy when a complaint is upheld.

### **Seeking continuous improvement**

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.

A full copy of the [Principles of Good Administration](#) can be accessed here.

## **JUDICIAL REVIEW**

The High Court, in relation to my powers under the Commissioner for Complaints (NI) Order 1996 (as amended) has recently issued a judgement. The background to the case is set out in the judgement and that can be accessed through the attached [link](#) . The judgement is being appealed.

## **FUTURE ADMINISTRATION AND STRUCTURE OF TRIBUNALS IN NORTHERN IRELAND**

In my role as Ombudsman I have jurisdiction to consider complaints of maladministration in relation to the administrative functions of NI based tribunals. I have noted with interest, that Justice Minister David Ford has issued a public consultation paper on the Future Administration and Structure of Tribunals in Northern Ireland.

Further information and a copy of the [consultation paper](#) can be accessed here.

## **SOCIAL SERVICES AND WELL-BEING (WALES) BILL**

The Welsh Assembly is currently consulting on the Social Services and Well-being (Wales) Bill. The Bill will make provision for a single Act for Wales that will bring together the duties and functions of local authorities in relation to improving the well-being of both people who need care and support, and carers who need support. It will transform the way social services are delivered, primarily through promoting people's independence to give them a stronger voice and control over the services provided to them.

In addition, the Bill will extend the powers of the Public Services Ombudsman for Wales to allow him to investigate complaints about privately arranged or funded social and palliative care.

Consultation on the Bill closes on 15 March 2013. Further information on the proposed [Social Services and Well-Being \(Wales\) Bill](#) can be accessed here.



ASSEMBLY OMBUDSMAN

## SELECTED CASE SUMMARIES

### DEPARTMENT OF ENTERPRISE, TRADE AND INVESTMENT

Case Reference 201000832

Issue: Oversight and governance of the Presbyterian Mutual Society

The complaint related to the oversight and governance of Industrial and Provident Societies registered in Northern Ireland under the provisions of the Industrial and Provident Societies Act (NI) 1969 (the 1969 Act). The complainant alleged that the Department of Enterprise, Trade and Investment (DETI) failed to subject the Presbyterian Mutual Society (PMS) to an adequate level of scrutiny and, as a result, failed to identify that the PMS had extended its activities to include what had been held by the Financial Services Authority (FSA) to be 'banking' activities.

Having conducted a full and detailed investigation of this complaint, I established that the role of DETI in relation to Industrial and Provident Societies is to:

- ensure that a registered Society meets the criteria for its initial and continuing registration under section 2 of the 1969 Act;
- ensure that the provisions of the 1969 Act are complied with by Industrial and Provident Societies (IPS); and
- enforce the legislation.

In relation to this complaint I considered the following Principles of Good Administration to be of relevance:

The First Principle	- Getting it Right
The Second Principle	- Being customer focused
The Third Principle	- Being open and accountable
The Sixth Principle	- Seeking continuous improvement

I found that DETI have failed to reach the standards set by the above principles and in particular that its approach to registration under the 1969 Act was inadequate. In particular, I found that in order to meet the provisions of the 1969 Act, it was incumbent on DETI to proactively examine the Annual Returns and accounts of Industrial and Provident Societies in order to satisfy itself that a Society is adhering to the limitations of activity placed on it by its rules and that it is complying with the legislative requirements imposed by the 1969 Act and further to satisfy itself that a Society is not involved in 'regulated' activities. I concluded that the examination by DETI of the PMS Annual Returns was a very limited administrative check which I regarded as being wholly inadequate for the purposes of DETI satisfying itself in relation to the above matters. I concluded that the failure of DETI to examine in detail the information provided within the PMS Annual Return, in particular the accounts information, constituted maladministration.

I found that, as a consequence of this failure in a key administrative function, DETI relied on declarations by the PMS in respect of deposit taking which, it has since become clear, were incomplete. Further, I was satisfied that, despite the relevant information being available to it, DETI failed to identify from the Annual Return that a significant element of PMS's activity involved it carrying out a deposit taking business. Furthermore, DETI failed to satisfy itself as to whether the PMS, which had made dividend or interest payments of more than £19m to its members in 2008, continued to meet the legislative conditions which had enabled it to be registered as a bona fide co-operative society.

However, I found no basis that would allow me to determine that this maladministration caused the financial turmoil that befell the PMS and which eventually led to its collapse in 2008. I did recognise that there were other parties who had supervisory and governance responsibilities in relation to the activities of the PMS namely its Board of Directors and its Auditors. As a consequence of its maladministration, I found that DETI failed to identify that the PMS was involved in 'regulated' activities which required the

authorisation of the FSA and, as a consequence, the PMS was able to continue its engagement in those activities without any intervention or sanction from DETI. I concluded that this failure by DETI played a contributory role in the PMS failure to seek authorisation for its banking activities from the FSA which, had it happened, would have qualified its members for the protection offered by the Financial Services Compensation Scheme.

In these circumstances, I was satisfied that maladministration by DETI contributed to the injustice experienced by the savers and members of the PMS that prevented them availing of that compensation scheme. However, in light of the compensation scheme established by the Executive to address the PMS crisis, I concluded that no further financial remedy for members in the circumstances was appropriate.

To ensure that in future the administrative actions of DETI in relation to its registration functions under the 1969 Act meet the Principles of Good Administration, I recommended that DETI revisit the procedures used in order to ensure that they met its statutory responsibilities and further that the Department should inform me of all measures introduced to prevent a recurrence of this maladministration. I also recommended to DETI that it should issue general guidance on the registration process which should be publicly available.

I am pleased to record that DETI have accepted my findings and recommendations. I further welcome DETI's assurances to me that it would comprehensively address the areas of concern identified in my Report and its assurance that its proposed changes would minimise the risks of the situation that arose with the PMS being repeated in any of the Industrial and Provident Societies that continue to be subject to registration by DETI. I have also been assured by DETI that additional scrutiny and testing of the registration process will be undertaken in order to provide a 'greater' degree of assurance to the public.

## **NORTHERN IRELAND PRISON SERVICE**

### **Case Reference 201100669**

Issue: Personnel Matter

The complainant in this case complained about the actions of the Northern Ireland Prison Service (NIPS). In particular, he complained that following a period of sick absence he received a Written Warning which he believed was inappropriate. He believed that NIPS failed to adhere to the Northern Ireland Civil Service (NICS) Staff Handbook and NIPS Sickness Absence Procedures 2008 when he was issued with the Written Warning and that they also failed to follow the correct procedures in his subsequent appeal.

My investigation into the actions of NIPS in regard to the handling of the complainants Written Warning and subsequent appeal identified maladministration. As a consequence of the administrative failings identified, I recommended that the Director General of NIPS should issue the complainant with a letter of apology along with a payment of £150 given the frustration, inconvenience and annoyance he has experienced due to the failings of NIPS. I also recommended that NIPS should ensure that officers tasked with decision making are aware of the need to make a record of meetings held under NIPS Absence Procedures, to record the factors which have been taken into account in reaching a decision and how each of those factors have been taken into consideration in informing a decision.

## **PLANNING SERVICE (PS)**

### **Case Reference 201100159**

Issue: Handling of planning application

This complaint concerned a House of Multiple Occupancy (HMO).

The complainants alleged that there had been inexcusable delay by PS in investigating two issues which they had raised concerning intensification of use of the HMO and the status of an adjoining property. My investigation revealed maladministration causing injustice to the complainants in respect of two issues as follows:

#### ***Issue 1 – Inexcusable delay in investigating the intensification of the HMO***

#### ***Issue 2 - Inexcusable delay in investigating the status of an adjoining property***

I upheld the complaint and found that the undue delay identified constituted maladministration as a result of which the complainants suffered the injustice of annoyance, frustration and delay.

In order to remedy this injustice, I recommended that the Acting Deputy Secretary of the Department issue the complainants with a letter of apology and a payment totalling £1500 and I am pleased to advise this recommendation was accepted.

### **Case Reference 201100423**

Issue: Handling of planning application

This complaint concerned the handling of two planning applications both for the demolition of an existing dwelling to facilitate 4 apartments with associated parking.

The complainant explained that planning application for the demolition of an existing dwelling to facilitate 4 apartments with associated parking was originally refused by PS. However, the application was subsequently withdrawn by the applicant prior to the PS decision being issued. A further planning application for the same development, with minor amendments, was submitted and granted planning permission. The complainant believed that the subsequent granting of planning approval demonstrated an inconsistent and contradictory approach by the PS.

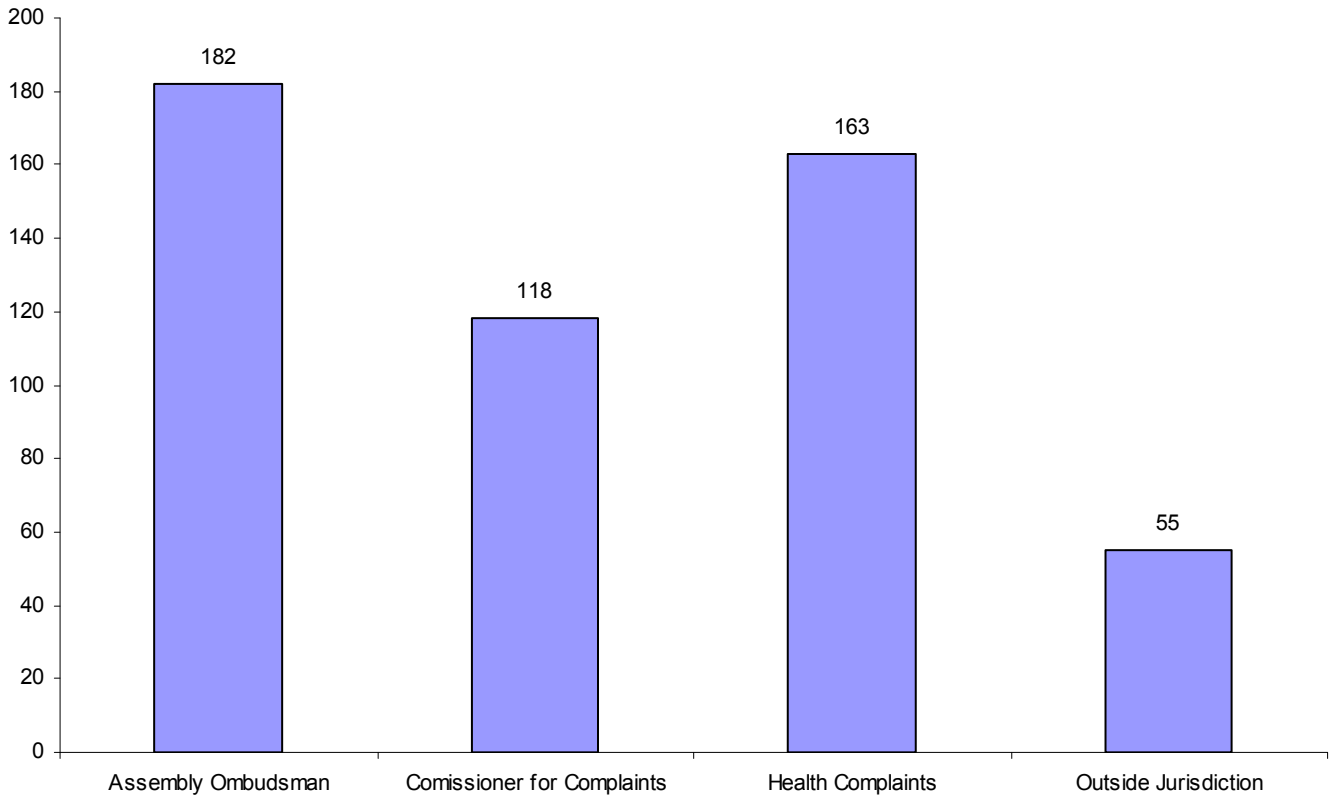
As a result of my investigation, I found that the 2009 application could not be considered the “same” as the 2007 application as there were differences in height, landscaping, location of bedrooms and kitchen/living areas and removal of 1st floor rear balconies. I was satisfied that the applications referred to by the complainant could not be regarded as identical applications and, as such, they could not be considered as evidence of PS having an inconsistent and contradictory approach in this case.

In concluding my investigation, I did not identify any maladministration on the part of PS in its handling of the planning application. In the circumstances I found no reason to challenge the merits of the final decision to grant approval.

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## STATISTICAL INFORMATION

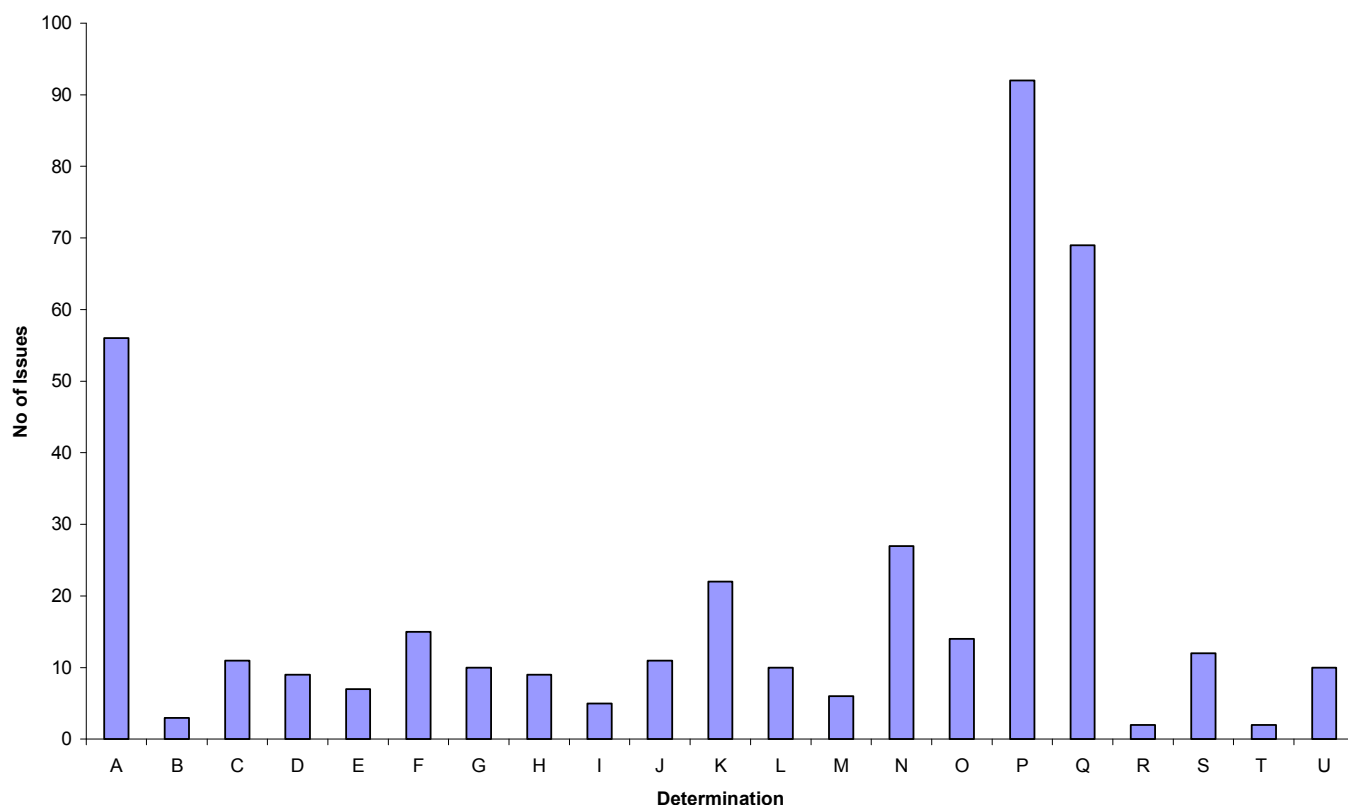
### Complaints received during the period 1 April to 31 December 2012





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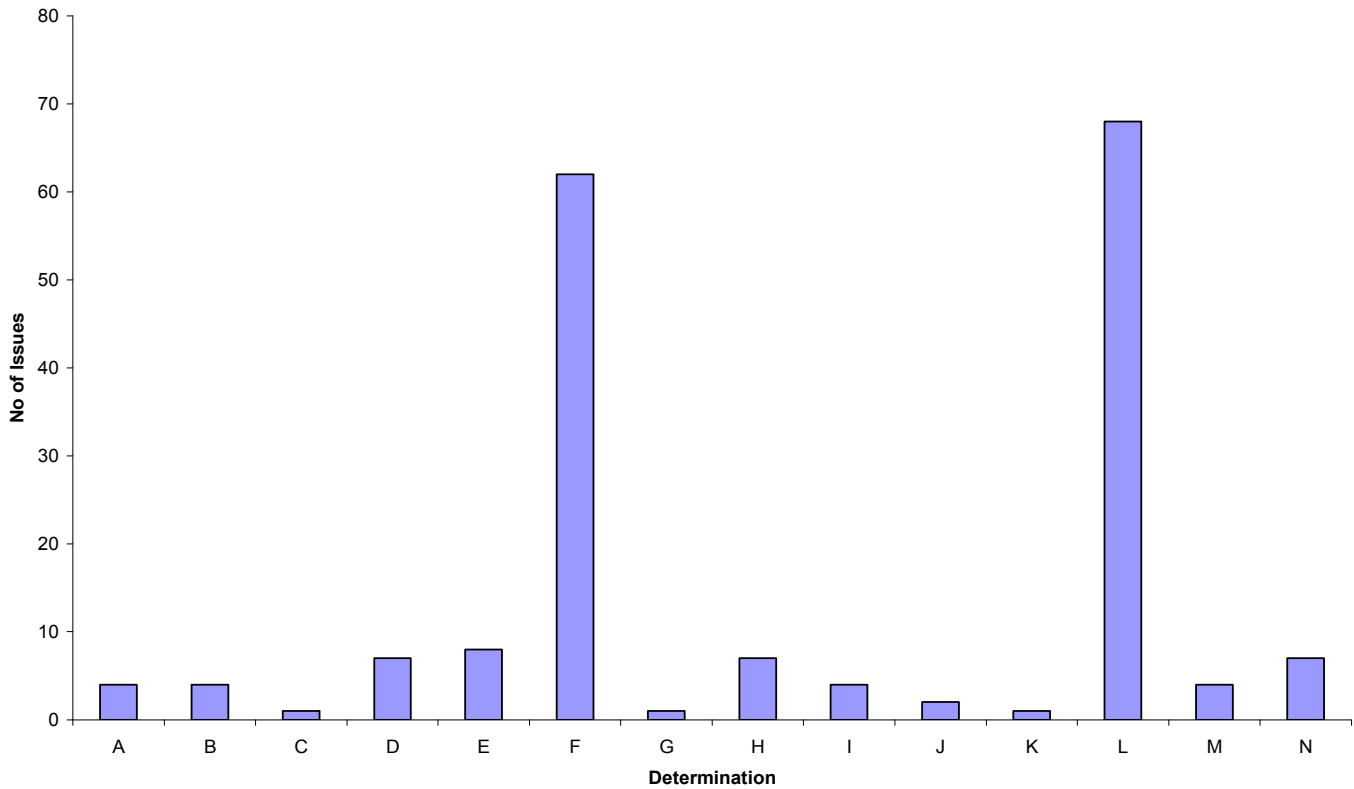
## Complaints determined in the period 1 April to 31 December 2012



Key	Determination	No. of complaints
A	Body Outside Jurisdiction	56
B	Complaint about commencement or conduct of legal proceedings	3
C	Complaint not by aggrieved person	11
D	Discontinued at Ombudsman's discretion	9
E	Discretionary decision taken by body without maladministration	7
F	Disposed of	15
G	Enquiry only	10
H	Matter Outside Jurisdiction	9
I	No evidence of injustice	5
J	No evidence of maladministration	11
K	No MLA sponsorship	22
L	Not pursued at Ombudsman's discretion	10
M	Not Upheld	6
N	Other	27
O	Out of time	14
P	Premature – body's complaints procedure not exhausted	92
Q	Premature – body's complaints procedure not used	69
R	Referred back to Convenor for his/her reconsideration	2
S	Remedy by way of legal proceedings	12
T	Remedy sought not within Ombudsman's remit	2
U	Right of appeal to a tribunal	10
<b>Total</b>		<b>402</b>



**Decisions issued in the period 1 April to 31 December 2012**



Key	Determination	No. of Decisions
A	Body Criticised	4
B	Discontinued at Ombudsman's discretion	4
C	Disposed of (without settlement) - other	1
D	No evidence of maladministration	7
E	Not pursued, at Ombudsman's discretion	8
F	Not Upheld	62
G	Out of time	1
H	Premature - body's complaints procedure not exhausted	7
I	Premature - body's complaints procedure not used	4
J	Referred back to Convenor for his/her reconsideration	2
K	Remedy by way of legal proceedings	1
L	Remedy Recommended/ Offered	68
M	Settled	4
N	Other	7
<b>Total</b>		<b>180</b>

## MORE INFORMATION

### FEEDBACK / FURTHER INFORMATION

The purpose of the case digest is to raise awareness of the work of the office, both with the members of the public that may want to use our service, and also with the public bodies that fall within the Ombudsman's jurisdiction. We hope you have found this edition of the case digest to be informative and of interest to you. If you have any comments or feedback on this edition, or any views on how we could improve future editions, we would like to hear from you. Your correspondence should be sent to the Corporate Services Manager at the address detailed below.

### HOW TO CONTACT THE NI OMBUDSMAN'S OFFICE

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