Northern Ireland Ombudsman

ANNUAL REPORT

of the Assembly Ombudsman for Northern Ireland
and the Northern Ireland Commissioner
for Complaints

NIA 37/06-07

2006 - 2007

My Role

The title of Northern Ireland Ombudsman is the popular name for two offices:

- The Assembly Ombudsman for Northern Ireland: and
- The Northern Ireland Commissioner for Complaints.

I deal with complaints from people who claim to have suffered injustice because of maladministration by government departments and public bodies in Northern Ireland.

The term "Maladministration" is not defined in my legislation but is generally taken to mean poor administration or the wrong application of rules.

The full list of bodies which I am able to investigate is available on my website (www.ni-ombudsman.org.uk) or by contacting my Office (tel: 028 9023 3821). It includes all the Northern Ireland government departments and their agencies, local councils, education and library boards, health and social services boards and trusts, housing associations and the Northern Ireland Housing Executive.

As well as being able to investigate both the Health Services and the Personal Social Services, I can also investigate complaints about the private health care sector but only where the Health and Personal Social Services is paying for the treatment. I do not get involved in cases of medical negligence nor claims for compensation as these are matters which properly lie with the Courts.

I am independent of the Assembly and of the government departments and public bodies which I have the power to investigate. All complaints to me are treated in the strictest confidence. I provide a free service.

CONTACTING THE OFFICE

Access to my office and the service I provide is designed to be user-friendly. Experienced staff are available during office hours to provide advice and assistance. Complaints must be put to me in writing either by letter or by completing my complaint form; the Complainant is asked to outline his/her problem and desired outcome. Complaints can be made to me by email. The sponsorship of a Member of the Legislative Assembly (MLA) is required when the complaint is against a government department or one of their Agencies. If a Complainant is unable for whatever reason to put his complaint in writing my staff will provide assistance either by telephone or by personal interview. I aim to be accessible to all.

My information leaflet is made widely available through the bodies within my jurisdiction; libraries; advice centres; etc. It is available: in the Arabic, Chinese, Hindi and Urdu languages; in large print form; and as an audio cassette.

You can contact my Office in any of the following ways.

By phone: 0800 34 34 24 (this is a freephone number)
or 028 9023 3821

By fax: 028 9023 4912.

By E-mail to: ombudsman@ni-ombudsman.org.uk

By writing to: The Ombudsman
Freepost BEL 1478
Belfast
BT1 6BR.

By calling, between 9:30 am and 4 pm, at:
The Ombudsman's Office
33 Wellington Place
Belfast
BT1 6HN.

Further information is also available on my Website:
www.ni-ombudsman.org.uk

The website gives a wide range of information including a list of the bodies within my jurisdiction, how to complain to me, how I deal with complaints and details of the information available from my Office under our Publication Scheme.

ANNUAL REPORT
of the ASSEMBLY OMBUDSMAN for NORTHERN IRELAND
and the NORTHERN IRELAND COMMISSIONER for COMPLAINTS for 2006/2007

Presented to the Assembly pursuant to Article 17 of the Ombudsman (Northern Ireland) Order 1996
and Article 19 of the Commissioner for Complaints (Northern Ireland) Order 1996

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SECTION ONE

The Year in Review

THE YEAR IN REVIEW

Over the last four years I have laid my Report before the Parliament at Westminster because of the suspension of the Northern Ireland Assembly. This year therefore I am pleased that as I write following elections in March an Executive has been formed and the Assembly has convened. As Assembly Ombudsman I believe this is a significant development both for my Office and for the citizens of Northern Ireland which the Office exists to serve. This year I will lay my Report at the Assembly. It will then be possible for Assembly Committees to ask me to appear before them in order that they can scrutinise the performance of individual Departments and public bodies against the experience of individual citizens as described in this Report.

The return of the Assembly will also enable the Review of my Office which commenced in 2003-2004 to be brought to a conclusion. This will enable the Assembly to assure itself that the Office is fit for purpose and that its jurisdiction matches the landscape of public service that has changed so much since the inception of the Office in 1969. The concept of the citizen's rights underpins the work of my Office notwithstanding the statutory limitations on my role which curtail my consideration of discretionary decisions which frequently lie at the core of individual complaints. In this context the Review will enable the Assembly to consider whether some adjustment should be made in this area and whether it would be helpful if 'own initiative investigation' was added to the range of measures available to the Ombudsman.

The fact that I continue to hold two offices – Assembly Ombudsman and Commissioner for Complaints – is again reflected by the division of this Report into distinct sections, one for each of these offices and a third for Health Service complaints. This year again these sections are identified by the use of coloured margins. Last year I invited readers of the Report to provide comments and suggestions on the content, layout and use of my Report. While I did not receive a significant number of responses, those which were provided were helpful and constructive and I would like to thank those who took the trouble to comment.

Planning Complaints

In my 2005/06 Annual Report I referred to a case which caused me concern around deficiencies in the amenity standards required under current planning policy. In response to my investigation of that case the Planning Service undertook a review of its policy on residential extensions/alterations. I am pleased to record that consultation on amendment to the amenity standards was initiated in January 2007 and has now been completed and I await with interest the outcome of the process.

A second area of concern in my last Report, which has not been addressed, is the limitation on the authority vested in the Planning Service to cancel planning permission where inaccurate material information has been provided by the applicant. Closely related to this point is the issue of planning permission which effectively has been granted in error. While these situations are not common, there is no straightforward mechanism available to deal with them. I appreciate that a solution to these matters may not be straightforward, however it is important to understand that these situations create significant anxiety and concern for third parties who are affected by them.

Overall however I would comment that the introduction of an improved standard of documentation, to which I referred in my last report, has led to greater clarity in the explanations provided by the Planning Service for their decisions.

Child Support Agency

I am aware that the legislation and regulations under which the Agency operates are complex and can create significant frustration for particular parents who have been left to care for children in very difficult and challenging circumstances. I recognise that these situations can also create frustration for staff who have to operate within the provisions of the legislation. I therefore consider it to be particularly positive that I receive a limited number of cases involving the Northern Ireland Child Support Agency.

One case from the CSA this year did however cause me concern and I have included a summary of it in this Report. I found that some years after the introduction of a new methodology for the calculation of the absent parent's liability, the Agency's computer system still does not have the capability to deal with cases which existed prior to that change. This has resulted in liability being calculated differently for "old" and "new" cases. I do accept a change to the new basis for calculation may not benefit every absent parent. However, whilst I recognise that this matter lies outside the direct control of the Northern Ireland Child Support Agency, I find it unacceptable in terms of good administration that there is not a consistent and uniform basis for the calculation of liability in cases within a single Scheme.

Review of Public Administration

Preparations were in train during the year for the first major change flowing from the Review. This involved the reconfiguration of Health and Social Services Trusts. I will be particularly interested in monitoring the impact of the changes to ensure that the increased size and complexity of the organisations does not result in extended and frustrating complaints processes for individual members of the public. It is my experience that large organisations can develop complex complaints systems which reflect their size rather than focussing on the needs of the individual wishing to make a complaint. I remain very firmly of the view that complaints should be addressed at a local level but equally I consider I have responsibility to protect the individual from having to engage with a complex bureaucracy in order to have their concerns addressed.

General Health Service Providers

In my 2003/04 Annual Report I referred to my concern about an increasing number of complaints from those who had been arbitrarily removed from the patient list of their general practitioner. I also included an overview of a number of reports following my investigation of these

complaints. In one particular report I noted that the Practice had refused to implement my recommendation regarding a consolatory payment.

The legislation which governs my Office does not include a requirement for public authorities to comply with my recommendations but where an authority ignores my recommendation the aggrieved person can seek damages in the County Court. However this provision does not apply in respect of General Health Service Providers (including GP's). Therefore some complainants who have sustained injustice, distress or even humiliation as a result of the actions of GPs have not had the redress I have recommended.

At the same time as making comment about this matter in my 2003/04 Annual Report I also wrote to the then Permanent Secretary of the Department of Health, Social Services and Public Safety and outlined the detail of my concerns arising from the failure of a particular Practice to implement my recommendations. In the correspondence I suggested that the Department should introduce legislative changes to ensure compliance with my recommendations, including the possibility of financial redress.

While there has been further written communication and meetings with the Department, to date there has not been any progress to address this significant deficit in the legislation. It is therefore with some frustration that three years later I find myself having to highlight a similar complaint and with possibly a worse outcome. A synopsis of my investigation of two General Practitioners is set out in Section 4 of this Annual Report. The synopsis records the failure of the two practitioners to comply with my recommendations notwithstanding their failure to properly consider the complaint and in so doing to breach practically all the professional guidance in relation to how General Practitioners are required to participate in the investigation of complaints.

I regard this deficiency as a most serious matter which I believe undermines the statutory purpose for which my Office was created and effectively leaves the citizen unprotected in this area of public administration. I intend to pursue this matter with a view to ensuring that the potential for such an unsatisfactory outcome to similar complaints is addressed.

Early Settlement of Cases

In my last Annual Report I referred to my positive experience of reaching a number of early settlements of complaints with the Northern Ireland Housing Executive. I am happy to record that this positive approach has continued this year. It is an approach which I commend to all other bodies in my jurisdiction, while recognising that not every complaint contains the potential to be settled at an early point in the process in a way that meets the aggrieved person's specific wishes. I have included in this years Report a number of cases illustrating this approach across a range of public service organisations.

Customer Satisfaction Survey

This year my Office appointed an independent company to undertake a satisfaction survey of key stakeholders who had engaged with my Office. The stakeholder groups covered by the survey included complainants, elected members, public bodies and my own staff. The Survey produced very positive results and demonstrated that a significant proportion of people seeking the assistance of the Office appreciated the difference between the quality of service provided by the Office and the actual outcome of their compliant. Importantly, the values that are

most highly rated by those outside the Office were the independence and impartiality of the Office. These are the values that I continue to place at the heart of the work of the Office. The Survey also identified a number of areas where I can improve the quality of the Office's approach to complaints. The findings will also inform future reviews of the processes that underpin the work of my Office.

Staffing

The staff of my Office continue to be mainly recruited by secondment from Northern Ireland Departments and their Agencies. During 2006/07 the Office completed a recruitment exercise to fill a vacancy which arose due to the retirement of the Director of Investigations - Health. This competition was open not only to Civil Servants but also to eligible staff currently employed by other public bodies outside the Civil Service. The successful candidate was recruited from a Health & Social Services public body. The number of staff in post at 31 March 2007 was 21. We continue to strive to ensure that the whole organisation works closely together, communicates effectively and shares knowledge, efforts which I hope benefit all staff and, in turn, those who depend on the service we exist to provide.

I would wish to express my gratitude to all the staff of my Office, without whose commitment, enthusiasm and expertise I simply could not fulfill the role to which I have been appointed.

Conclusion

Northern Ireland has embarked on a period of significant change through the restoration of the Assembly and the impact of structural re-organisation of the public sector through the implementation of the Review of Public Administration. At such a time there will be inevitable pressure on all public servants as they come to terms with new demands, new organisations and developing initiatives. A key factor in securing the public's confidence during this period of change will be meeting the challenge of delivering public services of the highest standards to the citizen.

I believe that a reading of my report will serve to illustrate that through complaints real improvements can be made to the delivery of public services. That should provide some assurance to the public, their elected representatives and the staff of public bodies alike.

Fig 1.1: Number of contacts 2006/07

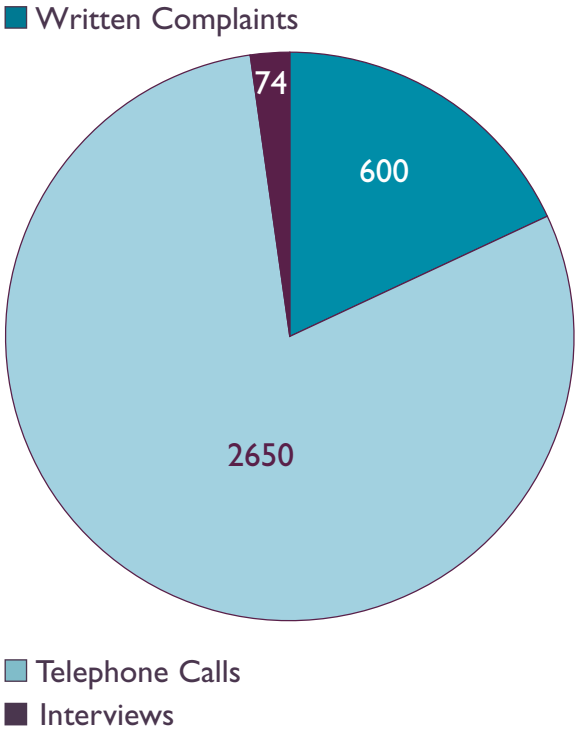


Fig 1.2: Breakdown of Telephone Calls to the Office 2006/07

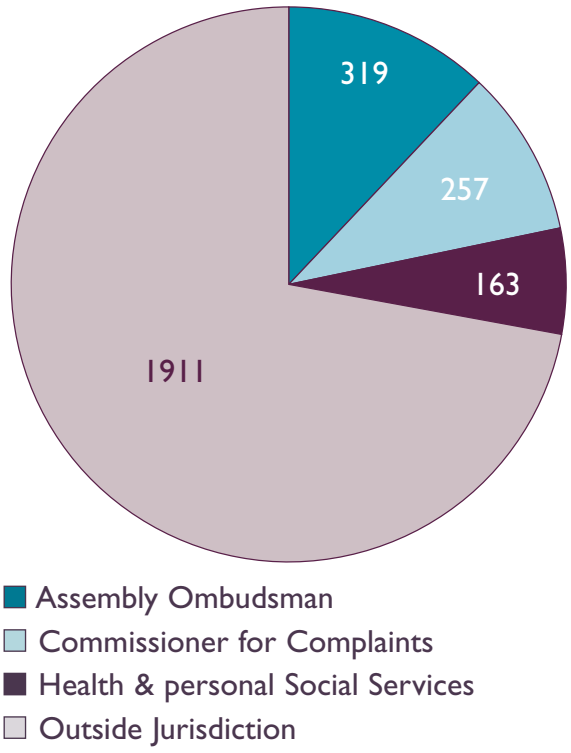


Fig 1.3: Breakdown of Interviews in the Office 2006/07

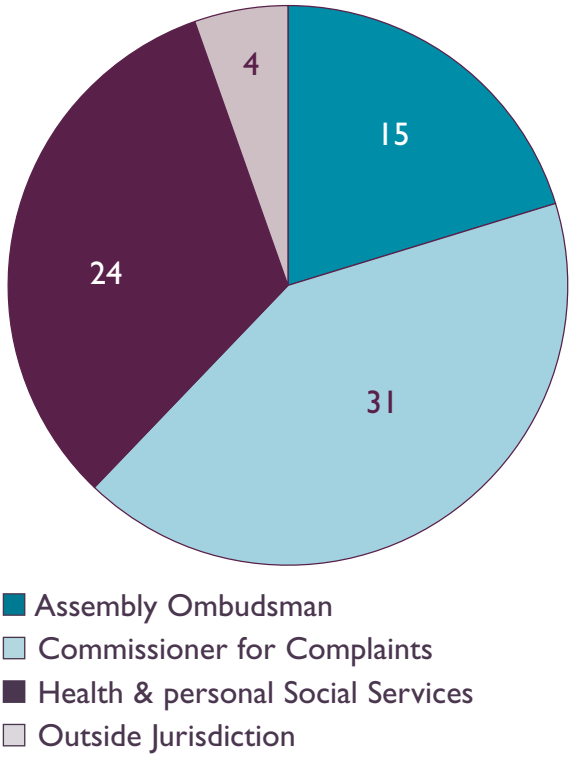


Fig 1.4: Breakdown of written Complaints to the Office 2006/07

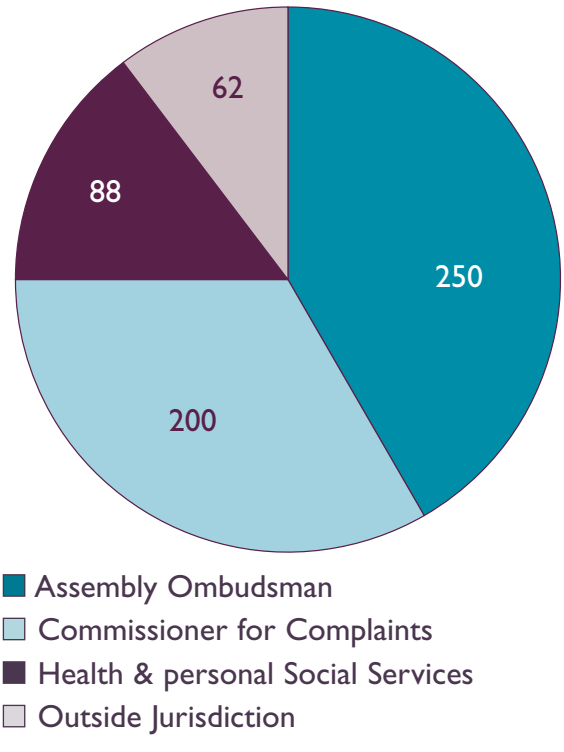


Fig 1.5: Breakdown of written complaints by Local Council Area in which Complainant Resides

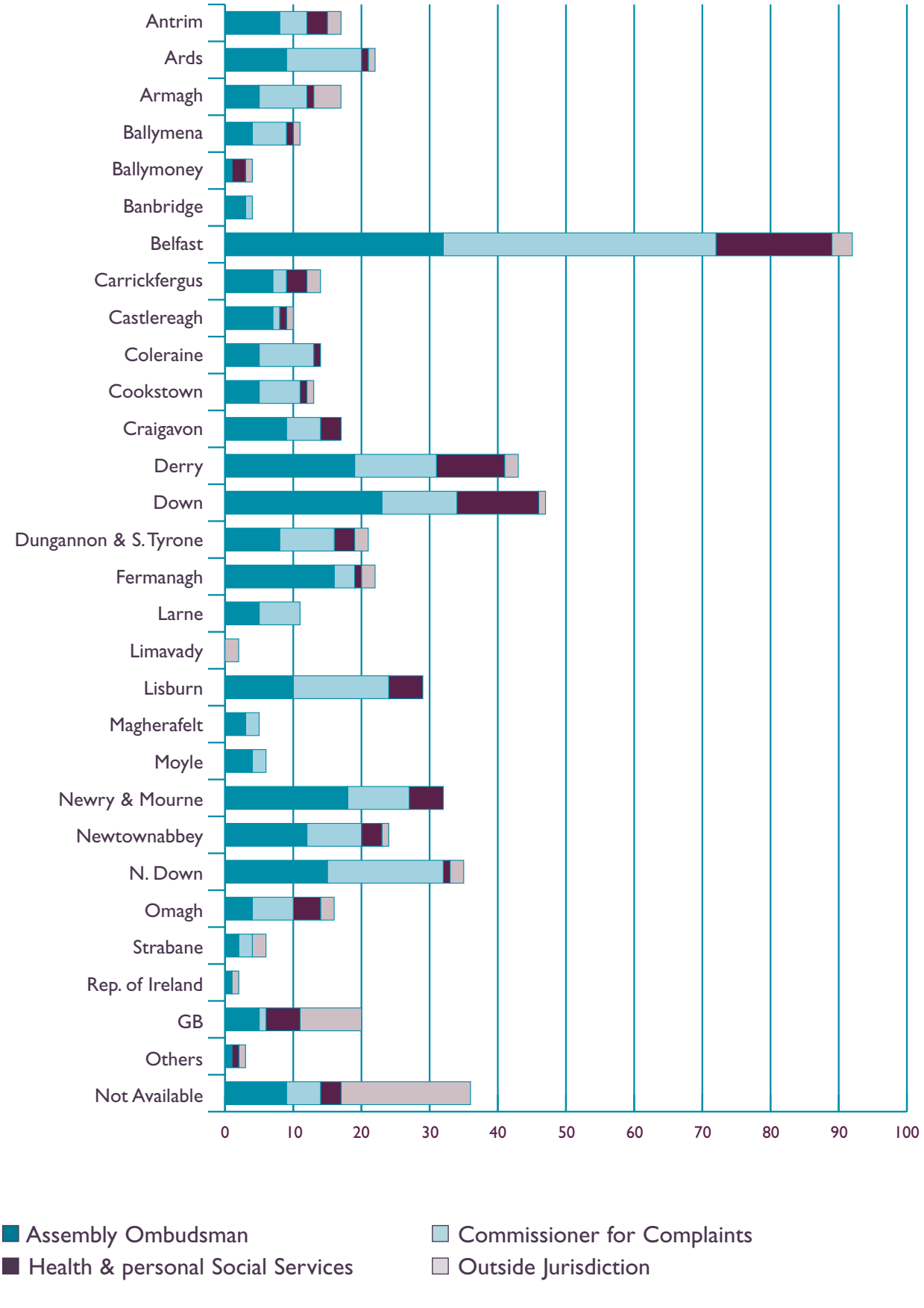


Fig 1.6: Completion Times for Investigation of Written Complaints

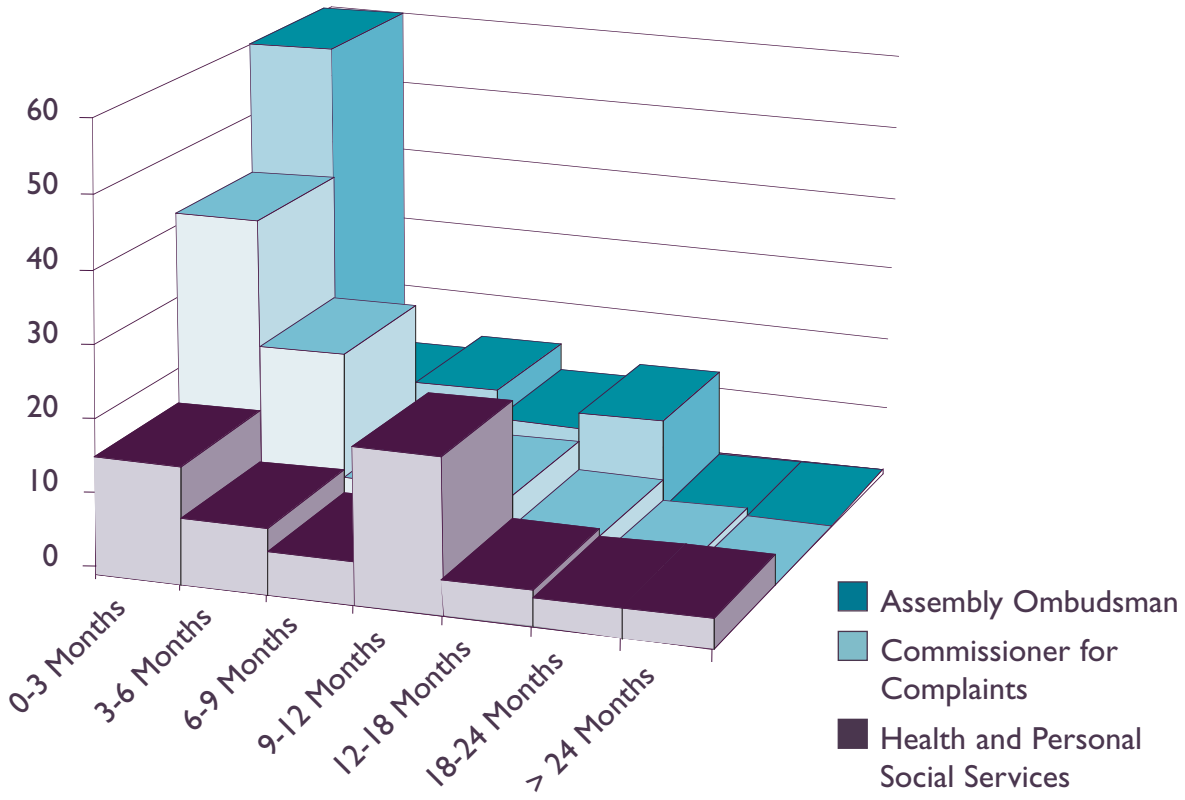
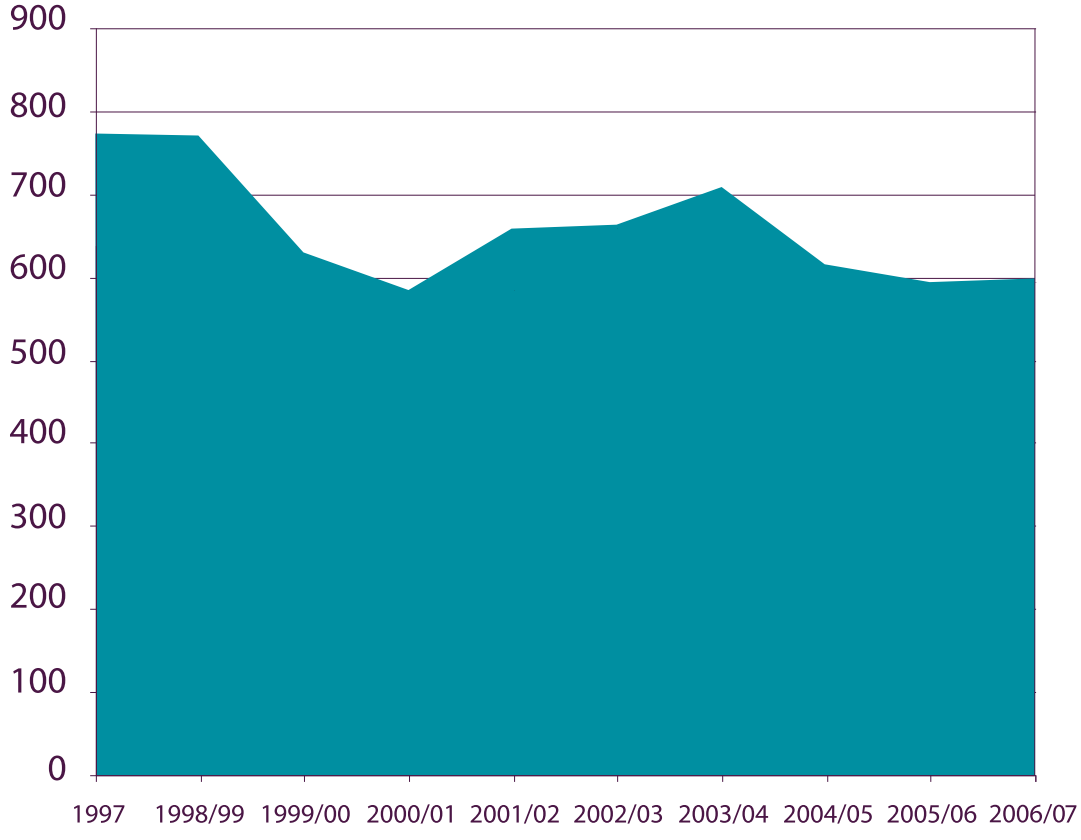


Fig 1.7: Written Complaints Received by the Ombudsman 1997 – 2006/07



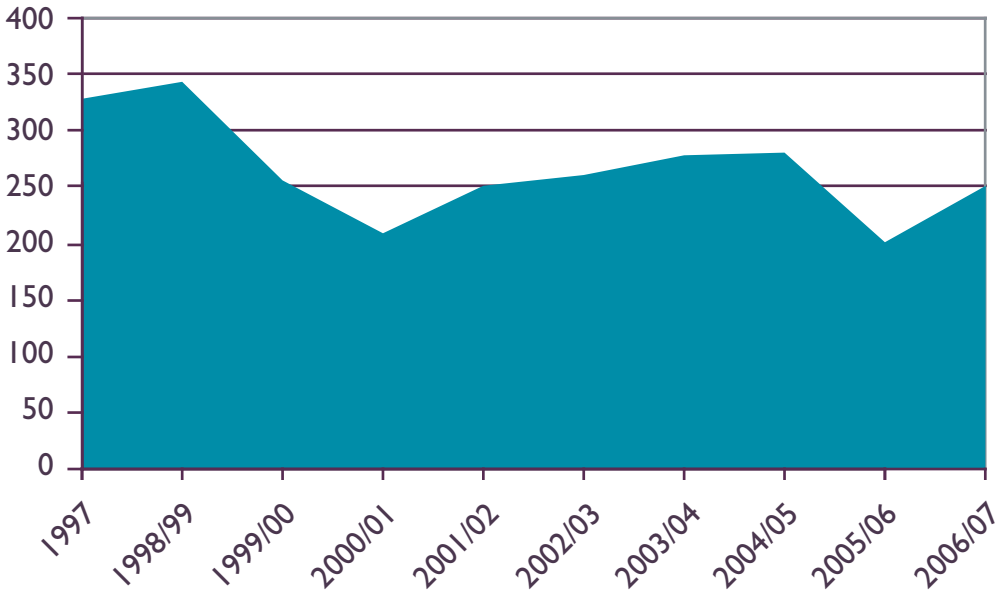
SECTION TWO

Annual Report of the Assembly Ombudsman for Northern Ireland

WRITTEN COMPLAINTS RECEIVED IN 2006/07

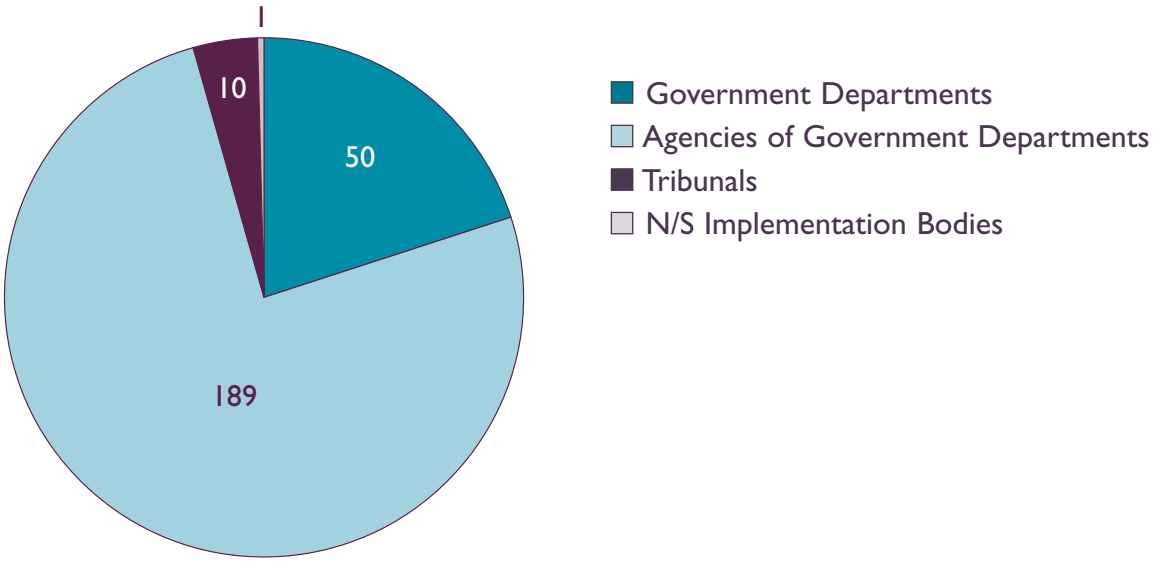
As Assembly Ombudsman for Northern Ireland I received a total of 250 complaints during 2006/07, 49 more than in 2005/06.

Fig. 2.1: Complaints to the Assembly Ombudsman 1997 - 2006/07



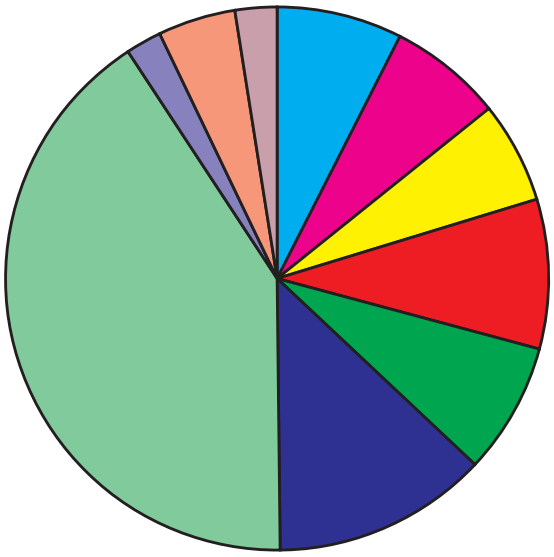
Under the Ombudsman (Northern Ireland) Order 1996, complaints made to me against government departments and their agencies required the 'sponsorship' of a Member of the Legislative Assembly (MLA). Of the 250 complaints received this year 130 were submitted in the first instance by an elected representative and 120 were submitted directly to me by complainants.

Fig 2.2: Written Complaints Received in 2006/07 by Authority Type



When their respective agencies are included, the Department of the Environment and the Department for Social Development attracted most complaints, 121 against the former and 44 against the latter. Of these 158 related to their agencies, with the Planning Service (95) and Social Security Agency (24) giving rise to the largest number of complaints. In all 189 of the 250 complaints received in 2006/07 related to the agencies of government departments.

Fig 2.3: Written Complaints Received in 2006/07 by Complaint Subject



- Agriculture
- Benefits
- Child Support
- Environment
- Miscellaneous
- Personnel
- Planning
- Rates
- Roads
- Water

The Caseload for 2006/07

In addition to the 250 complaints received during the reporting year, 33 cases were brought forward from 2005/06 – giving a total caseload of 283 complaints. Action was concluded in 256 cases during 2006/07 and of the 27 cases still being dealt with at the end of the year 3 were at the Validation Stage and 24 were under investigation.

Table 2.1 Caseload for 2006/07

Cases brought forward from 2005/06	33	
Written complaints received		250
Total Caseload for 2006/07		283
Of Which:		
Cleared at Validation Stage		168
Cleared at Investigation Stage (without a Report), including cases withdrawn and discontinued		62
Settled	4	
Full Report issued to MLA		22
In action at the end of the year		27

The outcomes of the cases dealt with in 2006/07 are detailed in Figs 2.4 and 2.5.

Fig 2.4: Outcomes of Cases Cleared at Validation Stage

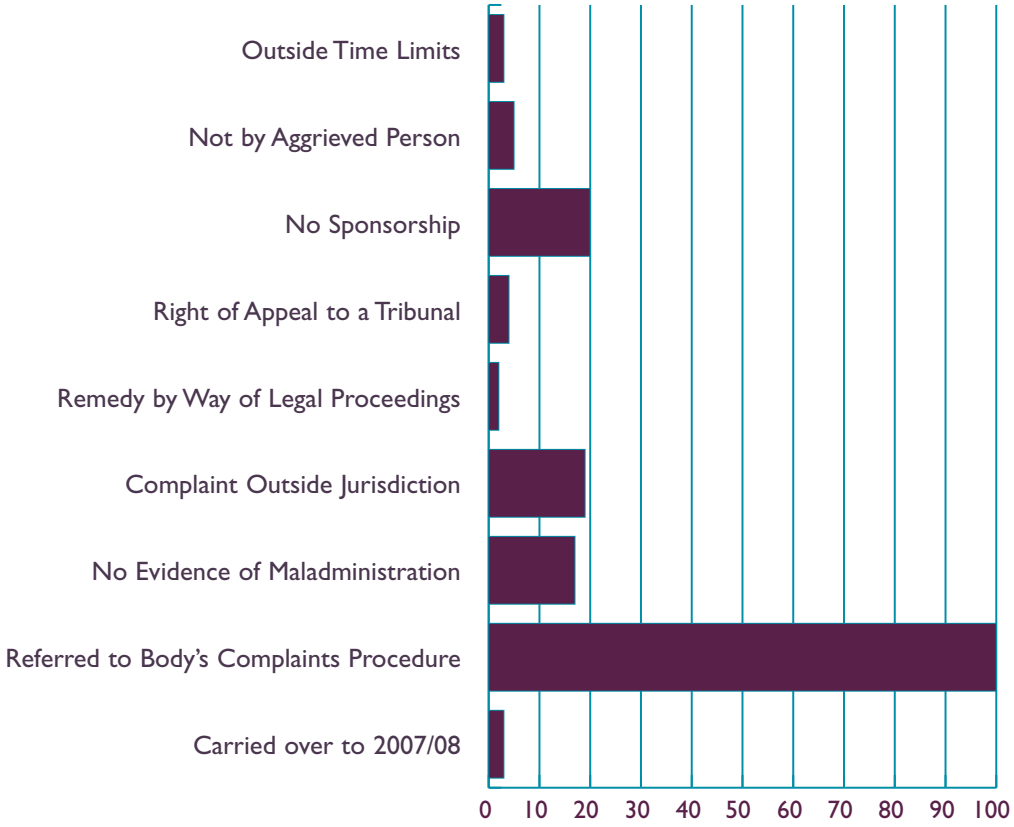
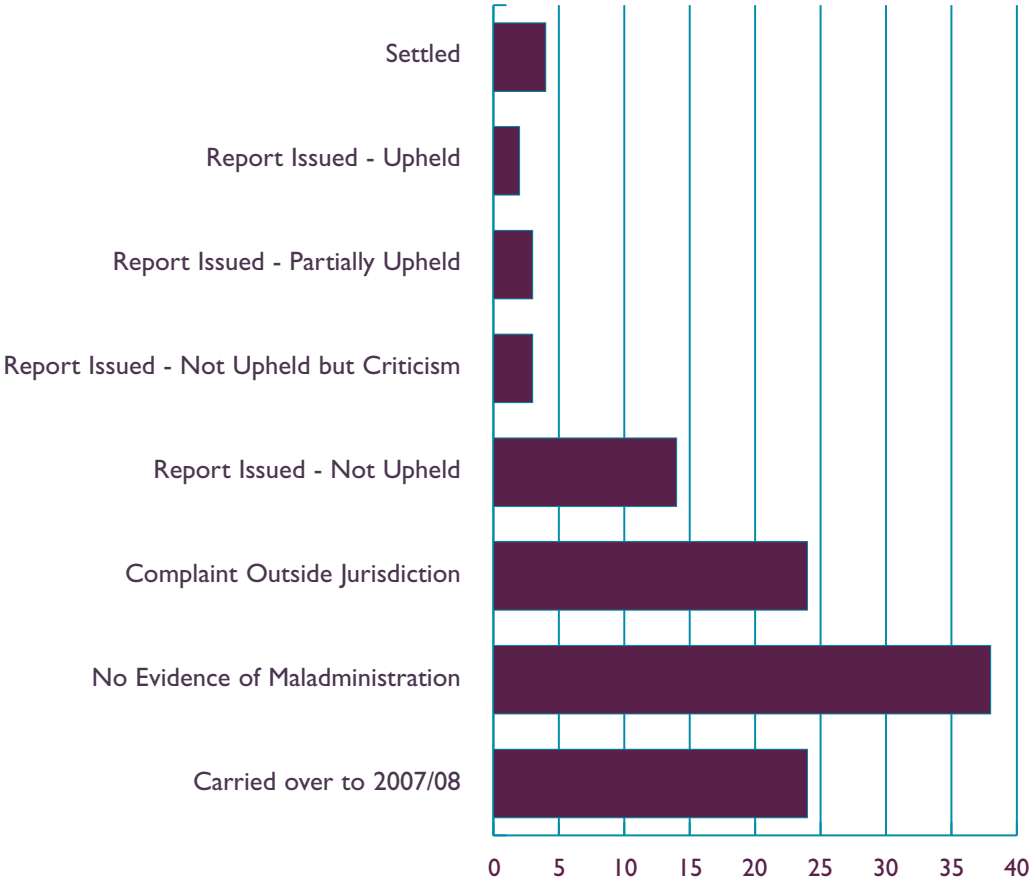


Fig 2.5: Outcome of cases Cleared at Investigation and Report Stages



The average time taken for a case to be examined and a reply issued at Validation Stage was 1 week.

The average time taken for a case to be examined, enquiries made and a reply issued at Investigation Stage was 12 weeks.

The average time taken for a case to be examined, enquiries made and a full Report issued at Report Stage was 43 weeks.

22 reports of investigations were issued in 2006/07. Of these cases: 2 were fully upheld; 3 were partially upheld; 3 were not upheld but I criticised the Body complained against; and 14 were not upheld. In all of the cases in which I made recommendations for action(s) by the body complained against these recommendations were accepted by the body.

Table 2.2 Recommendations in Reported Cases

Case No	Body	Subject of Complaint	Recommendation
200500388	Rate Collection Agency	Housing Benefit Claim	Overpayment of £433.42 written off
200500608	DARD	Cattle Subsidy Claim	Written apology
200500823	Child Support Agency	Child Support Maintenance	Written apology & consolatory payment of £100
200500971	Child Support Agency	Handling of Complaint	Written apology & consolatory payment of £275
200501081	DARD	Farm Subsidy Appeal	Written apology

SELECTED SUMMARIES OF INVESTIGATIONS

DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT

Processing of Single Farm Payment application

The complainant stated that he had applied under the Single Farm Payment (SFP) scheme for consideration of force majeure/exceptional circumstances under the category of 'long-term professional incapacity of the farmer' and he submitted medical evidence which confirmed his ill health. He asked the Department to calculate his SFP using the earlier reference period from 1997 to 1999. The Department refused his application and his SFP was based instead on the established reference period from 2000 to 2002. At the appeal hearing the Independent Appeal Panel (the Panel) recommended that his appeal be upheld but the Department ignored the Panel's recommendation and allowed only part of his appeal. He complained that the Department should have fully accepted the Panel's decision.

During 2006 I received a number of complaints in relation to the Department's processing of SFP cases. Where there has been recourse to an appeal procedure within a decision-making process, such as the SFP scheme, my role in a subsequent investigation of the complaint is to satisfy myself that the individual has had access to the appropriate procedure and has been properly and fairly treated. In previously investigated cases I established that the Department is required to strictly administer the SFP scheme which was introduced in 2005 under the European Community Council Regulation 1782/2003. I also established that there is no automatic right to have an alternative period of 1997-1999 used in the calculation of the SFP. However, if a farmer believes his production levels were adversely affected in each of the established reference period years 2000-2002 due to a 'force majeure' circumstance, that is, an unforeseen event, he can ask the Department to base his SFP on the earlier period.

In my investigation I established that the role of the Independent Appeal Panel, as set out in legislation, is to review the Department's decision on the case, take account of the relevant legislation and policy, and make a recommendation to the Minister on the appropriate action. The final decision on a case, however, rests with the Minister.

In the complainant's case I noted that the Department took the view that the Panel, when it recommended that the appeal be allowed, had failed to consider the UK policy relevant to this type of case, namely, that the force majeure/exceptional circumstances must be satisfied for each year of the reference period from 2000 to 2002. The Department provided cautionary advice to the Minister on this matter. In the cautionary advice the Department accepted that the complainant's incapacity had begun prior to 2000; that his illness was of a degenerative nature; and that in late 2000 he had become wheelchair bound. The Department therefore decided that his appeal could be allowed in part by removing the year 2001 from the calculation of his SFP. However, his illness could not be considered as unforeseen in the years 2000 or 2002 and therefore all 3 years, that is, 2000, 2001 and 2002 had not been affected. Consequently, the earlier reference period could not be used to calculate his SFP. I noted from previous

investigations that the Department had been consistent in its application of the agreed UK policy. In the event the Minister accepted the Department's recommendation and the complainant's appeal was partly allowed.

Overall, I was satisfied that the complainant's case had been thoroughly reviewed and I did not identify any maladministration by the Department. Consequently, I did not uphold the complaint. **(200600267)**

Disallowance of Farm Subsidy Appeal

The complainant stated that he posted his 2004 Integrated Administration and Control System (IACS) application form to the Department on 16 April 2004 by first class mail. When he did not receive his farm subsidy payment he telephoned the Department in June 2005, and he was subsequently advised that his IACS form had not been received and therefore no subsidy payment could be made to him. The complainant stated that he had invoked the three-stage Department appeal process in relation to this decision and at the final stage the Independent Appeal Panel upheld his appeal. He complained that, despite the successful outcome of his appeal, the Department overruled the Appeal Panel's decision and had refused to issue him with his subsidy payment.

My investigation established that the closure date for the submission of a 2004 IACS application form was 17 May 2004, and therefore when the complainant contacted the Department in June 2005, it was unable to accept a late IACS application from him. The complainant stated that 2004 was the first year that he had posted his IACS application form to the Department, having hand delivered the form to its office in previous years. The Department stated that exhaustive searches had taken place but there was no record that the 2004 IACS application had been received.

I established that it is the Department's normal practice to issue acknowledgment letters to farmers to confirm the receipt of subsidy applications regardless of whether they are hand delivered or received through the postal service. Moreover, the complainant would have been familiar with this practice having submitted a number of subsidy application forms in 2003. In addition, the IACS Applicants Guide issued to farmers specifically advised them to contact the Department immediately if they failed to receive an acknowledgement letter within 15 days of having posted an application form. The complainant had not taken this action.

My investigation confirmed that the Independent Appeal Panel's role is confined to reviewing the Department's initial subsidy decision and making a recommendation to the Department Minister. However, significantly, the final decision on the appeal rests with the Minister. I noted that the Panel's recommendation, that the complainant's appeal be allowed, was based on its view that, on the balance of probabilities, the IACS application form had been received by the Department. In my investigation of the complaint I did not see any evidence to support this finding by the Panel.

I noted that it was the Department's view that the Panel's finding did not accord with the established UK policy in relation to the submission of documents and it brought this issue to the Minister's attention. The Minister subsequently rejected the complainant's appeal on the basis that the Department had no record of having received his 2004 IACS application and that the complainant had no proof that his application had been received by the Department.

Overall, in my investigation I found no evidence of maladministration by the Department in the handling of the complainant's appeal. Consequently I did not uphold the complaint. **(200600335)**

Handling of Farm Subsidy Application

This case centred on the notification of herd inspections in connection with the complainant's farm subsidy claim. The complainant was permitted to postpone a cattle inspection for one week because of work commitments.

During the following week, before the inspection took place, he registered ten calves. He was told by the veterinary department that they were accepted as late notifications of birth (LNO). The practice of late notification had been acceptable for some years. Following the inspection, the inspector informed him that, as the animals had not been registered within 27 days of birth and before the notification of inspection, they could not be accepted. They were therefore classified as no notification of birth (NNO) and penalties were applied. The complainant maintained that two sets of guidelines were applied at the time of the inspection, the veterinary department allowed up to 6 months to register the date of birth while the inspection department could not accept registration after 27 days. The complainant also felt very aggrieved at the unfairness of the system of random notification of inspections and felt the imposition of a penalty implied that he had attempted to defraud the Department. My investigation into this complaint involved examination of the relevant EU regulations which, I was satisfied, the Department had a duty to apply; the nature of the concession allowed by the Department for late notification of cattle births; the information provided to producers to advise them of all relevant rules, arrangements and conditions and the extent to which the Department might exercise discretion in relation to penalties.

I had some sympathy for the complainant given that, as a part-time farmer, he had to deal with two separate sets of arrangements relating to schemes operated by the Department. My examination of the considerable volume of documentation detailing the actions of the Department, in relation to the matters complained of revealed maladministration in the following areas;

- failure by the Department to provide clear information and guidance to producers as to the significance of the date of notification of on-farm inspections in relation to the identification and registration of animals and its effect on associated subsidy;

- the absence of fully effective coordination in the administration of the Cattle Identification and Registration and Beef Special Premium schemes.

These failures caused the complainant the injustice of disappointment and frustration in relation to the temporary conferring of LNO status on his animals and the sanction of loss of payment subsequently imposed. However, I took account of the fact that the complainant had claimed previously under the Beef Special Premium Scheme and had a familiarity with the requirements of the scheme which would not have been the case had he been a first time claimant. Crucially, there was also no doubt that he was not, on this occasion, legally entitled to the subsidy and the Department had no discretion in relation to the imposition of a penalty.

In the circumstances, I considered that the Permanent Secretary of the Department should issue a written apology in respect of the administrative failings which I identified. **(200501081)**

DEPARTMENT OF THE ENVIRONMENT

PLANNING SERVICE

Processing of Outline and Reserved Matters Applications

This was a multi-element complaint concerning the Planning Service (PS) handling of a proposal for a dwelling to the rear of the complainant's home.

One of the main issues was that the complainant believed that he was denied the opportunity to have his objections recorded and considered at outline application stage. The complainant received a letter from PS informing him of receipt of the planning application. At this stage, he chose to discuss his concerns with the applicant but unfortunately this failed to produce a satisfactory outcome. The complainant subsequently visited the Planning Clinic, without appointment, and spoke to the planning officer in attendance. The complainant stated that, although the officer listened to his objections, he did not advise submitting his objections in writing. Although the officer recalled meeting the complainant he had no recollection of the substance of the meeting and there was no written record of their discussion. Without a written record of the interaction between the complainant and the planning officer and in the absence of independent corroborating evidence from either party it was difficult for me to make a finding on this matter. I was critical of the omission of a record in this case and recommended that staff were instructed to record and keep on file a brief record of those discussions with members of the public attending Planning Clinics. However, I did not find that PS had denied the complainant the opportunity to have his objections recorded and considered and I did not uphold this aspect of the complaint.

With regard to the complainant's allegation that, at outline stage, an old Ordnance Survey map had been submitted by the applicant's architect to PS which failed to show the existence of his home, I found that the complainant was correct. However, I was satisfied that PS was fully informed as to the up to date situation "on the ground" prior to forming an opinion on the application.

The complainant also believed that, in considering the Reserved Matters (RM) application PS had failed to address his concerns in a fair and balanced way and made a decision without due regard to the impact its judgement would have on him and his wife. In light of the evidence, I was satisfied that the complainant's objections to the RM application were registered and considered by PS in the processing of the application. I was also satisfied that PS was fully aware of the exact location of the proposed dwelling and its relationship to the complainant's dwelling.

I found that the complainant was correct in claiming that the dwelling had been built in a different position from that originally approved at outline stage. However, during the processing of the RM application, the applicant had submitted revised drawings which were considered acceptable by PS and subsequently approved. Therefore, the deviations from the original outline planning approval had been subject to PS consideration.

I did not uphold further allegations that PS should have pursued enforcement action against the developer or that the development was unacceptable in terms of road safety and drainage.

Overall, while I found reason to be critical of PS, the information available to me did not suggest any improper consideration on the part of PS in its handling of either the outline or the RM application. **(200500326)**

Decision to Grant Planning Approval for Dwelling

The complainants stated that, in 1998, Planning Service (PS) had granted outline planning permission for a dwelling on land to the rear of their property and that the site had included land that had been vested by Roads Service for a proposed new road scheme. They contended that the outline planning permission should be treated as null and void as all landowners, including Roads Service, had not been notified of the planning application. The complainants further stated that, in 2001, PS had subsequently granted full planning approval for a dwelling on the site even though the site was smaller than was originally approved at outline stage. As a result the dwelling was being squeezed onto the site with no authorized vehicular access over the adjoining laneway which they and other residents owned. They complained that PS had not considered their privacy when granting the dwelling planning permission as it was in very close proximity to their garden boundary and as a consequence their property had been devalued.

With regard to the processing of the outline planning application my investigation established that PS had notified the three listed owners of the laneway, including the complainants. Whilst Roads Service, as landowner of the vested land, was not notified it nevertheless was aware of the planning application through the consultation process undertaken by PS. I did not uphold this aspect of the complaint.

My investigation revealed that the full planning application which was subsequently submitted was for a dwelling on a smaller site than was originally approved in the outline planning application because the land owned by Roads Service for the proposed new road had been excluded. I established that the submission of a full planning application meant that PS was considering afresh all the planning issues in relation to the proposed development. It was clear that the planning applicant had intended to use the laneway as a right of way to provide access to and from the site but the complainants and other residents alleged ownership of the laneway. I was satisfied that PS took reasonable steps to establish land ownership of the laneway but conclusive information on this issue was not possible. In the event the planning applicant created an alternative route for accessing the site. From my examination of the planning report I was satisfied that PS gave due consideration to the protection of the complainants' privacy from overlooking by the proposed development.

On the issue of the alleged devaluation of the complainants' property I noted that planning case law has established that unless devaluation is extreme it should not prevent a positive planning decision being made if other planning issues are resolved. I formed the view that it would therefore be a matter for the Courts to decide if a planning decision and subsequent development had the effect of devaluing an individual's property. It was clear that the complainants were upset and annoyed that planning permission was granted for a dwelling to the rear of their property, but in my investigation I did not identify any maladministration in the processing of the full planning application. **(200500060)**

Failure to take enforcement action regarding unauthorized wall and fence

The complainants stated that, in May 2003, their neighbour, while constructing a patio area to the rear of his property, removed a tree belonging to them and replaced it with a combined wall/fence of 4 metres in height. None of

the structures built by their neighbour had planning permission. They complained that they were dissatisfied with the action taken by Planning Service (PS) to deal with the unauthorized development, and in particular the 4 metre wall/fence. They also expressed their disappointment that PS, despite their objections and its initial warning letter requesting the removal of the unauthorised structures, had subsequently accepted a retrospective planning application from their neighbour and had ultimately granted planning approval.

My investigation revealed that PS had acted promptly to a report about the unauthorized development by arranging a site meeting with the complainants. It had subsequently issued a warning letter to the neighbour regarding the breach of planning control, requesting the removal of the unauthorized structures. However, the remedy referred to in the warning letter from PS was not the only remedy which could rectify the situation and the complainants' neighbour chose instead to submit a retrospective planning application seeking planning approval for the development work. I acknowledged that the complainants had difficulty in accepting the appropriateness of a retrospective planning application in this type of situation. However, I established that planning law in Northern Ireland permits individuals to submit a planning application for development which has already taken place. Furthermore, PS had acted in accordance with its procedures by postponing enforcement action in relation to the unauthorized development until the outcome of the planning application had been decided.

I further established that PS's initial opinion was to refuse planning permission to the application on the basis of concerns about overlooking and privacy issues affecting the adjoining properties. However, following receipt of amended plans showing details of the proposed boundary fencing PS revised its initial planning opinion and granted planning permission. I accepted that the removal of the complainants' tree by their neighbour was not a planning matter. However the wall/fence which had been constructed did require planning permission and PS had subsequently decided that it formed part of the structural works and it was acceptable in planning terms. Overall, I was satisfied that PS had fully considered the concerns and objections raised by the complainants as evident in the planning report and by the fact that three visits had been made to view the application site from the complainants property prior to the determination of the planning application.

On a final note, my consideration of this complaint led me to believe that the wording contained in PS's warning letter had the potential to mislead third parties into believing that the removal of an unauthorised development was imminent. In response the Chief Executive informed me that, while it had been decided to retain the existing wording in the warning letters, PS in its reply to third parties would, in future, highlight the range of remedies available to rectify a breach of planning control. I welcome this improvement. **(200500716)**

Planning Application for an Extension

The complainants in this case wrote to me claiming to have suffered an injustice as a result of maladministration by Planning Service (PS) in its handling of a planning application for an extension to a neighbouring property.

The complainants received neighbour notification of a proposed extension to the neighbouring property which was described as "First floor extension over existing garage and single storey extension

to rear of dwelling". They objected on the grounds that the proposed first floor bedroom window would overlook their front garden and front door. This, they stated, would be an intrusion of their privacy, further aggravated by the fact that the new two storey building would be closer to their dwelling than present. The complainants also felt that PS replies to their correspondence were littered with inaccuracies which undermined any confidence they had that their original objections were taken seriously. The most serious inaccuracy was the PS inability to correctly identify a neighbouring property when commenting on the complainant's previous application for an extension to their own property.

As a result of my enquiries PS informed me that a front garden is regarded as "public space" as it is generally the case that the front garden of most dwellings is the interface with public space such as footpaths and roads. As such there is generally, although not always, a public view into the front garden space of a dwelling and it is in this context that PS reaches professional judgements. It is not PS policy to give any weight to the protection of individual privacy in the front garden/public interface area. In making planning decisions PS regard front gardens as having a public aspect which in certain circumstances can complement the general streetscape.

From my study of the documentation relating to the administrative process leading to the decision to grant planning permission, I was satisfied that the complainant's objection regarding intrusion of privacy had been considered.

As regards the complaints regarding errors in correspondence, I found that the error on two occasions to correctly identify an address to be most regrettable, however I noted that PS had been relying on an Ordnance Survey map which indicated an inaccurate location for the house number in question. Overall I was satisfied that the errors about which the complainants were concerned did not make any material difference to the ultimate discretionary decision to grant planning permission.

My investigation of this case did not disclose evidence of maladministration on the part of PS and I did not uphold the complaint. **(200501026)**

Processing of Planning Application

This was a complaint against both Planning Service (PS) and Roads Service (RS) concerning the processing of a planning application. The complainant alleged that the applicant's agent had made several false declarations on the form P2 of which PS was aware but chose to ignore. I learnt that the P2 form accompanies all planning applications and contains a statement in respect of ownership of land associated with the planning application. I believed it to be impracticable to expect PS to verify proof of ownership statements. However, I was aware from previous investigations that where a claim to ownership is challenged, it is the practice of PS to contact the parties involved to resolve the matter. From the evidence, I was satisfied that, once the complainant made PS aware of his concerns, it pursued the matter with the applicant until such time as it was satisfied that the applicant did in fact own the land which was the subject of the application.

The complainant also believed that PS had ignored his objections to the proposed development particularly with regard to achieving the required visibility splays. From the evidence, I was satisfied that PS was aware, had noted and taken account of the complainant's objections particularly with regard to achieving the required visibility splays. In its consideration of issues such as visibility splays PS must rely on

consultees such as RS to provide expert advice on what are specialist matters and must then be guided by that advice. In this instance, having regard to the consultation responses received from RS and its ultimate acceptance of the proposal, PS, understandably, proceeded on that basis which was a decision I found no reason to challenge.

It was further alleged that the applicant had removed hedging belonging to the complainant without his permission and that the removal of the hedging had given the applicant the required sight line. I found that the applicant could still have achieved the required sight lines regardless of the removal of the hedging in question. The hedging having been removed without permission was, in my view, a civil matter between the parties involved. The complainant further stated that an entrance had been created, without permission, from the development site onto the main road. In this instance, I found that PS had not taken action against the developer for creating an unauthorised access as it was not aware of the matter. Importantly, the development had since gained planning permission and the access was, therefore, no longer a breach of planning control.

Overall, I found no evidence to substantiate the complaint against either PS or RS. **(200600402 & 200600403)**

DRIVER AND VEHICLE TESTING AGENCY

Concerns Regarding MOT test

In this case the complainant raised various issues concerning the testing of her son's car by the Agency and the subsequent handling of her complaint.

The complainant asked why the examiner had changed the original "Notification of Refusal" in the section headed "Brake Test". The computer had registered "Pass" and the examiner had stroked this out and inserted "Fail". The Agency did not dispute that the examiner had changed the record from a "pass" to a "fail" and explained that, although the brakes had technically passed on the brake rollers, the examiner felt that there was a potential problem with the brakes that the machine had not identified. The subsequent road test confirmed the examiner's belief that the rear brakes were snatching on and off and I found that, having identified and confirmed the fault, he had no option but to fail the vehicle on this aspect of the test. In the circumstances I could not say that the examiner acted unreasonably nor did I seek to challenge his professional judgement in the making of what is a discretionary decision.

Another point of complaint concerned that part of the test conducted on the track outside the main building during which time the complainant believed the examiner mistreated the car. The Agency acknowledged that, in the circumstances, it was necessary to accelerate and brake quite sharply and this may have caused "more smoke than would have been evident in normal driving". In response to the allegations of the engine having been excessively revved with wheels spinning and the pulling of skids, I noted that the centre manager had acknowledged that during the test the rear wheels did lock causing the vehicle to skid. However, the examiner stated that the car was driven "appropriate to the circumstances and not in any way excessive". While I had no reason to disbelieve the complainant's perception of events, the potential witnesses referred to by the complainant, including a member of the public from whom I obtained comment, did not provide corroborating evidence. Against that background, I concluded that the vehicle was the subject of more vigorous driving than would be normal and the visual impact may well have been

heightened by the confined space. I could not, however, conclude that the vehicle was subject to abusive treatment by the examiner.

It was also claimed the examiner had made an inappropriate comment to the complainant's son. I found it regrettable that the examiner had made a comment which was considered as offensive. However, the evidence showed that the centre manager and the Chief Executive of the Agency had both apologized, in writing, for any offence and I considered this action adequate redress.

The complainant also said that there had been no contact by the Agency with either her or her son to ask any questions about her complaint. However, I found that the complainant had stated her case very clearly at the outset and I believed it worth noting that the CE had offered to meet with the complainant and discuss the matter with her directly; an offer she did not accept.

I did not uphold a further allegation that the Agency did not take the complaint seriously. I found that the Agency had given it full and proper consideration, making what I considered to be reasonable efforts to investigate the issues raised and provided timely, detailed and cogent replies on each occasion. The fact that the complainant disagreed with the Agency's response was not in itself evidence of mal-administration.

My examination of all the facts in this case revealed no evidence of maladministration by the Agency. **(200600543)**

DEPARTMENT OF FINANCE AND PERSONNEL

RATE COLLECTION AGENCY

Claim to Housing Benefit

The complainant was unemployed and claiming Job Seekers Allowance (JSA) from the Social Security Agency (SSA). He obtained employment and notified the SSA that he would no longer be claiming benefit. Nine months later, the RCA wrote to him stating that his Housing Benefit (HB) claim had been cancelled as he was no longer in receipt of Income Support or JSA and that he had been overpaid a total of £433.42 in HB. The complainant failed to understand how the overpayment had occurred given that he had told the SSA of his employment and was alarmed at receiving this information as repayment of this sum would cause him severe financial hardship due to his low earnings.

In the course of correspondence with the RCA the complainant was informed that he was legally obliged to notify the RCA that he had gained employment and, because he did not, it was unaware that his entitlement to HB had ceased and did not cancel his entitlement. However he was later informed that when he notified the SSA that he had found employment, the SSA had sent a notification to the RCA which, due to "an administrative failure", was not actioned until eight months later.

Following my investigation of this complaint I accepted the legislation required the complainant to notify the RCA of any change in his circumstances and that this duty had been clearly pointed out to him both in his original application to HB and when it was being renewed. However I found that the failure of the RCA to take action on information received from SSA for a period of almost 9 months to constitute maladministration and to be a

major contributory factor in the accumulation of the overpayment. Given that the complainant also bore some responsibility towards the overpayment I was of the view that a reasonable remedy for the injustice of confusion and annoyance caused would be for the RCA to seek to recover only £100 of the overpayment.

I am pleased to record that having re-examined the process for exchange of information between the SSA and the RCA and in light of other criticisms I had concerning the quality of its correspondence with the complainant, the Chief Executive of the RCA agreed to write off the entire overpayment. I regarded this action to be a welcome and suitable outcome to the complainant's justified complaint. **(200500388)**

DEPARTMENT FOR REGIONAL DEVELOPMENT

Alleged mishandling of promotion board

The complainant believed that the Department failed to give her a fair promotion Board. She explained that during the second panel member's questions the interview was interrupted by the sound of a mobile phone ringing. She said that the board member apologised and paused the interview to get the phone and take it out of the room. After a short time she returned, apologised again, and continued with the next question. My investigation revealed that the interruption came very close to the end of the interview with only 7 minutes left to run. While I realised that the complainant considered that the incident affected her performance, the evidence I considered did not lead me to conclude that she was significantly affected by what happened. There was no doubt that the incident was most regrettable and should not have happened. However, I believed it to be a genuine mistake. I recognized that such mistakes do happen and I strongly recommended that the Department add to its checklist for board chairpersons a requirement to ask all board members to ensure that mobile phones are switched off. Contrary to the complainant's belief, I found that the Chairperson did handle the situation and took reasonable steps to ensure that the complainant was given a reasonable opportunity to complete the interview and that she was not disadvantaged by the interruption. I did not uphold this aspect of the complaint.

With regard to the claim that the Department failed to have correct procedures in place for dealing with such interruptions, I found that it would be very difficult to have established a range of contingencies that that would have been capable of addressing every possible eventuality. I believed the role of the Chairperson to be crucial when incidents do occur and she/he must decide, at the time and in view of the circumstances, how best to deal with the situation. In considering whether or not the Department had failed to properly record the incident, I acknowledged that the contemporaneous handwritten notes provided by the Chairperson on the interview documentation provided a record of the incident. However, I recommended that panel members make a more formal record, at the time, of any unexpected incident and to forward that report immediately to the Establishment Officer. I did not uphold a further allegation that the Department had failed to properly record its investigation of the incident.

The complainant also alleged that she had not been advised of her right of appeal in any correspondence from the Department in relation to her Board complaint. I noted that the pre-Board documentation provided to all eligible candidates, including

the complainant, explained quite clearly the appeal procedure for candidates who wished to appeal the results of an interview. In the circumstances, I did not find it unreasonable of the Department not to repeat advice on appeal procedures to those candidates who had been provided with pre-board information.

A further issue raised by the complainant was her claim that she was misled into believing the matter would be resolved through the issue of a reserve list and yet no reserve list was subsequently issued. I found that any information conveyed to the complainant would have been an accurate reflection of the situation at that time and I considered it unlikely that there was an intention to mislead. I also accepted that, although a reserve list may exist, there is never any guarantee that it will be published. In this instance, I believed it was a reasonable assumption that a reserve list would be published but circumstances changed which resulted in a significant slowing of promotions. I concluded that the decision whether or not to issue a reserve list is a discretionary decision for the department concerned.

I found that the complainant was not advised of her right to appeal in relation to her request for documentation under FOI. However, the Department had already acknowledged this fact and apologized. Ultimately, the complainant was provided with the information she requested. I considered the Department's apology to represent an adequate redress.

Overall, I did not identify any substantive maladministration on the part of the Department and I did not uphold the complaint. **(200500907)**

Handling of Sick Absence

In this case the complainant felt she had suffered an injustice as a result of the Department's decision to issue her with a written warning regarding her sick absence record. The warning was accompanied by a 6 month ban from participation in promotion competitions. The complainant alleged that the Department had failed to provide her with adequate support measures to assist her return to work more quickly after suffering a broken ankle in an accident. She also complained that she had been denied a promotion opportunity as a result of avoidable delay by the Department in its processing of the decision on whether a warning should issue.

In the course of a detailed investigation I established that the Department's decision to issue a written warning to the complainant was based upon her attendance record over a four year period and not solely on the most recent absence arising from her accident.

Although I was concerned about the time taken to reach a decision that a warning should issue I was satisfied that the Department had provided an adequate explanation for the delay. In addition, I found that the case could not realistically have been processed within a timeframe which would have allowed the complainant to qualify for the promotion competition which had taken place during the period of her ban. I was unable to say that there was any particular onus on the Department to have made available support measures such as a phased return to work or home working in the particular circumstances of the complainant's case. Critically, I found no basis for questioning the discretionary decision, upheld through the Department's grievance procedure, that a written warning was appropriate in all of the circumstances which applied.

On a general point I noted that this case coincided with the introduction of a new

more robust corporate policy on the management of attendance across the Northern Ireland Civil Service. In my report I expressed some reservations about the way in which the Department had introduced the new arrangements. I was also critical of the apparent lack of management intervention to assist the complainant to improve her attendance record before she reached the point where it was considered that a written warning was justified. In response to my report the Permanent Secretary indicated that the Department would consider a phased approach to any further revisions of the managing attendance policy. The Permanent Secretary also informed me that the Department would ensure that line managers were reminded of their responsibilities to ensure that staff were fully advised of their position where a sickness record was becoming unacceptable. **(200500332)**

ROADS SERVICE

Condition of Roads

The aggrieved person's complaint related to the state of two roads in the Magheramorne area. He alleged that water, stones, potholes and debris constituted a hazard on these roads and that during bad weather the water which pooled in certain areas froze especially at the junction of the two roads.

I carefully examined all the documentation relating to the complaint including the road inspection and repair records together with the policy document relating to road maintenance standards with particular reference to the frequency of inspection and response times for repairs to be carried out. I also examined the records relating to the provision of salt/grit piles on these rural roads against standards laid down in the Roads Service Winter Service Policy and Procedure Guide.

I did not find any evidence of maladministration in the actions of Roads Service in its handling of the issues raised by the complainant nor did I identify any personal injustice to him. I take the view that a public body has a clear responsibility to ensure that its finite resources are used effectively and, in seeking to be fair to all road users, must be alert to the demands for remedial action which would result in disproportionate attention which can compromise the capacity of a service to address other priorities. Overall, I was satisfied that Roads Service dealt reasonably with the complainant. **(AO 86/04)**

DEPARTMENT FOR SOCIAL DEVELOPMENT

CHILD SUPPORT AGENCY

Processing and Calculation of Child Support Maintenance

The complainant stated that in May 2003 he submitted a departure application to the Agency in the belief that it would have the effect of reducing the amount of Child Support Maintenance (CSM) he was required to pay for his child. However, it took the Agency two years to inform him that he did not qualify for a departure and it subsequently assessed his CSM liability, backdating it to 2003, which immediately put him in an arrears situation. The complainant further alleged that he was paying a higher rate of CSM than he would have been liable for under the Agency's new scheme rules which applied to new Agency cases. He complained that it was grossly unfair that new Agency clients pay less CSM than existing clients.

In my investigation I established that a departure application form was issued to the complainant in November 2003 but the Agency had no record of the completed form having been returned. The

complainant alleged that several departure forms completed by him had been mislaid by the Agency. Whilst I was unable to state with certainty that the Agency did misplace the complainant's departure forms, having examined its filing system in relation to his case I formed the view that the possibility did exist. My investigation further revealed that, in October 2004, the Agency had interviewed and taken a written statement from the complainant regarding a departure application but had failed to complete an application form. In addition, the complainant had made a telephone enquiry to the Agency in February 2005 about his departure application and it took the Agency six weeks to return his telephone call and inform him that he did not qualify for a departure. The Agency also failed to issue the complainant with a formal written decision. I found this to be an unacceptable level of service amounting to maladministration.

With regard to the backdating of the complainant's CSM liability to 2003, my investigation revealed that, despite reminders from the Agency, it was only in 2005 that the complainant provided the necessary information to enable his CSM liability to be assessed. I criticised the Agency for not having carried out, at an earlier stage, an 'interim' assessment of the complainant's liability. However, I noted the complainant would have known that, being in full time employment, he was liable to pay CSM and therefore he should have set aside a contribution toward his CSM liability from 2003 onwards. I did not, therefore, uphold the allegation that the Agency was responsible for the arrears of CSM which had accrued.

My investigation further revealed that Agency cases received after March 2003 are assessed under a new Agency scheme whereas those cases which were in existence prior to that date, such as the complainant's, continue to be assessed under the 'old' Agency rules. Although the Agency provided information of what the complainant's CSM liability would be under the new scheme, I was unable to reach a firm conclusion on the matter of a reduction in liability under the new rules. However, I acknowledged that under the current legislation the Agency had correctly treated the complainant's case in assessing his liability under the 'old' rules. I did not therefore uphold this aspect of his complaint.

In conclusion, I found that the Agency's handling of the complainant's departure application amounted to maladministration. I therefore recommended that the Chief Executive take immediate steps to have the complainant interviewed by an experienced departure claims officer and to give him the opportunity to submit a departure application, which, if successful, should be treated as having been received by the Agency in November 2003. I further recommended that the Chief Executive issue a letter of apology to the complainant for the failure in service together with a consolatory payment of £100.

My investigation of this complaint has highlighted a continuing inequality of assessment rules for Agency clients. People are not being treated in a uniform way by the Agency because it is, in effect, operating two discrete systems for the assessment of CSM, with the method used being dependent on the date the application for maintenance was made. I am led to believe that the existing Agency cases will be re-assessed under the new Agency rules at a date to be determined by government. I expressed concern that three years on there is no indication of an implementation date for the re-assessment of existing Agency cases. In my opinion there is something amiss when a computer system has been operating for three years and, presumably, is still not providing a sufficient degree of assurance as to its capacity to

handle the Agency's entire caseload. **(200500823)**

Dissatisfaction with standard of service

The complainant in this case raised two matters concerning the collection of child support from him. The complainant was aggrieved that the first correspondence he received concerning his liability for child support was a copy of a Deductions from Earnings Order (DEO) that the Agency had issued to his employer. He was also aggrieved that, despite having reported to the Agency a change of circumstance, namely a reduction in his wages, the Agency had failed to re-assess his child support liability to take account of this.

I established that, prior to the issue of the DEO, the Agency had issued a Maintenance Enquiry Form to the complainant along with a further four letters. Although the complainant claimed not to have received any of this correspondence, I established that, because the letters had not been returned to it, the Agency assumed that the complainant had received them. I considered this assumption by the Agency to have been reasonable and suggested to the complainant that, if he had not already done so, he might wish to pursue with Royal Mail the matter of his not having received the Agency's full correspondence issued to him.

However, my investigation identified a number of examples of maladministration and unsatisfactory administration on the part of the Agency in its handling and processing of the complainant's case. In these circumstances, I understood why the complainant considered it necessary to complain to me concerning the Agency's failure, for a period of one year, to re-assess his child support liability to take account of this reduced earnings, despite his request that this should be done.

I regarded the standard of service that the Agency had provided to the complainant, in relation to his request for a re-assessment of his child support liability, as having fallen well short of the standard that citizens have a right to expect from government departments and their related Agencies.

The Agency had acknowledged that its handling of the complainant's case had been unsatisfactory and it had made a compensatory payment of £75 to him "in recognition of the gross inconvenience suffered as a result of the mishandling of his case".

However, in terms of redress, I concluded that I was fully justified in recommending that the complainant should receive a letter of apology from the Agency's Chief Executive and a consolatory payment of £350 in respect of the injustice of significant annoyance, frustration and inconvenience suffered as a consequence of the maladministration which occurred in this case (this amount included the £75 payment that the Agency had already made). **(200500971)**

SELECTED SUMMARIES OF CASES SETTLED

Social Security Agency

A lady complained to me about the failure of the Agency to comply with standard promotion procedure in filling two Grade 6 Assistant Director posts which were filled using a "reserve list" from a post-specific trawl.

My investigation of this complaint led me to a finding of maladministration as evidenced by the failure of the Agency to comply with the provisions of the NICS Pay and Conditions Code in respect of its handling of the filling of posts and, in consequence, the complainant suffered the injustice of disappointment and lost opportunity to compete. The Chief Executive of the Agency accepted my findings and agreed to issue a written apology to the complainant together with a consolatory payment of £500 in recognition of the injustice sustained. **(200500946)**

Child Support Agency

The complainant raised several issues in his complaint but the main issue concerned the fact that his Child Support Maintenance liability increased considerably resulting in a large element of arrears.

I arranged for enquiries to be made of the Agency and was informed that it was the Parent With Care who requested the reassessment and, due to technical problems with the computer system, it took some 13 months to resolve matters which meant that arrears accumulated. The complainant was informed of the reassessment at the time and asked to provide pay slips. He was, therefore, aware of the Agency's actions. Following the reassessment the complainant received a consolatory payment of £75 from the Agency for gross inconvenience in recognition of the delays which occurred in his case.

More recently, the complainant asked for a review and reassessment of his liability. This reassessment was completed and his liability adjusted taking account of the minimum rate for repayment of arrears. The Chief Executive of the Agency advised that a further consolatory payment of £175 had been approved and would issue to the complainant shortly. **(200501301)**

Child Support Agency

This case concerned the delay in the payment of maintenance to the complainant. Although there were other factors that contributed to ongoing delay, the Agency records showed a 9 month period of unaccountable inactivity for which it could provide no explanation. I considered that this inactivity constituted maladministration. The Chief Executive of the Agency accepted my finding of maladministration and agreed to issue a written apology to the complainant together with a consolatory payment of £250. **(200600632)**

Rate Collection Agency

A gentleman complained to me that he had received conflicting information from the Agency regarding his rates liability in the current year and in previous years. The Agency acknowledged errors in his Housing Benefit assessments in its response to the complainant's letter of complaint but it failed to offer him any redress. I arranged for detailed enquiries to be made of the Agency in which I asked the Chief Executive for his comments on this aspect of the case and also sought an assurance that the complainant's rates liability had been carefully re-examined.

As a result of these enquiries I was advised that, as the case is complex, the Agency had asked the Department for Social Development's Decision Making Unit to confirm that the Housing Benefit assessments completed during their review are correct. When this has been completed the Agency will inform the complainant of the outcome of the review. The Agency's Chief Executive acknowledged that the Agency missed opportunities to correctly assess the complainant's Housing Benefit claim on a number of occasions and, on reflection, he proposed a remedy by way of a letter of apology to the complainant together with a consolatory payment of £200.

I accepted this proposed settlement and asked the Chief Executive to ensure that the complainant's Housing Benefit review is completed speedily and that the complainant is notified of the outcome without delay. **(200600984)**

STATISTICS

Table 2.3: Analysis of Written Complaints Received in 2006/07

	Brought forward from 2005/06	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/07
Government Departments	13	49	27	1	17	2	7	8
Agencies of Government Departments	20	189	133	3	41	3	10	19
Tribunals	0	10	7	0	3	0	0	0
N/S Implementation Bodies	0	1	0	0	1	0	0	0
Non – Specified AO Body	0	1	1	0	0	0	0	0
TOTAL	33	250	168	4	62	5	17	27

Table 2.4: Analysis of Written Complaints Against Government Departments

	Brought forward from 2005/06	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/07
DARD	7	19	5	0	11	2	5	3
DCAL	0	1	0	0	1	0	0	0
DE	0	1	1	0	0	0	0	0
DEL	0	1	0	0	1	0	0	0
DETI	0	3	3	0	0	0	0	0
DFP	1	12	10	0	1	0	0	2
DHSSPS	0	1	1	0	0	0	0	0
DOE	0	5	4	0	0	0	0	1
DRD	2	4	3	0	0	0	2	1
DSD	3	2	0	1	3	0	0	1
TOTAL	13	49	27	1	17	2	7	8

Table 2.5: Analysis of Written Complaints Against Agencies of Government

Departments

	Brought forward from 2005/06	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/07
Child Support Agency	3	18	12	2	2	2	0	3
Driver Vehicle Licensing	0	5	4	0	1	0	0	0
Driver Vehicle Testing Agency	0	11	10	0	0	0	1	0
Environment & Heritage Service	0	5	2	0	3	0	0	0
General Register Office	0	1	1	0	0	0	0	0
Land Registers	1	4	3	0	1	0	0	1
Planning Service	9	95	65	0	24	0	7	8
Public Record Office	0	1	1	0	0	0	0	0
Rate Collection Agency	1	5	2	1	0	1	0	2
Rivers Agency	0	3	2	0	1	0	0	0
Roads Service	4	10	5	0	4	0	2	3
Social Security Agency	1	24	20	0	4	0	0	1
Valuation & Lands	0	1	1	0	0	0	0	0
Water Service	1	6	5	0	1	0	0	1
TOTAL	20	189	133	3	41	3	10	19

Table 2.6: Analysis of Written Complaints Against Tribunals

	Brought forward from 2005/06	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/07
Appeal Tribunals	0	1	1	0	0	0	0	0
Industrial Tribunal	0	2	1	0	1	0	0	0
Lands Tribunal	0	1	0	0	1	0	0	0
Planning Appeals Commission	0	6	5	0	1	0	0	0
TOTAL	0	10	7	0	3	0	0	0

Table 2.7: Analysis of Written Complaints Against N/S Implementation Bodies

	Brought forward from 2005/06	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/07
Waterways Ireland	0	1	0	0	1	0	0	0
TOTAL	0	1	0	0	1	0	0	0

SECTION THREE

Annual Report of the Northern Ireland Commissioner for Complaints

WRITTEN COMPLAINTS RECEIVED IN 2006/07

As Northern Ireland Commissioner for Complaints I received a total of 200 complaints during 2006/07, 18 less than in 2005/06.

Fig 3.1: Complaints to the Commissioner for Complaints 1997-2006/07

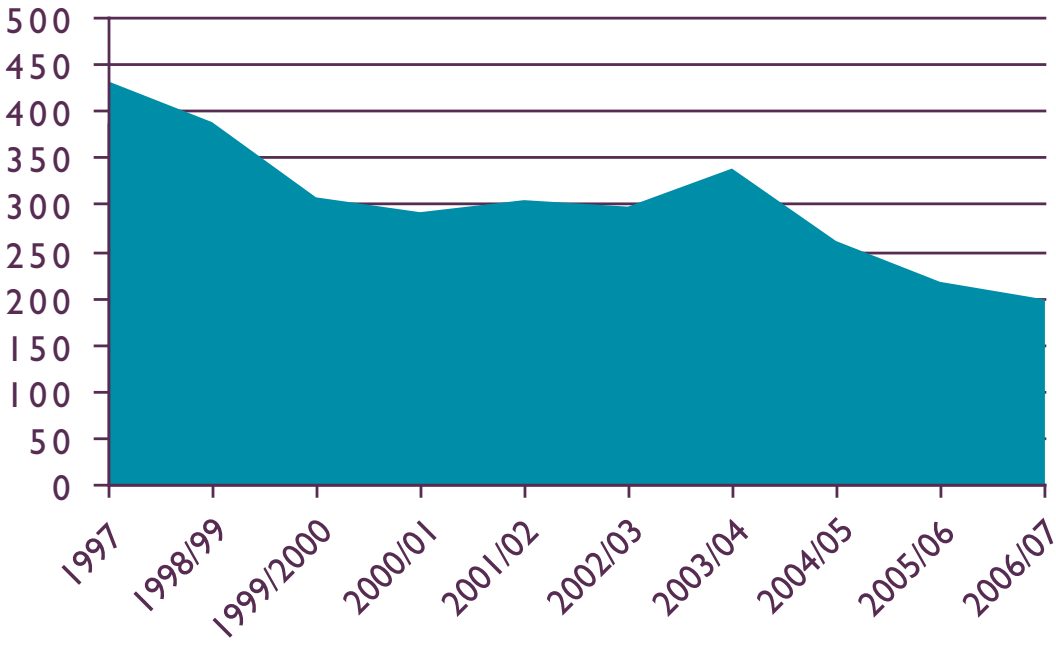
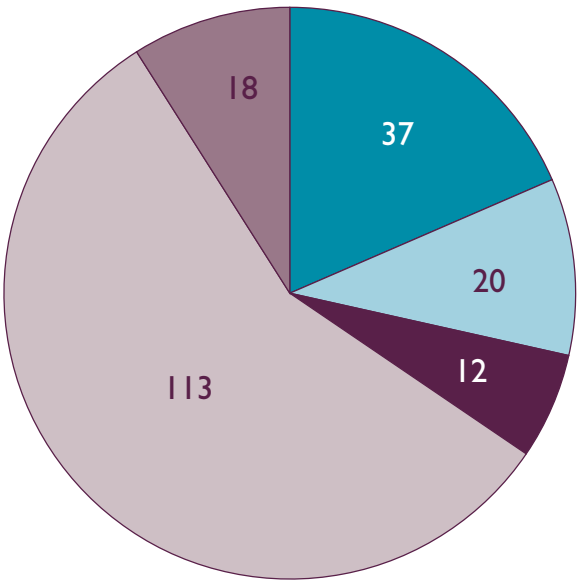


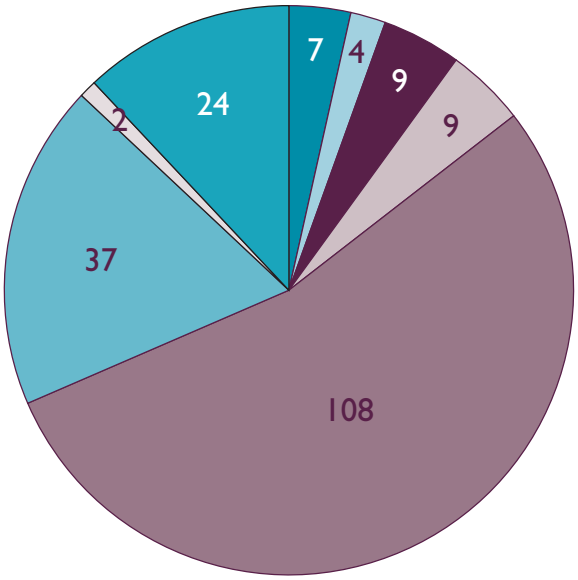
Fig 3.2: Written Complaints Received in 2006/07 by Authority Type



- Local Councils
- Education Authorities
- Health & Social Services Bodies
- Housing Authorities
- Other Bodies within Jurisdiction

As in previous years the Northern Ireland Housing Executive attracted most complaints with 91 (down 8% on 2005/06).

Fig 3.3: Written Complaints Received in 2006/07 by Complaint Subject



The Caseload for 2006/07

In addition to the 200 complaints received during the reporting year, 62 cases were brought forward from 2005/06 – giving a total caseload of 262 complaints. Action was concluded in 210 individual complaints during 2006/07. Of the 61 cases still being dealt with at the end of the year 1 was at Validation Stage and 60 were under investigation.

Table 3.1: Caseload for 2006/07

Cases brought forward from 2005/06	62	
Written complaints received		200
Total Caseload for 2006/07		262
Of Which*:		
Cleared at Validation Stage		95
Cleared at Investigation Stage (without a Report), including cases withdrawn and discontinued		74
Settled	16	
Full Report issued	24	
In action at the end of the year		61

** It should be noted that this breakdown contains several multi-element complaints and therefore the total is greater than the total caseload figure above.*

The outcomes of the cases dealt with in 2006/07 are detailed in the Figs 3.4 and 3.5.

Fig 3.4: Outcomes of Cases Cleared at Validation Stage

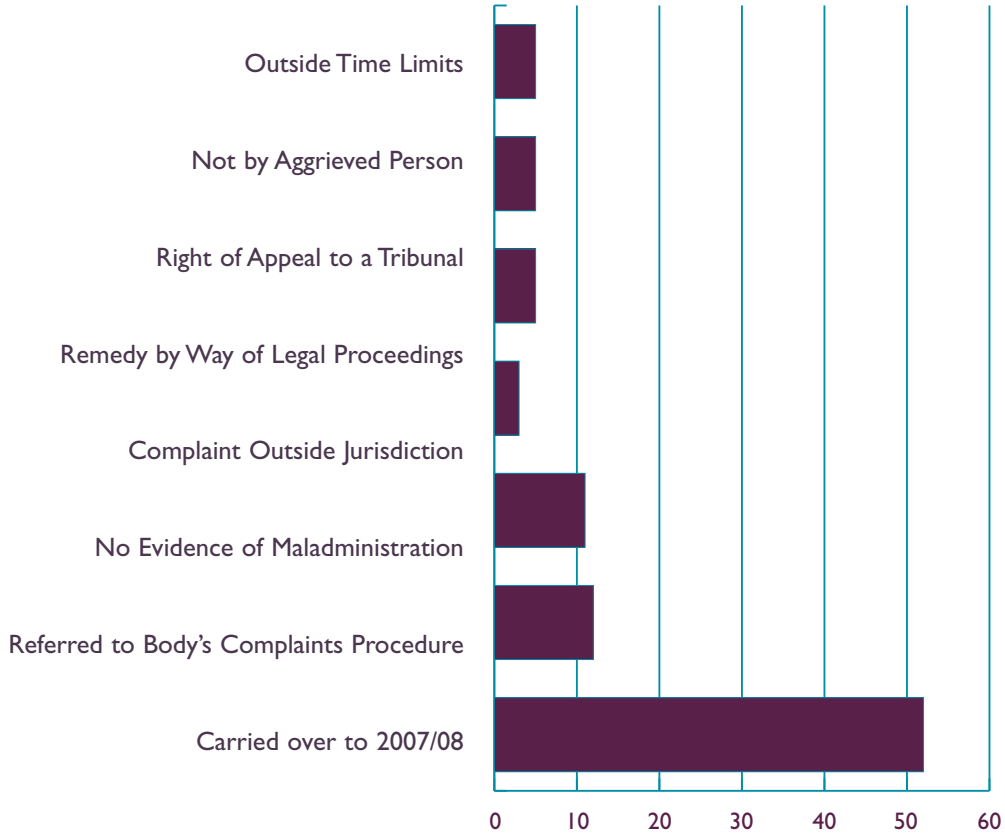
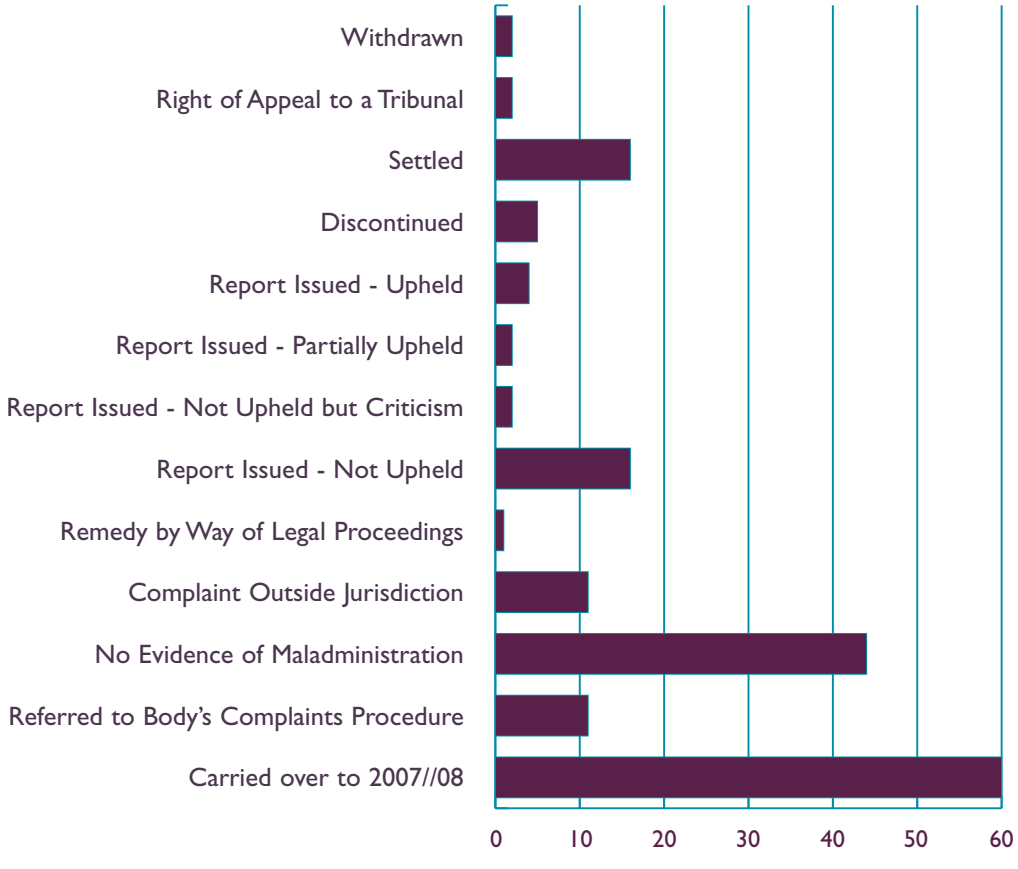


Fig 3.5: Outcome of cases Cleared at Investigation and Report Stages



The average time taken for a case to be examined and a reply issued at Validation Stage was 1 week.

The average time taken for a case to be examined, enquiries made and a reply issued at Investigation Stage was 14 weeks.

The average time taken for a case to be examined, enquiries made and a full Report issued at Report Stage was 47 weeks.

24 reports of investigations were issued in 2006/07. Of these cases: 4 were fully upheld; 2 were partially upheld; 2 were not upheld but 1 criticised the Body complained against; and 16 were not upheld. In all of the cases in which I made recommendations for action(s) by the body complained against these recommendations were accepted by the body.

Table 3.2 Recommendations in Reported Cases

Case No	Body	Subject of Complaint	Recommendation
CC 95/04	Limavady BC	Naming of Road	Written apology & consultation with residents by Council
CC 121/04	NIHE	Repairs, Redecoration Allowance & Public Liability Claim	Written apology & consolatory payment of £150
CC128/04	Craigavon Area Hospital Group H&SST	Shortlisting for Post of Service Improvement Manager	Written apology & review of procedures by Trust
200500446	Belfast E&LB	Application for Post of Technology and Design Teacher	Written apology & consolatory payment of £400
200500566	NIHE	Application for Housing	Written apology & consolatory payment of £1,000
200501066	Newtownabbey BC	Building Control	Written apology

SELECTED SUMMARIES OF INVESTIGATIONS

EDUCATION AUTHORITIES

Mishandling of Recruitment Procedure

I received two separate complaints arising from the same recruitment competition by the Western Education and Library Board. In both cases it was alleged that the successful candidate had no relevant experience and did not meet the essential criteria.

My investigation revealed that the Board received forty one applications from which thirteen candidates, including the complainants, were shortlisted for interview.

I examined the successful candidate's application form and I was satisfied that he had clearly demonstrated that he fully met the specified shortlisting criteria for the post and was, therefore, properly shortlisted for interview. Having been shortlisted, both complainants and the successful candidate then proceeded to the interview stage on equal terms with the other 10 shortisted candidates. Thereafter it is performance at interview that determines to whom the position is to be offered. I noted that each candidate was asked the same questions which covered a range of topics which enabled candidates to demonstrate their experience, knowledge and ability. I also noted that there was an agreed marking scheme with an established score allocated to each of the areas considered relevant to the post. On this basis, panel members awarded marks to each candidate thereby ranking them in merit order according to their overall score. The evidence showed that the successful candidate achieved the highest score at interview and was unanimously ranked in top place by panel members.

Overall, from the evidence provided, I was satisfied that this was a well structured and managed process, procedures were followed correctly and candidates were dealt with in a consistent manner. I was also satisfied that the successful candidate had the appropriate experience in order to satisfy both the shortlisting criteria and the interview panel. I found no evidence of improper consideration by the panel or that any factor other than the candidates' performance at interview ultimately determined the outcome. I did not uphold either complaint. **(200600190 & 200601160)**

Application for Post of Technology and Design Teacher

Following an interview for the post of Technology and Design teacher the complainant received an offer of appointment from the Belfast Education & Library Board stating that the Board had accepted the recommendation of the Board of Governors that he be appointed to the post. In June that year the complainant informed the school that it might be necessary for him to have a City and Guilds qualification to teach Technology and Design in Northern Ireland. In July he received a letter from the Board stating that his starting date was postponed. He then received a letter in August informing him that as he did not have the City and Guilds qualification the Board had no alternative but to withdraw the offer of appointment. The complainant considered that the Board should have known about the requirement for City and

Guilds qualification at the interview stage and that this requirement should have been included in the advertisement for the position.

My investigation into all the circumstances of this complaint revealed that the Board was faced with an unusual case and that all actions were not its sole responsibility as the school and the Department of Education also played a role in the appointment process. Nevertheless, I criticised the Board for not ensuring sufficient specificity in the job advertisement. The complainant submitted an application in vain because, without the City and Guilds qualification, he was never going to be eligible to teach technology and design in Northern Ireland. I also criticised the Board for not being more precise in its explanations to the complainant of the position in respect of ongoing or completed eligibility checks. In addition, and significantly, I identified that the Board worked for a time on a mistaken understanding that the Department of Education would go beyond its responsibility to confirm a general eligibility to teach. I considered that it was particularly remiss of the Board not to recognise its own responsibility to confirm possession by a candidate of a specific qualification. I decided that if the Board had recognised its responsibility before being made aware of it by the Department of Education, it could have withdrawn the offer of appointment to the complainant as soon as it was drawn to their attention in early July that he had not taken the City and Guilds Certificate qualification as part of his PGCE course.

Overall I found that the Board's failings amounted to maladministration. While I recognised that the complainant was not eligible for the post in question it was my view nonetheless that, as a result of the Board's maladministration, he suffered the injustice of disappointed expectations and very serious inconvenience in terms of his employment arrangements given the timing of the withdrawal of the offer of the post. The Chief Executive of the Board accepted my findings and my recommendation that he should issue a written apology to the complainant together with a consolatory payment of £400. **(200500446)**

HEALTH & SOCIAL SERVICES BODIES

Alleged mishandling of Selection Process

This complaint was about the Northern Ireland Medical & Dental Training Agency's handling of the selection procedure for Vocational Dental Trainers.

The complainant explained that there had been two vocational training schemes seeking applications for Trainers in respect of General Professional Training and Vocational Dental Practitioners. My investigation revealed that the same application form and Person Specification were used for both competitions. In considering the complainant's application forms for both posts the Agency took the position that he had failed to complete the forms correctly which meant that it was not evident that he met the essential criterion of having been in GDS practice for 4 years or more and he was not shortlisted for interview on either occasion. Having studied the complainant's application forms, I found no evidence of his having explicitly demonstrated that he had the relevant experience to satisfy the aforementioned essential criterion. While I had no difficulty whatsoever in seeing that it could have been inferred taking his application as a whole that the complainant had been in GDS practice for 4 years or more, to have done so would, in my view, have run contrary to good selection practice which requires a candidate to demonstrate clearly at the appropriate part of the application

form how he/she meets the relevant criterion. Against that background, it would, in my opinion, have been wrong of the panel, contrary to good selection practice and unfair to other candidates who had complied with the requirements, to have admitted the complainant to interview on the basis of an inference or assumption as to the experience he possessed.

The complainant also raised concern about the means by which members of the relevant shortlisting panels satisfied themselves that candidates met all of the essential criteria. He said that members of the shortlisting panels could only have drawn conclusions that the candidates would meet these essential criteria prior to interview. From my examination of the application form, I was satisfied that its design did enable the panel to elicit information from candidates as to how they met the shortlisting criteria with the remaining criteria being tested at interview. I did not believe this to be an unusual practice in the recruitment field and I could not say that I found this process unreasonable or flawed by maladministration.

I did not uphold a further allegation that the application form was badly designed and not specific enough and I did not support the complainant's belief that, because he was self employed, this would have prevented him from completing the section of the application form which asked for "Details of Career".

Overall, from the evidence provided, I was satisfied that the panel in this case was properly constituted, that procedures were followed correctly and candidates were dealt with in a consistent manner. I did not uphold the complaint. **(200501112)**

HOUSING ASSOCIATIONS

Application for a Post

The complainant alleged that Fold Housing Association failed to apply a fair and equitable recruitment and selection process. In particular he stated that one of the criteria requested was initially enhanced and later had its definition amended to the detriment of his application. The complainant felt that he had demonstrated on his application form that he had relevant experience and considered that he had a reasonable chance of being considered for the position.

I was advised by the Association that, because of the high number of applications, the short listing panel agreed to enhance the criteria by increasing a criterion by two years and at this stage the criterion was defined. I was also informed that the complainant was considered to have failed to have met the original criterion before it was enhanced. From my study of the complainant's application form, I noted an error in the Association's calculation of his length of relevant experience; however this error caused the complainant no disadvantage in the process. I took the view that, when faced with a high number of applicants, it was not unreasonable for a body to seek to limit the field of candidates for interview by introducing enhanced criteria providing that all candidates were treated equally. I found the decision not to shortlist the complainant for this position, on the grounds that he did not have the relevant experience, was not unreasonable. **(200600464)**

LOCAL COUNCILS

Alleged Inaction by Council

The complainant was of the opinion that, despite her assistance in providing Strabane District Council with clear reports and details of incidents, the

Council had done little to address the matter of dogs straying in the vicinity of her home.

My investigation revealed that, during a period of approximately 16 months, the Council monitored the area in question making a total of 120 visits. On only 2 occasions were dogs observed straying and the Dog Warden (DW) took what he considered to be appropriate action at the time, firstly with the issue of a verbal and written warning and secondly with the issue of a fixed penalty notice. These were discretionary decisions which I did not believe I had reason to challenge nor did I find them unreasonable. Overall I was satisfied that the Council made considerable effort to respond to the complainant's complaints with what I considered to have been extensive monitoring of the area in question over an extended period of time. Consequently I did not uphold the complainant's assertion that the Council had done little to address the matter of dogs straying. In relation to this element of the complaint I found no evidence of maladministration on the part of the Council.

The complainant also asked why an exemption applied to a dog in respect of which an order had been made for it to be chained. I learnt that no exemptions applied to any of the occupants in the area in question. With regard to the chaining of the dog in question I learnt that, under the relevant legislation, the owner or keeper of a dog must not permit it to stray but the Council had no authority to impose an Order specifying how a dog is to be restrained. I assured the complainant that there was no order, nor could there be, issued by the Council requiring a dog to be restrained by means of a chain.
(200500810)

Level of the damp-proof course in new dwelling

The complainant stated that a workman, whom he had employed to lay a patio at his recently built property, informed him that the damp-proof course (DPC) on his house was beneath ground level. He stated that, in the following three months, he sent emails and made telephone calls to Newtownabbey Borough Council's Building Control (BC) department seeking assistance with this problem but he was told that it was a matter between him and the developer. The developer informed him that he was not prepared to lower the ground level to expose the original DPC and that he would have to accept the insertion of a second DPC or nothing at all. The complainant stated that he had received no support from the Council's BC department and he had to employ a building engineer to give him advice. He further contended that the BC department should have initially identified the DPC problem during its statutory inspection of the construction of his house.

My investigation established that the Council's BC department had responded promptly to a report about the DPC from another resident (not the complainant) whose property had been similarly affected. The documentary evidence clearly showed that the BC department had subsequently acted without delay in notifying the developer of the breach of the Building Regulations which it had determined affected a number of properties, including that of the complainant, and in securing proposals to remedy the situation. The initial proposal by the developer, to install a second DPC in the affected dwellings, was accepted by the BC department as satisfying the Building Regulations. However, the preferred solution sought by the complainant (and other residents) was a

lowering of the ground level to expose the existing DPC and the developer eventually offered this as an alternative method of remedying the situation. This method would also have satisfied the Building Regulations.

I established that the BC department does not have the statutory authority to direct a developer to implement a particular method of construction to achieve compliance with the Building Regulations. I accepted that the BC department did not have any remit to advise the complainant or other residents on the various options of construction to remedy the problem. I also formed the view that, while the complainant may have felt the need to employ the services of a private building surveyor to give him advice on the available options to resolve the DPC problem, this was entirely a matter for him and was not attributable to any dereliction of duty on the part of the BC department.

With regard to the BC department's initial inspection of the DPC during construction of the dwelling, I accepted, as being likely, that it had not been possible to establish the exact measurement of the DPC above ground level at that stage of construction. Moreover, I noted that the Building Regulations do not require the BC department to secure conclusive evidence in this respect. Therefore, having considered the wording of the Building Regulations I accepted that the onus of responsibility for achieving compliance with the Building Regulations rests with the developer. Consequently, I did not uphold this aspect of the complaint.

My investigation of this complaint highlighted that the public's perception of the role of a Council's Building Control department is not as clearly understood as it should be. I therefore also recommended that the Council consider publishing an explanatory leaflet with particular reference to its remit regarding statutory inspections of new build. I wish to commend this practice to Building Control departments within all Councils.
(200501066)

Naming of laneway

The complainant stated that in January 2005 an officer from Magherafelt District Council visited her home and informed her that a new house number and a new address had been given to the laneway on which she resided. She was further advised that the request to rename the laneway had been made by a neighbour and approved by the Council in November 2004. The complainant objected to the Council on the basis that there had been no prior consultation with residents, however, she was advised that the new name of the laneway would remain. She complained that, while she accepted the concept of renaming the laneway, she strongly believed that consultation should have taken place.

My investigation revealed that the laneway, which abuts the main road and bears the same name, had previously been allocated letters after address numbers, that is, 47a, 47b etc. The Council stated that address numbering had become extremely complex and that the potential for misdirected mail was ever increasing. I established that the Council had received a written request from a resident on the laneway proposing a new name for the laneway. The request was referred to the monthly Council meeting in December 2004 and was subsequently ratified.

I established that the laneway had never formally been named and that the Council was empowered by legislation to determine street names in its area – a function normally undertaken when new streets are being developed. I further established that there is no requirement in the legislation

for consultation in such circumstances. Consequently, the Council's action in not consulting with occupiers of the laneway was not contrary to or inconsistent with the terms of the legislation. Notwithstanding that, however, I felt that, with the increasing emphasis on the protection of human rights, it is reasonable for a member of the public to expect to be informed of any proposal which could potentially impact on their property. While I recognised that the Council did not act outside the statutory requirements when it named the laneway without consultation with residents I considered it would have been courteous and consistent with good practice to have done so.

During my investigation I noted a significant disparity between the detail of events set out by the Council and those described by the complainant; in particular there was a significant discrepancy in the respect of events relating to an alleged meeting in February 2005 and a series of alleged telephone calls. I further noted that the Council's case was weakened by a total lack of any record of meetings or telephone conversations. However, as the key element of the complaint concerned the absence of consultation prior to the name change of the laneway I decided not to pursue the matter of the communication between the relevant parties as I considered, on balance, that there had been, at the very least, attempts made to contact the complainant.

Consequently, with regard to the naming of the laneway, I did not uphold the complaint. **(200500926)**

Noise Disturbance, Litter and Anti-Social Behaviour

The complainant did not believe that her complaints to Banbridge District Council about anti-social behaviour, vandalism, noise, litter etc were seriously, adequately or equally considered. She said the Council did not appear to understand the effect businesses e.g. clubs, pubs and hot food bars were having on nearby residents at night and early mornings and that health and safety issues were not being addressed. The complainant was particularly concerned that a hot food bar in her street was open too late encouraging drunken patrons from local night clubs to gather, causing noise, litter and anti-social behaviour. A further complaint was that taxis/buses were encouraged into the area causing more noise.

The Council acknowledged that Banbridge had, for many years, had a very active night-time economy with two large night clubs close to the town centre which inevitably attracted large numbers of young people, especially at weekends. However I was informed that whilst there was no doubt a considerable amount of litter did gather on the street, the Council's street cleaning service commenced at 5.00 am on Sunday mornings and left the area in pristine condition. In my report I stated that while I sympathised with the complainant in many of her concerns and fears over the consequences of accumulations of litter, it was not my role to pass judgement on the overall effectiveness of the street cleaning services provided in Banbridge. From the evidence provided I was however satisfied that the issue was being taken seriously by the Council.

In relation to noise and the late opening hours of a nearby hot food bar, I found that the Council had undertaken sufficient monitoring, over an extended period of time, to allow it to make the judgement, if, in its view, residents were being unreasonably disturbed and whether or not it would be appropriate to use noise monitoring equipment. The Council's decision as to the use of monitoring equipment to measure noise levels was ultimately a discretionary

one taken by professional Environmental Health Officers which I did not believe I had reason to challenge. Similarly, the decision not to take action in respect of opening hours of the hot food bar was a discretionary one which, in all the circumstances, I did not find unreasonable.

The evidence before me showed that action was initiated as a result of the complainant's concerns regarding noise coming from a particular premises and that proper consideration was given to the results of monitoring before a decision was made.

With regard to other issues raised by the complainant, I accepted that the issue of enforcement of parking restrictions did not come within the Council's jurisdiction but I was satisfied that the issues of car and bus parking had been considered by the Council with a view to improving the situation for both residents and night time traders. I was pleased to note that the Council had agreed to refurbish a previously closed public toilet in the area. Overall I found that I could not uphold the complainants contention that her complaints regarding noise, litter and enforcement of parking regulations had not been seriously considered by the Council. Overall I found that the Council was actively working with other agencies and bodies on these issues and I did not find any evidence of maladministration in its dealings with the complainant. **(200500940)**

NORTHERN IRELAND HOUSING EXECUTIVE

Application for Grant Aid for Renovations

First, the complainant stated that following his application for a Renovation Grant the Executive inspected his home and produced a Schedule of Works required to bring his house up to the required fitness standard. The complainant was dissatisfied with the standard of the inspection which was carried out as he considered that all works which were required to the roof of his house should have been identified at the initial inspection. My investigation established that when a Schedule of Works is issued an applicant is advised to give it to their builder/surveyor so that any necessary additional building works can be identified. In addition I was also informed by the Executive that if there are additional unforeseen works, identified during works on site, then the grant can be amended and an additional grant, up to the maximum £25,000, is available. My investigation established that the complainant had dealt with this as a paper exercise only and his builder had not inspected the house itself. Having considered all of the information available I was unable to uphold this element of this complaint.

Second, the complainant was dissatisfied with the standard of work which was carried out and felt that this should have been identified when inspections were carried out by the Executive as part of the grant procedure. I noted that according to the Executive's procedures, grant applicants are advised that the Executive does not accept any liability or responsibility in respect of the grant aided work. Applicants are also informed that they should not rely on the inspection or payment of monies by the Executive as any proof or guarantee that the contractor engaged to execute the works has completed the work to a proper standard. I further noted that applicants are strongly recommended therefore to retain their own surveyor to satisfy themselves that the work has been carried out to a satisfactory standard. The Executive provided me with detailed information regarding the inspection process and I am not in a position to question the technical judgments made. When the work was completed I noted that the complainant had signed a completion card for the Executive stating he was satisfied with the work. It was

regrettable that the complainant did not engage anyone to provide him with the assurance he required as to whether the work had been carried out to a satisfactory standard. I was therefore not able to uphold this element of the complaint.

I have also noted that during my investigation the complainant had complained to the Building Guarantee Scheme about the standard of work by the Builder. However, he was advised that nothing could be done about his complaint under the Scheme Guarantee in his circumstances.

I recognised that the Executive must apply the terms and conditions of the legislation and related policy and procedures under which it operates in processing grant applications and had done so in this case. I was pleased to record that the Executive had paid the maximum renovation grant of £25,000 to the complainant. **(CC 76/04)**

Handling and Processing of Application for Housing

Firstly, the complainant felt that she was being overlooked for housing and that the Executive was not taking into account that she was a single mother with a child of mixed ethnic background. During my investigation I was provided with details of the housing points allocated to the complainant and also details of housing offers which she had turned down because she did not regard them as acceptable in her situation. My investigation established that the Executive had dealt with the complainant's application for housing in accordance with its policy and procedures. I could not therefore uphold this element of the complaint.

Secondly, the complainant was concerned about the number of vacant houses which she had enquired about and was told they were being kept for decanting purposes. The Executive provided me with information regarding the use of its property for decanting purposes. This is a discretionary decision and as such I am neither authorised nor required to question such a decision which I regard as having been taken without maladministration.

Thirdly, the complainant was concerned about what she regarded as an "unsympathetic" attitude by some Executive staff. I noted the response from the Chief Executive in which he stated that when staff are in a situation where they are unable to satisfy a customer's demands it may sometimes appear that they are being unsympathetic. I was pleased to note the Chief Executive's apology that if the complainant considered that this was the case he wished to assure her that it was not the officer's intention. In addition to this the complainant also expressed her concerns about the differing accounts of her meetings with Executive staff. In my consideration of this element of the complaint I could only say that in the absence of any contemporaneous notes or an independent witness it is impossible for me to confirm what exactly was said. In the circumstances, therefore, I was unable to uphold this element of the complaint.

During the course of my investigation I was pleased to note that the complainant was offered and accepted the tenancy of a two bedroomed house in one of her preferred locations. However, issues were raised with the Executive regarding the condition of the house, especially the decoration. Following my intervention the Executive awarded a full redecoration grant to the complainant. As a result of this I recommended that the Executive clarify its procedures regarding the award of a redecoration grant to prospective new tenants, especially where a significant redecoration issue has been identified. I am pleased to record that the Executive agreed to consider this issue. **(200500335)**

Application for Rehousing

In this case, the complainant wrote to me about the actions of the Executive in its handling and processing of her application for rehousing.

The main element of the complaint was the complainant's disappointment at the length of time taken to meet her request for a transfer to alternative accommodation within her preferred areas. During my investigation I was provided with details of the housing points allocated to the complainant and also details of housing offers which she had been made and turned down for various reasons. My investigation also established the Executive's difficulties were compounded, because the complainant stipulated areas where the specified area is in high demand and with a limited turnover of stock. My investigation established that the Executive had dealt with the complainant's application for housing in accordance with its policy and procedures. **(CC 139/04)**

Application for Housing

This was a multi-element complaint, which centred on the Executive's handling of the complainant's application for housing and subsequent handling of his request for re-assessment under the provisions relating to intimidation.

Under the Housing (NI) Order 1988 and the Executive's own guidance, I established that inquiries are necessary to determine whether a person is homeless or threatened with homelessness. In this case, I could not accept it was reasonable for the Executive to have been satisfied that the complainant did not meet the criteria for priority homeless status, without following-up the initial written enquiry to the complainant's General Practitioner, who supplied medical evidence in support of the application. I also noted that the disallowance notice did not state the reasons why the Executive made that decision, nor did it set out the factors it took into account when making its decision.

On the issue of intimidation, my investigation established that the complainant would have been awarded additional points if the PSNI had confirmed that he was under threat or being intimidated. I noted that although the Executive sought such information from the PSNI, no follow-up was undertaken to ensure that relevant evidence was available to make a decision on whether or not to allocate additional housing points. This constituted a breach of the Executive's practice of consulting with the PSNI concerning allegations about threats to housing applicants. I could not accept that it was possible to assess the urgency of the complainant's housing application in the absence of evidence from the PSNI in respect of his allegations of threats from paramilitaries. The Executive acknowledged that such confirmation would have considerably increased the number of the complainant's housing points.

Overall, I considered that the failure by the Executive to properly process the complainant's application under the homelessness legislation, and subsequent handling of his request for re-assessment under the provisions relating to intimidation, constituted maladministration for which I criticised the Executive. In doing so, I drew particular attention to the need at all times to follow agreed procedures when dealing with applicants presenting as homeless, or who are having their housing needs reassessed because of a change in circumstances. I also recommended to the Chief Executive that he should consider reminding staff about the procedures already formulated concerning the actions to be taken to deal with persons who are the subject of a homelessness assessment. In terms of

redress, I recommended a letter of apology from the Chief Executive, together with a consolatory payment of £1,000 for failure to follow good administrative practice, which caused the complainant to experience the injustice of frustration, inconvenience and annoyance. I did, however, record that I found no evidence that improper consideration or motives were involved on the part of the Executive in its dealings with the complainant. **(200500566)**

Failure to be informed of changes proposed to House Sales Scheme

The complainant in this case was aggrieved that changes made, in 2004, to the Executive's House Sales Scheme had resulted in the Historic Cost provision, which affected his house, being extended from eight to ten years. The complainant was further aggrieved that the Executive failed to inform him of the proposed changes, which would adversely affect any 'new' house purchase application he submitted, before they were introduced.

Having investigated this complaint, I established that the Executive is required by law to submit to the Department for Social Development (DSD) a House Sales Scheme to offer for sale to its tenants the dwellings occupied by them. Also, the Executive is required to comply with a Scheme approved by DSD. My investigation further established that DSD initiated a review of the House Sales Scheme in 2004 and, while the Executive was aware that such a review was being considered, DSD only fully publicised the full changes proposed to the Scheme on 18 May 2004 by means of a News Release on its website and notices inserted in the local press.

The News Release included a statement by the Minister concerned that "the new arrangements will apply, subject to any amendments which might be made following the outcome of consultation, to all applications to purchase Executive or Housing Association properties received after 18 May 2004". The Executive informed me it had no opportunity to inform its tenants of the detail of the proposed changes to the House Sales Scheme before the effective date of 19 May 2004 for their introduction. I accepted this to have been the case.

I concluded that there had been no maladministration on the part of the Executive, in relation to its handling of changes proposed and made by DSD, in 2004, to its House Sales Scheme. **(200500498)**

Repayment of Discount on Resale

The complainant in this case said she and her husband purchased their former home in November 2002 from the Executive, under its Statutory House Sales Scheme, which allowed them, as tenants, a discount in the purchase price. The complainant said her family is mixed denomination and, following the purchase, they experienced a number of incidents of intimidation which ultimately "forced" them to sell their former home in October 2005. The complainant said the sale was completed only a matter of weeks before the expiration of the three year period from the date they purchased the house, but she and her husband had to repay one full year's discount to the Executive. The complainant added that, had the intimidation and abuse not been so detrimental to her family's well being, they would have endured it for another matter of weeks by which time they would have owned the property for more than three years and, therefore, would not have had to repay part of the discount.

The complainant considered she had been harshly penalised by the Executive for events which were outside her control and she contended that the Executive should

waive repayment of the discount applicable to the 52 week period ending in November 2005, or at the very least confine it to the proportion due in respect of the unexpired portion of the period in question.

In my investigation of this complaint, which included an examination of the relevant housing legislation and the terms of the Scheme, I established that the Executive had no discretion to either waive or accept a percentage of the discount repayment in this case. I found that, although the Scheme provides for certain categories of disposal of a former Executive owned property which do not attract repayment of discount, these do not include intimidation or anti-social behaviour. The relevant legislation, and related policy, stipulates that only complete, not part, years are to be considered when discount is repaid to the Executive. Also, I found that there is no discretion in the Scheme to make exceptions in individual cases such as that of the complainant.

I concluded that the terms of the Statutory House Sales Scheme, under which the Executive is require to operate, and which has its genesis in primary legislation, are stringent in that the Executive is not permitted to require repayment of a lesser amount of discount than that required under the terms of the Scheme. The legislative framework which informs my role does not empower or allow me to overrule such statutory requirements. In the circumstances I could not uphold this complaint. **(200501043)**

SELECTED SUMMARIES OF CASES SETTLED

Belfast Education and Library Board

The complainant wrote to me about the Board's failure to answer certain questions concerning the education of his son and to follow its own administrative guidelines. During discussions with my Director of Investigations, the complainant and the Board confirmed their willingness to meet to address the substance of the complaint. The meeting was productive and addressed the issues identified in the complaint to this Office. Following this meeting, the Board issued the complainant with a written response and also considered some additional issues which were raised by the complainant. In light of the above information, I was satisfied that the Board had sought to address the issues which formed the substance of the complaint to me. **(200600284)**

Newington Housing Association

The complainants in this case were dissatisfied with the Association's failure to undertake several maintenance works to their home. I arranged for enquiries to be made of the Association and, as a result of these enquiries, the Association undertook to replace the rear door and door frame and the toilet bowl in the upstairs bathroom of the dwelling. These actions by the Association resolved that element of the complaint to me. **(200600898)**

N.I. Commissioner for Children & Young People

I received a complaint about the actions of the NICCYP in relation to public statements referring to events which were the subject of court proceedings. I am certainly of the view that public bodies must be particularly careful to ensure that statements issued to the public, especially those which could bear upon contentious and highly sensitive matters, are balanced and fair.

The statements issued by NICCYP, and to which the complainant so clearly objected, were, I am satisfied, issued in terms which expressed the personal view of the, then, Children's Commissioner, sadly, now deceased. It is an unavoidable reality that these tragic circumstances rendered it impossible for those personal views to be reviewed or altered. Whilst I decided that, in such circumstances, a full investigation under the terms of the Order cannot be completed, I felt it was right to record my view, which was based upon careful consideration of all of the evidence obtained through my preliminary enquiries into the complaint, that the statements issued by NICCYP, whilst technically and legally accurate, were expressed in such a way that a reader could reasonably have inferred that a much more serious incident in terms of physical assault had transpired than that accepted by the Court. It seemed to me, therefore, that this case highlighted the critical need for statements made by public officials to not only be technically and legally accurate but also to convey an accurate contextualisation of the issue which is being commented upon.

In light of these findings I wrote to the Interim Commissioner recommending that NICCYP should consider removing the contentious press releases from its website. I asked him to note my comments in relation to the standards which I expect to see reflected in public statements issued by Bodies within my jurisdiction, and to bring these to the attention of all staff in the NICCYP, to ensure that he and his staff avoid a recurrence of the imbalance which I was satisfied had occurred in this instance.

(200501188)

Northern Ireland Housing Executive

This case involved a severely disabled lady who had been living with her sister, an Executive tenant, when an application to purchase their home was made. Sadly, the complainant's sister passed away on the day that the confirmation of sale arrived. Under the Housing Order 1992, the complainant was considered ineligible for the House Sales Scheme. Following representations from my Office, to both the Executive and the Department of Social Development who administer the Scheme, the case was reviewed. As a result the Executive advised that they had agreed to offer the sale of the house to the complainant under the same terms as those offered to her late sister in accordance with the spirit of the Order. In light of the action by the Executive I decided to take no further action on this complaint. **(200500997)**

Northern Ireland Housing Executive

I received a complaint about the levels of noise experienced in a ground floor flat, which the complainant attributed to the quality of construction of the property. Following representations from my Office, the Executive arranged for monitoring equipment to be placed in the property and undertook to lay an acoustic floor covering if noise levels were determined to be excessive. In the light of these undertakings from the Executive I decided to take no further action on his complaint. **(200600379)**

Northern Ireland Housing Executive

This complaint involved the sale of a store by the Executive. The complainant explained that the tenancy of his accommodation, which he had held for more than twenty years, included the use of the store. Having arranged for one of my investigating officers to meet with the complainant, I made enquiries of the Executive. As a result of these enquiries the Chief Executive of the Executive offered to compensate the complainant for the loss of the storage facility and for any distress he has suffered in the sum of £1,000. He also informed me that the store has now been returned to the Executive's ownership and the complainant once again has use of it. **(200600603)**

Northern Ireland Housing Executive

In this case the complainant was dissatisfied with the condition of the path and driveway at the front of her house and with the Executive's decision not to resurface her driveway. Following representations from this Office the Executive reviewed the particular circumstances of this case and subsequently decided to resurface the driveway with concrete and replace the flagstones at the front of her home with concrete. I also note that the Executive agreed to trim foliage in the complainant's front garden so that she could make better use of the handrail which had already been provided. **(200600665)**

South Eastern Education & Library Board

A lady complained to me that she had written to the Board in relation to her concerns regarding school transport and the firm allocated to take her daughter to school but had not received a reply. I arranged for enquiries to be made of the Board. I was informed that at the expiration of the contract for school transport services a tendering competition was held and a contract was awarded. I was also informed that a response to the complainant's query was to be issued by the Chief Executive of the Board. The complainant subsequently informed me that she received that response. **(200601220)**

STATISTICS

Table 3.3: Analysis of Written Complaints Received in 2006/07*

	Brought forward from 2005/06	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/07
Local Councils	11	37	23	1	11	2	4	7
Education Authorities	3	20	9	2	7	1	2	2
Health and Social Services Bodies	3	12	6	0	4	1	1	3
Housing Authorities	43	113	47	12	47	2	10	46
Other Bodies Within Jurisdiction	2	18	10	1	5	0	1	3
TOTAL	62	200	95	16	74	6	18	61

** It should be noted that this breakdown contains several multi-element complaints and therefore the total of complaints dealt with is greater than the total caseload figure.*

Table 3.4: Analysis of Written Complaints Against Local Councils

	Brought forward from 2005/06	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/07
Antrim BC	0	1	0	0	1	0	0	0
Ards BC	0	3	2	0	0	0	0	1
Armagh C&DC	1	1	1	0	0	0	1	0
Banbridge DC	1	0	0	0	0	0	1	0
Belfast CC	0	1	0	0	1	0	0	0
Carrickfergus BC	0	2	1	0	1	0	0	0
Castlereagh BC	0	2	0	0	1	0	0	1
Coleraine BC	0	1	0	0	1	0	0	0
Cookstown DC	0	1	1	0	0	0	0	0
Craigavon BC	1	4	2	0	1	0	0	2
Derry CC	0	3	3	0	0	0	0	0
Down DC	1	2	2	0	1	0	0	0
Dungannon & S Tyrone BC	0	2	2	0	0	0	0	0

	Brought forward from 2005/06	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/07
Larne BC	1	3	2	0	0	0	0	2
Limavady BC	2	0	0	0	0	1	0	1
Lisburn CC	1	1	1	0	1	0	0	0
Magherafelt DC	1	0	0	0	0	0	1	0
Moyle DC	0	2	1	1	0	0	0	0
Newry & Mourne DC	0	3	2	0	1	0	0	0
Newtownabbey BC	1	2	1	0	1	1	0	0
North Down BC	0	1	1	0	0	0	0	0
Omagh DC	0	2	1	0	1	0	0	0
Strabane DC	1	0	0	0	0	0	1	0
TOTAL	11	37	23	1	11	2	4	7

Table 3.5: Analysis of Written Complaints Against Education Authorities

	Brought forward from 2005/06	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/07
Belfast E&LB	1	4	1	1	1	1	0	1
CCMS	2	2	2	0	1	0	0	1
North Eastern E&LB	0	1	0	0	1	0	0	0
South Eastern E&LB	0	3	1	1	1	0	0	0
Southern E&LB	0	5	3	0	2	0	0	0
Western E&LB	0	5	2	0	1	0	2	0
TOTAL	3	20	9	2	7	1	2	2

Table 3.6: Analysis of Written Complaints Against Health and Social Services Bodies

	Brought forward from 2005/06	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/07
Armagh & Dungannon HSS Trust	0	1	0	0	1	0	0	0
Belfast City Hospital HSS Trust	0	1	1	0	0	0	0	0
Craigavon Area Hospital Group Trust	1	0	0	0	0	1	0	0
Foyle HSS Trust	0	1	0	0	0	0	0	1
Homefirst Community Trust	1	1	1	0	0	0	0	1
Mater Hospital Trust	0	1	1	0	0	0	0	0
NI Medical & Dental Training Agency	1	0	0	0	0	0	1	0
North & West Belfast HSS Trust	0	1	1	0	0	0	0	0
Regulation & Quality Improvement Authority	0	1	0	0	1	0	0	0
South & East Belfast HSS Trust	0	1	1	0	0	0	0	0
Sperrin Lakeland Health & Social Care Trust	0	1	0	0	0	0	0	1
Ulster Community & Hospitals Trust	0	2	1	0	1	0	0	0
United Hospitals HSS Trust	0	1	0	0	1	0	0	0
TOTAL	3	12	6	0	4	1	1	3

Table 3.7: Analysis of Written Complaints Against Housing Authorities*

	Brought forward from 2005/06	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/07
NIHE	41	91	37	10	38	2	9	41
Belfast Community Housing Association Ltd	0	1	1	0	0	0	0	0
BIH Housing Association Ltd	0	4	2	0	0	0	0	2
Clanmil Housing Association Ltd	0	2	1	0	1	0	0	0
Filor Housing Association Ltd	0	2	1	0	0	0	0	1
Fold Housing Association	1	3	1	0	2	0	1	0
Gosford Housing Association (Armagh) Ltd	0	1	0	0	1	0	0	0
Habinteg Housing Association (Ulster) Ltd	0	1	1	0	0	0	0	0
HEARTH Housing Association	0	1	0	0	1	0	0	0
Newington Housing Association (1975) Ltd	0	1	0	2	2	0	0	0
Oaklee Housing Association Ltd	1	3	3	0	0	0	0	1
St Matthews Housing Association Ltd	0	1	0	0	1	0	0	0
Triangle Housing Association Ltd	0	1	0	0	0	0	0	1
Ulidia Housing Association Ltd	0	1	0	0	1	0	0	0
TOTAL	43	113	47	12	47	2	10	46

** It should be noted that this breakdown contains several multi-element complaints and therefore the total of complaints dealt with is greater than the total caseload figure.*

Table 3.8: Analysis of Written Complaints Against Other Bodies Within Jurisdiction

	Brought forward from 2005/06	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/07
Arts Council	0	2	1	0	0	0	0	1
Consumer Council	0	3	1	0	2	0	0	0
Fisheries Conservancy Board	1	1	0	0	1	0	1	0
Invest NI	0	3	1	0	0	0	0	2
Labour Relations Agency	0	1	0	0	1	0	0	0
NI Certification Office	0	2	2	0	0	0	0	0
NI Commissioner for Children & Young people	1	1	1	1	0	0	0	0
NI Fire & Rescue Service	0	3	2	0	1	0	0	0
Not specified body within jurisdiction	0	2	2	0	0	0	0	0
TOTAL	2	18	10	1	5	0	1	3

SECTION FOUR

Annual Report of the Northern Ireland Commissioner for Complaints - Health Service Complaints

WRITTEN COMPLAINTS RECEIVED IN 2006/07

I received a total of 88 complaints during 2006/07, 22 less than in 2005/06.

Fig. 4.1: Health Services Complaints 1997/98 - 2006/07

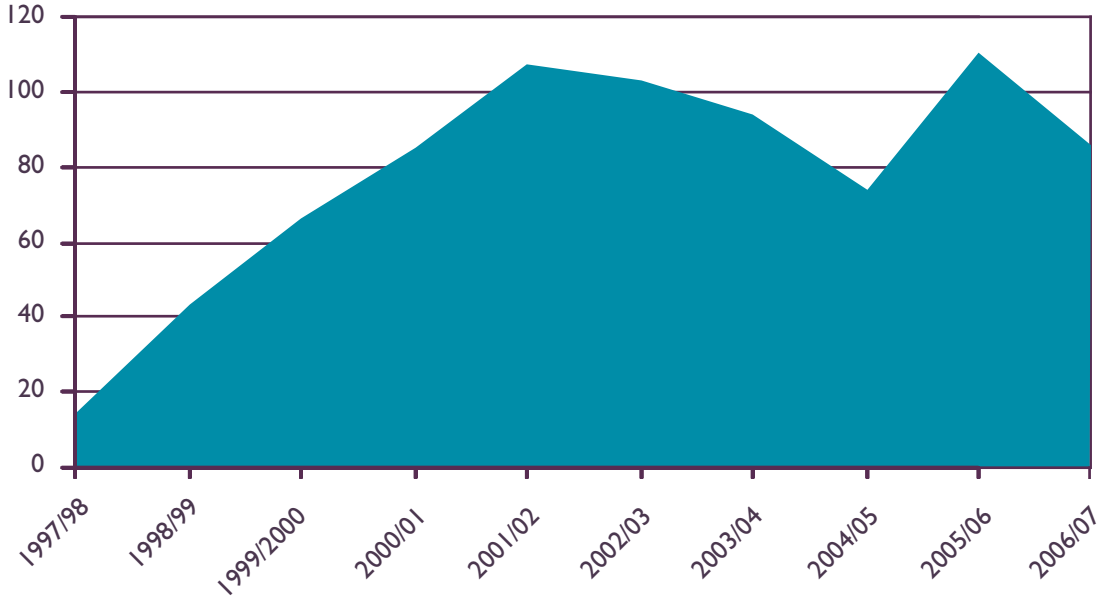


Fig 4.2: Written Complaints Received in 2006/07 by Authority Type

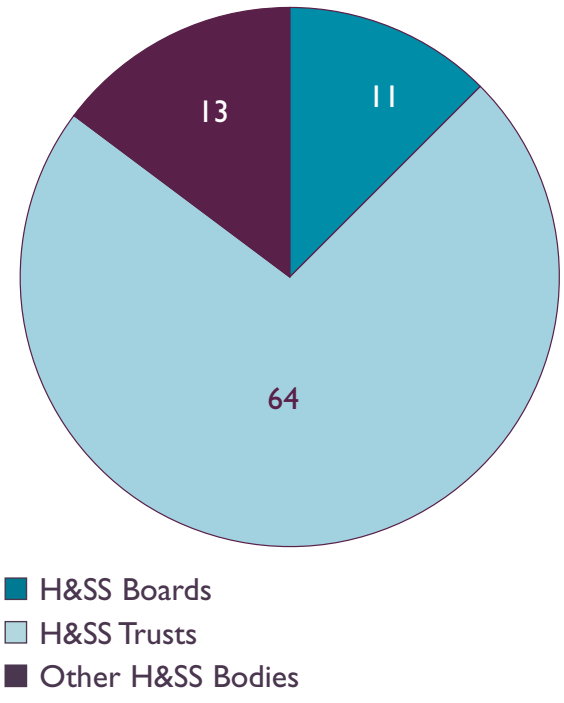
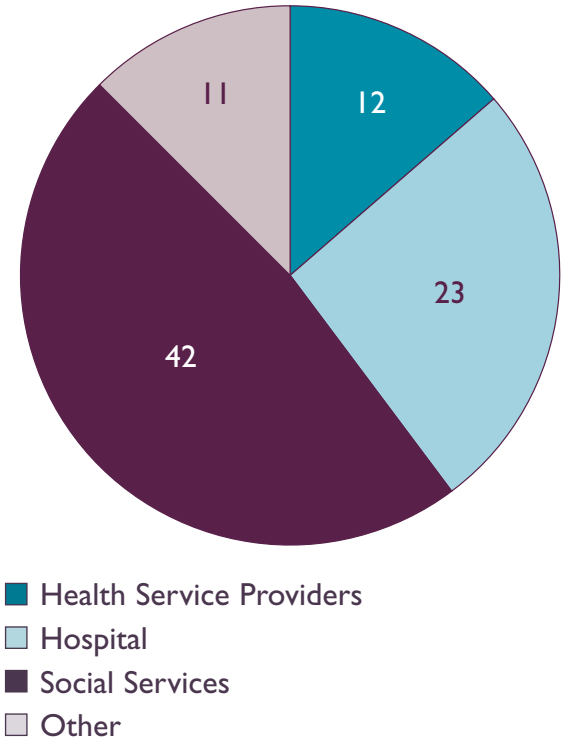


Fig 4.3: Written Complaints Received in 2006/07 by Complaint Subject



The Caseload for 2006/07

In addition to the 88 complaints received during the reporting year, 58 cases were brought forward from 2005/06 – giving a total caseload of 146 complaints. Action was concluded in 119 cases during 2006/07 and all of the 27 cases still being dealt with at the end of the year were under investigation.

Table 4.1: Caseload for 2006/07

Cases brought forward from 2005/06	58	
Written complaints received		88
Total Caseload for 2006/07		146
Of Which:		
Cleared at Validation Stage		54
Cleared at Investigation Stage (without a Report), including cases withdrawn and discontinued		46
Settled	5	
Full Report	14	
In action at the end of the year		27

The outcomes of the cases dealt with in 2006/07 are detailed in the Figs 4.4 and 4.5.

Fig 4.4: Outcomes of Cases Cleared at Validation Stage

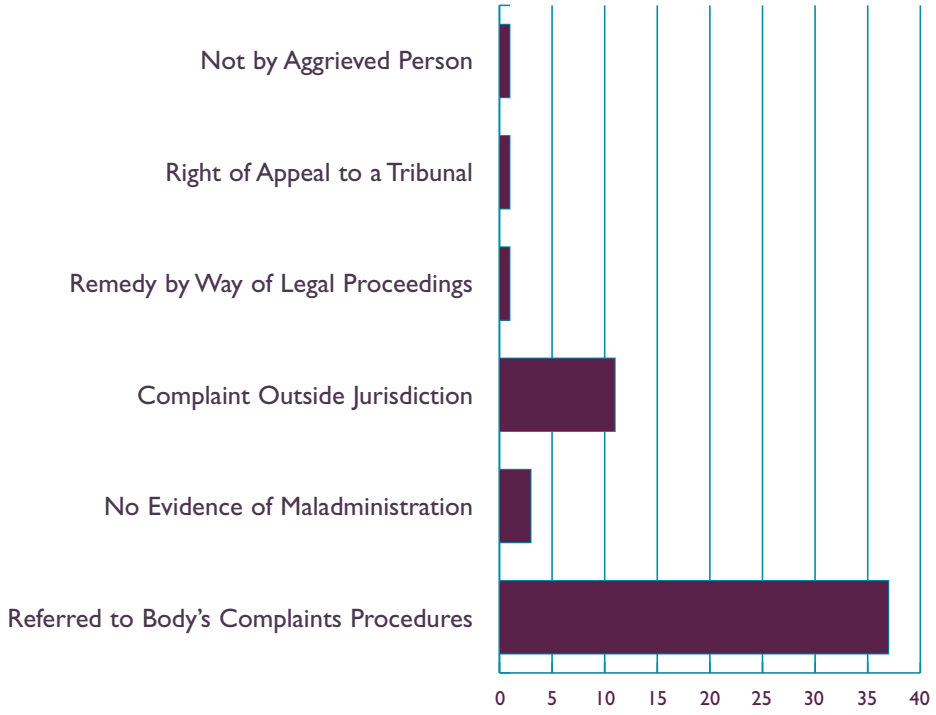
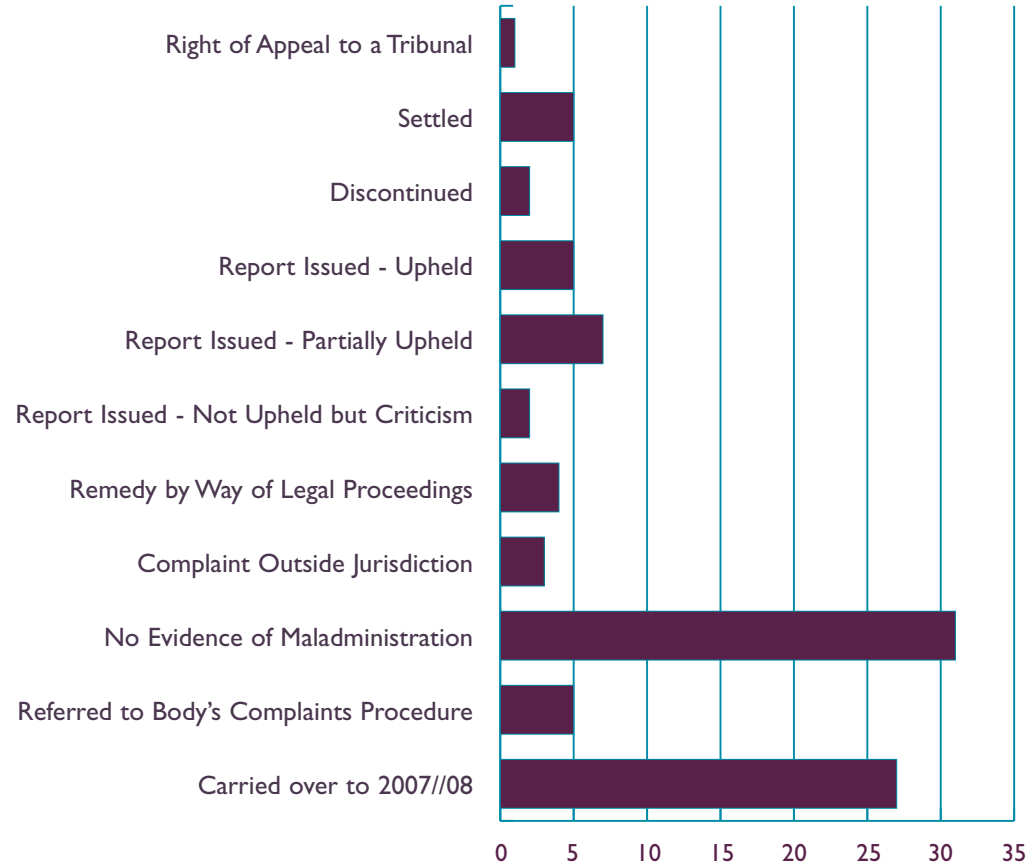


Fig 4.5: Outcome of Cases Cleared at Investigation and Report Stages



The average time taken for a case to be examined and a reply issued at Validation Stage was

1 week.

The average time taken for a case to be examined, enquiries made and a reply issued at Investigation Stage was 32 weeks.

The average time taken for a case to be examined, enquiries made and a full Report issued at Report Stage was 71 weeks.

14 reports of investigations were issued in 2006/07. Of these cases: 5 were fully upheld, 7 were partially upheld and 2 were not upheld but I criticised the Body complained against. In all but one of the cases in which I made recommendations for actions by the body complained against these recommendations were accepted by the body.

Table 4.2 Recommendations in Reported Cases

Case No	Body	Subject of Complaint	Recommendation
HC 18/03	United Hospitals HSS Trust	Inadequate Care of Elderly Mother	Written apology
HC 2/04	Health Service Provider - GP	Removal from GP's List & Mishandling of Complaint	Written apology and consolatory payment of £2,000
HC 3/04	Newry & Mourne HSS Trust	Events Leading to Brother's Death	Written apology and changes to address concerns identified in report
HC 5/04	Ulster Community & Hospitals HSS Trust	Inadequate Care and Treatment	Written apology and review of implementation of Departmental guidance
200500180	Southern H&SSB	Failure to properly consider request for Independent Review	Written apology
200500906	Southern H&SSB	Outcome of Independent Review	Written apology
200500943	North & West Belfast HSS Trust	Delay in Dealing with Request for Independent Review	Written apology
200500944	Eastern H&SSB	Delay in Dealing with Request for Independent Review	Written apology
200500967	Craigavon Area Hospital Group HSS Trust	Inadequate Care and Treatment	Written apology and changes to address concerns identified in report

Case No	Body	Subject of Complaint	Recommendation
200501032	Craigavon & Banbridge Community HSS Trust	Standard of Care and Treatment	Written apology
200501187	Eastern H&SSB	Decision to Refuse Independent Review of Complaint	Written apology
200600079	Foyle HSS Trust	Installation of Bathroom Grab Rails without Authorisation	Written apology and changes to address concerns identified in report

SELECTED SUMMARIES OF INVESTIGATIONS

Care and Treatment Provided to Elderly Mother; Inadequate Investigation of Complaint

In this long running and highly complex case the complainant raised multiple concerns in relation to the care and treatment provided to his mother during two separate in-patient episodes in Whiteabbey Hospital. The first complaint related to his mother's admission to hospital in November 2000 and the second, to a further admission to hospital in March 2002. The complainant told me that he remained dissatisfied with the responses to his concerns which he had received direct from the United Hospitals Trust (the Trust) and from the Convenor of the Eastern and Social Services Board who had refused his request for an Independent Review.

I decided not to conduct a detailed investigation of the issues raised in the first complaint since the substantive concerns raised with me related to events which were outside the time-limit set down in the legislation underpinning my Office. This provides that a complaint should be brought to me within one year of the complainant becoming aware of the matter complained of.

With regard to the second complaint the complainant explained that on 24 March 2002 his mother, who was a resident of a Private Nursing Home (PNH), was referred to Whiteabbey Hospital by her GP due to an infected ulcer in her left heel. She was initially cared for in Ward 4 before being transferred to Ward 7 from which she was discharged back to the PNH on 18 April 2002. The main issues of complaint raised by the complainant against the Trust were as follows:

- the family had received notice that their mother was being discharged on 15 April 2002 even though the Podiatrist had arranged a later appointment on that day to apply a dressing to his mother's heel. They were subsequently told that the discharge had been cancelled due to infected sores on their mother's hips, although the Trust later denied that this explanation had been provided;

- when the complainant's mother returned to the PNH on 18 April 2002 she arrived with a catheter, the urine bag of which was practically overflowing and smelt very strongly; she had an infection of the uterus and a urine infection; there were three wounds on her back for which there was no explanation;

- when the complainant phoned the hospital for further information he found the Ward 7 Sister to be aggressive and indifferent to his concerns. She denied any knowledge of the wounds on his mother's back;

Since I was satisfied that the second complaint was within the timescale required by my legislation I made preliminary enquiries into the handling of the relevant matters under the HPSS Complaints Procedure. I obtained and examined copies of the documentation considered by the Convenor who dealt with the request for an Independent Review of the complaint, including the records relating to the Trust's handling of the complaint under local resolution as well as the patient's medical and nursing records. I also sought advice from my own Independent Medical Adviser on the clinical aspects of the complaint. My conclusion at the end of the preliminary phase of investigation was that the complainant had

not received comprehensive answers to all of the issues which he had raised. I therefore decided to conduct a detailed investigation of the complaint.

To assist me with my in-depth investigation I appointed an Independent Nursing Assessor. Interviews were conducted with a number of nursing staff and managers from Whiteabbey Hospital as well as the Matron of the PNH. Following an exhaustive investigation which resulted in a very extensive and wide-ranging report which dealt with all of the concerns raised by the complainant, I found maladministration had occurred in the following areas:

1. Failure to properly implement infection control policy by permitting an overfull catheter bag to remain in situ.

2. Failure to discharge proper nursing care/practice through inappropriate use of a Mepore dressing on a patient with fragile skin.

3. Failure to properly implement a nursing care plan by:
   - neglecting to record the condition of the patient's wounds;
   - failing to use occlusive dressings as directed in nursing notes;
   - failing to demonstrate that adequate relief from pressure sores was provided.

4. Failure to adhere to acceptable communication standards by:
   - providing inaccurate information about pseudomonas infection in the patient's hips;
   - providing inaccurate confirmation of a pseudomonas infection in the patient's heel and inaccurate information regarding antibiotic therapy.

5. Failure to properly implement discharge procedures by:
   - neglecting to empty the patient's catheter bag;
   - neglecting to properly record wounds and dressings on the discharge form.

6. Failure to respond to the complainant's concerns in accordance with principles of good practice in complaints handling.

7. Failure to adequately investigate the complaint.

I noted that at the time of the patient's transfer from Ward 4 to Ward 7, the latter was experiencing staffing problems and was further disrupted by preparations for a temporary move to allow refurbishments to take place. Nevertheless I was highly critical of the multiple instances of failure to adhere to nursing policies and procedures exposed by my investigation. I was most concerned that the failures in the standard of care provided to the patient's mother were compounded by a wholly inadequate response to his complaint.

On a positive note, the complainant was keen to emphasise that his family had been very satisfied with the care which had been provided to their mother by the staff in Ward 4 of Whiteabbey Hospital. I was also encouraged by the readiness demonstrated at interview by many of the staff involved in this case to acknowledge and learn from the mistakes which had been made. In addition, I noted that the Trust had already put in place an action plan to address some of the matters which had been raised by the complainant and there was evidence of improved standards, particularly in the area of hygiene and infection control, being achieved by Ward 7. Whilst I regarded these as positive developments I asked the Chief Executive (CE) to report back to me after 3 months detailing the further action which the Trust planned to take to address all of the issues raised in my report. I also recommended that the CE should provide a

comprehensive apology to the complainant for all of the failings identified by me, together with details of all measures taken and planned by the Trust which might help to avoid a recurrence of the instances of sub-standard care and service experienced by this family. I am happy to report that the CE accepted my recommendations in full. **(HC18/03)**

Inadequate Care and Treatment; and Failure to Properly Consider Request for Independent Review

In this very sad case the complainant alleged that the Craigavon Area Hospitals Group Trust (the Trust) had failed to provide adequate care and treatment to her 40 year old sister who died in Craigavon Hospital in 2001. The patient, who had a history of liver problems due to alcohol abuse, had been admitted to hospital 10 days earlier due to a leg wound which would not stop bleeding. The complainant was particularly critical of the standard of record keeping by medical and nursing staff, which she believed had adversely affected the quality of care which her sister received. She was also convinced that staff had failed to recognize the seriousness of her sister's condition, despite the protestations of her family. The complainant told me that she believed her sister might have survived if the Trust had made an earlier diagnosis of hepatic encephalopathy. Further concerns related to the alleged administration of high doses of the sedative, Chlordiaepoxide and the alleged omission of other prescribed treatments.

The complainant submitted a number of highly detailed complaint letters to the Trust. She told me she was dissatisfied with all of the responses she received. The complainant was also aggrieved with the consideration given by the Southern Health and Social Services Board (the Board) to her request for an independent review. She believed that many of the points she had raised had not been properly addressed by the Convenor.

Following a preliminary investigation of the issues raised by the complainant I decided that the case warranted more detailed investigations of the actions of the Trust and the Board. I appointed an independent medical assessor and an independent nursing assessor to assist me with this phase of investigation. My assessors provided me with detailed reports in relation to the clinical issues raised by the complainant. After full consideration of the evidence and the independent advice provided to me in relation to these matters and having examined carefully the handling by the Trust of the concerns raised by the complainant I found the Trust culpable of the following significant failings in this case:

- Failure to properly evaluate the risk/benefits of administering Chlordiazepoxide to the patient between 12th and 15th October 2001.
- Failure to systematically monitor the patient's fluid balance and conscious level from 16th October onwards.
- Failure to adequately assess and cater for the patient's nutritional needs.
- Failure to carry out medical examinations of the patient on 19th October and 20th October prior to prescribing Chlordiazepoxide.
- Failure to properly evaluate the risk/benefits of administering Chlordiazepoxide to the patient on 19th October 2001 and 20th October 2001.
- Inappropriate administration of Chlordiazepoxide on 19th October 2001 and 20th October 2001.
- Failure to take reasonable steps on 21 October 2001 to minimise risk to the patient of falls.
- Failure to carry out neurological

observations as prescribed on 21 October 2001 and as directed in the Care Plan.

- Unreasonable delay in the diagnosis and treatment of hepatic encephalopathy.
- Failure on 21 October to either (a) insert a naso-gastric tube to facilitate administration of crushed neomycin or (b) provide alternative treatment with intravenous Metronidazole.

Whilst I was highly critical of these failings in the care and treatment provided to the complainant's sister, and which I considered had the effect of denying the family the opportunity of properly preparing themselves for the prospect of a very distressing outcome, I was unable to agree with the complainant that the Trust could have intervened to prevent her sister's death. My medical assessor confirmed that the cause of the patient's death was a liver which could no longer sustain her. Unfortunately the patient was not a suitable candidate for a liver transplant since she failed to meet the criterion of abstention from alcohol for a period of six months. In addition, whilst it was clear that there were numerous failings in record keeping, some of which had been recognized by the Trust in correspondence with the complainant, my assessors did not consider that these had impacted adversely on the quality of care and treatment provided to the patient.

I recommended that the Chief Executive of the Trust should provide a comprehensive apology to the patient's family for the failings in care and treatment identified in my report. In particular, I recommended a specific apology to the complainant for what I regarded as a wholly inadequate investigation and series of unacceptable responses to the many valid and serious issues which the complainant had raised. I asked the Chief Executive to provide a six month progress report, both to me and to the complainant, in relation to the measures taken to address the aspects of inadequate care and treatment highlighted by this complaint.

I was also critical of the Board's handling of the complainant's request for an Independent Review. I agreed with the complainant that the Convenor's response had failed to address all of the issues which she had raised. In addition I considered that the Convenor had strayed beyond his remit under the HPSS Complaints Procedure by expressing a view on the merits of the complaint. The Chief Executive of the Board accepted my recommendation that an apology should be made to the complainant for the mishandling of her IR application. **(200500967 & 200500180)**

Inadequate Care and Treatment; and Flawed Decision to Refuse an Independent Review

In these related cases the complainant explained that her 39 year old daughter, who had a learning disability, was referred by her GP to the A&E Department of the Ulster Hospital on 23 July 2003, suffering from a range of symptoms including slurred speech, headache and balance problems. The GP suggested a provisional diagnosis of cerebellar infarct. The complainant's daughter spent the night in the A&E Department before being discharged home the following day. On the journey home the patient suffered a serious seizure and had to be returned to hospital where she remained for the next 3 weeks.

The complainant was critical that her daughter had been sent home by the Consultant in charge, against her (the complainant's) wishes and without a definitive diagnosis or follow up plan. The complainant was also unhappy that the Consultant had failed to meet with her and she alleged that there was unreasonable delay in conducting a CT scan. In addition, the complainant was most dissatisfied with

the responses to her complaint which she had received from the Ulster Community Hospitals Health and Social Services Trust (the Trust) during local resolution and from the Eastern Health and Social Services Board (the Board), in response to her request for an Independent Review. In particular, the complainant told me that information contained in an independent medical report issued to her by the Board contradicted statements made by the Trust and appeared to indicate that the hospital doctors had wrongly assumed that her daughter's symptoms might be attributable to the withdrawal of a drug known as Melleril. The complainant maintained that she had continued to provide this medication to her daughter during her wait in the casualty department.

Since my preliminary enquiries supported the complainant's allegation that she had received contradictory information from the Board and the Trust I decided to fully investigate the actions of the respective Bodies. In order to assist me with my consideration of the clinical issues I appointed a Consultant Psychiatrist with a background in learning disability as my Independent Medical Assessor (IMA). The IMA provided me with a detailed report based upon his examination of the hospital medical records as well as all of the complaint papers (including the report prepared by the Board's independent medical adviser) and his interview with the Consultant who was in charge of the patient's care on 23/24 July 2003.

I found that the Board's response to the complainant's request for an Independent Review contained inaccuracies which emanated from a misinterpretation of the hospital notes by its independent medical adviser. In particular, I was persuaded that the Board had misreported to the complainant the views of the doctors regarding the possible role of Melleril in her daughter's symptoms. Whilst I concluded that the issue of the misleading clinical report by the Board had unnecessarily added to the complainant's distress in relation to the events surrounding her daughter's visit to the Trust's Casualty Department, I was not persuaded that the Convenor's decision to refuse an Independent Review of the complaint was, itself, flawed. I therefore recommended that the Chief Executive of the Board should provide an apology to the complainant for the upset caused by the issue of inaccurate information. The Chief Executive accepted my recommendation and undertook to review the Board's procedures in order to minimise the possibility of a recurrence of this type of error.

In terms of the actions of the Trust I was satisfied, on the basis of the medical evidence which was available to him at the time, that the Consultant in charge was entitled to take the clinical decision that the patient was fit to be discharged to the care of her GP on 24 July 2003. However I found that the Trust was guilty of maladministration for failing to alert the Consultant to the complainant's concerns about the decision to discharge her daughter. I was satisfied that, if this information had been passed on by staff in the A&E Department, the Consultant would have kept the complainant's daughter in hospital for a further 24 hours. I could not say that this would have prevented the seizure which was later experienced by the complainant's daughter on the journey homewards, but I did feel that the significant trauma experienced by the family, who had to cope with this frightening event without on-hand medical support, would have been avoided. Although the complainant was critical that the Consultant had failed to meet with her before discharging her daughter I found that he had made reasonable efforts to make himself available. I was also satisfied that the CT scan had been conducted within an acceptable timeframe.

A concerning feature of this complaint was the involvement of high doses of Melleril in

the patient's treatment. In the course of my investigation I became aware that this drug was the subject of restrictions set out in guidance issued by the Department of Health, Social Services and Public Safety in December 2000 arising out of concerns about the potential of Melleril to cause heart problems in certain patients. I was critical that, in determining whether the symptoms exhibited by the patient's daughter might be drug related, the Consultant had failed to seek appropriate guidance from the Trust's Pharmacy department regarding any risks associated with Melleril. However I was unable to say whether that drug was a contributory factor in the symptoms which prompted the patient's referral to Casualty and I noted that a Melleril reduction programme had been implemented by the Trust, following the patient's readmission to hospital on 24 July 2003.

I partially upheld the complaint and I recommended that the Chief Executive of the Trust should apologise to the complainant for the failure in communication which led to her daughter's discharge on 24 July. I also recommended that the Chief Executive should review the Trust's implementation of the DHSSPS Guidance in relation to the use of Melleril. The Chief Executive accepted my recommendations and undertook to report back to me on the outcome of the Melleril review. **(200501187 & HC 05/04)**

Removal from GP's List & Mishandling of Complaint

The complainant explained that she had accompanied her son, who had a history of psychological difficulties and suffered from dyslexia, to a consultation with Dr A at Bangor Health Centre because she was concerned that there had been a marked deterioration in his mental health and she had hoped to persuade Dr A to have him admitted to hospital. The complainant told me that she was very unhappy with the way Dr A had managed the consultation. She alleged that Dr A had been cruel, belligerent, very patronising and unprofessional towards her son. She subsequently made an appointment to see Dr B to ask him to try to have her son admitted to hospital. She also wanted to complain about Dr A. Although Dr B, whom she described as very pleasant and a lot more interested in her son than Dr A, had listened to her concerns, she got the impression that he did not want to deal with her complaint about Dr A. As Dr B failed to respond to her verbal complaint the complainant decided to make a formal written complaint. On contacting the Practice to get the date of her son's consultation with Dr A the complainant related her intention to make a written complaint. Following that contact her son was removed from the Practice list. The complainant alleged that the decision to remove her son from the Practice list was a direct response to her having indicated her intention to make a formal complaint. The Practice in its response to the complaint dismissed the validity of the complainant's concerns about Dr A and it claimed that the complainant's son had been removed from the patient's list because of his "persistent aggressive behaviour towards females."

I sought and obtained all the background papers relating to the examination of the complaint under the HPSS Complaints Procedure and in examining this I had grave concerns about the way the Practice had dealt with the complaint under that procedure.

My investigation centred on three issues. These were:

a. Dr A's management of the consultation with her son;

b. the Practice's handling of the complaints (verbal and written) which the complainant had made;

c. the Practice's decision to remove the complainant's son from its Practice list.

In relation to Dr A's management of the consultation with the complainant's son, although I found the complainant's account of the consultation credible, I was unable, in the absence of corroborating evidence, to make a firm finding on that aspect of the complaint.

In examining the issue of the Practice's handling of the complaint which the complainant had made I took into account the principles and statutory responsibilities relating to the HPSS Complaints Procedure and the 2001 General Medical Council's (GMC) Guidance on the Duties and Responsibilities of Doctors. I established that Dr B had failed to meet his statutory obligation to deal with the complainant's verbal complaint about Dr A in that he had failed to properly investigate the allegations made about Dr A and had failed to issue a written response. Additionally, I was most concerned about the fact that Dr B provided me with a number of conflicting accounts as to why he had not met his statutory obligation to investigate and provide a written response to the verbal complaint. I regarded Dr B's failure to deal with and issue a written response to complainant's verbal complaint as constituting maladministration.

In relation to the management of the written complaint I established that the Practice Manager's written response to the formal complaint had been provided to her by Dr A, who was the subject of the complaint. The Practice Manager confirmed that she had not carried out an investigation but had merely prepared and signed the response letter on the basis of the draft response provided to her by Dr A. She was unable to substantiate the information contained in the response, which included the allegation that the complainant's son had been persistently aggressive towards females. Drs A and B, in their evidence to my investigation, had claimed that the Practice Manager had investigated the complaint and had issued the response based on the outcome of her investigation. I tested the evidence provided to me and I decided that the evidence provided by the Practice Manager was more credible than that provided by Drs A and B. My reasons for this decision include the fact that both doctors had stated that they had agreed with the content of the letter issued by the Practice Manager and Dr A also stated that he had found the letter to be "accurate and factual". I found this latter statement particularly at odds with his later assertion "he could only assume there had been aggressive incidents – no incidents had been reported to him.". I formed the view that the Practice had abdicated its statutory responsibility to ensure that the complaint had been investigated properly particularly since it had failed to ensure the complaint was investigated by someone other than those named in the complaint. I concluded that the whole creditability and objectives of the HPSS Complaints Procedure had been compromised by the way the Practice had dealt with the complaint. I formed the view that the integrity of the Practice's commitment to the HPSS complaints procedure objectives had been undermined.

Following receipt of the Practice's response to her written complaint, the complainant requested the Convenor of the Eastern Health and Social Services Board (the Board) to examine her complaint by way of Independent Review. During the period that the complainant's request for an Independent Review was being considered by the Convenor, Dr A took the opportunity to relay to the Board's Complaints Officer comments about the complainant's psychiatric state of mind notwithstanding the fact that she had never been his patient. I regarded Dr A's discussion with the Board's Complaints Officer as inexcusable. I formed the view

that the comments made by Dr A had the potential to influence the Convenor's consideration of the complainant's request for an Independent Review.

In relation to the removal of the complainant's son from the Practice list, I explored extensively the issue of the complainant's son's alleged "persistent aggressive behaviour towards females". I was not presented with any evidence to substantiate the allegation. Dr A had specifically alleged that one of the receptionists had requested him to remove the complainant's son from the Practice list because she had an encounter with him when he was a patient in another Practice. Dr A had also alleged that the receptionist had told him that the complainant's son had been removed from his previous Practice because of aggressive behaviour. The receptionist emphatically denied having asked Dr A to remove the complainant's son from the Practice list and she also denied the allegation that she had told Dr A that the complainant's son had been removed from the other Practice list because of his aggressive behaviour. My investigation confirmed that the complainant's son had not been removed from his previous Practice list but had left it because he had moved out of the area. On the basis of the evidence available to me I concluded that the decision to remove the complainant's son from the Practice list had been based on the fact that the complainant had made it known that she was going to make a formal complaint. I found that Drs A and B, in making and implementing the decision to remove the complainant's son from the Practice list, had breached all the relevant professional guidance, including the GMC guidelines, in relation to the ending of a professional relationship. I regarded Drs A's and B's handling of the matter, including their subsequent attempts to justify their decision, as gross maladministration.

I have dealt with a number of complaints against General Practitioners who have removed patients from their Practice list because they have exercised their right to complain. It gives me no satisfaction to record that this particular case rates as the worst case I have ever considered relating to General Practitioners.

I recommended that a letter of apology should be issued to the complainant in recognition of the distress caused to her by the doctors' actions. I also recommended that the doctors should issue a consolatory payment of £2,000 to the complainant in recognition of the distress and annoyance caused to her since the unfortunate consultation between her son and Dr A. I recognised that I had no statutory authority to enforce such a recommendation, however, I believed that Drs A and B must offer tangible recognition as, by their conduct and behaviour in this case they had completely failed to adhere to the professional and personal standards that all patients have a right to expect from their doctors.

I was anxious to ensure that the complainant was spared any further hurt or distress and I therefore specifically requested that a draft copy of the letter of apology be sent to me so that I could endorse it before it was sent to the complainant. A copy of a draft apology was forwarded but I was unable to endorse it as it was drafted in terms which I considered fell well short of what a meaningful apology should contain. Drs A and B have refused to make any meaningful apology to the complainant. They have also refused to implement my recommendation regarding the consolatory award of £2,000. **(HC 2/04)**

Treatment by GP

The complainant in this case wrote to me about the care and treatment provided by Dr A during a consultation at Drumragh Family Practice (the Practice) during which she informed him that she was pregnant, suffering from sickness and

requested a medical certificate to excuse her from work as she felt unable to attend at that time. Dr A refused to provide her with a medical certificate for the duration of her pregnancy.

The complainant's complaint had been examined through the Health and Personal Social Services Complaints Procedure (HPSS Complaints Procedure) but she had not been satisfied with the outcome of that process.

Following my detailed investigation of this complaint which centred entirely on the interaction which took place during the consultation with Dr A, I found the recollections about the duration of the requested medical certificate, discussion of "morning sickness" and her request for genetic testing differ considerably. In the absence of definitive evidence I was unable to make an objective determination with regard to the matters about which the complainant made her complaint to me.

Although I did not uphold this complaint, I have identified a number of deficiencies in relation to the Practice's handling of complaints. I recommended that the Practice examine its Complaints Procedure with a view to ensuring that it adheres to the requirements of the HPSS Guidelines on Handling Complaints. **(200500497)**

Refusal to Grant Independent Review

The complainant in this case wrote to me about her dissatisfaction with the outcome of the Western Health & Social Services Board's examination of her complaint through the Health and Personal Social Services Complaints Procedure (HPSS Complaints Procedure). She was unhappy that the Convenor appointed by the Board had refused to refer her case to an Independent Review and she felt that she had been treated unfairly.

During my investigation of this complaint I examined all the documentation relating to the Convenor's consideration of the request for an Independent Review (IR) of the complaint. I was satisfied that the Convenor in refusing the complainant's request for an IR provided her with a detailed account of the consideration given by himself and the Lay Chairman on the points which had been raised. I am satisfied that the Convenor in his consideration of the request for an IR made a reasonable and informed decision and that this consideration was not attended by maladministration. However, the Convenor had strayed into an investigation of the issues raised by the complainant and in his letter to the complainant he made comments on the merits or otherwise of the issues which had been raised. This action was contrary to the designated role of a Convenor in the Guidelines for Handling HPSS Complaints and was therefore attended by maladministration.

There was also an inordinate delay in bringing the case forward for consideration by the Convenor and this was acknowledged by the Board. I am satisfied that this delay whilst it is an example of maladministration has been acknowledged by the Board and action has been taken to ensure that complaints are handled in a more efficient way in the future. I recommended that a letter of apology should be sent to the complainant and I am pleased to record that the Chief Executive has accepted my recommendation. **(HC 27/04)**

Delay in Dealing with Request for Independent Review

The complainant was dissatisfied about the delay in dealing with his request for an Independent Review. I established that there had been a 3 month delay by the North and West Belfast Health and Social Services Trust in forwarding the relevant local resolution documentation to the Eastern Health and Social Services Board. I

also established that following receipt of the documentation it took the Board's Convenor approximately 12 weeks to make a decision on the complainant's Independent Review request. In my report I highlighted my concern about the unacceptable delay by the Trust in providing the required documentation. I also highlighted my concern that the Board had not been pro-active in its efforts to get the documentation that it had requested. In addition, I drew attention to the failure of the Board to provide the complainant with written updates about the delays in responding to his request for an Independent Review. The respective Chief Executives of the Trust and the Board accepted my criticism of their organisations' role in contributing to the complainant's sense of annoyance and frustration about the delay in dealing with his request for an Independent Review and they each sent a letter of apology to the complainant acknowledging the failings that my investigation had identified. **(200500943 & 200500944)**

Events Leading to Brother's Death

The complainant in this case wrote to me about concerns which she had in respect of events leading to her brother's death. Whilst taking part in a cookery lesson at a Social Education Centre (the Centre) her brother, Mr A, who had learning difficulties, choked on a hot dog and required emergency first aid in the form of cardiopulmonary resuscitation. He was taken by ambulance to hospital where, tragically, he died some three weeks later. The complainant maintained that her late mother (Mrs B) had informed the Centre about Mr A's eating difficulties on many occasions and that she had believed that the centre had not taken appropriate action. She was unhappy that the Centre had not shown a greater awareness of Mr A's vulnerability to choking and believed that he should not have been given food such as a hot dog without it first being cut up finely.

The complaint had been examined through the Health and Personal Social Services Complaints Procedure (HPSS Complaints Procedure) but the complainant was dissatisfied with the outcome of that process.

I carried out a lengthy and detailed investigation of the issues involved. In the course of my investigation I examined the history of the Newry and Mourne Health and Social Services Trust's (the Trust) involvement in Mr A's care in respect of activities involving eating at both the Centre and the nursing home in which he resided. I was satisfied that the staff in the nursing home were well informed regarding Mr A's needs and that his family took a keen and active interest in his well being. I found that the experience of the staff at the Centre regarding Mr A's ability to eat independently differed somewhat from that of the family and the staff in the nursing home. While I noted the family's consistent view that information regarding Mr A's propensity to choke had been passed to the Centre by Mrs B, in the absence of any definitive evidence I was unable to make a determination on the matter.

My investigation however did identify a number of shortcomings on the part of the Trust in relation to its record keeping. I was concerned to note that information about a choking incident in the family home which was passed by Mrs B in a telephone call to the Centre more than a year prior to the choking incident at the Centre, did not trigger a risk assessment or an assessment by a speech and language therapist. The absence of any reference to a re-assessment in the Centre's records after Mrs B's telephone call undermined the Trust's assertion that there was 'ongoing assessment'. I was also concerned to note that minutes of the Annual Review meetings attended by representatives of the nursing

home, the Centre, Social Services staff and the family, were not shared with the family until a year after the event. It would also appear that these meetings lacked an overall perspective but focussed on particular issues as they related to the timing of the Annual Review. I was most concerned that information regarding Mr A's eating ability and his propensity to choke was available in some records held by the social services but that it was not recorded in others.

I found that the information provided by the Trust in relation to staff training records was confusing and open to misinterpretation. My investigation revealed that some of the Centre's staff wished to avail of further first aid and health emergency training. I believe that adequate First Aid training is vital in situations where care is provided for vulnerable adults and I therefore recommended that the Trust arranged appropriate training on an on-going basis to enable staff to face with confidence, emergency situations such as arose in this case.

I endorsed the recommendation of the Independent Review (IR) Panel that where a number of agencies are involved in providing care, a key worker should be identified who is able to have an overview of all aspects of the case to take responsibility for co-ordinating and monitoring the case.

I recommended that an apology should be sent to the complainant for the failures identified and the consequent injustice and to advise of the actions that the Trust had already taken together with future plans which should be in place to address the concerns highlighted during my investigation. I am glad to say the Chief Executive accepted and acted upon my recommendations.

The complainant was also not satisfied with the outcome of the IR of the complaint. She believed that the professional guidance on the European Guidelines for Resuscitation (1998) (the European Guidelines) which had been given to the Convenor was inadequate. She also complained that the report compiled by the Clinical Assessors, who were commissioned by the IR Panel, was amateurish, irrelevant in parts and demonstrated that the assessors had exceeded their remit. She believed that the IR Panel should have interviewed the staff from the nursing home where Mr A resided and that the IR Panel's final report was flawed, inadequate and failed to follow the Procedures for Handling Complaints (1998).

As part of my in-depth investigation into the issues raised by the complainant, I arranged for an Independent Medical Advisor (IMA) to examine the matter of the guidance given to the Convenor in relation to the European Guidelines. My IMA formed the opinion that the Centre's staff did the best they could in very distressing circumstances. I have not found any evidence to suggest that the IR Panel were inadequately advised regarding adherence to the European Guidelines.

I carefully considered the IR Report which was the cause of great distress to the complainant and her family. I am of the opinion that under the agreed terms of reference the clinical assessors exceeded their remit in the investigation and provision of clinical advice to the IR Panel. The quality of their report in terms of sensitivity to the people with whom the report would be shared was unacceptable. It exhibited inappropriate and patronising terms which proved to exacerbate the situation rather than aiding the Panel's investigation of the complaint in a conciliatory way as stipulated in the Guidelines for Handling HPSS Complaints. I found that the action of the IR Panel in accepting the assessors' report without amendment constituted maladministration. The Panel also failed to appreciate the impact that the wording of the report

would have on Mr A's family. It is my belief that the Panel were not adequately informed regarding the care provided by the nursing home staff for Mr A and their experience of his eating abilities. Inferences were drawn rather than judgements based on the facts which were available in the care plans completed by nursing home staff and interviews with the staff and the report was therefore flawed. Accordingly I made a recommendation that the Chief Executive of the Southern Health and Social Services Board should write to the complainant to apologise for the injustice caused by the failure of the IR Panel to fulfil its responsibilities effectively. I am glad to report the Chief Executive accepted my recommendations. **(HC 3/04 & 200500906)**

Installation of Bathroom Grab Rails without Authorisation

This case was about workmen from Foyle Health and Social Services Trust entering the complainant's 84 year old mother's home and installing grab rails in her bathroom without being authorised to do so by a family member. He told me no request had been made for grab rails and he stated that the grab rails were unsuitable as they prevented his mother from taking a shower. The complainant alleged that when he attempted to contact the Occupational Therapist who had been responsible for organising the installation of the grab rails she had refused to take his telephone call.

I established that the Social Worker responsible for the complainant's mother had made a referral to the Trust's Occupational Therapy Department for grab rails to be installed in her client's (the complainant's mother) shower. I also established that although an arrangement had been made for a Technician to meet the client's Grand-daughter, who was the client's main carer, to discuss the proposed shower rails, that arrangement had not been communicated to the Technician and she had carried out the visit a day earlier than had been arranged and did not meet the client's Grand-daughter, although she had telephoned the Grand-daughter to discuss the installation of the grab rails. Following the placement of an order for grab rails to be installed in the client's shower Trust workmen, without making an appointment called at the client's home, and were granted access to the client's home by a workman, whom they had mistakenly assumed was a family member. They installed the grab rails and left the client's home without getting the worksheet signed and without speaking to a family member. In relation to the complainant's allegation that the Occupational Therapist had refused to take his telephone call, I was informed that she had not been in the Office when the complainant had called and because the complainant had refused to provide his name or reason for wanting to speak to her, she was unable to return his call. I also was advised that the complainant had been verbally abusive when he had made the call. In addition I was advised that the Trust had, at the family's request, arranged for the grab rails to be removed and the shower tiles were replaced.

I upheld the validity of the complainant's concerns about a workman entering his mother's home without obtaining valid authorisation from the client or a family member. I also highlighted my concern about the Technician not having been advised about the arrangement that had been made for her to meet with the client's Grand-daughter to discuss the installation of the grab rails. I asked the Trust's Chief Executive to ensure that the Trust drew up a protocol requiring members of staff to make specific appointments with their clients and on arrival at a client's home to ensure that they make themselves known to the client or their representative before entering a

client home. The Trust's Chief Executive accepted my recommendation to issue a letter of apology to the complainant for the stress and inconvenience caused to his mother and other family members as a result of the failures that I had identified. **(200600079)**

Standard of Care & Treatment

Mrs A's husband complained on her behalf. Mrs A suffers from acute Tardive Dyskinesia and a bi-polar illness. The complaint related to the care and treatment afforded to Mrs A while she was a patient in Craigavon Area Hospital. It had been examined through the Health and Personal Social Services Complaints Procedure however, the complainant was most unhappy about the Craigavon and Banbridge Community Health and Social Services Trust's (the Trust) failure to take action in respect of recommendations contained in the Independent Review Panel's Report.

The Independent Review Panel (IR Panel) had recommended that the Trust should honour a commitment given to Mr A regarding a referral to Professor C and that he would be provided with information about the prescription of laxatives. My investigation of this complaint revealed that the Trust had taken no action following the meeting at which the undertaking had been given and that there had been no contemporaneous record of the meeting. This failure to record a summary of the meeting set in train a series of events that undermined the attempt at local resolution of some of Mr A's concerns. The Trust assured me that Mrs A's care and treatment were not compromised in any way by this oversight however, the fact remained that the matter had been overlooked and this failure was clearly maladministration. The Trust had been unable to provide me with any evidence from the clinical notes to support its assertion that nursing staff had discussed the issue of the prescription of laxatives with Mr A. It is my view that where no record of a discussion exists any attempts to portray the details of the discussion are severely undermined and as a consequence the Trust's actions constituted maladministration.

I noted that the Chairman of the IR Panel had specifically informed the Chief Executive (CE) of the Trust that the complainant had been advised that he would 'hear from him shortly'. The CE had not only failed to write to the complainant but also ignored the requirements of the Guidance on Handling HPSS Complaints issued in 2000. In light of these omissions on the part of the CE and the failure of the Trust to produce any record of the discussions which it had maintained had taken place, I upheld the complaint made to me. The CE of the Trust agreed to issue a letter of apology to the complainant which he copied to me. **(200501032)**

SELECTED SUMMARIES OF CASES SETTLED

Provision of 'bite guard'

The complainant in this case was dissatisfied with the fact that her dentist refused to remove 4 healthy teeth from her lower jaw and provide her with dentures; she was also dissatisfied with the replacement "bite guard" provided by her dentist, particularly as it cost £60.00. The complainant had not used the HPSS Complaints procedure, however in view of her age and evident distress I felt it was appropriate to exercise my discretion and accept the complaint with a view to early resolution.

I arranged for one of my investigating officers to visit the dentist. I ascertained that the dentist, in refusing to remove her teeth, had offered to refer her to another dentist - this new dentist also refused to remove the four teeth. However, following my investigating officer's visit, the dentist complained about wrote to the complainant explaining the actions which had been taken and refunding the £60.00 cost of the "bite guard". My investigating officer contacted the complainant who was very happy with this outcome. **(200501379)**

Funding Arrangements for Care Placement

A gentleman complained to me about the actions of the United Hospitals Trust and Homefirst Community Trust in relation to the handling of funding arrangements for the care placement to which his mother was transferred following her discharge from Hospital.

I arranged for preliminary enquiries to be directed to both Trusts. As a result of these enquiries the Chief Executives (CE) of Homefirst Trust and United Hospitals Trust agreed to refund to the complainant the costs incurred from the time of his mother's discharge until funding became available from Homefirst Community Trust. An apology was also been extended to him for any distress caused as a result of this issue. In addition, arising from my investigation of this complaint, the CEs undertook to implement formal protocols between their respective organisations dealing with the prioritisation of funding of nursing/residential home accommodation in special circumstances such as in this case. **(200500474 & 200500476)**

Top Up Fees

This lady's complaint centred on a request to impose top up fees in respect of her aunt who had been placed in a residential home for care. When the complainant's aunt chose to be placed in the residential home there was no suggestion of a top up nor was there any indication that one would be introduced in the future. However, the residential home did introduce a top up and by virtue of this became "more expensive accommodation than the Trust would usually expect to pay for." The complainant refused to pay the top up and the payment was initially waived and has not been applied since.

The complainant however remained concerned about the possibility of her aunt being moved from the residential home because of her inability to pay the top up. My examination of various Departmental documents led me to believe that the complainant was not responsible for the top up and after fairly lengthy interaction with South & East Belfast Health and Social Services Trust (the Trust) I finally obtained an assurance that if the residential home decided in the future to request a top up for

the complainant's aunt the Trust would apply the latest Departmental guidance (July 2006) – a client would not be moved to less expensive accommodation if such a move would be detrimental to their emotional or physical well being (the complainant's aunt's GP has provided evidence to the effect that such a move would be detrimental). The Trust stated that in these circumstances they would look at how the top-up fee would be met. The Chief Executive of the Trust further stated that if any further request from the residential home for a top up fee was made the Trust would not consider moving the complainant's aunt, instead the Trust would discuss the matter with the Home and reach agreement regarding payment. The Trust also included a caveat to the effect that should the residential home no longer be able to meet the complainant's aunt's care needs, a move to alternative accommodation would have to be considered, however this would be done in liaison with her and her family.

In considering all the circumstances I felt that these actions by the Trust offered the best opportunity of removing the cause for complaint and at the same time offered reassurance for the continuing care of her aunt. **(200500378)**

Provision of Mental Health Services

The complainant in this case complained about the mental health services provided by Down Lisburn Health and Social Services Trust (the Trust). In particular he stated that he sought the opportunity of getting a second specialist opinion.

I obtained all the background papers relating to the complainant's application for an Independent Review of his complaint and, following my consideration of these, I arranged for contact to be made with the Trust's Chief Executive about the possibility of the complainant being referred to another Consultant Psychiatrist. I subsequently received confirmation from the Trust's Chief Executive that the complainant had been offered an appointment with a second Consultant Psychiatrist. **(200600764)**

STATISTICS

Table 4.3: Analysis of Written Complaints Received in 2006/07

	Brought forward from 2005/06	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/07
H&SS Boards	14	11	5	0	12	4	1	3
H&SS Trusts	40	64	42	4	30	7	0	21
Other H&SS Bodies	4	13	7	1	4	1	1	3
TOTAL	58	88	54	5	46	12	2	27

Table 4.4: Analysis of Written Complaints Against Health and Social Services Boards

	Brought forward from 2005/06	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/07
Eastern H&SSB	2	3	1	0	2	2	0	0
Northern H&SSB	2	0	0	0	2	0	0	0
Southern H&SSB	4	3	2	0	3	2	0	0
Western H&SSB	6	5	2	0	5	0	1	3
TOTAL	14	11	5	0	12	4	1	3

Table 4.5: Analysis of Written Complaints Against Health and Social Services Trusts

	Brought forward from 2005/06	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/07
Altnagelvin Hospitals H&SS Trust	2	2	2	0	2	0	0	0
Armagh & Dungannon H&SS Trust	0	1	0	0	1	0	0	0
Belfast City Hospital H&SS Trust	1	4	2	0	1	0	0	2
Causeway H&SS Trust	0	1	1	0	0	0	0	0
Craigavon Area Hospital Group Trust	3	1	0	0	2	1	0	1
Craigavon & Banbridge Community H&SS Trust	2	1	1	0	1	1	0	0
Down Lisburn Trust	1	6	4	1	0	0	0	2
Foyle H&SS Trust	1	8	5	0	2	1	0	1
Green Park Healthcare Trust	0	1	1	0	0	0	0	0
Homefirst Community Trust	12	9	5	1	4	0	0	11
Mater Hospital Trust	0	3	3	0	0	0	0	0
Newry & Mourne H&SS Trust	3	4	2	0	4	1	0	0
North & West Belfast H&SS Trust	1	1	1	0	0	1	0	0
NI Ambulance Service	1	3	1	0	2	0	0	1
Royal Group of Hospitals & Dental Hospital Trust	2	1	0	0	3	0	0	0
South & East Belfast H&SS Trust	3	8	6	1	3	0	0	1
Sperrin Lakeland Health & Social Care trust	2	5	4	0	2	0	0	1
Ulster Community & Hospitals Trust	2	2	1	0	1	1	0	1
United Hospitals Trust	4	3	3	1	2	1	0	0
TOTAL	40	64	42	4	30	7	0	21

Table 4.6: Analysis of Written Complaints Against Other Health and Social Services Bodies

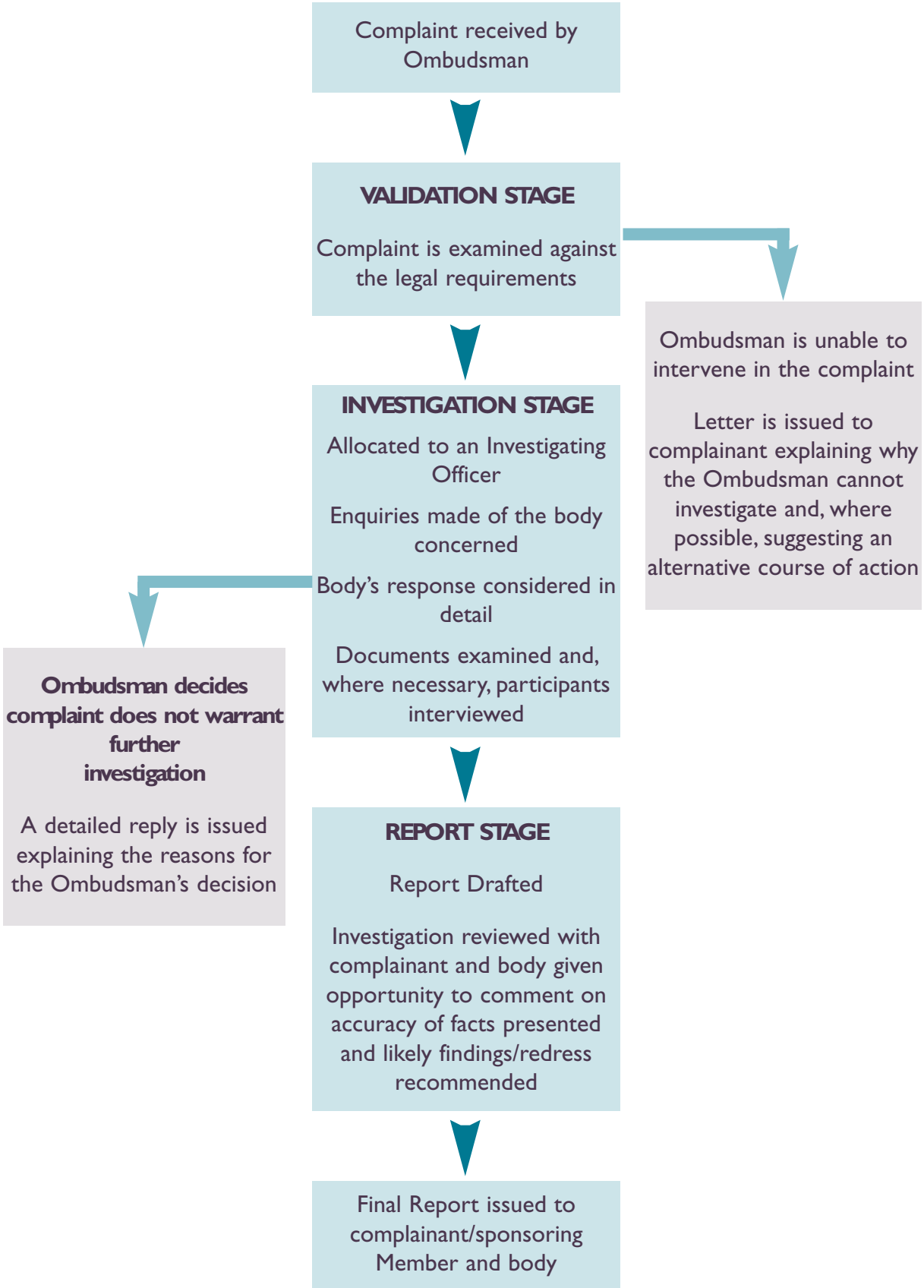
	Brought forward from 2005/06	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/07
Health Service Providers - GDP	2	2	1	1	2	0	0	0
Health Service Providers – GP	2	7	2	0	2	1	1	3
Not specified Health & Social Services Body	0	4	4	0	0	0	0	0
TOTAL	4	13	7	1	4	1	1	3

APPENDIX A

Handling of Complaints

How is a Written Complaint Handled by the Ombudsman's Office?

THE PROCESS:



Validation Stage

Each complaint is checked to ensure that:

- the body complained of is within jurisdiction;
- the matter complained of is within jurisdiction;
- it has been raised already with the body concerned;
- it has been referred to me by an MLA (where necessary);
- sufficient information has been supplied concerning the complaint; and
- it is within the statutory time limits.

Where one or more of the above points are not satisfied a letter will issue to the complainant/MLA explaining why I cannot investigate the complaint. Where possible, this reply will detail a course of action which may be appropriate to the complaint (this may include reference to a more appropriate Ombudsman, a request for further details, reference to the complaints procedure of the body concerned, etc.).

Where the complaint is found to satisfy all of the points listed above, it is referred to the Investigation Stage (see below). The Office target for the issue of a reply under the Validation Stage is currently 5 working days.

Investigation Stage

The purpose of an investigation is to ascertain whether there is evidence of maladministration in the complaint and how this has caused the complainant an injustice. The first step will generally be to make detailed enquiries of the body concerned. These enquiries usually take the form of a written request for information to the chief officer of the body. In Health Service cases it may also be necessary to seek independent professional advice. Once these enquiries have been completed, a decision is taken as to what course of action is appropriate for each complaint. There are three possible outcomes at this stage of the investigation process:

a. **where there is no evidence of maladministration by the body** - a reply will issue to the complainant/MLA explaining that the complaint is not suitable for investigation and stating the reasons for this decision;

b. **Where there is evidence of maladministration but it is found that this has not caused the complainant a substantive personal injustice** – a reply will issue to the complainant/MLA detailing my findings and explaining why it is considered that the case does not warrant further investigation. Where maladministration has been identified, the reply may contain criticism of the body concerned. In such cases a copy of the reply will also be forwarded to the chief officer of the body; or

c. **Where there is evidence of maladministration which has apparently also led to a substantive personal injustice to the complainant** - the investigation of the case will continue (see below).

If, at this stage of the investigation, the maladministration and the injustice caused can be readily identified, I will consider whether it would be appropriate to seek an early resolution to the complaint. This would involve me writing to the chief officer of the body outlining the maladministration identified and suggesting a remedy which I consider appropriate. If the body accepts my suggested remedy, the case can be quickly resolved. However, should the body not accept my suggestion or where

the case would not be suitable for early resolution the detailed investigation of the case will continue. This continued investigation will involve inspecting all the relevant documentary evidence and, where necessary, interviewing the complainant and the relevant officials. Where the complaint is about a Health Service matter, including clinical judgement, professional advice will be obtained where appropriate from independent clinical assessors. At the conclusion of the investigation the case will progress to the Report Stage.

Report Stage

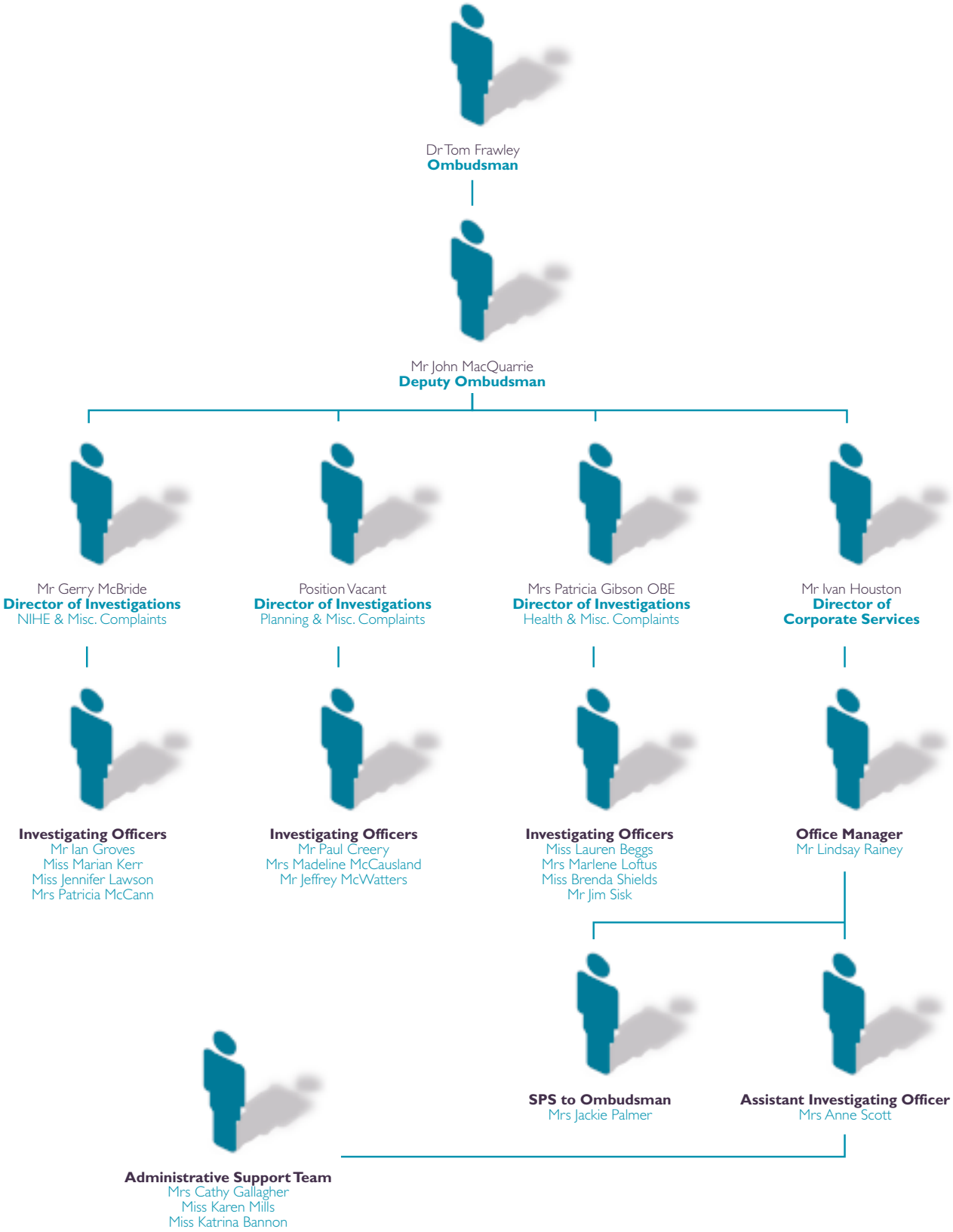
I will prepare a draft Report containing the facts of the case and my likely findings. At this point the case will be reviewed with the complainant. The body concerned will be given an opportunity to comment on the accuracy of the facts as presented, my likely findings and any redress I propose to recommend. Following receipt of any comments which the body may have I will issue my final Report to both the complainant/MLA and to the body. This is a very time consuming exercise as I must be satisfied that I have all the relevant information available before reaching my decision.

The Office target is to complete the Investigation and Report Stages within 12 months of initial receipt of the complaint.

APPENDIX B

Staff Organisational Chart

STAFF ORGANISATIONAL CHART

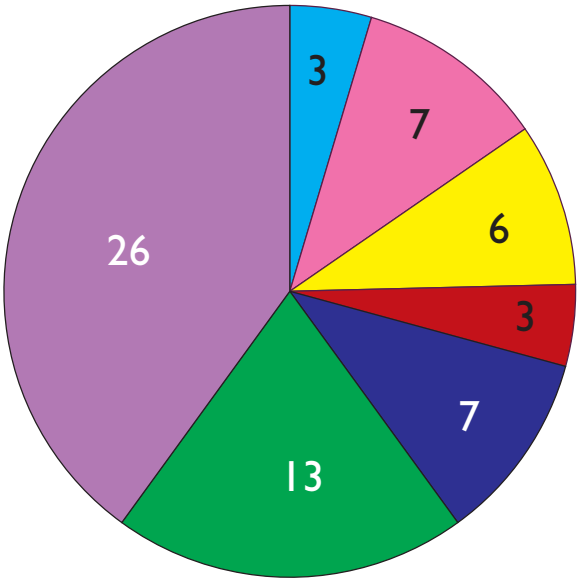


APPENDIX C

Analysis of Complaints Received Which Were Outside Jurisdiction

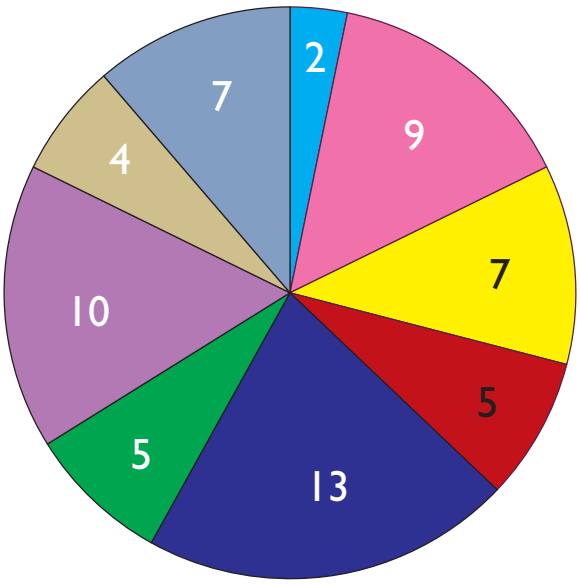
My Office received some 127 specific complaints and enquiries relating to bodies which were clearly outside my jurisdiction. In such cases Administration Section staff give as much advice/information as they can about other avenues which may be open to the persons concerned to pursue their complaint and, where possible, provide appropriate contact information.

Breakdown of Telephone Calls and Interviews Outside My Jurisdiction



- Courts
- Non-NI Government Dept
- Non-NI Public Body
- Police
- Universities
- Private Company/Individual
- Miscellaneous

Breakdown of Written Complaints Outside My Jurisdiction



- Courts
- Non-NI Government Dept
- Non-NI Public Body
- Police
- Private Company/Individual
- Further Education
- Financial Bodies
- Solicitors
- Miscellaneous

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Northern Ireland Ombudsman
33 Wellington Place
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