Northern Ireland
Ombudsman

2001 ~ 2002 Annual Report

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

NIA 89/01

FEEDBACK

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

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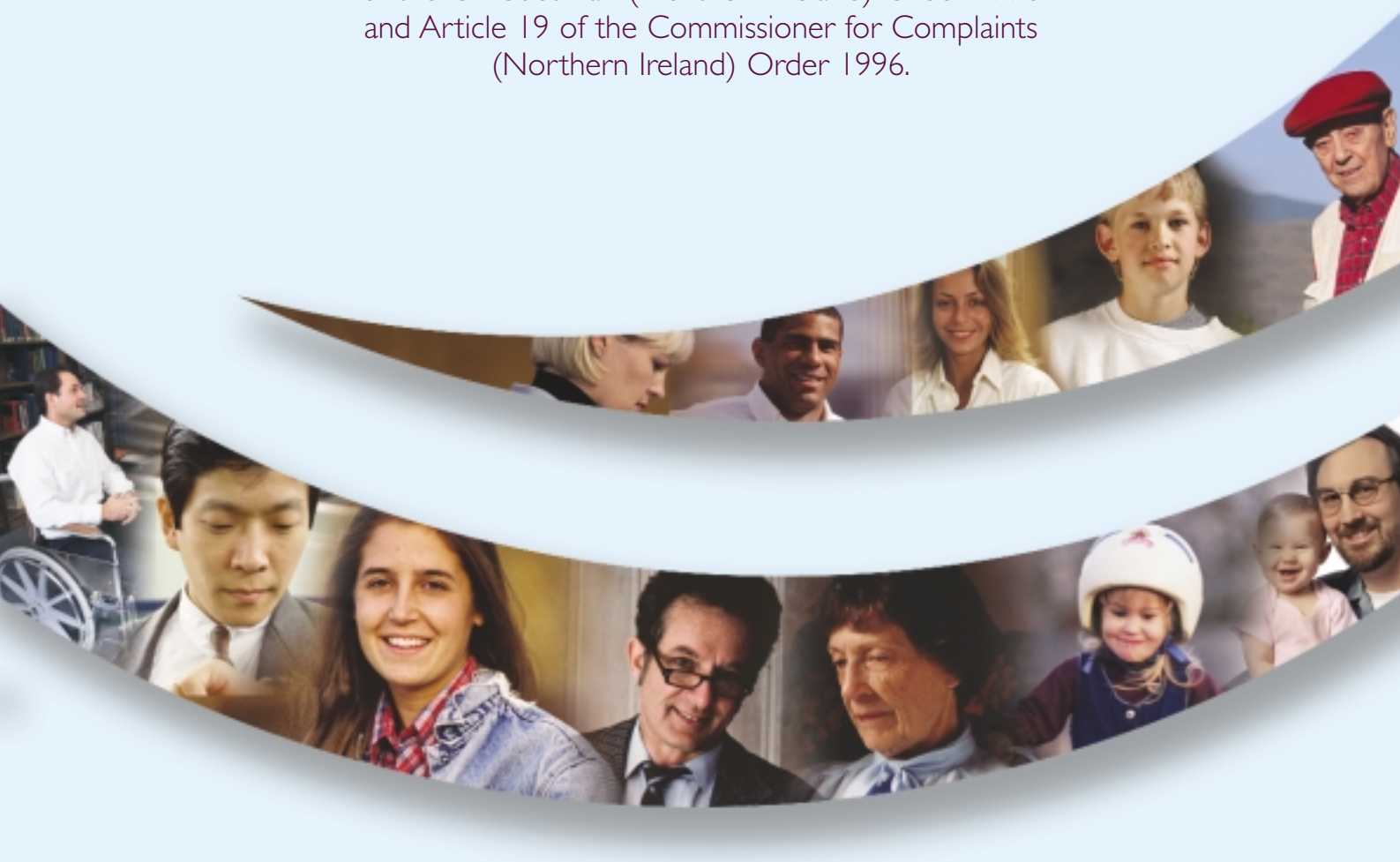
Presented to the Assembly pursuant to Article 17
of the Ombudsman (Northern Ireland) Order 1996
and Article 19 of the Commissioner for Complaints
(Northern Ireland) Order 1996.



Ordered by The Assembly *to be printed*

2002

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Section One

Introduction

This Annual Report is the Document of Record of the Ombudsman's Office describing its work for the period 2001/02. The Report I believe provides a clear sense of the cases I have examined and the conclusions I reached. Importantly, the Report also meets a statutory requirement to submit annually to the Assembly a Report on the activity of the Office for the previous year.

It has been a very busy year for the Office; there has been an increase in activity from the number of contacts (+5%), through to the number of written complaints (+13%). Significantly in January 2002 we launched a strategic document 'Facing the Future'. The objective of the document was to examine how the Ombudsman operates at present and identify the challenges that will face the Office in the future. There has been an excellent response from Government Departments, public bodies and the voluntary organisations consulted. It is intended to use the responses received to inform in due course a Review of the legislation under which my Office operates.

In parallel with the consultation process on 'Facing the Future', the Office has through the year initiated an awareness campaign involving District Councils, Area Boards, Agencies, Government Departments and Voluntary Organisations. This initiative is ongoing and the challenge remains to engage citizens who currently are not aware of the Office or its purpose. The awareness campaign has been complemented by revamping all the public information materials used by the Office with a particular emphasis on people with disabilities and ethnic minorities.

In relation to our core activity of complaints investigation there is a tendency to regard the successful resolution of a specific complaint as being the end of the process. I believe that public services can learn a great deal from complaints and it is essential that the insights obtained are applied as an integral part of each organisation's quality assurance arrangements. Essentially this means taking every opportunity to test services against the issues identified in individual complaints. It is necessary to see individual complaints as potential symptoms of wider service problems. Therefore, complaints management must be an integral part of the quality management system which should be proactively developed within all government and public service organisations.

In this regard I would again stress to Government and Public Bodies my desire to see as many complaints as possible settled within the context of their internal complaints processes. While I believe that generally, there has been an improvement in this regard during the period covered by this Report, I equally believe there remains significant scope for further improvement in this aspect of public service performance.

Looking at complaints about services in the round I am struck by the number of occasions where gaps or deficiencies in communications feature in individual complaints.

While many citizens accept that mistakes do occur from time to time they find it hard to understand why staff dealing with them lack critical communications skills. There is in my view a need for an ongoing investment in training and equipping staff to communicate effectively, whether through face to face contacts or in writing. Again, I believe that effective communication and communication training are another essential element of high quality service.

Finally, in 'Facing the Future' I made reference to the critical need to make the work of my Office more relevant to older people, women and younger people. Research shows these groups have difficulty or are reluctant to access Complaints Procedures. Interestingly these groups include many who are the focus of Section 75 of the Northern Ireland Act 1998. I therefore believe that we need to be particularly aware of the needs of these groups and also people with learning difficulties, with sensory disability and those from an ethnic minority background who do not use English as a first language. Not only do we need to ensure that such people know of their rights to complain but we must also create organisational arrangements that support them in that process.

Thomas J Frawley
Ombudsman

Staffing and Finance

Staffing

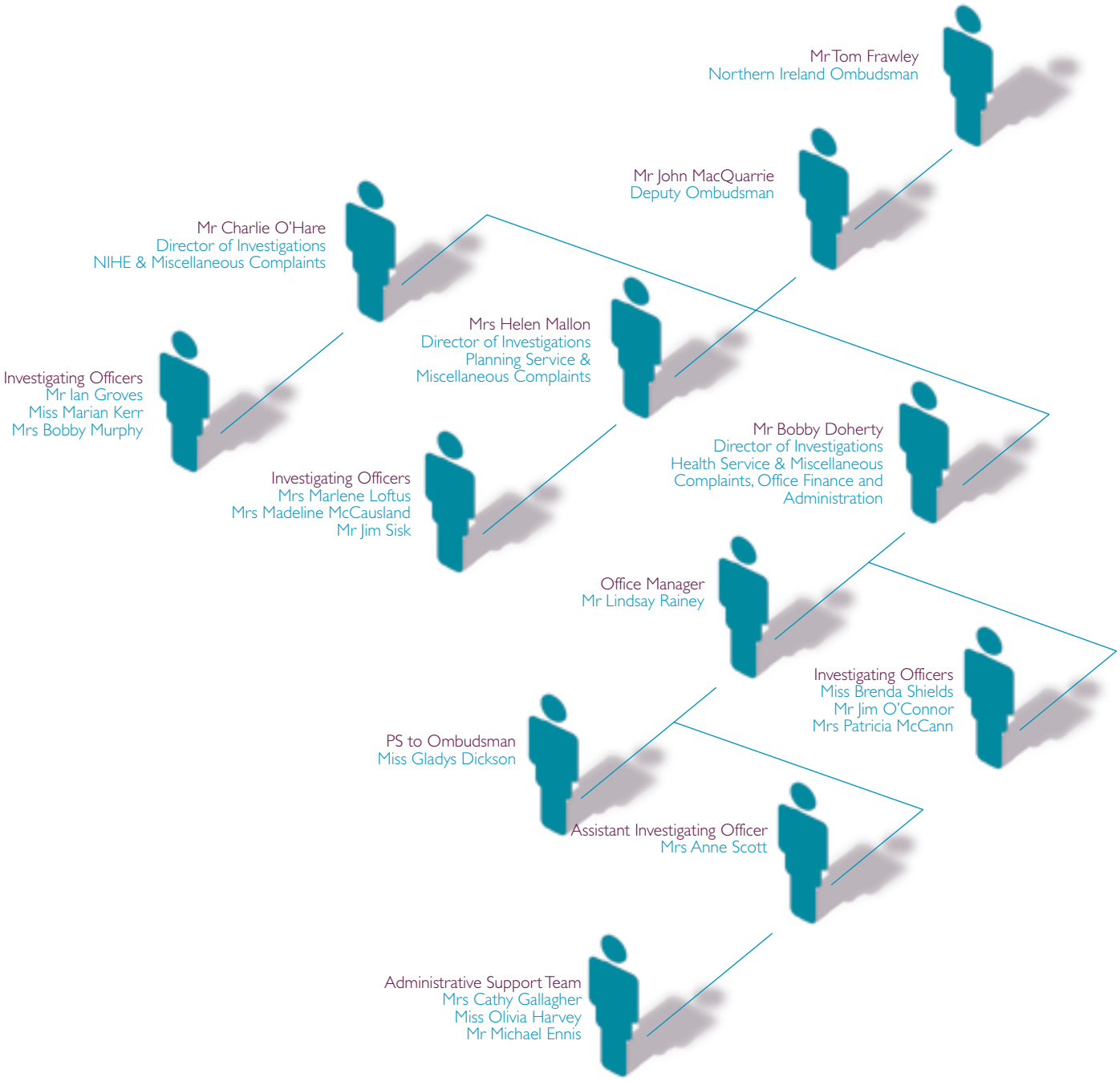
My Office is staffed by officers recruited by secondment from Northern Ireland Departments and their Agencies. I am happy to record again my thanks to senior management in the Northern Ireland Civil Service for providing me with this facility. The number of staff in post in my Office at the end of the year was 19.

Finance

The funds voted for 2001/02 were £955,000 and cover both the Office of the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints. The expenditure continues to be exempt from running cost control with resource needs considered by the Department of Finance and Personnel.

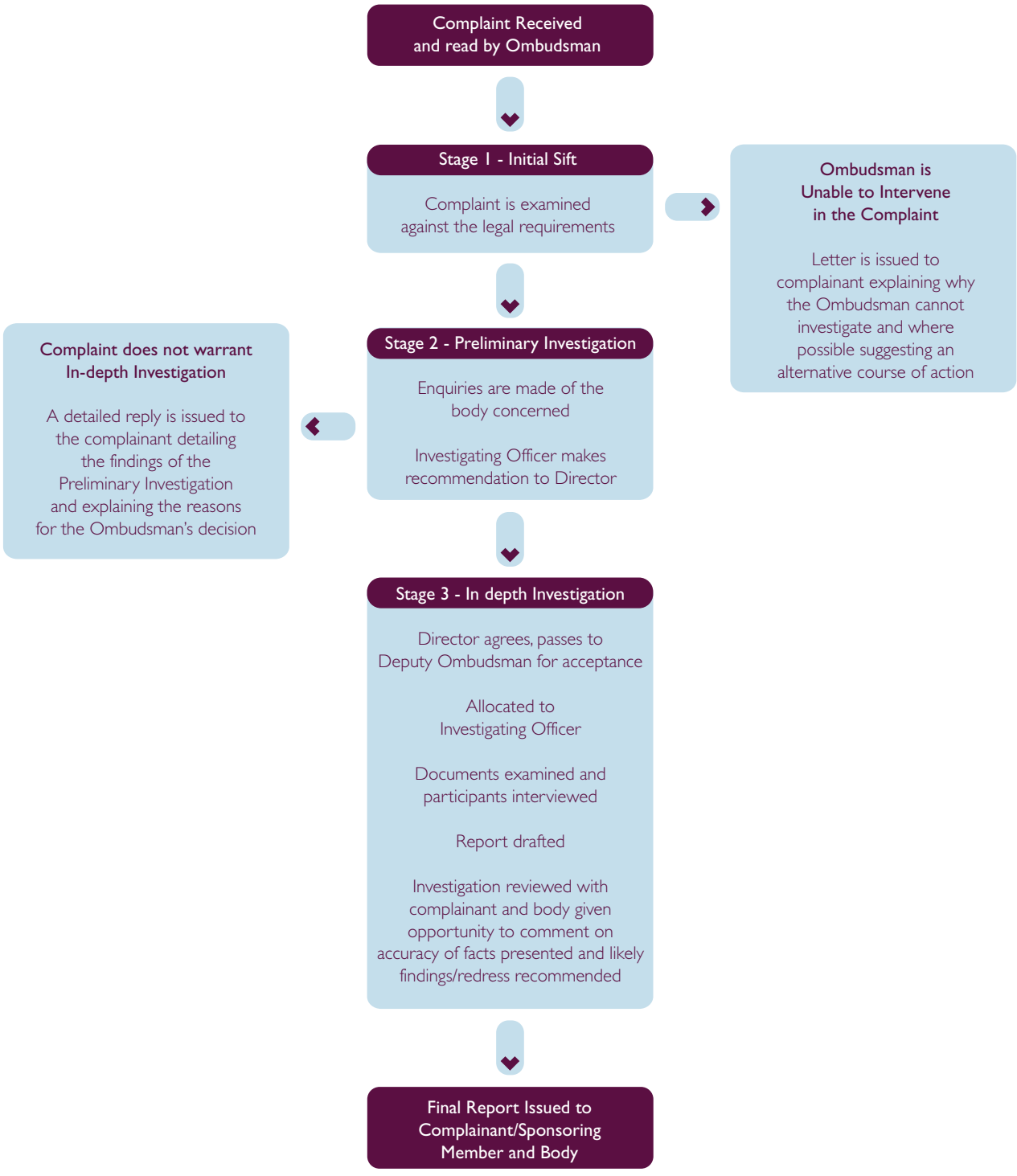
My salary is charged directly to the Consolidated Fund while the operational costs of the Office were included in the Northern Ireland Estimates which are approved by the Assembly.

Staff Organisational Chart



Handling of Complaints

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



THE PROCESS:

Stage 1 - Initial Sift

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 Stage 2 (see below). The Office target for the issue of a reply under Stage 1 or reference to Stage 2 is currently 5 working days.

Stage 2 - Preliminary Investigation

The purpose of this stage is to ascertain whether there is evidence of maladministration in the complaint and how this has caused the complainant an injustice. At this stage enquiries will be made of the body concerned. These enquiries take the form of informal telephone calls to the body and/or 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 initial enquiries have been completed, the complaint is referred to a Director of Investigation who decides what course of action is appropriate for each complaint. There are three possible outcomes to 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 - an Investigation Report will issue to the complainant/MLA detailing the findings of my preliminary investigation and explaining why it is considered that the case does not warrant further investigation. Where maladministration has been identified, the Report may contain criticism of the body concerned. In such cases a copy of the Report 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 case will be referred to Stage 3.

The Office target for the issue of a reply under Stage 2 or reference to Stage 3 is currently 13 working weeks.

Stage 3 - In-depth Investigation

If, at the outset of this stage of 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 a full formal investigation of the case will be undertaken. Such an investigation will involve interviewing the complainant and the relevant officials and inspecting all the relevant documentary evidence. Where the complaint is about a Health Service matter, including clinical judgement, professional advice will be obtained where appropriate from independent clinical assessors. At the conclusion of the investigation I will prepare a draft Report containing the facts of the case and my likely findings. At this point the case will be reviewed with the complainant. The body concerned will be given an opportunity to comment on the accuracy of the facts as presented, my likely findings and any redress I propose to recommend. Following receipt of any comments which the body may have I will issue my final Report to both the complainant/MLA and to the body. This is a very time consuming exercise as I must be satisfied that I have all the relevant information available before reaching my decision.

The Office target is to complete a case involving a Stage 3 investigation within 12 months of initial receipt of the complaint.

Oral Complaints/ Enquiries

During 2001/02 the Office dealt with 2379 telephone calls and there were 84 personal callers.

Of these, 592 telephone calls and 74 interviews related to bodies and matters within my jurisdiction. I have included as Appendices to Sections 2, 3 and 4 details of the bodies complained of and the outcomes of the oral complaints which were received by telephone/interview.

The remaining 1787 telephone calls and 10 interviews related to complaints where either the body or the subject of the complaint 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, if possible, provide an appropriate contact name.

Fig 1.1 Northern Ireland Ombudsman 2001/02
660 Complaints Received

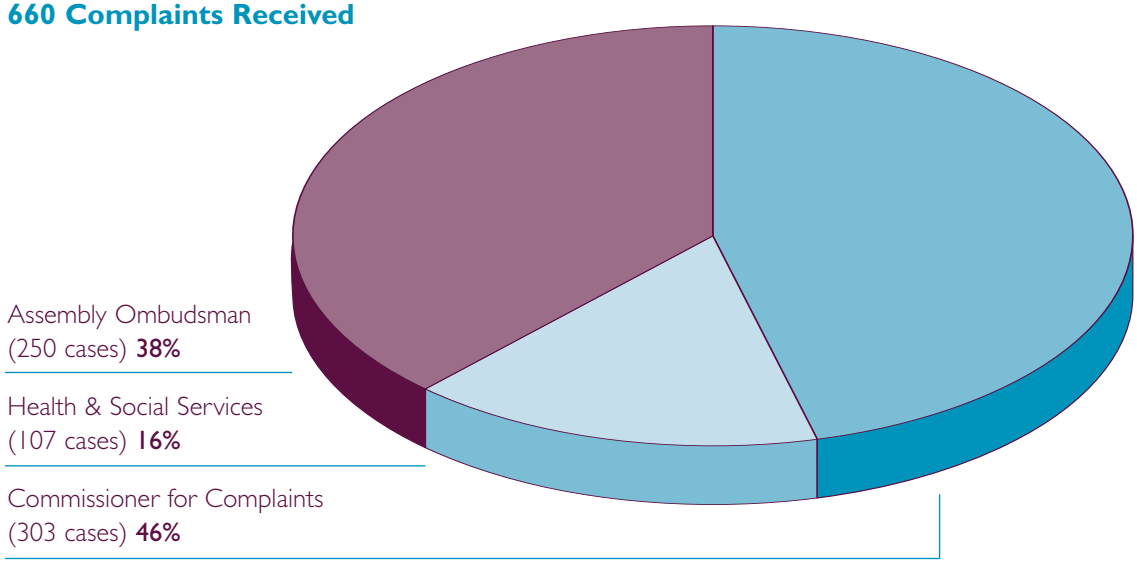


Fig 1.2 Northern Ireland Ombudsman 2001/02
Complaints Received by Month

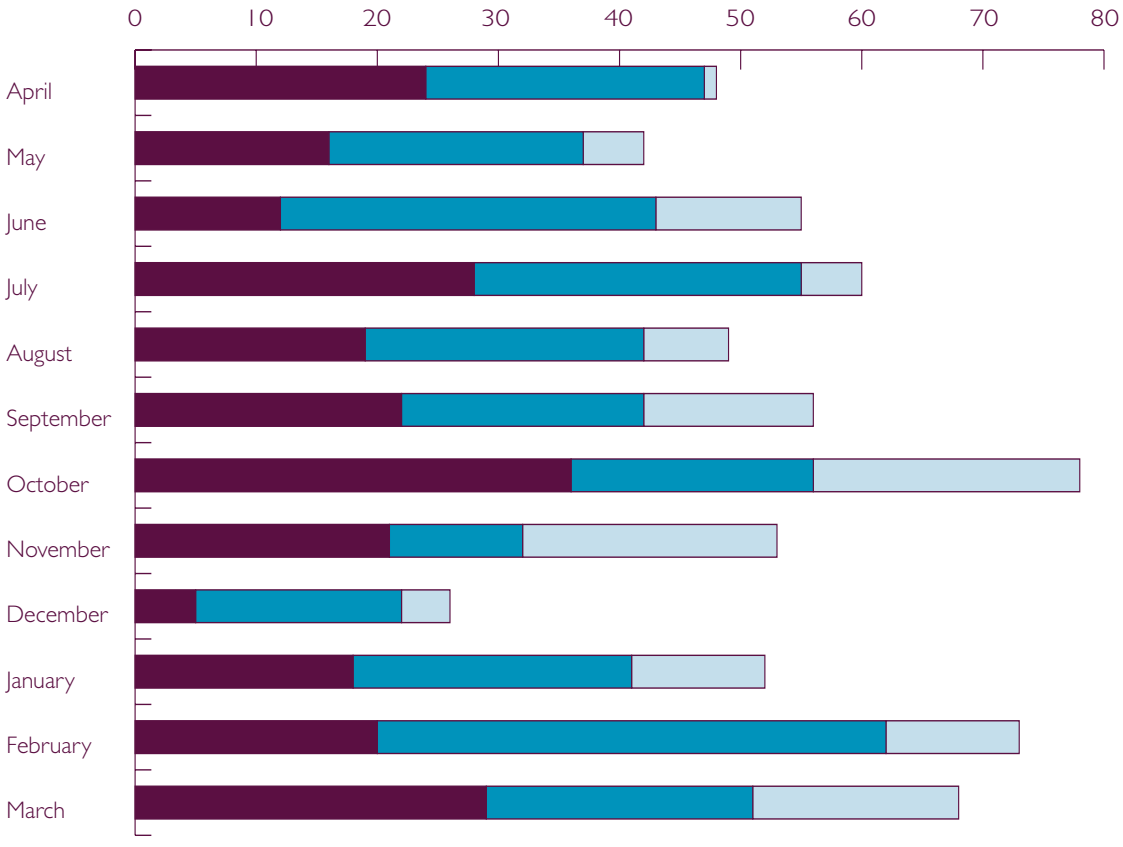


Fig 1.3 Northern Ireland Ombudsman 2001/02 660 Complaints Received - Local Council Area in which Complainant Resides

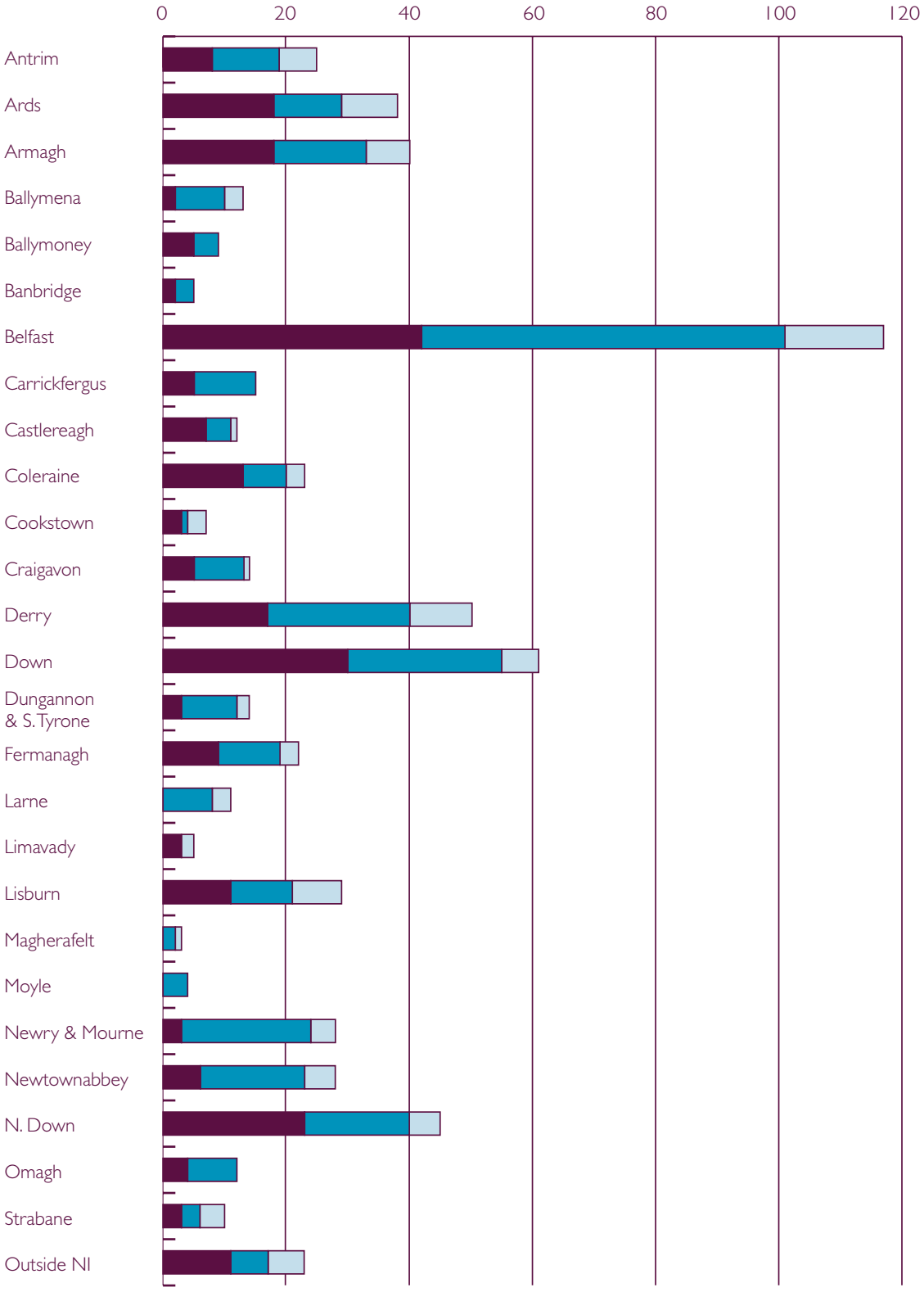


Fig 1.4 Northern Ireland Ombudsman 2001/02 Completion Times for Registered Cases

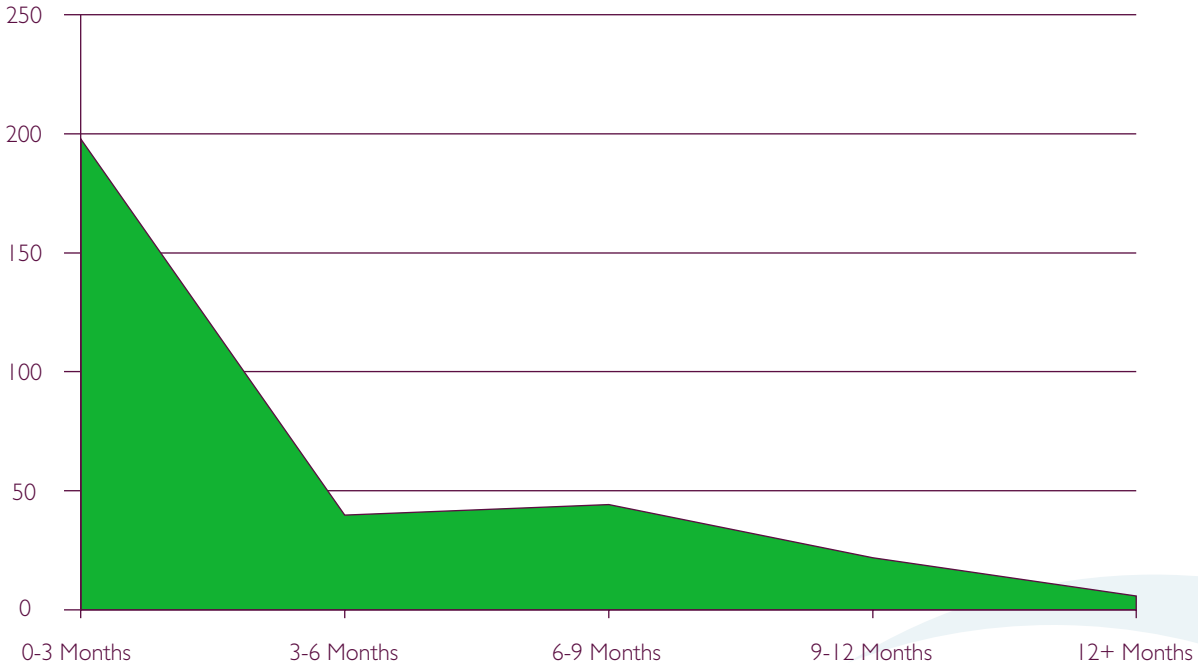
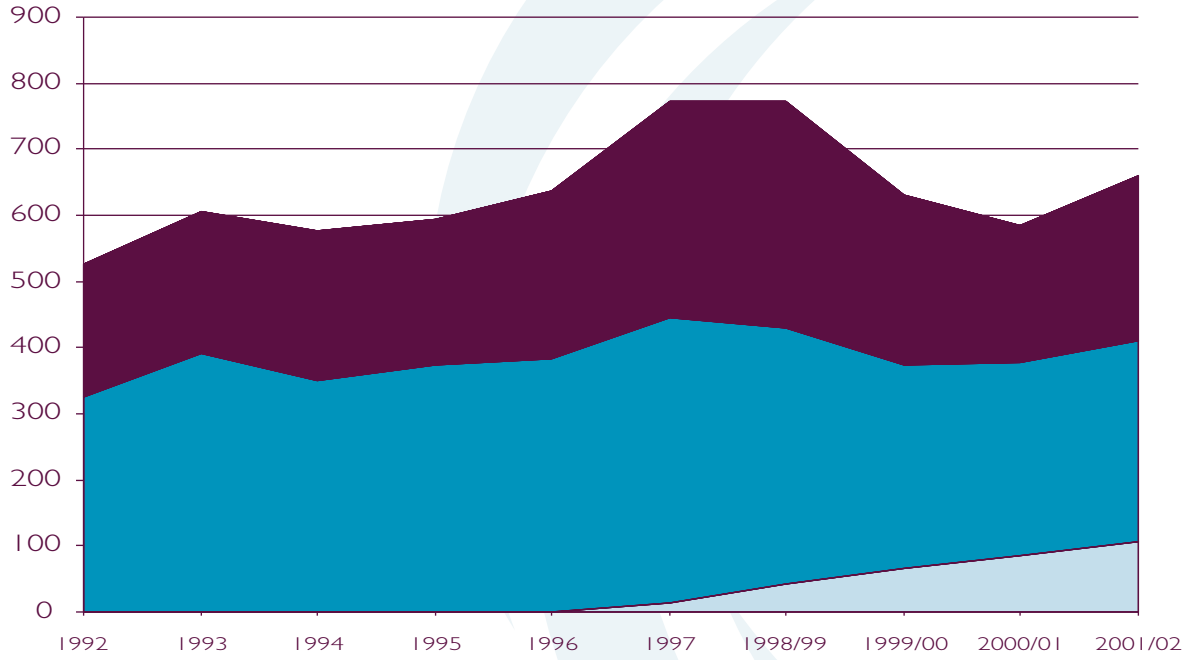


Fig 1.5 Northern Ireland Ombudsman Complaints Received by the Ombudsman 1992-2001/02



Section Two

Annual Report of the
Assembly Ombudsman
for Northern Ireland

Complaints Received

As Assembly Ombudsman for Northern Ireland I received a total of 250 complaints during 2001/02, 42 more than in 2000/01. Under the Ombudsman (Northern Ireland) Order 1996, complaints made to me against government departments and their agencies required the 'sponsorship' of a Member of the Legislative Assembly (MLA). Of the 250 complaints received this year 107 were submitted in the first instance by a MLA and 143 were submitted directly to me by complainants.

The Department of the Environment and the Department of Social Development attracted most complaints, 83 against the former and 56 against the latter. Of these 136 related to their agencies, with the Planning Service and Social Security Agency giving rise to most of the complaints. In all 176 of the 250 complaints received in 2001/02 related to the agencies of government departments.

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

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

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

Table 2.1 - Subject areas of complaints received in 2001/02

Subject of Complaint	No. Received
Personnel	46
Water	3
Planning	74
Benefits	41
Education	5
Roads	8
Agriculture	2
Rates	3
Miscellaneous	68
TOTAL	**250**

Fig.2.1 Assembly Ombudsman 2001/02 250 Complaints Received

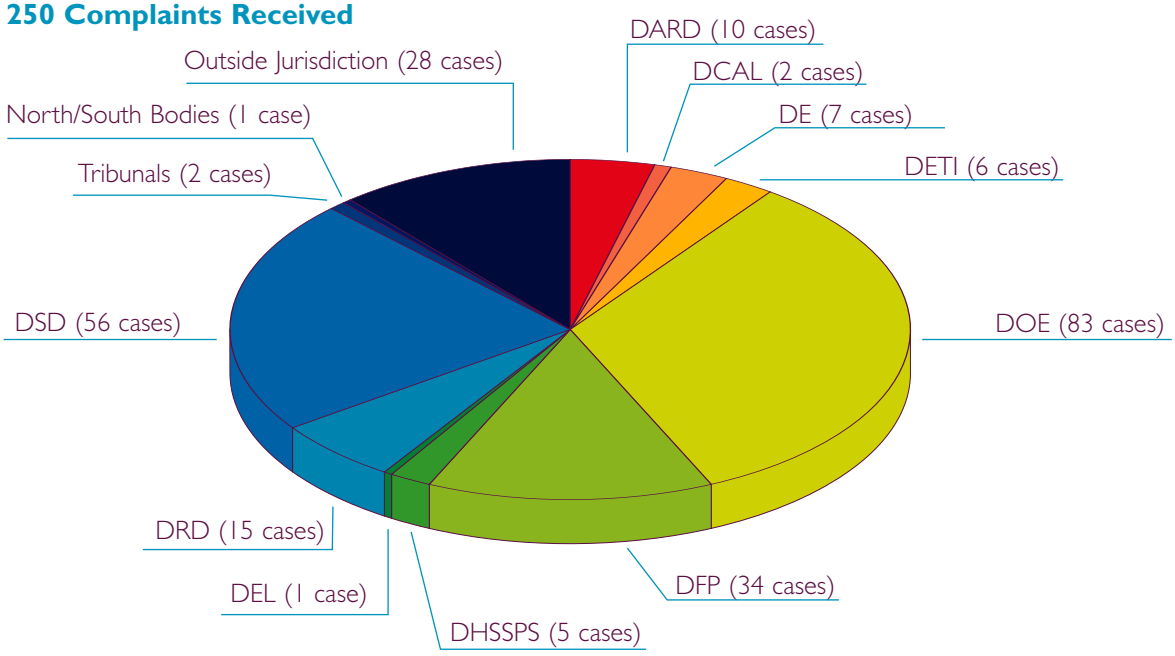


Fig 2.2 Assembly Ombudsman Complaints Received 1997-2001/02

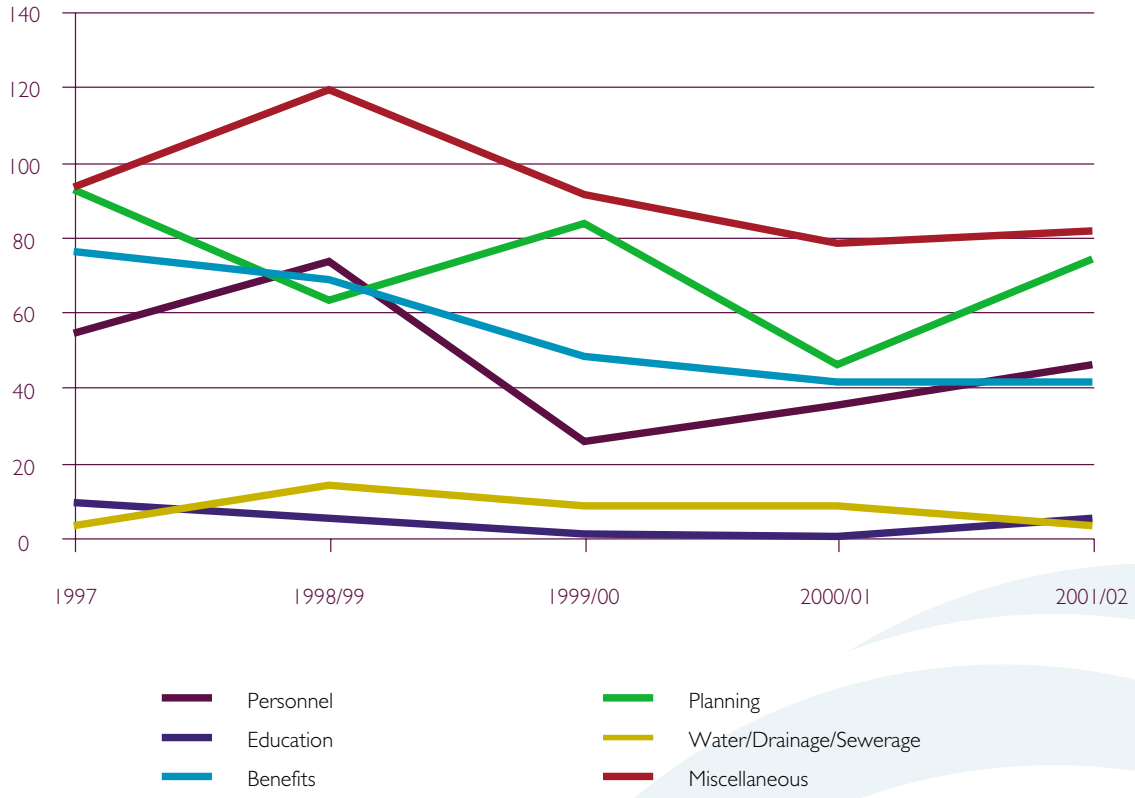


Fig 2.3 Assembly Ombudsman 2001/02
250 Complaints Received - Local Council Area in which Complainant Resides

Fig 2.4 Complaints Against Government Agencies 2001/02
176 Complaints Received

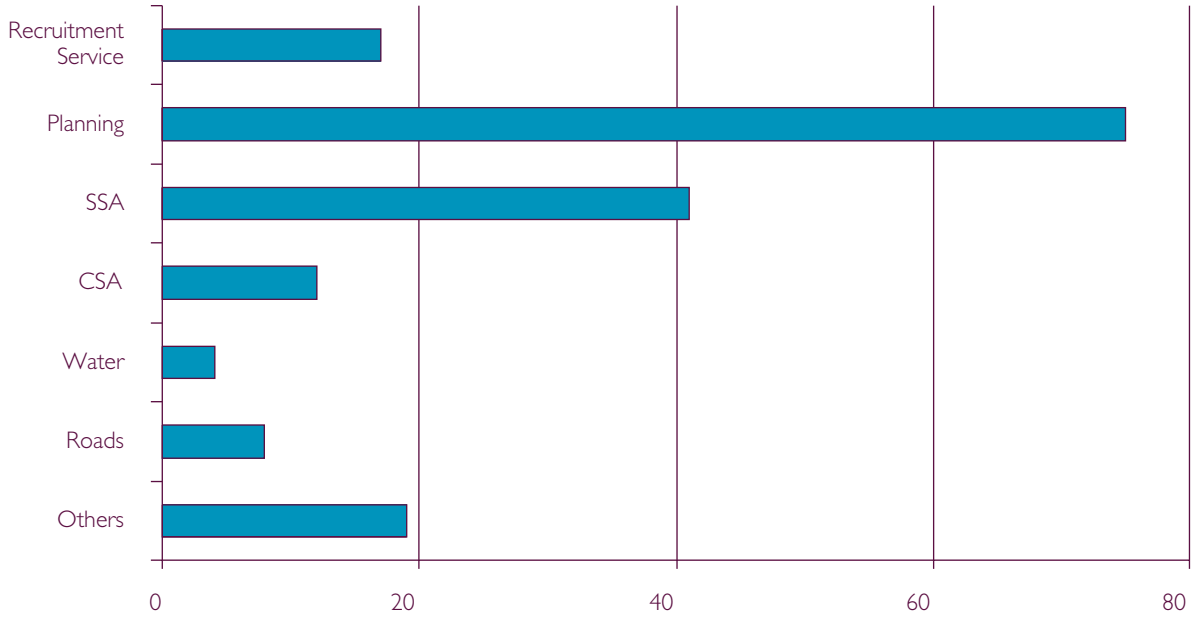
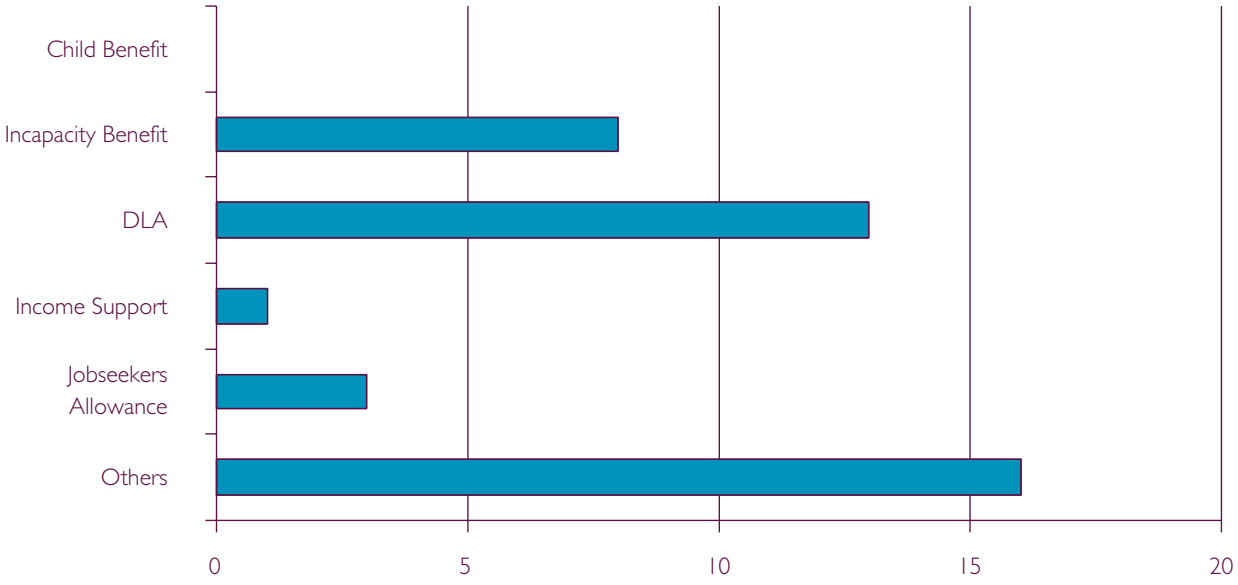


Fig 2.5 Benefits Complaints 2001/02
41 Complaints Received



Statistics

In addition to the 250 complaints received during the reporting year, 28 cases were brought forward from 2001/02. Action was concluded in 229 cases during 2001/02 and, of 49 cases still being dealt with at the end of the year, 47 were under investigation. In 23 cases I issued an Investigation Report to the MLA setting out my findings.

The 49 cases in process at 31 March 2002 were received during the months indicated in Table 2.3.

During 2001/02 91 cases were cleared without the need for in-depth investigation and 6 cases were settled. 130 cases were accepted for investigation. Complaints against authorities or matters not subject to my investigation totalled 45. I rejected 17 complaints where I considered redress in a court of law to be more appropriate and 16 where there was a right of appeal to a tribunal. The outcomes of the cases dealt with in 2001/02 are detailed in the Fig 2.6.

I also dealt with 6 letters making further representations relating to cases which I, or my predecessor, had previously concluded. By the end of the reporting year all of these letters had been dealt with.

Of the total of 2463 oral complaints received by my Office some 250 were against bodies within the jurisdiction of the Assembly Ombudsman. See Figs 2.7 and 2.8 at Appendix D to this Section.

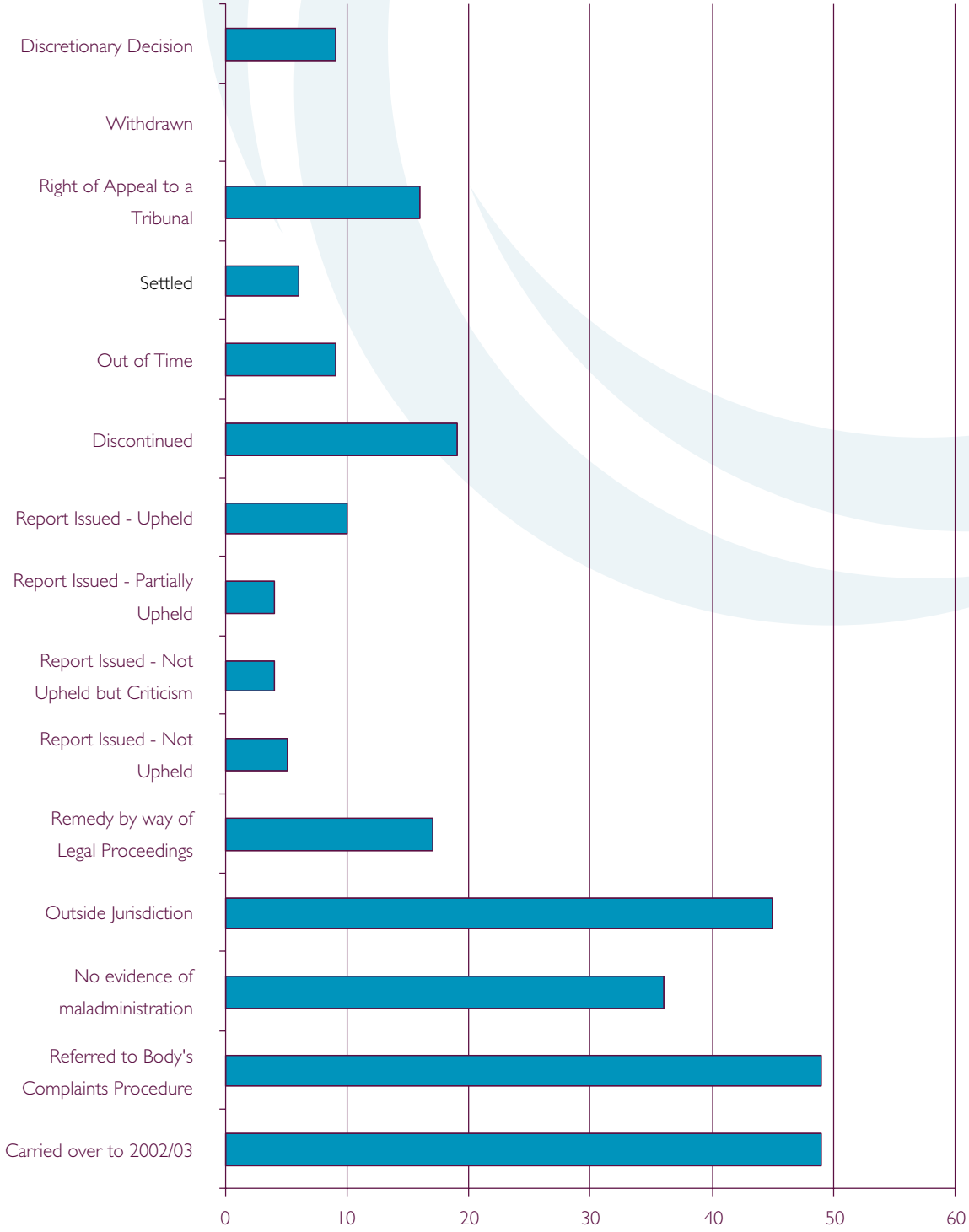
Table 2.2 Caseload for 2001/02

Number of uncompleted cases brought forward	28
Complaints received	250
Total Caseload for 2001/02	278
Of Which:	
Cleared at Initial Sift Stage	109
Cleared without in-depth investigation including cases withdrawn and discontinued	91
Cases settled	6
Full report issued to MLA	23
Cases in action at the end of the year	49

Table 2.3 Date of Receipt of Cases in Process at 31 March 2002

March 2001	4
April 2001	1
May 2001	4
June 2001	3
July 2001	4
August 2001	3
September 2001	3
October 2001	4
November 2001	1
December 2001	1
January 2002	2
February 2002	6
March 2002	13

Fig 2.6 Assembly Ombudsman 2001/02
Outcome of Cases



Time Taken for Investigations

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

The average time taken for a case to be examined, enquiries made and a reply issued at investigation stage was 14.5 weeks.

Reports Issued and Settlements Obtained After Investigation

23 reports of investigations were issued in 2001/02, compared to 54 in 2000/01. The breakdown according to the subject of the cases reported on was Planning 6, Benefits 4, Personnel 4, Agriculture 1, Water 1, Education 1 and Miscellaneous 6.

10 cases were fully upheld; 13 cases were not but 4 of these were partially upheld and 1 criticised the Department/Agency in 4. Settlements were achieved in all of the 10 cases that I upheld:-

Case No	Department/Agency	Subject of Complaint	Settlement
AO 68/01	DSD - CSA	Handling and processing of application for Child Support Maintenance	Apology & consolatory payment of £500
AO 118/00	DSD - SSA	Delays of Processing	Apology & consolatory payment of £2,000
AO 113/00	DOE - Planning Service	Erection of Telecomm Mast	Apology & consolatory payment of £500
AO 116/00	DSD – CSA	Securing of Child Maintenance	Payment to complainant increased from £200 to £300
AO 108/00	DOE – Planning Service	Failure to take account of earlier decision to refuse	Apology & consolatory payment of £1,000
AO 96/00	DARD	Handling of Application for Farm Dwelling	Apology & ex-gratia payment of £500
AO 42/00	DSD – CSA	Delay in processing application for Child Support Maintenance	Apology & ex-gratia payment of £400
AO 66/00	DFP – Recruitment Service	Not shortlisted	Apology & consolatory payment of £500
AO 55/00	DSD - SSA	Handling of DLA claim	Apology & consolatory payment of £500
AO 63/00	DVTA	Non – Renewal of Advanced Driving Certificate	Apology & consolatory payment of £1,000

Review of Investigations

DEPARTMENT OF AGRICULTURE & RURAL DEVELOPMENT

Eligibility for high rate payment under the Extensification Payment Scheme

In this case, the aggrieved person complained that the actions of the Department denied him sufficient time to make the relevant management decisions regarding the sale of some of his stock in the Autumn of 2000 to ensure his eligibility for the high rate payment, under the Extensification Payment Scheme (EPS). The complainant alleged that in addition to losing the extra premium of approximately £2,086, he incurred additional feeding costs during the winter months.

My investigation revealed that on 7 September 2000 the European Union agreed that a co-efficient provision should be made to assist producers claiming under the EPS, whose holdings had been subject to movement restrictions by the Department's Veterinary Office, following the outbreak of an epizootic disease. Although the Department subsequently issued details of that provision in a Press Release dated 4 October 2000, the complainant alleged that he did not see any such details. The Department's Permanent Secretary (the PS) told me that Press Releases are the traditional way of communicating in-year changes to Scheme rules/conditions. However, he acknowledged that on this particular occasion, "with the benefit of hindsight given this complaint, it clearly would have been better had the Department issued a letter to all producers", affected by the co-efficient provision. I concurred entirely with the PS, given that nine months of the year in question had already passed when the Press Release was issued.

By way of redress, the Department offered to reconsider the complainant's case. I am pleased to record that the PS subsequently decided to award the complainant £2,273.28 (plus interest to date of payment). Furthermore, the PS confirmed it was the Department's intention, as a general principle, to issue letters to producers in future, to inform them of any scheme change(s) which occur in the course of the particular 12-month period covered by Schemes such as the EPS. Overall, I considered this to be a reasonable outcome to a justified complaint. *(AO 43/01)*

Delay in recommendations to the Planning Service

In this case, the aggrieved person complained about the actions of the Department in advising the Planning Service on his need, in farming terms, for a dwelling house. The complainant alleged that he had to wait approximately 30 months before the Department finally made its recommendations to the Planning Service. According to the complainant, the delay caused him great stress and anxiety, as well as additional financial expenditure.

My investigation established that the Department's dealings with the complainant and its overall handling and processing of his outline planning application referral from the Planning Service were affected by, at least, a degree of maladministration, particularly in relation to the Department's letter of 13 March 1998. According to the Permanent Secretary (the PS), the letter was "too cautious and poorly worded" and that "a better written letter would simply have made it clearer that planning permission could not be recommended at that time". I agreed entirely with this. As the viability of the complainant's farming activities underpinned his application for planning permission, it was clear to me that he submitted his application too soon. Consequently, I was of the opinion that, ultimately, the issues raised in the Department's letter of 13 March 1998 had no direct bearing on the overall length of time it took the Planning Service to process the complainant's

initial outline, and subsequent full planning application. Having said that, I concluded that the letter in question caused the complainant to sustain annoyance, disappointment and some degree of unnecessary financial outlay. It was therefore against this background that I concluded that the complainant should receive what I considered to be appropriate redress, including financial, from the Department. I am pleased to record that the PS agreed to issue an apology to the complainant, together with an ex-gratia payment of £500. *(AO 96/00)*

Claim for *"force majeure"* in respect of a claim under the Suckler Cow Premium Scheme

In this case the complainant said he applied to the Department, on 5 July 1999, for Suckler Cow Premium (SCP) for a total of 118 cows and, at that time, he was not aware that his entire herd was affected by brucellosis. The complainant said tests, carried out in late June 1999, found that brucellosis was present in a number of his cattle. He stated, however, that he was unaware that all of his female stock was to be removed by the Department and, although the Department claimed that it had notified him of this in June 1999, he contended that he did not receive any such notification.

The complainant said that, on 15 July 1999, he informed the Department's Grants and Subsidies Division of the removal of his herd and claimed *force majeure* in respect of the animals the subject of his SCPS claim. However, he said it was not until 20 July 2000 that the Department informed him that his claim for *force majeure* had been rejected. The complainant said that, in the intervening one-year period he made financial arrangements with his bank, based on the amount of premium he expected to receive, to enable him to restock his farm and was facing financial difficulty because of the unreasonable length of time taken by the Department to notify him of its decision. He added that he considered he was being penalised by the Department and that his claim for *force majeure* was indeed valid.

Having investigated this complaint I established that the Department's policy documentation, including that provided to SCPS applicants, stated "loss of cattle for reasons of *force majeure* means abnormal or unforeseeable circumstances which you could not avoid by reasonable action". I also established that the crucial element of a *force majeure* determination is based on timing of the event, i.e. if a producer was aware of a factor, which would/was likely to prevent him from complying with the Scheme rules, then *force majeure* could not be invoked. As I saw it, much depended on whether, before he submitted his SCPS claim on 5 July 1999, the complainant was aware that his herd was going to be bought out by the Department. On the basis of the evidence available, I formed the view that, by 2 July 1999 at least, the Department had taken reasonable steps to inform the complainant that his herd was due for an imminent buy-out because of the brucellosis situation. I therefore did not find the Department's decision that *force majeure* could not be invoked in respect of the complainant's SCPS claim of 5 July 1999 to be unreasonable and thus I did not uphold this element of his complaint.

With regard to the delay by the Department in notifying the complainant of the outcome of his SCPS claim and related request for the application of *force majeure* provisions to his claim, the Department's Permanent Secretary (PS) acknowledged that there had been unacceptable shortcomings in carrying out the investigation of the complainant's application and that there was an inordinate delay in reaching a decision. In the light of this acknowledgement I did not see the need to labour the matter of the Department's failures in this regard, which I found to have constituted maladministration. In saying this, I took account of comments made by the PS regarding the difficult and exceptional circumstances which pertained within the section concerned at the time. I was pleased to note that this situation had subsequently been resolved and that new control procedures and closer line management supervision had been put in place to ensure that files are handled timeously and appropriately.

I welcomed the fact that the PS, in his review of the case, had acknowledged that the processing delays on the part of the Department denied the complainant the opportunity to lease his SCP Quota during 1999 and that, consequently, he was prepared to make an ex-gratia payment of £7,080. I sought and was provided with details of the basis on which this figure had been calculated. I was satisfied with the information provided. I was pleased to acknowledge the PS' acceptance of my suggestion that the proposed (ex gratia) payment be subject to the payment of interest.

I concluded that the Department's handling and processing of the complainant's *force majeure* request was attended by maladministration, which caused him the injustice of not being able to lease his SCP Quota during 1999. However, I regarded the PS' redress proposals, in recognition of the injustice caused to the complainant, as being fair and reasonable in the circumstances. Normally, in a situation such as this, I would also have recommended that the Department issued an apology to the aggrieved person. However, I noted that, through its Deputy Secretary, acting on behalf of the PS, the Department had already apologised unequivocally to the complainant and I considered this to be a satisfactory response.

I subsequently learned that the total payment made to the complainant by the Department was in the sum of £8,300.84. *(AO 39/01)*

DEPARTMENT OF EDUCATION

Adverse inspection report

The aggrieved person in this case complained about what he considered had been the critical and destructive way in which the Department's Education and Training Inspectorate informed him of its findings with regard to his teaching performance following a school inspection. He further alleged that the Chief Inspector (CI) had failed to address many of the points he had raised in letters to her and that she shifted the onus of replying to him to his employing authority. In addition, he stated that the CI had initially refused to meet with him and it was only due to his perseverance that the meeting took place.

During the investigation the complainant elaborated on the main issue of his grievance by stating that he had endured a fifteen-minute verbal report from the Department's Inspector which had been delivered in a callous and insensitive manner with hardly a positive word and that he had been psychologically brutalised by the whole experience. The Department refuted the complainant's account of the interview and it provided a copy of the Inspector's written report of the meeting.

My investigation established that the complainant and the Department's Inspector were unaccompanied at the meeting at which the Inspectorate's findings about his teaching performance were relayed. Furthermore, there were no independent witnesses to the event. I considered carefully the complainant's recollection and the Inspector's written record of the event, and acknowledged that the content of the Inspection report was a 'difficult' message to deliver and equally a 'difficult' message to receive. However, I was unable to make a finding about the oral delivery of the Inspectorate's findings to the complainant because there were no witnesses present at the interview. The Department apprised me that at future feedback interviews with teachers it proposes to invite the school Principal to be present as an observer. I welcome this development.

On the matter of the CI's alleged failure to reply to many of the points raised by the complainant in his letters to her, I reached the conclusion that it would have been prudent for the CI to have provided a fuller reply to the complainant. However, from an examination of the Department's documents, I was satisfied that despite the brevity of the CI's response to the complainant, she did nonetheless investigate his complaint. Also, I did not find any evidence to support the complainant's contention that the CI had shifted the onus for replying to him to his employing authority.

With regard to the final aspect of the complaint, I identified that the Department's procedures do not require the CI to meet post-inspection with a teacher whose teaching is found to be unsatisfactory. I was satisfied that the CI was aware of the extent of the complainant's concerns and that her initial decision was taken with this knowledge. Furthermore, the CI's subsequent decision to meet the complainant appeared to be the result of further representations from him and his Trade Union representative and I did not attach any untoward motive for this change in stance by the CI.

Overall, therefore, I did not uphold the complaint. *(AO 15/01)*

DEPARTMENT OF THE ENVIRONMENT

DRIVER & VEHICLE TESTING AGENCY

Withholding of Advance Driving Instructor's licence

In this case the complainant had been employed by the Agency as a Driving Examiner. He told me that when he was appointed as a Driving Examiner in October 1980, he was required to submit his Advance Driving Instructor's licence (ADI licence). He stated that on surrendering his licence he had been given the assurance that it would be returned to him when he left his post. On leaving his post, he requested his ADI licence and was told that it could not be returned to him and he would have to undergo a 3-part examination process. The complainant alleged the Agency had acted unreasonably by withholding his ADI licence and in doing so it was depriving him of earning a livelihood in his chosen profession. He also alleged that the Agency was guilty of inequitable treatment because he knew that the Agency had a practice of returning ADI licences to supervising examiners without requiring them to undergo the 3-part examination process.

In response to the allegations made by the complainant, the Agency told me that it had no record to back up the complainant's claim that he had been given an assurance that his ADI licence would be returned to him. I was told that the decision not to return the ADI licence to the complainant was based on the relevant legislation which deals with ADI registrations. In relation to the allegation that some ex-examiners had their ADI licences returned, I was told that the Agency was not aware of any individual who had their ADI licence returned to them after a period of employment.

As part of my investigation personnel files relating to three ex-employees were examined. The examination of those files revealed that a driving examiner and a supervising examiner had their ADI licences returned to them. I noted that the third ex-employee had not had his ADI licence returned to him but he had also claimed that he had been given the same assurance which the complainant stated he had been given. On probing the matter further with Agency officials, I discovered that the Agency had been operating a practice of returning ADI licences to supervising examiners without requiring them to go through the 3-part examination. I learnt that the practice of returning ADI licences to driving examiners had not been operated by the Agency for some time.

On the basis of the information which I had uncovered, I concluded that, on the balance of probability, the complainant had been given the assurance that his ADI licence would be returned to him. Having reached the conclusion that he had been given the assurance, the next issue that I had to examine was the Agency's refusal to honour that assurance. In dealing with that aspect, I examined the legislation which governs ADI registrations. Having studied the legislation, I was satisfied that the complainant did not meet its requirements and consequently I could not challenge the Agency's decision not to honour the assurance which the complaint had been given. Although I could not uphold the substantive issue of the complaint made to me, I concluded that the

complainant had a right to feel aggrieved in relation to the issue of inequitable treatment. The Agency accepted my recommendation that, in recognition of the hurt which the complainant had been caused, it should issue a consolatory payment of £1000 to him and the Agency's CE agreed to write to him to apologise for the inequitable practice which the Agency was operating. Finally, I was pleased to receive an assurance that the practice of returning ADI licences to supervising examiners has now ceased. *(AO 63/00)*

PLANNING SERVICE

Handling of a planning application for a residential development

This was a multi element complaint in which the complainant alleged that she had suffered injustice as a result of the Planning Service's (PS) handling of a planning application for a residential development adjacent to her home. One of the most serious allegations was that the PS had not pursued the complainant's claim of having an interest in the site for which planning approval was sought.

The complainant alleged that planning permission for the development had been granted in January 2001 even though, in November 2000, she had registered an objection to the proposal. She claimed to have produced a document proving her interest in the site and had assumed that the PS took the matter up with the applicant in order to rectify matters. As she heard nothing from the PS she had taken it that the applicant was no longer applying for permission and the case was closed. She stated that she was dumbfounded when she received the letter telling her that planning permission had been granted.

On investigation I learned that there were three derelict cottages on the site. The applicant was the beneficiary of one half of the three cottages and also had a life interest in the remaining half of the three cottages. In the event of the applicant's decease the complainant's son had been named as inheriting the applicant's life interest share of the cottages and it was this interest that the complainant had purchased from her son. My examination of the PS file showed a signed P2 form from the applicant confirming that she had a life interest in "every part of the land to which the said application relates". There was no written objection or letter of explanation from the complainant nor had she made any written claim of ownership. There was, however, a copy on file of the document which recorded the purchase of her son's share of the cottages and this had been registered as "non committal". Although there was no recorded evidence of the Development Control Group having considered this document for which I criticised the PS, the Chief Executive assured me that it had been considered but it was agreed not to take the land ownership issue any further. I also noted that the PS had contacted the applicant's solicitor who confirmed that she had a life interest in the three cottages. This was in accordance with the information provided by the applicant on the P2 form. I concluded that the decision by the DCG not to take the land ownership issue any further was a discretionary decision which, in the circumstances and particularly in the absence of any written objection or claim of ownership, I did not find unreasonable. Furthermore, I was told that under current planning legislation there is no requirement for an applicant to actually own the land for which planning permission is being sought.

Overall, I was satisfied that in processing the application the PS had identified and paid particular attention to the relevant policies. Also relevant factors were considered; the significance or otherwise of which is a matter of a discretionary decision by the PS which, in the absence of maladministration, I could not challenge. I did not see that the PS had acted unreasonably and did not, therefore, consider that I had grounds to challenge the opinion to approve.

I did not uphold the complainant's further allegation of failure to neighbour notify her about the proposed development although I did impress upon the PS the importance of having reliable up to date information available which, should there be any doubt, would enable

staff to verify addresses of neighbouring property. I did, however, criticise the PS for failing to record relevant comments/advice given to the complainant when she met with a planning officer on two separate occasions to view the application documents and register her objection; for issuing an erroneous letter to the complainant and for its inaction in not responding to the complainant's request for an application form.

Finally, I was pleased to record that, with regard to the criticisms in my report, the PS advised me that officials had recently been reminded of the need to maintain written records of important meetings, telephone calls etc, as part of the introduction of new measures aimed at enhancing transparency and accessibility. New measures also included a revised Development Control Officer's Report format to assist staff in recording relevant information. The PS had enhanced staff resources in each planning office in order to assist in providing information to the public and a project, the Common Addressfile Project, was currently underway to develop and maintain a comprehensive database of addresses for the whole of Northern Ireland.

Overall this was a lengthy and time-consuming investigation at the end of which I was unable to say that the PS's various actions were attended by maladministration from which the complainant sustained any substantive injustice. *(AO 114/00)*

Handling of planning application for meat products plant and bakery

The complainants alleged that suspicious circumstances attached to the granting of planning approval for a meat products plant and bakery to the rear of their home. They felt that objections had been side stepped to facilitate the planning application going through and complained that an unsatisfactory and incomplete response had been given to their objections by the Chief Executive of Planning Service. The complainants also stated that amended proposals and changes to block plans took place after consultative bodies, including Roads Service, had already given their opinion.

In the course of my investigation I examined the planning policy background and carefully scrutinised all of the PS records, including the Development Control Officer's (DCO) Report and the decision notice. I found considerable evidence on the PS file to demonstrate that PS had taken action based on the comments of the complainants and other objectors. In fact this accounted at least in part for the amendments to the block plans. There was also clear evidence that Roads Service had been fully consulted on these amendments. I found that the DCO report acknowledged all of the issues raised by the complainants and I was satisfied that full and proper consideration was given to the application. I could not say that the PS sidestepped objections nor could I find any other grounds to challenge the opinion to approve the application. I further observed that the decision notice, approving the application, contained a number of conditions and informatives which were aimed at safeguarding the living conditions of residents in adjoining and nearby properties.

I studied carefully the letter from the complainants to the Chief Executive of PS and his response. The letter of complaint raised 7 specific points and the response dealt with each of these in turn. I examined the documentation to which the CE referred in his response to the complainants and I was satisfied that the information provided in relation to all 7 points was correct. I did not find the PS response to be unsatisfactory or incomplete.

Other issues were raised by the complainants including issues relating to neighbour notification and an alleged failure to supply written details of the proposed development. These too were investigated but no evidence of maladministration was found. *(AO 95/00)*

Failure to take account of earlier decision to refuse

In this case the complainant was aggrieved with the granting of outline planning permission for a dwelling in a field to the rear of her property. The complainant argued that objections to the application, lodged on her behalf by a legal

representative, had not been given full consideration. In addition it was alleged that Planning Service (PS) had failed to take account of a decision in 1991, upheld by the PAC, to refuse permission for development of the site because of the undesirable change it would create in the character of the rural area when added to the dwellings and buildings already in existence.

In the course of a lengthy and complex investigation I explored the policy framework against which decisions were made in respect of the 1991 and 2000 applications for development on this site. This revealed that there had been a significant revision of planning policy in the intervening period. The decision in 2000 was taken against a provision contained in "A Planning Strategy for Rural Northern Ireland" which states that the test applying to consideration of single dwellings in the countryside is whether such a proposal is likely "to cause a detrimental change to the overall character of rural areas". In his reply to my enquiries the Director of Professional Services (DPS) in PS stated that this test was more stringent than that applied by the policies in force in 1991, these having been withdrawn after the introduction of "A Planning Strategy for Rural Northern Ireland" in 1993. PS had judged that refusal of the 2000 planning application would be difficult to defend in terms of being "detrimental" to the character of the area. When taken together with other material considerations, including the effect of changes in vegetation on the site between 1991 and 2000, PS formed a view in favour of approval.

In considering the handling of the outline planning application submitted in 2000 I scrutinised all of the relevant PS documents. These showed that the Development Control Officer (DCO) who inspected the site had recommended refusal of the application. PS informed me, and I had no reason to doubt, that it was only after considering the DCO's report in conjunction with the objections received, current planning policy and the earlier PAC decision that the Development Control Group (DCG) decided in favour of approval. I found the professional planning report of the DCG meeting provided no details of the reasoning and discussion which informed this decision nor could I find anything other than a passing reference to the PAC decision. I further found that when consulting the Borough Council on the application PS failed to draw attention to the PAC decision, albeit that the report was amongst papers circulated at the meeting by the Council's Chief Executive.

My most serious criticisms of the PS' handling of this case flowed from actions following the Council meeting at which it was agreed to defer a decision on the application, pending a site meeting. An administrative error resulted in a planning approval notice issuing prematurely, in advance of the site meeting. I considered that this extremely careless action resulted in a denial of the Council's statutory right to be fully consulted on the outline planning application and, in addition, led to serious distress and disturbance for the complainant who had quite properly expected an opportunity to be heard at the site meeting before any final decision was issued. The site meeting subsequently took place and I found that in its approach to a suggestion from the complainant's MLA of a compromise site for the proposed dwelling the Planning Service made a genuine attempt to ameliorate the complainant's situation.

Having considered all of the evidence which emerged in the course of this difficult investigation I concluded that the discretionary decision made by the PS to approve the planning application was not wholly unreasonable. However I found that the deficiencies identified in PS record keeping and in the errors which permitted premature issue of the decision notice, collectively amounted to maladministration. I recommended that the Acting Chief Executive should issue an apology to the complainant together with a consolatory payment of £1,000. I am pleased to say that the Acting Chief Executive agreed to this course of action. In addition PS advised me of the introduction of a revised DCO Report form which should address some off the deficiencies highlighted in my investigation. PS also undertook to inform me of the remedial

measures introduced to minimise the possibility of a repetition of the human error which occurred in this case. *(AO 108/00)*

Planning application for a telecommunications tower

In this case the complainant raised a number of issues in his claim to have sustained injustice as a result of maladministration by the Planning Service (PS) in its processing of a planning application for the erection of a telecommunications tower on a site to the rear of his home.

The main aspect of the complaint was the alleged lack of consideration by the PS in processing the planning application and the effect of the proposal on the complainant's property. I learned that the existing legislation with regard to the erection of telecommunications masts permitted the erection of masts not exceeding 15 metres in height above ground level without the submission of a planning application. However, such proposals, known as permitted development, are conditional upon the developer applying to the PS for a determination as to whether or not the prior approval of the PS is required for the siting and appearance of the development. This is known as a prior approval application. Having published in the press a notice advising of the receipt of such an application and having also notified the local council, the PS has a period of 42 days beginning on the date of receipt of the application in which to make and notify its determination on whether or not prior approval is required to the siting and appearance of the mast. The mast in question fell into this category.

During my investigation I studied the content of the relevant legislation, policy and guidance together with the planning officer's assessment of the proposal and surrounding area. Overall I was satisfied that the PS had complied with the requirements of the legislation and had identified and paid particular attention to the relevant policy and guidance. I was also satisfied that the location, size and scale of the mast together with the complainant's objections were issues known, noted and considered by the PS prior to making any decision on the application. Overall, I could not see that the PS had acted unreasonably nor did I find any evidence of maladministration in the decision making process. I did not, therefore, consider that I had grounds to challenge the PS opinion to approve the application.

The complainant also felt that the PS should have considered the possible resiting of the tower. My investigation revealed that the PS has a duty to determine applications as submitted. In this instance the PS had concluded that the proposed siting of the tower was acceptable and there was, therefore, no reason for it to suggest an alternative location. I concluded that the PS had not acted unreasonably in not seeking to reposition the mast.

The complainant also said that he had been advised that he would be told of the decision taken on the application but no such advice was received. I discovered that, in a letter from the PS, the complainant had been told that he would be advised of the outcome of the application. I also discovered that, in a subsequent letter from the PS to the complainant, the PS admitted that due to an oversight it had omitted to advise him as promised. The letter also apologised for the oversight. There was also a further letter to the complainant in which the PS stated that the case officer had made a genuine mistake in not notifying him of the decision taken on the application and detailed various steps which had been put in motion to ensure that this did not happen again. While I criticised the PS for this administrative lapse I noted that the PS had already apologised to the complainant for the oversight and had taken steps to ensure no recurrence of such a situation.

The PS had written to the complainant on 13 October 2000 and the complainant stated that a particular paragraph was incomprehensible as it seemed to say that "prior approval was not required" yet the application was advertised and comments invited. The complainant believed that the PS could have simply let the

project go ahead regardless. I learned that what the statement actually meant was that an application had been made to determine whether or not the prior approval of the Department was required for the siting and appearance of the mast. Following consideration, the PS had determined that it did not wish to influence these matters and no further consideration was necessary. I acknowledged the PS's acceptance that the form of wording was confusing and welcomed steps taken in order to rectify matters.

The complainant also expressed concern with regard to the perceived health effects of telecommunications masts and said that the PS seemed to be sheltering behind some government body but he had not been given an address or contact point for that body. I learned that the PS is guided by the National Radiological Protection Board (NRPB) in relation to the perceived health effects of this form of development. I had to accept that the PS, like myself, has no expertise in the alleged risks to health from telecommunications masts and must, therefore, be guided by experts in the field such as the NRPB which was established by the radiological Protection Act 1970 to provide information and advice to Government and others in relation to protection from radiation hazards, to undertake research and to provide technical services to those concerned with radiation hazards. In the circumstances, I did not consider the PS to be "sheltering behind some government board". The complainant also said that the PS had not given him an address or contact point for the NRPB. I learned that it was not normal practice for the PS to provide a contact address for the NRPB and at no time had the complainant requested this information. I could not, therefore, say that the PS had failed to provide the information. However, while acknowledging that the PS had, through its reply to me, provided the complainant with the information he required, I considered that, on this occasion, it would have been helpful for the PS to have provided the address when first approached by the complainant.

The complainant had sent a newspaper cutting to the PS and he expressed his disappointment with the PS response which merely noted the contents of the article. The PS explained to me that the article in question referred to a report of a pressure group preparing to take legal action against the UK Government on health concerns regarding masts. I was told that the PS did not feel that it had anything to say on threatened legal action against the UK Government and could not take such threats into account when determining the application which was the subject of the complaint. Having read the article I agreed with the PS view but considered that it would have been helpful if it had provided the complainant with the explanation which I had been given. As it was, I considered the PS response to be blunt and unhelpful and could well understand how it would be perceived as dismissive.

Overall, apart from criticising the PS for an administrative lapse in failing to notify the complainant of the decision taken on the application and for its response to the complainant with regard to the newspaper article, from my investigation and careful examination of the information made available to me I was unable to say that the PS's various actions were attended by maladministration from which the complainant sustained any substantive injustice. *(AO 119/00)*

Planning approval for telecommunications mast

The aggrieved couple in this case complained about the way in which the Planning Service processed a planning application and a prior approval application for the erection of a telecommunications mast (telecom mast) in the vicinity of their dwelling. They alleged that they had not been neighbour notified about the planning application or informed that the application involved encroachment of their land. They further stated that they did not feel that the Planning Service had taken account of their objections and they could not understand how the Planning Service could permit the construction of a telecom mast close to an ancient monument.

During my investigation it was established that telecom operators are given permitted development rights for a range of telecom developments subject to certain limitations and this includes the installation of masts up to 15 metres in height as in this case. The telecom operator initially chose to submit to the Planning Service a normal full planning application for the erection of a telecom mast even though this was not in fact required by legislation. In processing the planning application the Planning Service initially failed to neighbour notify the complainants. When this omission came to light during the consultation period with the Council the Planning Service issued notification of the planning application to the couple. They subsequently lodged their objections to the proposal. I acknowledged that the complainants would not have been neighbour notified had the telecom operator submitted a 'Prior Approval' application initially. However, in the event they were able to submit their objections to the planning application.

My investigation also confirmed that the planning officer had sought clarification on the status of the ancient monument and had recorded comments on matters including location, proximity, access and visual amenity in connection with the proposals for the telecom mast. Therefore on this issue I was satisfied that the Planning Service had had regard to the complainants' objections. As it transpired the full planning application for the telecom mast was withdrawn prior to a planning decision being issued. The telecom operator subsequently submitted a 'Prior Approval' application, which meant he was applying to the Planning Service for prior approval as to the siting and appearance of the proposed telecom mast. In this type of application the Planning Service is required to issue a determination within a 28-day time limit and if it fails to do so the planning legislation permits the telecom operator to proceed with the proposed development. The investigation revealed that in processing the 'Prior Approval' application planning officers misinterpreted relevant case law and it then became necessary to seek legal advice on the matter. This had the effect of prolonging the processing of the application beyond the 28-day time limit resulting in the telecom operator obtaining approval by default. I concluded that while the planning officers had acted in good faith the misinterpretation of the case law amounted to maladministration.

I was also critical of the Planning Service in that it had failed to update the complainants' public representative that the telecom mast proposals had been granted Prior Approval by default. Consequently, for 7 months the complainants' believed incorrectly that the proposal to install the telecom mast had been deferred. On the matter of the complainants' allegation that the use of access had caused encroachment of their property, I accepted that this is a civil matter between the parties concerned and that the Planning Service is not empowered to alter this position. During my investigation I became aware that there are changes proposed to the legislation in respect of telecommunications development which hopefully will bring greater clarity to the process for dealing with telecom mast proposals.

Overall, I concluded that the failings and maladministration by the Planning Service had caused the complainants' confusion, anxiety, and raised expectations. I therefore recommended that a letter of apology should be sent to the complainants' together with a consolatory payment of £500. I am pleased to record that the Chief Executive of the Planning Service agreed. *(AO 113/00)*

Handling of a reserved matters planning application

This was a multi element complaint in which the aggrieved person alleged that she had suffered injustice as a result of maladministration by the Planning Service (PS) because of its handling of a reserved matters planning application for a commercial and residential development adjacent to her home.

In addressing the issues raised by the complainant regarding the PS' handling of the planning application in question, I considered it necessary to examine events dating back to 1994 when the first of four applications was

made in relation to the site in question and which, in my view, had a significant bearing on more recent developments. I discovered that the Divisional Planning Office (DPO) had acted in error in regarding an earlier Article 28 application (to develop land without compliance with conditions previously attached) and approval relating to the same site as extending the time limit for the submission of the reserved matters application in question. The DPO had processed the reserved matters application unaware that the submission was in fact out of time. The reserved matters application was therefore accepted well outside the statutory time limit which I regarded as an act of maladministration. However with regard to the determinations made by the PS I have no role in ruling on the legality of planning decisions. I concluded that it would now be for the courts to rule authoritatively on the status of the Article 28 permission and the validity of the approval of the reserved matters application. To that extent, I concluded, from all the evidence made available to me, that the PS dealt with the reserved matters application as if it had been properly submitted and it was in that light that I considered how the PS dealt with the issues raised by the complainant during the processing of the application. I also discovered that consideration of the reserved matters application took place against the background of an outline approval which had established the principle that development on the site in question was acceptable.

Two of the more serious allegations made by the complainant were those of inaccurate drawings which did not indicate the proximity of her property to the proposed development and of failing to adequately address her concerns. I was provided with a copy of the 1/2500 scale ordnance-based site plan and a 1.500 scale plan. I noted that the proposed development site was clearly indicated on both, as were all the neighbouring properties including the complainant's property. In light of various documents I examined, I noted a consistency throughout with regard to references to the measured distance between the complainant's property and the completed development. I did not uphold this aspect of the complaint.

The complainant also felt that her objections were not adequately addressed and, although the original plans were amended she did not consider these amendments to be sufficient to address her concerns. My investigation revealed that, between August and November 1999, fourteen letters of objection were received by the PS from the complainant and her representatives. I was satisfied that, once the PS was alerted to the complainant's concerns, it took appropriate action in order to address those relevant to the consideration process. This involved a series of meetings between officials from the PS, the developer, Councillors and the applicant's agent several of which the complainant attended. The applicant was also required to submit amended plans for a lesser/reduced proposal which had specific relevance to properties in the avenue where the complainant lived. Overall, I was satisfied that the PS took into account the issues raised by the complainant as objections to the planning application.

I did criticise the PS for initially failing to neighbour notify the complainant about the proposed details of the development and when it did subsequently notify her there was an inadequate period of time in which to respond. However, I was satisfied that the situation was rectified and the concerns later raised by the complainant were given proper consideration.

Notwithstanding the maladministration in accepting the reserved matters application and its possible impact on the validity of the actual determination, which would now be a matter for the courts, I did not find evidence of maladministration in the processing of the application from which the complainant sustained any substantive injustice. (AO 118/99)

DEPARTMENT OF FINANCE AND PERSONNEL

Handling of secondment opportunity

In this case the complainant considered he had suffered injustice as a result of maladministration by the Department and one of its agencies, the Valuation and Lands Agency (VLA), in which he is employed. The complaint concerned a secondment opportunity for valuers to work in the Cayman Islands for a period of six months. The complainant alleged that in handling the competition for the secondment there were no agreed competencies; he assumed that the Department's Guide for Candidates and Line Managers on Criteria Based Interviewing (the Guide) would be the basis for the competition; the Department failed to correctly follow procedures and Northern Ireland Civil Service (NICS) guidelines; he had been given incorrect and false information and the full terms on offer were not revealed to him. Furthermore, he alleged that there had been a failure to answer his telephone calls and correspondence in order to clarify issues.

My enquiries of the Department confirmed that the competition in question was initiated by the Cayman Islands Government (CIG) and facilitated by the VLA. The CIG is not a body subject to my jurisdiction. My investigation was confined to the actions of the Department and/or the VLA.

My investigation revealed that, prior to interviews, the VLA had advised all candidates who had registered an interest of a single criterion which had been provided by the CIG. On the day of interviews, the CIG introduced four additional competencies to be tested at interview. I was satisfied that other than the single criterion, no further information on competencies and/or criteria was received by VLA prior to the interviews. I could not, therefore, say that the VLA had failed to pass on relevant information to candidates. The method of selection, including the specific competencies/criteria used to assess candidates, was, and could only be, determined by the CIG and as such were outside my jurisdiction. I did, however, consider it unfortunate that the VLA had not secured a clear understanding of the procedures that would apply against a background that all candidates were VLA staff and therefore would have had an understandable expectation of more definitive advance information of the interview process and procedures that would inform it. With regard to the Department Guide being used as the basis for the competition, I found no evidence to suggest that the complainant had at any time been advised this would be the case. I concluded that it was clearly an unfounded assumption on the part of the complainant.

In examining the allegation of having been given incorrect and false information, I found that, on 15 August 2000, having found the terms and conditions of the secondment to be unacceptable, the complainant withdrew from the competition. As it transpired the package on offer at this time was incomplete and, on 21 August 2000, DFP advised VLA of the complete financial package. I was satisfied that prior to 21 August 2000 all candidates, including the complainant, had been offered the same financial package and, based on that package, one candidate had unconditionally accepted the secondment. I found that if the complainant had not withdrawn from the competition he would also have been offered the enhanced financial package. I was satisfied that although the financial package offered prior to 21 August 2000 was incomplete both the Department and VLA believed it to be correct at that time. I found no evidence to suggest that either the Department or VLA knowingly provided incorrect or false information nor could I say that the complainant was disadvantaged in that he made his decision based on the same information which had been provided to all other candidates.

The complainant was aggrieved that when the VLA became aware of the "true offer" he was not given a second chance to change his

position. I found no evidence of any commitment by VLA to give the complainant a second opportunity to review his position. In my view the complainant made an assumption that would be the case. Furthermore, I did not consider it unreasonable of the VLA not to re-offer the position to him. Finally, I did not uphold the allegation that there had been a failure by the VLA to answer his telephone calls and correspondence in order to clarify issues.

Overall I was satisfied that there was no evidence of maladministration by the Department /VLA and therefore I could not accept the complainant's contention that he had suffered an injustice as a result of the actions of the Department /VLA. *(AO 6/01)*

Not shortlisted for job interview

In this case the aggrieved person complained that he had applied for the post of Higher Professional & Technical Officer (HPTO) Planning Officer believing that he fulfilled the specified criteria. However, he was subsequently informed by the Recruitment Service that he did not satisfy the required experience criterion. Despite having written to the Recruitment Service on numerous occasions to request the reasons for the selection panel's decision, the Recruitment Service failed to provide an explanation to him.

My investigation revealed that there was a prolonged exchange of letters between the complainant and the Recruitment Service and that at the end of the exchange the complainant was no wiser as to the reason for the selection panel's decision that his application did not meet the experience criterion. I identified serious failings by the Recruitment Service in the way in which it had dealt with the complainant's genuine enquiries. I also recorded that this was not an isolated case, having previously investigated a similar complaint about the standard of responses issued by the Recruitment Service to unsuccessful candidates. The Permanent Secretary assured me that he has asked Recruitment Service to review its procedures. I recommended, and the Permanent Secretary agreed, to issue to the complainant a letter of apology, together with a consolatory payment of £500. *(AO 66/00)*

Rejection on grounds of criminal record

In this case the complainant claimed to have suffered injustice as a result of maladministration by Recruitment Service (RS) in dealing with his application for the post of TGII Vehicle Inspector with the Driver and Vehicle Testing Agency (DVTA).

As part of the application process the complainant completed a Character Reference Form and security form on which, as required, he supplied details of a conviction for theft in 1998. He later attended an interview following which he was informed that he had been found suitable for the post subject to pre appointment enquiries. He was subsequently turned down for the post on the grounds that he had sustained a conviction within the previous three years. The complainant felt aggrieved that the documentation issued to him at the time of application appeared to give no indication of the possible effect of a declared conviction. He was also unhappy that RS went on to invite him for interview apparently in the knowledge that its policy is not to offer employment to those with unspent convictions. The annoyance was compounded by what he perceived as inadequate responses by RS to his follow up enquiries.

As part of my investigation I examined carefully all of the documentation issued to applicants for the post of TGII. This led me to the view that, in completing the Character Enquiry Form, which provides a table setting out rehabilitation periods attaching to convictions, and the security questionnaire, the complainant was alerted to possible effects of convictions on his application. I found further cautionary advice contained in the invitation to interview which clearly stated this did not imply a decision on eligibility for employment. However I concluded that there was a lack of clarity in the guidance on eligibility contained in the Information for Applicants leaflet. I recommended that

paragraph 2 of that document should be amended so as to set out clearly all the factors constituting eligibility and to flag up the possible effect of declared convictions on the assessment of eligibility.

The complainant questioned why he was invited for interview if, as appeared to be the case, there was a three year rule attaching to convictions which automatically disqualified him from appointment. In his response to my enquiries the PS of the Department made clear that RS must complete certain pre appointment formalities relating to a number of matters including health, character and knowledge, ability, aptitude and potential required to perform the duties of the post and that, in practice, many of these are only completed after interviews have taken place. An additional security check is carried out independently of RS and the time taken to report is outside of its control. The PS clarified that there is no rule barring anyone with a criminal record from gaining employment in the NICS for a period of three years. However in this case, where the post fell within the category of 'excepted employment' under the provisions of the Rehabilitation of Offenders (NI) Order 1978, internal guidelines set out by the then Civil Service Commission were applied in considering whether the complainant should be offered the job. The important factors informing the decision were that the TGII post was classified as 'excepted employment', three years had not elapsed since the complainant's conviction and it was decided that the penalty imposed was not a minor one. I considered that this was a discretionary decision which I had no reason to challenge. I also found that RS had followed standard procedures in reserving a definitive decision until the results of all eligibility and security checks were known. In these circumstances I was unable to say that it had been wrong of RS to invite the complainant for interview.

I could fully understand the complainant's sense of disappointment in being told that he could not be offered the post having been notified that he was recommended as suitable. However I concluded that the complainant was treated fairly in the decision regarding his application and in the administrative procedures followed by RS in the lead up to that decision.

My examination of the correspondence exchanged between the complainant and RS, both before and after the decision not to offer him employment was notified, led me to conclude that the standard letters used by RS were uninformative and misleading. I conveyed this criticism to RS and indicated that its responses to applicants should be more tailored and helpful. I recommended that the PS should apologise to the complainant for the standard of responses which he had received. I am pleased to say that the PS agreed to issue an apology and to include my comments in a review of procedures in respect of responses to candidates. *(AO 72/00)*

RATE COLLECTION AGENCY

Refusal to backdate Housing Benefit and initiation of legal proceedings

The complainant in this case complained that Rate Collection Agency (RCA) had been unreasonable in not backdating Housing Benefit when he moved house and should not have initiated legal proceedings against him when he was in default of Rates.

I found that the 6-week period for automatic backdating of Housing Benefit is laid down in Regulations. These Regulations also provided that backdating could occur for a maximum of 52 weeks from the date of a request for backdating if an acceptable case was made. The complainant had signed a Benefit statement that he knew he should notify the Housing Benefit Branch if there was any change in his circumstances but he failed to do so on moving house. He applied for Housing Benefit some 4 months after the move but on receiving notice of refusal to backdate he failed to appeal within the prescribed time limit. He queried his case only when faced with the threat of legal proceedings. The decision to initiate legal proceedings is a matter which is outside my jurisdiction.

I found no evidence of maladministration in respect of the other issue within my jurisdiction. *(AO 9/01)*

DEPARTMENT FOR RURAL DEVELOPMENT

WATER SERVICE

Interruption in water supply

The complainant alleged that the Water Service (WS) had failed to provide a regular water supply for five consecutive days from 31 December 2000 to 4 January 2001. She asked about the payment of compensation by the WS for the inconvenience caused by the interruption. The complainant also stated that the WS had failed to provide her with accurate information during the period of interruption of the water supply. She also claimed that the interruption to the water supply was a regular occurrence each winter and that the WS had failed to take remedial action over a period of years to prevent such interruptions to the water supply to her home.

The WS confirmed that no mains water supply was available at the complainant's home for approximately five days. However, it was also explained that during this period resources were severely stretched as a result of widespread damage to watermains and the resultant major interruptions to supplies caused by the thaw which followed the spell of sub-zero temperatures over the Christmas period. I learned that, of the 125,000 properties in the Southern Division which is where the complainant lived, some 6,000 were affected at some stage and around 1,800 were affected at any one time. As a result, the WS was unable to respond to all incidents as quickly as it would have been able to had circumstances been normal. I also learned that tankers of water were dispatched to the areas worst affected to provide a supply of water pending repairs being affected and the water supply restored; two of these tankers were located on the road where the complainant lived. I concluded that the complainant was correct in stating that the WS had failed to provide a regular mains supply to her home for five consecutive days from 31 December 2000 to 4 January 2001. However, in accordance with its operational policy, the WS had made alternative supplies available and, therefore, I was unable to say that the complainant had been completely without access to water during the period in question. I considered the circumstances at the time to be exceptional and did not find a period of five days in which to restore normal mains water supply to be unreasonable when I considered the practical difficulties of renewing the supply.

I also learned that the WS has discretion to offer payment of compensation but only if the damage was caused by the WS's negligence or failure in carrying out its statutory duty which is to supply and distribute water. I was satisfied that, in this instance, the situation could not be attributed to negligence or failure on the part of the WS. Rather the situation was due to circumstances beyond its control.

Finally, I found no evidence no substantiate the complaint's claim that the interruption to the water supply was a regular occurrence each winter. Overall I did not uphold the complaint. *(AO 129/00)*

DEPARTMENT FOR SOCIAL DEVELOPMENT

CHILD SUPPORT AGENCY

Delay in processing application for child support maintenance

In this case the complainant alleged she had sustained injustice as a result of maladministration by the Agency because of its inefficient handling and processing of her application for child support maintenance (CSM).

Having investigated this complaint, I established clear evidence of attempts made to obstruct

the system and difficulties created by what was obviously a recalcitrant non-resident parent, who was apparently aided and abetted by his alleged employer. I established that, through court proceedings, the Agency had obtained a Liability Order against the non-resident parent in respect of arrears of CSM. My enquiries revealed that once a Liability Order is granted, the Enforcement of Judgements Office (EJO) assumes responsibility for attempting to collect the arrears. I found that the EJO had recently confirmed to the Agency that a "Certificate of Unenforceabilty" existed in relation to the non-resident parent and therefore it was not possible to collect the arrears due to the complainant.

However, I also found that there were a number of failures, including inactivity on the case, which I regarded as constituting totally inadequate and unprofessional adherence to basic administrative procedures for which I criticised the Agency. The Agency had acknowledged that its handling of the case had been unsatisfactory and had made a compensatory payment of £250 for the "poor service received" by and "gross inconvenience" caused to the complainant. I concluded there were a number of unacceptable errors, significant delays and periods of inactivity in the handling of the case and I considered that the complainant was fully justified in complaining to me. In terms of redress, I took into account the fact that, on the basis of the "Certificate of Unenforceabilty", the complainant had not suffered a loss of CSM. However, I recommended that the complainant should receive a letter of apology from the Agency's Chief Executive and an ex-gratia (consolatory) payment of £400 in respect of the injustice of considerable disappointment, inconvenience, annoyance and frustration suffered as a consequence of the maladministration which occurred in this case (this amount included the £250 payment that the Agency had already made). I was pleased to record that the Chief Executive accepted my recommendations. Also, I was pleased to note that the Agency had strengthened its procedures in respect of weaknesses identified in the course of this investigation. *(AO 42/00)*

Delay in taking enforcement action

In this case the complainant was concerned that it had taken the Agency so long to go to court to seek an Enforcement Order because this gave the non-resident parent (NRP) time to dissipate his assets. If action had been taken more quickly she would have secured monies.

I made enquiries of the Agency and was provided with a very detailed history of its dealings with the complainant since she first made a claim for child support to the Agency in 1993. I examined in particular the Agency's actions since the NRP's payments stopped in February 1996. I learned that the lack of cooperation from the NRP in providing the Agency with information, together with his unstable employment pattern, presented difficulty in terms of seeking to achieve NRP compliance. The Agency acknowledged that, while the NRP's lack of cooperation had contributed to delays, there was no doubt that the Agency had failed to monitor and progress the case in a timely manner and the Chief Executive apologised for the unacceptable service the complainant had received. I noted that the Agency had decided to make an award of £200 compensation to the complainant.

I found that there had been serious shortcomings in terms of delays, periods of inactivity and lack of vigilance of which I was critical and which amounted, in my view, to maladministration as a result of which the complainant had suffered the injustice of frustration and annoyance over the years, together with the uncertainty as to when she might eventually receive payment of maintenance and arrears.

I acknowledged the Agency's more recent and more vigorous efforts to get to grips with the case and I urged the Agency to maintain particular vigilance in respect of employer compliance. I also recommended, and the Chief executive accepted my recommendation, that the compensation payment to the complainant be increased to £300. *(AO 116/00)*

Application for child support maintenance

In this case, the aggrieved person complained about the actions, or inactions, of the Agency concerning her application for child support maintenance (CSM).

My investigation established that since September 1995, the aggrieved person had been trying, albeit unsuccessfully, to obtain CSM from the non-resident parent (the NRP). Although I could understand fully the frustration, disappointment and annoyance felt by the aggrieved person, equally, I could understand the difficulties faced by the Agency in seeking to obtain payments of CSM for parents with care. In this particular case, the recalcitrant NRP caused delays and obstructed the system. Furthermore, the NRP disputed paternity at the outset and, because he was abroad on long tours of duty with the Army, it took from October 1995 to May 1999 to have it determined that the NRP is the father of the child for whom the aggrieved person is claiming CSM. Unfortunately, by that time the NRP was no longer in the Army, but was living and working in Brussels. As a consequence, the NRP's liability for CSM has not, as yet, been established and cannot be established until he meets the habitually resident criterion (i.e., living in the UK or living abroad and being paid by a UK employer). In the circumstances, I could not conclude that the aggrieved person had suffered any loss of CSM, as a consequence of the Agency's actions. However, I recommended that the Agency's Chief Executive (the CE) should apology to the aggrieved person and issue a consolatory payment of £400 for periods of delay and unsatisfactory administrative practices, which I established during my investigation. I am pleased to record that the CE accepted my recommendations.

I am also pleased to record that the CE assured me that the aggrieved person's case would be monitored closely to ensure that there were no further errors or unnecessary delays on the part of the Agency in dealing with it, should the NRP satisfy the habitually resident criterion.

Finally, the other party to this complaint was the Ministry of Defence's Army Personnel Centre. Although this Government Department does not come within my jurisdiction I drew to the attention of the sponsoring MLA my firm view, as a result of my overall consideration of this complaint, that the Agency did not receive the level of support and co-operation it might reasonably have expected to receive in its dealings with the Army Personnel Centre. I considered this to be particularly true in respect of the period August to December 1997. I expressed to the sponsoring MLA my view that in the difficult environment and circumstances in which it operates, the Agency has every justification in expecting to receive a high level of support and co-operation from Government Departments such as the Ministry of Defence. *(AO 121100)*

Handling and processing of application for child support maintenance

In this case the complainant contacted me about the Agency's handling and processing of her application for child support maintenance (CSM). She regarded the Agency's actions and overall processing of her application as having been incompetent and inefficient, with a lack of affirmative action in obtaining CSM from the Non Resident Parent (NRP).

The complainant stated she had first applied for CSM seven years ago and had still not received any maintenance in respect of her two daughters. She added that although she realised the Agency had difficulty securing an address for the NRP for some time, there was a period of almost two years when he lived at a known and confirmed address but the Agency failed to pursue her application for CSM. In his comments to me on the various elements of this complaint, the Agency's Chief Executive (CE) acknowledged that the Agency did not provide the complainant with the level of service she is entitled to expect and that, overall, the Agency's handling of this case had been unsatisfactory. In particular, the CE acknowledged that there had been delays in

completing the initial assessment and the subsequent reviews, inaction on the part of the Agency in failing to pursue the matter of review forms not returned by the NRP and a failure to follow up information provided by the complainant regarding the NRP's address during the period from May 1998 to February 2000. The CE also stated that the Agency accepts that partly due to the delays on its part the complainant is likely to have sustained financial loss. In mitigation, the CE informed me that at the time of the complainant's application, the Agency encountered many operational difficulties due to the sheer volume of applications and the resulting heavy workload.

The CE assured me that the Agency is continually reviewing all aspects of its operations to ensure the most effective means of handling cases are identified and changes are made wherever the process can be improved. He accepted, however, that due to the Agency's delays and the non-compliance of the NRP, the complainant had suffered injustice. The CE informed me that, following my initial enquiries, the Agency had issued to the complainant an ex-gratia payment of £500 as consolation for its failure to deliver the standard of service its customers are entitled to expect. The CE also informed me that a Liability Order has been granted to the Agency and the case has been referred to bailiffs for enforcement. In addition, the NRP had now completed a Maintenance Enquiry Form which will enable the Agency to calculate a full Maintenance Assessment.

However, my detailed investigation led me to conclude that the Agency's handling and processing of this case had constituted significant maladministration. It is likely also that the complainant sustained financial loss.

In terms of redress I recommended to the CE that he should issue a full and unreserved apology to the complainant for the failures of the Agency in her case, together with an additional consolatory payment of £500 in recognition of the injustice, other than potential financial loss, that I have mentioned above. I am pleased to record that the CE accepted my recommendation.

On the matter of financial loss, I concluded that it was not possible for me to make a final determination on this matter until the outcome of (a) the current enforcement process and (b) the process to convert the Interim Maintenance Assessment to a Full Maintenance Assessment was known. I therefore informed the CE that, in the particular circumstances of this case, I would be keeping under review progress on the above processes with a view to determining the matter of financial loss as soon as possible. I also informed the CE that I was reserving the right to review further the adequacy of the above-mentioned consolatory payment when the outcome of (a) and (b) above was known finally.

Also, I put it to the CE that I expected him to take the steps necessary to ensure that this case will be monitored closely with a view to ensuring that there are no further errors or unnecessary delays in having it processed, particularly in relation to processes (a) and (b) above. In response, the CE informed me that the manager responsible for progressing this case would take personal responsibility for monitoring the case to ensure that it is actioned properly and no further unnecessary delays occurred.

The CE also informed me that the Agency now has a number of initiatives in place aimed at reducing delay and improving the standard of service provided to its clients. (AO 68/01)

SOCIAL SECURITY AGENCY

Handling of Disability Living Allowance claims

A lady complained about the Agency's handling of Disability Living Allowance (DLA) claims which she had submitted in respect of her two sons. My investigation, which centred on the administrative handling of both claims, revealed a pattern of excessive delays, inaction and poor administrative practice. In addition, I was very concerned about the fact that DLA staff had spent some five months trying to reach a decision on how to deal with a reconsideration

request which the claimant had made in response to a disallowance notification. I had no hesitation in concluding that the complainant had not received the standard of service to which she was entitled. The SSA had readily acknowledged that there had been excessive delays in the processing of it's the claims. I did not accept staff shortages and staffing difficulties as acceptable explanations for the poor service delivery. I reminded the SSA of its obligation to ensure that it has sufficient staff to provide an acceptable level of service.

In recognition of the annoyance, inconvenience and frustration that the complainant had suffered, I recommended that the SSA issue to her a payment of £500, which was in addition to £150 already paid to her by it under its financial redress guidance. I also recommended that the SSA's CE issue a letter of apology to the complainant. The SSA accepted my recommendation and it also provided me with details of steps that it had introduced to address systemic weaknesses that I had identified in the course of my investigation. These included:

a. the issue of clear instructions to staff on how a "deterioration in a customer's condition, after an improvement has been reported" should be dealt with;

b. in relation to the issue of time taken to deal with review requests, a Quality Improvement initiative had been undertaken to examine the issue of inadequate processes. Following the outcome of that initiative, revised procedures were put in place and dedicated officers now deal with review requests and management are now more proactive in ensuring issues of further evidence and subsequent follow-up are dealt with as quickly as possible;

c. measures were taken, including the recruitment and training of more Examining Medical Practitioners (EMP), to reduce the timescale for EMP visits to between 20 - 25 working days. (AO 55/00)

Management of a claim for Incapacity Benefit

In this case the complaint concerned the actions of the Agency in respect of the administrative management of an appeal against a review decision relating to a claim for Incapacity Benefit by the complainant, delays by the Agency in processing a compensation payment and failure on the part of the Agency to deliver a promised improved standard of service.

My investigation persuaded me that the Agency's management of the case had been totally unacceptable and that maladministration had been clearly evidenced in terms of incompetence, neglect, broken undertakings and unacceptable delay. I found that the standard of service received by the complainant fell a long way short of what a citizen has a right to expect from a public body. My disquiet about this case was compounded by the fact that many of the failures which had occurred had previously formed the basis of an earlier complaint by the complainant and that necessary lessons had not been learned or acted upon by the Agency. The Agency agreed with my findings and conclusions without demur and agreed with my recommendation that an apology and a consolatory payment of £2,000 be issued to the complainant. I am pleased to note the CE's assurance that the failures highlighted in this case are being addressed. (AO 118/00)

Section Two Appendices

Assembly Ombudsman
for Northern Ireland

Appendix A

Summaries of Registered Cases Settled

Department of Education
(AO 75/00)

The aggrieved person in this case claimed that she had sustained injustice as a result of maladministration by the Department of Education (the Department) because of its handling of her teacher status position in Northern Ireland. The complainant contended that the Department had refused, under the European Directive on the Mutual Recognition of Professional Qualifications, to recognise her teaching qualification obtained from the University of Nantes in France and subsequently confirmed by the Ministry of National Education, Research and Technology in Paris.

My investigation revealed that although the Department had initially informed the complainant in March 1998 that it had approved her "qualifications for the purposes of qualified teacher status in all grant-aided schools in Northern Ireland", it later suspended her full qualified teacher status (QTS) when information came into its possession that she was not qualified to teach French in primary and post-primary state schools, either in France or abroad. In all the circumstances, I did not consider this to have been an unreasonable action on the part of the Department.

During the course of my investigation, the Department decided, "as an exceptional measure" to award the complainant temporary QTS to enable her to undertake a three year Beginning Teachers' Programme. The complainant informed me that she was content with the Department's revised proposals and, on that basis, she regarded her complaint as having been remedied. In light of this, and bearing in mind that the Department's action had not resulted in the complainant sustaining any final disadvantage in terms of her salary entitlement, I did not believe that anything further could be gained in pursuance of her complaint. Consequently, I decided to discontinue my investigation.

DFP - Recruitment Service
(AO 67/01)

The complainant in this case felt that she was being treated unfairly by Recruitment Service in relation to a competition for a permanent appointment as an Administrative Assistant in which she was successful. During the course of my investigation of this complaint the complainant informed me that Recruitment Service had offered her a permanent appointment, which she had accepted. As I regarded this as a satisfactory resolution of this complaint, I decided to take no further action on it.

DSD - Social Security Agency
(AO 88/01)

The complainant in this case was unhappy with the Agency's response to his case following an investigation by the Independent Case Examiner. He specifically referred to what he regarded as an inadequate apology and his reservations concerning the adequacy of the consolatory payment. Having considered the matter further I concluded that the Agency's apology had been full and without reservation and therefore took no further action on this aspect of the complaint. However, I did consider that the consolatory payment was inadequate. I therefore recommended and the Agency accepted that the payment should be increased by £100.

DOE - Planning Service
(AO 90/00)

In this case the complainant claimed to have sustained injustice as a result of maladministration by the Planning Service (PS). She alleged that plans for an extension to her neighbour's property should never have been approved claiming that several aspects of the impact of the development on her property had not been taken into account when approving the plans. She believed that the PS had made a judgement that conifers along her

boundary would screen the new development and therefore alleviate the visual impact of the new wall. She also held the PS responsible for the damage to screening along the boundary of her property.

My investigation revealed that, although neighbour notified, the complainant missed the opportunity of viewing and commenting on the proposal when the application was first submitted. I could not hold the PS responsible for her lost opportunity to submit her objections to the proposal. I considered how the PS assessed the possible effect of the proposed development on the complainant's property and whether that assessment was reasonable given that the PS was not aware at the time of the complainant's concerns about the development. I was aware that there is no statutory obligation to visit objectors and the decision by PS as to the need to access a particular property involves the exercise of discretion. That is a position which I accepted with some misgiving.

My investigation revealed that a planning officer visited the site and, while unable to gain access to the complainant's property, he did note one window on the side elevation. I established that the Planning Officer was aware that this gable window would face onto the tall gable wall of the new garage. However it appeared that the visual impact could not be effectively assessed because the planning officer could not access the complainant's property. I noted that this new wall was right at the boundary with the complainant's property and was of dominating appearance. I established also that the height of the new development was a factor recognised before approval and that the planning officer was aware of a row of tall conifers forming a dense screen boundary between the complainant and her neighbour. In relation to amenity and the effect on the complainant's property, the planning officer commented in his report that there was "no adverse effects on adjoining properties". However, damage to the trees during and as a result of construction resulted in a section of wall becoming clearly visible from the complainant's back window and back garden. It was my view that if this particular section remained exposed, unscreened or unrendered then the complainant had an unsightly view of the neighbouring structure from her back garden.

In terms of the purely administrative actions in this case, which are the primary focus of my investigations, I did not find maladministration in the processing of the planning application. However, my test for evidence of maladministration extended also to the quality of the consideration given to this case. In relation to the consideration given to amenity I realised that in commenting about existing screening an assumption was made that the screening would remain in place. I also realised that, in terms of the practicability of implementing a proposal, the PS did not carry out an assessment to establish whether damage was likely to occur. Furthermore, while PS specified a rendered finish, it appeared that the question of permission to access a neighbour's property to enable the rendering to be carried out could not be addressed in the processing or determination of a planning application. Although I recognised that this was an issue which went beyond my investigation of this case, nevertheless I considered these to be basic weaknesses in the current planning system in Northern Ireland meriting close and urgent attention since they create a situation which was, in my view, unreasonable in that the implications of developments for neighbours could as a result only be tested by the Planning Service to a limited degree rather than in their totality.

While I was at a loss to understand how the conclusion was reached that there would be "no adverse effects on adjoining properties" this was clearly into the realm of professional judgement, balancing the impact of the proposal on neighbours against the rights of the applicant. In the absence of maladministration this was, therefore, an issue on which I could not comment. I was very conscious in this case of the limitations on my powers. It was not my view that the application in its entirety should not have been approved nor did I have the power to order that a building already constructed be reduced in

height. As a minimum, however, I considered that I would be justified in recommending that appropriate screening be provided as an ameliorating measure.

While current arrangements were, on the advice of the Acting Chief Executive, generally Human Rights compliant my investigation of this complaint had highlighted what I considered to be some weaknesses in the current provisions and arrangements for considering planning applications. Specifically, in terms of consideration of the impact on third parties I believed that PS needed to remain sensitive and alert to the possible concerns of neighbours and that visits in order to view the proposed development site from neighbouring dwellings should be undertaken if there is any doubt about the potential impact of a proposed development. I also believed that PS should be more robust in warning applicants in relation to such matters as their responsibility to meet other legal requirements flowing from their proposals. I recommended that the PS compensate the complainant for the provision of new and/or reinstated screening along the boundary of her property in order to ameliorate the impact created as a result of the implementation of approval granted based on an assumption that the existing trees would remain in place. I was pleased to record that the Acting Chief Executive agreed to compensate the complainant for the reasonable vouched costs of up to £300 to provide new screening.

Appendix B

Summaries of Registered Cases Discontinued

DOE - Planning Service

(AO 63/01)

The complainant in this case raised a number of concerns regarding Planning Services decisions to grant, defer or refuse planning permission in certain specific circumstances. Having made some preliminary enquiries of Planning Service I discovered that the complainant's concerns related to professional planning decisions. As it is not my function to review such decisions taken in the normal way I decided to discontinue my investigation of this case.

DOE - Planning Service

(AO 76/01)

This complaint related to a planning application for a residential development to the rear of the complainants' home. I understand, from the Acting Chief Executive's response to my enquiries, that Planning Service has for some time been trying to obtain a satisfactory resolution to the breach of planning control which has taken place. In particular, I noted that the Planning Service recently advised the developer and relevant house owners that enforcement notices are now likely to be served. I also noted that the developer has indicated his intention to enter into further discussions with the complainants and their neighbours in a last effort to avoid demolition of the properties concerned. I decided that, as a discretionary process was still on-going, it would not be appropriate for me to intervene at this stage and therefore I discontinued my investigation of this complaint. However, I advised the complainants' MLA that, once action by the Planning Service has been finalized, it would be open to the complainants to resubmit a complaint to me.

DSD - Social Security Agency
(AO 56/01)

The complainant in this case stated that he had been caused undue and unnecessary stress due to the actions of the Agency. During the course of my investigation the complainant's sponsoring MLA asked me to suspend my investigation of the complaint as he wished to meet further with the complainant. I suspended my investigation but, as I had heard nothing further from either the complainant or his sponsoring MLA after some 8 weeks, I decided to discontinue my investigation.

DRD - Water Service
(AO 85/01)

I received a complaint about the Water Service's management of specific pipelaying works. Following a meeting with one of my Investigating Officers the complainant decided to re-examine the critical aspects of his complaint. He agreed to forward to me details of the key areas of concern relating to the complaint. In view of this agreement I decided to discontinue my investigation pending receipt of the agreed details.

Department of Agriculture and Rural Development
(AO 112/01)

This complaint related to the Department's refurbishment of sea defences. Having made some preliminary enquiries in relation to this matter it became clear that the key issue in the case concerned the existence or otherwise of a public right of way. I informed the complainant that this was a matter which should first be brought to the attention of the local council. In the circumstances I discontinued my investigation of the case.

Appendix C

Analysis of Written Complaints

Analysis of All Complaints Received – 1 April 2001 to 31 March 2002

	DEL	DARD	DCAL	DFP	DE	DETI	DOE	DRD	DSD	DHSSPS	Bodies, etc, Outside Jurisdiction	North South Bodies	Tribunals	**Total**
Brought forward from 2000/01	0	1	0	4	1	1	12	1	6	2	0	0	0	**28**
Received in 2001/02	1	10	2	34	7	6	83	15	56	5	28	1	2	**250**
Total	**1**	**11**	**2**	**38**	**8**	**7**	**95**	**16**	**62**	**7**	**28**	**1**	**2**	**278**
Dealt with in 2001/02	1	10	2	32	6	6	74	13	48	6	28	1	2	**229**
In action at 31/3/02	0	1	0	6	2	1	21	3	14	1	0	0	0	**49**

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

	DEL	DARD	DCAL	DFP	DE	DETI	DOE	DRD	DSD	DHSSPS	Bodies, etc, Outside Jurisdiction	North South Bodies	Tribunals	**Total**
Referred to Body's Complaints Procedure	0	1	0	3	0	1	16	2	17	0	0	0	0	**40**
Authorities and matters outside jurisdiction	0	0	0	1	1	0	4	0	2	1	27	0	2	**38**
Right of appeal to a Tribunal	0	0	0	1	0	0	2	3	2	0	0	0	0	**8**
Remedy by way of legal proceedings	0	0	0	2	0	0	2	3	0	0	0	0	0	**7**
Not aggrieved person	0	0	0	0	0	0	0	0	0	0	0	0	0	**0**
Out of time	0	1	0	0	0	0	3	1	0	0	0	0	0	**5**
No evidence of maladministration	0	1	0	3	0	1	1	0	1	0	0	0	0	**7**
Discontinued	0	0	0	1	0	1	6	0	1	0	0	0	0	**9**
Settled	0	0	0	0	0	0	0	0	2	0	0	0	0	**2**
Discretionary Decision	0	0	0	1	0	0	0	0	1	0	0	0	0	**2**
TOTAL	**0**	**3**	**0**	**12**	**1**	**3**	**34**	**9**	**26**	**1**	**27**	**0**	**2**	**118**

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

	DEL	DARD	DCAL	DFP	DE	DETI	DOE	DRD	DSD	DHSSPS	Bodies, etc, Outside Jurisdiction	North South Bodies	Tribunals	**Total**
Report Issued- Complaint Upheld	0	1	0	1	0	0	3	0	5	0	0	0	0	**10**
Report Issued – Complaint Partially Upheld	0	2	0	0	0	0	1	0	1	0	0	0	0	**4**
Report Issued – Complaint not upheld but body criticised	0	0	0	2	1	0	1	0	0	0	0	0	0	**4**
Report Issued – Complaint not upheld	0	0	0	2	0	0	2	1	0	0	0	0	0	**5**
Letter issued – no evidence of maladministration	0	0	1	3	0	0	13	1	8	2	0	1	0	**29**
Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	**0**
Right of Appeal to a Tribunal	0	1	0	1	1	0	1	0	4	0	0	0	0	**8**
Settled	0	0	0	1	1	0	1	0	1	0	0	0	0	**4**
Out of Time	0	0	0	0	0	2	2	0	0	0	0	0	0	**4**
Discontinued	0	1	0	2	0	0	4	1	1	1	0	0	0	**10**
Remedy by way of legal proceedings	0	0	1	1	1	0	6	0	0	0	1	0	0	**10**
Outside Jurisdiction	0	1	0	3	0	0	1	1	0	1	0	0	0	**7**
Referred to body's complaints procedure	0	0	0	2	0	0	5	0	2	0	0	0	0	**9**
Discretionary Decision	1	1	0	2	1	1	0	0	0	1	0	0	0	**7**
TOTAL	**1**	**7**	**2**	**20**	**5**	**3**	**40**	**4**	**22**	**5**	**1**	**1**	**0**	**111**

Appendix D

Analysis of Oral Complaints

Fig 2.7 Assembly Ombudsman
Analysis of Oral Complaints Received - 1 April 2001 to 31 March 2002

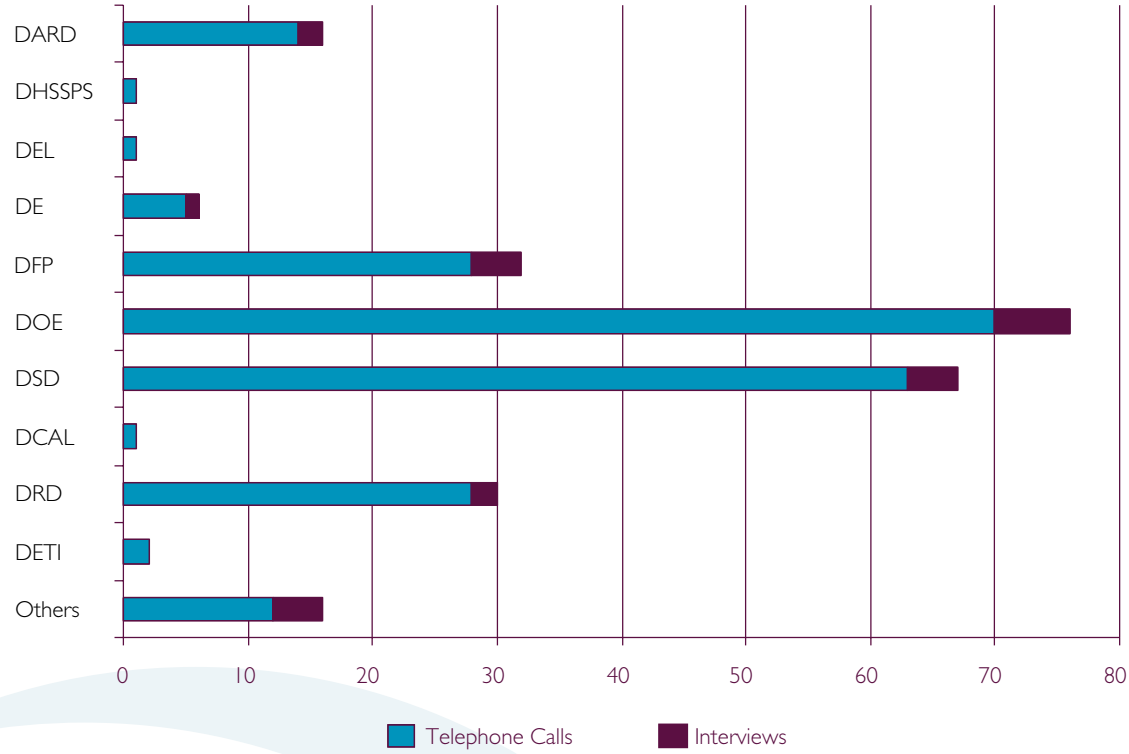
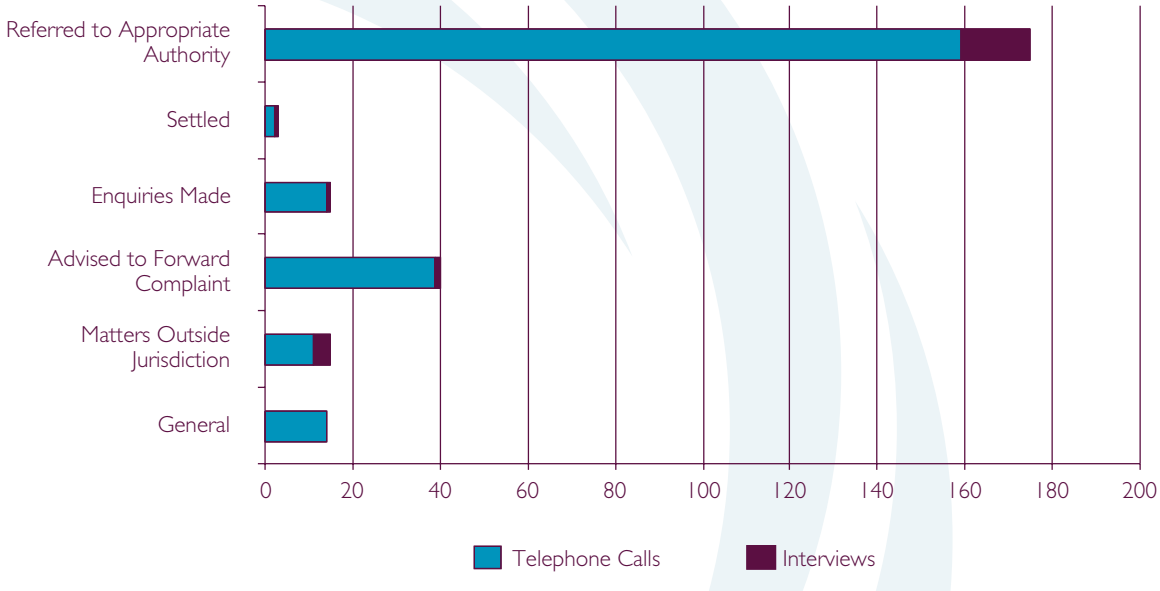


Fig 2.8 Assembly Ombudsman
Outcome of Oral Complaints Received - 1 April 2001 to 31 March 2002



Section Three

Annual Report of the
Northern Ireland
Commissioner for Complaints

Complaints Received

As Northern Ireland Commissioner for Complaints I received a total of 303 complaints during 2001/02, which is 11 more than in 2000/01.

The local and public bodies against which complaints were received in 2001/02 compared with those in the preceding four years are shown in Table 3.1.

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

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

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

Table 3.1 – Bodies against which complaints were received in 2001/02

	1997	1998/99	1999/00	2000/01	2001/02
Local Councils	70	56	41	71	66
Education and Library Boards	36	58	35	24	14
Health and Social Services	85	54	39	22	21
Northern Ireland Housing Executive	153	149	138	131	125
Miscellaneous	88	70	55	44	77
TOTAL	**432**	**387**	**308**	**292**	**303**

Fig3.1 Commissioner for Complaints 2001/02
303 Complaints Received

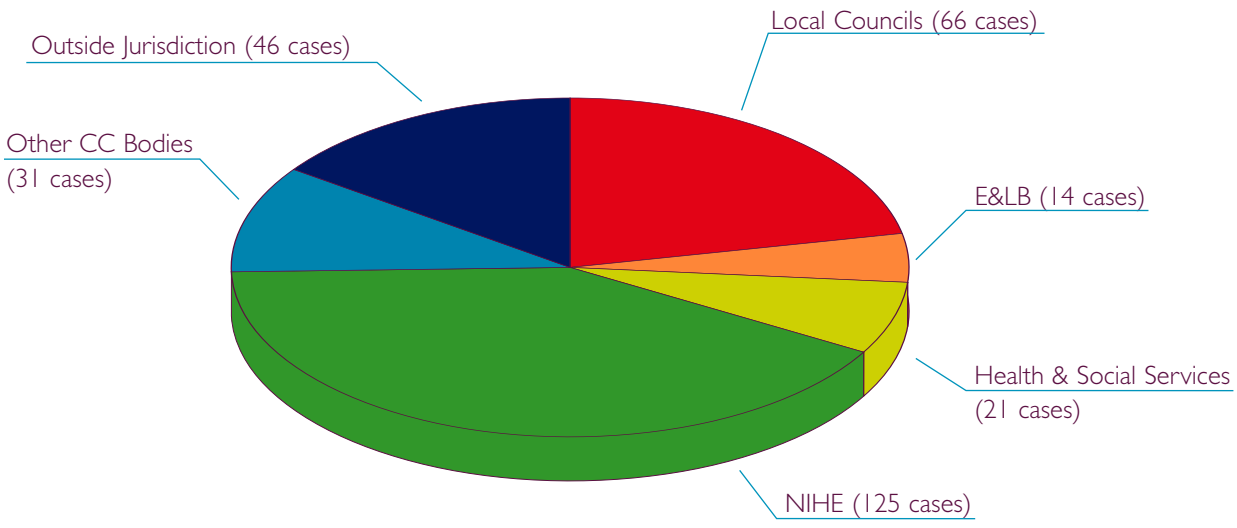


Fig3.2 Commissioner for Complaints Complaints Received 1997 - 2001/02

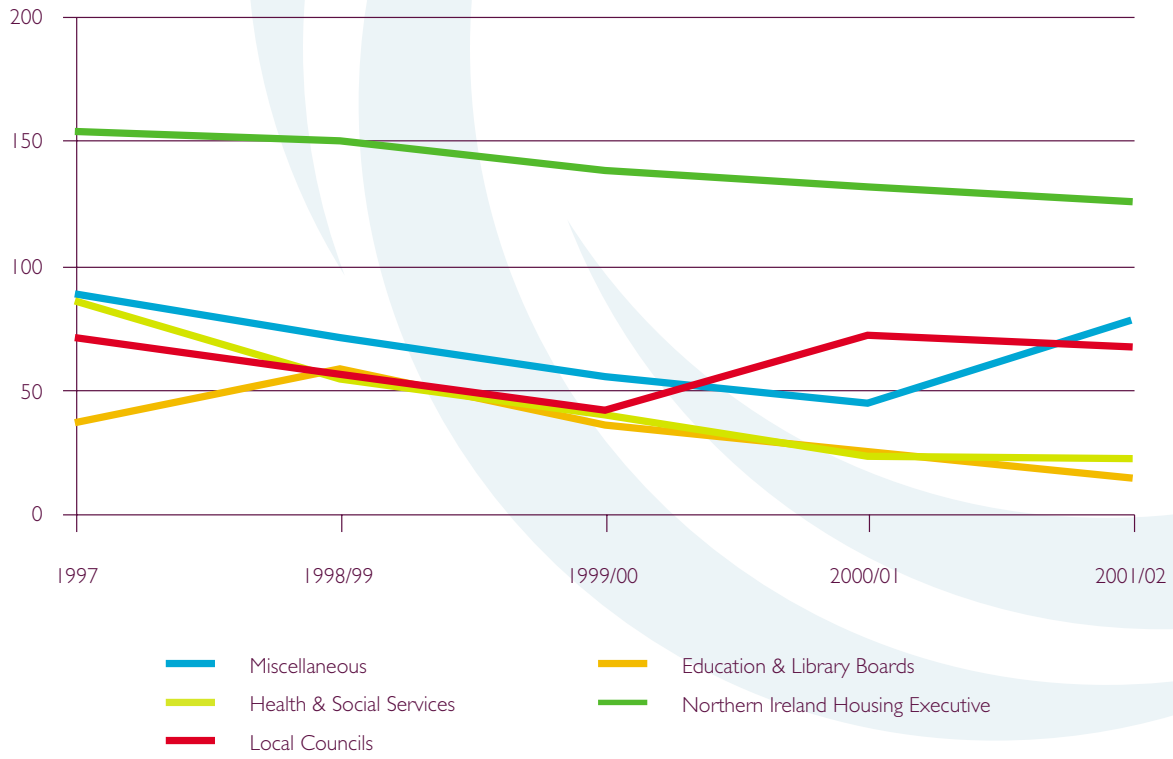


Fig3.3 Complaints Against NIHE 2001/02 125 Complaints Received

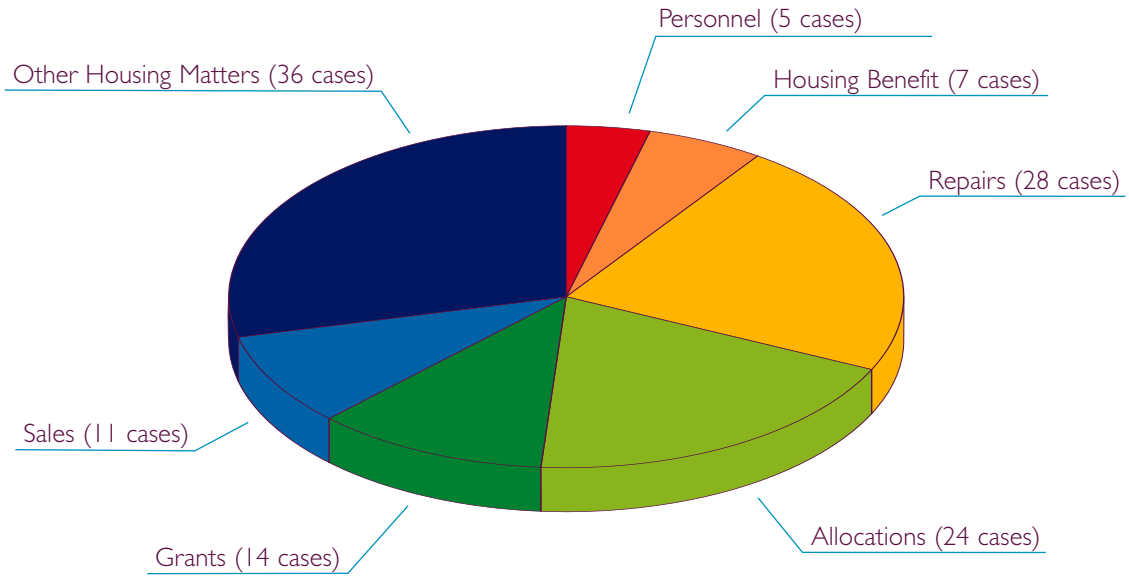
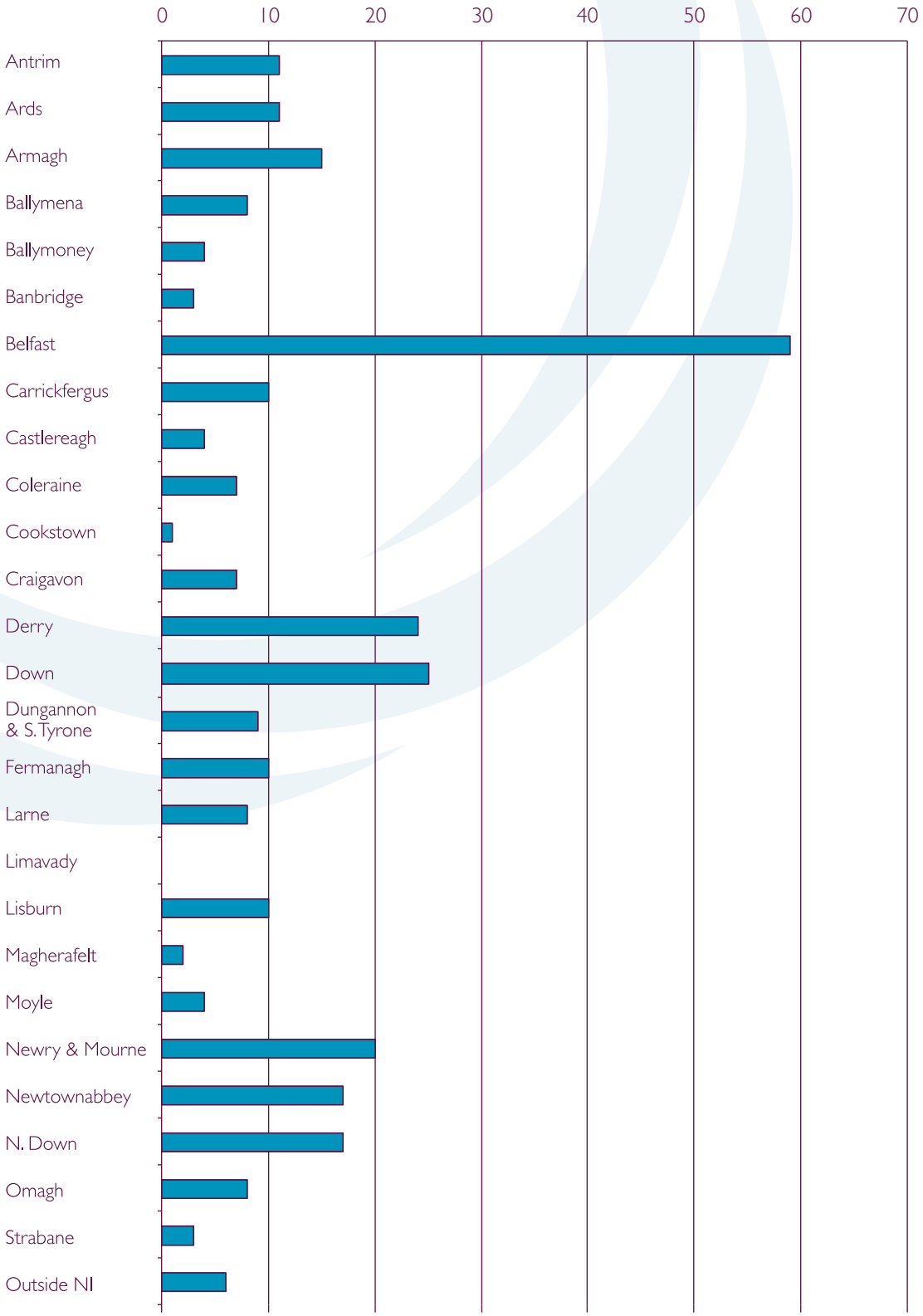


Fig 3.4 Commissioner for Complaints 2001/02
303 Complaints Received - Local Council Area in which Complainant Resides



Statistics

In addition to the 303 complaints received during the reporting year, 44 cases were brought forward from 2000/01. Action was concluded in 292 cases during 2001/02 and of 55 cases still being dealt with at the end of the year, 51 were under investigation. In 52 cases I issued an Investigation Report setting out my findings.

The 55 cases in process at 31 March 2002 were received during the months indicated in Table 3.3.

During 2001/02 81 cases were resolved without the need for in-depth investigation and 18 cases were settled. 162 cases were accepted for investigation. Complaints against authorities or matters not subject to my investigation totalled 56. I referred 79 complaints to the body concerned to be dealt with under its own complaints procedure. The outcomes of the cases dealt with in 2001/02 are detailed in Fig 3.5.

I also dealt with 9 letters making further representations relating to cases which I had previously concluded. By the end of the reporting year 7 of these letters had been dealt with.

Of the total of 2463 oral complaints received by my Office some 307 were against bodies within the jurisdiction of the Commissioner for Complaints. See Figs 2.7 and 2.8 at Appendix D to this Section.

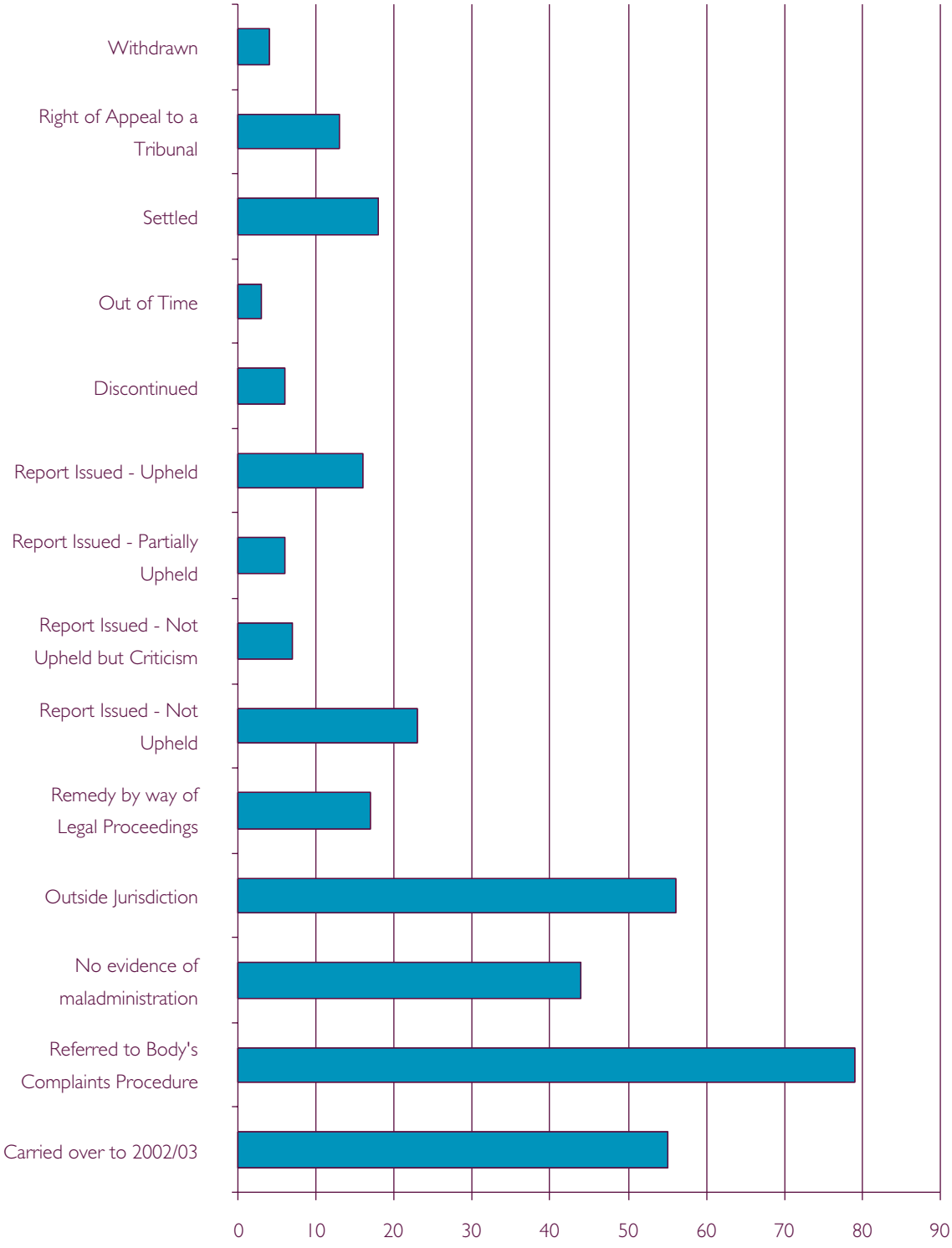
Table 3.2 Caseload for 2001/02

Number of uncompleted cases brought forward	44
Complaints received	303
Total Caseload for 2001/02	347
Of Which:	
Cleared at Initial Sift Stage	141
Cleared without in-depth investigation including cases withdrawn and discontinued	81
Cases settled	18
Full report issued	52
Cases in action at the end of the year	55

Table 3.3 Date of Receipt of Cases in Process at 31st March 2002

January 2001	2
April 2001	1
May 2001	0
June 2001	1
July 2001	4
August 2001	3
September 2001	4
October 2001	7
November 2001	4
December 2001	4
January 2002	6
February 2002	7
March 2002	12

Fig 3.5 Commissioner for Complaints 2001/02
Outcome of Cases



Time Taken for Investigations

The average time taken for a case to be examined and a reply issued at Initial Sift stage was 1.3 weeks.

The average time taken for a case to be examined, enquiries made and a reply issued at Investigation stage was 13.6 weeks.

Reports Issued and Settlements Obtained After In-depth Investigation

52 reports of investigations were issued in 2001/02, compared to 80 in 2000/01. The breakdown according to the subject of the cases reported on was Housing 32, Personnel 12, Education 1 and Miscellaneous 7.

16 cases were fully upheld; 36 cases were not but 6 of these were partially upheld and 1 criticised the public body in 7. Settlements were achieved in all of the 16 cases that I upheld:

Table 3.4 Settlements Achieved in Upheld Cases

Case No	Body	Subject of Complaint	Settlement
CC 39/01	NIHE	Handling of Housing Benefit claim	Apology & rent arrears reduced by £210
CC 9/01	Armagh City & District Council	Personnel recruitment	Apology & consolatory payment of £500
CC 6/01	Craigavon Area Hospitals Trust	Failure to be shortlisted	Apology & consolatory payment of £400
CC 3/01	CCMS	Not appointed to position	Apology & consolatory payment of £5,000
CC 8/01	NIHE	Sale of House but not adjoining gardens	Apology, consolatory payment of £750 and rent refund of £715.40
CC 151/00	CCMS	Offer of redundancy withdrawn	Apology & consolatory payment of £1,000
CC 26/01	NIHE	Response to complaints of flooding	Apology & payment of £750 as financial recognition of injustice
CC 82/01	NIHE	Attitude regarding repairs & transfer application	Apology & consolatory payment of £300
CC 32/01	NIHE	Lack of privacy & enjoyment of dwelling	Necessary measures taken by NIHE
CC 29/01	NIHE	Repairs to heating system	Apology & rent rebate of £486
CC 147/00	NIHE	Grants assessment	Apology & reimbursed 60% of labour costs (£962.83)

Table 3.4 Settlements Achieved in Upheld Cases Continued

Case No	Body	Subject of Complaint	Settlement
CC 159/00	NIHE	Insulation of Loft	Apology & reimbursed cost of materials (£84)
CC 71/00	Strabane District Council	Failure to be shortlisted	Apology & consolatory payment of £1,000
CC 68/00	Strabane District Council	Failure to be shortlisted	Apology & consolatory payment of £1,000
CC 130/00	NIHE	Entitlement to Housing Benefit	Apology & ex-gratia payment approval process (for £1,645.82) completed with minimum delay
CC 116/00	CCMS	Proper application of agreed personnel procedures	Final written warning reduced to a written warning

Review of Investigations

EMPLOYMENT

Disciplinary proceedings

In this case the complainant alleged she had sustained injustice as a result of maladministration by Homefirst Community Trust (the Trust) because of the way in which it implemented its disciplinary proceedings against her.

My investigation revealed that following a disciplinary hearing on 17 and 20 April 2000, the Trust informed the complainant that the allegations against her of misconduct had been proven. The Trust subsequently issued a final warning to the complainant and transferred her to an alternative location. The complainant appealed the Trust's decision but the disciplinary appeal panel, which met on 6 and 8 June 2000, upheld the earlier decision of the disciplinary panel. Although the complainant requested that her case be taken to arbitration, the Trust refused to agree to this.

It was clear to me that the complainant felt a real sense of grievance regarding the outcome of the disciplinary proceedings. Nevertheless, I was satisfied that the Trust had provided her with an adequate opportunity to have her case heard, initially at the disciplinary hearing and subsequently at the disciplinary appeal hearing. In the absence of any evidence of maladministration in the decision making process, I could not question the decisions reached by the panels.

However, in relation to the complainant's request that the matter be referred to arbitration, I criticised the Trust's failure to address this issue properly. I considered the Trust's failure in this regard to have constituted less than satisfactory administration of its procedures. I recommended that the Trust's Chief Executive should write to the complainant, as a matter of urgency, explaining clearly and in detail why it did not agree to her request for arbitration. I also recommended that the Trust should follow this practice in any similar cases that may arise in the future. I am pleased to record that the Chief Executive accepted my recommendations in full.
(CC 52/00)

Compliance with agreed harassment and disciplinary procedures

The complainant in this case complained to me that he had suffered injustice as a result of maladministration by the Council for Catholic Maintained Schools (CCMS) because it failed to comply with agreed harassment and disciplinary procedures. The complaint concerned an incident at an office Christmas party and how CCMS dealt with a subsequent complaint of harassment.

In the course of my investigation I was advised that CCMS did not consider it failed to follow agreed procedures. In dealing with a potentially serious and certainly sensitive matter CCMS considered its officers had handled the matter in a professional, sensitive, confidential and realistic manner. In view of the complainant's admission of the incident and apology to the victim CCMS believed this obviated the need for an investigation. A panel convened to deal with the harassment claim also dealt with the consequent disciplinary proceedings and issued a sanction of a final written warning. The complaint appealed through the CCMS appeals process on the grounds that procedures had not been followed. The appeal panel found that procedures had not been breached but reduced the penalty to a written warning because the disciplinary panel had not given the complainant adequate opportunity to prepare a response.

As a result of my investigation I identified some concerns about the procedures followed by CCMS in its dealings with the complainant. I found that there was a failure to record the decision to depart from CCMS procedures by not carrying out an investigation; the investigation and disciplinary panel compressed two sets of procedures and in so doing failed to exercise an employer's duty of care in relation to the complainant's state of mind at the time. I considered that as a matter of good practice and in the interests of natural justice the same panel should not deal with harassment and disciplinary proceedings. I also found there to be maladministration on the part of the appeal panel for not acknowledging explicitly that CCMS had departed from its procedures on this occasion.

Whilst acknowledging that CCMS had tried to deal with the matter in a confidential and sensitive manner I nonetheless found there had been maladministration in terms of departures from procedures and I strongly urged CCMS to review its procedures and draw lessons from my report. In terms of redress I considered that the appeal process the complainant availed of which reduced the sanction from a final written warning to a written warning represented an adequate redress. *(CC 116/00)*

Failure to be shortlisted for the post of Business Manager

In this case the complainant alleged that she had sustained injustice as a result of maladministration by Strabane District Council (the Council) because it failed to shortlist her for the post of Business Manager. When she queried the reason for not being shortlisted she was told that due to the large number of applicants the criteria had been enhanced and that her application did not meet the enhanced criteria because her experience of working in a voluntary grammar school was not considered to constitute working for a local authority, public or statutory body or other organisation in the public sector. The complainant failed to understand how this determination was reached. Also, she stated that neither the advertisement nor any documentation received from the Council stated that the criteria might be enhanced.

From my examination of the shortlisting criteria and the selection process, I noted that the original, essential criteria consisted of three specified requirements which were clearly detailed in the advertisement and were also included in the person specification. I further noted that when it came to shortlisting the panel felt that, with twenty- five applicants, it was necessary to enhance the essential criteria in order to create a manageable number of people to invite to interview. It was at this stage in the process that the panel looked critically at the nature of the post and the kind of person and experience best suited to the duties of the post. It was decided that the

successful applicant should, ideally, be someone who had experience of working in the public sector. The panel then introduced what it regarded as an enhancement of criterion 2 which had originally stated that applicants should have "at least two years experience in Business management for a local authority, public or statutory body or other organisation in the public or private sector". In doing so the Council excluded the reference to experience within the private sector.

I found that, rather than enhancing the criteria by increasing the minimum standards, the Council fundamentally altered a publicly advertised essential criterion by deciding to focus on public sector experience, thereby excluding otherwise qualified candidates with experience gained in the private sector. Having set out to be inclusive, I found the original approach commendable but the approach adopted at shortlisting was in my view not defensible. I was also particularly concerned that actions of the panel indicated a lack of understanding as to the correct approach to enhancement of criteria in a selection process.

I considered that, having clearly indicated to candidates with private sector experience that they were eligible for consideration, it was wrong of the Council simply to eliminate or ignore part of a publicly advertised essential criterion. I found that the actions of the panel at shortlisting stage fundamentally altered the stipulated criteria previously published in the related specification and rendered ineligible an entire tranche of candidates whose experience was gained in a setting the Council did not consider to be the public sector, including the complainant who, I believe rightly, considered herself qualified to apply and whose experience was relevant. I was satisfied that the complainant should have been invited for interview.

Furthermore, I considered that the definitive examination of the job requirements should have been undertaken at a much earlier stage in the recruitment process. Good practice demands that the requirements of a post are considered fully and finalised as the first step in the recruitment process and prior to placing the advertisement in the press.

I also upheld the complainant's allegation that the job information provided no indication that the criteria might be enhanced or of proposals to shortlist. I considered that enhancements to be applied should also be determined in advance, with pre-application documentation providing information on how it is intended to shortlist. Finally, I expressed concern that the job title "Business Manager" may not have been the most appropriate in the circumstances and not only were the panel discussion and agreement of definitions not recorded but the definitions used lacked precision.

I concluded that the shortcomings in the process amounted to maladministration from which the complainant had experienced the injustice of disappointment and of the denial of a proper opportunity to participate in the competition which she entered in good faith. However, I could not say that had she been interviewed she would have been successful. I recommended and the Chief Executive agreed to apologise to the complainant and issue a consolatory payment of £1000. *(CC 68/00)*

I received a further complaint *(CC 71/00)* from a gentleman regarding the same recruitment exercise. In this second case I made the same recommendations as I did in CC 68/00 above.

Failure to be appointed to the post of caretaker

In this case the complainant alleged he had sustained injustice as a result of maladministration by the Western Education & Library Board (the Board) because it failed to appoint him to the post of Caretaker in a local school. The complainant said he attended for interview for the post and, when the post was later re-advertised, he attended a further interview. However, the Board informed him that he was unsuccessful on both occasions.

As part of my investigation, I obtained the full selection documentation which included the interview panel's assessment forms in relation to those initially interviewed. I found that, in relation to the first interviews, the panel

decided that the candidates had not attained a sufficiently high standard to enable an appointment to be made. From my examination of the available evidence, including the panel's assessment sheets, I found nothing unreasonable in the judgement made by the panel.

I also examined the interview panel's assessment sheets, in relation to those interviewed when the post was re-advertised, which resulted in a decision that, on the basis of the interview performance, an offer of the post should be made to one of the candidates interviewed.

I found that the complainant had satisfied the requirements relevant to the shortlisting process and, having been shortlisted, proceeded to the interview stage on equal terms with the other shortlisted candidates on both occasions. Having considered all the evidence obtained during my investigation I had no reason to doubt that the successful candidate was chosen on the basis that she demonstrated better at interview, her experience and knowledge for the position.

I concluded that, on both occasions, the competition for this post was conducted properly. I was also satisfied that, on both occasions, all candidates were given a fair and equal opportunity to state their case to the interview panel. It was also my view that the interview panel was properly constituted and competent for the task. In the absence of evidence of maladministration in the selection and appointment process for the subject post I did not uphold this complaint. (CC 163/00)

Failure to be shortlisted for the post of Caretaker

In this case the complainant alleged he had sustained injustice as a result of maladministration by the Western Education & Library Board (the Board) because it failed to shortlist him for the post of Caretaker in a local school.

From my examination of the shortlisting/selection process, I found that the job description issued with the application forms listed 4 separate areas of qualifications and experience. I noted that potential applicants were informed that they should have experience of at least one of those areas. One of the listed areas, supervision of staff, was an area that the complainant failed to address in his application form, which I examined, and I found that it was this essential criterion that the shortlisting panel decided the complainant did not meet.

However, I found that the criteria subsequently decided upon as being the minimum essential criteria for shortlisting purposes were not explicitly recorded in the job description. At shortlisting stage the panel defined a minimum of two specific criteria, one of which "a minimum of 6 months' caretaking and/or cleaning experience" had not been included in the job description.

I took the view that if a public body deems it necessary to keep a job advertisement brief then, at the very least, the documentation accompanying the application form must provide clear, specific and unambiguous information on the essential and desirable job requirements. In particular, I considered that potential candidates are entitled to be informed clearly and without ambiguity regarding the minimum essential and desirable criteria against which they will be judged at the shortlisting stage.

It was my view that as a consequence of the ambiguity and resultant lack of clarity in the job description, the complainant was disadvantaged, in terms of completing his application form, in relation to the above-mentioned specific criterion. However, as the complainant was deemed by the shortlisting panel to have met this criterion, I considered that he could not be regarded as having sustained an injustice as a consequence of the lack of clarity mentioned.

Although I acknowledged the complainant's sincerely held belief that he should have been shortlisted, I concluded that the shortlisting panel's decision in respect of the complainant's application did not constitute maladministration and consequently that the complainant had not

sustained an injustice. In the circumstances I did not uphold this complaint. However, I am pleased to record that the Board, in view of my comments in this case, agreed to take the necessary action to eliminate from future similar selection processes weaknesses which I identified in the course of my investigation of this complaint. *(CC 162/00)*

Failure to be shortlisted for the post of Stores/Depot Attendant

In this case, the complainant alleged he had sustained injustice as a result of maladministration by Armagh and City District Council (the Council) because it failed to shortlist him for the post of Stores/Depot Attendant.

From my examination of the shortlisting process, I noted it was recorded by the Council's shortlisting panel that the complainant *"meets criteria but has not been shortlisted due to untenable position appointment to this post would create"*. The complainant had previously worked for the Council, but in a more senior position. It was on this basis that the shortlisting panel decided that the complainant should not be invited for interview. Notwithstanding the unusual circumstances of this case, I was satisfied that the shortlisting panel gave inappropriate consideration to the complainant's previous period of employment within the Council, which in effect introduced a new criterion that was not applied to any other candidate. Consequently, I concluded that the shortlisting panel's decision not to shortlist the complainant for interview was attended by maladministration. As a result of the maladministration involved, the complainant experienced the injustice of disappointment and of the denial of an opportunity to participate in a competition which he entered in good faith in the belief that his prospects of success were very good. I was, however, unable to put the complainant back in the position he would have been in had the maladministration not occurred, namely on the shortlist of candidates who were invited to interview. In addition, while I acknowledged the complainant's own belief that he was a strong contender, I could not say authoritatively that, even if he had been invited to interview, he would have been successful. The complainant accepted this to be the case.

In terms of redress, I recommended the issue of a written apology by the Council's Chief Executive to the complainant, together with a consolatory payment of £500. I am pleased to record that the Council accepted my recommendation. *(CC 09/01)*

Failure to be shortlisted for the position of Psychology Assistant

In this case against Down Lisburn Health and Social Services Trust (the Trust) the complainant had applied for the position of Psychology Assistant in a Special School but was not shortlisted for interview because, the Trust informed her, she did not have the appropriate Honours degree. The complainant felt that the Trust unjustly judged the criterion. She has a Masters degree in Psychology which provides her with the Graduate Basis for Registration requested for the position.

I put the issues raised to the Chief Executive (CE) of the Trust who informed me that the shortlisting criteria for the post were based on the requirements stipulated in the advertisement and personnel specification. The shortlisting criteria included a First Class or Upper Second Class Primary Honours Degree in Psychology that confers eligibility for graduate membership of the British Psychological Society. The complainant did not meet the shortlisting criteria because it was the shortlisting panel's view that she did not have a First Class or Upper Second Class Honours Degree in Psychology. The CE also advised that there is no equivalent qualification and in this general context it is important to note that the reference to British Psychological Society is directly linked to the primary degree.

I examined the job description, personnel specification, advertisement and the candidates' completed application forms. The first essential criterion was a First Class or Upper Second Class Primary Honours Degree in Psychology that confers eligibility for Graduate

Membership of the British Psychological Society (BPS). The complainant's application indicated that she had a B.Ed Honours Biology, MA Psychology of Education and PhD Developmental Psychology. Additional information supplied with her application indicated that it was the complainant's MA which gave her the Graduate Basis for Registration with BPS. Further documentation which I examined indicated that the BPS regard an undergraduate degree in Psychology to be a necessary prerequisite for Graduate Basis for Registration in working towards Chartered Status. I noted that the applicants called to interview possessed the requisite primary honours degree in Psychology. The Trust subsequently advised that the complainant's Masters Degree was in a focussed area and would not have covered the broad spectrum covered by a Psychology degree. The fact that the complainant had BPS registration was not a key element in the decision.

I regarded the essential and shortlisting criteria as discretionary matters for the Trust and, having regard to the nature and duties of the post, I did not find the criteria determined in this case to be unreasonable. I was satisfied that the panel was properly constituted and competent for its task and applied the criteria to all candidates in a consistent manner. Although the advertisement carried the statement that the degree should confer eligibility for BPS registration I did not consider that the panel was seeking registration per se, rather, linked as it was to a primary degree in psychology I considered that it was the quality and content of undergraduate studies which were the important elements of this criterion.

I noted that the Trust had not fully addressed the complainant's query about her membership of BPS and I urged the Trust to be mindful of the need for fuller responses when disappointed candidates raise specific issues of concern. I found no evidence of maladministration in the Trust's handling of the shortlisting and I did not uphold the complaint. *(CC 164/00)*

Unsuccessful application for the post of Director of Nursing and Quality

In this case the complainant considered he had suffered injustice as a result of maladministration by the Craigavon Area Hospital Group Trust (the Trust). He had not been shortlisted for the post of Director of Nursing and Quality and was told that, prior to shortlisting, the panel had defined exactly what their requirements were and his overall experience did not fully match the needs of the Trust. The complainant believed that he did meet the criteria as defined in the employee profile and that the panel, in refining one of the criteria, had actually changed it completely from that which was included in the application pack.

My investigation revealed that when it came to shortlisting the panel amended the essential criterion requiring candidates to have "at least 3 years experience working in a Senior Nurse Management position in a Health and Social Care environment" to "at least 3 years experience within the last 5, working in a Senior Nurse Management position at Grade 1 level or above in an acute hospital". I noted that while the complainant had the specified experience it was not within the previous 5 years.

I fully understood and could accept why, for a demanding, senior level post such as this, the panel would wish candidates to have up to date, current experience, also why the panel would wish to specify a minimum grade. I noted also that the panel defined "a Health and Social Care environment" as "an acute hospital" and indeed I would have expected it to define what it meant by this term which, to my mind, was open ended and capable of a wide range of interpretation. I had a deep concern about how the panel approached the process of further refining the three components of the essential criterion, in that the evidence suggested that this process took place at such a late stage in the selection process and was not consistent with the approach as described in the Trust's guidelines. I noted also that candidates in this competition were provided with no indication that the criteria might be further refined.

I also found a lack of consistency in the guidelines themselves, as between the advice on preparation of the employee profile and the later guidance on shortlisting, which was, in my view, misleading to panels. Indeed, a provision in the Trust's guidelines that clear definition of criteria takes place just before looking at application forms, was a fundamental weakness in the process which I considered the Trust needed to address urgently. Furthermore, I found that this provision was not consistent with other key provisions in the guidelines. I also found it disappointing that none of the panel appeared to have spotted this inconsistency, in spite of the level and nature of training received in recruitment and selection. Overall, I found that the Trust's guidelines on the definition of requirements and determination of shortlisting criteria were sparse and lacking in precision. I had a further concern about the description of the purpose of shortlisting being to "reduce" the applicant pool. This conveyed to me a negative view of selection as an unwelcome chore for the employer/panel with little regard for the significance to candidates of the opportunity presented by the competition in terms of personal and/or career development.

Although I was told that the panel decided not to apply the desirable criteria, which sought at least 5 years senior management experience in an acute hospital, the requirement for "acute hospital" experience was incorporated into its belated definition of the related essential criterion. I considered the Trust should have ensured that this was reflected in the published criteria and employee profile. The approach adopted was confusing and it would have been better to have maintained a clear distinction in articulating and applying what was essential and what was desirable.

I concluded that the complainant experienced the injustice of being led to believe that he was eligible to participate in a competition which he entered in good faith because the Trust delayed its "interpretation" of the criterion until the shortlisting stage, an action which I considered to be maladministrative. I urged the Trust to review its approach and its documentation and to have regard to the selection practices and related documentation of other public sector employers. I also recommended, and the Chief Executive agreed, that the complainant should receive a letter of apology together with a consolatory payment of £400. *(CC 6/01)*

Unsuccessful in application for Principal post

In this case the complainant stated that, as an experienced Council for Catholic Maintained Schools (CCMS) assessor and trainer for new assessors he was familiar with all aspects of the procedures that must be adhered to at all times during a selection process. He claimed to be in no doubt that there were serious breaches of procedures by the Selection Panel and by the CCMS officials during this selection process which he believed clearly conflicted with the Scheme for the Appointment of Teachers in Catholic Maintained Schools (the Scheme). Having been interviewed for the post of Principal, the complainant was subsequently advised that the panel had decided not to make an appointment at that time. He believed that information in relation to allegations of harassment and bullying which had previously been made against him were introduced into discussion after the interview and used to oppose his appointment. He contended that this information was introduced to the reconvened panel and resulted in a decision that, even though he was deemed suitable, he should not be appointed to this post. The complainant concluded that the effect of these actions had resulted in maladministration and injustice which has had a far reaching impact. He indicated that as a result he suffered extreme stress; unfair treatment; defamation of character; loss of a post close to home; damage to career prospects; loss of opportunity and loss of professional status.

My investigation revealed that, in relation to the selection panel's assessment of the complainant's candidature, he was assessed to be the most suitable candidate by achieving the highest score in the assessment of every member of the panel and that this was endorsed without caveat by both independent

assessors on the panel. However the panel decided not to appoint the complainant and agreed instead to readvertise the post. I concluded that the panel had allowed an issue which was completely separate from the selection procedure to affect and indeed ultimately determine its decision. I found nothing on record to justify the decision to set aside the results of the panel's individual and collective assessment. I noted also that the panel decided to ignore the advice provided by the CCMS Head of Human Resources. I expressed concern that there was no provision currently for referral of the circumstance that arose in this case to an appropriate sub-committee of the Council. While I did not necessarily disagree with the CCMS assessment that in this unusual circumstance it had accountability without authority, and welcomed a proposed review of procedures, it was my view that there are important issues of systems and accountability to be drawn to the attention of the Department of Education, the Council of the CCMS and the Education and Library Boards. It was also my view that appropriate action should be taken in relation to the panel members involved; at the very least, I considered they should not be permitted to participate in further selection exercises until they had received appropriate, relevant and effective training.

I concluded that there were significant failings on the part of CCMS which constituted maladministration causing a clear injustice to the complainant in terms of personal disappointment, damage to reputation and the adverse effect on his professional standing. By way of redress, having regard to all the circumstances of this case, I recommended that CCMS should make a payment of £5,000 to the complainant. I also considered that a written apology from the Chief Executive was warranted. I am pleased to record that the CE accepted my recommendations. (CC 3/01)

Conditional element of redundancy offer not made known

In this case the complainant, a Vice Principal (VP), alleged that a pre-condition set by the Council for Catholic Maintained Schools (CCMS) that he should absent himself on sick leave prior to a school inspection taking place in order to be granted redundancy, was not made known to him or to his Trade Union (TU) representative. Consequently, he was present for the school inspection during which his teaching performance was found to be unsatisfactory. The complainant also queried the reason for the withdrawal of the offer of redundancy by CCMS and why it had failed to appoint a successor to the VP post.

During my investigation I found that decisions regarding redundancy of teachers in Catholic Maintained Schools with delegated budgets are the responsibility of the schools' Boards of Governors (the BoG). I do not have authority to investigate the actions of BoGs' in relation to day-to-day management of a school, therefore, I confined my investigation to the actions of the CCMS officials in relation to the redundancy offer. To gain the fullest possible understanding of the situation I arranged for interviews to be conducted with the Chairman of the BoG, the former Principal of the school, the TU representative and various officials in CCMS.

I established that in early February 2000, the Chairman of the BoG was notified by the Department of Education (the Department) that a General Inspection of the school would take place in March 2000. A meeting subsequently took place between the complainant and the Chairman of the BoG at which the complainant's health problems and his wish to leave the teaching profession were discussed. The meeting concluded with the Chairman of the BoG advising the complainant of the possibility of redundancy and the BoG's willingness to facilitate the complainant's departure from teaching linked to its concerns about his teaching.

My investigation further established that the Human Resources Manager in CCMS was informed that the Principal and the BoG believed that if the complainant's teaching performance was inspected by the Department it was likely to be found unsatisfactory and that they were concerned about the impact of such

an outcome on the school. As a consequence, the BoG had decided to make the VP post redundant. Despite his firm reservations on this issue, the Human Resources Manager agreed to relay the BoG's conditional offer of redundancy, specifying that the complainant should not be present at the school inspection, to the TU representative. When interviewed the TU representative maintained that he had not been aware that the redundancy proposal had been subject to a condition that the complainant should be absent from the school inspection process.

I concluded that a misunderstanding had arisen in that the TU representative did not appreciate the redundancy offer was conditional and I was satisfied the complainant had believed that a straightforward offer of redundancy was available to him. However, more importantly, I established the fact that the conditional redundancy proposal should never have been taken forward by CCMS as the Premature Retirement Compensation Scheme does not allow for the imposition of any pre-condition, such as that proposed in this case. Moreover, the Department requires employing authorities to adhere fully to the terms of the Scheme. In the circumstances, therefore it would have been wrong for the complainant to have benefited from the redundancy offer due to its wholly irregular nature.

I further established that the conditional offer of redundancy had been withdrawn because the complainant did not, as required, absent himself from the school inspection process. Consequently, the action of withdrawing the redundancy offer actually corrected the original fundamental error. On the aspect of the complaint concerning the failure of CCMS to appoint a successor to the VP post, I received from CCMS an explanation of the reasons for the delay in filling the position. I acknowledged that the critical decision on when and how to fill the post was a matter for the BoG and that this issue does not fall within my jurisdiction.

Overall, I concluded that the complainant, who had been unaware of the conditional nature of the redundancy proposal, had suffered the injustice of disappointed expectation due to the actions of CCMS in relaying the redundancy offer when in fact no legitimate offer existed in the first place. In the circumstances, I recommended, and the Chief Executive agreed, to issue to the complainant a letter of apology together with a consolatory payment of £1000. In the event, the complainant's premature retirement from teaching was eventually processed on the appropriate terms.

In conclusion, I should say that I was very critical of many aspects of this case. I pointed out in my report that a perception could be gained that the conditional redundancy offer had been intended to effect a potential distortion in the outcome of the school inspection. Additionally, the absence of detailed minutes of BoG meetings, especially the meeting held 'In Committee' at which it was decided to suppress the VP post made it difficult for me to track the background of the redundancy proposal and its subsequent withdrawal. Consequently, I made a number of recommendations to CCMS relating to practical issues arising in this case, namely:-

1. the issue by CCMS of a guidance note, the terms of which to be agreed with the Department, to all BoGs' of its schools regarding usage of the redundancy, unsatisfactory performance and medical discharge provisions;

2. that CCMS draws to the attention of BoGs' the need to maintain adequate and accurate records, particularly in relation to personnel matters; and

3. that CCMS put in place a system whereby it is notified by BoGs' of serious concerns regarding the health or teaching performance of individual members of staff. *(CC 151100)*

NORTHERN IRELAND HOUSING EXECUTIVE

Perceived change of use of Executive owned premises

In this case the complainant stated that a bakery business, which has three retail outlets, was to relocate to Executive owned premises where it intended to bake its produce and distribute it from there to its other shop premises. The complainant approached the Planning Service (PS) about this proposed use of the shop premises and had been informed that the information provided by the Executive was that the retail use would remain and the bakery would be ancillary to that use. The complainant was informed by the PS that, in these circumstances, a planning application was not required for the subject premises. However, the complainant said he had been informed that if the property were used exclusively as a bakery with distribution to other premises it would then require a planning application for a change of use. The complainant considered that the Executive was determined to proceed with the development without proper planning approval and thus was not being seen to comply with the law.

Having investigated this complaint I established that the shop premises concerned were to be sold by the Executive for use as a retail shop/home bakery. I found that the purchaser intended to use the premises as a retail outlet for his home baked products, together with other light grocery items, and to use part of the premises as a bakery area, from which he would service his other two retail outlets. I was provided with evidence that the Executive had sought clarification on the planning aspects of this matter from the outset and that it had complied with all necessary requirements and regulations, having been notified by the PS that no application for a change of use was required.

I concluded that my investigation did not reveal any prima facie evidence of maladministration on the part of the Executive in relation to ensuring that the proposed use of the retail premises concerned complied with the PS' requirements/regulations. In the circumstances I did not uphold this complaint. *(CC 176/00)*

Entitlement to receive Housing Benefit

The complainant claimed that she had suffered an injustice because of the manner in which the Executive had processed her rent account, particularly with regard to its decision that she was not entitled to receive Housing Benefit in respect of the period 9 August 1993 to 4 July 1994.

During the course of my detailed investigation, the Executive's Chief Executive (CE) decided there were sufficient grounds to warrant a request being made to the Department of Social Development for an ex-gratia payment to be made up to the value of the complainant's Housing Benefit entitlement for the period 9 August 1993 to 4 July 1994. The amount involved was £1,645.82, which resulted in rent arrears of £1,260.00 being cleared and the balance being paid directly to her. While I very much welcomed and commended the redress proposals which the CE had put forward, I found as regrettable the fact that the Executive did not take the appropriate action on receipt of the Housing Rights Service's letter of 6 April 1995, which the CE accepted "ought to have been enough to generate the backdating of the claim but it was not dealt with by the appropriate member of staff and, as a consequence, the complainant had been denied her right to an appeal which may have led to this decision being changed".

I regarded the above-mentioned failure on the part of the Executive to take the appropriate action in April 1995 as constituting maladministration. I further regarded that maladministration as having been compounded by the Executive' failure to take the necessary remedial action in the course of its Internal Complaints process, which the aggrieved person had availed of. In terms of redress, I recommended that the CE issue a written apology to the aggrieved person in acknowledgement of the annoyance and

inconvenience caused to her, and take all steps necessary to ensure that the ex-gratia payment approval process was completed with the minimum of delay. I am pleased to record that the CE accepted my recommendations in full. *(CC 130/00)*

Handling of application for housing

In this case a lady complained about the Executive because of the manner in which it had treated her late brother's application for housing. She alleged that the Executive had deliberately kept her brother homeless.

My investigation revealed that the Executive's Chief Administrative Medical Officer (CAMO) had awarded the complainant's brother priority status (A2) on medical considerations and recommended that he should be allocated ground floor accommodation. As no ground floor accommodation was available within the complainant's brother's stipulated area of preference, the Executive suggested, on two occasions, that he should 'consider widening his areas of choice'. However, the Executive received no reply to this suggestion and, unfortunately and regrettably, the complainant's brother died before any suitable accommodation became available within his stipulated area of choice. In the absence of any evidence of maladministration on the part of the Executive, there was no further action I could take on this complaint. *(CC 140/00)*

Delay in restoration of electricity supply

The complainant in this case complained about the inconveniences he suffered because of the length of time it took the Executive to restore electricity supply to his former dwelling, following a power failure that had occurred on Sunday, 27 August 2000.

My investigation revealed that the Executive had received a complaint from the aggrieved person at 11.05am on Sunday, 27 August 2000 about loss of electricity supply to his maisonette. I noted that the repair work was eventually completed and supply reconnected at 1pm on Wednesday, 30 August 2000. It was unfortunate that the loss of electricity supply occurred during a Bank Holiday weekend, especially when the electrical contractor needed access to a wholesale supplier for a specific type of fuse, which could not then be ordered until Tuesday, 29 August 2000. Having said that, according to the Executive's Maintenance Officer, who called at the maisonettes on Tuesday, 29 August 2000, it was unlikely that electricity supply could have been re-connected to the maisonettes before Tuesday evening (29 August) because of the condition of the meter box. Having regard to all of the evidence available to me, I concluded that I had no grounds on which to question the length of time it took the Executive to restore power supply to the complainant's maisonette. Consequently, I could not uphold the core element of this complaint. *(CC 128/00)*

Handling of application for rehousing

A lady complained about the Executive because of its handling of her application to be rehoused. She told me that her name was placed on the Executive's general transfer list in December 1996 and since that date the Executive had made her only one offer of a two bedroomed upper flat, which she refused on the grounds that she would prefer a house.

As a result of my investigation, and on the basis of the information available to me, I considered that the complainant's application for rehousing had been satisfactorily investigated and considered by the Executive under its Housing Selection Scheme. I accept that the Executive has a finite housing stock and it was clear to me that there is a high demand for, and low turnover of, existing accommodation in the areas stipulated by the complainant. Furthermore, I did not consider the Executive's District Manager's decision not to award the complainant Priority Transfer 2 status in September 2000 to have been at variance with what could have been expected in light of all the facts and information available to him at that time. Importantly, I accept that the Executive must apply the terms and conditions of the legislation and related policy and

procedures under which it operates on all matters associated with housing transfer requests. In all the circumstances, and on the evidence available to me, I could not say the length of time taken by the Executive to process the complainant's application had been attended by maladministration. However, in recognition of the complainant's concern to be rehoused as soon as possible, I arranged for the Executive to interview the complainant and obtain an up-to-date position on her circumstances. I am pleased to record that following an interview with the complainant on 18 June 2001, the Executive decided to request a further report on her health and social well being in order to re-assess her rehousing application in accordance with its Housing Selection Scheme. Consequently, having regard to the position that had then been reached, I decided there was no further meaningful action that I could take on this complaint. *(CC 133/00)*

Payment of grant aid

A lady complained that she had sustained injustice because the Executive had not met its obligations to her by approving the payment of grant aid in respect of work which was regarded at a later date as not having been completed to a satisfactory standard by the contractor who carried out the work. It was the complainant's strong contention that the Executive should have been prepared to take action against the contractor.

Although I could fully understand the complainant's strongly held views on the matter, overall, I found no prima facie evidence of maladministration on the part of the Executive in its handling of the Renovation and Disabled Facilities Grants, both of which were processed under the terms of the Housing (NI) Order 1982 and paid on 18 December 1995. Notwithstanding this, and following representations from my office, the Executive agreed to provide additional grant aid to the complainant to facilitate the installation of central heating in her dwelling and to process a 'second' renovation grant on the basis of "borderline unfitness". My office maintained close contact with 'Shelter' and the Executive's local Grants Manager to ensure, insofar as was possible, that the various remaining steps necessary to process the complainant's grant applications to formal approval stage were completed as quickly as possible. This was achieved. *(CC 105/00)*

Succession of tenancy

A gentleman complained about the Executive because of the manner in which it dealt with the succession of tenancy of his next-door neighbour's (Mr A) dwelling to his neighbour's daughter (Mrs B).

The complainant told me that the Executive had built an extension to his neighbour's dwelling to facilitate his disability. The complainant contended that at that time his neighbour's daughter had signed an agreement waiving her right to succeed to the tenancy of the family home in the event of the death of her father, on the basis that the house had purposely been redesigned for a person with a disability. He was thus most dissatisfied when he learned that his neighbour's daughter had succeeded to the tenancy of the dwelling on her father's death and subsequently had purchased the dwelling. The complainant regarded Mrs B (and her family) as a troublesome neighbour.

As a result of my investigation, I found that the Executive had handled this matter in accordance with its normal procedures. The Chief Executive stated that no record of an agreement, as identified by the complainant, existed and it would not be Executive policy to enter into such an agreement. I found that despite a detailed investigation and comprehensive examination of the Executive's records relating to Mr A's tenancy, no evidence was found that such a document existed. The Chief Executive also informed me that his officers had consulted the Executive's Legal department and were advised that Mrs B had a right to succeed to the tenancy of her father's home and thus the Executive could not withhold consent to her succession.

Overall, I concluded that my investigation did

not reveal any evidence of maladministration on the part of the Executive in its dealings with the complainant or in its handling and processing of the succession of tenancy of his neighbour's dwelling. *(CC 160/00)*

Possible demolition of dwelling to facilitate a renovation scheme

In this case the complainant stated that the Executive proposed to undertake renovations in the estate in which she lives, the renovations involving the demolition of vacant properties. The complainant said that during a visit made earlier in the year, Executive officials informed her that her end of terrace house was to be demolished under the proposed renovation scheme to enable car parking spaces to be provided. The complainant said she had resided in her dwelling for 3 years and, as she had incurred considerable expense in decorating and improving it, she did not wish to move. The complainant provided me with a press article which reported the Executive as having stated that it had no intention of "intimidating" the complainant and her family out of their home and giving an undertaking to see if its designers could come up with alternative plans. However, the complainant alleged to me that she had a subsequent visit from Executive officials who told her that she would have to vacate the property. The complainant considered she was being treated unfairly and she failed to understand why the Executive, having reassured her that she could remain the tenant of her dwelling, was now "threatening" that she would have to move.

Having investigated this complaint I found that, under its legislation, the Executive could seek repossession of those properties which are occupied by tenants who refuse to be rehoused in order to facilitate major improvements. However, the Executive had been opposed to pursuing this course of action and was attempting to implement its major improvement strategy with the co-operation of residents and their representatives.

My enquiries revealed that the Executive's designers had expressed concern that if the preferred option for the implementation of Phase 1 of the strategy, involving the demolition of the complainant's dwelling, could not proceed, this would severely jeopardise the sustainability of the estate concerned. I found that the designers had again been asked to produce an alternative option. Simultaneously, however, the Executive decided to further visit those residents whose dwellings had been identified for demolition in the context of the preferred option for Phase 1 of the strategy. I was satisfied that, by doing so, the Executive was fulfilling its obligation to consult with tenants regarding any major scheme development and I did not find this to be unreasonable. I further found, and the complainant subsequently confirmed, that the Executive's visit was amicable, that the officials concerned were very courteous and that at no time was the complainant "threatened" that she would have no choice other than to move to an alternative dwelling.

I concluded that my investigation did not reveal any prima facie evidence of maladministration on the part of the Executive in relation to the matter complained of. In the circumstances I did not uphold this complaint. I was, however, pleased to note that the complainant would remain the tenant of her dwelling while the Executive, the scheme designers and public and tenants' representatives, through discussion, attempted to produce a mutually acceptable solution to the issues which remained to be fully resolved. I also welcomed an undertaking given by the Executive to keep the complainant fully informed of any decisions made regarding plans for Phase 1 of the strategy. *(CC 42/01)*

Dissatisfaction with heating system and unwillingness to carry out work to front garden

In this case the complainant said that, in the two-year period she had lived in her home, she had frequently complained to the Executive about the solid fuel heating system in the dwelling. Although the Executive's contractor had inspected the fire appliance on a number of occasions and had undertaken various works and tests to the appliance, the complainant said that the fire was overheating with the result that she had to keep it low. By doing so, the complainant said there was insufficient heat from the radiators, which resulted

in her home being cold. The complainant further said the cold condition of her dwelling exacerbated her medical condition, which included arthritis. The Executive had informed her that, in certain circumstances, it may be possible to provide a change of heating on a one-off basis and, in this regard, the complainant said she had recently completed and returned a Heating Evaluation Form to the Executive.

The complainant further stated she had asked the Executive to remove the hedge and a tree in the front garden of her home to enable her to erect fencing. However, the Executive had informed her that as the hedge and tree are within the boundary of her property she was responsible for them, as tenant.

Having investigated this complaint, I found no specific evidence of maladministration by the Executive in relation to its response to reports about the performance of the solid fuel heating system in the complainant's home. I established that each request by the complainant had been actioned by the Executive, which instructed its roomheater service contractor to check and repair the appliance as necessary. Following one such inspection, and as a result of a heat test, the contractor recommended to the Executive that it should replace the appliance, as it was no longer operating to its required efficiency.

I was pleased to note, in the course of my investigation, that the Executive had considered the complainant for a change of heating on medical grounds and, based on evidence provided, had assessed the complainant as meeting the criteria for this. I was further pleased to note that, because the complainant's heating system was not working effectively, the Executive arranged to have the work carried out as a matter of urgency.

In relation to the complainant's request for the removal of the hedge and tree, I found that the Executive's Conditions of Tenancy stipulates that the care and upkeep of gardens and hedges is the responsibility of the tenant. I found no evidence of maladministration by the Executive in this matter, given that it had applied its relevant policy and procedures.

In light of the decision to change the heating system, which I, and the complainant, regarded as a satisfactory resolution of the main element of this complaint, I concluded there was no further meaningful action that I could take on this complaint. *(CC 182/00)*

Insulation of loft

In this case the complainant said that, following an inspection, the Executive agreed to replace the loft insulation in his dwelling, which was in a poor condition and which required to be removed to facilitate woodworm treatment to the timbers of the roof void of the house. However, the Executive subsequently informed the complainant that it would not undertake the work and that he could obtain no assistance from it (the Executive), for example through the self help repair scheme, with the cost. As the insulation had been removed in the course of the treatment work, and given the Executive's apparent refusal to replace the insulation, the complainant replaced this himself. Several days later, he was informed by letter that the Executive had arranged for the installation of loft insulation at his property. In these circumstances, the complainant requested from the Executive reimbursement of the cost of the materials. However, this request had been refused. The complainant contended that the Executive had a responsibility to undertake the work and simply refused to carry it out.

During the course of my investigation, the Executive decided to reimburse the complainant by way of a sum of £84, representing the cost of the materials used for the insulation of his loft, and to issue him with an apology for any inconvenience caused. As I considered this outcome represented a satisfactory settlement of the complaint, I decided to discontinue my investigation of this case. *(CC 159/00)*

Failure to obtain statutory approvals in respect of improvement works

In this case the complainant said the Executive undertook major renovation works to his dwelling during 1996/97. He stated that, at the time works were ongoing, he enquired of the Executive whether planning permission and

building control approval had been obtained in respect of the improvements to his home. This concern emanated from the complainant's intention to purchase the property and also from information he had obtained from the Planning Service to the effect that the required approval had not been sought for his dwelling. The complainant considered that the Executive officials had been very dismissive of his concerns and that they had failed to investigate properly his genuine enquiry.

The complainant stated that, in 1998, the Executive realised that planning and building control approval had not been obtained in respect of the works undertaken to his property and, although the necessary applications were submitted at that time, the Executive failed to complete the process with the result that the required approvals were not obtained.

The complainant applied to purchase his dwelling in or around March 1999. He considered that the Executive failed to meet its target timescales for completion of the various stages of the sale of his dwelling and that its purchase was delayed considerably as a result. The complainant was further aggrieved that, under the Executive's Internal Complaints process, he was informed that the lack of appropriate approvals only became apparent after the Executive wrote to his Solicitor in May 2001.

My investigation of this case revealed that the complainant's dwelling had been added to the contract for the Improvement Scheme. My enquiries established that when a property is introduced into a scheme belatedly and outside of the Executive's initial scheme framework, the property will not usually be subject to improvement until the end of the scheme and therefore the necessary time is available for approvals to be obtained. In this case, improvement work commenced to the complainant's property 6 months before the end of the scheme and, prior to this change in the scheme programme, the Executive had anticipated that approvals would be sought for the dwelling in due time. I noted that the Executive had apologised to the complainant for its failure to request the necessary approvals at an earlier date.

With regard to the complainant's contention that the Executive was dismissive of his concerns and that it failed to investigate his genuine enquiry in relation to approvals, my investigation confirmed that the complainant had alerted Executive officials to the fact that statutory approvals may not have been obtained in respect of his dwelling. I considered that it would have been prudent for the officials concerned, if not incumbent on them, to satisfy themselves that all was in order.

The Executive made an application for Building Control approval for the dwelling in March 1998, which was obtained in November 1998. However, I found that the submission of a planning application had been overlooked at that time. I found no evidence of the question of statutory approvals being raised by others on the complainant's behalf.

I concluded that there were failures and delays on the Executive's part in relation to its requirement to obtain statutory approvals in respect of the complainant's dwelling, these failures constituting unsatisfactory administration which warranted criticism on my part. However, I considered that the lack of the requisite approvals was not detrimental to the complainant while he was an Executive tenant and I concluded that, during the relevant period, the complainant did not sustain a substantive injustice as a result of the unsatisfactory administration.

I found that the lack of approvals did, however, cause the complainant an injustice, arising from excessive delay in processing the sale of the property to him, when he entered into a contract with the Executive in this regard. I noted that the Executive had apologised to the complainant both for the error relating to the approvals and for the delay in completing the sale transaction. In addition, the Executive paid the sum of £499.80, representing the amount of rent paid by the complainant in respect of the relevant 14-week period of excessive delay. I considered these measures by the Executive

to represent satisfactory redress to the complainant in respect of the period in question. In all the circumstances of this case, I concluded that, on the basis of equity and balance, it would not be appropriate for me to recommend any additional redress measures. *(CC 79/01)*

Preliminary Test of Resources assessment

In this case, the complainant alleged that she could have avoided unnecessary financial hardship and delay in having works completed to her home had the Executive made her aware at the outset of her application for renovation grant aid that she could request a preliminary Test of Resources (PTOR) assessment. In particular, the complainant said that she incurred the unnecessary financial expenditure of £1,600 to have her house rewired by a contractor, who is enrolled with the National Inspection Council for Electrical Installation Contracting (NICEIC), whereas her husband, who is a qualified electrician, could have rewired the house, had she been aware by the Executive at an earlier stage that she would not qualify for grant aid. It is a condition that all Executive grant aided electrical work must be carried out and certified by a contractor enrolled with the NICEIC.

Having investigated the matter, I found, albeit on the balance of probability, that the complainant was not made aware that she could request a PTOR assessment and thereby, with an important adverse result, was denied the opportunity to make a properly informed decision on whether to request the completion of such an assessment. Although I considered the primary duty of care rested with the Executive I found that the complainant's inactions to have contributed to the situation. I took the view that it was reasonable to expect the complainant to have read and studied carefully the documentation which she did not dispute having received. Had she done so, and particularly if she had requested a 'missing' accompanying letter, she would have been alerted to the option of having a PTOR assessment completed.

By way of redress, I recommended that the Executive apologise to the complainant and reimburse her in respect of 60% of the labour costs incurred in having her house rewired, with the remaining 40% to be borne by her in light of my finding above. I am pleased to record that the Executive accepted my recommendation and the complainant subsequently received a cheque for £962.83. *(CC 147/00)*

Delays in repairs to heating system

In this case the complainant was unhappy with delays in having repairs carried out to his heating system. He was dissatisfied that although he paid rent for a fully centrally heated house, he had no effective heating in his dwelling, despite his many representations to the Executive.

During the course of my investigation, I discovered that the Executive had responded to the complaints and attempted to resolve problems with the heating system several times with no successful outcome. The Executive informed me that it had therefore agreed to fit a completely new heating system in the complainant's home. As a result of my investigations, the Executive also agreed to issue a written apology to the complainant for the inconvenience caused by the delay in repairing his heating system and to award a rent rebate of £486 for the period the complainant suffered from ineffective heating. The complainant regarded these measures as representing a satisfactory outcome to his complaint to me. *(CC 29/01)*

Handling of complaint regarding excessive noise and disturbance

In this case the complainant was dissatisfied with the way the Executive dealt with his complaint regarding excessive noise and disturbance from his next-door neighbour. During the course of my investigation, I was informed that the District Manager had informed the complainant that in order for legal action to be considered, the Executive required specific evidence of further nuisance and disturbance relating to his dwelling. I

established that the Environmental Health department of the appropriate Local Council has statutory responsibility for noise control.

The complainant was advised by the Executive to keep a log of any incidents and contact the Environmental Health department of the District Council should any further incidents occur. The neighbour was warned orally, and by letter, in accordance with the Executive's procedure concerning complaints of noise nuisance.

Although sympathetic to the complainant and the difficult situation in which he found himself, I was satisfied that the Executive had not been guilty of maladministration in its handling and processing of the complainant's representations to it about noise nuisance and disturbance allegedly caused by his neighbour. Consequently, I was unable to uphold this complaint. *(CC 161/00)*

Handling of Housing Benefit claim

The aggrieved person in this case complained about the way the Executive had dealt with his Housing Benefit (HB) claim. The complainant stated that as a consequence of what he regarded to have been the Executive's inefficiency in the administration of his HB claim, he was confronted suddenly and unexpectedly with an excessive rent arrears demand.

The Executive informed me that rent arrears had accrued because the complainant had failed to inform it in writing of the fact that he had ceased to receive Income Support. The complainant insisted that he had informed the Executive of his change in circumstances by telephone and was advised that no further action was required on his part and that his HB entitlement would not be affected.

In the course of my investigation, I found that many telephone calls made by the complainant had not been recorded by the Executive. I also found that Notices from the Social Security Agency informing the Executive of change in entitlement of clients to benefit were unclear and confusing. Both of these factors contributed to this complaint. As a result of my investigation, the Executive agreed to apologise to the complainant and reduce his rent arrears by the sum of £210. The Executive also informed me that changes have been made to HB application forms and a recent advertising campaign had been run in an effort to notify claimants of their need to put in writing to the Executive details of any change(s) in their circumstances. The Executive has admitted the need for more documentation to be made on files regarding oral queries and is currently in negotiations with the Department for Social Development regarding additional resources to undertake this duty. *(CC 39/01)*

Handling of application for transfer to alternative post(s) within the organisation

In this case the complainant said he applied, in June 1999, for a transfer to an alternative post within the Executive. Several months later, a selection board for promotion of eligible staff to his grade was held. The complainant said that, in December 1999, he reaffirmed to the Executive that his transfer request was to remain live. Although a number of staff recommended for promotion had been placed in posts at the higher level, the complainant said he had not received a firm offer in respect of his transfer request. He said he wrote to the Executive's Personnel department in September 2000 informing it of a suitable vacancy that had been offered to an officer whose name had been on the reserve list arising from the 1999 promotion board. He sought confirmation that it was the Executive's policy to give transfer requests precedence over transfers on promotion and also an explanation as to why he was not considered for the post concerned.

In response, the complainant was informed that an error had been made in that, in making a permanent offer of the post he had identified, his transfer request had been completely overlooked. The complainant contended that the officer to whom the post had been offered was subsequently offered and accepted a different post and that a person on secondment held the post in question.

In my investigation of this complaint, I examined the Executive's Appointments and Promotions procedures. I found that the complainant's transfer request fell within the third priority category of the procedure, which allowed managers to use their discretion to organise and manage staff resources to best match the business needs of the organisation while having regard to the aspirations of staff. I found no evidence that the complainant's transfer request was not dealt with in accordance with the procedure and consequently I did not uphold this aspect of his complaint.

I established that, in response to his request for a career development transfer, the complainant had been offered and accepted a secondment for a period of 18 months from November 1999. My enquiries revealed that, on this basis, the Executive would not have been seeking a career development move for the complainant during his period of secondment and I did not find this to be an unreasonable position. In relation to the complainant's reaffirmation to the Executive that his transfer request was to remain live, I found that no apparent action had been taken in response to this and I found it necessary to criticise the Executive for what I regarded as an administrative failure.

My enquiries confirmed that the complainant was informed by letter that, in making an offer in respect of an available post, his transfer request had been overlooked in error. The letter added that the complainant would be considered for the next suitable vacancy. I found that the error concerned a failure to check the transfer file which, if undertaken, would have disqualified the complainant for consideration on the grounds that he would not have been available for at least 7 months due to his secondment. While satisfied that the oversight had no material impact on the complainant, I regarded the handling of this issue as having represented less than satisfactory administrative practice and that the provision of erroneous information to the complainant was most regrettable and constituted maladministration.

I concluded that my thorough investigation of this complaint had not found any evidence to support the complainant's contention that his transfer request was not dealt with in a fair and reasonable manner, taking account of all the relevant factors and circumstances. I therefore did not uphold the substantive elements of this complaint. However, I regarded the Executive's handling and processing of the above-mentioned issues to have been flawed to the extent that it constituted unsatisfactory administration which caused the complainant at least some degree of confusion and/or frustration. Consequently, I recommended that the complainant should receive a letter of apology from the Chief Executive, which was duly issued. *(CC 143/00)*

Amount of discount to be repaid

In this case the complainant said she and her husband purchased their dwelling in April 1999 from the Executive, under its Statutory House Sales Scheme. The complainant said that, due to her disability, she now required a house with a downstairs bedroom and had found accommodation which was both suitable to her needs and affordable. However, the Executive had informed the complainant that if her house was sold prior to 19 April 2001, she would have to repay two full years discount to the Executive or one full years discount if the sale occurred in the year commencing 20 April 2001. She had been further informed that if the sale was completed shortly before 19 April 2001, the Executive could not accept only part of the second year's discount being repaid by her.

The complainant was extremely concerned that by delaying the sale of her current dwelling, she would lose out on the opportunity to purchase the available alternative dwelling that she had identified. Also, having a purchaser for her own dwelling, she was concerned that the sale might not proceed if she attempted to delay it. The complainant added that the requirement to repay the sum concerned could leave her in a position that she may not be able to move house. She was therefore very annoyed that the Executive could not take her medical circumstances into account when making its decision as to the sums involved in her repayment of discount.

In my investigation of this complaint, which included an examination of the relevant housing legislation and the terms of the House Sales Scheme (the Scheme), I established that the Executive had no discretion to either waive or accept a percentage of the discount repayment in this case. I found that, although the Scheme provides for certain categories of disposal of a former Executive owned property which do not attract repayment of discount, these do not include medical circumstances which necessitate a person moving to accommodation that is more suitable/adapted to meet his/her needs. The relevant legislation, and related policy, stipulates that only complete, not part, years are to be considered when discount is repaid to the Executive. Also, I found that there is no discretion in the Scheme to make exceptions in individual cases such as this.

My investigation established, however, that rather than 19 April 1999, the termination date of the sale of the complainant's property by the Executive was 5 April 1999. Although I was satisfied that the erroneous information provided by the Executive had no adverse affect on the complainant's case I considered it to be of the utmost importance that members of the public receive accurate information from public bodies, particularly in cases such as this involving the repayment, or possible repayment, of a significant sum of money. I therefore drew this matter to the attention of the Executive's Chief Executive and asked that he note my view accordingly.

Although I had considerable sympathy for the difficult position in which the complainant found herself, I concluded that the terms of the statutory House Sales Scheme, under which the Executive is require to operate, and which has its genesis in primary legislation, are stringent in that the Executive is not permitted to require repayment of a lesser amount of discount than that required under the terms of the Scheme. The legislative framework which informs my role does not empower or allow me to overrule such statutory requirements. In the circumstances I did not uphold this complaint. *(CC 170/00)*

Handling of a housing application

In this case the complainant said she applied to the Executive for rehousing in October 1999, following an assault upon her by neighbours, and was awarded PT (A2) priority status. However, the Executive subsequently informed her that it had removed her priority status and, having assessed her rehousing application under the provisions of the new Housing Selection Scheme (HSS), she was entitled to only 20 points. She failed to understand why her priority status had been removed but considered a possible reason might be the fact that those involved in assaulting her had since been rehoused.

The complainant said there had been a number of incidents in which her children had been subject to victimisation and intimidation by other children. She added that she herself feared seeing her assailants who continued to live in the general area. Although she had provided the Executive with medical evidence that she suffered from depression, anxiety, increasing isolation and difficulty in coping due to attacks on her family, the complainant considered that the Executive had not taken this into account in considering her transfer request.

The complainant claimed that although she occupied a three bedroomed house, the Executive had informed her that if she rented private accommodation, she would be awarded Housing Benefit on the basis of a two bedroomed flat. She said she had further been informed that the Executive would consider her only for a two bedroomed house and it would not consider her for any available flats in her areas of choice. Although notified by the Executive that she had been awarded a further 20 points for her first area of choice, bringing her total to 40, the complainant considered she had been treated very unfairly by the Executive in having her priority status for rehousing removed, for no obvious reason, whilst leaving her in a situation which, in terms of achieving suitable alternative housing, was "hopeless" as a result.

I found that in November 2000 the Executive introduced the new HSS, which saw the replacement of the PT (A2) category with a points based assessment. When the complainant was assessed under the new HSS both her alleged assailants had moved address and the Executive considered that the risk to her had been removed. I established that only those applicants with A1 priority status had their position on the waiting list protected when the current HSS was introduced, all other applicants being reassessed on a points basis. I was therefore satisfied that the complainant had not been treated unfairly because all PT (A2) applicants for rehousing were reassessed with points awarded to them.

My enquiries revealed that as a direct result of medical related evidence submitted in support of the complainant's transfer application, the Executive awarded her additional points in respect of her areas of choice. With regard to the complainant's claim of having been informed that her requirement was a two-bedroomed house and that, if she rented private accommodation, she would be awarded Housing Benefit on the basis of a two-bedroomed flat, my investigation produced no evidence to substantiate this. In all the circumstances, I was unable to uphold these elements of the complaint.

My investigation, however, revealed some administrative failures in the processing of the complainant's rehousing application under the revised HSS. However, I was satisfied that the complainant was not disadvantaged by the Executive's failure in this respect in terms of the points awarded.

My investigation revealed that the complainant missed out on the opportunity of being made two offers of dwellings as a consequence of the Executive's delay in allocating a total of 40 points to her for her first area of choice. However, the complainant told me that she would not have accepted either of the dwellings and I very much appreciated and commended her honesty and openness in this regard.

I was pleased to note that, during the course of this investigation, the complainant was offered a suitable dwelling for herself and her family by the Executive, which she accepted, and that she was happy both with the dwelling and its location. Also, I was pleased to record that, as a result of this investigation, the Executive reminded its Housing Officers of the HSS policy on Primary Social Need and homelessness. *(CC 4/01)*

Refusal of application to purchase dwelling

In this case, the complainant wrote to me about the Executive refusal of her father's application to purchase his dwelling. She informed me that her father had been a tenant of Executive property for over forty years and had become the tenant of his present dwelling as the result of a compulsory transfer. When he applied to purchase the property, he was informed his application could not be accepted by the Executive due to its exclusion provisions contained in its Statutory House Sales Scheme. The complainant told me her father had to move from his previous residence as it was due to be demolished and she considered that her father's case should be categorised as that of a tenant who was compulsorily transferred from another Executive dwelling in respect of which he enjoyed the right to buy.

The Executive informed me the complainant's father was unable to purchase his dwelling, as it was a single storey property which was let to him when he was over 60 years old. The Executive's current House Sales Scheme, made under the Housing (Northern Ireland) Order 1992, excludes from sale to sitting tenants single-storey property or ground floor accommodation with no more than two bedrooms which was let to the tenant, or to a predecessor in title of his, for occupation by a person who was aged 60 or more when the tenancy commenced. In the context of an earlier, similar type, complaint I learned that this exclusion provision had been upheld following a Judicial Review challenge.

It was explained to me by the Executive that there had been no element of compulsion involved in the complainant's father's transfer. During the course of my investigation, I established that when the complainant's father applied for a transfer, it was on medical grounds because of his wife's illness. The transfer application was supported by a doctor. My detailed investigation of this complaint did not produce any evidence of maladministration in the Executive's handling and consideration of the complainant's father's application to purchase his dwelling. In particular, I was satisfied that the Executive had applied properly the terms and conditions of the legislation, and related policy and procedures under which it is required to operate in relation to house purchase applications. Consequently, in the absence of maladministration I did not uphold this complaint. *(CC 62/01)*

Additional cost in respect of External Cyclic Maintenance work

In this case the complainant stated that he purchased his maisonette from the Executive and, since then, had undertaken maintenance works required to the property himself. The service charges he had incurred as owner of his maisonette had therefore related solely to insurance cover. The complainant said the Executive informed him that a cost of £255.25 was to be added to his service charge for the year 2000/2001 in respect of External Cyclic Maintenance (ECM) work that it had undertaken to his property. He stated he had not been consulted about the type/extent of the works proposed, did not give approval for any of the works to be carried out to his property and he contended that all of the works undertaken to his maisonette, including the fitting of a new front door, were unnecessary. The complainant therefore considered he should not have to pay any of the maintenance costs included in his 2000/2001 service charges.

The complainant said the Executive had informed him that it retained ownership of the doors and windows of his property. He disputed this but, if it was the case, he contended that he should not have to pay the cost of maintaining what was the Executive's property. The complaint further said that, while "working at" the windows in his maisonette, the contractors damaged the frame of the window in the front bedroom. Although he said he reported the damage to the Executive on at least 4 occasions, it had not inspected the damage, which was such that he had a replacement window fitted at a cost of £240.

Having investigated this complaint I established that, under the terms of the Executive's standard lease relating to the disposal of flats to its tenants, the purchaser of the flat is liable in every financial year for the Service Charge attributable to the flat in that financial year. I further established that the charge should be a proportionate part of the costs incurred in that year by the Executive in connection with the provision of services, repairs, maintenance or insurance. On this basis, I was satisfied that the complainant was liable for that part of the service charge relating to planned maintenance works undertaken by the Executive.

I established that the Executive's policy requires it to have regard to the owner's views in carrying out works to blocks of flats and to consult owners, at the same time as Executive tenants, using one of four methods of consultation, including individual contact. I noted that, on three occasions, letters were issued to the complainant giving various details of the proposed ECM Scheme. Although the complainant disputed receiving these letters, I had no reason to doubt that the Executive did not issue the correspondence.

With regard to the complainant's contention that he did not give approval for any of the works, the Executive's policy relating to improvement works affecting flats, which are the subject of consultation, requires that works should not normally begin until a one-month period has expired. In the absence of any indication from the complainant to the contrary, my view was that it would therefore have been reasonable for the Executive to proceed with the works on the assumption

that the complainant was fully in agreement with the nature and extent of these.

In relation to the question of ownership of the doors and windows of the complainant's dwelling, my investigation revealed that, although details relating to the sale of flats by the Executive to its tenants are quite complex, the terms of the Executive's standard lease indicated that the complainant owned the front door of his dwelling. Through my investigation, the Executive found it had made an error in contending that the door remained in its ownership. I was pleased to note that, on the basis that the front door of the complainant's property should not have been replaced, the Executive had agreed to deduct the cost of the door from that element of the complainant's service charge relating to planned maintenance. I was further pleased to note that the Executive's Chief Executive had undertaken to write to the complainant to explain how the confusion had arisen, to apologise for the error and also to apologise that this matter had not been resolved at an earlier stage in the Executive's complaints process. The Executive also indicated its agreement to consider the damage to the window of the dwelling, provided it received from the complainant evidence of the damage and a receipted invoice for the repair. The complainant regarded these outcomes as a satisfactory resolution of his complaint.

I concluded that my investigation did not reveal any prima facie evidence of maladministration on the part of the Executive in its dealings with the complainant regarding its ECM Scheme involving a number of dwellings, including the complainant's property. *(CC 181100)*

Works undertaken to kitchen of dwelling

In this case the complainant alleged that the Executive had delayed in undertaking repairs to his kitchen. He claimed that although he reported the need for repairs to his kitchen units to the Executive each year since his tenancy began, no action was taken until 1999, when the Executive fitted new kitchen units. The complainant stated that the new units were much smaller than those previously fitted with the result that the contents of his kitchen did not fit into the space available. Given this reduction in his storage, the complainant contended that the Executive should fit further units to compensate for the difference in sizes of the old and new units. The complainant also expressed concern that his dwelling was to be omitted from a more comprehensive kitchen replacement scheme proposed for his estate by the Executive. Further elements of this case related to the complainant's concern that the full Economy 7 heating system installed in his dwelling, to replace the partial Economy 7 system, was not yet in operation and also several minor work matters.

Having investigated this complaint, I found no evidence to substantiate the complainant's contention of having made complaints to the Executive about the kitchen units in his dwelling during the period concerned. In the circumstances, I did not uphold this element of the complaint. However, I was pleased to note that as a result of my involvement the Executive had agreed to fit further kitchen units, which the complainant accepted would result in him having at least the same amount of storage capacity as before. Also, the complainant indicated that this action represented a satisfactory resolution to the main element of his complaint. I established that the Executive had no current plans to refurbish kitchens in its properties in the area concerned but I was pleased to note an assurance by the Executive's Chief Executive that the complainant's dwelling would be included in any future kitchen upgrading scheme.

With regard to the heating in the complainant's dwelling, I established that the works undertaken did not involve any changes to the system of supply. It was not therefore necessary for the Executive's contractor to submit connection cards to NIE. I further established that the selected NIE tariff is a private agreement between NIE and the consumer, who are the only parties who can alter the arrangement. I found that, some years earlier, the complainant decided to revert to a

Domestic Energy Tariff only, which resulted in the off-peak meter having been removed. I further found that when the Executive was made aware of the complainant's situation, it acted without delay to ensure that the heating system was operational. In all the circumstances I did not consider that the Executive acted incorrectly or unreasonably in this matter and, although I hoped that the complainant found my intervention as being helpful in having the matter resolved, I did not uphold this element of the complaint.

I was pleased to note that the Executive had attended to the other minor work matters that were an element of this complaint. This resulted in a cover being fitted to the water storage tank, a full check of the wiring in part of the complainant's dwelling and the sanding down and revarnishing of the front door of the property.

I concluded that my investigation did not reveal any prima facie evidence of maladministration on the part of the Executive in its dealings with the complainant. I was, however, pleased to note that the complainant had found my involvement helpful in relation to resolving the issues about which he was aggrieved.
(CC 135/00)

Amount of Renovation Grant approved in respect of dwelling

In this case the complainants said that, in response to their application for grant assistance, the amount of Renovation Grant determined and approved by the Executive was insufficient to enable the necessary works, part of which were critical to the safety of their dwelling, to be undertaken. On the basis of the cost estimates, which they had obtained for the works required, the complainants contended that under its grant aid Scheme, the Executive severely underpriced the costs of works. They complained that the level of disparity between the amount of grant approved and the builder's estimate meant that the only choices available to them were to borrow the deficit sum, "involving several thousand pounds", which would be impossible in their circumstances, or to withdraw their application for renovation grant aid.

My investigation of this complaint included an examination of the Executive's grants policy, particularly the policy and procedures governing the determination of the amount of grant aid to be awarded in respect of those works considered necessary by the Executive to be carried out and thus eligible for grant assistance. I also examined the legislation which the Executive is statutorily obliged to adhere to in its consideration of applications for grant aid. I was satisfied that Government policy has clearly stipulated, "Where the Executive decides to approve an application for a grant it shall determine which of the relevant works are eligible for grant". The legislation has also stipulated that the Executive "shall determine the amount of expenses which in its opinion are proper to be incurred in the execution of the eligible works and the amount of grant it has decided to pay in respect of the eligible works". I took the view that the legislative stipulations left the Executive with little or no discretion and thus I found no evidence that the Executive had been guilty of maladministration in how it was applying the statutory policy as it currently stood.

I considered it relevant and appropriate to comment on the methodology used by the Executive to determine the actual amount of aid payable to grant applicants. I established that within its legislative framework the Executive has to make a judgement on reasonable costs on which its Schedule of Rates, used in grants schemes, is based. I was satisfied that the Executive was taking reasonable steps and precautions in determining what costs should be allowed for grant assisted works. I did not, therefore, find any evidence of maladministration in the Executive's approach to how it fulfilled this element of its statutory responsibility. I established that although it is a requirement of the grants scheme that applicants submit a builder's estimate, it is not the Executive's practice to accept the estimate or the lowest of a number of estimates obtained by the grant applicant.

I had a great deal of sympathy for the difficult position in which the complainants found themselves. However, I took the view that,

essentially, the complainants were, in effect, challenging the policy that Government had laid down for the Executive to follow on the matter of considering and determining applications for grant aid. This was not a matter in which I could become directly involved.

I welcomed the Executive's willingness to attend a meeting with the complainants and their contractor to discuss the Executive's specifications and costings, if this could be arranged, and I urged the complainants to take up this offer in an effort to at least have the most essential elements of the work undertaken to their property.

I concluded that my investigation had not revealed that maladministration had occurred on the part of the Executive. However, I recognised and appreciated the complainants' undoubted strength of feeling on the particular issue in question. I therefore had sympathy for their viewpoint. However, it is the position that I am not empowered to overrule or overturn legislative provisions. Also, the legislation relevant to the core issue of this complaint does not provide for the exercise of discretion. In addition, I was satisfied that the Executive must guard against inflated estimates and contract prices. In all the circumstances, therefore, I did not uphold the core issue of this complaint and thus I could take no further action on it. *(CC 179/00)*

Valuation placed upon home under House Sales Scheme

In this case the complainant said she applied to purchase her dwelling from the Executive in March 2000 but much to her annoyance, she had to wait several months for the property to be valued and several more months before she received an offer. The complainant stated that when an offer, based on a valuation of £41,000, was made to her by the Executive on 4 October 2000 she was "shocked" that the valuation was so high compared to the "much lower" valuations placed on dwellings occupied by some of her neighbours. As a result of her request for a valuation redetermination, the complainant received a second offer which was also based on a valuation of £41,000. The complainant said she was aggrieved at what she regarded as the unfairness of the House Sales Scheme in terms of valuations. She referred to several properties in the vicinity of her dwelling, the occupants of which, she claimed, had been Executive tenants for a far shorter period than her but who were able to purchase the houses at a lower cost, a situation that she considered "indefensible".

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

I also established that, in this case, the VLA had been involved in both the initial valuation exercise and as "final arbiter" when the complainant requested a redetermination of the initial valuation assessment. On the basis of a detailed probing and investigation of how the VLA determined the valuation figures, I was fully satisfied that the gross valuation figure was arrived at after a thorough and professional exercise on the part of the VLA, which I found not to have been attended by maladministration. Consequently, I could not uphold the complainant's contention that the Executive had been guilty of maladministration in arriving at a gross valuation figure of £41,000 in respect of her dwelling. I therefore could not uphold this element of the complaint.

This case, however, brought to my attention for the first time an issue which gave me concern, namely the VLA's dual role in the Scheme and how this was fulfilled. My in-depth examination of the evidence established that the VLA was fulfilling to a high standard its role in providing to the Executive valuation assessments of dwellings which are the subject of applications

to purchase. However, I found it difficult to dispel the sense of unease I had that there remains a significant risk of a perception on the part of the public that the VLA's dual role in the Executive's Homes for Sale Scheme constitutes a conflict of interest. This in turn presented a significant degree of concern to me that a continuing dual role on the part of the VLA would make it difficult to secure public confidence in the independence and objectivity of the re-determination process in those cases where what is being contested is the VLA's initial valuation assessment.

I put these points of concern together with recommendations to the VLA which, I was pleased to note, agreed with my conclusion that there was a risk of a perception of conflict of interest and accepted the change to the existing scheme that I had recommended. I therefore concluded that my concerns had been appropriately addressed.

With regard to the processing of the complainant's application to purchase her dwelling, I established that the Executive's objective timescale for completing the various steps involved in the house sales process provided for a period of 10 weeks, from receipt of an application, in which to issue a letter of offer to sell. However, the complainant did not receive a letter of offer until some 28 weeks after the date of receipt of her purchase application. This represented a delay of 18 weeks when compared to the Executive's stated timescale. Although the Executive was experiencing difficulties due to the amalgamation of two offices at the time, and a backlog of work caused by the resultant move, to a significant extent, I regarded the standard of service which the complainant received in the period in question as falling below the Executive's stated performance standards and therefore that which members of the public are entitled to expect.

I concluded that the terms of the statutory House Sales Scheme, under which the Executive is required to operate, and which has its genesis in primary legislation, are stringent in that the Executive is not permitted to offer a dwelling for sale at a lesser amount than that required under the terms of the Scheme. The legislative framework which informs my role does not empower or allow me to overrule such statutory requirements.

However, I had no doubt that as a consequence of the excessive delay in processing her purchase application, the complainant experienced disappointment, annoyance and uncertainty. By way of redress, therefore, I recommended that she received a written apology from the Executive's Chief Executive (CE), together with a consolatory payment of £100. I am pleased to record that the CE accepted my recommendation. I also considered the question of whether the complainant would have to meet the cost of unnecessary rent if she decided to proceed with the purchase of her dwelling. My enquiries established that this would not arise as the complainant's rent was being covered by her entitlement to full Housing Benefit. *(CC 19/01)*

Response to complaints of flooding at her dwelling

In this case the complainant said that, in early 1998, she experienced a problem with flooding at the front and, to a greater extent, the rear of her Executive owned dwelling. She said she reported this problem to the Executive and, from early 1998 up to June 2000, was in contact with various Executive officials, in person, by telephone and in writing, about the matter. She further said that, throughout the two-year period concerned, the Executive constantly told her that the then Department of the Environment (DOE), and not the Executive, was responsible for rectifying the problem. The complainant added that she was extremely distressed and inconvenienced by the problem and she incurred financial loss due to the contents of her garden shed being totally destroyed by the flooding.

The complainant said that, due to the distress and inconvenience which she suffered, and the time taken by the Executive to admit responsibility for the problem of flooding at the rear of her dwelling she stopped paying rent in early 2000 as she felt strongly that this was the

only way in which she could get the Executive to act. When arrears of her rent accumulated, she was informed by Executive staff to submit a claim to its General Services Finance department in respect of the contents of her garden shed and also for exemption from paying rent on the grounds that she could not enjoy her tenancy. The complainant felt aggrieved that Executive staff encouraged her to make these claims for something they knew she would not be entitled to.

Having investigated this case, I established that there was a conflict of evidence as to when the complainant first brought the problem of flooding to the attention of the Executive. The Executive was adamant that, according to its records, the first report of flooding at the rear of the dwelling was in August 1999. This constituted one of those situations where I was faced with two conflicting statements and without firm corroborative evidence, or an independent witness, as a consequence of which it was very difficult for me to make a definitive finding on this element of the complaint. However, it was not disputed by the Executive that the complainant notified it on 31 August 1999, of a flooding problem at the rear of her dwelling. Neither was it disputed that the remedial action necessary to resolve the problem was not completed until 20 June 2000.

I found as totally unacceptable and as constituting maladministration, the Executive's failures to provide an effective service to the complainant during the period 31 August 1999 to June 2000. On receipt of the complainant's report of a flooding problem at the rear of her dwelling, there was a duty of care on the Executive to have the matter investigated. Instead, I established that the Executive took no action. I also established that the Executive largely, if not entirely, ignored further representations from the complainant. I found this constituted further unacceptable administrative practice and failure of service, which obviously added to the complainant's sense of distress, annoyance, frustration and disappointment. Also, I found as constituting maladministration, a delay from March to 14 June 2000 on the part of the Executive in issuing an order for the construction of a drain to alleviate the flooding problem at the rear of the complainant's dwelling.

I established that the Executive disallowed the complainant's claim for loss of contents of the garden shed on the grounds that the flooding was not due to any negligence on its part. It was my firm view that the facts and circumstances of the case, as established during my investigation, simply did not support this conclusion. I found that the complainant had not received a written decision on her claim regarding a rent exemption. I established that the Executive regarded its decision in relation to the shed contents as a satisfactory notification of its decision on both of the complainant's claims and I found this unacceptable to the extent that it constituted maladministration.

I concluded that the Executive's handling and processing of the matters which formed the core element of this complaint were flawed by maladministration. Consequently, the quality of service that the complainant received fell well short of that which the Executive seeks to deliver and which members of the public are entitled to receive. As a consequence of the maladministration, I had little doubt that the complainant suffered the injustice of significant frustration, disappointment, annoyance and distress.

I recommended that the Executive's Chief Executive apologised to the complainant and that the Executive made a financial recognition, in the sum of £750, of the injustice to her. I also recommended that the Executive should review the complainant's public liability claim for loss of contents of the garden shed. In relation to the claim regarding "exemption" from paying rent, I considered the complainant was entitled to an explicit notification of the Executive's decision on this claim. I am pleased to record that the Chief Executive accepted my recommendations. I am also pleased to record that as a follow on from my recommendations, the Executive reached agreement with the complainant to pay her £200 in respect of her claim for loss of contents of her garden shed. *(CC 26/01)*

LOCAL COUNCILS

Failure to serve a Certificate of Disrepair

In this case the complainant complained about Ards Borough Council's (the Council) failure to serve a Certificate of Disrepair on his Landlord, who had refused to meet his obligation to carry out repairs. The complainant alleged that the Council's decision not to serve a Certificate of Disrepair was influenced by the fact that the Landlord was a local Councillor.

My investigation established that the Council officials dealing with the complainant's case had made a professional decision that the property required major works that were appropriate to the Housing Order and did not fall within in the remit of the Council's statutory responsibility but fell within the remit of the Northern Ireland Housing Executive. The Council exercised its statutory powers to require the Landlord to carry out repairs that were appropriate to the Public Health. It served Public Health Notices requiring the Landlord to deal with the outstanding repairs which detrimental to the health of the complainant's family. I could not challenge that decision because I was satisfied that the repairs detailed on the Public Health Notices were matters which could be detrimental to the health of the complainant's family. I found no evidence to support the complainant's contention that the Council's decision not to serve a Certificate of Disrepair was influenced by the fact that the Landlord was a local Councillor. My investigation did not allow me to uphold either aspect of the complaint submitted to me. *(CC 44/00)*

Handling of a public right of way dispute

In this case, the complainant claimed to have sustained injustice as a result of maladministration by Antrim Borough Council (the Council) in relation to its handling of a public right of way dispute. During the course of my investigation, I discovered that the complainant had spent considerable time and resources uncovering evidence to support the existence of an alleged right of way. She considered that the Council had been negative in dealing with this matter, had not taken responsibility to investigate the existence of the alleged right of way and had not fully investigated the evidence submitted to it both by her and the objectors. She also considered that the evidence she had submitted was sufficient to assert that the alleged right of way was a public right of way.

The Council acknowledged the effort applied by the complainant in obtaining evidence to support her claim and explained this had been discussed with her in the early stages of the case and she had shown a willingness to do so. However, the Council stated it fully accepted its responsibility also and had pursued various avenues in an attempt to gain information to support and substantiate evidence from witnesses. It was explained to me that the Council's decision was made after much consideration of inconclusive evidence both for and against the claim along with advice from its Solicitors.

As a result of my investigation I was satisfied that the Council had sought to deal with the complainant's concerns promptly, diligently and seriously. In particular, my investigation did not lead me to conclude that the Council had been unreasonable in the decision it took in March 2001, mainly on the basis of legal advice, that the evidence available to date would not support an assertion that the alleged right of way should be deemed a public right of way. The Council assured me it remained receptive to the consideration of any further evidence brought forward, either for or against the right of way claim. In all the circumstances, therefore, I did not uphold this complaint. *(CC 61/01)*

Failure to deal with noise nuisance

I received a complaint alleging maladministration by Fermanagh District Council because of its failure to take action to deal with excessive noise generated by operations on an industrial estate, situated close to the complainants' home. The development of the industrial estate had been ongoing without planning permission for some

years. It was when the levels of noise generated on site reached nuisance proportions, causing stress and disruption to their family life, that the complainants sought action by the Environmental Health Department (EHD) of Fermanagh District Council to address the problem.

My investigations showed that the EHD had acted promptly after receiving the complaint by visiting the site to assess the extent of the problem. However the situation became more complex when the developer of the industrial estate submitted a retrospective planning application seeking approval to retain the unauthorised buildings, uses and structures on the site. The Council decided that the appropriate means of dealing with the alleged noise problem was via the statutory planning consultation process. Having given consideration to the respective roles of the bodies in these circumstances I accepted that the primary responsibility for issues surrounding development of this site properly fell to the Planning Service. I therefore agreed that the Council's chosen course of action was the correct one. The CE of the Council advised me that the subsequent actions by Environmental Health Department were taken with the dual aim of addressing the noise complaint and facilitating a response to the planning application. My examination of the relevant records showed that these actions included numerous site visits, meetings and advice to Planning Service on mitigating measures proposed by the developer. The evidence showed that sufficient progress was made by these means to permit EHD to make the judgement that the developer could reasonably argue he was adopting "best practical means" of dealing with the noise disturbance.

I was sympathetic to the grievances felt by the complainants and I found fault with the Council in failing to properly explain its position, thereby contributing to the perception of negligence. I also found instances of poor record keeping for which I criticised the Council. Overall however I was unable to uphold this complaint. *(CC 174/00)*

Response to reports about noise from an adjoining property

In this case the complainant said the noise of office equipment, which is in use 24 hours a day by his next door neighbours, had resulted in his being unable to sleep at night properly for more than a 45-week period. He said he had attempted to resolve the matter through the Environmental Health department of Newry and Mourne District Council (the Council). However, the complainant said he was totally dissatisfied with the Council's monitoring practices and its general response to his complaint because the office equipment was still in use in the adjoining property.

Having investigated this case, I established that, in response to his complaints, the Council had carried out an unannounced visit to the property adjoining the complainant's dwelling. However, there was no evidence of a change of use from a dwelling to an office having taken place and, therefore, there was no breach of Building Regulations. I further established that the Council had, on several occasions, installed a recording system to monitor the noise in the complainant's dwelling but it was subsequently unable, through an analysis of the monitoring results, to confirm intrusive noise from the recordings. On this basis, I found that the Council had insufficient grounds to support an action regarding a statutory noise nuisance from the adjoining dwelling.

The outcome of my investigation did not lead me to conclude that the Council had been guilty of maladministration arising from the way it had dealt with the representations made to it by the complainant about noise nuisance allegedly caused by the occupants of the neighbouring dwelling. I was satisfied that the Council had sought to deal with the complainant's concerns promptly, seriously and thoroughly. Consequently, I did not uphold this complaint. *(CC 123/01)*

SPORTS COUNCIL

Amount of lottery funding awarded

In this case the complainant alleged that the Football Club (the Club) had sustained injustice as a result of maladministration by the Sports Council Northern Ireland Lottery Fund (the Sports Council) because of the inadequate and inequitable amount of lottery funding awarded to its project.

My investigation revealed that the Sports Council wrote to the Club on 21 April 1997, offering a maximum award of £45,000 for the provision of "two changing rooms". I noted that the Club was not content with this offer and following an exchange of correspondence, the Sports Council subsequently increased its offer by £15,000, i.e. £5,000 towards the inclusion of a utility room and £10,000 towards the difficult ground conditions at the Club. The Sports Council's Chief Executive told me that his organisation uses standard awards, with an upper limit, in an effort to have the maximum impact and thereby avoid applicants using Sports Council funding to provide unreasonably high specification buildings. I did not consider this to be an unreasonable approach, as it complied with the reality of budgetary responsibilities and constraints.

Although I did not doubt that the Club felt a real sense of disappointment regarding the Sports Council's decision not to provide additional lottery funding towards completing its building project, my thorough investigation did not reveal any evidence to demonstrate that the Sports Council had failed to follow its procedures properly in respect of the Club's application for lottery funding. Neither did I find any evidence that the Club had been treated inequitably by the Sports Council, in comparison to the decisions taken on similar type applications. I was also satisfied that the Club had been provided with an adequate opportunity to have its case 'reheard' by the Sports Council's Appeals Panel. I considered this to have been an effective appeals process. In all the circumstances, therefore, and although I was not without sympathy for the Club's financial difficulties, I could not uphold this complaint. (CC 101/00)

LAGANSIDE CORPORATION

Decision to refuse grant aid

The complainant's mother stated that the Laganside Corporation (the Corporation) had sought advice from the Valuation and Lands Agency (the VLA) in connection with her daughter's application for an Investment Incentive (II) Grant and the information was used to reject her claim for grant aid. She complained that the Corporation had refused to provide them with a copy of the VLA report containing the said information stating that it was a 'confidential document'. In addition, it had refused to provide them with information relating to the grant scheme and details of other grant applications which had been awarded/refused.

The investigation of the complaint established that the award or refusal of an II Grant is a discretionary decision for the Corporation to determine. Moreover, the Corporation had sought advice from the VLA to provide independent comment on the project. On the issue of the non-disclosure to the complainant of the VLA report, I considered the Code of Practice on Access to Government Information (the Code) which applies to Government Departments and public bodies, including the Corporation. The Code supports the Government's policy of extending access to official information, and responding to reasonable requests for information. I was therefore critical of the Corporation's decision not to inform the complainant's mother, who was acting on her behalf, of the 'before' and 'after' valuation figures contained in the VLA report. However, I also acknowledged that this was the first time that the Corporation had received a request for valuation information, and that its decision had been based on the position taken by the VLA in such matters.

On the second aspect of the complaint I concluded that the Corporation did provide the complainant's mother with written general information relating to the number of grant applications and awards. I was further satisfied that the Corporation had provided a copy of

its policy document in connection with the II Grant Scheme, the content of which had been discussed at a meeting with the complainant's mother.

In the light of my criticism of the Corporation's decision not to inform the complainant's mother of the content of the VLA report, I recommended and the Chief Executive agreed, to issue written details of the valuation figures provided by the VLA, which had supported the Corporation's decision to refuse grant aid. *(CC 166/00)*

Section Three Appendices

Northern Ireland
Commissioner for Complaints

Appendix A

Summaries of Registered Cases Settled

Northern Ireland Housing Executive
(CC 113/00)

I received a complaint regarding the Executive's overall handling and implementation of the disability adaptation project at the complainant's home. At an early stage in my investigation the Executive accepted that the complainant did not receive the support and service which she had the right to expect and which it normally strives to provide. It was agreed that the Executive should make a payment of £4,600 to the complainant in recognition of the overall injustice she suffered. In view of this satisfactory resolution of the complaint I took no further action on this case.

Northern Ireland Housing Executive
(CC 12/01)

The complainant in this case was unhappy with the Executive's decision not to install oil fired central heating in his dwelling. During the course of my investigation of this complaint the Executive informed me that, following further consideration of the matter, it had decided to install oil fired central heating in the complainant's home. As I regarded this as a satisfactory resolution of this complaint, I decided to take no further action on it.

Northern Ireland Housing Executive
(CC 34/01)

This complaint related to the complainant's dissatisfaction with the standard of workmanship carried out to his home by the Executive's contractors. As a result of my enquiries in this case the Executive commissioned a consultant's report in relation to the works. This was undertaken and the Executive assured me that the necessary works identified by the Consultant would be carried out as soon as possible. As I regarded this as a satisfactory resolution of the complaint I decided to take no further action on the case.

Sperrin Lakeland Trust
(CC 50/01 & CC 51/01)

I received two complaints regarding the effective date being applied by the Trust following the upgrading of the complainants. During the course of my investigation the Trust, having reviewed the issues raised, offered to backdate the complainants' payments to the date applied for. As this represented a satisfactory resolution of the complaints I decided to take no further action.

Northern Ireland Housing Executive
(CC 55/01)

The complainants in this case alleged that the Executive had failed to take adequate action to resolve a problem of penetrating damp coming into their home. During the course of my investigation the Executive informed me that it had issued a statutory notice with a view to rectifying the outstanding repairs to the complainants' home. As I regarded this as a satisfactory resolution of this complaint, I decided to take no further action on it.

Northern Ireland Housing Executive
(CC 63/01)

I received a complaint regarding the Executive's failure to meet a housing transfer request. The complainant identified a particular property that she was interested in and which had become vacant. Following the commencement of my investigation I received a further letter from the complainant stating that the Executive had now allocated the property in question to her. As both the complainant and I regarded this as a satisfactory resolution to the complaint I decided to take no further action.

Northern Ireland Housing Executive
(CC 68/01)

This complaint related to the delay in completing outstanding repairs to the complainants home. During my investigation, one of my Investigating Officers met with the Executive's Area Technical Services Department. The Executive explained that it was experiencing problems with some of its contractors. Nevertheless, despite these

problems, the Executive arranged to have the necessary repairs to the complainants home completed. As both the complainant and I regarded these works as resolving the complaint I decided to take no further action on this case.

Northern Ireland Housing Executive
(CC 78/01)

The complainant in this case was dissatisfied with the length of time it was taking the Executive to process his tenant's application for Housing Benefit. As a result of enquiries made of the Executive by my Office I was informed that a payment had just been issued to the complainant. As I, and the complainant, were satisfied that this resolved the matter I decided to take no further action on this complaint.

Northern Ireland Housing Executive
(CC 85/01)

This complainant was dissatisfied with the Executive's decision to provide grant aid only for one of his properties and regard any works to the other property as an enhancement to the proposed grant aid scheme. As part of my investigation I arranged for one of my Investigating Officers and the Executive's Senior Grants officer to call with the complainant. The Senior Grants Officer explained the various options which were available to the complainant in relation to his grant application. Following these meetings the complainant informed me that he found the Executive's explanations very helpful and, as result, he no longer required the assistance of my Office. As I regarded this as a satisfactory outcome to the complaint I decided to take no further action.

Northern Ireland Housing Executive
(CC 93/01)

In this case the complainant stated that the windows in her home were not wind proof or waterproof, with the result that the house was constantly cold which exacerbated her arthritic condition. As the complainant also had difficulty bathing, she applied to the Executive for a Disabled Facilities Grant to enable her to install a shower and to replace the windows in her home. The complainant had been informed by the Executive that, although it would consider grant aid for the provision of a shower, grant assistance was not available in respect of the replacement of her windows. The complainant considered that the Executive had failed to recognise or take into account her medical condition and how the cold affected her.

During the course of my investigation, and as a result of a further inspection of the window frames which confirmed their poor condition, the Executive decided to consider the complainant for both a Disabled Facilities Grant for adaptations and a discretionary Renovation Grant, on an exceptional basis, for the items of disrepair in her dwelling. On being informed of the Executive's revised decision, the complainant told me that she regarded her complaint as having been resolved satisfactorily and that she was very appreciative of my assistance in achieving this satisfactory resolution.

Northern Ireland Housing Executive
(CC 135/01)

The complainant in this case was unhappy with the current condition of his Executive dwelling. As a result of my enquiries a District Office official called with the complainant and it was agreed that the necessary repairs would be carried by the Executive. As these repairs were subsequently actioned by the Executive I regarded this case as having been satisfactorily resolved. I therefore decided to take no further action.

Appendix B

Summaries of Registered Cases Discontinued

Northern Ireland Housing Executive
(CC 165/00)

The complainants in this case were unhappy with the Executive's handling and processing of their application for grant aid. During the course of my investigation the complainants met with my Investigating Officer and stated that they wished me to discontinue further direct involvement in their case. In view of the reasons given by the complainants I acceded to their request. However, in view of my concerns about the matter I remained actively in touch with the Executive regarding the case on a purely informal basis. I am pleased to note that the matter has now been resolved satisfactorily with the issue to the complainants of a payment of £3,492.

Northern Ireland Housing Executive
(CC 5/01)

This complaint related to the amount of payment the complainant was asked to make to a contractor in order to have the gas heating appliance of his choice fitted rather than that approved and offered by the Executive. Following a meeting with one of my Investigating Officers the complainant contacted the contractor again and informed me that they had achieved a resolution to the matter. In the circumstances I decided to discontinue my investigation.

Appendix C

Analysis of Written Complaints

Analysis of All Complaints Received - 1 April 2001 to 31 March 2002

	Brought forward from 2000/01	Received	Rejected	Settled	Discontinued	Withdrawn	Reported cases upheld or partially upheld	Reported cases not upheld	In action at 31.3.2002
Local Councils	6	66	54	1	0	2	3	5	7
Education Authorities	5	25	19	0	0	0	3	2	6
Health and Social Services	5	21	13	2	0	0	2	1	8
Northern Ireland Housing Executive	24	125	67	15	6	2	14	20	25
Other Public Bodies	4	20	13	0	0	0	0	2	9
Bodies Outside Jurisdiction	0	46	46	0	0	0	0	0	0
TOTAL	**44**	**303**	**212**	**18**	**6**	**4**	**22**	**30**	**55**

Analysis of Complaints Against Education Authorities
1 April 2001 to 31 March 2002

	Brought forward from 2000/01	Received	Rejected	Settled	Discontinued	Withdrawn	Reported cases upheld or partially upheld	Reported cases not upheld	In action at 31.3.2002
Belfast	0	3	3	0	0	0	0	0	0
North Eastern	1	6	4	0	0	0	0	0	3
Southern	0	3	2	0	0	0	0	0	1
Western	2	2	1	0	0	0	0	2	1
Council for Catholic Maintained Schools	2	11	9	0	0	0	3	0	1
TOTAL	**5**	**25**	**19**	**0**	**0**	**0**	**3**	**2**	**6**

Analysis of Complaints Against Local Councils
1 April 2001 to 31 March 2002

	Brought forward from 2000/01	Received	Rejected	Settled	Discontinued	Withdrawn	Reported cases upheld or partially upheld	Reported cases not upheld	In action at 31.3.2002
Antrim Borough Council	0	1	0	0	0	0	0	1	0
Ards Borough Council	1	5	4	0	0	0	0	1	1
Armagh City & District Council	0	3	2	0	0	0	1	0	0
Ballymoney Borough Council	0	1	1	0	0	0	0	0	0
Belfast City Council	0	10	7	0	0	1	0	0	2
Carrickfergus Borough Council	0	1	1	0	0	0	0	0	0
Castlereagh Borough Council	1	0	0	0	0	0	0	1	0
Coleraine Borough Council	0	4	4	0	0	0	0	0	0
Craigavon Borough Council	0	7	4	0	0	1	0	0	2
Derry City Council	0	4	4	0	0	0	0	0	0

Analysis of Complaints Against Local Councils - 1 April 2001 to 31 March 2002 Continued

	Brought forward from 2000/01	Received	Rejected	Settled	Discontinued	Withdrawn	Reported cases upheld or partially upheld	Reported cases not upheld	In action at 31.3.2002
Down District Council	1	5	6	0	0	0	0	0	0
Dungannon & S. Tyrone Borough Council	0	1	1	0	0	0	0	0	0
Fermanagh District Council	1	0	0	0	0	0	0	1	0
Larne Borough Council	0	3	1	0	0	0	0	0	2
Lisburn Borough Council	0	6	6	0	0	0	0	0	0
Magherafelt District Council	0	1	1	0	0	0	0	0	0
Moyle District Council	0	1	1	0	0	0	0	0	0
Newry and Mourne District Council	0	5	3	1	0	0	0	1	0
Newtownabbey Borough Council	0	6	6	0	0	0	0	0	0
Strabane District Council	2	2	2	0	0	0	2	0	0
Total	**6**	**66**	**54**	**1**	**0**	**2**	**3**	**5**	**7**

Analysis of Complaints Against Health & Social Services Boards, Trusts and Agencies - 1 April 2001 to 31 March 2002

	Brought forward from 2000/01	Received	Rejected	Settled	Discontinued	Withdrawn	Reported cases upheld or partially upheld	Reported cases not upheld	In action at 31.3.2002
Northern H&SSB	1	0	1	0	0	0	0	0	0
Down Lisburn Trust	0	4	3	0	0	0	0	0	1
N&W Belfast Trust	0	2	1	0	0	0	0	0	1
S&E Belfast Trust	0	2	1	0	0	0	0	0	1
Ambulance Service	2	0	1	0	0	0	0	1	0
Greenpark Trust	0	1	1	0	0	0	0	0	0
Sperrin Lakeland Trust	1	3	2	2	0	0	0	0	0
Causeway Trust	0	1	0	0	0	0	0	0	1
Homefirst Community Trust	1	0	0	0	0	0	1	0	0
Craigavon & Banbridge Community Trust	0	1	0	0	0	0	0	0	1
Newry and Mourne Trust	0	1	0	0	0	0	0	0	1
Craigavon Area Hospital Trust	0	1	0	0	0	0	1	0	0
Foyle Community Trust	0	1	0	0	0	0	0	0	1
Altnagelvin Hospital Trust	0	1	1	0	0	0	0	0	0
Central Services Agency	0	3	2	0	0	0	0	0	1
Total	**5**	**21**	**13**	**2**	**0**	**0**	**2**	**1**	**8**

Analysis of Complaints Against Other Bodies Within Jurisdiction - 1 April 2001 to 31 March 2002

	Brought forward from 2000/01	Received	Rejected	Settled	Discontinued	Withdrawn	Reported cases upheld or partially upheld	Reported cases not upheld	In action at 31.3.2002
Arts Council	0	1	0	0	0	0	0	0	1
Council for the Curriculum Examinations and Assessment	0	1	0	0	0	0	0	0	1
Tourist Board	1	0	0	0	0	0	0	0	1
Sports Council	1	1	1	0	0	0	0	1	0
Museums Council	0	2	2	0	0	0	0	0	0
Fire Authority	1	4	3	0	0	0	0	0	2
Laganside Corporation	1	0	0	0	0	0	0	1	0
Equality Commission	0	1	1	0	0	0	0	0	0
Fisheries Conservancy Board	0	1	1	0	0	0	0	0	0
Warrenpoint Harbour Authority	0	1	1	0	0	0	0	0	0
Health & Safety Executive	0	3	1	0	0	0	0	0	2
Industrial Training Commission	0	1	1	0	0	0	0	0	0
LRA	0	2	1	0	0	0	0	0	1
LEDU	0	2	1	0	0	0	0	0	1
Total	**4**	**20**	**13**	**0**	**0**	**0**	**0**	**2**	**9**

Appendix D

Analysis of Oral Complaints

Fig 3.6 Commissioner for Complaints
Analysis of Oral Complaints Received - 1 April 2001 to 31 March 2002

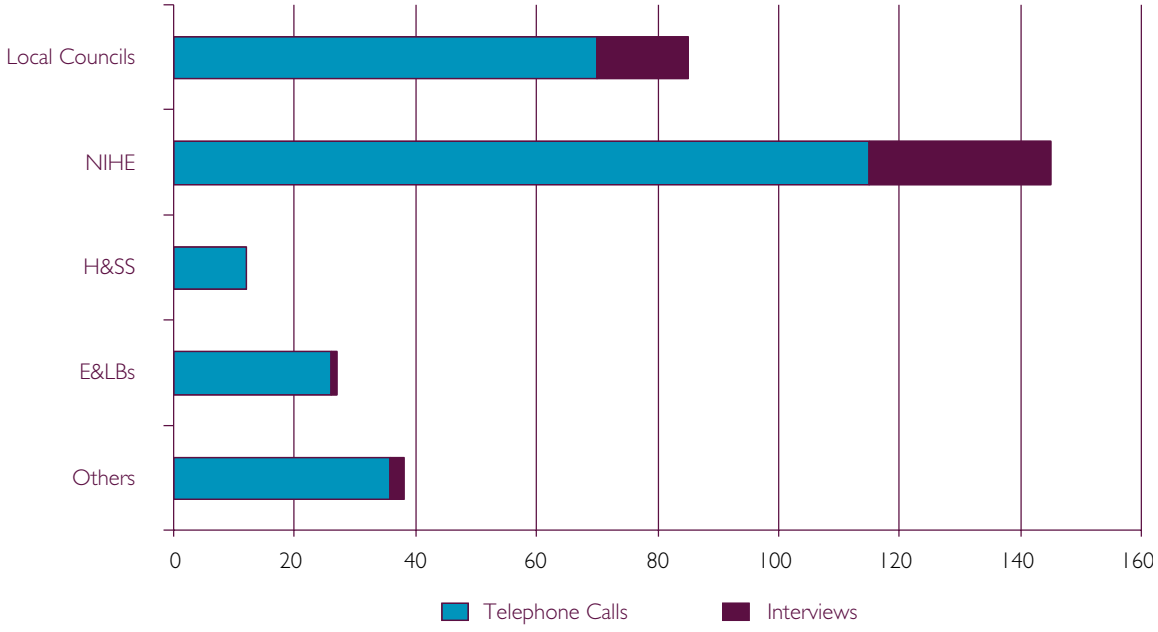
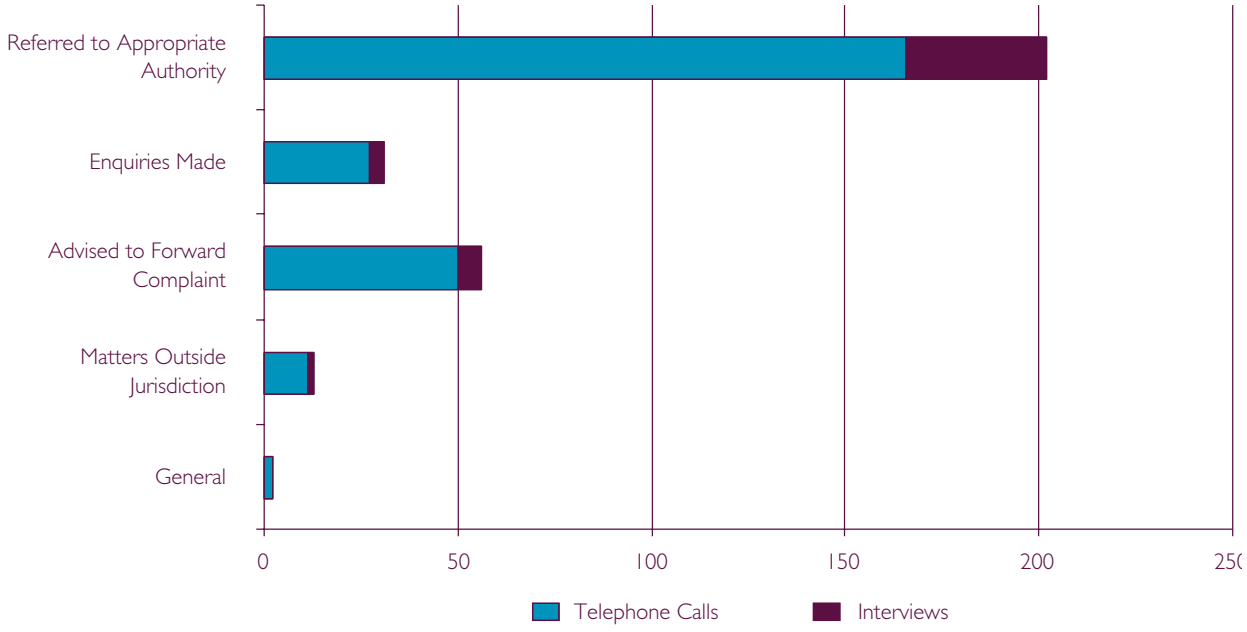


Fig 3.7 Commissioner for Complaints
Outcome of Oral Complaints Received - 1 April 2001 to 31 March 2002



Section Four

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

Complaints Received

I received a total of 107 complaints during 2001/02, 22 more than in 2000/01.

Breakdowns of the complaints received in 2001/02 by Service, Subject and Groups are shown in Figs 4.2 - 4.4 at the end of this section.

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

Fig 4.1 Health Service Complaints 1997/98 - 2001/02

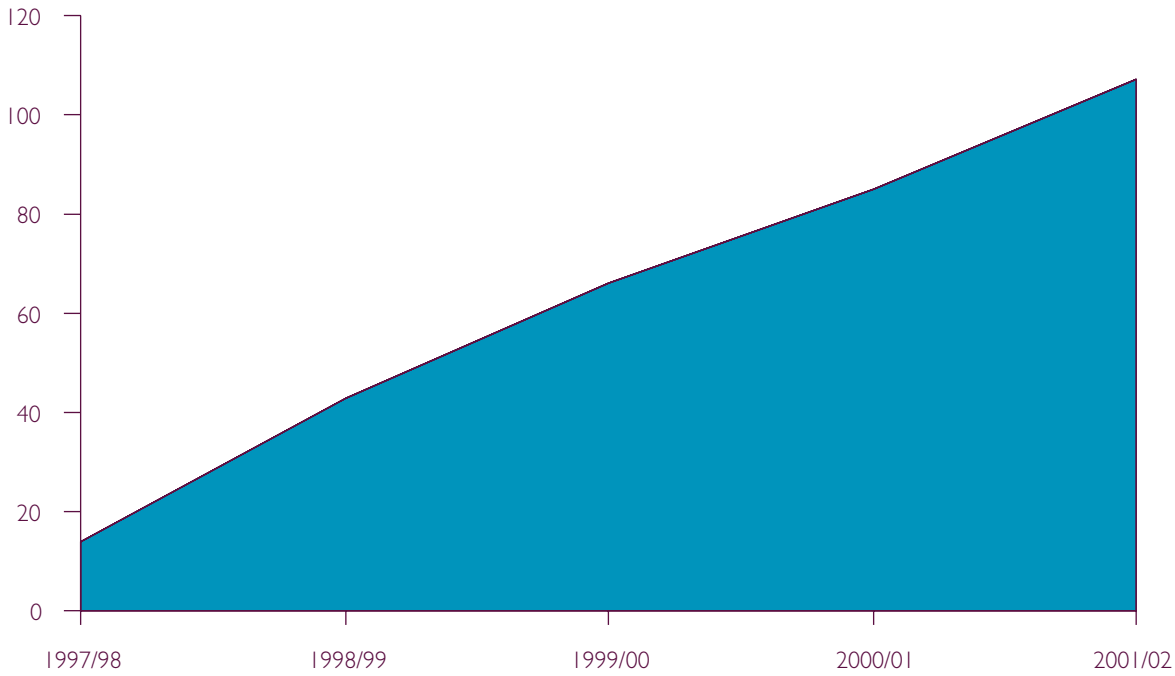


Fig 4.2 Health & Social Services Complaints 2001/02
107 Complaints Received

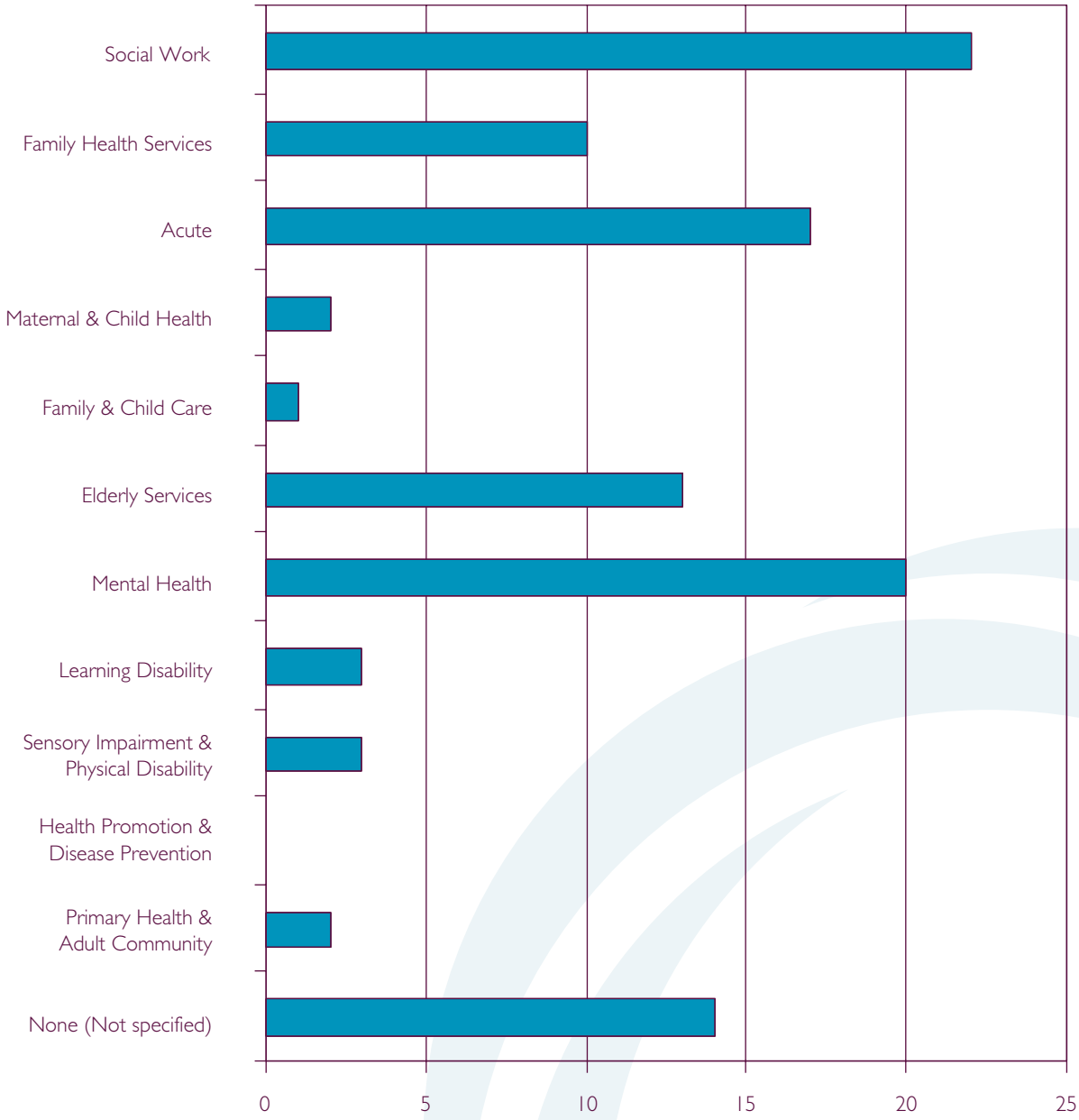


Fig 4.3 Subject of Health Services Complaints 2001/02
107 Complaints Received

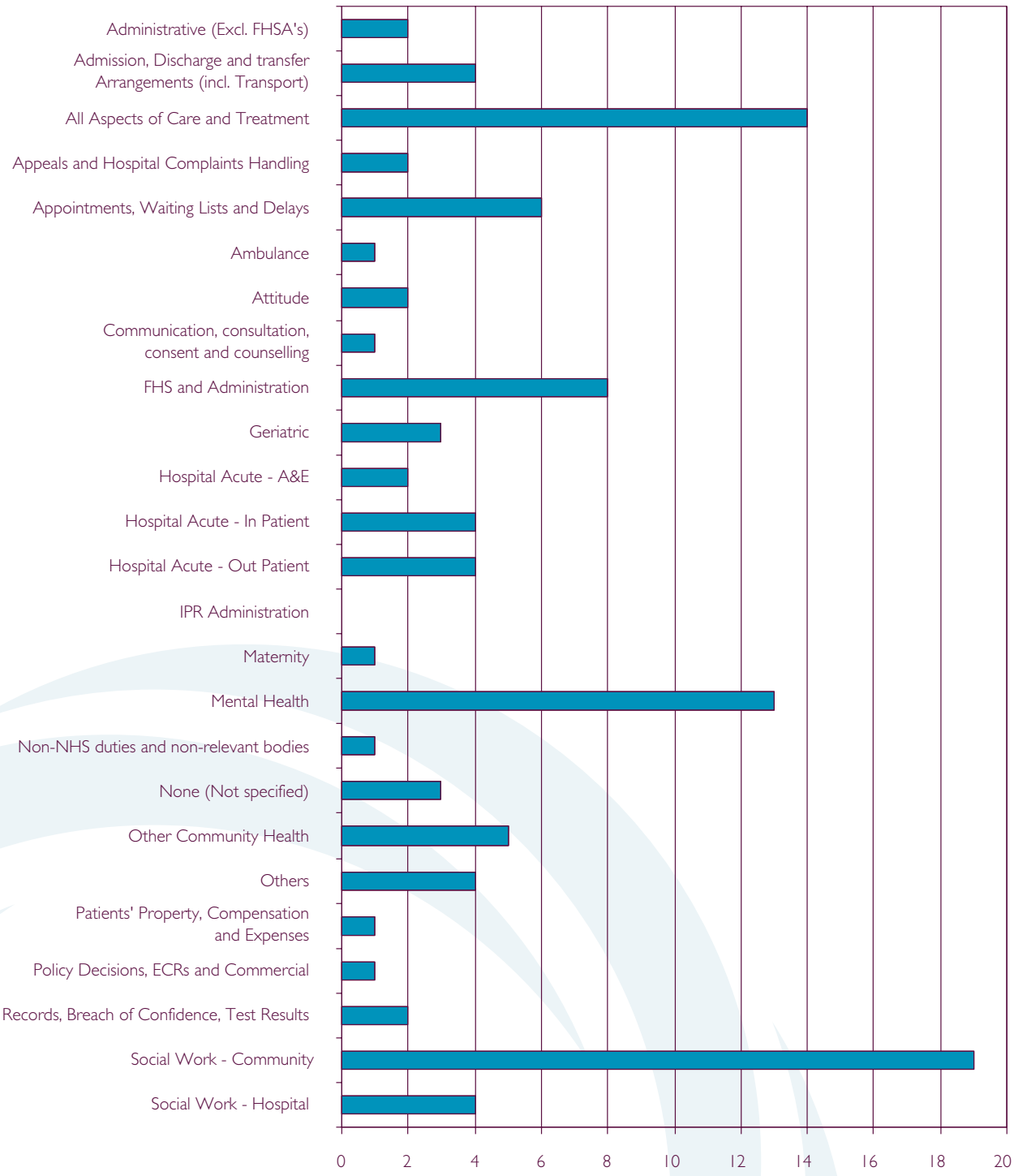


Fig 4.4 Health Service Groups Complained of 2001/02
107 Complaints Received

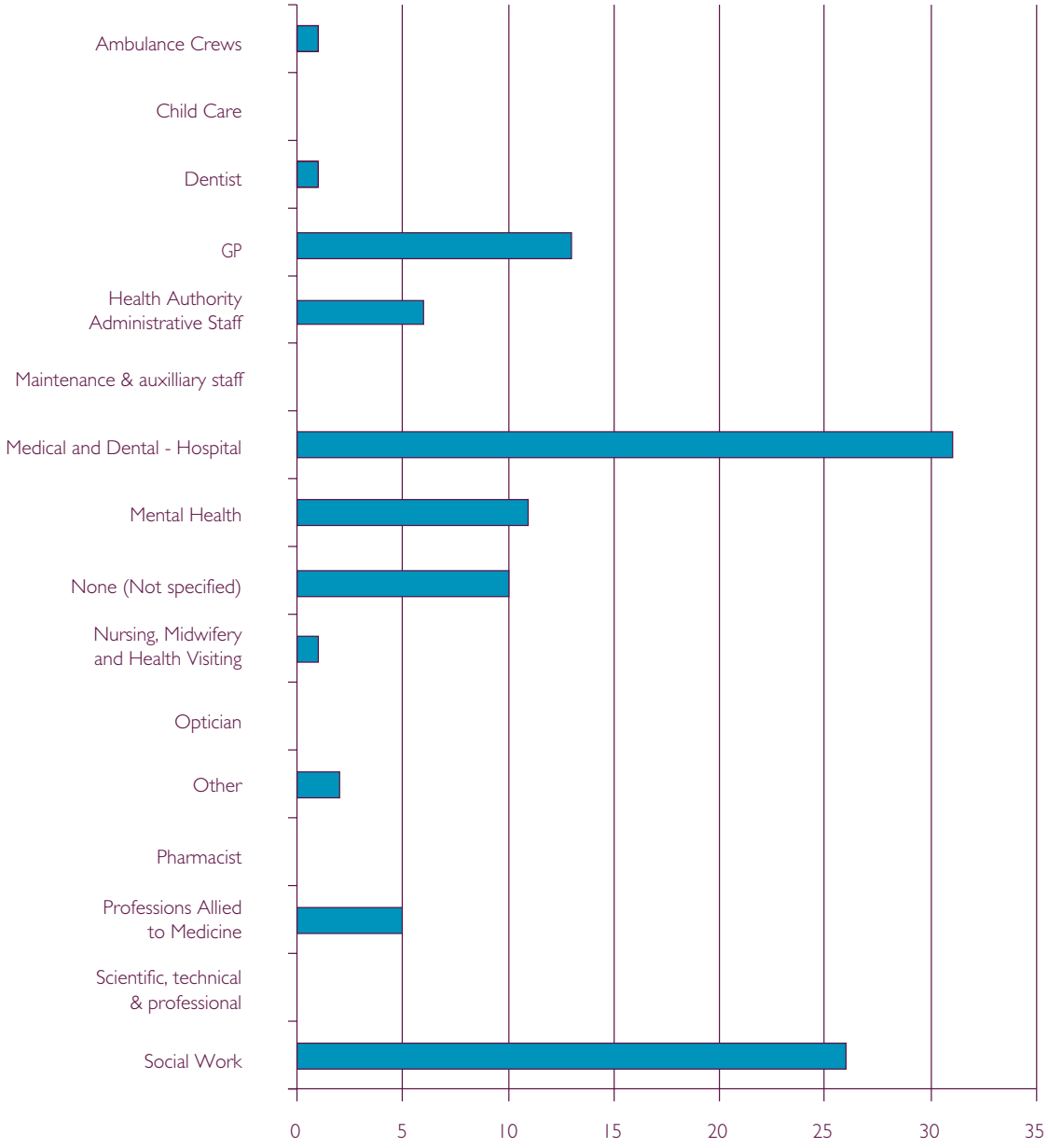
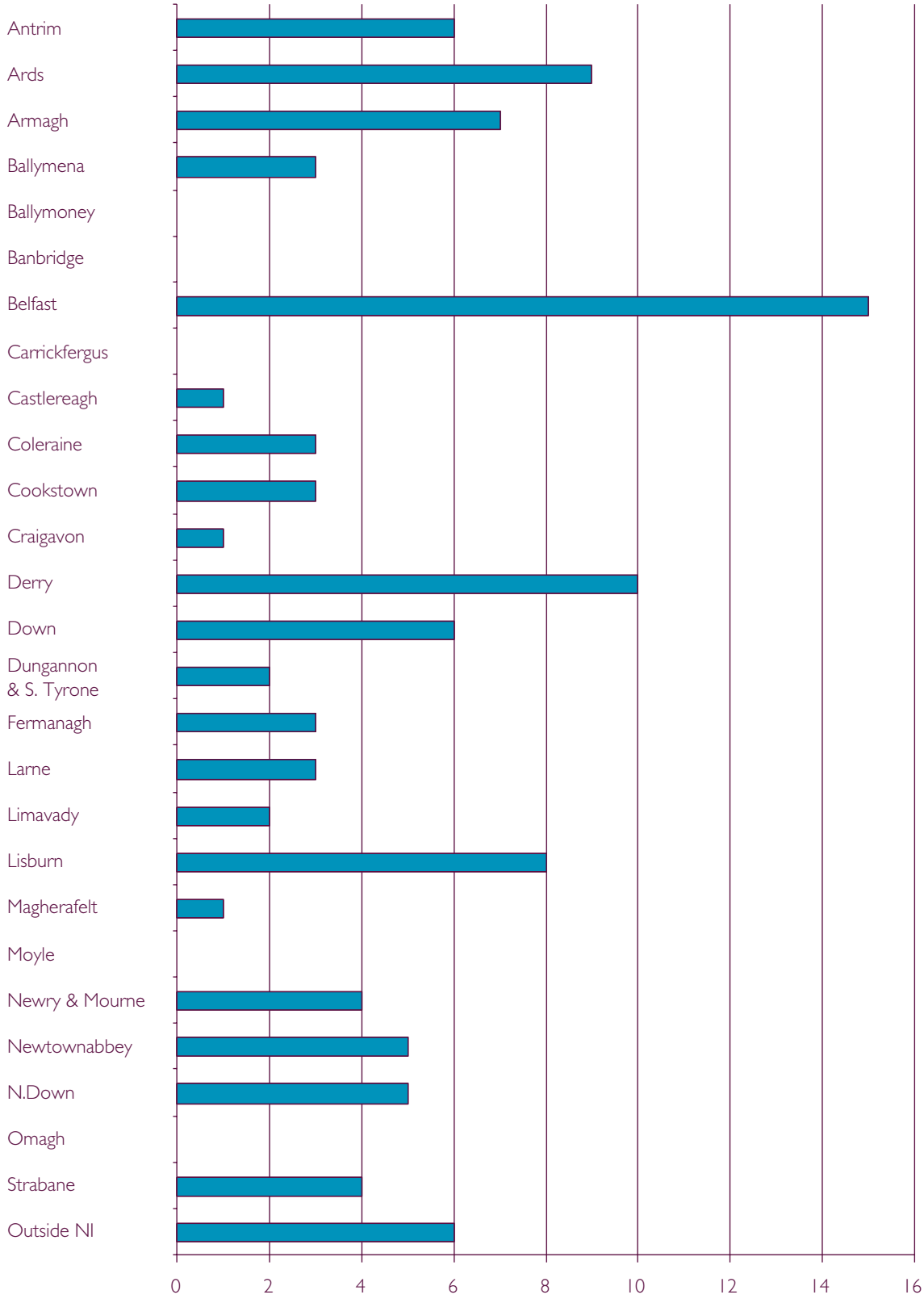


Fig 4.5 Health and Social Services 2001/02
107 Complaints - Local Council Area in which Complainant Resides



Statistics

In addition to the 107 complaints received during the reporting year, 17 cases were brought forward from 2000/01. Action was concluded in 98 cases during 2001/02 and, of 26 still being dealt with at the end of the year, 22 were under investigation. In 6 cases I issued an Investigation Report setting out my findings.

The 26 cases in process at 31 March 2002 were received during the months indicated in Table 4.2.

During 2001/02 45 cases were resolved without the need for in-depth investigation and 2 cases were settled. 52 cases were accepted for investigation. Complaints about matters not subject to my investigation totalled 14. I referred 39 complaints to the body concerned to be dealt with under the Health & Personal Social Services Complaints Procedure. The outcomes of the cases dealt with in 2001/02 are detailed in Fig 4.6.

I also dealt with 5 letters making further representations relating to cases which I had previously concluded. By the end of the reporting year all of these letters had been dealt with.

Table 4.1 Caseload for 2001/02

Number of uncompleted cases brought forward	17
Complaints received	107
Total Caseload for 2001/02	124
Of Which:	
Cleared at Initial Sift Stage	45
Cleared without in-depth investigation including cases withdrawn and discontinued	45
Cases settled	2
Full report issued	6
Cases in action at the end of the year	26

Table 4.2 Date of Receipt of Cases in Process at 31 March 2002

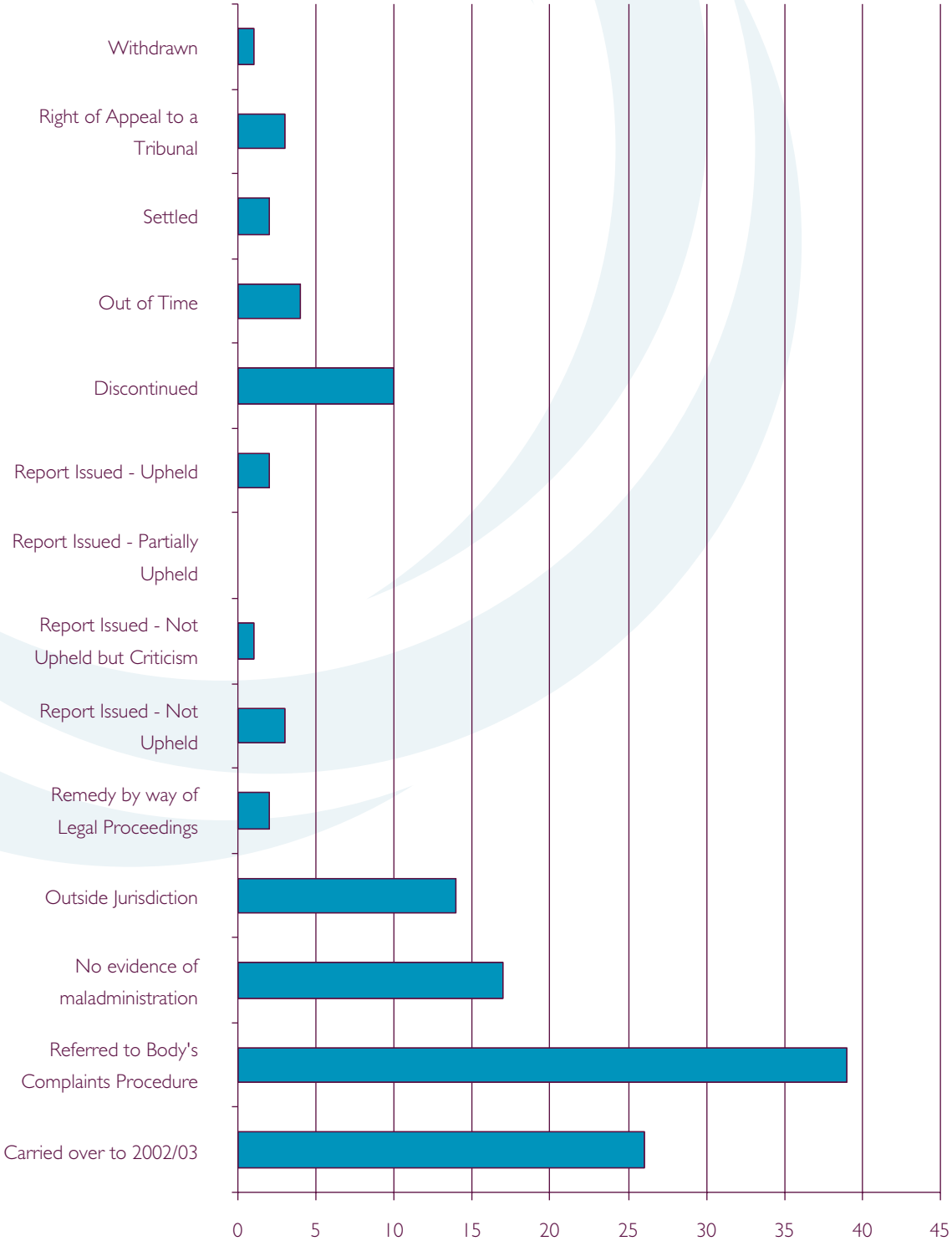
April 2001	1
May 2001	0
June 2001	0
July 2001	1
August 2001	1
September 2001	2
October 2001	2
November 2001	2
December 2001	0
January 2002	4
February 2002	3
March 2002	10

Time Taken for Investigations

The average time taken for a case to be examined and a reply issued at Initial Sift stage was 1.4 weeks.

The average time taken for a case to be examined, enquiries made and a reply issued at Investigation stage was 16.1 weeks.

Fig 4.6 Health and Social Services 2001/02 Outcome of cases



Reports Issued and Settlements Obtained After Formal Investigation

6 reports of investigations were issued in 2001/02 compared to 10 in 2000/01. The subjects of the cases reported on were All Aspects of Care and Treatment; Social Work-Community; Hospital Acute-In Patient; Family Health Services and Administration; Administrative (excl. FHSA's) and IPR Administration.

2 cases were fully upheld; 4 cases were not but I criticised the health body in 1 of these. Settlements were achieved in all of the cases that I upheld:-

Table 4.3 Settlements Achieved in Upheld Cases

Case No	Body	Subject of Complaint	Settlement
HC 5/01	Craigavon Area Hospital Trust	All Aspects of Care & Treatment	Apology
HC 31/00	Causeway Trust	Administrative	Apology & consolatory payment of £1,000

Review of Investigations

Failure by Independent Review

In this case the complainant alleged that the Independent Review, which the Western Health and Social Services Board had conducted, had failed to deal with the central issue of his complaint. The complainant had requested the Independent Review because he believed that a Consultant in Tyrone County Hospital had refused to admit his terminally ill daughter for emergency treatment. Because of a potential perception of a conflict of interest my Deputy dealt with this complaint.

In dealing with this complaint, my Deputy reviewed the Independent Review documents, including the final report. He was satisfied that the Independent Review had been conducted in a thorough manner, which included the provision of a report from Independent Assessors. He was also satisfied that the Independent Review had examined and reported on all the circumstances that affected the admission to Tyrone County Hospital. *(HC 42/00)*

Removal from a treatment list

In this case the complainant complained to me about the actions of a Consultant who had removed her father's name from his treatment list after a formal complaint had been made about him to the United Hospitals Trust's (the Trust) Chief Executive. The complainant explained that, following a difference of opinion with the Consultant, she had exercised the right to complain under the Trust's complaint's procedure. The Consultant subsequently removed her father from his treatment list. The complainant had requested an Independent Review but her request was refused.

As part of my investigation I reviewed all the documents relating to this complaint which had been examined by the Northern Health and Social Services Board in response to the complainant's request for an Independent Review. I also arranged for Trust officials to be interviewed, including the Consultant who insisted that he had removed the patient's name from his treatment list because the patient's family he believed had lost faith in him.

My investigation did not allow me to conclude that the Consultant's action was a direct response to the complaint, which had been made against him. However, my concerns about the manner and nature of the Consultant's action, particularly against the background of a complaint having been made against him, were not alleviated. Throughout the investigation the Trust consistently asserted the view that a Consultant has a right to remove a patient from their treatment list if the relationship between Doctor and patient has broken down. However, the Trust did not have a formal protocol for dealing with such circumstances. I regarded the Trust's failure to have a formal protocol as a significant gap and I directed that it should, as a matter of urgency, draw up a protocol.
(HC 11/00)

Refusal to provide disposable pants for children

In this case the complainant was unhappy with the Homefirst Community Trust's (the Trust) refusal to provide disposable pants for her two children who had learning disability. The complainant believed that the Trust in making its decision had failed to take into account a range of points which she had made in support of her request for the disposable pants.

My investigation established that the Trust in dealing with the complainant's request had carried out "needs assessments" in respect of the two children, the results of which indicated that the disposable pants would not meet the continence needs of the children. In addition, I established that the Trust had offered the complainant what I regarded as a suitable alternative to the disposable pants but the complainant did not accept this offer. I was satisfied that the Trust's decision not to provide disposable pants was based on appropriate professional assessments of the children's needs and consequently I did not seek to challenge that decision. *(HC 50/00)*

Request for second opinion

The complainant in this case alleged that she was treated in a totally insensitive manner when she requested the Craigavon Area Hospital Group Trust (the Hospital) to arrange a "second opinion" for her husband who was critically ill in the hospital's Intensive Care Unit. Initially her request was refused. When she insisted that she wanted a second opinion she was directed to ask her General Practitioner (GP) to make arrangements for a second opinion. Her GP advised her that it was the responsibility of the hospital to arrange the second opinion and referred her back to the hospital. Some 3 days after she had made her initial request, her husband was examined by another Consultant.

My investigation of this complaint led me to conclude that those involved in responding to the complainant's request had failed to deal with the request in a sensitive manner, which the particular circumstances warranted. In addition, I concluded that the absence of a protocol for managing such requests contributed to the difficulties. I was pleased to learn that the hospital has now addressed the issue by introducing a protocol for the management of such requests.

By way of redress and in recognition of the hurt that she had been caused, the hospital's Chief Executive agreed to write to the complainant and apologise for the way she had been treated. *(HC 5/01)*

Handling of a selection process

In this case the complainant alleged that the Causeway HSS Trust's (the Trust) handling of a selection process was attended by maladministration. Her complaint centred on the criteria that had been set for the post of Ward Sister/Charge Nurse, Grade G. The complainant applied for the post but was not interviewed because she was deemed not to have met the criteria. Her Trade Union raised concerns about the criteria however the recruitment process had been completed and an appointment was made.

Following my investigation of this complaint, I had no hesitation in concluding that the selection process had been attended by maladministration. Concerns which I noted and

highlighted in my investigation report included the failure of the selection panel to ensure that the criteria were realistic, imprecise drafting of criteria, failure to require applicants to have current course certificates, the acceptance of equivalences even though it was not stated in the criteria that equivalences would be accepted and the failure to properly consider the concerns raised about the criteria. I was satisfied that the selection panel's decision not to shortlist the complainant was wrong and thus I concluded that she had been denied the opportunity to compete for the post. In recognition of the injustice caused to her, I recommended that the Trust should make a payment of £1000 to the complainant. I also requested the Trust's Chief Executive to issue a letter of apology to the complainant. *(HC 31100)*

Oversight of foster care provided to complainant's children

In this case the substance of the complaint related to the Ulster Community and Hospitals Trust's (the Trust) oversight of the foster care provided to the complainant's children, the rigour of the Trust's investigations of concerns raised by him and the manner in which it responded to recommendations made by a statutory Panel set up to hear his complaints.

I sought comments from the Chief Executive of the Trust and I reviewed all documentation relating to both the Stage 1 and Stage 2 Panels constituted by the Trust under the complaints procedures laid down in the Representations Procedure (Children) Regulations (Northern Ireland) 1996 in response to the complaints made to it. I also obtained independent professional advice on the Trust's handling of the case with regard to the relevant legislation, policy, procedures and best social work practice.

Having thoroughly examined all aspects of the case, I decided not to conduct an in depth formal investigation because the Trust had addressed all the matters complained about and there were no issues which required further clarification. In addition I took the view that in this case my Order placed restrictions upon me because the complainant had had access to a statutory complaints procedure which allowed him to present his complaints personally at a Panel hearing. However, my examination of the case persuaded me that the case was not attended by maladministration and that the complainant did not suffer any injustice which remained unremedied, although I found that some of the procedures used by the Trust in this case were not as effective as they might have been. *(HC 41100)*

Transport to Hospital

This complaint against the Northern Ireland Ambulance Service (NIAS) concerned the treatment of the complainant's father, firstly in relation to delay in transferring the patient from Altnagelvin to Waterside Hospital and also, at a later date, when the NIAS would not tell the complainant what day they could transport his father to his home, even though the discharge booking had been made 48 hours in advance.

My investigation revealed that both inter-hospital transfers and discharges are treated as non-urgent transport in the Ambulance Service's Area Policy. Transfers require 24 hours notice to be given to Ambulance Control. In this case the transfer was carried out within one hour of the expected arrival time. However the patient had been prepared for the transfer from after breakfast and I found no indication of any contact by the hospital ward to check or confirm with Ambulance Control the estimated time of arrival of the ambulance.

NIAS policy states that discharges are subject to the first available ambulance going in the direction the patient has to travel and, given the resources available every effort will be made to transfer the patient within a 24-hour period. NIAS told me that it is not possible to provide an exact timing for transport due to the unpredictable demand for emergency ambulances. The ward made a specific booking for a tail-lift ambulance and, on the day in question, only one such ambulance was in operation and it was being used on emergency cover. Although the ward recorded a planned

discharge of 2.00 pm the patient was made ready for discharge in the morning. I found that inadequate information was provided to the complainant's family at an anxious time as to what they might expect and that this was primarily the responsibility of ward staff. I suggested that NIAS consider the establishment of more effective communication arrangements. *(CC 168/00)*

Section Four Appendices

Northern Ireland
Commissioner for Complaints:
Health Services Complaints

Appendix A

Summary of Registered Cases Settled

Foyle Health & Social Services Trust
(HC 6/01)

I received a complaint regarding the Trust's current arrangements to provide respite care for the complainants' daughter. During the course of my investigation, and following a meeting between the complainants and one of my Investigating Officers, the Trust agreed to arrange a meeting with the complainants in order to attempt to resolve the issue of respite care. As I regarded this as a satisfactory resolution to the complaint I decided to take no further action.

Royal Group of Hospitals Trust
(HC 25/00)

The complainants in this case were dissatisfied with the manner in which the arrangements for an Extra Contractual Referral and associated air ambulance arrangements were handled by Trust staff in relation to the treatment of their baby son. Having progressed my investigation of this case to an advanced stage, one of my directors met with the Trust's Chief Executive and Patient Liaison Manager. At that meeting the Trust agreed to reimburse the costs incurred by the complainants. As I, and the complainants, regarded this as a fair and reasonable settlement of this complaint I decided to take no further action.

Appendix B

Summary of Registered Cases Discontinued

Ulster Community & Hospitals Trust
(HC 60/00)

The complainant in this case was dissatisfied with the standard of care and treatment afforded to her by the Trust. During the course of my investigation, and despite assurances to the contrary from the complainant, I became aware that the complainant's solicitors had give written notice to the Trust of their intention to institute legal proceedings. As the legislation precludes me from investigating any case where the aggrieved person has a remedy by way of proceedings in a court of law I decided to discontinue my investigation of the case.

Family Health Services
(HC 41/00)

In this case the complainant was dissatisfied with the way her complaint, about the care and treatment afforded to her late father by a GP, was dealt with under the Health and Personal Social Services Complaints Procedure. She stated that she was in no way re-assured that the Health and Social Services Board had given careful consideration to all the details of the complaint. Having carefully investigated this complaint to an advanced stage I found no evidence to conclude that the Board's decision was based on improper consideration of the facts. I was not persuaded that the decision was unreasonable and therefore I decided to discontinue my investigation as there was no further action that I could usefully take.

Appendix C

Analysis of Written Complaints

Analysis of All Complaints Received - 1 April 2001 to 31 March 2002

	Brought forward from 2000/01	Received	Rejected	Settled	Discontinued	Withdrawn	Reported cases upheld or partially upheld	Reported cases not upheld	In action at 31.3.2002
Health and Social Services Boards	3	13	9	0	1	0	1	1	4
Health and Social Services Trusts	12	81	60	2	7	0	1	3	20
Other Health and Social Services Complaints	2	13	10	0	2	1	0	0	2
TOTAL	**17**	**107**	**79**	**2**	**10**	**1**	**2**	**4**	**26**

Analysis of Complaints Against Health and Social Services Boards - 1 April 2001 to 31 March 2002

	Brought forward from 2000/01	Received	Rejected	Settled	Discontinued	Withdrawn	Reported cases upheld or partially upheld	Reported cases not upheld	In action at 31.3.2002
Eastern H&SSB	0	5	2	0	1	0	0	0	2
Northern H&SSB	2	3	4	0	0	0	0	0	1
Southern H&SSB	0	2	1	0	0	0	1	0	0
Western H&SSB	1	3	2	0	0	0	0	1	1
TOTAL	**3**	**13**	**9**	**0**	**1**	**0**	**1**	**1**	**4**

Analysis of complaints Against Health and Social Services Trusts - 1 April 2001 to 31 March 2002

	Brought forward from 2000/01	Received	Rejected	Settled	Discontinued	Withdrawn	Reported cases upheld or partially upheld	Reported cases not upheld	In action at 31.3.2002
Down Lisburn Trust	0	8	7	0	0	0	0	0	1
N&W Belfast Trust	1	0	0	0	0	0	0	0	1
S&E Belfast Trust	0	6	5	0	0	0	0	0	1
Belfast City Hospital Trust	1	3	2	0	0	0	0	0	2
Royal Hospitals Trust	2	4	4	1	0	0	0	0	1
Sperrin Lakeland Trust	0	1	1	0	0	0	0	0	0
Ulster Community and Hospitals Trust	3	13	12	0	2	0	0	1	1
Causeway Trust	1	3	1	0	0	0	1	0	2
Homefirst Community Trust	1	10	5	0	1	0	0	1	4
United Hospitals Trust	2	8	7	0	0	0	0	1	2
Armagh & Dungannon Trust	0	6	4	0	1	0	0	0	1

Analysis of complaints Against Health and Social Services Trusts (continued) - 1 April 2001 to 31 March 2002

	Brought forward from 2000/01	Received	Rejected	Settled	Discontinued	Withdrawn	Reported cases upheld or partially upheld	Reported cases not upheld	In action at 31.3.2002
Craigavon & Banbridge Community Trust	1	1	2	0	0	0	0	0	0
Craigavon Area Hospital Trust	0	2	1	0	0	0	0	0	1
Mater Hospital Trust	0	1	1	0	0	0	0	0	0
Newry and Mourne Trust	0	4	1	0	2	0	0	0	1
Foyle Community Trust	0	8	5	1	1	0	0	0	1
Altnagelvin Area Hospital Trust	0	2	2	0	0	0	0	0	0
Ambulance Service	0	1	0	0	0	0	0	0	1
TOTAL	**12**	**81**	**60**	**2**	**7**	**0**	**1**	**3**	**20**

Appendix D

Analysis of Oral Complaints

Fig 4.7 Health and Social Services
Analysis of Oral Complaints Received - 1April to 31 March 2002

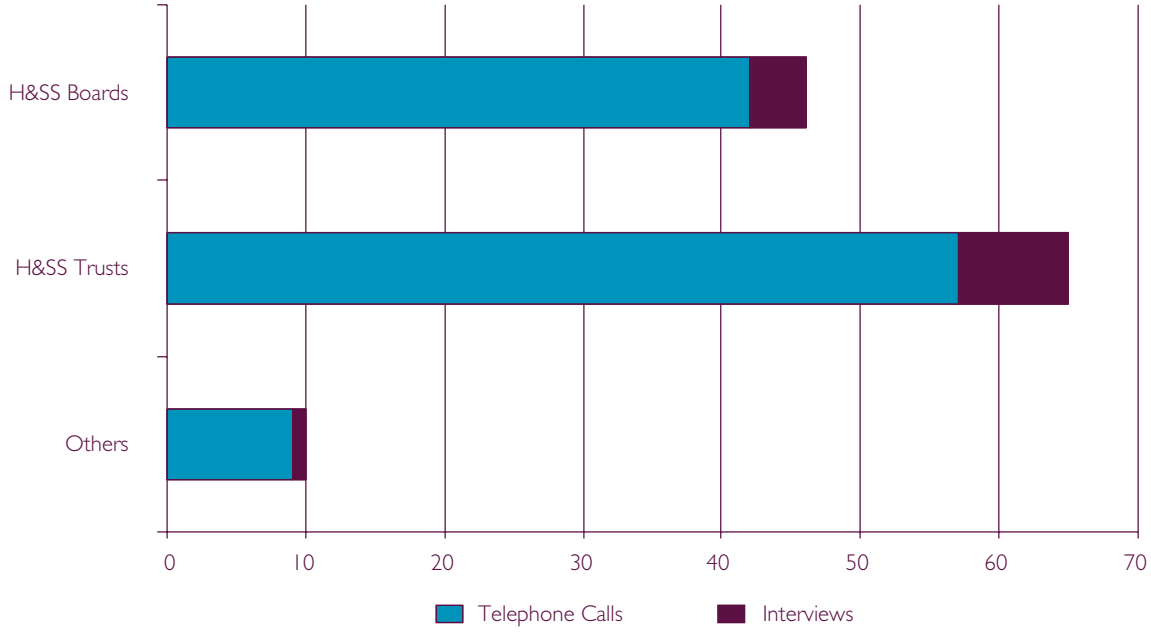
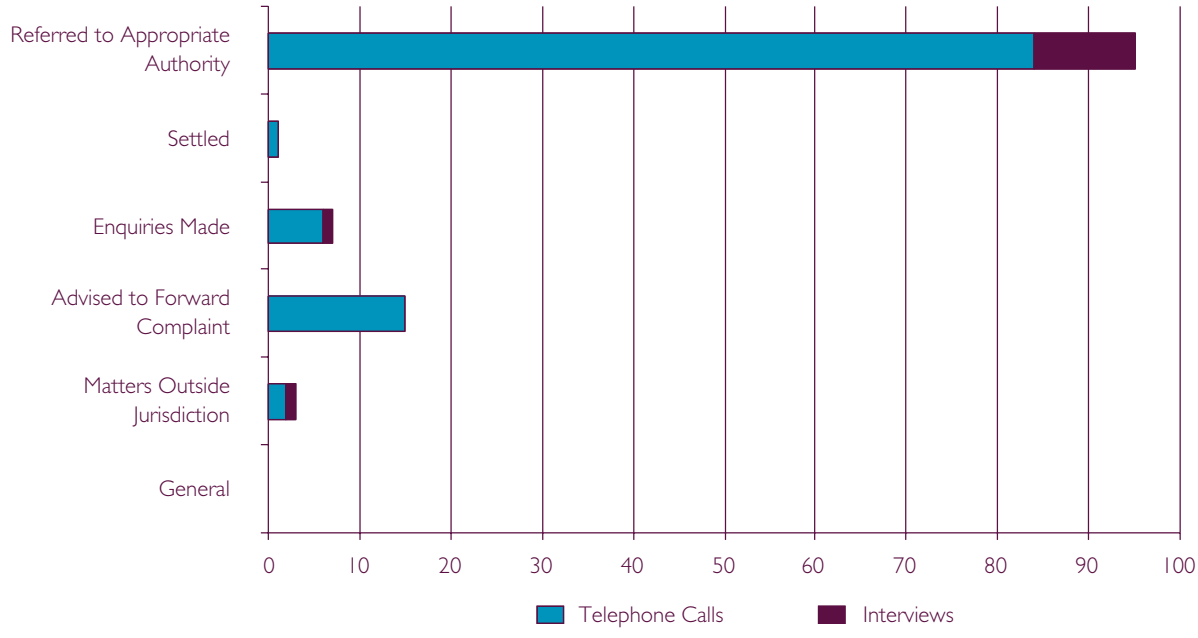


Fig 4.8 Health and Social Services
Outcome of Oral Complaints Received - 1 April to 31 March 2002



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