

Opening Statement of the Ombudsman for the Defence Forces (ODF) to Joint Committee on Public Petitions and the Ombudsmen

At the outset I would like to thank the Cathaoirleach and Members of the Committee for your invitation to me to appear before the Committee.

The 2021 Annual Report provides a breakdown of the types of complaints referred to me and investigated by me in that year. 36 Reports were produced in 2021, including one Preliminary report and one Supplemental report. The figure therefore represents 24 complete Investigations. The comparable figure for 2020 was 25 and there was a similar total for 2022.

I should emphasise that simply comparing one year's figures with another does not tell the full story. Some investigations require many weeks of intensive work, while others may only take a couple of weeks to conclude. For example, in 2022 one particular Report took almost 12 weeks – spread over a couple of months – to complete, as the 'complaint' from a single complainant involved in reality over 20 complaints, many involving completely separate facts and information. That completed Report ran to 50 pages and was the largest produced by me in the past 5 years.

Also, in the first 6 months of this year I have produced 24 Reports, almost the same number for the whole of 2022 and this suggests that the total for this year may exceed the 2021 total. This reflects the fact that complaint referrals for this current year (and this would include referrals from the tail end of last year) have so far been unusually high. Why this is so is difficult to say – possibly a clearer picture as to the reasons may emerge when this year is looked at as a whole.

One possible contributing factor is the publication of the IRG Report earlier this year, and the attendant publicity that both pre and post dated its publication.

However it is, I believe, noteworthy, that there has been a slow, albeit not significant, increase in what might be described as interpersonal complaints – including, bullying and inappropriate behaviour. In 2022 there were 8 complaints which were classed as interpersonal, and this year I expect the figure to increase again, but not significantly so. In 2021 the figure was 3.

Again, it should be stated, particularly in the context of the publicity arising in relation to the lead up to the IRG Report, and its findings, in my almost 5 years as ODF I have only had one new complaint during those 5 years of alleged sexual misbehaviour – in effect a sexual assault allegation -, and that was from a male. However, because it far exceeded the 12 month limitation period in which a complaint must be referred to the ODF for investigation (Section 6 of the 2004 Act), I was unable to investigate it.

What I have noticed over the past couple of years is a shift – but very slight – increase in what might be described as gender related complaints, including issues relating to course participation and promotion opportunities associated with maternity leave, for example.

In general terms however, complaints from female members of the Defence Forces do not appear disproportionate to their overall numbers in the Defence Forces.

In relation to the 12 month limitation period for referring a complaint to my office I have suggested to the Minister that consideration be given to extending that – perhaps to 2 years. The 2004 Act affords me no discretion to enlarge the limitation period, even in the most extenuating circumstances. In an effort to reduce the likelihood of would be complainants falling foul of the 12 month period my office has, in conjunction with the Department and the Defence Forces, introduced measures to reduce that likelihood and I believe this has significantly reduced the numbers failing to meet this deadline. An individual now lodging a complaint through the internal Defence Forces grievance management process (often referred to as the Section 114 route), and which is still the preferred route, now receives warnings from both the DF and my office that the 12 month period for referring his or her complaint to the ODF is strict and needs to be kept an eye on. I am aware that these measures have helped to save some referrals from rejection on time grounds. Importantly, a letter now issues from my office approximately 3 months prior to the expiry of the 12-month limitation period, warning the individual, that he/she must refer the complaint to my office within this remaining 3-month period if an investigation by my office is required.

Of course, those who decide to directly refer their complaint to the ODF – and this category includes all former members of the Defence Forces – continue to run a greater risk of failing to meet this 12 month deadline as they do not, for obvious reasons, receive a timely reminder of the expiry of the 12 month limitation period.

2023, to date, has seen a notable increase in the number of direct referrals from serving members of complaints to my office. This, I believe, is probably explained by the fact that there has been an increased awareness of the entitlement to directly refer. Directly referred cases impose an additional workload on my office as a lot of information, which would otherwise become available on transfer to my office of the Defence Forces internal investigative file, has to be sourced from scratch before a full investigation can begin. None-the-less the wait time for an outcome and a full Report remains usually a matter of weeks from the time when full information is available.

As the Committee will be aware the only significant power I, as Ombudsman for the Defence Forces, have, under the 2004 Act, is to make Recommendations to the Minister for Defence. Recommendations are not made in every case. In 2021, for example, I made 15 Recommendations – with some cases having more than one Recommendation.

In 2022 I made 18 Recommendations to the Minister. Of the 15 Recommendations made in 2021, 8 have been accepted by the Minister, and none have been rejected. In relation to the 18 Recommendation made in 2022, 7 have been accepted by the Minister and none have been rejected so far. In general terms, the vast majority of Recommendations are accepted by the Minister.

In 2021 approximately 35% of complaints actually referred to me were upheld or partially upheld, compared to approximately 25% the previous year. The comparable figure for 2022 is approximately 41%. These figures do not however take account of the larger number of complaints which were resolved internally within the Defence Forces.

It remains my strong view that it is important for the Defence Forces to maintain its own internal grievance management system as I believe that most complaints are capable of resolution at that level, and are in fact resolved at that level, and I also believe that most Defence Force members prefer to have complaints resolved internally where reasonably possible, but to also have the option to engage the services of the Ombudsman when preferred or where required.

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