

Joint Committee on Public Petitions

20th January 2022

Office of the Ombudsman for the Defence Forces and the Ombudsman (Defence Forces) Act 2004 (ODF = Ombudsman for the Defence Forces)

1. I thank the Chairman for the invitation to appear before the committee to discuss the activities of the Office of the Ombudsman for the Defence Forces over the last number of years.
2. I will commence by stating that the relevant legislation for the work of my office is the Ombudsman (Defence Forces) Act 2004 and the Defence Act 1954, as amended. In particular my jurisdiction is governed by the provisions of the 2004 Act.

The Office of the Ombudsman for the Defence forces was created as a result of protracted lobbying by PDFORRA and as an acknowledgment of the need for a transparent, external, independent and rigorous procedure to deal with complaints across the Defence Forces. It provides military personnel with an independent and impartial external statutory complaint investigation system. It is entirely separate, distinct and independent of both the military chain of command and the Department of Defence and complies with the generally recognized principles of Ombudsmanship. In that regard, the Office is recognized by both the International Ombudsman Association and ICOAF (the International Conference of Ombuds Institutions for the Armed Forces).

3. On a comparative basis, I should tell the Joint Committee there are three models for military Ombudsman throughout the world. The first one is where the Ombudsman is integrated within the armed forces, which sometimes is referred to as an Inspector General. This is the oldest form of military Ombudsman extant and is still operational in some countries. Indeed, the Irish Defence Act 1954 contains a provision for the appointment of an inspector general. The second such model is one in which the Ombudsman has exclusive jurisdiction in relation to the operation of an external complaints process, and the third is where oversight of the armed forces is subsumed into the functions of a general Ombudsman.
4. In 2004, Ireland opted for the appointment of a civilian Ombudsman, entirely independent of the Defence Forces and the Department of Defence, the second of the three models I mentioned. We share this arrangement with Austria, Canada, Germany, Norway, South Africa, the United Kingdom and, more recently, Bosnia-Herzegovina, all of which have similar-type military Ombudsman. Independence is of

critical importance for any Ombudsman. International standards show that the primary indicators of independence for Ombudsman are being independent of government, and of those they are appointed to oversee. I am satisfied the 2004 Act contains appropriate statutory provisions providing for the independence of my office along those lines, and in my experience that independence has always been respected by the Minister of Defence, the Department and by the Defence Forces.

5. Members of the Defence Forces who wish to lodge a complaint in relation to a work related issue are entitled to utilize the decades old internal investigation process within the Defence Forces, often referred to as the Section 114 process. That process provides for the appointment of a Military Investigation Officer who will undertake a detailed inquiry into the matters complained of, including interviewing witnesses and examining relevant regulations etc. If the matter is not resolved at that stage it will then be considered by the Complainant's Commanding Officer (GOC), and a final determination will then be made by the Chief of Staff (COS). It is quite an exhaustive process and, in my experience, impressive in its detail. It leads, in the great majority of cases to a resolution, and it is always preferable, for all concerned, that complaints are resolved within the organization, if at all possible. The vast majority of serving personnel only request the ODF to intervene after the full internal investigation process, as outlined above, has been exhausted.

However, a Complainant does have an entitlement, at any stage of the internal process, or indeed by avoiding it altogether, to request the ODF to investigate.

6. I should add
 - (a) That former members of the Defence Forces submit complaints directly to the ODF without utilizing the internal Defence Forces investigation process, unless their complaint was submitted prior to their leaving the Defence Forces, and
 - (b) The ODF may investigate complaints of current and former members of the Defence Forces made against civil servants in the Department of Defence in relation to the performance of administrative functions by them.
7. The referral of a complaint to the ODF must take place within 12 months of the date of the occurrence in question, or within 12 months of the Complainant becoming aware of it, whichever later occurs. There is no limitation period in relation to complaints submitted to the Defence Forces.

Section 5 of the 2004 Act excludes the following from the jurisdiction of the ODF: -

- Security or military operations
- Organisation, structure and deployment of the Defence Forces,
- Terms and conditions of employment
- Administration of Military Prisons.

8. Section 4 of the 2004 Act sets out the types of occurrences or actions that he or she can investigate. They are actions:-
- (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,

9. The ODF is not entitled to investigate complains relating to “an order issued in the course of a military operation.”

I should emphasize that the foregoing is simply a brief summary of the main provisions of the 2004 Act in terms of the ODF’s jurisdiction, and is certainly not intended to be exhaustive.

10. I now wish to turn to some statistical data. Since my appointment in July 2018 to the end of 2020, a total of 137 complaints have been brought to conclusion by my office (plus a further 36 cases in 2021). The majority of these cases dealt with complaints in relation to promotion competitions or courses and general maladministration. Detailed statistics are provided in my annual reports.

11. Of note is the fact that the significant backlog of approximately 100 cases that existed at the time of my appointment in 2018 has been dealt with. Now, in excess of 95% of new referrals are fully investigated and reported on within 4 weeks. Indeed, in one particularly urgent case, a complaint was investigated and reported on within 24 hours. In a small number of cases unavoidable delays occur, primarily in circumstances where there is a need to seek additional information or documentation. I believe it is important to provide a speedy turnaround in complaint referrals because, generally speaking, the nature of most complaints is such that they require a quick decision, if justice is to be done.

12. More generally, with the benefit of experience gained in over three years as ODF, I have identified three areas in which I believe the service provided by my office to current and past members of the Defence Forces might be significantly improved. I have advised the Minister of Defence of my views, and I am aware that he and the Department are in the process of considering them. All would require amending legislation. They are as follows: -

- (1) Section 6(3) of the 2004 Act provides for a limitation period of twelve months in which a complaint must be referred to the ODF in order for him/her to conduct an investigation. The twelve months is measured from the date of the occurrence or action complained of (Section 6(3)(a)), or twelve months from the

date on which the Complainant becomes aware of it (Section 6(3)(b), whichever later occurs.

In an, albeit, small number of cases over the past three years or so I have found it necessary to decline to investigate because of these provisions. A number of cases fall foul of the twelve month limitation period because, for example, a complaint was submitted some months after the date of the occurrence of the action giving rise to it, and the internal Defence Forces investigation then takes a number of months to conclude, so that the referral to the ODF does not occur until possibly month fourteen or fifteen.

The current legislation affords me no discretion to extend the limitation period, no matter how deserving that might be.

- (2) The categories of complaint provided for in Section 4 of the 2004 Act (see above) may not, in my view, adequately provide for certain types of interpersonal complaints, such as, for example, inappropriate behaviour, sexual abuse and sexual harassment (to give a but a few examples). I have suggested that Section 4 be amended to include additional categories.
- (3) The Act of 2004 does not permit the ODF to conduct “own initiative” investigations. In other words, investigations that are not dependent on an actual complaint being referred to the ODF by an individual. Such a power, which I believe would be used sparingly, would be beneficial for Defence Force personnel, and for the Defence Forces as a whole. It would permit the ODF to target for investigation matters in a proactive manner, detached from any particular complaints. An example might be an investigation into an issue which repeatedly arises in individual complaints, or into systemic administration failures.

Such a power is being increasingly provided to Ombud Institutions around the globe, for example, our own (Public Service) Ombudsman, GSOC, the NI Public Services Ombudsman, the Canadian Defence Ombudsman, as well as Ombudsman Institutions in Australia and New Zealand, to name but a few.

13. Finally, it would be remiss of me not to take this opportunity to pay tribute to the men and women of Oghlaigh na hEireann, the Irish Defence Forces, for the work they have undertaken over the last, almost 2 years, in providing aid to the civil power during the Covid-19 pandemic. They have provided vital assistance in a range of activities including transport and logistics, provision of medical staff for both testing and vaccination delivery, contact tracing and mandatory quarantine. They really have been a credit to their uniform. More generally, the Defence Forces are to be congratulated and are widely admired, both at home and abroad, for their invaluable work in their many areas of operation in the Army, Air Corps and Naval

Service, and peace keeping in the Middle East, Africa and elsewhere. The dedication to duty, and the skillsets, of the men and women of our Defence Forces are indeed impressive.

Mr. Justice Alan Mahon

Ombudsman for the Defence Forces

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What does the Ombudsman for the Defence Forces do?

A neutral third-party who investigates complaints by members, and former members, of the Defence Forces.....independent of the Minister, the Department of Defence and the military authorities.

Who can make a complaint?

- Serving members of the Defence Forces
- Retired members of the Defence Forces
- Serving Members of the Reserve Defence Forces
- Retired members of the Reserve Defence Forces

Against whom?

The Ombudsman is empowered to investigate complaints about actions taken by:

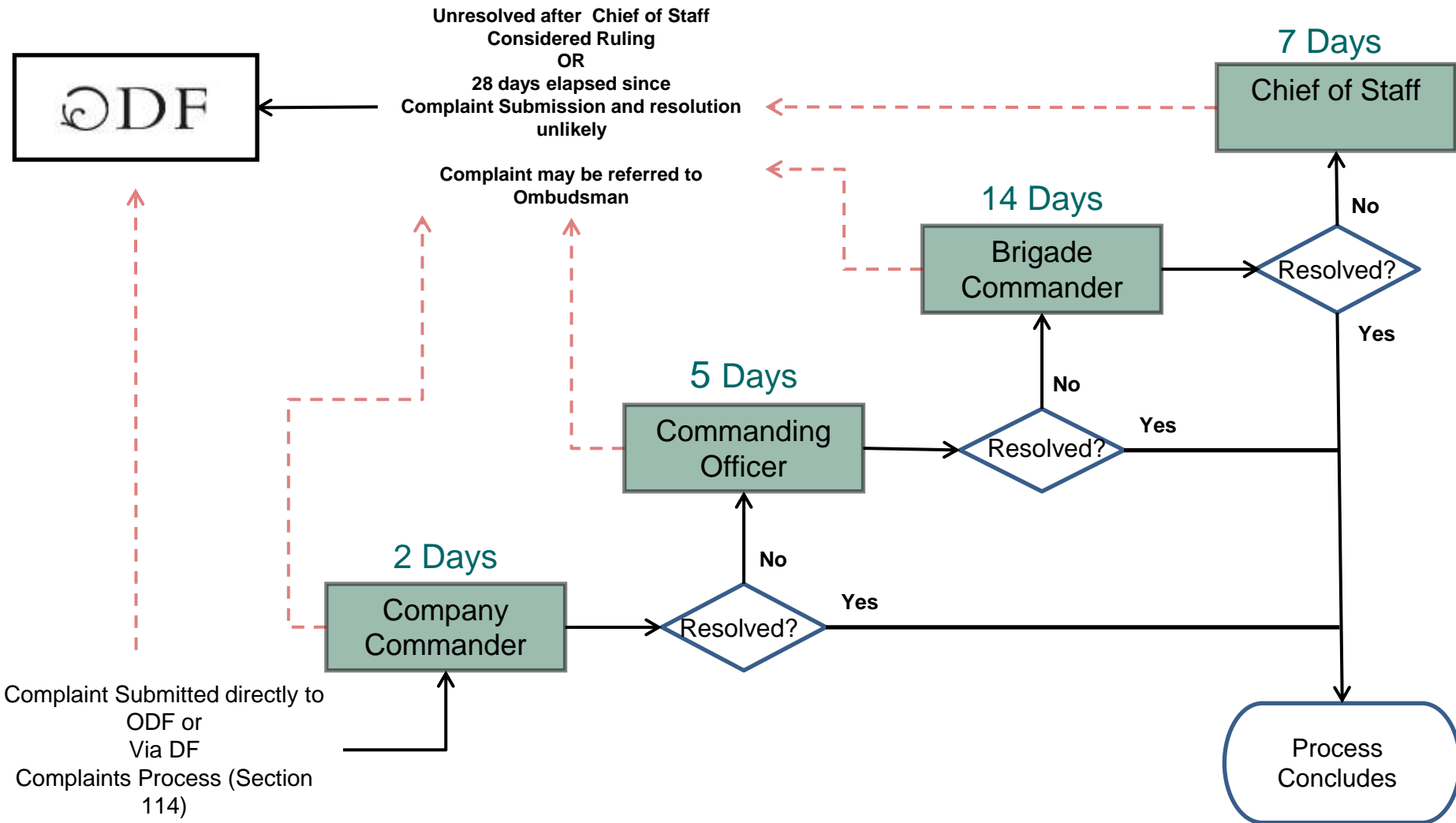
- Another serving member of the Defence Forces
- A former member of the Defence Forces who was serving at the time of the action
- A civil servant of the Department of Defence

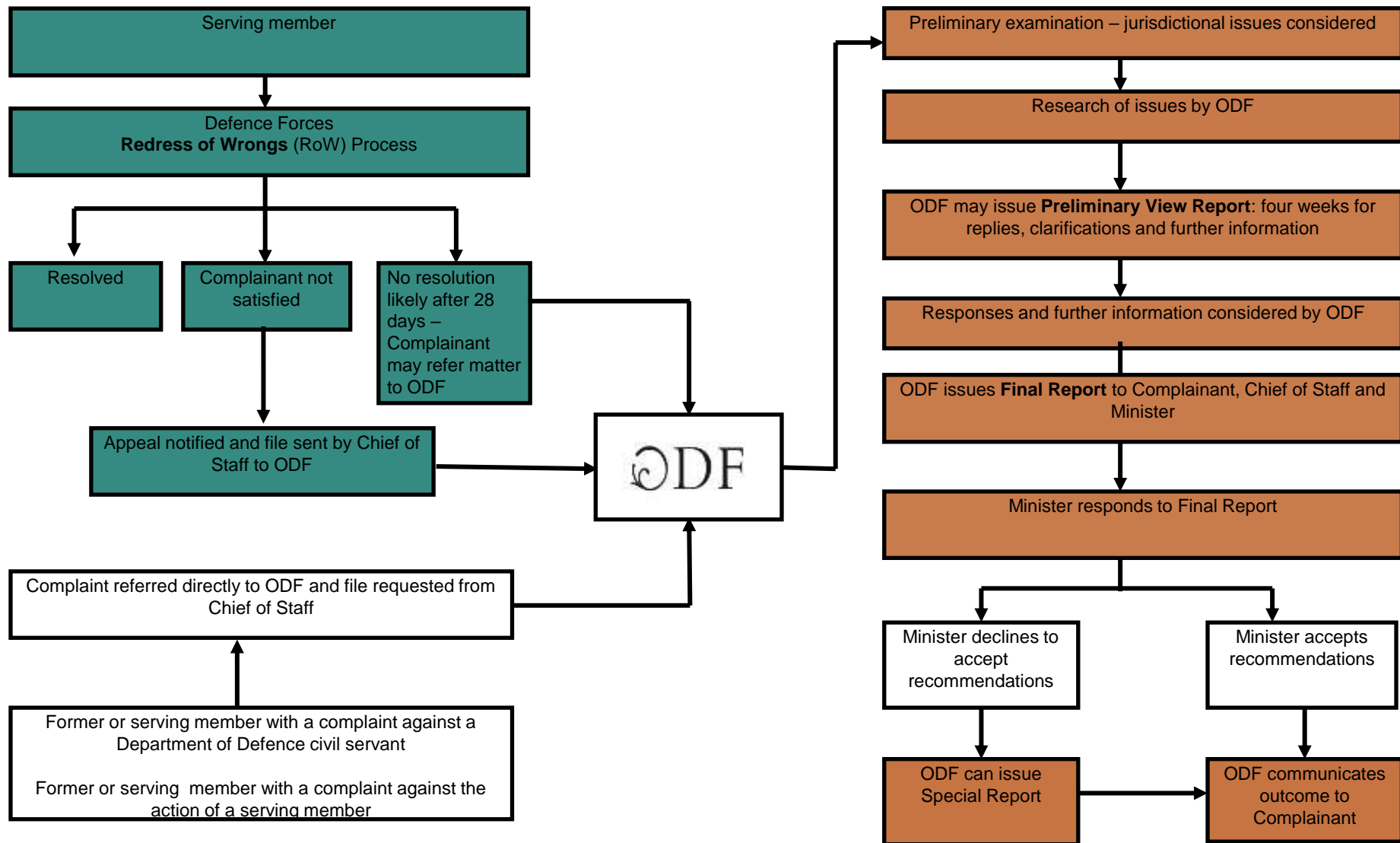
About?

Any action that may have been:

- Taken without proper authority
- Taken on irrelevant grounds
- The result of negligence or carelessness
- Based on wrong or incomplete information
- Improperly discriminatory
- Contrary to fair or sound administration

Irish Defence Forces Redress of Wrong Process





Ombudsman

“The Ombudsman shall be independent in the performance of his or her functions....”

Section 4 (1) Ombudsman (Defence Forces) Act 2004.

Are complaints made directly to the Ombudsman?

The 2004 Act does not expressly exclude the direct referral of complaints to the ODF by serving members. Almost all complaints, however, are initially submitted to the internal DF investigation process, and the great majority of these are resolved at that stage.

However, the ODF is empowered to refuse to take a direct referral from a serving member unless and until he or she has “taken all reasonable steps to seek redress”, in those cases where there appears to be a reasonable possibility of redress being granted, including through the use of the internal military Redress of Wrongs process.

Former DF members who wish to submit a complaint do so directly to the ODF.

Do complaints have to be made within a specific time?

Yes:

- within 12 months of the action happening,
- or
- within 12 months of becoming aware of the action

Can the Ombudsman for the Defence Forces investigate actions that occurred before the establishment of his Office?

No.

The Ombudsman can only investigate actions taken on or since 1st December 2005, the day the Minister for Defence signed an Order bringing the provisions of the Ombudsman (Defence Forces) Act 2004 into force.

Is the Ombudsman for the Defence Forces excluded from investigating some issues?

Yes, matters relating to the following:

- Security or military operations
- Organisation, structure and deployment of the Defence Forces
- Terms and conditions of employment (i.e. within the ambit of the Conciliation and Arbitration Scheme)
- Administration of military prisons