Northern Ireland
Ombudsman

Annual Report

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

2005 ~ 2006

My Role

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

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

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

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

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

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

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

ANNUAL REPORT of the ASSEMBLY OMBUDSMAN for NORTHERN IRELAND and the NORTHERN IRELAND COMMISSIONER for COMPLAINTS for 2005/2006

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

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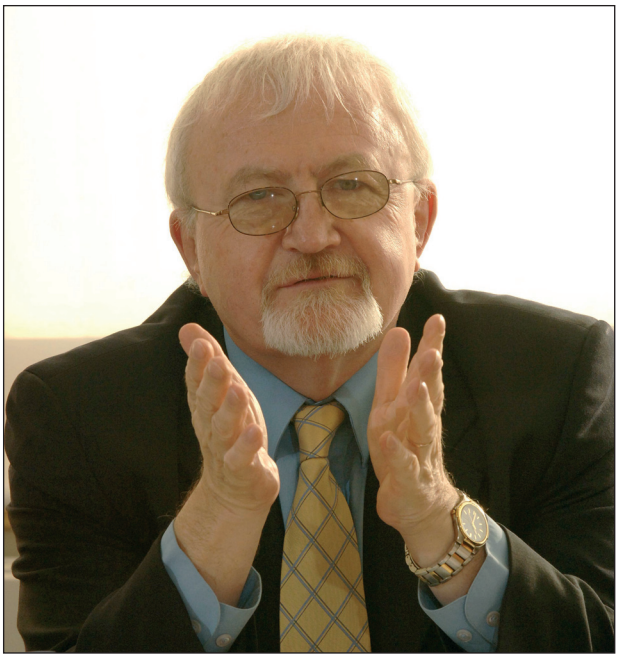


The Year in Review

I am pleased to present my Annual Report for the year 2005/2006. As with my last three Annual Reports, the continued suspension of the Northern Ireland Assembly has meant that I am laying this report before Parliament in Westminster. In a number of respects, this year's report is similar to those which I have presented in recent years. In other respects however, it is different. The changes reflect improvements to our internal systems and procedures, in particular the introduction of a new IT complaints management system. While this may make direct comparisons between this year's report and those of previous years more difficult, it does provide a more accurate picture of the work of my office. The changes also reflect a renewed determination to ensure that all that we do as an organisation is easily accessible to the widest possible range of people.

The fact that I continue to hold two offices – those of Assembly Ombudsman and Commissioner for Complaints – is again reflected by the division of this report into distinct sections, one for each of these offices and a third for Health Service complaints.

This year however, as one of a number of changes to improve the readability and accessibility of my report, these sections are more clearly identified by the use of coloured margins. In a desire to continue to improve my annual reports I have also distributed a response form asking readers of this report to provide comments and suggestions on its layout, content and use.

Range and Relevance of Complaints

As in previous reports, the complaints reported in the following pages reflect the fact that I continue to receive complaints about the full spectrum of the public services in Northern Ireland, and about a wide range of examples of maladministration. While I did not receive complaints against every public body within my jurisdiction, the value of a report such as this lies in the insights that it offers that are of relevance to every area of the public service. I would therefore encourage every public body to read my report and the individual case summaries against the context of how the matters investigated might apply to the service provided by their own organisations.

In the course of this year I have been invited to address many groups on the work of my office. I welcome all such opportunities, and seek to use them to emphasise the benefits that organisations can derive from developing and implementing effective complaints handling processes. As is shown in the following pages, complaints offer an insight into how well our public bodies are delivering their services to the people to whom they owe their very existence – individual citizens. In some cases, I concluded that the complaints were unproven – an indication of the standards of service that are delivered by many of our public services. In other cases however the complaints reveal real failings in the service complained of, and provide an opportunity to put things right, not only for the benefit of the individual complainant but also for other users of that service.

The implementation of the recently completed Review of Public Administration will bring with it a number of significant challenges for the public service. Not least among these will be that of continuing the delivery of existing services at the same as organisations and structures are being altered and changed. It is critical therefore that the essential needs of citizens are not neglected during a time of major change and transition.

As is illustrated in Appendix B (See page 93), within my office three teams of Investigating Officers work on the three main areas of Housing, Health and Planning. Inevitably, because of their impact on all our lives, these areas make up the greater number of the complaints I receive. Each of these teams is led by a Director of Investigations.

Housing Complaints

Although I continue to receive a substantial number of complaints relating to Housing (See Fig 3.2, page 46) I remain conscious of the enormous number of contacts which the Northern Ireland Housing Executive and Housing Associations have with their tenants and the wider public in the course of a year. Only a small number of these results in a complaint to my Office, and a smaller number still in a finding of maladministration by me.

Where complaints are brought to me I seek to balance the rights of the individual to be treated fairly, and the duty of the public body to act within the legislative and policy framework established for it.

I am pleased to report that in my view the Northern Ireland Housing Executive has made improved efforts over the last year in responding to complaints brought to me. Of particular note is the openness of the Executive to consider early settlement of complaints, where that is appropriate. This not only avoids a costly and time consuming investigation but also demonstrates a commitment by the Executive to put things right. During the year 19 housing cases were settled in this way (See 'Selected Summaries of Cases Settled', page 67).

Housing Associations have only come within my jurisdiction in the last two years, however the number of cases brought to my attention does suggest the need for greater consistency of approach across the social housing sector. This is something I hope to pursue as part of my Office's Communication Strategy.

As in previous years, I continue to see evidence in complaints brought to me, of a failure to apply policies consistently and correctly. The Housing case summaries show that House Sales continue to present particular difficulties for complainants as do standards of workmanship. Failure to be re-housed also features heavily in complaints, along with problems in administration of housing grants.

Many of the complaints I receive may fall short of a finding of maladministration, although in a number of instances there is a basis on which to criticise the housing body when poor administrative practices are evident. I am convinced that a greater understanding of policies and good administrative practice by those charged with implementing them would reduce the number of complaints and provide a better service to the public.

Health Complaints

In the course of my investigations of Health and Social Services complaints during the past year I have been concerned to note that there appears to be some misunderstanding about the funding arrangements for residential care for the elderly. My concern relates to the administration of third-party contributions to residential care costs and the availability of safeguards for residents who are at the centre of such arrangements.

My concern is exemplified by my investigation of one particular complaint (See 'Selected Summaries of Cases Settled', page 83) which

involved the transfer of an elderly lady from nursing home accommodation in Northern Ireland to a home in England. From my investigation it was apparent that the Trust at the centre of this complaint did not fully understand its statutory financial liabilities for the cost of residential or nursing home accommodation. Additionally, this lack of understanding was compounded by confusion concerning the interpretation and application of the Department's Circular HPSR (3) 1/93 Community Care – Choice of Residential and Nursing Home Accommodation.

The complainant made clear that he would not have agreed to the transfer of his mother if he had understood the financial liability involved. In considering this aspect of his complaint it became apparent that the Trust had entered into a third party agreement with the complainant without any written evidence to demonstrate that the complainant had understood and agreed to the financial basis upon which it (the Trust) was prepared to place his mother in the significantly more expensive accommodation in England. The Trust also appeared to be willing to allow the personal financial resources of the complainant's mother to become depleted despite the clear instruction in the relevant Circular in relation to the protection of the resources of residents from use in top-up arrangements. Furthermore, the Trust was clearly of the mistaken view that it bore no financial liability for the third party contribution of the nursing home fees in the event of default by the complainant.

Of particular concern to me was the fact that the needs of a frail and vulnerable elderly lady appeared to be incidental to the financial interchange between the Trust and the complainant. This scenario is not unique and I consider the matter must be urgently addressed by the Department of Health, Social Services and Public Safety in order that safeguards are introduced to ensure that the needs of the elderly and vulnerable, both caring and financial, are given primacy and not subordinated to any other considerations. In Section 4 of this Annual Report I have set out the detail of my concerns.

I have already mentioned the importance of developing and implementing effective complaints handling processes. With this in mind, I must report my frustration that another year has passed in which the Department of Health, Social Services and Public Safety's Review of Complaints Procedures has remained incomplete. The fact that such a review was undertaken in the first place is recognition of the inadequacies of the existing procedures. While there have been a number of understandable delays to this review, it is difficult to accept that a process begun in 2001 has yet to be brought to a useful conclusion.

Planning Complaints

During the reporting year I investigated a number of complaints against the Planning Service and two cases, in particular, raised significant issues which I pursued with the Planning Service.

My investigation of the first complaint served to highlight the absence in planning legislation in Northern Ireland of a facility for the correction of planning errors. In this instance the Planning Service had, erroneously, granted planning permission for a second replacement dwelling in a Green Belt area some twenty years after the original replacement planning approval had been granted. The current planning policy permits only one replacement dwelling in a Green Belt area. As a consequence of my investigation of the complaint the Planning Service undertook discussion with its legal advisors to explore the possibility of the introduction of new powers to cancel a planning permission where there is a material inaccuracy in the information provided or evidence that the applicant has not been completely honest in the planning application. Consideration of this issue is continuing.

In my investigation of the second complaint I was concerned about the deficiencies in amenity standards under current planning policy in Northern Ireland which, by means of a house extension, permitted an improvement in the amenity of the planning applicant to the detriment of the amenity of the neighbour. I concluded that this aspect of planning policy required an immediate review and I raised this issue with the Planning Service. I have been informed that the Planning Service's draft business plan for the 2006/07 year will include a commitment to consult on a revised policy on residential extensions/alterations.

I wish to take this opportunity to acknowledge the Planning Service's recognition of the requirement for more detailed documentation to enhance the transparency of the planning decision-making process as a consequence of my investigations of planning complaints during the reporting period. I therefore welcome the seriousness of the Planning Service's response in issuing guidance on this important issue to planning staff, which, when implemented, will indicate more clearly the reasoning behind planning decisions.

Working with other complaints bodies

A number of the cases I investigated during the year underlined the importance of organisations which exist to serve the public working together, both to create a seamless response and to share knowledge and best practice. As well as seeing the benefits of such efforts among the bodies which I investigate, I have continued this year to see the benefits from my own office's participation in organisations such as the British Irish Ombudsmen's Association and the International Ombudsman's Institute.

The continued growth in the number of Ombudsman schemes and other bodies with a remit to investigate complaints and uphold standards makes such cooperation more important than ever. With this in mind we have sought this year to establish close working relationships with bodies such as the new Northern Ireland Health and Personal Social Services Regulation and Improvement Authority and the Northern Ireland Commissioner for Children and Young People.

Delay in reform of Office

Through a close working relationship with Public Service Ombudsmen schemes throughout these islands I have also been able to observe the continuing development of an integrated public services ombudsman scheme in Wales. The continued suspension of the Northern Ireland Assembly has meant a further delay in a long-awaited public consultation exercise on the findings of a review of my office carried out by the Office of the First Minister and Deputy First Minister in 2003. One of the most fundamental recommendations arising from that review was the creation of a single office of the Northern Ireland Public Service Ombudsman, which would replace the two offices which I currently hold. This and other recommendations for reform and improvement could make a significant contribution to the impact, service and public accessibility of my office, and its continued delay has been a cause of some frustration to both myself and my colleagues in the Office. I would hope that in the year ahead the review's recommendations will be taken forward either in the context of restored devolution or continued direct rule.

Feedback

That review of my office provided us with some important insights into the perspectives of some of our key stakeholders. I have already referred to my desire to ascertain the views of readers of this report in order to ensure that future reports meet their requirements. This initiative reflects a wider commitment on my part to ascertain a clearer

picture of the perception of my office and the service it provides from a range of stakeholders. As the reporting year drew to a close we embarked on a major project to establish the views of complainants, bodies investigated by my office and other stakeholders such as elected representatives, advisory groups and representative bodies. I look forward to receiving the results of this exercise and will make them available on my website and in next year's Annual Report. We will also this year commence an ongoing programme of continuously monitoring the views of complainants, and gathering data to give us a more accurate picture of who is, and who is not, using our service.

The final part of this feedback initiative will be an annual survey of the views of my own staff, without whose commitment, enthusiasm and expertise I simply could not fulfil the role to which I have been appointed, and to whom I would wish to express my gratitude.

Staffing

The number of staff in post currently stands at 22. These staff are mainly recruited by secondment from Northern Ireland Departments and their Agencies. Within the year in review the Office completed a recruitment exercise to fill a vacancy which arose due to the retirement of the Director of Housing. For the first time the competition was opened not only to established Civil Servants but also to eligible staff currently employed by other public bodies, with the successful candidate recruited from such a public body.

During the course of the last year we have striven to ensure that the whole organisation – administrative staff, investigating officers and senior managers – work more closely together, communicate more effectively and share knowledge; efforts which I hope will benefit all staff and, in turn, those who depend on the service we exist to provide.

Improving the way we work

Over the course of the last year we have introduced a number of significant changes to our internal administration and procedures in an effort to improve the service we provide. I have already referred to the development and implementation of a new complaints management software system. Introduced at the start of the reporting year, this software, known as CHAS (Complaint Handling Administration System), allows for improved complaint tracking, document and record management in relation to individual complaints. It has also, by way of template documents, led to improvements in our response through consistency of approach. Due to extensive and effective preparation and involvement and training of staff this project was delivered with minimal interruption to our work and is already delivering benefits in terms of managing and monitoring our caseload. Again, I would pay tribute to all of my staff for their flexibility and cooperation in what was a major change in their working practices.

The end of the reporting year saw the implementation of a new set of complaints handling procedures. These procedures have been developed to ensure that we operate in the most efficient way possible, and will be closely monitored to ensure that complainants receive an improved service and wherever possible, a speedier conclusion to my investigation of their complaint.

Finally, we have sought during this year to ensure that we operate to the very highest standards of financial accounting and governance. An Audit Committee was established, and an Independent member has been appointed to the Committee to reflect current best practice. As required by statute, the full Resource Accounts for my office are published separately, and are available on my website (www.ni-ombudsman.org.uk). My Office is funded through the normal Budget and Estimate exercises with approval by

Parliament in the absence of the Northern Ireland Assembly.

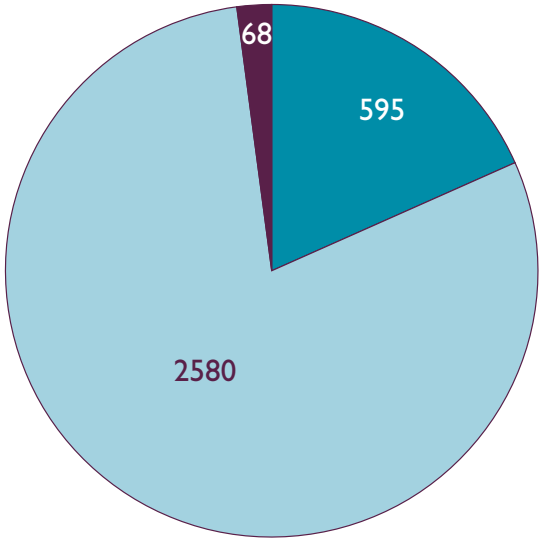
Conclusion

In conclusion, this year has seen significant developments in the work of my office. I would hope that the results of my investigations have made a real difference to a number of complainants and, in the medium to long term, to the services under investigation. I would again wish to place on record my thanks to every one of my staff who worked in such a dedicated way to support me in the conduct of these investigations.

The implementation of the Review of Public Administration will make the next few years particularly challenging for the Northern Ireland public service. Much has been said about the nature and number of the new structures that are now being established. But more important than the structures are the values and standards which should underpin the delivery of services through those structures. Setting the standards and ensuring that the very highest public service values are lived out in the services provided from day to day will be the critical determinant of the Review's success.

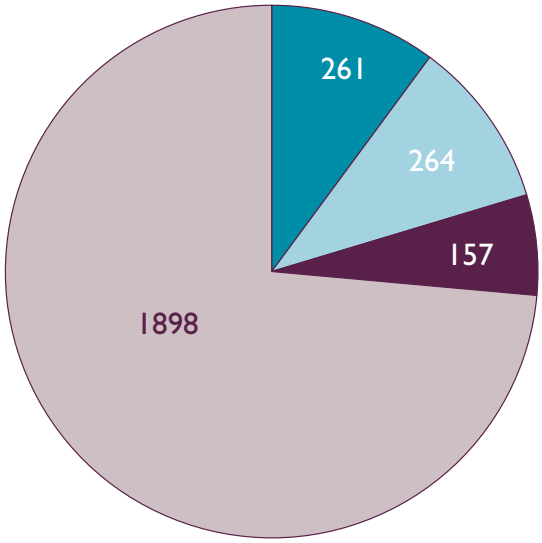
Key to this will be the development and implementation of effective complaints procedures. I hope that the cases outlined in this report will serve to inform that work and would therefore commend it to all who work within the public service. At times, complaints may cause frustration, but I would encourage public servants to remember that, as has been said before, their frustrations can represent a thousand men's freedoms. I am confident that a reading of the following pages will serve to assure both the public and those employed to serve them that through complaints a real improvement can be made to the experience of individual citizens and to the delivery of services to others. That must surely be to the benefit of both the public and their servants alike.

Fig 1.1: Number of contacts 2005/06



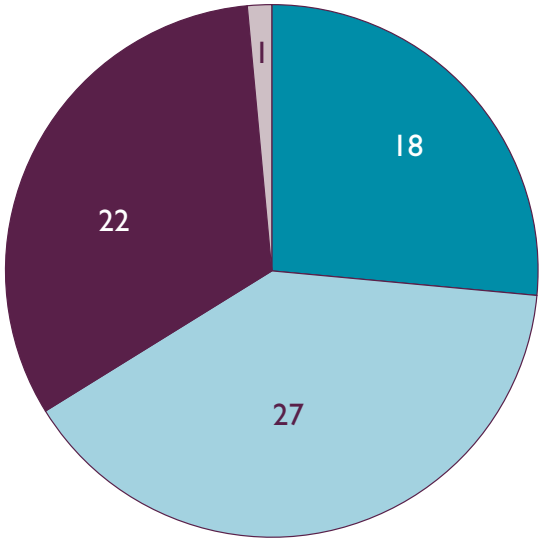
Written Complaints
Telephone Calls
Interviews

Fig 1.2: Breakdown of Telephone Calls to the Office 2005/06



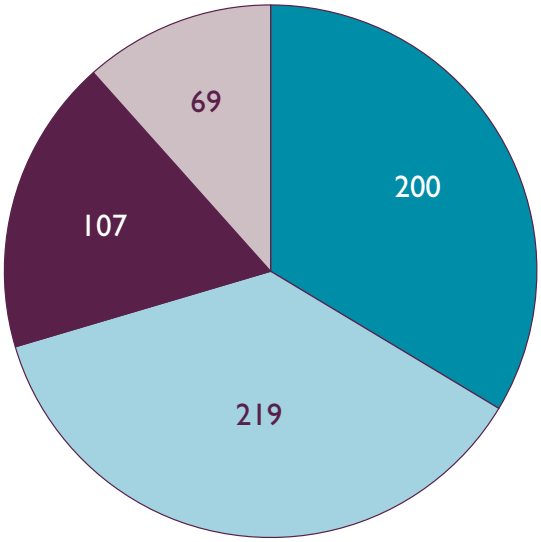
Assembly Ombudsman
Commissioner for Complaints
Health and Personal Social Services
Outside Jurisdiction

Fig 1.3: Breakdown of Interviews in the Office 2005/06



Assembly Ombudsman
Commissioner for Complaints
Health and Personal Social Services
Outside Jurisdiction

Fig 1.4: Breakdown of written Complaints to the Office 2005/06



Assembly Ombudsman
Commissioner for Complaints
Health and Personal Social Services
Outside Jurisdiction

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

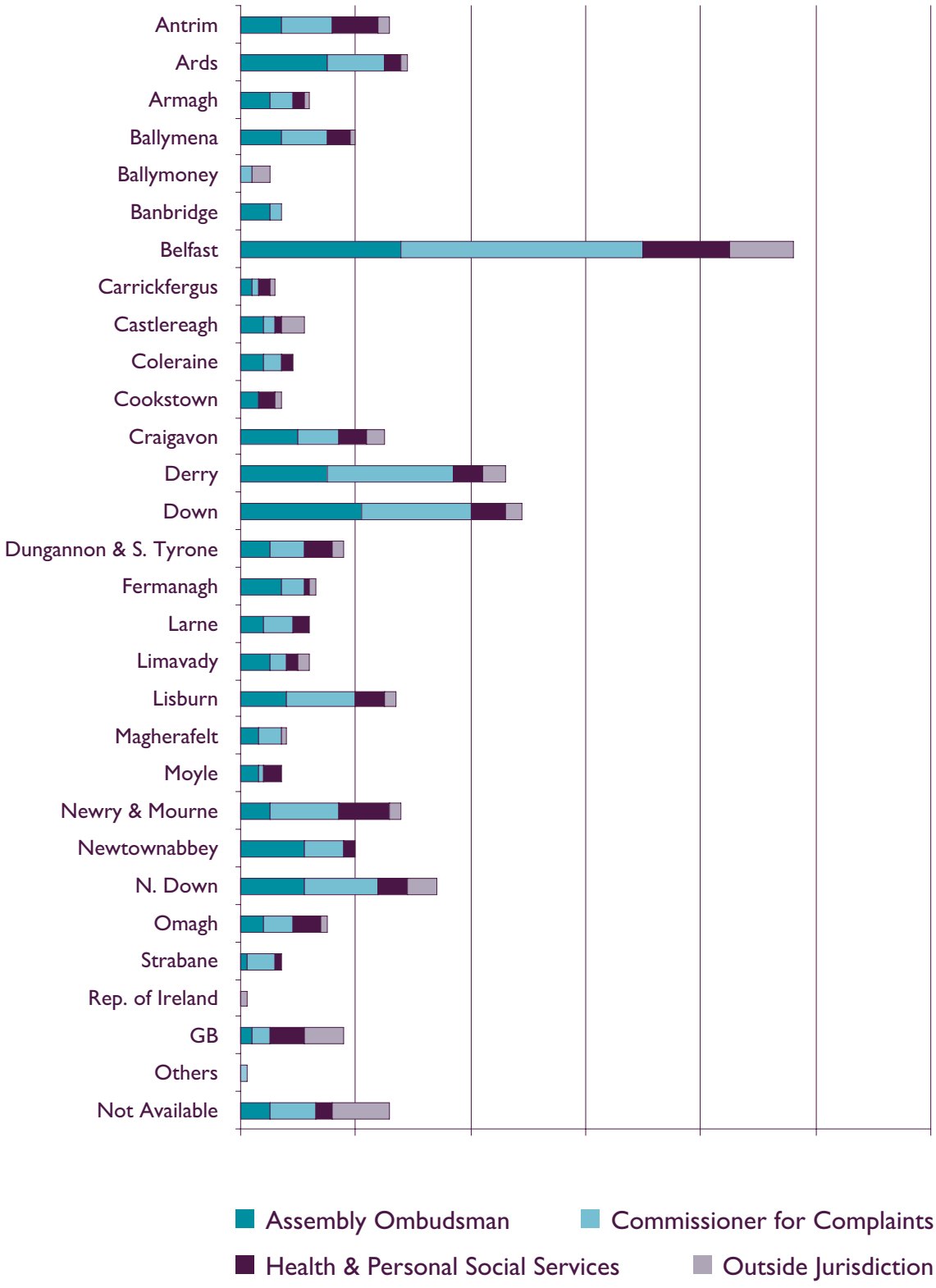


Fig 1.6: Completion Times for Investigation of Written Complaints

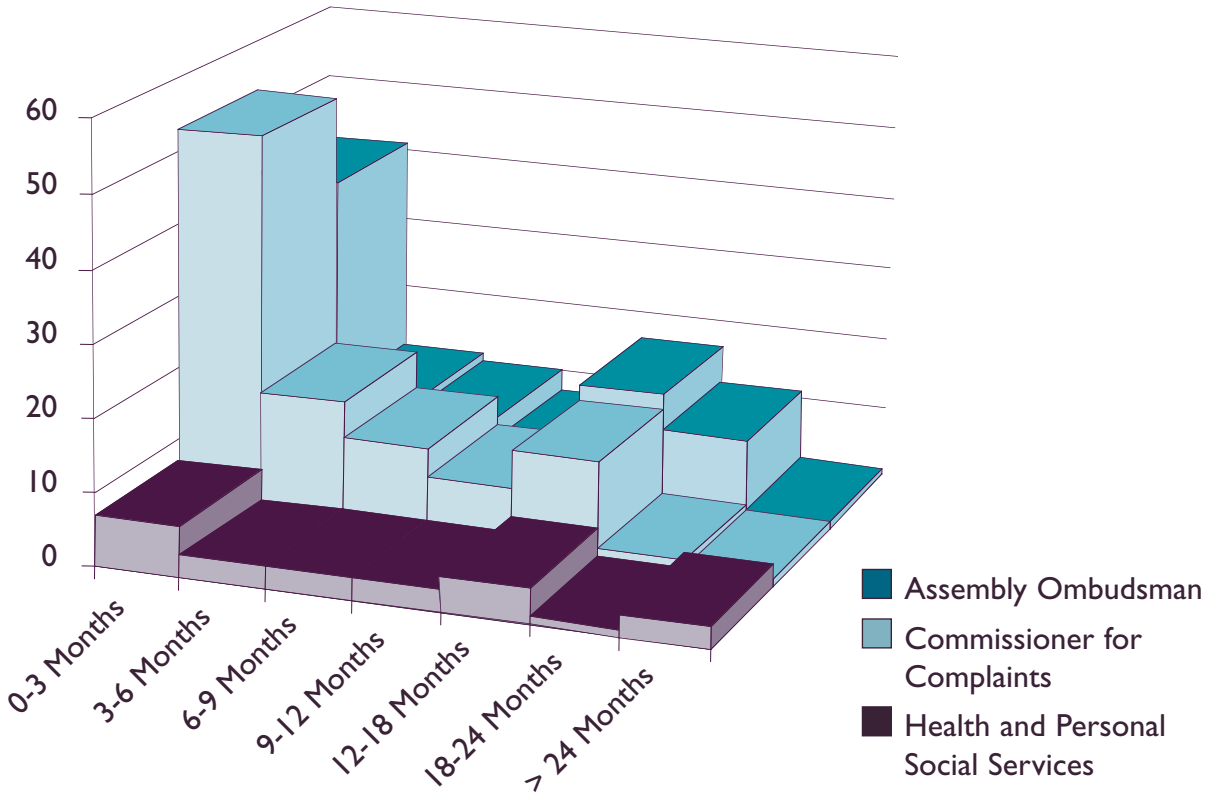
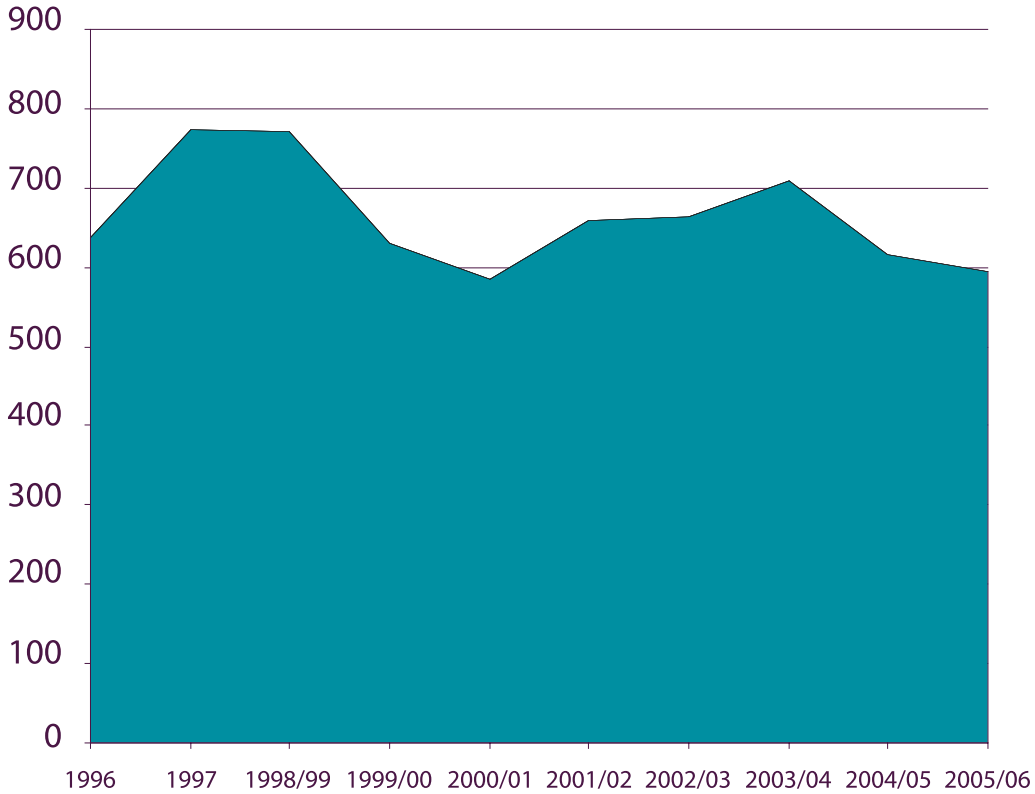


Fig 1.7: Written Complaints Received by the Ombudsman 1996 – 2005/06



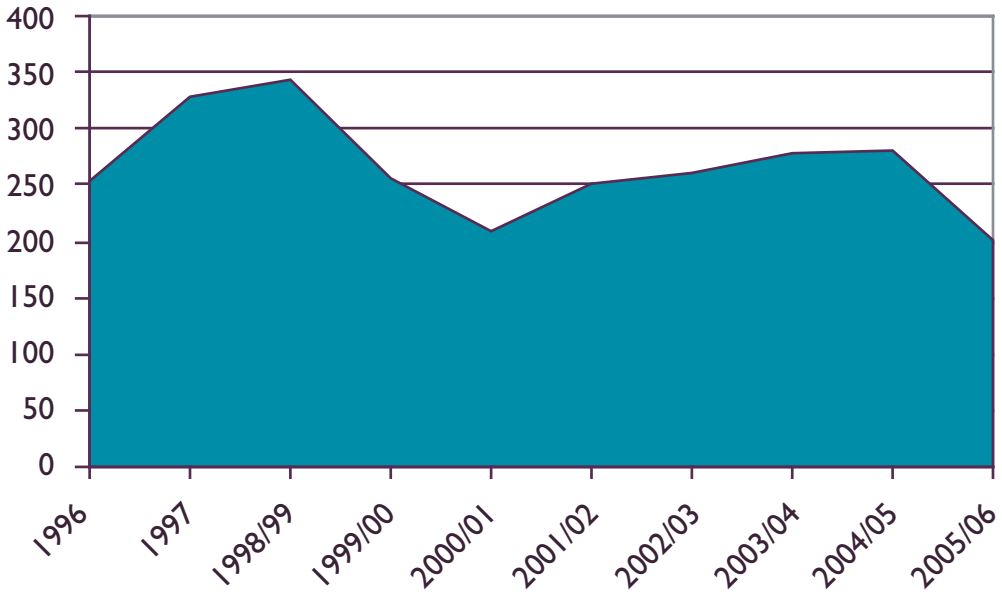
Section Two

Annual Report of the Assembly Ombudsman for Northern Ireland

Written Complaints Received in 2005/06

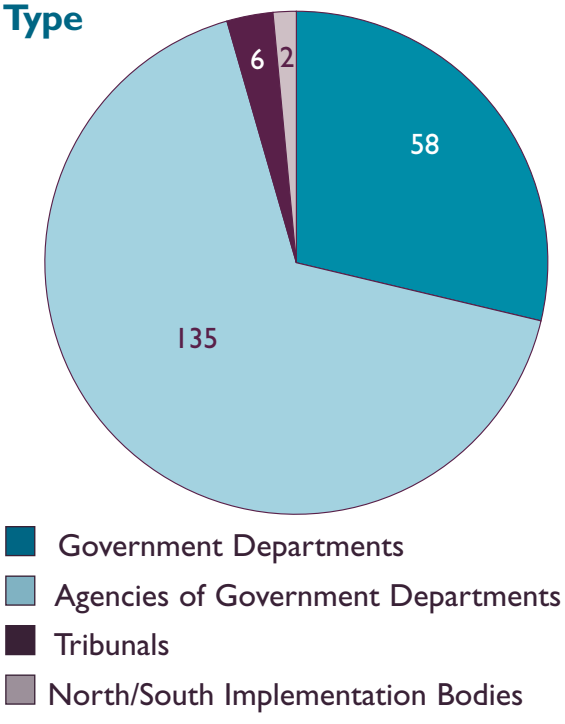
As Assembly Ombudsman for Northern Ireland I received a total of 201 complaints during 2005/06, 80 less than in 2004/05.

Fig: 2.1: Complaints to the Assembly Ombudsman 1996- 2005/06



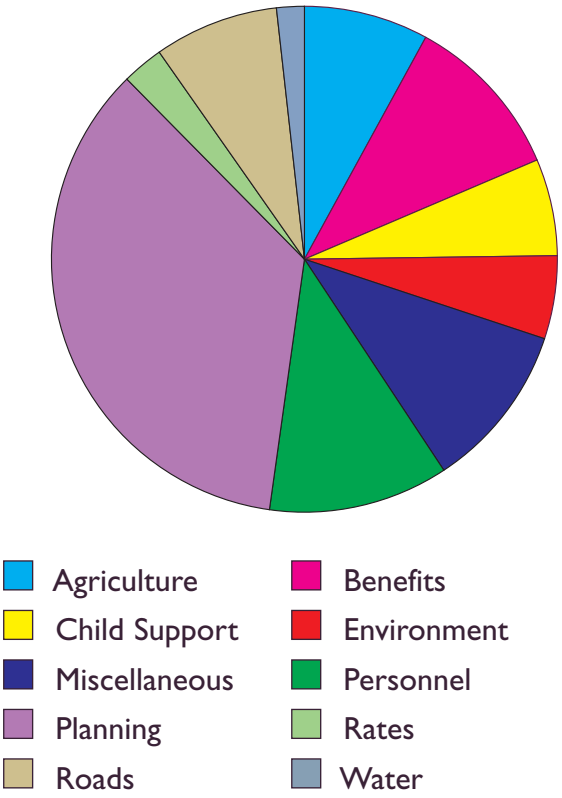
Under the Ombudsman (Northern Ireland) Order 1996, complaints made to me against government departments and their agencies require the 'sponsorship' of a Member of the Legislative Assembly (MLA). Of the 201 complaints received this year 99 were submitted in the first instance by an elected representative and 102 were submitted directly to me by complainants.

Fig 2.2: Written Complaints Received in 2005/06 by Authority Type



When their respective agencies are included, the Department of the Environment and the Department for Social Development attracted most complaints, 75 against the former and 36 against the latter. Of these 103 related to their agencies, with the Planning Service (70) and Social Security Agency (20) giving rise to the largest number of complaints. In all 135 of the 201 complaints received in 2005/06 related to the agencies of government departments.

Fig 2.3: Written Complaints Received in 2005/06 by Complaint Subject



The Caseload for 2005/06

In addition to the 201 complaints received during the reporting year, 62 cases were brought forward from 2004/05 – giving a total caseload of 263 complaints. Action was concluded in 230 cases during 2005/06 and all of the 33 cases still being dealt with at the end of the year were under investigation.

Table 2.1 Caseload for 2004/05

Cases brought forward from 2004/05	62
Written complaints received	201
Total Caseload for 2005/06	263
Of Which:	
Cleared at Validation Stage	131
Cleared at Investigation Stage (without a Report), including cases withdrawn and discontinued	56
Settled	6
Full Report issued to MLA	37
In action at the end of the year	33

The outcomes of the cases dealt with in 2005/06 are detailed in Figs 2.4 and 2.5.

Fig 2.4: Outcomes of Cases Cleared at Validation Stage

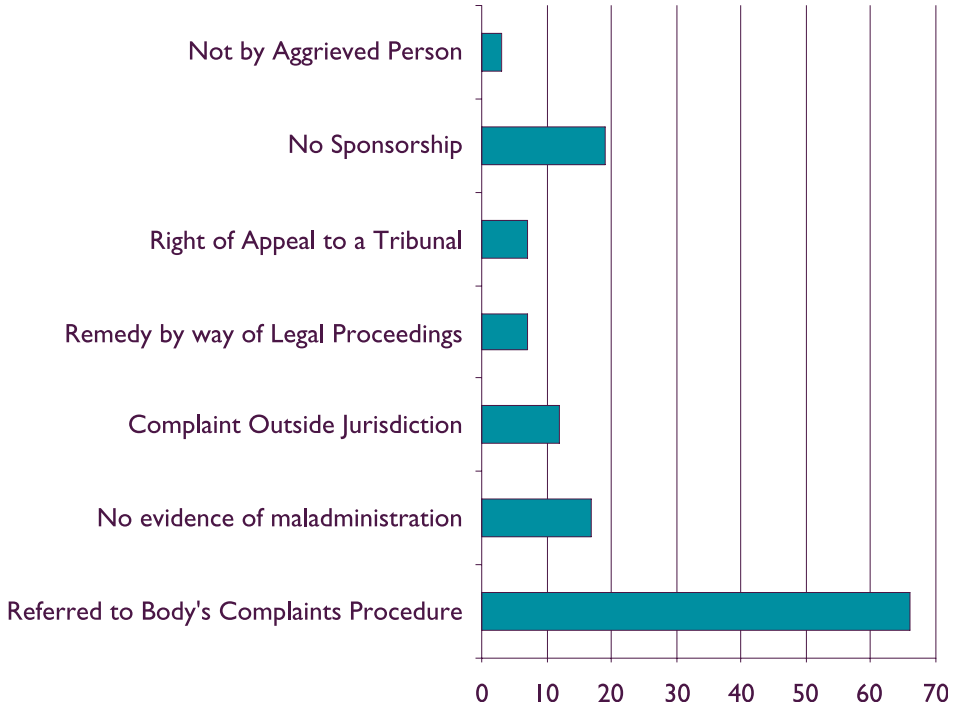
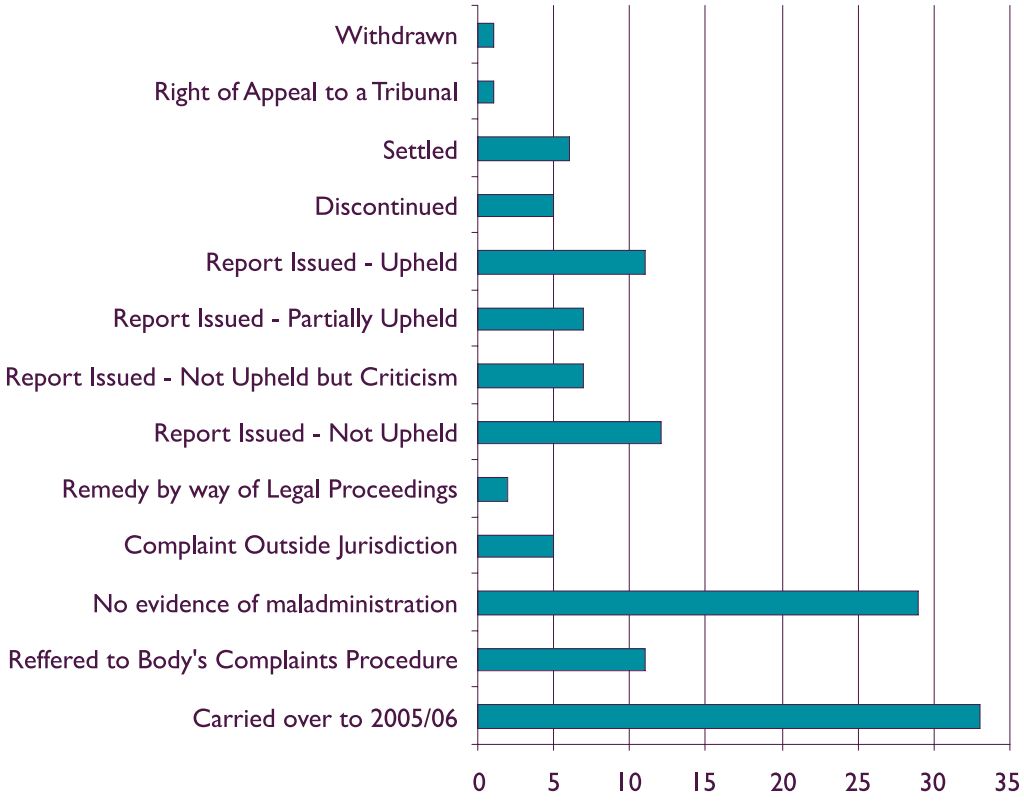


Fig 2.5: Outcome of cases Cleared at Investigation and Report Stages



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

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

The average time taken for a case to be examined, enquiries made and a full Report issued at Report Stage was 62 weeks.

37 reports of investigations were issued in 2005/06. Of these cases: 11 were fully upheld; 7 were partially upheld; 7 were not upheld but I criticised the Body complained against; and 12 were not upheld. In all of the cases in which I made recommendations for action(s) by the body complained against these recommendations were accepted by the body.

Table 2.2 Recommendations in Reported Cases

Case No	*Body*	*Subject of Complaint*	*Recommendation*
AO 31/03	Planning Service	Failure to revoke planning approval	Change to Planning Service Policy/Procedure
AO 37/03	DARD	Alteration of herd numbers	Apology & Consolatory payment of £5,000
AO 62/03	Planning Service	Handling of planning application	Apology & Consolatory payment of £500
AO 90/03	Planning Service	Handling of planning application	Consultation to be carried out re improvements to the planning consultation process.
AO 91/03	Planning Service	Handling of planning application	Apology & Consolatory payment of £7,000. Change to Planning Service procedure
AO 103/03	Planning Service	Handling of planning application	Apology & Consolatory payment of £300
AO 5/04	Planning Service	Handling of planning application	Apology
AO 13/04	Planning Service	Handling of planning application	Apology & Consolatory payment of £500
AO 16/04	Roads Service	Termination of lease and repairs	Apology & Consolatory payment of £500
AO 17/04	DSD	Termination of lease and repairs	Apology & Consolatory payment of £500
AO 19/04	Planning Service	Handling of planning application	Apology & Consolatory payment of £450
AO 28/04	DE	Disciplinary charge	Apology & Consolatory payment of £5,000. Personal record amended.
AO 40/04	Planning Service	Objection to infilling	Apology & Consolatory payment of £150
AO 51/04	Child Support Agency	Delay in assessing arrears	Apology & Consolatory payment of £350. Agency made a further consolatory payment of £100.
AO 60/04	DFP	Failure to handle harassment complaint properly	Apology. Change to Departmental Policy/Procedure
AO 61/04	Child Support Agency	Delay in issue of maintenance payment	Apology & Consolatory payment of £900
AO 65/04	Planning Service	Not neighbour notified of planning application	Apology & Consolatory payment of £400
AO 70/04	DARD	Conduct of Promotion Board	Apology
AO 71/04	DARD	Conduct of Promotion Board	Apology
AO 81/04	Planning Service	Handling of a complaint	Apology

Selected Summaries of Reported Cases

DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT

Issue of Second Herd Registration Number

The aggrieved person complained that the Department had breached its normal policy and procedures when it issued his brother with a second Herd Registration Number. This had facilitated his brother in his efforts to inflict financial hardship on him and the other members of the family involved in the family farming business. It was also alleged that the Department had failed to honour a commitment which it had given to his mother that it would not issue a Movement Permit to his brother in respect of 13 animals without her signature. The Department had subsequently issued a permit for the 13 animals without the complainant's mother's signature. In addition he complained that the Department had imposed a signature restriction on his mother's herd registration which required his brother's signature on Animal Movement Permit applications.

I established that the complainant's brother had met the requirements for the issue of the herd number and I was satisfied that in issuing the herd number the Department had acted in accordance with its normal policy and procedures. I established that the permit for the 13 animals had been issued as a result of human error as a result of Department's failure to put in place sufficiently robust procedures to ensure that the commitment made was met. In relation to the Department's placing the signature restriction on the complainant's mother's herd I was satisfied that the Department had taken that action, on the advice of its Legal Advisors, to avoid becoming embroiled in what was essentially a family dispute relating to the ownership of animals within the herd registered to the complainant's mother. Although I did not uphold the substantive elements of the complaint made to me, I regarded the Department's failure to ensure it met the commitment which it had made to the complainant's mother as maladministration. The Department accepted my recommendation that it should issue a letter of apology to the complainant together with a consolatory payment of £5000, in recognition of the substantial injustice it had caused by failing to meet its commitment. **(AO 37/03)**

Management of Disease

The aggrieved person complained about the way in which the Department had managed the spread of disease which had occurred in his flock of pedigree sheep. He stated that in April 2003 he had notified the Department of his suspicion that his flock had contracted a highly infectious disease. Over the next 14 months the Department's veterinary officers carried out a number of inspections of his flock, removing those animals showing signs of disease for slaughter for which he was duly compensated. However, he complained that the Department refused to buy-out the remainder of his flock even though it had taken such action to compensate a neighbouring farmer whose flock, he claimed, had a lower level of infection. He also alleged that a decision to buy-out his flock made by the original veterinary officer in charge of his case had been overturned when she left the Department. He further alleged that the Department had adopted a "wait and see" policy regarding the removal of animals from his flock which had increased the suffering of his sheep and reduced the amount of compensation payable to him.

My investigation disclosed that there had been a meeting of officials in the Veterinary Service and Animal Disease Control Branch who work together on the control of animal disease. The complainant's case had been discussed and a

range of views expressed. However, none of the opinions which were aired could have been taken to constitute a recommendation to buy-out the complainant's flock. Such a recommendation would have been the responsibility of the Divisional Veterinary Officer and I did not see any evidence to indicate that she had made any such recommendation at any point during the administration of the case. Furthermore, there had been no change in the personnel dealing with his case. Consequently, I did not uphold this aspect of the complaint.

With regard to the allegation of inequitable treatment I examined the Department's handling of the case, together with that of the neighbouring farmer, particularly in relation to the removal of animals from each flock. I formed the view that there were a number of factors relevant to the two cases which rendered it impossible for the Department to have taken identical steps in dealing with the progress of the disease in each flock. I was, nevertheless, satisfied that the Department had adopted the same overall method in its endeavours to control the spread of the disease in the two cases. In effect, I saw no evidence to substantiate the complainant's contention that he was the subject of inequitable treatment by the Department.

Insofar as the "wait and see" allegation was concerned, I established that the Department's compensation scheme for animals affected by this particular disease involved the payment of 50% of the value of an infected animal and 100% of the value of an animal which is not infected with the disease and that the determination was based on post mortem results. I was satisfied that the removal of animals from the complainant's flock was based on professional veterinary opinion taking account of the spread of the disease through the flock. I did not, therefore, concur with the complainant that the Department's handling of the case was motivated solely by a desire to pay him as little compensation as possible.

Finally, I noted that although the complainant had been in regular telephone contact with the Department it had failed to keep a written record of his enquiries. I criticised the Department for this failure. I subsequently received an assurance from the Department that staff had been reminded of the importance of maintaining adequate records of exchanges with members of the public. **(AO 111/03)**

Conduct of a Promotion Board

In this case the aggrieved person claimed to have suffered an injustice as a result of maladministration by the Department in relation to the conduct of a promotion Board. I received a similar complaint relating to the same promotion Board from another candidate.

The complainant was one of three internal staff who passed the initial sift of candidates for the post. He alleged that one of the board members discussed the board with him and left on his desk photocopies of papers which he, the complainant, considered to be answers to questions that would be asked on the board. That afternoon, the complainant passed the information he had been given to another candidate. The next morning, the complainant challenged the regularity of the board via his line manager who met with the board Chairman. The board Chairman decided to proceed with the board, a decision which was not conveyed to line management or the complainant. The complainant stated that he found himself in the objectionable situation that as a whistle blower, he then found himself being interviewed by the person he blew the whistle on. He felt the interview was extremely biased as it was obvious to him that the Board member was angry about what the complainant had done. The complainant was not selected for promotion following the interview. He appealed the board's decision to his Personnel Department explaining that answers had been distributed and the subsequent impact on the board. The response of the Personnel Department was that no

unfair treatment had occurred. The complainant appealed Personnel's decision to the Permanent Secretary who stated that he found no evidence that the complainant was treated unfairly.

In considering the matters raised by the complainant, I examined the manner in which his appeals to Personnel Branch and subsequently to the Permanent Secretary were dealt with by the Department. I also found it necessary to examine the actions which gave rise to his appeal. At the conclusion of my detailed investigation I had reason to be critical of the actions of the Board member in passing on papers prior to the board, an action that fell short of good practice and of the failure by the board Chairman to give reasons for proceeding with the Board. I did not, however, find that the passing on of papers conferred particular advantage on any candidate, nor were the actions sufficient to invalidate the interview process itself or call the overall outcome into question. I found reason to be critical of the investigation conducted by Personnel Branch following the complainant's appeal in that there was a lack of rigour and thoroughness, including the failure to interview the complainant and his line manager. I found that all the failures identified constituted maladministration as a result of which the complainant sustained the injustice of uncertainty and anxiety. However, I found the investigation by the Permanent Secretary to be thorough and wide-ranging and noted that important changes had already been introduced to ensure proper conduct of panel members. I urged the Permanent Secretary to consider further measures to strengthen procedures so that the very unfortunate and damaging perceptions formed by the complainant as to the integrity of the selection process and the appeals procedure could be avoided in future. I also recommended that staff in Personnel Branch should be alert to the kind of special or unusual circumstances which would indicate that an interview of an appellant is justified; that they ensure that due regard is paid to the right to be heard and the need to give reasons for decisions.

I considered a suitable remedy for the injustice sustained by the complainant would be for the Permanent Secretary to write to him, giving an apology for the maladministrative actions and an assurance as to the measures taken to remedy the failings and shortcomings. I am pleased to record that the Permanent Secretary accepted my recommendation. **(AO 70/04)**

Sheep Annual Premium

The complainant stated that an envelope containing his Sheep Annual Premium application form for 2004, together with his quota lease form was hand-delivered to the Department's sub-office in Ballymoney on 5 January 2004. The complainant alleged that, while the Sheep Annual Premium application form was removed from the envelope by a Departmental official, the envelope was discarded with the quota form still inside. Consequently, Sheep Annual Premium for the additional sheep he owned as detailed on the quota lease form was not paid by the Department. As a result he received payment of Sheep Annual Premium from the Department for only 186 sheep instead of 290 sheep and this caused him a substantial financial loss.

My investigation established that, following contact from the complainant about the matter, the Department had undertaken a search of the sub-office and the agricultural main offices but no trace of the complainant's quota form had been found. It is also the Department's normal practice to provide a receipt for hand-delivered documents and to include on the receipt details of all forms handed over. In this case the receipt showed only the details of the Sheep Annual Premium application form and it contained no reference to the submission of a quota lease form.

I further established that in previous years the complainant had submitted a quota lease form and that the Department had subsequently issued him with an acknowledgement letter and followed this up with a Final Statement of Quota letter. On this occasion the complainant had not checked the details on the receipt provided by the Department nor had he queried with the Department the fact that he had not received an acknowledgement letter or a final statement of quota letter. The complainant had made his complaint to the Department only when he received his payment of Sheep Annual Premium for 186 sheep. My investigation further revealed that there had been inaccuracies in the complainant's statements to the Department surrounding the submission of his quota lease form.

In conclusion, I accepted that it was undoubtedly the complainant's intention to submit a sheep quota lease form. However, on the balance of probability, the form in question had not been received by the Department. Consequently I did not uphold the complaint against the Department. **(200500375)**

RIVERS AGENCY

Processing of an Application to Culvert a Watercourse

This was a multi element complaint concerning alleged maladministration by the Agency in its handling of the culverting of an open stream at the bottom of the complainants' garden. It is related to cases AO 22/04 against Planning Service (See page 32) and AO 23/04 against Roads Service (See page 37).

The Agency gave consent for the culverting of a portion of the Waringstown Drain Extension without consultation and the complainants sought clarification on the public consultation process. My investigation revealed that there is no statutory provision for consultation with any third party when the works are to be carried out by anyone other than the Department. Therefore, I recognized that the Agency's action in not consulting with the complainants in this case was not contrary to or inconsistent with the terms of the relevant legislation. That said, I fully understood the complainants' dissatisfaction at the absence of consultation and their wish for the Agency to introduce a neighbour notification/public consultation process for the culverting of rivers. I believe that in today's climate with increasing emphasis on the protection of human rights it is reasonable for a member of the public to expect to be informed of any proposal which could potentially impact on their property and affect the enjoyment of their home. In the interests of public awareness I have asked the Agency to consider how culverting proposals could be more proactively drawn to the attention of the public.

In considering whether the Agency's decision to permit the culverting of the watercourse constituted maladministration or whether any part of the decision making process was attended by maladministration I was satisfied that the Agency had before it full details of the proposal, had visited the site on several occasions and was well aware of the location of the proposed culvert and the surrounding area. Consideration of such a proposal involves the exercise of professional judgement leading ultimately to the taking of a discretionary decision by the Agency. Overall, having regard to the Agency's statutory remit, I found no evidence of improper consideration of the proposal and I did not find the Agency's decision making process to have been affected by maladministration. I was, however, concerned that there was no formal record of site visits/observations other than a diary entry indicating the journey. The only exception to this would be if faults were to be found. I recommended that staff are instructed to record dates of those visits that

are undertaken other than in a personal diary together with any supporting observations, however brief.

The complainants expressed concern about the flooding of the bottom of their garden caused by the culverting of the open watercourse and found it unacceptable that the Agency had stated that, with flooding, no built property was affected or at risk. While I identified little acknowledgement in the Agency's response to them of the complainants' feelings in relation to their loss of enjoyment of a portion of their garden, I did not consider the Agency, as alleged by the complainants, intended to minimise or demean the importance of their garden to them.

My investigation revealed that there had been three occasions when the complainants reported flooding of their garden. I noted that on each occasion this was due to blockage of the protective grille at the inlet to the new culvert and that the grille in question is inspected and cleaned on a weekly basis or more frequently during periods of adverse weather. To that extent I believed the Agency was taking proper action.

The complainants believed that any additional costs for the maintenance of their property should be the responsibility of the Agency in approving the scheme. I learned that the Agency has no statutory responsibility for additional maintenance costs. In the circumstances, I could not say that the Agency was acting unreasonably or failing to comply with its statutory requirements.

The complainants also believed that the Agency should be responsible for the maintenance of the retaining wall at the bottom of their garden. My investigation revealed that maintenance of the retaining wall was the responsibility of the land owner and, as the wall in question was not in the ownership of the Agency, I could not say that it was unreasonable of the Agency not to accept responsibility for maintenance of the wall.

I did not uphold a further allegation that the Agency had put the onus on the complainants to repair the damage caused to the river bank due to the installation of the culvert.

With regard to the complainants' concern at an apparent lack of "joined up government" between government agencies, I could understand the frustration experienced and particularly in this instance, when an elderly couple, concerned about the effect of the installation of the culvert and grille on their much loved and cared for garden, tried to negotiate around various agencies in seeking a solution. In the face of apparently rigid adherence to boundaries I could also well understand the desire to see a seamless response resulting in concerted and meaningful action. This was not the first time this matter had been raised in a complaint to me. I recognized, however, that each agency must operate within its own legislative parameters and does not have the authority to extend its actions to areas that are beyond its statutory remit. Having said that, it is often the case that, as the result of my investigative work, I seek to identify opportunities for and encourage public bodies in better liaison and non-statutory collaborative action, with a view to a more effective response to citizens.

Overall, I found that the Agency had managed this case in accordance with the relevant legislation in relation to the culverting of a designated watercourse. I found no evidence of maladministration on the part of the Agency. **(AO 24/04)**

Serving of Notices in Relation to Unauthorised Infilling

I received a complaint against the Agency arising from the serving of Enforcement and Stop Notices by Planning Service (PS) in

relation to unauthorised infilling. This case is related to cases AO 12/03 against Planning Service (See page 28) and AO 57/03 against Water Service (See page 38). The complainant was aggrieved about the way in which the Agency had acted in relation to the issuing of a letter to PS concerning infilling on a river floodplain. It was the complainant's belief that the letter was genuine but was a fabrication produced after the service of Enforcement and Stop Notices to help bolster PS's case at a Planning Appeals Committee hearing. The complainant also alleged that, during an unscheduled visit to Water Service (WS) offices, he had been informed the site would be revisited by a WS official.

My investigation revealed that the Agency acts as the Drainage Authority for Northern Ireland and that it administers enforcement procedures to protect the drainage function of all watercourses. The Agency has developed a policy on floodplains which it applies in advising PS on the drainage aspects of development. The policy seeks to ensure that development should not take place on land which has an unacceptable risk of flooding. Within this framework the Agency has established close liaison with PS and acts as a consultee of PS in relation to flood risk implications. The Agency's role is advisory only and ultimate decisions on planning applications rests with PS.

In my report I stated that, following my careful examination of the evidence, I found no reason to cast doubt on the authenticity of the letter from the Agency to PS, which accurately gave the Agency's position, which is that that no infilling of the floodplain for development purposes should be permitted. I did not uphold the complainant's allegation that the letter was a fabrication. However as a result of my investigation into what occurred during the unscheduled visit, I made a recommendation that the Agency's staff be instructed to record those discussions with members of the public which they judge as having the potential to be contentious or clearly require action on the part of the Agency. I am pleased to record that the Agency accepted my recommendation. **(AO 58/04)**

DEPARTMENT OF EDUCATION

Dissatisfaction with handling and investigation of a complaint under harassment procedures

In this complaint to me the aggrieved person expressed his dissatisfaction at the way in which the Department had handled the investigation of a complaint which was made against him, under the Department's Harassment and Bullying Policy. He was also dissatisfied with the decision by the Department to bring, and ultimately uphold, a disciplinary charge against him.

The overall facts and circumstances of this case, as established during my investigation, led me to the firm conclusion that the Department's decision and subsequent disciplinary action was unreasonable and disproportionate. I concluded that virtually all stages of the Department's handling of the complaint and the related processes, as they affected the complainant, were flawed to varying levels of seriousness. I concluded that the Department's actions constituted significant maladministration, as a consequence of which I considered the complainant to have sustained significant injustice.

During my investigation I raised concerns about the lack of clarity in the Department's guidelines and was assured by the Permanent Secretary that this had been remedied in the Department's revised procedures which were issued in September 2005.

I had no doubt that as a consequence of the maladministration the complainant had suffered the injustice of considerable distress, anxiety, annoyance and worry. With regard to redress I

also took into account that the complainant had to expend a great deal of time and effort in pursuing his grievance, with all the attendant inconvenience which this had involved. I was pleased to record that the Permanent Secretary accepted my recommendation that the complainant receive a payment of £5,000 in recognition of the injustice I had identified, removal of the informal warning from the complainant's record and a letter of apology from the Permanent Secretary. **(AO 28/04)**

Not Short-listed for Interview

In this case the complaint related to a decision by a sift panel from the Department not to shortlist his application for a post advertised within the Department. In his complaint he alleged the panel wrongly determined he did not satisfy the shortlisting criterion and did not supply reasons to justify this decision. The complainant appealed to the panel indicating that, in the absence of a definition of the short-listing criteria, any example would fit, and his own example fell within dictionary definitions of the criteria. He stated his appeal was dismissed ignoring his reference to dictionary definitions. The complainant then brought his concerns to the attention of the Permanent Secretary (PS) of the Department who agreed with the decision of the panel without reference to dictionary definitions of the criteria. The complainant also raised concerns that the Department subsequently imposed a definition of the criteria in order to reject his appeal. He stated it was unfair that the outcome of the interviews was announced before his appeal to the PS had been considered, and queried whether it was appropriate that both the sift and appeal panels were identically composed.

I was advised by the Department that when the complainant was informed that his application had been excluded, the reason given was that he had not shown evidence that he met one of the two advertised shortlisting criteria. When he appealed he was given further information on why he had not met the criteria.

I considered the complainant's primary grievance to be in relation to the panel's decision that he didn't satisfy the shortlisting criteria and therefore examined whether this decision was attended by maladministration in terms of being wholly unreasonable.

I was satisfied that the Panel was entitled to reach the judgement not to shortlist the complainant on the basis that he had failed to provide evidence on his application form that he had met the advertised shortlisting criteria. I also found that the appeal process against the decision not to shortlist the complainant was administered in accordance with proper procedures.

However, in respect of the complainant's concerns that the outcome of the interviews was announced before his appeal to the PS had been considered I found that Northern Ireland Civil Service (NICS) guidance provides a general right of appeal to the PS of a Department. This general right extends to any personal matter including dissatisfaction with a shortlisting decision. I did note that it appeared that this right of appeal and associated process may be treated as being quite discrete from the selection process and any timeframes which may attach to the latter. It therefore seemed there was potential for an anomalous scenario where an appellant's case could be upheld after an appointment had been made, thereby denying the applicant the opportunity to progress to the next stage of the selection competition.

I did feel that in light of this situation the current appeals position was unsatisfactory and needed to be regularised. I felt that the ongoing review of the NICS code being carried out by the Department of Finance and Personnel (DFP) could provide a timely opportunity for this to be considered and I recommended that the Department should bring this to the attention of DFP. I was pleased to note that the PS accepted my rec-ommendation. **(AO 31/04)**

Delay in Promotion

In this case, the complainant stated that a promotion board was held in 2001 and in May 2002 he was informed that he had been successful. He was subsequently offered a post in Rathgael House, Bangor but, due to family commitments, he had to refuse the offer of a post in that location. In March 2003 he was advised that his name would remain on the promotion list and his position in the merit order would remain unchanged but he would not be offered any further posts in Rathgael House or the Bangor area. However, in the two years from the issue of that letter the Department had failed to offer him any other post. He felt that the Department had put his career progression on hold indefinitely, due to a combination of ineptitude and a dogged application of the rules concerning promotion and posting which he believed were flawed. He claimed he was denied the opportunity to advance grade and pay progression within the Civil Service.

My investigation revealed that within the Northern Ireland Civil Service (NICS) there exists an established framework to be used by all departments for the equalization of promotion opportunities in general service grades of Administrative Officer to Deputy Principal. Under the Equalisation Process, the Department of Education is classed as an "Importing Department" and therefore does not "export" staff who are successful in promotion competitions to other departments. Having studied the relevant documents, I noted that the terms of the Equalisation process had been agreed with the Civil Service Trade Union Side of the Central Whitley Council. It appeared to me to that the arrangements that have been put in place provide an acceptable framework to enable individuals to have equal access to promotion opportunities in the NICS within the general service grades irrespective of what department they are working in. I did not find the arrangements that have been set in place to be flawed by maladministration.

I also considered whether or not there was any evidence of a clear irregularity in the Department's implementation of those existing arrangements. I learned that other candidates placed below the complainant in merit order were placed within the Department but all within Rathgael House which, at the time, had been excluded by the complainant. Also, since May 2002, two members of staff had been posted into the Department and both were placed within Rathgael House. Furthermore, there had been no promotion vacancies in his own locality and no staff at that level from other departments had been posted there during the period in question.

While under no obligation to do so, I learned that the Department had contacted other departments seeking to secure the complainant a posting in the area of his choice. Unfortunately these efforts were to prove unsuccessful. While I found that, at the early stages, it would have been better if the Department had provided the complainant with more detailed explanations as to the implications of these centrally negotiated procedures regarding equalisation and the fact that the Department is an "importing department", I did not believe that this would have caused him to pursue a different course of action. **(200500200)**

DEPARTMENT OF ENTERPRISE, TRADE AND INVESTMENT

Appointment of an Independent Wayleave Officer

The Department had issued an Order giving consent to Northern Ireland Electricity (NIE) to install an overhead electric line across the complainants' lands. This Order was issued following receipt of a Wayleave Officer's report. The complainants questioned the independence and ability of the Wayleave Officer to be impartial when arbitrating in disputes

between members of the public and NIE. The Complainants also claimed that the 7 wayleave disputes prior to their own had been decided in NIE's favour. They perceived this as evidence of bias against members of the public on the part of Wayleave Officers who had been appointed by the Department.

My investigation revealed that for a wayleave for the installation of an electric line across land in private ownership, NIE's first option is always to seek agreement on a voluntary wayleave including terms for compensation. However, if voluntary agreement cannot be reached, NIE may apply to the Department for a necessary wayleave. NIE is unable to erect any electrical equipment in the absence of either a voluntary wayleave or a necessary wayleave granted by the Department. Before granting a necessary wayleave, the owner of the land is afforded an opportunity of being heard by a person appointed by the Department i.e. the Wayleave Officer.

As it was open to the complainants to seek leave for a Judicial Review in respect of the actual consent granted by the Department, the decision itself fell outside of my jurisdiction. I therefore focussed my investigation on the procedure adopted by the Department for the appointment of the Wayleave Officer's company and the steps taken to address the complainants' concerns as to his impartiality.

The complainants had described the Wayleave Officer as an "arbitrator", however my enquiries and my reading of the legislation revealed that the Wayleave Officer does not act as an arbitrator in such cases; rather his role is restricted to hearing the representations of the parties involved and making a report to the Department. While his role is an essential element of the process, it is the Department that makes the decision on whether to grant a necessary wayleave, taking into account the report received and any other relevant information including the wider public interest.

I gave careful consideration to the process by which the Wayleave Officer's company was appointed and from my examination of the evidence I was satisfied that the Department had followed proper procedures in conducting an open appointment process. I found no evidence of maladministration in relation to the selection and appointment of the company to provide Wayleave Officers nor did I find any evidence to call into question the Wayleave Officer's independence and ability to be impartial. I did not uphold the complaint. **(AO 80/04)**

DEPARTMENT OF THE ENVIRONMENT

PLANNING SERVICE

Serving of Notices in Relation to Unauthorised Infilling

I received a complaint against Planning Service (PS) concerning the serving of Enforcement and Stop Notices in relation to unauthorised infilling. This case is related to cases AO 57/04 against Water Service (See page 38) and AO 58/04 against the Rivers Agency (See page 24). The complainant made a number of allegations about the actions of PS. He stated that a PS official attempted to improperly influence meetings of the Planning and Public Services Liaison Committee of the local Council. These meetings were held following a Planning Appeals Commission (PAC) notification to the Council that the PAC had received appeals against Enforcement Notices issued to the complainant which asked the Council to submit any representations they wished to make. The complainant also alleged that the same PS official attempted to frustrate his son in the preparation of his family's case when he sought to obtain sight of planning applications at PS's Divisional Offices.

During the course of the PAC hearing the complainant's solicitor requested a copy of a

letter from Rivers Agency (the Agency) to PS. The complainant further alleged that a PS officer had asked the Agency to write a letter to PS objecting to the infilling which was the subject of the Enforcement and Stop Notices. Also during the PAC hearing, PS submitted a letter signed by Water Service (WS). The complainant believed that the introduction of the WS letter by PS at short notice was designed to place him at a disadvantage and to ensure that he was not in a position to adequately respond.

At the heart of the complainant's concerns was his belief that enforcement action should never have been taken by PS against his family in the first place. In view of the obvious complexities in this case, I carried out a careful analysis of the papers placed before me. In my report I stressed that I was satisfied that the complainant had been given a full opportunity to state his case on the matter of enforcement to the PAC and there was no evidence of maladministration in the process adopted. From my detailed investigation of this complaint I did not find any evidence to substantiate the complainant's allegations in respect of attempts to exert improper influence on the Council by a PS official nor did I find that PS attempted to frustrate his son in the preparation of the family's case before the PAC. I found no evidence to question the authenticity of the letter from the Agency to PS and I did not uphold the complaint on the matter of the letter from WS to PS. **(AO 12/03)**

Granting of Planning Approval for a Second Replacement Dwelling in a Green Belt Area

The complainant stated that her house was built in a Green Belt area in 1980 as a replacement for an old house which was retained as a fodder store. However, in 1998, the owner of the old house applied a second time for outline planning permission for replacement of the same property and in his application to Planning Service (PS) he omitted her house and land from the site plan. PS subsequently granted outline planning approval. She complained that although PS had acknowledged that the second replacement approval was granted in error it refused to revoke the planning permission. She further complained that at a later date PS renewed the erroneously issued replacement planning approval.

My investigation established that PS's policy in relation to replacement dwellings in a Green Belt area is a 'one for one' replacement policy. In my examination of the documents relating to the processing of the second outline planning application it was evident that the old house on PS's map had not been endorsed with the replacement planning reference number as it should have been. The planning officers processing the second application were therefore unaware that a replacement planning approval for the site had previously been granted eighteen years earlier. Consequently, the second replacement planning approval was granted in error, a fact which PS had previously acknowledged to the complainant.

Following an in-depth interview of planning officials I accepted that the factors involved in the case did not warrant the very serious action of revocation, nonetheless it caused me concern that PS had no mechanism by which it could correct acknowledged planning errors. I had further discussions with the Chief Executive on this matter with the result that he gave a commitment to actively address this issue with the PS legislative team and legal advisers.

With regard to the renewal application for the second replacement outline planning approval, I noted that PS had sought legal advice on this issue. The legal advice recognized that the matter was not clear cut and that refusal of the renewal planning application carried risks for PS of a successful

challenge by the planning applicant. I was also advised that there was a clear distinction between the extension of a valid planning permission (which is what this application was) and a new application in respect of an expired approval. Having given careful consideration to these facts I accepted that the PS decision to renew the second replacement outline planning approval was a discretionary matter and, in the absence of maladministration, I had no remit to question the decision.

My investigation of the complaint revealed some administrative shortcomings by PS which included a failure to provide the complainant with an explanation of its decision that revocation was not appropriate and a lack of documentation setting out its consideration of the legal advice it had obtained relating to the renewal application. Consequently, I made a number of recommendations to PS.

Finally, whilst I acknowledged that the aggrieved person's complaint was prompted by her public-spirited concern about the protection of Green Belt areas of the countryside, I could not conclude that she had sustained a personal injustice as a result of the failings by PS. Nevertheless, the complaint she made had been important, in that it served to highlight the absence in planning legislation in Northern Ireland of a facility for the correction of planning errors and this may in the future result in new planning legislation in this specific area. **(AO 31/03)**

Planning Application for Neighbouring Extension

The complainant in this case stated that she was denied the opportunity to have her objections considered by Planning Service (PS) in relation to the processing of a planning application for a two storey extension to the neighbouring property. She complained that the neighbouring extension which was built made her downstairs bathroom gloomy.

However, the main impact of the extension, which had increased the height of the neighbouring roofline, was the unsightly view of a solid brick wall five feet from the first floor bedroom window. This had resulted in a reduction in the amount of light entering the bedroom. The complainant also expressed her dissatisfaction with the way in which PS had dealt with her correspondence about the case.

My investigation established that the complainant had to wait four weeks for an appointment to view the plans at the local Council offices. Within days of this event PS issued planning approval before the complainant had the opportunity to submit her objections to the planning application. I regarded these failures as constituting maladministration. With regard to the impact on her dwelling my investigation confirmed that PS had documented its consideration of the potential overshadowing of the complainant's bathroom. However, there was a failure by PS to record the existence of the first floor bedroom window and to document the impact the development would have on this main room. Consequently, it was my view that PS's decision was made on the basis of seriously inadequate information.

Having visited the complainant's house to view, at first hand, the impact of the neighbouring development I formed the opinion that the outcome of the planning decision had had a serious detrimental effect on the complainant's enjoyment of her home and had adversely affected the amenity she had previously enjoyed. It was also of concern to me that PS, after careful reconsideration of the case considered that such a situation was acceptable. I regarded PS's deficient consideration of the impact of the proposed development on the complainant's bedroom window as a serious failing which constituted maladministration. I also found that PS's response to the complainant's correspondence in relation to the case was poor.

I therefore recommended that the Chief Executive issue a letter of apology to the complainant, together with a consolatory payment of £7,000 to enable the complainant to take remedial action to mitigate the effects of the adjoining house extension on her property. I further recommended that PS prepare a system of recording planning decisions which demonstrate clearly how the competing rights and interests of planning applicants and adjoining neighbours have been taken into account.

Finally, the investigation of this case caused me to conclude that amenity standards permitted under current planning policy in Northern Ireland are significantly deficient and require an immediate review in the context of modern expectations by the public. I have written to the Chief Executive on this issue. **(AO 91/03)**

Breach of Planning Approval

The aggrieved person in this case stated that when the foundations of a neighbouring dwelling were being excavated she complained to Planning Service (PS) about the close proximity of the proposed property to her house stating that her privacy would be adversely affected by overlooking from the first floor bedroom window in the gable wall of the new property. However, construction work had continued on the neighbouring property and three months later she was advised by PS that the developer intended to submit a new planning application in respect of the dwelling. She complained that she could not understand why PS had subsequently granted planning permission for the neighbouring property when it had previously acknowledged that there had been a breach of planning approval, in that, the dwelling had been constructed closer to her house than had been originally approved. The complainant further stated that she would like the clear glass in the bedroom window of the adjacent dwelling changed to frosted glass to allow her some privacy.

During my investigation PS acknowledged that the complainant had brought the breach of planning control to its attention and that it had taken a further three months before the Enforcement Section contacted the developer about the matter. I noted the Chief Executive's explanation for the delay was that progression of enforcement work had been affected due to limited resources. I nevertheless criticised PS for failing to promptly action the complainant's report of the breach of planning approval. Had it done so, it was possible that the problem of the close proximity of the proposed dwelling to the complainant's home could have been resolved at an early stage before construction work commenced.

I further established that planning law permits the submission of a retrospective planning application to PS to demonstrate changes made to a development and that, in this case, the developer decided to follow this course of action. However, I regarded the nine months taken by PS to obtain and validate the developer's retrospective planning application as excessive.

With regard to the processing of the retrospective planning application the planning officer believed that the first floor gable window served a bathroom, whereas the complainant maintained it was a bedroom window. It was my opinion that the planning officer should have conducted an internal visit to the neighbouring property to establish beyond doubt the type of room served by the first floor gable window. I criticised PS for failing to investigate fully the specific objection raised by the complainant regarding overlooking from the first floor gable window which contained clear glass, as opposed to obscure glass which is the normal glazing for a bathroom window.

Following referral of the complaint to my office a PS enforcement officer subsequently negotiated an agreement with the occupier and the developer which resulted in the

replacement of the clear glass in the first floor gable window with frosted glass. I regarded this as a satisfactory resolution to the complainant's concern of overlooking of her property.

This case highlighted what many complainants regard as the unwelcome provision within the planning legislation which permits an application for retrospective planning permission following a breach of planning control. While that is a position I am not empowered to alter, I nevertheless, urged the Chief Executive to provide objectors with the fullest possible explanation of the retrospective planning process. My investigation of this case revealed a series of administrative failings by PS in its dealings with the complainant which caused her the injustice of annoyance, frustration and stress. I therefore recommended, and the Chief Executive agreed, to issue a letter of apology to the complainant, together with a consolatory payment of £450. **(AO 19/04)**

Processing of a Planning Application

This was a multi element complaint concerning alleged maladministration by Planning Service (PS) in its handling of a planning application for a housing development adjacent to the complainant's home. This case is related to cases AO 23/04 against Roads Service (See page 37) and AO 24/04 against the Rivers Agency (See page 23).

The complainants believed that the application process did not follow due process. Despite a clear indication from the complainants that they intended to make further submission upon completion of a review of the relevant files, PS proceeded to present the application to the local Council with an opinion to approve. I was informed that, given the detail of PS' dealings with the complainants over the previous number of months, PS felt that it was unlikely that they would raise any new issues following the review of files. I was satisfied that the issues raised in their first letter of objection were consistently restated and I found that it was not unreasonable for PS to believe that the complainants would not raise any new issues that had not been previously identified and considered by PS in its determination of the application. However, I found that PS should have awaited further correspondence from the complainants prior to presenting the application to Council and I criticised PS for not doing so.

The complainants contended that the culverting of a stream should have been part of the planning process thus enabling public consultation. I learnt that a proposal by a third party to culvert a watercourse does not require planning permission; it requires only the consent of the Rivers Agency and, in this instance, the issue of the stream had no bearing on the layout proposed. In such circumstances, I could not say that PS failed to follow procedures. I found no evidence that administrative procedures were not followed and I did not consider that I had grounds to challenge the PS opinion on this occasion.

There was some confusion on the part of the complainants as to why, at no point during the processing of the application, was a response issued directly to them from Roads Service (RS). I did not find it an unreasonable approach for correspondence directed to PS to be copied to RS for its comments on any roads related issues and for a co-ordinated reply to issue from PS. I noted that such an explanation was given by PS in a letter to the complainants together with an apology for any misunderstanding. However, I believed it would have been better if, at an earlier stage, PS had informed the complainants as to its normal procedure for dealing with queries concerning roads related issues.

The complainants clearly disagreed with the RS opinion that the proposal was acceptable in terms of road safety and felt that PS should

also have disagreed. I do not believe that it is for PS to substitute its judgement for the judgement of professionals in another agency.

Another important issue was the complainants' belief that the granting of permission for the dwelling on site one was in total contravention of and a deliberate misinterpretation of PS' supplementary planning guidance "Creating Places", paragraph 7.16. It was my view that the complainants' interpretation of paragraph 7.16 was not in accordance with the intent of the guidance. I was satisfied that the circumstances described in paragraph 7.16 of Creating Places were not directly comparable to the subject site and I could not concur with the complainants' allegation that PS had in this case deliberately misinterpreted or deviated from its guidance or adopted an inconsistent approach. However, it struck me that members of the public would be better persuaded of the reasonableness of such decisions if the wording of paragraph 7.16 was more specific. I recommended that PS revise the wording of paragraph 7.16 in order to avoid any future misinterpretation.

The complainants also alleged that they did not have an adequate opportunity to input to the application for the revised scheme largely due to the inadequacies of PS's file system and record keeping. I concluded that the planning register was inaccurate when viewed by the complainants, a fact acknowledged by the Chief Executive. I criticised PS for inviting a member of the public to inspect the public register that turned out to be inaccurate/incomplete. Having said that, I was aware that the complainants did subsequently view the complete register and I believe that they were then fully aware of what had been proposed. Overall, I found no evidence to support the complainants' belief that the opportunity to input to the process was inadequate and rushed to suit the developer.

While I did criticise PS for failing to notify the complainants of receipt of a revised plan, I was satisfied that the complainants were aware of the revised plan well in advance of PS forming an opinion to approve the application.

From the evidence examined I was unable to uphold a further ten allegations of maladministration. I also examined the evidence of the interaction which took place between PS and the complainants over a period of time and was satisfied that PS dealt reasonably with them.

This was an extended and time consuming investigation. While I found reason to be critical of PS and I recommended that it review the wording of paragraph 7.16 in the document Creating Places, I was satisfied that it gave full and proper consideration to each aspect of the planning application and to the complainants' objections. Crucially however, the decision whether or not to grant planning permission is a discretionary one and I cannot question the decisions of professional planning officers, however unpopular they may be with interested parties, unless they are perverse or the process by which they are arrived at is flawed. I did not find this to be the case with this application. **(AO 22/04)**

Processing of a Reserved Matters Planning Application

In this case the aggrieved person complained that, in processing the Reserved Matters application, Planning Service (PS) approved a building height 2 metres above the level approved by the Planning Appeals Commission (PAC) at outline stage.

My investigation revealed that in August 2001 an outline planning application for a dwelling was refused planning permission and the applicant subsequently appealed to the PAC. In July 2002, the PAC upheld the appeal and planning permission was granted. As this was

outline approval, a Reserved Matters application detailing issues such as the design, external appearance, access, landscaping was submitted to PS in September 2003 and planning permission was granted in May 2004.

In my investigation I assessed the conditions of the PAC approval against the subsequent Reserved Matters approval by PS and it became clear to me that the crux of the matter was how the road adjacent to the development site had been illustrated on the approved drawings relevant to the outline and Reserved Matters applications. The approved drawing at outline stage showed the road at the same level as the development site and on the approved drawing at Reserved Matters stage the road was shown at a lower level than the development site. The complainant's interpretation of the PAC requirements was that the new development should be built at the same base level as the road which, he believed, would reduce its height by approximately 2m. The crucial factor was, therefore, what level, if any, the PAC had attributed to the road in determining the finished level of the new development. I decided it was appropriate to seek a definitive opinion from the Chief Commissioner of the PAC who was unequivocal in his response that it was the relationship of the finished floor level of the proposed development with the complainant's property, rather than the level of the road, which was critical. I was, therefore, satisfied that the road had no relevance to the finished level of the new dwelling and its existence on the approved drawings was nothing more than a graphical illustration.

That being so I was satisfied that PS had given full and proper consideration to each aspect of the planning application and, in particular, to ensuring that it met the requirements of the outline planning permission. **(AO 83/04)**

Planning Application for Townhouses and Apartments

The aggrieved person complained that the proposal to construct townhouses and apartments in close proximity to her house would result in overlooking of her property and cause a loss of privacy. Other concerns expressed by the complainant involved the structural stability of her house once excavation of the site commenced; an increase in traffic congestion in the immediate area; and the capacity of the local sewerage system to cope with the additional usage. The complainant also alleged that, in processing the planning application, Planning Service (PS) had ignored her interests.

My investigation established that planning permission had been granted for five townhouses to replace the two existing dwellings on the site. There were no apartments approved for the site. I noted that the complainant, having been notified about the planning application, submitted to PS a detailed letter of objection to the development proposals which included the issues of overlooking and overshadowing of her property and concerns relating to an increase in traffic. An examination of the planning documents demonstrated that PS had recorded its consideration of the potential impact of the development on the complainant's property. I was satisfied therefore that proper consideration was given by PS to the issues of overlooking and privacy in relation to the complainant's property.

On the other issues of concern my investigation revealed that PS had consulted with Roads Service in connection with the planning proposals and Roads Service did not express any reservations about a potential increase in traffic congestion. Similarly, PS had also consulted with Environment and Heritage Service in connection with the capacity of the local sewerage system to cope with additional usage and in its reply it did not object to the

planning proposals. I further established that the structural stability of any development site does not come within the jurisdiction of PS; rather it is the responsibility of the developer, in conjunction with the Building Control Section of the local Council. Consequently this element of the complaint was not appropriate to PS.

Overall, I was satisfied that PS had due regard to the concerns raised by the complainant. Moreover, I did not identify any maladministration in the way in which PS had dealt with the planning application. I did not, therefore, uphold the complaint. **(AO 88/04)**

Change of Use from Retail to Serving of Hot Food

This complaint was about Planning Service's (PS) handling of a planning application for a change of use from Retail Unit to Serving of Hot Food at a shopping centre. The shopping premises are situated behind the complainant's home. The complainant wrote to PS detailing his objections which were that he would be subject to unpleasant cooking smells, that the new hot food takeaway would be open seven days a week into the early hours of the morning and noise during these extended opening times would be unacceptable. He considered that food refuse left in bins adjacent to his rear fence would result in the congregation of vermin and that another planning approval would lead to an over supply of hot food outlets in the area. The complainant also felt his objections and those of other neighbours were not taken into consideration and that conditions should have been placed on the approval. He specifically referred to PS's document Development Control Advice Note 4, Restaurants, Cafes and Fast Food Outlets. Finally the complainant felt that the questions of devaluation of his property and his concerns regarding parking and car parking ratios in the shopping centre were not addressed by PS.

My investigation revealed that the application was presented to the Council by PS on three occasions, each time with an opinion to approve. Site visits and meetings took place at which Councillors, officials from the Environmental Health Department (EHD) of the Council and Roads Service (RS) personnel attended. A report was also received from the EHD into the environmental implications of the proposal and there was consultation with the Environmental Heritage Service. In my report I commented that this was one of the most comprehensively documented planning proposals I had seen. I found no evidence of maladministration in the processing of the application and there was, therefore, no basis on which I could question the decision of PS to grant approval.

I found that many of the issues which concerned the complainant were not planning matters and did not come within the remit of PS. With regard to the reasons for conditions relating to noise and fumes not being incorporated into the approval as granted, I accepted PS's position that a planning condition must meet legal tests and that a condition must only be attached where, without that specific condition, the development must otherwise be refused. I agreed that it would be inappropriate for PS to attach conditions to a development approval when enforcing in the event of a breach of condition would be for another authority. I also had regard to the fact that no trading as yet was taking place from the unit and that PS has no direct role in the stipulation of opening hours of a business. The evidence before me indicated that proper consideration was given by PS to its policy statements before the decision to approve was granted and I did not concur with the complainant's view on the matter of adherence to guidelines in this case. I was also satisfied that PS carried out proper consultation with RS and that in the absence of RS objections to the proposal there were no grounds to refuse the proposal for reasons of car parking.

I was satisfied that PS consulted extensively with all the relevant authorities before making its discretionary decision and I did not find any evidence of maladministration in the process which led to the decision to grant approval. **(200500219)**

DEPARTMENT OF FINANCE AND PERSONNEL

Handling of a Complaint of Harassment and Bullying

This complaint centred on the Department's handling of a complaint of Harassment and Bullying and subsequent treatment under the Department's Grievance procedures.

The complaint stemmed from events that occurred in the workplace between the complainant and her line manager. I emphasised from the outset that those events were appropriate to established employment processes, such as Harassment and Bullying and Grievance procedures. The focus of my investigation was to establish whether those procedures, once invoked, had been correctly administered.

The complainant lodged a formal complaint of Harassment and Bullying with the Department's Equal Opportunities Officer. In the complainant's view the events that occurred, which resulted in her being absent from work due to ill health, were attributable to the line manager and an acknowledgment and acceptance of this view was the only resolution to the complaint. The management, on the other hand, whilst accepting the events occurred and apologising, could not accept responsibility for the complainant's health difficulties. In an effort to resolve the issue and facilitate the complainant's return to work, a series of meetings were held in the hope of resolving the matter informally. The Department's policy statement advocated attempting to resolve complaints informally where possible, a view I endorse.

In spite of the various informal meetings the matter remained unresolved. However, despite all previous meetings having failed to improve the situation, a further informal meeting was offered by the Equal Opportunities Officer which, I found to the complainant's credit, she agreed to attend. Perhaps not surprisingly, however, the situation remained the same. After this particular meeting, my investigation found no evidence of any direct follow up action by the Equal Opportunities Officer to progress or conclude the matter. Instead, sometime later, the question of whether or not the matter should be dealt with by way of the Department's Grievance Procedure was suggested to the complainant, which she decided to use. The Grievance was accepted but no action was taken to tell the complainant that the invoking of the Grievance Procedure effectively cancelled the Harassment and Bullying procedure. I criticised the Department for failing to explain clearly to and agree with the complainant how her complaint should be progressed.

The complainant lodged two separate grievances – one against her line manager, re-iterating the points in the Harassment and Bullying complaint and one against the Department's handling of the complaint. The Department failed to follow the established procedures for dealing with grievances in terms of arranging meetings and progressing the matter through the appropriate channels. For my part, I did not accept that the previous meetings held when the matter was being handled informally negated the need to follow the specific procedures relevant to the handling of a grievance. I found no scope for discretion to disregard the procedures once invoked and I was critical of the Department's failure to follow the established procedures.

I identified failings in the Department's handling of the complaint which I considered caused the complainant frustration and annoyance. I

recommended that the Department issue an apology to the complainant in respect of these failings and that it also review its operation of the procedures to identify if greater clarity can be provided in the supporting documentation and advice. The Permanent Secretary accepted my recommendation and issued an apology to the complainant. The Permanent Secretary also undertook to forward my comments to the Steering Group charged with the development of a corporate Harassment and Bullying Policy for the Northern Ireland Civil Service. I welcomed this undertaking. **(AO 60/04)**

DEPARTMENT FOR REGIONAL DEVELOPMENT

ROADS SERVICE

Handling of a Decision to Terminate the Tenancy of a Property

The aggrieved person complained about the actions of Roads Service (RS) and Lands Service in relation to their handling of a decision to terminate her tenancy of a property owned by RS and managed by Lands Service. Without any form of advance warning she was notified in an unsigned letter, from Lands Service, that her tenancy of 27 years was being terminated. The complainant had not been provided with any form of explanation for the decision and she was very dissatisfied with what she regarded as the complete lack of courtesy afforded to her when she attempted to clarify why the decision had been taken.

Although I did not seek to challenge the discretionary decision to terminate the complainant's tenancy which had been taken following the outcome of an Audit Exercise, I was appalled at the sheer lack of sensitivity in which the matter had been handled, in that she had not been offered any explanation for the decision. I also regarded the way the decision had been communicated as less than satisfactory, particularly in light of the acknowledgement that the complainant had been a very good tenant for 27 years. The Chief Executive of RS and the Permanent Secretary of the Department of Social Development accepted my findings and my recommendation that they should each issue a letter of apology to the complainant together with a consolatory payment of £500**. (AO 16/04 & 17/04)**

Alleged Failure to Take Note of Access Concerns

This case is related to cases AO 24/04 against the Rivers Agency (See page 23) and AO 22/04 against Planning Service (See page 32).

My investigation revealed that Planning Service had provided Roads Service (RS) with copies of the application documents, including drawings, seeking its views on the housing development proposal. In considering the proposal, RS was aware that there had been a previous application for the redevelopment of the site in question, which had extant planning permission for an industrial use, as a site for residential housing. The site already had in existence an access onto the main road. This previous application had been granted planning permission for 37 dwellings and this had therefore established the principle of a housing development on the site using the existing access. The more recent application, which was the subject of the complaint, sought to increase the number of dwellings from 37 to 45.

I noted that in its consideration of the proposal RS identified relevant policy documents, carried out a site visit and an assessment of the traffic generation of the revised application compared to the previous industrial use of the site. The overall conclusion was that the proposed development would generate significantly fewer trips. However, because of the increase in the number of dwellings, RS did seek improved visibility splays.

The complainants had expressed concern that there was no clear delineation shown on the submitted plans between the housing access and their private road. Although RS did not consider the proximity of the accesses to be a major safety issue, the developer's agent was asked to consider a revised access layout. Amended drawings were subsequently submitted by the developer with clear delineation between the access to the development site and the access to the rear of the complainants' home. I noted that this additional measure was not required by RS in order to gain approval. In these circumstances, I could not agree with the complainants' allegation that RS had delayed unnecessarily in seeking to obtain the aforementioned delineation.

From the evidence provided, I did not uphold the complainants' further allegation that RS failed to recognize and adequately take note of access or safety concerns or that their safety and amenity were marginalized and given little or no serious attention. Nor could I say that I found any irregularity with the application of the relevant policies to the circumstances of the application. In this instance, RS came to the conclusion that, given the improvements to the existing access, the proposed development was unlikely to compromise road safety. Consideration of such a proposal involves the exercise of professional judgement leading ultimately to the taking of a discretionary decision by RS. I found I had no grounds in this case to question the judgement of professional RS engineers.

I did, however, consider the standard of documentation in support of the RS' consideration of the proposal to be wholly inadequate and to constitute maladministration.

I did not uphold further allegations that RS had failed to respond to reasonable questions and fulfil promised responses within reasonable time periods.

Overall, although I was critical of the incompleteness of the information contained in the documentation supporting the RS consideration of the proposed development, the information available to me did not suggest any improper consideration on the part of RS. **(AO 23/04)**

WATER SERVICE

Serving of Notices in Relation to Unauthorised Infilling

The complainant was aggrieved about the way in which Water Service (WS) had acted in relation to the issuing of a letter to Planning Service (PS) regarding unauthorised infilling. This case is related to cases AO 58/04 against the Rivers Agency (See page 24) and AO 12/03 against Planning Service (See page 28).

He stated that, during a Planning Appeals Commission (PAC) hearing appealing against the issue of Enforcement and Stop Notices, PS submitted a letter from WS, the contents of which were completely at odds with the understanding that he had entered into with WS in 1991 when he permitted WS to enter upon his lands and construct a sewer. The complainant alleged that WS were putting in writing what PS wanted to read and which would bolster their case against him at the PAC hearing. He felt that it was only because the hearing was adjourned and he was able to confront WS with evidence of an earlier agreement that the letter from WS was withdrawn from the PAC hearing.

From my careful examination of the papers supplied it was quite clear that the complainant did have an agreement with WS dating back to August 1991 in relation to these lands. However I found no evidence to suggest that WS was being urged to put in writing what PS wanted to read in order to strengthen its case before the PAC. It was my view that the letter presented a statement of the facts, as they appeared to WS, relating to the situation on

the ground. It seemed to me that, on the matter of the agreement with WS, the complainant would have been in a position to respond at the PAC hearing, having in his possession earlier correspondence from WS. It was clear to me that, once the attention of WS was drawn to the existing agreement and it became aware of the documentary evidence in its possession, WS promptly withdrew its comments by sending a fax and telephoning the complainant's solicitor. I did not believe that the withdrawal of the letter signalled unwillingness on the part of WS to attend the PAC hearing as alleged by the complainant. Overall, I found no evidence of maladministration by WS in its dealings with the complainant and I did not uphold his complaint. **(AO 57/04)**

DEPARTMENT FOR SOCIAL DEVELOPMENT

CHILD SUPPORT AGENCY

Dissatisfaction with the processing of a Child Support Maintenance review/reassessment

The aggrieved person was a non-resident parent (NRP) who was particularly dissatisfied at the CSA's delay in carrying out a review/reassessment of his liability amount which culminated in a notification of arrears in excess of £4,000.

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 (of approximately 12 months) on the part of the CSA in processing the review/reassessment of the NRP's Child Support Maintenance (CSM) liability amount. I criticised the CSA for the delay involved in completing the review and reassessment, and subsequently informing the NRP of the outcome, the consequences of which caused the NRP to incur a large amount of CSM arrears.

The NRP considered he should not be expected to pay the arrears which had arisen through no fault of his own. I was informed that information obtained by the CSA confirmed there had been a significant increase in the NRP's earnings. It was the CSA's view that where an NRP's wages have increased, he/she should expect that a review of an existing CSM liability assessment is likely to result in an increase in the amount of CSM payable and should take steps to make provision for it. In all the circumstances I could not consider the holding of such a view to be unreasonable or inappropriate on the part of the CSA. With regard to the excessive delay by the CSA in processing the reassessment however, I told the Chief Executive (CE) that I would expect the CSA to exercise the maximum degree of flexibility in collecting the arrears balance from the NRP. The CE agreed with that opinion.

In fairness the CSA acknowledged that the standard of service delivered to the NRP on this occasion had fallen far short of that which he was entitled to expect from the Agency.

By way of redress for the considerable anxiety, annoyance, frustration and inconvenience, which I had no doubt the aggrieved person had suffered, I recommended that the CE issue a letter of apology, together with a consolatory payment of £500. This amount was inclusive of the £150 that had already been issued by the CSA to the NRP. I am pleased to record that the CE accepted these recommendations.

In addition the NRP contended he had suffered from stress which caused him to take "time off" from his employment because of the uncertainty in relation to the amount of arrears he would have to pay and had evidence from his GP to confirm this. I directed that the NRP be informed that if he continued to suffer from stress for the reasons described to me, he should provide for the CSA's further consideration, specific

evidence, as outlined by the CE. The CE subsequently informed me that a further consolatory payment was awarded amounting to £100. **(AO 51/04)**

Application for Child Support Maintenance

The complainant in this case wrote to me about what she regarded as the incompetent and inefficient manner in which the Child Support Agency (CSA) had handled her application for child support, from her former husband, particularly from May 2003. The complainant stated that, following a period of unemployment, her former husband became employed again in May 2003 and informed the CSA of this change in circumstances. The complainant was dissatisfied with the subsequent action taken by the CSA. Also, the complainant said she failed to understand how her former husband's current partner, who lived with him, had claimed child support from him in respect of their child. The complainant said that, as a result, the amount of child support paid by her former husband had been split between both claims.

Having investigated this complaint I found that the other claim, referred to by the complainant, had subsequently been closed. However, I formed the view, based on the evidence available to me, that the CSA had to accept that the claim was valid during the relatively short time in which it was 'live'. Regrettably, my investigation established that, a fault in the CSA's computerised system, meant that the system did not recognise the closure of the other claim. The split of the CSM between both cases had continued. I also established that, to resolve this problem, the CSA found it necessary to inhibit the system from issuing any payments to the complainant and, instead, to have her payments issued manually. The CSA's Chief Executive told me that the system/operational fault could not be rectified at the time and that this situation was unlikely to change for the "foreseeable future".

While I am not without sympathy for staff in organisations that experience technical problems or faults, primarily I regard the difficulties which the Agency has experienced with its new computer system, in this case, as constituting evidence of an operational flaw. It is my firm view that members of the public, which the relevant organisation serves, should not be disadvantaged by such operational difficulties. I also found a significant number of instances of poor service provision, significant delay and errors by CSA staff which led me to conclude that the complainant was fully justified in complaining to me. Overall, I regarded the standard of service provided to the complainant as having fallen completely short of the standard that citizens have a right to expect from government departments or their related agencies.

The CSA had acknowledged that its handling of the complainant's case had been unsatisfactory and it had made a compensatory payment of £150 to her "in recognition of the delay and inconvenience" which she had experienced through not having "received the level of service that she was entitled to expect from the CSA".

However, in terms of redress, I recommended that the complainant should receive a letter of apology from the CSA's Chief Executive and an consolatory payment of £900 in respect of the injustice of significant annoyance, exasperation and frustration, together with financial worries and considerable disappointment, anxiety and inconvenience suffered as a consequence of the maladministration which occurred in this case (this amount included the £150 payment that the CSA had already made). I was pleased to record that the Chief Executive accepted my recommendation. Also, the Chief Executive assured me that the CSA is continually reviewing all aspects of its operations to ensure that the most effective means of handling cases are identified and that changes are made wherever the process can be improved. I welcomed this assurance. **(AO 61/04)**

Selected Summaries of Settled Cases

Environment and Heritage Service

I received a complaint from a gentleman regarding the replacement windows which were installed in his house, which is a listed building property, by a developer acting on instruction from Environment and Heritage Service (EHS). He complained that as the owner of the property he was not consulted nor was his opinion sought regarding the design of the replacement windows which effectively reduced the amount of light entering his home. I made written enquiries of EHS and I subsequently visited the complainant's house accompanied by the EHS's Chief Executive. Following the visit the Chief Executive wrote to me and proposed that EHS would, in consultation with the complainant, organise and pay for the replacement of two windows in the complainant's house with an appropriate style of window and to carry out any remedial paint work. The complainant subsequently confirmed the work had been carried out to his satisfaction. **(AO 33/04)**

Roads Service

The complainant in this case was dissatisfied with Roads Service's handling of its request for a hedge/tree to be cut back. In his response to my enquiries on this case the Chief Executive of Roads Service informed me that he was prepared to consider an offer of compensation to the complainant by way of a 'without prejudice' payment. He added that local Roads Service officials will ask that their Central Claims Unit reconsider the case and commence negotiations with the complainant's solicitors over the amount of legally compensable loss. **(200500486)**

Planning Service

The complainant in this case alleged that he had been misled by Planning Service in its handling of his 2004 application for a Certificate of Lawfulness for a Proposed Use or Development (CLUD) for a second proposed Free Range Organic Poultry Unit (the broiler house). I made preliminary enquiries of Planning Service and established that the complainant had paid a planning fee of £630 in submitting his CLUD application but, unfortunately, Planning Service had been unable to determine the application for the second broiler house application in the same way as his previous application. He therefore had to submit a full planning application and pay a further planning fee. In response to my written enquiries the Chief Executive reviewed the case and proposed to issue an apology to the complainant for Planning Service's handling of his case and to make an ex-gratia payment to him equivalent to his CLUD application fee of £630. **(200500792)**

Social Security Agency

A lady complained to me about the Social Security Agency's (SSA) processing of the transfer of her Retirement Pension and Pension Credit claims from England to Northern Ireland. I arranged for detailed preliminary enquiries to be made of the SSA. A detailed response was provided by the Retirement Pension Branch and the Pension Credit Office and forwarded to my office by the SSA's Customer Service Unit. My enquiries revealed a three week delay in issuing the complainant's Retirement Pension for the month of July 2005, although regular payments were made thereafter. However, there were a series of errors made in the processing of the complainant's Pension Credit and the resultant delay in issuing payment to her caused her unnecessary anxiety. I noted, however, that in recognition of the inconvenience and stress caused to the complainant the SSA issued her with a letter of apology, together with a consolatory payment of £75. **(200500868)**

Statistics

Table 2.3: Analysis of Written Complaints Received in 2005/06

	Brought forward from 2004/05	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/06
Government Departments	17	58	38	0	14	5	5	13
Agencies of Government Departments	45	135	85	6	42	13	14	20
Tribunals	0	6	6	0	0	0	0	0
North/South Implementation Bodies	0	2	2	0	0	0	0	0
TOTAL	62	201	131	6	56	18	19	33

Table 2.4: Analysis of Written Complaints Against Government Departments

	Brought forward from 2004/05	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/06
DARD	7	19	8	0	6	3	2	7
DCAL	0	1	1	0	0	0	0	0
DE	4	3	2	0	2	1	2	0
DEL	1	3	2	0	2	0	0	0
DETI	1	0	0	0	0	0	1	0
DFP	1	9	7	0	1	1	0	1
DHSSPS	0	4	3	0	1	0	0	0
DOE	0	3	3	0	0	0	0	0
DRD	0	10	8	0	0	0	0	2
DSD	3	5	3	0	2	0	0	3
NIO (Extra Statutory)	0	1	1	0	0	0	0	0
TOTAL	17	58	38	0	14	5	5	13

Table 2.5: Analysis of Written Complaints Against Agencies of Government Departments

	Brought forward from 2004/05	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/06
Child Support Agency	4	11	5	1	4	2	0	3
Driver Vehicle Licensing	0	4	3	1	0	0	0	0
Driver Vehicle Testing Agency	0	7	4	0	3	0	0	0
Environment & Heritage Service	3	2	1	1	3	0	0	0
Land Registers	0	2	0	0	1	0	0	1
Planning Service	21	70	45	1	16	11	9	9
Rate Collection Agency	0	4	2	0	1	0	0	1
Rivers Agency	2	0	0	0	0	0	2	0
Roads Service	9	12	5	1	9	0	2	4
Social Security Agency	3	20	18	1	3	0	0	1
Water Service	3	3	2	0	2	0	1	1
TOTAL	45	135	85	6	42	13	14	20

Table 2.6: Analysis of Written Complaints Against Tribunals

	Brought forward from 2004/05	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/06
Appeal Tribunals	0	3	3	0	0	0	0	0
Industrial Tribunal	0	1	1	0	0	0	0	0
Planning Appeals Commission	0	2	2	0	0	0	0	0
TOTAL	0	6	6	0	0	0	0	0

Table 2.7: Analysis of Written Complaints Against North/South Implementation Bodies

	Brought forward from 2004/05	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/06
Special European Union Programmes Body	0	1	1	0	0	0	0	0
Waterways Ireland	0	1	1	0	0	0	0	0
TOTAL	0	2	2	0	0	0	0	0

Section Three

Annual Report of the Northern Ireland Commissioner for Complaints

Written Complaints Received in 2005/06

As Northern Ireland Commissioner for Complaints I received a total of 218 complaints during 2005/06, 42 less than in 2004/05.

As in previous years the Northern Ireland Housing Executive attracted most complaints with 99 (down 1% on 2004/05).

Fig: 3.1: Complaints to the Commissioner for Complaints 1996 - 2005/06

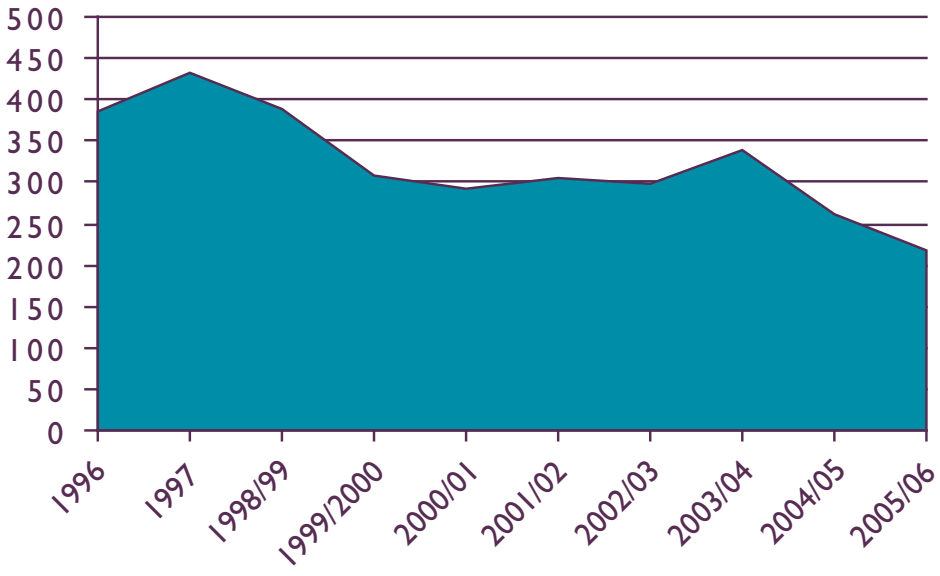


Fig 3.2: Written Complaints Received in 2005/06 by

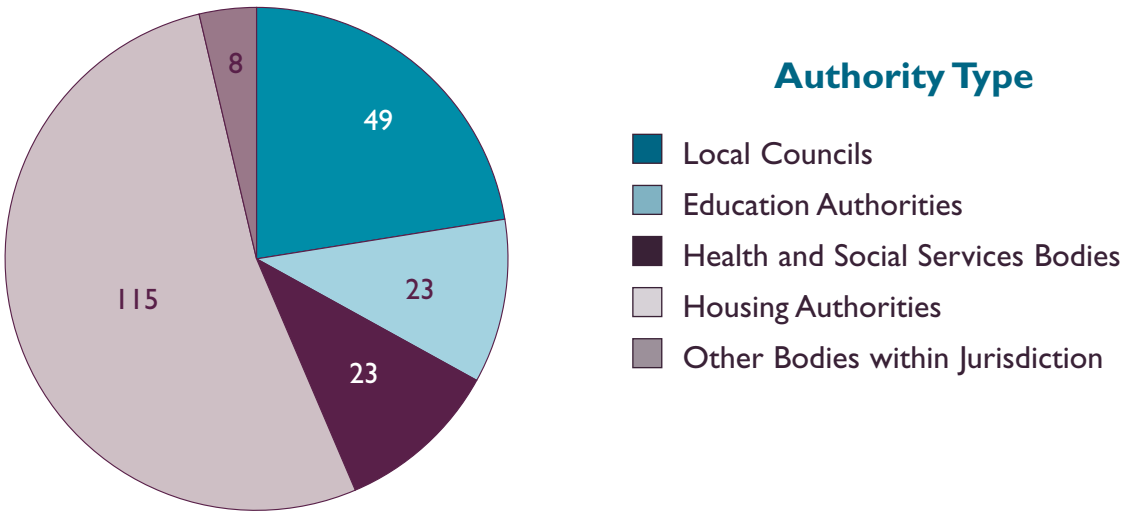
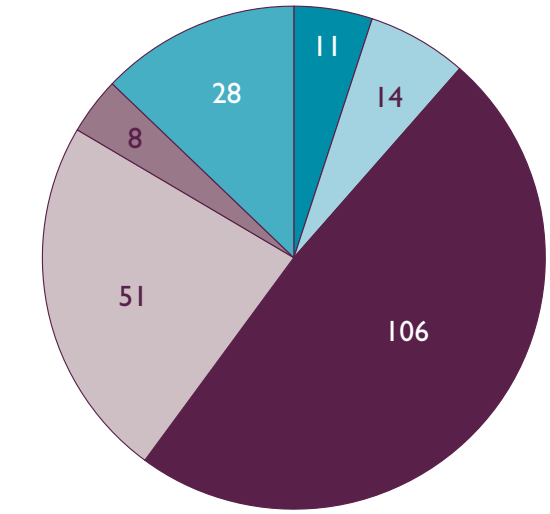


Fig 3.3: Written Complaints Received in 2005/06 by Complaint Subject



- Education
- Environmental Health & Cleansing
- Housing
- Personnel
- Recreation & Leisure
- Miscellaneous

The Caseload for 2005/06

In addition to the 218 complaints received during the reporting year, 63 cases were brought forward from 2004/05 – giving a total caseload of 281 complaints. Action was concluded in 220 cases during 2005/06 and all of the 61 cases still being dealt with at the end of the year were under investigation.

Table 3.1 Caseload for 2004/05

Cases brought forward from 2004/05	63
Written complaints received	218
Total Caseload for 2005/06	281
Of Which:	
Cleared at Validation Stage	109
Cleared at Investigation Stage (without a Report), including cases withdrawn and discontinued	62
Settled	22
Full Report issued	27
In action at the end of the year	61

The outcomes of the cases dealt with in 2005/06 are detailed in Figs 3.4 and 3.5.

Fig 3.4: Outcomes of Cases Cleared at Validation Stage

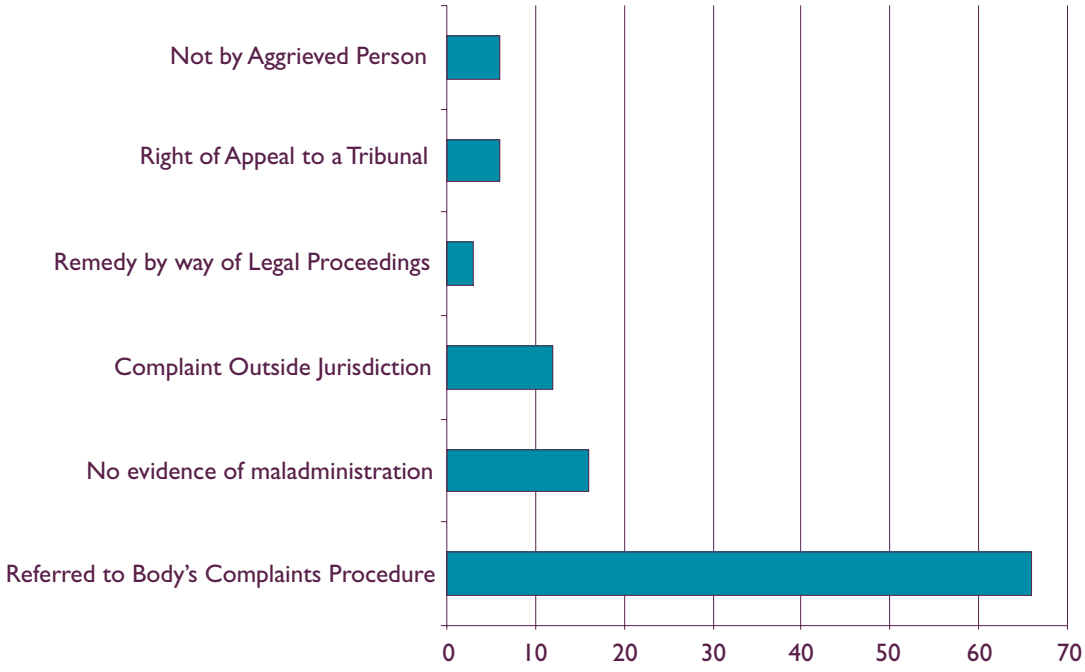
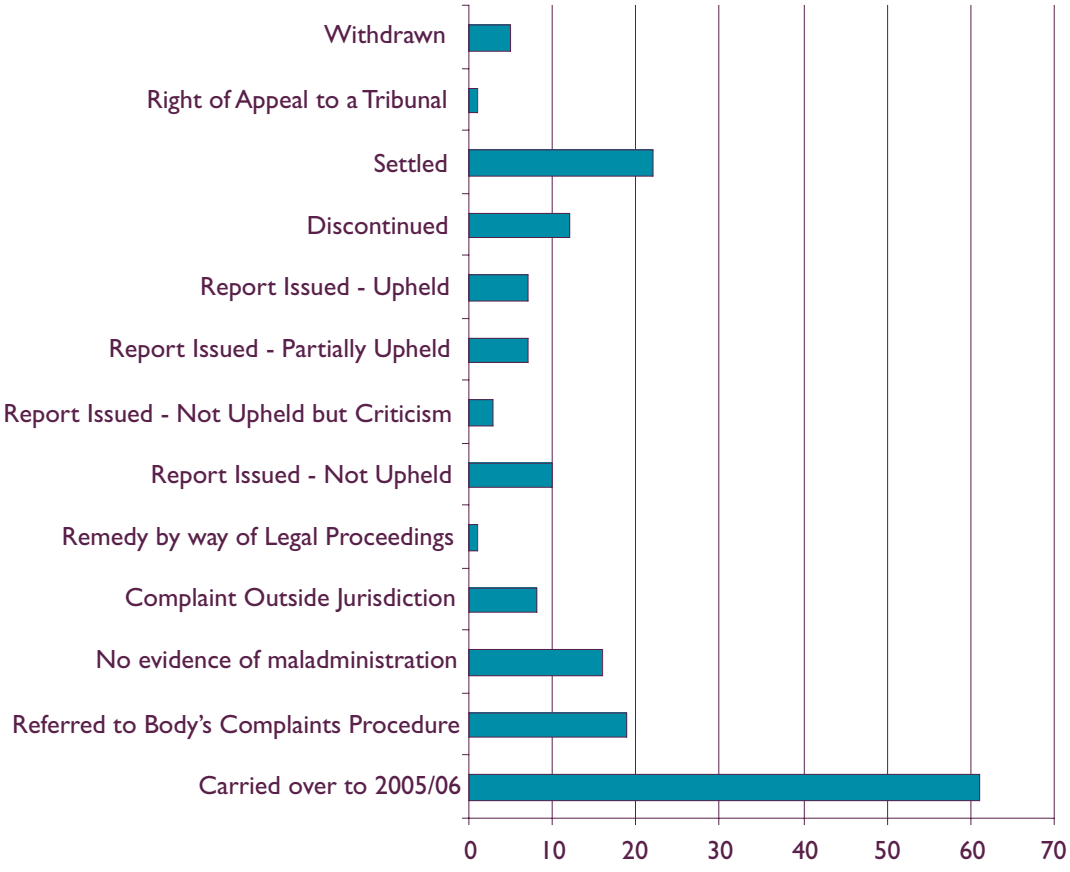


Fig 3.5: Outcome of cases Cleared at Investigation and Report Stages



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

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

The average time taken for a case to be examined, enquiries made and a full Report issued at Report Stage was 55 weeks.

27 reports of investigations were issued in 2005/06. Of these cases: 7 were fully upheld; 7 were partially upheld; 3 were not upheld but I criticised the Body complained against; and 10 were not upheld. In all of the cases in which I made recommendations for action(s) by the body complained against these recommendations were accepted by the body.

Table 3.2 Recommendations in Reported Cases

Case No	Body	Subject of Complaint	Recommendation
CC 188/02	Armagh C&DC	Termination of contract	Apology & consolatory payment of £850
CC 56/03	NI Ambulance Service	Change in terms of agreement	Apology & consolatory payment of £350
CC 140/03	Equality Commission	Handling of a case	Apology & consolatory payment of £400
CC 10/04	Derry CC	Failure to respond to correspondence	Apology
CC 39/04	Equality Commission	Handling of a case	Equality Commission has introduced new procedures
CC 57/04	NI Ambulance Service	Failure to implement recommendations	Apology
CC 59/04	Sperrin Lakeland Health & Social Care Trust	Equivalent educational qualifications not accepted	Apology
CC 71/04	NIHE	Processing of housing application	Visit by Housing Officer to discuss housing options & offer advice and assistance
CC 105/04	NIHE	Failure to carry out repairs	Apology & consolatory payment of £750
CC 112/04	Equality Commission	Handling of application to tribunal and advice given	Equality Commission has made improvements in the areas of customer care, complaints handling and customer service standards
CC 116/04	Western E&LB	Not shortlisted for interview	Apology & consolatory payment of £500
CC 119/04	Southern E&LB	Requirement to repay grant	Apology and Board to forgo collection of £1,000 from the overpayment
200500202	NIHE	Events during house move	Dissemination of formal policy document to all NIHE staff

Selected Summaries of Reported Cases

EDUCATION AUTHORITIES

Withdrawal of library privileges

During my investigation of this complaint I noted that in October 2003 the Chief Librarian of the Belfast Education and Library Board (the Board) issued a 'warning' letter to the complainant concerning his behaviour towards staff and other library users on library premises. He was warned that if he continued to behave in what the Chief Librarian regarded as an unsatisfactory manner, consideration would be given to withdrawing his library privileges. I also noted that the Chief Librarian subsequently decided to exercise her discretion, and authority, by withdrawing the complainant's library privileges following consideration of a report of an incident involving the complainant in a Library and a recommendation from the Principal Librarian, who had held a meeting with him.

It was clear to me that the complainant felt a keen sense of injustice at having his library privileges withdrawn, given that as far as he was concerned, he was the innocent party who had been "persecuted" by Library officials who had taken a dislike to him. However, the evidence established during my investigation led me to conclude that there was no basis on which to question the Board's process in reaching its discretionary decision. Consequently I did not uphold the complaint. **(CC 42/04)**

Application for Transport Assistance

The complainant explained that she applied for transport assistance from the North Eastern Education and Library Board (the Board) to take her daughter to primary school. The complainant was a single parent and was unwell, having been initially diagnosed with ME. She was finding it more and more difficult driving her daughter to and from school. She was informed by the Board that the first and main criterion was that the child should be attending the nearest available school. The complainant was asked if she had applied to another school which was closer to her home address. The complainant explained to the Board that, having arrived from England and settling her daughter in her present school, she could not move her again. Originally the complainant had been able to drive her daughter to school, however by the start of the new school year she was in hospital having been re-diagnosed with MS. She was then in correspondence with the Board in the hope that her family circumstances would be deemed exceptional and she would receive transport assistance. The Board wrote to her stating that the circumstances were "not exceptional" and the request was turned down. She was told the Board does not consider family circumstances. The complainant found this difficult to comprehend as she had been asked to explain her circumstances by the Board.

In the course of my investigation I learned that an Education Board is permitted to assist with a pupil's travel to school providing the distance from the pupil's home to the school attended exceeds the statutory walking distance of two miles and there is no nearer suitable school. It is Board policy to provide transport assistance only where a pupil has been unable to gain admission to all suitable schools within the statutory walking distance. I was informed that the Board was unable to assist with the complainant's daughter's transport to school as there was a place available at her nearest suitable school and she was within the statutory walking distance of the school.

In the circumstances of this case, I found that the Board's decision was taken in accordance

with the terms of its policy and the legislation under which the transport assistance scheme operates. This policy is quite explicit with regard to the eligibility of students whose home address is within statutory walking distance from another suitable school and who apply for assistance to a more distant school.

Whilst I fully understood the deep disappointment and anxiety experienced by the complainant I found that I had no grounds to question the discretionary decision of the Board that no exceptional circumstances applied to her application. It seemed to me, that in order to make a fully informed decision as to whether exceptional circumstances existed in relation to the complainant's application for transport assistance, the Board was entitled to request that she supply details of her reasons for believing that assistance should be provided. I considered that it would have been remiss of the Board not to have satisfied itself that the complainant was given the opportunity to make representations to them. Although the complainant clearly considered that the Board's decision was harsh I could not say that it was wrong that an exception to the strict letter of the policy was not granted in her case. Disagreement with a discretionary decision does not in itself constitute evidence of maladministration.

I did, nevertheless, have some concern as to a possible lack of clarity surrounding the advice given to the complainant and I expressed concern that staff should be instructed to ensure that all exchanges with members of the public relating to requests for Board assistance should be recorded. Overall, however, I did not uphold the complaint. **(CC 84/04)**

Not Invited for Interview

The aggrieved person in this case complained that she was refused an interview for an Executive Officer post in a school even though she fulfilled all the criteria in the job advertisement. She was subsequently advised by the Western Education & Library Board (the Board) that the selection panel had enhanced the advertised criteria in order to reduce the number of candidates for interview to a manageable number. However, she alleged that the panel did not enhance the criteria rather it had used an exclusion policy to exclude individuals from outside the Education sector. She also expressed concern that as she had made a previous complaint to me about the Board it was now attempting to exclude her from future posts within the Education sector.

In my investigation I established that 81 applications had been received for the Executive Officer post. I accepted that it was not unreasonable of the Board to wish to reduce to a manageable level the number of candidates for interview. With regard to the enhancement of the experience criterion I established that the panel had enhanced the criterion to two years relevant administrative experience gained within the education sector on the basis that the post was located in a school. I found the panel's view was not wholly unreasonable. I also noted that the complainant was not the sole candidate to have been excluded from the competition by the application of this particular criterion. I found no evidence to substantiate the complainant's concerns that the Board had attempted to exclude her from posts within the Education sector because she had made a previous complaint to my office.

Overall, however, I identified a number of administrative failures in the recruitment competition which constituted maladministration. These included a failure to provide information in the job description document regarding the enhancement of criteria in the event that a large number of applications should be received. I also had reason to be concerned about the panel's inaccurate recording of criteria. I did not uphold the

main element of the complaint regarding the enhancement of the experience criterion. I accepted, however, that the complainant had a reasonable expectation that she would be invited for interview since her qualifications and administrative experience exceeded the advertised criteria. Crucially, no information had been provided regarding the nature of enhancements which might be applied to the criteria. Consequently the complainant had suffered the injustice of disappointment and annoyance. I therefore recommended, and the Chief Executive agreed, to issue to the complainant a letter of apology, together with a consolatory payment of £500. **(CC 116/04)**

Higher Education Bursary Award

The complainant explained that she received a Higher Education Bursary Award of £2,000 for the 2003/04 year from the Southern Education and Library Board (the Board). On applying again the following year she was awarded £245. Her parents' circumstances were the same as in 2003 and she questioned why she received a lesser amount. She was told that only her father's income had been taken into account the previous year as only his P60 had been sent in for the 2003 assessment. The complainant's mother wrote to disagree and enclosed her P60 to let the Board see it. The Board used this to reassess the 2003/04 award and notified the complainant that she had been overpaid £1,500. The Board deducted her £245 award for 2004/05 and she was told that she has to repay £1,255.

My investigation of this complaint revealed that students are regarded as eligible or ineligible for living cost support (Loan and Bursary) and fee support on the basis of a completed Student Support application form. An assessment is carried out by computer on the basis of the parental income and only students from low income families are eligible for bursary.

The Board agreed that they had failed to calculate the complainant's Bursary correctly and attributed this to the fact that income details had not been included in the application form. The Board also stated that, as the assessment was carried out at a busy time of the year, staff did not notice that the complainant's mother was employed. I was informed that the Board has a statutory obligation to seek a refund of overpayments and that the complainant had signed a declaration undertaking to repay any over-payments.

I accepted the point that the Board's task is made more difficult when applicants supply incomplete or contradictory information, for example by putting dashes in areas of the application forms that should have been completed. However I was critical of the Board for its failure to be alerted to the complainant's mother's employment, for not seeking further information as to her income during the relevant year and for failure to check the application form as a whole. I considered this to constitute maladministration and to have caused the overpayment to occur. I did not consider that the Board should rely on an undertaking signed by the complainant in cases where maladministration on their part had caused the overpayment.

Having considered all the facts of this case I took the view that the complainant's parent's failure to properly complete part of the application form constituted an element of contributory negligence, notwithstanding the fact that the onus overall was on the Board to satisfactorily validate the information given to it before payment was made. I therefore recommended that a letter of apology be issued by the Board's Chief Executive to the complainant together with a consolatory payment of £1,000 to be made if the overpayment had been recovered. If the overpayment had not as yet been recovered, I recommended that the Board forgo recovery of £1,000. I am pleased to record that the Chief Executive accepted my recommendation. **(CC 119/04)**

HEALTH & SOCIAL SERVICES BODIES

Concerns regarding Displacement Policy

The complainant claimed to have suffered an injustice as a result of maladministration by the Northern Ireland Ambulance Service (NIAS) in the manner in which it handled the complainant's re-deployment from a Core Rota paramedic position in Banbridge to another post in Newry. There were a number of aspects to his complaint but the main element concerned the lack of an agreed Displacement Policy, including the calculation of his seniority in post.

On enquiry I found that the NIAS did not break any agreement with the complainant concerning his terms and conditions of service, nor was there any significant delay in conducting the Grievance Procedure. I also found that the Grievance Procedure did address the range of issues which the complainant raised. I was however critical of the means by which the panel conveyed its decision to the complainant. Additionally, I was concerned to note that the NIAS were still operating a system of custom and practice for some ten years in relation to staff displacement issues. I recommended that NIAS address this deficiency and publish a Displacement Policy as a matter of priority. For the injustice sustained on account of the maladministration identified I recommended that an apology and consolatory payment of £350 be issued to the complainant. I am glad to report the Chief Executive agreed with my recommendations. **(CC 56/03)**

Delay in Implementing Recommendations of a Harassment Investigation

The complainant in this case stated that she had lodged a complaint of harassment which was duly investigated by her employer the Northern Ireland Ambulance Service (NIAS). She complained however that there was undue delay by her employer in fully implementing six of the recommendations of the investigation.

During my investigation I established that there had been a four month delay by the NIAS in implementing the recommendation which stated contact should be made with the complainant within one month to discuss the feasibility of a further meeting between her and the other party in the complaint. I was critical of this lapse. My enquiries further revealed that work was underway in connection with the recommendation to install a security number on the female locker room and during the period of my investigation action was taken regarding the storage of Patient Report Forms in locked boxes. I discovered that the two recommendations relating to the issue of separate memos to staff regarding the seriousness and unacceptability of breaking into lockers and of writing graffiti on walls had been combined and that a composite memo had been issued by the employer. I noted that the issue of the memo to staff had occurred just outside the three month timescale specified in the recommendation. My investigation further established that five months after the instruction had issued that regular monitoring checks for graffiti in the toilet areas should be undertaken and recorded on the notice board, a record of the inspections carried out was not being publicly recorded. As a consequence the complainant and other members of staff were unaware that monitoring checks were taking place.

Overall, I found that the NIAS was tardy in ensuring the necessary recommended action was carried out at the complainant's place of work and that this had caused her annoyance, frustration and anxiety. Consequently, I recommended, and the Chief Executive agreed, to issue a letter of apology to the

complainant for the delay in fully implementing the recommendations of the investigation of her harassment complaint. **(CC 57/04)**

Not Shortlisted for Post of ICT Helpdesk Officer

The complainant in this case alleged she had experienced injustice because the Sperrin Lakeland Health and Social Care Trust (the Trust) had not shortlisted her for interview for the post of I.C.T. Helpdesk Officer. The competition was arranged by Westcare Business Services acting on the Trust's behalf. The complainant failed to meet the educational criterion of a Degree or equivalent. She had a Graduate Diploma in computing which was equivalent to an Honours Degree in Computing. She forwarded a letter from the University of Ulster confirming the status of the Graduate Diploma in Computing in time to receive an interview but the Trust declined her an interview. The post was later advertised in the local Press as it had not been filled in the internal trawl exercise and the "degree equivalent" option was removed thereby denying her the opportunity to apply for the post.

In the course of my investigation the Senior Personnel Officer informed me that the letter issued by the University of Ulster confirming the status of the Graduate Diploma in Computing was not included with the complainant's application form therefore, the short listing panel did not have the information available confirming she met the criterion when it shortlisted candidates. The letter was submitted by the complainant after the closing date of the competition. The Senior Personnel Officer confirmed to me that the wording "or equivalent" was not stipulated in the public advertisement however the Trust policy was to accept equivalences when supporting information was provided either with or on the application form.

It was evident from the information supplied that the complainant did not submit the explanation of the Graduate Diploma in computing qualification until after her application had been refused. I considered it was for applicants to provide as full information as possible to enable a short listing panel to determine which applicants are eligible for the post to be called for interview. As the complainant had failed to provide the information before the closing date for the competition, which was the relevant date in accordance with the Trust's Selection and Appointment's policy, I did not consider the Trust was guilty of maladministration and I did not uphold this element of the complaint.

The Trust's response to my enquiries as to why the wording "or equivalent" was omitted from the public advertisement was vague. It seemed to me the omission was an error as the Senior Personnel Officer assured me that the Trust's policy was to accept educational equivalences where supporting information is provided. I had no doubt the Trust would have accepted equivalences but the wording of the public advertisement did not convey this vital information. Consequently I criticised the Trust in respect of the omission of this information from the public advertisement. I held the view that the complainant was denied the opportunity to participate in the competition as a result. In recognition of the injustice the complainant suffered I recommended that the Chief Executive of the Trust should issue her a written apology. The Trust accepted my recommendation. **(CC 59/04)**

HOUSING ASSOCIATIONS

Level of increases to rental and other charges

In this case the complainant wrote to me about the level of increases to the rental costs of his dwelling, particularly the increase of 63.5% in the service charge, that Oaklee

Housing Association (the Association) had imposed. The complainant said that although a Housing Association must consult its tenants prior to making any substantial increase in the service charge, he was not consulted before the 63.5% increase was imposed. The complainant stated that the full service charge, levied by the Association, was divided into support charges and service charges, in April 2003, as required by the Supporting People Regulations, which came into effect at that time. Increases in support charges were however subject to restriction. The complainant contended however that, despite this, the Association combined both elements of the full service charge, in April 2004, thus contravening the Supporting People Regulations and enabling it to increase the two charges without any restriction.

The complainant said he is a pensioner on a fixed income and, apart from his state retirement pension, he is not in receipt of any additional benefits. He therefore considered the 2004 rental increase by the Association excessive and a cause of great hardship to him and those other Association tenants who shared his financial circumstances.

My investigation of this complaint confirmed that registered Housing Associations are required to "consult with all affected tenants about proposed changes to management and maintenance policies or practices, in particular where the Association proposes to change significantly the extent and cost of services paid for out of tenants' service charges". However, the Association saw this requirement as referring to the extent and cost together of services, not one or the other, and applying, for example, where an Association proposed to introduce a new or extended service which would lead to significant extra costs to tenants, rather than to the yearly increases in rental costs. Also, the Association considered that it was not practicable to consult its tenants in advance of annual rent revisions. I did not find the above discretionary decisions by the Association to have been inappropriate, unreasonable or incorrect.

My investigation established that, in relation to housing schemes such as that in which the complainant resided, the only element of the rental cost that is controlled by legislation is the increase in the support charge, which, in 2004, was restricted to 2.5%. I was satisfied that, by increasing the weekly support charge by only 37 pence in 2004, which represented 2.5% of the amount of support charge that applied in 2003, the Association fulfilled the statutory requirement concerning the above restriction.

My investigation further established that the increase in the level of service charge payable by the complainant rose by 63.5% in April 2004. However, I found that this percentage increase was arrived at as a result of the Association's decision to limit the overall increase in the support and service charges to 20% to keep charges and increases to a minimum, retaining affordability and minimising any burden falling on those who pay their full charges while protecting the financial viability of the Association for all tenants. I did not find this decision, which, having regard to the legislative restriction of 2.5% in respect of the support charge, resulted in the service charge increasing by 63.5% from April 2004, to have been inappropriate, unreasonable or incorrect.

With regard to the complainant's worry about his future ability to meet his rental costs, I noted and welcomed the Association's recognition of the anxiety that increases in housing costs cause to a pensioner on a fixed income who does not receive assistance in respect of rent or other charges, as a result of which the Association had recommended to its Board a number of changes aimed at limiting the amount of increase experienced by such tenants. I commended this particular action by the Association. **(CC 113/04)**

LOCAL COUNCILS

Handling of termination of employment

The complainant commenced employment with Armagh City and District Council in 2001. On appointment she was advised that confirmation of her appointment depended on the successful completion of a six month probationary period. At the end of this probationary period the complainant was advised, at a meeting in March 2002, that her contract was not to be confirmed and her period of employment with the Council was terminated forthwith. The complainant objected to the manner in which her employment had been managed by Council officers and the way in which the decision had been made not to confirm her contract/extend her employment.

In my investigation I found that the Council was not required to conduct a probationary review in accordance with disciplinary procedures. I considered it took reasonable account of the complainant's personal circumstances and was entitled to judge her work-related objectives and achievements. I was also content that the Council was entitled to set and assess the parameters of the complainant's post and associated duties, and I found no evidence of personal antipathy on behalf of the Head of Division (HOD) which might have influenced the assessment of the complainant's performance in post. I am satisfied that the HOD enjoyed the Council's confidence in terms of her management skills and expertise. There was, in my opinion, no evidence of maladministration in any of these aspects of her complaint.

However, I found maladministration had occurred because the Council failed to appropriately and adequately alert the complainant within a reasonable time-frame to the seriousness of issues of her performance in post, and the likely consequent effect on her employment. I formed the view that the Council failed to effectively record or address in a realistic time-frame the issue of the complainant's work performance, thereby denying her proper opportunity to address any identified shortcomings. I believe that the Council failed to offer appropriate induction and ongoing training and support to the complainant during the course of her probationary period and I was unconvinced that the Council properly considered the implementation of remedial training or advice programmes and the possibility of extending the probationary period. I was further persuaded that the decision to terminate the complainant's employment had been effectively decided prior to the 'official' decision in March 2002.

I recommended that the Chief Executive should issue to the complainant an apology for each of the shortcomings I had identified together with a consolatory payment of £850.00. I am pleased to record that the Chief Executive agreed to my recommendations. **(CC 188/02)**

List of Licensed Premises

In this case, the complainant alleged that Derry City Council had failed to provide him with a list of the licensed premises in the City which may have been in breach of their entertainment licensing conditions, particularly during the Council's 2003 pre-Christmas inspection.

From my investigation it was clear to me that the complainant had genuine concerns about the safety of his sons, who frequented licensed premises in the City. I therefore considered it regrettable that the Council failed to explain to the complainant why it felt unable to address his specific concerns. In mitigation, I recognised that the Council could not, for legal reasons, provide the complainant, or indeed any member of the public, with a list of premises suspected of being in breach of their licensing conditions.

However, I found that the Council's failure to explain the situation to the complainant to have constituted unsatisfactory administrative practice, for which I criticised the Council. In terms of appropriate redress I recommended and the Chief Executive agreed to issue a written apology to the complainant. **(CC 10/04)**

Dissatisfaction with the Council's handling and investigation of a complaint of sexual harassment

In this complaint the aggrieved person expressed his dissatisfaction at the way in which Ballymena Borough Council handled the investigation of a complaint of sexual harassment made against him. It was his view that the Council had failed to carry out the process correctly in accordance with its policy and procedures for dealing with complaints of harassment.

Whilst my investigation identified that the Council's Harassment Policy and Procedure was not fully adhered to, due to a prevailing staffing situation, I was satisfied that the Council had undertaken an extensive and detailed investigation of the allegations and made contact with those whom the complainant considered could support his position. It was clear to me that throughout the Council's investigation the complainant had the advice and support of his trade union representative. The Representative is on record as having been content with the process within the context of the Council's procedures in this regard. Overall I was satisfied that the actual investigation and disciplinary action in this case did not indicate any evidence of maladministration of a significant nature, to the extent that it caused the complainant a personal injustice. Consequently I did not uphold the complaint. **(CC 52/04)**

Grant Aid Assistance

In this case there were three elements to the complaint. First, the complainant believed that the Down District Council should have informed him about the availability of grants when he decided to renovate above his shop to make a home for his family. The complainant contended that he had spoken to Council officials about this matter.

My investigation established that the Council official's recollection of discussions were at variance with that of the complainant. During my investigation I was provided with a record of a telephone call with the complainant's wife. I had to say that in the absence of any other notes or an independent witness it was impossible for me to confirm or otherwise what exactly was said to, or by whom. I could not therefore give a determination on this aspect of the complaint.

Second, the complainant expressed his concern at the way in which the Council had dealt with the selection of a town for a grant scheme run by the Northern Ireland Housing Executive. The complainant was of the view that the town where he resided should have been considered as the Council's nomination. In my consideration of this element of the complaint I noted the minutes of the relevant Council Committee meetings. The recommendation as to which town should be selected was discussed by the Council's Committee and was proposed, seconded and adopted by its Councillors. This was a discretionary decision reached after consideration of the Scheme and information from officers. That being so I saw no basis to believe that maladministration occurred in the decision making process.

I also considered the complainant's concerns about the Council's issue of invitations to the meetings in two of the towns in the District. The complainant was of the view that the decision to select one particular town had

been made by a Council official prior to the public meetings. The actual decision was taken by the Council's Committee. Having considered all of the information provided to me I could understand how the complainant felt that the decision had already been made before the public meetings. I considered the wording of the invitation to the traders to have been carelessly drafted and to have misrepresented the actual situation. I recommended that the Council should ensure that greater care be taken in future in its communications with the public.

The final element in the complaint to me was the complainant's dissatisfaction that another town had been put forward by the Council in a bid for a funding from a project supported by the Department for Social Development. I was provided with the reasons for this decision and again I had no basis to believe that maladministration had occurred. **(200500834)**

NORTHERN IRELAND HOUSING EXECUTIVE

Application for Disabled Facilities Grant

The complaint concerned disagreement with the Executive's decision not to approve an application for a Disabled Facilities Grant in respect of the complainant's daughter.

The complainant had applied previously for a Disabled Facilities Grant. At the time of the former application, such a Grant was subject to means testing and due to the Test of Resources the application was withdrawn because the complainant's contribution would have exceeded the cost of adaptations. The complainant then decided to sell the dwelling he and his family resided in. He bought another piece of land and constructed a new purpose built dwelling that incorporated all the necessary facilities for his daughter's needs. As the work to the dwelling was nearing completion, the complainant read in the local Press that the Government was announcing plans to abolish the means test for Disabled Facilities Grants in respect of children. The complainant immediately contacted the Executive and he was advised to submit a Preliminary Enquiry Form. An Executive official visited the complainant after the Form was submitted and noted that the work to the dwelling was almost complete and the necessary facilities for his daughter's needs were in place. The application for the Disabled Facilities Grant was subsequently disallowed because in the Executive's view the Grant was only payable where there was an existing dwelling to which adaptations for the needs of a disabled person were required. The complainant disagreed with the Executive's interpretation of the legislation and believed the Executive was drawing a distinction between an existing dwelling and a new purpose built dwelling and he stressed that the legislation made no such distinction. The complainant also contended that had Executive officials informed him of the impending change he would have delayed construction of his new house.

In the course of my investigation I sought independent legal advice as the interpretation being placed on the legislation to support the Executive's policy appeared, at first sight, to be ambiguous. I was mindful of the fact that it is not within my remit to provide a definitive interpretation of legislation, that is a function of a Court of Law. I did, however, wish to be assured that the interpretation the Executive was relying upon to support its policy not to award Disabled Facilities Grants in a "new build" situation was defensible. I considered this issue most carefully and I was satisfied that the policy was supported by a reasonable interpretation of the legislation.

I identified that whilst the means test for Disabled Facilities Grants in respect of children had been removed, all other

fundamental qualifying conditions relating to the award of Grant remained. Of relevance to this complaint was the express provision that precluded payment of the grant where works had been completed. I was satisfied that the Executive had applied its policy correctly. I was also satisfied that the policy was not out of line with the spirit of the legislation as the complainant contended. The amending legislation that came about as a result of the Report of the Working Group tasked to examine the issue of taking account of the income of parents of disabled children did not examine any other fundamental rules regarding the award of Disabled Facilities Grants. I did not uphold the complaint. **(CC 27/04)**

Length of Time on Waiting List for Accommodation

The complainant had been on the Executive's waiting list for accommodation for three years and he had not been offered what he deemed as suitable accommodation in that time. He complained that the Executive would only consider him for two bedroom accommodation even though he had agreed overnight access to his children, two boys and a girl. The complainant wanted a three bedroom house in one of two specified localities.

The Chief Executive informed me that the current Executive policy in instances of relationship breakdown involving children addresses, in the first instance, the housing needs of the parent with whom the children primarily reside. In considering the size of accommodation required by the partner, who has access to the children, the Executive policy deems it reasonable to allocate accommodation with one additional bedroom to facilitate such access. The Chief Executive also informed me that the complainant's areas of choice for housing were areas of high demand with few re-lets.

My experience of investigating many complaints about transfers has highlighted the difficulties facing the Executive to match demand for particular housing from its finite stock. The difficulties are compounded when a request for housing is confined to a particular area where there is low turnover and high demand. Consequently, the Executive must adhere rigidly to the details of its Housing Selection Scheme to manage the system effectively. I noted in this case that the Executive had made four offers in the first year the complainant was on the waiting list; all were refused on the basis of size or location. I noted two of the offers comprised 3 bedroom accommodation, even though the policy indicated the complainant was entitled to two- bedroom accommodation. I considered this an example of the Executive applying a flexible approach to managing housing need against available stock. As the complainant had severely restricted his areas of choice for housing I considered the Executive had not acted unreasonably in not making further offers. I urged the complainant to re-consider the areas he would accept accommodation in to broaden the scope of realistically obtaining accommodation to facilitate overnight access arrangements with his children.

The complainant was also concerned that the Executive held certain vacant properties when there was an unfulfilled housing need. I considered this policy of retaining vacant properties for decanting purposes justified in the interests of good management of the housing stock.

I did not uphold the complaint. **(CC 44/04)**

Valuation Placed on Dwelling

The complainant had applied to purchase his property in 1998 having lived there for over 20 years. The sale did not complete at that time because of the complainant's ill health. The complainant made two further applica-

tions to purchase the property but neither of these completed because of his ill health.

In 2003, when he applied again to purchase the property the value had increased significantly. He proceeded with the purchase but felt strongly that the Executive should have offered the house to him at the value placed on it at the first application.

The procedures for the sale of dwellings to individual tenants are laid down in the Scheme for the Sale of Dwelling Houses by the Executive. The Scheme is approved by the Department for Social Development and administered by the Executive. The Scheme provides that the market value of the property should be assessed, as at the date of application to purchase, by a professional valuer. If dissatisfied with the value, the prospective buyer can request a re-determination which will be carried out by the Valuation and Lands Agency (the Agency), or a nominated official. The Scheme stipulates that the Agency's valuation is binding on the Executive and the buyer; there is no other right of review or appeal.

I noted that at the time of the final application to purchase, the complainant had requested a re-determination and this was conducted by the Agency. The complainant had asked that account be taken of the years he had lived in the property and how he had maintained it at his own expense. I pointed out that under the Scheme the Executive takes account of the duration of a tenancy and reflects that period in the discount offered. In addition, the Scheme clearly states that tenant's improvements will not be included in the valuation and consequently the Executive can make no such allowance in any final offer price.

The Scheme also provides a ceiling on the discount applicable to an offer price. By the time the complainant was in a position to complete the purchase of the property a lower ceiling applied to the discount he was eligible for and the Executive was obliged to implement the lower ceiling. I was unable to find that the Executive's handling of the application to purchase and the rules applied, as regards the valuation and discount awarded, were tended by maladministration. I was satisfied the re-determination was arrived at after a thorough and professional exercise on the part of the Agency and the decision was supported by relevant evidence. The process followed was consistent with the terms of the Scheme and I did not uphold the complaint. **(CC 92/04)**

Dissatisfaction with the Executive's transfer of a tenant

The complainant in this case alleged that she and her young son were the victims of a vicious sectarian attack that occurred at her Executive owned home, in 1997, which resulted in her having sustained "substantial injuries". The complainant stated that, following the assault, the Executive transferred her family to their current dwelling, which they subsequently purchased in 2001. The complainant said she was "extremely shocked" to discover that, in September 2003, the Executive had transferred the person allegedly responsible for the assault on her to one of its dwellings, situated "close to her home", and she considered this action "was wrong". It was the complainant's view that the Executive should take urgent action to relocate her alleged attacker, using information available to it regarding the assault.

I established that the complainant claimed that the physical assault on her which was the principal factor in her being transferred by the Executive in 1997 was perpetrated by one of her neighbours at the time. However, I was satisfied that the Executive had not formally been made aware of the identity of the alleged perpetrator.

I also established that, although one of the complainant's neighbours was interviewed by

Police with a view to prosecution for the assault on the complainant, a prosecution did not take place. I found that even with knowledge of the identity of the alleged perpetrator of the attack on the complainant, it would have been inappropriate for the Executive to have acted on this information, either in 1997 or subsequently, in the absence of evidence of wrongdoing by the person concerned or a prosecution and subsequent conviction for the assault.

In relation to the area in which the person transferred had been rehoused by the Executive, I found that the Executive is required to respect each tenant's right to register for a transfer and, under the rules of the Housing Selection Scheme, to choose the areas in which he/she would prefer to be rehoused. I did not find this to be incorrect or unreasonable.

I did not uphold this complaint. **(CC 99/04)**

Refusal to Fit Replacement Kitchen

This complaint was about the Executive's refusal to fit a replacement kitchen or, at the very minimum, replacement doors for all the kitchen units. The complainant said the Executive's decision was based on the tenancy of her home having been assigned to her. She was not considered to be a new tenant who would be eligible for repairs. The complainant said she agreed to move to her current home in order that her granddaughter could continue to reside there. The complainant added that before the tenancy was assigned to her, in these circumstances, the Executive failed to inform her she would not be eligible for maintenance or repair works, including kitchen replacement, which, she considered, would have been undertaken on commencement of a new tenancy of the property.

I established that the Executive's handling and processing of the tenancy assignment to the complainant was flawed by significant administrative failings. Primarily, I established that the complainant was assigned the tenancy of her house by the Executive under its policy rules which applied in the very exceptional circumstances of her case i.e. the previous tenant had left the dwelling, and the complainant had assumed responsibility for that tenant's dependent child, who needed to remain in the family home. However, I also established that, under the Executive's policy and operational procedures which apply in such circumstances, the tenancy of the complainant's current home should have been re-let to her, rather than being regarded by the Executive as a continuation of the former tenancy. I regarded the Executive's failure to follow its own policy and procedures in this case to have constituted a significant administrative failing which warranted my criticism. However, I noted and welcomed the fact that the complainant was 'signed' up by the Executive as the new tenant of her home, thus regularising her status in relation to her occupancy of the dwelling. I also noted and welcomed an undertaking by the Chief Executive that he would issue clarification to his staff in relation to the assignment of tenancies in very exceptional circumstances.

I also established a failure by the Executive to have a written policy relating directly to "repairs following assignment". Consequently, in regarding the assignment in this case not as a renewal, but as a continuation of the original tenancy, the Executive failed to undertake, for a period of one year after the complainant occupied her current home three important health and safety checks in the dwelling. I was critical of this matter. However, I noted and welcomed the Chief Executive's undertaking that the Executive's policy relating to repairs following assignment and succession, with particular reference to the carrying out of health and safety checks, would be added to its Repairs Manual.

I found that, having been entitled to be "signed up", and thus regarded, as a new tenant, the

complainant was also entitled to benefit from a change of tenancy inspection of her dwelling to determine the extent of repairs required to bring the dwelling up to "a full lettable standard" and the implementation of such repairs. Had this responsibility been fulfilled at the appropriate time, the complainant may not have found it necessary to complain, with the assistance of her Solicitor, about the condition of the kitchen in her dwelling. However, I was pleased to note, and welcomed, that the Executive carried out a comprehensive change of tenancy inspection of the complainant's dwelling, in the course of which a significant number of repairs were identified as being required, including works to improve and upgrade the kitchen.

I recommended that the complainant should receive an apology from the Chief Executive together with a consolatory payment of £750. I also recommended that if the complainant had incurred legal costs in her efforts to have her complaint resolved, prior to requesting my involvement, any such costs should be reimbursed to her by the Executive on production to it of a detailed account. I was pleased to record that the Chief Executive accepted my recommendations. **(CC 105/04)**

Refusal of Request for a Second Home Loss Payment

This case was about the Executive's refusal of a request for a second Home Loss Payment.

During my investigation, I established that the Executive had awarded the complainant a Home Loss Payment of £1,500 in February 2001. The complainant qualified for the Payment because he was forced to move out of his home as a result of a compulsory purchase by the Executive. However, it was clear to me that the complainant's subsequent move to a third address in July 2004 was not as a result of any statutory action by the Executive. This meant that, on this occasion, the complainant did not satisfy the necessary conditions for the award of a Home Loss Payment. Unfortunately, there is no provision within the Home Loss Payment scheme to allow the Executive any discretion in the application of its terms. I therefore had to accept that the Executive's decision not to award a second Home Loss Payment to the complainant was clearly consistent with the Executive's stated current policy, which is underpinned by primary legislation. In the circumstances, I could not uphold this complaint. I was, however, pleased to note that the Executive had awarded the complainant a discretionary Disturbance Payment of £1,500. **(CC 118/04)**

Cancellation of Application to Purchase Dwelling

I found that the Executive had made it entirely clear to the complainant's solicitor, on two occasions, that her house sale application would be cancelled if the contract was not returned by the due date. Given that the complainant's solicitor made no contact with the Executive during the period between that notification and the due date I did not find it wrong for the Executive to have cancelled the application. It seemed to me that the complainant's solicitor was less than diligent in his contacts with the complainant, with a view to making all reasonable efforts to having the contract signed by the due date, or in contacting the Executive on or before that date to provide it with an update. Overall, I was satisfied that the Executive had managed this case in accordance with its procedures for dealing with an application from a tenant to purchase a dwelling. **(CC 120/04)**

Forcible Entry by Executive's Contractors

The complainant stated the Executive required her to move from her home which was to be demolished in order to facilitate the proposed redevelopment of the area and she accepted the tenancy of another house

which required a number of repairs. The complainant said repairs to her "new" house had not been fully completed when she received the keys to it and, therefore, with the Executive's permission, she continued to live at her former home, while the remaining work was carried out. However, the complainant said she arrived at her former home to discover that the front door had been forced and three men, engaged by the Executive to secure the property, were inside.

I established that when the complainant signed for the tenancy of her "new" house, the Executive terminated her previous tenancy with the result that its computer records showed the property as void. However, the complainant had retained the keys of her former home and had agreed with the Executive that she would confirm the actual date on which she would move house. I also established that it is the Executive's normal procedure to check that the keys of a dwelling which it intends to secure have been returned by the previous tenant and that the tenant has removed all belongings. Although satisfied that there was no malicious intent on the part of the Executive staff involved in arranging to have the complainant's former house secured, I regarded the Executive's failure to follow its normal procedures as constituting maladministration. The complainant stated that the situation created by the Executive's actions in arranging to secure her former dwelling, while she was still living there, caused her a great deal of upset and distress. I had no doubt, whatsoever, that this was the case.

I established that, following their forced entry to the complainant's former house, the contractors contacted the Executive to report the presence of "past tenant" items in the property. The contractors were instructed to continue securing the dwelling because of the Executive's concern that the house may have been squatted in by others but to leave all items within it. However, I established that the Executive has a formal policy and related procedures for dealing with persons who have illegally entered and are occupying one of its properties with the intention of living there. Securing the windows and doors of a dwelling is not one of the measures contained within those procedures. In these circumstances, I found the Executive's further instruction that its contractors should continue to secure the complainant's dwelling to constitute a further example of maladministration. The complainant said she was aggrieved that the Executive failed to offer her an explanation or apology for its actions in having her dwelling forcibly entered by its contactors until she used its Internal Complaints process. I regarded the Executive's failure to issue a formal apology, without first waiting for a complaint from the complainant, as again representing less than satisfactory administration. I also found that the level of service which the complainant received under the Executive's Internal Complaints process fell well short of the standard which members of the public are entitled to expect.

I recommended that all Executive staff should receive a formal policy document about the system of checks to be undertaken prior to arranging to have dwellings secured. I also recommended to the Chief Executive that he way wish to consider reminding staff about the Executive's procedures concerning the actions to be taken to deal with persons squatting in one of its properties. I was pleased to record that the Chief Executive accepted these recommendations.

By way of redress, I recommended that the complainant should receive an apology from the Chief Executive together with a consolatory payment of £500. I was pleased to record that the Chief Executive accepted my recommendation. **(200500202)**

EQUALITY COMMISSION

Handling of Application for Assistance

In this case the aggrieved person stated that he was dissatisfied with the Commission's lack of contact during the initial processing of his application for assistance in 2002. His case was subsequently assigned to a different officer but he remained unhappy about the progress of his application and he complained to the Commission's Chief Executive. His complaint to my office concerned the Commission's lack of communication and its subsequent investigation of his grievance about the handling of his application for assistance.

My investigation revealed that the complainant had made numerous telephone calls to the Commission during the initial two month period following the submission of his application for assistance. However, none of his telephone calls, in which he sought an update on the progress of his application, were returned or noted by the Commission. I also established that his subsequent fax enquiry to the Commission's Director of Legal Services outlining his concern that no decision had been reached on his application was neither acknowledged nor answered. A further telephone call from the complainant, whilst noted by the Commission, also went unanswered. I found that the consistent lack of courtesy shown by the Commission to the complainant through its failure to respond to his numerous enquiries constituted maladministration.

With regard to the Commission's investigation of his grievance I did not uphold his allegation that the officer processing his application for assistance had tried to pre-empt the Commission's internal investigation. However, I found that the four month delay by the Commission, with no interim updates, in investigating his grievance was wholly unacceptable and amounted to maladministration. I viewed this as a further example of the breakdown in communication which featured in the complainant's dealings with the Commission.

During my investigation the complainant raised a further issue of concern with me relating to a document entitled 'Order for Further Particulars' (the Order) which was issued by the Fair Employment Tribunal (the FET) to the Commission in connection with his case. He stated that the Order had not been completed and he had been advised by the Commission that it had not received the document. He complained that the failure by the Commission to complete the Order had seriously jeopardised the progress of his FET case.

I established that the Order had been addressed to the Commission and sent via the normal postal service but I could not state categorically that it had been received by that office. Consequently I could not conclude that the Commission could be held responsible for a failure in the postal delivery service. Whilst I noted that the complainant had formed the opinion that the Order had been received by the Commission but had subsequently been misplaced within its office, my investigation did not reveal any evidence to suggest this had been the case.

I recommended, and the Chief Executive agreed, to issue the complainant with a letter of apology and a consolatory payment of £400, in respect of the injustice he sustained. **(CC 140/03)**

Provision of Assistance

In this case, the complainant alleged she had sustained injustice because of the Commission's decision to provide assistance to Ms A to enable her to take a sex discrimination case to the Fair Employment Tribunal. Ms A had alleged that the complainant had withdrawn an offer of employment, on the grounds that Ms A was pregnant.

I noted that following the Commission's initial consideration of Ms A's case, its Legal Funding Committee decided to grant her assistance, under Article 75 of the Sex Discrimination (Northern Ireland) 1976, for the purposes of obtaining legal advice on the merits, or otherwise, of her case. I also noted that the Commission appointed a firm of Solicitors to represent Ms A and to obtain Counsel's Opinion on the merits of her case. This resulted in the Commission providing initial financial support to Ms A, following a favourable opinion on the merits of her case. The Commission has discretion to provide assistance to applicants who apply for such assistance to pursue complaints of unlawful discrimination. Equally, the Commission has discretion to discontinue that assistance at a later stage, if in the light of additional information, or legal advice, it concludes that the facts of the case do not warrant a continuation of assistance. Having carefully considered the Counsel's opinion, referred to above, I had no reason to question the Commission's discretionary decision to provide initial assistance to Ms A. I noted that during the period of time the Commission continued to provide assistance to Ms A, the Solicitors, acting on behalf of the Commission, obtained three further opinions. The final advice resulted in the Commission deciding to withdraw its assistance from Ms A's case. The case was finally heard by the Fair Employment Tribunal, whose unanimous decision was that Ms A had not been discriminated against on grounds of her sex. Although the decision reached by the Tribunal fully exonerated the complainant, I could not say that this called into question the Commission's initial decision to provide assistance to Ms A. Consequently, I did not uphold the core element of this complaint.

Notwithstanding what I have said above, I noted, with concern that it took the Commission from February 2000 to September 2001 to reach its decision to withdraw funding to Ms A. However, given that the Commission was acting on behalf of Ms A, I accepted that it had no responsibility to keep the complainant informed of developments, not least because she had her own legal adviser. While I appreciated it was of no benefit to the complainant, I hoped she found some value in my investigation having established that the Commission has now introduced new procedures whereby it regularly reviews the casework and sets targets and deadlines which are continuously monitored**. (CC 39/04)**

Job Application

In this case the complainant suffered from Dyslexia and had been reassured by the fact that the advertisement for the post declared that the employer, based in GB, was an equal opportunities employer and that the Guaranteed Interview Scheme (GIS) would be used. He felt confident that he would at least be interviewed as he had more than the required qualifications and relevant working experience. However he was told that, because of the large number of applications, there had been a random sift of candidates and that his application had been sifted out. The complainant was informed that this was done on the advice of the Commission. My investigation focused on the Commission's dealings with the complainant who, in addition to complaining about the Commission's advice to the employer, also complained about rudeness of Commission staff, failure to either lodge papers with the Industrial Tribunal or return the forms to him and the handling of his complaint by the Commission.

My investigation indicated that while the Commission was not entirely without blame, I could not hold it solely responsible for the mistake, acknowledged by the recruiting employer, which resulted in the complainant, as a candidate with a disability, not receiving a guaranteed interview in this recruitment exercise. I was, however, critical of certain

shortcomings on the part of the Commission. One was that the provisions of the GIS scheme should be a central issue in the minds of any Commission staff who are providing advice to employers and that staff providing such advice record the detail and tone of the exchange taking place. I also expressed concern at the lack of records relating to telephone calls from the complainant. I urged the Commission to provide written clarification to claimants as to the position of the Commission when a solicitor has been appointed to assist them, so that the very unfortunate misunderstanding, in respect of the handling of tribunal papers, which arose in this case, can be avoided. I was encouraged by the comments of the Commission in relation to improvements being made in the areas of customer care, complaints handling and customer service standards. I am pleased to record that the Chief Executive informed me that the recommendations made in my report will be communicated to the relevant divisions within the Commission and that their implementation will be monitored. Overall I did not uphold the substantive element of the complaint that the Commission gave permission for the GIS to be ignored. **(CC 112/04)**

FIRE AUTHORITY FOR NORTHERN IRELAND

Assessment Centre Process for Promotion

This complainant was about the handling of an Assessment Centre process for promotion by a management consultancy firm on behalf of the Authority.

Following the complainant being informed that he was unsuccessful, he invoked the Authority's grievance procedure as he was told that there was no other avenue of appeal. He felt that no progress was made under the grievance procedure or a complaint of unfair treatment under the Code of Procedures for Recruitment and Selection. The complainant also stated that, contrary to recruitment and selection procedures, he was denied the opportunity to appeal against the decision made on his performance at the Assessment Centre.

I found no reason to question the Authority's use of Assessment Centres in conducting promotion or recruitment exercises. Nor did I have any difficulty with the Authority engaging a recognized firm of management consultants to conduct the Assessment Centres on its behalf. I did comment that it was clear that the introduction of competence-based assessment, such as was undertaken in this case, represented a significant and not always welcome cultural change for staff accustomed over many years to more traditional methods.

In relation to the running of the Assessment Centre, the complainant was concerned with the detail of the events on the day of his Assessment Centre exercise. However, following my investigation, I did not uphold his complaints regarding the invigilation arrangements, the competencies measured or the timing recorded by the consultants for the length of the complainant's presentation. I found that the complainant was treated in a way which was not inconsistent with the policy and practice at the time and that he was not treated differently from other candidates in that year. With regard to the Authority's handling of his complaints, I was critical of the Authority for contributing to the confusion by not drawing the complainant's appeal and grievance procedures to a conclusion. Whilst I was critical of the Authority on these points, I also acknowledged the genuine and repeated efforts made to address the complainant's concerns. I recommended that the Authority clarify for its staff the difference between the Appeals and Grievance processes and the circumstances when each process should be utilised. In all the circumstances I considered

that a reasonable outcome would be for the Chief Fire Officer to meet with the complainant with a view to resolving any remaining concerns. I am pleased to note that the Chief Fire Officer accepted my recommendation. **(CC 16/04)**

LAGANSIDE CORPORATION

Floating Bar and Restaurant

In this case the complainant stated he required a licence from the Department for Regional Development (the Department) to allow access from his floating restaurant to the riverbank. It was Laganside Corporation's responsibility to liaise with the Department for the granting of the access licence to enable him to proceed with an application for a liquor licence. He complained that subsequent delay by Laganside Corporation affected the progress of his liquor licence application and had an adverse effect on his project. The complainant also raised a number of other issues such as the decision of Laganside Corporation not to extend the lease granting mooring rights and the amount set for a Performance Bond.

In my investigation of the complaint I undertook a very detailed examination of the extensive documentary evidence including that provided by the complainant in support of his case. In the event I did not uphold the core issue of the complaint that Laganside Corporation had wilfully inhibited the progress of the project. Nor did I concur with the complainant's contention that the decision by Laganside Corporation to terminate the Development Agreement and hence the lease constituted maladministration. I did, however, record concern that there had been a lack of a proactive approach by Laganside Corporation to drive forward the completion of the granting of the access licence and the lack of documentation in relation to the amount determined for the Performance Bond.

From my investigation of the complaint I formed the view that the complainant's project had been frustrated in the end by the strong opposition which was mounted against his application for a liquor licence and by the decision by Laganside Corporation not to continue with the lease for the mooring site as it had decided that relevant agreements had not been fulfilled. **(CC 71/03)**

Selected Summaries of Settled Cases

Northern Ireland Housing Executive

In this case the complainant wrote to me regarding problems she was experiencing in relation to renovations to her dwelling. I arranged for enquiries to be made of the Executive and, following those enquiries, my Officers facilitated discussions between the Executive and the complainant. As a result of these discussions a mutually acceptable agreement was reached and the necessary renovation works to the complainant's dwelling were subsequently completed. **(CC 148/03)**

Northern Ireland Housing Executive

The complainant in this case was dissatisfied with the Executive's failure to take remedial action in relation to a number of defects in works to her dwelling as part of a Multi-Element Improvement Scheme. During the course of my investigation of this complaint the Executive informed me that it's Measured Term Contractor had now completed remedial works to the dwelling and that it proposed to carry out action in relation to the garden area. As a result of the works carried out and the proposed actions I considered that the matters at the core of this complaint had been satisfactorily addressed by the Executive. **(CC 41/04)**

Southern Education & Library Board

A lady complained to me about the Board's handling of her application for a bursary and, in particular, the Board's decision to recover the resultant overpayment. The Board informed me that, as a result of my Office's representations, it had decided to review the case. The outcome of the review was that the Board decided to refund the bursary overpayment (£525), that it had recovered from the complainant. In addition the Chief Executive of the Board informed me that a letter of apology would also be issued. **(CC 60/04)**

Northern Ireland Housing Executive

This complaint concerned a gentleman who was unhappy with the Executive because it refused to remove a hedge surrounding his front garden and to level the front garden. I noted that the Executive had found the hedge to be healthy and its policy is not to remove healthy hedges. I arranged for one of my investigating officers to meet the complainant along with the Maintenance Officer for the area and the District Maintenance Officer. After some discussion the District Maintenance Officer agreed to level the front garden of the complainant's dwelling and remove the offending paving stones and bricks. The raised area to the right of the garden path was to remain and the complainant accepted that the hedge could not be removed. **(CC 82/04)**

Northern Ireland Housing Executive

I received a complaint from a lady and gentleman who were dissatisfied with the Executive's handling of the renovation of their home. Having made enquiries of the Executive, I arranged for my Director of Investigation and one of my Investigation Officers to meet with the Executive's Director of Design and Property Services and his Assistant. As a result of that meeting the Executive agreed to increase the overall amount of renovation grant aid to the complainants by some £8,500 to £25,000. **(CC 90/04)**

Northern Ireland Housing Executive

I received a number of complaints regarding the Executive's handling of applications to purchase houses. In each of the cases the Executive had decided to hold the application in abeyance pending the outcome of consultations on a proposed new House Sales Scheme. However,

during the course of my investigation of these complaints the Executive informed me that it had received revised instructions, from the Department for Social Development, on the handling of house purchase applications, including that of the complainants. As a result of these revised instructions the complainants' house purchase application will now be processed under the existing House Sales Scheme. **(CC 91/04; CC 123/04; CC 130/04; CC 135/04 & 200500201)**

Northern Ireland Housing Executive

I received a complaint from a gentleman who was unhappy with the Executive's handling of his Housing Benefit claim. In response to my enquiries, the Chief Executive of the Executive informed me that he fully accepted that the service provided to the complainant in this case fell well below the standard he was entitled to expect and which the Executive would normally deliver. The Chief Executive informed me that the complainant's entitlement to Housing Benefit has now been assessed and that the necessary monies have been paid to him. In addition, during a visit with the complainant, the Manager of the Executive's Private Housing Benefit Unit personally apologised to the complainant for the distress and anxiety caused to him by the previous handling of his case. **(CC 115/04)**

Down District Council

The complainant in this case was unhappy with the Council's arrangements for the delivery of a blue bin for the collection of recyclable materials and, in particular, the Council's handling of his request for the reimbursement of expenses totalling £25.00. Having considered the matter in some detail I found a clear conflict between the version of events provided by the complainant and that provided by the Council. In the absence of independent witnesses in support of either version of events I recommended that the Council should issue a payment of £12.50 to the complainant being a 50/50 settlement of his claim. **(200500049)**

Northern Ireland Housing Executive

The complainant in this case was dissatisfied with the amount of grant assistance paid by the Executive in respect of the replacement of a septic tank and associated works at her dwelling. In light of the representations made by my Office the Executive decided to review this case. As a result of that review the Executive increased the amount of grant assistance payable from the original £375 to £2,021.42. **(200500648)**

Northern Ireland Housing Executive

I received a complaint from a gentleman who was dissatisfied with the Executive's refusal to erect fencing at the front and side of his end of terrace bungalow. As a result of representations by my Office the Executive decided to review the position in relation to the provision of fencing to the complainant's dwelling. Following this review the Executive decided, in consultation with the complainant, to erect fencing at the front and side of the dwelling. **(200500708)**

Northern Ireland Housing Executive

A lady complained to me about the Executive's decision that she could not succeed to the tenancy of a dwelling. In order to be fully informed of the circumstances of this complaint I arranged for detailed enquiries to be made of the Executive. In response to those enquiries the Executive decided to review the particular circumstances of this case. As a result of that review the Executive decided to grant the tenancy of the dwelling to the complainant. **(200501111)**

Statistics

Table 3.3: Analysis of Written Complaints Received in 2005/06

	Brought forward from 2004/05	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/06
Local Councils	9	49	28	1	14	2	2	11
Education Authorities	9	23	13	2	10	2	2	3
Health and Social Services Bodies	5	23	17	0	4	3	1	3
Housing Authorities	34	115	47	19	31	3	7	42
Other Bodies Within Jurisdiction	6	8	4	0	3	4	1	2
TOTAL	63	218	109	22	62	14	13	61

Table 3.4: Analysis of Written Complaints Against Local Councils

	Brought forward from 2004/05	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/06
Ards BC	0	3	2	0	1	0	0	0
Armagh C&DC	2	0	0	0	0	1	0	1
Ballymena BC	1	0	0	0	0	0	1	0
Banbridge DC	0	1	0	0	0	0	0	1
Belfast CC	0	2	2	0	0	0	0	0
Coleraine BC	0	4	4	0	0	0	0	0
Craigavon BC	0	2	0	0	1	0	0	1
Derry CC	1	0	0	0	0	1	0	0
Down DC	0	11	7	1	1	0	1	1
Dungannon & S Tyrone BC	0	3	3	0	0	0	0	0
Fermanagh DC	0	1	1	0	0	0	0	0
Larne BC	0	1	0	0	0	0	0	1
Limavady BC	1	2	1	0	0	0	0	2
Lisburn CC	2	3	1	0	3	0	0	1
Magherafelt DC	0	2	0	0	1	0	0	1
Moyle DC	2	1	1	0	2	0	0	0
Newry & Mourne DC	0	4	0	0	4	0	0	0
Newtown-abbey BC	0	2	1	0	0	0	0	1
North Down BC	0	5	4	0	1	0	0	0
Omagh DC	0	1	1	0	0	0	0	0
Strabane DC	0	1	0	0	0	0	0	1
TOTAL	9	49	28	1	14	2	2	11

Table 3.5: Analysis of Written Complaints Against Education Authorities

	Brought forward from 2004/05	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/06
Belfast E&LB	1	5	3	0	1	0	1	1
CCMS	2	4	1	0	3	0	0	2
North Eastern E&LB	1	3	2	1	0	0	1	0
South Eastern E&LB	0	5	5	0	0	0	0	0
Southern E&LB	4	5	2	1	5	1	0	0
Western E&LB	1	1	0	0	1	1	0	0
TOTAL	9	23	13	2	10	2	2	3

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

	Brought forward from 2004/05	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/06
Eastern H&SSB	0	1	1	0	0	0	0	0
Central Services Agency	0	2	2	0	0	0	0	0
Craigavon Area Hospital Group Trust	1	0	0	0	0	0	0	1
Down Lisburn Trust	0	1	1	0	0	0	0	0
Foyle HSS Trust	0	3	3	0	0	0	0	0
Homefirst Community Trust	0	7	4	0	2	0	0	1
Mater Hospital Trust	0	1	0	0	1	0	0	0
NI Ambulance Service	2	1	1	0	0	2	0	0
NI Medical & Dental Training Agency	0	2	0	0	1	0	0	1
Royal Group of Hospitals & Dental Hospital Trust	0	1	1	0	0	0	0	0
Sperrin Lakeland Health & Social Care Trust	2	0	0	0	0	1	1	0
Ulster Community & Hospitals Trust	0	4	4	0	0	0	0	0
TOTAL	5	23	17	0	4	3	1	3

Table 3.7: Analysis of Written Complaints Against Housing Authorities

	Brought forward from 2004/05	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/06
NIHE	32	99	39	19	24	3	6	40
Ark Housing Association (NI) Ltd	0	1	0	0	1	0	0	0
BIH Housing Association Ltd	0	2	1	0	1	0	0	0
Fold Housing Association	0	3	0	0	2	0	0	1
Gosford Housing Association (Armagh) Ltd	0	1	1	0	0	0	0	0
Habinteg Housing Association (Ulster) Ltd	0	1	1	0	0	0	0	0
North & West Housing Ltd	1	1	1	0	1	0	0	0
NI Co-Owner-ship Housing Association	0	1	1	0	0	0	0	0
Oaklee Housing Association Ltd	1	3	1	0	1	0	1	1
Presbyterian Housing Association (NI) Ltd	0	1	1	0	0	0	0	0
SHAC	0	2	1	0	1	0	0	0
TOTAL	34	115	47	19	31	3	7	42

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

	Brought forward from 2004/05	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/06
Community Relations Council	0	2	2	0	0	0	0	0
Equality Commission	3	1	0	0	1	3	0	0
Fire Authority	1	0	0	0	0	0	1	0
Fisheries Conservancy Board	0	2	1	0	0	0	0	1
Invest NI	0	1	1	0	0	0	0	0
Laganside Corporation	1	0	0	0	0	1	0	0
NI Commissioner for Children & Young people	1	2	0	0	2	0	0	1
TOTAL	6	8	4	0	3	4	1	2

Section Four

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

Written Complaints Received in 2005/06

I received a total of 110 complaints during 2005/06, 36 more than in 2004/05.

Fig: 4.1: Health Services Complaints 1997/98 - 2005/06

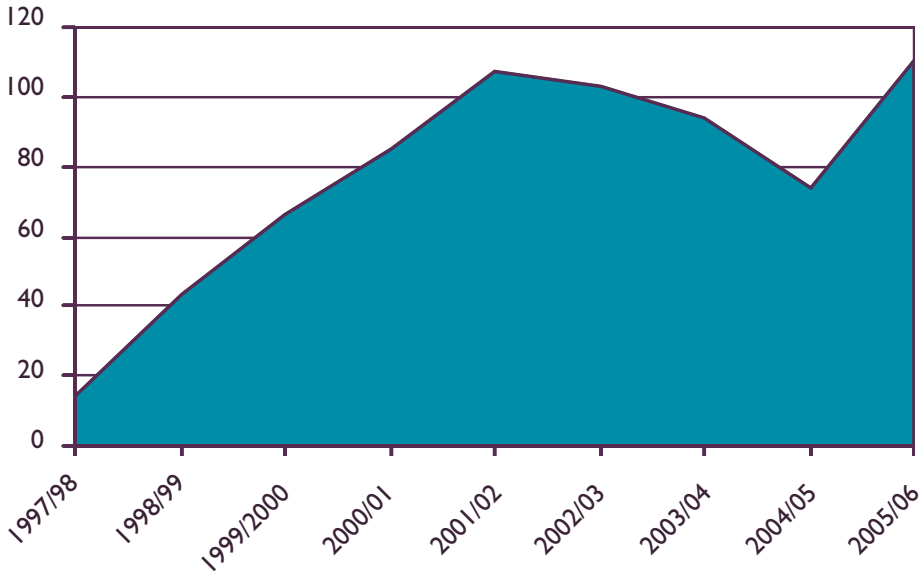


Fig 4.2: Written Complaints Received in 2005/06 by Authority Type

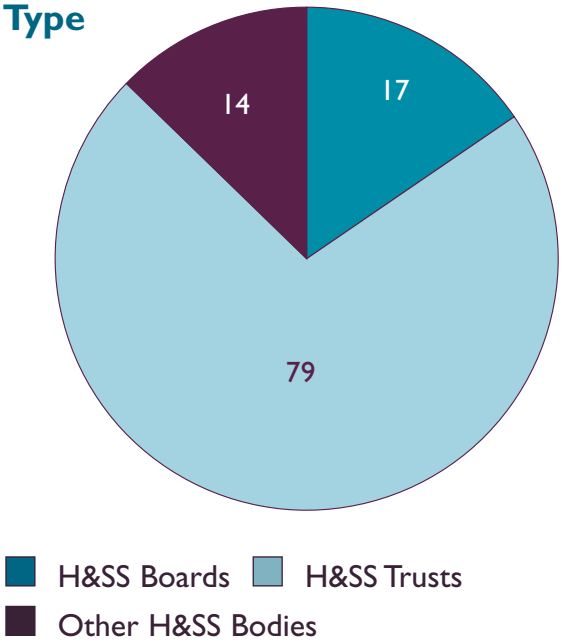
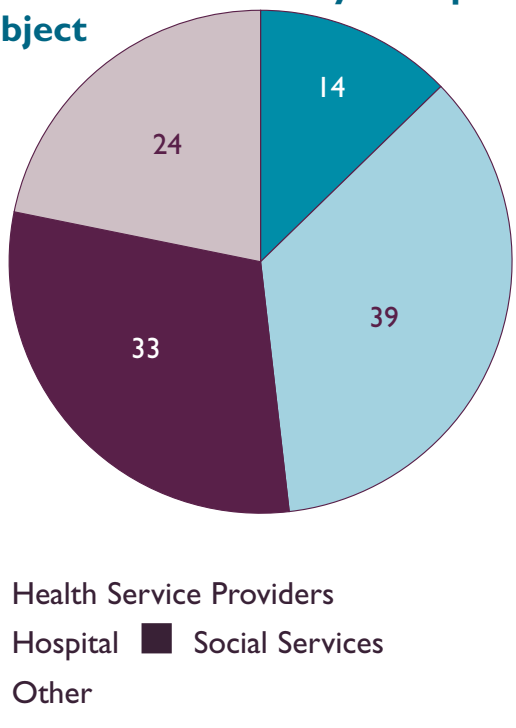


Fig 4.3: Written Complaints Received in 2005/06 by Complaint Subject



The Caseload for 2005/06

In addition to the 110 complaints received during the reporting year, 27 cases were brought forward from 2004/05 – giving a total caseload of 137 complaints. Action was concluded in 79 cases during 2005/06 and all of the 58 cases still being dealt with at the end of the year were under investigation.

Table 4.1 Caseload for 2004/05

Cases brought forward from 2004/05	27
Written complaints received	110
Total Caseload for 2005/06	137
Of Which:	
Cleared at Validation Stage	52
Cleared at Investigation Stage (without a Report), including cases withdrawn and discontinued	20
Settled	3
Full Report	4
In action at the end of the year	58

The outcomes of the cases dealt with in 2005/06 are detailed in Figs 4.4 and 4.5.

Fig 4.4: Outcomes of Cases Cleared at Validation Stage

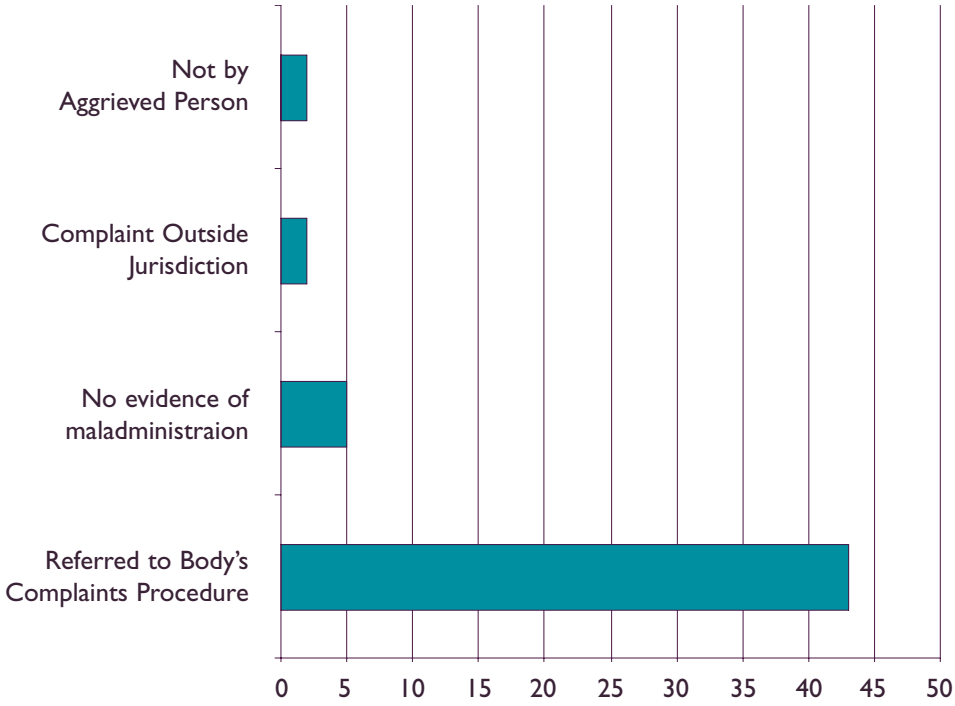
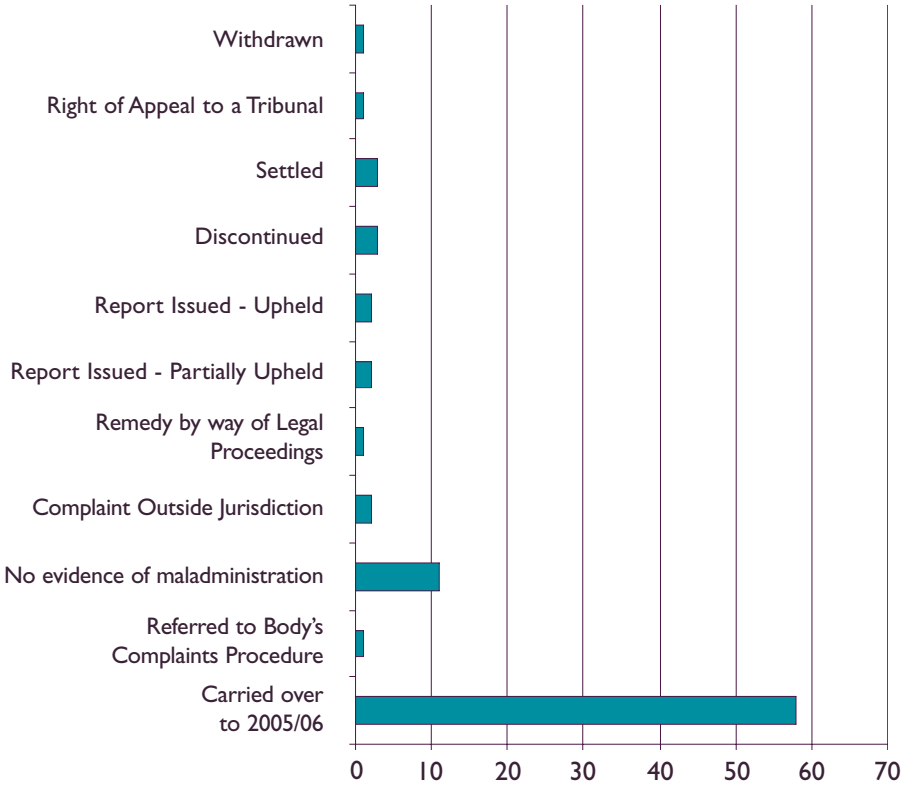


Fig 4.5: Outcome of cases Cleared at Investigation and Report Stages



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

The average time taken for a case to be examined, enquiries made and a reply issued at Investigation Stage was 33 weeks.

The average time taken for a case to be examined, enquiries made and a full Report issued at Report Stage was 101 weeks.

4 reports of investigations were issued in 2005/06. Of these cases: 2 were fully upheld and 2 were partially upheld. In all of the cases in which I made recommendations for actions by the body complained against these recommendations were accepted by the body.

Table 4.2 Recommendations in Reported Cases

Case No	*Body*	*Subject of Complaint*	*Recommendation*
HC 23/03	NI Ambulance Service	Failure to take patient to hospital	Introduction of a definitive protocol on the particular issue of consent to care and treatment, including refusal to travel
HC 36/03	NI Ambulance Service	Management of an emergency call out. Handling of complaint	Apology and NIAS to review investigation report with a view to addressing the failings/concerns highlighted
HC 53/03	Health Service Providers - GP	Complainant struck off GP's list	Apology from GP
HC 54/03	Health Service Providers - GP	Complainant and husband struck off GP's list	Apology from GP

Selected Summaries of Reported Cases

Emergency Call Out

The complainant in this case complained to me about the Northern Ireland Ambulance Services' (the NIAS) handling of an emergency call out in respect of his late wife. His complaint centred on the failure of the Ambulance crew to take his wife to hospital, despite repeated requests from him. The complainant told me that the Ambulance crew who had attended his wife prior to her death had failed to appreciate that she had been too confused to properly understand their advice that she should go with them to hospital.

My investigation of this complaint focused on the issue of consent and the legal position of a patient's right to determine what happens to them. As part of my investigation I examined the Reference Guidance to Consent for Examination, Treatment or Care which confirms and reinforces the requirement that valid consent to treatment is absolutely central to all forms of health care. The patient's medical records did not indicate that she did not have the capacity to take a decision not to travel to hospital. I was satisfied that the Ambulance crew, having spent approximately one hour trying to persuade the patient to allow them to take her to hospital, did not secure her consent and consequently did not have the legal authority to take her to hospital against her wishes. My investigation of this complaint highlighted the need for a definitive protocol on the particular issue of consent to care and treatment, including refusal to travel. The NIAS accepted my recommendation on this matter and agreed to develop a protocol. **(HC 23/03)**

Handling of an Emergency Call

The complainant in this case complained to me about the Northern Ireland Ambulance Service's (the NIAS) handling of an emergency call out in respect of his late father. His complaint centred on the NIAS' management of the call out and the performance of the Ambulance crew (the crew). The complainant believed that his father had been denied the opportunity of life saving intervention because of the crew's failure to transport him to hospital; instead the crew had waited on the attendance of the mobile coronary care team and by the time it arrived his father's life was beyond saving. A further aspect to the complaint centred on the NIAS' handling of the formal complaint which he had made.

As part of my in-depth investigation into the issues raised by the complainant, I arranged for an Independent Consultant Cardiologist to examine the matter of the crew's performance and the failure to transport the patient to hospital. Having examined the matter in great detail he formed the view that the patient was too ill to be moved to hospital and he did not raise any concerns about the crew's management of the call out.

The detailed report provided by the Independent Consultant Cardiologist helped me to reach an informed view that the crew had dealt with the call out in accordance with their training and the relevant protocols. My investigation of the complaint however did identify a number of shortcomings in relation to the NIAS' management of the call out. Those shortcomings centred on issues of poor communication in relation to the failure of the Control staff to relate vital information to the crew such as the fact that the patient had a cardiac history and the fact that the mobile coronary care team was not available to respond immediately to the call out. In addition, the Control staff had failed to follow protocol in that they had not contacted another mobile coronary care team to

establish if it was available to respond to the call out. I had no hesitation in criticising the NIAS in relation to its handling of the complainant's formal complaint. The NIAS had failed to carry out a thorough examination of the complaint made to it and failed to adhere to the complaint handling guidelines. It was abundantly clear that the NIAS' handling of the complaint had done nothing to ease the distress and annoyance which the complainant had experienced as a result of the sudden death of his father. I was pleased to receive a commitment from the NIAS' Chief Executive that the NIAS would review the detail of my investigation report with a view to addressing the failings/concerns that I had highlighted. In addition he accepted my recommendation to issue a letter of apology to the complainant in recognition that the standard of service had been well short of the standard he was entitled to receive. **(HC 36/03)**

Removal from the Patient List

The complainant in this case wrote to me about the decision to remove her husband, her daughter and herself from the patient list at a GP Practice. She was aggrieved that her Doctor had arbitrarily removed them from the list following a minor incident which involved her husband during a visit to the Practice. Her husband had been a patient of the Practice for 70 years without any problems.

The complainant's daughter also complained to me about the matter. In particular she was concerned that she had been removed in this way as she was an adult living at a different address from her parents and had not been involved in the incident.

My detailed investigation of this complaint confirmed that there was an unpleasant incident at the reception desk of the Practice. Whilst I did not condone the behaviour of the complainant's husband my investigation revealed that the decision to remove the complainant, her husband and their daughter from the patient list was taken without consultation between the partners, was taken pre-emptively and without due regard to the guidelines laid down by the GMC and professional body. Against this background I concluded that the Practice, in its arbitrary removal of the patients from the patient list was guilty of maladministration. I was satisfied that the complainants had suffered the injustice of annoyance and frustration caused by the Practice in removing them from the Practice list without informing them or giving them any reason for the action. In recognition of this injustice I recommended that a letter of apology should be sent to both the complainants. The Practice accepted my recommendation. **(HC 54/03 & 53/03)**

Selected Summaries of Settled Cases

Transfer from Nursing Home Accommodation

A case which gave me particular concern related to the transfer of an elderly lady from nursing home accommodation in Northern Ireland to a facility in England. The complaint was made to me by the lady's son who alleged that the Trust which had facilitated the transfer at his request, failed to properly explain the funding arrangements which would apply to the new placement and, in particular, failed to provide written confirmation of the contribution towards the cost of his mother's care which he would be required to make, until after the transfer had taken place. The complainant told me that he would not have agreed to his mother's transfer if he had understood the financial liability involved, which he belatedly discovered to be £230 per week.

My investigation of this complaint established that specific legislation has not been enacted to facilitate the transfer of nursing home residents between NI and England. As a result, the Trust in question had to obtain extra-statutory approval in order that the transfer could proceed. Approval was given by the Department of Health, Social Services and Public Safety (the Department) for the lady's transfer to England to take place at the regional rate for nursing home placements, which at that time was **£420** per week. However, my enquiries indicated that under the terms of a circular issued by the Department to all Heath and Social Services Trusts and Boards in NI **(Circular HPSR (3) 1/93 Community Care – Choice of Residential and Nursing Home Accommodation)** a person is entitled to enter more expensive accommodation if a third party is willing and able to pay the difference in cost. Thus, in the circumstances of this particular case, the Trust agreed to place the complainant's mother in a home in England charging **£650** per week, based on the Trust's understanding, apparently established in a number of telephone conversations with the complainant (but later denied by him), that he was agreeable to funding, from his own resources, that element of the charge which was in excess of the regional rate (otherwise known as the 'third-party contribution' or 'top-up') i.e. in this case, **£230** per week.

In the course of a complex investigation I found that the Trust:

- had embarked upon this arrangement with an inadequate understanding of its financial liabilities under the Health and Personal Social Services (Northern Ireland) Order 1972 for the cost of residential or nursing home accommodation;
- was unable to provide documentary evidence to demonstrate that it had made clear to the complainant, prior to the placement date, the financial basis upon which it was prepared to place his mother in the more expensive accommodation;
- was unable to demonstrate that the complainant had fully understood the financial commitment into which he was entering or that the Trust had established any basis for concluding that the complainant was in a position to sustain the financial burden upon which his mother's transfer from her home in Northern Ireland was predicated.

I am pleased to report that the CE of the Trust accepted my preliminary conclusions that the Body had failed to achieve an acceptable standard of administration in this case. The CE further agreed with my recommendation that, in order to avoid any further hardship or anxiety for the elderly lady at the centre of these events, an early settlement of the complaint was appropriate. The Trust

therefore apologised to the complainant for its inadequate administration and complaint handling and accepted liability for the greater portion of the disputed top-up sum.

Whilst I regarded this as a satisfactory outcome to my investigation my overriding concern in relation to this complaint was the exposure of what appeared to me to be wholly inadequate safeguards to protect the interests of an elderly and vulnerable lady who was permitted to be transferred from this jurisdiction without any effective action to either establish the bona fides of her representatives or to achieve reasonable guarantees that these representatives were willing and able to discharge the responsibilities upon which the transfer arrangements were dependent. I have therefore decided to write to the Permanent Secretary of the Department setting out my wider concerns arising from this complaint and seeking clarification regarding the respective responsibilities of Trusts and the Department in relation to the protection of the interests of prospective residents in such circumstances. **(200500177)**

Contribution to Legal Costs

The complainants in this case were unhappy with the contribution made to their legal costs by the Ulster Community & Hospitals Trust (the Trust).

Having read carefully the papers submitted I noted that the arrangements under which the Trust made a contribution to the legal costs were written in terms of making a contribution to costs as distinct from any authority to meet the full amount of costs. I would generally expect to see full costs falling on a public body only where there had been an award by the court. However I also formed the opinion that the contribution to the complainant's legal costs made thus far by the Trust fell short of what might otherwise reasonably have been expected.

Accordingly I personally contacted the Chief Executive of the Trust and invited him to review the Trust's position. As a result the Chief Executive informed me the Trust was prepared to make a further and final contribution of £20,000 towards the complainant's legal costs in this case. **(200501180)**

Statistics

Table 4.3: Analysis of Written Complaints Received in 2005/06

	Brought forward from 2004/05	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/06
H&SS Boards	5	17	4	1	2	0	0	15
H&SS Trusts	18	79	40	2	14	2	0	39
Other H&SS Bodies	4	14	8	0	4	2	0	4
TOTAL	27	110	52	3	20	4	0	58

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

	Brought forward from 2004/05	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/06
Eastern H&SSB	1	4	2	0	1	0	0	2
Northern H&SSB	1	2	0	0	1	0	0	2
Southern H&SSB	1	3	0	0	0	0	0	4
Western H&SSB	2	8	2	1	0	0	0	7
TOTAL	5	17	4	1	2	0	0	15

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

	Brought forward from 2004/05	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/06
Altnagelvin Hospitals H&SS Trust	0	2	0	0	0	0	0	2
Armagh & Dungannon H&SS Trust	1	3	3	0	1	0	0	0
Belfast City Hospital H&SS Trust	1	2	2	0	1	0	0	0
Causeway H&SS Trust	0	3	3	0	0	0	0	0
Craigavon Area Hospital Group Trust	0	7	4	0	0	0	0	3
Craigavon & Banbridge Community H&SS Trust	1	3	1	1	0	0	0	2
Down Lisburn Trust	1	7	6	0	1	0	0	1
Foyle H&SS Trust	1	0	0	0	0	0	0	1
Homefirst Community Trust	0	14	2	0	0	0	0	12
Mater Hospital Trust	0	1	1	0	0	0	0	0
Newry & Mourne H&SS Trust	1	6	4	0	0	0	0	3
North & West Belfast H&SS Trust	1	2	1	0	1	0	0	1

Table 4.5 continued

	Brought forward from 2004/05	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/06
NI Ambulance Service	3	1	0	0	1	2	0	1
Royal Group of Hospitals & Dental Hospital Trust	0	7	4	0	1	0	0	2
South & East Belfast H&SS Trust	0	6	1	0	2	0	0	3
Sperrin Lakeland Health & Social Care trust	1	3	2	0	0	0	0	2
Ulster Community & Hospitals Trust	6	7	4	1	6	0	0	2
United Hospitals Trust	1	5	2	0	0	0	0	4
TOTAL	18	79	40	2	14	2	0	39

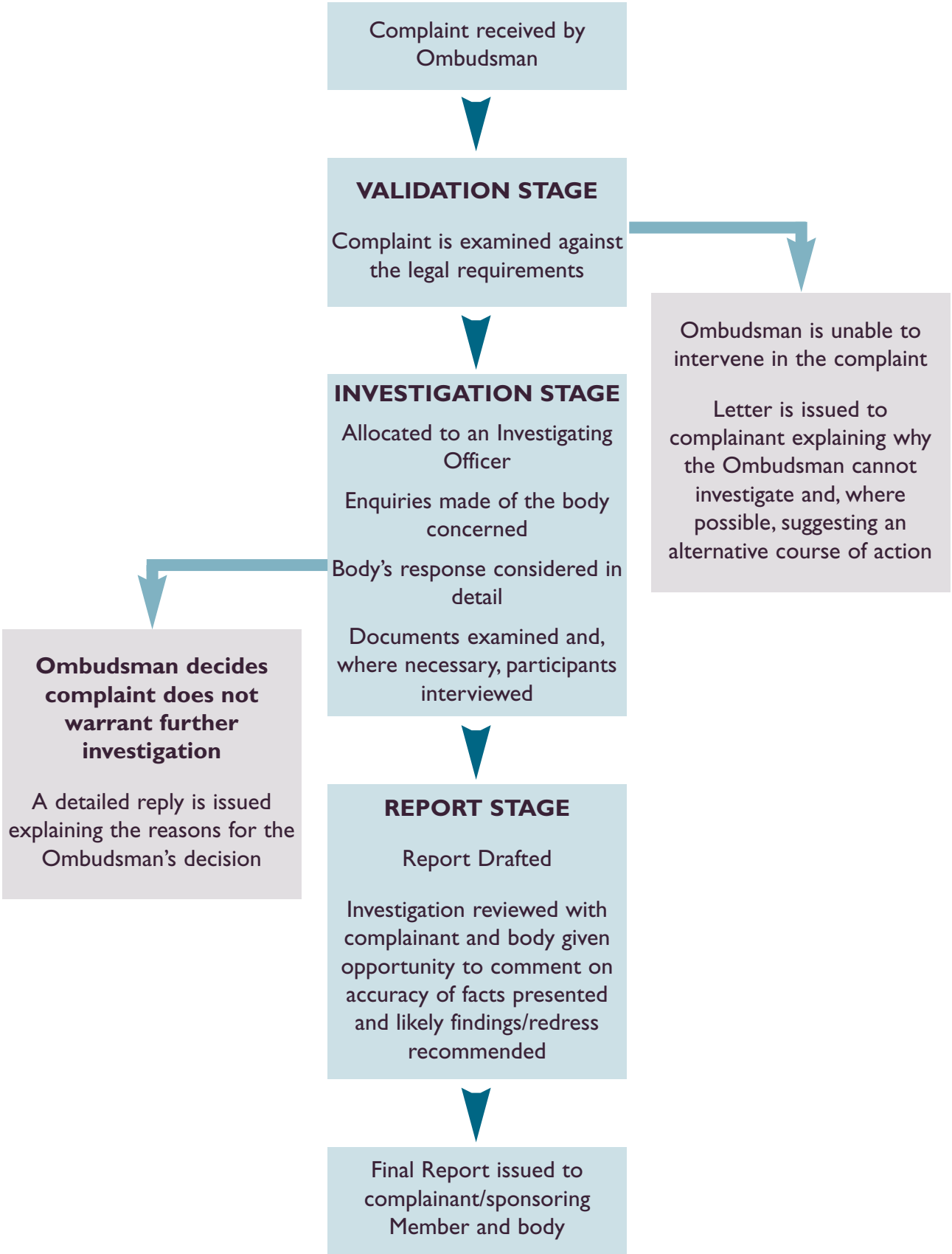
Table 4.6: Analysis of Written Complaints Against Other Health and Social Services Bodies

	Brought forward from 2004/05	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/06
Health Service Providers - GDP	0	4	2	0	0	0	0	2
Health Service Providers – GP	4	9	5	0	4	2	0	2
Health Service Providers - Optometrists	0	1	1	0	0	0	0	0
TOTAL	4	14	8	0	4	2	0	4

Appendix A

Handling of Complaints

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



THE PROCESS:

Validation Stage

Each complaint is checked to ensure that:

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

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

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

Investigation Stage

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

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

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

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

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

all the relevant documentary evidence and, where necessary, interviewing the complainant and the relevant officials. Where the complaint is about a Health Service matter, including clinical judgement, professional advice will be obtained where appropriate from independent clinical assessors. At the conclusion of the investigation the case will progress to the Report Stage.

Report Stage

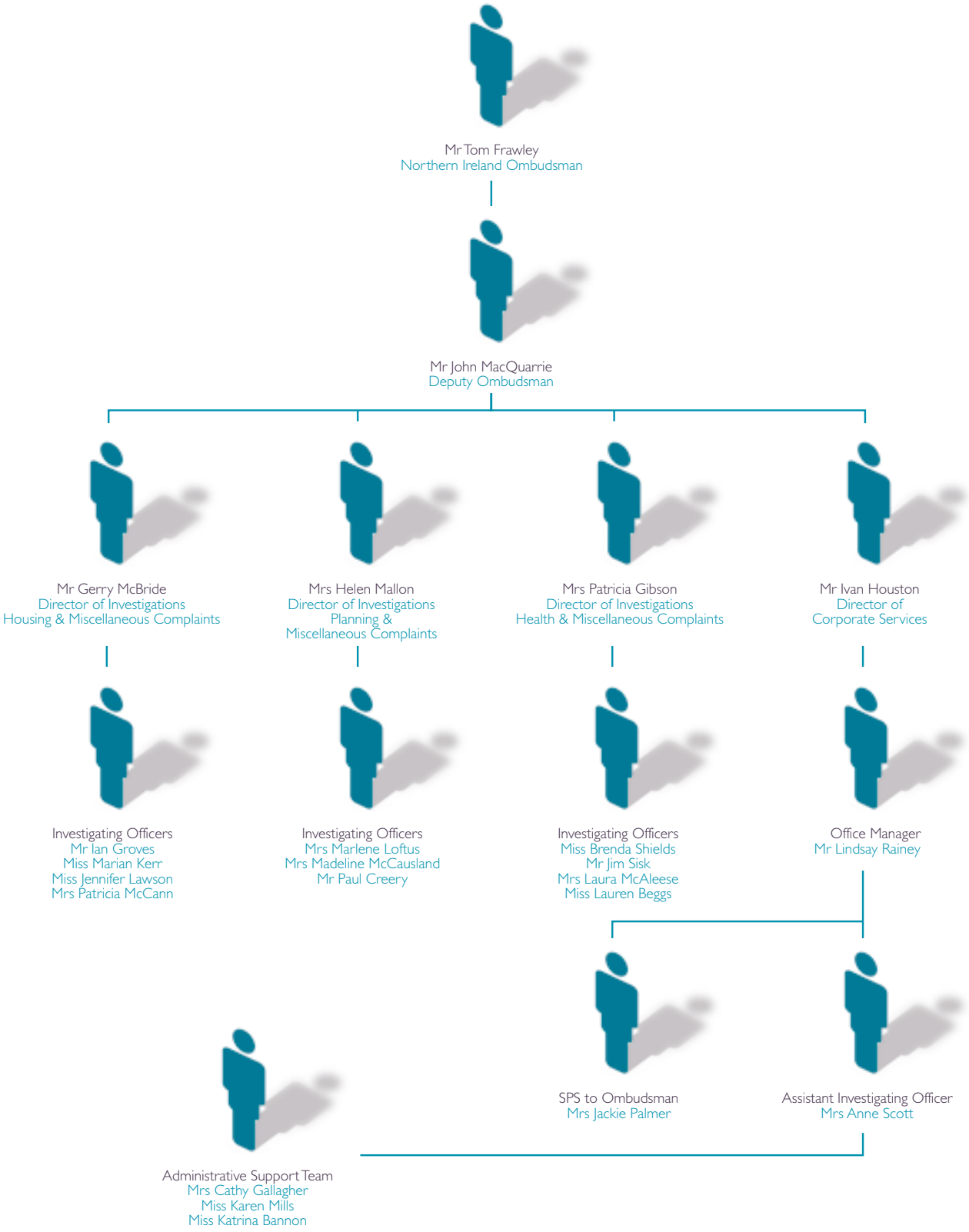
I will prepare a draft Report containing the facts of the case and my likely findings. At this point the case will be reviewed with the complainant. The body concerned will be given an opportunity to comment on the accuracy of the facts as presented, my likely findings and any redress I propose to recommend.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

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

Appendix B

Staff Organisational Chart

Staff Organisational Chart

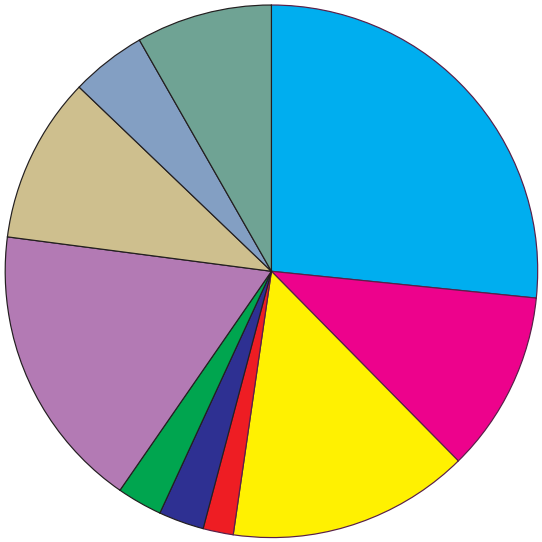


Appendix C

Analysis of Complaints Received Which Were Outside Jurisdiction

My Office received some 2000 complaints and enquiries relating to bodies which were clearly outside my jurisdiction. In such cases Administration Section staff give as much advice/information as they can about other avenues which may be open to the persons concerned to pursue their complaint and, where possible, provide appropriate contact information.

Cases Referred to another Complaints Authority



- Financial Ombudsman Service
- Parliamentary & Health Service Ombudsman
- Police Ombudsman
- Pensions Ombudsman
- Ofcom
- Ofreg
- Consumer Bodies
- Legal Matters
- Information Commissioner
- Other Complaint Bodies

Contacting the Office

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

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

My Office can be contacted in any of the following ways.

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

By fax: 028 9023 4912.

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

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

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

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

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

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