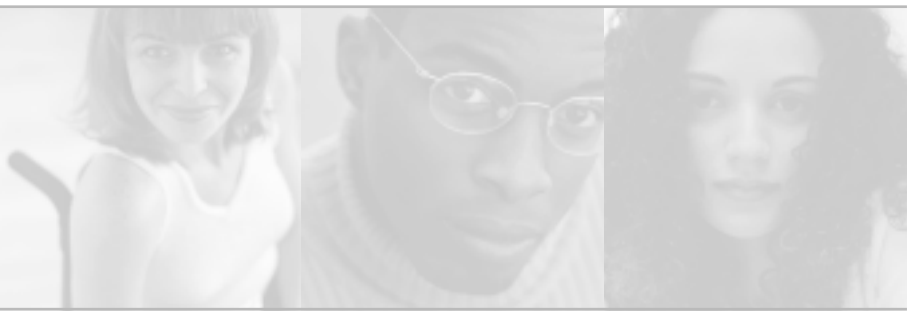
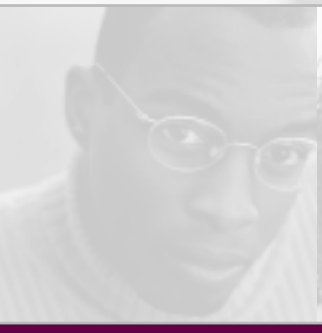


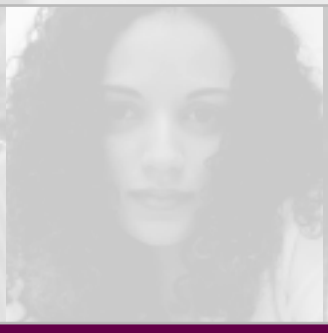
Northern Ireland
Ombudsman

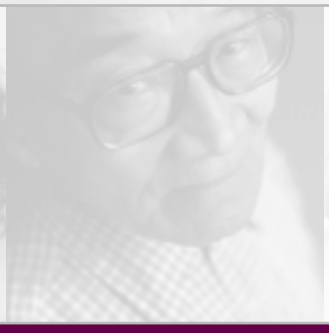
2003-2004

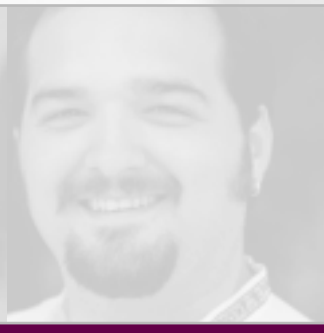
Annual Report

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









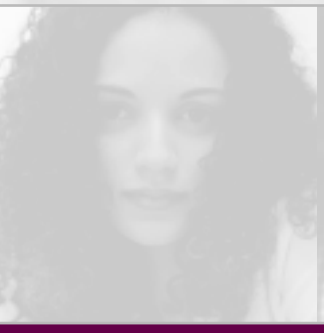
Presented to Parliament pursuant to Article 17
of the Ombudsman (Northern Ireland) Order 1996 and Article 19
of the Commissioner for Complaints (Northern Ireland) Order 1996.

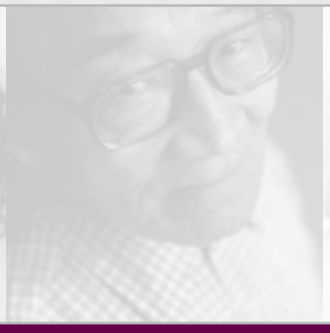
Ordered by The House of Commons to be printed
1st July 2004

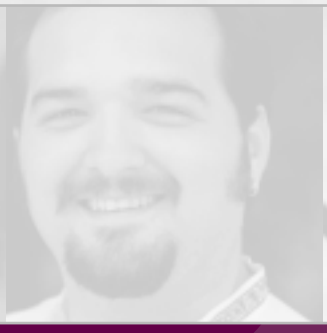
HC 659 **London: The Stationery Office** **£24.00**

Contents

SECTION 4 - Annual Report of the Northern Ireland Commissioner for Complaints - Health Services Complaints 127







Section One

Introduction

I am pleased to present my Annual Report for the year 2003/04 in my role as Northern Ireland Ombudsman. This year my report is again being laid before Parliament in Westminster because at this time the Northern Ireland Assembly remains suspended.

During the year the number of complaints submitted to me increased by 6.9%. The matters which I am asked to investigate continue to cover the full spectrum of the public services in Northern Ireland as will be seen from the summaries of cases I have included in the later sections of my report. In Section 3 of my report I have commented particularly on my experience of complaints about housing matters and the interaction of my Office with the Northern Ireland Housing Executive. However, with regard to my investigations in general, I wish to record my thanks for the cooperation I have received from the chief officers and in particular those public servants who have a responsibility for complaints handling in the bodies with whom I have dealt.

In the course of my investigations of Heath and Social Services Complaints I have been concerned to note an emerging trend in complaints from persons who have been arbitrarily removed from the patient list of their general practitioner - GP. In each of the cases which I have concluded over the past few months of this year the patients have been removed from the doctors list without any warning, indeed in some cases the first notification received by these patients has been a letter from the Central Services Agency that they have been removed from their GP's practice list. To compound the injustice sustained by each of them I have identified in my investigation a failure by the individual Practices to properly consider the complaint that has ensued from the affected patient(s) under the Heath and Personal Social Services Complaints Procedures. In each case I have found the Practice to be failing in its duty and have recommended the issue of an appropriate apology to the patients concerned together with other recommendations to ensure future adherence to procedures, and in one case I have recommended a consolatory payment for the distress and humiliation caused to the patient. This trend and its attendant failures are matters which I consider must be addressed by the Department of Health Social Services and Public Safety. In Section 4 of this Annual Report, following my review of a number of Health Service Complaints, I have set out the detail of my concerns together with recommendations of how they should be addressed.

In 2003 the Office of the First Minister and Deputy First Minister commissioned a review of the functions and powers of the

Northern Ireland Ombudsman. This is the first review of the Ombudsman's Office since it was established in 1969. The review was carried out by a firm of consultants whose terms of reference said the review must address the scope of the matters which would come within the jurisdiction and investigative remit of the Office. The consultants carried out an extensive consultation process with a range of stakeholders to ensure their review was informed by all relevant interests. The Office of the First Minister and Deputy First Minister will now have a key function in taking forward any legislative changes required for the Ombudsman's Office that are agreed following public consultation on the review and also implementing any alterations to jurisdiction which would flow from legislation proposed elsewhere in the public services.

I believe the review of my Office, which has as its focus public administration, is timely, coinciding as it does with the ongoing Review of Public Administration and which should deliver an agreed system of public administration that will meet the needs and expectations of all the people of Northern Ireland. This is a complex task, which will provide a major challenge for the review Team, the key stakeholders, those who will make the final decisions and the public, whose views are also important to the review.

Finally, to those whose daily tasks include dealing with complaints, I would commend the thought that acknowledging a mistake is not a sign of weakness but demonstrates integrity which is an essential characteristic for high quality public service - a standard to which all public servants should aspire.

T Frawley
Ombudsman

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.

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.

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

I can 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 have been given the power to investigate both the administrative actions of Health Service organisations and the exercise of clinical judgement by health care professionals. I do not get involved in cases of medical negligence nor claims for compensation as these are matters which properly lie with the Courts.

Accessibility

Access to my office and the service I provide is designed to be user-friendly. 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 articulate the 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. My staff will provide assistance either by telephone or by personal interview if the Complainant is unable for whatever reason to put his complaint in writing. I aim to be accessible to all.

Providing Information

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. Members of the public can visit my website at www.ni-ombudsman.org.uk which is regularly updated to include full details about my Office. 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.

Staffing and Finance

Staffing

My Office is staffed by officers recruited by secondment from Northern Ireland Departments and their Agencies. I am happy to record again my thanks to senior management in the Northern Ireland Civil Service for providing me with this facility. The number of staff in post in my Office at the end of the year was 21.

Finance

The funds voted for 2003/04 were £1,105,000 and cover both the Office of the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints. The expenditure continues to be exempt from running cost control with resource needs considered by the Department of Finance and Personnel.

My salary is charged directly to the Consolidated Fund while the operational costs of the Office were included in the Northern Ireland Estimates which are approved by the Assembly.

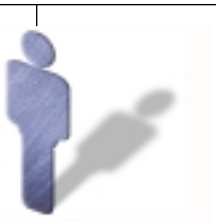
STAFF ORGANISATION

Mr Tom Frawley
Northern Ireland Ombudsman

Mr John MacQuarrie
Deputy Ombudsman

Mr Charlie O'Hare
Director of Investigations
NIHE & Miscellaneous Complaints

Mrs Helen Mallon *
Director of Investigations
Planning & Miscellaneous Complaints



Mrs Patricia Gibson
Director of Investigations
Health & Miscellaneous Complaints

Mr Bobby Doherty
Director of Administration & Finance

Investigating Officers
Mr Ian Groves
Miss Marian Kerr
Miss Jennifer Lawson
Mrs Patricia McCann

Investigating Officers
Mrs Marlene Loftus
Mrs Madeline McCausland
Mr Paul Creery

Investigating Officers
Miss Brenda Shields
Mr Jim O'Connor
Mr Jim Sisk
Mrs Laura McAleese

Office Manager
Mr Lindsay Rainey

PS to Ombudsman
Miss Gladys Dickson

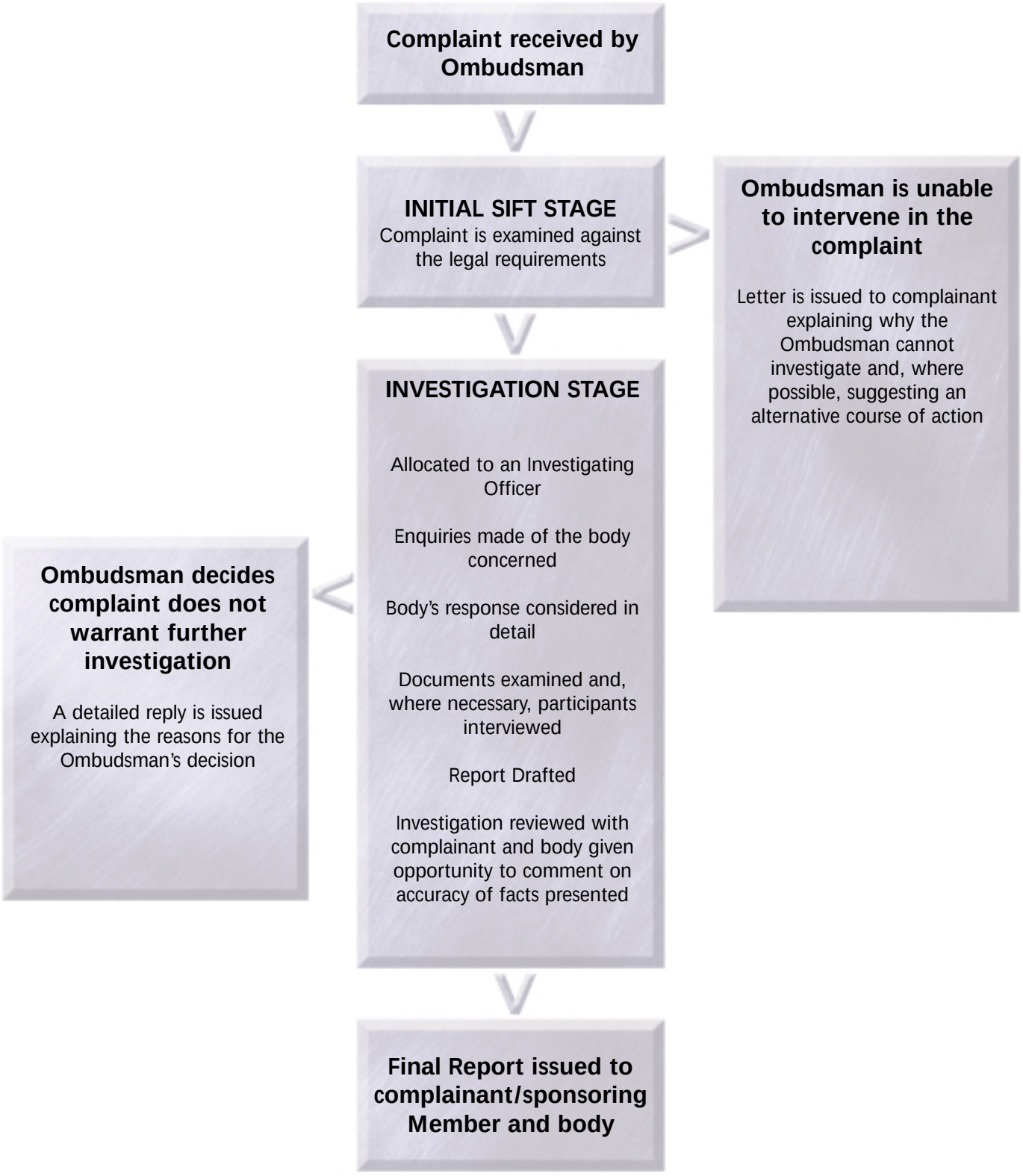
Assistant Investigating Officer
Mrs Anne Scott

Administrative Support Team
Mrs Cathy Gallagher
Mrs Eleanor Oliver
Mrs Stacey Todd

* Currently on career break

Handling of Complaints

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



THE PROCESS:

Initial Sift 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 Initial Sift 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 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 within 12 months of initial receipt of the complaint.

Oral Complaints/ Enquiries

During 2003/04 the Office dealt with 2,792 telephone calls, an increase of some 9% on 2002/03, and there were 60 personal callers, a decrease of some 30% on 2002/03.

Of these, 753 telephone calls and 50 interviews related to bodies and matters within my jurisdiction. I have included as Appendices to Sections 2, 3 and 4 details of the bodies complained of and the outcomes of the oral complaints which were received by telephone/interview.

The remaining 2,039 telephone calls and 10 interviews related to complaints where either the body or the subject of the complaint was 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, if possible, provide appropriate contact information.

Fig 1.1 - Northern Ireland Ombudsman 2003/04
709 Complaints Received

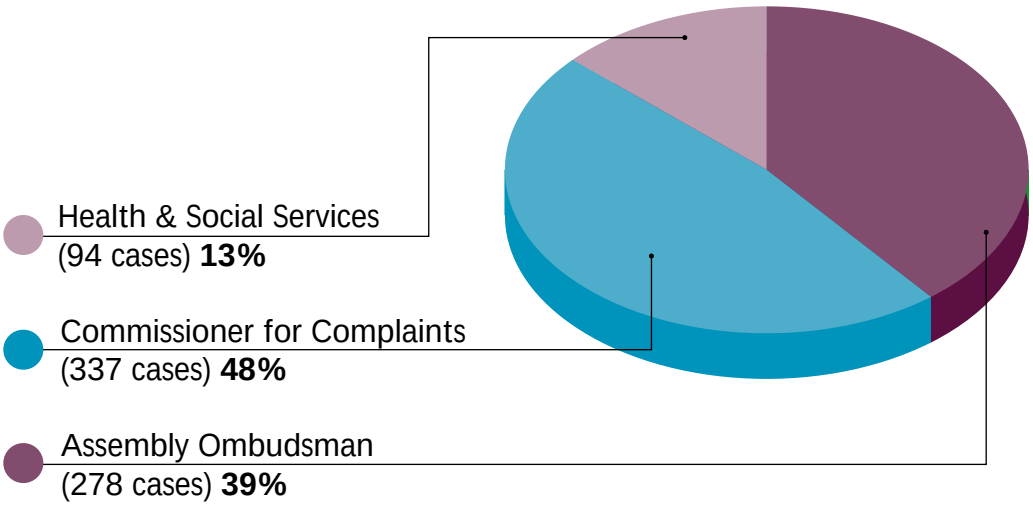


Fig 1.2 - Northern Ireland Ombudsman 2003/04
Complaints Received by Month

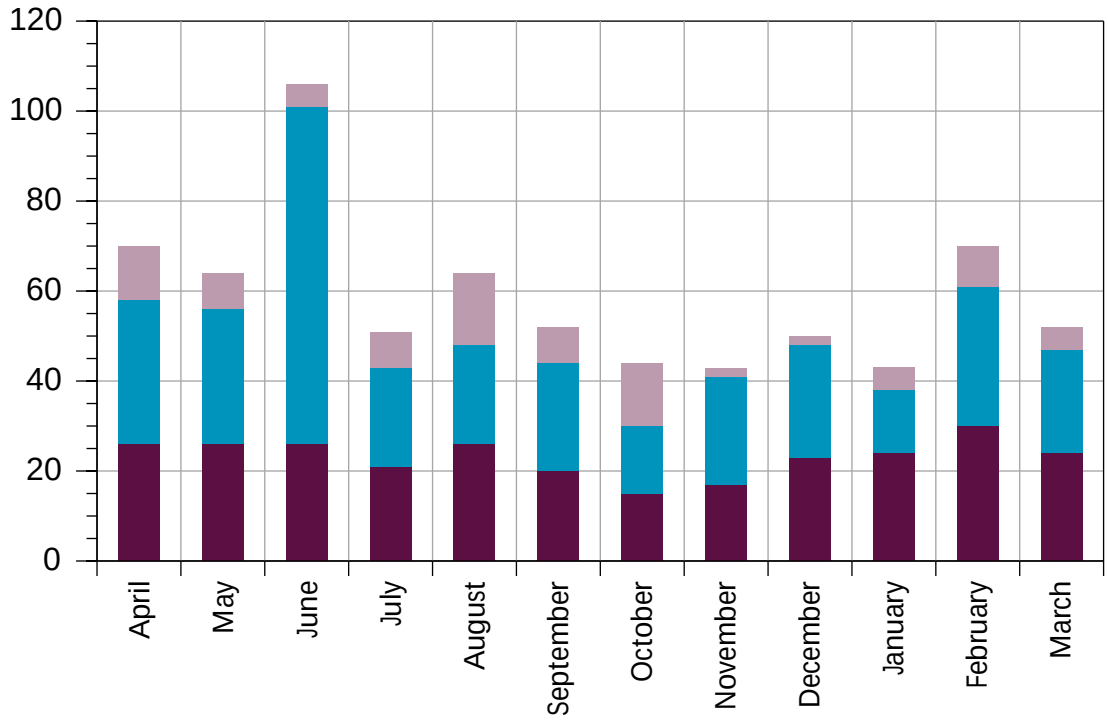


Fig 1.3 - Northern Ireland Ombudsman 2003/04
709 Complaints Received - Local Council Area in which Complainant Resides

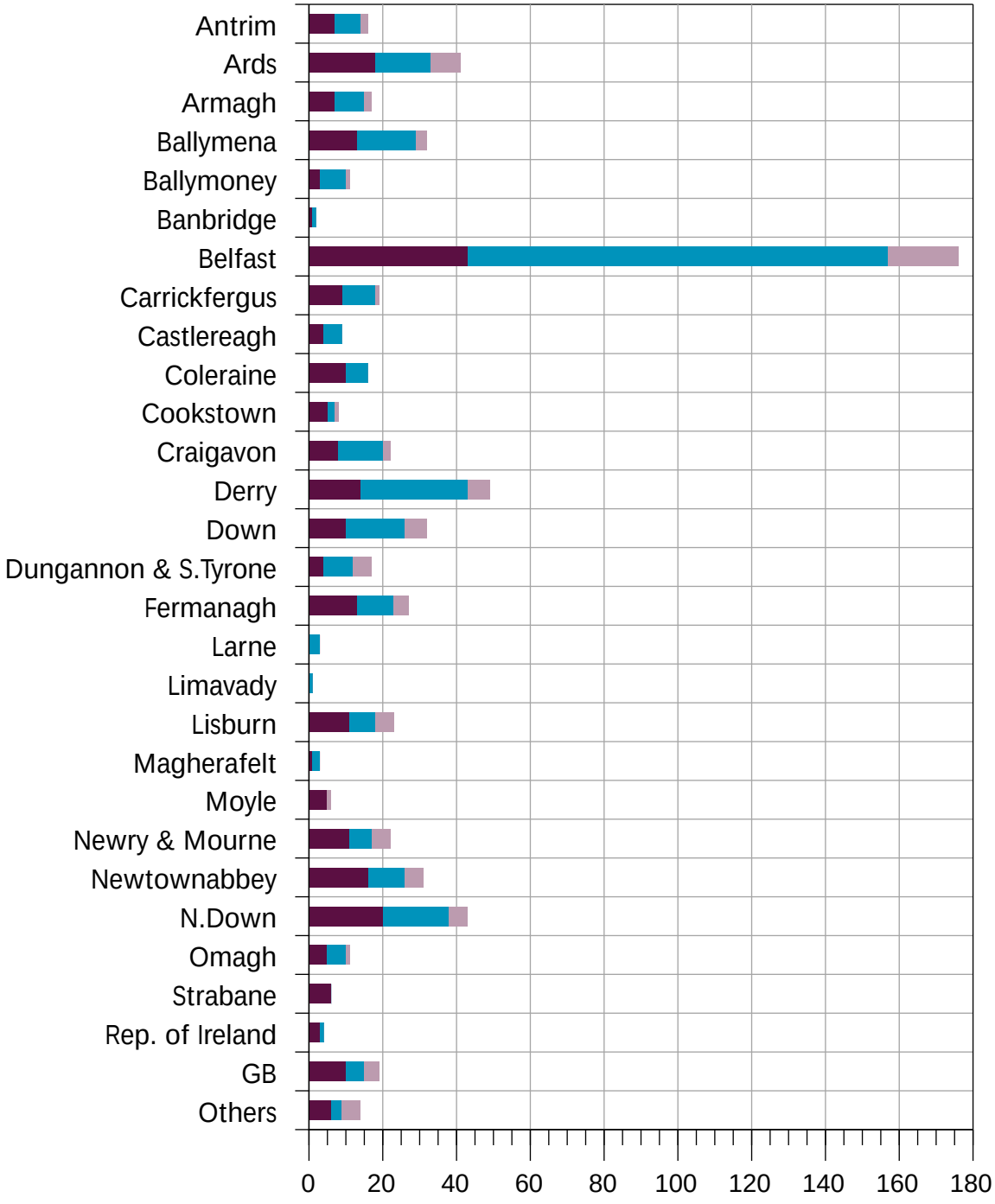


Fig 1.4 - Northern Ireland Ombudsman 2003/04
Completion Times for Registered Cases

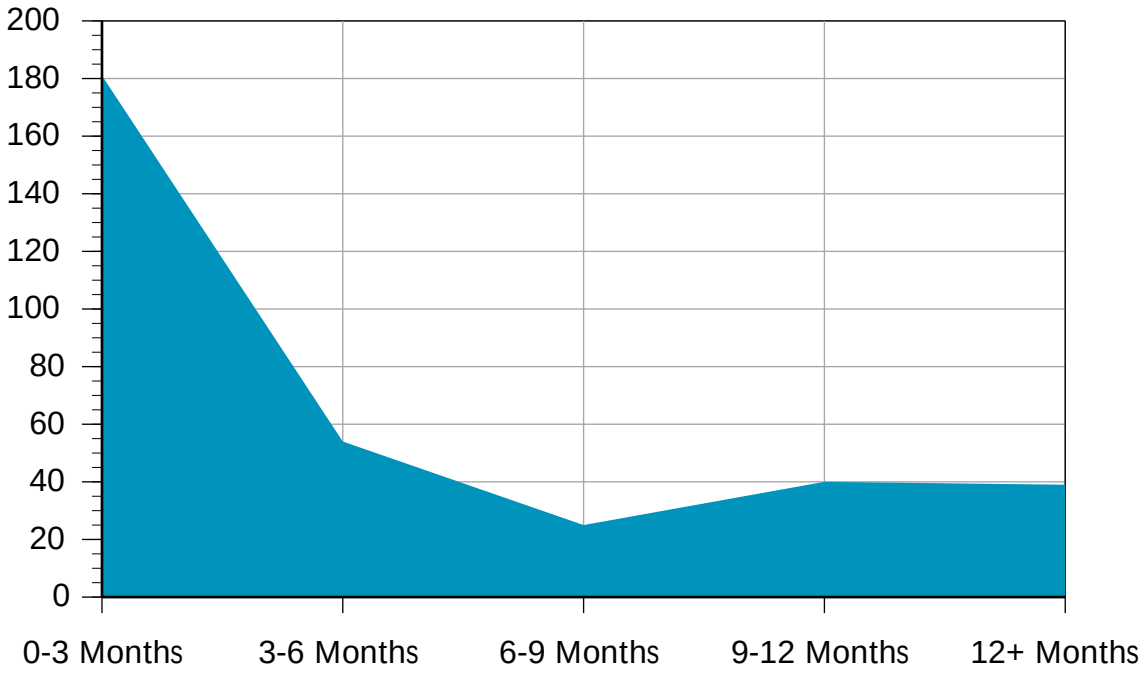
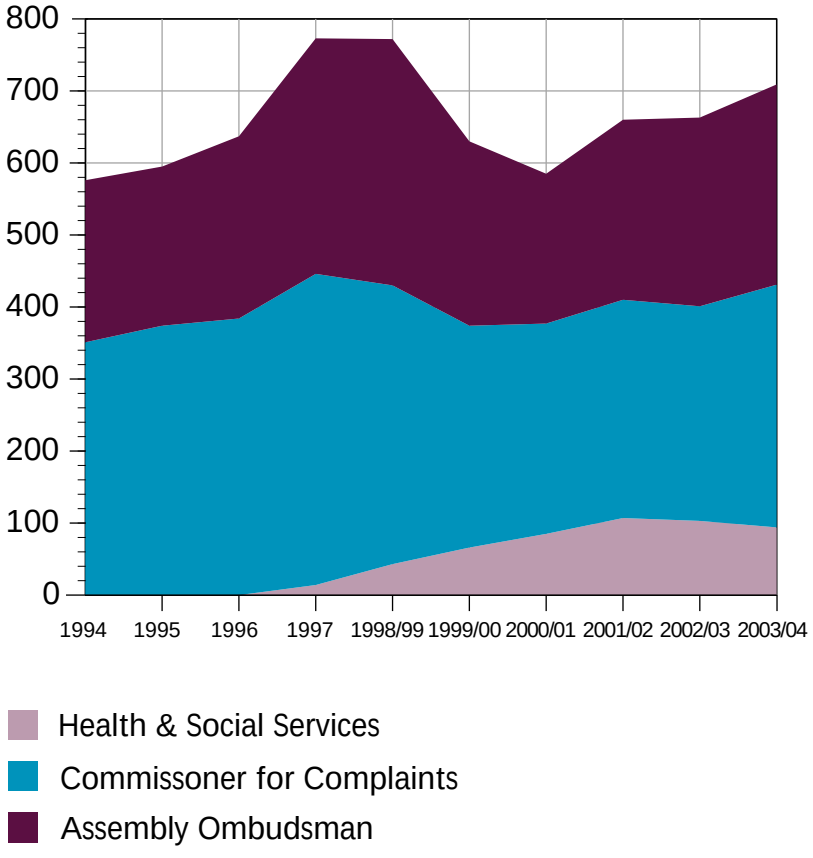
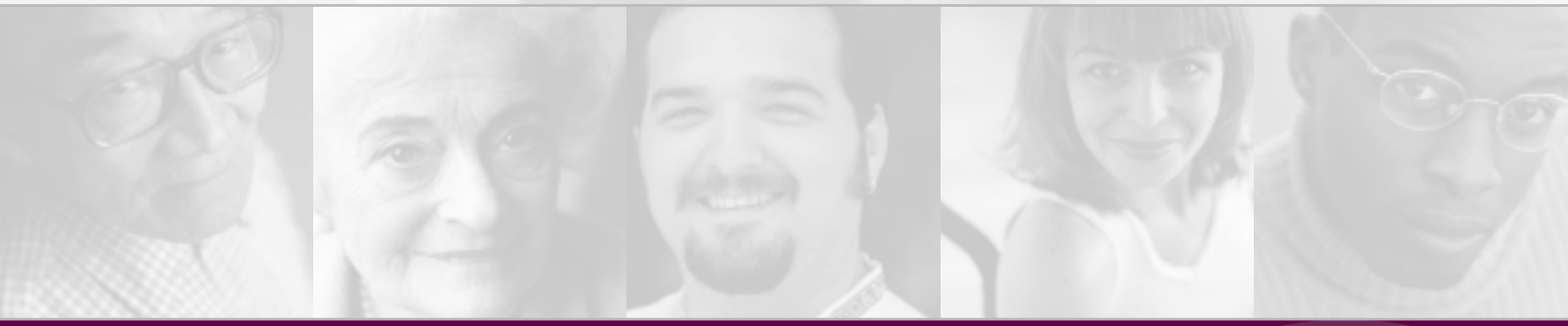


Fig 1.5 - Complaints Received by the Ombudsman 1994 - 2003/04



Annual Report of the Assembly Ombudsman for Northern Ireland



Section Two

2

Complaints Received

As Assembly Ombudsman for Northern Ireland I received a total of 278 complaints during 2003/04, 16 more than in 2002/03. 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 278 complaints received this year 93 were submitted in the first instance by an elected representative and 185 were submitted directly to me by complainants.

The Department of the Environment and the Department for Social Development attracted most complaints, 92 against the former and 67 against the latter. Of these 149 related to their agencies, with the Planning Service and Social Security Agency giving rise to most of the complaints. In all 186 of the 278 complaints received in 2003/04 related to the agencies of government departments.

A breakdown of the complaints received according to the Local Council area in which the complainant resides is shown in Fig 2.3.

A breakdown of the complaints received against the agencies of government departments and those relating to benefits are given in Figs 2.4 and 2.5.

During the reporting year I received no complaints in which religious discrimination was alleged. Those alleging such discrimination in employment matters do, of course, have a right of recourse to the Equality Commission and/or the Office of the Industrial Tribunals and Fair Employment Tribunal.

Table 2.1 - Subject areas of complaints received in 2003/2004

Subject of Complaint	No. Received
Personnel	32
Water	7
Planning	75
Benefits	35
Education	0
Roads	12
Agriculture	3
Rates	4
Miscellaneous*	110
TOTAL:	**278**

* Among the issues complained about were child support, trading standards, Occupational Health Service, retention of documents, MOT certificate, National Insurance number, and driver licencing.

Fig 2.1 - Assembly Ombudsman 2003/04
278 Complaints Received

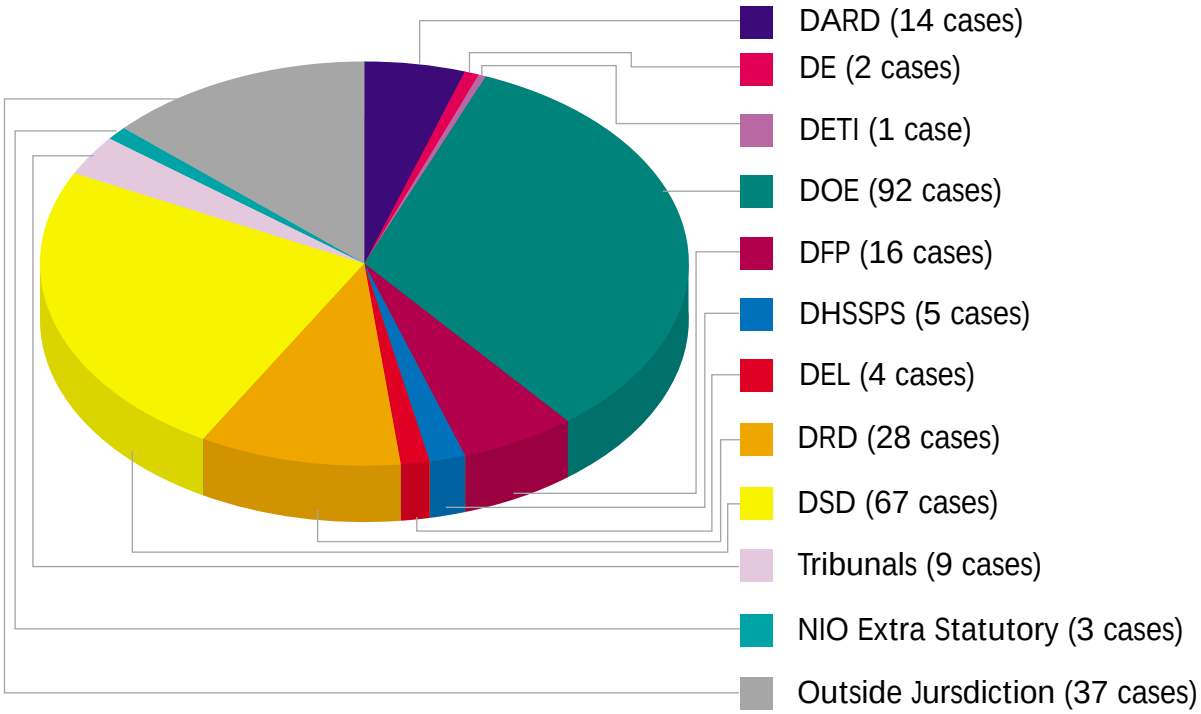


Fig 2.2 - Assembly Ombudsman
Complaints Received 1999/2000 – 2003/04

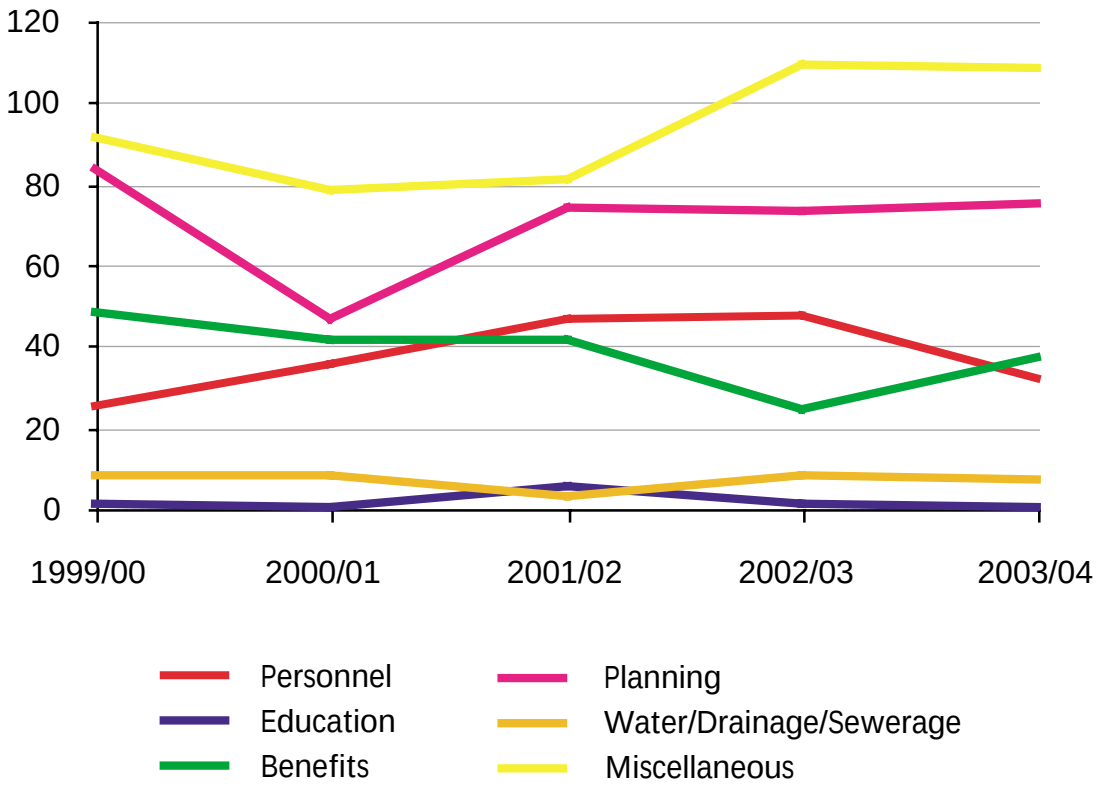


Fig 2.3 - Assembly Ombudsman 2003/04
278 Complaints Received - Local Council Area in which Complainant Resides

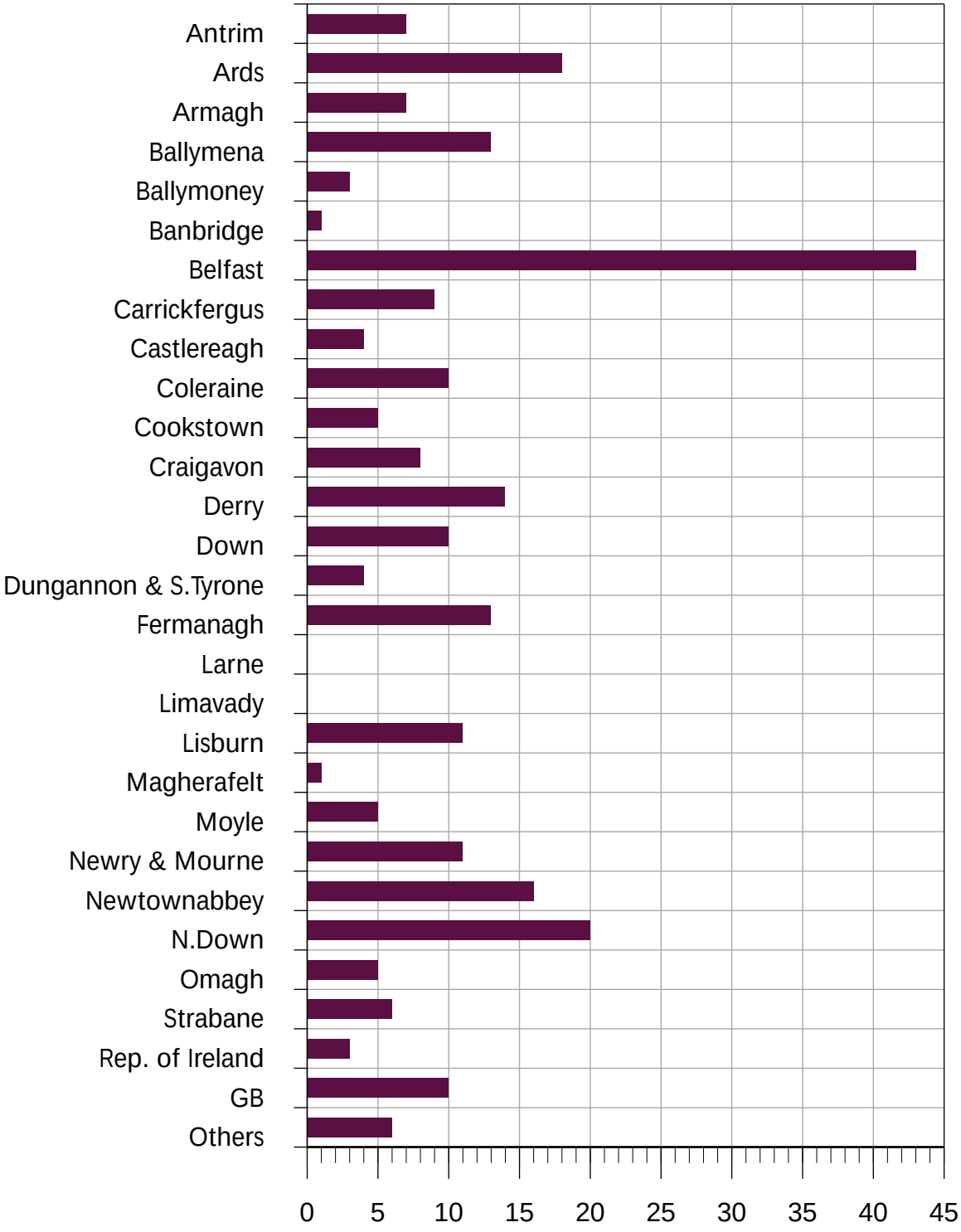


Fig 2.4 - Complaints Against Government Agencies 2003/04
186 Complaints Received

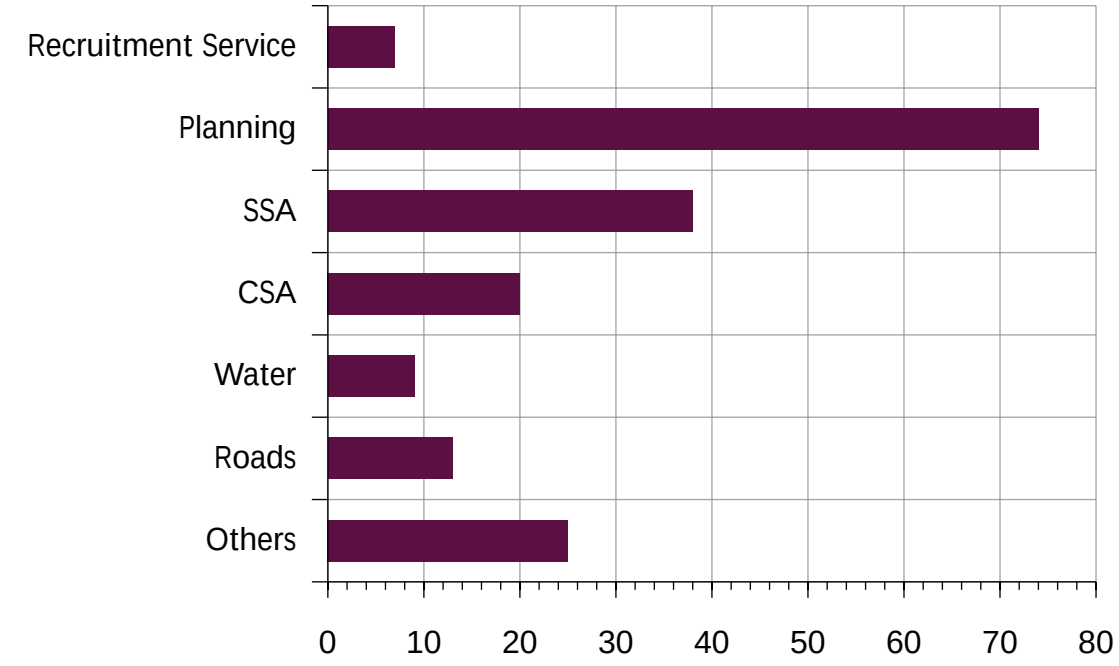
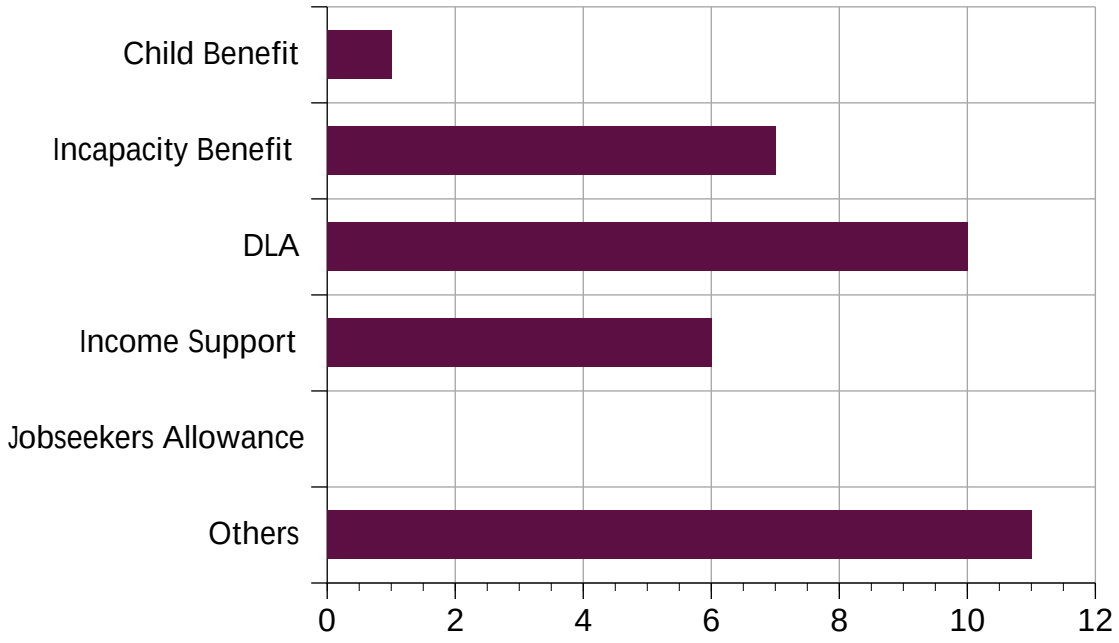


Fig 2.5 - Benefits Complaints 2003/04
35 Complaints Received



Statistics

In addition to the 278 complaints received during the reporting year, 56 cases were brought forward from 2002/03. Action was concluded in 285 cases during 2003/04 and, of 49 cases still being dealt with at the end of the year, 48 were under investigation. In 39 cases I issued an Investigation Report to the sponsoring elected representative setting out my findings.

The 49 cases in process at 31 March 2004 were received during the months indicated in Table 2.3.

During 2003/04 84 cases were cleared without the need for in-depth investigation and 9 cases were settled. 121 cases were accepted for investigation. Complaints against authorities or matters not subject to my investigation totalled 49. I rejected 6 complaints where I considered redress in a court of law to be more appropriate and 11 where there was a right of appeal to a tribunal. The outcomes of the cases dealt with in 2003/04 are detailed in the Fig 2.6.

Of the total of 2,852 oral complaints received by my Office some 379 were against bodies within the jurisdiction of the Assembly Ombudsman. See Figs 2.7 and 2.8 at Appendix D to this Section.

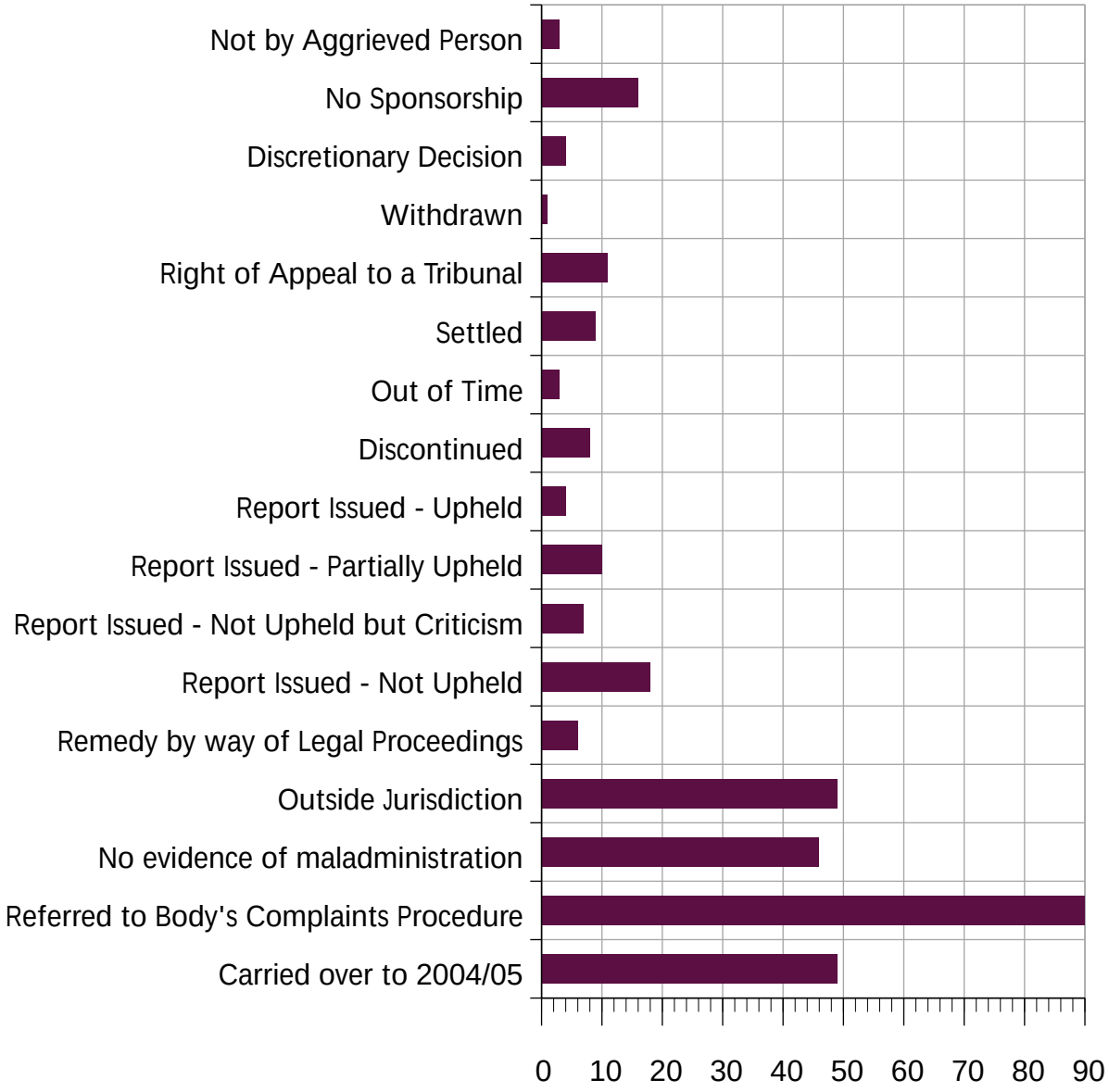
Table 2.2 - Caseload for 2003/04

Number of uncompleted cases brought forward	56
Complaints received	278
Total Caseload for 2003/04	334
Of Which:	
Cleared at Initial Sift Stage	153
Cleared without in-depth investigation including cases withdrawn and discontinued	84
Cases settled	9
Full report issued	39
Cases in action at the end of the year	49

Table 2.3 - Date of Receipt of Cases in Process at 31 March 2004

November 2002	1
March 2003	2
June 2003	4
July 2003	2
August 2003	2
September 2003	3
October 2003	4
November 2003	1
December 2003	5
January 2004	3
February 2004	13
March 2004	9

Fig 2.6 - Assembly Ombudsman 2003/04
Outcome of Cases



Time Taken for Investigations

The average time taken for a case to be examined and a reply issued at Initial Sift stage was 0.9 weeks.

The average time taken for a case to be examined, enquiries made and a reply issued at Investigation Stage was 22.9 weeks.

Reports Issued and Settlements Obtained After Investigation

39 reports of investigations were issued in 2003/04, compared to 34 in 2002/03. The breakdown according to the subject of the cases reported on was Planning 16, Benefits 4, Personnel 10, DARD 2, and Miscellaneous 7.

4 cases were fully upheld; 35 cases were not but 10 of these were partially upheld and I criticised the Department/Agency in 7. Settlements were achieved in all of the 4 cases that I upheld:-

Table 2.4 - Settlements Achieved in Upheld Cases

Case No	Depart./Agency	Subject of Complaint	Settlement
AO 45/02	DOE - Planning Service	Handling of planning application	Apology & consolatory payment of £400
AO 128/02	DOE - Planning Service	Processing of outline planning application	Apology & consolatory payment of £100
AO 129/02	DSD - CSA	Delay in processing application	Apology & consolatory payment of £500
AO 25/03	DSD - SSA	Delays and failure to reply	Apology & consolatory payment of £100

Review of Investigations

DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT

Failure to Be Shortlisted

In this case the complainant alleged he had suffered injustice as a result of maladministration by the Department of Agriculture and Rural Development (the Department) in its handling of his application for the post of Beekeeping Instructor. He questioned the provision of evidence relating to possession of the qualification regarded by the Department as the essential criterion, i.e. a qualification to minimum Intermediate Certificate level accredited by the British Bee Keepers Association or the Federation of Irish Bee Keepers Association. He claimed that he more than adequately met the minimum qualification stipulation by virtue of being a "Lecturer" which he stated is an official qualification that cannot be obtained until Intermediate and Senior certificates have been acquired. He also made the point that, since the application form did not specify the sending in of certificates none was sent in.

My investigation revealed that the advertisement for the post specified that applicants "should state clearly on the application form their area(s) of expertise and provide evidence of their experience and any relevant qualifications". The job specification contained similar advice in stating applicants must "provide details on their application form as to how they fully meet the qualifications and experience needed for eligibility….". In addition the application warned applicants that only applications containing ALL requested information would be considered. I was satisfied that, taken together, all this advice provided candidates with a clear and unmistakeable indication of the importance of providing information on the application form relating to possession of the essential qualifications. Although I accepted the complainant's point that the application form itself did not specify that certificates should be submitted. Nevertheless, I took the view that, since candidates had been provided with such clear and specific advice in the documentation, the onus was on applicants, and indeed it was in their own interests, to comply, and the shortlisting panel was then entitled to be rigorous in its approach in considering the information and evidence supplied by candidates in their application forms.

I concluded that the shortlisting panel took a rigorous approach and noted that, in respect of qualifications, the complainant provided information only in relation to his NI Senior Certificate pass. The complainant also provided information in relation to his experience as lecturer, examiner and marker. On the basis of this information, the panel considered that the complainant's experience did suggest that he may hold the qualifications. It was therefore decided that the complainant should be asked to provide verification of his qualifications. The evidence indicated that he did not provide such verification.

Overall, I was satisfied that the panel was properly constituted, that procedures were followed correctly and candidates were dealt with in a consistent manner. The complainant had not provided all the information required in his application form. It would, in my view, 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 him to the interview on the basis of an inference

or assumption as to the qualifications he possessed. I was satisfied, however, that he was given a further opportunity to supply the verification required and it was unfortunate that he was unable to do so. I did not uphold this complaint. **(AO 53/02)**

Handling of Integrated Administration and Control System 2001 Area Aid Application

In this case the complainant alleged that she, her husband and her son had suffered an injustice as a result of maladministration by the Department of Agriculture & Rural Development (the Department). Primarily, it was the complainant's contention that the Department's poor administrative handling of her letter dated 15 June 2001, concerning their Integrated Administration and Control System (IACS) 2001 area aid application, had caused her and her family to suffer considerable distress, loss of income and significant expenditure of having to engage a solicitor and a barrister to represent them at a newly introduced appeals procedure, which culminated in the (then) Minister deciding that the information relating to the three separate 2001 IACS claims should be honoured.

My investigation established that crucial to the processing of the IACS applications lodged by the complainant was whether the Department had received her supplementary information on forage areas which the Regulations, and special derogation, stipulated must be lodged with the Department on or before 30 June 2001, otherwise penalties would be imposed. Following my careful consideration of all of the evidence and information available to me, and notwithstanding the recommendation of the independent Appeal panel, referred to above, I did not conclude that Department had been guilty of maladministration in its initial decision not to accept and pay on the 'late' receipt of the supplementary information provided by the complainant. It was the situation that my investigation did not produce any firm evidence that the supplementary information provided by the complainant had been received by the Department prior to 14 August 2001, despite the fact that the complainant's accompanying letter was dated 15 June 2001. I did, however, find reason to be critical of the Department in relation to what I regarded as unsatisfactory administrative practice in its handling and processing of the complainant's correspondence, referred to above, particularly in terms of associating it with the (original) IACS applications, received from the complainant on 15 May 2001.

As a result of my investigation, the Department offered to issue an ex-gratia payment of £1,000 to the complainant, albeit on a "without prejudice" basis. The Department also agreed to pay interest on the premia which had been paid to the complainant and her family following the outcome of the appeals process. The interest paid amounted to £637. In addition, the Department offered to review the complainant's respective claims for 2001 and to "consider making appropriate recompense in the event that a financial loss attributable to the Department is confirmed". It was against this overall background that I concluded there was no further meaningful action I could take on behalf of the complainant, at least at that point in time, pending the outcome of the Department's review. The review has not yet been completed by the Department. **(AO 107/02)**

RIVERS AGENCY

Effect of Permission to Culvert a Watercourse

In this case the complainant contended that, as a consequence of Rivers Agency's (the Agency) decision, dated 3 April 2001, which granted permission to Mr [A] to culvert a watercourse near Cookstown, his trout hatchery business would be rendered unviable as it was dependent on pristine water supply.

Although my investigation confirmed that the Agency had contacted the Department of Culture, Arts & Leisure's (DCAL's) Fisheries Division about the complainant's concerns in relation to his trout hatchery business, I could not dispel completely a lingering doubt on my part that the discussion had taken place after 3 April 2001. Having said that, I was, however, pleased to note that in light of the complainant's representations, and further discussions by the Agency with DCAL's Fisheries Division, Mr [A] had agreed to construct a specific type of accommodation bridge (as opposed to inserting concrete pipes in the watercourse). I was informed that the use of an accommodation bridge should avoid any interference with the watercourse. In the circumstances, I had no reason to doubt that the Agency would probably still have granted permission to Mr [A] to culvert the watercourse, albeit perhaps by means of an accommodation bridge as opposed to inserting concrete pipes. Overall, therefore, as a result of my investigation, I formed the view that regardless of when the Agency contacted Fisheries Division, it was inevitable that the outcome of the discretionary decision was going to be accepted by one party and rejected by the other. As I was satisfied that the Agency had managed this case in accordance with its policy and the underpinning legislation on the matter of dealing with a request for permission to culvert an undesignated watercourse, I had no reason to question the discretionary decision taken by the Agency. Consequently, I could not uphold the complainant's contention that the Agency had been guilty of maladministration. **(AO 21/02)**

Unsuccessful in Application for Post of Area Foreperson

In this case the complainant alleged he had sustained injustice as a result of maladministration by the Rivers Agency (the Agency) because he was unsuccessful in his application for one of the posts of Area Foreperson.

Primarily, the complainant contended that although the posts of Area Forepersons were publicly advertised, the Agency had policies and procedures in place to ensure that only internal candidates were appointed. Although my consideration and examination of this case left me in no doubt concerning the complainant's sense of disappointment at the outcome of the recruitment process, I found no evidence to conclude that the Agency had been guilty of maladministration in either its selection criteria or the panel's related assessment of the complainant's performance at interview. It was also the case that my investigation did not produce any evidence to show that the complainant, as an external candidate, had been treated differently from any of the internal (or indeed the other external) candidates in the process. Neither did my investigation produce any evidence that the complainant had not been given a fair and equal opportunity to state his case to the interview panel. Also, I was satisfied that the interview panel had been properly constituted and competent for the task. In the absence of evidence of maladministration I had no grounds on which to challenge the interview panel's

decision. Consequently, I did not find that the complainant had suffered a personal injustice as a result of the Agency's actions. **(AO 91/02)**

DEPARTMENT OF THE ENVIRONMENT

PLANNING SERVICE

Failure to Afford Full Right of Objection

A complainant alleged that because of maladministration by Planning Service (PS) a third party gained a right of way over a laneway in his ownership, reducing the value and amenity of his property. The complainant told me that PS failed to notify him of the application to build a house with an access from his laneway and had not responded to the concerns which he raised through his solicitor upon learning of the proposal. He complained that a letter was later sent to him by the applicant's agent but he was on holiday and PS had approved the application before he was able to submit his views. He therefore believed he had been denied the proper period for objection and his concerns had failed to receive a fair hearing. The complainant also alleged that when he queried how the application could be processed in the absence of permission to use the laneway he was told by a planning official that the applicant had completed a form certifying that permission had been given. The planning official was alleged to have stated that it was a PS responsibility to verify the information on the form but admitted that in most cases this was not checked. The complainant made further allegations in relation to the withholding of important documents by PS.

My examination of the records showed evidence that PS had issued a neighbour notification letter to the complainant's address. Although I found that PS had not replied in writing to the solicitor's representations on behalf of the complainant I was satisfied that there was clear evidence of discussion between the parties, which led to PS seeking further information from the planning applicant in relation to land ownership. I found this to have been duly submitted by the planning applicant on the requisite P2 form, which identified the complainant as part owner of the laneway. I found that the letter from the applicant's agent was served on the complainant as an interested land owner in accordance with Article 22 of the Planning (NI) Order 1991 and PS waited the required 14 days from the date of service before issuing the approval notice. It seemed to me that with no knowledge of the complainant's absence on holiday PS could not be regarded as denying him a right of objection.

My investigation established that it is not the purpose of the P2 form to grant approval for access, nor is there any obligation upon PS to check the accuracy of information provided on the form. However I found that a challenge to the accuracy of a certificate gives rise to an investigation and if a defect is found a remedy can be to seek an amended certificate, which was what had happened in this case following representations by the complainant's agent. I accepted that PS was obliged to determine the application on its planning merits alone while issues of permission for access were civil matters. As regards the complainant's allegation that PS withheld documents I was unable to make a finding in the absence of conclusive evidence.

Overall I was unable to uphold this complaint, however the case highlighted what for many is the vexed question of rights of access over third party land. My investigation underlined that the granting of planning permission does not confer rights of ownership or rights of access in respect of third party land. Although I can appreciate how affected landowners find it an unsatisfactory situation, a dispute in relation to implementing access to a proposed development is a civil matter. **(AO 61/02)**

Delay in Enforcing Compliance with Planning Permission

A complainant told me that a car wash had been operating at the rear of his mother's home without proper planning permission since 1996. Although the Planning Appeals Commission (PAC) had granted planning approval to the development in 2001, the conditions attached by the PAC in order to protect the amenity of adjacent dwellings, including that of his mother, had still not been complied with. The complainant alleged that Planning Service (PS) was guilty of gross maladministration by taking an excessive amount of time to enforce full compliance with planning approval.

Because of the time limits imposed by the legislation governing my Office this investigation was restricted to examination of the actions of PS, following issue of planning approval by the PAC in 2001. In response to my detailed enquiries into the complaint the Director of Professional Services set out the relevant PS policies on enforcement against breaches of planning approval, in particular emphasising the Department's aims of achieving an outcome preferably through negotiation whilst balancing the interests of small business development with the legitimate expectations of neighbours.

Against this background my investigation found that PS had acted quickly after being informed by the complainant that the developer had failed to implement a number of mitigating measures within the time limit imposed by the PAC. A site visit confirmed several breaches of planning approval and a warning letter was issued. After further site visits the developer partially complied with the requirements by erecting Perspex screens and constructing a boundary wall. The car wash operator submitted a further planning application in an attempt to regularise unauthorised aspects of the development, however this was rejected by PS and an enforcement notice was issued, requiring removal of a portacabin and other equipment, alterations to floodlighting and provision of soundproof bunkers to house car washer units. When the developer failed to complete the necessary work by the end of the statutory period for compliance PS proceeded to initiate summons action. The site operator subsequently took further steps towards compliance in advance of the court hearing at which the site owner pleaded guilty to breach of the enforcement notice.

Although some 17 months elapsed between the complainant's notice to PS of the developer's failure to comply with the approval issued by the PAC, and the initiation of summons action, I did not find any evidence that this was due to inaction or delay by PS. I found that PS had moved through a series of site visits, warnings and enforcement notices to achieve a significant measure of compliance before deploying its most powerful sanction of court action in an attempt to bring the developer fully into line with planning approvals. In my report I made clear that I expected PS to rigorously pursue the outstanding matters following the court judgement. However, despite my considerable sympathy for the

complainant in this case I was unable to uphold the complaint. **(AO 47/02)**

Processing of a Planning Application

In this case the complainant alleged he had suffered injustice as a result of maladministration by Planning Service (PS) concerning its handling of an application for the demolition of an existing workshop, builder's yard and four dwellings and the construction of apartments on a site adjacent to his home. The complainant explained that the planning application in question appeared before Down District Council (the Council) in March 2002 with an opinion to refuse and, following a site meeting, had been returned to the Council, in April 2002, still with an opinion to refuse. The complainant said that he had visited the Divisional Planning Office (DPO) at the beginning of July 2002 with a request to view amended plans. He was, however, shown the old plans and informed by PS that someone would contact him regarding this confusion but no one did. On 10 July 2002, his representative intervened and contacted PS on his behalf. It was ascertained there had been a mix up and PS apologised. At the end of July his representative's office again contacted the DPO and was informed that no decision had been made and the application would not be going to Council that month. However, following another telephone call to the DPO, his representative's office was informed that contrary to the telephone call on the previous day, the application had been granted planning permission. The complainant believed that, because of the actions of PS, he had lost out on the opportunity to put his case against the amended application.

My investigation revealed that there was neither a record of the complainant visiting the DPO at the beginning of July to view the amended plans nor was there any record of subsequent telephone contact from his representative's office. When I am faced with a version of events for which there is insufficient independent corroborating evidence I normally find it difficult to make comment. Having said that, I had no reason to doubt the complainant's or his representative's versions of events. The Acting Chief Executive (ACE) of PS had, in his written reply to me, also stated that he had no reason to doubt the complainant had visited the DPO. I criticised PS for the fact that no evidence existed of the contacts by the complainant or his representative but welcomed the fact that steps have been taken to ensure that such visits to the DPO are recorded and kept on file. With regard to telephone contact, I accepted, albeit with some reluctance, PS's explanation to me that not all calls need to be recorded and it becomes a matter of judgement for the planning officer concerned. However, I cautioned that officers should be disposed to record wherever possible. Finally, I noted that in a letter dated 12 August 2002 to the complainant's representative, the Divisional Planning Manager (DPM) acknowledged that the complainant had not been notified of the decision to grant planning permission and "should have been". I also noted that the DPM offered his apologies to the complainant.

In considering therefore whether or not the complainant "lost out" on the opportunity to put his case against the amended application, I regarded it as a significant factor that my examination of PS records confirmed that he was notified, in June 2002, of receipt of the amended scheme. I noted that this was six weeks prior to the issue of the decision notice granting planning permission for

the development and I was of the view that there would have been sufficient time for the complainant to register his written objection to the proposal during that period. However, it seemed to me that the complainant had an expectation that contact would be made with him in respect of the amended plans and to clarify the confusion which arose in relation to his viewing old plans during his earlier visit to the DPO. As it happened the confusion was never clarified and the DPO failed to notify him of its decision of 22 July 2002. I could fully understand the complainant's disappointment, dissatisfaction and frustration with his experience and his feeling that he lost out on an opportunity to comment on the amended plans was, in my view, justified.

In relation to PS's consideration of the application I was satisfied that the complainant's objection to the original proposal was registered by PS. Furthermore, I noted that relevant factors were fully considered by PS prior to making any decision on the application. I recognised that consideration of the significance or otherwise of relevant factors during the processing of any application, whether an initial or an amended proposal, involves the exercise of professional and, on occasion, very finely balanced, judgement leading ultimately to the taking of discretionary decisions by PS. While the complainant was unhappy with PS's change of opinion from refuse to approve, I found no grounds in this case for substituting my judgement for the judgement of the planners in relation to the opinion formed on either the original or the amended proposal.

I concluded that the general lack of vigilance and absence of records in this case was a form of maladministration which caused the complainant unnecessary confusion and frustration and disappointment. In recognition of this I recommended that a written apology should issue from the ACE to the complainant. The ACE accepted my recommendation. **(AO 49/02)**

Handling of Plans Relating to a Decision by the Planning Appeals Commission

In this case the complainant claimed to have suffered injustice as a result maladministration by Planning Service (PS) regarding its handling of plans relating to a decision by the Planning Appeals Commission (PAC) which had upheld his appeal and approved his planning application for a dwelling. The complainant stated that, in refusing to stamp and approve plans within a two month period, PS was in default of the PAC decision. He also complained about delay, as a result of which he was unable to commence building. He had telephoned the Divisional Planning Office (DPO) to check on progress and it was confirmed that the officer dealing with his case had been absent for some weeks. To prevent further delay in dealing with plans referring to conditions attached to the PAC decision the complainant made the minor adjustments PS considered necessary and presented the amended plans to the DPO on 15 May 2002.

My investigation established that there was no requirement for PS to stamp and approve plans relating to conditions attached to a PAC decision within a two month period. Although the stamping and approval process took longer than two months I did not find that PS was in default of the PAC decision.

I examined the facts of the case to determine whether avoidable delays occurred. I considered the capacity of the DPO to continue to progress cases when a case officer is unavoidably absent and

other officers also manage heavy workloads. While I understood the complainant's frustration I had also to consider what PS could realistically and reasonably hope to achieve given the practical administrative demands of seeking to continue to process a case load of some 100 planning applications. In all the circumstances I did not consider that there was undue delay in PS' dealings with the complainant between the issue of the PAC decision and receipt of the amended plans.

However, I was told that the amended plans were misfiled. I was concerned to discover that, in spite of letters of complaint to the Chief Executive (CE) and the Minister, the misfiling of the amended plans did not come to light until the complainant wrote to the Minister a second time on 3 September 2002. In the meantime a response from the CE assured the complainant that his complaint had been fully investigated. A response to the complainant from the Minister was also inaccurate. The plans were approved and stamped on 11 September and the complainant received an apology. Nevertheless, I found PS guilty of maladministration for the misfiling and subsequent avoidable delay in actioning the plans and for its failure to locate the plans through a comprehensive review of all the papers for the purposes of contributing to responses from the CE and the Minister.

I was told that corrective measures have been taken to ensure that papers submitted to PS are properly filed. I urged PS to review with care its procedures for gathering evidence and information for responding to letters from members of the public, in particular letters to the CE and the Minister.

PS accepted my recommendation of a written apology together with a consolatory payment of £400 to the complainant in recognition of the frustration, disappointment and annoyance that he had experienced. **(AO 45/02)**

Failure to Neighbour Notify of a Planning Application

In this case the complainants were aggrieved that they had not been neighbour notified of a planning application for a two storey extension to a property adjacent to their home. The complainants alleged that due to a fault in Planning Service (PS) procedure they were denied their right to object to the proposal and as a result their property was now grossly overlooked. The complainants alleged they were provided with misleading advice by PS and that it refused to answer reasonable questions.

My in-depth investigation found that the failure to notify the complainants of the application was primarily due to an error in PS's Geographical Information System (GIS) which identified their property by the wrong postal address. In his reply to my enquiries the Acting Chief Executive (ACE) explained that since PS's information in relation to the complainant's property coincided with the maps submitted by the planning applicant there was no reason to suspect that a mistake had been made in the neighbour notification process. Whilst I therefore accepted that the failure to notify the complainants was not a deliberate act of maladministration I expressed serious concerns about the inaccuracy in the GIS system and made clear to PS that I expected this to be investigated and rectified.

I gave very careful consideration to the verbal and documentary evidence provided by PS in respect of its consideration of the planning application.

Although I found a number of deficiencies in the documentary records, overall on the basis of my examination of the evidence, I accepted the assurances of PS that overlooking of the complainant's property had been taken into consideration in determining the application. I therefore concluded that the failure to notify the complainants of the planning application had not resulted in an injustice to them.

Although I did not uphold the allegations of maladministration in respect of neighbour notification and failure to consider overlooking of the complainant's property, I was extremely critical of PS for some serious inconsistencies in the evidence provided to my investigation, poor record keeping practice and inadequate answers supplied to questions posed by the complainants. Taken together I regarded these failures as constituting maladministration, which caused the injustices of confusion and frustration to the complainants. I am pleased to record the ACE accepted my recommendation that an apology should be issued to the complainants, together with a consolatory payment of £500. **(AO 57/02)**

Processing of a Planning Application for Extensions to Neighbouring Property

The aggrieved couple in this case claimed to have suffered an injustice as a result of maladministration by Planning Service (PS) in its processing of a planning application for the erection of a large 2 storey extension at the front, and a smaller 1 storey extension to the rear, of neighbouring property.

The complainants objected on several grounds, that the extension was not in keeping with the area, that it was unsightly and that it overlooked and darkened their property. They supplied PS with a copy of the deeds to their property which they stated, explicitly forbid the construction of any building or fences above 6 feet in height. They stated that they did not feel that PS had taken account of their objections. They also alleged that the actual size of the finished structure was larger than that given permission for and that more residents should have been neighbour notified than the 2 who actually were. They further alleged that there was damage to their property during construction and that the use of part of the extension as a music room had forced them to endure a barrage of noise.

With regard to the objections of the complainants to the planning application, PS provided details of its consideration of the issues and I was satisfied that the complainants concerns were considered by the PS Development Control Officer as well as by the internal Development Control Group.

PS informed me that the contents of the deeds were not an issue for PS. These represent a legal agreement between the "lessor" and the "lessee" and remained a matter between these two parties. PS makes decisions based on relevant planning policy and any other material considerations, such as consultee responses and objections, and these were considered prior to a recommendation being presented to the Council's Town Planning Committee.

As regards the level of public consultation in this case, I was satisfied that there is a large element of discretion available to PS to decide which neighbours should be notified, over and above those to whom the normal arrangements apply. Having examined the evidence provided by PS, and, crucially, given the fact that the complainants were themselves notified, I

could not uphold this element of the complaint. I also could not uphold the element of the complaint relating to noise emanating from the new structure. PS has no remit to control noise nor do they have a role in determining the purpose which might be assigned to specific rooms in a domestic property. I accepted that the issue of noise which might potentially be generated by any aspect of the proposal did not constitute a material planning consideration. I could only suggest that the complainants take their concerns to the local Environmental Health Department. Furthermore I felt that I could not pursue the aspect of the complaint with regard to damage to the complainants property during construction, I could only suggest that the complainants seek legal advice on this civil matter.

Finally, it was clear from my examination of the records that the actual size of the finished extension was larger than that approved. When the complainants first contacted PS in relation to this, PS obtained a verbal assurance from the applicants agent that the structure would be moved back 600mm to conform with the original plans. A further site inspection by PS found that the finished extension had in fact been built 290mm closer to the complainant's property than approved. Whilst I accepted PS's view that this can be accepted as a minor amendment to the approved plans and that no enforcement action was warranted, I was of the view that the complainants were led to believe, by PS, that the extension would not be closer to their property than 600mm as per the stamped approved drawings. Although I did not find PS guilty of maladministration in this aspect of its handling of the grievance, I recommended and PS agreed to apologise for this deviation from its implied commitment. **(AO 105/02)**

Processing of a Planning Application

In this case the complainant alleged he had suffered injustice as a result of maladministration by Planning Service (PS) concerning its handling of a planning application for an extension and garage at an adjoining property. The complainant submitted his objections to PS claiming that the extension would completely block the light from his lounge and upper bedroom and would look unsightly spoiling the contour of the semi-detached residences at the rear. He claimed that PS had not properly or adequately considered his objections. He also stated that, although he was entitled to a site visit, he was never offered one.

In relation to PS's consideration of the application, I was satisfied that the complainant's objection (the only one) to the proposal was registered by PS. I was also satisfied that the issues raised by the complainant were noted and were given consideration in the processing of the application. There was also evidence of detailed reference to design, scale, characteristics of the site and relationship to adjacent properties. I was satisfied that these issues were known, noted and fully considered by PS prior to making any decision on the application.

I noted that it was only after planning permission had been granted that the complainant first raised the matter of a site visit. I was aware from previous investigations that PS has no statutory obligation to visit neighbours/objectors to the proposed development but it is normal practice for a visit to the application site to be carried out by a planning officer which, among other things, would assess the impact of the development on neighbouring properties. I noted that such a site visit had been carried out. While I could understand the

complainant's wish for the planners to have visited his property and met with him in order to discuss the proposed development, I could not concur with his view that he was "entitled" to a visit and I had to accept that the decision in each case as to whether or not there is a need to do so must be a discretionary one. In view of the totality of the matters considered and recorded by the planners in this case I could not say that this decision was unreasonable. Indeed, I went as far as to say that I considered it unlikely that a visit to the complainant would have produced a different decision by PS. Overall, the information available to me did not suggest any improper consideration on the part of PS in its handling of the planning application itself.

Finally, following the granting of planning permission, the complainant stated that he had telephoned PS and was told that the original plan had been modified. He said that no modification was sent to him. I was satisfied that, although there had been amendments to the original plans, they were such that they did not have any direct affect on the complainant's property or view of the proposal and, in the circumstances, I could not say that it was unreasonable of PS not to have notified him of the changes.

While I did not find evidence of maladministration in the processing by PS of the planning application in question leading to the discretionary decision to approve, my consideration of this case had nonetheless given me reason to be critical of PS in respect of the quality of its communication with the complainant which, on occasion, failed to address fully the issues raised by the complainant, contained inaccuracies and was subject to delay. In recognition of the poor standard of communication experienced by the complainant, I recommended and the Chief Executive of PS agreed to issue a formal apology to the complainant. **(AO 124/02)**

Mistakes in Awarding Planning Approval and Failure to Take Action Against Breaches of Planning Control

In this case the complainants told me that Planning Service (PS) had failed to take effective action against a developer who, in the course of constructing a dwelling on an infill site adjacent to their home (formerly part of their garden, which the complainants sold with outline planning approval for a dwelling), had removed boundary vegetation in contravention of a condition of outline planning approval, changed the orientation of the house contrary to the approved plans and constructed a detached garage in an unapproved position. The complainants also argued that the planners had mistakenly approved a house which was too large for the site, making it impossible to retain the protected boundary vegetation. They complained that a two storey house should not have been approved on such an elevated site, particularly as other proposals for two storey dwellings on less prominent sites in the immediate area, had been subjected to height restrictions.

In the course of a highly complex and lengthy investigation I examined in detail the processing of the reserved matters planning application. I established that the application had been widely publicised and the complainants had been neighbour notified of the proposal. I was satisfied that sufficient detail was available in the application to permit a reasonable assessment to have been made of the likely impact of the dwelling in terms of its scale and prominence. I was also satisfied that there were no planning policies restricting the height of dwellings in this locality. Where the

complainants had identified examples of height restrictions being imposed I found evidence that these were based on other considerations such as impact on adjacent properties. Since there was no way of establishing conclusively what boundary vegetation had existed prior to development of the site I could not uphold the complainant's allegation that the approved structure had only been achievable by removing trees which were protected by the Outline Planning Permission. In light of these findings I was unable to say that PS was guilty of maladministration in the processing of the planning application.

I also considered very carefully the complainant's allegation that PS had failed to take enforcement action against three breaches of planning control. There was clear evidence that the breaches described by the complainants had occurred. I examined in detail the response of PS to each of these planning breaches. I found that, whilst PS was guilty of maladministration in aspects of its record keeping and the quality of its communication with the complainants, it had acted to ensure that the boundary vegetation protected by the outline approval was restored, it had secured the planting of additional trees to address the effects of the unauthorised reorientation of the house and it had required that a new planning application should be submitted in respect of the altered position of the garage. I was satisfied that there was no maladministration in the process leading to a decision to approve the garage in its new location.

At the end of an exhaustive investigation I was unable to uphold the complainants' central allegations in relation to the processing of the application and the response by PS to the breaches of planning control. However I recommended that PS should apologise to the complainants for its poor performance in relation to the standards of record keeping and communication in this case. **(AO 58/02)**

Processing of a Planning Application

This was a multi-element complaint in which the complainants alleged maladministration by Planning Service (PS) in its handling of the planning application for a dwelling on a site opposite their home. One aspect of the complaint was that the complainants felt that their objections were not given proper consideration. From my examination of the relevant documents I was satisfied that their objections were registered and fully considered by PS prior to making the decision to approve the proposed development.

The complainants also believed that they should have been invited to attend a site meeting. My investigation revealed that neither the complainants nor the Council had asked for a site meeting. I was aware from previous investigations that PS has no statutory obligation to meet with neighbours/objectors to the proposed development but it is normal practice for a visit to the application site to be carried out by a planning officer which, among other things, would assess the impact of the development on neighbouring properties. In this instance I noted that a site visit was carried out by the planning officer as part of the Development Control process. While I could understand the complainants' wish for the planners to have met with them in order to discuss the proposed development, I had to accept that the decision in each case as to whether or not there is a need to do so must be a discretionary one. In view of the fact that the complainants were able to register their objections to the proposal together with the totality of the matters

considered and recorded by the planners, I could not say it was unreasonable of PS not to have met with the complainants.

With regard to the complainants' claim that PS should have sought the relocation of the proposed dwelling, I had to accept that PS has a duty to determine any application as submitted. In this instance, PS concluded that the proposed siting of the dwelling was acceptable and there was, therefore, no reason for PS to suggest an alternative location. Therefore, I could not say that PS acted unreasonably in not seeking to relocate the dwelling nor was there any requirement for it to do so.

The complainants also found a response from PS to be "completely defensive" and "ignoring several of the issues raised". Having studied the letter in question, I found that PS failed to adequately address two issues raised by the complainants. I criticised PS for this omission. However, I did not find the content of the PS response to be unreasonable nor did I find the tone to be defensive; merely stating fact.

Further grievances concerning an alleged lack of consistency, logic or fairness by PS and the speed at which the application was processed were not upheld although I did recommend that PS amend the wording in its standard letter to objectors when referring to the overall timescale for the processing of an application.

Overall, although I was critical of PS for not providing an adequate response to the complainants on one occasion, I concluded that PS gave full and proper consideration to each aspect of the planning application and to the complainants' objections. I found no evidence of maladministration in the decision making process and did not, therefore, consider that I had grounds to challenge the PS opinion on this occasion. **(AO 14/03)**

Handling of a Planning Application

This was a multi-element complaint in which the complainants alleged that they had suffered injustice as a result of maladministration by Planning Service (PS) in its handling of an application for a housing development to the rear of their home. One aspect of the complaint was that the complainants alleged that the application was approved prior to receipt of a report from one of the consultees, namely the Environment and Heritage Service (EHS). As a result the complainants claimed that PS had ignored EHS comments. My investigation revealed that the application was presented to the local Council with an opinion to approve prior to EHS having confirmed their satisfaction with the proposed scheme. However, I discovered that EHS had been dealing directly with the applicant's architect who was modifying the scheme in order to satisfy EHS concerns. PS had no doubt that EHS requirements were being met. As it happened the proposal was not finally approved until all outstanding issues had been addressed. I was satisfied that the presentation of the application to the Council at an early stage was not an attempt to thwart the process but I considered such a practice to be not without risk and I could understand how it could undermine confidence in the decision making process. In future, in order to ensure transparency in the process, I recommended that applications are not presented to the Council with an opinion to approve until all consultees have formally provided their final comments on the proposal. I did not uphold the claim that EHS comments had been ignored by PS.

The complainants also felt that their objections had been ignored. From my examination of the relevant documents, I was satisfied that PS had regard to the issues raised in the complainants' letters of objection and did consider them prior to making its decision. I was also satisfied that PS had regard to its policies and guidance in considering factors such as the design, siting, access, size and scale of the development including specific and detailed reference to the effect on the visual and residential amenity of the area, together with the impact in relation to the complainants' property. There was, however, a lack of detailed documentation demonstrating those deliberations that led to final acceptance of the proposal.

I accepted as reasonable the PS decision not to refuse planning permission based on the grounds that a new development plan was under preparation.

Further grievances were not upheld after investigation. These included failure to advise the complainants of plan changes and the outcome of the application in question, inconsistency in decision making, acting outside policies, bowing to the wishes of a developer and completely ignoring the complainants during the processing of the application. Due to the passage of time and the lack of independent corroborating evidence I was unable to make a finding on whether or not comments attributed to an EHS representative and a planning official during a meeting in July 2000 were in fact made.

Overall, I found no evidence of maladministration in the processing of the planning application in question in that policy and procedures were followed. However, I was critical of the completeness of the information contained in the supporting documentation. Notwithstanding my conclusion in this case, I had great difficulty in accepting that the position in which the complainants found themselves could be a position which would be other than unacceptable to a member of the general public in terms of its adverse effect on their amenity and privacy. I considered it a matter of particular concern that the proper application of current planning legislation and policies should have resulted in the position now endured by the complainants. I therefore recommended that the Department should review urgently and extensively the standards it uses in respect of assessing the potential adverse impact on existing property owners of developments permissible under current legislation and policies. **(AO 123/01)**

Extension to Neighbouring Property

The complainants in this case were unhappy that Planning Service (PS) had granted planning permission to their neighbour for the construction of a two-storey extension onto the side of his house, which resulted in the extended property being two and a half inches from their detached house. They further complained that the extension affected the amount of light entering their single-storey utility room and the foundations encroached on their property. They also alleged that their property had been devalued as a consequence of PS's decision.

My investigation established that the separation distance between the detached properties was 200 millimetres or 8 inches. Furthermore, there was no documentary evidence to suggest that the planning officer had made any attempt to ascertain the nature of the complainants' single-storey utility room extension with its Perspex roof; to note its proximity to

the proposed development or to view the application site from the complainants' property. I also established that a planning condition on the planning approval notice regarding the finished surface of the gable wall could not be fulfilled because of its close proximity to the complainants' property. I found that PS' failure to check the enforceability of the condition prior to the issue of the planning decision and the other failings outlined above amounted to maladministration. However, I was unable to say that an assessment of the proposal from the complainants' property would have resulted in a different planning decision.

I decided that the alleged encroachment of the development on the complainant's property did not come within the remit of my role as the determination of this issue could well require legal opinion. I also formed the view on the question of the alleged devaluation of the complainants' property that only a court could determine whether the complainants' situation was an extreme case deserving of compensation.

Consequently, with regard to the maladministration which had occurred I recommended that the complainants should receive a letter of apology from PS's Acting Chief Executive, together with a consolatory payment of £500. My recommendation was accepted by the Acting Chief Executive. **(AO 9/02)**

Dissatisfied with Processing of Neighbour's Planning Application

In this case the complainant stated that Planning Service (PS) had failed to notify him of a neighbour's planning application and that it had not taken account of the objections he had raised. He further stated that there were inaccuracies in the processing of the application and he expressed his dissatisfaction with the correspondence he had received from the Acting Chief Executive of PS.

In my investigation I was critical of PS's failure to identify the complainant's property and issue him with a neighbour notification letter in connection with the planning application. Fortunately the complainant did not suffer any injustice as a result of this failure because he had seen the PS advertisement relating to the planning application. Consequently, he was able to submit his letter of objection prior to the determination of the planning application.

My investigation also uncovered a number of administrative failings in PS's processing of the application. These related to inaccuracies in the recording of data on the planning report. The most notable being that the complainant's letter of objection to the planning application had not been recorded on the planning report even though it had been received two days before the report was printed. I recommended that PS review its procedures in this area.

With regard to the contention that PS had not considered the complainant's objections relating to access issues and visibility splays, I established that PS relies on the expertise of Roads Service in these matters. I was informed that PS's normal practice is to send objections about roads service issues to Roads Service. However in this case the complainant's letter had not been forwarded because PS stated the consultation reply from Roads Service had addressed the issues raised by the complainant. I confirmed this to be the case but I criticised PS for deviating from its normal practice.

On the matter of the Acting Chief Executive's correspondence to the complainant, I found that it was lacking in

detail and did not address the issues of his complaint. I also criticised PS for failing to issue the complainant with a timely reply in accordance with its published customer service target. Overall, I concluded that PS's maladministration had caused the complainant frustration and anxiety and I recommended a letter of apology from the Chief Executive, together with a consolatory payment of £100. The Chief Executive accepted my recommendation. **(AO 128/02)**

Relocation of Bus Shelter

In this case the complainant alleged that he had been told by planning officials from 1996 onwards that the unauthorised bus shelter opposite his home, which was being misused by vandals, would be moved. He subsequently apprised neighbouring residents about the re-location of the bus shelter. However, in 2002, Planning Service (PS) granted planning permission for a bus shelter at the existing location even though it had previously granted planning approval for an alternative site. The complainant stated that PS's recent decision had made him look foolish.

During my investigation I established that the bus shelter in question had been in existence since 1995 and that planning permission had twice been refused in 1996. I considered it highly likely that PS had, at that time, indicated to the complainant that the bus shelter would be removed. I further established that in 2001, PS received confirmation from Roads Service that it would re-locate the bus shelter and in endeavouring to be helpful PS had apprised the complainant of Roads Service's decision.

My investigation revealed that Roads Service went back on its decision to re-locate the bus shelter even though it had received planning permission for the alternative site. I established that when the complainant contacted PS about the continued existence of the unauthorised bus shelter, PS raised his expectations that enforcement action could be taken against Roads Service. However, this was never an option because PS cannot serve an enforcement notice on a Crown body, such as Roads Service. In the event a new planning application was submitted to PS to retain the bus shelter at the existing location but set back from the roadside. Planning permission was subsequently granted.

In conclusion, I did not identify any maladministration by PS in its determination of the planning application. However, I was critical that it had misled the complainant into believing for a time that it could take enforcement action. I therefore recommended that the complainant should receive a letter of apology from the Acting Chief Executive in this respect. The Acting Chief Executive agreed to my recommendation. **(AO 94/02)**

Dwelling Out of Character with Development in the Area

This was a multi-element complaint in which two neighbours alleged that a neighbouring dwelling approved by Planning Service (PS) was out of character with the other properties in the vicinity being much smaller in size and was contrary to planning policy. They further complained that they had been misled by PS in relation to the type of objections they could submit. Other issues of complaint related to a prior commitment given by PS to development of the site; the dimensions of the site; the capacity of the local sewerage system to cope with additional development and access to drains. The complainants also expressed dissatisfaction with the processing of the planning application and the PS

Management Board's determination of the application.

The complainants alleged that PS had misled them into believing that the principle of development of the site was established and therefore they confined their objections to the detail of the proposal. Subsequently, a professional planning consultant advised them that there had been legitimate grounds for challenging the principal of development. On this aspect of the complaint I was unable to make a finding as to the exact nature of the advice which the complainants had received from PS due to the absence of documentary or oral evidence.

With regard to the allegation that a prior commitment to grant planning permission had been given by PS which prejudiced its subsequent consideration of the planning application, I established that PS had provided pre-application advice to the planning applicant as provided for under the planning legislation. I found that this advice did not amount to a commitment by PS that planning permission would subsequently be granted. Turning to the complainants' contention that the dimensions of the site were smaller than that stated by PS, my investigation established that there is no procedural or statutory requirement on PS to measure a site in connection with a planning application. However, in response to the complainants' objection planning officials had measured the site and concluded that the dimensions were accurately shown on the submitted plans. I was therefore satisfied that PS had addressed the complainants' objection regarding the site dimensions and had subsequently informed them of its findings.

The complainants expressed concern that PS did not give full consideration to the problems with the capacity of the local sewerage system to cope with additional housing in the area. I established that it is the role of Water Service to notify PS of any problems in relation to sewerage treatment capacity and in this case it had not raised any such concerns. Nonetheless this issue was given further consideration by the PS Management Board in its processing of the planning application. While I was critical of the Management Board's documentation of this issue and of a minor inaccuracy in data, I was nevertheless satisfied that the complainants' objections had been given consideration.

One of the complainants alleged that PS had not responded to a request that a legal clause was required to the deeds of the new property to allow him to access drains on the site. My investigation established that PS had replied to Water Service (who had initially raised the issue) that this was a civil matter between the parties concerned. I further established that although the complainant had not received any written reply on this matter he nevertheless did receive oral advice from both PS and Water Service.

On the matter of the compatibility of the dwelling with the neighbouring properties, PS stated that following amendments to the plans it was satisfied that the proposed dwelling conformed to policy requirements in regard to siting, scale and design. It is not my role to challenge decisions of planning officers relating to their professional judgement on planning applications, unless there is evidence of substantive maladministration in reaching the decisions. Overall, my investigation did not reveal evidence of maladministration; consequently I did not uphold the complaint.
(AO 120/02; AO 121/02)

Planning Approval for Garage on Neighbouring Property

The complainant in this case alleged that he had suffered an injustice as a result of maladministration by Planning Service (PS) regarding its decision to grant planning approval for a garage on a neighbouring property. The complainant alleged that a hand delivered letter of objection was mislaid by PS and that PS met to consider the application prior to the deadline for objections. He also stated that PS did not take seriously or properly consider his objections to the application, in particular his concerns in relation to loss of light, claustrophobic and overbearing impact, intrusion of privacy and devaluation of his property. PS failed to inform him that he could make a presentation to the local Council and failed to provide him with information on where he could seek advice to prepare his case against the application. He further alleged that PS was dismissive and inaccurate in its description to the Council of the representations made against the application and that he was not invited to a site meeting as part of the consideration of the case by the Planning Management Board.

In my consideration of the complaint my Investigating Officer met with the complainant and written responses were received from the Acting Chief Executive of PS.

I found the failure to acknowledge receipt of the letter of objection regrettable and I criticised PS for this. I also criticised PS for a clerical error which led to the letter of objection not being logged on to the PS computer system. However I considered that these errors had no material effect and considered that the letter was properly taken into account by the Council and PS in their deliberations. I also found that the Development Control Group meeting held before the deadline for objections had not discussed the proposed development but had deferred discussion until a further meeting scheduled to be held after the deadline.

From my examination of the documentation I was unable to uphold the complainant's view that PS had failed to take seriously or properly consider his objections to this application. It was evident from my examination that planning officers did give consideration to the issue of loss of light in their determination of the planning application. I considered that these are matters on which planning officers are entitled to use their discretion, and in the end it was their professional judgement that the proposal was acceptable in planning terms. With regard to the complainant's view that PS did not take into account his concerns in relation to devaluation of his property, I found this was not an issue on which I could make a ruling. Only a Court can determine if the complainant's case would constitute an extreme case deserving of compensation. However PS failed to address these matters in its correspondence with the complainant and I criticised PS for this omission.

The complainant felt that PS should have been more helpful in advising him as to how and where he could seek advice in opposing the application. PS contended, and I agreed, that they have no statutory requirement to assist people in preparing objections against planning applications. I had no evidence that any specific requests for information were made by the complainant in this case and in the absence of this I could not uphold a complaint that a response was not given. As regards the complainant making a presentation to the Council, PS has no involvement in this part of the process; it is arranged by members of the public making representations to the Council

through the Town Clerk/Chief Executive's Office and again without evidence of a specific request having been made I could not uphold a complaint that information was not given.

The complainant felt PS was dismissive of his objections at one Council meeting and that his objections were not sufficiently highlighted by PS at another. Having studied the case officers notes prepared for the Council meeting and the Council Planning Committee notes, I found that whilst the complainant's objections may not have been expressed to his satisfaction, there was no attempt on the part of PS to conceal facts and that the Council were aware of the objection and the grounds for it. For this reason I could not uphold this aspect of the complaint. A further aspect of the complaint that I could not uphold was the complaint concerning late acknowledgement of a letter of complaint to the Chief Executive's Office. My investigation revealed that there had been a seven working day gap between receipt of the letter and an acknowledgement being issued. I did not consider this constituted late acknowledgement. Finally the complainant had been concerned there was a further site meeting to which he was not invited, I found that this was a site visit rather than a site meeting and was a normal part of the Management Board Referral process. Neither the complainant nor the applicant was present.

Overall, although I had reason to criticise PS for certain shortcomings, I did not find any evidence of maladministration in the processing of the planning application and I did not uphold the complaint. **(AO 38/03)**

DEPARTMENT OF FINANCE AND PERSONNEL

RECRUITMENT SERVICE

Failure to be Interviewed for Principal Scientific Officer Posts

Two gentlemen lodged a joint complaint with me against the Recruitment Service (RS) of the Department of Finance and Personnel (DFP). The complaint related to failed applications by the complainants to posts of Principal Scientific Officer (PSO) with the Environment and Heritage Service. The posts applied for by the complainants were those of PSO, Environmental Strategy and PSO, Operations Manager. Interviews for both posts had been held in February 2001, however, neither of the complainants had been offered interviews on the basis that they failed to meet the published criteria.

In order to ensure that I had a full understanding of the background to this complaint, I directed enquiries to the Permanent Secretary of DFP. I obtained his comments and pertinent documentation and examined both carefully. My Investigating Officer interviewed the Chairperson of the Selection Panel which established the criteria for the advertised posts and which had decided not to invite the complainants for interview. My Investigating Officer also interviewed the complainants and relevant officers from RS. Information on Chemistry Degrees and their content was requested and obtained from the Royal Society of Chemists. Detailed information on the course content of chemistry degrees was also obtained from a selection of university prospectuses. Having given very careful consideration to all of the

documentation and other information gathered during the course of the investigation, I was able to set down the findings and reach the conclusions contained in my report.

In summary, I found that the selection panel which was constituted by RS had been endowed with the authority to establish the criteria for the PSO posts and to exercise its discretion in choosing or excluding candidates. I was persuaded that the panel had acted within its delegated authority in rejecting the applications from both complainants on the grounds that they failed to meet the published criteria. I found that the panel had correctly exercised its discretion in deciding which qualifications could best be applied to the particular duties of the PSO posts, although I considered that the explanation of this issue was not as satisfactory as it should have been. I was also of the view that RS attempted to deal with the complaints raised by the complainants in a reasonable and honest fashion. I found that there were matters which had been raised by the complainants which did not warrant investigation, due to the fact that no injustice was caused to the complainants. These matters were the issue of criteria applied to previous competitions and the use of the Membership of the Institution of Civil Engineers as a shortlisting determinant.

Although I did not find evidence of maladministration on behalf of RS or DFP in respect of the constitution of selection panels, the make up of such panels and the powers vested in them, I put forward some suggestions for consideration by DFP and RS, which it uses to organise and run competitions. Whilst I acknowledged the expertise and experience of the selection panel in this case, I noted that RS did not feel it necessary to obtain guidance from any academic or professional body in respect of the qualifications required for the PSO posts. As my investigations had revealed that in the case of chemistry degrees alone, there was great variety in the content of the degrees on offer, I recommended that in future selection panels should give consideration to obtaining detailed advice on course content and equivalences prior to shortlisting candidates for interview. I recommended that there should be a demonstrable "read–across" from the academic or other requirements included in selection criteria to the actual duties of posts trawled or advertised. I further suggested that in order to ensure consistency, RS should consider informing selection panels of previously used criteria and setting down and advising panels on the criteria which should be considered for particular competitions.

Whilst I had some sympathy with the complainants' view that insufficient consideration was given to the skills and expertise which they could offer, I concluded that RS acted appropriately and reasonably in refusing their applications. I did, however, recommend that RS issue an apology to one of the complainants for the lack of clarity over the issue of the link between qualifications and job duties.
(AO 72/01; AO 73/01)

Job Application Rejected in Two Recruitment Competitions

In this case the complainant submitted a job application for an Administrative Officer post in a recruitment competition in October 2001 and re-applied for a similar competition held in January 2003. However, his candidature was rejected by Recruitment Service (RS) on both occasions. The complainant stated he was told that his initial application had been rejected because of an unsatisfactory reference from his employer. He appealed

the decision but was unsuccessful. However he was later told that his exclusion had been on the basis of a conviction held by him. He complained that the misleading information from RS had undermined his appeal.

My investigation established that the complainant's employer had provided a reference which stated that his attendance record was unsatisfactory. This information was re-checked with the employer before RS rejected the complainant's candidature because of an unsatisfactory reference. In processing the complainant's appeal, I noted that RS had consulted again with the employer and had received confirmation of the original decision. RS had subsequently informed the complainant that his appeal had been unsuccessful. I found no maladministration by RS in this aspect of the complaint.

I did, however, establish that RS had at a later stage informed the complainant that his exclusion from the competition had been on the basis of a conviction held by him. This was incorrect. I criticised RS for providing misleading information to the complainant and for causing him to doubt the appropriateness of his appeal. As a result of my investigation I was satisfied that his appeal had not been invalidated.

With regard to the recruitment competition held in January 2003, I found that RS was correct to exclude the complainant's application on the basis of a conviction held by him, in accordance with the revised guidance on character requirements. However, I was critical of RS for its failure to convey fully the reason for excluding his application from the competition.

During the investigation the complainant raised a further issue relating to an apparent inconsistency in the character requirement guidance as applied by the Northern Ireland Civil Service (NICS). The complainant stated that although he was considered unacceptable for entry into the NICS as an Administrative Officer (AO) because of a conviction, he was nevertheless eligible to apply for internal promotion to the AO grade. The Director of Equal Opportunities and Appointments agreed that recruiting candidates at administrative level and the opportunities available to civil servants for promotion thereafter may give rise to issues of apparent inconsistency. On this issue I took the view that it is a matter for the Department's discretion to review and amend entry qualifications, including character requirements, but that these cannot be applied retrospectively to existing employees. I therefore did not concur with the complainant's contention that the application of the character requirement guidance as applied by the NICS was unfair to him as an external candidate.

In conclusion, I recommended that the Permanent Secretary issue a letter of apology to the complainant for the frustration, annoyance and distress the complainant had suffered as a result of the administrative failures by RS outlined above. The Permanent Secretary agreed to my recommendation. **(AO 134/02)**

DEPARTMENT OF HEALTH, SOCIAL SERVICES AND PUBLIC SAFETY

Handling of Harassment Allegation and Complaint Against Line Managers

In this case, because I had been acquainted with two of the officers named in the complaint, in the interests of equity for all parties I invited a former Local Government Ombudsman for Scotland (Mr A) to oversee the investigation and produce findings on the case before I reached a conclusion. Under the legislation, the conclusion come to on the case still rested with me.

There were two main aspects to the complaint. The first aspect concerned the Department of Health, Social Services and Public Safety's (the Department) handling of an allegation of harassment made against the complainant and there were several issues to be addressed. One of the more serious allegations was that the Department failed to record the names of, or interview, both the main witnesses before endorsing the outcome of the investigation. During investigation it was revealed that the names recorded by the note taker as having been put forward by the complainant to be spoken to as part of the investigation were added to by the complainant prior to her signing the record as accurate and two of those named were considered by the complainant to be the main witnesses. However, they were not initially interviewed by the Harassment Investigating Officer (HIO) as she (the HIO) was of the view that they would have nothing to contribute. Furthermore, it was established that the complainant had raised this issue as part of a successful appeal against the outcome of the investigation. As a result, the HIO was instructed by the Department to carry out further interviews with those concerned. These additional interviews were included as an addendum to the investigation report but, as originally thought by the HIO, did not provide any new evidence. Both the HIO's original conclusion and the Department's decision remained unchanged.

With regard to the recording of information by the note taker, the Department's Harassment Policy and Complaints Procedure (HPCP) allows interviewees the opportunity to examine the notes and make amendments prior to agreeing them as an accurate record. Therefore, should a note taker fail to record a particular point or if the interviewee wishes to add anything, the interviewee has every opportunity to ensure the record is accurate and complete before signing it. While one name was omitted from the record of the interview, in accordance with the HPCP, the complainant was given the opportunity to include the missing name and Mr A was satisfied that she had not, therefore, suffered an injustice.

With regard to the interviewing of witnesses, it was established that the HPCP empowers the HIO to interview whoever he/she sees fit during the course of an investigation. It also requires the HIO to interview named witnesses in specific circumstances. In this instance, the complainant had denied the offence and Mr A found that the HIO should have interviewed witnesses named by her as part of the original investigation. I criticised the HIO for not doing so but I also recognised that the interviews were subsequently carried out. Also, having read the addendum to the investigation report, I was of the view that neither interviewee provided any new evidence.

Mr A did not uphold further allegations, viz., the Department's failure to fully investigate either the scene or the physical impossibility of the alleged incident; failure to investigate the probable medical reasons behind the complaint; failure to adhere to the requirements of the formal procedures as detailed in the HPCP; failure to mediate; and the deliberate exclusion of evidence in favour of the complainant and cherry picking other evidence.

The second aspect of the complaint put to me concerned the actions of the complainant's line managers who, the complainant alleged, had tried, through her former colleagues, to put pressure on her to take sick leave and resign her post. This action was alleged to have taken place during the investigation of the allegation of harassment which had been made against the complainant. Investigation revealed that this allegation had been the focus of an investigation by the Department following receipt of a formal complaint by the complainant and that it had not been upheld. Essentially the complainant was challenging the outcome of the Department's investigation. Having considered most carefully the documentation in relation to the Department's investigation of this matter Mr A was satisfied that the issues raised by the complainant had been included and fully considered by the Department during its investigation of this matter. It was clear that the complainant remained unhappy with the outcome of the Department's investigation but the fact that it reached a different conclusion to that of the complainant did not mean that the decision was flawed by maladministration. Mr A did not uphold this aspect of the complaint.

Mr A did not uphold further allegations concerning the failure by the Permanent Secretary to act promptly on information given to him concerning the intentions of the complainant's line managers and his failure to reconsider his assessment of his decision not to uphold the complainant's assertion with regard to their actions.

There were two further criticisms of the Department which were common to both of the aforementioned aspects of complaint. Mr A did uphold the claim that witnesses had not been informed of investigations having been concluded. While I criticised the Department for this administrative lapse, I did not find that it caused an injustice to the complainant. The complainant also challenged the Department's choice of investigating officer. Investigation established that the appointment of an investigating officer is a discretionary decision for the Department and Mr A found no reason to challenge the choice of investigating officer on either occasion.

Overall, I was satisfied that Mr A's findings were in keeping with the evidence available. I concurred with his findings and in two instances where failings by the Department were identified I recorded criticism. I was satisfied that, notwithstanding the two specific points of criticism, the Department's handling of the matters complained about did not constitute maladministration causing injustice. **(AO 35/02)**

DEPARTMENT FOR REGIONAL DEVELOPMENT

Processing Claim for Compensation

In this complaint concerning the handling of a personal injury claim by the Department for Regional Development's Central Claims Unit (CCU), the

complainant alleged an excessive use of standard letters and legalistic language, a failure to share information, a failure to address reasonable points or to answer reasonable questions and endemic delay arising from mechanical and legalistic claim processing.

In formulating his complaint to me the complainant made a number of general assertions in relation to his perception of the culture and ethos of CCU, its levels of service and its approach to the handling of business. In my report I explained to the complainant the limitations to my role in the investigation of complaints. The provisions of my legislation empower me to explore claims of maladministrative actions by government departments and agencies which are alleged to have impacted personally on an individual complainant. It is not part of my role to attempt to address wide-ranging and generalised criticisms of a service offered by a Department or Agency or the overall performance of a statutory or other function. I explained that I considered the scrutinising and challenging of such matters of legitimate public concern were best effected by means of political institutions and representatives.

My detailed investigation of the more specific allegations made by the complainant found no evidence of maladministration by CCU although as a result of examining the issues raised by the complainant I was able to make a number of recommendations for improvement, including a suggested modification to one of the standard forms used. I also cautioned the Permanent Secretary that care should be exercised in the use of language so as to avoid choice of wording that could be considered by claimants to be excessively legalistic or perceived as off-hand.

Finally, I was able to inform the complainant that some of the wider concerns which he had raised were likely to feature in discussions on the introduction of pre-action protocols which had been recommended in the Report of the Review of the Civil Justice System in Northern Ireland and in which, the Permanent Secretary confirmed, the Department had registered an interest. **(AO 50/02)**

Handling of Application for the Post of Curatorial Grade E

In this case the aggrieved person complained to me about the handling of his application for the post of Curatorial Grade E in the Public Record Office of Northern Ireland (PRONI). Although PRONI is an Agency of the Department of Culture, Arts & Leisure (DCAL), the competition was trawled across the Northern Ireland Civil Service (NICS) by the Department for Regional Development (DRD), which manages personnel functions on behalf of DCAL.

Primarily, the complainant contended that although the post of Curatorial E was trawled across the NICS, he considered that the questions asked by the Interview Panel favoured internal candidates and because he was not from PRONI, he was not treated equally. Although my consideration and examination of this case left me in no doubt concerning the complainant's sense of disappointment at the outcome of the recruitment process, I found no evidence to conclude that DRD (on behalf of DCAL) had been guilty of maladministration in either the formulation of its selection criteria or the panel's related assessment of the complainant's performance at interview. It was also the case that my investigation did not produce any evidence to show that the complainant, as a non-PRONI candidate, had been treated differently

from any of the PRONI (or indeed the other non-PRONI) candidates involved in the selection process. Neither did my investigation produce any evidence that the complainant had not been given a fair and equal opportunity to state his case to the interview panel. Also, I was satisfied that the complainant had been given a full opportunity to have his grievance addressed in a comprehensive and thorough manner by DRD, under the appeals process which was available to him under the NICS' Conditions of Service. In the absence of evidence of maladministration or irregularities in the running of any part of the selection process, I had no grounds on which to challenge the interview panel's decision. Consequently, I did not find that the complainant had suffered a personal injustice as a result of DRD's actions. **(AO 93/02)**

ROADS SERVICE

Relocation of Bus Shelter

The complainant in this case stated that a central issue of his complaint was the nuisance caused by youths who congregated at unsocial hours at an unauthorised bus shelter opposite his home creating disruption to the immediate community. He stated that since 1996 he had been led to believe that the bus shelter would be relocated by Roads Service (RS). Consequently, he had informed neighbouring residents. However, in 2002, RS decided not to re-site the bus shelter but to seek planning permission to retain it in its current location. He complained that RS's revised decision had made him seem foolish.

In my investigation I established that in 2001, RS decided to re-locate the bus shelter and that this information had been relayed to the complainant. I found however, that RS had gone back on its original decision, even though it had received planning permission for the alternative site. Planning permission was subsequently granted for the bus shelter to remain at the existing location but set back from the roadside. I was advised by the Chief Executive of RS that its practice is to resist the removal or re-positioning of bus shelters solely on the grounds of anti-social behaviour.

While I accepted that RS is fully entitled to change its opinion regarding the location of bus shelters, I was nevertheless disappointed that it was unwilling to treat this case sympathetically. However, as I did not identify any maladministration in RS's processes, I could not uphold the complaint. **(AO 100/02)**

Delays in Finalising Accommodation Works

This complainant wrote to me concerning accommodation works undertaken by Roads Service (RS) at her property, these works having arisen from a road improvement scheme which incorporated a portion of land in her ownership. The complainant said she was dissatisfied and disappointed with the standard of the accommodation works, and delays by RS in resolving her concerns in this regard. The complainant stated she had met with RS in an attempt to resolve her grievances but despite undertakings given to her at the meeting by RS, none had been acted upon. The complainant said she subsequently wrote to RS informing it that it had been her intention to submit her complaint to my Office but she was prepared to await a reply from RS informing her of the actions it proposed to take and the timescale of such actions. Although receipt of her letter was acknowledged, the complainant said she had received no further response from RS.

Having investigated this complaint I established that in its handling of the matters about which the complainant was aggrieved, which had been discussed at the meeting referred to, and in its failure to issue a substantive response to the complainant's subsequent specific request, the actions of RS had been flawed by examples of unsatisfactory administrative practice. I therefore considered that, as a consequence, RS failed to provide the complainant with the standard of service it seeks to provide and which members of the public are entitled to expect. I recommended that the complainant should receive from RS a written apology from its Chief Executive (CE). I am pleased to record that the CE accepted my recommendation. Also, I welcomed the CE's statement that he accepted that there had been delays by RS in progressing this case and that he had, therefore, reminded the officials involved in this case of their responsibilities for ensuring that accommodation works are completed as quickly as possible.

I was pleased to note that, in the course of my investigation, RS officials again met with the complainant and her representatives to discuss all aspects of the additional accommodation works she had requested and that these were generally agreed to in principle by the complainant's agent. I asked the CE to ensure that the additional accommodation works were completed at the complainant's property as soon as possible by RS, once 'Permission to Enter' had been granted by the complainant. **(AO 84/02)**

WATER SERVICE

Handling of a Recruitment Process

In this case the complainant alleged that he had sustained injustice as a result of maladministration by the Water Service (WS) concerning its handling of his application for the post of Class 3 Operator. He had applied for a Class 3 Operator position which he was offered subject to a medical examination. He attended for a medical and subsequently received notification that he was "found fit for employment including work in confined spaces" and given a start date. His official appointment letter stated that he would have to be referred for a further medical examination. He queried this and was told that all employees should be found fit for work in both categories A and B. Furthermore, if he had not reduced in weight his contract would be terminated.

From my examination I was satisfied that the advertisement stated clearly that applicants must undergo a medical examination before an offer of appointment can be made. I discovered that the complainant was examined and found to be fit for Category B work but unfit for Category A. However, since there were posts in the WS where only one of the categories was required it was possible to offer the complainant an appointment. He was duly offered an appointment and a commencement date. I found that the letter informed him that he had been found fit for employment but did not specify that this applied to Category B work only. It was assumed by WS that the complainant was informed verbally by the medical officer as to the category of work he would be able to carry out and that a review of his fitness was to be carried out in 3 months.

The complainant was taken by surprise to learn that he was to be re-referred to Occupational Health Service (OHS) to have his weight loss monitored and fitness for Category A reassessed. He then rang Industrial Personnel for clarification. I was faced with differing recollections of the advice provided by WS on the occasion the complainant rang for clarification and in the absence of collaborative evidence regarding the exchange which took place I was unable to explain why the complainant reached the understanding of the position that he did following the conversation. However, it was clear that although the complainant did not, in his own words, "fulfill all the requirements", his current state of fitness did not preclude him completely from employment as a Class 3 Operator.

It seemed to me that a lack of clarity and precision in the information provided at crucial stages in the process contributed to a less than full understanding by the complainant but I did not consider that there was a deliberate attempt to withhold vital information from him. In addition, it was not sufficient in my view for the employer to rely on a medical officer to impart verbally the important advice relating to fitness for categories of duties or to assume that an applicant will have fully understood what he has been told following a medical examination.

I concluded that if a fuller written explanation of the complainant's fitness had been provided in the letters offering him an appointment the potential for confusion and misunderstanding would have been considerably reduced. I recommended that WS reviews its communications with job applicants, particularly where a health requirement has to be satisfied, with a view to ensuring clarity and precision in the information provided in written offers of appointment. Also, in recognition of the confusion and misunderstanding which resulted for the complainant, I recommended that the Chief Executive provide him with a written apology. The Chief Executive accepted my recommendations. **(AO 15/02)**

Refusal to Empty Septic Tank

The complainants were aggrieved about Water Service's (WS) refusal to empty their septic tank. They informed me that they made a routine booking with WS to have their septic tank emptied. The booking was confirmed but instead of the tank being emptied they were visited by an official from WS who advised them that WS had changed its criteria under which the service operated. They were advised that their tank no longer fulfilled the criteria as being suitable for this service and the service was being withdrawn. They believed WS had unfairly changed the criteria it uses to decide whether or not a septic tank is provided with this service.

My investigation revealed that WS received a telephone request from the complainants for desludging of their septic tank. In response a contractor, appointed by WS, called at their dwelling but was unable to empty the tank because it was inaccessible to his HGV vehicle. The contractor reported his findings to WS and, as a result, an inspection of their property was undertaken by WS. In the course of that inspection WS found that the complainant's property did not allow safe access for the type of HGV tanker now used by WS and/or its contractors in the desludging of septic tanks. The complainants were informed by the WS official(s) who undertook the inspection that the tank no longer fulfilled the criteria for being emptied by WS but that it would be emptied once more. They were advised that this would be the final

time that this service would be fulfilled unless access to the tank was upgraded. In accordance with its revised procedures, WS carried out a final desludging of the tank to enable arrangements to be made for the access to be improved or the tank resited in order to comply with the criteria required for the entering into of a Septic Tank Emptying Agreement.

I learnt that, in 1994, WS revised its policy on desludging septic tanks in order to provide consistency of service, to ensure best value for money and to achieve the specific efficiency targets which WS must meet each year. In standardising the arrangements for the desludging of septic tanks it had been necessary for WS to enforce the access arrangements more stringently so as to accommodate effective pumping through standard equipment that can be used across Northern Ireland whilst providing a safe working environment for staff. I also learnt that WS has no statutory obligations in relation to the emptying of septic tanks. WS's powers in relation to the emptying of septic tanks are provided by virtue of Article 37 of the Water and Sewerage Services (Northern Ireland) Order 1973 and confer a discretion on WS to empty any septic tank, subject to such conditions (including conditions as to charges) as it may think fit.

It was clear that the crux of the complaint was about a general policy issue, i.e. the outcome of WS's review of its policy on desludging of septic tanks and its progressive implementation of the new operational arrangements which emerged from that review, with particular reference to the more stringent application of the access requirements which had not changed but were being more rigorously enforced.

Following my detailed examination, investigation and consideration of the issues raised, I concluded that WS's decision to discontinue the service of desludging the septic tank serving the complainant's home, until such time as access to their property was upgraded to meet WS's requirements, was not contrary to, or inconsistent with, its policy, which in turn must take full account of the terms of the underpinning legislation. Also, I did not find WS's decision making process to have been affected by maladministration. Consequently, I did not uphold the complaint. **(AO 2/03)**

Standard of Service Provided Following a Major Flooding Incident

In this case the complainant expressed his dissatisfaction with the standard of service provided to him by Water Service (WS), following a major flooding incident in his area on 21 June 2002.

My consideration and examination of this case left me in no doubt concerning the depth of the complainant's concern for the safety of his property and more importantly the potential health risk to his wife and family due to the fact that the area in which he lives had been affected by flooding, caused by extreme weather conditions in June 2002. Neither did I doubt that the complainant and his family experienced considerable worry and anxiety, particularly during the major flooding incident. Having said that, my detailed investigation of this complaint did not produce any evidence to show that WS's response to the flooding incident on 21 June 2002 was attended by maladministration. My investigation established that the flooding incident, referred to above, was caused by very exceptional weather conditions that particular evening, compounded by the fact that the drainage systems were not designed to cope with rainfall of such intensity. It was clear to me that the

situation in which the complainant found himself, on 21 June 2002, could not be attributed to negligence or failure by WS, but rather the situation was due to circumstances beyond its control. I was, however, pleased to note that WS subsequently commissioned an independent review of its contingency arrangements for responding to flooding incidents and, as a consequence, it intends to introduce a number of changes which should improve the quality of its response to any future flooding incidents of similar severity. Overall, therefore, in the absence of any evidence of maladministration on the part of WS, I did not uphold this complaint. **(AO 65/02)**

Withdrawal of Sewage Disposal Service Previously Provided

In this case, the complainant stated that, for many years, the septic tank at her property had been desludged by Water Service (WS) staff, using a tractor and tanker. The complainant said the WS now sub-contracts the work of desludging septic tanks to private contractors and, before it includes a dwelling on the tender list, WS inspects the dwelling to determine whether it is "suitable" for listing on the tender document. The complainant stated that WS, having inspected her dwelling, had decided that the septic tank at her house was unsuitable to be included on the revised scheme because (a) the tank is in excess of 30 metres from the road, and (b) the entrance to her property is 3.1 metres wide, rather than the required width of 3.5 metres.

The complainant stated she had been informed by WS that she could be charged the sum of £200 to have her tank emptied by a private contractor. She also stated she is a disabled pensioner and could not afford to pay this amount. Also, the complainant contended that her rates account includes an element for the provision of this service. Consequently, she failed to see why she must pay twice for the same service and she failed to understand why WS had awarded contracts which do not include the traditional tractor and tanker method used previously by WS. She contended that the decision to discontinue this method would discriminate against the owners of older country houses which have individual tanks.

Having investigated this matter, I found that, under its legislation, WS has no statutory obligations in relation to the desludging of septic tanks but it may agree to desludge any septic tank, subject to such conditions (including conditions as to charges) as it may think fit. I also found that Septic Tank Emptying Agreements with individual householders have existed since 1975 and that such Agreements have always contained requirements for appropriate access arrangements which reflected the need to protect the health and safety of the staff who were carrying out the desludging and also to protect those householders who may be in attendance. In addition, I found that no specific element of rate revenues is allocated to specific services such as water and sewerage.

My investigation established that a contractor, appointed by WS, had called to the complainant's dwelling, in response to her request to WS for her septic tank to be desludged. However, the contractor was unable to desludge the tank because it was inaccessible to his HGV vehicle. As a result, WS inspected the complainant's property and found that it did not allow safe access for the type of HGV tanker now used by WS and/or its contractors in the desludging of septic tanks. The complainant was informed by the WS official(s) who undertook the inspection that the access to her dwelling would require to be upgraded in order to enable

WS to continue to provide a desludging service, failing which it was open to her to employ a private contractor to desludge the tank. The complainant was also informed by the WS official(s) that her existing Agreement was no longer appropriate and would therefore be terminated, in accordance with its relevant provision.

In considering complaints about the provision of public services my role is to examine the way the process was administered and to ensure that the statutory body concerned has dealt with the matter in a way that is consistent with its procedures and policies. Where the exercise of discretion is involved I look to see if, in my view, this has been exercised reasonably and without maladministration. I concluded that the decisions by WS to terminate its Septic Tank Emptying Agreement with the complainant, together with its decision not to enter into a new Agreement with her until access arrangements to the septic tank at her property had been improved to meet the criteria of a revised Agreement, were not affected by maladministration.

Consequently, in the absence of evidence of maladministration, I did not uphold the complaint. I was, however, pleased to note that WS did carry out a 'final' desludging of the septic tank serving the complainant's dwelling house, to allow time for the access to be improved. I was informed it was the view of WS officials that further desludging should not be necessary for at least a further 2 years. I recommended to the complainant that she should give serious consideration, during that period, to having the access arrangements to the septic tank at her dwelling improved sufficiently to enable WS to enter into a new Septic Tank Emptying Agreement with her.
(AO 62/02)

DEPARTMENT FOR SOCIAL DEVELOPMENT

CHILD SUPPORT AGENCY

Processing of an Application for Child Support Maintenance

I received a complaint against the Child Support Agency (CSA) concerning its handling and processing of an application for child support maintenance (CSM). The aggrieved person was a private client, who had applied to the CSA to arrange and collect CSM from the non resident parent (NRP). In the absence of reaching a private agreement with the NRP and because the Court Service is no longer responsible for dealing with child maintenance cases, the aggrieved person had no alternative but to avail of the CSA's services.

Having investigated this complaint, I had no hesitation in concluding that the CSA's handling of this case was attended by maladministration. My investigation revealed evidence of delay on the part of the CSA in processing CSM liability and overall poor administrative practice. It was clear to me that much of the CSA's actions in this case were driven by the aggrieved person as, in a number of instances, action was taken by the CSA only as a result of enquiries from the aggrieved person. Overall, while I appreciated that the CSA had difficulties in obtaining information from the NRP, it seemed to me that the CSA could have met its initial target of 20 weeks (as opposed to 10 months in this case) if it had pursued the case more vigorously. I criticised the CSA for failing to meet its initial assessment target, the consequences of which caused the NRP to incur a large amount of CSM arrears and

perhaps, more importantly, deprived her of 'regular' payments of CSM from an earlier date.

In fairness, the CSA acknowledged that "clearly there have been excessive delays in the processing of the case". I can understand the difficulties faced by the CSA in seeking to obtain payments for parents with care, and am aware that there are ways in which a recalcitrant NRP can cause delays and obstruct the system. However, I found it was regrettable that the aggrieved person's case had still not produced a satisfactory outcome, in terms of receiving CSM, albeit the CSA had taken the case to the Magistrates Court to try and have a liability Order imposed. The Chief Executive assured me that as a result of my investigation and findings, he had asked that this case be monitored closely by a senior officer to ensure that there were no further delays in processing it. By way of redress for the considerable disappointment, anxiety, annoyance, frustration and inconvenience, which I had no doubt the aggrieved person had suffered, I recommended that the CSA's Chief Executive issue to her a letter of apology, together with a consolatory payment of £500. I am pleased to record that my recommendations were accepted and implemented by the CSA.
(AO 129/02)

SOCIAL SECURITY AGENCY

Handling of claim to Jobseekers Allowance

In this case the substance of the complaint related to the Social Security Agency's (SSA) handling of the complainant's claim to Jobseekers Allowance (JSA). The complainant's main grievances related to the number of interviews which he had been required to attend, the recording and response to information supplied by him to the SSA, the manner in which he was treated during attendance at the Bangor Social Security Office (SSO) and the maintenance of his National Insurance Contribution records by the SSA.

In pursuit of my investigation into this case I made enquiries of the Chief Executive of the SSA and I directed my Investigating Officer to interview appropriate SSA staff. I carefully examined and considered documentation obtained from the SSA and information elicited during interviews. I also carefully examined all documentation submitted by the complainant.

My investigations revealed that the SSA had attempted to provide an honest and comprehensive response to all of the complaints raised by the complainant and that apart from the wording of a standard letter, the SSA's correspondence with the complainant relating to his attendance at Bangor SSO on 6 March 2000, had been accurate. I found that the SSA had acted properly in disallowing benefit for the period 7 March 2000 to 17 April 2000, and that the proper appeals mechanism had addressed the grievance that the complainant had raised. Whilst recognising the divergence of views between the complainant and SSA staff about the management of interview arrangements on 26 January 2000, I was persuaded that the actions of the SSA staff on the day were legitimate and reasonable. I was also persuaded that the actions of SSA staff on 6 March 2000, in not permitting the complainant to sign on, after he failed to attend a review interview, were appropriate. The waiting time to see the ad hoc client advisor, which was caused by the complainant's failure to attend the review interview, I found to be reasonable and by no means excessive. Finally, I found that the SSA had the authority and discretion to arrange

interviews as it deemed necessary in the particular circumstances of the case, and therefore, a charge of excessive interviewing was not sustainable.

My investigations also revealed, however, that there had been an unjustified closure of the complainant's benefit for the period 22 February 2000 to 26 March 2000, and that this closure could have been avoided had the SSA recorded and acted upon a telephone call made by the complainant on 8 March 2000. Although I was satisfied that no intentional discourtesy was meant to the complainant in relation to how he was addressed over the public address system in Bangor SSO on 6 March 2000, I was convinced that a more professional approach should have been employed by the staff member concerned. I found that the SSA had failed to properly maintain the complainant's National Insurance contribution record, but also noted that the SSA had acknowledged, rectified and apologised for its failure in this regard. I also found that the SSA had failed to record or securely maintain the record of an interview with the complainant in Bangor SSO on 26 January 2000.

In respect of the maladministration identified, I recommended that the SSA issue an apology and a consolatory payment to the complainant. I also suggested (if action had not already been taken) that the SSA give consideration to amending some of its interview arrangements and some of the standard letters which had been issued in this case. I was pleased to note the Chief Executive's agreement to issue both the requested apology and consolatory payment and his willingness to consider the other recommendations which I advanced. **(AO 74/01)**

Investigation by Benefit Investigation Service into Suspected Benefit Fraud

In this case the complaint derived from an investigation by Benefit Investigation Service (BIS) into a suspected benefit fraud by a claimant who had been identified in an anonymous telephone to the Benefit Fraud Hotline. The employer for whom the claimant was alleged to be working disputed the allegation when it was put to him by a Fraud Investigating Officer from Benefit Investigation Services; he challenged the veracity and accuracy of the evidence put forward by the Fraud Investigation Officer and he also expressed concern at the conduct of the investigation into and response to his complaints by the Social Security Agency (SSA).

In pursuit of my investigation into this case I made enquiries of the Chief Executive of the SSA and I directed my Investigating Officer to interview appropriate SSA staff. I carefully examined and considered documentation obtained from the SSA and information elicited during interviews. Further relevant information was obtained from Cosmo Car Rental and Car Parking, Thomas Cook Travel and British Midland International. I reviewed a previous report from the Independent Case Examiner and I obtained comment from the complainant and examined all documentation submitted by him through his sponsoring MLA, Councillor Sir Reg Empey.

My investigation revealed no evidence of collusion between any member of BIS and the anonymous source of the information about the claimant suspected of fraud. Neither did I find evidence that the complainant was ever under surveillance. I also found that there was no attempt to deliberately mislead the complainant in the citing (in SSA correspondence) of

various locations for a car which was the target of surveillance during the BIS investigations. I was persuaded that the Chief Executive of the SSA responded appropriately in appointing competent officers to respond to the complaint and in allocating the necessary resources to investigate and formulate a response. I accepted that the SSA/BIS were required to conduct investigations into the anonymous information which was presented and that these investigations represented a proper use of public funds.

I found, however, that there were particular failings in the SSA's administrative procedures and in its overall response to the complaint. I concluded that the complainant should have received earlier and better information regarding the SSA's complaints procedures. In respect of the conduct of the suspected fraud investigation, my enquiries revealed ignorance of procedures with consequent misapplication which resulted in very serious maladministration. In partially upholding the complaint, I recommended that improved investigative procedures be introduced by SSA/BIS and that an apology, together with a consolatory payment of £1,250, is issued to the complainant. I was pleased to note the Chief Executive's acceptance of my conclusions and recommendations and his assurance that improved procedures were already being implemented. **(AO 84/01)**

Award of Disability Living Allowance

In this case the complainant alleged he had sustained injustice as a result of maladministration by the Social Security Agency (SSA) concerning his award of Disability Living Allowance (DLA), with particular reference to the period from October 1999.

My consideration and examination of this case left me in no doubt concerning the complainant's sense of grievance regarding the SSA's disallowance, in January and August 2000, of his claim to DLA, following a review of his circumstances. However, the complainant exercised his right of appeal against the SSA's decisions and, in so doing, his DLA benefit was re-instated by the Social Security Appeal Tribunal. He subsequently received arrears of £3,771.00. It is the position that I have no remit to investigate the matter which has been the subject of a hearing by an independent Appeal Tribunal.

In relation to the complainant's grievance about the alleged conduct of the Examining Medical Practitioner, on 22 January 2000, I was satisfied that he (the complainant) was given a full opportunity to make known his concerns to the SSA. Equally, I was satisfied that his concerns were properly and seriously examined and considered by the SSA. Overall, therefore, following the most careful consideration of, and reflection on, all of the facts, circumstances and issues which emerged during my detailed investigation of this complaint, I could not say that the complainant had sustained injustice as a consequence of maladministration by the SSA, in applying the terms of its Social Security legislation and related policy governing the award of DLA. **(AO 04/02)**

Delay in Processing Claim for Disability Living Allowance

The aggrieved person in this case complained that she had applied to the Social Security Agency (SSA) for Disability Living Allowance (DLA) in November 2002, but at the date of writing to my Office on 21 May 2003, she had still not received a decision on her benefit claim. She stated that she had made a number of telephone calls to the SSA regarding

her benefit claim only to be repeatedly told that it would be necessary for a Doctor to visit her in connection with her claim. However, months had passed without her having received an appointment date for the Doctor's home visit. Furthermore, the SSA had not acknowledged or replied to her letter in March 2003, requesting an explanation for the delay in processing her claim to benefit.

My investigation established that there were periods of unacceptable delay by the SSA in progressing the complainant's DLA claim. One such delay was in the time taken to refer the complainant's benefit file from one government office to another locally-situated government office so that a visit by an Examining Medical Practitioner (EMP) could be arranged. Consequently I recommended the SSA urgently review its procedure for such referrals. I also found that Medical Support Services, which is responsible for arranging EMP visits, took 51 working days to complete its action, well outside its target time of 17 working days. The SSA advised it had taken steps to address this problem and I asked to be informed of the outcome.

With regard to the complainant's enquiry letter, the SSA confirmed that it had been received on 26 March 2003, but that it had been filed away without having been acknowledged or replied to. The SSA stated that it had no record of the telephone calls that the complainant alleged she had made to the office from February 2003 onwards. However, my investigation established that the complainant had been informed that her case had been referred for an EMF visit and she had not been informed of this fact by letter. I therefore concluded that it was likely that the information had been imparted to the complainant during a telephone conversation with an SSA official. Consequently, I accepted that the complainant had made telephone calls to the office seeking an update on the progress of her benefit claim. I recommended that the SSA issue a reminder to staff that good administrative practice includes the need to record telephone calls which are received.

Overall, I found that the SSA took approximately 145 working days to issue a benefit decision to the complainant, which is over twice its target time of 60 working days for determining benefit applications. In respect of the unjustifiable delay, and the failure to acknowledge or reply to her correspondence, I recommended that the SSA's Chief Executive issue to the complainant a letter of apology, together with a consolatory payment of £100. The Chief Executive accepted my recommendation.

Subsequently the Chief Executive reported to me that the Disability and Carers Service had conducted an overall review of the evidence gathering process which included the time taken to send a request for an Examining Medical Practitioner visit to the Medical Support Services. As a result, from the point at which a Decision Maker decides an EMP visit is appropriate until the file is dispatched to Medical Support Services, is now taking 4 working days. In addition, there has been a successful EMP recruitment exercise resulting in 14 new doctors being appointed for DLA assessments. The clearance time for DLA examinations is now 14 working days against a target of 17 working days. **(AO 25/03)**

In addition to the above the SSA informed me of a further systems improvement as a result of a case which I investigated in 2002/03. This improvement addresses the problem of delays in obtaining further evidence from medical professionals.

The SSA held discussions with officials from the Department of Health, Social Services and Public Safety which resulted in a new and updated circular being issued on the "Provision of Confidential Information to the Social Security Agency for Benefit Assessment Purposes". The circular highlights the roles and responsibilities that Department of Health, Social Services and Public Safety bodies play in relation to the assessment of claims for Disability Living Allowance. The circular also highlights that "unnecessary delays in dealing with requests may have as great a personal impact on a client as delaying treatment can have on a patient".

Following a letter from the SSA's Chief Executive to his counterparts in the Health and Social Services Trusts, a meeting was held with Representatives from the Trusts. This meeting provided a useful exchange of views, which enabled both sides to more fully understand and become familiar with the issues and problems. A number of suggestions were made and both sides have agreed that the meetings should continue, initially bi-annually. The suggestions were incorporated into an internal review of the "evidence-gathering process" for Disability claims.

One additional measure has been introduced, whereby a "sticker" attached to the requests issued to Doctors and Consultants highlights the SSA's Service Delivery Targets for processing new Disability Living Allowance Claims. The SSA has assured me that it remains fully committed to tackling any problems that may delay the assessment of benefits.

NORTHERN IRELAND OFFICE

Handling of an Allegation of Harassment

The complainant alleged that she had sustained injustice as a result of maladministration by the Northern Ireland Office (NIO) regarding the manner in which it had handled a grievance from her relating to serious bullying and harassment. The NIO is not listed as a body which falls within my jurisdiction. However, for many years there has been an extra statutory arrangement where my Office can investigate complaints of a personnel nature from Northern Ireland Civil Servants who have been seconded to the NIO. In so doing I conduct my investigation within the terms of the jurisdiction and procedures set out in the legislation as if they did apply to the investigation.

One aspect of the complaint was that it took the NIO two and a half years to conclude an investigation into the formal complaint that the complainant submitted in May 1999. I established that it took just over twenty one months for the investigation to be completed and the report submitted to the Establishment Officer. During this time there was an unforeseen "down time" of eight months. This considerably reduced the overall investigation period to thirteen months. While impressed by the thoroughness of the investigation, I found the thirteen month period of effective investigation to be too long.

Having met with the Establishment Officer and been informed of the outcome of the investigation, it took a further three months before the minutes of that meeting were made available to the complainant. From my examination of the

relevant documents, I found that there were mitigating circumstances for the delay in the provision of minutes and did not uphold this aspect of the complaint.

A further concern was that, having provided the NIO with her detailed comments on various aspects of the investigation, she had to wait a further year for the NIO to provide a substantive reply and confirmation that the investigation was "complete and final". My investigation revealed that the NIO had acknowledged and apologised to the complainant for the delay in responding to her correspondence and for bringing the matter to a close. Also, the Permanent Under-Secretary of State (PUS) had, in his written response to me, expressed his regret over the delay. I considered this to represent adequate redress.

I also investigated some additional criticisms which the complainant made of the NIO. I did not uphold her comment that the NIO never took a sufficiently serious view of the bullying/harassment and that her welfare over the matter did not seem to count. My consideration of the complainant's comment that she "never got any redress not even a proper apology" revealed that she had been given a verbal apology by the Establishment Officer both for the fact that she had suffered and for the length of time taken to complete the investigation. However, I considered that, in view of the inordinate period of time which had elapsed, a written apology was called for.

There was no doubt that the complainant felt a real sense of grievance regarding the NIO's decision that, although the alleged harasser was found guilty of bullying, it was also found that the complainant held some responsibility for the situation which had developed.

However, having studied most carefully the extensive documentation which formed the NIO's investigation report, I was satisfied that the complainant had been given every opportunity to present her case. I was also satisfied that the NIO had carried out a detailed and thorough investigation of the complaint. Having regard to all the evidence available to me, I did not consider the outcome of the investigation to have been so unreasonable or at variance with what any such reasonable decision maker was likely to have decided that I could have considered the decision itself to have been maladministrative.

Overall, although I found no evidence of maladministration in the procedures adopted by the NIO to investigate the complaint, I had found the time taken to complete the matter to have been too long. I recommended that the PUS issue a written apology in respect of the delay. I also recommended that steps be taken to ensure that such complaints would be accorded greater priority by the NIO. I was pleased to record that the PUS accepted my recommendation and advised me that this was an isolated example. The PUS also informed me that more recent complaints requiring a formal investigation had been dealt with within a more reasonable timeframe. **(AO 119/02)**

Section Two
Appendices

Appendix A

Summaries of Registered Cases Settled

Department for Regional Development (AO 87/01)

The complainant in this case was dissatisfied with the Department's decision not to release a copy of a Report which had been prepared by PricewaterhouseCoopers on the subject of Public Private Partnerships. During the course of my investigation of this complaint and following a series of interventions by my Office the Department agreed to make the majority of the Report available to the complainant, with only three sections not to be disclosed. After detailed consideration of the reasons for their non-disclosure I concluded that the Department was justified in its approach. Therefore, as I regarded this as a satisfactory outcome to the complaint, I decided to take no further action on this case.

Social Security Agency (AO 72/02)

In this case the complainant was dissatisfied with the SSA's assessment of his entitlement to Income Support. My investigation revealed that the SSA made mistakes in its assessment of the complainant's case. I was also informed that the SSA had written to the complainant acknowledging the error and apologising for the inadequate administration. In addition the SSA made a special payment to the complainant to cover loss of statutory entitlement to Income Support, housing costs and compensation. As a result of my investigation the Chief Executive of the SSA agreed to issue a further apology and a consolatory payment of £200 in recognition of the SSA's mishandling of the case. In view of this, which I considered to be a satisfactory resolution of the matter, I decided to take no further action on this complaint.

Department for Regional Development (AO 111/02)

This complaint related to the Department's handling and processing of an application for a promotion competition for the grade of PTO Civil Engineering Assistant. Following the commencement of my investigation of this case the Department's Permanent Secretary wrote to inform me that the Department accepted responsibility for the error in the handling of the complainant's application and acknowledging that the resultant situation caused the complainant considerable disappointment, hurt and annoyance. The Permanent Secretary agreed to issue a letter of apology together with a consolatory payment of £500. As I regarded this to be a satisfactory resolution of the complaint I decided to take no further action on this case.

Driver & Vehicle Testing Agency (AO 10/03)

I received a complaint in which a gentleman claimed to have suffered financial loss as a result of the Agency's cancellation of motorcycle tests at short notice. I arranged for enquiries to be made of the Agency and, to ensure I had a full understanding of the circumstances surrounding the complaint, one of my Investigating Officers met with the complainant. During the course of the investigation the Agency agreed to reconsider the complainant's case and a method of calculating any compensation which may be due to the complainant was proposed by it. In view of this proposal, which I considered to be a

satisfactory resolution of the matter, I decided to take no further action on this complaint.

Driver and Vehicle Licensing Northern Ireland (AO 15/03)

A gentleman complained to me that he had suffered an injustice because DVLNI had released inaccurate information about a vehicle to a Council. As a result he was served with an 'Article 72' Notice by the Council. I noted from copy correspondence supplied by the complainant that the key facts of this complaint were not in dispute by DVLNI. In fact the Chief Executive of DVLNI had issued the complainant with an apology together with a consolatory payment of £50. Having examined the full circumstances of the case I considered that a consolatory payment of £100 would have been more appropriate. I recommended this to the Chief Executive of DVLNI and am pleased to record that he accepted my recommendation and issued a further payment of £50 to the complainant together with a reiteration of his apology on behalf of DVLNI. As I regarded this to be a satisfactory resolution of this complaint I decided to take no further action on the matter.

Social Security Agency (AO 29/03)

I received a complaint from a gentleman who was dissatisfied with the actions of the SSA in relation to his claim for arrears of Disability Living Allowance (DLA) and Severe Disablement Allowance (SDA) and also its refusal of his request for a loan or grant. My investigation of this complaint revealed no maladministration in the SSA's handling of the complainant's claim for arrears of DLA and SDA. I could therefore take no further action on this aspect of the complaint. However, during the course of my investigation the SSA, as a result of its concern that some confusion on the part of the complainant may have resulted in his missing out on possible entitlement to Social Fund, arranged for officers to call with the complainant. During the visit the officers assisted the complainant in completing a fresh claim for Community Care Grant. I understand that, on the basis of the information in this new claim, the complainant received an award of £1,315. As I regarded this as a satisfactory resolution of this aspect of the complaint I decided to take no further action on the matter.

Appendix B

Summaries of Registered Cases Discontinued

Land Registers of Northern Ireland (AO 13/03)

A gentleman complained to me about the actions of the Land Registers and the means of calculation of land registry fees. During my investigation of this complaint I was satisfied that the Land Registers had no formal involvement in the transaction being complained of. In addition I noted that Land Registers wrote to the complainant with a clear and comprehensive explanation of the fees position. In view of this I decided that there was nothing further to be gained from an investigation of this case and therefore I discontinued my investigation.

Planning Service (AO 65/03)

The complaint in this case related to Planning Service's handling of the complainant's objections to a planning application. My investigation of the facts in this case revealed that, whilst there had indeed been periods of delay by Planning Service in responding to the complainant's correspondence, Planning Service had acknowledged these delays and offered apologies for them. I considered that an investigation by me would serve no purpose in that what I was being asked to establish had already been acknowledged. I therefore decided to discontinue my investigation of this complaint.

Driver and Vehicle Licensing Northern Ireland (AO 87/03)

A gentleman complained to me about the DVLNI's decision to restrict his driving licence on medical grounds. Sadly, during the course of my investigation, the complainant died. At the request of his widow I discontinued my investigation.

Appendix C

Analysis of Written Complaints

Analysis of All Complaints Received – 1 April 2003 to 31 March 2004

	DEL	DARD	DCAL	DFP	DE	DETI	DOE	DRD	DSD	DHSSPS	OFMDFM	Bodies, etc, Outside Jurisdiction	NIO Extra Statutory	Tribunals	Ofreg	**Total**
Brought forward from 2002/03	0	5	1	3	1	1	22	14	7	1	0	0	1	0	0	**56**
Received in 2003/04	4	14	0	16	2	1	92	28	67	5	0	37	3	9	0	**278**
Total	**4**	**19**	**1**	**19**	**3**	**2**	**114**	**42**	**74**	**6**	**0**	**37**	**4**	**9**	**0**	**334**
Dealt with in 2003/04	3	14	1	17	3	2	92	37	64	6	0	37	3	6	0	**285**
In action at 31/3/04	1	5	0	2	0	0	22	5	10	0	0	0	1	3	0	**49**

Analysis of the Outcomes of Complaints Handled at the Initial Sift Stage

	DEL	DARD	DCAL	DFP	DE	DETI	DOE	DRD	DSD	DHSSPS	OFMDFM	Bodies, etc, Outside Jurisdiction	NIO Extra Statutory	Tribunals	Ofreg	**Total**
Referred to Body's Complaints Procedure	0	3	0	7	0	0	17	10	32	1	0	1	0	1	0	**72**
Authorities and matters outside jurisdiction	1	1	0	1	0	0	0	1	0	0	0	36	1	1	0	**42**
Right of appeal to a Tribunal	0	0	0	0	0	0	3	0	1	0	0	0	0	0	0	**4**
Remedy by way of legal proceedings	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**0**
Not aggrieved person	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	**2**
Out of time	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	**2**
No evidence of maladministration	0	1	0	0	1	0	4	1	0	1	0	0	0	1	0	**9**
Discontinued	0	0	0	0	0	0	4	0	1	0	0	0	0	0	0	**5**
Settled	0	0	0	0	0	0	0	0	3	0	0	0	0	0	0	**3**
Discretionary Decision	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0	**2**
No Sponsorship	1	1	0	2	0	0	7	0	2	1	0	0	0	0	0	**14**
Withdrawn	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	**1**
TOTAL	**2**	**6**	**0**	**11**	**1**	**0**	**38**	**14**	**40**	**3**	**0**	**37**	**1**	**3**	**0**	**156**

Analysis of the Outcomes of Cases in Which an Investigation Was Completed

	DEL	DARD	DCAL	DFP	DE	DETI	DOE	DRD	DSD	DHSSPS	OFMDFM	Bodies, etc, Outside Jurisdiction	NIO Extra Statutory	Tribunals	Ofreg	**Total**
Report Issued - Complaint Upheld	0	0	0	0	0	0	4	0	2	0	0	0	0	0	0	**6**
Report Issued - Complaint Partially Upheld	0	1	0	0	0	0	5	1	2	0	0	0	1	0	0	**10**
Report Issued - Complaint not upheld but body criticised	0	1	0	1	0	0	3	1	0	1	0	0	0	0	0	**7**
Report Issued - Complaint not upheld	0	2	0	3	0	0	4	6	1	0	0	0	0	0	0	**16**
Letter issued - no evidence of maladministration	1	3	1	1	1	2	15	4	8	1	0	0	0	0	0	**37**
Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**0**
Right of Appeal to a Tribunal	0	0	0	0	0	0	4	0	3	0	0	0	0	0	0	**7**
Settled	0	0	0	0	0	0	2	2	2	0	0	0	0	0	0	**6**
Out of Time	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	**1**
Discontinued	0	0	0	1	0	0	2	0	0	0	0	0	0	0	0	**3**
Remedy by way of legal proceedings	0	1	0	0	0	0	2	2	1	0	0	0	0	0	0	**6**
Outside Jurisdiction	0	0	0	0	1	0	2	0	2	0	0	0	0	2	0	**7**
Referred to body's complaints procedure	0	0	0	0	0	0	10	3	3	1	0	0	0	1	0	**18**
Discretionary Decision	0	0	0	0	0	0	1	0	0	0	0	0	1	0	0	**2**
Not by aggrieved person	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	**1**
No Sponsorship	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	**2**
TOTAL	**1**	**8**	**1**	**6**	**2**	**2**	**54**	**23**	**24**	**3**	**0**	**0**	**2**	**3**	**0**	**129**

Appendix D

Analysis of Oral Complaints

Fig 2.7 Analysis of Oral Complaints Received - 1 April 2003 to 31 March 2004

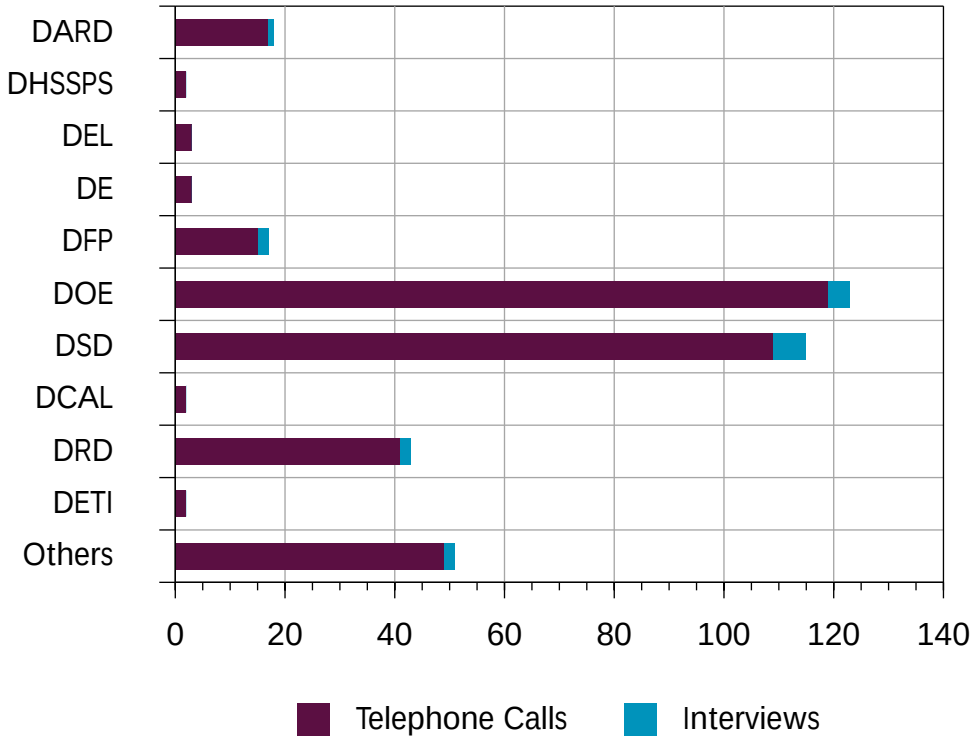
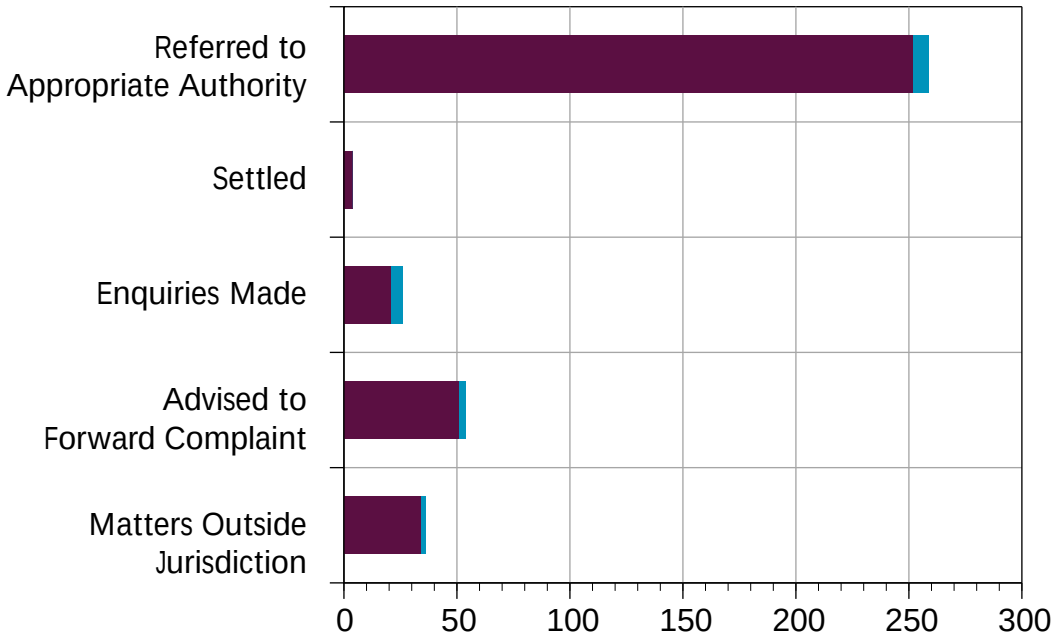


Fig 2.8 - Outcome of Oral Complaints Received 1 April 2003 to 31 March 2004



Annual Report of the Northern Ireland Commissioner for Complaints

Section Three

3

In my role as Commissioner for Complaints the largest number of complaints I receive are against the Northern Ireland Housing Executive. However, this is not surprising in view of the Executive's role as Northern Ireland's only public sector housing landlord, with responsibility for approximately 120,000 dwellings. As a public body, therefore, the Executive impacts very significantly on the day to day lives of a considerable number of people.

The complaints which I received against the Executive during the twelve month period covered by this Report covered the broad spectrum of the Executive's functions. There was, however, a significant number of complaints from prospective new tenants, who had applied for public sector housing, and from existing tenants who had applied for transfers from their existing accommodation. In none of the cases which I investigated did I find that the Executive had failed to follow the rules that inform the current Housing Section Scheme. I do, however, have some sympathy for housing applicants who find themselves having to wait quite a considerable period of time before their housing need can be met – in some cases this can involve periods measured in years. This area of my work has demonstrated the increasing pressures under which the Executive is being required to respond to public housing requests in order to meet need in a timeframe that is acceptable to its customers. This housing shortage is particularly evident in urban areas in general and the greater Belfast area in particular. A key factor that is contributing to this problem is the reducing housing stock available to the Executive to meet public sector housing needs, due to the continuing strong interest on the part of existing tenants in purchasing their dwellings; ironically the Housing Executive is becoming the victim of its very successful home sales policy.

On the subject of house sales, I continue to receive complaints in relation to the fact that the Executive's current House Sales Scheme excludes the sale of pensioners' bungalows, which were let to the tenant, or to a predecessor in title of his/her who was aged 60 or more when the tenancy commenced. The purpose of this exclusion is to protect the interests of "pensioners" ie those aged 60 or more. It is apparently this age group that is more interested in renting their homes and the Executive therefore wishes to protect its stock of this type of dwelling. I am unable to uphold such complaints, given that the refusal of such applications to buy is clearly consistent with the Executive's stated policy, which in turn is underpinned by primary legislation. Consequently, the decisions not to sell in the above circumstances cannot be regarded as acts of maladministration.

It is also important to note that the exclusion from the House Sales Scheme of this category of dwelling has been the subject of at least two Judicial Reviews. The Reviews were sought primarily on the argument that such an exclusion was arbitrary and perverse and an infringement of Human Rights Legislation. In both cases, the Reviews failed on the basis that the Executive's policy was found to be not unreasonable, except in situations in which the letting took place as a result of a compulsory transfer from another dwelling within the Executive's stock, if the tenant had enjoyed the right to buy the dwelling from which he/she was transferred.

In examining housing complaints, and in line with my general practice, I look to see, at an early stage, whether it may be possible for me to seek to facilitate a reasonable settlement. I regard this as an

important part of my role, as achieving an early settlement of a complaint has the considerable benefit of avoiding a time consuming and resource intensive detailed investigation and, most importantly, results in the aggrieved person achieving a satisfactory resolution with the minimum of delay. I am pleased with, and would therefore wish to acknowledge, the level of co-operation I received from the Executive in this regard during the period under review. This co-operation resulted in an early resolution of a significant number of housing complaints, and the consequential achievement of a satisfactory outcome, with the minimum of delay, for the aggrieved persons involved. In one specific distressing case involving a disabled child prompt action to resolve the complaint was taken by the Executive when I drew the issue to its attention; I was also provided with a comprehensive report of the additional measures the Executive was taking to improve the overall delivery of Private Sector Disabled Facilities Grants, thus achieving another important objective of using complaints to inform amendments and changes that improve systems and procedures.

Complaints Received

As Northern Ireland Commissioner for Complaints I received a total of 337 complaints during 2003/04, which is 39 more than in 2002/03.

The local and public bodies against which complaints were received in 2003/04 compared with those in the preceding four years are shown in Table 3.1.

As in previous years, the Northern Ireland Housing Executive attracted most complaints. A breakdown of the complaints received against it by subject is shown in Fig 3.3.

A breakdown of the complaints received according to the Local Council area in which the complainant resides is shown in Fig 3.4.

During the reporting year I received no complaints in which religious discrimination was alleged. Those alleging such discrimination in employment matters do, of course, have a right of recourse to the Equality Commission and/or the Office of the Industrial Tribunals and Fair Employment Tribunal.

Table 3.1 - Bodies against which complaints were received 1999/2000 - 2003/04

	1999/00	2000/01	2001/02	2002/03	2003/04
Local Councils	41	71	66	52	45
Education Authorities	35	24	14	40	57
Health and Social Services	39	22	21	27	35
Northern Ireland Housing Executive	138	131	125	105	144
Miscellaneous	55	44	77	74	56
TOTAL	308	292	303	298	337

Fig 3.1 - Commissioner for Complaints 2003/04
337 Complaints Received

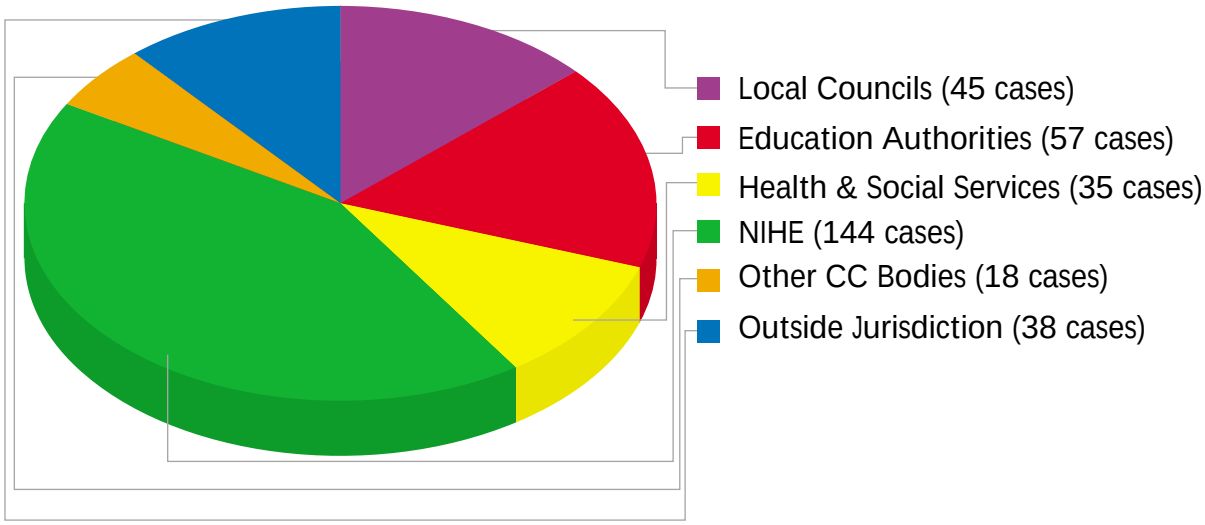


Fig 3.2 - Commissioner for Complaints
Complaints Received 1999/2000 – 2003/04

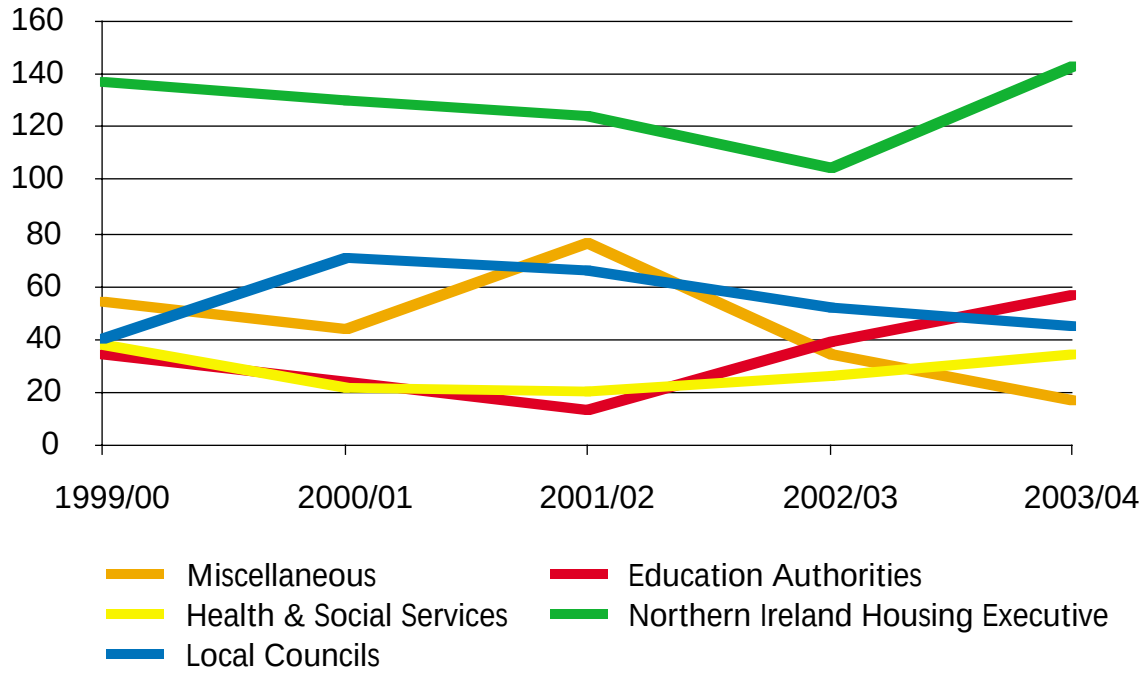


Fig 3.3 - Complaints Against NIHE 2003/04
144 Complaints Received

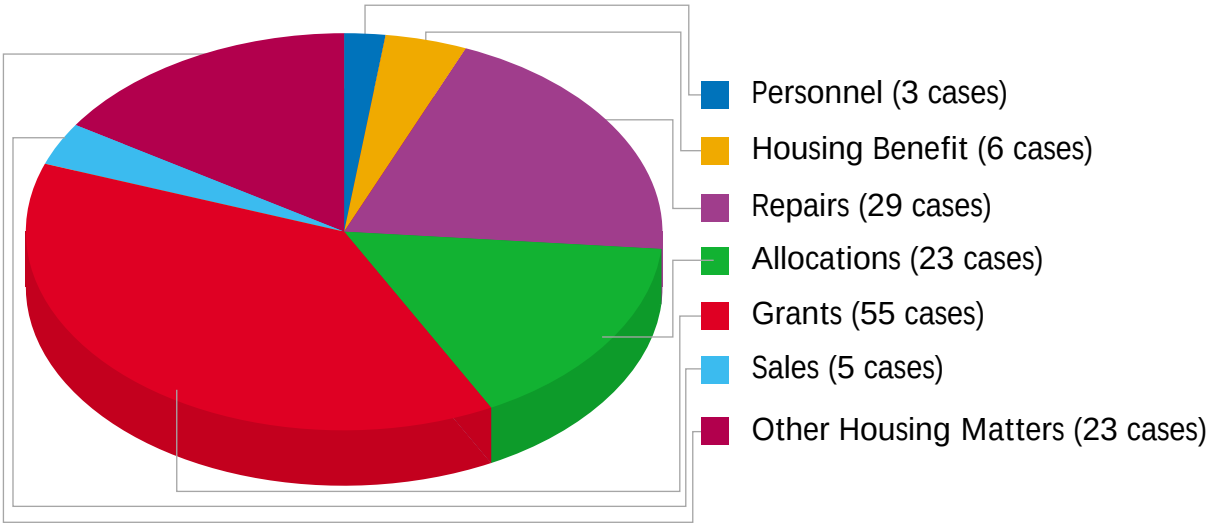
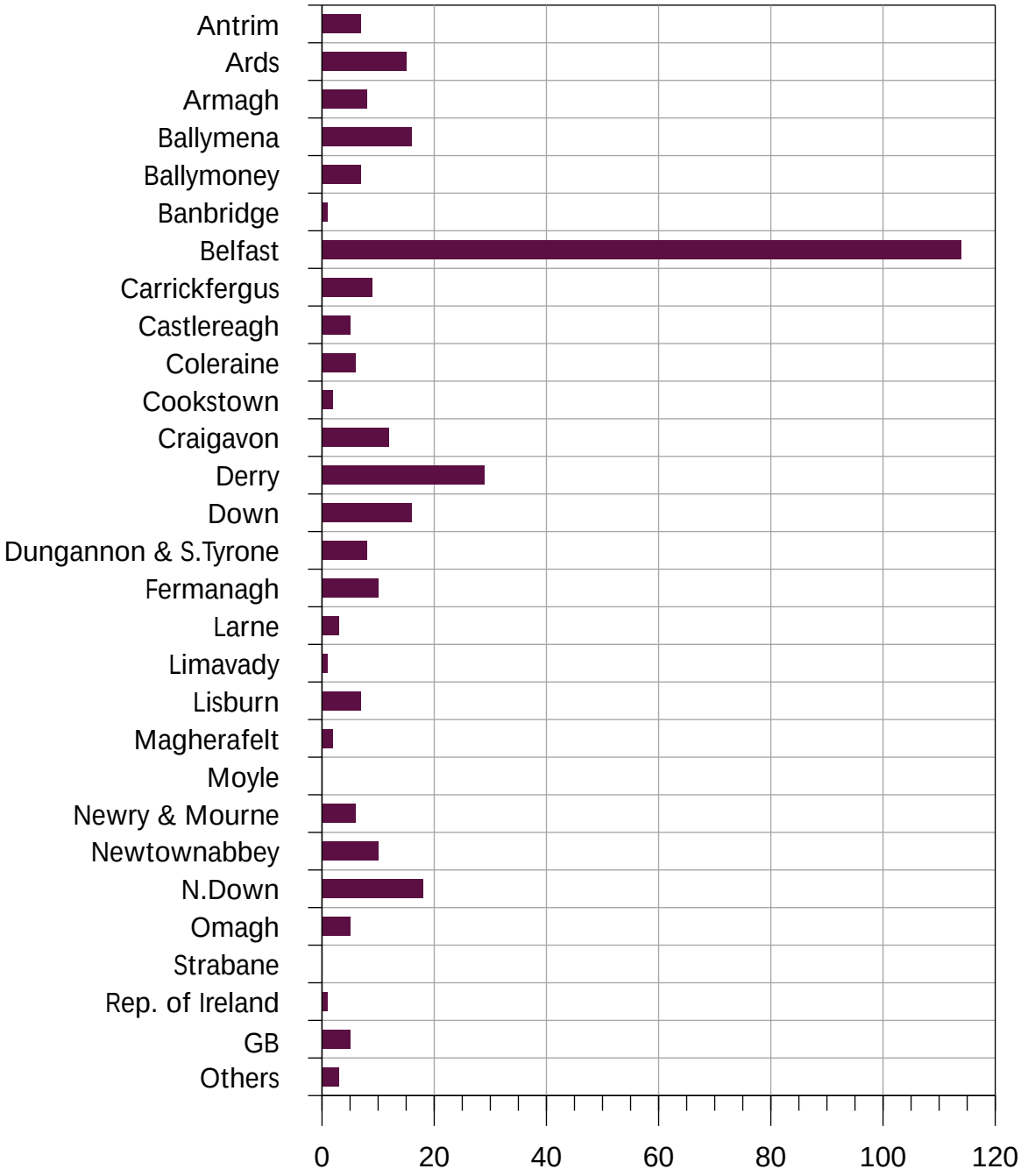


Fig 3.4 - Commissioner for Complaints 2003/04
337 Complaints Received – Local Council Area in which Complainant Resides



Statistics

In addition to the 337 complaints received during the reporting year, 61 cases were brought forward from 2002/03. Action was concluded in 338 cases during 2003/04 and of 60 cases still being dealt with at the end of the year, 58 were under investigation. In 44 cases I issued an Investigation Report setting out my findings.

The 60 cases in process at 31 March 2004 were received during the months indicated in Table 3.3.

During 2003/04 95 cases were resolved without the need for in-depth investigation and 14 cases were settled. 151 cases were accepted for investigation. Complaints against authorities or matters not subject to my investigation totalled 48. I referred 105 complaints to the body concerned to be dealt with under its own complaints procedure. The outcomes of the cases dealt with in 2003/04 are detailed in Fig 3.5.

Of the total of 2,852 oral complaints received by my Office some 293 were against bodies within the jurisdiction of the Commissioner for Complaints. See Figs 3.6 and 3.7 at Appendix D to this Section.

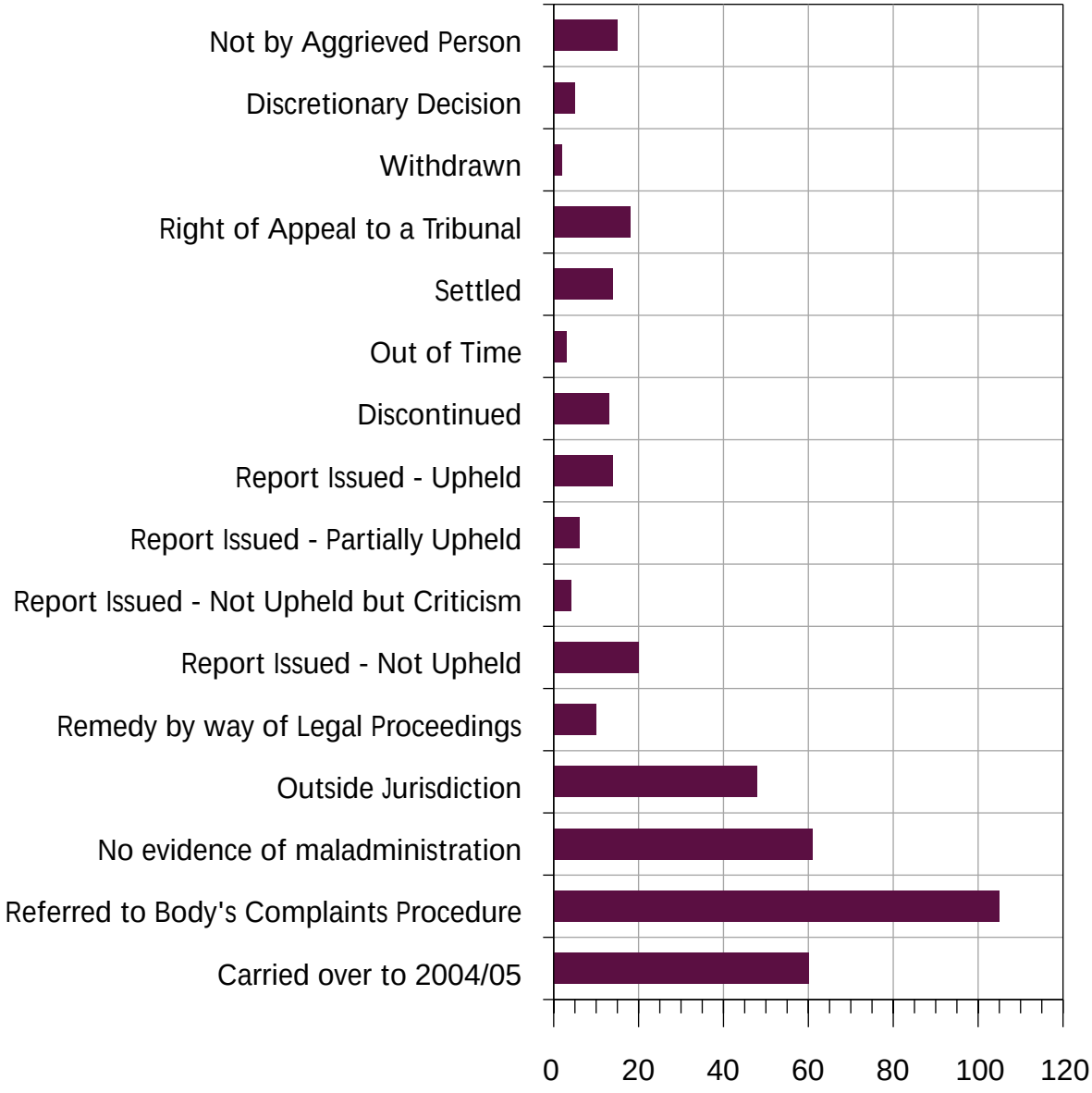
Table 3.2 - Caseload for 2003/04

Number of uncompleted cases brought forward	61
Complaints received	337
Total Caseload for 2003/04	398
Of Which:	
Cleared at Initial Sift Stage	185
Cleared without in-depth investigation including cases withdrawn and discontinued	95
Cases settled	14
Full report issued	44
Cases in action at the end of the year	60

Table 3.3 - Date of Receipt of Cases in Process at 31 March 2004

February 2003	1
March 2003	2
May 2003	3
June 2003	3
July 2003	4
August 2003	4
September 2003	7
October 2003	4
November 2003	8
December 2003	3
January 2004	5
February 2004	9
March 2004	7

Fig 3.5 - Commissioner for Complaints 2003/04
Outcome of Cases



Time Taken for Investigations

The average time taken for a case to be examined and a reply issued at Initial Sift stage was 1.2 weeks.

The average time taken for a case to be examined, enquiries made and a reply issued at Investigation stage was 19.2 weeks.

Reports Issued and Settlements Obtained After Investigation

44 reports of investigations were issued in 2003/04, compared to 59 in 2002/03. The breakdown according to the subject of the cases reported on was Housing 14, Personnel 19, Education 2 and Miscellaneous 9.

14 cases were fully upheld; 30 cases were not but 6 of these were partially upheld and I criticised the public body in 4. Settlements were achieved in 12 of the 14 cases that I upheld:-

Table 3.4 - Settlements Achieved in Upheld Cases

Case No	Body	Subject of Complaint	Settlement
CC 94/01	Ards BC	Not shortlisted for interview	Apology & consolatory payment of £500
CC 43/02	South Eastern E&LB	Failure to be shortlisted for post	Apology & consolatory payment of £300
CC 49/02	South Eastern E&LB	Failure to be shortlisted for post	Apology & consolatory payment of £400
CC 61/02	Homefirst Community Trust	Selection Process/Interview	Apology & consolatory payment of £200
CC108/02	North Down BC	Deficiencies in administration of public health notice	Letter of explanation & consolatory payment of £100
CC 123/02	Down Lisburn Trust	Recruitment for post of Senior Dental Officer	Apology & consolatory payment of £500
CC 126/02	NIHE	Costs due to improvement works	Consolatory payment of £250
CC 140/02	Carrickfergus BC	Interview for post of Dog Pound Assistant	Apology & consolatory payment of £500
CC 161/02	Sperrin Lakeland Trust	Handling of promotion process	Apology & consolatory payment of £750
CC 175/02	Strabane DC	Handling of a Food Complaint and Loss of the Food Sample	Apology & consolatory payment of £300
CC 8/03	Belfast City Hospital Trust	Grievance re term-time working	Apology & consolatory payment of £1,000
CC 44/03	Southern E&LB	Payment demands by student loan company	Apology & consolatory payment of £300

Review of Investigations

ARTS COUNCIL OF NORTHERN IRELAND

Handling of an application for funds

The aggrieved person in this case alleged he had suffered injustice as a result of maladministration by the Arts Council of Northern Ireland (the Council). He stated that he had sent a full and detailed application to the Council seeking funds under the New Work Category Two Scheme. He was very surprised to receive the entire application returned to him together with a brief note from the Arts Development Director stating that the Council was unable to accept the application since it had arrived after the closing date. The complainant did not dispute the fact that the application had been received by the Council after the published deadline but he felt that he had acted in good faith to meet the deadline and it was unreasonable to be penalised for a postal delay.

My investigation revealed that, despite the complainant's application having being sent by first class recorded delivery three days prior to the closing date, it did not arrive until after the deadline for receipt of applications. However, when queried by the complainant, the Council then gave him the opportunity of presenting his case, explaining any special circumstances and providing any supporting evidence but without any guarantee of his application being accepted. The complainant provided the Council with a letter from the Post Office which verified the date and method of posting and that there had been a delay in delivery. However, the Post Office could not offer any reason for the delay. The Post Office also advised that its Recorded Delivery service did not provide any guarantee as to the time of delivery; it merely guaranteed delivery. The Post Office suggested that, in future, the complainant may wish to consider its Special Delivery service which guaranteed a next day delivery. As the complainant had not chosen to avail of the Special Delivery service, the Council felt that a case had not been made which would permit it to go against its practice of not accepting late applications. I also learnt that one other late application was received for the New Work Scheme and it also was rejected by the Council.

Having investigated this complaint I was satisfied that, having been received three days late, the Council did not act unreasonably in its immediate rejection of the application. I was also satisfied that the Council's procedures for receipt of applications were followed correctly and applications were dealt with in a consistent manner. Furthermore, the complainant was given a further opportunity to state his case, albeit without the outcome he would have desired. I considered it most unfortunate that the complainant had posted the application in good faith believing it would arrive within the deadline yet the method of posting provided no guarantee as to the date of delivery. I found no evidence to suggest that the Council could in any way be held responsible for the delay in delivering the application. In considering what could reasonably be expected of the applicant in such circumstances, I was of the view that the onus to ensure delivery by the closing date rested with the applicant. In the circumstances, I could not say that it was unreasonable of the Council not to have admitted the application. I concluded that my careful examination of all the facts revealed no evidence of maladministration on the part of the Council. Consequently I did not uphold the complaint.
(CC 102/03)

EDUCATION BODIES

Handling of a Selection Process

I received two separate complaints alleging that the Northern Eastern Education and Library Board (the Board) was guilty of maladministration in its handling of the selection procedure for the post of Principal. The complainants stated that the selection of a Principal involves a two stage process involving shortlisting and interview by the Board of Governors (BoG) with final interview and appointment by the Teaching Appointments Committee (TAC). They claimed that, following the first interview, one applicant received unanimous support from the BoG as the only candidate to go forward to the TAC. However, following pressure from a Board officer, the Chair of governors put forward a second candidate for interview by the TAC. No other candidate's name was put forward yet one of the complainants and two other candidates appeared for interview by the TAC. The complainants alleged that the BoG did not agree to three names being forwarded for interview by the TAC.

My investigation revealed that, under the Board's Teaching Appointments Scheme, when five or more applicants are interviewed the BoG is required to select three candidates to proceed for interview by the TAC. However, the evidence provided differing views from the governors as to what transpired at the BoG selection meeting. On the other hand, Board officers were consistent in their recollection of events that governors had unanimously agreed to forward three candidates to the TAC. When faced with such conflicting evidence I found it impossible to make a judgement as to who was right and who was wrong; this was something on which I could not comment. However, I found that the integrity of the selection process was seriously compromised by the absence of a contemporaneous record of the outcome of the BoG selection meeting signed and dated by a representative of both the BoG and the Board at the time. I found the absence of such a formal record to constitute maladministration. In view of the contradictory statements and lack of corroborating evidence with appropriate signatures and dates, I was also unable to make a finding as to the accuracy of the minutes and whether or not the governors agreed to three names being forwarded for interview by the TAC.

With regard to other aspects of the complaint I did not find any requirement within the Teaching Appointments Scheme for the ratification of draft minutes prior to a TAC meeting. Neither did I find any evidence of a conflict of interest between the Chairman of the TAC and the successful candidate.

During my detailed investigation of the complaint and although not raised by the complainants, I did identify certain actions and key failings in practice and procedures which I found to constitute maladministration. I drew these matters to the urgent attention of the Board with a view to the Board considering the overall policies and procedures that inform its selection and recruitment practices.

Overall I was satisfied that the TAC made its decision based on the relative merits of all three candidates' performance at interview. The complainant was interviewed in the same way as the other two candidates. Having considered the relevant documentation I was satisfied that the successful candidate was considered to be the best candidate on the day. I, therefore, concluded that the

complainant had not suffered any injustice.

I was pleased to note that the Board accepted that the process of recruitment and selection is a key management process requiring high levels of skill on the part of the panel members and acknowledged that there is an ongoing need for up-to-date training and support on a regular basis. The Board confirmed that it is consistently organising convenient and relevant training events for governors who serve in a voluntary capacity. The Board also accepted that the procedures for the handling of minutes of selection meetings needed to be improved and has already taken steps to ensure that any question with regard to the accuracy of information coming before TAC can be prevented in the future. I welcomed this development. I also welcomed the fact that a review of procedures, including the appointment of senior staff in schools, extending across all Area Boards is underway. I was assured that my comments would be taken into account during the review.
(CC 45/01; CC 54/01)

Job Interview and "Unseen Presentation" for Post of Open Enrolment and Transfer Officer

In this case the complainant alleged that she had suffered injustice as a result of maladministration by the Belfast Education and Library Board (the Board) in relation to a job interview and "unseen presentation" for the post of Open Enrolment and Transfer Officer, the content of the unseen presentation was, she claimed, completely biased in favour of the other candidate.

My investigation examined in detail the written response from the Chief Executive of the Board, the panel records in relation to the interviews and presentations by the candidates and the report of an internal investigation carried out by the Board.

At the heart of the complaint was the unsuccessful candidate's concern that the topic set for the unseen presentation, which asked the candidates how they would contribute to the Board's strategic themes if successful, placed her at a disadvantage over the other candidate who, in her view, had extensive knowledge of the subject matter.

From my study of the evidence I found nothing to suggest that the abilities or experience of the successful candidate had any bearing on the choice of presentation topic. It was my view that criteria and questions should be determined with the needs of the business in mind and I did not find it unreasonable that the topic selected for the unseen presentation should focus on strategic themes.

From the information available to me it was clear that the complainant performed to a high standard at interview and her presentation was also competent. Unfortunately for the complainant, on the day, the other candidate delivered her presentation in such a way that the panel placed her marginally ahead. That was a discretionary decision on the part of the panel and since I had found no evidence of maladministration in the conduct of the competition, I had no grounds to question the panel's decision and consequently was unable to uphold the complaint. **(CC 19/03)**

Handling of Application for Higher Education Student Support

A student complained to me that she had suffered an injustice as a result of maladministration by the Southern Education and Library Board (the Board) in its handling of her application for higher education student support.

The complainant had applied for a student grant in academic year 2001/2002 and received an assessment from the Board indicating that tuition fees of £1,050 would be paid on her behalf by the Student Loans Company to the University as part of an overall student loan. In January 2003, some two and a half years later she received a demand from the University for repayment of £1,050 on the basis that it had been incorrectly awarded to her in September 2000 and that this sum had been reclaimed from the University by the Student Loans Company. She was advised by the University that she could not graduate unless and until the sum was paid.

The Board stated that she was notified in August 2001 that an error had been made in her assessment. However the complainant did not receive this letter and was not aware of the overpayment until January 2003. She claimed that even if she had received the Board's correspondence this gave no indication that the overpayment would be recouped, and she was therefore denied the opportunity to adjust her financial arrangements to cater for the debt created by the Board's error. She was horrified that a mistake by the Board in August 2000 resulted in her potentially not being able to graduate from University in July 2003.

My investigation of this complaint established that a mistake had been made by the Board in its recording of the assessment of the complainant's eligibility for fee support. This error was compounded by the notification of the inaccurate information to the Student Loans Company. I also criticised the Board for its failure to notify the complainant of the likely financial consequences of their mistake. I found these failings to amount to maladministration. During my consideration of the case I was conscious of the fact that the complainant was not eligible to have fees paid for her and that the Board has no discretion to authorise payment of fees for an illegible student.

Against this background I concluded that the complainant should receive by way of redress a letter of apology from the Board's Chief Executive and a consolatory payment of £300. I was pleased to note that the Chief Executive accepted the above recommendation. **(CC 44/03)**

Unsuccessful in Job Interview

The aggrieved person in this case, a kitchen assistant in a local primary school, complained that she had been unfairly treated by the Western Education & Library Board (the Board) in her application for the post of part-time caretaker in the school. She stated that she had performed well at the interview and she believed that she was well qualified for the post. She therefore complained that she had been discriminated against for reasons unknown to her. In addition she expressed her dissatisfaction with the Board's written explanation of why she had failed to secure the post.

I established that there were no criteria for the post other than that previous experience of caretaking duties would be desirable. None of the three candidates,

including the complainant, who were interviewed for the post declared any previous caretaking experience. My examination of the interview panel's scoring sheets for each candidate revealed that the panel had used an agreed marking scheme with an established score allocated to each of the areas considered relevant to the post. I noted that two panel members had amended and initialed the scores they had initially awarded to two candidates. However, I noted that the Board's procedural guidance allowed for initially assessed marks to be revised following further deliberation. I therefore found nothing wrong in the revision of marks by two panel members and I found no evidence of unfair treatment or discrimination against the complainant.

On the matter of the Board's correspondence I noted the assessment process which had been applied to each candidate had been explained to the complainant. She had also been informed that the panel had ranked the candidates in accordance with the total scores awarded and that the highest ranking candidate had been appointed. While I acknowledged that it may have been helpful had the Board explained to the complainant that there were no established criteria for the post, nevertheless I was satisfied that the complainant had been provided with an explanation of why she had been unsuccessful in the competition. Overall, I did not uphold the complaint. **(CC 90/03)**

Job Evaluation Process

In this case the complainant stated he was aggrieved at a job evaluation process, undertaken by the Western Education & Library Board (the Board), in respect of his former post of Assistant Chief Librarian. In particular, the complainant said he was aggrieved at the time taken to undertake the job evaluation and that he found the outcome of the resulting assessment of his post to be unfair and unreasonable. The complainant further stated that although he received arrears of pay backdated for a period of 8 years, the Board had made no adjustment, in the form of an interest payment, for the fall in value of the amount of arrears involved from the time they were due.

Having investigated this complaint I established that the relevant job evaluation process, which was introduced in January 1995 and which was ongoing, had been adopted by the five Education & Library Boards in Northern Ireland, following negotiation and agreement with the relevant Trade Union body. I also established that a phased approach had been adopted, on a sectional basis, due to the large volume of posts to be evaluated. Also, a provisional timetable had been drawn up by the Board on the understanding that where the job documentation reflected the remit of the post from 1995, backdated arrears would be paid accordingly. I further established that although the Board accepted that the evaluation process would take a number of years, the inbuilt protection date of 1995 ensured equality of treatment for all staff involved in the evaluation.

I considered the approach adopted by the Board to the job evaluation process to represent a decision taken in exercise of the Board's discretion in such matters. The terms of the legislation governing my Office do not authorise or require me to question such decisions, where I am satisfied there has not been maladministration in the decision making process.

With regard to the time taken to undertake the evaluation of the complainant's former post, I established that the Board did not treat the

complainant differently or less fairly that his colleagues in the Library Service across the five Boards.

In relation to the resulting assessment and related grading of the complainant's post, my investigation established that the complainant had suggested and agreed to a "read across" with similar posts of Assistant Chief Librarian level in the Belfast Education & Library Board, with a full understanding of the potential outcome of the evaluation of those posts.

I also established that there was no provision in the Board's Job Evaluation Scheme for the payment of interest to be made on arrears of pay. In these circumstances, and again taking account of the fact that the complainant had not been treated differently or less fairly that his colleagues in the five Education & Library Boards in relation to arrears of pay. I did not uphold this element of his complaint.

Overall, the facts and circumstances of this case did not lead me to conclude that the Board had been guilty of maladministration in its dealings with the complainant regarding the evaluation of his former post of Assistant Chief Librarian. Consequently, I did not uphold this complaint. **(CC 6/03)**

Failure to be Shortlisted

The complainant in these cases wrote to me because he was aggrieved that he had not been shortlisted for interview by the Southern Education & Library Board (the Board) for two posts of School Principal though he firmly believed he met the advertised criteria. The complainant said the criteria for the posts included the requirement that applicants should have at least 2 years management experience in a post with a minimum of 3 management allowances within the last 5 years. The complainant stated he had served as Vice-Principal for a 14 year period and had furthered his experience in taking up an initial 2 year secondment post within the Board, which had been extended for a further 2 year period by mutual agreement. The complainant said he therefore considered that he should at least have been afforded the opportunity to be interviewed for the posts and was disappointed, annoyed and distressed when notified that he had not been shortlisted. He considered the Board was responsible for the position in which he found himself because it had failed to inform him that his acceptance of the secondment post could later prejudice, or inhibit, in any way, his career choices.

Having investigated this complaint, I found no evidence of maladministration on the part of the Board in fulfilling its role and responsibilities in relation to the two competitions which caused the complainant to write to me. I established that, under the terms of the Board's Teaching Appointments Scheme, as approved by the Department of Education, the final decisions on the eligibility criteria that were formulated for the posts rested with the Schools' Boards of Governors. However, as a result of my investigation, I was satisfied the panels' decision not to shortlist the complainant was not a reflection on his ability or competence but was based solely on the fact that he did not have recent school experience and, therefore, did not satisfy one of the published essential criteria for both posts. I was also satisfied that the criteria were reasonable and job-related.

The Board told me it did not consider as feasible the complainant's suggestion that it was responsible for his current position. The Board further said, and I acknowledged, that, as it had no role in the decision making process about criteria for posts, it could not attempt to predict

criteria which Boards of Governors might determine for posts that could or might become vacant in the future. However, I did have sympathy in relation to the sentiments expressed by the complainant concerning his position in these recruitment competitions. I indicated to the Board's Chief Executive my view that, with hindsight, it would have been prudent for the Board, prior to the extension of the complainant's secondment after expiry of the initial 2 year period, to have brought to his attention the possible implications of a further period of secondment for career opportunities into the future and how he could be disadvantaged if he wished to pursue senior teaching posts, such as Principal.

I therefore recommended that it should be the Board's practice to ensure that staff did not take up secondments without being made aware that, in certain circumstances at least, they could ultimately be disadvantaged, particularly in relation to applying for senior teaching positions within schools. I considered that if the practice I was recommending was adopted, staff who were contemplating applying for secondment opportunities would then be fully informed in making the choice which they considered most appropriate to their individual circumstances. I was pleased to record that the Chief Executive of the Board agreed to consider this recommendation.

In the absence of any actual maladministration by the Board, there was no further action I could take in this case. **(CC 85/02; CC 157/02)**

Failure, on Two Occasions, to be Shortlisted for Post

The complainant in this case wrote to me because she was aggrieved that she had not been shortlisted for interview by the South Eastern Education & Library Board (the Board) for the post of Staff Development and Training Officer on the two occasions the post was advertised, through an initial internal trawl notice and subsequent public advertisement. The complainant firmly believed she met the advertised criteria.

In my detailed investigation of this case, I identified a fundamental weakness in the Board's selection process whereby it delayed, until shortlisting stage, its definition and agreement of the criteria to be met for selection for interview. I criticised this as a maladministrative action. In relation to the advertisement of employment opportunities by public bodies, I regard it as particularly important that prospective candidates can make an informed decision as to whether they are eligible to apply for a post, based on clear definitions that will in turn inform the panel's decision at shortlisting and interview stages. I expressed concern that the Board appeared to find it acceptable that the criteria against which candidates would be shortlisted were left open to interpretation right up to the commencement of shortlisting. I therefore urged the Board to introduce greater rigour and clarity into its processes and the documentation that supports its selection and recruitment procedures, with a view to eliminating this weakness.

I found that the maladministration by the Board was compounded when, unable to recommend a suitable candidate, following examination and consideration of the applications received in response to the internal trawl notice, it subsequently advertised the post publicly. I found as inexplicable and as constituting highly unsatisfactory administrative practice, the fact that the Board's public advertisement did not reflect the defined and agreed criteria which had been agreed by its selection panel, for shortlisting purposes.

Also, it is my firm view that any candidate who has had an application rejected from a competition is entitled to a timely, and cogent, explanation of the reasons for rejection. In this case, I found it necessary to criticise the Board's handling of the complainant's efforts to obtain clarification on why she had not been shortlisted for interview as having been unsatisfactory to the extent that it constituted maladministration. I had no doubt that as a consequence of this maladministration, the complainant experienced the injustice of unnecessary and significant frustration, annoyance, inconvenience and disappointment. This compounded the annoyance and disappointment I found the complainant had undoubtedly experienced when notified by the Board that her application "had not been successful". I also found it necessary to criticise the Board for several examples of unsatisfactory administrative practice, caused by its failure to make contemporaneous notes and records of discussions relating to several aspects of this particular recruitment exercise and by a contravention of its formulated procedures.

By way of redress for the injustice experienced by the complainant, I recommended that she should receive from the Board a written apology from its Chief Executive (CE), together with a consolatory payment of £400. Also, I informed the CE that I expected the Board to take the action necessary to eliminate from future selection processes the weaknesses/examples of unsatisfactory administrative practice I had identified in my investigation of this complaint. I was pleased to record that the CE accepted my recommendations. **(CC 49/02)**

The complainant also wrote to me with a similar complaint in relation to the post of Best Value Officer. Once again I found that the Board's actions amounted to maladministration. By way of redress for the injustice experienced by the complainant, I recommended that she should receive from the Board a written apology from its Chief Executive, together with a consolatory payment of £300. I was pleased to record that the CE accepted my recommendations. **(CC43/02)**

Refusal to Extend an Existing Transport Service to a Primary School and Ineligibility for School Transport Assistance

In this case, the complainant had requested the Western Education and Library Board (the Board) to extend the route of an existing school transport service for road safety reasons. She also stated that the nearest suitable primary school, was due to close within two years and that parents who decided to send their children to a school of their choice were not informed by the Board that transport would not be provided if the chosen school was not their nearest suitable school.

My detailed investigation of this complaint showed that the Board did consider the complainant's request but, having taken account of all the facts and circumstances, and tested them against the terms of the policy and guidance laid down by the Department of Education and also the terms of the underpinning statutory legislation, concluded that the circumstances of the case were not so exceptional to justify making an exception to its normal policy in relation to the extension of existing transport routes. The Board had, however, offered to move the bus boarding point to an alternative location, which it regarded as safer, and which was closer to the complainant's home. I was informed that the complainant had chosen not to avail of

this offer.

As a result of my investigation, I was satisfied that through correspondence and meetings with Board officials, which included the Chief Executive, that the complainant and her husband were provided with a reasonable opportunity to make representations to the Board as to the decision they would wish it to have reached on the matter of their request for an extension of an existing (concessionary) school transport service.

As a result of my investigation, it was clear to me that the Board had no statutory requirement to provide any transport service for the complainant's children but, in order to facilitate parental choice, had allowed them to use an existing service on a concessionary basis. Furthermore, the Board had offered to move the excising bus boarding point to what it regarded as a safer location. In doing so, I considered that the Board had made reasonable efforts to facilitate the complainant's parental choice of primary school and also to allay the complainant's concerns about the safety of the existing boarding point. I therefore urged the complainant to give serious consideration to the Board's offer as the alternative boarding point being offered appeared to me to be a safer and more satisfactory option.

The complainant also contended that she and other parents who decided to send their children to a school of their choice, instead of to the nearest school distance wise, were not informed by the Board that by doing so they would not be eligible for school transport assistance. My investigation has shown that the Board notified the complainant's husband that it would not be able to extend the present bus service to and from the primary school of their choice and, in 1997, also took particular care to publicise transport information. My Office was provided with copies of leaflets which were distributed to schools and parents at that time. I was satisfied that any parent who read them should have been very aware of the Board's transport policy. I would have to say that I considered the Board to have produced evidence which rebutted this element of the complaint and, consequently I did not uphold it.

Overall, my investigation of this complaint did not lead me to conclude that the Board's handling of, and decision making process relating to the complainant's request for an extension to an existing school transport service was attended by maladministration. I was satisfied that the Board had managed this case in accordance with its policy, and the underpinning legislation on the provision of school transport. **(CC 115/02)**

EQUALITY COMMISSION FOR NORTHERN IRELAND

Decision to Withdraw Assistance for Dispute to the Industrial Tribunal

In this case the complainant stated that the Equality Commission for Northern Ireland (the Commission) had granted legal assistance, in September 2000, in support of his dispute to the Industrial Tribunal against his previous employer. In January 2003, the Commission withdrew its assistance.

My investigation established that the Commission made clear to the complainant at the outset its right to terminate its assistance if it so decided. The complainant also signed an acknowledgement in which he accepted

the terms and conditions of assistance. I established that in November 2002 the complainant's legal representative had been informed of the fact the Commission was "currently undertaking a review of all assisted cases". The Commission notified the complainant in January 20003 that the assistance was being withdrawn and he was given the opportunity to have that decision reviewed. At the complainant's request and, in light of representations which his legal representative put forward on his behalf, the decision was re-examined by the Commission, in February 2003. The outcome was an endorsement of the original decision. My investigation established that the Commission did have discretion to review each case where assistance was being provided with a view to determine whether that assistance should continue or be withdrawn.

Overall, having carefully examined the documentation which I requested and obtained from the Commission, I did not find the Commission's decision making process to have been flawed by maladministration. I was satisfied that the Commission had managed this case in accordance with its policy and underpinning legislation on the provision of assistance (financial and/or otherwise). In other words, I was satisfied that the Commission's decision was not contrary to, or inconsistent with its policy. Consequently I did not uphold this complaint. **(CC 181/02)**

HEALTH & SOCIAL SERVICES BODIES

Refused "Term-Time" Working Arrangements

The substance of this complaint relates to the complainant's employment with Belfast City Hospital Trust (the Trust), as an Enrolled Nurse in the Intensive Care Unit of Belfast City Hospital, in that she had applied for, but had been refused "term-time" working arrangements. The complainant felt that she had been unfairly treated in being excluded from the term-time arrangements and registered a complaint with the Trust through its internal grievance procedure. The complainant also felt that her complaint had been mishandled and raised her concerns with me.

In order to ensure that I had a full understanding of the background to and the detail of this complaint, I directed enquiries to the Chief Executive of the Trust. The Director of Personnel replied on his behalf and I carefully examined both his comments and pertinent documentation submitted. I directed that my Investigating Officer interview the Director of Personnel, to more fully explore the circumstances of the case. The complainant was also interviewed. All the information elicited from these interviews was collated and, together with all relevant documentation, was presented to me for consideration.

My investigations revealed that the Trust had utilised an unsatisfactory selection process for term-time working, that there had been unreasonable delay in dealing with the complainant's grievance and that she had not been informed of the outcome of the Stage 2 Grievance Procedure which she had initiated. I thus upheld all three aspects of her complaint against the Trust, and although I accepted that a difficult staffing situation existed, I considered the absence of a clear policy and procedures combined to create the unacceptable situation which had developed, including the delays and errors in dealing with her grievance. I was pleased to note the Trust's willingness to accept the failures in its actions and that

it had introduced a new policy designed to address such problems as those which came to light in the investigation of this complaint.

I recommended that the Trust should give consideration to staff members' individual domestic and other relevant circumstances in relation to the allocation of term-time working and that it should strictly adhere to its published grievance procedures in all future cases. In recognition of the maladministration identified in this case and the consequent injustice caused to the complainant, I recommended that the Trust issue an apology to her together with a consolatory payment of £1,000. **(CC 8/03)**

Handling of Application for Re-Grading

The complainant was dissatisfied with the outcome of the Foyle Health and Social Services Trust's (the Trust) grievance procedure which dealt with his application for re-grading from Staff Nurse Grade D to Grade E. He claimed that his hearing was not a fair one in that all the detailed evidence he presented at both Stages I and II of the procedure was not verified in any way by his line manager. The complainant also felt that there was doubt about the impartiality of the decisions taken at Stages I and II because both stages involved officers employed by the Trust and the decision would, therefore, undoubtedly lie in the interests of the Trust.

My office has a very limited role in relation to pay and grading issues which I generally regard as more appropriate to industrial relations machinery. There are also limitations as to the extent to which I can become involved in a complaint regarding the outcome of a grievance procedure. Specifically I cannot question the decision of a grievance panel unless there is clear evidence of maladministration in the process, for example where the complainant was not afforded an adequate opportunity to present his case or the panel failed to take account of all relevant information.

My investigation examined the records pertaining to the Trust's handling of the complainant's grievance. The evidence showed that the complainant had an adequate opportunity to make the case for re-grading from Grade D to Grade E and that the panels deliberations had been based on comprehensive information. I therefore had no reason to question the Trust's decision that the appropriate level for the complainant's post was Grade D.

On the matter of the detailed evidence presented by the complainant at both stages not being verified in any way by his line manager, I noted that there was no requirement in the Trust's Grievance Procedure for a panel to seek verification of evidence. With regard to the complainants concern that both panels involved officers employed by the Trust, I was satisfied that the panels were constituted in accordance with the specified requirements and there was no requirement for panel members to be other than officers of the Trust. I concluded that there was no evidence to show that the complainant did not have a fair hearing or that the process followed by the Trust in reaching its decision was flawed by maladministration. I did not uphold the complaint. **(CC 37/03)**

Not Appointed to Post of GAA Accounts Payable

The complainant claimed to have suffered an injustice as a result of maladministration by the Altnagelvin Hospitals Health & Social Services Trust

(the Trust) in that following an interview she was not appointed to the post of GAA Accounts Payable. She questioned the short listing procedures and felt the arrangements for interview were biased and unfair and constructed to keep her out of the post. The complainant stated that she had been acting in the position for one year, felt she met all the criteria and had performed well at interview. She further stated that one of the interview panel members had telephoned in sick on the day of the interview and his replacement had openly pushed the other successful candidate and had groomed and coached her prior to the interview. Subsequent investigations by the complainant were blocked by personnel in that she was refused guidelines or procedures surrounding the code of promotion and employment. She also felt the feedback interview she had with the whole panel rather than just the chairperson was designed to intimidate her. At this interview she did not receive the information she requested regarding markings nor was she given any information on any appeals or grievance procedure.

Having investigated this complaint and examined relevant background papers I found that the complainant had performed well at interview and was placed as the reserve candidate. An analysis of the marks awarded to the respective candidates revealed that the panel scored the complainant higher than the successful candidate in one of the three assessment categories; however she scored lower in the other two. I found nothing which I could interpret as running contrary to the Trust's assertion that the appointment was made in accordance with the merit principle and therefore could not uphold this aspect of the complaint.

As regards the shortlisting procedure, while I accepted that the complainant believed this was in some way flawed, the fact that she was included among the short listed candidates satisfied me that she had not suffered from this aspect of the case. The replacement panel member, who was one of the referees named by the complainant in her application form, denied that she had coached or groomed any candidate. From my investigation of the circumstances surrounding the replacement of one panel member with another I could see no reason to criticise the Trust for proceeding with the interviews and was unable to uphold this element of the complaint.

In relation to the complainant's belief that she was refused guidelines or procedures surrounding the code of promotion and employment I found no reason to believe that they were deliberately withheld from her or that any attempts were made to block her enquiries.

As regards the complainant feeling intimidated by the feedback process, whilst I accepted that this was not the outcome sought by the Trust, I recommended that it should take account of the complainant's experience in any review of the effectiveness of this process. In relation to the complainant not receiving information regarding markings, I considered it a discretionary matter for the body itself to decide what information should be disclosed, subject to any relevant provisions of the Data Protection Act. I also noted the Trust's comment that the complainant did not raise the issue of a further level of complaint at the feedback meeting.

In the absence of any maladministration on the part of the Trust I did not uphold this complaint. **(CC 124/02)**

Failure to Conduct a Recruitment/Selection Exercise in Accordance with Normal Procedures

In this case, the complainant alleged she had sustained injustice as a result of maladministration by the Causeway Health and Social Services Trust (the Trust) because of its failure to conduct a recruitment/selection exercise in accordance with normal procedures.

Following a detailed investigation of this complaint, I did not uphold its main elements. One element of the complaint which did concern me, however, was the fact that the complainant had learned from a Social Worker colleague that her temporary post was on offer to the first reserve candidate, even though she (the complainant) was later assured of a temporary post until the end of her contract, in January 2002. My investigation established that the problem had arisen because the Trust had not provided a mechanism to ensure that a member of staff, albeit temporary in this case, was informed that he/she may have to transfer because the post he/she occupied was being offered to another person. I considered it disappointing that the need for such communication did not occur to the Trust's managers involved in this case and I found the failure to provide such communication to have constituted maladministration.

Although I acknowledged the point made by the Trust that the complainant could have retained her temporary Social Worker post on the Rehabilitation Team until the end of her contract in January 2002, had she decided not to resign, I found that embarrassment was caused to the complainant as a result of a clear failure by the Trust to communicate appropriately to her the potential impact of an offer of appointment to another candidate, of the post she occupied. It was against this background that I concluded that the complainant should receive, by way of redress, a letter of apology from the Trust's Chief Executive, together with a consolatory payment of £200. I am pleased to record that the Chief Executive accepted the above redress recommendation. **(CC 61/02)**

Decision Not to Proceed with Proposed Presentational Element of Interview

In this case the complainant contended that, as a consequence of the Down Lisburn Health and Social Services Trust's (the Trust) failure to inform her prior to the scheduled time for her interview on 1 October 2002, of its decision not to proceed with the proposed presentational element of the interview, for the post of Senior Dental Officer – Paediatrics (2 posts), she was "too distraught" to proceed with her interview.

Although the Trust readily acknowledged to me its failure in the handling of the selection process, I found it very unfortunate and disappointing that it (the Trust) had not considered the possibility of offering the complainant another interview, notwithstanding her clear oral withdrawal statement on the date of the interview. I say this because I would have expected the Trust to have recognised that had the complainant proceeded with the interview on 1 October 2002, she would have been participating on an unequal basis against the other three candidates who were aware prior to the interview date that the format of the interview and selection process had been altered.

Overall, it was clear to me that had the Trust informed all of the candidates officially of its decision to cancel the proposed presentational element of the

interview, this complaint would have been avoided. Having said that, I found no evidence to suggest that because the complainant was an external candidate, the Trust had knowingly treated her differently from the other candidates (all of whom were internal). Furthermore, given that there were two posts and only four candidates, I could not say authoritatively that, even if the complainant had been interviewed, she would have been one of the two successful candidates. Consequently, I could not become involved in the question of potential loss of earnings. However, I was satisfied that the complainant had experienced the injustice of anxiety and frustration as a consequence of the maladministration I identified in my investigation of this complaint. In recognition of the injustice, the Trust's Chief Executive agreed to issue a letter of apology to the complainant, together with a consolatory payment of £500. I also recommended that the Trust reviews its procedures for handling selection processes, against the backdrop of weaknesses which I identified in the course of my investigation of this complaint. **(CC 123/02)**

Recruitment of Lead Nurse - Mobile Coronary Care Service

The complainant wrote to me because she was dissatisfied about the actions of the Sperrin Lakeland Health and Social Care Trust (the Trust) with regard to its recruitment of nursing staff for posts of Lead Nurse-Mobile Coronary Care Service. The complainant said she had been informed that she was qualified for such a post and it would not be necessary for the Trust to interview her. She further stated that, although the Trust was asked to increase the grade of the posts of the cardiac staff concerned, including her post, to reflect the additional responsibility of their new role, this request was refused.

The complainant said the Trust advertised the posts of Lead Nurse-Mobile Coronary Care Service and she completed an application. However, she subsequently withdrew her application. Despite the withdrawal of her application, the complainant was aggrieved at the fact that she was interviewed by the selection panel, acting on behalf of the Trust, in this selection process.

Having investigated this complaint I established that a variety of options, to meet the staffing needs of the Mobile Coronary Care Service and to recognise the additional responsibilities being asked of the relevant nursing staff, had been proposed by the Trust and discussed with the Medical Cardiac Nursing Team. I was satisfied it was proper, and in keeping with equal opportunities and fair employment practices and legislation, for the Trust to advertise posts it required at the higher Grade, which involved the promotion of some members of its staff, who were both eligible and interested in working in that higher grade, and to select such staff based on merit, judged according to the selection criteria and the performance of those applicants at interview. From my investigation of this complaint, it appeared to be the case that, overall, the complainant was regarded by the Trust as suitably qualified to take on the higher role. However, my investigation did not produce any definitive evidence that the complainant was given an undertaking by the Trust that it would not be necessary to interview her for the higher role, and, therefore, I did not uphold this element of the complaint.

My investigation established that the Trust accepted that the complainant should not have been asked to attend the relevant selection interview, given that she had

withdrawn the job application she had lodged with the Trust, and that this mistake had been acknowledged to the complainant, both at meetings and in correspondence, by the Trust's Medical Services Director and the Director of Acute Hospital Services.

I concluded that the actions of the selection panel in this case were inappropriate and in contravention of good personnel and recruitment practices, to the extent that they constituted significant maladministration. I considered that maladministration to have been compounded by the actions of the Trust's Personnel Service in issuing a letter to the complainant which informed her that the appointments panel had nominated her as a reserve candidate for the posts involved. I was concerned at the fact that the Trust's Personnel Service had failed to recognise that the complainant should not have been reintroduced to the competition, following her notification to the Trust of her decision to withdraw her job application. I was however satisfied that those actions of the Trust of which I was critical were not attended by any ulterior motive or premeditated malice. Also, I acknowledged that prior to the complainant submitting her complaint to me, the Trust had already informed the complainant that it accepted she should not have been asked to attend the interviews, given that she had already informed it she was withdrawing from the competition.

I was satisfied that as a consequence of maladministration, the complainant experienced injustice in the form of having had her expectations raised inappropriately, only to be subsequently dashed. She also experienced disappointment, embarrassment, annoyance and distress.

The question of redress always presents some difficulty. The primary objective is to put the aggrieved person in the position he/she would have been in had the maladministration not occurred. Clearly, that was not possible in this case. Having regard to all the circumstances and to the facts of this case, and based on my overall findings on the core element of this complaint, I recommended that the complainant should receive, by way of redress, a detailed written apology from the Trust's Chief Executive and a consolatory payment of £750. I am pleased to record that the Trust accepted my recommendation. **(CC 161/02)**

LOCAL COUNCILS

Handling of a Grievance in Relation to a Health and Safety Issue

In this case the complaint related to the handling by Newtownabbey Borough Council (the Council) of a grievance in respect of the health and safety implications of leaving a vehicle "unattended" whilst carrying out the duties of a bin man. The complainant, who was employed by the Council as a driver on a two-man trade waste operation, alleged his complaint (that it was unsafe to leave the waste vehicle unsupervised when helping with the movement of bins) had been subject to avoidable delay, inadequate, contradictory and misleading advice and a refusal to answer simple and reasonable questions.

My detailed investigation found that the Council had responded quickly to the complainant's grievance. At a meeting with the complainant and the Trade Union/Safety Representative the Council's Cleansing Manager, having previously consulted with an adviser from the Health

and Safety Executive for Northern Ireland, had supplied a spare key to lock the vehicle in circumstances where there was felt to be a risk to security. Although the complainant was dissatisfied with this measure, I considered that a decision on an appropriate remedy for the health and safety issue was a matter for the discretion of the professional officers concerned. I found that additional steps had been taken by Council Management to provide reassurance to the complainant, including consultation with the Police Service and the Health and Safety Executive for Northern Ireland, completion of a comprehensive risk assessment on the Trade Waste operation and consultation with legal advisers, all of which measures indicated that the Council procedures were compatible with safety and legal requirements.

Although I found no evidence of maladministration by the Council I suggested that consideration should be given to revising the Cleansing Section Code of Practice to incorporate the advice on vehicle security supplied to the complainant. I also recommended that consultations currently ongoing between the Council and Trade Unions on establishing a Health and Safety Committee should consider whether the grievance procedure, whose time limits the Council had found it necessary to depart from in order to resolve all of the issues raised in this case, should continue to have a role in resolving staff health and safety concerns. Overall, however, I was unable to uphold the complaint.
(CC 75/02)

Handling of an Application to Purchase Land

In this case the complainant alleged he had suffered injustice as a result of maladministration by Newry and Mourne District Council (the Council). He had applied to purchase a small piece of land from the Council primarily to give him vehicular access to his property but the Council had refused to accede to his request. It was his understanding that in relation to acquisition/disposal of land a decision is only to be taken at a Full Council meeting and yet in a letter to him dated 20 June 2002, by the Council's own admission, this did not happen.

My investigation revealed that, since June 2001, under the Council's policy and procedures all requests to purchase land/property, together with recommendations from the relevant Director, are now tabled at the Council's Finance Sub-Committee and its decision is then brought to the monthly meeting of the Council. However the complainant's initial request was made in August 1998 when the Council's practice was to refer such requests to the relevant Department. While it appeared that, under the Council's former practice, recommendations in respect of disposal of surplus land were referred to a main Council or Committee meeting the position in relation to non-disposal of land was less clear.

I noted that the complainant was concerned to establish whether his request had been considered at a full Council meeting and wrote to the Council on four occasions, the first being on 17 July 2001 asking to receive a copy of the relevant minutes. In a reply dated 20 June 2002 the Council stated that the complainant's original request had not been considered at a Council meeting. Although the complainant had received a verbal explanation of the new policy from a Council official who visited him at his home, he remained unclear about the nature of the former policy. I found it regrettable that the Council did not take the opportunity to provide the complainant with a clear written

explanation of the effect of old and new policies following his letter dated 17 July 2001, which was close to the time of introduction of the new policy. This would, in my view, have clarified Council procedures much sooner for the complainant and spared him much frustration.

Overall I could not say that the Council was wrong, in the period 1998 to 2001, not to have full Council consider the complainant's requests since this appeared to have been in accordance with Council policy and practice at the time. I found no evidence of maladministration on the part of the Council in the reaching of its decision. I was pleased to note that the Council provided the complainant with a copy of the relevant minute relating to a Finance Sub-Committee meeting of 19 September 2001 confirming that the Council did not intend to sell the land. In recognition of the frustration experienced by the complainant in pursing specific information relating to his initial request to purchase the land I recommended that the Chief Executive provide him with a written apology. The Chief Executive accepted my recommendation.
(CC 55/02)

Berthing Charges at Carnlough Harbour

The complaint raised with me concerned the complainant's part-ownership of a vessel berthed at Carnlough Harbour and the related fees charged by Larne Borough Council (the Council) for this amenity. In June 2001, when notified of increased berthing charges at the Harbour, the complainant had raised his concerns with the Council at the size of the increase in the fees, which he maintained were unreasonably high. The complainant also claimed that although he had visited the Council's offices on 1 June 200l, to discuss the raised berthing charges, no Council officer had been available to speak to him at the time of his visit and the Council failed to subsequently contact him, despite a promise so to do. The complainant further asserted that the Council failed to reply to a letter of 7 September 2001, in which he had again questioned the increase in berthing fees.

In order to ensure that I had a full understanding of the background to the complaint, I arranged for enquiries to be made of the Chief Executive of the Council and for background documentation to be obtained and examined. My Investigating Officer interviewed both the complainant and appropriate Council officers and I took consideration of the information elicited at these meetings. I directed enquiries regarding berthing fees to Harbour Masters in various ports where facilities are offered to vessels of a nature similar to the complainant's. All of the evidence gathered during my investigation was carefully considered and enabled me to set down the findings and reach the conclusions contained in my report.

I found that in respect of its right to levy berthing fees and in the amount of fees which was set, the Council had acted within its powers and in a reasonable and proper manner. I found, however, that there had been failures in the recording of and response to the complainant's concerns which amounted to maladministration. I fully accepted that there was no malicious intent on behalf of any Council staff in relation to the failures to reply to the complainant, but rather that the failures arose from unfortunate administrative lapses. I was pleased to note that the Council was reviewing its administrative procedures, including complaints procedures. Whilst not upholding the complaint in respect of the berthing charges, in view of the

understandable annoyance caused to the complainant by the failures in the response to concerns, I recommended that the Council issue a written apology to the complainant. **(CC 97/01)**

Unfair Treatment in Job Interview

In this case the complainant stated that her interview for the post of Dog Pound Assistant with Carrickfergus Borough Council (the Council) was conducted by two panel members whilst all the other candidates were interviewed by a complete interview panel of three people. She could not understand therefore how the interview panel had arrived at the marks which were awarded to her. She also complained that during a social evening out she was told she had been unsuccessful by a member of the Council's staff prior to having been officially notified of the outcome of the competition.

My investigation revealed that the complainant was the first candidate to be interviewed for the post. However, at the appointed time the third member of the interview panel had failed to arrive and the remaining two panel members decided to proceed with the interview. Following the complainant's interview the absent panel member arrived and proceeded to take part in the interview process for all the other subsequent candidates having failed to be present during the complainant's interview.

What I found even more disturbing was the fact that the absent panel member had completed a scoring sheet for the complainant awarding marks to her under each category even though she had not been present during the interview. The Council's Chief Executive explained that the Council did not have a policy to deal with the rare situation where a panel member is absent and in this case it had endeavoured to minimise any inconvenience to candidates by keeping to timescales. On the matter of the absent panel member having awarded marks to the complainant, the Chief Executive explained that following a discussion by all three panel members the complainant's marks had been increased by approximately 50% to compensate. While I recognised that the panel may have been well-intentioned and concerned to spare the complainant the inconvenience of a re-arranged interview, I nevertheless regarded its actions as incompatible with good recruitment and selection practice which amounted to maladministration.

On the matter of the unofficial notification that the complainant had been unsuccessful in the competition as relayed to her by a Council employee during a social evening out, I found that it was quite unacceptable for the outcome of a recruitment competition to be communicated to a candidate in this manner. The Council's Chief Executive initiated an enquiry into the incident and he undertook to remind Council staff of their contractual obligations on the need for confidentiality in such matters. I did not uphold the more minor issues raised by the complainant.

Overall, I concluded that the complainant had suffered an injustice as a consequence of maladministration by the Council. I recommended, and the Chief Executive agreed to issue to the complainant a letter of apology, together with a consolatory payment of £500 for the distress, disappointment and embarrassment which the matter had caused her. **(CC 140/02)**

Insufficient Information in Public Health Notice

In this case the complainant contended that, as a consequence of North Down Borough Council's (the Council) failure to inform him, or provide him with sufficient information in its Public Health Notice, dated 21 February 2002, about the estimation of the area/dimensions of repair work considered necessary to abate the public health nuisance(s) to his property, he was subsequently awarded Repair Grant aid assistance from the Northern Ireland Housing Executive (the Executive) of only £48.12, whereas the actual repair bill amounted to £412.00. It is the position that the award of Repair Grant aid is considered by the Executive only where the local District Council has served a Statutory (Public Health) Notice.

The facts of this case, as established during my investigation, led me to the conclusion that the Council's processing of the complainant's request for a Statutory Notice was attended by administrative weaknesses. I found, albeit on a strong balance of probability, that the complainant was not provided with sufficient information in relation to the subject of additional works and thereby, with an important adverse result, in that he was denied the opportunity to make a properly informed decision on whether to request the Council to reconsider its Public Health Notice and/or proceed with the repair work, additional to that referred to in the Public Health Notice issued to him on 21 February 2002. Unfortunately, given that the additional remedial works had already been completed, it was not possible for the Council to determine beyond doubt whether those (additional) disrepairs would have been prejudicial to the complainant's health to the extent that it (the Council) would have considered it necessary to withdraw its initial Public Health Notice and issue a fresh Notice. It was also the case that there was no evidence to demonstrate that the additional remedial works carried out by the complainant's contractor were unnecessary. However, the award of grant aid assistance by the Executive to the complainant could be considered only in relation to those minimum works regarded by the Council as being necessary to abate the statutory nuisance described in the Public Health Notice, dated 21 February 2002. Nevertheless, I had no doubt that the complainant experienced annoyance, disappointment and inconvenience as a consequence of the administrative weaknesses highlighted by my investigation. Overall, I concluded that the complainant should receive, by way of redress, a letter of explanation from the Council's Chief Executive, together with a consolatory payment of £100. **(CC 108/02)**

Handling of Application to Tender for a Contract

In this case the complainant expressed his dissatisfaction with the manner in which Down District Council (the Council) dealt with his application, dated 11 October 2001, to tender for a contract for providing and maintaining kennels for the impounding of stray dogs, on behalf of the Council. The complainant disagreed with the Council's decision to award the contract to Mrs [A].

From my detailed investigation of this complaint, it was clear to me that the Council awarded the contract to Mrs [A] after very careful consideration of her tender. I noted that in the course of its consideration, the Council had sought Senior Counsel's opinion. In addition, probity and fairness required that contracts must be awarded on the basis of merit, including the satisfying of stipulated criteria. Also, I realised that the

Council, like all other publicly funded bodies, has finite resources and was therefore required to manage its budgets within the funds allocated. Although I recognised that the Council's tender document clearly states that the "Council does not bind itself to accept the lowest or any tender", equally I had to recognise that, in this competition, the Council would have required a very justifiable reason for not awarding the contract to Mrs [A], the acceptability of whose tender had been tested with Senior Counsel. I was very conscious that the award of a public sector contract involved making a discretionary decision, the outcome of which was going to be accepted by one applicant and (possibly) disputed by the other(s). Overall, therefore, I was satisfied that the complainant's tender was subjected to the same criteria as the other two tenders and was ultimately assessed on a comparable basis (in what was a renewal tendering exercise). In the absence of evidence of maladministration I had no grounds on which to challenge the Council's decision-making process. Consequently, I did not find that the complainant had suffered a personal injustice as a result of the Council's actions. **(CC 178/02)**

Handling of a Food Complaint and Loss of the Food Sample Concerned

In this case the complainant stated she discovered a metal screw in a sausage that she was eating, which resulted in an injury to her mouth, and she subsequently made a food complaint to Strabane District Council (the Council). The complainant said she produced the food concerned and the foreign matter to the Council and asked that her complaint should be formally investigated. The complainant also said that, on one of the many occasions on which the Council was contacted to ascertain whether progress had been made on her complaint, she was informed that the food specimen she had provided had "gone missing" and could not be traced. She stated she was subsequently notified by the Council that it considered it would have difficulty in taking a successful prosecution under the appropriate Food Safety legislation, even if the metal screw had still been available. The complainant further stated she failed to understand how this situation had arisen and she contended that the Council had either not followed its procedures in her case or that the procedures in place were not sufficient to enable food complaints to be properly investigated and to allow complainants to be kept informed of developments.

Having investigated this complaint I established that the Council had procedures in place for dealing with food complaints. However, I found that there were several breaches by the Council of those procedures. I also found that, due to an error, the Council had forwarded, to the wrong intended recipient, for analysis, the crucial evidence provided by the complainant. I further found it necessary to express concern about a lack of control by the Council in relation to samples which it forwarded for analysis. Also, I asked the Council's Chief Executive (CE) to review the Council's procedures for informing complainants of progress in relation to food complaints they had made, with a view to improving these.

I concluded that in its handling of the food complaint it received from the complainant, and in its subsequent dealings concerning this matter, the actions of the Council had been flawed by examples of unsatisfactory administrative practice and maladministration, which had caused the complainant to experience the injustice of inconvenience, annoyance, frustration and disappointment. I considered that, as an

overall consequence, the Council failed to provide the complainant with the standard of service it seeks to provide and which members of the public are entitled to expect. Consequently, I fully appreciated why the complainant considered it necessary to refer her complaint to me.

By way of redress I recommended that the complainant should receive from the Council a consolatory payment of £300 together with a written apology from its CE. In making this recommendation, I took into account the fact that the complainant had already received an apology from the Council's Chief Environmental Health Officer and from the CE for any distress caused to her by the loss of the food sample. However, I considered that the further apology which I recommended should relate to the Council's overall handling of the food complaint submitted by the complainant. I was pleased to record that the CE, in accepting my recommendations, informed me that all of the specific issues of concern which I had raised in this case had been relayed to the Council's Environmental Health department for the purpose of an overall review of its procedures and practices for dealing with food complaints. **(CC 175/02)**

Failure to Undertake Necessary Checks/Inspections of Adaptation Works

In this case the complainant said he had carried out at his dwelling a number of adaptations, which were the subject of Building Control approval. The complainant said he understood that works which are the subject of Building Regulations approval must be inspected by Craigavon Borough Council's (the Council) Building Control Services department on several occasions, and at various stages of their completion, to ensure that they conformed to the specification/terms of that approval and that they had been undertaken to the Council's satisfaction. The complainant claimed that work to his dwelling had been inspected on only one occasion by a member of the Council's Building Control staff.

The complainant contended that the failure by the Council to undertake the necessary checks/inspections of the adaptation works to his dwelling "allowed" the contractor involved to carry out substandard works.

Having investigated this complaint I established that, under the terms of Building Regulations, the Building Control Services departments of District and Borough Councils in Northern Ireland are responsible for ensuring that buildings, and adaptations thereto, conform to construction standards which include standards on health, structural stability, fire safety, energy conservation and accessibility. I also established that these standards are enforced through site inspections undertaken at various stages as work progresses and that there is a legal obligation on any person causing works to be carried out to inform the Building Control department of the relevant Council at the stages of the statutory inspections so that site visits may be undertaken.

I also established that, although only one or two inspections would normally be required for a scheme of the type and size as that undertaken by the complainant, a member of the Council's Building Control staff inspected, on four separate occasions, the adaptation works being carried out to the complainant's dwelling. I found that, as there are no provisions in the Building Control Regulations regarding the quality or standard of workmanship, these matters do not come within the jurisdiction of Building Control Services.

I concluded that there was no evidence of maladministration by the Council, either in its dealings with the complainant, or in the carrying out of its statutory responsibilities in this case. Consequently, I did not uphold this complaint. **(CC 23/03)**

Handling of a Recruitment Exercise for the Position of Duty Officer

In this case the complainant was most unhappy with Ards Borough Council's (the Council) handling of a recruitment exercise for the position of Duty Officer. He believed that he had demonstrated in his application form that he met both the essential and the enhanced criteria and therefore should have been interviewed for the position.

My investigation of this complaint established that the Council's management of the recruitment exercise was less than satisfactory in that it had failed to include in its advertised essential criteria the requirement of supervisory experience which applicants needed to have. It also introduced an enhancement to the criteria without advising applicants of the enhancement that would be used. In addition the selection panel in carrying out the shortlisting exercise applied a degree of flexibility to some applications which it did not accord to the complainant's application.

I was satisfied that the Council's poor handling of this particular recruitment exercise amounted to maladministration. In recognition of the injustice of disappointment which the complainant was caused by its handling of the exercise, the Council agreed to issue a letter of apology to him together with a consolatory payment of £500. **(CC 94/01)**

Duties and Salary Proper to Post of Clerk/Word Processor Operator

In this case the complaint related to the duties and salary proper to the post of Clerk/Word Processor Operator (C/WPO) with Belfast City Council (the Council) and with the Council's response to the complainant's expressed concerns. The level of payments made by the Council to temporary staff performing C/WPO duties also formed an element of the complaint.

My investigation of this case included direct enquiry to the Chief Executive (CE) of the Council and to the Oxford, Cambridge and Royal Society of Arts examinations body. I also made enquiries of the Northern Ireland Public Service Alliance, GMB, Unison, and the Amalgamated Transport and General Workers Union. My Investigating Officer conducted interviews with the complainant and with appropriate Council officers. All the evidence elicited during the investigation was subjected to careful examination and informed my findings and conclusions.

My investigations persuaded me that the Council had acted reasonably and properly in assigning audio-typing duties to the complainant and that payments made to temporary staff by a recruitment agency were outside the Council's control. I found, however, that correspondence from the complainant and her agents had not been properly addressed by the Council and there had been undue delay in responding to a simple request from the complainant for a job-evaluation. I was pleased to note the CE's acceptance of the findings and conclusions in my report and his compliance with my recommendation that an apology and a consolatory payment be issued to the complainant. **(CC 86/01)**

NORTHERN IRELAND HOUSING EXECUTIVE

Delay re Minor Works Assistance Grant Aid

In this case the complainant contended that, as a consequence of the time taken by the Northern Ireland Housing Executive (the Executive) to process an enquiry, and subsequent application, for Minor Works Assistance grant aid, her mother-in-law had died before she could benefit from new windows and a new door.

Following the most careful consideration of, and reflection on, all of the facts, circumstances and issues which emerged during my detailed investigation of this complaint, I could not say that the Executive had been guilty of maladministration in applying the terms of the current primary legislation and related policy and procedures governing the making available of Minor Works Assistance grant aid to owner occupiers. Unfortunately, when the complainant's mother-in-law died on 11 December 2001, the qualifying conditions for the grant aid no longer existed.

However, and notwithstanding the above, the facts of this case, as established during my investigation, led me to conclude that the Executive's administrative handling and processing of the complainant's letter dated 14 February 2002 had been less than satisfactory to the extent that it constituted what I consider to have been unsatisfactory administrative practice. In this context, I had no doubt that the complainant experienced additional and unnecessary anxiety and annoyance, on foot of two bereavements in the family. It was against this background that I concluded that the complainant should receive, by way of redress, a letter of apology from the Executive's Chief Executive. I am pleased to record that the Chief Executive accepted my recommendation in this regard. I also recommended that the Executive should consider revising its formal application form for grant aid to include a section for appointees. The Executive agreed to take this recommendation forward. **(CC 64/02)**

Unsuccessful in Internal Promotion Competition

The complainant in this case alleged that there was a wide disparity in the range of marks awarded to candidates by the five interview panels in an internal Northern Ireland Housing Executive (the Executive) promotion competition. This resulted in thirty candidates with lower marks than him being listed for promotion. The complainant also contended that the marks awarded to him by the interview panel were lower than they should have been and in regard to one particular question the marks were completely omitted. He stated that he had invoked the Executive's internal appeal process but that he remained dissatisfied with the outcome.

Firstly, I would like to make clear that it is not my role to try to second guess the opinion of members of an interview panel who have been present during a promotion board interview. Neither is it my function to re-run an internal appeals process. My role in this type of complaint is to satisfy myself that an individual has been given a fair opportunity to have his/her grievance investigated.

Having said that, and in the interests of thoroughness of the investigation, I examined the scoring sheets completed by the panel in respect of the complainant's performance at interview. My examination did not lead me to form the opinion that the complainant's

answers during the interview had been undermarked by the panel. Nor could I concur with the complainant's view that marks in respect of a specific question had been omitted. I was satisfied that this element of his appeal had been seriously considered and addressed during the internal appeal process.

I further established that there was a variance in the range in the marks awarded by the interview panels. However, in my examination of a sample of candidate scoring sheets I did not identify evidence of any perverse application of the scoring system by any of the interview panels. I found that the Executive, in recognition of such a possibility in a large competition, had applied a moderating process as a means of 'equalising' the results of individual interview panels. I confirmed that this method has been used by other public bodies in large scale promotion competitions. Overall I found that the Executive, in managing the promotion board, had taken reasonable steps to ensure uniformity between interview panels and that the method used to 'equalise' the results of the individual panels' lists was acceptable. Consequently I did not uphold the complaint.
(CC 136/02)

Failure to Take Necessary Action Against Neighbours

In this case the complainant contended that the Northern Ireland Housing Executive (the Executive) had failed to take the necessary action against his neighbours to ensure his right to the quiet enjoyment of his home. In particular, the complainant emphasised his sense of grievance regarding the Executive's decision not to evict Mr [A] and Mr [B], who resided in the flats above him, and who allegedly subjected him to excessive noise and verbal abuse.

My investigation established that the Executive had given this complaint serious consideration, which included seeking evidence from the Police Service of Northern Ireland. I was satisfied that I had no basis on which to challenge the Executive's decision that it had insufficient evidence to take legal action against Mr [A] and Mr [B]. As I was satisfied that the Executive had not neglected its responsibilities in dealing with the complainant's allegations, I was unable to uphold his complaint. It was clear to me that key to the solution of the complainant's problem lay with his willingness to co-operate with the Executive, namely either to allow noise monitoring equipment to be installed in order to obtain critical evidence as to the volume of the sound being heard in his flat, or to apply for a transfer to suitable accommodation within the Executive's housing stock. My investigation showed that the complainant had not been prepared to co-operate with the Executive on either of those matters, thus leaving it very difficult for the Executive to take any meaningful action on his continued representations to it. The complainant finally decided to apply for a transfer.
(CC 71/02)

Extent of Works Undertaken in the Course of an Environmental Scheme

In this case the complainant was dissatisfied with the extent of works undertaken to his dwelling in the course of an Environmental Scheme (the Scheme) undertaken by the Northern Ireland Housing Executive (the Executive). He said an Executive official had explained to him, orally, prior to the commencement of the Scheme, the works it was proposed to carry out at his dwelling. The complainant said he was aggrieved that, contrary to what he had been told, gates were not fitted to two entrances to his dwelling

and railings were not erected along the side of his garden which is adjacent to a public alley way.

The complainant contended he was subsequently informed by the Executive that it was unable to provide gates at the entrances to his dwelling due to Roads Service (RS) regulations. The complainant said he failed to understand why he had been told this because RS had recently informed him that it had no objections to the proposed erection of railings and gates at his dwelling provided the works were within the curtilage of the dwelling and any new gates opened into the property. The complainant considered the Executive should now complete all the work that he was told, at the outset, would be undertaken at his dwelling.

Having investigated this complaint I established that the Scheme aimed to address the problem that a number of the dwellings involved were effectively landlocked and had no direct vehicular access. Also, there was a general lack of defined boundaries and screening to most dwellings and the front garden areas were inadequately protected in most cases. The Scheme proposals therefore provided for the construction/upgrading of pedestrian pathways and vehicular hard standing at the front of dwellings, as appropriate, fencing, and soft landscaping of open spaces.

The Executive informed me that, although it had consulted RS by telephone about its proposal to fit gates to the front of the dwellings in the Scheme, it had not prepared a note to record the content of the discussion. Due to this absence of contemporaneous documentary evidence, I was unable to determine to my satisfaction whether or not the Executive had consulted RS at the relevant time about the Scheme proposals. Also, I was unable to determine the reasons why the Executive, having included, in its original Scheme proposals, the fitting of gates at the front of the dwellings involved, subsequently withdrew this measure. I therefore found it necessary to criticise the Executive's failure to record a note of its oral consultation with RS in this instance as constituting unsatisfactory administrative practice. I also found, as representing unsatisfactory administrative practice, the Executive's failure to obtain confirmation, in a more formal manner, of objections by a Government agency to proposals which had been, initially, orally presented. I criticised the Executive for its failure in this regard.

With regard to that element of the complaint concerning the Executive's failure to erect fencing along the boundary of the dwelling, adjacent to a public alleyway, my investigation established that it is the Executive's policy, when undertaking environmental schemes, to erect only a fence where one is not in place or where a fence in place is in a poor state of repair. My investigation further established that, at the time the Scheme was being undertaken, there was a low level fence, in good repair, backed by a well established conifer hedge at the side of the complainant's dwelling.

Overall, on the basis of the evidence available, including the original Scheme drawings, I found no evidence of serious maladministration by the Executive in its dealings with the complainant. Although I concluded that certain elements of the Executive's administrative handling of the Scheme concerned were flawed by unsatisfactory administrative practice, which warranted criticism by me, I was satisfied that these did not cause the complainant to sustain an injustice. I drew the matters I had criticised to the attention of the Executive's Chief Executive and informed him that I expected the Executive to review, as

necessary, its practices with a view to remedying the matters of concern I had raised. The Chief Executive told me that all of the Executive's technical staff had been reminded of the importance of recording relevant information from telephone calls, meetings etc. in relation to the planning and implementation of schemes. **(CC 163/02)**

Refusal of House Purchase Application

In this case the complainant said he applied to the Northern Ireland Housing Executive (the Executive) to purchase his two bedroomed bungalow, and, as a result, the Executive appointed valuers to assess the market value of the dwelling. The complainant also said he was later orally informed by the Executive that it did not know whether the dwelling was being sold to him or not. In addition, the complainant stated it was not until 9_ months after he had made his purchase application that the Executive informed him it could not proceed with his application because his "predecessor in title" was his grandmother who was over 60 years of age when she took up the tenancy of the dwelling.

The complainant said he previously lived in the dwelling with his grandmother. However, when his grandmother was placed in permanent residential care, he applied to the Executive for the tenancy. The complainant contended that the Executive gave lengthy consideration as to whether he should be regarded as a "new" or "existing" tenant and he considered that, in all the circumstances of his case, he should have been classed by the Executive as a "new" tenant, which would have conferred on him the right to buy the dwelling. The complainant added that he regarded the Executive's actions, in relation to both his current tenancy position and his application to purchase the dwelling, as being unjust and unfair.

Having investigated this complaint, I established that the Executive's Statutory House Sales Scheme, by which it is empowered to offer for sale to its tenants the dwellings occupied by them, contains exclusions with regard to sheltered dwelling units and single-storey or ground floor accommodation with no more than two bedrooms. The purpose of these exclusions is to protect the interests of those aged over 60, who are more interested in renting their homes. The exclusions therefore enable the Executive to protect its stock of that type of dwelling. The policy of reserving single or ground floor accommodation of 2 bedrooms or less for occupation by pensioners has been the subject of legal challenge, when the policy was upheld as both reasonable and lawful.

On the basis of all the available evidence, including advice I had received from my legal adviser, I was unable to uphold the core element of this case, which was the complainant's dissatisfaction with the Executive's decision to refuse his application to purchase his dwelling. The exclusions contained within the Executive's Statutory House Sales Scheme apply to "single-storey property or ground floor accommodation with no more than two bedrooms which was let to the tenant, or to a predecessor in title of his, for occupation by a person who was aged 60 or more when the tenancy commenced". My investigation established that the complainant's grandmother, who was his "predecessor in title", was more than 60 years of age when her tenancy of the subject dwelling commenced. It is the situation that the Executive must apply the terms and conditions of its governing legislation and related policy, which do not provide for the exercise of discretion in relation to the

house sale exclusion. In these circumstances, I was satisfied that the complainant's application to purchase could not be accepted by the Executive and that its ultimate decision to refuse the application was correct.

I established that the Executive's policy/procedures allow an assignment of tenancy, i.e. the transfer of tenancy rights to someone else, to occur when a tenant is unable to continue as such due to illness. I further established that, due to his grandmother's medical condition, the complainant was entitled to assign to her tenancy. My investigation, however, produced no evidence to support the complainant's contentions that the Executive gave lengthy consideration as to whether he should be regarded as a "new" or "existing" tenant. Also, I found that, the Executive would not have been acting in accordance with its policy had it considered the complainant either as a "new" or "existing" tenant of the dwelling, previously occupied by his grandmother. I therefore did not uphold this particular element of the complaint.

However, based on the facts and evidence, established as a result of my investigation, I concluded that in its handling and processing of the complainant's application for the tenancy of his dwelling and his subsequent application to purchase the dwelling, the Executive's actions were flawed by maladministration and examples of unsatisfactory administrative practice. In particular, as a consequence of the maladministration I identified, I found that the complainant had not been informed/made aware by the Executive, as he should have been, that he was not eligible to purchase his dwelling because of the exclusion provisions contained within the Executive's Statutory House Sales Scheme. I therefore considered that the Executive failed to discharge properly its responsibility, and its duty, to provide the complainant with the standard of service he was entitled to expect.

By way of redress for the injustice of considerable disappointment, annoyance and anxiety which I consider the complainant to have sustained, I recommended that he should receive from the Executive a consolatory payment of £500 together with a written apology from its Chief Executive. I was pleased to record that the Chief Executive accepted my recommendations. **(CC 174/02)**

Processing of Application for Housing as a Homeless Applicant

The complainant said she and her husband applied to the Northern Ireland Housing Executive (the Executive) for rehousing as homeless applicants because of their need to sell their dwelling, due to financial hardship. The complainant said that, despite numerous telephone calls to the Executive, she was told that alternative accommodation was not available and, consequently, she and her husband found themselves homeless with nowhere to stay. The complainant also said she and her husband were later placed by the Executive in a hostel, where they continued to reside, and that they had not seen most of their belongings, which had been placed in storage, in the 6 month period they had been homeless.

The complainant also stated that her husband suffers from a mental illness and she considered that his condition was deteriorating rapidly and that her own health was suffering as their homeless situation continued. She added that, although they had followed the Executive's procedures relating to their homelessness situation, she and her husband regarded their situation as hopeless.

Having investigated this complaint, I established that, under its homelessness legislation, the Executive is responsible for securing temporary and permanent accommodation for certain types of households who are homeless or threatened with homelessness. Also, a person is deemed to be threatened with homelessness if it is likely that he/she will become homeless within 28 days from the day on which he/she gives such written notice to the Executive.

In my investigation of this complaint, I established that, at the time the complainant and her husband applied to the Executive for rehousing, they had received no offers from potential purchasers of their property. The Executive had, therefore, advised them to contact it further when their house sale was more definite i.e. when they could be regarded as being threatened with homelessness. I also established that the complainant had contacted the Executive only 17 days before the date of completion of the sale of their house and, therefore, the date on which she and her husband would actually become homeless. I found that the Executive had acted promptly in accepting the complainant and her husband as "full duty" applicants for housing under its homelessness legislation.

My investigation also established that, although the Executive had made several offers of temporary alternative accommodation to the complainant and her husband before they became homeless, those offers had been refused as being unsuitable. In relation to the storage of the complainant's belongings, I found that she had agreed, and had signed an undertaking to the effect, that the Executive should place her possessions/furniture in storage until such time as it was satisfied that there was no further need for the possessions/furniture to be stored or it had no further responsibility in this regard.

I found that the complainant and her husband had asked the Executive to rehouse them in areas where there was a high demand for, and low turnover of, housing stock. In addition, they had stipulated that they were not prepared to consider any type of accommodation other than a house. While I acknowledged and respected the right of the complainant and her husband to make these choices, I found that the explicit restrictions involved limited considerably the Executive's scope to meet their rehousing needs. However, I was pleased to be informed by the Executive, in the course of my investigation, that, in addition to the complainant's points level, it was giving maximum consideration to her housing application as a management transfer category applicant. I was further pleased to note that the Executive hoped to be in a position to offer the tenancy of suitable accommodation to the complainant in the near future.

Whilst I recognised the difficult situation in which the complainant and her husband found themselves, the facts and circumstances of the case did not lead me to conclude that in its dealings with them the Executive had been guilty of maladministration. Consequently, I did not uphold this complaint. **(CC 189/02)**

Valuation of Property

In this case the complainant said he applied to purchase his dwelling from the Northern Ireland Housing Executive (the Executive) but was "shocked" with the valuation of £60,000 which had been placed on his dwelling when compared to the "much lower" valuations of other similar houses in the vicinity. The complainant was concerned that improvements he had made to the

dwelling had been taken into account in the gross valuation sum.

Having investigated this complaint I established that, under its statutory House Sales Scheme (the Scheme), the Executive is required to offer houses for sale based on market values assessed by its appointed professional valuers. In those cases where the initial valuation sum has been the subject of a redetermination request by the tenant, the terms of the Scheme stipulate that this will be carried out by the Valuation & Lands Agency (VLA). The terms of the Scheme further stipulate that the ultimate determination of the market value by the VLA is final and binding on both the Executive and the purchaser.

During my detailed investigation of this complaint, I established that, in this case, the VLA had not been involved in the initial valuation exercise. The VLA was, however, involved in the redetermination exercise, referred to above. On the basis of a detailed probing and investigation of how the VLA determined its gross valuation sum, I was fully satisfied that this was arrived at after a thorough and professional exercise on the part of the VLA, which I found not to have been attended by maladministration. Consequently, I could not uphold the complainant's contention that the Executive had been guilty of maladministration in arriving at a gross valuation sum of £60,000 in respect of his dwelling.

I concluded that the terms of the Scheme, under which the Executive is require to operate, in dealing with house purchase applications, and which has its genesis in primary legislation, are stringent in that the Executive is not permitted to offer a dwelling for sale at a lesser amount 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 all the circumstances, therefore, I did not uphold this complaint. **(CC 18/03)**

Processing of Rehousing Application

In this case the complainant stated she applied to the Northern Ireland Housing Executive (the Executive) for a transfer and provided medical reports confirming that she suffers from severe mental health problems. However, she considered that her application for rehousing had been assessed on the basis of her physical rather than her mental needs, which resulted in an award of only 10 points. The complainant said she had therefore appealed her points award twice, without success. The complainant further said she requested a transfer to supported housing, on the basis of her mental health problems, but was informed by the Executive that she would not be considered for this type of accommodation. Despite her request for an explanation of its decision, the complainant said the Executive had failed to respond.

Having investigated this complaint I was pleased to note that, since receiving details of this complaint to me, the Executive arranged for its Housing Support Services Officer to undertake a further assessment of the complainant's case. That assessment indicated that the complainant should be considered for rehousing under the Complex Needs category of the Executive's Housing Selection Scheme (HSS), on the basis of her mental health. As a result, the complainant was awarded a further 20 points, bringing to 30 her total points award. I was also pleased to record that, again since making her complaint to me, the Executive provided the complainant

with the option of moving to supported housing and with the information necessary to enable her to make an informed choice in this regard.

However, I established that certain elements of the Executive's handling and processing of the complainant's housing transfer application and follow up representations were flawed by unsatisfactory administration. Consequently, I found that the standard of administrative service which the complainant received in this regard fell some way short of that which the Executive seeks to deliver and which members of the public are entitled to expect. As a consequence of this unsatisfactory administration, I had little doubt that the complainant experienced frustration, disappointment and annoyance. By way of redress, I recommended that the Executive, through its Chief Executive (CE), should issue the complainant with a letter of apology. Also, given the information now available to the Executive, through its assessment of the complainant as a Complex Needs applicant for housing, I asked the CE to ensure that the circumstances of her case were fully reviewed to ensure that she had been considered for/awarded the maximum points to which she may have been/was entitled to receive under the HSS. I was pleased to record that the CE accepted my recommendation and agreed that the Executive would carry out a full review of the complainant's case. Also, the CE informed me that, as a result of this case, the Executive's Area Housing Support Services Officer would meet with all Senior Housing Officers to reinforce the need to identify and refer to the appropriate officials, potential complex needs applicants for housing.
(CC 156/02)

Disability Adaptation to Dwelling

In this case the complainant stated that her Northern Ireland Housing Executive (the Executive) owned dwelling had been subject to disability adaptation works, in the form of a ground floor extension providing a single bedroom and a shower room, which were undertaken by the Executive to meet her medical condition. The complainant said that, although she was happy with the extension to her dwelling, she was, however, aggrieved about a number of matters relating to the overall carrying out of the adaptation scheme.

The complainant said, although she received plans of the proposed extension from the Executive, these were not discussed with her, in terms of what the adaptations would fully involve, particularly in terms of disruption and inconvenience, and she was not consulted by the Executive as to whether she should continue to live in the house while work was in progress or whether it would be preferable to decant her. The complainant claimed she had to replace floor coverings in her home due to damage caused to these in the course of the works. Also, the complainant was aggrieved that she incurred further expense, through charges for electricity used by the contractor, in having the works undertaken, and that she had not received the full allowances she considered she was entitled to receive from the Executive.

Having investigated this case, I found that the Executive was unable to provide me with firm, definitive evidence as to how comprehensively the requirement to discuss fully with the complainant what the adaptation works would involve, was fulfilled by it (the Executive). This was due primarily to inadequate documentation of interviews, discussions etc. I regarded the

Executive's inadequate record keeping and failure to maintain contemporaneous records as constituting unsatisfactory administrative practice, which warranted criticism by me. However, I found the evidence which was available sufficiently persuasive to enable me to form the view that the Executive had explained to the complainant, to some extent at least, the nature and extent of the works which it was proposed to carry out and also what their implementation would involve.

In the light of my investigation of this case, I considered there was a need for the Executive to revise its policy and procedures in the overall preparations for and implementation of improvements/adaptation works to tenants' dwellings. I therefore recommended to the Chief Executive (CE) that a number of procedural changes, which I detailed, should be given serious consideration and introduced, if at all possible, by the Executive. In response, the CE stated that he would discuss the issues concerned, which would need to be addressed across the organisation, with his staff and arrange for guidelines to be issued to the staff concerned. I welcomed this undertaking.

Following very careful consideration and evaluation of all the evidence which my investigation of alleged damage to the complainant's carpets and kitchen floor covering had produced, I found that it had not provided me with sufficiently definitive grounds to allow me to uphold this element of her complaint, even on the balance of probability. However, I established that it was open to the complainant to submit a public liability claim to the Executive. Given the complainant's overall circumstances, I recommended that she should receive from the Executive a full explanation of what is involved in making a public liability claim along with any assistance necessary to enable her to submit a full and properly completed claim. I was pleased to record that the CE also accepted my overall recommendation in this regard.

I was also pleased to record that since submitting her complaint to me, the complainant was reimbursed the sum of £97.50 by the contractor, who undertook work to her dwelling, in respect of costs for which he had been responsible. I was also pleased to record that, in the context of my enquiries to it, the Executive considered it appropriate to make an 'in situ' payment of £216 to the complainant. However, having regard to all the circumstances of this case, including the complainant's age and health, I recommended that she should also receive a consolatory payment of £250 from the Executive. I was pleased to record that the CE also accepted this recommendation. **(CC 126/02)**

Possession of Dwelling Following Tenant's Death

The complainant in this case wrote to me on her own behalf and on behalf of her brother because they were aggrieved at the Northern Ireland Housing Executive's (the Executive) actions, following the death of their youngest brother, to regain possession of the dwelling of which he had been the tenant. The complainant said her late brother had been in the process of buying his dwelling from the Executive and, following his death, her Solicitor had sought advice from the Executive as to whether the sale could proceed. The complainant said, however, that the Executive changed the locks on her late brother's dwelling, without having notified her of its intention to do so, and no subsequent arrangements had been made with her to enable access to be gained to the dwelling. The complainant was also aggrieved about

delays by the Executive in processing the purchase application made by her late brother and the Executive's failure to respond to requests as to whether there could be a succession of tenancy in this case.

In my detailed investigation of this complaint, I upheld that element which concerned the Executive's actions in changing the locks of the subject dwelling. In this regard, I identified evidence of a systemic flaw, through the failure by staff in one section of the Executive to make available to staff in another section, important and totally relevant information concerning the death of a sole tenant. I found that, as a consequence of the Executive's actions, the complainant's brother experienced the injustice of unnecessary distress and upset. I was, however, pleased to note that, since making her complaint to me, the Executive had provided the complainant's brother with a set of new keys to the dwelling to enable him to gain access in order to remove his late brother's belongings.

My investigation of delays by the Executive in processing the sale of the dwelling established that the Executive was guilty of unreasonable and unsatisfactory delays, one such delay being unreasonable to the extent that it constituted an unsatisfactory and unprofessional standard of administration. However, I found that the complainants had not sustained a direct personal injustice as a result of the delays I had identified in the processing of the sale.

I concluded that the sale of the dwelling to the complainants was not possible under the relevant legislative and administrative provisions which govern the sales of Executive owned dwellings and which applied in this case. In regard to this matter, I am not empowered to overrule statutory requirements or administrative policy which has its genesis in legislation. Also, I did not find as incorrect or unreasonable the Executive's decision that there was no person who was qualified, under its legislation, to succeed to the tenancy.

However, I found it necessary to criticise the Executive for failing to respond to correspondence from the complainant's Solicitor on the question of whether any member of her family could purchase the subject dwelling. Those failures represented a poor standard of service, which I regarded as having constituted unsatisfactory administrative practice, which caused the complainant the injustice of distress, annoyance and frustration. By way of redress, I recommended that the complainant and her brother should receive a formal written apology from the Executive's Chief Executive. I was pleased to record that the Chief Executive accepted my recommendation. **(CC 22/03)**

'Historic Cost' Condition and its Related Implications on the Price of Purchasing a Home

In this case, the complainants alleged they had sustained injustice as a result of maladministration by the Northern Ireland Housing Executive (the Executive). Primarily, it was the complainants' contention that the Executive had failed to inform them about 'historic cost' condition, and its related implications on the price of purchasing their home, before they accepted the tenancy of their dwelling, in November 1998. The complainants stated it was not until September 1999 that they were informed by the Executive of the 'historic cost' condition. According to the complainants, they would not have accepted the tenancy of their dwelling if they had known, at that time, about the 'historic cost' condition.

My careful consideration of, and reflection on, all of the facts, circumstances and issues which emerged during my detailed investigation of this complaint led me to conclude that the Executive took the appropriate steps to ensure that the complainants were aware of the implications of the 'historic cost' condition. It was normal practice of the Executive to provide new tenants with a 'Tenant's Handbook', which states, among other things, that "If your house or flat was built or purchased by the Executive, or had improvements carried out to it, in the year of your application or in the previous eight financial years, we cannot sell it to you for less than the cost of the works involved or the acquisition costs". However, it was not possible for me to be absolutely certain that the complainants had been provided with a 'Tenant's Handbook', in November 1998, at the pre-allocation of their dwelling, or that the 'historic cost' condition had been mentioned to them by the Executive at a preliminary interview at that time. Also, I could not prove that the Executive's letter dated 3rd December 1998 had not been received by the complainants until September 1999, as contended by them. Although I noted the complainants' contention that other Executive tenants had claimed, to them, that they had not been advised about the 'historic cost' condition, I had to accept that the circumstances of those tenants might have been different, given that my investigation established that one of those tenants actually signed her name acknowledging receipt of the Executive's standard letter explaining the 'historic cost' condition. Overall, on the evidence produced by my investigation, it was not possible for me to conclude that, in this case, the Executive had departed from its normal practice of providing new tenants with a 'Tenant's Handbook'. Consequently, I could not uphold this complaint. **(CC 76/02)**

Handling and Processing of Application for a Disabled Facilities Grant

The complainant in this case wrote to me because of his dissatisfaction with the Northern Ireland Housing Executive's (the Executive) handling and processing of his application for a Disabled Facilities Grant. The complainant said the contractor took approximately 6 months, instead of an estimated 6 week period, to undertake the adaptation works. He further said that, some months after the Executive had completed its final inspection of the works, a number of defects became apparent. Although some remedial work was subsequently undertaken, the complainant said he remained dissatisfied with a number of elements of the work. The complainant attributed the position in which he found himself to failures by the Executive to provide him with specific information, which, he contended, represented deficiencies in the Executive's grants system.

The complainant said he considered that the Executive should have written to him following its various inspections of the adaptation works being carried out, drawing attention to all defects noted during its inspections. Also, he claimed that the Executive paid grant aid to the contractor for works, despite his having informed it that the works concerned had not been undertaken/carried out to specification.

Having investigated this complaint, I established that, under the terms of the Executive's grants scheme, responsibility for the organisation of grant aided works and the appointment of a contractor rests with the grant applicant and that the Executive has no control over the duration of works that are the subject of grant aid, this being entirely a matter of agreement between the grant applicant and the

builder appointed by him/her. I also established that, to assist in its aim of ensuring completion of a grant aided adaptation scheme and that the work is carried out to a satisfactory standard, the Executive requires that applicants use a builder who is a member of a recognised Warranted Builders Scheme. The purpose of this requirement is to provide protection for a grant applicant in the event of a dispute or the contractor failing to complete the scheme. I also established that, in the grant approval documents issued to grant applicants, the Executive states it does not accept liability or responsibility in respect of the grant aided works, and it, therefore, strongly recommends that a surveyor should be retained to satisfy the grant applicant that works have been carried out to a satisfactory standard.

I further established that the Executive had provided the complainant with all necessary information required about the processes involved in applying for grant aid and having works undertaken. In this regard, I found that the complainant had been informed of the range of services and assistance provided by 'Fold', in relation to the grants scheme, which were available to him through funding from the Executive, and that he chose to avail of only part of the services and assistance on offer. Also, I established that the Executive had released grant aid on the basis of written notification from the complainant that work on the grant aided scheme to his dwelling had been completed to his satisfaction and that he wished to claim the approved grant monies.

However, I was pleased to record that, since I received this complaint, the Executive organised a meeting, involving all relevant parties, at the complainant's dwelling to discuss remedial action required to address those elements of the disabled adaptation scheme about which he remained dissatisfied. I was further pleased to record that such remedial work, which the complainant subsequently agreed, was then completed to his satisfaction.

Overall, the facts and circumstances of the case did not lead me to conclude that, in its dealings with the complainant regarding the award and payment to him of a Disabled Facilities Grant, the Executive had been guilty of maladministration. Consequently, I could take no further action in this case.
(CC 24/03)

Level of Contribution Towards Cost of Grant Aided Renovations

In this case the complainant said his application to the Northern Ireland Housing Executive (the Executive) for renovation grant aid in respect of his dwelling had been approved. However, the complainant also said he was subsequently notified by the Executive that his contribution to the cost of the renovation work had been calculated at £15,446.33, based on his registered ownership of land that surrounded the dwelling involved. The complainant also commented that although he had been informed by his Solicitors that he could not be required to sell the land in order to finance any renovation work to his dwelling, the Executive had refused to amend the terms of the offer of grant aid made to him.

Having investigated this complaint I established that, under the relevant legislation, the Executive is required, as part of its grants process, to calculate the contribution, if any, required by an applicant towards the costs of works, through a Test of Resources assessment. My investigation confirmed that the capital value of the land owned by the

complainant, as assessed by the Valuation and Lands Agency (VLA) on the Executive's behalf, had been included in his TOR assessment. However, having also contacted the VLA in this case, I found that the Executive, in requesting from the VLA an assessment of the market value of the land, had issued incomplete and deficient instructions, which I regarded as having constituted unsatisfactory administrative practice. As a consequence, I considered that the Executive's decision to include in its TOR assessment the capital value of the land owned by the complainant was not fully informed and may therefore have been invalid.

I therefore recommended to the Chief Executive (CE) of the Executive that an urgent request should be submitted to the VLA, containing explicit and comprehensive background information and instructions regarding the market value assessment of the land owned by the complainant, for advice/comment. I welcomed the CE's undertaking to return this case to the VLA, with additional information, to enable a review of the valuation to be carried out.

My investigation also established that there was a failure by the Executive to inform/notify the complainant of the likelihood that the land he owned would be capitalised. In this regard, I found that it was not until one year after the complainant had submitted a formal application for grant aid to the Executive, that he received his first firm indication that his land had been capitalised by the Executive in connection with its assessment of his contribution towards the cost of eligible works. I regarded this failure by the Executive to fulfill the requirements of its relevant policy and procedures in its processing of the complainant's application for grant aid as constituting further unsatisfactory administrative practice, which warranted criticism by me. I was pleased to record the CE's statement that he would issue an apology to the complainant in respect of this failure.

I also recommended to the CE that several procedural changes, which I considered necessary to eliminate weaknesses and deficiencies identified by my investigation, should be introduced by the Executive as soon as possible. I was pleased to record the statement by the CE that in relation to its processing of applications for grant aid, it was the Executive's intention to review its policy and procedures relating to the capitalisation of land and that the review had commenced.

I was subsequently pleased to be informed by the Executive that, having redetermined this case, on the basis of a reassessment by the VLA of the capital value of the complainant's land, the contribution the complainant would have to make towards the costs of renovating his dwelling was reduced by the sum of £3,910.14. **(CC 132/02)**

Processing of Application for Rehousing

The core of this complaint was that the complainant had not been granted a housing transfer by the Northern Ireland Housing Executive (the Executive), even though she had been on the transfer waiting list for five years. She was very keen to move from her present dwelling and was interested in purchasing a property from the Executive if she was granted a transfer in an area of her choice. She also had difficulty understanding how her level of points had been assessed by the Executive.

My investigation established that at the commencement of the New Housing Selection Scheme, effective from 1

November 2000, the complainant should have been awarded additional points. I considered that the failure to award the complainant the correct points at that time to have constituted unsatisfactory administration, by the Executive, of the complainant's transfer application. I expressed criticism of the Executive in relation to this failure. However, from the information obtained during my investigation, I was satisfied that no allocations of one or two bedroomed houses in the complainant's areas of choice had been made during the period when the complainant did not have the benefit of the additional points.

I also established that the complainant had informed the Executive about injuries following an accident and that she had difficulty climbing stairs. However, the Executive assumed the injuries were temporary and the complainant was not awarded any additional points at that time. Although it was difficult to say, definitively, in retrospect, whether it was reasonable for the Executive to have assumed that the injuries were temporary, it did seem to me it would have been prudent for the Executive to have requested a medical opinion rather than make an assumption on the matter. The Executive accepted this view.

Overall, my detailed investigation did not produce evidence to show that there had been a failure on the part of the Executive to process and administer the complainant's application for a housing transfer to the extent that she lost out on reasonable offers of suitable accommodation in her stipulated areas of choice. Consequently, I did not find that she had sustained an injustice as a result of the Executive's actions. I did, however, comment that in different circumstances, the shortcomings on the Executive's that my investigation identified could have had a significant impact in relation to a complainant missing out an offer(s) of suitable accommodation.

Given the restriction on location, as stipulated by the complainant in her transfer application, of her preferred category of accommodation, it was not possible for the Executive to be definitive as to how soon the complainant would be rehoused. I suggested to the complainant that if it was possible for her to widen her areas of choice, her rehousing opportunities would increase and I urged her to give this serious consideration.

In terms of redress, I recommended that the complainant's circumstances should be kept under close review by the Executive, which included her being visited every 6 months to check if the level of points awarded remained appropriate. I was pleased to record that, in response, the Chief Executive accepted my recommendation and in addition informed me that District Office staff had been reminded of the policies and procedures regarding housing and transfer cases so that any unsatisfactory administration practices are eliminated. **(CC 131/02)**

Processing of Application for Rehousing

In this case the complainant contended that, in November 1999, he had applied to the Northern Ireland Housing Executive (the Executive) for rehousing, primarily due to "hassle from neighbours".

My investigation established that the complainant, in addition to being awarded Full Duty Applicant status points, had also been awarded Management Transfer status which is designed to allow designate officers, such as District Managers, the flexibility to make best use of available housing stock. I found that although he had requested a 2 bedroomed ground floor accommodation, the Executive had not allocated any such properties within his area of choice, since the award of his Management Transfer status.

My investigation established that the complainant had stipulated to the Executive only one specific area of choice, in respect of which demand is high and turnover is low. While I acknowledged and respected the complainant's entitlement to make this choice, this restriction did, however, limit considerably, the Executive's scope to meet his rehousing needs. Given the restriction on location, together with the low turnover of the complainant's preferred category of accommodation, it was not possible for the Executive to be definitive as to how soon the complainant would be rehoused. I suggested to the complainant that he should give serious consideration to the possibility of widening his area(s) of choice.

Overall, having examined carefully and in detail the grounds of this complaint, and based on the evidence available, the outcome of my investigation was that I did not find any evidence of maladministration on the part of the Executive in dealing with the complainant's application for a transfer to alternative accommodation. Consequently, I did not uphold this complaint. I did, however, acknowledge to the complainant that I understand his frustration at the length of time he had waited for what he regarded as suitable alternative accommodation. **(CC 95/03)**

Section Three
Appendices

Appendix A

Summaries of Registered Cases Settled

Derry City Council (81/02)
The complainant in this case believed that the Council had failed to adequately deal with an 'incident' between him and a member of staff at a leisure centre. My investigations led me to believe that the complainant was not without justification for feeling aggrieved at the Council's handling of the 'incident'. I brought this to the Council's attention and it acknowledged its shortcomings in dealing with the matter. As a result the Council agreed to write to the complainant acknowledging its shortcomings and apologising to him. As I regarded this as a satisfactory and appropriate resolution of the matter I decided to take no further action on this complaint.

Northern Ireland Housing Executive (CC 88/02)
In this case the complainant was dissatisfied with the Executive's refusal to accept his claim to residence of a dwelling, when it was acquired, by vesting, by the Executive to facilitate a housing redevelopment scheme.

In my examination of this complaint, I established that what was involved represented a discretionary decision taken by the Executive on the basis of all the information and evidence made available to it at that time by the complainant. Having reviewed all of the information and evidence, which formed the basis of the Executive's decision, I formed the view that the decision could not be regarded as being so wholly unreasonable that no reasonable person would have taken it in the light of the relevant facts and circumstances. The legislation which informs my role effectively points me away from reviewing discretionary decisions, whereas the Courts, which have the powers to review such decisions, set very high tests. For example, Lord Diplock spoke of: "A decision which is so outrageous it its defiance of logic or accepted moral standards that no sensible person who applied his mind to the question to be decided could have arrived at it". I did not consider that test to have been met in relation to the decision which had caused the complainant to refer the matter to me.

In the course of my investigation of his complaint, and with assistance from my Office, the complainant was, eventually, able to provide the Executive with further evidence and documentation in support of his residence claim. In light of the additional evidence and documentation provided by the complainant, the Executive's District Manager decided it was appropriate to review the earlier decision and having done so, decided it would be possible and reasonable for the Executive to accept the complainant's claim to residency at the time of vesting. This enabled the Executive to regularise the complainant's occupation of the dwelling, pending rehousing. He could also be considered for compensation, which included Home Loss and Disturbance payments. In addition, the question of the complainant's possible entitlement to purchase a subsidised fixed price housing unit in a local Development Area could be re-opened.

In light of the above developments, the complainant informed my Office that he regarded the Executive's acceptance of his claim to residence of the dwelling, at the time of vesting, to be a satisfactory resolution of his grievance and considered that my Office need take no further action in relation to his complaint. In all the circumstances of this case, therefore, I did not believe that anything further

could be gained in pursuance of the complaint against the Executive. Consequently, I decided, in exercise of my discretion, under Article 12(1) of the Commissioner for Complaints (NI) Order 1996, to discontinue my investigation of the complaint. I was pleased that the complainant had found my intervention helpful in having his complaint resolved.

Northern Ireland Housing Executive (CC 176/02)

A gentleman complained to me regarding his son's application to the Executive for housing which had not yet been successful. During the course of my investigation I was informed that the complainant's son had been offered a tenancy by the Executive and had subsequently accepted that offer. In view of this satisfactory resolution of the complaint I decided to take no further action on this case.

Northern Ireland Housing Executive (CC 5/03)

A lady complained to me about what she regarded as a low number of points awarded to her by the Executive in relation to her housing application. To ensure that I had a full understanding of this case I arranged for detailed enquiries to be made of the Executive. During the course of these enquiries the Executive informed me that it had offered the tenancy of a property to the complainant. The complainant subsequently confirmed to me that she had accepted this tenancy. As I regarded this as a satisfactory resolution of the complaint I decided to take no further action on this case.

Northern Ireland Housing Executive (CC 32/03)

A lady complained to me regarding the Executive's failure to transfer her to suitable alternative accommodation. She also complained that repairs had not been carried out to her bathroom. Despite the fact that she had not used the Executive's internal complaints procedure I made informal enquiries regarding her complaint. As a result of these enquiries the Executive's District Manager undertook to: arrange for the complainant to be re-visited; reconsider any new medical evidence; arrange for a housing officer to contact local housing associations on her behalf; reconsider her circumstances and review the complexity of her needs; and arrange for the required repairs to be carried out to her bathroom. In light of these undertakings, which I regarded as a satisfactory resolution of the complaint, I decided to take no further action on this case.

Northern Ireland Housing Executive (CC 45/03)

A gentleman wrote to me seeking my assistance in obtaining information from the Executive concerning his continued dissatisfaction with flood water which gathers in front of the kitchen window of his dwelling. My enquiries of the Executive produced the required information which I was able to pass on to the complainant. In light of this I decided to take no further action on this case.

Northern Ireland Housing Executive (CC 64/03)

I received a complaint against the Executive regarding what the complainant considered to be outstanding repairs to his property. I arranged for one of my Investigating Officers, together with Executive Officers, to visit the complainant's home to discuss the complaint in greater detail. Following that meeting the Executive agreed to carry out a number of the repairs which were central to the complaint. The Executive also provided me with explanations, which I accepted, as to its position regarding the other issues contained in the complaint. Having conveyed this

information to the complainant I decided to take no further action on this case.

Northern Ireland Housing Executive (CC 72/03)
This complaint against the Executive related to the complainant's dissatisfaction with the extent and standard of repairs to his property. Following the commencement of my investigation of this case the Executive informed me that it had completed all of the necessary repairs to the complainant's property. As I considered this a satisfactory resolution of the matter I decided to take no further action on this case.

Northern Ireland Housing Executive (CC 79/03)
A gentleman complained to me regarding the Executive's failure to pay a redecoration grant following the installation of new windows in his property. I arranged for informal enquiries to be made of the Executive and was informed that it was currently processing the complainant's grant payment which it expected to issue within 3 weeks. In light of this information, which I considered resolved his complaint, I decided to take no further action on this case.

Northern Ireland Housing Executive (CC 80/03)
This case related to the Executive's failure to meet the complainant's request to be rehoused. During the course of my investigation of this complaint the complainant informed me that she had been offered, and had accepted, the tenancy of a one bedroom bungalow. As I, and the complainant, considered this represented a satisfactory resolution of the complaint, I decided to take no further action on this case.

Northern Ireland Housing Executive (CC 103/03)
A gentleman complained about the Executive's failure to rehouse him and his family following alleged intimidation which had resulted in him giving up the tenancy of his previous Executive property. I arranged for written enquiries to be made of the Executive and for one of my Investigating Officers to monitor the position. I was subsequently informed by the Executive that the complainant had been offered, and had accepted, the tenancy of another Executive property. As I considered this resolved his complaint, I decided to take no further action on this case.

Northern Ireland Housing Executive (CC 105/03)
The complainant in this case was concerned that the Executive had not given sufficient consideration to his complaint about access to his dwelling and the closure of a public pathway. During the course of my investigation the Executive informed me that it had carried out works to the front of the complainant's dwelling which addressed his concerns in relation to access. The complainant subsequently wrote to me confirming that he was satisfied with works. The Executive also informed me that it had commenced the statutory process involved in the extinguishment of the public right of way. In the circumstances I considered that the Executive's actions represented a satisfactory resolution to the matter. As a result I decided to take no further action on this complaint.

Northern Ireland Housing Executive (CC 112/03)
A lady complained to me about what she considered to be the Executive's failure to repair damage to the windows of her house. Having commenced my investigation of this complaint, I was

informed by the Executive's District Manager that the damaged window panes in the complainant's house are to be replaced. As I regarded this as representing a satisfactory resolution of the complaint, I decided to take no further action on the matter.

Northern Ireland Housing Executive (CC 117/03)

I received a complaint regarding delays in the Executive's handling of an application for a Disabled Facilities Grant. I arranged for enquiries to be made of the Executive and, during the course of these enquiries, I was informed that the Executive had completed the processing of the application and had issued an approval letter to the complainant. As I considered that this represented a satisfactory resolution of the complaint, I decided to take no further action on the matter.

Appendix B

Summaries of Registered Cases Discontinued

General Consumer Council (CC 160/02)
The Chief Executive of a private company complained to me about the way in which his company's performance was reported in the GCC's Annual Report. Following the commencement of my investigation the Complainant wrote to me asking to withdraw the complaint as a gesture of goodwill. Having considered the circumstances, I decided to discontinue my investigation of this case.

Arts Council (CC 162/02)
The secretary of a voluntary organisation complained to me that they were unhappy that the Arts Council had used the organisation's name in the rejection of artists' applications for financial support. They were also dissatisfied with the Arts Council's response when the matter was brought to its attention. I arranged for detailed enquiries to be made of the Arts Council. In her response, the Chief Executive of the Arts Council took the opportunity to apologise to the organisation for any distress caused, however inadvertently. She also offered to write to the artists in question explaining the position. In view of this, I decided to take no further action on this complaint.

Newtownabbey Borough Council (CC 168/02)
I received a complaint regarding the Council's processing of an application for grant aid. During the course of my investigation it became clear that further information was required from the complainant to enable the investigation to be progressed. However, despite a written request, the required information was not received. In the absence of the required information I had no option but to discontinue my investigation of this case.

North Eastern Education & Library Board (CC 27/03)
A gentleman complained to me, on behalf of his wife, about the Board's decision to deduct money from her salary because of her absence from her employment with the Board as a result of being called for jury service. I arranged for enquiries to be made of the Board. The Board's Human Resources Manager subsequently informed me that, following a meeting with the complainant's wife, the Board had decided that it would reimburse all of the money deducted from her salary at the earliest opportunity. As I regarded this as a satisfactory resolution of the complaint I decided to take no further action on this case.

Lisburn City Council (CC 31/03)
A lady complained to me because her employer, the Council, would not permit a grievance she brought against the management team to be heard. I arranged for enquiries to be directed to the Chief Executive of the Council. While those enquiries were ongoing I was informed by the complainant, and separately by the Chief Executive of the Council, that she had been offered an appeal hearing by the Council. In light of this I decided to discontinue my investigation of this case.

Northern Ireland Housing Executive (CC 55/03)
The complainant in this case was dissatisfied with the actions of the Executive. However, from the correspondence received it was not clear which actions of the Executive she regarded as flawed by maladministration and how she had suffered as a result. I therefore asked that she supply certain specific information to allow me to decide on the appropriate course of action in this case. However, as the requested

information was not supplied, despite several reminders, I decided to I had no option but to discontinue my investigation of this case.

Northern Ireland Housing Executive (CC 77/03)

The complainant in this case was dissatisfied with the Executive's refusal to retain the 'Doric' cooker or provide a solid fuel focal point fire following the installation of oil fired central heating in her dwelling. She was further aggrieved that she had been informed by the Executive that the installation of central heating in her dwelling would not proceed unless she agreed to have an electric focal point fire installed instead of a coal fire. She considered that the Executive was treating her unfairly.

During the course of my investigation, the complainant was offered the option of keeping the 'Doric' cooker, purely as a cooking facility, along with oil fired central heating. At that time, the complainant had reconsidered the matter and had decided that she would like a solid fuel focal point fire, disconnected from the heating system, and oil fired central heating provided. The Executive agreed to this request provided that an additional flue would not be required in the complainant's dwelling.

The complainant told me that she regarded the Executive's offer as representing a satisfactory resolution of her complaint. She further stated she considered that I need take no further action in relation to her complaint. I was pleased to note that the complainant also stated that she had found my intervention helpful in having her complaint resolved. In all the circumstances, therefore, and in exercise of my discretion under Article 12 (1) of the Order, I decided to discontinue my investigation of this case.

Appendix C

Analysis of Written Complaints

Analysis of All Complaints Received – 1 April 2003 to 31 March 2004

	Brought forward from 2002/03	Received	Rejected	Settled	Discon-tinued	Withdrawn	Reported cases upheld or partially upheld	Reported cases not upheld	In action at 31.3.2004
Local Councils	17	45	41	1	3	0	6	4	7
Education Authorities	17	57	54	0	1	1	5	6	7
Health and Social Services	6	35	25	0	1	0	4	2	9
Northern Ireland Housing Executive	18	144	96	13	5	0	5	10	33
Other Public Bodies	3	18	12	0	2	1	0	2	4
Bodies Outside Jurisdiction	0	38	37	0	1	0	0	0	0
TOTAL	**61**	**337**	**265**	**14**	**13**	**2**	**20**	**24**	**60**

Analysis of Complaints Against Education Authorities – 1 April 2003 to 31 March 2004

	Brought forward from 2002/03	Received	Rejected	Settled	Discon-tinued	Withdrawn	Reported cases upheld or partially upheld	Reported cases not upheld	In action at 31.3.2004
Belfast	0	17	16	0	0	0	0	1	0
North Eastern	2	5	3	0	1	0	2	0	1
Southern	3	12	8	0	0	0	1	2	4
South Eastern	3	17	16	0	0	1	2	0	1
Western	9	5	10	0	0	0	0	3	1
Council for Catholic Maintained Schools	0	1	1	0	0	0	0	0	0
TOTAL	**17**	**57**	**54**	**0**	**1**	**1**	**5**	**6**	**7**

Analysis of Complaints Against Local Councils - 1 April 2003 to 31 March 2004

	Brought forward from 2002/03	Received	Rejected	Settled	Discon-tinued	Withdrawn	Reported cases upheld or partially upheld	Reported cases not upheld	In action at 31.3.2004
Antrim Borough Council	0	1	1	0	0	0	0	0	0
Ards Borough Council	2	2	3	0	0	0	1	0	0
Armagh City and District Council	1	1	1	0	0	0	0	0	1
Ballymena Borough Council	0	3	2	0	0	0	0	0	1
Belfast City Council	1	8	7	0	1	0	1	0	0
Carrickfergus Borough Council	1	1	1	0	0	0	1	0	0
Castlereagh Borough Council	0	1	1	0	0	0	0	0	0
Coleraine Borough Council	0	2	2	0	0	0	0	0	0
Craigavon Borough Council	0	3	1	0	0	0	0	1	1
Derry City Council	2	7	7	1	0	0	0	0	1
Down District Council	2	5	6	0	0	0	0	1	0
Fermanagh District Council	0	1	1	0	0	0	0	0	0
Larne Borough Council	2	1	2	0	0	0	1	0	0
Lisburn City Council	1	2	2	0	1	0	0	0	0
Newry and Mourne District Council	1	1	1	0	0	0	0	1	0
Newtownabbey Borough Council	2	3	2	0	1	0	0	1	1
North Down Borough Council	1	1	0	0	0	0	1	0	1
Omagh District Council	0	2	1	0	0	0	0	0	1
Strabane District Council	1	0	0	0	0	0	1	0	0
Total	**17**	**45**	**41**	**1**	**3**	**0**	**6**	**4**	**7**

Analysis of Complaints Against Health and Social Services Boards, Trusts and Agencies - 1 April 2003 to 31 March 2004

	Brought forward from 2002/03	Received	Rejected	Settled	Discon-tinued	Withdrawn	Reported cases upheld or partially upheld	Reported cases not upheld	In action at 31.3.2004
Northern H&SSB	0	1	1	0	0	0	0	0	0
Down Lisburn Trust	1	1	1	0	0	0	1	0	0
N&W Belfast Trust	0	1	1	0	0	0	0	0	0
S&E Belfast Trust	0	4	2	0	1	0	0	0	1
Ambulance Service	1	3	1	0	0	0	0	0	3
Sperrin Lakeland Trust	1	1	1	0	0	0	1	0	0
Causeway Trust	0	3	3	0	0	0	0	0	0
Royal Hospitals Trust	0	1	1	0	0	0	0	0	0
Ulster Community & Hospital Trust	0	1	0	0	0	0	0	0	1
United Hospitals Trust	1	0	1	0	0	0	0	0	0
Homefirst Community Trust	1	5	5	0	0	0	1	0	0
Craigavon & Banbridge Community Trust	0	1	0	0	0	0	0	0	1
Craigavon Area Hospital Trust	0	2	1	0	0	0	0	0	1
Foyle Community Trust	0	3	1	0	0	0	0	1	1
Altnagelvin Hospital Trust	1	3	2	0	0	0	0	1	1
Belfast City Hospital Trust	0	2	1	0	0	0	1	0	0
Armagh Dungannon Trust	0	1	1	0	0	0	0	0	0
Mater Hospital Trust	0	2	2	0	0	0	0	0	0
Total	**6**	**35**	**25**	**0**	**1**	**0**	**4**	**2**	**9**

Analysis of Complaints Against Other Bodies Within Jurisdiction 1 April 2003 to 31 March 2004

	Brought forward from 2002/03	Received	Rejected	Settled	Discon-tinued	Withdrawn	Reported cases upheld or partially upheld	Reported cases not upheld	In action at 31.3.2004
Arts Council	1	1	0	0	1	0	0	1	0
Council for the Curriculum Examinations and Assessment	0	4	3	0	0	0	0	0	1
Fire Authority	0	4	3	0	0	0	0	0	1
Equality Commission	1	2	1	0	0	0	0	1	1
General Consumer Council	1	0	0	0	1	0	0	0	0
Health & Safety Executive	0	1	1	0	0	0	0	0	0
Office of the Certification Officer	0	1	1	0	0	0	0	0	0
Local Government Officers Superannuation Committee	0	2	1	0	0	1	0	0	0
Laganside Corporation	0	1	0	0	0	0	0	0	1
Staff Commission For Education & Library Boards	0	2	2	0	0	0	0	0	0
Total	**3**	**18**	**12**	**0**	**2**	**1**	**0**	**2**	**4**

Appendix D

Analysis of Oral Complaints

Fig 3.6 - Commissioner for Complaints
Analysis of Oral Complaints Received - 1 April 2003 to 31 March 2004

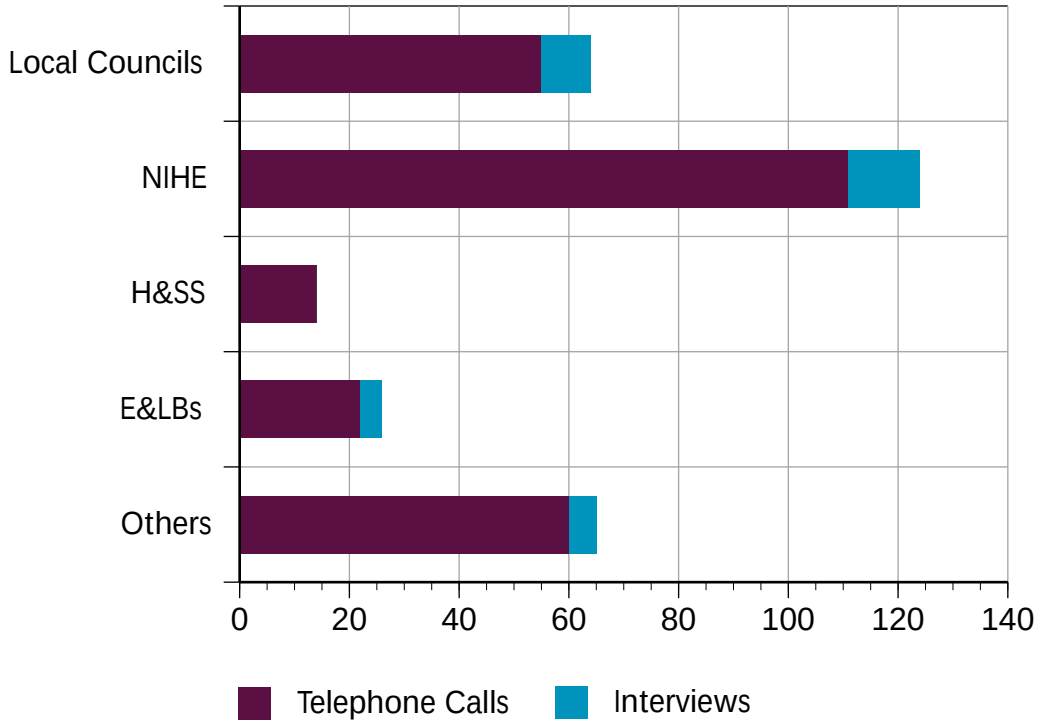
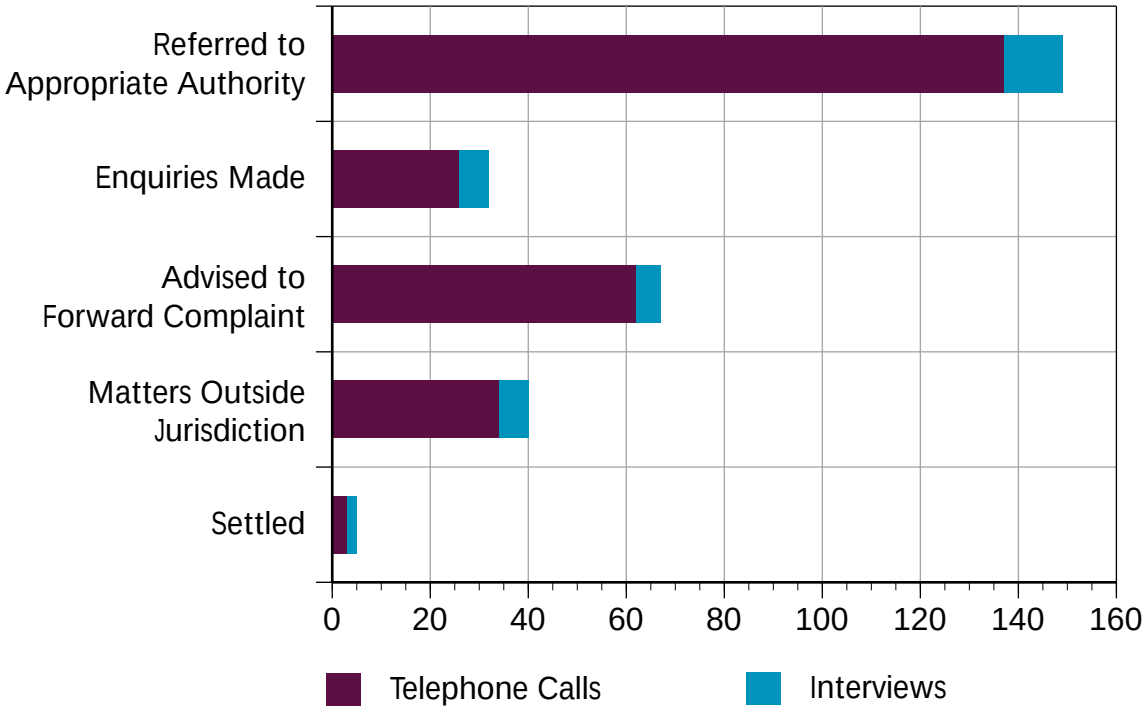
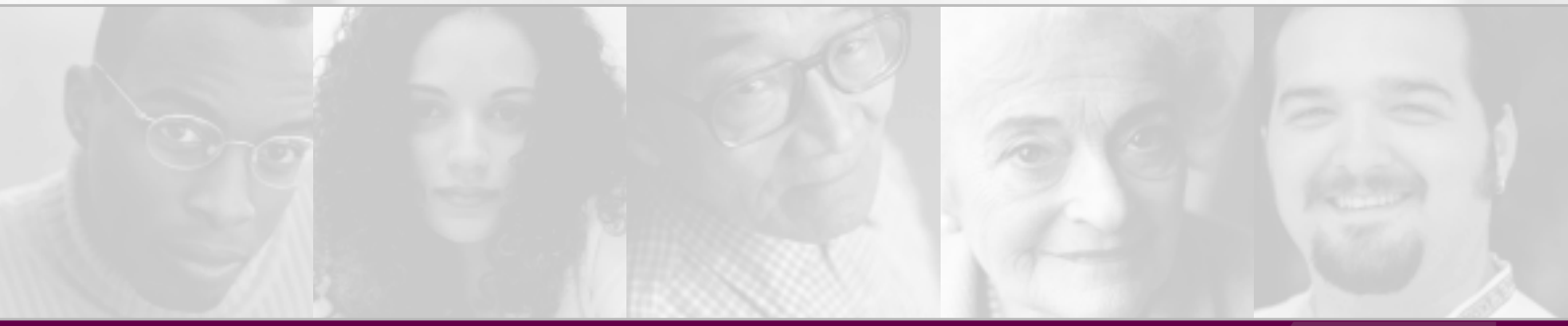


Fig 3.7 - Commissioner for Complaints
Outcome of Oral Complaints Received - 1 April 2003 to 31 March 2004



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



Section Four

CONCERNS AND RECOMMENDATIONS

In my introduction I referred to my concern about an emerging trend in complaints from persons who have been arbitrarily removed from the patient list of their general health service provider. I also referred to the additional failures following receipt of complaints by the patients concerned.

I have included three such cases in my review of investigations, each reflect a personal injustice as a result of maladministration, and each has resulted in the implementation of my recommendation that an apology be issued to the particular claimant. In one of these cases I also recommended that a consolatory payment should be issued to the complaint on account of the injustice, distress and humiliation sustained as a result of the capricious actions of the Practice. This particular case highlights all the concerns I must address, and my purpose in singling it out is to prevent a recurrence of such malpractice, and to ensure that legislation is enacted to guarantee compliance with the recommendations, including financial sanctions, made as a result of an investigation by the Commissioner for Complaints, or indeed an investigation conducted under the Health and Personal Social Services Complaints Procedures

First, practitioners have available to them clear and explicit guidance which defines their duties and responsibilities. This includes guidance on the ending of the professional relationship with a complainant together with advice on co-operation with any complaints procedures. In this case all the guidance was disregarded, the complainant was summarily removed from the practice list, no attempt was made to engage in local resolution and compliance with the Health and Person Social Services Complaints Procedures was non-existent, compounded by a failure to implement the recommendations of an independent review panel.

In the case of my recommendations following my extensive investigation although the Practice issued an apology to the complaints, my specific instructions regarding that apology were ignored, as was my recommendation concerning a consolatory payment.

While I am not suggesting that the behaviour of this particular Practice is typical, I do suggest the behaviour clearly illustrates that a voluntary approach to implementing recommendations does not work when it encounters a cavalier and unaccountable attitude. Accordingly I consider that it is imperative that the Department of Health, Social Services and Public Safety introduces a change to the legislation which will ensure compliance with recommendations and introduce tangible sanctions.

Complaints Received

I received a total of 94 complaints during 2003/04, 9 less than in 2002/03.

Breakdowns of the complaints received in 2003/04 by Service, Subject and Groups are shown in Figs 4.2 – 4.4.

A breakdown of the complaints received according to the Local Council area in which the complainant resides is shown in Fig 4.5.

Fig 4.1 - Health Service Complaints 1997/98 – 2003/04

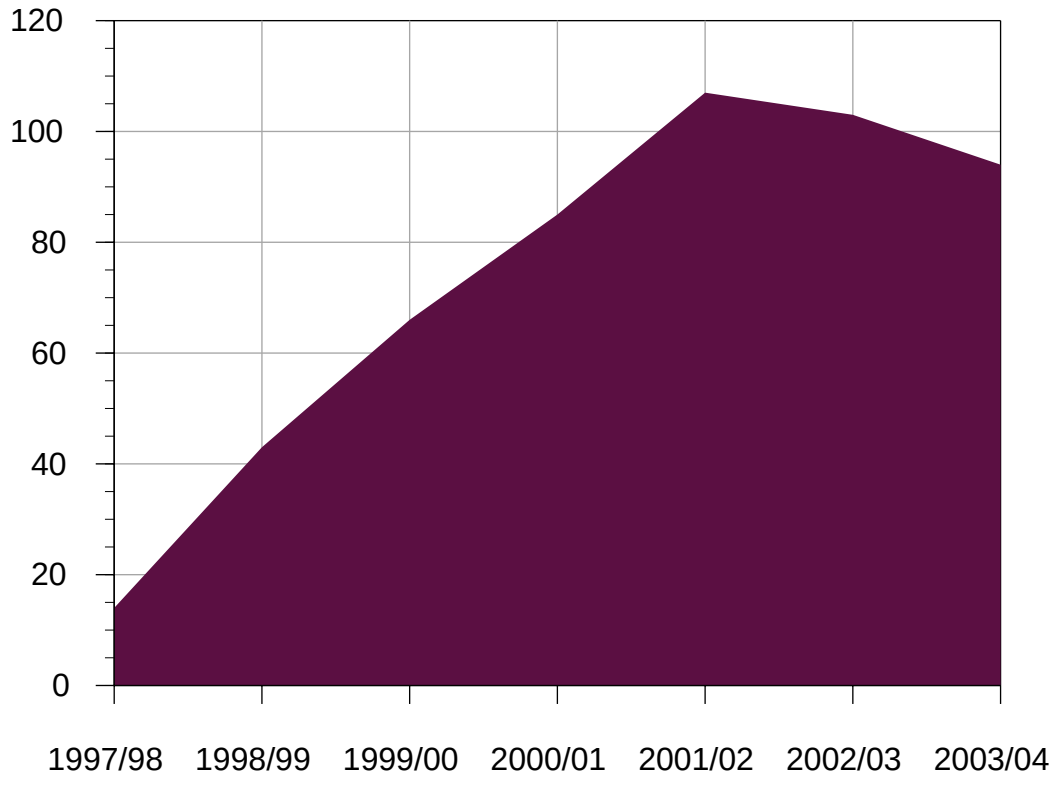


Fig 4.2 - Health and Social Services Complaints 2003/04
94 Complaints Received

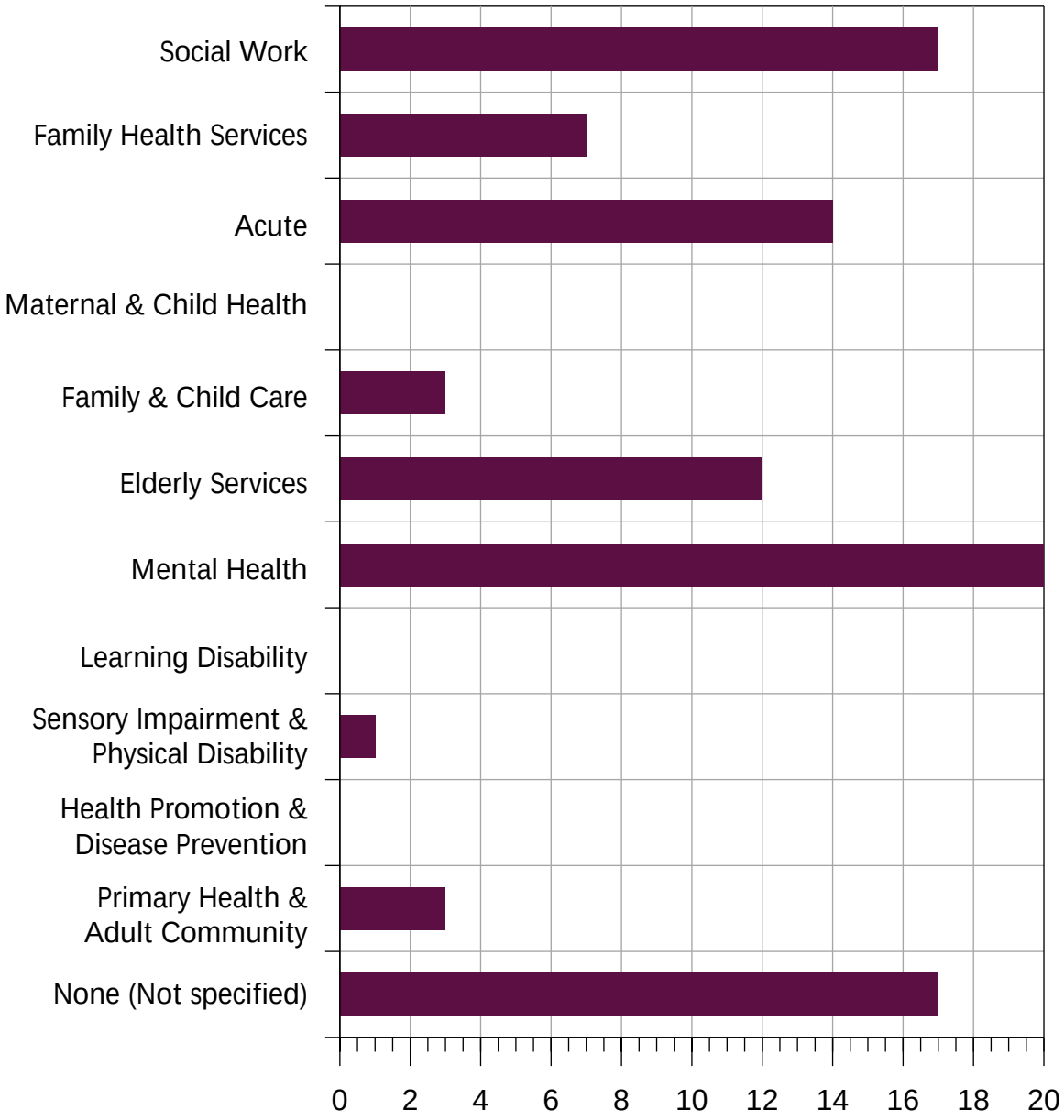


Fig 4.3 - Subject of Health Services Complaints 2003/04
94 Complaints Received

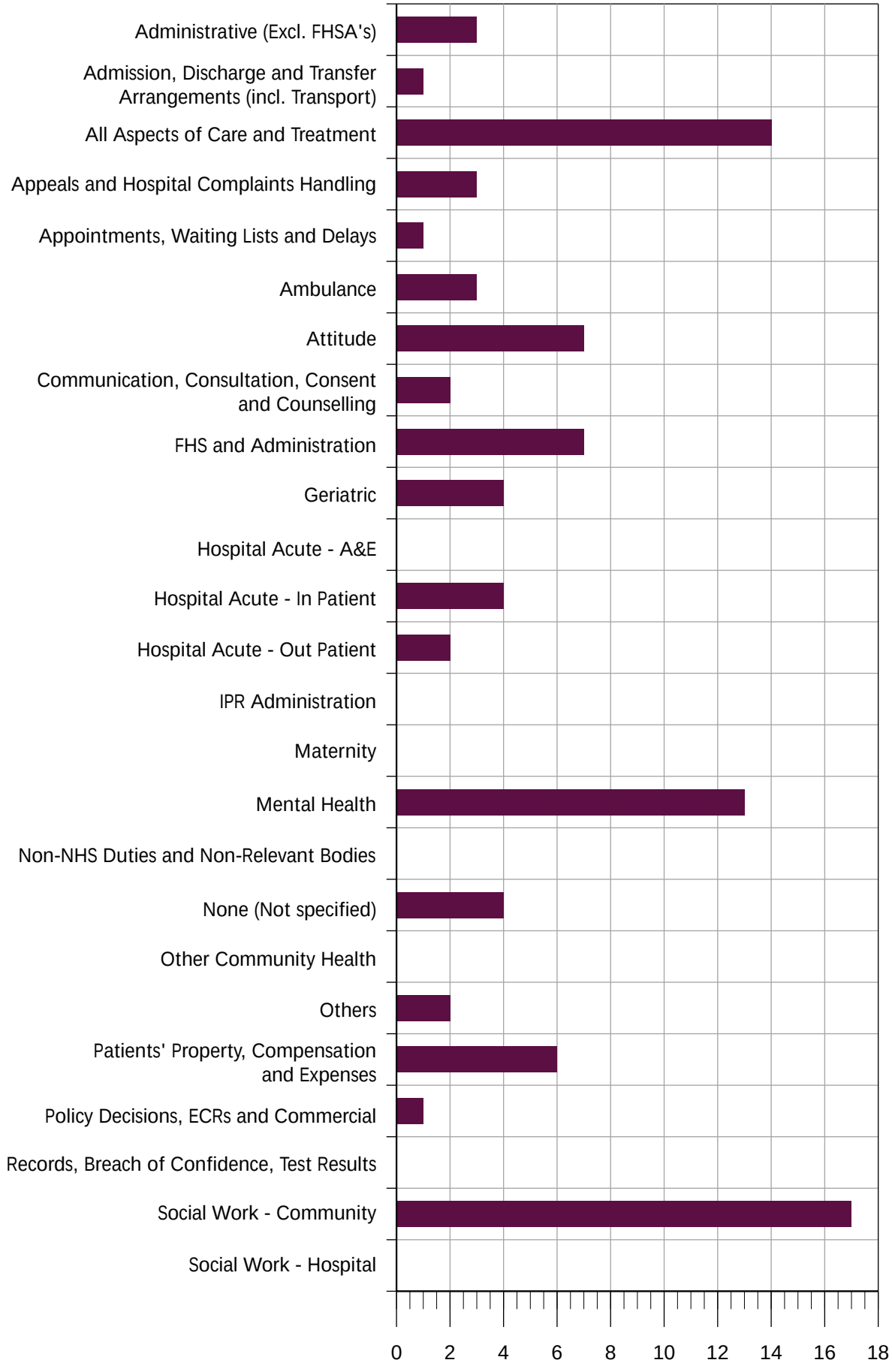


Fig 4.4 - Health Service Groups Complained of - 2003/04
94 Complaints Received

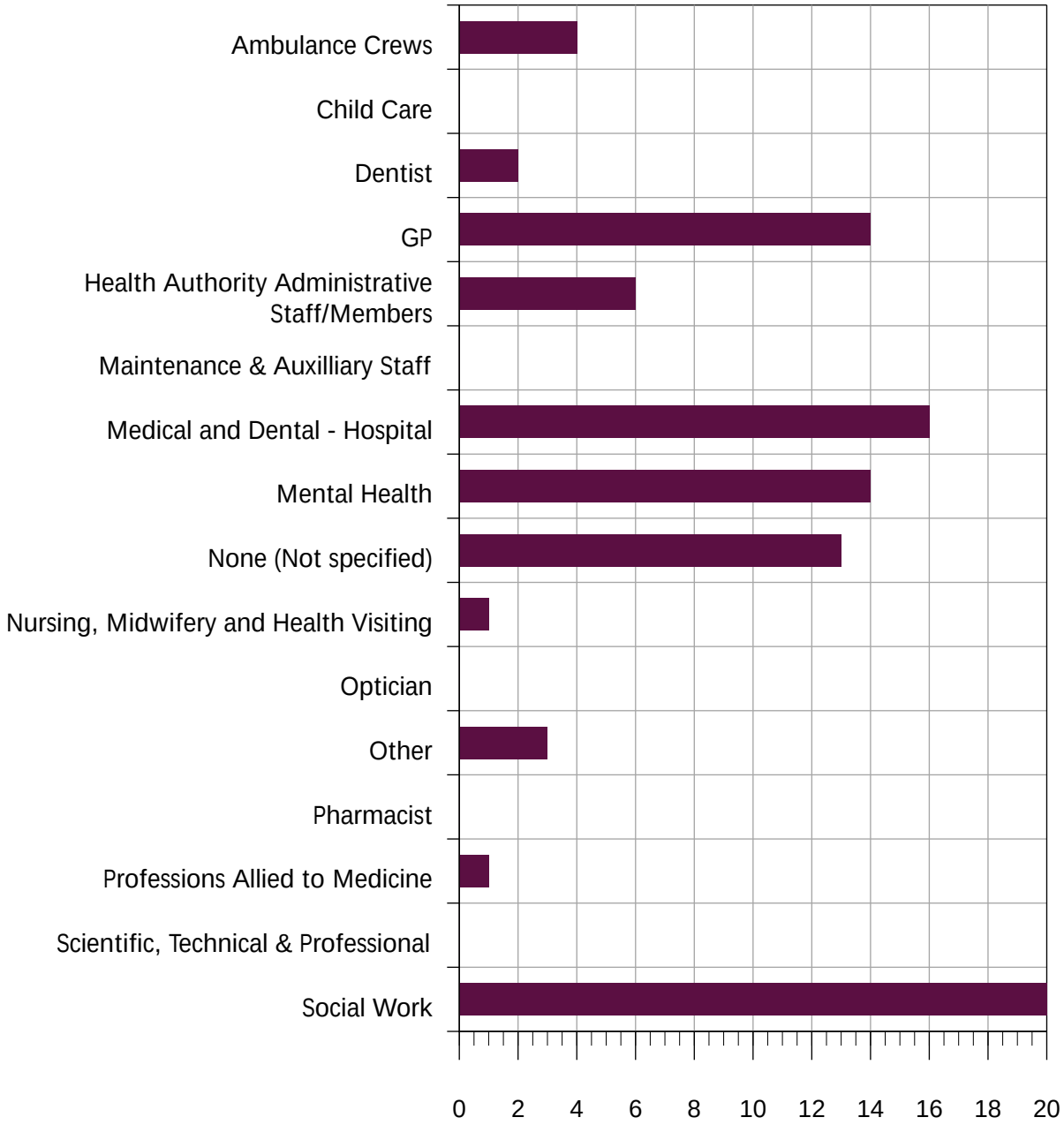
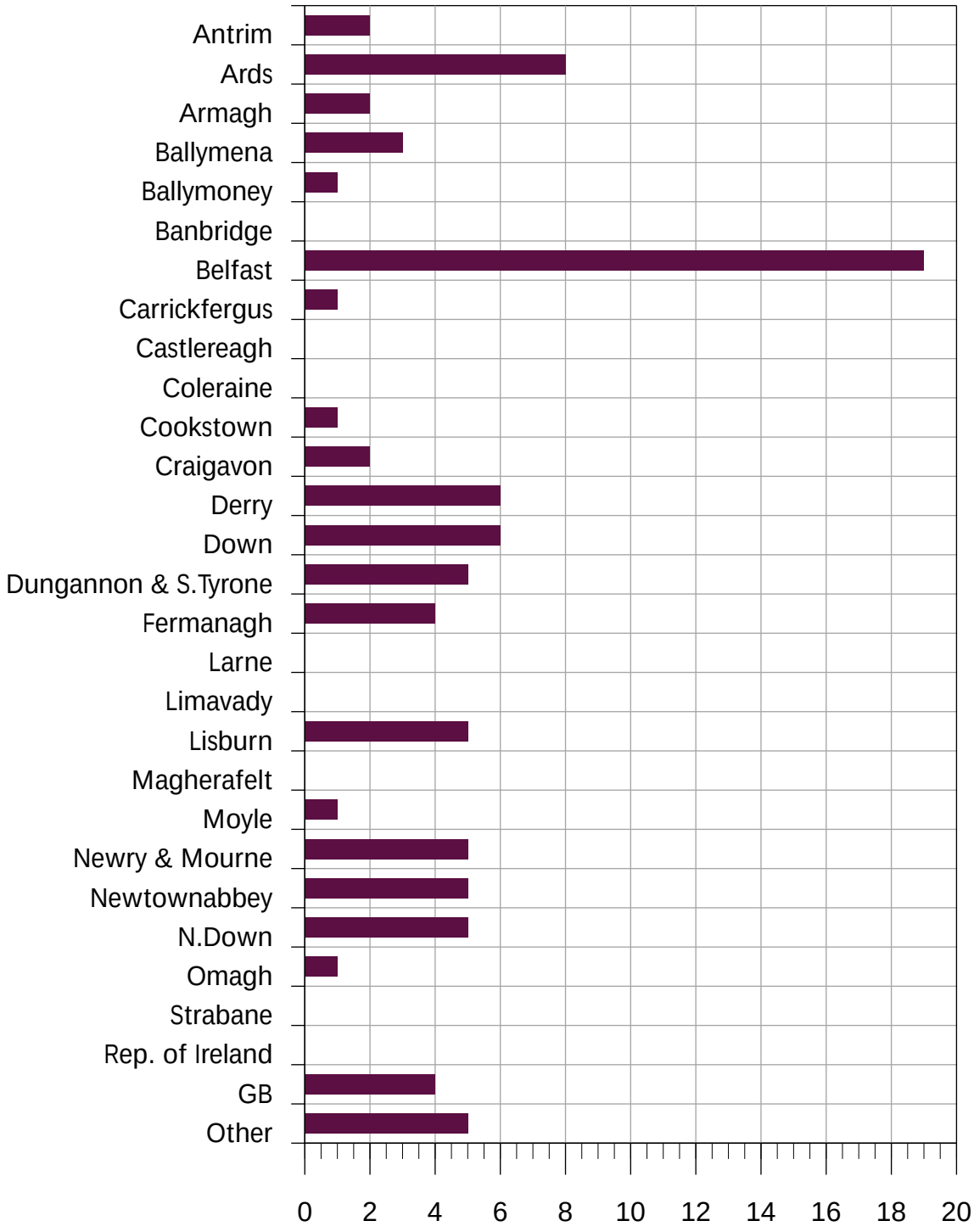


Fig 4.5 - Health and Social Services 2003/04
94 Complaints Received - Local Council Area in which Complainant Resides



Statistics

In addition to the 94 complaints received during the reporting year, 33 cases were brought forward from 2002/03. Action was concluded in 89 cases during 2003/04 and, of 38 still being dealt with at the end of the year, all were under investigation. In 6 cases I issued an Investigation Report setting out my findings.

The 38 cases in process at 31 March 2004 were received during the months indicated in Table 4.2.

During 2003/04 50 cases were resolved without the need for in-depth investigation and 1 case was settled. 65 cases were accepted for investigation. Complaints about matters not subject to my investigation totalled 5. I referred 40 complaints to the body concerned to be dealt with under the Health & Personal Social Services Complaints Procedure. The outcomes of the cases dealt with in 2003/04 are detailed in Fig 4.6.

Of the total of 2,852 oral complaints received by my Office some 135 were against bodies within the Health & Personal Social Services jurisdiction of the Commissioner for Complaints. See Figs 4.7 and 4.8 at Appendix D to this Section.

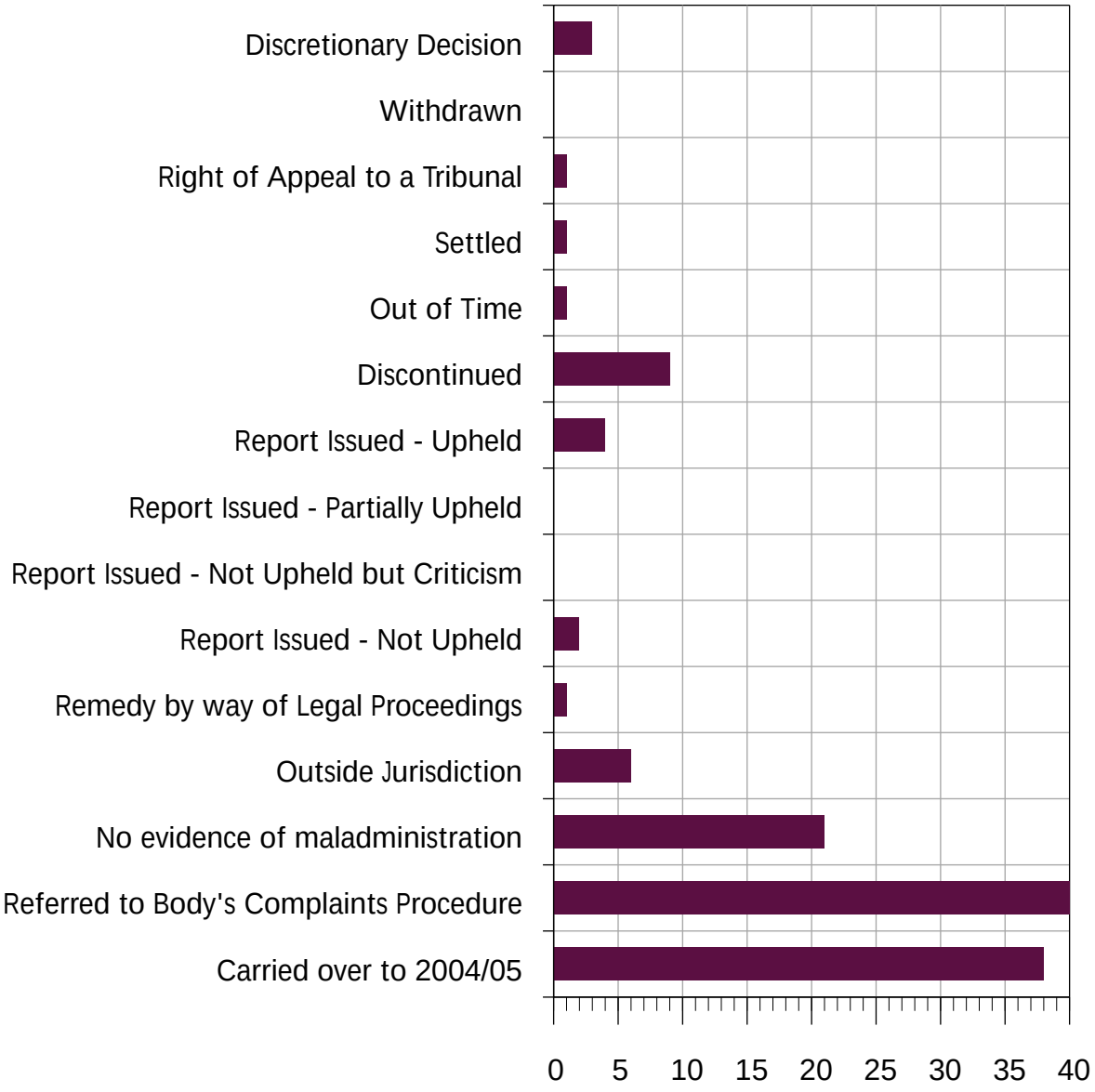
Table 4.1 - Caseload for 2003/04

Number of uncompleted cases brought forward	33
Complaints received	94
Total Caseload for 2003/04	127
Of Which:	
Cleared at Initial Sift Stage	32
Cleared without in-depth investigation including cases withdrawn and discontinued	50
Cases settled	1
Full report issued	6
Cases in action at the end of the year	38

Table 4.2 - Date of Receipt of Cases in Process at 31 March 2004

November 2001	1
January 2002	1
May 2002	1
June 2002	1
July 2002	1
November 2002	1
December 2002	1
April 2003	1
July 2003	1
August 2003	9
September 2003	3
October 2003	3
November 2003	1
December 2003	2
January 2004	4
February 2004	5
March 2004	2

Fig 4.6 - Health and Social Services 2003/04
Outcome of Cases



Time Taken for Investigations

The average time taken for a case to be examined and a reply issued at Initial Sift stage was 1.5 weeks.

The average time taken for a case to be examined, enquiries made and a reply issued at Investigation stage was 30.5 weeks.

Reports Issued and Settlements Obtained After Investigation

6 reports of investigations were issued in 2003/04 compared to 4 in 2002/03. The subjects of the cases reported on were: Family Health Services and Admin (3); All Aspects of Care and Treatment (2); and Ambulance.

4 cases were upheld; 2 cases were not upheld. Full Settlement was achieved in 3 of the 4 cases that I upheld:-

Table 4.3 - Settlement Achieved in Upheld Cases

Case No	Body	Subject of Complaint	Settlement
HC 1/01	NI Ambulance Service	Emergency Ambulance response to call out	Apology
HC 49/01	Cookstown Health Centre	Handling of a complaint	Apology
HC 51/01	Ardmore Health Centre	Decision to remove complainant and his with from the patient list	Apology

Review of Investigations

Failure to Address Concerns Regarding Standard of Care

In this case the complainant alleged that in refusing to approve her request for Independent Review of a complaint about the standard of urological and gynaecological care provided by Craigavon Area Hospitals Trust (the Trust), the Convenor of the Southern Health and Social Services Board (the Board) had failed to give due consideration to the points she had raised. The complainant listed a number of grievances against the Trust including the manner in which her complaint had been handled, the attitude and actions of staff in the Urology Department towards her, the decision of the Consultant Urologist not to proceed with a surgical procedure and to remove her from his list, the failure of the Trust to facilitate a meeting to discuss this decision and the standard of gynaecological care which she had received over a 10 year period.

To enable me to consider the complaint, I asked the Board to provide me with all the documentation considered by the Convenor when dealing with the request for an Independent Review. I also obtained my own independent medical advice on the clinical aspects of the case.

Having examined the papers most carefully I was satisfied that the Convenor had been in possession of comprehensive information upon which to base the decision on the merits of an Independent Review of the complaint. I did consider it unfortunate that the Trust had felt unable to meet with the complainant to discuss her complaint, however in light of the background of difficult relationships with staff in the Urological Department which had culminated in a particularly fractious incident, I did not disagree with the Convenor's view that a meeting would be unlikely to be productive. I was satisfied that the Consultant Urologist's decision not to carry out the planned procedure was properly made on clinical grounds although I criticised the Trust for failing to communicate this more expeditiously to the complainant. I felt that the Trust's recommendation to the complainant's GP that she should be referred to Belfast City Hospital for future urological care was in the interests of her current and future healthcare needs. I found no reason to be critical of the gynaecological care provided by the Trust.

I had some minor concerns about the Trust's handling of the complaint which led me to write to the Chief Executive to remind him of the need to issue a comprehensive reply to a complainant within a timeframe that was commensurate with the need to conduct an effective investigation of the matters that had been complained of. However, given the difficult background to this complaint, I was satisfied that reasonable attempts had been made to deal with the complainant's grievances.

As regards the request for an Independent Review I decided that the Convenor had made an informed and reasoned decision in respect of this complaint. As a result I decided that I had no grounds for further action. **(HC 2/02)**

Failure to Identify and Treat Cancer

In this complaint the aggrieved person told me that she was dissatisfied with the response under the local resolution phase of the Health & Personal Social Services Complaints Procedure from Craigavon Hospitals Group Trust (the Trust) in relation to concerns about the standard of care provided to her late mother, who

had died of bowel cancer. In addition, the complainant told me that she was not satisfied with the assurances given by the Convenor, appointed by the Southern Health and Social Services Board (the Board) to consider her application for an Independent Review of the complaint, that the care her mother received was of an appropriate standard. The complainant felt that symptoms exhibited by her mother during the latter years of her life had not been properly investigated by the Trust. She felt that her mother's bowel cancer could have been detected and treated earlier, particularly in light of the fact that she had previously undergone surgery for breast cancer and an earlier incidence of bowel cancer.

In the course of my enquiries into this complaint I examined the documentation considered by the Convenor when dealing with the request for an Independent Review, including all of the papers generated during the Local Resolution phase of the complaints procedure as well as detailed and extensive clinical notes. In addition I sought my own independent medical advice on the clinical handling of the case. From my examination of the records I was satisfied that the Convenor had been properly informed by access to comprehensive documentation on the Trust's handling of the complaint. I was also satisfied that the Convenor was in possession of extensive medical notes pertaining to the relevant period of care and treatment provided to the complainant's mother. In addition, I verified that independent professional medical advice on the manner in which the Trust responded to the clinical issues raised in the complaint was obtained by the Convenor, in line with the Health & Personal Social Services Complaints Procedure. Having carefully considered all of the documentary evidence and taken account of the advice of my own Independent Medical Adviser I found that there were no grounds to criticise the clinical care which the complainant's mother had received in Craigavon Hospital, or from the cancer specialists. I was unable to identify any evidence which would indicate that symptoms were inappropriately treated or that bowel cancer could have been diagnosed at an earlier stage.

As a result of my enquiries into this case I did consider it appropriate to endorse concerns expressed by the Convenor in relation to the adequacy of the Trust's system for updating complainants on progress in the investigation of complaints. I also agreed with the Convenor that the Trust had fallen short of the required standard of recording of communications between the complainant's family and the medical team. I therefore wrote to the Chief Executive asking for details of the proposed action to address these shortcomings.

However, despite my deep sympathy for the distressing loss suffered by the complainant in this case, I was satisfied that the Convenor's decision not to grant an Independent Review had been reasoned and informed. As a result I was unable to take any further action on the complaint. **(HC 31/02)**

Handling of a Complaint

The complainant in this case complained to me about the Cookstown Health Centre Practitioners' handling of a complaint which she had made under the provisions of the Health and Personal Social Services Complaints Procedure (the complaints procedure). In making her complaint the complainant alleged that the Practitioners had failed to co-operate with the complaints procedure and had failed to implement the Independent Review Panel's recommendations.

My investigation of the complaint confirmed a total lack of commitment to and co-operation with the process. I concluded that those responsible for dealing with complaints on behalf of the Health Centre had demonstrated a lack of respect for the complaints procedure and those trying to operate it. Their attitude towards it was manifestly at variance with the objectives of the complaints procedure and the spirit of the General Medical Council guidance. Against the background of their lack of co-operation with the complaints procedure and their failure to implement the Independent Review Panel's recommendations I had no hesitation in concluding that the Practice was guilty of maladministration. I was satisfied that the complainant had suffered the injustices of annoyance and frustration. In recognition of the injustices caused to the complainant I recommended that an apology by the Practitioners and the Practice manager should be sent to her. The Practice accepted my recommendation.
(HC 49/01)

Emergency Ambulance Response to a Call Out

The complainant in this case wrote to me about the Northern Ireland Ambulance Service (the NIAS). She outlined to me concerns which she had about an emergency ambulance response to a call out which her father's General Practitioner (the GP) had made. She told me that there had been considerable delay in the emergency ambulance arriving and despite being requested by the GP to take her father to the Royal Victoria Hospital, Belfast, the ambulance crew (the crew) had taken him to the Downe Hospital, whereupon he had been immediately transferred to the Belfast City Hospital (BCH). Following his arrival in BCH her father had underwent emergency surgery for a ruptured aortic aneurysm. He failed to make a full recovery and had died some three weeks later. The complainant alleged that the crew had ignored specific requests both from the GP and her mother to take the patient to the nearest hospital for stabilisation, they were not paramedic trained and did not appear competent in that they had assumed they were dealing with a cardiac related illness, they failed to act in accordance with GP's requests and they were unable to lift her father unassisted into the ambulance. The complainant was firmly of view that the delay in getting her father to an appropriate hospital for emergency surgery had considerably lessened his chance of surviving.

Following a long and detailed investigation, I identified a number of areas that led me to conclude that the NIAS had failed to provide the standard of service which the complainant's family were entitled to receive. Those areas included delay in the emergency ambulance arriving at the patient's home, the failure of the crew to meet their professional responsibility to establish the nature of the patient's illness, the crew's failure to take the patient to the appropriate nearest hospital and its failure to clarify which hospital the GP wanted his patient brought to in accordance the normal custom and practice. I established that the delay in arriving at the patient's home had been due to the fact that the Ambulance Station which normally served the patient's home area had been unable to dispatch a crew because its ambulances had been held up at Dundonald Hospital. In addition the Eastern Area Ambulance Control had given the attending crew incorrect directions. I formed the view that the delay had resulted in understandable stress and anxiety which had effectively inhibited good communication between the crew and the GP and had resulted in the crew's failure to establish the nature

of the patient's illness which in turn had influenced their decision to bring the patient to the Downe Hospital because they had assumed the patient had a cardiac related illness.

Other areas of concern which I had, included the fact that not all NIAS emergency ambulances were staffed with paramedics and the NIAS did not have systems to allow Ambulance Control to differentiate calls and allocate crews based on the level of skills required. In addition, I expressed concern about the handling of the complaint made by the complainant to the NIAS in that no attempt was made to establish the cause the delay. A further matter of concern which I had was the fact that the GP had not been aware that he had primacy at the emergency scene.

I concluded that the complainant's family had suffered the injustice of stress and annoyance as a result of maladministration. Although the NIAS Chief Executive agreed that the standard of service fell short of what the complainant's family were entitled to receive he did not agree with some of the severe criticism which I levied at his organisation in my report. The Chief Executive agreed to issue a letter of apology to the complainant which he copied to me. He also provided details of steps taken by the NIAS to improve service delivery standards. Those steps included

- The part-time Medical Director was increased to full time
- A full time Complaints Officer was appointed for the first time
- On a pilot basis an Ambulance Officer was to be seconded to work alongside the Complaints Officer with a view to improving the overall complaints process
- The post of Director of Operations was filled on a permanent basis. This post had been filled on a temporary basis from June 2000 to May 2001.
- The pilot for Advanced Medical Priority Dispatch was continuing at East Ambulance Control and the evaluation report recommended that it be rolled out across Northern Ireland.
- A Clinical Governance Committee was established in the Trust, chaired by a Non-Executive Director
- Improved mapping systems were introduced into East Ambulance Control

Following completion of my investigation I wrote to the Permanent Secretary of the Department of Health, Social Services and Public Safety highlighting my concerns about the shortage of paramedic trained staff, the difficulties associated with Dundonald Hospital and the absence of a Medical Priority Dispatch System in all regions of the province. **(HC 1/01)**

Removal from GP Practice List

The complainant in this case referred a complaint to me which centred on the decision of General Practitioners (GPs/GP) in Cookstown Health Centre (the Practice) to remove her and her family from its practice list. She explained that for some twenty years they had been patients of the Practice and were devastated when they were removed from the practice list. The complainant explained that her husband, who had been seriously ill for over two years, had been experiencing some difficulty getting an appointment with his GP, who had been a personal family friend. Her husband had contacted the Northern Health and Social Services

Board (the Board) to clarify if he was entitled to an appointment with his GP. A Board Officer had contacted the Practice by way of mediation, following which an appointment had been arranged for the complainant and her husband. That appointment was used to tell them that the doctors had decided to remove them from the practice list because they had contacted the Board. The complainant and her husband were shocked and humiliated by the way the matter had been handled by the Practice, particularly because they had been led to believe that the appointment had been allocated to them for the sole purpose of a medical consultation.

The complainant raised her complaint with the Practice under the provisions of the Health and Personal Social Services Complaints Procedure (the complaints procedure). The response issued to her by her former GP stated they had been removed from the practice list because of their contact with the Board and based on that it had been decided the doctor/patient relationship had broken down. The complainant was granted an Independent Review because the Practice had refused to engage in further local resolution.

In making her complaint to me the complainant expressed her annoyance about the Practice's handling of the complaints procedure. She alleged that the Practice had failed to co-operate with the Independent Review process and had failed to implement the Independent Review Panel's recommendations.

Following a review of all the documentation relating to the processing of the complainant's complaint through the Independent Review process I had grave concerns about the Practice's management of the complaints procedure and the lack of consistency in the evidence presented to the Independent Review Panel by those who represented the Practice. My concerns were such that I decided it would be necessary to examine the issue of the removal of the complainant and her family from the practice list in addition to the Practice's management of the complaints procedure, including the Independent Review Process. My investigation of the complaint established that my concerns were well founded.

I examined the Practice's decision to remove the complainant and her family from the practice list. In examining this matter I had regard for the General Medical Council's guidance which defines the duties and responsibilities of Practitioners. I also considered guidance issued by the Royal College of General Practitioners and the British Medical Association's General Practitioners Committee. I established that the GPs had not afforded the complainant and her husband the opportunity of explaining their reasons for contacting the Board. I concluded that the way this matter had been handled had been counter to all the professional guidance and indeed offended the principles of natural justice. The GPs in their evidence to me had acknowledged that they had not met their professional responsibilities in their handling of this matter. However, that acknowledgement was significantly qualified in that the GPs had sought to justify their decision to remove the family from their practice list by seeking to attribute their decision to what they described as the unreasonable demands made by the family on two of the GPs despite the fact that the evidence demonstrated that the GP who had been a family friend, had encouraged them to seek support.

I felt it necessary to examine the circumstances surrounding the

appointment which the complainant and her husband had been given following their contact with the Board. There was no doubt that they had genuinely believed that the appointment had been allocated to them for a medical consultation. When they arrived for the appointment they were confronted by two GPs and the Practice Manager and they were told they had been removed from the practice list because they contacted the Board. I established that the decision to remove the complainant's family from the practice list had been taken the previous day in response to the contact with the Board. I found the GPs' admission to me that, in the planning and implementation of this indefensible episode, they had not had regard for the possible ill effects that such an experience might have on the complaint's husband who had just come through a prolonged period of ill health. I regarded their handling of that matter as gross maladministration.

I examined the management of the complaints procedure. The evidence confirmed that no attempt had been made by the Practice to seek to resolve the matter under the local resolution process. The Independent Review process lasted some 14 months and much of that delay was directly attributable to the Practice's failure to co-operate with the Convenor's requests for documentation. The Independent Review Panel had sought to establish why the Practice had failed to co-operate with the Independent Review process. The Practice Manager claimed that she had been advised by the Police not to have anything to do with the process because the complainant's husband had issued a threat against her on the day they had been told that they had been removed from the practice list. The Police Sergeant, whom the alleged threat had been reported to, had provided written confirmation to the Independent Review Panel that a report had been made and the matter had been the subject of a criminal investigation. My investigation established that a formal complaint had not been made to the Police, nor had the matter been the subject of a criminal investigation. Additionally the Practice Manager had not been advised by the Police not to co-operate with the Independent Review process. Because the complainant had not been made aware of the allegation made against her husband and therefore had not been given the opportunity to respond to the validity of the allegation I explored this matter in some depth with the GPs, the Practice Manager, the Police and the complainant. The Practice Manager had claimed that she had believed that her life was in danger because she had been aware the complainant's husband had legally held firearms. The complainant's husband had acknowledged that he had been very angry on the day in question but had insisted that he had been referring to the Practice Manager's job when he stated to her, "I'll have you removed". Following careful consideration of all the evidence, including the fact that at no stage prior to the Independent Review Panel hearing had the Practice Manager or indeed the Lead GP, who also had responsibility for complaint handling, provide an explanation for their failure to co-operate with the process. In addition I could not ignore the fact that no formal complaint had been made to the Police nor had there been a criminal investigation. Indeed the Practice Manager had made a conscious decision not to pursue a formal complaint about the incident which in my view indicated that she had not considered the threat as potentially serious. I formed the view that the Lead GP and the Practice Manager had been minded not to co-operate with the Independent Review process. My view was informed by the fact that they had

not consulted the other GPs about their decision not to co-operate with the process and they misled the Independent Review panel about the Police involvement and the advice allegedly given to the Practice Manager. I had no hesitation in arriving at the conclusion that the Lead GP and the Practice Manager had deliberately set out to frustrate and obstruct those trying to operate the Independent Review process to the extent that they had been prepared to go to any lengths to discredit the open and transparent examination of the complaint made to the Board. Although the Practice Manager and the Lead GP had overall responsibility for the management of complaint, I noted my concern about the dereliction of responsibility on the part of the other GPs in relation to complaint handling.

The Independent Review panel in its formal report made a number of recommendations in relation to actions it expected the Practitioners to take. My investigation established that the GPs had failed to implement all the recommendations. The Lead GP had responsibility for ensuring that the recommendations were implemented and he had failed to meet that responsibility. The complaints procedure does not place a statutory responsibility to implement Independent Review panel recommendations but in my view, in accordance with the spirit of complaints procedure, there is a professional responsibility to do so. The failure to implement all the recommendations further illustrated the Lead GP's lack of respect and commitment to the complaints process.

I found it most regrettable that the GP whom the family had identified as a family friend, and who readily acknowledged that friendship, had sought to discredit the complainant and her husband by accusing them of making unreasonable demands of his care and attention.

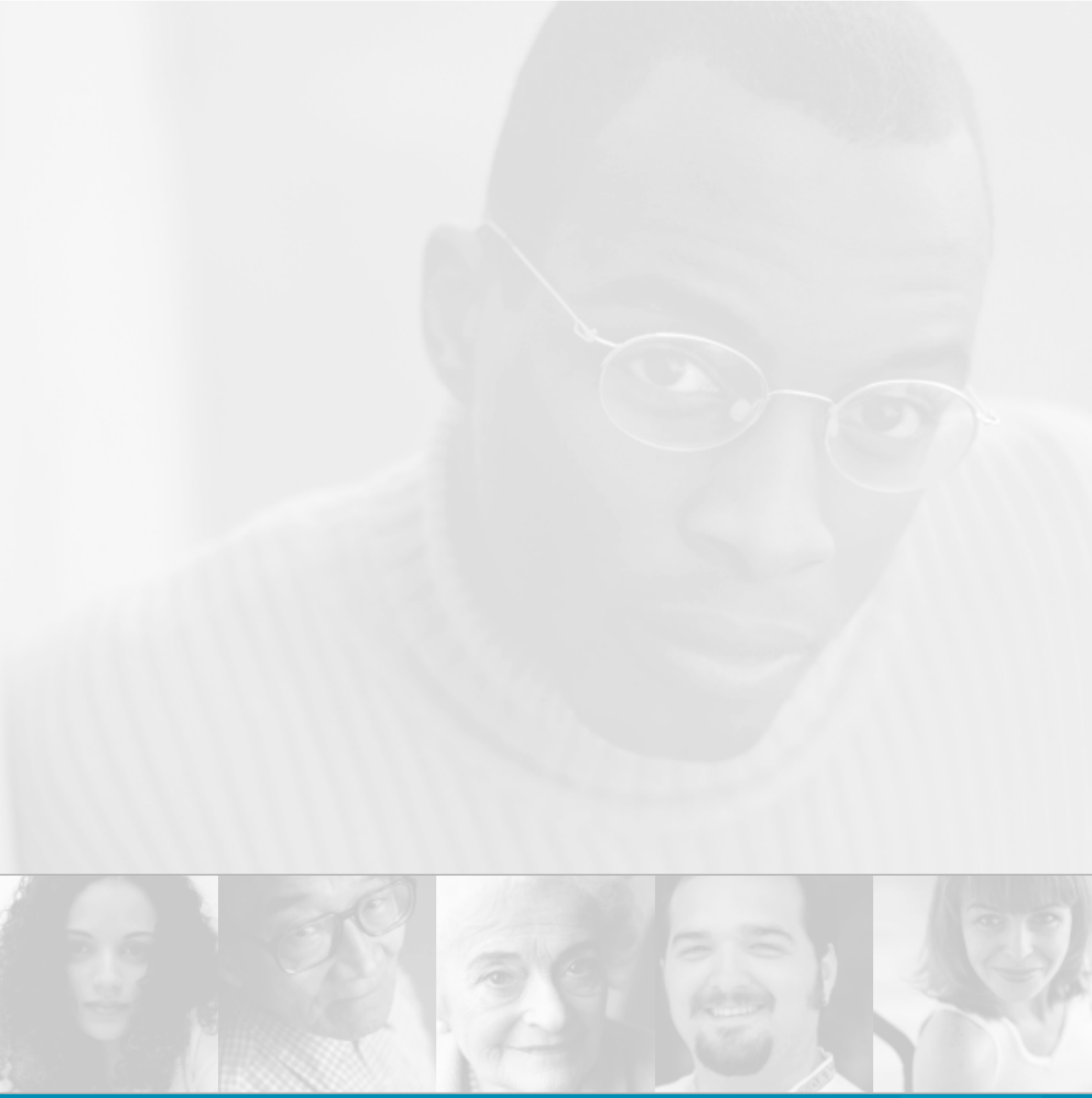
In making my recommendation that the GPs and the Practice Manager should issue a letter of apology to the complainant and her husband, together with a consolatory payment of £3,000, I took into account the injustices of distress and humiliation which the complainant and her husband had been caused. In relation to the consolatory payment I had originally considered a payment of £4,000. However on reflection, I decided to reduce to £3000 on the basis that I could not condone the complainant's husband's angry reaction to the information that he and his family were being removed from the practice list. I had specifically requested that a draft copy of the letter of apology be sent to me so that I could endorse it; my request was ignored by the Practice. The Practice also refused to implement my recommendation regarding the consolatory award. **(HC 48/01)**

Decision to Remove Complainant and His Wife from the Patient List

The complainant in this case wrote to me about the decision to remove his wife and himself from the patient list at Ardmore Medical Centre (the Medical Centre). He was aggrieved that his Doctor had arbitrarily removed them from the patient list following an incident during a visit to the Medical Centre. In making his complaint, the complainant also made reference to his concerns about the Practice's response to the recommendations made by the Independent Review Panel.

My detailed investigation of this complaint revealed that in the handling of the removal of the complainant and his

wife from the patient list, the Medical Centre failed to adhere to the guidelines laid down by the professional bodies and to its own complaints procedure. The failure to implement any of the recommendations of the Independent Review Panel indicated a lack of co-operation with the Health and Personal Social Services Complaints Procedure. Against this background I concluded that the Medical Centre, in its arbitrary removal of the patients from the Practice list and its failure to implement the Independent Review Panel's recommendations, was guilty of maladministration. I was satisfied that the complainant had suffered the injustices of annoyance and frustration and in recognition of these injustices I recommended that a letter of apology, signed by the Doctor concerned and the Practice Manager should be sent to the complainant. The Medical Centre accepted my recommendation.
(HC 51/01)



Section Four
Appendices

Appendix A

Summary of Registered Case Settled

Craigavon & Banbridge Community Trust (HC 9/03)

A lady complained to me about the nursing home costs imposed by the Trust after her late husband was hospitalised. I arranged for enquiries to be made of the Trust and, as a result of these enquiries, a review of the case was undertaken by the Trust. Following that review the Trust informed me that, in view of the circumstances in this case, it would not be pursuing any outstanding charges for the period following the complainant's late husband's hospitalisation. As I regarded this as a satisfactory resolution of the complaint, I decided to take no further action on this case.

Appendix B

Summaries of Registered Cases Discontinued

Western Health & Social Services Board (HC 6/02 & 9/02)
A couple made two complaints to me about delays by the Board in dealing with their complaints. Having carefully considered the issues raised in their letters of complaint I decided to discontinue any action on these cases as the matters complained of were included within an ongoing complaint by the same complainants.

South & East Belfast Health & Social Services Trust (HC 13/03)
The complainant in this case was dissatisfied with the Trust's handling of his complaint. During the course of my investigation the complainant wrote to me to explain that the Chief Executive of the Trust had written to him apologising for any offence and distress he may have suffered and that he had accepted her apology. In light of this development I decided to discontinue my investigation of this case.

Foyle Health & Social Services Trust (HC 23/03)
I received a complaint from a lady regarding the Trust's handling of her complaints in relation to Social Workers. Having obtained the background papers on this case from the Trust it became evident that the complaint had not be examined through the Trust's Complaints and Representation Procedure. In the circumstances I decided to discontinue my investigation of the complaint.

Down Lisburn Trust (HC 26/03)
A gentleman complained to me about the level of funding provided towards his wife's care in a nursing home. This complaint was prompted by a Special Report to Parliament by the Parliamentary and Health Service Ombudsman in Great Britain. Having made enquiries I determined that the Report does not apply in Northern Ireland because the provision of health and social care here operates under different legislation and a different administration structure. In view of this I decided to discontinue my investigation of this case.

Ulster Community & Hospital Trust (HC 60/03)
A lady complained to me about the Trust's handling of her complaint. Having carefully considered the issues raised in her letter of complaint I decided to discontinue any action on this case as the matters complained of were included within an ongoing complaint by the same complainant.

Appendix C

Analysis of Written Complaints

Analysis of All Complaints Received – 1 April 2003 to 31 March 2004

	Brought forward from 2002/03	Received	Rejected	Settled	Discon-tinued	Withdrawn	Reported cases upheld or partially upheld	Reported cases not upheld	In action at 31.3.2004
Health and Social Services Boards	8	14	11	0	3	0	1	0	7
Health and Social Services Trusts	21	65	52	1	6	1	1	2	23
Other Health and Social Services Complaints	4	15	9	0	0	0	2	0	8
TOTAL	**33**	**94**	**72**	**1**	**9**	**1**	**4**	**2**	**38**

Analysis of Complaints Against Health and Social Services Boards 1 April 2003 to 31 March 2004

	Brought forward from 2002/03	Received	Rejected	Settled	Discon-tinued	Withdrawn	Reported cases upheld or partially upheld	Reported cases not upheld	In action at 31.3.2004
Eastern H&SSB	1	6	3	0	1	0	0	0	3
Northern H&SSB	3	3	5	0	0	0	1	0	0
Southern H&SSB	1	3	3	0	0	0	0	0	1
Western H&SSB	3	2	0	0	2	0	0	0	3
TOTAL	**8**	**14**	**11**	**0**	**3**	**0**	**1**	**0**	**7**

Analysis of Complaints Against Health and Social Services Trusts 1 April 2003 to 31 March 2004

	Brought forward from 2002/03	Received	Rejected	Settled	Discon-tinued	Withdrawn	Reported cases upheld or partially upheld	Reported cases not upheld	In action at 31.3.2004
Greenpark Trust	1	2	2	0	0	1	0	0	0
Down Lisburn Trust	0	7	4	0	1	0	0	0	2
N&W Belfast Trust	1	1	2	0	0	0	0	0	0
S&E Belfast Trust	0	7	4	0	1	0	0	0	2
Belfast City Hospital Trust	2	1	3	0	0	0	0	0	0
Royal Hospitals Trust	1	1	1	0	0	0	0	0	1
Sperrin Lakeland Trust	1	5	2	0	1	0	0	0	3
Ulster Community and Hospitals Trust	1	11	3	0	2	0	0	0	7
Causeway Trust	1	0	1	0	0	0	0	0	0
Homefirst Community Trust	2	4	5	0	0	0	0	0	1
United Hospitals Trust	0	2	0	0	0	0	0	0	2
Armagh & Dungannon Trust	2	6	7	0	0	0	0	0	1
Craigavon & Banbridge Community Trust	1	4	4	1	0	0	0	0	0
Craigavon Area Hospital Trust	2	0	0	0	0	0	0	2	0
Mater Hospital Trust	2	2	4	0	0	0	0	0	0
Newry and Mourne Trust	1	2	3	0	0	0	0	0	0
Foyle Community Trust	2	6	5	0	1	0	0	0	2
Ambulance Service	1	4	2	0	0	0	1	0	2
TOTAL	**21**	**65**	**52**	**1**	**6**	**1**	**1**	**2**	**23**

Analysis of Complaints Against Other Health and Social Services Bodies
1 April 2003 to 31 March 2004

	Brought forward from 2002/03	Received	Rejected	Settled	Discon-tinued	Withdrawn	Reported cases upheld or partially upheld	Reported cases not upheld	In action at 31.3.2004
Medical Family Practitioner Services	4	12	6	0	0	0	2	0	8
Dental Family Practitioner Services	0	1	1	0	0	0	0	0	0
TOTAL	**4**	**13**	**7**	**0**	**0**	**0**	**2**	**0**	**8**

Appendix D

Analysis of Oral Complaints

Fig 4.7 - Health and Social Services
Analysis of Oral Complaints Received - 1 April 2003 to 31 March 2004

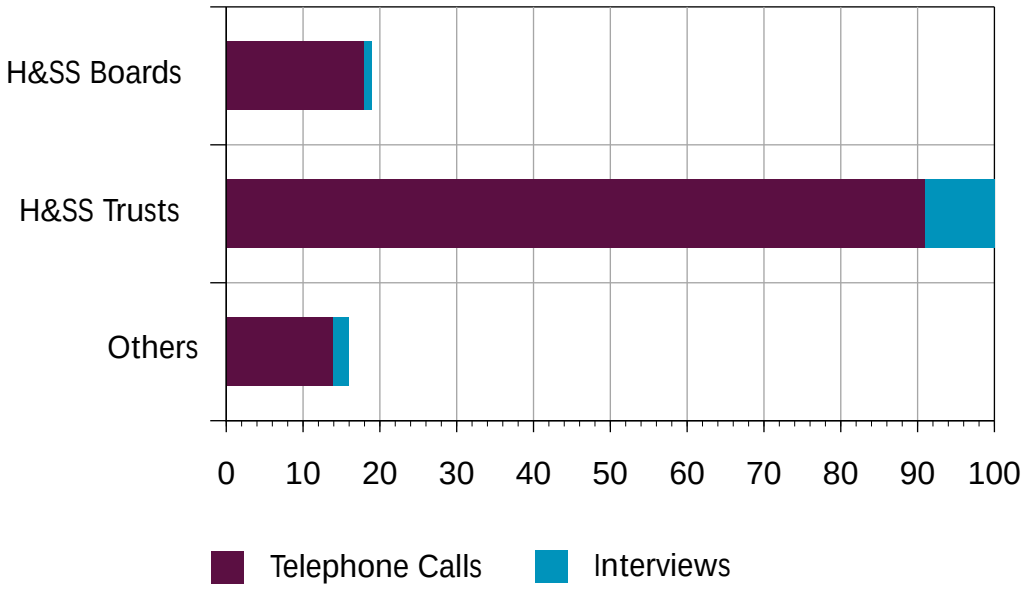
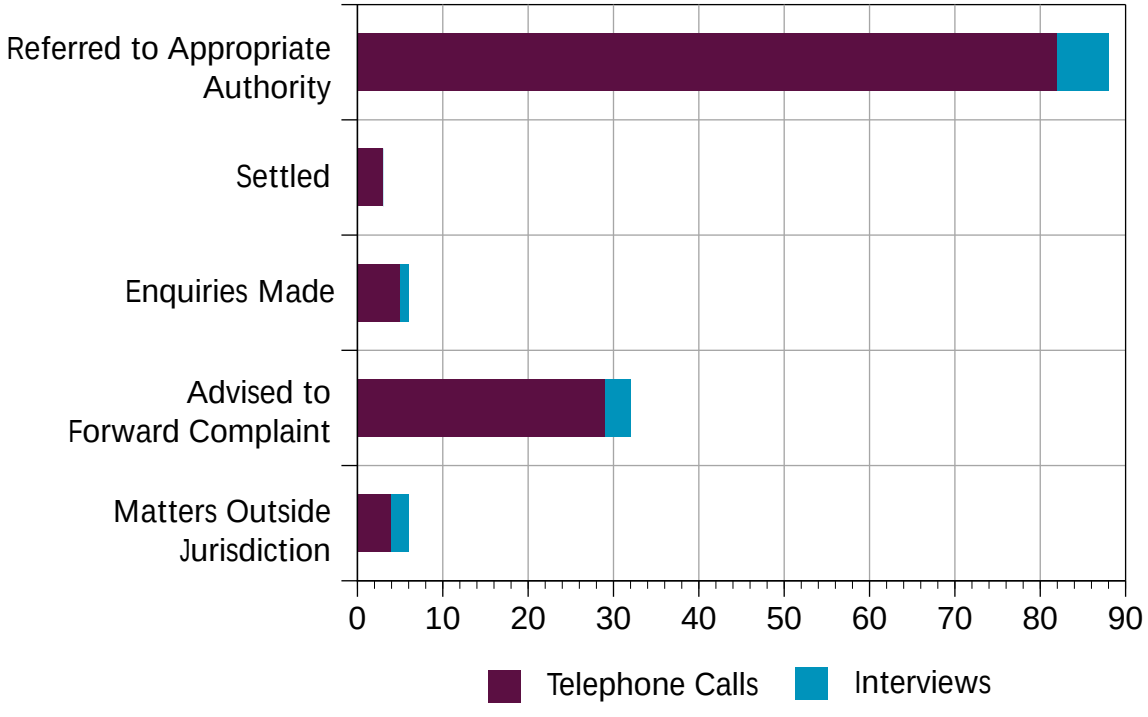


Fig 4.8 - Health and Social Services
Outcome of Oral Complaints Received - 1 April 2003 to 31 March 2004



Published by TSO (The Stationery Office) and available from:

Online
www.tso.co.uk/bookshop

Mail, Telephone, Fax & E-mail
TSO
PO Box 29, Norwich, NR3 1GN
Telephone orders/General enquiries: 0870 600 5522
Fax orders: 0870 600 5533
Order through the Parliamentary Hotline
Lo-call 0845 702 3474
E-mail book.orders@tso.co.uk
Telephone: 0870 240 3701

TSO Bookshops
123 Kingsway, London, WC2B 6PQ
020 7242 6393 Fax 020 7242 6394
68-69 Bull Street, Birmingham B4 6AD
0121 236 9696 Fax 0121 236 9699
9-21 Princess Street, Manchester M60 8AS
0161 834 7201 Fax 0161 833 0634
16 Arthur Street, Belfast BT1 4GD
028 9023 8451 Fax 028 9023 5401
18-19 High Street, Cardiff CF10 1PT
029 2039 5548 Fax 029 2038 4347
71 Lothian Road, Edinburgh EH3 9AZ
0870 606 5566 Fax 0870 606 5588

The Parliamentary Bookshop
12 Bridge Square, Parliament Square,
London SW1A 2JX
Telephone orders/ General enquiries 020 7219 3890
Fax orders 020 7219 3866

TSO Accredited Agents
(see Yellow Pages)

and through good booksellers

ISBN 0-10-292537-2

9 780102 925371

FEEDBACK

Whilst this Report is the document of record which is laid before Parliament it is vitally important that it is also relevant and informative to the public the Office is here to serve. Should you have any comments regarding any aspect of the Report (e.g. content, layout, etc) I would be happy to receive them. Any such comments should be sent to me at the following address:

Mr Tom Frawley
Northern Ireland Ombudsman
Progressive House
33 Wellington Place
Belfast
BT1 6HN