Northern Ireland
Ombudsman

2002 ~ 2003

Annual Report

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

FEEDBACK

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

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

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

Ordered by The House of Commons *to be printed*

18th November 2003

HC 1225 London: The Stationery Office **£23.00**

Contents

SECTION 1 **Page**

Introduction 4
My Role
Accessibility
Providing Information
Staffing and Finance 6
Handling of Complaints 8
Oral Complaints/Enquiries 10

SECTION 2

Annual Report of the Assembly Ombudsman for Northern Ireland 15
Complaints Received 16
Statistics 20
Time Taken for Investigations 22
Reports Issued and Settlements Obtained 22
Review of Investigations 23
Appendix A: Summaries of Registered Cases Settled 44
Appendix B: Summaries of Registered Cases Discontinued 46
Appendix C: Analysis of Written Complaints 47
Appendix D: Analysis of Oral Complaints 50

SECTION 3

Annual Report of the Northern Ireland Commissioner for Complaints 51
Complaints Received 52
Statistics 55
Time Taken for Investigations 57
Reports Issued and Settlements Obtained 57
Review of Investigations 58
Appendix A: Summaries of Registered Cases Settled 90
Appendix B: Summaries of Registered Cases Discontinued 92
Appendix C: Analysis of Written Complaints 92
Appendix D: Analysis of Oral Complaints 97

SECTION 4

Annual Report of the Northern Ireland Commissioner for Complaints: Health Services Complaints 99
Complaints Received 100
Statistics 105
Time Taken for Investigations 105
Reports Issued and Settlements Obtained 107
Review of Investigations 107
Appendix A: Summaries of Registered Cases Discontinued 112
Appendix B: Analysis of Written Complaints 112
Appendix C: Analysis of Oral Complaints 113

Section One

Introduction

This is the third Annual Report I have had the honour to present in my role as Northern Ireland Ombudsman. As I write, the Legislative Assembly remains dissolved so for this year my report will be laid before Parliament at Westminster.

The dissolution of the Assembly, following its suspension on 14 October 2002, has had significant implications for the work of my Office. The underpinning law which requires complaints against government departments and their agencies to be sponsored to me by a Member of the Legislative Assembly (MLA) had to be changed to facilitate sponsorship by Members of Parliament. At the same time the amended legislation now says my final report in relation to the investigation of a complaint must be submitted to a nominated Member of Parliament. This has led to some understandable frustration from former MLA's who had supported individual members of the public in developing the detail of a complaint and submitting it to this Office.

Since taking up office in the Autumn of 2000 there has been a 5.25% increase in complaints submitted to me although there was only a marginal increase (0.5%) in complaints submitted in 2002/03. Reflecting on the period covered by this Report and the nature of the complaints put to me in the year under review I have investigated a number of very complex Planning and Health and Personal Social Services cases. This pattern of increasing complexity is reflected in the range of case summaries which I have included in this report. The summaries included also provide an overview of the wide range of issues which were submitted to me for investigation and reflect the conclusions I reached.

I believe it is very important for government departments and public bodies to keep their internal complaints processes under regular review. In particular, such a review should have the objective of streamlining procedures as far as possible with the purpose of facilitating the settlement of as many complaints as possible within the organisation. It is my firm view that the resolution of complaints within the internal complaints process has the potential to eliminate a lot of damaging frustration, annoyance and anxiety for those members of the public who have a genuine and justifiable grievance.

In my interactions with public bodies over the past year a particular problem has been highlighted to me by the Health and Social Services Councils, supported by research carried out by Queen's University Belfast, which I believe merits mention. There appears to be confusion on occasion within some Health and Social Services Trusts about when the Health and Social Services Complaints Procedure or the Children Order Representation and Complaints Procedure should be used. I have some evidence from complaints submitted to me to support this view and I believe it is essential that the position is clarified by the Department of Health, Social Services and Public Safety.

During the year I continued to provide an investigation service for the Committee on Standards and Privileges of the Assembly while draft legislation that would formalise the role was being considered by the Assembly. My role was to investigate complaints made about Assembly Members registering and declaring their interests or failing to do so, and also complaints that a member had breached the Assembly "Code of Conduct". My experience, albeit of the small number of cases referred to me, was positive as in all the cases referred to me I received the full co-operation of Assembly Members.

Looking to the future, the Office of the First Minister and Deputy First Minister has decided that a review of the legislation governing my Office should be undertaken. The review will look at a wide range of aspects of the current remit of the Office including the question of the requirement for sponsorship by Members of the Assembly of complaints against government departments. The review will also examine the need for updating my legislation in relation to jurisdiction. I welcome this review which I believe is timely.

When I published the strategic document entitled "Facing the Future" in January 2002 one of my objectives was to identify the challenges that will face this Office in the future. The review of my Office to be carried out by the Office of the First Minister and Deputy First Minister will be a further significant step in this process. At the same time I believe it is important for government departments and public bodies to remain focussed on providing the highest standards of administration and that people are dealt with properly, fairly, openly and impartially.

T Frawley
Ombudsman

My Role

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

- The Assembly Ombudsman: and
- The Commissioner for Complaints

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

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

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

I can investigate both the Health Services and the Personal Social Services. I can also investigate complaints about the private health care sector but only where the Health and Personal Social Services is paying for the treatment. I have been given the power to investigate both the administrative actions of Health Service organisations and the exercise of clinical judgement by heath care professionals. I do not get involved in cases of medical negligence nor claims for compensation as these are matters which properly lie with the Courts.

Accessibility

Access to my office and the services I provide is designed to be user-friendly. Complaints must be put to me in writing either by letter or by completing my complaint form; the Complainant is asked to outline his/her problem and articulate the desired outcome. The sponsorship of a Member of Parliament is required when the complaint is against a government department, or one of their Agencies. My staff will provide assistance either by telephone or by personal interview if the Complainant is unable for whatever reason to put his complaint in writing. I aim to be accessible to all.

Providing Information

My information leaflet is made widely available and can be obtained in large print form and also as an audio cassette. The leaflet is also available in Arabic, Chinese, Hindi and Urdu. Members of the public can visit my web site at www.ni-ombudsman.org.uk which has been updated to include full details about my office. The website gives a wide range of information including a list of bodies within my jurisdiction, how to complain to me and how I deal with complaints. Complaints can be made to me by email.

Staffing and Finance

Staffing

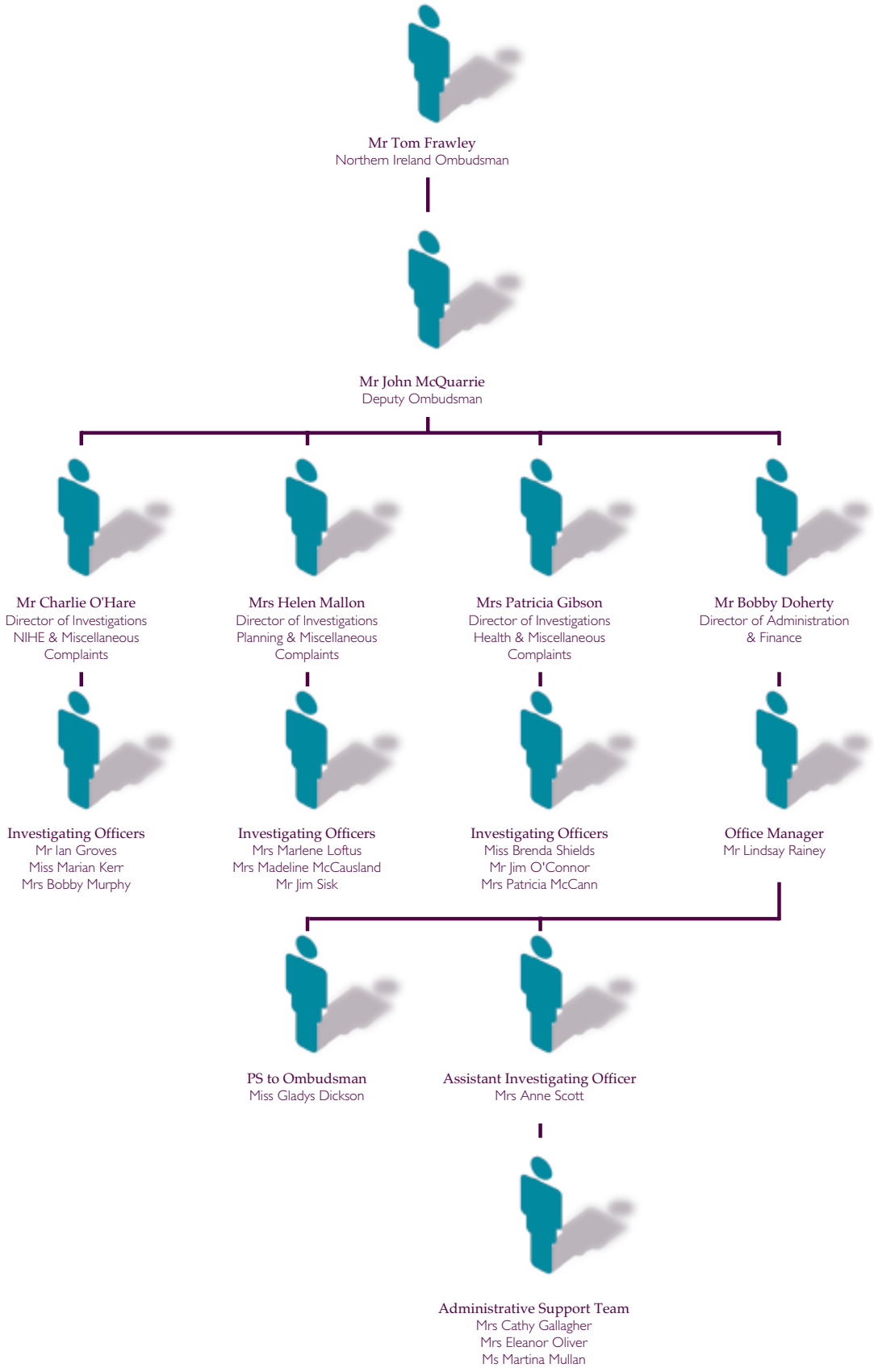
My Office is staffed by officers recruited by secondment from Northern Ireland Departments and their Agencies. I am happy to record again my thanks to senior management in the Northern Ireland Civil Service for providing me with this facility. The number of staff in post in my Office at the end of the year was 20.

Finance

The funds voted for 2002/03 were £1,038,000 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.

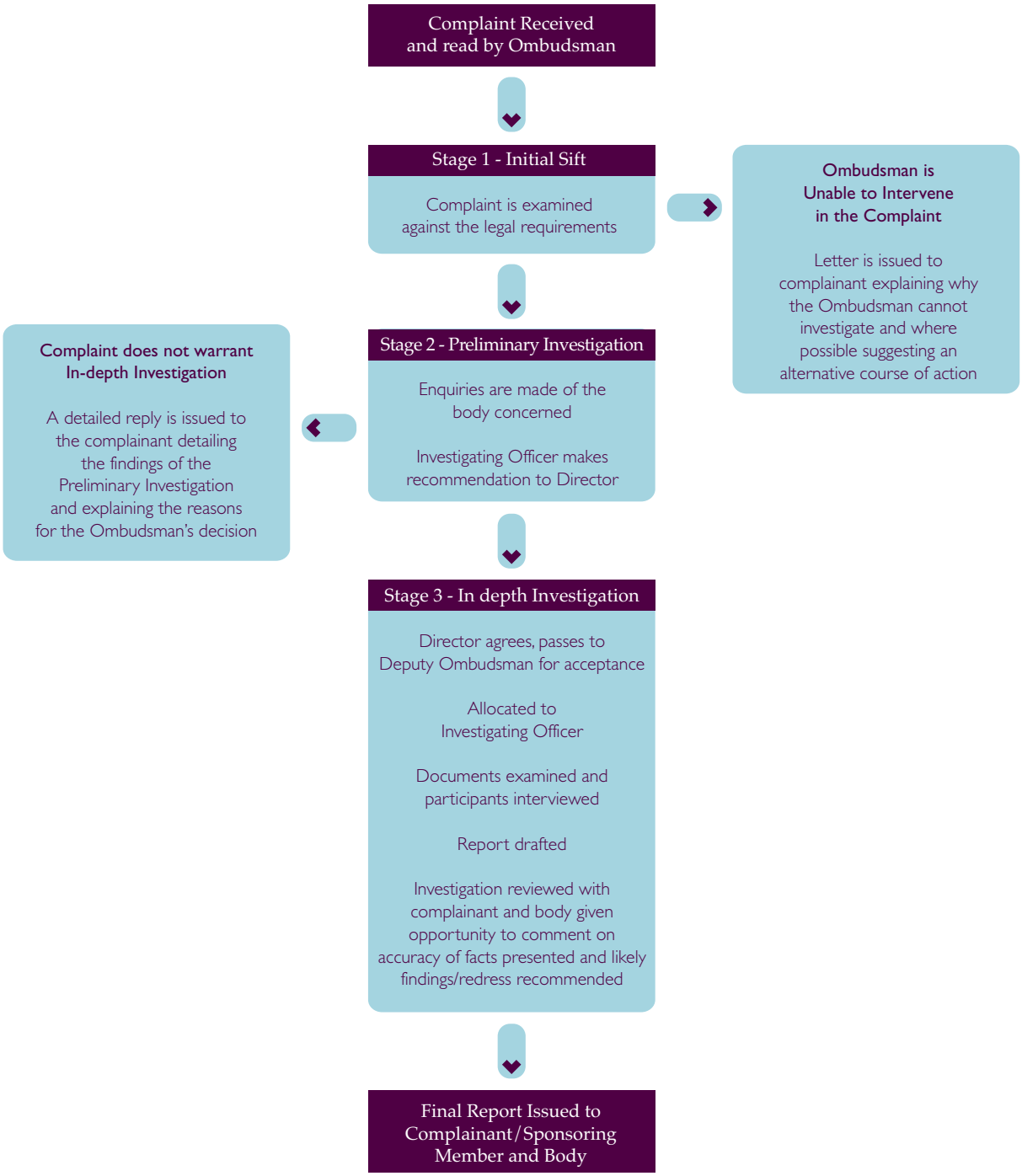
My salary is charged directly to the Consolidated Fund while the operational costs of the Office were included in the Northern Ireland Estimates which are approved by the Assembly.

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 MP (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/MP 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/MP 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/MP 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/MP 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.

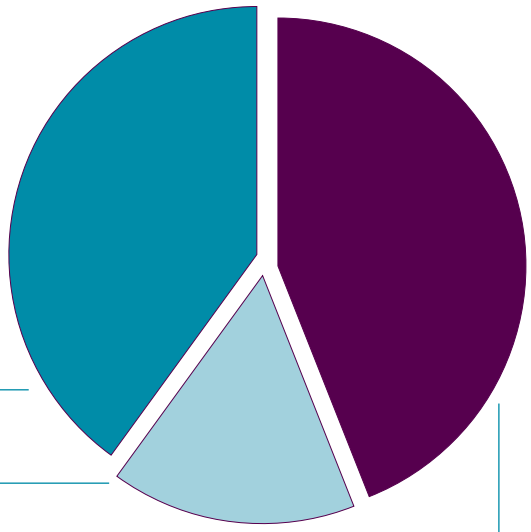
Oral Complaints/ Enquiries

During 2002/03 the Office dealt with 2,572 telephone calls and there were 86 personal callers.

Of these, 641 telephone calls and 72 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 1,931 telephone calls and 14 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 appropriate contact information.

Fig 1.1 Northern Ireland Ombudsman 2002/03
663 Complaints Received



Assembly Ombudsman
(262 cases) **40%**

Health & Social Services
(103 cases) **16%**

Commissioner for Complaints
(298 cases) **44%**

Fig 1.2 Northern Ireland Ombudsman 2002/03
Complaints Received by Month

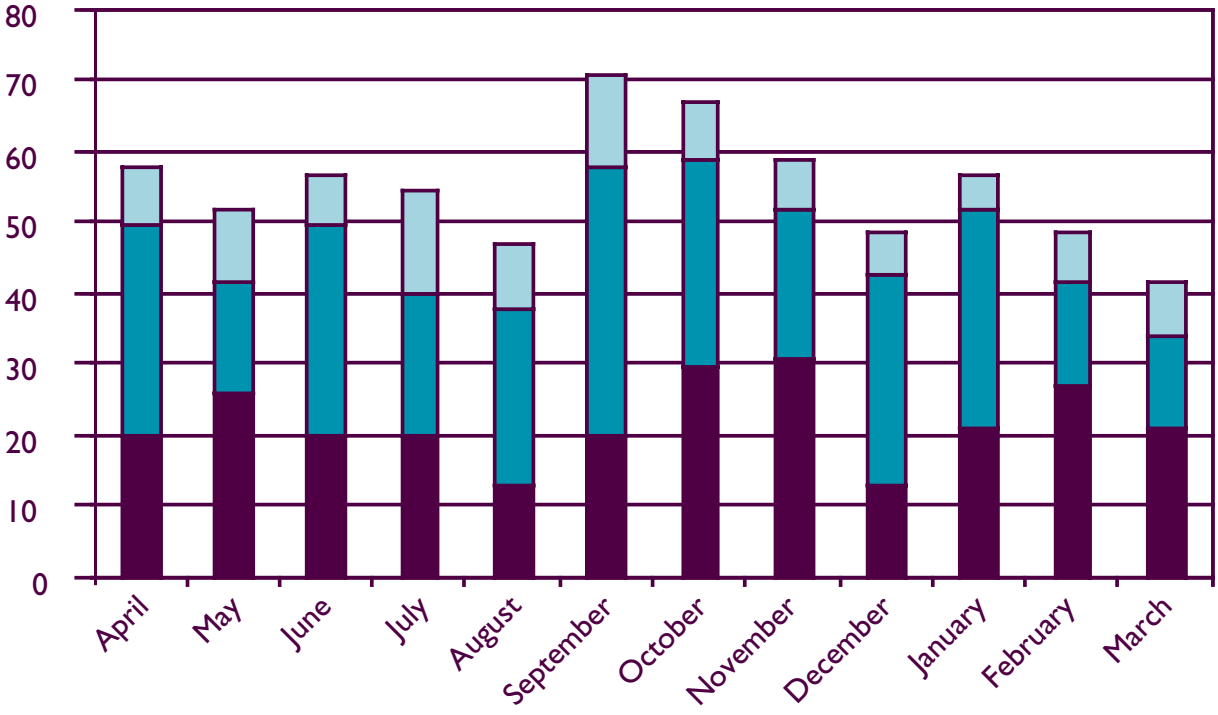


Fig 1.3 Northern Ireland Ombudsman 2002/03 663 Complaints Received - Local Council Area in which Complainant Resides

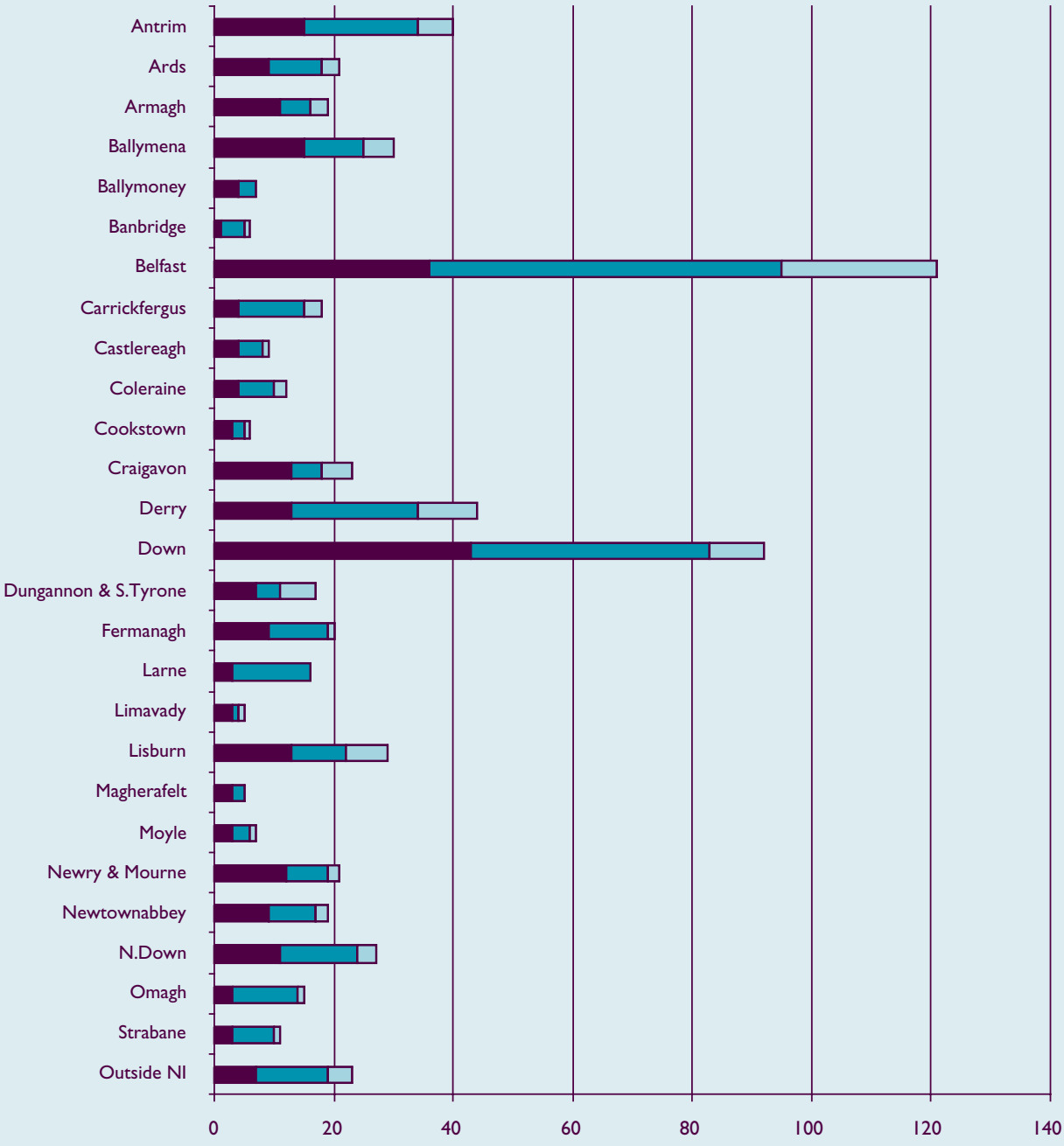


Fig 1.4 Northern Ireland Ombudsman 2002/03 Completion Times for Registered Cases

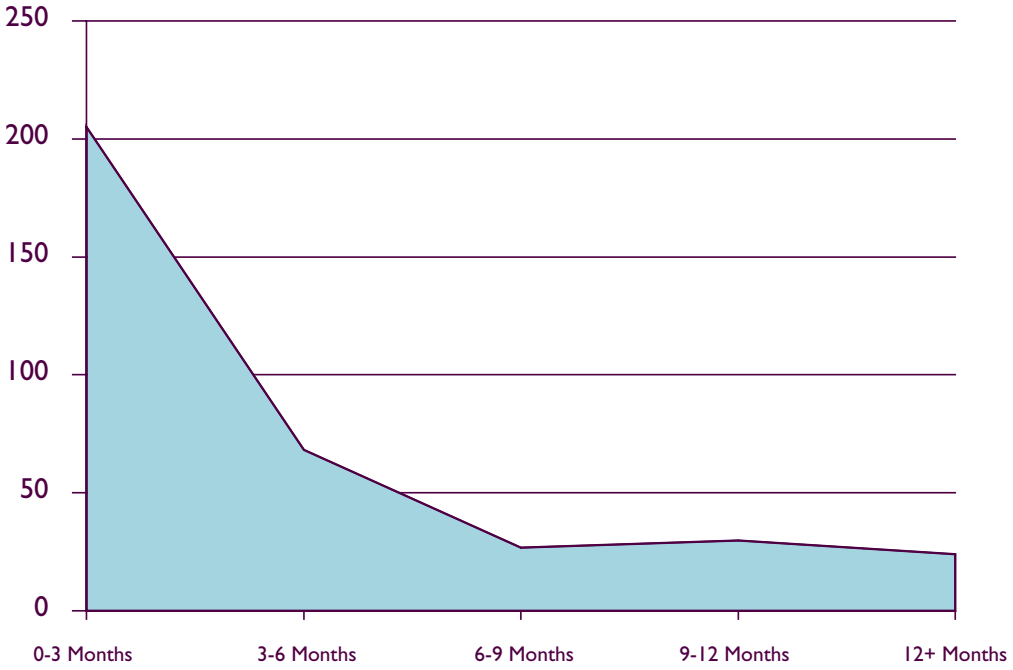
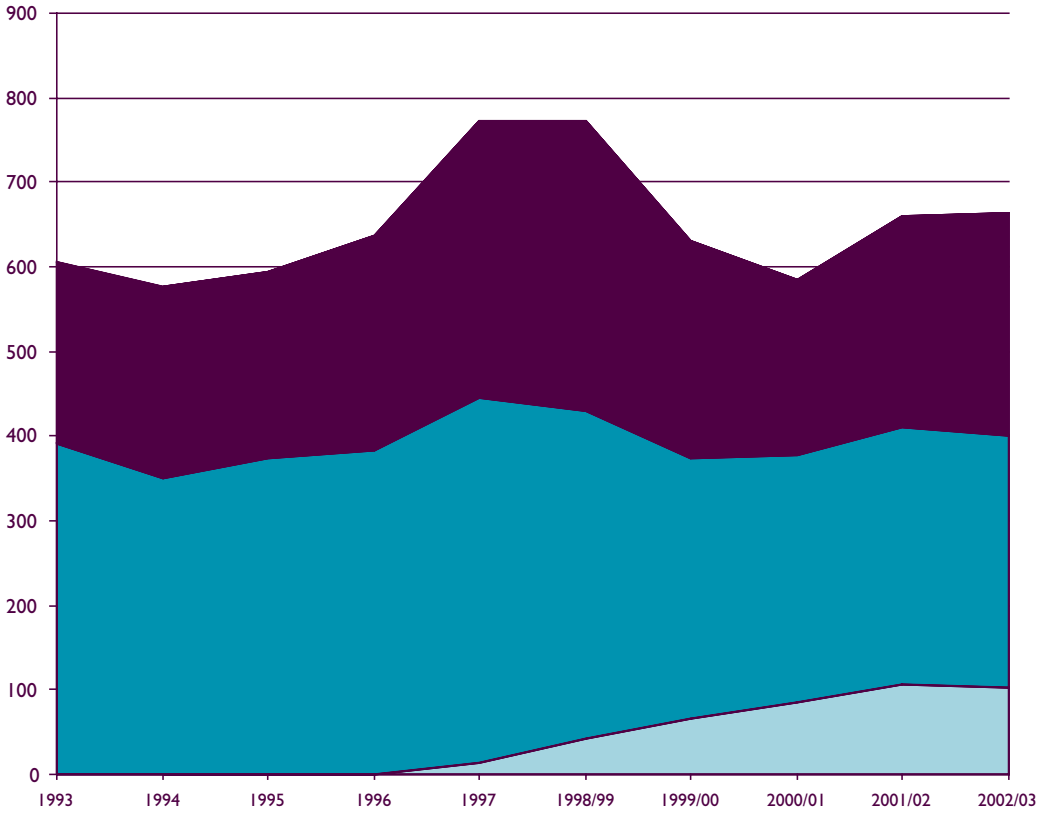


Fig 1.5 Northern Ireland Ombudsman Complaints Received by the Ombudsman 1993-2002/03



Section Two

Annual Report of the Assembly Ombudsman for Northern Ireland

Complaints Received

As Assembly Ombudsman for Northern Ireland I received a total of 262 complaints during 2002/03, 12 more than in 2001/02. Of these 110 were submitted in the first instance by an elected representative and 152 were submitted directly to me by complainants.

The Department of the Environment and the Department for Social Development attracted most complaints, 82 against the former and 41 against the latter. Of these 116 related to their agencies, with the Planning Service and Social Security Agency giving rise to most of the complaints. In all 163 of the 262 complaints received in 2002/03 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 or the Office of the Industrial Tribunals and Fair Employment Tribunal.

Table 2.1 - Subject areas of complaints received in 2002/03

Subject of Complaint	No. Received
Personnel	47
Water	8
Planning	73
Benefits	24
Education	1
Roads	18
Agriculture	3
Rates	3
Miscellaneous*	85
TOTAL	**262**

** Among the issues complained about were loss of deeds, erection of bus shelter, activities of debt solicitor, non-payment of EU monies, inaccurate maps, licence fees and flooding damage.*

Fig.2.1 Assembly Ombudsman 2002/03 262 Complaints Received

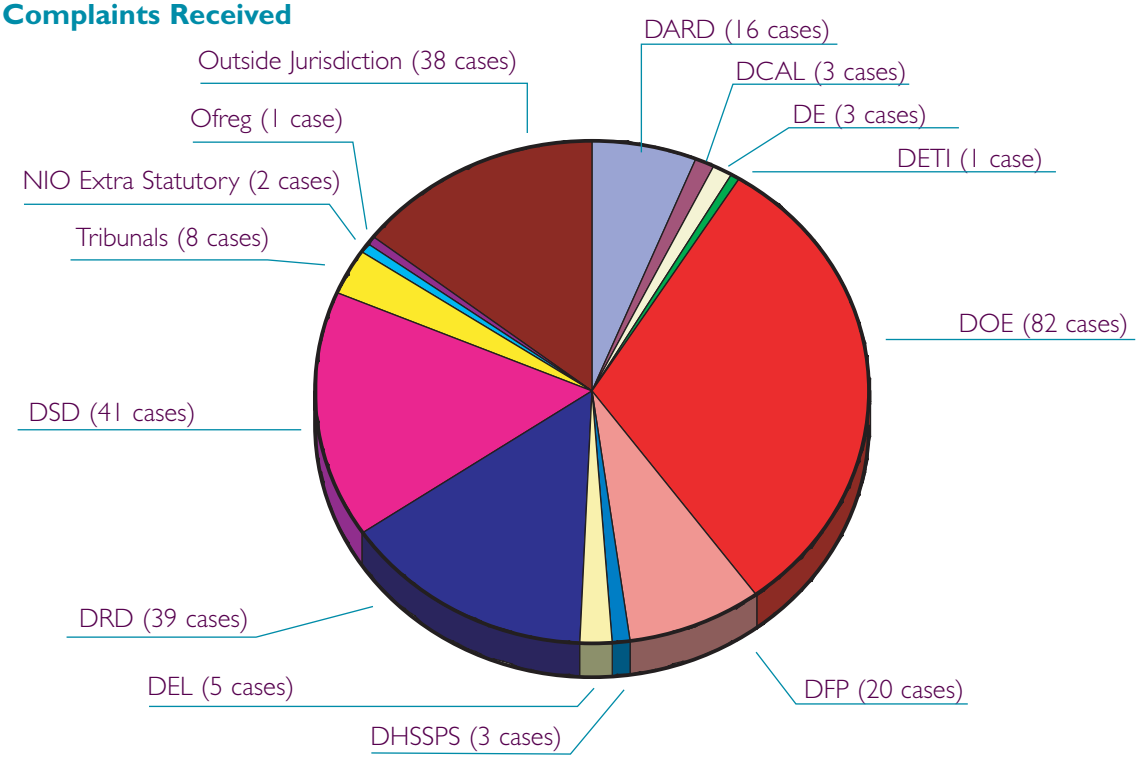


Fig 2.2 Assembly Ombudsman
Complaints Received 1998/99-2002/03

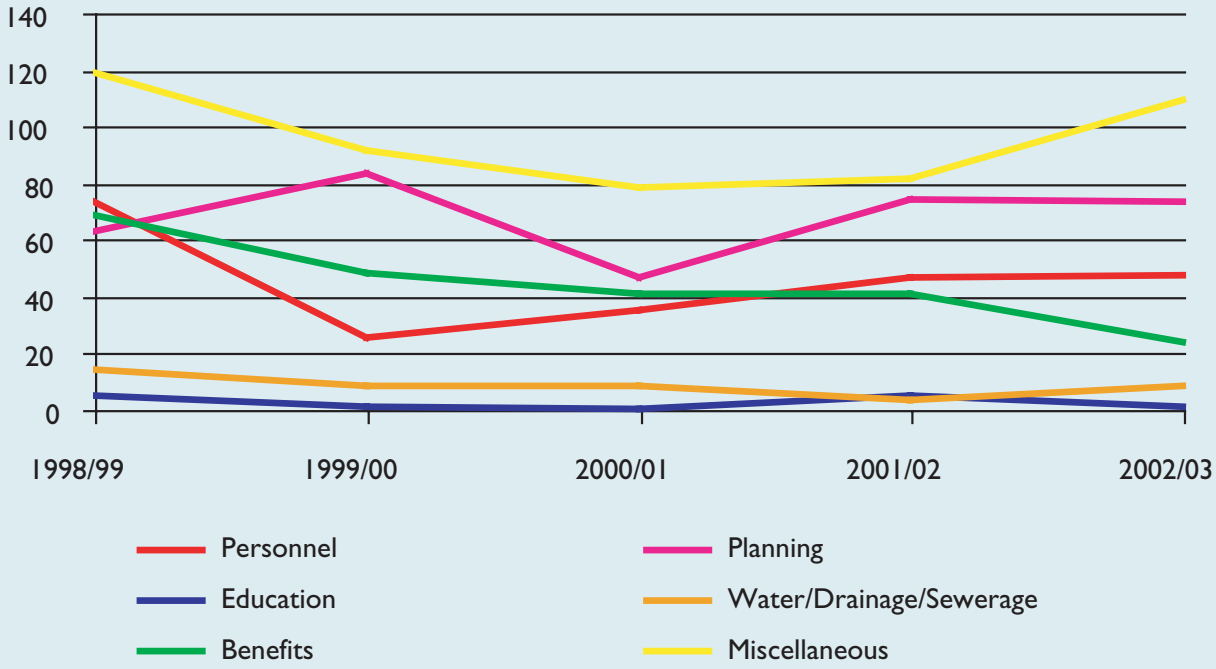


Fig 2.3 Assembly Ombudsman 2002/03
262 Complaints Received - Local Council Area in which Complainant Resides

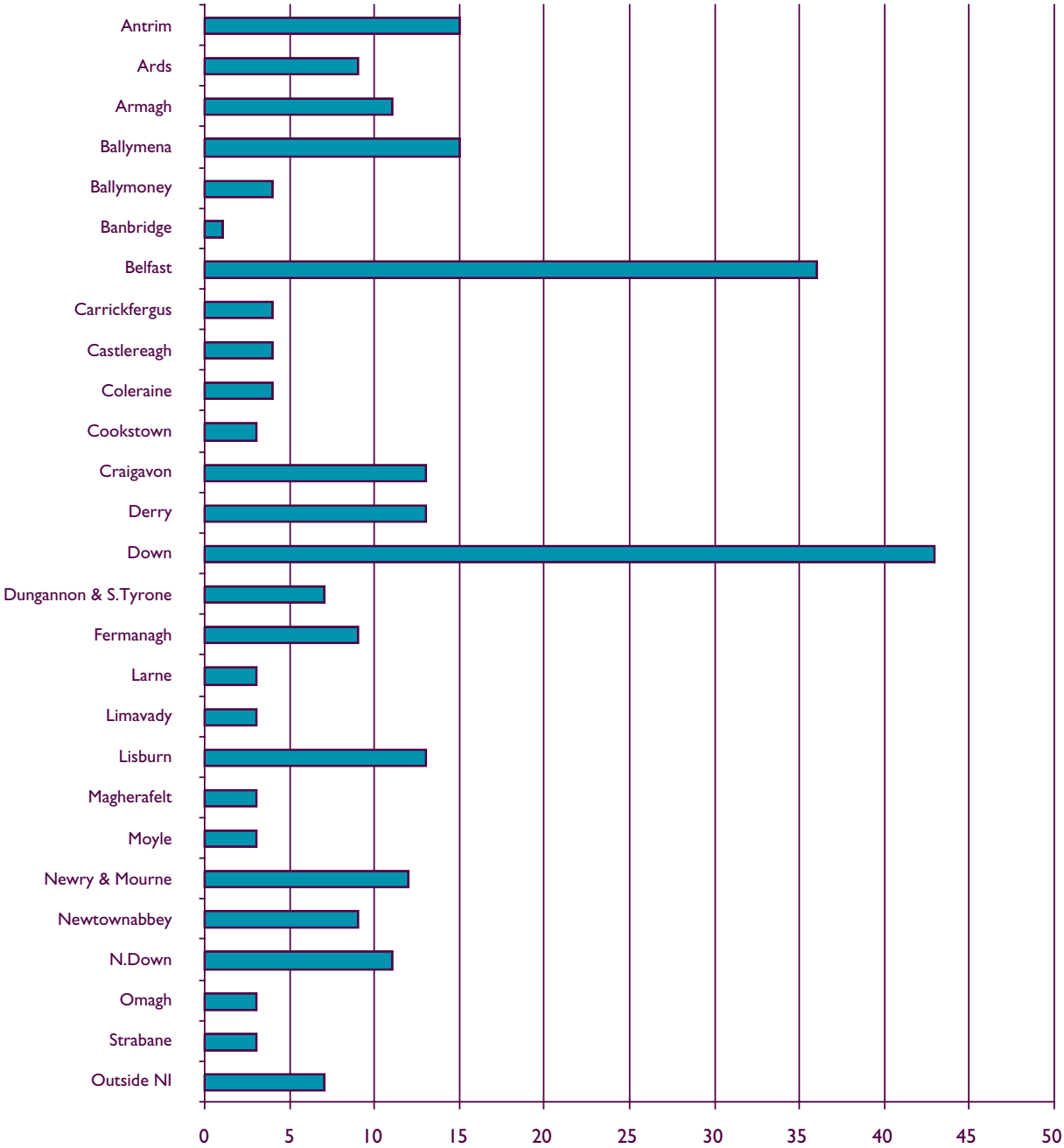


Fig 2.4 Complaints Against Government Agencies 2002/03
163 Complaints Received

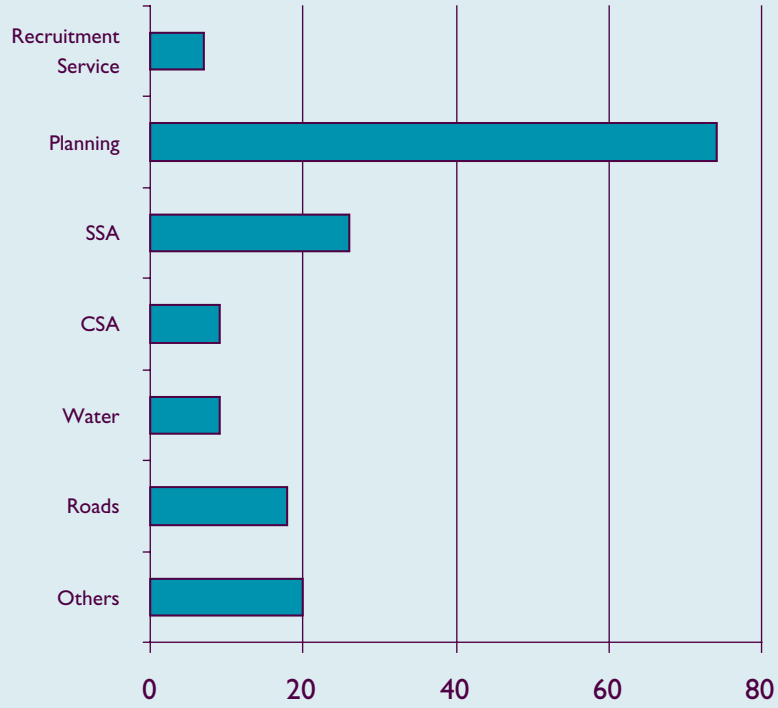
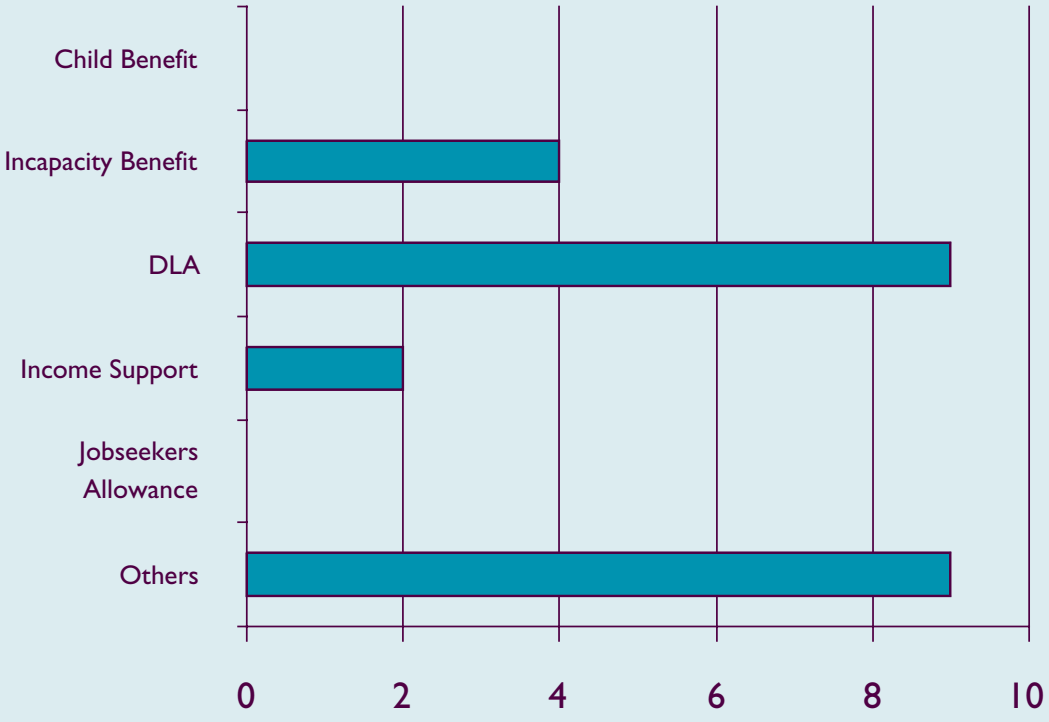


Fig 2.5 Benefits Complaints 2002/03
24 Complaints Received



Statistics

In addition to the 262 complaints received during the reporting year, 49 cases were brought forward from 2001/02. Action was concluded in 255 cases during 2002/03 and, of 56 cases still being dealt with at the end of the year, all were under investigation. In 34 cases I issued an Investigation Report setting out my findings.

The 56 cases in process at 31 March 2003 were received during the months indicated in Table 2.3.

During 2002/03 89 cases were cleared without the need for in-depth investigation and 6 cases were settled. 136 cases were accepted for investigation. Complaints against authorities or matters not subject to my investigation totalled 57. I rejected 10 complaints where I considered redress in a court of law to be more appropriate and 12 where there was a right of appeal to a tribunal. The outcomes of the cases dealt with in 2002/03 are detailed in Fig 2.6.

Of the total of 2,658 oral complaints received by my Office some 327 were against bodies within the jurisdiction of the Assembly Ombudsman. See Figs 2.7 and 2.8 at Appendix D to this Section.

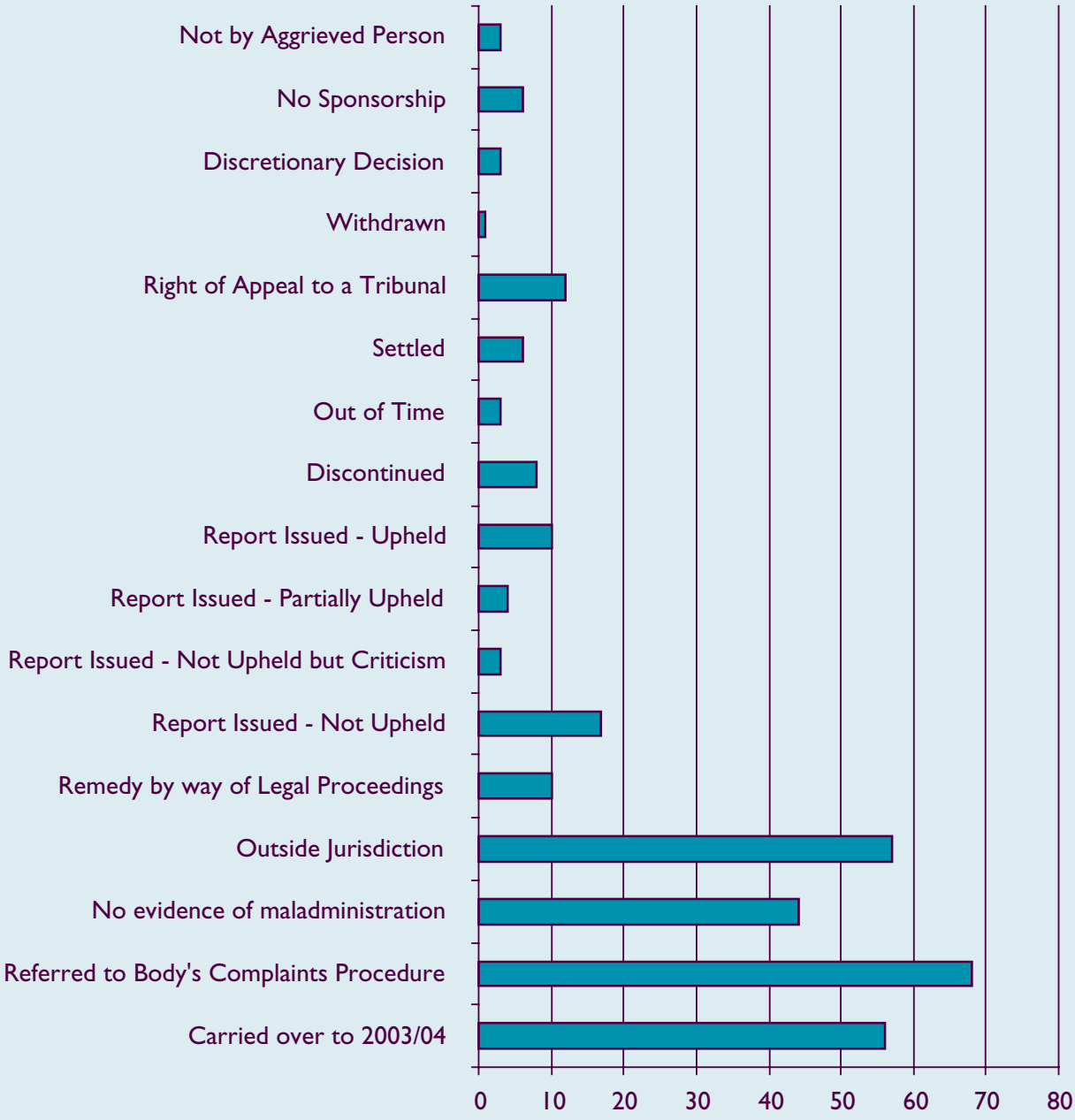
Table 2.2 Caseload for 2002/03

Number of uncompleted cases brought forward	49
Complaints received	262
Total Caseload for 2002/03	311
Of Which:	
Cleared at Initial Sift Stage	126
Cleared without in-depth investigation including cases withdrawn and discontinued	89
Cases settled	6
Full report issued	34
Cases in action at the end of the year	56

Table 2.3 Date of Receipt of Cases in Process at 31 March 2003

September 2001	2
October 2001	3
March 2002	1
April 2002	1
May 2002	3
June 2002	1
July 2002	1
August 2002	1
September 2002	4
October 2002	4
November 2002	6
December 2002	5
January 2003	5
February 2003	7
March 2003	12

Fig 2.6 Assembly Ombudsman 2002/03
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 18.4 weeks.

Reports Issued and Settlements Obtained After Investigation

34 reports of investigations were issued in 2002/03, compared to 23 in 2001/02. The breakdown according to the subject of the cases reported on was Planning 14, Benefits 3, Personnel 8, Roads 2, Child Support 2, Rates 2 and Miscellaneous 3.

10 cases were fully upheld; 24 cases were not but 4 of these were partially upheld and 1 criticised the Department/Agency in 3. Settlements were achieved in 9 of the 10 cases that I upheld:-

Case No	Department/Agency	Subject of Complaint	Settlement
AO 125/00	DOE Planning Service	Conduct of Planning Service	Apology & consolatory payment of £500
AO 21/01	DSD CSA	Maintenance Payments	Apology & consolatory payment of £600
AO 31/01	DSD CSA	Harassment/bullying	Apology & consolatory payment of £1,000
AO 60/01	DOE Planning Service	No opportunity to object	Apology & consolatory payment of £300
AO 97/01	Department of Education	Recovery of pension	Apology
AO 106/01	DFP Recruitment Service	Not shortlisted for interview	Apology & consolatory payment of £300
AO 111/01	DOE Planning Service	Handling of objections	Apology
AO 29/02	DFP RCA	Direct debit error	Apology & consolatory payment of £200
AO 30/02	DFP RCA	Disabled persons allowance	Apology & consolatory payment of £200

Review of Investigations

DEPARTMENT OF EDUCATION

Handling of an overpayment of teacher's pension

The complainant, a retired Teacher, alleged that the Department of Education (the Department) had treated him unfairly in the way it had handled an overpayment of his teacher's pension. The overpayment which amounted to £1745.87 covered a period of 6 years. The Department sought to recover the full amount from the complainant, despite the fact that the overpayment was due to a Departmental error and the complainant had not been aware he had been overpaid. The complainant was aware that the previous year when similar cases were identified the Department recovered only the last 12 months of the overpayment. Despite representations that he should be afforded the same consideration the Department refused to alter its decision and he had to have his case referred to the Minister to achieve that consideration. The complainant was firmly of the view that the Department had not treated him fairly and he believed that he should not have been expected to repay any of the overpayment.

On examining the issue of recovery of the overpayment I established that under common law the Department could seek recovery and therefore I could not conclude that in seeking recovery the Department had acted incorrectly. However my investigation revealed that the Department in dealing with the complainant's case had failed to act in accordance with the official Overpayment Guidance in that it should have sought to recover only the last 12 months of the overpayment. I also confirmed that the Department had failed to accord the complainant's case the same consideration that it had accorded to cases the previous year.

I concluded that in failing to accord the complainant the same consideration that it had accorded to the cases the previous year and by failing to apply the Overpayment Guidance, the Department had treated the complainant unfairly. The Department's Permanent Secretary accepted my conclusions and undertook to issue a letter of apology to the complainant. He also agreed to waive the outstanding amount of the overpayment and refund to the complainant the amount which he had repaid. **(AO 97/01)**

DEPARTMENT OF ENTERPRISE, TRADE AND INVESTMENT

Consideration of candidature for promotion within the Department

In this case, the aggrieved person complained that the Department of Enterprise, Trade and Investment (the Department) failed, in February 2001, to comply with and adhere to the procedures laid down by the Northern Ireland Civil Service in considering her candidature for promotion to Staff Officer grade within the Department.

Primarily, the complainant contended that, on 6 February 2001, the Department's selection panel, which considered her for the post of Staff Officer, failed to make a balanced assessment based on all of the evidence before it, including that presented at interview. Having carefully examined all of the evidence and information available to me, as a result of my detailed investigation of the grounds of complaint, as put forward by the complainant, I formed the firm view that the panel took account of all the information before it, but with particular reference to that presented at interview, when assessing the complainant's performance against each of the six selection criteria, against which all candidates were being judged. In relation to performance at interview, for the purposes of job selection or promotion, it is not my role to try to second guess the judgements of panel members in complaints arising from the outcome of such interviews. In other words, appraisal/judgement of performance of necessity contains a considerable

degree of subjectivity, which is of a discretionary nature. In such circumstances, it would be virtually impossible for me to substitute my judgement for that of the members of an interviewing panel who clearly had the advantage of assessing the candidate's performance at first hand.

Overall, my careful consideration of all of the evidence and information available to me did not lead me to conclude that the Department had been guilty of maladministration either in its conduct of the promotion process, the subject of this complaint, or as a consequence of the interviewing panel's conduct of the complainant's interview and related assessment of her performance. Neither did my investigation produce any evidence of an irregularity in the promotion process. Also I did not find any evidence that the complainant was treated differently from any other candidate in the process. Overall, therefore, I did not find that the complainant suffered a personal injustice as a result of the Department's actions. **(AO 58/01)**

DEPARTMENT OF THE ENVIRONMENT

PLANNING SERVICE

Failure to take enforcement action/failure to properly consider objections to a planning application

The complainant stated that a large shed for paint spraying of commercial vehicles had been operating for some time without planning permission adjacent to his home and Planning Service (PS) had failed to take enforcement action. He also felt that PS disregarded his objections when a planning application was eventually submitted and failed to apply normal planning criteria to the application and decision.

I found that following receipt of information from the complainant, PS inspected the site but made an error in initially deciding against enforcement action on the grounds that the shed was covered by an earlier approval. When challenged by the complainant, it was verified that the earlier approval had lapsed. Although I criticised PS for this error I found that appropriate corrective action was taken subsequently, by requiring the developer to regularise the breach of planning control through submission of a retrospective planning application. In line with normal procedures PS then suspended enforcement action pending determination of the planning application. Whilst I felt that PS might have better explained to the complainant its approach to enforcement in such circumstances I did not consider that the body had been maladministrative in dealing with the breach.

In a detailed examination of the processing of the planning application I found clear documentary evidence that the complainant's objections to the shed had been taken into account by PS. Concerns relating to odours and emissions from the paint spraying operation were addressed through inclusion in the planning approval of appropriate informatives on the advice of the Environmental Health Department of the local Council. Although I discovered, and was critical of PS for, some minor confusion in the records in relation to the relevant planning policy which was applicable to the development I found that this had no effect on the integrity of the decision which was taken. Overall I was unable to uphold the complaint. **(AO 124/00)**

Failure to take enforcement action

I received a complaint about an alleged failure by Planning Service (PS) to take enforcement action against an unlicensed waste disposal operation which had been ongoing in a greenbelt location for 19 months prior to receiving planning approval. The complainant also alleged that PS had failed to enforce a condition of the planning approval which required installation of a wheelwash on the site. Other aspects of the complaint included criticism that the access road to the development was unsuitable for heavy vehicles, the approved height of infill had been exceeded, PS had failed to record or answer all the questions raised at a site meeting and a general purpose agricultural shed erected on site had not been built in accordance with approved plans. The complainant argued that the application for the shed should have been combined with the infilling to give a more accurate picture of the operator's future intentions for the site, which the complainant suspected was not

agricultural improvement as claimed, but a plan to relocate a stud farm business.

This multi element complaint led to a difficult and prolonged investigation which required a number of interviews of officials in PS as well as the local Council. All of the case papers were examined carefully, as was the complex legislation relating to waste disposal and licensing and a range of planning policies on enforcement, waste, and development in the greenbelt.

My investigation found that PS had commenced enforcement action against the unauthorised infilling but, in line with normal procedure, this had been suspended when a retrospective planning application was submitted. My detailed examination of PS files satisfied me that the planning application had been properly processed. Although I upheld the complainant's view that the failure by PS to record the site meeting was maladministrative, the documents showed that all objections and other material considerations, including Roads Service comment on traffic issues and relevant planning policies, had been taken into account in the decision to approve the proposal with conditions.

I was satisfied that there was no planning reason why the infill application should not have been submitted independently of the agricultural building application. Whilst there was some evidence to support the complainant's suspicion that the site operator may wish to develop a stud farm at this location in the future, PS advised that such a major change of use would require a new planning application to which the complainant would be fully entitled to object. I also found some substance in the allegation that site levels had been exceeded, however PS provided an assurance that the revised levels proposed by the site operator would be publicised and, therefore, amenable to challenge by the complainant. As regards the non-conformity of the agricultural building with approved plans, PS agreed that the approval had not been strictly adhered to, but stated that the variations were minor and would not justify enforcement action. I had no reason to disagree with this discretionary decision.

I established that the issue of licensing of the waste disposal site is a matter for the local Council, rather than PS. PS admitted that the question of acceptability of waste disposal for the purpose of agricultural improvement lacks legal clarity and is the subject of ongoing discussion between PS and the Department of Agriculture and Rural Development. I was concerned to find a divergence in legislation between Government Departments on such an issue and I urged a speedy resolution of the anomaly. However I concluded that, notwithstanding the legal complexities in relation to the waste issue, the decision to issue planning approval in this particular case was properly made in line with existing PS legislation and policies.

I upheld the complainant's allegation that PS had failed to effectively enforce the planning condition which required approval and installation of a wheelwash at the landfill site before further development proceeded. I could not fully accept the PS explanation that it is not possible to routinely monitor compliance with planning conditions and I recommended a greater use of targeted enforcement measures in relation to such conditions, particularly where issues of safety are involved.

At its heart this case was borne out of the complainant's frustration at what he perceived to be an unscrupulous developer getting his own way by exploiting loopholes in the law and misrepresenting his intentions. Although I was unable to fully uphold the complaint, my investigation found maladministration by PS in its failure to record a site meeting and to properly enforce a planning condition. The Chief Executive of PS accepted my recommendation that the complainant should be given an apology and a consolatory payment of £500 for the injustice of frustration and annoyance caused by these failings. The Chief Executive also agreed to provide the complainant with an explanation of current proposals for improvements to planning policy and procedures relevant to issues raised in his complaint. **(AO 125/00)**

Inadequate processing of a planning application

This was a multi-element complaint in which three neighbours alleged that they had suffered injustice as a result of maladministration by the Planning Service (PS) in its handling of a planning application for a dwelling on a site adjacent to their properties. One of the most serious allegations

was that concerning alleged failures in the processing of the application. The complainants believed that PS did not inform the local Council as to the numerous objections to the application which it had received. From the evidence provided I was satisfied that the Council was provided with a clear indication as to the number of representations received in respect of the application in question. Therefore, I could not say that the Council would have been unaware of the level of interest which this application had provoked.

The complainants were also concerned that PS failed to take proper account of bone-fide objections which included concerns about the design and scale of the proposed dwelling, access and privacy and the fact that the proposed site involved was a beautiful woodland area consisting of mature trees. From my examination of the relevant documents I was satisfied that the design, siting, access, size and scale of the development including the effect on the visual and residential amenity of the area with specific and detailed reference to the impact on the trees were issues known, noted and considered by PS prior to making any decision on the application. I was also satisfied that PS had regard to the letters/petition of objection and considered these prior to making the decision to approve the proposed development. In this instance, I did not see that PS 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 PS opinion on this occasion.

The complainants also believed that the applicant was afforded special treatment by PS. My investigation revealed no evidence to substantiate the complainants' allegation of PS having afforded the applicant special treatment.

It was also claimed that inconsistent policies are applied by the Department to new structures in different parts of NI; for example, more stringent rules regarding height and appearance applied in country areas compared to those applied in the Belfast area. The question had been asked should design policy not be standard throughout NI. It is not my role to intervene in the forming of policy. My primary remit is to examine a body's administrative actions in implementing established policy. An objection to a particular policy is not in itself prima facie evidence of maladministration. Neither is it an indication that the policy is unreasonable. I considered it unreasonable for PS to seek to impose a uniform design policy throughout NI as the complainants appeared to suggest. I did not regard development control as a repetitive, mechanical process, rather one that must take account of the context in which the development is proposed.

A further allegation was made that tighter guidelines are applied to alterations and extensions compared to new build. However, from my experience of dealing with complaints about planning matters it had become clear to me that "like for like" comparisons are virtually impossible since proposals will rarely have the same characteristics. Development control involves the consideration of individual cases on their own merits and making judgements in accordance with the characteristics of the site and relevant policies. Therefore, while there may be cases which would support the complainants' allegation, I was satisfied that it could not be attributed to an inconsistent approach by PS in dealing with apparently identical applications.

With regard to the claim that the file/plans were unavailable for inspection, I discovered one occasion when one of the complainants called at the divisional planning office and the file was not available for inspection. While it was unfortunate that the file could not be located, the officer apologised and forwarded a full set of drawings for the information of the complainants. In the circumstances, I considered this to be a satisfactory outcome.

I did not uphold the complainants' further allegations of refusing to provide information and that a final decision had been made on the application and given to the applicant prior to their meeting with the Minister.

Overall this was a lengthy and time consuming investigation at the end of which I was unable to say that PS's various actions were attended by maladministration from which the complainants sustained any substantive injustice. **(AO 50/01; AO 51/01; AO 52/01)**

Processing of a planning application

This was another multi-element complaint in which the complainant alleged that he had suffered injustice as a result of maladministration by Planning Service (PS) in its handling of an application by his neighbour for a work store/shed adjacent to his property. One aspect of the complaint was that the complainant believed that his neighbour broke the rules and was guilty of wrong-doing in starting to build in an unauthorised location and PS was guilty of serious duplicity in rewarding him with a choice of where to build.

On investigation, I learned that under current planning legislation, in a case where development is proceeding without the benefit of planning permission, it is open to PS to take a discretionary decision that a remedy for the breach of planning control involves a requirement to submit a planning application. In these circumstances, it is PS's normal practice to suspend any enforcement action pending the determination of a relevant application.

My investigation revealed that there was an extant planning permission for a store albeit in a different location. Once it was established that the store was not to be constructed in the approved location, PS took immediate action in order to bring the situation under control which meant that the applicant could either revert to the original approved location or make an application for a relocation. Two months later a fresh application was submitted for full planning permission for the erection of a store in a different location. I realised from my investigation of previous complaints that there was nothing to prevent an applicant taking such action. It was clear to me that, in the circumstances, PS had no choice, and indeed had a duty to process that application. I did not find evidence of maladministration in PS's discretionary decision not to take enforcement action in this case. PS had sought to control the situation by processing the new application. I concluded that was not, in my view, evidence of serious duplicity on the part of PS.

The complainant also stated that he advised in his letter of objection to PS that it was in the public interest that the public representatives, in particular his Member of Parliament (MP), who were involved in the earlier application be made aware of the current situation. The complainant considered that PS ignored his advice and that his rights as a constituent were denied. I learnt that PS is required by statute to consult local councils on all planning applications but there is no such requirement nor is it normal practice for PS to consult MPs. While PS confirmed that the MP had not been involved in the consultation process I was satisfied that the local Council had been involved. I believe that it would be improper for PS, or indeed any public body charged with reaching a discretionary decision, to seek what could be perceived as the intervention of an elected representative on behalf of any party with an interest in the case. The complainant himself was at liberty to contact the MP and it was unfortunate that he did not do so. I did not consider that PS had denied the complainant his right to seek the support of the MP. I concluded, however, that it would have been helpful to the complainant if PS had responded to the matter of MP consultation as suggested in his letter of objection. I considered this was a lost opportunity for PS to clarify its position. Overall I concluded that PS had given full and proper consideration to each aspect of the planning application and to the complainant's objection. **(AO 78/01)**

Processing of a planning application for a telecommunications mast

The complainant alleged maladministration by Planning Service (PS) in its processing of a planning application for the siting of a telecommunications mast adjacent to his home. There were two main aspects to the complaint.

The first issue concerned the processing of the planning application and, in particular, the alleged inadequate consideration of the siting of the mast. I learned that the existing legislation with regard to the erection of telecommunications masts permits 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 PS for a determination as to whether or not the prior approval of 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, 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. In this instance, PS received notification from the applicant requiring a determination as to whether or not prior approval was required to the siting and appearance of the proposed mast. Having considered the proposal, PS notified the applicant that prior approval was required meaning that PS did wish to influence the proposed siting and appearance of the mast before work could proceed. PS subsequently contacted the agent acting for the developer regarding the possibility of mast sharing on an existing similar mast close by but the agent advised that this would not be feasible and explained in detail the reasons for this decision. PS concluded that prior approval for the siting and appearance of the proposed mast should be granted and a decision was issued accordingly.

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 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 siting, size and scale of the mast including the effect on the visual and residential amenity of the area with specific reference to the area where the complainant's lived and the fact that it was at a lower level than the development site were issues known, noted and considered by PS prior to making any decision on the application. Overall, I could not see that 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 PS should have considered the possible resiting of the mast. My investigation revealed that PS has a duty to determine applications as submitted. In this instance PS had concluded that the proposed siting of the mast was acceptable and there was, therefore, no reason for it to suggest an alternative location. I concluded that PS had not acted unreasonably in not seeking to reposition the mast.

The second issue focused on the complainant's concern with regard to the perceived health effects of telecommunications masts. I learned that under the present system, there is no provision for consideration of health issues; it is the role of the Department of Health, Social Services and Public Safety, guided by the National Radiological Protection Board (NRPB) and International Commission on Non-ionising Radiation Protection guidelines to offer advice in relation to the perceived health effects of this form of development. I had to accept that 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. The reality is that I have no authority to overturn a planning decision with which an interested party might disagree because of his views in relation to a potential adverse effect on health. Overall, I did not uphold the complaint. **(AO16/01)**

Breach of published aims regarding planning permission

The aggrieved person in this case complained that Planning Service (PS) in granting planning permission for an extension to a neighbouring house had breached its own published aims and objectives. He stated that the planning application did not 'contribute to a quality environment' or 'meet the social aspirations of present and future generations' in accordance with PS's Charter Standards Statement. Rather the application represented unsustainable, over-development and was contrary to the Department's Development Control Advice Note (DCAN) 2 relating to Houses of Multiple Occupancy. The complainant further alleged that in granting planning approval PS had failed to take account of the objections of the local Residents Group and the publicised anti-social behaviour of short-term residents in the area.

My investigation of the complaint focused on the way in which PS had processed the planning application and dealt with the complainant. I made it clear that it is not my role to change planning legislation or policy or to advocate in matters of wider public concern, such as the cumulative impact of a particular type of development on an

entire neighbourhood. In my view the public, in seeking to have such deeply felt concerns addressed, need to bring them to the attention of elected representatives.

With regard to the alleged breach by PS of the standards in its Charter Statement I formed the view that the extent to which the standards have been realised can only be judged over a substantial period of time and on the basis of a complex interplay of factors, rather on the basis of this particular planning decision. On the issue of PS's alleged failure to follow the guidance in DCAN2, the complainant had disputed its decision to process the planning application as a domestic extension rather than a change of use application for a House of Multiple Occupancy. The decision to process a planning application as a specific category of application is a decision for PS to take and I cannot question it unless there is evidence of substantive maladministration. Having considered the explanation by PS regarding the processing of this specific application I did not find evidence of improper consideration.

PS stated that anti-social behaviour is not a material planning consideration and I accepted that this is so. My investigation established that while the complainant's objections to the planning application were received by PS after the application had been presented to the Council, nevertheless there was evidence that PS had given consideration to all material planning issues. The complainant also raised on behalf of the Residents Group issues of wider public concern relating to the neighbourhood in general and I acknowledged that it would have been helpful if PS had responded promptly to the complainant on this matter. Overall, however I did not find any evidence of maladministration by PS and I did not uphold the complaint. **(AO 46/01)**

Failure to re-advertise a planning application

The complainants in this case stated that Planning Service (PS) in an advertisement failed to correctly describe an amended planning application for a neighbouring site. A PS official assured the complainants that the planning application would be re-advertised with the correct description, and so they postponed lodging their objections to the application pending the re-advertisement. However, PS did not re-advertise the planning application but proceeded to grant planning permission. The complainants subsequently complained that they had been denied their legal right to submit their objections to the planning application prior to it being determined.

In my investigation of the complaint I established that there had been three separate planning applications for the site in question. The original planning application for the construction of 20 townhouses had been publicly advertised and the complainants had the opportunity to lodge their objections to the proposals. PS subsequently processed the application and granted planning permission. In the event however, the developer built 10 houses only and he submitted a further planning application to replace the 10 unbuilt houses with 3 blocks of apartments. The second planning application was duly advertised and the complainants lodged their objections. However, the developer withdrew the second planning application prior to a decision being issued by PS.

The complaint to my Office related to PS's processing of the third planning application submitted by the developer. In my examination of the plans it was clear that the developer had sought planning permission for the construction of 2 blocks of apartments in place of 7 of the unbuilt townhouses, thereby retaining 3 of the previously approved townhouses. However, he did not accurately describe his revised proposals on the planning application form, consequently the advertised description of the planning application was incorrect. I concluded that it was incumbent on PS to advertise the planning application to reflect correctly the development proposals for the site and I was therefore critical of its failure in this respect.

With regard to the failure to re-advertise the planning application with the correct description of the proposals, I established that the PS official had told the complainants that the application would be re-advertised. However despite his assurance there was no evidence to demonstrate that the official had taken the necessary follow-up action to ensure this occurred. I therefore concluded that the PS official had not seriously pursued the re-advertisement of the planning application and that this failure amounted to maladministration.

Although I identified maladministration in failing to re-advertise the planning application I was of the opinion that the failure did not cause any injustice to the complainants. In reaching this conclusion I had regard to the complainants' statement that the objections which they would have submitted in relation to the construction of 2 blocks of apartments and 3 townhouses would, in all likelihood, have been on the same grounds as their objections to the previous planning applications. It was clear that the complainants' objections were well known to PS and therefore it was unlikely that any new issues of objection would have arisen which had not been previously considered by PS.

Overall, I concluded that the complainants had been misled by PS regarding the re-advertisement of the planning application in that office procedures had not been followed to ensure that this occurred. As a result they suffered the injustice of frustrated expectations and the opportunity to put forward their views once again on matters of genuine concern to them. I was also critical of PS for the undue delay in replying to the complainants' correspondence about the processing of the planning application. Consequently, I recommended and the Chief Executive of PS agreed to issue a letter of apology to the complainants for the inconvenience and distress which the maladministration had caused to them. **(AO 111/01)**

Not notified of neighbour's planning application

The complainant alleged that Planning Service (PS) failed to notify him of a planning application submitted by his neighbour. As a consequence he was denied the opportunity of lodging his objections to the planning proposal. He further complained that despite having written several letters to PS it had not provided him with a satisfactory explanation of how the standard procedures for neighbour notification had failed.

My investigation established that as a result of an administrative error by PS staff the complainant's address was not entered onto its computer system when details of the planning application were being input. Consequently a computer-generated neighbour notification letter did not issue to him. I also identified that PS had missed a further opportunity to notify the complainant when the site visit was undertaken. While I acknowledged that the complainant's objection to the planning application may not have altered the decision to grant planning approval, nevertheless he had been denied the opportunity to have his views considered by PS prior to its determination of the planning application. I regarded this failure as maladministration.

My investigation also identified that PS had misfiled the complainant's original letter in which he had sought an explanation of why he had not been neighbour notified of the planning application. Consequently he did not receive a reply from PS. I further established that the complainant's subsequent letter to PS on this issue also went unanswered and that the PS response to his third letter failed to provide him with an adequate explanation. I concluded that this failure also constituted maladministration. I recommended and the Chief Executive of PS agreed to issue a letter of apology to the complainant together with a consolatory payment of £300. **(AO 60/01)**

Handling of permitted development application

In this case the complainant alleged that a planning application made by her neighbours for an extension to their property was processed as permitted development when in fact it did not comply with permitted development requirements. It was claimed that since 1973 there had been three previous extensions to the neighbour's property which were not considered by Planning Service (PS) in determining the most recent application. The complainant believed that if these extensions had been considered the permitted development limit would have been exhausted and formal planning permission would have therefore been required.

My investigation revealed that the applicant voluntarily submitted an Article 41 application to determine whether or not planning permission was required. In processing the application, PS was required to take account of the cumulative effect of any previous extension/s to the property since 1 October 1993. PS examined the planning history of the site and identified one permitted development file reference relating to the same property dating back to 1985. However, the file had been destroyed and PS had no means of

ascertaining the details of the previous proposal, the determination made or if the proposal had been implemented. In the absence of any definitive information to indicate that permitted development rights had been used up, PS determined that the proposed works fell below the permitted development allowance of 70 cubic metres. On that basis the applicant was advised that the proposed works were considered to be permitted development and did not require the submission of a formal planning application.

I found that, having identified one previous application, PS was unable to ascertain any details of that proposal due to its policy on the destruction of permitted development files. PS acknowledged that this presents a contradiction which the Department sought to address by keeping registers of relevant details. However, registers were first prescribed in legislation only with effect from 24 June 1991 and would not have been available prior to that date in this instance. I expressed concern that, notwithstanding the formal policy on disposal of records, no separate mechanism whatever appeared to have existed prior to 1991 to enable planners to record information relating to permitted development applications and determinations. This represented, in my view, a significant failure of the authorities at the time to have regard to the administrative implications, in terms of good record keeping, of their policy and contributed ironically to a circumstance in which accurate determinations under that same policy could not be made. I therefore welcomed the change in policy of 1991 which introduced the keeping of at least a register of relevant details. I was acutely aware of a further factor which added to the complexity of cases such as this in that householders can legally exercise their permitted development rights without making application to PS. It seemed to me, this would more than likely account for PS having no record of the other two extensions referred to by the complainant.

Clearly there was a practical difficulty in establishing records of development which, legally, did not require PS consultation or authorisation. I considered that all of this pointed to a significant systemic weakness in the handling of Article 41 applications which I believed PS should take urgent steps to address.

In considering the determination made in this case I took the view that, having regard to the requirements of the legislation, the correct decision would have been that an accurate determination was not possible. It seemed to me that, subject to the applicant's wishes, the proposal would then have been submitted as a full planning application and it was possible that the complainant's situation would effectively have been no different from the situation she found herself in today.

This was an unusual and somewhat complex complaint to deal with and my investigation identified an important systemic weakness in the manner of PS's handling of permitted development applications which I found amounted to maladministration. I did not, however, find that this resulted in a personal injustice to the complainant. **(AO 24/01)**

Processing of planning application for neighbouring site

The complainants in this case alleged that they were not neighbour notified by Planning Service (PS) regarding a neighbour's planning application for a replacement dwelling. Consequently they did not believe that PS had considered the impact of the proposed development on their property. They also expressed their concern that the roadside frontage to their property was used, without their permission, for the visibility splays and that there were changes made to the approved plans for the neighbouring dwelling.

My investigation of the complaint confirmed that PS should have neighbour notified the complainants about the planning application but had failed to do so. As a consequence the complainants were denied the opportunity to submit their objections to the proposed development and to have their views considered by PS prior to a planning decision having been made. I found this amounted to maladministration.

From an examination of the documentation in the planning file I was satisfied that the presence of the complainants' property in relation to the proposed dwelling was recorded by PS and that consideration had been given to the impact on their property. My investigation also established that Roads Service are controllers of road verges for visibility splays and that it had not raised any

objection to the proposed visibility splays in this application. Therefore the question of ownership of the roadside verge was not of direct consequence in this case. With regard to the changes which were made to the approved plans I noted that PS had sought amended plans from the planning applicant and had deferred its consideration of the plans to allow the complainants to submit their written comments. I concluded that PS had not acted unreasonably in this matter. I did not uphold the complaint on any of these issues.

For the injustice of not being neighbour notified of the planning application I recommended and the Chief Executive of PS agreed to issue the complainants a letter of apology, together with a consolatory payment of £500. **(AO 120/00)**

Handling of a planning application

In this case the aggrieved person complained about Planning Service (PS) with regard to a planning application relating to a poultry processing plant adjacent to his home. Among the issues raised by the complainant was a claim that the submission and subsequent withdrawal of a series of planning applications had been an attempt to circumvent the planning system; that the description on the latest in the series of applications as advertised and neighbour notified did not cover all the activities proposed on the site, in particular poultry slaughtering and processing; that a major breach of practice occurred in consulting the local Council with an incorrect description. A deputation to PS requested the submission of a fresh application. The complainant was aggrieved that PS took it upon itself to amend the description and that the application was readvertised, thereby denying residents time and opportunity to call a Public Inquiry. He claimed that there was inadequate time for PS to consider further objections between the closing date and forwarding a schedule to Council. Furthermore, at the next Council meeting, the description was again that as advertised previously and not as amended.

My investigation involved obtaining a written response from PS, together with interviews of a number of officials and exhaustive scrutiny of a considerable volume of documentation. On the basis of the evidence examined I found that the acceptance by PS of a series of separate planning applications was within its statutory responsibility and that PS had not facilitated a circumvention of the planning system. In relation to the limited description of activities I was told that it is normal practice to advertise a planning application as described at Section 9 of the P1 application form although, in this case, the information relating to poultry processing contained at Section 17 of the form entitled PS to treat processing as an integral part of the proposal. I took the view that the application form did cover all the activities on site and was satisfied that initial consideration had also addressed all aspects of the proposal. However I found that the design of the form caused the description to be split with only that part of the description entered at Section 9 being advertised. I also took the view that it is incumbent on PS to seek to obtain the fullest, most accurate description possible before advertising. I criticised the lack of vigilance which resulted in the initial publication of a less than full description and found that it amounted to maladministration although it did not result in injustice to the complainant. I recommended that PS review the P1 form to ensure completeness of descriptions to be advertised.

In view of substantial consideration and consultation by PS I considered that all consultees were well aware of the full nature of activities by the time the Council first met to consider the application and an amended description or readvertisement prior to the meeting would not have secured a substantially different outcome. I did not uphold the complainant's complaint in respect of breach of practice in relation to Council consultation.

I accepted as reasonable the PS view that it was not necessary to seek a fresh application in this case insofar as the subsequent consultation with relevant bodies was concerned although I could not be certain that all who may have had an interest were aware of the full extent of the proposal. However, I found that in readvertising with an amended description PS was seeking to remove any risk that other objectors would not understand the nature of the proposal. I considered that, in amending the description, PS was going some way to meet public concern and

was entitled to make the judgement to combine a formerly "split" description.

I was satisfied that the discretionary decision of PS that the application did not meet the criteria for designation for a Public Inquiry was a reasonable one and the questions of a fresh application and related time limits were not relevant in this case.

While I had reason to criticise PS for not checking to ensure the accuracy of the description presented to Council at its second meeting I considered that the meeting was informed as to all the activities taking place on site. I was also satisfied that, although the time following the closing date for objections was short, it was sufficient for PS to verify that no new or substantial issues had been raised in objection to the readvertised application which would give cause for a fundamental review of the opinion formed to approve.

Overall, while I found reason to criticise PS I did not uphold the complaint. **(AO 23/01)**

Handling of P2 form

The complainant in this case was dissatisfied with a number of aspects of the handling by Planning Service (PS) of a planning application for a bungalow on a site adjacent to his property which it was proposed should be accessed by a lane, of which, the complainant claimed, he was part owner.

The most substantive element of the complaint centred around the requirement under Article 22 of the Planning (NI) Order 1991 that notice of a planning application should be issued to any third party landowner affected by the development proposal. The complainant alleged that PS was guilty of maladministration for processing the planning application even though the proper certification procedure under Article 22 had not been followed. This procedure requires that each planning application should be accompanied by a properly completed form (known as a P2 form) on which the planning applicant makes a statement in relation to ownership of land covered by the proposal, and, where appropriate, certifies that any interested third party landowners have been notified of the application. The complainant alleged that the P2 form submitted in this case contained no reference to his interest as a part owner of the access laneway.

My investigation carefully examined all of the documentary evidence and paid particular attention to the provisions of Article 22 of the Planning Order. I found that although the original P2 form submitted with the application did not identify the complainant's interest, this was not inappropriate since at that stage the laneway was not included within the proposal. Following receipt of information on land ownership from the complainant PS arranged for the applicant to submit a revised plan and P2 form incorporating the laneway. I found the revised P2 to include reference to the complainant's interest in the lane. I was unable to explain why, when he requested copy documentation from PS , the complainant appeared not to have received a copy of the revised P2. I recommended that the appropriate document should be issued to him by PS.

My examination of the legislation confirmed that under Article 22 the responsibility for notifying third party landowners rests with the planning applicant, not Planning Service. The Order provides that it is an offence for an applicant to wilfully make false or misleading statements on the P2 form. I was concerned that the guidance material issued by PS did not give sufficient emphasis to the gravity of the planning applicant's responsibility to third party landowners under Article 22 of the Order. I therefore recommended, and PS accepted, that consideration should be given to inclusion of an appropriate cautionary statement in the guidance materials for planning applicants or on the P2 form itself.

I investigated a number of additional criticisms which the complainant made of PS. These included failure to answer questions in correspondence, failure to issue neighbour notification of the revised application and failure to issue notification of the planning approval. I found some substance in these aspects of the complaint. However further grievances were not upheld after investigation. These included intention to mislead; "arrogant and obnoxious" treatment of correspondence, failure to mention his objections to the application at a Council meeting, failure to carry out a site inspection, failure to take account of the location of his septic tank and failure to comply with the Citizen's Charter.

Overall I was satisfied that the complainant's substantive objections to the application were

taken into account by PS and the decision to approve the proposal was taken without maladministration. However because of an accumulation of minor errors and shortcomings in the processing of the application I recommended, and the Chief Executive accepted, that the complainant should receive a general apology for the level of service provided and a consolatory payment of £250. **(AO 117/01)**

ENVIRONMENT AND HERITAGE SERVICE

Handling of complaints of alleged pollution

The complainants alleged that Environment and Heritage Service (EHS) had failed to respond to their frequent notifications that pollution was flowing into their garden from neighbouring properties. They were also unhappy with the timing of visits in response to their reports of pollution. They believed that EHS had failed to deal effectively with the situation and failed to carry out its statutory function in relation to this matter.

My investigation revealed that EHS had responded within its target response time and on many occasions much more quickly, on each of the numerous occasions when the complainants reported pollution. I did not, therefore, uphold this aspect of the complaint.

The complainants also alleged that EHS had failed to deal effectively with the situation in that it forewarned the landowner of their impending arrival which allowed him to do some degree of remedial work to lessen the problem. EHS explained and I accepted that there are occasions when it is necessary for officials to contact a landowner prior to a visit. I did not consider such action to be a failure on the part of EHS.

I did not uphold the complainant's further allegation of failing to investigate or respond with regard to alleged pollution of a spring well. Overall I found no evidence to suggest that EHS failed to carry out its statutory function in this matter nor that it failed to deal effectively with the complainants' situation. I did not uphold this complaint. **(AO 126/00)**

DEPARTMENT OF FINANCE AND PERSONNEL

RATE COLLECTION AGENCY

Delay in processing an application for Disabled Persons Allowance

The complainant stated that she had applied to the Rate Collection Agency (RCA) for a Disabled Persons Allowance (DPA) in May 2001, which if granted would reduce her yearly liability for rates on her property. However, some fifteen months later the RCA had still not made a decision on whether she was entitled to the allowance and in the meantime she had paid full rates for two consecutive years.

During my investigation I established that the RCA has a clear responsibility to manage the DPA Scheme but that it is heavily reliant on the Health Trusts and the Valuation and Lands Agency to assist the process. The Trusts are required to advise the RCA if the disabled person named in the application is disabled within the meaning of section 1 of the Chronically Sick and Disabled Persons (NI) Act 1978. Without this confirmation the application is unable to proceed to the second stage which is an assessment by the Valuation and Lands Agency to apportion that part of the property used for the disabled person's purposes.

In this case my investigation revealed that the RCA had issued five reminder letters to the relevant Trust in addition to the original enquiry seeking confirmation that the complainant met the requirements of the 1978 Act. However, the Trust had not provided the necessary information to the RCA to enable it to process the DPA claim. The RCA stated that it had written in November 2000 to all the Trusts about the impact the delays were having on the processing of DPA claims. In response the Trusts had referred to the waiting lists and had stated that the RCA's requests for information were not a priority for their organisations. I corresponded with the Trust to whom the complainant's case had been referred

and its Chief Executive informed me that as her needs were not known to the Trust it would be necessary for staff to visit her to assess her eligibility. The Chief Executive confirmed that this type of referral is not considered to be of a priority nature and due to high demand on the occupational therapy service there was a waiting list for routine assessments.

I established that the RCA had processed on average 1000 DPA applications yearly in the preceding three years. Nevertheless, there were a number of applications outstanding because of a lack of information from the Trusts. While I acknowledged that the RCA had initiated action to remedy the serious delays albeit with limited success, it should have taken further action to break the log jam, if necessary by obtaining advice from another source. I concluded therefore that the arrangements which the RCA have in place with regard to processing DPA applications are seriously systemically flawed.

I was further advised by the RCA that if the complainant's DPA application was successful she would be entitled to a retrospective rebate of rates for the previous two years. Nonetheless, I found that due to the administrative failings of the current system for processing DPA applications the complainant had endured uncertainty, frustration and annoyance, moreover the injustice would continue until a decision was reached on her DPA claim. Consequently, I recommended and the Chief Executive of the RCA agreed to issue to the complainant a letter of apology and a consolatory payment of £200. In the light of my concern about the wholly unsatisfactory system, I asked the Chief Executive to report to me within 8 weeks the outcome of the complainant's DPA application and what further arrangements, if any, had been developed with the Trusts. **(AO 30/02)**

The Chief Executive subsequently told me that the complainant's application was unsuccessful and that the present scheme does not allow for appeal against this decision. However, as part of the RCA's overall review of the DPA Scheme, consideration will be given to if and in what way an appeal procedure can be incorporated into the process.

Dissatisfaction with the Agency's standard of service

This complaint concerned the standard of service that the complainant received from the Rate Collection Agency (RCA) during 2001. The complainant said he learned, in early 2001, that the Direct Debit, set up with his bank, in respect of his rate account was not being used. He said when he telephoned the RCA to query this, he was informed that he should not worry because his rate account must either be cleared or overpaid. He was therefore very surprised when, in September 2001, he received a final rate demand for a sum of almost £1,000.

The complainant said that several post-dated cheques that he provided to the RCA, in relation to a deferred payment agreement he had made regarding his 2001 rate account, were incorrectly processed which resulted in the cheques being lodged prior to their due date for payment. This error was compounded when the complainant's bank subsequently debited the post-dated cheques to his account causing it to be overdrawn. As a result, the complainant said he was unable to make a cash withdrawal at a time he and his family were leaving for a weekend break in London.

Prior to making his complaint to me, the RCA had admitted to the complainant that, arising from his case, it had amended its procedures, and also that it had made errors in his case. He had also received several written apologies from RCA officials, including the Chief Executive, for distress and inconvenience caused to him. However, the complainant said he considered the RCA should recognise all the errors made, and the resulting injustice to him, in a tangible way.

During the course of my investigation, and following reconsideration of the case, which took account of new evidence, the RCA decided to make a consolatory payment of £200 to the complainant. As I, and the complainant, regarded this as a fair and reasonable settlement of this complaint I decided to discontinue my investigation of the case. **(AO 29/02)**

RECRUITMENT SERVICE

Failure to shortlist for the post of Chief Environmental Health Officer

In this case the complaint involved a competition for the post of Chief Environmental Health Officer with the Department of Health, Social Services and Public Safety (DHSSPS), which was organised by Recruitment Service (RS). The complainant was aggrieved at the decision to exclude him from an interview for the post and was dissatisfied with the reasons offered by RS for not interviewing him.

In response to my detailed enquiries RS provided copies of all the pertinent documentation, including the job advertisement, job description, personnel specification, completed application forms and the panel's shortlisting records. The panel comprised two senior officials from DHSSPS, an Outside Assessor and a RS representative.

RS told me that the complainant was not invited for interview because he failed to provide sufficient evidence to convince the shortlisting panel that he met the criterion which required that candidates should provide evidence of "at least 3 year's experience within the last 5 years in leading the development and implementation of environmental health programmes." Initial consideration of the documents led me to pose further specific questions in order to clarify the approach taken by the panel to the shortlisting exercise.

Having analysed all of the documents and records and carefully considered the clarification provided by RS in relation to evidence sought in support of the shortlisting criterion, I concluded that the panel had applied the criterion inconsistently by making assumptions as to the skills and experience gained in previous posts by two of the shortlisted candidates, whilst affording no such latitude to the complainant. RS explained that the responsibility for reaching shortlisting decisions in a consistent manner rested solely with the panel. I therefore found that, having failed to meet this standard, the panel was guilty of maladministration. By extension, as organiser of the competition, RS also contributed to its flawed administration. Although I was satisfied that the successful candidate had comfortably met the shortlisting criterion and the outcome of the competition was therefore not in question, I found that the complainant had sustained an injustice through being excluded from interview.

As regards the complainant's dissatisfaction with the reasons given for excluding him from interview RS told me that it is not reasonable or practicable in such cases to provide a detailed explanation of how the applicant failed to meet the requirements. I advised RS that I was unhappy with this stance, not least because I had previously been assured, in response to criticisms arising from investigation into a similar complaint, that a review was in hand aimed at revising and improving the procedures for dealing with replies to candidates who have been unsuccessful in recruitment competitions. I received an assurance from the RS that, having completed the promised review, RS is seeking to be as open as possible in its responses, whilst observing the need to avoid prejudicing its position in the event of any legal challenge. The Chief Executive added that in light of this case RS will look at what more might be done, for example, by encouraging panels to provide specific examples of how the candidate failed to demonstrate the relevant criteria.

In recognition of the injustice occasioned to the complainant by the failure to shortlist him for the post of Chief Environmental Health Officer and the further failure to provide an adequate response to his subsequent request for explanation of the decision, I recommended that the RS should issue an apology together with a consolatory payment of £300. I am pleased to say that this recommendation was accepted. **(AO 106/01)**

Not shortlisted for job interview

The aggrieved person in this case complained that the shortlisting panel did not read fully his application form, together with the additional information he had provided in his covering letter. As a result the shortlisting panel's decision not to invite him for interview for the post of Trainee Trading Standards Officer was incorrect. Furthermore, the panel's subsequent offer of an interview had no substance or validity because other candidates had already been interviewed for the job and a selection decision had been made.

In my investigation I identified that applicants had been informed in writing of the necessity of fully

describing on the application form how they met the qualification requirements and the qualities sought. Applicants had been further informed that CVs would not be accepted. I established that the complainant had failed to include on the application form that he held a BA degree in Consumer Protection, which was one of the eligibility criteria for the post. However, he had referred to this qualification in his covering letter which accompanied the application form. I found that Recruitment Service had acted correctly in not forwarding to the shortlisting panel the complainant's covering letter. I also found that the original decision by the panel not to invite the complainant to interview, based on the information contained in his application form, was not unreasonable.

My investigation further revealed that the complainant had subsequently been invited for interview following his second letter of appeal against the panel's original decision. I formed the view that the panel had demonstrated a significant level of discretion in revising its decision and inviting the complainant to interview. In the event, however, he chose not to accept the interview invitation. I did not concur with the complainant's view that the subsequent interview offer had no validity. Rather I accepted that had he attended for interview he would have been assessed in relation to other candidates in the normal way and placed in order of merit. Overall, therefore, I did not uphold the complaint. **(AO 27/02)**

DEPARTMENT OF HEALTH, SOCIAL SERVICES AND PUBLIC SAFETY

The placement of candidates from a promotion list

The complainant alleged that the Department of Health, Social Services and Public Safety (the Department) had promoted ahead of him, four officers who were below him on the merit order promotion list published in 1992 and that he had been by-passed for promotion. Furthermore, the Department had subsequently paid back-dated salary arrears to a number of similarly unpromoted officers from the same competition but it had refused to settle his case. Consequently he had suffered financial loss and the opportunity to progress to the next higher grade.

My predecessor had investigated earlier complaints about the same promotion exercise and he had established a number of principles which were equally appropriate to the circumstances of this case. I accepted that the Northern Ireland Civil Service Pay & Conditions of Service Code allows management discretion, in certain circumstances, to promote otherwise than in strict merit order. I also accepted that suitability for a post must be substantial to override the principle of promotion in merit order and I acknowledged the advantage to management of 'in situ' promotions.

I therefore considered the aggrieved person's complaint in the context of the whole promotion exercise and the circumstances which prevailed in 1992. My investigation revealed that only eight promotions were possible because a service-wide embargo on promotions came into force in 1993. I accepted as reasonable the outcome of the Department's internal investigation that the posts originally filled by the promotion of two officers below the complainant in merit order should, in fact, have been allocated to two candidates who were above the complainant on the merit order list. The Department subsequently paid backdated salary arrears to these officers.

With regard to the promotion ahead of the complainant of a third officer I noted that this had been an 'in situ' promotion. Having considered the available information about this particular promotion I concluded that the Department's action had not been unreasonable. The Department's placement of a fourth officer who was below the complainant on the merit order list had been the subject of a complaint investigated by my predecessor and it was found not to be sustainable. The conclusion was that an officer who was on the same level in the merit order list as the complainant should have been offered the post. The Department accepted my predecessor's findings and had settled the case.

In my investigation of this complaint I formed the view that, had the Department originally taken the

appropriate action in relation to the promotion of candidates, the complainant would not have been promoted into one of the eight posts available at that time. I therefore concluded that while the Department's handling of the promotion exercise was grossly mismanaged, the complainant had not suffered an injustice. Consequently, I did not uphold his complaint. **(AO 01/01)**

DEPARTMENT FOR REGIONAL DEVELOPMENT

ROADS SERVICE

Refusal to lower the level of the kerb

In this case, the complainant said that, prior to her moving to her dwelling in 1996, the Northern Ireland Housing Executive (the Executive) had undertaken a renovation scheme involving a number of its properties, including her dwelling. The complainant said the scheme had included work, carried out by Roads Service (RS), to drop the level of the kerbs outside every gate, pedestrian gate or driveway of the houses because of water levels which caused flooding to the dwellings. According to the complainant, the Executive informed her that it had included, in the scheme programme, the lowering of kerbs at her dwelling. She said she therefore failed to understand why RS, acting on behalf of the Executive, had omitted to carry out this element of the scheme work.

The complainant contended that of the 68 dwellings with vehicular or pedestrian access in the street in which she resides, hers is the only dwelling at which the road side kerbs were not lowered. She said she contacted RS to inform it that her driveway was constantly flooding because rainwater, instead of running off the kerb, was running into her driveway and gathering outside the gate of her dwelling. The complainant further stated that RS had completely failed to consider her complaint about flooding and that, by referring to vehicular access, RS was attempting to ignore the fact that it is responsible for the footpath outside the gateway to her dwelling.

Having investigated this complaint, I established that RS, and not the Executive, undertook the scheme to upgrade the footpaths and carriageway in the area concerned. I was therefore unable to uphold those elements of the complaint that the works to the roadway were undertaken by the Executive and that, effectively, the property occupied by the complainant was omitted from the programme by RS.

I also established that the use of dropped kerbs at pedestrian entrances in the scheme was to facilitate existing path levels, so ensuring that surface water drained from the inside of the footpath out to the road edge, rather than regrading the paths. My investigation revealed that there had not been a problem with path levels outside the complainant's dwelling and, therefore, upright kerbs were provided. I found that new dropped kerbs were provided at 30 existing pedestrian accesses and replaced at 19 existing vehicular accesses and at other locations where the placement of upright kerbs would have resulted in difficulties with levels at entrances, possibly resulting in rainwater draining into residents' properties rather than to the public road. I do not have authority to question the merits of technical/professional decisions, such as the decision by RS that there was not a problem with path levels outside the complainant's dwelling. In all the circumstances, therefore, I was unable to uphold this element of the complaint.

I was satisfied that RS had investigated that element of the complaint that water drained back from the footpath into the gateway of the complainant's dwelling. RS had found that a Water Service stopcock cover outside the complainant's gateway was marginally lower than the surrounding area and caused slight ponding of surface water. However, it had further found that vehicles driving over the footpath, which was not constructed for such use, exacerbated the depression of the footpath at the gateway and the minor ponding that occurred. RS had determined that as the ponding was of a minor nature it could not justify the dropping of the kerbs and the reconstruction of this section of the footpath. Based on the evidence available, I did not uphold the complaint that RS had failed to consider reports which the complainant made to it about flooding. Also, I did not find the decision by RS that it could not justify

the reconstruction of the footpath at her dwelling to be unreasonable.

I concluded that my investigation did not reveal any evidence of maladministration on the part of RS in its dealings with the complainant regarding the level of the kerb outside her dwelling. Also, I was satisfied that RS had managed this case in accordance with its policy and the underpinning legislation on the provision of crossings over footways and verges. Consequently, I did not uphold the complaint. **(AO 71/02)**

Handling of a complaint

The complainant alleged she had sustained injustice as a result of maladministration by the Roads Service (RS) concerning its handling of her complaint about the muddy state of the carriageway and the parking of machinery on the grass verge of the road which serves her home, in County Armagh.

My investigation acknowledged the difficulties which the complainant no doubt experienced in relation to the condition of this narrow unclassified rural road, particularly during spells of wet weather. Equally, I recognised that it was very difficult for RS to maintain complete cleanliness of rural roads, and moreso those that are narrow and unclassified, particularly where they serve intensive farming operations.

Against the above background, I considered carefully the specific issues raised by the complainant regarding the actions of RS. I examined and took full account of the information provided by the complainant and the substantial written and documentary evidence supplied by RS. In relation to RS's responsibility in respect of the issues raised by the complainant, I considered that it sought to deal with her concerns promptly and diligently. In particular, my investigation did not lead me to conclude that RS had been negligent in dealing with the complainant or her representations to it. I welcomed the (recent) erection by RS of a new fence, which will have the effect of reducing significantly the verge width. I also welcomed the fact that the road is inspected/monitored every 2 weeks. Notwithstanding this frequent inspection/monitoring, I urged the complainant "to immediately contact either RS section staff or the Police when the road becomes dirty". It is the position that unless one or other of the above-mentioned authorities are made aware of the above situation they cannot act to remedy it. **(AO 89/01)**

DEPARTMENT FOR SOCIAL DEVELOPMENT

Delay in processing a compensation claim for the vesting of land

The aggrieved person complained that there had been delays by the Department for Social Development (the Department) and other government agencies in processing her compensation claim for her vested land which had been on-going since 1996. She further stated that she had twice reduced the amount of her claim but both had been dismissed by the Department. She alleged that if she had been able to sell her land on the open market she would have been better off financially and she would have suffered none of the hassle from government departments which she had experienced in the previous 6 1/2 years.

In my investigation I established that in 1996 the Department had vested land which had included a portion of the complainant's land, and in mid 1999, the Department had received a compensation claim from the complainant. From my investigation it was apparent that the reduction by the complainant in her compensation claim was part of normal negotiations to reach a mutually acceptable agreement on the level of compensation and that both parties had adjusted their initial positions to take account of the case as presented. Moreover, the complainant could, at any time, have referred the matter to the Lands Tribunal service to bring the compensation claim to a conclusion but had chosen not to do so.

While I could appreciate the stress which the complainant had experienced in the protracted negotiations with the Department to secure an agreed level of compensation, I, nevertheless, did not find any evidence that the Department or the

agencies had caused undue delay in the processing of her compensation claim. I also noted that the Department had made a formal compensation offer in June 2001 to the complainant and was awaiting her response. I also investigated other miscellaneous issues of concern raised by the complainant. Overall, however, I did not uphold the complaint. **(AO 66/01)**

Disadvantaged in an internal promotion competition

A civil servant complained that he had been disadvantaged in an internal promotion competition, as incomplete reports of his service and performance in post had been placed before the panel which interviewed him. The officer also asserted that his departmental Personnel Branch had wrongly interpreted the circulars which outlined promotion procedures, that there was mishandling of his appeal against the validity of the interview process in which he participated and that his complaints were not processed as quickly and efficiently as they should have been.

In pursuit of the investigation into this case I made enquiries of the Permanent Secretary of the Department for Social Development (the Department) and obtained and scrutinised pertinent documentation. I directed that my Investigating Officer interview the Chair of the interview panel and the Personnel Officer of the Social Security Agency and I examined the information elicited from these interviews. The views of the complainant were also obtained during the course of the investigation and I examined all documentation submitted by the complainant through his sponsoring MLA (Mr Alex Attwood).

My investigations persuaded me that there had been no deliberate attempt to disadvantage the complainant either in the boarding interview, or in the departmental response to his appeal. I accepted that the Department took reasonable steps to address the complainant's concerns. I found, however, that maladministration was evidenced by the Department in the misinterpretation of circulars and administrative delays in amending human resource information. I recommended that the Department should take steps to introduce a robust appeals procedure and also to ensure that in future the proper roles and procedures relating to boarding competitions are fully understood and correctly implemented by appropriate staff. Partially upholding the complaint, I recommended that the Department should issue a clear and unambiguous apology to the complainant together with a consolatory payment. I also suggested that the complainant should be commended for bringing failures in procedures to the attention of the Department. **(AO 29/01)**

Processing of a funding application

In this case, the complainant, who was a member of an enterprise group (the Group) and who submitted this complaint on the Group's behalf, was dissatisfied with the Department for Social Development's (the Department) decision not to award the Group funding in response to its application for grant assistance for the purposes of buying and developing premises.

Having investigated this complaint in detail, I found no evidence of maladministration on the part of the Department in its dealings with the Group or in what I considered to have been the Department's careful and sympathetic handling and processing of the Group's application for grant aid, including in its response to the considerable amount of representations from the Group in support of its application.

The award or refusal of grant aid, such as was being sought by the Group, is a discretionary decision for the relevant Government Department, or public body to determine. Under the terms of the legislation underpinning my role, if I consider that a discretionary decision not to award grant aid has been taken without maladministration I am unable to substitute my judgement for that of the officials in which the discretion to make that decision is properly vested.

I concluded that there was no evidence that the Department had been guilty of maladministration in respect of the matters which the complainant raised with me. Neither did my investigation produce any evidence of an irregularity in the process followed by the Department in its handling of the application for funding. Overall, as a result of my investigation I detected a clear willingness by the Department to provide the applicants concerned with considerable opportunity to satisfy it (the Department) that the proposed project was

financially viable to the extent that an offer of grant could be made without infringing the basic principles of public accountability requirements. The Group was unable to provide the Department with the necessary standard of assurance. I therefore took no further action on this complaint. **(AO 13/02)**

CHILD SUPPORT AGENCY

Handling of an application for child support maintenance

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

Having investigated this complaint, I had no hesitation in concluding that the CSA's handling of this case was attended by maladministration. My investigation revealed evidence of delay on the part of the CSA in processing CSM liability and overall poor administration practice. It was clear to me that much of the CSA's actions in this case were driven by the aggrieved person as, in a number of instances, action was taken by the CSA only as a result of enquiries from the aggrieved person. Moreover, it seemed to me that the CSA could have met its initial target of 20 weeks (as opposed to 38 weeks in this case) if it had pursued the case more vigorously. I criticised the CSA for failing to meet its initial assessment target, the consequences of which caused the NRP to incur a large amount of CSM arrears and, perhaps more importantly, deprived the aggrieved person of 'regular' payments of CSM from an earlier date.

The CSA had acknowledged that "the case was not processed as efficiently as it should have been" and, in recognition of that fact, had issued (consolatory) payments amounting to £350 to the aggrieved person. By way of redress for the considerable disappointment, anxiety, annoyance, frustration and inconvenience which I had no doubt the aggrieved person had suffered, I recommended that the CSA's Chief Executive issue a letter of apology, together with a (further) consolatory payment of £250 and an 'advance payment' of at least some of the outstanding arrears of CSM. I am pleased to record that my recommendations were accepted and implemented by the CSA, which included an 'advance payment' of £1,440.77. **(AO 21/01)**

Attitude, behaviour and methods of administering procedures

In this case the complainant alleged he had sustained injustice as a result of maladministration by the Child Support Agency (CSA) in its handling, processing and administration of his child support maintenance (CSM) liability account. The complainant provided a detailed overall statement which contained a total of 21 points, each point representing a complaint/statement of dissatisfaction in relation to the CSA's "attitude, behaviour and methods of administering its procedures".

Having investigated this complaint, I identified a number of examples of maladministration/unsatisfactory administrative practice by the CSA in its handling and processing of the complainant's case for which I criticised the CSA. The CSA had acknowledged that its handling of the case had been unsatisfactory and had made a compensatory payment of £250 for the "delays and mistakes which occurred" in the complainant's case.

I welcomed the fact that the CSA had also undertaken to consider the question of a special payment of compensation to the complainant for worry and distress, on production by him of as much evidence as possible to support his claim. I noted that the CSA is able to consider such a payment, in very exceptional circumstances, where customers allege that CSA error has had an adverse affect their physical well-being which may have led directly to a deterioration in their physical or mental health. I urged the CSA's Chief Executive (CE) to ensure that the matter of compensation was considered both thoroughly and sympathetically if the complainant provided the

CSA with the required information/evidence in this regard. I am informed by the CSA that, to date, the required information/evidence has not been provided by the complainant.

I concluded that the complainant had suffered injustice as a consequence of significant maladministration on the part of the CSA in its processing and administration of his CSM account, despite the fact that he co-operated with the CSA as fully as possible. I further concluded that there had been a clear failure on the part of the CSA to deliver to the complainant the standard of service its clients are entitled to expect and I considered that the complainant was fully justified in complaining to me.

In terms of redress, I recommended that the complainant should receive a letter of apology from the CSA's Chief Executive and an ex-gratia (consolatory) payment of £1,000 in respect of the injustice of injustice of unacceptable exasperation and frustration, together with considerable disappointment, annoyance, anxiety and inconvenience suffered as a consequence of the maladministration which occurred in this case (this amount included the £250 payment that the CSA had already made). I was pleased to record that the Chief Executive accepted my recommendations.

In addition, I recognised that the complainant remained very dissatisfied and unhappy with the CSA's assessment of his arrears liability. In recognition of this concern, I recommended that, as a first step, appropriately experienced CSA officials should arrange to meet with the complainant to establish his areas of concern regarding liability assessments and related arrears calculations. I further recommended that, thereafter, all reasonable efforts should be made to provide the complainant with the clarity necessary to provide him with the assurance he was seeking as to the validity and accuracy of those liability determinations and arrears assessments which he was continuing to dispute. This recommendation was also accepted by the CSA's Chief Executive. **(AO 31/01)**

SOCIAL SECURITY AGENCY

Alleged unfair treatment

In this case the complainant worked in the Social Security Agency (SSA). She alleged that her remuneration for the same work had been less than others doing the same job. She believed that she had been treated unfairly because procedures were not administered equally and she asked for reinstatement of Social Security Officer Grade 1 (SSO1) from 1 April 1996 and compensation for loss of earnings.

Job grading and evaluation are not issues in which I become involved. Therefore, I did not examine or comment on the actual grading of the posts in question. Rather, I was required to consider how the SSA administered the issues in question.

I learned that staff in the social security offices have SSO status and are paid a higher salary than staff who do not have direct contact with the public. In 1996, having sought a transfer for career development purposes, the complainant transferred out of the social security office, where she had been graded SSO1, to District Support Branch (DSB) where she took up her new role as an instruction writer. Such posts had previously been graded EO1 but, in 1996 following a review of DSB by Efficiency Unit, the posts in question were downgraded to EO11. Hence the need for staff to fill vacancies at EO11 level and the complainant's transfer. What the complainant did not know was that the SSA had some difficulty securing appropriate levels of suitably skilled staff within DSB and, for "practical and business reasons", guidelines were applied which meant that, on relocation to DSB, some staff retained their SSO status while others did not. The introduction of such guidelines was a discretionary decision for management which, under the challenging circumstances at the time, I did not find unreasonable.

In March 1999, quite by accident, the complainant became aware of what appeared to be an anomaly in terms of grading between herself and another member of staff. It was as a result of her approach to management that the SSA's personnel branch confirmed that, in accordance with the guidelines,

all staff who had moved to the Branch prior to 1 October 1998 at their own request, including the complainant, were correctly re-graded to EO11. However, after that date and up to 1 February 2000 when, as a result of Welfare Reform and the Benefit Modernisation programme, all staff in the Branch were re-graded as SSOs it became evident that four members of staff had incorrectly kept their SSO status on joining the Branch. The SSA acknowledged that in the application of the guidelines anomalies did "creep in" and that some staff incorrectly kept their SSO status and the associated salary increase. However, I was satisfied that, once discovered, overpayments were calculated and the amounts written off as official errors. The complainant was, like all staff, re-graded to SSO1 with effect from 1 February 2000 but, ultimately, she received full arrears of salary at SSO1 level backdated to March 1999 which is when she first queried her grade and related salary. She also received an additional amount by way of interest.

I concluded that, in line with the guidelines being followed at the time, the complainant was not eligible to retain SSO1 status on transfer to her new branch. Therefore, although I found the SSA guilty of maladministration in its application of the guidelines, I fully accepted that it could not compound that error by granting the complainant's request to pay her a salary she was not entitled to with effect from 1 April 1996 which is when she first transferred into her new Branch. I was of the view that the SSA had, in the circumstances, been generous in backdating her re-grading as far as it did. **(AO 8/02)**

Conduct of interview by officers from the Benefits Investigation Services

The complainant said she was interviewed by officers from the Benefits Investigation Services of the Social Security Agency (SSA) and questioned about her entitlement to Housing Benefit (HB). She considered that the line of questioning during the interview was, at times, irrelevant and that the attitude of the Benefit Investigation Officer(s) (the officers) was rude, discourteous, judgemental and intrusive into her personal life. The complainant said the officers told her that, provided she heard nothing more within a period of two weeks, no further action would be taken. She said this resulted in her leaving the interview unaware of what would happen, feeling frightened and bullied and fearing the possibility that she would go to jail.

Having investigated this complaint, I established that the SSA has a statutory obligation to protect public funds, and in relation to all allegations or suspicions of benefit fraud, to conduct in a thorough manner such investigations as it judges are necessary and appropriate. I also established that the SSA decided to interview the complainant to gather sufficient information to enable decisions to be made on her continuing entitlement to HB.

I found that benefit fraud investigations, suspected or otherwise, by their nature require personal information and I accepted that it is very difficult to avoid a line of enquiry/questioning which could at least appear to the benefit claimant to be intrusive. However, having studied the available evidence, including a record of the interview concerned, I found no evidence of excessive intrusiveness. Also, in all of the circumstances of the case, I did not uphold that element of the complaint that the line of questioning followed in the course of the interview was irrelevant.

With regard to the complainant's feelings on leaving the interview, I found that she had been informed by the officers, at the conclusion of the interview, that any decision about benefit entitlement would be a matter for the HB Adjudication Officer to take and that the Adjudication Officer would probably contact her in due course. I further found that the officers had acted in accordance with the Code of Conduct for Informal Interviews, produced by the SSA for the guidance of its staff.

I concluded that my investigation did not reveal any evidence of maladministration on the part of the SSA in respect of the matters raised by the complainant. Also, my investigation did not produce any evidence of an irregularity in the process followed by the SSA. Consequently, I concluded it was not possible for me to take any further action on this complaint. **(AO 121/01)**

Conduct of interview by officers from the Benefits Investigation Services

In this similar case the complainant said he was interviewed by officers from the Benefits

Investigation Services of the Social Security Agency (SSA) and questioned about his entitlement to Housing Benefit and Jobseekers Allowance. This complainant also considered that the line of questioning during the interview was, at times, irrelevant and that the attitude of the Benefit Investigation Officer(s) was rude, discourteous, judgemental and intrusive into his personal life.

Having studied the available evidence, including a record of the interview concerned, I found no evidence of excessive intrusiveness and I did not uphold that element of the complaint that the line of questioning followed in the course of the interview was irrelevant.

My investigation did not reveal any evidence of maladministration on the part of the SSA in respect of the matters raised by the complainant and my investigation did not produce any evidence of an irregularity in the process followed by the SSA. I concluded it was not possible for me to take any further action on this complaint. **(AO 122/01)**

Handling of claim for Disability Living Allowance

In this case the complaint related to the conduct of an examination by an Examining Medical Practitioner (EMP) in respect of a claim for Disability Living Allowance (DLA), the Social Security Agency's (SSA) refusal of a second examination by another doctor and the absence of an urgent review of the complainant's DLA award.

During the course of my investigation into this case, I directed formal written enquiries to the Chief Executive (CE) of the SSA, and I carefully examined and considered the CE's response. I also obtained and gave careful consideration to those documents which contained information germane to the investigation. My Investigating Officer interviewed both the complainant and an appropriate officer of the SSA and I took note of the information elicited by these interviews.

My investigation persuaded me that there was no evidence of unprofessional conduct during the EMP's examination of the complainant. I was convinced by the available information that the letters of complaint sent by the complainant were considered and adequately investigated by the SSA.

With respect to the complainant's request for a second examination, I could not say that the SSA's discretionary decision in this matter was wrong or unreasonable. Whilst I had no reason to doubt the complainant's claim about the non-receipt of a review decision, neither did I doubt the SSA's statement that the notice in question was issued to the complainant's address on the date specified. Whilst I acknowledged the complainant's dissatisfaction with the medical examination and the subsequent investigation of his complaint by the SSA, I did not uphold any aspect of his complaint. **(AO 30/01)**

Section Two
Appendices

Appendix A

Summaries of Registered Cases Settled

Social Security Agency (AO 127/01)

A lady complained to me about the SSA's delay in processing her husband's Disability Living Allowance claim. During the course of my investigation of this complaint the SSA's Customer Service Director informed me that the SSA acknowledged that there were unacceptable delays in processing this benefit claim and also that the claimant was not advised to claim Income Support. The SSA further informed me that it intended to issue a consolatory payment of £100 to the claimant and also that it had issued an internal memorandum to its Incapacity Benefit Branch staff instructing them to advise claimants of the availability of Income Support. As I regarded this as a satisfactory resolution of the complaint I took no further action on this case.

Planning Service (AO 70/02)

The complainant in this case was unhappy with the actions of Planning Service following his request for an exemption letter to confirm that his extension did not require planning permission. On receipt of this complaint I arranged for enquiries to be made of Planning Service. Following a meeting with the Acting Chief Executive, Planning Service offered to issue a letter of apology to the complainant, including details of how to obtain a refund of the fee paid, and also a 'letter of comfort' confirming that his extension comes within the scope of Permitted Development Regulations. As both I and the complainants were satisfied that the complaint had been resolved I decided to take no further action on this case.

Social Security Agency (AO 90/02)

I received a complaint from a gentleman regarding the handling of his claim for Incapacity Benefit and Income Support by the SSA. My preliminary enquiries made of the SSA confirmed that a number of administrative errors were made in the handling of his case. The SSA acknowledged these errors and the Chief Executive agreed to issue the complainant with a letter of apology and a consolatory payment of £300 in recognition of the SSA's mishandling of his case. As I considered that this represented a satisfactory resolution of the complaint I decided to take no further action on this case.

Department of Agriculture and Rural Development (AO 102/02)

This complaint related to the contention that the Department had failed to provide adequate clarification in respect of allegations made against the complainant concerning travel claims. Having commenced my investigation of this complaint I was informed by the Department that it would issue a letter to the complainant confirming the position in respect of his travel claims. Having acquainted myself with the terms of the letter I was satisfied that it represented an appropriate resolution of the matter. I therefore decided to take no further action on this case.

Appendix B

Summaries of Registered Cases Discontinued

Social Security Agency (AO 105/01)

The complainant in this case stated that he had been caused undue and unnecessary stress due to the actions of the SSA. The complainant asked to meet someone from my Office to discuss his complaint. However, when my Investigating Officer contacted him he was unable to arrange a date due to serious ill-health. In view of the protracted nature of this illness I decided to discontinue my investigation pending the complainant's recovery.

Social Security Agency (AO 22/02)

In this case a lady complained about her treatment in connection with a promotion board. Having commenced my investigations on this case I identified what I considered to be an indication of evidence of maladministration. I put this evidence to the SSA and subsequently met with the SSA's Chief Executive. I recommended, and the Chief Executive accepted, that an apology issue to the complainant together with a consolatory payment of £700. In view of this satisfactory resolution of the matter I decided to discontinue my investigation of this case.

Planning Service (AO 34/02)

A gentleman complained to me about the PS's handling of matters relating to his request to fell a tree and carry out tree surgery. During my investigation of this case I identified what I considered to be evidence of maladministration. I put this evidence to PS. I recommended, and the Chief Executive accepted, that an apology issue to the complainant together with a consolatory payment of £200. In view of this satisfactory resolution of the matter I decided to discontinue my investigation of this case.

Planning Service (AO 46/02)

The complainants in this case were unhappy with the PS's handling of a planning application for an extension to a property behind their home. In a telephone conversation with one of my Investigating Officers the complainants stated that, since submitting their complaint to me, written representations had been made on their behalf to the Chief Executive of PS, who undertook to reply directly to their grievance. In view of the Chief Executive's consideration of their complaint, I decided that it would be inappropriate for me to become involved in the matter. I therefore decided to discontinue my investigation of this case.

Department of Agriculture and Rural Development (AO 69/02)

I received a complaint against the Department directly from the complainant. However, under Article 9(2) of the Ombudsman (Northern Ireland) Order 1996 such complaints must be referred to me by a Member of the Northern Ireland Legislative Assembly (MLA). Despite several telephone conversations with the complainant regarding this requirement, no such sponsorship was received. In view of this a letter issued to the complainant informing her that I could take no further action on her complaint until the MLA sponsorship has been received.

Department of Education (AO 87/02)

I received a complaint about the processing of the threshold assessment whereby a teacher could progress from one salary scale to another. Upon commencement of my investigation of this matter it became clear that responsibility of this matter lay not with the Department but with the relevant Education and Library Board. I therefore discontinued my case against the Department.

Appendix C

Analysis of Written Complaints

Analysis of All Complaints Received – 1 April 2002 to 31 March 2003

	DEL	DARD	DCAL	DFP	DE	DETI	DOE	DRD	DSD	DHSSPS	OFMDFM	Bodies Etc. outside Jurisdiction	NIO Extra Statutory	Tribunals	Ofreg	Total
Brought forward from 2001/02	0	1	0	5	2	1	21	3	14	1	1*	0	0	0	0	**49**
Received in 2002/03	5	16	3	20	3	1	82	39	41	3	0	38	2	8	1	**262**
Total	**5**	**17**	**3**	**25**	**5**	**2**	**103**	**42**	**55**	**4**	**1***	**38**	**2**	**8**	**1**	**311**
Dealt with in 2002/03	5	12	2	22	4	1	81	28	48	3	1*	38	1	8	1	**255**
In action at 31/3/03	0	5	1	3	1	1	22	14	7	1	0	0	1	0	0	**56**

* This case was erroneously recorded as a DFP complaint in the 2001/02 Annual Report

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

	DEL	DARD	DCAL	DFP	DE	DETI	DOE	DRD	DSD	DHSSPS	OFMDFM	Bodies Etc. outside Jurisdiction	NIO Extra Statutory	Tribunals	Ofreg	**Total**
Referred to Body's Complaints Procedure	0	1	0	4	0	0	16	11	11	1	0	0	1	1	0	**46**
Authorities and matters outside jurisdiction	1	0	0	1	0	0	0	3	3	0	0	38	0	1	1	**48**
Right of appeal to a Tribunal	0	1	0	2	0	0	2	1	1	0	0	0	0	1	0	**8**
Remedy by way of legal proceedings	0	1	0	0	0	0	0	1	1	0	0	0	0	0	0	**3**
Not aggrieved person	0	0	0	0	0	0	1	0	0	0	0	0	0	1	0	**2**
Out of time	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	**1**
No evidence of maladministration	0	0	1	1	0	0	2	1	4	0	0	0	0	0	0	**9**
Discontinued	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	**2**
Settled	0	0	0	0	0	0	0	1	1	0	0	0	0	0	0	**2**
Discretionary Decision	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	**1**
No Sponsorship	0	0	0	0	0	0	2	0	3	1	0	0	0	0	0	**6**
TOTAL	**1**	**3**	**1**	**9**	**0**	**0**	**26**	**18**	**24**	**2**	**0**	**38**	**1**	**4**	**1**	**128**

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

	DEL	DARD	DCAL	DFP	DE	DETI	DOE	DRD	DSD	DHSSPS	OFMDFM	Bodies Etc. outside Jurisdiction	NIO Extra Statutory	Tribunals	Ofreg	**Total**
Report Issued-Complaint Upheld	0	0	0	3	1	0	4	0	2	0	0	0	0	0	0	**10**
Report Issued – Complaint Partially Upheld	0	0	0	0	0	0	2	0	2	0	0	0	0	0	0	**4**
Report Issued – Complaint not upheld but body criticised	0	0	0	0	0	0	3	0	0	0	0	0	0	0	0	**3**
Report Issued – Complaint not upheld	0	0	0	2	0	1	6	2	5	1	0	0	0	0	0	**17**
Letter issued – no evidence of maladministration	1	5	0	2	1	0	18	1	6	0	1	0	0	0	0	**35**
Withdrawn	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	**1**
Right of Appeal to a Tribunal	0	0	1	0	0	0	0	0	3	0	0	0	0	0	0	**4**
Settled	0	1	0	0	0	0	1	0	2	0	0	0	0	0	0	**4**
Out of Time	0	0	0	0	1	0	1	0	0	0	0	0	0	0	0	**2**
Discontinued	0	1	0	0	1	0	2	0	2	0	0	0	0	0	0	**6**
Remedy by way of legal proceedings	1	0	0	2	0	0	1	3	0	0	0	0	0	0	0	**7**
Outside Jurisdiction	2	0	0	1	0	0	0	2	1	0	0	0	0	3	0	**9**
Referred to body's complaints procedure	0	1	0	2	0	0	16	2	1	0	0	0	0	0	0	**22**
Discretionary Decision	0	0	0	1	0	0	0	0	0	0	0	0	0	1	0	**2**
Not by aggreived person	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	**1**
TOTAL	**4**	**9**	**1**	**13**	**4**	**1**	**55**	**10**	**24**	**1**	**1**	**0**	**0**	**4**	**0**	**127**

Appendix D

Analysis of Oral Complaints

Fig 2.7 Assembly Ombudsman
Analysis of Oral Complaints Received - 1 April 2002 to 31 March 2003

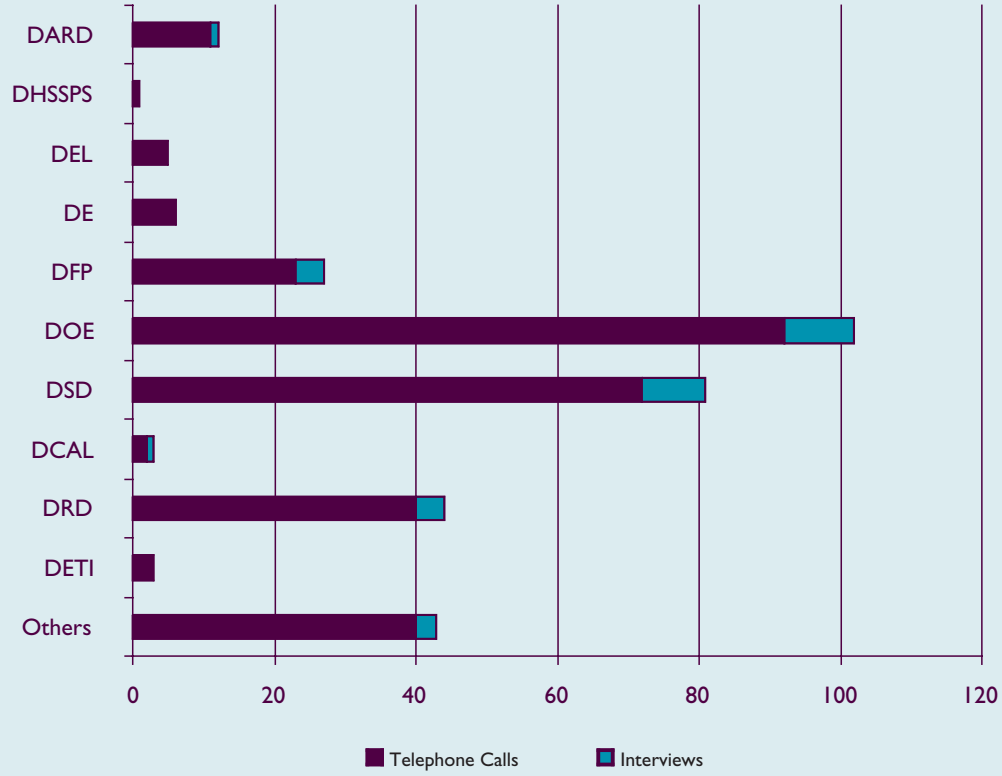
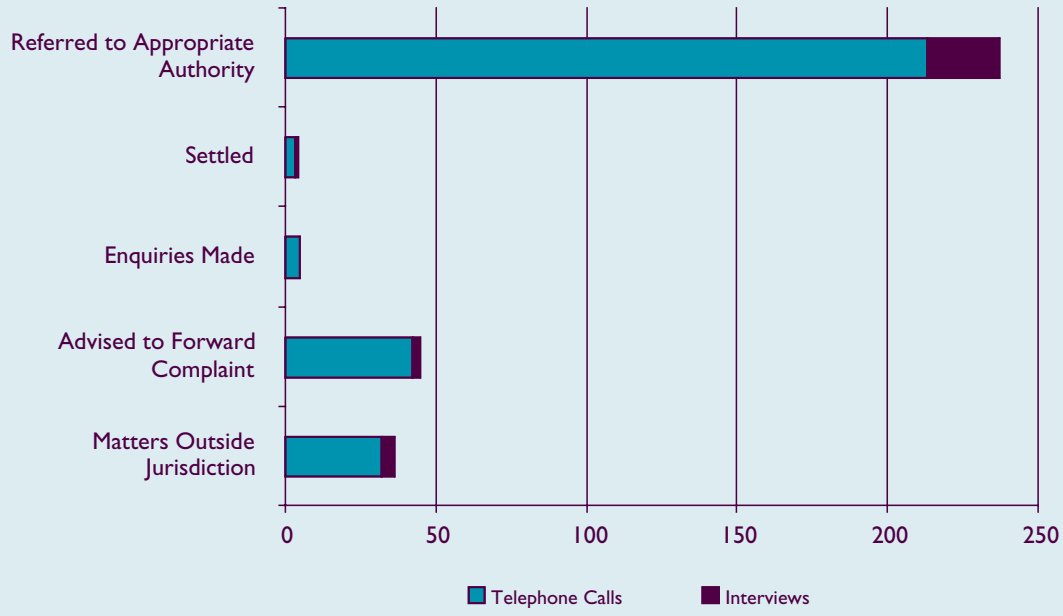


Fig 2.8 Assembly Ombudsman
Outcome of Oral Complaints Received - 1 April 2002 to 31 March 2003



Section Three

Annual Report of the Northern Ireland Commissioner for Complaints

Complaints Received

As Northern Ireland Commissioner for Complaints I received a total of 298 complaints during 2002/03, which is 5 less than in 2001/02.

The local and public bodies against which complaints were received in 2002/03 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 1998/99 - 2002/03

	1998/99	1999/00	2000/01	2001/02	2002/03
Local Councils	56	41	71	66	52
Education and Library Boards	58	35	24	14	40
Health and Social Services	54	39	22	21	27
Northern Ireland Housing Executive	149	138	131	125	105
Miscellaneous	70	55	44	77	74
TOTAL	**387**	**308**	**292**	**303**	**298**

Fig 3.1 Commissioner for Complaints 2002/03
298 Complaints Received

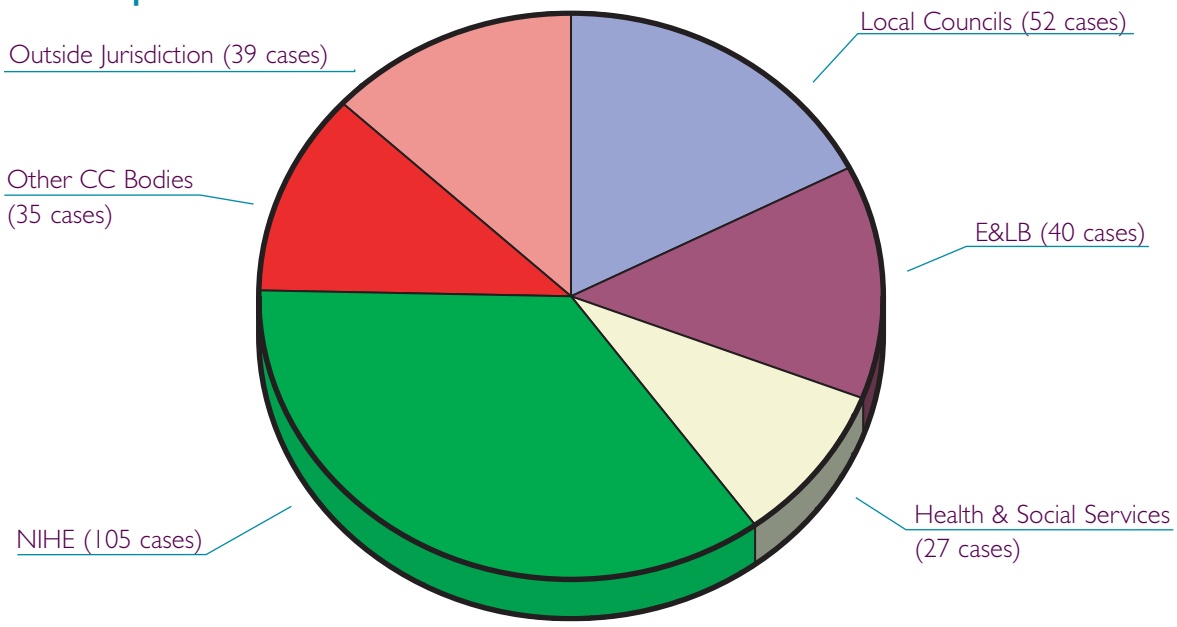


Fig 3.2 Commissioner for Complaints
Complaints Received 1998/99 - 2002/03

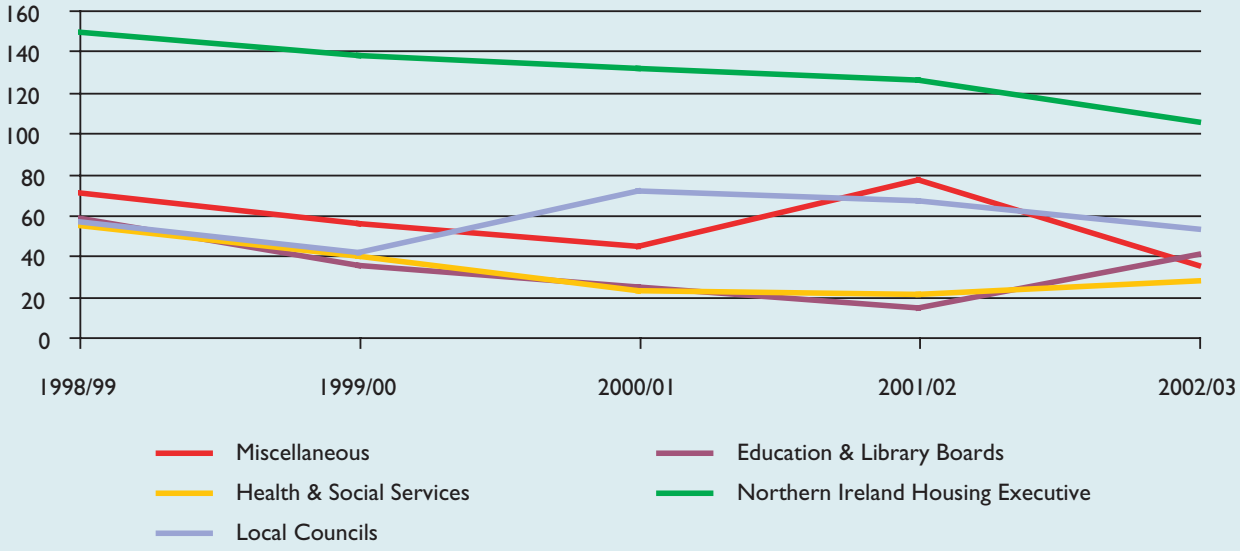


Fig 3.3 Complaints Against NIHE 2002/03
105 Complaints Received

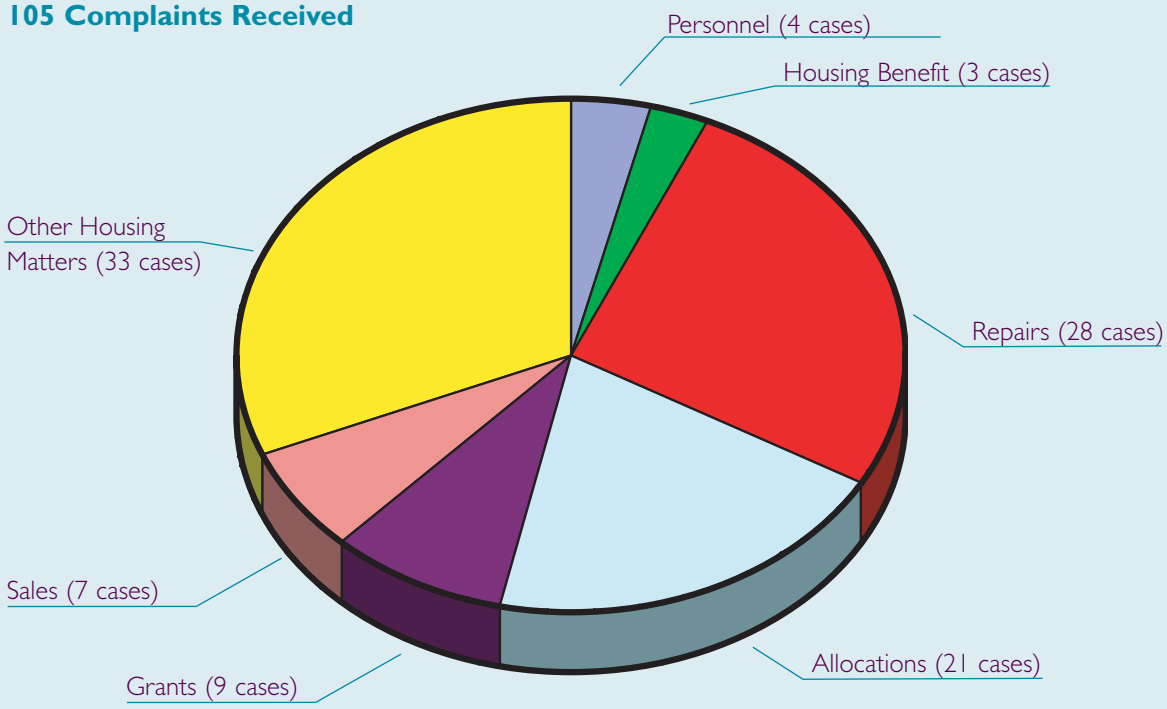
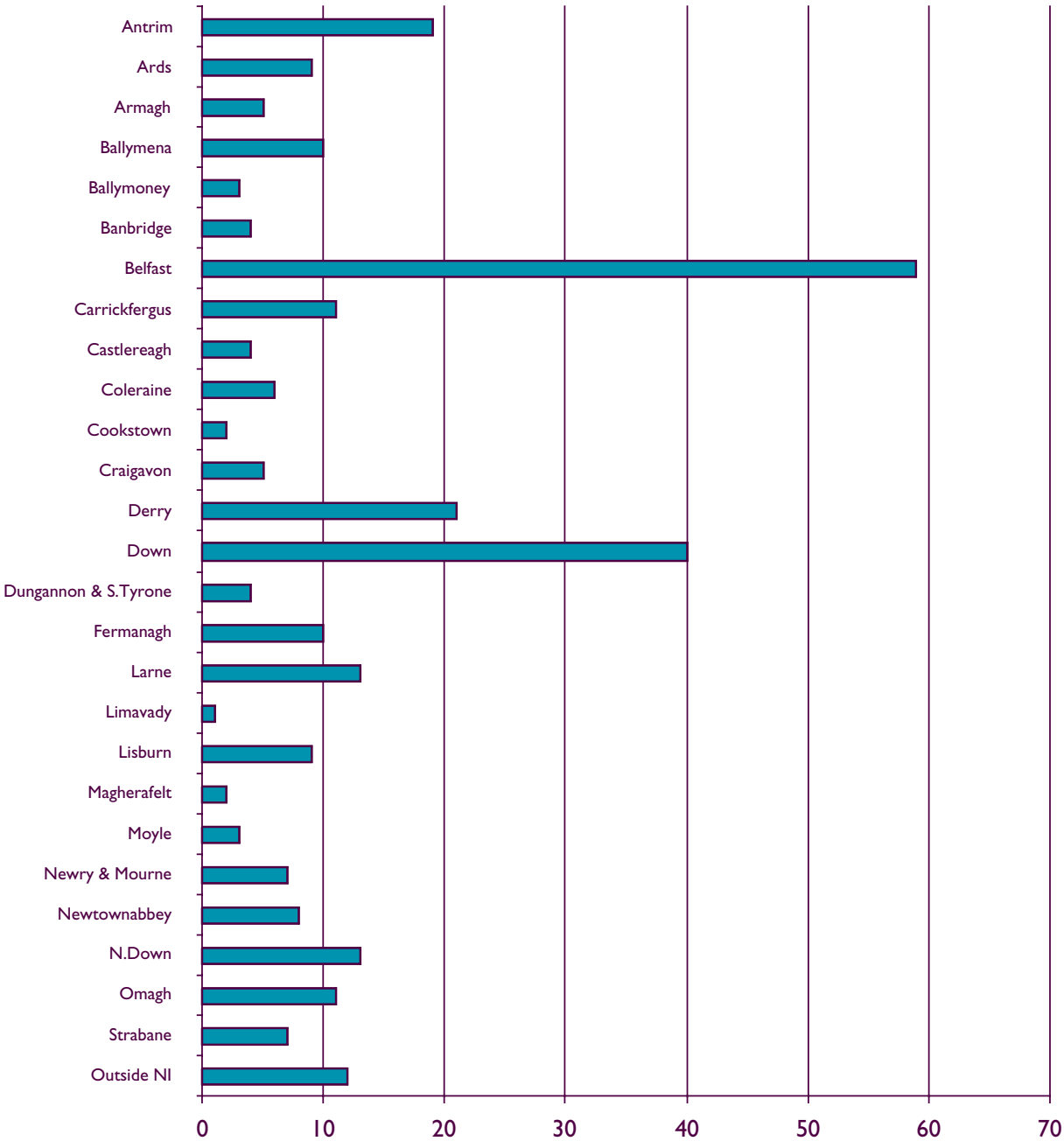


Fig 3.4 Commissioner for Complaints 2002/03
298 Complaints Received - Local Council Area in which Complainant Resides



Statistics

In addition to the 298 complaints received during the reporting year, 55 cases were brought forward from 2001/02. Action was concluded in 292 cases during 2002/03 and of 61 cases still being dealt with at the end of the year, 60 were under investigation. In 59 cases I issued an Investigation Report setting out my findings.

The 61 cases in process at 31 March 2003 were received during the months indicated in Table 3.3.

During 2002/03 32 cases were resolved without the need for in-depth investigation and 16 cases were settled. 189 cases were accepted for investigation. Complaints against authorities or matters not subject to my investigation totalled 52. I referred 66 complaints to the body concerned to be dealt with under its own complaints procedure. The outcomes of the cases dealt with in 2002/03 are detailed in Fig 3.5.

Of the total of 2,658 oral complaints received by my Office some 298 were against bodies within the jurisdiction of the Commissioner for Complaints. See Figs 3.6 and 3.7 at Appendix D to this Section.

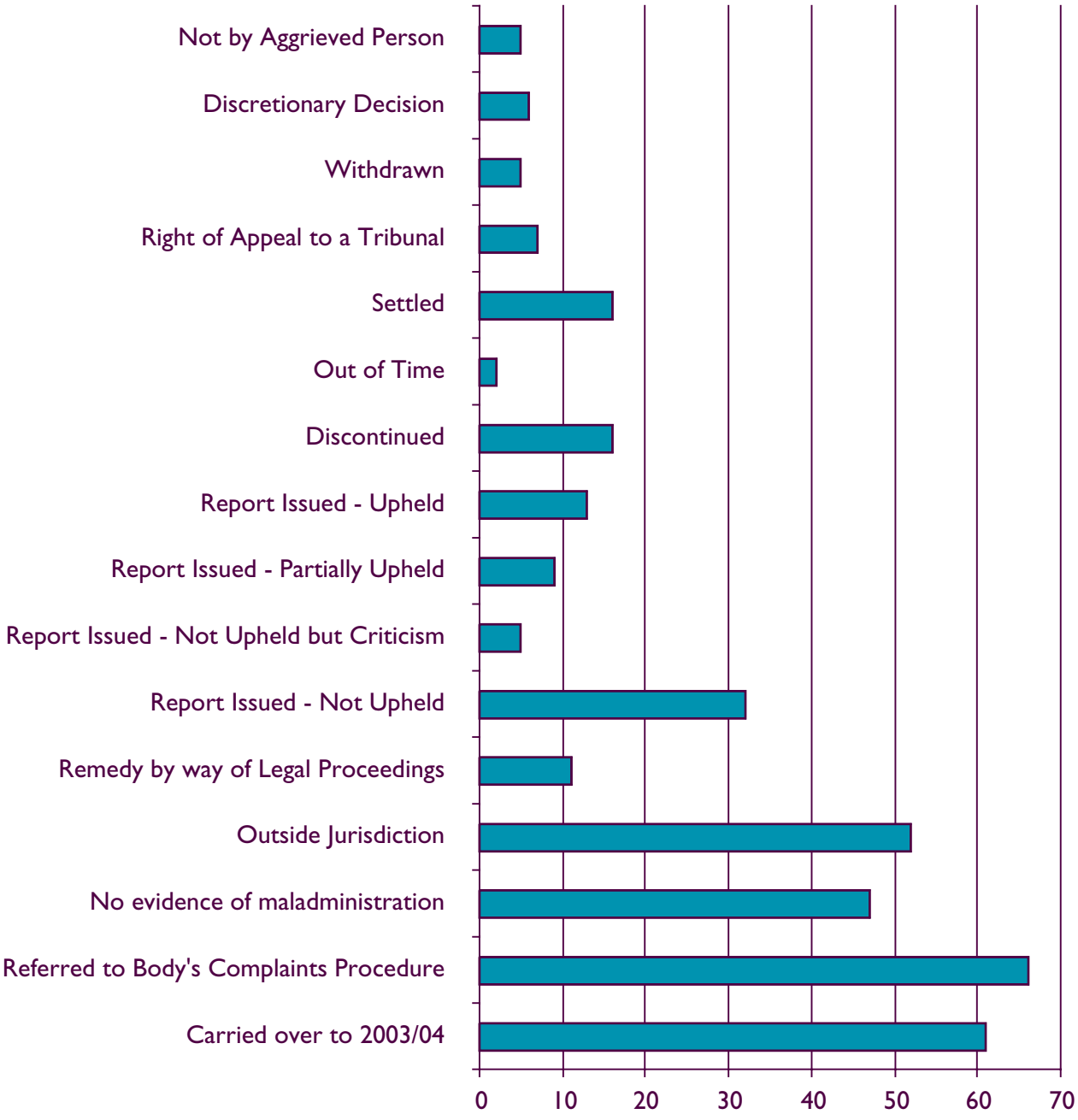
Table 3.2 Caseload for 2002/03

Number of uncompleted cases brought forward	55
Complaints received	298
Total Caseload for 2002/03	353
Of Which:	
Cleared at Initial Sift Stage	108
Cleared without in-depth investigation including cases withdrawn and discontinued	109
Cases settled	16
Full report issued	59
Cases in action at the end of the year	61

Table 3.3 Date of Receipt of Cases in Process at 31st March 2003

June 2002	2
July 2002	3
August 2002	5
September 2002	3
October 2002	5
November 2002	5
December 2002	12
January 2003	8
February 2003	8
March 2003	10

Fig 3.5 Commissioner for Complaints 2002/03
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 15.4 weeks.

Reports Issued and Settlements Obtained After In-depth Investigation

59 reports of investigations were issued in 2002/03, compared to 52 in 2001/02. The breakdown according to the subject of the cases reported on was Housing 29, Personnel 18, Education 4 and Miscellaneous 8.

13 cases were fully upheld; 46 cases were not but 9 of these were partially upheld and 1 criticised the public body in 5. Settlements were achieved in 11 of the 13 cases that I upheld:

Table 3.4 Settlements Achieved in Upheld Cases

Case No	Body	Subject of Complaint	Settlement
CC 35/01	Labour Relations Agency	Failure to implement pay settlement	Apology & consolatory payment of £350
CC 60/01	NIHE	Allocation of property	Apology & consolatory payment of £1,000
CC 71/01	NIHE	Handling of application	Apology & consolatory payment of £400
CC 80/01	NIHE	Sale of garden	Apology & consolatory payment of £200
CC 84/01	S&E Belfast H&SS Trust	Handling of sick leave	Apology & consolatory payment of £150
CC 105/01	Newry & Mourne H&SS Trust	Non-appointment from reserve list	Apology & consolatory payment of £100
CC 116/01	NIHE	Housing benefit application	Apology & consolatory payment of £200
CC 142/01	NIHE	Refund of money	Apology & consolatory payment of £1,000
CC 156/01	Arts Council	Application for funding	Apology & consolatory payment of £500
CC 38/02	Equality Commission	Recruitment/ Application form	Apology & consolatory payment of £300
CC 82/02	NIHE	Delay in house sale	Apology & consolatory payment of £1,000

Review of Investigations

ARTS COUNCIL OF NORTHERN IRELAND

Refusal to grant funding

In this case, the complainant wrote to me about the manner in which the Arts Council of Northern Ireland (the Council) had dealt with his complaint regarding its refusal to grant funding to the Orchestra he represented. He informed me that he believed the three reasons given for refusing the Orchestra's application were in complete contradiction of the stated guidelines in the application pack.

My detailed investigation established that the guidelines provided to applicants were unclear and ambiguous in places, causing confusion and disappointment to the complainant and the Orchestra when their application for funding was refused. This was further compounded when the Orchestra asked for clarification regarding the reason(s) the application was refused. In reply to this request, the Council wrote to the complainant, setting out other previously unreferred to reasons for rejection of the Orchestra's application for funding.

My investigation of this complaint led me to conclude that the Council's handling and processing of this case had been incompetent and flawed in a number of respects and to have been unsatisfactory to the extent that it constituted significant maladministration. I noted with particular concern a lack of clarity in its communication with the public and in this case, with the Orchestra. I therefore had no doubt that as a consequence of the Council's maladministration in this case, the complainant suffered the injustice of unacceptable frustration, and considerable disappointment, annoyance, anxiety and inconvenience.

In the circumstances, I recommended to the Chief Executive (CE) that she should issue a full and unreserved apology to the complainant for the failures of the Council in his case, together with a consolatory payment to the Orchestra of £500 for the inadequacies of the Council's administration of the funding application. I am pleased to record that the CE accepted my recommendation. **(CC 156/01)**

EDUCATION BODIES

Refused a remark of modular examinations

A parent complained to me that the Council for the Curriculum, Examinations and Assessment (CCEA) acted unjustly in refusing a request on behalf of her daughter for a remark of four modular examinations taken in pursuit of a GCSE in Social and Environmental Studies. The complainant contended that she had been deprived of an opportunity to access the remark service as she had not been advised of the need to seek a remark at the time that each modular result was published, rather than at the end of the two year course. The examination centre which entered her daughter for the exams also appeared to be unaware of this requirement. The complainant further stated that the examination results had not been issued to her at the appropriate times to permit a remark request.

In the course of an exhaustive investigation I examined closely the detail of the complaint in addition to a wealth of published material on codes and procedures relating to the conduct of post GCSE examination services to candidates. I concluded that the respective roles and responsibilities of the awarding body (CCEA) and the examination centre (the school) in the matter of communicating results to candidates and actioning the remark service are very clearly set out in a comprehensive range of publications. These publications explicitly inform examination centres, which are responsible for issuing results to candidates and submitting remark requests to CCEA on their behalf, that in the case of modular GCSEs the remark service must be taken up after publication of each modular result and in accordance with very clear deadlines. Within the constraints of my investigation, which was necessarily limited to the actions of CCEA, I was unable to explain why the complainant was not notified of the results of individual modules close

to the date of publication. CCEA told me, and I had no reason to doubt, that if requests for remarks on behalf of the complainant's daughter had been received from the examination centre within the deadlines, remarks would have been carried out. However no such request was received and when the issue was raised by the complainant it was so far beyond the deadlines as to have removed any room for the exercise of discretion by CCEA. In all the circumstances, whilst I had considerable sympathy for the complainant and her daughter, I concluded that CCEA acted appropriately and I was unable to uphold the complaint. **(CC 137/01)**

Refusal of application for school transport assistance

In this case, the complainant said his application to the South Eastern Education & Library Board (the Board) for school transport assistance in respect of his son was refused on the grounds that he had not attempted to gain admission to a school which was within statutory walking distance of his home. The complainant said he appealed against this decision on the grounds that, although he had neglected to put the school concerned as his first choice on the transfer form, his son had achieved a grade which, he contended, the school would not have considered.

The complainant considered that the circumstances of his case clearly indicated that his son should be entitled to school travel assistance and the Board was "blindly following rules". Also, he contended that the Board was more interested in applying rules than applying the principles governing its school transport policy and, thus, was not administering public funds in a fair and equitable manner. The complainant was also aggrieved that the Board, in its correspondence, did not indicate any right of appeal or remedies open to him.

Having investigated this complaint, I established that the Board's policy is to provide transport assistance only where a pupil has been unable to gain admission to all suitable schools with the statutory walking distance. I found that this policy is clearly set out in a number of documents which the Board provides to applicants, including the application form. I found the Board's decision to refuse the complainant's application on the grounds that he had not attempted to gain admission by his son to suitable schools within the statutory walking distance of his home to have been taken in accordance with the terms of its policy, which in turn is underpinned by primary legislation.

In relation to the complainant's contention that the school within walking distance would have automatically rejected his son on the basis of the grade which he achieved in the transfer test, my investigation established that this point had been raised in a recent application for a judicial review of a decision in relation to school transport. I found that one of the conclusions of the hearing of the judicial review application was that it could not be left to the estimation of the individual parent whether to apply for admission to a particular school and that the parent concerned in the case could not ignore the requirements of the Board's policy. In these circumstances, I was unable to uphold this element of the complaint.

My investigation established that, although all parents have a right to approach the Board if they are dissatisfied with a decision, the Board's initial notification to the complainant of its decision on his application for transport assistance failed to include any information regarding a right of appeal/ right to make further representations or any other possible avenues, such as referral to my Office. I found this failure to have constituted unsatisfactory administrative practice. Overall, while as a result of his own initiative the complainant was not disadvantaged by the failure, I recommended to the Chief Executive that all initial notification letters of refusal to provide transport assistance should henceforth include full information on what further steps are open to a parent by way of appeal/further representation etc. I was pleased to record that the Board gave an undertaking that it would address this matter in the near future.

I concluded that there was no evidence of maladministration by the Board in this case. Also, I was satisfied that the Board had managed the case in accordance with its policy and the underpinning legislation on the provision of school transport assistance. Consequently, I did not uphold the complaint. **(CC 111/02)**

Refusal of application for school transport assistance

A parent complained to me that the Southern Education and Library Board (the Board) had refused school transport assistance for her child on the grounds that a suitable alternative school to that in which she was placed was available within walking distance of the family home. The complainant told me that she felt she was being denied freedom of choice and it almost appeared as if the decision on the future and education of her child rested with the Board and its recommendations for suitable schooling.

In response to my enquiries the Chief Executive of the Board told me that the Board was not denying the complainant the right to enrol her child in any school of her choice but that there were restrictions regarding the provision of transport assistance.

My investigation examined carefully the legal and policy framework within which the Board makes its decisions on transport assistance. This revealed that within the context of the Education and Libraries (NI) Order 1986 and directions laid down by the Department of Education in a circular on school transport, the Board has considerable discretion in determining how the school transport service will be delivered and which pupils will receive assistance. However I found that an important criterion for the decision on transport assistance was whether there was a suitable school within statutory walking distance (in this case 3 miles) of the home. I also found that the Department of Education's Circular identified clear categories of schools to guide Boards in assessing suitability for the purposes of a decision on transport assistance.

My investigation found that guidance issued to parents by the Board was explicit in stating that application must be made to all suitable schools within statutory walking distance before a preference was expressed for a more distant school. I was satisfied in this case that since the complainant had chosen not to apply to the closer school (which met the definition of suitability contained in the Transport circular) the Board applied the policy correctly in determining that there was no entitlement to transport assistance to attend the more distant institution. I was unable to uphold the complaint. **(CC 89/02)**

Appointment process for a teaching post

In this case the complainant alleged that the successful candidate did not meet the criterion regarding experience of teaching children with special educational needs. She also questioned the health and fitness of the successful candidate to deal with the demands of teaching and looking after children with severe learning difficulties, some of whom also had physical disabilities.

In my investigation I identified that, contrary to what would be expected in recruitment competitions, the criterion relating to experience of teaching children with special educational needs did not stipulate the length or breadth of the required experience. However, I established that there had been previous unsuccessful attempts to fill this particular teaching post which had generated only a small number of applications. Consequently, a decision was taken to amend and relax the criteria for this competition in order to encourage a greater number of applicants. In the circumstances, I did not find that this approach was unreasonable. During my investigation I carefully examined the application form completed by the successful candidate and I was satisfied that she had experience in teaching children with special educational needs. She therefore met the requirements of the criterion and was entitled to be interviewed for the teaching post.

With regard to the successful candidate's physical fitness for the post I took the view that this was a matter for the North Eastern Education & Library Board to determine as the employing authority of teachers, and it was not a decision for the interview panel to take. While I could understand the complainant's contention that the successful candidate was less qualified and did not have the same amount of experience as her, nevertheless I was satisfied that it was performance at interview which had determined the matter. I did not find any evidence of maladministration in the interview panel's decision-making process. Consequently I did not uphold the complaint. **(CC 44/01)**

Withdrawal of school transport

A parent complained to me that the Southern Education and Library Board (the Board) had withdrawn school transport from her children for

no reason, despite earlier assessing the family as having entitlement based on the distance from their home to the school.

The Board told me that when the Transport Officer (TO) carried out his initial assessment of eligibility he measured the distance from the complainant's home to the school as being 2.1 miles. Since this was in excess of the statutory walking distance of 2 miles specified in the Education and Libraries (NI) Order 1986 the TO decided that the family was entitled to free transport to and from school. However following a review of transport arrangements some 4 years later it was discovered that an alternative route to the school measuring 1.8 miles was available. As a result the TO decided that the Board could only offer concessionary transport to the complainant's family. This consisted of transport to the school in the morning and return transport to a point 0.6 miles from the complainant's home.

My investigation examined carefully the legal and policy framework within which the Board makes its decisions on transport assistance. This revealed that within the context of the Education and Libraries (NI) Order 1986 and directions laid down by the Department of Education in a circular on school transport, the Board has considerable discretion in determining how the school transport service will be delivered and which pupils will receive assistance. I concluded that, notwithstanding its initial error in the journey measurement, the Board was entitled to reassess the assistance which could be made available to the complainant's family in light of the discovery that the home was in fact less than the 2 mile statutory walking distance from the school. I found that the decision whether to offer concessionary transport in these changed circumstances was entirely at the discretion of the Board and I was therefore unable to uphold the complaint. **(CC 153/01)**

EQUALITY COMMISSION FOR NORTHERN IRELAND

Request for a job application form

The complainant alleged that he had sustained injustice as a result of maladministration by the Equality Commission for Northern Ireland (the Commission) because it failed to process his request for an application form for the post of Head of Policy and Public Affairs (the post).

At the outset of my investigation, the Commission accepted that, in January 2001, due to a "human error", it had not processed the complainant's request for an application form for the post. Although I regarded this error as having constituted an administrative failure on the part of the Commission, my overall investigation did not reveal any evidence whatsoever of bias, or malice, by the Commission. Unfortunately, because the recruitment exercise for the post had already been completed, I was unable to put the complainant back in the position he would have been in had the administrative failure not occurred. I was of course very aware that even if the complainant had been permitted to submit a completed application form, there was no guarantee that he would have been successful at shortlisting stage or indeed in the interviews which followed for those who were shortlisted for interview. I could not therefore say, even on the balance of probability, that the complainant had been deprived of a post at a higher salary as a result of the Commission's administrative error. Accordingly, there could be no question of him being compensated for possible loss of higher earnings. Nevertheless, I concluded that the complainant had been deprived of the opportunity to compete for the post and in recognition of this injustice, together with the disappointment and annoyance which he undoubtedly experienced as a consequence of the error, referred to above, I recommended that the Commission should issue to the complainant, in addition to the written apology already sent to him, on 2 July 2001, by its Chief Executive, a consolatory payment of £300. The Commission accepted my recommendation. **(CC 38/02)**

FIRE AUTHORITY FOR NORTHERN IRELAND

Handling of application for promotion

The complainant alleged that he had sustained injustice as a result of maladministration by the Fire Authority for Northern Ireland (FANI) in its handling of his application for promotion to Divisional Officer, Grade II (DOII).

My investigation found that the arrangements devised for the promotion competition in question, involved FANI in discretionary decisions which, in my view, it was entitled to take. I was satisfied that the Assessment Centre exercises, about which the complainant was particularly concerned, enabled FANI to determine whether candidates possessed the specific skills, ability and attributes required to perform at the rank of DOII. Furthermore, I was impressed by the thoroughness of FANI's overall appeal process which, in my view, fully and properly addressed the concerns raised by the complainant. Although I could fully understand the complainant's disappointment at the outcome of the promotion process, my careful consideration of all of the evidence and information available to me did not lead me to conclude that FANI had been guilty of maladministration in its conduct of the promotion process the subject of this complaint. Neither did I find any evidence that the complainant had been treated any differently from other candidates in the process. Overall, therefore, I did not uphold the complaint. **(CC 33/01)**

Handling of selection process

This was a multi element complaint in which the complainant alleged that he had suffered injustice as a result of maladministration by the Northern Ireland Fire Brigade (the Brigade) in its handling of a selection process for the rank of Sub-Officer. The issues concerned were:

1. Failure to issue Assessment Centre results. The complainant alleged that the Brigade failed to issue to him the results of the Assessment Centre exercise. My enquiries revealed that a Candidate Feedback Sheet was completed for the complainant and his name and address was included on the mailing list for the issue of this information. While the Brigade could not prove categorically that the complainant's Feedback Sheet was issued, in the circumstances, I considered it to be a reasonable assumption that it was. That said, the question of non-delivery becomes a matter for the Royal Mail which is not a body subject to my jurisdiction. I was satisfied that the Brigade took reasonable steps to communicate the results of the Assessment Centre to the complainant and could not be held responsible for that information not having been received by him.

2. Failure to confirm receipt of Assessment Centre results. The complainant was aggrieved that the Brigade, having put in place a system for verifying that candidates had received their Assessment Centre Feedback form, did not contact those candidates who did not respond. My investigation revealed that the Brigade had asked candidates to verify receipt of the Assessment Centre Feedback form. The Brigade informed me that the system relied on the cooperation of the recipient and that any follow up action would require further paperwork adding to an "already stretched administrative burden" due to a "very onerous recruitment programme" in progress at the time. I was of the view that if it was considered important enough to seek verification of receipt of information then the Brigade should have made a reasonable attempt to contact those candidates who did not initially respond. I acknowledged and agreed with the Brigade's admission that, with hindsight, it might have been prudent to have a follow-up system for returns. This was tempered, however, by the fact that the Brigade reinstated its original policy of not disclosing results of an Assessment Centre exercise to candidates and this situation should not, therefore, recur.

3. Unfair Treatment. The complainant believed that he was treated unfairly by the Brigade in that it did not provide him with his Assessment Centre results prior to interview. Having already dealt with the circumstances surrounding the issue of the results and concluded that the Brigade took reasonable steps to notify the information to the complainant and could not, therefore, be held responsible for him not having received the information, I could not say that the complainant was treated any differently from any of the other sixty two candidates who had attended the Assessment Centre and whose results were also posted out.

I also considered whether or not the non receipt of his Assessment Centre results caused the complainant to be disadvantaged at interview. The complainant believed that had he received this information he could have enhanced his interview score. My investigation revealed that the marking system used for the selection process comprised of three elements; the Assessment Centre, qualifications and experience and, finally, the interview. Having examined in detail each of the three elements used to score candidates I was satisfied that they were quite distinct and even if the complainant had received his Assessment Centre results prior to interview it would have been of no benefit in preparing for interview. Furthermore, all candidates, including the complainant, were provided in advance of the interviews with details of the areas to be covered and were, therefore, given an opportunity to prepare for interview. I did not uphold this aspect of the complaint.

4. Contradictory Information. The complainant referred to two separate incidents when he enquired about the issue of Assessment Centre results which, he claimed, resulted in two conflicting accounts of the situation. According to the complainant, his first contact with a Brigade officer confirmed that he should have been informed of the results and said that his would be posted out. The Brigade, however, put a slightly different slant on events and neither the complainant nor the Brigade produced documentary evidence to prove either contention. Consequently, I was unable to reach a conclusion on the exact context of the conversation. However, I was satisfied that the Brigade officer did reaffirm the complainant's belief that the Assessment Centre results were made available to candidates. Turning to the second incident when the complainant met with another officer. The officer treated it as an informal meeting and did not keep a record. The complainant claimed that he was promised written confirmation of the situation with regard to the Assessment Centre results but did not receive any such confirmation. I obtained a copy of the complainant's copy of his report of the meeting and there was no evidence to support his claim of a promise of written confirmation. The officer disputed the allegation and, similarly, there was no evidence to support his contention as to what was said. Having no reason to doubt each participant's understanding of events, without documentary evidence to prove either contention, as before, I could not reach a conclusion on this aspect of the complaint.

As to the allegation that the second officer contradicted the first officer by stating that the Assessment Centre results were not made available to candidates, the Brigade acknowledged this to be correct and explained the context of how and why this happened. While I could understand the rationale for the issue of the Assessment Centre results, I noted that, prior to his meeting with the complainant, the second officer had consulted with the appointments panel and I was somewhat surprised that a senior officer and a selection panel were unaware of the change in procedures. I criticised the Brigade for this lack of communication. What happened was clearly a misunderstanding but I appreciated how confusing this matter was to the complainant and I agreed with the Brigade's acknowledgement that, once established, the circumstances surrounding this issue could have been made absolutely clear to the complainant. Also, I considered it would have been courteous to have issued an apology for the misunderstanding and I criticised the Brigade for not having done so.

5. Inaction on the part of the Brigade. The complainant alleged that he was totally ignored for a period of five months. My enquiries revealed that during the five months in question the Brigade corresponded with the complainant on four occasions. Therefore, I could not say that he was ignored during the five month period nor was there any evidence to substantiate his claim that it was my intervention which prompted an interview with the Chief Fire Officer. I did not uphold this element of the complaint.

Overall, I concluded that there were in fact no grounds to warrant a finding of maladministration on the part of the Brigade nor could I say that the complainant was disadvantaged or treated differently to any other candidate. I did not uphold his complaint. **(CC 7/01)**

HEALTH & SAFETY EXECUTIVE

Breach of trust in conduct of a health and safety investigation

An allegation was made that a Health and Safety Inspector was guilty of serious malpractice and a breach of trust by divulging the identity of the complainant as the source of information on alleged unsafe work practices to the management of the factory where he was employed. The complainant also alleged that the Health and Safety Inspector had been obstructive, protective of the management of the factory, and had failed to enforce regulations.

My investigation examined closely the sequence and content of recorded contacts between the complainant and the Health and Safety Executive Northern Ireland (HSENI). The original telephone complaint form completed by a member of the HSENI support staff showed that the complainant had provided his name and telephone number. However I regarded the form as providing inconclusive evidence on the matter of the complainant's attitude to being identified to his employer.

The complainant told me that he had made a "protected disclosure" to the Health and Safety Inspector but that his name had nonetheless been passed on to the Company. My investigation confirmed that a telephone conversation had taken place between the Inspector and the complainant soon after receipt of the original complaint. Although no official record was made of this conversation the Inspector told my Investigating Officer that he recalled the complainant had been agreeable to his name being disclosed to the Company. In the absence of a documentary record I was unable to make any finding of what was actually agreed between the parties during this conversation on the matter of disclosure of the complainant's identity.

I examined a series of letters sent to the Health and Safety Inspector by the complainant following their telephone conversation. The first suggestion of the complainant's desire for anonymity which I could find in correspondence was in the third letter, received by HSENI some five weeks after the Inspector's visit to the factory during which the complainant's name was disclosed. In this letter the complainant said that he wished his correspondence to be treated as "protected disclosure". However I concluded that by this time any request to HSENI for anonymity in relation to the information disclosed 5 weeks earlier would have had little effect.

Having carefully considered all of the evidence I found that I could not support the allegation that the Inspector was guilty of malpractice or a breach of trust in divulging the complainant's identity to the company. Neither did the evidence support the allegations that the Inspector had been obstructive and negligent in enforcing regulations. In fact I found that the Inspector's investigation into the complainant's allegations about work practices at the factory had been pursued promptly. The records showed that the Inspector had advised the complainant of his findings and offered to meet with him to discuss outstanding concerns, an invitation which HSENI confirmed was still open to the complainant.

Although I could not uphold his complaint I was able to advise the complainant that the phrase "protected disclosure" which he had used in his correspondence was in fact derived from legislation (The Public Interest Disclosure (Northern Ireland) Order 1998) which aims to protect an individual employee, by means of recourse to an Industrial Tribunal, from discriminatory action by his employer as a result of his making a bona fide disclosure of suspected malpractice to certain authorities such as HSENI. I suggested that he should seek further legal advice on this matter.

My investigation found no evidence of maladministration by HSENI in its dealings with the complainant however, since my investigation identified a number of weaknesses in the existing systems for determining and recording a complainant's attitude to anonymity, I recommended that the Chief Executive should consider conducting a review of the relevant procedures. The Chief Executive accepted my recommendation and I am pleased to report that, following this review, revised arrangements have been put in place which should provide enhanced safeguards for complainants and Inspectors in the handling of the issue of anonymity. **(CC 72/02)**

HEALTH & SOCIAL SERVICES BODIES

Processing of application for Temporary Injury Benefit

The complainant was aggrieved at the length of time taken by the South & East Belfast Health & Social Services Trust (the Trust) to process her application for Temporary Injury Benefit in respect of injuries sustained in the course of her employment by the Trust.

Having investigated this case I found that, on 1 April 2001, responsibility for the administration of Temporary Injury Benefit was delegated to Trusts by the Department of Health. I was pleased to record that, in the course of my investigation, the Trust decided that the complainant met the criteria for Temporary Injury Benefit and had notified her of this decision. I noted that the complainant regarded the Trust's decision as a satisfactory resolution of her complaint in one respect.

However, my investigation established that there were periods of inactivity by the Trust in processing the complainant's application for Temporary Injury Benefit. I further established that these periods of inactivity were due to general confusion as to which section of the Trust should be responsible for administering such applications, also to the fact that the complainant's claim was the first received by the Trust and staff had very little training and virtually no knowledge of how to process it. While not without understanding for the situation in which staff of public bodies find themselves when faced with a new area of work, particularly with little training in the processes required to undertake that new responsibility, it was my view that customers of public bodies should not be disadvantaged in such situations, which I consider to represent systemic flaws.

I concluded that the Trust's handling and processing of the complainant's application for Temporary Injury Benefit was flawed by unsatisfactory administration. Consequently, the quality of service which the complainant received in this regard fell short of that which the Trust seeks to deliver and which members of the public and employees alike are entitled to expect. As a consequence of this unsatisfactory administration, I had little doubt that the complainant suffered the injustice of frustration, disappointment and annoyance. In terms of redress, I recommended that the Trust, through its Chief Executive, should issue a letter of apology to the complainant and make a consolatory payment of £150 in recognition of the above-mentioned injustice. I am pleased to record that the Trust accepted both elements of this recommendation. Also, I welcomed an assurance by the Trust that in dealing with future applications for Temporary Injury Benefit, it would ensure that any delays are kept to a minimum and would inform applicants of any delays which were outside of its control. **(CC 84/01)**

Handling of application for re-grading

The complainant was dissatisfied with the outcome of the Causeway Health and Social Services Trust's (the Trust) grievance procedure which dealt with his application for re-grading from Administrative and Clerical Grade 2 to Grade 4. He claimed that the Trust's management failed to demonstrate why his post should be uprated only to Grade 3. The complainant was also aggrieved with the decision in relation to the effective date of re-grading. He claimed that, under procedures in place at the time, the Trust should have backdated his re-grading to the date of request, rather than, as it actually did, to the date of return of his completed job evaluation form.

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

My investigation examined the records pertaining to the Trust's handling of the complainant's grievance. The evidence showed that the complainant had an adequate opportunity to make the case for re-grading to Grade 4 and that the Grievance Panel's deliberations had been based on comprehensive information. I therefore had no reason to question the Trust's decision that the appropriate level for the complainant's post was Grade 3.

On the matter of the effective date of re-grading the Trust's Director of Human Resources confirmed that a new protocol had been introduced to address the problem of staff retaining the job evaluation form for an undue length of time before completing and returning it. Former custom and practice was that the effective date of re-grading was taken to be the date that an application form was requested. The new protocol provided for the effective date to be that on which the completed form was returned to the Human Resources Department. Although I understood the Trust's reasons for changing its procedures I found that the revised protocol had not been in place when the complainant asked for a job evaluation and therefore it was unreasonable that its provisions should have been retrospectively applied to him. I concluded that this departure from the Trust's procedures established by custom and practice amounted to maladministration, resulting in an injustice to the complainant. I recommended that the re-grading should be backdated to the date on which the complainant made his request for a job evaluation. The Trust accepted my recommendation and also agreed to re-examine a number of other similar cases. **(CC 8/02)**

Advertisement for the post of Social Worker

The aggrieved person alleged he had sustained injustice as a result of maladministration by Newry and Mourne Health and Social Services Trust (the Trust) regarding its advertisement, in September 2001, for the post of Social Worker - Dementia Team.

During my investigation, I established that on 17 August 2001, the Trust wrote to the aggrieved person stating that although he had been unsuccessful in his application for the then existing vacancy, he, along with several others, had been placed on a waiting list, should a further vacancy for the post in question occur within six months after the date of his interview. I noted that a further vacancy arose within the Trust's Dementia Team and because the first reserve candidate declined the offer of the post, consideration was then given to offering it to the aggrieved person, who was the second reserve candidate. Following a reconvened meeting of the Trust's interviewing panel on 18 September 2001, to discuss the employers' references received in respect of the aggrieved person, it was decided that the Trust could not offer him the (additional) post of Social Worker Dementia Team. Taking into consideration all of the evidence available to me, including the content of the written references, I could not say that the discretionary decision taken by the interviewing panel, not to offer the position to the aggrieved person, was wholly unreasonable or very seriously at variance with what could have been expected in the light of the facts. Consequently, I could not uphold the main element of this complaint.

However, and notwithstanding the above, I concluded that the Trust's overall administrative handling of the aggrieved person's application, particularly its failure to communicate with him prior to the commencement of the new recruitment/selection exercise, was less than satisfactory to the extent that it constituted what I considered to have been unsatisfactory administrative practice. By way of redress, for disappointment/distress and annoyance suffered by the aggrieved person, I concluded that he should receive a letter of apology from the Trust's Chief Executive, together with a consolatory payment of £100. I am pleased to record that the Trust accepted this recommendation, together with my further recommendation that it should review its policies and practices to ensure that the situation which arose in this case does not recur. **(CC 105/01)**

Handling of an allegation of harassment

The complainant alleged that she had sustained injustice as a result of maladministration by the North & West Belfast Health and Social Services Trust (the Trust) regarding the manner in which it had dealt with an allegation of harassment against her. At the centre of this complaint, was the complainant's sense of grievance and disappointment at the Trust's finding and conclusion in relation to Incident 1 (of the eight incidents of alleged harassment put forward).

It was clear to me that the complainant did not accept the decision reached by an investigating panel, on behalf of the Trust. Although the complainant accepted that her behaviour on 9

January 2001 was inappropriate and subsequently apologised for it, she did not regard that behaviour as amounting to harassment against the person who had complained against her. However, having regard to all the evidence available to me, and against the backdrop of what is defined as harassment, as set out in the Trust's policy document on the subject, I did not consider the outcome of the panel's investigation, subsequently endorsed by the Trust, to have been so unreasonable or at variance with what any such investigating panel was likely to have decided, that I could have considered the decision itself to be maladministrative.

Notwithstanding the above, I recognised with concern that the complainant had been left in a situation where she could not seek to challenge, or have reviewed, the outcome of the harassment investigation. So far as the complainant was concerned, she had been labelled as a harasser, with all the attendant ignominy, compounded by the fact that she could not contest the evidence which led to the finding. I did not find that to be a satisfactory situation nor was it one which I believed the Trust envisaged arising. In the circumstances I considered that the complainant should be issued with a letter from the Trust's Chief Executive (CE) stating that notwithstanding the finding of the investigating panel, the Trust did not consider the matter had warranted formal disciplinary action, having noted her prompt acknowledgement of the inappropriateness of her behaviour and the apology for her behaviour at the time. I also recommended that the CE should state in his letter that the incident was not regarded in any way as a disciplinary issue on the complainant's record, nor had it been registered as such. I was subsequently provided with a copy of the letter which the CE had issued to the complainant. I was satisfied that its content met the terms of my recommendation. **(CC 91/01)**

Not shortlisted for post

In this case the aggrieved person complained that the Western Health and Social Services Board (the Board) made available two different types of application form for the post and that the form which he had completed had disadvantaged him at the shortlisting stage. He further contended that he had provided sufficient information on his application form to be shortlisted for interview. The complainant also expressed concern about the subsequent competition for a second post.

My investigation confirmed that two different types of application form were available to candidates in the original competition. The Board's standard application form was obtainable from its advertised website and a revised application form, devised for this particular competition, was available from the Board's Personnel department. I concluded that it was maladministrative of the Board to permit two different application forms to be available to candidates when from the outset it had identified the need for a re-designed application form for this particular competition. However, I further concluded that the complainant had not been disadvantaged by completing the Board's standard application form.

On the second aspect of the complaint I was satisfied that the complainant had demonstrated on his completed application form that he had met the experience criterion to be shortlisted for interview. Consequently, I found that maladministration had occurred in the complainant's candidature having been rejected at shortlisting stage and that he had been denied the opportunity to compete for the post. I did not uphold the complaint regarding the complainant's failure to be appointed in the second competition.

In the particular circumstances of the case, I recommended that the complainant should receive a personal, unreserved apology from the Chief Executive of the Board. I further recommended that the Board take steps to ensure that in any future competitions in which a special application form is used, the standard application form is not made available to candidates. **(CC 41/02)**

Secondment to a post-graduate diploma course

The complaint concerned the actions of Foyle Health and Social Services Trust (the Trust) in shortlisting, calling to interview and subsequently deeming ineligible for interview, the complainant, who had applied for a secondment to a post-graduate diploma course in Health Visiting.

As part of my investigation I reviewed the published eligibility criteria for the course and the

papers used in the shortlisting process. Comments on administrative aspects of the case were sought from the Chief Executive of the Trust and interviews were conducted with appropriate personnel staff. The chair of the interviewing panel was also interviewed in relation to interview arrangements and the particular circumstances of the complainant's appearance before the interview panel

My investigations persuaded me that although there were some shortcomings in the Trust's response to the complainant's expressed concerns, the most serious aspect of the complaint lay in the failure of the shortlisting panel to properly apply the selection criteria. This failure led in turn to the complainant being called to interview and to the subsequent distress caused to the complainant on being informed that she should not have been called. I was pleased to note the Chief Executive's candid acceptance of errors on behalf of the Trust and also of my recommendations that an apology and consolatory payment be issued to the complainant. **(CC 99/01)**

Decision not to upgrade a member of staff

The complaint derived from a decision in July 2001 by the Central Services Agency's (CSA) Director of Human Resources and the Director of Family Practitioner Services not to upgrade a member of a "Pilot Team" in the Medical Directorate to the rank of Administrative and Clerical Grade 3.

In pursuit of the investigation of this case I made enquiries of the Chief Executive of the CSA and I obtained and scrutinised pertinent documentation. I directed that my Investigating Officer interview the complainant and appropriate CSA officers and I carefully examined the information elicited from these interviews.

My investigations persuaded me that the CSA had reasonably and properly excluded the complainant from the upgrading exercise and had not excluded her on the basis of an individual evaluation of her performance in post. I was also persuaded that the complainant had not been treated discourteously in not being invited to a meeting on 2 July 2001 and that the CSA had attempted to deal with the complainants concerns in a timely and courteous fashion. However, I found that maladministration had been evidenced by the CSA in advancing different reasons for not upgrading the complainant and in not taking proper account of its organisational failures in the complainant's training which had a direct bearing on the decision not to upgrade her. I was pleased to note the Chief Executive's complete acceptance of the findings and conclusions in my report and also of his acceptance of my recommendations that an apology and consolatory payment be issued to the complainant. **(CC 69/01)**

Implementation of Harassment Policy

In this case the complainant alleged she had sustained injustice as a result of maladministration by the Causeway Health and Social Services Trust (the Trust) because it failed to implement its Harassment policy correctly, following her complaint, in May 1999, about "overt and subtle bullying" at work by two colleagues.

Notwithstanding the limits to my jurisdiction in this case, I conducted a thorough investigation into this complaint. There was no doubt that the complainant felt a real sense of grievance regarding the Trust's decision not to uphold her complaint of harassment. I concurred entirely with the notes of the Trust's meeting, held on 23 August 2000, which stated that "the Panel members were not saying they did not believe [the complainant] and recognised the strength of her feeling" …… but "the report did not contain evidence to substantiate her claim". Overall, I was satisfied that the Trust's investigation report of this complaint was properly and seriously examined and considered, initially by the Trust's Director of Child & Community Care and the Senior Human Resources Manager, and subsequently, on appeal, by the Trust's Director of Human Resources and Director of Nursing. The evidence established during my detailed investigation of this complaint, and thus available to me, did not lead me to conclude that I was in a position to question, and much less contradict the decision reached by the Trust, i.e. that there was insufficient evidence to substantiate the complainant's allegation of harassment. Consequently, in the absence of evidence of maladministration in its decision-making process, I could not question the decision reached by the Trust.

However, and notwithstanding the above, the facts of this case, as established during my investigation, did lead me to conclude that the Trust's administrative handling and processing of this complaint were less than satisfactory to the extent that they constituted what I considered to have been unsatisfactory administrative practice. As a consequence of the length of time taken by the Trust to investigate the complaint (14 months), I had no doubt that the complainant experienced significant distress, anxiety and annoyance. It was against this background, and my above-mentioned finding, that I concluded that the complainant should receive, by way of redress, a letter of apology from the Trust's Chief Executive, together with a consolatory payment of £200. I am pleased to record that the Chief Executive accepted the above redress recommendation. **(CC 88/01)**

Failure to be appointed following interview

The complainant said she considered she performed well at her interview by the Ulster Community & Hospitals Trust (the Trust) for the post of Personal Secretary, and was disappointed when later informed that she did not meet the required standard at interview. The complainant said she rejected this reason, stating that she answered all the questions at interview with no difficulty. The complainant further said she considered that her candidature had been adversely affected by an unsatisfactory and unfair reference from someone who had treated her unfairly in a previous post in the Trust, from which she had resigned. The complainant considered she had received an unsatisfactory response from the Trust regarding her request for a full explanation as to why she was unsuccessful at interview and that her candidature was prejudiced by the reference, referred to above.

Having investigated this complaint and examined various documents, including notes taken by the panel at interview and the markings given to each candidate, I found that the complainant had performed well at interview, meeting or surpassing the required standard for three of the five questions. However, in the remaining two questions, I found that the complainant had scored 3 out of a possible 9 for each question and thus failed to reach the required mark. I further found that the overall required mark for the interview was 28 out of a possible 42 and the complainant received 25 marks in total, which just failed to meet the required standard for selection for employment or a position on the waiting list for possible future vacancies. I therefore found no evidence of maladministration on the part of the Trust regarding this aspect of the complaint.

In relation to the complainant's belief that a previous unsatisfactory reference had prejudiced the panel in the selection process, I carefully examined copies of previous references held in the Trust's file records regarding the complainant and found none to be less than satisfactory. Also, I was assured by the Trust that the selection panel did not have access to any previous references. On the basis of the available evidence, I did not regard the Trust as having been guilty of maladministration in relation to this element of the recruitment process.

In relation to that element of the complaint concerning the allegedly unsatisfactory notification from the Trust regarding the complainant's request for a full explanation as to why she was unsuccessful at interview, I found that, although the letter was brief, it answered the complainant's questions, albeit briefly. The letter stated that the complainant had not met the standard required for initial selection or the waiting list and that her references were not examined by the panel. Against this background, I did not uphold this aspect of the complaint.

In the absence of any maladministration on the part of the Trust I did not uphold this complaint. **(CC 20/02)**

LABOUR RELATIONS AGENCY

Handling of a pay award

The complainant alleged that he had sustained injustice as a result of maladministration by the Labour Relations Agency (LRA) because of its handling of his 2000 pay award. It is the position that the LRA's pay award for any given year is based on a person's performance (i.e., 'Box

Marking') during the previous performance year. Consequently, when the LRA was implementing the 2000 pay award, in November 2000, it could not adjust the complainant's salary because it had not received his performance 'Box Marking' for the reporting period ending 31 March 2000. However, it was the complainant's contention that the LRA should have adopted its normal practice and allocated him a performance 'Box Marking' based on his performance in the previous year.

During my investigation, I established that although the LRA had issued a Performance Report Form for year ending 31 March 2000 to the complainant on 7 March 2000, both he and his Reporting Officer had gone on (long-term) sick leave before the target date (31 May 2000) for completion of all stages of the LRA's Performance Appraisal process. I also established that the complainant subsequently retired from the LRA on health grounds, with effect from 8 September 2000, before the pay award was implemented in November 2000. Although the LRA's Chief Executive confirmed that in exceptional circumstances, payments have been made to LRA staff, where appraisals have not been fully complete, but only where the individual remained an employee of the LRA, thus allowing for redress should the outcome be reviewed or challenged. In the circumstances, I had to accept that it would not have been appropriate for LRA to have allocated a performance 'Box Marking' to the complainant for the period ending 31 March 2000. Having said that, I found that the LRA's failure to have appropriate systems in place to identify Performance Appraisal reports that had not been returned, including those in respect of any person(s) who had retired (or terminated their employment for whatever reason), to constitute unsatisfactory and inadequate administrative practice.

By way of redress for the disappointment, annoyance and inconvenience which the complainant had suffered, I recommended that the LRA's Chief Executive issue a letter of apology together with a consolatory payment of £350, which included an element for the loss of interest on the salary arrears. I also recommended to the Chief Executive that the LRA should take action to ensure that a system be put in place to identify Performance Appraisal Report forms not returned by staff in the stipulated time and more importantly in time for salary payments to be made. The Chief Executive confirmed to me that the LRA would be taking the action necessary to comply with my recommendation. **(CC 35/01)**

LOCAL COUNCILS

Failure to observe statutory duty to assert a public right of way

A residents association complained to me about a decision taken by Lame Borough Council (the Council) not to assert a public right of way (PROW) at Lame Harbour. The residents alleged a lack of proper procedure, selective use of legal advice by Council officials, conflict of interest on the part of legal advisers and provision of one-sided information to legal counsel and the Local Government Auditor by Council officials all of which contributed to a maladministrative decision by the Council not to proceed with assertion action. The complainants were convinced that the positive evidence for the existence of the PROW in terms of maps, photographs and user statements was so overwhelming that the Council had failed in its clear statutory duty under the Countryside Order (NI) 1983 to assert the PROW.

I examined an extensive array of documents connected with the Council's investigation into the existence of the PROW, its correspondence with legal advisers and the Local Government Auditor, minutes of Council meetings where the case was considered and the legislative and procedural framework within which the Council took its decision. My investigation found no evidence of maladministration by Council officials in their conduct of the case. In fact it was clear to me that no attempt had been made to deny or disguise the extensive evidence in favour of the existence of the PROW at Lame Harbour. I found that the case crucially turned on the interpretation of a Council's statutory duty to assert a PROW under the Countryside Order.

The Residents argued that because of the extensive positive evidence in favour of a PROW, and lack of contrary evidence, there was an effective legal imperative upon the Council to

proceed with assertion. On the other hand the Council's legal advisers indicated that, in deciding whether to assert the PROW, legal precedent suggested that the Council was entitled to take account of its wider responsibilities to ratepayers. Since my role as Commissioner for Complaints does not extend to arbitration in such complex legal argument, which is properly a matter for the Courts, I was unable to comment on this aspect of the case.

In the event, Council officials recommended, and the Council resolved, that assertion action should not proceed, primarily because of the risk of legal challenge by the Harbour Company which had already infilled and fenced off the disputed area. Since I found no evidence of maladministration in the process I could not question this discretionary decision and I was therefore unable to uphold the complaint. **(CC 68/02)**

Parking and activities of a mobile kitchen

In this case, the complainant wrote to me about the manner in which Coleraine Borough Council (the Council) had dealt with his complaint regarding the parking and activities of a mobile kitchen (on the public roadway) outside his dwelling. He informed me that some two years ago a mobile chip van was brought into his street and parked outside his dwelling. He stated that the van did not trade in the street, but all the loading, unloading, refuelling and cleaning of it was being carried out from his neighbours' dwelling. He informed me that this had caused a lot of noise disturbance as well as fuel and dirty water being spilt on the road outside his dwelling. He informed me that he was also concerned about the possible safety hazard of large gas cylinders which were being stored outside the dwelling adjacent to his. He could not understand how the trader, who does not live in this street but in a private development some distance away, could be granted a licence by the Council to trade under these conditions.

My detailed investigation established that the legislation which regulates street trading does not state where a trader may or may not park their vehicles overnight. The Council informed me that the trader concerned had been visited by Environmental Health Department officials and had been spoken to regarding issues such as noise nuisance, food preparation and storage of gas cylinders. The Council informed me that it had also contacted other agencies in an attempt to resolve the complainant's problem.

My investigation established that the Council had no authority under licensing laws to stipulate where a trader may or may not park their vehicle. Neither did it have grounds on which it could revoke the licences granted to the trader. Consequently, I could not uphold this complaint. As a result of my investigation, I was, however, satisfied that there had been a clear willingness by the Council to attend diligently to those aspects of the complainant's representations to it which came within its remit. **(CC 24/02)**

Failure to be shortlisted

The complainant alleged that he had sustained injustice as a result of maladministration by North Down Borough Council (the Council) because it had not shortlisted him for the post of Refuse and Street Cleansing Manager, which had been advertised by the Council in February 2002.

My investigation established that the Council's (shortlisting) panel decided that the complainant should not be invited for interview because, in its opinion, he did not meet the educational criterion, namely his qualifications were not considered to be equivalent to being "Educated to degree level". Overall, in the circumstances of this case, and on the basis of the information and evidence available to me, I was satisfied that the panel had gave appropriate consideration to the complainant's application, with particular reference to the advice provided by the Institute of Wastes Management. Consequently, I did not conclude that the panel's decision not to shortlist the complainant for interview was incorrect, and thus it could not be held to have constituted maladministration, as a result of which the complainant sustained an injustice. I am, however, pleased to record that the Council accepted my recommendation to be more specific when publishing shortlisting criteria for any future positions, in order to avoid any raised expectations or confusion on the part of applicants. **(CC 13/02)**

Selection process for a temporary "acting-up" promotion

An employee of Craigavon Borough Council (the Council) complained that he had been unfairly treated in the selection process for a temporary "acting-up" promotion and that the injustice which he claimed to have suffered was compounded by the manner in which the results of the selection process were published.

As part of my investigation, I made enquiries of the Chief Executive of the Council and carefully considered the detailed written response obtained. I also secured and examined the relevant trawl notice and job description for the post in question, together with the completed application forms, interview questions list, scoring sheets, interview notes and the summary of the results of the interview process. I considered evidence obtained from interviews which were conducted by my Investigating Officer with both appropriate Council staff and the complainant.

My investigation established that the complainant had been mistaken in his contention that previous experience was a criterion contained in the trawl notice and I found no evidence to support the complainant's assertion that his failure to obtain the acting-up position was related to experience (or lack thereof) as a trade union representative. I did find, however, that the method of transmitting the results of the competition to all the candidates was unsatisfactory and recommended that the Council apologise to the complainant in this regard. I further recommended that the Council adopt improved arrangements in relation to the publication of results in future acting-up competitions. **(CC 114/01)**

Handling of a recruitment exercise

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

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

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

MUSEUMS & GALLERIES OF NORTHERN IRELAND

Refusal to reconvene a Selection Panel

The complainant alleged that he had sustained injustice as a result of maladministration by the Museums & Galleries of Northern Ireland (MAGNI) because it refused to reconvene a Selection Panel for the post of Director of Operations in MAGNI.

My consideration and examination of this case left me in no doubt concerning the complainant's sense of disappointment at the MAGNI Panel's decision that it was not practicable to reconvene to interview him, subsequent to his return from holiday on 14 September 2001. However, the information and evidence available to me led me to conclude that the Panel gave appropriate and reasonable consideration to the matter of whether it should reconvene to interview the complainant. I further concluded that its discretionary decision not to reconvene was not attended by maladministration nor could I have considered the decision to have been so unreasonable that no reasonable person would have taken it. Consequently, I did not uphold the substantive element of this complaint. Neither did I regard MAGNI's nor Recruitment Service's handling and

processing of the complainant's written representations to them to have been attended by maladministration. **(CC 28/02)**

NORTHERN IRELAND HOUSING EXECUTIVE

Refusal of application to purchase dwelling

In this case the complainants said they applied to purchase their two bedroomed bungalow from the Northern Ireland Housing Executive (the Executive) but were informed that, under the terms of the Executive's House Sales Scheme, the dwelling could not be sold to them. The complainants said Executive staff had informed them that, in order to be eligible to purchase the dwelling, they would have had to have been less than 60 years of age when their tenancy commenced. They considered that the Executive's policy in this regard was very unfair.

Having investigated this complaint I established that, under its statutory House Sales Scheme (the Scheme), the Executive is required to offer for sale to its tenants the dwellings occupied by them with the exception of sheltered dwelling units and single storey property or ground floor accommodation with no more than two bedrooms which was let to a tenant, or to a predecessor in title of his, for occupation by a person who was aged 60 or more when the tenancy commenced. The purpose of these exclusions is to protect the Executive's stock of the types of dwellings concerned for the benefit of those aged 60 or more, who are more interested in renting their homes. I also established that the exclusion to the Scheme had been the subject of a Judicial Review, primarily on the grounds that such an exclusion was arbitrary and perverse. The outcome of the Judicial Review process was that the Executive's policy was held generally to be not unreasonable.

I therefore found the Executive's decision not to sell the dwelling to the complainants to have been clearly consistent with its stated policy, which is underpinned by primary legislation. Consequently, I could not regard the Executive's decision as an act of maladministration. I therefore concluded that I could take no further action on this complaint. **(CC 121/01)**

Refusal of application to purchase dwelling

The complainants said they applied to purchase their two bedroomed bungalow from the Northern Ireland Housing Executive (the Executive) but were informed that, under the terms of the Executive's House Sales Scheme, the dwelling could not be sold to them. The complainants said they were granted the tenancy of the bungalow in 1992 and that the Executive had informed them, on the day they signed for the tenancy, that if they waited until 2001 before submitting an application to purchase the dwelling they would receive a 60% discount. They considered that Executive staff had misled them.

Under its statutory House Sales Scheme (the Scheme), which took effect from May 1993, the Executive is required to offer for sale to its tenants the dwellings occupied by them with the exception of sheltered dwelling units and single storey property or ground floor accommodation with no more than two bedrooms which was let to a tenant, or to a predecessor in title of his, for occupation by a person who was aged 60 or more when the tenancy commenced. The purpose of these exclusions is to protect the Executive's stock of the types of dwellings concerned for the benefit of those aged 60 or more, who are more interested in renting their homes. The exclusion to the Scheme had been the subject of a Judicial Review, primarily on the grounds that such an exclusion was arbitrary and perverse. The outcome of the Judicial Review process was that the Executive's policy was held generally to be not unreasonable.

I therefore found the Executive's decision not to sell the dwelling to the complainants to have been clearly consistent with its stated policy, which is underpinned by primary legislation. Consequently, I could not regard the Executive's decision as an act of maladministration.

My investigation established that when the complainants' tenancy of the bungalow commenced in 1992, the Executive's policy at that time allowed District Managers discretion to sell two-bed ground floor accommodation to sitting

tenants. My investigation also established that the complainants did not submit an application to purchase their dwelling between the period their tenancy commenced and the change to the Executive's policy in May 1993. However, as a result of my investigation, I found that, in a letter dated 11 August 1994, the Executive had informed a local Councillor, who was acting on behalf of the complainants, that they could only purchase their dwelling at its historic cost because it was built in 1992. That letter also suggested that the complainants might wish to re-apply to purchase their dwelling in 6 years time, when the historic cost provision had expired. That information was inaccurate in that it did not reflect the change in Executive policy which had been introduced 15 months earlier. I found that the inaccurate information had created an expectation on the part of the complainants that they would be eligible to apply to purchase their dwelling, at a discounted rate, once the historic cost provision had expired. I criticised this error as representing an administrative failure on the Executive's part, as a consequence of which the complainants had been caused unnecessary disappointment and annoyance.

In terms of redress, I recommended that the Executive, through its Chief Executive (CE), issued a written apology to the complainants. I was pleased to record that the CE accepted my recommendation. **(CC 126/01)**

Refusal of application to purchase dwelling

The complainant wrote to me about the Northern Ireland Housing Executive's (the Executive) refusal of her application to purchase her dwelling. She informed me that she had been a tenant of Executive property for a long time and had become the tenant of her present dwelling as the result of ill health after the death of her husband. When she applied to purchase the property, she was informed her application could not be accepted by the Executive due to its exclusion provisions contained in its Statutory House Sales Scheme. The complainant explained to me that she had applied for a transfer from her previous home before she had achieved her sixtieth birthday and considered it was the fault of the Executive that she was over sixty when she commenced the tenancy of her present dwelling.

The Executive informed me the complainant was unable to purchase her dwelling, as it was a single storey property which was let to her when she was over 60 years old. The Executive's current statutory 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.

During the course of my investigation, I established that the complainant had been on the waiting list for a transfer for twelve months before she was offered the tenancy of her present dwelling. As her case was a non-urgent one, I consider this was not an unreasonable time for her to wait for a transfer. My detailed investigation of this complaint did not produce any evidence of maladministration in the Executive's handling and consideration of the complainant's application to purchase her dwelling. In particular, I was satisfied that in its consideration of the complainant's application to purchase her Executive owned dwelling, 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 10/02)**

Refusal of application to purchase dwelling

In a similar case to CC10/02, the complaint's nephew wrote to me about the Northern Ireland Housing Executive's (the Executive) refusal of his uncle's application to purchase his dwelling. He informed me that his uncle 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's nephew told me his uncle had to move from his previous residence under 'emergency' circumstances and he considered that his uncle'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.

Again under the Executive's current House Sales Scheme, made under the Housing (Northern Ireland) Order 1992, the complainant 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.

I was provided with evidence by the Executive that there had been no element of compulsion involved in the complainant's transfer. During the course of my investigation, I established that when the complainant applied for a transfer, it was on medical grounds because of his 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 uncle'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, with particular reference to its Statutory House Sales Scheme, referred to above, 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 116/02)**

Refusal of application to purchase dwelling

In this case, the complainant wrote to me about the Northern Ireland Housing Executive's (the Executive) refusal of her application to purchase her dwelling. She informed me that she had previously applied to purchase her dwelling and her application had been successful, but because of ill health she had been unable to complete the purchase. When she subsequently applied to purchase the property, she was informed by the Executive that her application could not be accepted due to the exclusion provisions contained in its Statutory House Sales Scheme. She was further informed that her previous application had been accepted in error. The complainant stated that she could not understand how such an error could occur.

The Executive's current House Sales Scheme, made under the Housing (Northern Ireland) Order 1992, prevented the complainant from purchasing her dwelling, as it was a single storey property which was let to her when she was over 60 years old. In the context of an earlier, similar type, complaint I learned that this exclusion provision had been upheld following a Judicial Review challenge.

During the course of my investigation, I established that the complainant had not been as well served by the Executive as she might have been. When she first applied for a transfer, she was living in unsatisfactory conditions. When she was eventually granted a transfer, it was to a two bedroom single storey dwelling which she was unable to purchase. Her expectations had been raised when the Executive accepted, in principle, her initial application to purchase her dwelling. Consequently, she suffered considerable disappointment when she was informed subsequently by the Executive that this acceptance had been an error on its part. Notwithstanding this administrative error, which did not result in a legally binding agreement having been entered into, I found the Executive's subsequent decision not to sell the dwelling to the complainant to have been clearly consistent with its stated policy, which is underpinned by primary legislation. Consequently, I could not regard the Executive's decision not to sell the dwelling as constituting an act of maladministration.

I am pleased to record that, in accordance with my recommendations, the Executive made the complainant a 'without prejudice' consolatory payment of £500 for the disappointment she suffered as a consequence of the administrative error referred to above. **(CC 159/01)**

Handling of application to purchase dwelling

In this case the complainant said that he had suffered injustice as a result of maladministration by the Northern Ireland Housing Executive (the Executive) through its handling of his application to buy his dwelling.

Although my investigation revealed that a longer period than normal had elapsed from the date of the complainant's application to purchase his dwelling (9 February 2001) to the date of final completion (13 October 2002), I accepted that the Executive did not have control of events over the entire period. Nevertheless, I considered that the failures and inactions on the part of the Executive and in particular the length of time taken to obtain necessary information regarding Improvement Costs, caused considerable delay to the issue of an offer to sell the dwelling to the complainant. A further delay occurred in the next stage of the house sale process, when a difficult title was compounded by the absence of the Title Officer from the office for a lengthy period.

By way of redress, I recommended that the Executive should apologise, in writing, to the complainant and issue a payment of £1000. This amount reflected some 20 weeks delay together with recognition that the complainant suffered frustration, worry, inconvenience and annoyance as a consequence of the failures and delay, referred to above, on the part of the Executive. **(CC 82/02)**

Refusal of application to purchase dwelling

In this case, the complainant was 63 years old when, in 1993, she became the tenant of a Northern Ireland Housing Executive (the Executive) owned two bedroomed bungalow, as a result of having a housing transfer granted by the Executive. The complainant said she had recently applied to the Executive to purchase the dwelling. However, she was informed that her application could not be accepted by the Executive due to the exclusion provisions contained in its Statutory House Sales Scheme.

The complainant said that, before occupying the bungalow, she had previously resided in a two storey, three bedroomed dwelling. She contended that she was not informed by the Executive of the impact that her acceptance of the tenancy of the bungalow would have on her right to buy her home. She further contended that had she been made aware that by moving to the bungalow her right to buy would be "restricted", she would not have given up her previous tenancy. The complainant was aggrieved that this failure on the part of the Executive had led to her being denied the right to purchase her home from the Executive with the benefit of a significant discount, this right having been available to her in her previous accommodation.

Under its Statutory House Sales Scheme (the Scheme), which took effect from May 1993, the Executive was required to offer for sale to its tenants the dwellings occupied by them with the exception of sheltered dwelling units and single storey property or ground floor accommodation with no more than two bedrooms which was let to a tenant, or to a predecessor in title of his, for occupation by a person who was aged 60 or more when the tenancy commenced. The purpose of these exclusions was to protect the Executive's stock of the types of dwellings concerned for the benefit of those aged 60 or more, who are more interested in renting their homes. I also established that the exclusion to the Scheme, which affected the complainant, had been the subject of a Judicial Review, primarily on the grounds that such an exclusion was arbitrary and perverse. The outcome of the Judicial Review process was that the Executive's policy was held generally to be not unreasonable.

I therefore found the Executive's decision not to sell the dwelling to the complainant to have been clearly consistent with its stated policy, which is underpinned by primary legislation. Consequently, I could not regard the Executive's decision as an act of maladministration.

However, I concluded, on the basis of all available evidence and on the strong balance of probability, that there was a failure on the part of the Executive to inform the complainant in December 1993, that she would be ineligible to purchase the bungalow if she moved to it from her former dwelling (in respect of which she had a right to buy). I found that, by its omission, the Executive had failed to discharge properly its overall duty of care to the complainant. I therefore concluded that this overall failure constituted unsatisfactory administrative practice on the part of the Executive.

In terms of redress, I recommended that the Executive, through its Chief Executive (CE), issued a letter of apology to the complainant and made a consolatory payment of £500 to the complainant in recognition of the failure and related injustice. I

am pleased to record that the CE accepted my recommendations regarding redress.

Finally, I decided, after the most careful consideration and evaluation of all the information and evidence established during my investigation, that it was not possible for me to conclude definitively, or even on the balance of probability, that the complainant would have (a) continued to reside in her former two storey dwelling and (b) subsequently proceeded to have purchased it from the Executive, even if she had been informed by the Executive, in December 1993, that she would be excluded from purchasing the bungalow. **(CC 150/00)**

Handling of application for Housing Benefit

The complainant was unhappy about the actions of the Northern Ireland Housing Executive (the Executive) in dealing with his application for Housing Benefit (HB). The complainant was adamant that he had submitted a valid application form for HB, but the Executive stated it did not receive this application form from the complainant. This resulted in the complainant not receiving any HB until 3 months later and then payment was made for the period commencing 2 months after the complainant's alleged application.

When the complainant made enquiries regarding his HB claim, he was informed by the Executive that confusion had been caused by notices which it (the Executive) had received from the Social Security Agency (SSA) regarding his benefit entitlement. The complainant informed me that he had found staff in his District Office of the Executive to have been less than helpful.

As a result of my investigation, the Chief Executive of the Executive (the CE) awarded the complainant HB from the date he alleged he first submitted an application. In his overall review of the complainant's papers, the CE also found two other periods when he was entitled to HB, which had been overlooked. He authorised payments for these periods. The CE also ensured that a procedural weakness regarding the recording of important telephone conversations with clients, which came to light in the course of this investigation, has been addressed and steps have been taken to minimise the risk of any recurrence of the problems that arose in this case.

In terms of redress, the CE agreed to make a consolatory payment of £400 and issue a letter of apology to the complainant in respect of frustration, disappointment and annoyance caused to the complainant as a consequence of the inadequate and unsatisfactory administration of his HB claim by the Executive, which my investigation established. The complainant regarded these measures as representing a satisfactory outcome to his complaint to me. **(CC 71/01)**

Handling and processing of claim for Housing Benefit

In this case, the complainant alleged that he had sustained injustice as a result of maladministration by the Northern Ireland Housing Executive (the Executive) regarding its overall handling and processing of his claim for Housing Benefit for the period 31 May to 1 November 1999.

In my examination of the Executive's processing of the above-mentioned period of claim, I noted that the Executive included details of VAT refunded to the complainant and treated this as income, for Housing Benefit assessment purposes. In this regard, the Executive told me that it applied the reverse of Regulation 31(8)(b)(i) of the Housing Benefit (General) Regulations (NI) 1987 (i.e., "for the avoidance of doubt a deduction shall be made thereunder in respect of the excess of any value added tax paid over value added tax received in the assessment period") and "added the excess back into the gross profit, as this appeared to be the logical interpretation of the regulation". I accepted that the circumstances of this case were unusual in that it seemed to be normal practice for the complainant to be returned more UK VAT than he paid out, on the basis that his main customers were VAT registered in the Republic of Ireland and therefore UK VAT was not chargeable. As the Executive's procedures did not cover this type of case, it had to make a discretionary decision. In the circumstances, I could not say that the discretionary decision, as detailed above, was so unreasonable that no reasonable person would have taken it. Nevertheless, I was pleased to note that the Executive subsequently reviewed its decision, on 9 October 2001, and decided to disregard the excess VAT repaid to the complainant, which resulted in an award of

Housing Benefit of £13.53 per week for the period 31 May to 1 November 1999. A payment of £297.66 was issued to the complainant on 5 November 2001.

By way of redress, for the annoyance experienced by the complainant, as well as the considerable time and effort he and his accountant had expended on the matter, I concluded that the complainant should receive a letter of apology from the Executive's Chief Executive, together with a consolatory payment of £200. The Executive accepted my recommendation. **(CC 116/01)**

Administrative handling and processing of Housing Benefit applications

This complaint concerned the manner in which the Northern Ireland Housing Executive (the Executive) dealt with and administered the complainant's Housing Benefit (HB) matters during periods between June 1999 and August 2001. The complainant was dissatisfied with delays by the Executive in processing his HB applications and about the non-payment of HB to his landlord during specific periods. In particular, the complainant said that, until early August 2001, the Executive was adamant that he wasn't entitled to HB for the period November 2000 to February 2001, even though he had provided the Executive with full details of his situation and income. The complainant said that when his landlord began threatening to terminate the lease, because of non-payment of HB, he wrote to the Executive informing it of this threat. He further said that, as he became increasingly concerned that his landlord would carry out his threat to evict him, he applied to the Executive for rehousing in July 2001.

The complainant said the Executive had recently informed him of its decision that benefit would be granted. However, although the complainant's landlord subsequently received full payment of HB for the period concerned, he had indicated his determination to proceed with the termination of the lease because of the lack of rental income in the subject period and because of an earlier problem with receiving HB from the Executive in respect of the complainant's tenancy.

The complainant said he regarded the Executive as being responsible for his being made homeless. The complainant also expressed his dissatisfaction with the Executive's efforts to meet his housing needs since his private sector tenancy was terminated.

The facts of this case led me clearly to the conclusion that the Executive's overall handling, processing and administration of the complainant's HB matters, during the periods under review in my investigation, were significantly flawed by maladministration. Consequently, I considered that the complainant was fully justified in complaining to me. In saying this I took into account difficulties I had identified which were caused by the unsatisfactory arrangements for the exchange of information between the Executive and the Social Security Agency (SSA), including delays on the part of the SSA in issuing notifications to the Executive in relation to the complainant's entitlement, or otherwise, to Social Security benefits.

As a consequence of this maladministration, I found there had been a clear failure on the part of the Executive to deliver to the complainant the standard of service its clients are entitled to expect and which the Executive normally strives to provide. I had no doubt that as a consequence of the maladministration and failures on the part of the Executive, the complainant suffered the injustice of considerable distress, disappointment, frustration, worry, annoyance and inconvenience, with particular reference to the termination of his former tenancy.

With regard to the complainant's claim that he regarded the Executive as being responsible for his being made homeless, I formed the view, that even if the HB payment delays and non payment did not constitute the sole reason for the tenancy termination decision, taken by the complainant's landlord, they were a particularly significant factor.

The question of redress always presents some difficulty. The objective is to put the aggrieved person in the position they would have been in had the maladministration not occurred. Clearly, that was very difficult in this case, given its overall background and circumstances. I recommended that the complainant should receive, by way of redress, a letter of apology from the Executive's Chief Executive (CE) together with a consolatory payment of £1,000. I am pleased to record that the CE accepted my recommendations.

Also, I considered it was incumbent on the Executive to treat the complainant's housing needs as urgent, with a view to having him rehoused at the earliest possible opportunity. I therefore also recommended that the Executive should regard the complainant as a priority housing applicant and that it should take all reasonable steps to meet his application for public sector housing, without reference to his points level. **(CC 60/01)**

Handling of an application for a transfer

The complainant was unhappy about the actions of the Northern Ireland Housing Executive (the Executive) in its handling of his application for a transfer from his then dwelling. When the complainant applied for a transfer, he was refused access to the waiting list, as he had been a tenant of his dwelling less than two years, this being a requirement for eligibility to be considered for a transfer. Due to subsequent evidence of mental health problems suffered by the complainant, the Executive, on reviewing his case, decided to waive that requirement.

The complainant complained that as he had been awarded what he considered to be a low number of points, he believed he would be on the waiting list for a long time. He stated that his mental health problems were being exacerbated by living in this area. He also considered that staff in the District Office (the DO) did not treat him in a satisfactory or courteous manner.

In the course of this investigation, I discovered that although the complainant had submitted medical evidence in support of his application for a transfer, it was not current. I advised the complainant of this and encouraged him to submit fresh medical evidence in support of his application. I did not find any definitive evidence to support the complainant's contention that staff in the DO had treated him in an unsatisfactory or discourteous manner. However, I am pleased to note that the DO, being aware of the need to provide a high standard of customer service, held a 'Business Away Day' where this was the focus of the seminar.

On the basis of an up to date medical report from medical professionals, the complainant was offered the tenancy of another dwelling which was situated in a more safe and secure area. The complainant regarded this as representing a satisfactory outcome to his complaint to me. **(CC 5/02)**

Sale of part of garden

The complainants were unhappy about the actions of the Northern Ireland Housing Executive (the Executive) in selling part of the garden of their (Executive owned) dwelling to a neighbour. When they accepted the tenancy of their dwelling, the complainants thought they were moving into a bungalow with a large garden which suited the needs of a disabled member of the family. They were familiar with the bungalow and so felt no need to view the property before accepting the tenancy. It was therefore a surprise when they discovered a neighbour had erected a fence which encroached considerably onto what they believed to have been the garden of their dwelling. The Executive informed me that it is normal practice for prospective tenants to inspect a property prior to accepting it and it was assumed in this case that the family had done so.

When the complainants complained to the Executive regarding the fence, the District Office (the DO) was unaware the piece of land had been sold and they were told by the DO that the neighbour would be required to move the fence. They were later informed that the property had been sold but a satisfactory party wall would be built. At the commencement of my investigation, this wall had not been built. My investigation established that when the complainants began their tenancy of the bungalow, it was the case that contracts had been signed and the neighbour was the legal owner of the above-mentioned piece of land.

As a result of my investigation, I established that the District Manager had had no objection to the sale of the land but had recommended that a party wall should be built. I also found that the DO had no documentary evidence of whether the complainants had been offered the opportunity to view the property before confirming their tenancy of it. I considered this a procedural weakness and the Executive has agreed to address this weakness. In addition, the overall facts/evidence produced by my investigation led me to conclude that the Executive's dealings with the complainants in September 2000 and during the period 24 April to

4 May 2001 had been flawed by maladministration. I found that as a consequence, the Executive had failed to discharge properly its responsibility, and its duty, to provide the complainants with the standard of service they were entitled to expect. As a result, they experienced disappointment, frustration and annoyance. I recommended that, through its Chief Executive, the Executive should apologise, in writing, to the complainants, make a consolatory payment of £200 to them and ensure that a party wall was built. **(CC 80/01)**

Refusal to erect fencing

In this case the complainant said she asked the Northern Ireland Housing Executive (the Executive) about the possibility of a fence being erected along the top of the front garden wall of her dwelling because teenagers sat on the wall, walked along it and generally disturbed her. She further said these youths had damaged her flowers and shrubbery, had thrown rubbish and bottles into her garden and had also thrown stones at the windows of her dwelling. The complainant believed that the youths concerned had been responsible for breaking glass in four windows of her dwelling. The Executive refused the complainant's request for fencing. The complainant told me she failed to understand why, particularly as the Executive had recently erected fencing along the front of a dwelling in a separate area of the estate.

Having investigated this complaint I found that the Executive, having considered the complainant's request and following inspections of the area concerned, was of the opinion that there was no need to erect a fence on top of the existing wall. With regard to the erection of fencing along the front of another tenant's dwelling in separate area of the estate, my investigation established that this measure had been undertaken not to deter vandalism, but to prevent people using the tenant's garden as a shortcut and also to provide protection as there is a drop to the pavement from this property which would constitute a public liability.

Having given the circumstances of this complaint very careful consideration, and as some 22 months had elapsed since the complainant submitted her initial request to the Executive regarding fencing, I asked the Chief Executive (CE) of the Executive to review the Executive's decision on the complainant's request and to let me know the outcome. In response, the CE told me that different officers had inspected the subject area at different times and all were in agreement that there was no evidence of vandalism in the area. The inspections had revealed that the gardens in the area were in full bloom and similarly, the bushes and plants within a walkway, adjacent to the complainant's dwelling, did not appear to be damaged or vandalised. I would add that the above also appeared to be the case when one of my officers viewed the area in the course of my investigation of this complaint.

The CE further said that the Executive had contacted the Police Service of Northern Ireland for their views on vandalism in this area and had been informed that the local police officers did not consider the area surrounding the complainant's dwelling to be prone to vandalism. The CE added that while he sympathised with the complainant's feelings of insecurity, there were a high number of elderly people living in all of the Executive's estates and should fencing be provided in this instance, there would be a compelling case for providing fencing throughout the District, which would prove extremely costly.

Overall, therefore, I was unable to uphold this complaint. However, I asked the CE to ensure that any future reports of vandalism etc that the Executive might receive from the complainant were investigated promptly and thoroughly by it with a view to determining whether the current decision on the provision of fencing continued to be appropriate. **(CC 138/01)**

Parking and activities of a mobile kitchen

The complainant wrote to me about the manner in which the Northern Ireland Housing Executive (the Executive) had dealt with his complaint regarding the parking and activities of a mobile kitchen (on the public roadway) outside his dwelling. He informed me that some two years ago a mobile chip van was brought into his street and parked outside his dwelling. He stated that the van did not trade in the street, but all the loading, unloading, refuelling and cleaning of it was being carried out from his neighbours' dwelling. He informed me that he was concerned about the possible safety hazard of large gas cylinders which

were being stored outside the dwelling adjacent to his and believed his neighbours were in breach of their obligations as tenants of Executive owned property.

In the course of my investigation, I established that the substantial actions complained of did not fall fully within the remit of the Executive. In submitting his complaint to me at the outset, the complainant also expressed his dissatisfaction with the Coleraine Borough Council (the Council)'s actions in response to his representations. I have also completed and reported on my investigation into the actions of the Council regarding the matters at the core of this complaint.

My detailed investigation of this complaint established that the Executive had sought legal advice regarding the obligations of the complainant's neighbours as tenants of Executive owned property and had followed the advice provided. I established that the Executive consulted closely, and to positive effect, with the Council, with particular reference to the gas cylinders, referred to above, in dealing with the matters raised by the complainant. Overall, I detected a clear willingness by the Executive to attend diligently to those aspects of the complaint which came within its remit. In the absence of any evidence of maladministration, therefore, there was no further action I could take on this complaint. At the conclusion of my investigation, I was pleased to be informed by the Executive that the owners of the mobile food unit had moved the vehicle and had stated that it would not be returned to park in the complainant's street. **(CC 25/02)**

Repairs to a boundary fence

The complainant wrote to me about the manner in which the Northern Ireland Housing Executive (the Executive) had dealt with his complaint regarding repairs to a boundary fence at his dwelling. When he reported a broken wire fence to the Executive and requested that it be replaced with a wooden one, his request was denied on the grounds that the repair was carried out as part of an External Cyclic Maintenance (ECM) scheme which states that an existing item can only be replaced on a like for like basis. He stated that he was aware of three dwellings in his area, in respect of which the Executive had removed wire fences and hedges and replaced them with wooden fences.

The Chief Executive of the Executive (CE) informed me that the complainant's house was included in a list of addresses for an ECM scheme and it is the Executive's policy to replace broken wire fences between gardens with 900mm concrete post and bull wire. The CE stated that in some cases, the Executive will provide timber fencing between gardens on the recommendation of, for example, an Occupational Therapist, where a tenant or member of the family has a specific need.

During the course of my investigation, I established that the Executive's policy and guidelines for boundary fencing stated that in low vulnerability areas, boundary treatment to public space should be timber and between properties should be timber fencing extending 3m from the dwelling and post and chain link fence for the remainder.

My detailed investigation of this complaint did not produce any evidence of maladministration in the Executive's handling and consideration of the complainant's request for timber fencing. 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 repairs. In addition, I was satisfied that the Executive had not exercised its discretion unreasonably. Consequently, in the absence of maladministration I did not uphold this complaint. **(CC 37/02)**

Valuation of property

The complainant said she applied to purchase her dwelling from the Northern Ireland Housing Executive (the Executive) in September 2001. The complainant stated that when an offer, based on a valuation of £60,000, was made to her by the Executive on 28 October 2001 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 £60,000. 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, including the dwelling adjacent to hers, the occupants of which 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 not been involved in the initial valuation exercise. 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 £60,000 in respect of her dwelling. 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. **(CC 109/02)**

Refusal of application for reimbursement of costs

The complainant wrote to me about the Northern Ireland Housing Executive's (the Executive) refusal of his application for reimbursement of the cost of installation of oil fired central heating (OFCH) in his dwelling. He informed me that he applied to the Executive to have OFCH installed in his dwelling as his wife and he both suffered from ill health and mobility difficulties. He stated that his application for OFCH was initially refused on the grounds that he did not meet the criteria but on appeal, he was referred to the Occupational Therapy Department (OTD) for assessment.

The complainant stated that the OTD informed him that he would receive a change of heating at no cost to himself, as part of a Multi Element Improvement Scheme carried out by the Executive. He was later informed that as this information was in fact erroneous he was reinstated on the waiting list for an appointment with the OTD and was likely to be on the waiting list in excess of one year. The complainant informed me that due to his wife's and his disability he felt unable to wait for an OTD appointment and arranged to have OFCH installed at his own expense. He informed me that when he enquired of the Executive about the possibility of proceeding on this basis, he was given a form to complete and had the new heating system inspected by the Executive after installation. He stated that on enquiry regarding a possible reimbursement of the cost of installation of OFCH, he was informed by an officer of the Executive that there shouldn't be a problem with that.

My detailed investigation revealed that this case suffered from lengthy delays both in being referred to OTD and receiving an appointment for assessment by OTD. It also became apparent, in the course of my investigation, that the Executive had neglected to record some details of visits with the complainant and hence it was difficult to determine what transpired during those visits. I recommended that the Executive offer the complainant £1000 in recognition of the distress and disappointment he suffered and that staff within the Executive be encouraged to record details of visits and telephone calls. I am pleased to record that the Executive accepted my recommendations. **(CC 142/01)**

Delay in processing application for Disabled Facilities Grant

The complainant alleged that, as a consequence of the time taken by the Northern Ireland Housing Executive (the Executive) to process an enquiry and subsequent application for Disabled Facilities Grant (DFG), her late mother, who died on 28 September 2001, was denied the use of her own bedroom and proper washing and toilet facilities, in relation to the period following her discharge from hospital in November 2000. It is the situation that

to facilitate an enquiry for DFG, the Executive must liaise with the Health and Social Services Trust (the Trust) which is responsible for assessing the housing adaptations needs of the person with the disability, in order to assess the priority of the case and also to inform the appropriate recommendations in relation to the adaptations considered necessary.

Following the most careful consideration of, and reflection on, all of the facts, circumstances and issues which emerged during my detailed investigation of this complaint, I could not say, apart from the error of writing to 'Shelter' on 15 December 2000 to request revised sketch plans, that the Executive had failed to meet its published Standards of Service for processing DFGs. While I was not without understanding of why the complainant felt there had been periods of delay/inactivity in processing the DFG enquiry and subsequent application, I had to accept that each of the eight steps in processing a DFG case was free-standing. It is the position that the Executive must be satisfied that any proposed scheme, including enhancements, meets the Occupational Therapist's recommendation(s) and, in terms of value for money, against a background of many competing demands on finite resources, is the most cost effective option. Overall, therefore, I did not find that the actions, or inactions, of the Executive caused the complainant's mother to suffer an injustice arising out of maladministration. Unfortunately, when the complainant's mother died on 28 September 2001, the housing adaptation needs, relevant to her disability, no longer existed.

However, and notwithstanding the above, the Executive offered the family a payment of £1,078.90 to meet the costs of the excavation works that had been carried out prior to their mother's death. I recommended that they should avail of this "goodwill gesture" on the part of the Executive. I also recommended that the Executive should consider the possibility of "fast tracking" any Occupational Therapist priority referrals for disabled facilities grant aid. The Executive agreed to take this recommendation forward in consultation with the Health and Social Services Trusts. **(CC 129/01)**

Serving of a Closing Order

The complainant alleged that, as a consequence of the Northern Ireland Housing Executive's (the Executive) "unlawful" decision, in August 2000, to serve a Closing Order on his dwelling, his landlord may use this as a means to have him and his family evicted from the home in which they have lived for more than 30 years.

From my examination of all the evidence presented to me, it was clear that the Executive had a statutory duty to take action to remedy the complainant's dwelling, which, on two occasions, had been deemed by the relevant District to be unfit for human habitation. It is the situation that when an unfit property has been identified, the Executive is required to satisfy itself that the course of action chosen is the most satisfactory one for dealing with that property. The responsibility for determining the "most satisfactory course of action", in relation to unfit properties, therefore lies with the Executive. Basically, the Executive had a choice between serving a Closing Order on the dwelling or issuing a Repair Notice to the landlord. Although the Executive was aware of the complainant's wishes to have the dwelling repaired, it "felt that there would be difficulties in implementing any Repair Notice, given the landlord's obvious reluctance to pursue grant aid at that time". In the circumstances, I did not conclude that the Executive's discretionary decision to serve a Closing Order, as opposed to a Repair Notice, on the complainant's dwelling had amounted to maladministration. Overall, I was satisfied that the Executive had managed this case in accordance with its policy and the underpinning legislation on the provision of dealing with a property that has been deemed to be unfit for human habitation. While I had no doubt that the possibility of loss of tenancy was a genuine matter of concern for the complainant and his family, it would be a matter for the courts to decide whether vacant possession should be granted to the landlord, in the event of such vacant possession being sought. Also, in such circumstances, the complainant would be entitled to apply to the Executive to be rehoused. Overall, therefore, I did not uphold the complaint. **(CC 134/01)**

Replacement Grant Aid

In this case the complainant alleged that, as a consequence of the Northern Ireland Housing Executive's (the Executive) failure/neglect to inform him, or provide him with information, about the 2 year occupancy rule for Replacement Grant aid, he submitted a preliminary enquiry form (PEF), dated 13 September 2000, to the Executive and was subsequently informed, by letter dated 20 March 2001, that "in the absence of any change of circumstances, any statutory application is unlikely to be successful".

Following the most careful consideration of, and reflection on, all of the facts, circumstances and issues which emerged during my detailed investigation of this complaint, I concluded that the Executive's handling of the complainant's enquiry for grant aid, particularly in relation to its dealings with his brother in (early) September 2000, had been affected by a degree of maladministration. I found, albeit on the balance of probability, that the complainant had not been provided with sufficient information and therefore had been denied the opportunity to make a properly informed decision on when to submit a PEF. The complainant gave me firm evidence that he would not have completed a PEF in September 2000 had he known, or been made aware, of the two year occupancy criterion for Replacement Grant aid. I had no reason to doubt the complainant's clear evidence to this effect.

By way of redress, I am pleased to record that the Executive responded positively to my concerns and decided that consideration of any Replacement Grant aid application submitted by the complainant should be taken forward, albeit on an extra statutory basis. I considered the redress offered by the Executive to be fair and reasonable in the particular circumstances of this case and recommended that the complainant should proceed promptly to avail of the above offer. I am also pleased to record that the Executive accepted my recommendation to amend its leaflet/Website on Replacement Grant aid, with a view to eliminating the procedural weakness which came to light during my investigation and which, in my view, contributed to the substance of this complaint. **(CC 157/01)**

Refusal to include dwelling in multi-element improvement scheme

This complaint was that, although a multi-element improvement scheme (the Scheme) was currently being undertaken by the Northern Ireland Housing Executive (the Executive) involving most of the dwellings in the area in which the complainant lives, the Executive had refused to include her dwelling in the Scheme. The complainant was also concerned that her rent was substantially higher that the rent which the Executive was charging a neighbouring tenant for her dwelling. The complainant said she considered it was very unfair that a tenant who pays less rent has not only a bigger house but one which would be fully improved under the Scheme.

In considering complaints about the provision of public services my role is to examine the way the process was administered and to ensure that the statutory body concerned has dealt with the matter in a way that is consistent with its procedures and policies. Where the exercise of discretion is involved I look to see if, in my view, this has been exercised reasonably and without maladministration.

Having investigated this complaint, I established that the Executive's policy when organising improvement schemes is to start with the oldest dwellings in the District concerned and work forward. In this case, the dwellings which were benefiting from improvements under the Scheme were built in the period up to 1970. A remaining 7 dwellings excluded from the Scheme, including that occupied by the complainant, were constructed after 1970. I therefore found that the Executive had dealt with the improvements to its dwellings in the estate concerned in accordance with its policy, which in turn is tailored to the availability of financial resources. In these circumstances, I was unable to uphold the main substance of this complaint.

However, I noted that the complainant was concerned about the condition of the wiring in her dwelling. It was my view that these concerns had not been adequately addressed by the Executive and that the complainant was entitled to have her concern alleviated. Consequently, I recommended to the Chief Executive that the Executive should arrange to have the wiring in the complainant's

dwelling checked thoroughly as soon as possible and any defects attended to. I am pleased to record that, as a result, the Executive arranged for a full electrical inspection to be completed as soon as possible.

My investigation also established that the Executive calculates rents payable on its properties in accordance with its rent scheme, under which points are awarded for a range of facilities and amenities within the dwelling concerned. I found that, due to a number of factors, such as year of construction, kitchen facilities and lack of central heating, a larger property can actually attract fewer points and would therefore have a lower rent charge. Consequently, in the absence of evidence of maladministration, I did not uphold the complaint. **(CC 110/02)**

Refusal to take action regarding breach of tenancy agreement

The complaint was that a neighbour had erected a high wall, between his Northern Ireland Housing Executive (the Executive) owned dwelling and the complainant's property. The complainant said that, although the wall had been built by her neighbour without the Executive's permission and, therefore, was in breach of his tenancy agreement, the Executive had decided to take no action in relation to this breach.

I found the Executive had established that, of the 14-15 houses in the street concerned, approx. 7-8 of the householders, including the complainant, had erected walls or fences without its permission. In the light of this the Executive had decided, having taken legal advice, that it would be impracticable for it to take action against all tenants and owner-occupiers for this category of breach of tenancy agreements or leases.

I do not have authority to question a discretionary decision, taken by a public body, without maladministration and I considered that the actions of the Executive in this case did not constitute maladministration. The Executive's decision not to initiate legal action was a clear matter of discretion which was reached after examination of relevant information, with particular reference to the legal advice it had been provided with. As such it was not open to me to question the merits of it. Consequently I did not uphold this complaint. **(CC 133/01)**

Continuing poor repair condition of dwelling

As a result of my investigation of an earlier complaint regarding the poor repair condition of the complainant's dwelling, the Northern Ireland Housing Executive (the Executive) included the dwelling in a multi-element improvement scheme (the Scheme) due on site in March 2002. Also, the Executive had given an undertaking to explore with the Scheme contractor, when appointed, the practicability of carrying out the improvements to the complainant's dwelling as early in the Scheme as possible. The complainant said that, despite this undertaking, given almost a year earlier, no work had been carried out to his dwelling. He further said the Executive had recently informed him that the improvements to his dwelling may not be completed for a further period of 12 to 18 months. He asked me to investigate.

I found that the Executive had fulfilled its undertaking. However, the contractor was unable to facilitate the Executive's request for several reasons, none of which I considered to be unreasonable. I further found that, although the Executive had attempted to undertake exterior repairs/improvements to the complainant's dwelling, as an interim measure, he had refused to allow this work to proceed pending the commencement of full improvement works.

In the absence of any maladministration on the part of the Executive I did not uphold this particular complaint. However, I strongly urged the complainant to reconsider his decision not to allow the Executive to proceed with the interim exterior repairs/improvements to his dwelling, referred to above. **(CC 133/02)**

Failure to rehouse following vesting

The complainants' current dwelling was vested by the Northern Ireland Housing Executive (the Executive), in January 2001, as part of a housing redevelopment area. They said they were informed by Executive staff that they could apply to the Executive for rehousing and, provided the dwelling allocated to them had been owned by the Executive for more than 8 years, they could apply to purchase it and would be entitled to a discount in purchase price.

The complainants applied to the Executive for rehousing and were awarded 60 points on the waiting list and also management transfer status. They said they had been informed by Executive staff that, as a result of their property being vested, they would be rehoused on the basis of their management transfer status rather than their points award. However, they said that when they contacted the Executive about a number of suitable vacant properties, they were informed that their points total of 60 was relatively low and, because allocations were based on points, that their management transfer status meant very little.

The complainants were concerned that they had not yet been rehoused and also about proposed changes in the Executive's House Sales Scheme which, if adopted, were likely to affect both their eligibility to purchase an Executive owned dwelling and their discount entitlement.

Having investigated this complaint, I established that the Executive has discretion, under the provisions of its Housing Selection Scheme (HSS), to award Management Transfer status to enable it to rehouse existing tenants or accommodate new applicants for housing without reference to their points level, in certain circumstances, including facilitating ongoing development. However, the applicant concerned would continue to be assessed and pointed in the same manner as all other transfer cases. I also established that, under the HSS, the general guideline in housing applications involving a dwelling that has been vested is that applicants can be rehoused only after their present accommodation comes into public ownership and generally only when the Executive required vacant possession. The critical date for possession by the Executive of the complainants' dwelling was mid-2003.

However, I was pleased to be informed by the Executive, in the course of my investigation, that, in addition to their points level, it was giving maximum consideration to the complainants' housing application as management transfer category applicants.

With regard to the possible changes to the Executive's House Sales Scheme, I found that these were under consideration by the Executive and that no definitive conclusions had been reached, or decisions taken. Against this background, it was not possible for me to make a finding on this element of the complaint.

Whilst I recognised the difficult situation in which the complainants found themselves, the facts and circumstances of the case did not lead me to conclude that the Executive had been guilty of maladministration. Consequently, I did not uphold this complaint**. (CC 141/01)**

Delay in being rehoused

In this case, the complainant said she applied to the Northern Ireland Housing Executive (the Executive) for rehousing in January 2000 because she felt threatened and afraid in her current dwelling, stemming from incidents of intimidation, and was awarded PT2 priority status. The complainant stated that, although she had reported to Executive staff all the incidents that had occurred, she had not reported these to the police, in case of possible further retaliation. She further said she had provided medical evidence to the Executive about the effects which the incidents were having on her health and that of her daughter. However, she felt that the Executive had not taken account of these.

My investigation established that the complainant was awarded PT2 priority transfer status, on health/social grounds, with effect from 9 March 2000. In November 2000, the Executive introduced the current Housing Selection Scheme (HSS) under which the PT priority category was replaced with a points based assessment, designed to ensure that those in greatest need are awarded the highest level of points and, therefore, appear highest on the waiting list for housing. My investigation also established that the current HSS includes a new health and social well being section which means that it is no longer necessary for cases involving those applicants seeking to be housed/rehoused on medical grounds, to be referred by the Executive to an independent medical officer for a recommendation regarding an award of priority status. My investigation established that when the complainant was assessed under the terms and conditions of the new HSS she was awarded 12 points on the waiting list to reflect her circumstances.

I noted that the Executive's policy, in those housing cases in which the applicant alleges intimidation,

requires it to contact the police in order to obtain advice/verification of specific incidents of intimidation. I further noted that the Executive had not contacted the police to obtain advice/verification of the complainant's claims of intimidation because her failure to report any relevant incidents to the police means that verification could not be provided. I did not find this unreasonable.

In making her complaint to me, the complainant provided further medical evidence regarding the effects which difficulties with neighbouring tenants were having on her daughter. I arranged for a copy of that medical report to be forwarded to the Executive. I was pleased to note that, as a result, the Executive re-assessed the complainant's housing application and increased, from 12 to 92, her points award. This significant increase in points will improve considerably the complainant's chances of rehousing.

Overall, based on the evidence available, I found no evidence of maladministration by the Executive in its handling and processing of the matters complained of. Consequently, I did not uphold the complaint. **(CC 16/02)**

Processing of housing application

The complainant said she applied to the Northern Ireland Housing Executive (the Executive) for housing in February 1999. She was awarded A1 priority status for rehousing in January 2000 but this status was subsequently removed in October 2000. The complainant said she had constantly contested the Executive's decision to remove her priority status. She further said she re-applied for accommodation during 2001 and was disappointed when she was allocated only 62 points, which she regarded as being totally unfair.

Having investigated this complaint I established that the complainant was living in her mother's dwelling in February 1999 when she applied for housing. In December 1999, the complainant presented to the Executive as homeless, citing a breakdown in the sharing arrangements with her mother. She was placed in temporary accommodation by the Executive which subsequently determined that she was unintentionally homeless and in priority need. She was therefore registered on the Executive's waiting list for accommodation, with A1 priority status.

My investigation established that, in June 2000, the Executive became aware that the complainant and her children were again living with the complainant's mother. I found that, upon investigation carried out by the Executive and based on all the evidence available to it at that time, the Executive decided to remove the complainant's priority status. In all the circumstances I did not find this decision to have been unreasonable.

My investigation further established that, although the complainant was informed, in August 2000, of the Executive's decision to remove her A1 status and of her right of appeal against this decision, it was not until May 2001 that she took steps to appeal the decision. I therefore did not uphold that element of the complaint that the complainant had constantly contested the Executive's decision to remove her priority status.

I further found that, following re-assessment, the complainant was awarded points on the waiting list but that her housing application was subsequently withdrawn. I established that the Executive's policy in relation to the Housing Selection Scheme (HSS) required all applications for housing, which were pending at 1 November 2000, to be assessed and ranked under this Scheme, regardless of whether they had been assessed and/or ranked under any other Scheme. I found that, although she had been visited by an Executive official to enable her application to be re-assessed, the complainant informed the officer concerned that she intended to appeal the decision to remove her priority status and she did not consider it appropriate for her housing application to be assessed on the basis of the accommodation available in her mother's dwelling. I further found that the Executive then decided to regard the complainant's application as having been withdrawn.

My investigation established that the decision to withdraw the complainant's application was not in accordance with the Executive's policy in relation to the HSS. I therefore regarded the decision as representing maladministration, which warranted criticism on my part. My investigation further established that the complainant was not notified until 8 months later of the decision to regard her housing application as having been withdrawn, with the result that her name was removed from the

waiting list for accommodation. I regarded this failure by the Executive to inform housing applicants of decisions taken which affect them so significantly as representing unacceptable administrative practice.

On the basis of an examination of the Executive's file records of the offers of properties made, I found that the complainant did not have a sufficiently high points award to enable her to be considered for any suitable properties which became available for allocation during the relevant period. I was therefore satisfied that the complainant was not disadvantaged by the fact that her application had been withdrawn.

Although I did not uphold a number of elements of this complaint, I concluded that elements of the Executive's handling and processing of the complainant's housing application were flawed by unsatisfactory administration. In terms of redress, I recommended that the Executive, through its Chief Executive (CE), should issue a written apology to the complainant. I was pleased to record that the CE accepted my recommendation. **(CC 111/01)**

Refusal to install double glazing

In this case, the complainant said that, in the course of converting the solid fuel heating in his dwelling to an oil fired system, the Northern Ireland Housing Executive (the Executive) removed the fireplace, and replaced it with an electric fire which he considered too expensive to burn continuously. The complainant also referred to the size of the window in his living room which, he contended, the Executive did not take into account when it arranged the change of heating in his dwelling. Also, he said that draughts from both the window and the living room door resulted in his having varying temperatures in different parts of the room. The complainant had asked the Executive to install double glazing in the north facing windows of his dwelling and he was aggrieved that his request had been refused.

Having investigated this complaint, I was satisfied that the complainant had been consulted appropriately by the Executive regarding the proposed change of heating system and, like all of his neighbours, he had opted for oil fired heating. I established that oil fired central heating, when installed by the Executive in its dwellings, is regarded as the prime source of heat for the property. I found that it is the Executive's policy also to install an electric fire to serve as both a decorative focal point in the living room and as an alternative heat source in the event of a failure in the central heating system. My investigation also established that a solid fuel/oil fired heating link up system is not one which the Executive approves of for safety reasons. I considered the Executive's decision with regard to approving, and therefore allowing, such a link up heating system in its dwellings as being of a technical nature involving the professional judgement of its staff. I do not have authority to question the merits of such technical/professional decisions, nor am I qualified to substitute my judgement for that of professional/technical staff.

I further found that the Executive had taken reasonable action in responding to representations made by the complainant arising from the new form of heating in his dwelling, including arranging for an outside specialist firm to visit the complainant in order to provide him with both operational and energy efficiency advice.

In relation to the core issue of this complaint, I established that, under its normal maintenance policy and procedures, the Executive could not upgrade single glazing to double glazing and that this would require to be undertaken as part of a planned improvement scheme in which windows requiring replacement would be replaced by double glazed units. I noted that the complainant's dwelling had been identified by the Executive for inclusion in a Multi-Element Improvement Scheme, planned to commence in April 2004, subject to the availability of finance. I further noted that window replacement is generally included within such Schemes.

Consequently, in the absence of evidence of maladministration, I did not uphold the complaint. **(CC 154/02)**

Processing of an application for housing

This complaint concerned the length of time the complainant regarded her name as having been on the Northern Ireland Housing Executive's (the Executive) waiting list for accommodation. In this respect, the Executive informed the complainant

that she was being considered for re-housing on the basis of her application which had been registered on 25 March 1999. However, the complainant considered that her points allocation should have been based on her need, in July 1996, to terminate the tenancy of her dwelling, whilst she was staying in temporary accommodation provided for her by the Executive. The complainant said that her name had been on the Executive's waiting list for accommodation for a number of years but she considered she was entitled to a priority transfer.

The complainant further said she had rented private sector accommodation since 1998, pending receipt of an offer of alternative suitable accommodation from the Executive. She stated that, although this rented accommodation was not permanent housing, the Executive regarded it as settled accommodation. The complainant said she had been given notice to quit her private sector accommodation because the property was in the process of being sold.

Having investigated this complaint, I found that the complainant's file in respect of her tenancy and her housing application from her previous Executive owned accommodation were not available, having been destroyed by the Executive because they were outside the retention period of 2 years. However, my investigation revealed that, under its records retention policy, the Executive is required to retain tenant files for the period of the tenancy and for 6 years after the tenancy terminates. The Executive should therefore have still retained the relevant file records of the complainant's previous tenancy.

Due to the unavailability of file records relating to the termination of the complainant's earlier Executive tenancy, it was impossible for me to establish the actions taken on her case by the Executive during that time or to comment on the complainant's contention that she should have been offered alternative accommodation on a priority basis when she left/terminated the tenancy of the dwelling. I noted, however, that the records, which remained available to the Executive concerning the period in question, indicated that the complainant was not awarded priority status when she presented to the Executive in November 1995 as homeless.

My investigation established that the complainant had been given notice to quit her accommodation because the property was placed on the market for sale. I noted that, in response, the Executive had placed the complainant in temporary accommodation and had subsequently accepted her as a full duty applicant under its homeless legislation. I also noted that the complainant had been awarded 114 points on the waiting list for accommodation.

With regard to the complainant's housing application of March 1999, my investigation established that the complainant was, at that time, residing in private sector accommodation as a sub-tenant and that the Executive awarded her 35 points on the waiting list. On the grounds that the complainant's landlord was consenting to her occupation of her private sector accommodation, the Executive did not deem the complainant to be homeless. I did not find this view to be unreasonable.

I concluded that my investigation of the complainant's full complaint to me was hampered to a very large extent by the premature destruction by the Executive of its file records relating to her earlier Executive tenancy. I regarded the early action taken in this regard as unsatisfactory administrative practice, for which I criticised the Executive. In order to help ensure that records are not destroyed prematurely, I asked the Executive's Chief Executive to draw to the attention of staff the Executive's policy with regard to the length of time records should be retained.

Having examined carefully the other grounds of this complaint, I found no prima facie evidence of maladministration by the Executive in its dealings with the complainant regarding her 1999 application for housing. Consequently, I did not uphold the complaint. **(CC 18/02)**

Excluded from a promotion opportunity

An officer of the Northern Ireland Housing Executive (the Executive) complained that he had been disadvantaged in relation to a promotion opportunity by being wrongly excluded from the boarding competition, that he had not been afforded equality of treatment and that the Executive had not correctly applied and

implemented the appropriate appointments and promotion guidelines.

My investigation of this case included direct enquiry to the Chief Executive of the Executive, and to the Northern Ireland Public Service Alliance (NIPSA). Interviews were conducted with the complainant and with appropriate staff from the Personnel section of the Executive. I obtained and examined the Appointments and Promotions Procedures guidelines used by the Executive, with particular reference to those sections dealing with eligibility criteria. I obtained NIPSA's views on the agreed interpretation of eligibility criteria.

Whilst I understood the basis of the complainant's grievances, I concluded that the Executive had acted reasonably and properly in refusing the complainant's application to the promotion competition. After careful examination of all the facts of the case I was persuaded that the Executive had correctly interpreted and applied its Appointments and Promotions Procedures and that it had acted at all times within its discretionary authority. I, therefore, did not uphold the complaint. **(CC 47/01)**

Handling of several matters concerning a dwelling and subsequent reports/complaints about these matters

In this case the complainant was aggrieved at the Northern Ireland Housing Executive's (the Executive) response to his complaint about excessive water run-off, either from a lane or a section of his garden that had recently been re-seeded, into the ground at the rear of his dwelling. The complainant said he was informed by the Executive that, after investigation, there was no evidence to suggest that rainwater was running from the lane. He said he was further informed that there was a certain amount of seepage from the re-seeded garden area, which had probably occurred after exceptionally heavy rain which had fallen on the relatively bare area. The complainant was dissatisfied with the Executive's assurance that the problem would cease when the grass sward was established.

The complainant said he also made representations to the Executive about two trees on the boundary of his dwelling. The complainant said he considered that the trees were too close to his dwelling, they had been killed by ivy and, "sooner or later", they would fall on the roof of his dwelling. Although informed by the Executive that the trees would be pruned back, the complainant was dissatisfied because he wished to have the trees removed.

The complainant said he was annoyed and disappointed at the way in which his complaints about the matters, referred to above, had been investigated/dealt with by the Executive.

Having investigated this complaint, I found that, when the complainant first reported excessive water run-off into the ground at the rear of his dwelling, the Executive had examined the layout of the complainant's dwelling and the arrangements for the disposal of storm water and was satisfied that the provision for storm drainage at the property met its normal standard. I also found that although the Executive had been prepared to install a French drain at the edge of the back garden of the complainant's dwelling to assist with drainage of water off the garden, the complainant had refused this. I further found that the complainant had asked the Executive to concrete the entire rear garden of his dwelling and, when that request was refused, to provide sub-surface drains across the entire rear garden area and to direct the water into an adjacent garden belonging to his neighbour. I noted that the latter request was refused by the Executive on the grounds that it would not be ethical, or indeed legal, to engage in such practice.

On the basis of the evidence available to me, I was satisfied that the Executive had taken reasonable action in responding to this particular element of the complaint. Also, I did not find the Executive's response to the complainant's requests that his rear garden should be concreted or that sub-surface drains should be installed across the entire rear garden area to have been unreasonable. In all the circumstances, therefore, I was unable to uphold this element of the complaint.

With regard to the trees on the boundary of the complainant's dwelling, my investigation established that, in the opinion of the Executive's technical staff, the condition of the trees did not warrant their removal. The decision as to whether or not trees are in a dangerous condition is one that required a technical judgement, the merits of which

I have no authority to question. However, on the basis of the evidence available to me, I was satisfied that the Executive had taken reasonable action in responding to this particular element of the complaint. I was pleased to note, however, that the Executive had undertaken to cut the trees down to the level of the hedge and I hoped that this measure would alleviate the complainant's fears about the possibility of the trees falling on the roof of his home.

In the absence of any evidence of maladministration on the part of the Executive I did not uphold this particular complaint. **(CC 53/02)**

Refusal to reimburse architects and statutory fees

The complainant said that, having applied to the Northern Ireland Housing Executive (the Executive), in January 1999, for grant aid to replace her dwelling, his mother employed an architect to draw up the necessary plans and sought planning approval for the replacement dwelling. The complainant stated that his mother became ill, was hospitalised and her physical and mental condition deteriorated to the extent that, in December 2001, she was placed in a nursing home where she had remained since. The complainant said, the Executive decided, in February 2002, to withdraw his mother's grant approval on the grounds that she no longer lived in the property that was the subject of the application.

The complainant stated that when he sought reimbursement from the Executive of a sum of £1,197.50, incurred by his mother on architects and statutory fees in respect of the proposed replacement dwelling, he was informed by the Executive that it had no legislative authority to pay grant for ancillary charges and services in a case which did not progress to approval stage. The complainant was dissatisfied with this decision on the grounds that his mother had incurred the expense only to comply with the Executive's requirements following her grant application and, as the grant approval had been withdrawn, his mother's outlay was wasted as neither the design work nor the planning approval were of any value to her.

Having investigated this complaint, I established that the decision to proceed further, or not, with any grant enquiry rests with the applicant; the Executive can only provide financial assistance through the grant aid scheme. I found that, if an applicant decided that they wished to proceed with their grant aid enquiry it would be necessary that they obtained Planning Service approval, and other appropriate statutory approvals, to their plans, as with any building scheme.

Although there had been a delay in the grant process in the period November 1999 to December 2001, I found that this was primarily, if not entirely, attributable to the architect employed by the complainant's mother.

I further established that, under the terms of its legislation, the Executive does not have authority to pay grant aid for ancillary charges and services when a grant application cannot progress to approval stage and therefore the relevant work cannot be completed. Also, I found that the Executive has no statutory discretion to pay the fees incurred.

In all the circumstances of this case, and having regard to the terms of the relevant legislation, I found that the Executive had not acted incorrectly or unreasonably, in refusing to pay the professional and statutory fees concerned. In the absence of any maladministration on the part of the Executive I did not uphold this particular complaint. **(CC 107/02)**

SPORTS COUNCIL

Tendering process

The complainant wrote to me about the manner in which the Sports Council for Northern Ireland (the Council) dealt with his complaint regarding the tendering process for resurfacing of tennis courts at a Boat Club. The resurfacing work was being funded by the Council's Lottery Fund. The complainant considered that the tendering period was totally inadequate and specifications in the tender document were such that an open and equal tender situation, as is required of recipients of Lottery Funding, did not exist. The complainant also considered that the Council did not conduct a

thorough and proper investigation into his complaint to it.

I established that the substance of the complaint lay against the Boat Club and its agents and the role of the Council was limited in this case. Hence, the substantial actions complained of were not those of a public body within the jurisdiction of my Office nor were they the actions of a direct agent of that body.

In its investigation of the complaint, submitted to it by the complainant, I established that the Council had conducted a thorough examination of the issues raised by the complainant. Overall, I was satisfied that his complaint was treated seriously and I did not find any evidence of maladministration on the part of the Council in its handling and processing of the complaint. There was therefore no further action I could take on this complaint. **(CC 83/02)**

TOURIST BOARD

Inequality of treatment in relation to a business

The complainant in this case alleged inequality of treatment and unfairness by the NI Tourist Board (NITB) in relation to his business as the proprietor of a guesthouse. He stated that the description of the facilities in his property had been inaccurately described and understated in two separate NITB brochures which may have resulted in a loss of bookings. He further stated he was dissatisfied with the NITB's response to his complaint, pointing out that it did not have an established complaints procedure.

My investigation identified that while there was an internal method within the NITB for dealing with various types of complaint, nevertheless there was no established complaints procedure in existence. However, I was satisfied that the NITB was actively pursing this matter and it had given an undertaking to have a published complaints procedure in place by spring 2002. With regard to the other issue of the complaint, the NITB confirmed that the complainant's property had been inaccurately described in one of its brochures but that a correction notice had subsequently been inserted into the publication. The complainant was unconvinced that this had occurred. I was critical of the time taken by the NITB to respond to his request for a copy of the correction notice but I was unable to make a finding on the matter of publication of the correction notice. In addition, I did not uphold the complaint that the facilities in the complainant's guesthouse were inaccurately described in a further NITB publication.

My investigation also established that the complainant had made several requests for booking allocation figures from the NITB because he believed that his guesthouse had not received equal treatment. I noted that while the NITB replied to the complainant's numerous written enquiries on other issues it did not respond to his request for booking information. I further noted that it was only as a result of receiving my notice of investigation which prompted the NITB to seek legal advice in connection with the complainant's request. I considered this to be poor administrative practice. I obtained and carefully examined the booking allocation which had been requested by the complainant and I concluded that it did not support the complainant's contention that his guesthouse had suffered inequitable treatment. Consequently, I did not uphold this aspect of the complaint. I did, however, identify a number of administrative failings by the NITB which amounted to maladministration. I recommended and the Chief Executive of the NITB agreed to issue a letter of apology to the complainant. **(CC 157/00)**

Section Three
Appendices

Appendix A

Summaries of Registered Cases Settled

Northern Ireland Housing Executive (CC 72/01)

This complaint related to the Executive's handling of work carried out to the complainant's home and his application to purchase the property. In the course of my investigation of this complaint the Executive's Chief Executive wrote to me with the Executive's proposals for a settlement of the case. The Executive offered to sell the property to the complainant at its original market value less a discount of 59%. In addition they offered the complainant the sum of £3,529, being the assessed value of the outstanding works, to allow him to complete the works in his own time and to his own satisfaction. I regarded these proposals as a fair settlement of the case and, following the complainant's acceptance of them, I decided to take no further action on this complaint.

Northern Ireland Housing Executive (CC 128/01)

I received a complaint about the Executive's refusal to change the form of heating in the complainants' house. During the course of my investigation the Executive informed me that it intended to change the complainants' existing roomheaters to a gas heating system in September 2002. The Executive also conveyed this information to the complainants who subsequently informed me that they regarded this as a satisfactory resolution of the matter. As both I and the complainants were satisfied that the complaint had been resolved I decided to take no further action on this case.

Northern Ireland Housing Executive (CC 4/02)

A gentleman complained that he had been on the Executive's waiting list since 1989 but had not been rehoused. Having made initial enquiries of the Executive in relation to this matter, I was informed that the complainant had accepted the tenancy of alternative accommodation. This offer was made in exercise of the Executive's discretion in such matters. In view of this satisfactory resolution of the complaint I decided to take no further action on this matter.

Northern Ireland Housing Executive (CC 7/02)

The complainant in this case was dissatisfied with delays in repairs to her home. Following receipt of this complaint I arranged for informal enquiries to be made of the Executive. In addition I passed the complainant's list of outstanding repairs to the relevant Executive District Maintenance Officer (DMO). As a result the DMO called with the complainant, inspected the property and subsequently arranged for the necessary repairs to be carried out. I understand that the complainant was delighted with the completed works. In view of this satisfactory resolution of the complaint I decided to take no further action on this matter.

Northern Ireland Housing Executive (CC 22/02)

I received a complaint regarding the Executive's refusal to reimburse the additional electricity charges incurred by the complainant as a result of a broken storage heater. I arranged for enquiries to be made of the Executive and was pleased to note that the Area Manager wrote to the complainant asking her to provide details of her electricity consumption for the corresponding period last year to allow the reimbursement to be calculated. As I regarded this as a satisfactory resolution of the matter I took no further action on the case.

Northern Ireland Housing Executive (CC 26/02)

This complaint related to the Executive's handling and processing of an application for a discretionary housing payment to supplement the complainant's Housing Benefit entitlement. In response to my enquires about this case the Executive explained the background to the case and also how discretionary housing payments are calculated. I was pleased to be informed that the Executive had approved the complainant's application at the maximum weekly amount. As a result the complainant's overall weekly Housing Benefit payment increased accordingly. I was also pleased to note that, whilst such discretionary payments are normally subject to review, the complainant's circumstances are such that she will not have to

apply for further payments. As I regarded this as a satisfactory resolution of the complaint I took no further action on this case.

Council for Catholic Maintained Schools (CC 56/02)

A gentleman complained to me about CCMS's handling of his complaint in relation to a series of episodes in a school in which he was a teacher. I raised these matters with the Chief Executive of CCMS who accepted that the service provided to the complainant was less than satisfactory. As a result a letter of apology issued to the complainant and CCMS undertook to consider my suggested improvements as part of a review of CCMS internal procedures and systems. As I regarded this as a satisfactory resolution of the complaint I took no further action on this case.

Northern Ireland Housing Executive (CC 73/02 & CC 74/02)

I received two complaints from ladies in neighbouring houses who were dissatisfied with a number of aspects of improvement works carried to their homes by the Executive's contractors. Having made preliminary enquiries of the Executive I decided to proceed with a detailed investigation of these cases. During the course of that investigation the Executive undertook a number of measures in response to the various elements of the complaints made to me. As a result of these works the complainants informed my officer that they considered that their complaints had been satisfactorily resolved. In view of this satisfactory outcome I decided to take no further action on these cases.

Northern Ireland Housing Executive (CC 105/02)

The complainants wrote to me about the delay they were experiencing in relation to a housing transfer. On receipt of this complaint I arranged for enquiries to be made of the Executive. During the course of those investigations the complainant wrote to me stating that he had now signed the tenancy agreement on the new property and therefore he did not wish me to take any further action on the matter. As both the complainant and I regarded this as a satisfactory resolution of the complaint I decided to take no further action on this case.

Northern Ireland Housing Executive (CC 112/02)

This complaint related to the conditions in which the complainant was living following vandalism to his Executive owned home. During the course my investigation of this case I was informed by the Executive that the complainant had been offered, and had subsequently accepted, the tenancy of an alternative property. As I regarded this as a satisfactory resolution of the complaint I decided to take no further action on this case.

Northern Ireland Housing Executive (CC 119/02)

The complainant in this case was unhappy with the Executive's failure to take appropriate action in relation to a hole in her kitchen sink. Having commenced my investigation of this case I was informed by the Executive that a new sink and draining board had been fitted in the complainant's kitchen. As both the complainant and I regarded this as a satisfactory resolution of the complaint I decided to take no further action on this case.

Northern Ireland Housing Executive (CC 121/02)

I received a complaint from a gentleman who was unhappy with the Executive's failure to offer him alternative accommodation following his application for rehousing. Following the commencement of my investigation of this case I was informed that the complainant had been offered the tenancy of suitable accommodation and that he had accepted that offer. As I, and indeed the complainant, regarded this as a satisfactory resolution of the matter I decided to take no further action on his complaint.

Northern Ireland Housing Executive (CC 169/02)

A lady complained to me that her health was being affected due to an allergy to her neighbour's trees, a matter on which the Executive had taken no action. Following the commencement of my investigation of this case I was informed that the complainant had been offered the tenancy of alternative suitable accommodation and that she had accepted that offer. As I, and indeed the complainant, regarded this as a satisfactory resolution of the matter I decided to take no further action on his complaint.

Appendix B

Summaries of Registered Cases Discontinued

Arts Council (CC 3/02)

This complaint concerned the Arts Council's actions in relation to film funding applications. During the course of my investigation the complainant accepted that the Art's Council could no longer legally accept applications for funding. As a result it was agreed with the complainant that no further action could be taken on his complaint by my Office. I therefore discontinued this investigation.

Fermanagh District Council (CC 6/02)

I received a complaint against the Council regarding an ongoing problem with regular blockages in the sewage system. My initial enquiries of the Council on this matter revealed that the matter had been passed to the local Network Manager of the Water Service who had undertaken to investigate the problem and contact the complainant directly regarding what could be done. In view of this ongoing action I decided to discontinue my investigation of this case.

Limavady Borough Council (CC 32/02)

The complainant in this case was dissatisfied with the lack of progress concerning the Council evaluation of her previously held post. It became clear following the commencement of my investigation that the process was ongoing despite the delay, for which the Chief Executive apologised to the complainant. In view of this ongoing discretionary process I decided to discontinue my investigation of this case.

Northern Ireland Housing Executive (CC 132/01)

I received a letter of complaint expressing dissatisfaction with the actions of the Executive. The letter did not contain any specific allegations of maladministration and therefore I arranged for one of my Directors to meet with the complainant to discuss the matter. At that meeting it was agreed that the complainant would write to me again detailing the exact nature of his complaint. However, as he failed to do so it was not possible for me to continue with an investigation.

Northern Ireland Housing Executive (CC 23/02)

Following receipt of this complaint against the Executive, one of my Directors wrote to the complainant requesting a meeting to discuss his complaint. As the complainant did not contact my Office I decided to discontinue this case. My Director wrote to the complainant explaining the situation and emphasising that the matter would remain closed until he made contact with my Office.

Northern Ireland Housing Executive (CC 67/02)

A gentleman complained to me about the amount of grant awarded to him by the Executive. However, following the commencement of my investigation the complainant realised and accepted that the Executive calculated the amount of grant payable to him on the basis of information supplied by the local council. The complainant therefore decided to make a complaint against the council rather than the Executive. In view of this I discontinued my investigation of the case against the Executive.

Northern Ireland Housing Executive (CC 70/02)

In this case the complainant was dissatisfied with the Executive's response to her application for housing as a homeless person. During the course of my investigation, the complainant successfully appealed the Executive's decision regarding her homelessness. Also, she was offered, and accepted, the tenancy of a dwelling which required some repairs before she could move into it. The complainant told me that she regarded the Executive's offer as remedying her complaint. In all the circumstances, therefore, I decided to discontinue my investigation of this case. However, I asked the Executive's Chief Executive to ensure that all reasonable steps were taken to ensure that the repairs were completed satisfactorily and as expeditiously as possible.

I also found it necessary to express my disappointment that, in two instances, the Executive's correspondence to the complainant had been issued to an incorrect address. While I regarded this as having constituted unsatisfactory administrative practice I recognised, however, that, in both instances, corrective action was taken quickly by the Executive. Also, I was satisfied that the complainant was not disadvantaged by these errors.

Northern Ireland Housing Executive (CC 91/02)

I received a complaint against both the Executive and the local council. Having commenced my investigation it became clear that responsibility for the matter complained of rested with the local council. I therefore decided to discontinue my case against the Executive.

Northern Ireland Housing Executive (CC 125/02)

I received a complaint regarding the rehousing of a gentleman with mental health problems. My initial enquiries revealed that the gentleman was extremely unwell and that the local Mental Health Unit had decided that the question of his accommodation needs should be deferred until his condition could be stabilised and he was in a better condition to make an informed choice. In view of this information I decided to discontinue my investigation of this case.

South Eastern Education & Library Board (CC 137/02)

I received a complaint, via an MLA, against the Board. Having commenced my preliminary enquiries on the matter I discovered that the issues involved were already being considered under an earlier complaint which had been received directly from the aggrieved person. In light of this I discontinued this case.

Southern Education & Library Board (CC 77/02)

A gentleman complained to me about the actions of the Board in dealing with his concerns regarding the academic record and educational qualifications of a primary school principal. Having carried out extensive preliminary investigations of this complex complaint I found that the issues raised fell outside my jurisdiction. In light of this I decided to discontinue my investigation of this case.

Appendix C

Analysis of Written Complaints

Analysis of All Complaints Received - 1 April 2002 to 31 March 2003

	Brought forward from 2001/02	Received	Rejected	Settled	Discontinued	Withdrawn	Reported cases upheld or partially upheld	Reported cases not upheld	In action at 31.3.2003
Local Councils	7	52	32	1	3	2	1	3	17
Education Authorities	6	40	22	1	2	0	0	4	17
Health and Social Services	8	27	19	0	0	1	7	2	6
Northern Ireland Housing Executive	25	105	57	14	8	1	9	23	18
Other Public Bodies	9	35	27	0	3	1	4	6	3
Bodies Outside Jurisdiction	0	39	39	0	0	0	0	0	0
TOTAL	**55**	**298**	**196**	**16**	**16**	**5**	**21**	**38**	**61**

Analysis of Complaints Against Education Authorities 1 April 2002 to 31 March 2003

	Brought forward from 2001/02	Received	Rejected	Settled	Discontinued	Withdrawn	Reported cases upheld or partially upheld	Reported cases not upheld	In action at 31.3.2003
Belfast	0	4	4	0	0	0	0	0	0
North Eastern	3	4	4	0	0	0	0	1	2
Southern	1	5	1	0	0	0	0	2	3
South Eastern	0	13	7	0	2	0	0	1	3
Western	1	12	4	0	0	0	0	0	9
Council for Catholic Maintained Schools	1	2	2	1	0	0	0	0	0
TOTAL	**6**	**40**	**22**	**1**	**2**	**0**	**0**	**4**	**17**

Analysis of Complaints Against Local Councils
1 April 2002 to 31 March 2003

	Brought forward from 2001/02	Received	Rejected	Settled	Discontinued	Withdrawn	Reported cases upheld or partially upheld	Reported cases not upheld	In action at 31.3.2003
Antrim Borough Council	0	1	1	0	0	0	0	0	0
Ards Borough Council	1	2	1	0	0	0	0	0	2
Armagh City & District Council	0	2	1	0	0	0	0	0	1
Belfast City Council	2	9	9	1	0	0	0	0	1
Carrickfergus Borough Council	0	2	1	0	0	0	0	0	1
Coleraine Borough Council	0	1	0	0	0	0	0	1	0
Craigavon Borough Council	2	0	0	0	0	1	1	0	0
Derry City Council	0	2	0	0	0	0	0	0	2
Down District Council	0	6	4	0	0	0	0	0	2
Fermanagh District Council	0	3	2	0	1	0	0	0	0
Larne Borough Council	2	5	3	0	0	1	0	1	2
Limavady Borough Council	0	1	0	0	1	0	0	0	0
Lisburn City Council	0	2	1	0	0	0	0	0	1
Moyle District Council	0	1	1	0	0	0	0	0	0
Newry and Mourne District Council	0	4	2	0	1	0	0	0	1
Newtownabbey Borough Council	0	4	2	0	0	0	0	0	2
North Down Borough Council	0	3	1	0	0	0	0	1	1
Omagh District Council	0	1	1	0	0	0	0	0	0
Strabane District Council	0	3	2	0	0	0	0	0	1
Total	**7**	**52**	**32**	**1**	**3**	**2**	**1**	**3**	**17**

Analysis of Complaints Against Health & Social Services Boards, Trusts and Agencies 1 April 2002 to 31 March 2003

	Brought forward from 2001/02	Received	Rejected	Settled	Discontinued	Withdrawn	Reported cases upheld or partially upheld	Reported cases not upheld	In action at 31.3.2003
Northern H&SSB	0	1	1	0	0	0	0	0	0
Western H&SSB	0	1	0	0	0	0	1	0	0
Down Lisburn Trust	1	1	1	0	0	0	0	0	1
N&W Belfast Trust	1	0	0	0	0	0	0	1	0
S&E Belfast Trust	1	1	1	0	0	0	1	0	0
Ambulance Service	0	2	1	0	0	0	0	0	1
Sperrin Lakeland Trust	0	3	2	0	0	0	0	0	1
Causeway Trust	1	1	0	0	0	0	2	0	0
Royal Hospitals Trust	0	2	2	0	0	0	0	0	0
Ulster Community & Hospital Trust	0	3	2	0	0	0	0	1	0
United Hospitals Trust	0	1	0	0	0	0	0	0	1
Homefirst Community Trust	0	2	1	0	0	0	0	0	1
Craigavon & Banbridge Community Trust	1	0	0	0	0	1	0	0	0
Newry and Mourne Trust	1	1	1	0	0	0	1	0	0
Craigavon Area Hospital Trust	0	1	1	0	0	0	0	0	0
Foyle Community Trust	1	3	3	0	0	0	1	0	0
Altnagelvin Hospital Trust	0	2	1	0	0	0	0	0	1
Central Services Agency	1	2	2	0	0	0	1	0	0
Total	**8**	**27**	**19**	**0**	**0**	**1**	**7**	**2**	**6**

Analysis of Complaints Against Other Bodies Within Jurisdiction 1 April 2002 to 31 March 2003

	Brought forward from 2001/02	Received	Rejected	Settled	Discontinued	Withdrawn	Reported cases upheld or partially upheld	Reported cases not upheld	In action at 31.3.2003
Arts Council	1	4	2	0	1	0	1	0	1
Council for the Curriculum Examinations and Assessment	1	1	1	0	0	0	0	1	0
Tourist Board	1	2	2	0	0	0	1	0	0
Sports Council	0	3	2	0	0	0	0	1	0
Museums Council	0	1	0	0	0	0	0	1	0
Fire Authority	2	4	4	0	0	0	0	2	0
Eeastern H&SS Council	0	3	1	0	1	1	0	0	0
Northern H&SS Council	0	1	1	0	0	0	0	0	0
Equality Commission	0	8	6	0	0	0	1	0	1
General Consumer Council	0	1	0	0	0	0	0	0	1
Mental Health Commission	0	3	2	0	1	0	0	0	0
Health & Safety Executive	2	1	2	0	0	0	0	1	0
Office of the Certification Officer	0	1	1	0	0	0	0	0	0
LRA	1	0	0	0	0	0	1	0	0
LEDU	1	0	1	0	0	0	0	0	0
Invest NI	0	2	2	0	0	0	0	0	0
Total	**9**	**35**	**27**	**0**	**3**	**1**	**4**	**6**	**3**

Appendix D

Analysis of Oral Complaints

Fig 3.6 Commissioner for Complaints
Analysis of Oral Complaints Received - 1 April 2002 to 31 March 2003

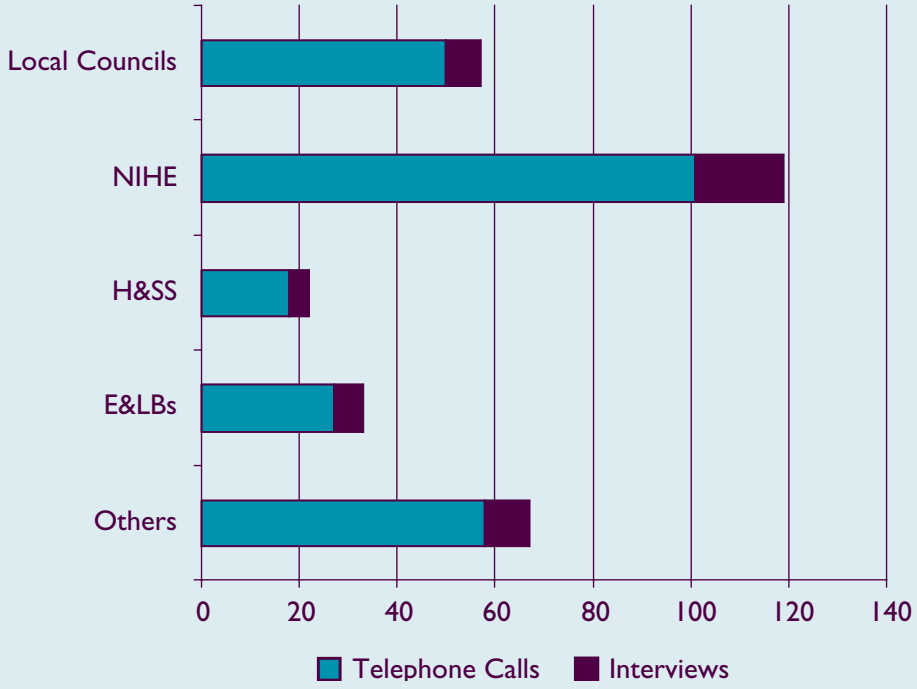
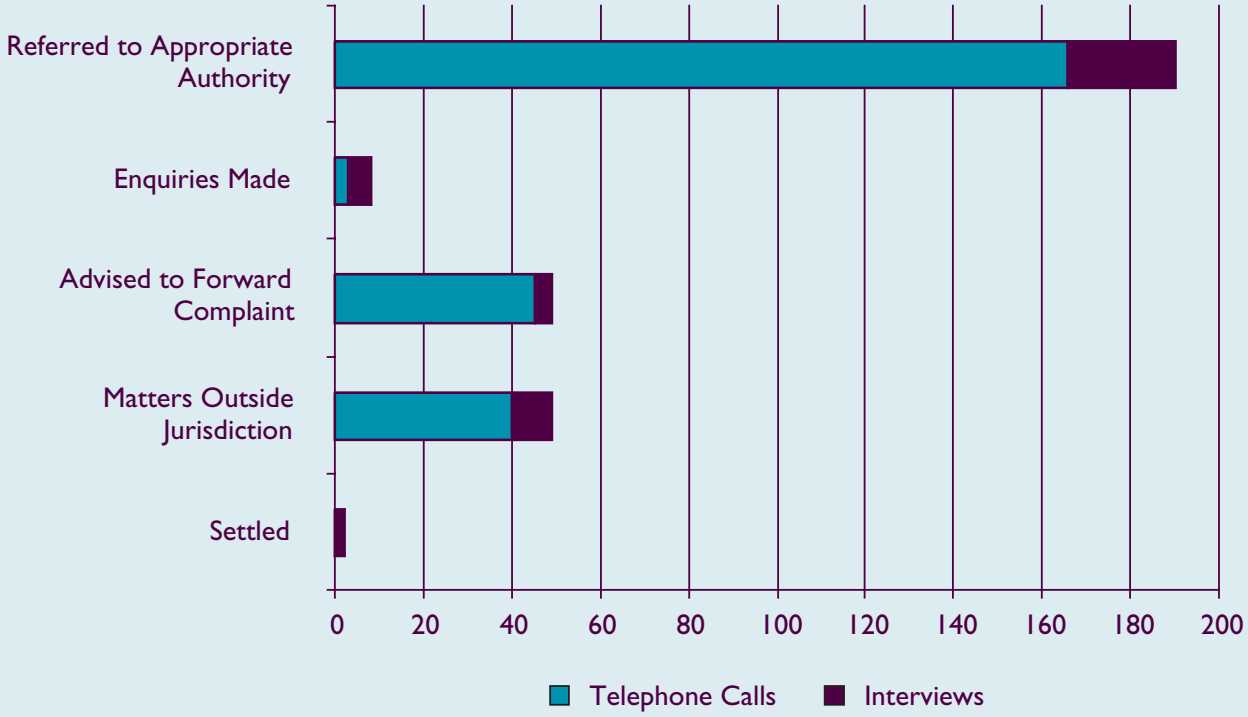


Fig 3.7 Commissioner for Complaints
Outcome of Oral Complaints Received - 1 April 2002 to 31 March 2003



Section Four

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

Complaints Received

I received a total of 103 complaints during 2002/03, 4 less than in 2001/02.

Breakdowns of the complaints received in 2002/03 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 - 2002/03

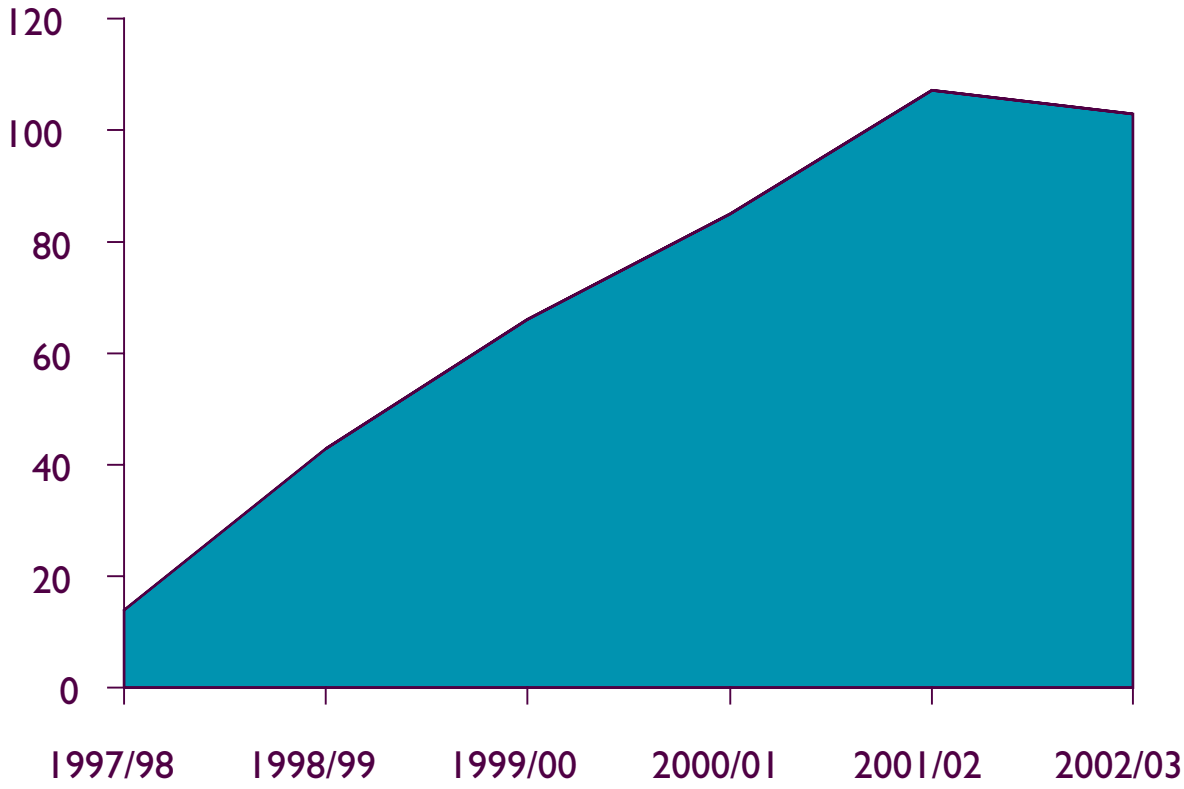


Fig 4.2 Health & Social Services Complaints 2002/03
103 Complaints Received

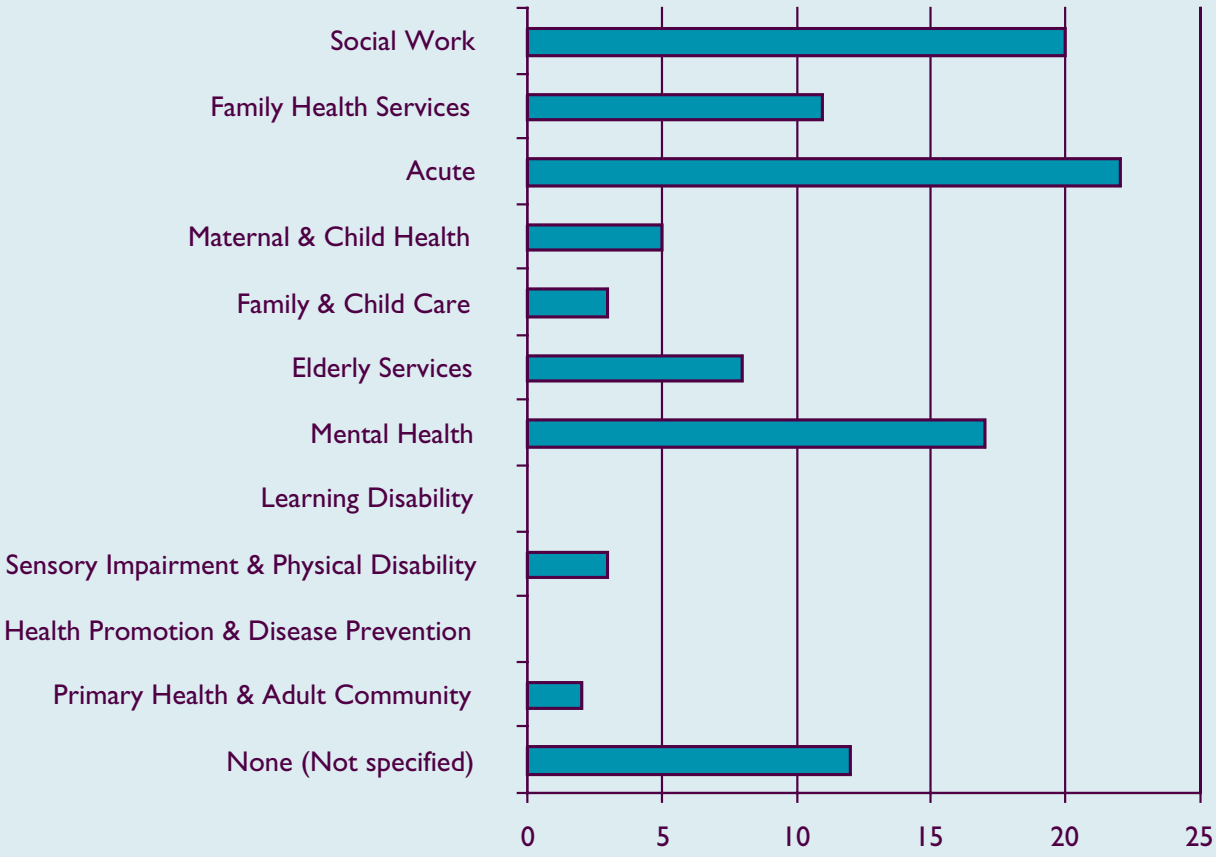


Fig 4.3 Subject of Health Services Complaints 2002/03
103 Complaints Received

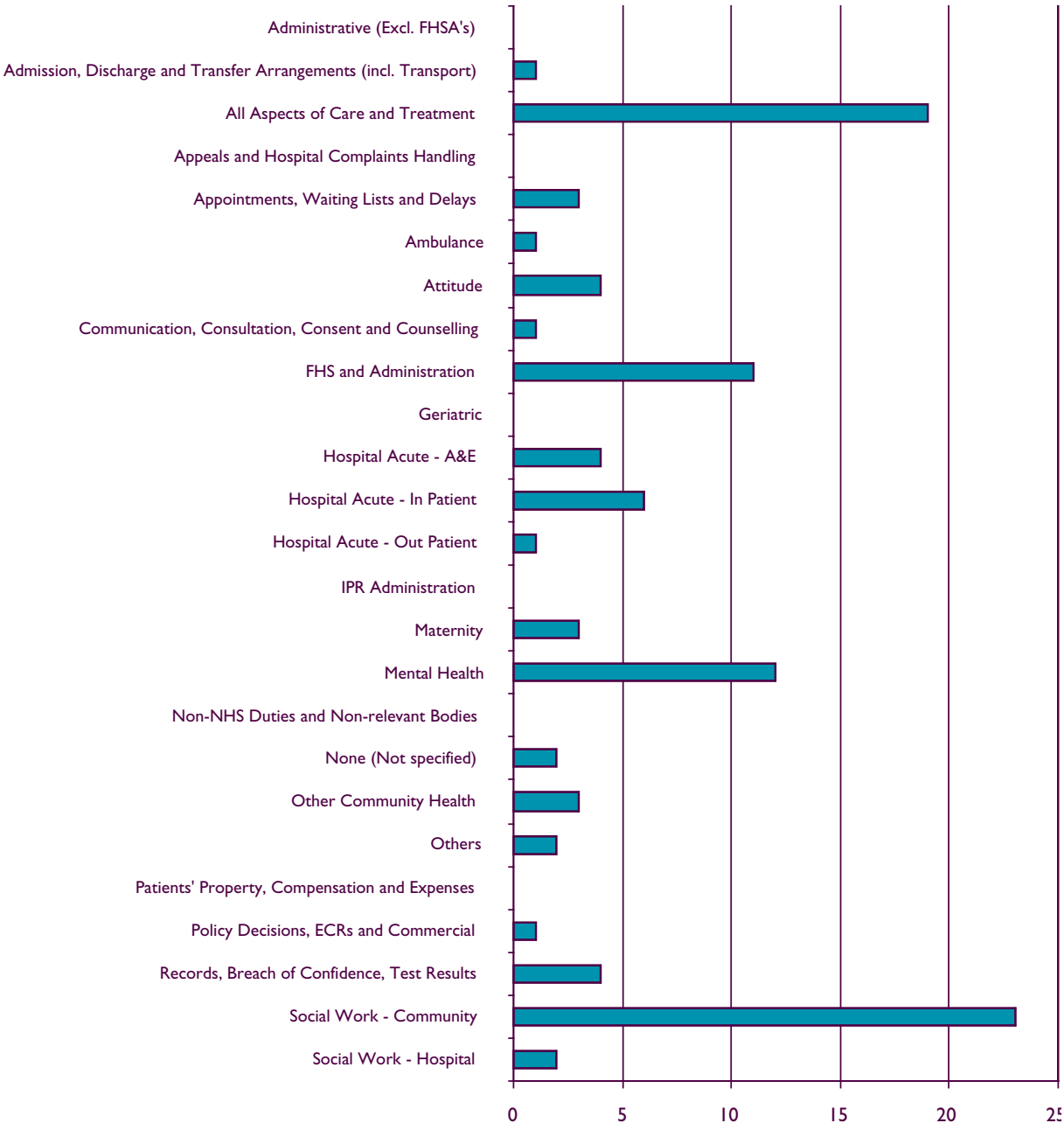


Fig 4.4 Health Service Groups Complained of 2002/03
103 Complaints Received

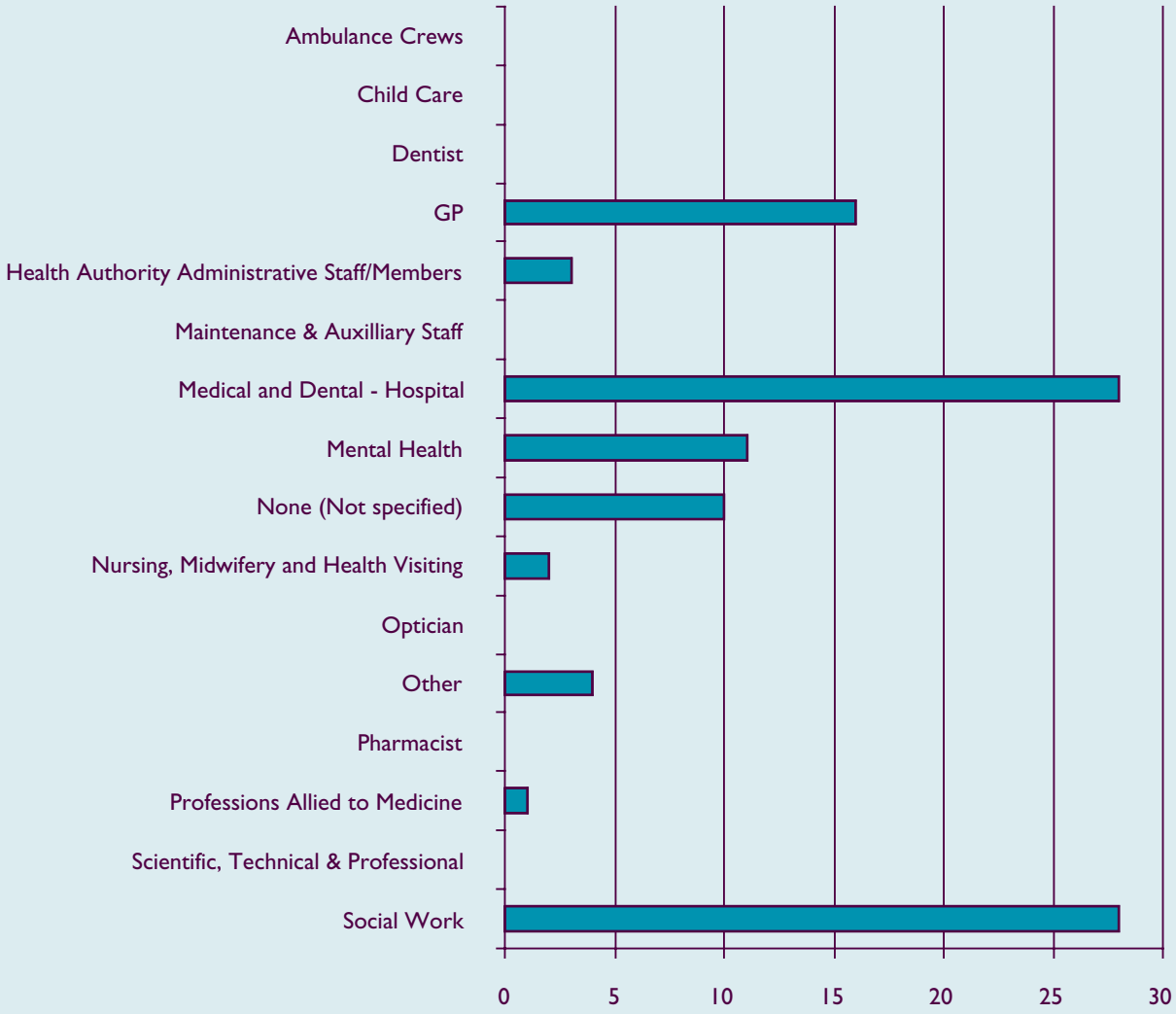
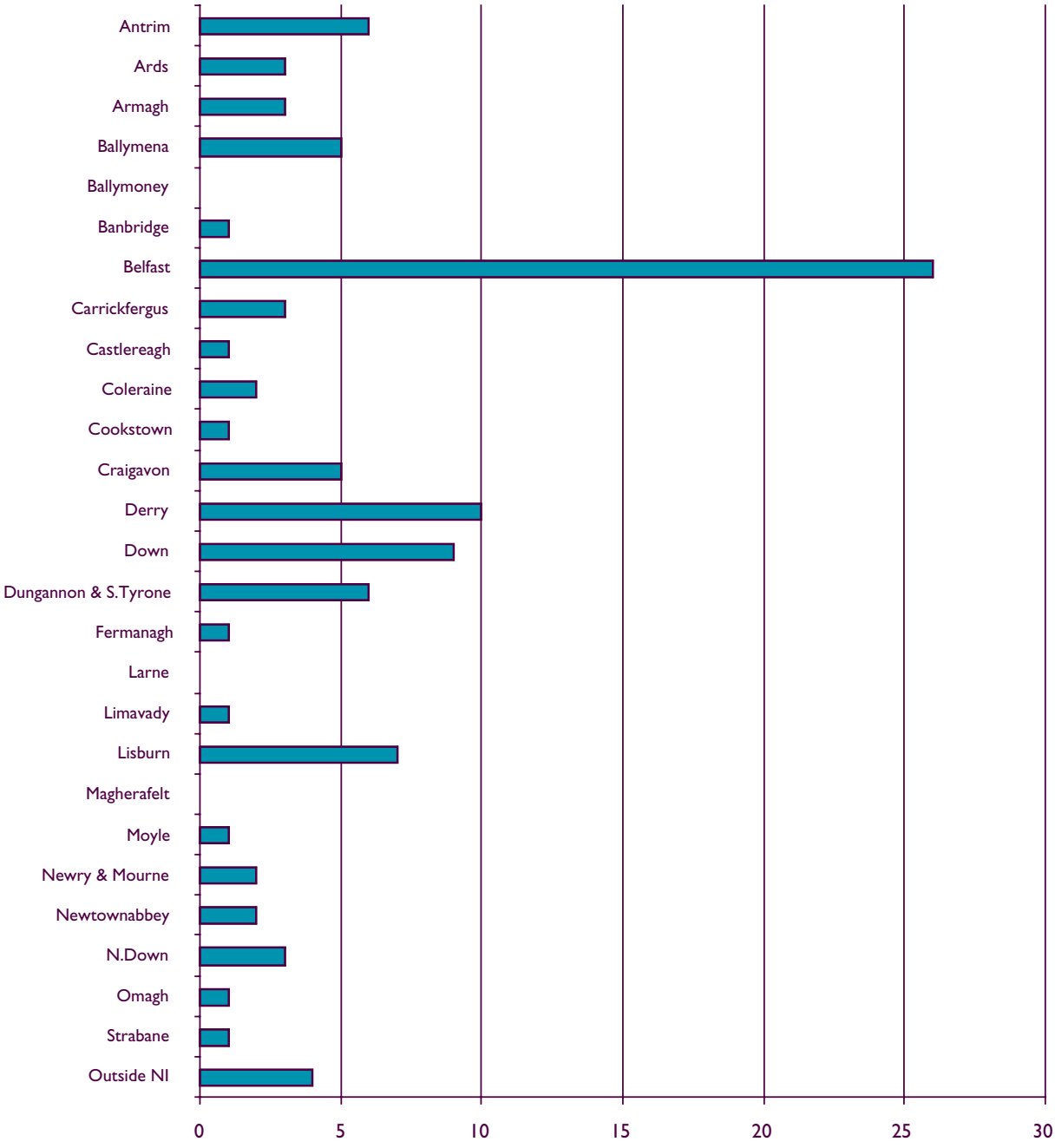


Fig 4.5 Health and Social Services 2002/03
103 Complaints - Local Council Area in which Complainant Resides



Statistics

In addition to the 103 complaints received during the reporting year, 26 cases were brought forward from 2001/02. Action was concluded in 96 cases during 2002/03 and, of 33 still being dealt with at the end of the year, 30 were under investigation. In 4 cases I issued an Investigation Report setting out my findings.

The 33 cases in process at 31 March 2003 were received during the months indicated in Table 4.2.

During 2002/03 46 cases were resolved without the need for in-depth investigation and no cases were settled. 57 cases were accepted for investigation. Complaints about matters not subject to my investigation totalled 5. I referred 42 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 2002/03 are detailed in Fig 4.6.

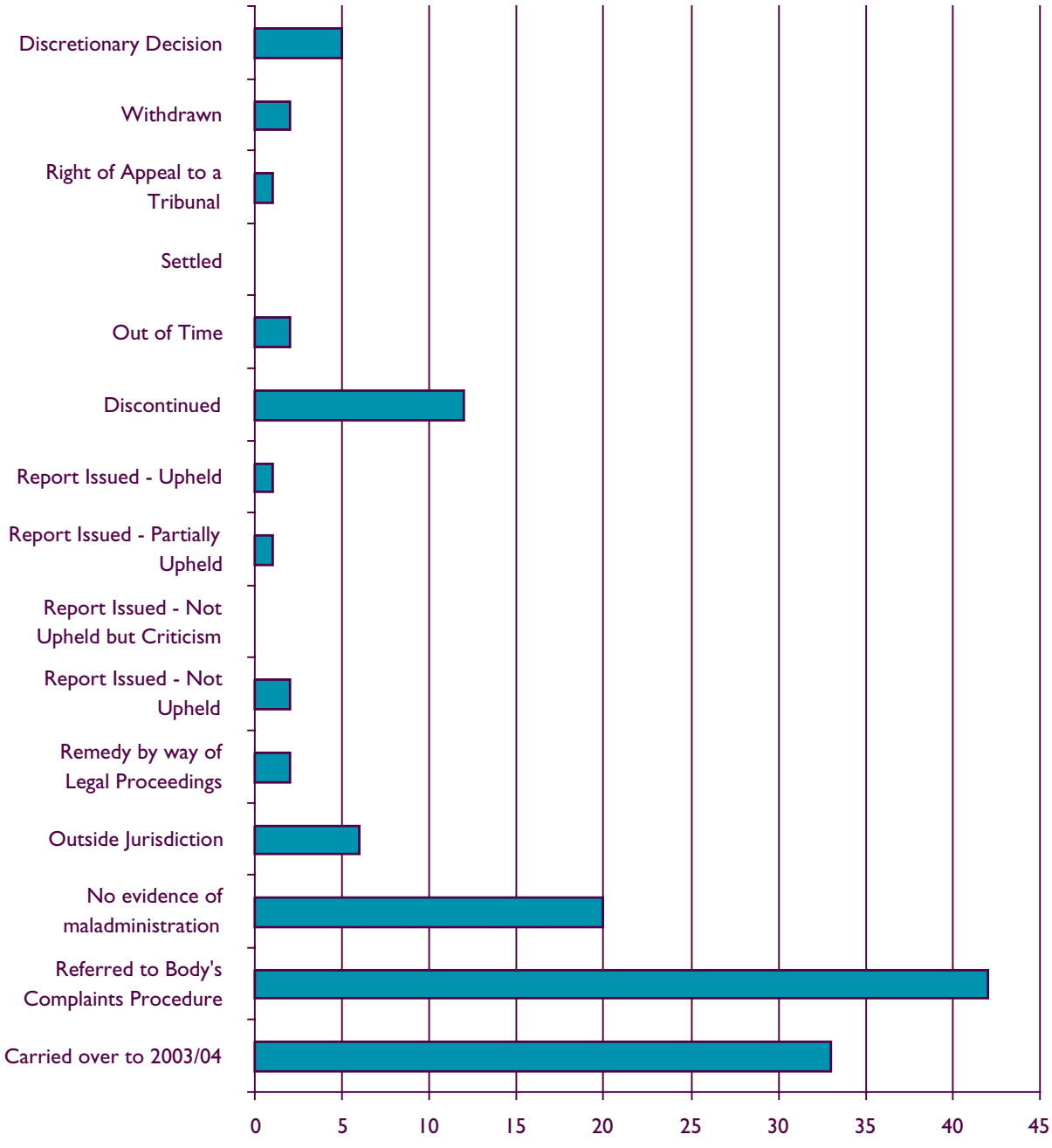
Table 4.1 Caseload for 2002/03

Number of uncompleted cases brought forward	26
Complaints received	103
Total Caseload for 2002/03	129
Of Which:	
Cleared at Initial Sift Stage	46
Cleared without in-depth investigation including cases withdrawn and discontinued	46
Cases settled	0
Full report issued	4
Cases in action at the end of the year	33

Table 4.2 Date of Receipt of Cases in Process at 31 March 2003

April 2001	1
November 2001	1
January 2002	1
March 2002	3
April 2002	3
May 2002	4
June 2002	2
July 2002	4
August 2002	0
September 2002	2
October 2002	1
November 2002	3
December 2002	2
January 2003	0
February 2003	1
March 2003	5

Fig 4.6 Health and Social Services 2002/03
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 2.2 weeks.

The average time taken for a case to be examined, enquiries made and a reply issued at Investigation stage was 21.6 weeks.

Reports Issued and Settlements Obtained After Formal Investigation

4 reports of investigations were issued in 2002/03 compared to 6 in 2001/02. The subjects of the cases reported on were: Hospital Acute - A&E; All Aspects of Care and Treatment (2); and Hospital Acute-In Patient.

1 case was upheld; 3 cases were not upheld but 1 of these was partially upheld. Settlement was achieved in the 1 case that I upheld:-

Table 4.3 Settlements Achieved in Upheld Cases

Case No	Body	Subject of Complaint	Settlement
HC 17/02	Royal Hospitals H&SS Trust	Hospital Acute - A&E	Written apology

Review of Investigations

Care and treatment afforded to the complainant's late wife

In this case the complaint derived from the care and treatment afforded by the United Hospitals Trust (the Trust) to the complainant's late wife. The specific areas of concern raised by the complainant related to the administrative actions of Trust staff, the adherence of nursing staff to clinical instructions, the timeframe of treatment in respect of an Urinary Tract Infection (UTI) and a cause of death given by a clinician which differed from the cause of death recorded on the death certificate.

As part of my investigation I obtained and examined all documentation relating to the case which had been reviewed by the Northern Health and Social Services Board (the Board) in response to the complainant's request for an Independent Review. I sought comments from the Chief Executive of the Trust on the various clinical and administrative aspects of the case. In order to ensure proper and informed insight to the clinical issues involved in the matter, I sought and obtained advice from my Independent Medical Advisor. I directed that my Investigating Officer interview and obtain pertinent documents from the patient's General Practitioner and I examined information elicited.

At the conclusion of my investigation I was unable to establish any link between the delay in treatment of the patient's UTI and her subsequent tragic death. I was, however, able to identify failures by the Trust in recording and acting upon information supplied by the patient's General Practitioner, as well as failures by nursing staff to carry out clinical instructions in respect of urine samples. I concluded that the major failure in this case resulted from a breakdown in communication relating to the patient's UTI. I was, however, satisfied that the Trust had thoroughly examined the original complaint and that the CE had unreservedly apologised for shortcomings revealed and had offered a meeting with senior medical staff to the complainant. It became clear that the Trust had taken action to address to establish robust and effective procedures to address the issues

highlighted in this case. In light of identified failures, I recommended that the Trust issue a full apology to the family of the complainant who sadly died in the course of the investigation. **(HC 12/01)**

Denied the professional support and help required

The complainant in this case alleged that her five year old son had been denied the professional support and help which he required because the Homefirst Community Trust (the Trust) had not provided a firm diagnosis that he had autism and Asperger syndrome. Because of the delay in providing the diagnosis the complainant had made her own private arrangements to have her son's condition diagnosed. The complainant also contended that she and her husband had been denied the standard of support that they were entitled to receive to help them care for their son.

My investigation of this complaint confirmed that there had been an undue delay in providing the definite diagnosis. It established that the delay was due to the fact that within the Northern Ireland Health Service there was a lack of funding for autism specific teams and diagnosticians and the Trust had not been funded to provide that specialised service. I was satisfied that the Trust, within the finite resources available to it, had sought to identify and provide the required level of support and services to the complainant's family. I was also satisfied that the Trust staff had acted professionally and appropriately within their level of competence, experience and remit. Although I had a great deal of sympathy for the complainant and her family and could understand why she arranged to have her son diagnosed through a private arrangement I could not uphold her complaint against the Trust.

Towards the end of my investigation of this complaint, I was pleased to learn that the Department of Education was taking forward the development of a specialised Centre to deal with children and young persons with autistic spectrum disorders. **(HC 15/01)**

Events leading up to and following complainant's mother's death

The complainant in this case wrote to me about concerns which he had relating to events leading up to and following his mother's death. He believed that the named Consultant in charge of his mother's care and treatment had taken a decision to discontinue treating her by way of medical intervention and following that decision had removed medical aids and drug treatment. He also believed that his mother had suffered a cardiac arrest some 35 minutes before she was discovered and he alleged that he had been denied access to the ward to be with his mother during the last minutes of her life. Other concerns which the complainant had included, the accuracy of medical records relating to the recorded time of the cardiac arrest which his mother had suffered, the recording of the "not for resuscitation order" and the recorded time of his mother's death.

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

To assist me with the investigation of this complaint I appointed an Independent Medical Adviser (IMA) to examine and report on the clinical care and treatment provided to the complainant's mother during her last stay in hospital. I was grateful to receive what I considered to be a thorough and professional analysis of the care and treatment given to the complainant's mother. The IMA also provided me with useful comments and guidance relating to good communication practice.

Following my in-dept investigation, I found no evidence to substantiate the allegations/concerns which the complainant had raised with me. I was satisfied that in its examination of the complainant's complaint under the HPSS Complaints Procedure the Ulster Community and Hospital HSS Trust had identified, acknowledged and apologised to the complainant for shortcoming/weaknesses in relation to issues relating to good communication practice. In the absence of evidence I could not uphold the complaint as made to me. **(HC 19/01)**

Section Four
Appendices

Appendix A

Summary of Registered Cases Discontinued

Homefirst Community Trust (HC 21/01 & 30/01)

I received two complaints regarding the provision of home care by the Trust. During the course of my investigation the circumstances of both complainants changed insofar as neither now required home care from the Trust. As a result I decided that there was nothing to be gained from further investigation and therefore I discontinued action on both cases.

Homefirst Community Trust (HC 7/02)

I received a complaint regarding the actions of the Trust's social work staff. Having considered a considerable volume of documentation I decided that an in-depth investigation of this complaint would not represent the best way forward. However, having sought independent professional advice on a possible way forward in this case, I obtained the Trust's agreement to put in place a planned programme of counselling for the complainant's child and the complainants. In light of this agreed way forward I decided to discontinue my investigation of this case.

Homefirst Community Trust (HC 19/02 & 20/02)

Two ladies complained to me about the lack of spaces at local day centres for their sons who have special needs. The Trust accepted that their sons would benefit from attendance at a day centre but, in the absence of additional resources to address the demands, they could only be placed on the relevant waiting lists. However, the Northern Health & Social Services Board was aware of the problem and, following meetings with interested parties, made some additional resources available. As a result the complainants' sons commenced attendance at their respective local day centres. In view of this satisfactory resolution of these complaints I decided to discontinue my investigation of the cases.

Craigavon & Banbridge Trust (HC 28/02)

I received a letter of complaint expressing dissatisfaction with the actions of the Trust. The letter did not contain any specific allegations of maladministration and therefore I arranged for one of my Investigating Officers to meet with the complainant to discuss the matter. At that meeting it was agreed that the complainant would write to me again detailing the exact nature of her complaint. However, as she failed to do so it was not possible for me to continue with an investigation.

Western Health & Social Services Board (HC 44/01)

The complainant in this case was a lady whose child has learning difficulties. She complained to me because she was dissatisfied with the level of physiotherapy support being offered to her child. Following the commencement of my investigations it was agreed the level of physiotherapy service being provided would be reassessed. In view of this reassessment I decided to discontinue my investigation.

Appendix B

Analysis of Written Complaints

Analysis of All Complaints Received 1 April 2002 to 31 March 2003

	Brought forward from 2001/02	Received	Rejected	Settled	Discontinued	Withdrawn	Reported cases upheld or partially upheld	Reported cases not upheld	In action at 31.3.2003
Health and Social Services Boards	4	14	8	0	2	0	0	0	8
Health and Social Services Trusts	20	79	63	0	9	2	2	2	21
Other Health and Social Services Complaints	2	10	7	0	1	0	0	0	4
TOTAL	**26**	**103**	**78**	**0**	**12**	**2**	**2**	**2**	**33**

Analysis of Complaints Against Health and Social Services Boards 1 April 2002 to 31 March 2003

	Brought forward from 2001/02	Received	Rejected	Settled	Discontinued	Withdrawn	Reported cases upheld or partially upheld	Reported cases not upheld	In action at 31.3.2003
Eastern H&SSB	2	6	6	0	1	0	0	0	1
Northern H&SSB	1	3	1	0	0	0	0	0	3
Southern H&SSB	0	1	0	0	0	0	0	0	1
Western H&SSB	1	4	1	0	1	0	0	0	3
TOTAL	**4**	**14**	**8**	**0**	**2**	**0**	**0**	**0**	**8**

Analysis of complaints Against Health and Social Services Trusts 1 April 2002 to 31 March 2003

	Brought forward from 2001/02	Received	Rejected	Settled	Discontinued	Withdrawn	Reported cases upheld or partially upheld	Reported cases not upheld	In action at 31.3.2003
Greenpark Trust	0	2	1	0	0	0	0	0	1
Down Lisburn Trust	1	7	8	0	0	0	0	0	0
N&W Belfast Trust	1	3	3	0	0	0	0	0	1
S&E Belfast Trust	1	2	3	0	0	0	0	0	0
Belfast City Hospital Trust	2	7	5	0	2	0	0	0	2
Royal Hospitals Trust	1	4	3	0	0	0	1	0	1
Sperrin Lakeland Trust	0	1	0	0	0	0	0	0	1
Ulster Community and Hospitals Trust	1	6	5	0	0	0	0	1	1
Causeway Trust	2	5	6	0	0	0	0	0	1
Homefirst Community Trust	4	7	3	0	5	0	0	1	2
United Hospitals Trust	2	5	6	0	0	0	1	0	0
Armagh & Dungannon Trust	1	5	3	0	0	1	0	0	2
Craigavon & Banbridge Community	0	8	6	0	1	0	0	0	1
Craigavon Area Hospital Trust	1	3	2	0	0	0	0	0	2
Mater Hospital Trust	0	5	1	0	1	1	0	0	2
Newry & Mourne Trust	1	1	1	0	0	0	0	0	1
Foyle Community Trust	1	6	5	0	0	0	0	0	2
Altnagelvin Area Hospital Trust	0	2	2	0	0	0	0	0	0
Ambulance Service	1	0	0	0	0	0	0	0	1
Total	**20**	**79**	**63**	**0**	**9**	**2**	**2**	**2**	**21**

Appendix C

Analysis of Oral Complaints

Fig 4.7 Health and Social Services
Analysis of Oral Complaints Received - 1April 2002 to 31 March 2003

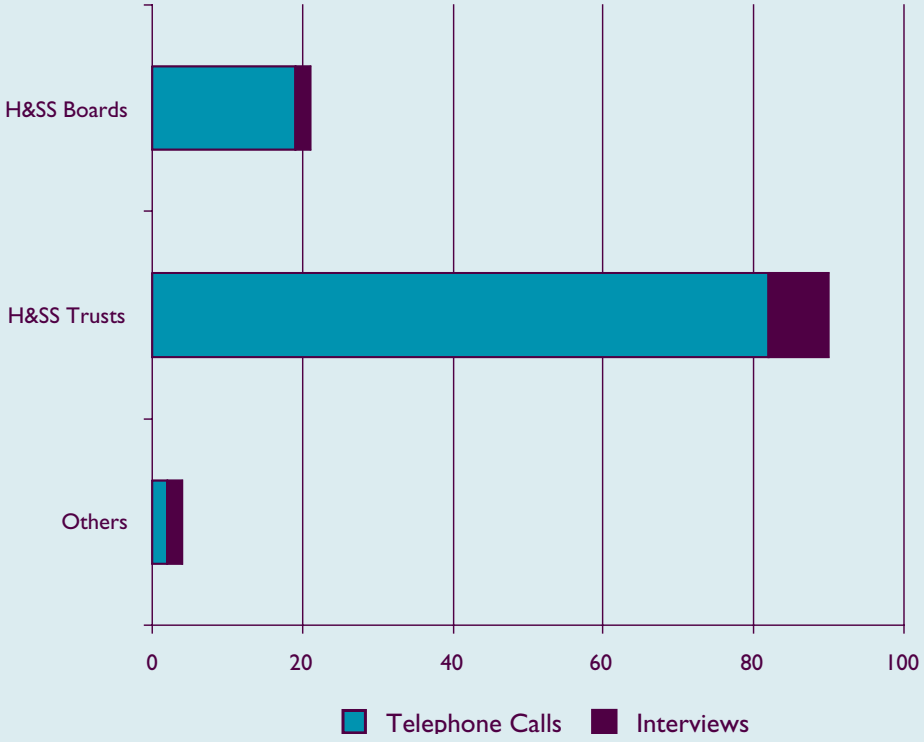
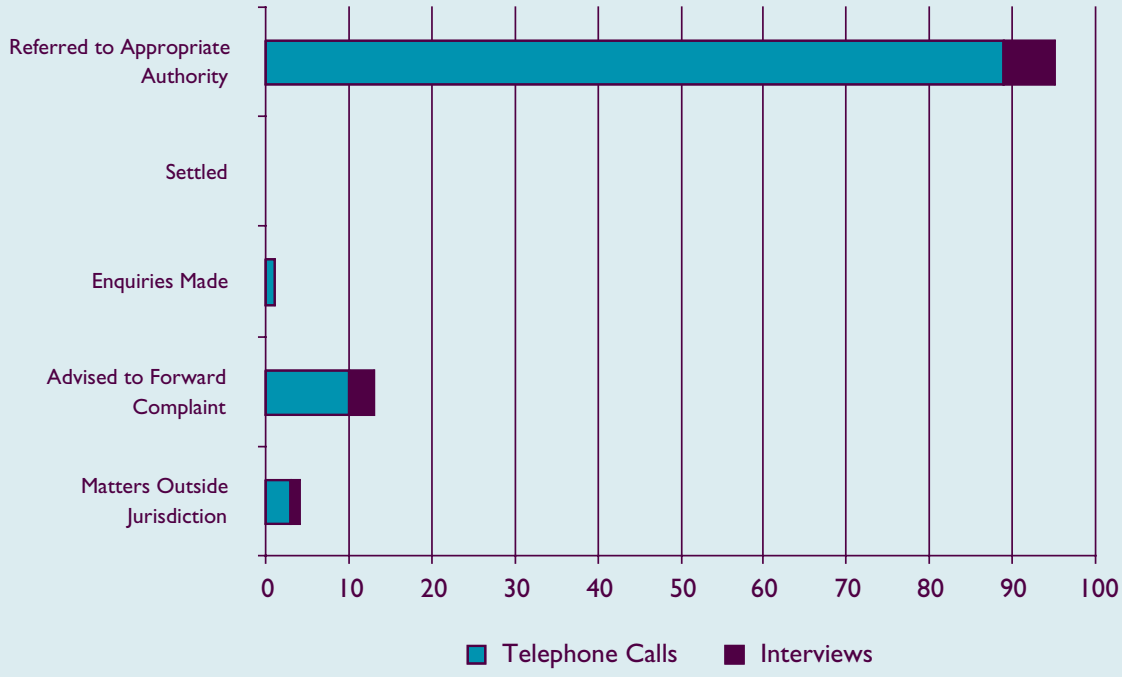


Fig 4.8 Health and Social Services
Outcome of Oral Complaints Received - 1 April 2002 to 31 March 2003



Contact Details

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

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

By fax: **028 9023 4912.**

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

By writing to:

The Ombudsman
Freepost BEL 1478
Belfast
BT1 6BR.

By calling, between 9:30 am and 4pm, at:

The Ombudsman's Office
33 Wellington Place
Belfast
BT1 6HN.

Further information is also available on my Website:

www.ni-ombudsman.org.uk

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

Online
www.tso.co.uk/bookshop

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

TSO Bookshops
123 Kingsway, London, WC2B 6PQ
020 7242 6393 Fax 020 7242 6394
68-69 Bull Street, Birmingham B4 6AD
0121 236 9696 Fax 0121 236 9699
0-21 Princess Street, Manchester M60 8AS
0161 834 7201 Fax 0161 833 0634
16 Arthur Street, Belfast BT1 4GD
028 9023 8451 Fax 028 9023 5401
18-19 High Street, Cardiff CF10 1PT
029 2039 5548 Fax 029 2038 4347
71 Lothian Road, Edinburgh EH3 9AZ
0870 606 5566 Fax 0870 606 5588

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

TSO Accredited Agents
(see Yellow Pages)

and through good booksellers

ISBN 0-10-292479-1

9 780102 924794