



# Annual Report

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

2008 - 2009



**Ombudsman** Northern Ireland

**NIA 108/08-09**

# MY ROLE

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

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

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

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

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

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

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

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ANNUAL REPORT of the  
ASSEMBLY OMBUDSMAN for NORTHERN IRELAND and the  
NORTHERN IRELAND COMMISSIONER for COMPLAINTS for 2008/2009

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

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## Section One

### The Year in Review



Ombudsman Northern Ireland

# The Year in Review



Once again I am pleased to lay my report before the Assembly. My report sets out the work of my Office for the year 2008-09 and gives summary details of the cases in which I carried out full investigations of the complaints submitted to me by Assembly Members and also members of the public. As will be seen the types of complaint covers the whole spectrum of public service functions with housing, health and planning once again being the main areas giving rise to citizens' grievances. The report, as a document of record, is commended to government departments and public bodies as an aide to improve services. It provides insights in the case summaries against which organisations can test their internal arrangements and service provision.

The period of my Annual Report 2008/09 has been a year of transition as the new political structures in the Northern Ireland Assembly are more firmly established. The changes emerging from the Review of Public Administration (RPA) have begun to be implemented and these will have an increasing impact on the administration and delivery of public services in Northern Ireland. The challenge for all public bodies within my jurisdiction will be to manage these major developments in such a way as to ensure members of the public and users of services continue to be provided with high quality services and do not experience any diminution of services. The most significant change arising from the Review of Public Administration to date has been the creation of five new Health and Social Care Trusts from the 1 April 2007 and the creation of a single Health Board from 1 April 2009. These changes will require careful implementation and will therefore need to be underpinned by robust administrative procedures that will help achieve a seamless transition. At the same time the ongoing work on the development of the Educational Skills Authority will significantly alter the field of education administration.

A key concern for me has been the delay in the implementation of the recommendations contained in the review of my Office. This I had anticipated would be carried out in parallel with the implementation of the RPA. The review recommended a number of important changes to my jurisdiction and adjustments to the way in which my Office operates. I believe these changes are essential if the



Office is to keep pace with the reforms in the wider public service and also to ensure it is appropriately equipped for its role within a modernised public sector. I understand the Office of the First Minister and Deputy First Minister is currently considering how the consultations on the proposed changes to my Office will be taken forward.

From an operational point of view, overall the business of my Office showed a decrease in the number of complaints received by the Office of 5.9% for the year 2008/2009. However, I anticipate an increase in caseload next year due to the ongoing changes in Health & Social Care complaints procedures.

## PLANNING

As Assembly Ombudsman I continue to receive a number of complaints in relation to the Planning Service. Of the complaints received a large number are from 'objectors' who are unhappy that planning permission has been granted, however my subsequent investigation identifies no maladministration. Unlike applicants for planning permission, objectors to planning applications have no appeal mechanism, and they, therefore, frequently look to me to "right" what they believe is the "wrong" done to them by the Planning Service. It is acknowledged that the rise in property prices during 2005/08 led to a major expansion of property development throughout Northern Ireland with, frequently, large, established homes being demolished to make way for apartments or other high density developments. Unsurprisingly, those living alongside these proposed developments felt

that their objections to the proposals were not adequately considered. In some cases, also, complainants felt that developers had built far beyond approved plans but Planning Service had made no effort to take enforcement action against such breaches.

Unfortunately, my level of authority in relation to planning matters is quite narrow and does not allow me even to consider the type of outcome these objectors are seeking. My authority extends only to the investigation of the administrative actions of the Planning Service. I do not have the authority to question technical decisions made by professional planners in determining planning applications or in the exercise of their discretion, unless there is evidence of maladministration in the reaching of those decisions. Importantly, my disagreement with a planning decision does not in itself constitute evidence of maladministration.

I am aware that many complainants, who believe that I can 'undo' planning approvals, are disappointed when I am not able to help them as they would wish. I am keen to manage these expectations with a view to reducing disappointment and will shortly publish a leaflet, providing information specific to planning complaints, which I hope will be of assistance to those considering making a complaint to me. In addition, the current updating of my website will include advice on making planning, and other, complaints, as well as detailing what a complainant needs to do before he/she comes to me.

As well as seeking to improve my own Office's communication with complainants, I

am also concerned with how the Planning Service keeps interested parties informed of the planning process. Where I identify what I perceive to be improvements, I ask the Chief Executive of the Planning Service to consider introducing these. While, presently, some proposals are still under consideration, I am pleased that the Chief Executive has agreed to my recommendation regarding compliance with planning conditions. Many objectors believed - wrongly - that Planning Service monitor the conditions outlined in planning approvals, leading to complaints that no action was taken when approved plans were not adhered to. Planning Service will now include, in planning notifications to objectors, advice on reporting non compliance of conditions attached to planning approvals; this will make it clear to objectors that the onus is on them to report planning breaches, which will provide the Planning Service with the opportunity to consider whether any action is necessary in a particular circumstance.

## HOUSING

I continue to receive a substantial number of complaints relating to the Social Housing Sector. As I have indicated in previous Annual Reports the quality of service is often measured by the way an organisation manages its complaints, whether justified or not. I am pleased to note that following the seminar I organised for the Social Housing Sector on good complaints handling a number of Housing Associations have amended or are in the process of amending their complaints procedures. This will ensure the procedures are in line with the principles of best practice.

The issues arising from housing complaints to me centre on issues such as home purchase, homelessness, standards of workmanship, grants, time taken to respond and staff attitudes. The Housing case summaries (See page 51 et seq) highlight the human dimension behind the issues raised in these complaints to me. I acknowledge that the 38 Housing Associations and the Northern Ireland Housing Executive in particular, as the largest social landlord in Northern Ireland, do aspire to provide a first class service and in fact do so successfully for the majority of the public for whom they provide a service. Settlements continue to feature heavily this year. I particularly welcome this response by public bodies as it demonstrates a willingness to put the citizen back in the position they would have been in if the matter complained of had not occurred.

Of particular concern to me, however, are cases where clearly the public body has not followed its own legislative and policy guidelines. I have provided details in the case summaries of a complainant who wrote to me because she was unhappy with the renovations carried out to her home by Northern Ireland Housing Executive.

Although the defects referred to the Executive were eventually rectified, this work was only completed after repeated efforts by the complainant to raise the issues that were affecting her well being. I had been initially informed that the problems in the complainant's accommodation had been addressed with the exception of difficulties with the windows, two months after the complainant



had returned to her flat. In fact, the problems outlined had not been resolved, a period of six months after the complainant had returned to her property.

It was only when her concerns were raised at the second stage of the Executive's complaints process that an inspection confirmed the problems she had complained about. I criticised the Executive for failing to provide an adequate level of service to the complainant.

This case indicated a lack of robust review at the intermediate stages of the complaints process. In particular there was no genuine effort to deal adequately with the complaint. I consider that the effective operation of a complaints system must ensure that a fresh and independent assessment is undertaken at each subsequent stage in the procedure. In a number of the complaints brought to me there is evidence of an absence of objectivity at the different stages of the complaints process. I am confident that in such cases the exercise of independent judgement by the officer concerned would have obviated the need for the complainant to come to my Office for their complaint to be considered. I am absolutely clear that staff tasked with considering such complaints should be willing and able to apply the same critical analysis as I do to cases where the level of service has fallen below an acceptable standard. In administering complaints procedures I would urge organisations to ensure that staff dealing with complaints are adequately trained and understand the importance of a full and impartial investigation of all relevant issues.

## HEALTH & SOCIAL CARE

This year my Office's approach to Health and Social Care complaints has had an additional focus on planning for the impact that may arise as a result of the new Health and Social Care complaints procedure which comes into effect on 1 April 2009. The new procedure, a one stage local resolution procedure, sees the removal of the independent review stage, which has been in existence since 1996. It denotes a regional and organisational commitment to delivering a strengthened local resolution process, employing, where necessary, a range of models and techniques, to ensure that as many complaints, as possible, are resolved internally by health and social care bodies.

In recognition of the potential impact that these changes may have on my Office's workload and, moreover, given the continuing increased complexity of many of the health and social care complaints I receive, I have recruited, and trained, a further three Investigating Officers to the Health and Social Care Team to help meet the challenges arising from this sphere of public sector work.

I have also undertaken a series of workshops with the five Health and Social Care Trusts and the Ambulance Service, to explain the role of my Office, the legislation under which I work, and my procedures in respect of investigating Health and Social Care complaints. I am confident that these workshops have helped to better inform health and social care bodies and staff of my expectations moving forward and will, therefore, ultimately result in a more

efficient investigative process. Further workshops with the Patient and Client Council and family practitioner services are currently being arranged.

Prison healthcare has also come into my jurisdiction within this reporting period, with South Eastern Health and Social Care Trust taking regional responsibility for the delivery of healthcare services within Northern Ireland's prisons from 1 April 2008. Previously, prisoners with complaints about prison healthcare, after completing the internal prison complaints procedure had a right of redress through the Prisoner Ombudsman's office. The change in responsibility for the delivery of healthcare has resulted in a corresponding change in responsibility for complaints handling. As such where a prisoner complains about the healthcare they have received in prison, after exhausting the internal prison complaints procedure, they can access the Health and Social Care Complaints procedure with a final right of redress through my office in the event they remain dissatisfied.

One final piece of work, currently underway, is the development of a protocol which best helps to ensure that any 'learning' which arises from the cases I investigate can be shared not only internally, within the organisation complained of, but also within the wider health and social care system. I am also committed to ensuring that, where my recommendations have called for particular action to address a problem or issue, effective monitoring of the progress of the organisation in implementing my recommendations, to the full, is carried out. Such monitoring of compliance, I believe,

would be most appropriately incorporated, where possible, into already established regulatory and inspection programmes.

## STAFFING

As recorded above, in preparation for the new Health & Social Care complaints procedure from 1 April 2009, I have recruited a number of additional staff. In addition, over the year there have been a number of changes to staffing both in the investigative and administration teams.

Also during the year my Deputy, Mr John MacQuarrie CBE, retired having provided outstanding service to my Office over the past twelve years. I wish to record my thanks to John and, indeed, all of my staff for their commitment and support during the year

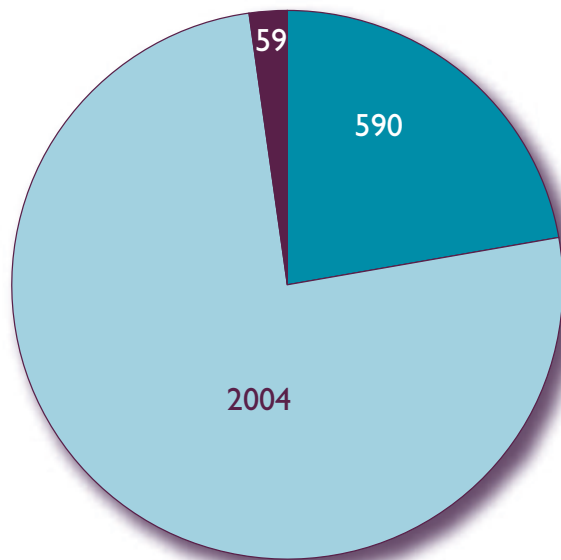
## INVESTIGATIVE PROCESS

The process of investigation is kept under constant review. During the year a full evaluation of the process was carried out by my Senior Management Team. An explanation of the three stages of the process - validation stage, investigation stage and report stage - is included at pages 92-94 of my report.

## CONCLUSION

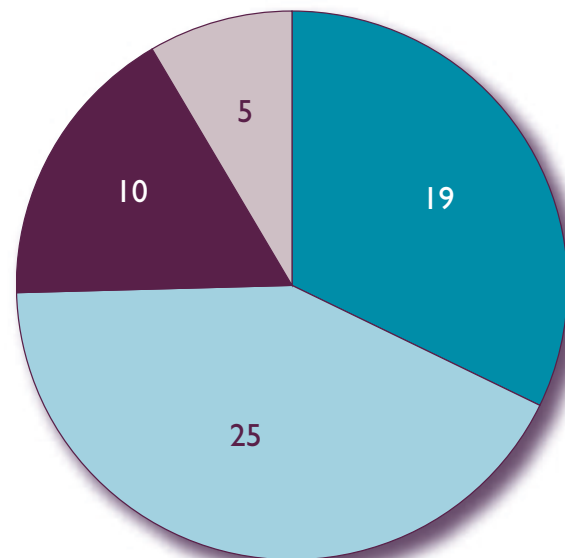
I look forward to another challenging year in the knowledge that my Office is well placed to meet the issues arising from the change agenda presently being implemented in Northern Ireland public services.

Fig 1.1: Number of contacts 2008/09



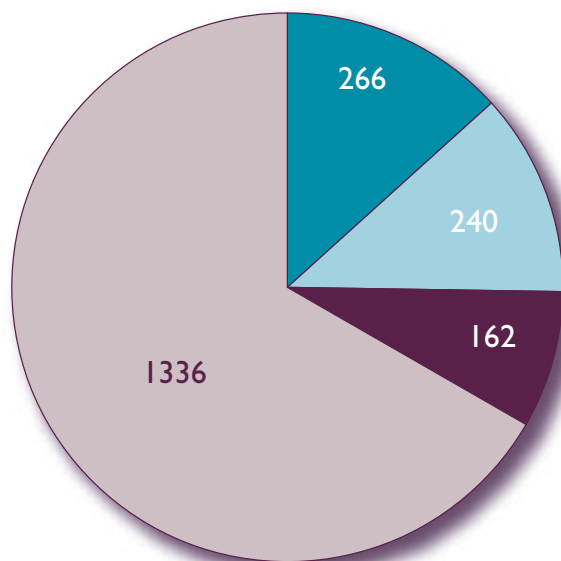
- Written Complaints
- Telephone Calls
- Interviews

Fig 1.3: Breakdown of Interviews in the Office 2008/09



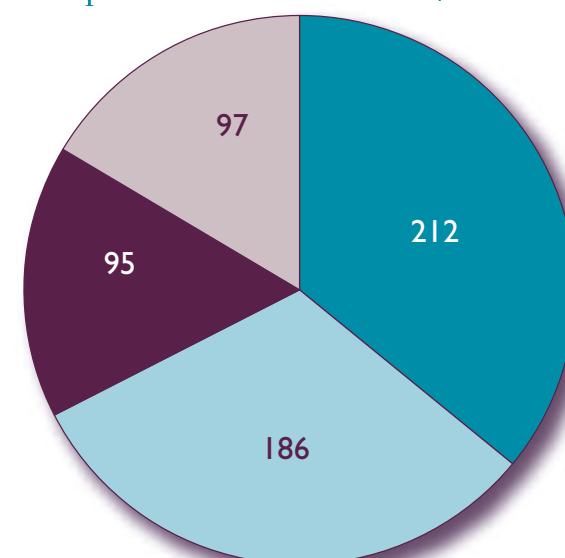
- Assembly Ombudsman
- Commissioner for Complaints
- Health and Personal Social Services
- Outside Jurisdiction

Fig 1.2: Breakdown of Telephone Calls to the Office 2008/09



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

Fig 1.4: Breakdown of Written Complaints to the Office 2008/09



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

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

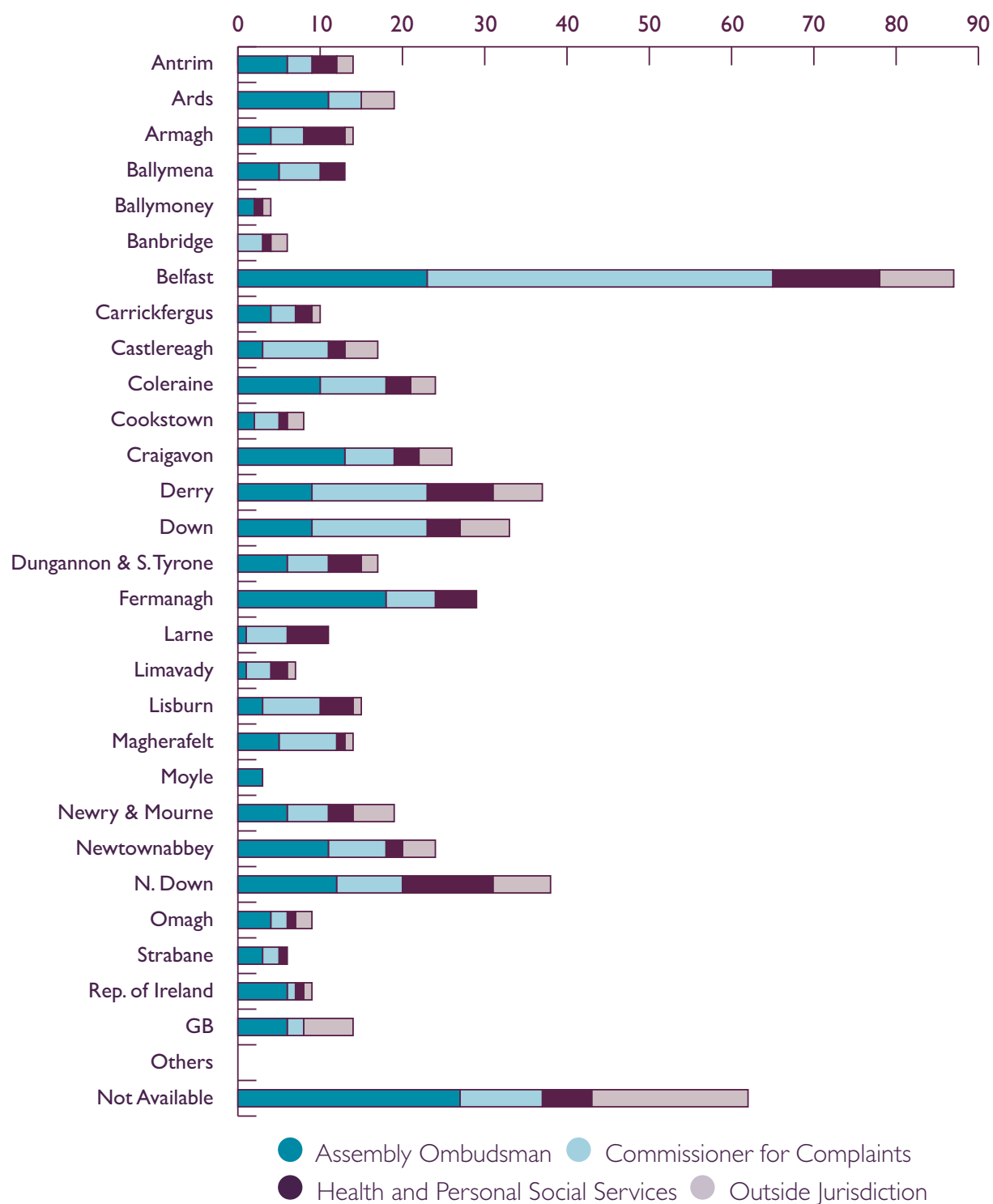


Fig 1.5b: Number of complaints per 10,000 resident population

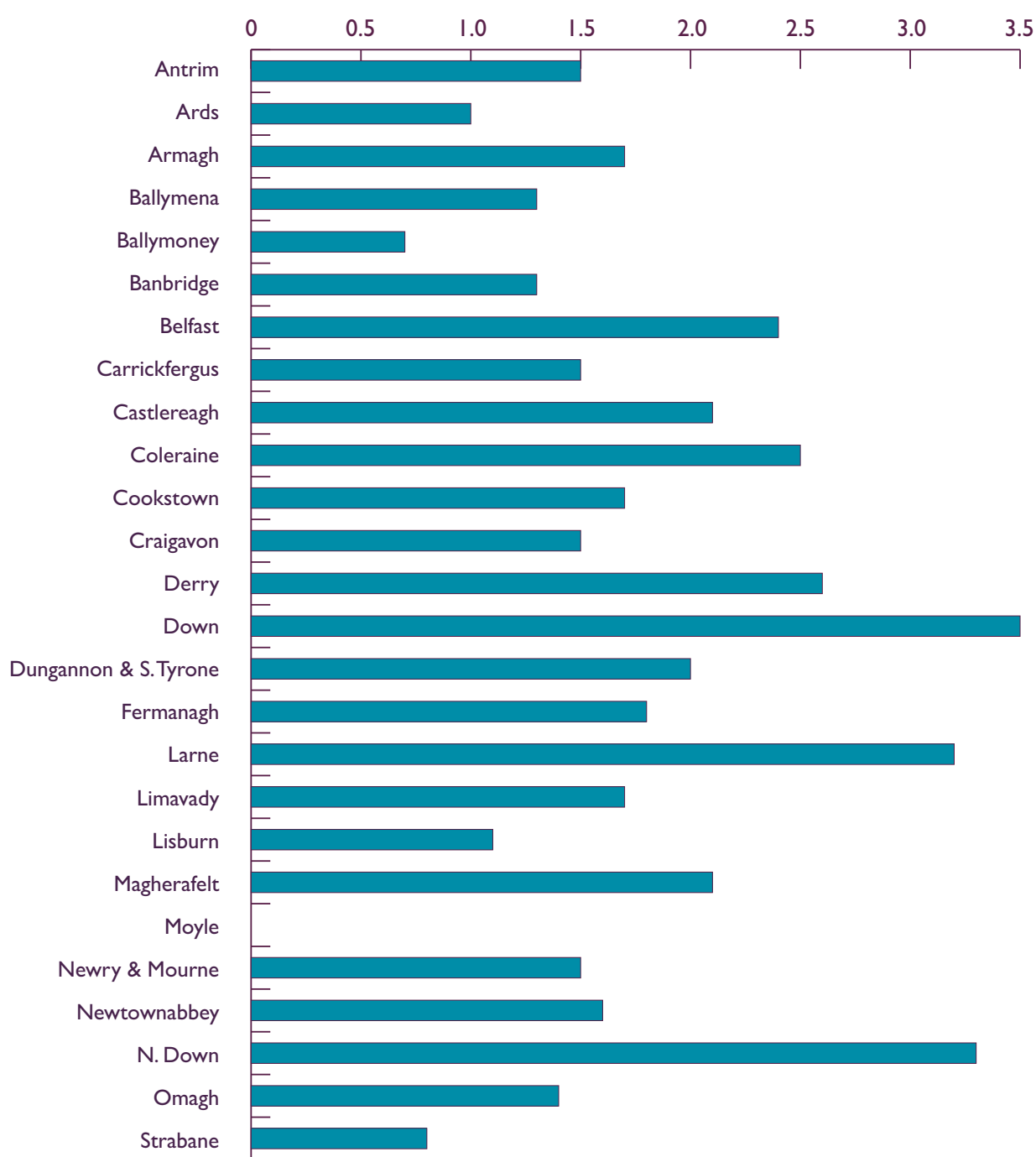


Fig 1.6: Completion Times for Investigation of Written Complaints

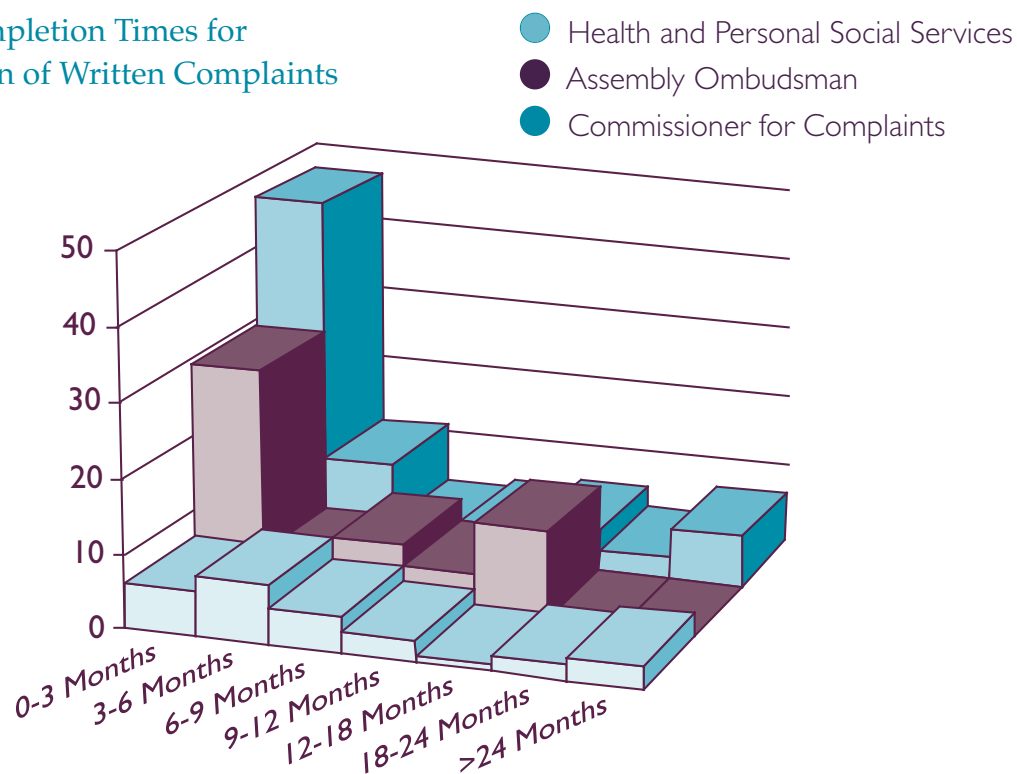
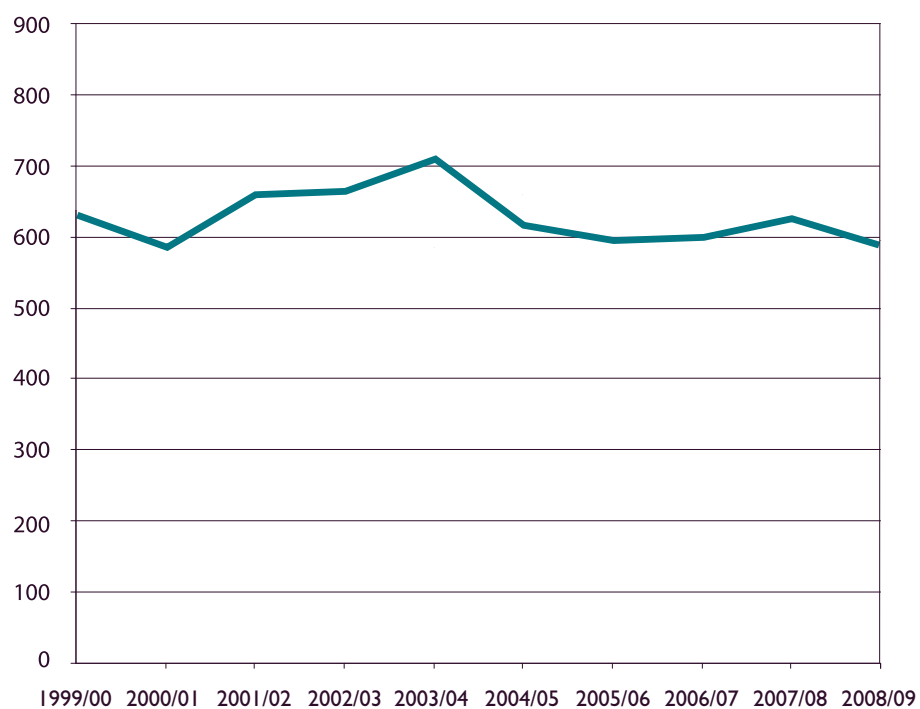


Fig 1.7: Written Complaints Received by the Ombudsman 1999/00 – 2008/09







## Section Two

Annual Report of the  
Assembly Ombudsman  
for Northern Ireland



Ombudsman Northern Ireland

# Annual Report

## WRITTEN COMPLAINTS RECEIVED IN 2008/09

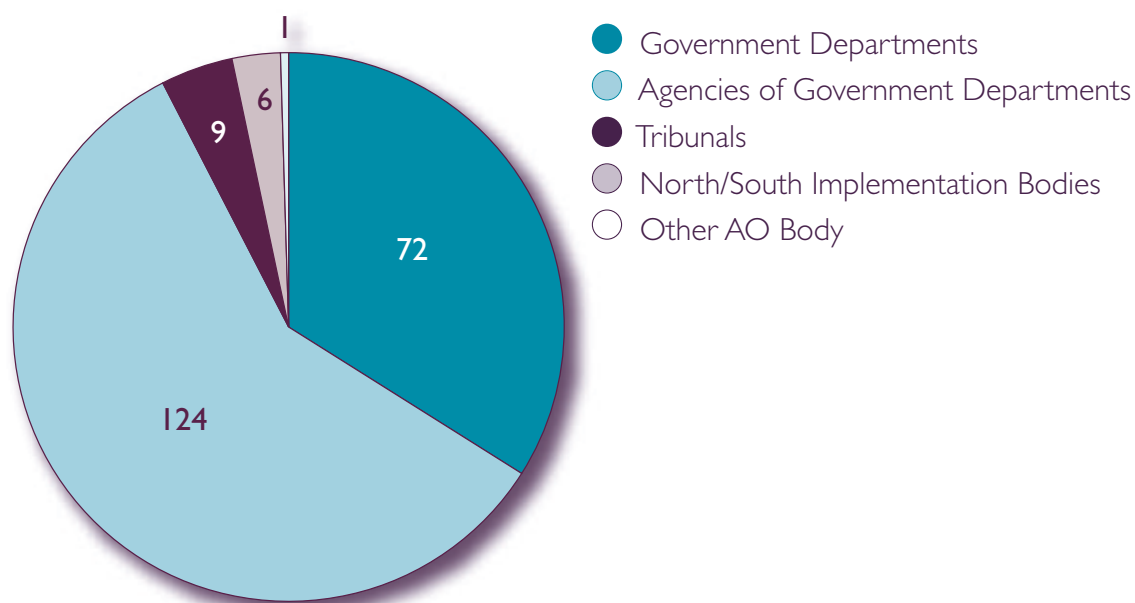
As Assembly Ombudsman for Northern Ireland I received a total of 212 complaints during 2008/09, 21 less than in 2007/08.

Fig. 2.1: Complaints to the Assembly Ombudsman 1999/00 - 2008/09



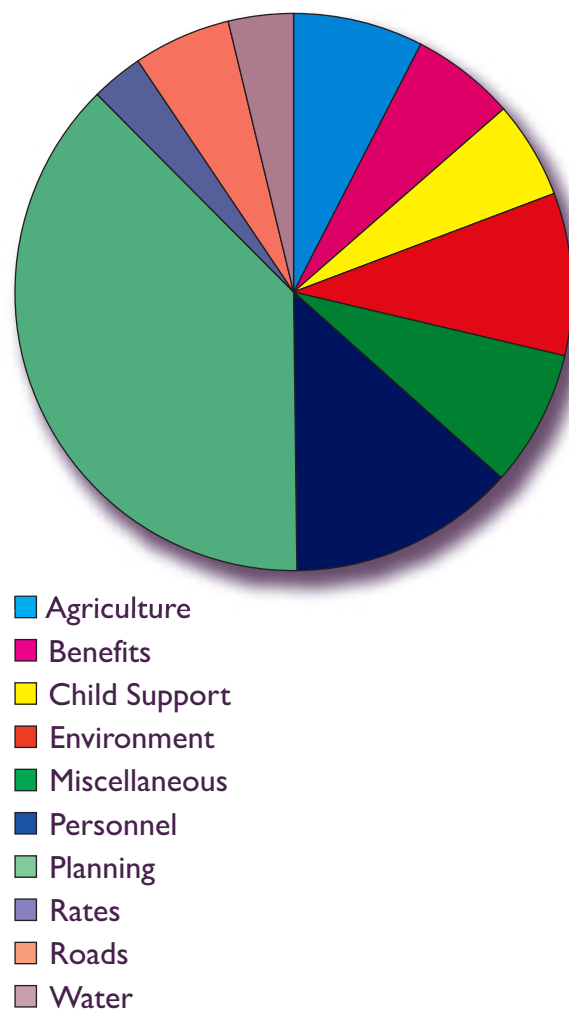
Under the Ombudsman (Northern Ireland) Order 1996, complaints made to me against government departments and their agencies require the 'sponsorship' of a Member of the Legislative Assembly (MLA).

Fig 2.2: Written Complaints Received in 2008/09 by Authority Type



When their respective agencies are included, the Department of the Environment and the Department for Regional Development attracted most complaints, 67 against the former and 36 against the latter. Of these 98 related to their agencies, with the Planning Service (51) and Roads Service (35) giving rise to the largest number of complaints. In all 124 of the 212 complaints received in 2008/09 related to the agencies of government departments.

**Fig 2.3: Written Complaints Received in 2008/09 by Complaint Subject**



## THE CASELOAD FOR 2008/09

In addition to the 212 complaints received during the reporting year, 30 cases were brought forward from 2007/08 – giving a total caseload of 242 complaints. Action was concluded in 207 cases during 2008/09 and of the 36 cases still being dealt with at the end of the year all 36 were still active and had not been concluded.

**Table 2.1 Caseload for 2008/09**

Cases brought forward from 2007/08	30
Written complaints received	212
Total Caseload for 2008/09	242
<b>Of Which:</b>	
Cleared at Validation Stage	147
Cleared at Investigation Stage (without a Report), including cases withdrawn and discontinued	36
Settled	3
Full Report or Letter of Report issued to MLA	20
In action at the end of the year	36

The outcomes of the cases dealt with in 2008/09 are detailed in Figs 2.4 and 2.5.

Fig 2.4: Outcomes of Cases Cleared at Validation Stage

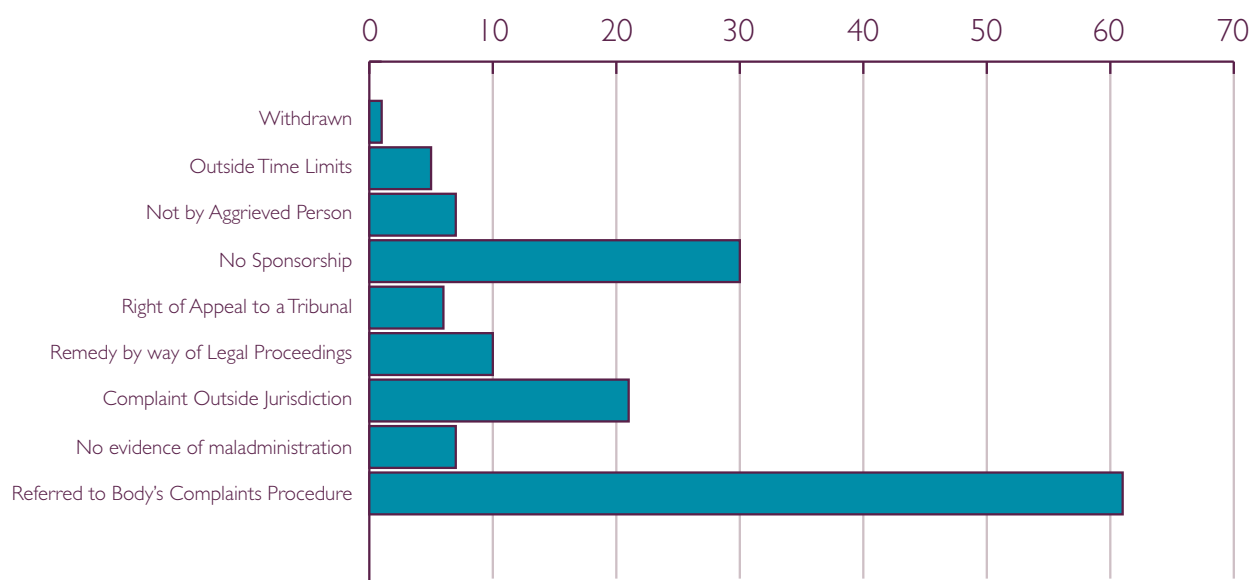
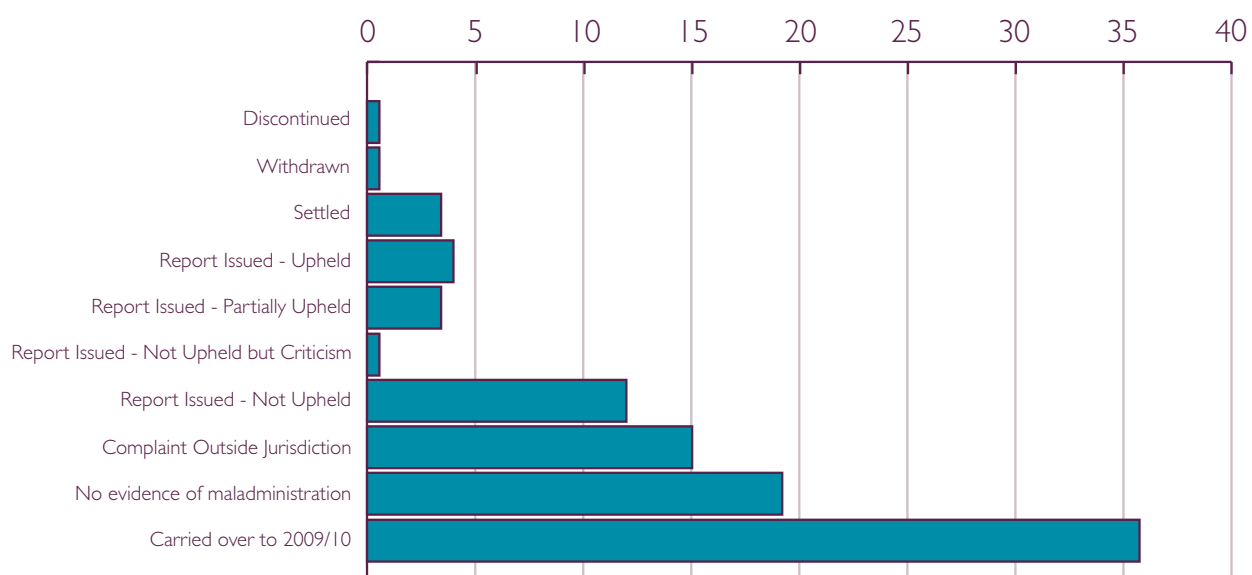


Fig 2.5: Outcome of cases Cleared at Investigation and Report Stages



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

The average time taken for a case to be examined, enquiries made and a reply issued at Investigation Stage was 11 weeks.

The average time taken for a case to be examined, enquiries made and a full Report issued was 50 weeks.

20 reports of investigations (Full Reports and Letters of Report) were issued in 2008/09. Of these cases: 4 were fully upheld; 3 were partially upheld; 1 was not upheld but I criticised the Body complained against; and 12 were not upheld. In all of the cases in which I made recommendations for action(s) by the body complained against these recommendations were accepted by the body concerned.

**Table 2.2 Recommendations in Reported Cases**

Case No	Body	Subject of Complaint	Recommendation
200700595	Planning Service	Handling of Complaint	Written apology & consolatory payment of £500
200700229	Planning Service	Handling of Complaint	Written apology & consolatory payment of £500
200700833	Department of Education	Personnel- Disciplinary Procedure	Written apology & consolatory payment of £500
200700790	Department for Social Development (CMED)	Handling of Complaint	Written apology & consolatory payment of £400
200700869	Driver & Vehicle Agency	Unfair Treatment	Written apology & consolatory payment of £150
200700963	Department of Agriculture and Rural Development	Unfair Treatment	Written apology & consolatory payment of £1250
200800171	Land and Property Services	Handling of Complaint	Written apology & consolatory payment of £200

# Selected Summaries of Investigations

## DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT (DARD)

### Refusal of grant aid

The complainant alleged that the Department had not treated him fairly in relation to his application to the Farm Nutrient Management Scheme (FNMS) for grant aid to build storage facilities for dealing with manure, slurry or silage effluent. The complainant told me that the Department had refused his application because he did not have animals registered in his farm herd when he made his application. The complainant believed that the decision to reject his application was unfair because neither the FNMS guidance nor the legislation had highlighted the requirement to have animals in the applicant's farm herd when they made their application. The Department had taken the position that farmers who had no animals on their farms when they made their application were already compliant with the Nitrates Directive<sup>1</sup>.

I reviewed all the documentation relating to the complainant's FNMS application, including the relevant guidance and legislation. I also explored the issues raised by the complainant with the Department's Permanent Secretary from whom I obtained written comments.

From all the information available to me, I was satisfied that the complainant's application had been considered in accordance with the Department's pre-determined policy to prioritise the FNMS to assist those farmers who had stock on their

farms at the time of their application and needed additional storage facilities to maintain their existing farming business. The complainant was not operating an existing farming business when he made his application and I was satisfied that, based on the Department's policy, he was not entitled to be considered for grant aid. **(200701010)**

### Improper handling of risk notification

In this case, the aggrieved person alleged that as a consequence of DARD's handling of information about an animal in his flock of sheep which it considered may have been in contact with an animal that had tested positive for Maedi Visna disease, he suffered a financial loss and damage to his reputation as a good quality stock-keeper.

My investigation established that DARD received notification in July 2007 of the potential risk of Maedi Visna having been brought into Northern Ireland by a sheep purchased by the complainant at a sale in England, in October 2006. I was advised that Northern Ireland is a recognised Maedi Visna free region and therefore any potential threat to this status is dealt with in a rigorous way, for the protection of the sheep industry and in particular its export trade. However, in this case, DARD delayed approximately four days before deciding to restrict the movement of the complainant's sheep, despite the fact that DARD had granted him a licence to take some of his sheep to the market, which was due to be held later that day. Unfortunately, by the time DARD contacted the complainant, he had already arrived at the Market and had unloaded his sheep, which he then had to remove from the Market prior to the

<sup>1</sup> Directive No 91/676/EEC



commencement of the sale. Overall, I considered that DARD's failure to act in a timely manner, commensurate with the nature of the disease, amounted to maladministration.

By way of redress for the inconvenience, embarrassment and loss of reputation experienced by the complainant, I recommended that he should receive an apology from the Permanent Secretary, together with a consolatory payment of £1,250. I am pleased to record that DARD accepted my recommendations.  
**(200700963)**

#### **Application for Single Farm Payment**

The complainant had applied for Single Farm Payment (SFP) and had told me that he had been misadvised by DARD Officials. As a result he had applied for his Single Farm Payment under the "default" methodology which did not secure him the level of payment that he had expected to receive. The complainant was firmly of the view that he would have received a larger payment if he had applied under the "alternative" methodology.

In my investigation of the complaint I reviewed all the documentation relating to the complainant's SFP application and all the documentation relating to the consideration of the complainant's appeal through the formal Appeals Procedure. I also explored the issues raised by the complainant with DARD's Permanent Secretary and obtained his written comments.

Having taken into account all of the information available to me, including an

assurance from the Permanent Secretary that an application under the alternative methodology would not have produced a greater SFP award for the complainant, I concluded that DARD's handling of the complainant's SFP application and the consideration of his appeal through the formal Appeals Procedure was not attended by maladministration. **(200700393)**

#### **Alleged mishandling of selection procedure**

In his complaint to me the aggrieved person claimed to have suffered an injustice as a result of maladministration by the Department of Agriculture and Rural development (DARD) in relation to the handling of the selection procedure for the post of Civil Engineer, Principal Professional and Technical Officer (PPTO) grade, within DARD's Rivers Agency. I received two similar complaints relating to the same competition from two other candidates.

The complainant alleged that he met the criteria for the post and yet the panel failed to shortlist him for interview. Having studied the documentation made available to me both by the complainant and DARD, I concluded that the complainant had failed to provide all the information required in his application form. In my view, in submitting their applications for the post, the onus was clearly on an applicant to demonstrate clearly how he/she met the essential criteria and, unfortunately, unlike the candidates who were shortlisted, the complainant did not do so. It would, therefore, have been wrong of the panel, contrary to good selection practice, and unfair to other candidates who had complied with the specified information requested, to have

shortlisted the complainant to the interview based on an inference or assumption as to the extent of his specific personal experience relevant to the criteria. Furthermore, it was a discretionary decision for a panel to evaluate and quantify all the evidence provided and make the judgement as to whether the shortlisting criteria had been met. This was something which I had no authority to question since I was satisfied that the decision was taken without maladministration.

For completeness, I examined in detail the application forms of all 21 candidates who took part in the competition and, based on the information provided by each applicant, I was satisfied that the treatment afforded to all was consistent. Also, I was satisfied that the approach adopted completely met the guidance offered to candidates in the application documentation. I did not find the process adopted for this appointment unreasonable or flawed by maladministration.

I did not uphold further allegations that the complainant had been excluded from the competition because he was not an employee of DARD, Rivers Agency; that the sift stage of the competition did not comply with the requirements of the Recruitment Policy and Procedures Manual or that information had been withheld from the complainant. I was also satisfied that each of the candidates identified by the complainant as not having the relevant qualifications and/or experience did, in fact, satisfy the criteria and, as such, were correctly assessed by the panel.

The complainant submitted an appeal against the panel's decision not to shortlist him and he also raised several issues concerning the handling of his appeal. My investigation revealed that there was an established and recognised mechanism for dealing with appeals from candidates about non selection for interview and I found that the appeal process was administered in accordance with relevant procedures. I did not uphold the complaint. (200701013; 200701219; 200701220)

## DEPARTMENT OF EDUCATION (DE)

### Handling and investigation of complaint under grievance procedures

The complainant in this case was dissatisfied at the delay in the DE's handling of his complaint under the Department's Grievance Procedure. The issue at the core of this complaint arose from a decision by management to move the complainant from his post, at short notice, without providing a reasonable explanation for the move. It is not my normal practice to re-examine a grievance process unless I am satisfied there is evidence of possible maladministration. In this case I established that there was an inordinate delay in dealing with the grievance throughout the various phases of the procedure.

My investigation established that the DE had not kept the complainant informed about the progress on his grievance in line with procedures. I considered this to constitute maladministration. I also established that the complainant's transfer to another post had left some unanswered questions which the

Permanent Secretary accepted were not managed or handled well. In situations where staff have to be moved on an involuntary basis, the reason and particularly the rationale behind the decision should be communicated to the member of staff without delay. This case also emphasised the need for managers to maintain clear documentary records, which contemporaneously reflect the thinking and decision making that informed the involuntary staff transfer; the various options which were open to them and any discussions that have taken place with the key personnel involved.

I am pleased to record that the Permanent Secretary acknowledged that this case highlighted the need for clear procedures to be complied with and also adherence to timescales. The case also demonstrated the importance of adherence to clear time frames that needed to be established in relation to the appeal process involving the Permanent Secretary, including timescales for the receipt of appeals from staff and the processing of such appeals by the Permanent Secretary which recognise the total time for a grievance to be considered from beginning to end.

I concluded that the complainant should receive a further letter of apology from the Permanent Secretary informing him of the 'learning' that has been gained from this case for the handling of future staff changes and for the administration of the grievance procedure and a consolatory payment of £500 for the stress and inconvenience he had experienced as a result of the delay in the overall handling of his grievance, at the

end of which he was not provided with a clear rationale and explanation of the circumstances that affected his move. I am pleased to record that the Permanent Secretary accepted my recommendations. **(200700833)**

## DEPARTMENT OF THE ENVIRONMENT (DOE)

### Driver & Vehicle Agency (DVA)

#### **Allegation of Unfair Treatment**

This complainant alleged that the DVA failed to follow its review and appeal procedures when he had his car examined for the purpose of obtaining a Test Certificate. On examination, the examiner had refused the complainant's car a Test Certificate because he had found the brake pipes to be corroded. The complainant asked the DVA to re-assess the condition of his car and he was dissatisfied with the DVA's failure to do so or to inform him of his right to appeal the examiner's decision. The complainant therefore considered that the DVA had not treated him fairly.

In my investigation I established that the complainant had asked the Test Centre's Acting Manager to re-assess the condition of the brake pipes of his vehicle, to enable him either to confirm the examiner's assessment or to overturn it, if he considered the assessment incorrect. From the evidence available to me, it was clear that, in accordance with the DVA's normal practice, if not its documented policy and procedures, the complainant was entitled to such a re-assessment. I regarded the Acting

Managers' failure to examine the brake pipes of the complainant's car as representing maladministration for which I criticised the DVA.

However, my investigation also established that the complainant became abusive to the Acting Manager when his request for a re-assessment did not produce the outcome he had sought, his behaviour also upset other customers who were waiting in the DVA's reception/waiting area. Whilst I appreciated that the complainant was disappointed when his vehicle was refused a Test Certificate and that he may have experienced frustration and annoyance in the course of his further contact with DVA staff, it is my firm view that it is totally unacceptable for members of the public to engage in abusive and objectionable behaviour in the way demonstrated by the complainant and verified by an independent witness in this case.

In this investigation I identified a further example of maladministration on the part of the DVA in its dealings with the complainant when he presented his car for its annual MOT check. I also identified several examples of unsatisfactory administration by the DVA in relation to its overall handling of complaints that the complainant made to it under the DVA's Internal Complaints process.

Overall, I concluded that the quality of service that the complainant received from the DVA fell short of the standard that members of the public have a right to expect from government agencies and which, in fairness, I am satisfied the DVA does strive to deliver. I had no doubt that, as a consequence, the complainant

experienced the injustice of disappointment, annoyance and frustration. As a remedy, I recommended the complainant should receive an appropriate letter of apology from the DVA's Chief Executive together with a consolatory payment of £150. The level of payment that I recommended would have been higher had the complainant not contributed to the problem himself by his abusive behaviour. I am pleased to record that the Chief Executive accepted my recommendations. (200700869)

### The Environment Agency

#### Erection of fencing

Environment & Heritage Service (EHS) (now the Northern Ireland Environment Agency) wrote to residents whose properties border Crawfordsburn Country Park, informing them that it was proposing to erect a fence between the Park and residents' properties. The complainant stated that some residents have an access gate in their fencing by which they enter the Park. He acknowledged that residents did not have a "right of way" into the Park and stated that EHS intended to stop these "unauthorised entry points" by the erection of a fence. The complainant considered that the fence was to be an industrial grade coated metal fence which was inappropriate for a country park. He also complained about the level of consultation involved in the process. Overall the complainant considered that the fence would restrict his family's means of gaining access to the Park.

In response to my enquiries EHS informed me that the number of unauthorised access

points to the Park had risen over the years and that the fence was erected to demarcate the Park boundary and prevent potential loss through encroachment. It was also considered that some of the unauthorised access points were not maintained to an acceptable standard. The EHS also believed the fence would ensure that no access rights were established by passage of time and would reduce the incidences of unauthorised dumping in the Park and damage to trees which was becoming an increasing problem.

After careful consideration I found no evidence of maladministration in the decision to erect fencing around the boundary of the Park, the type of fencing to be erected or in the level of consultation with local residents.

In conclusion, I considered that EHS made a decision in line with long standing policy, properly sought legal advice and consulted with residents before making the discretionary decision, which it was legally entitled to take. I did not uphold the complaint. **(200800167)**

### Planning Service (PS)

#### Development too close to dwelling

In this case the complaint stemmed from the complainants' dissatisfaction with Planning Service's decision to grant approval for the development on part of what had been a larger site that had been acquired from them and which was adjacent to their home. They believed that planning permission should not have been granted in such close proximity to their home. In my

examination of their complaint I did not find any evidence which would allow me to conclude that the determination of the planning applications, which were the subject of this complaint, was attended by maladministration. **(200700240)**

#### Decision to grant planning permission for Dental Surgery

Planning Service (PS) received a planning application to convert a dwelling into a specialist dental surgery. The complainant lived next door and objected on the grounds that the area had always been residential and that a dental surgery at the location would lead to increased traffic, noise nuisance, loss of light and loss of privacy which he claimed would have a detrimental effect on his lifestyle. The complainant was aware that a planning application for a dental surgery in another residential area of Belfast had previously been refused by PS and he felt that a precedent therefore existed for refusal in this case. He was also aware that PS had refused a planning application for a care agency in the immediate vicinity of his local area. In light of these two refusals, the complainant claimed that PS had acted inconsistently by granting planning permission for the dental surgery next door to his home.

My investigation revealed that PS had viewed the proposed dental surgery as a health facility and that, in that context, it viewed the planning application as being acceptable under planning policy. In contrast, PS had viewed the planning application in respect of the care agency as an application for an office, and thus it warranted a different assessment. I found that while PS had refused a planning application for a dental

surgery in another residential area of Belfast, that application had been approved on appeal to the Planning Appeals Commission, which I concluded had removed the argument that a precedent against such development had been set. I also found that while PS had considered the objections raised by the complainant, it did not view those objections as being sufficient to merit refusal of the planning application. Current planning law affords PS the discretion to make such decisions. I was unable to uphold the complaint. (200700709)

#### **Handling of planning application for apartments**

This was a multi element complaint concerning the Planning Service's (PS) handling of a planning application for the demolition of an existing dwelling and the erection of one block of apartments. One of the allegations concerned the "informal lobbying" by elected representatives of the Chief Executive (CE) of the Planning Service which the complainant claimed was contrary to PS's own guidance. Having carefully studied the relevant guidance, I did not agree with the complainant's interpretation of the document in terms of its relevance to this particular situation.

In considering whether or not the CE should have accepted telephone calls from the elected representatives, I believe that generally there is an expectation on the part of the public that its elected representatives should be able to make representation to public officials. There is no policy in Northern Ireland prohibiting "informal" telephone contact during the processing of a planning application.

Consideration of whether such a policy should be put in place is a matter for the PS and, indeed, the Northern Ireland Assembly to consider. That said, I recognise that elected representatives have an important role in representing the interests of their constituents be they applicants or objectors. I did criticise the PS for failing to make any record of the telephone conversations with the elected representatives and recommended that staff are advised to make a formal written record of any such interaction which clearly has the potential at a later stage to be contentious and particularly so if the call is made in order to influence one way or the other a discretionary decision. I was, however, satisfied that the final decision to grant planning permission was based on valid planning considerations and not as a result of any influence or pressure exerted by an elected representative.

My investigation and careful examination of the Northern Ireland Civil Service Code of Conduct and Code of Ethics revealed no evidence to substantiate the complainant's accusation that PS officials had failed to comply with these professional and ethical codes. I also found no evidence of bias by the CE or any of his staff in favour of the applicant.

In considering the complainant's claim that the CE had offered him no explanation as to why parts of the planning file were missing, I found that this was because the CE had been satisfied that this was not the case and the CE had sought to assure the complainant accordingly.



Although I did not uphold the allegation that the complainant's letters were never replied to, I did criticise the PS for delay in dealing with the complainant's correspondence and failing to provide substantive replies to his letters. However, I noted that the CE had acknowledged and apologised to the complainant for these failings and I considered this response to represent a suitable redress.

I did not uphold further allegations that:

those issues raised by the complainant concerning loss of amenity to his home had not been noted, recorded, and addressed in the planning officer's assessment of the proposal;

letters of objection were missing from the planning file and had, therefore, failed to be considered during the processing of the application;

the original proposal for the development should have been refused planning permission rather than giving the applicant an opportunity to submit an amended design;

having received amended drawings, the planning officer tasked with reassessing the proposal had neither addressed the previous objections of his professional colleagues nor did he explain how he had reached the opposite opinion to that which had been previously recorded;

the CE had tried to mislead the complainant;

the formal complaint made by the complainant to the CE had not been dealt with in line with the PS complaints procedure or that it was unreasonable for the CE to have responded to the complainant on behalf of the PS.

Overall, I found no evidence of maladministration on the part of the PS during the processing of the application.  
**(200700206)**

#### **Handling of planning application for extension to neighbouring property**

The complaint centred on the handling of a planning application for a two storey extension to the side of a neighbouring property. The proposal also included the existing detached garage being incorporated into the dwelling and raising the level of the garage roof. The complainant believed that the Planning Service (PS) could not possibly have carried out a full assessment of the impact of the extension on his property as no one from the PS visited him at his home to discuss the proposal and see from his property the difference in levels which he believed would result in loss of light and loss of privacy.

My investigation revealed that the case officer had attempted to gain access to the complainant's property and had called at his home without response. In the absence of a calling card or a follow up telephone call, the complainant was clearly unaware of this visit. However, I was satisfied that, as a consequence of the visit, the case officer had viewed the applicant's site from the street and from within the grounds of the actual site. I was also satisfied that the PS

had sufficient knowledge of the area and adjoining properties on which to base its judgement. Ultimately, it is a professional decision as to when it is considered essential to gain unrestricted access to an adjoining property and I had no reason to challenge a professional, discretionary decision that it was not necessary to gain access to the complainant's property on this occasion. While I could sympathise with the complainant's sense of frustration and his belief that to make an informed decision someone from PS should have viewed the proposal from within his property, I also had to acknowledge the practical and resource difficulties presented to PS of arranging all site visits by appointment and viewing development sites from within an adjoining property. I did, however, comment that it would appear to me to be common courtesy to leave a note/calling card when visiting an objector's property, stating that an officer had called, giving the name of the officer involved and a contact telephone number. This simple act would also give reassurance that a visit had taken place. I therefore recommended that PS should consider introducing such a practice on occasions where no one is available when they visit premises.

From my careful study of documentation relating to the administrative process leading to the decision to grant planning permission, I was satisfied that the PS had taken into consideration the lower height of the complainant's property to the development site and objections from neighbours, including those from the complainant, particularly in respect of loss of privacy. Any potential overlooking or overshadowing issues were

considered and documented, but overall were not felt to be so significant as to warrant the refusal of planning permission.

The complainant also made the point that the issue of venting gases on to his property had not been addressed by the PS in the processing of the application. My investigation revealed that the PS has no role in either determining the siting of boilers or in the control of gases/fumes which may be discharged from such a boiler. I did not uphold a further allegation that the complainant had been given an assurance by the PS that he would be represented or be able to attend a meeting between the PS and the local Council.

I found no evidence of maladministration in the processing of the application and, in all the circumstances, I had no grounds on which to question the professional judgement underpinning the discretionary decision to grant approval in this case.

**(200700822)**

#### **Planning application for replacement dwelling and detached garage**

The complainant stated that the proposal for a replacement dwelling and detached garage adjacent to his home did not comply with planning regulations and in support of his belief he referred to the Planning Service booklet "Your Home and Planning Permission" (the booklet). Having carefully studied the booklet, it seemed to me that the complainant had misunderstood the purpose of the guidance detailed in the booklet. I concluded that his interpretation of the booklet was not in accordance with the intent of the guidance.

It was also alleged that the development, as built, did not comply with the approved drawings and, when brought to the attention of the PS, the complainant was told that it did not intend to take any further action. I established that the development, as built, did not comply with the approved drawings. However, the deviations were minor in nature and, had an application been submitted that included the unauthorised work, it would have received planning permission. Therefore, PS concluded that it would not be proportionate to pursue enforcement action. It is for PS to decide whether or not to initiate enforcement action and this is a matter which involves the exercise of professional judgement leading ultimately to the taking of a discretionary decision by the PS. In this instance, I found that I had no grounds for substituting my judgement for the judgement of the planners in relation to the opinion formed on this matter.

The complainant also claimed that the plan for the garage showed a different address to that of the development site and that it was not designed for the site in question. PS acknowledged that the garage plan did show a different address but the PS reference number which appeared on all application documentation, including the drawing and the Decision Notice, ensured that the plan was associated with the actual development site. I concluded that this oversight did not therefore affect the validity of the planning permission. However, I considered that it would have been better had the PS amended the address on the plan which would have resolved any potential misunderstanding.

I did not uphold further allegations that the PS had attempted to conceal the detail of the proposal from the local Council or that it had failed to give reasonable consideration to the impact of the development on the privacy of the complainant. I did, however, identify a lack of written evidence demonstrating and recording the deliberations of the case officer with regard to the effect or otherwise the development may or may not have had on the complainant's property. I found that the omission of such information had the potential to undermine the credibility of the planning process in the perception of members of the public who, in my view, should be able to see formalised recorded evidence that all relevant matters had been considered and that consideration properly recorded.

Overall, I found no grounds on which to challenge the PS opinion to grant approval on this application. **(200700680)**

### **Disagreement with granting of planning permission and communication failures**

The complainant lived next to a site where PS had approved two outline planning applications for the erection of dwellings. He had objected to the proposals and had acquainted himself thoroughly with the relevant policies and guidelines which the planners used to reach their decision. He argued that PS was in breach of both policies and guidelines. In particular, the complainant contended that PS had evaluated the applications in a superficial, inaccurate and incomplete manner. He felt PS had failed to carry out a proper evaluation of: the proposals' effect on the

local character/sense of place of the area; on loss of light; their effect on overlooking/loss of privacy and; their compliance with guidelines specific to the layout of dwellings. The complainant also felt PS had attempted to 'wrong foot' objectors by accelerating the decision-making process at the last minute and rushing the completion of its consultation with the Council.

My investigation found that PS had demonstrated a reasonable consideration of the applications. I did not find that its granting of planning permission was in breach of the PS guidelines and policies referred to by the complainant. I concluded that the complainant had merely disagreed with the decision reached by PS. Significantly, however, PS has discretion to make decisions and disagreement with those decisions does not of itself indicate maladministration. I found nothing to substantiate the allegations concerning the timing or management of the consultation with the Council.

The complainant was also unhappy that he did not receive written communication from PS as was his right once a decision had been reached. He also complained that PS failed to respond to specific questions he had raised in a letter he sent seeking information. My investigation confirmed that these claims were valid and, while the complainant did eventually receive the outstanding communication (albeit after a further error on the part of PS) I found significant delay by PS which I considered to be unacceptable. Moreover, I found that PS failed to notify neighbours (including the complainant) about its receipt of amended plans and this

had contributed to the complainant's feeling that PS had 'wrong footed' objectors. Having studied the documentation in this case, my attention also became focussed on the legibility of PS handwritten comments, having been provided with a document, part of which was virtually indecipherable. In my view all of these failings constituted maladministration.

Recognising the undermining effect this maladministration had on the complainant's confidence in PS, an organisation whose responsibilities inevitably increase the possibility of strong disagreement from those affected by its decisions, I recommended the complainant be paid a consolatory payment of £500, accompanied by a letter of apology from the Chief Executive of PS. I am pleased to record that my recommendations were accepted.

**(200700229)**

### **Planning applications for neighbouring development**

This complaint concerned the handling of two separate planning applications for the same development site to the rear of the complainant's home. The first application concerned the renewal of a planning permission. My investigation revealed that outline planning permission had previously been granted for a single storey development and the permission had carried certain conditions, including a specified maximum ridge height. However, in considering the application for renewal of this planning permission, PS granted permission without the previous restrictions. The complainant explained that throughout the planning process he was unaware that

the proposal included not only renewal but removal of the height restriction.

My investigation revealed that the applicant did not request removal of the height restriction and it was the PS, in its consideration of the renewal application, who made the decision regarding which conditions should be attached to the approval and, in particular, not to apply the height restriction. In light of the evidence, I was satisfied that the PS was fully aware of the relevant policies, the characteristics of the site, the surrounding area and its relationship to the existing dwellings, which included the complainant's home. I was also satisfied that, prior to its making a decision on the renewal application, although unaware of the possibility that PS could remove the height restriction, the complainant was able to, and did, make his views known to PS that the renewal application should be subject to the same conditions as those attached to the original application. The decision whether or not to grant planning permission or apply conditions to that permission was a professional, discretionary decision for the PS which, in the circumstances, I did not seek to challenge.

The complainant also said that, during the processing of this application, the PS failed to make him aware of the existence of a Concept Statement or to make it available to him. I found that the Concept Statement did not form part of the approved documentation and, as such, none of the information contained within the document formed part of the planning decision. I was, therefore, satisfied that not having been

provided with a copy of the Concept Statement did not cause the complainant any injustice.

The second application was for the erection of 3 new detached, 4 bedroom dwellings. The complainant, throughout his complaint, challenged technical information in relation to the site plans/measurements and the PS's opinion regarding the scale of the development. It is not my role to question the technical decisions made by planners in determining planning applications or in the exercise of their discretion, unless there is evidence of substantive maladministration in the reaching of such decisions and I had found no evidence that would cause me to challenge PS's interpretation of this technical information.

The complainant also claimed that the granting of permission for the dwelling to the rear of his property was in contravention of PS's supplementary planning guidance "Creating Places", paragraph 7.16. I learned that the guidance in paragraph 7.16 of the document relates to two storey developments and to back-to-back instances between dwellings (dwelling rear wall to dwelling rear wall) and it was not directly applicable to a situation such as the case complained of where the dwellings were not positioned square to each other. It was my view that the complainant's interpretation of paragraph 7.16 was not consistent with the intent of the guidance. I was also satisfied that the circumstances described in paragraph 7.16 of the Creating Places document were not directly comparable to the subject site. While I could not concur with the

complainant's assertion that PS had in this case deviated from its guidance, it struck me that members of the public would be better persuaded of the reasonableness of such decisions if the wording of paragraph 7.16 was more specific to indicate that, in respect of separation distances between dwellings, it is the "back to back" distance that applies. I recommended that, at the earliest opportunity, PS revise the wording of paragraph 7.16 in order to avoid any future misunderstanding. Overall, I found no evidence of maladministration in the processing of this application. (200601355)

#### **Failure to take enforcement action**

This complaint centred on the handling of two planning applications for neighbouring sites. The complainants stated that the Planning Service (PS) failed to take appropriate enforcement action in relation to the initial planning approval, and that it was unacceptable for PS not to have in place appropriate monitoring arrangements to ensure conditions outlined in a planning approval are complied with. The complainants were also of the view that, had appropriate enforcement action been taken with regard to the initial planning approval, the developer would have been prevented from seeking planning permission for an additional dwelling on the restricted site.

The complainants also felt that, as objectors to the second planning application, they were disadvantaged by PS in favour of the developer, because PS put on hold any formal enforcement proceedings pending the outcome of the second planning application.

My investigation revealed no evidence which would allow me to conclude that the determination of the second planning application was attended by maladministration which caused the complainant substantive injustice. In response to my enquiries the PS confirmed it does not monitor developments to ensure compliance with planning conditions as it does not have the resources to do so, rather it relies on breaches of development control being brought to its attention. It also confirmed that failure to comply with any planning condition is not, in itself, an offence, however those responsible for unauthorised development leave themselves open to possible enforcement action by PS as outlined in the Planning Policy Statement 9 (PPS9), 'The Enforcement of Planning Control'. PS also confirmed that it will normally hold enforcement proceedings in abeyance pending the outcome of a subsequent planning application. It stressed that this was not to provide an advantage to any party, but to allow a situation which might remedy the alleged breach of control to be considered. However, if the application did not remedy the breach, the enforcement proceedings could proceed. In this particular case the Divisional Planning Office issued several warning letters to the developer seeking assurance that the breach of the conditions of the initial planning approval would be rectified. PS also confirmed that the developer subsequently commenced work in line with the second planning approval and, as a result, PS no longer had grounds to pursue enforcement action in relation to the failure to comply with the conditions outlined in the initial planning approval.



I found no evidence to substantiate the complainants' contention that, if the PS had taken timely enforcement action in relation to the conditions attached to the initial planning approval, the developer would have been prevented from submitting the second planning application. PS have confirmed that the developer could still have submitted a planning application to develop the plot, even if he had complied with the conditions laid out in the initial planning approval. PS also confirmed that the second planning application had been determined in accordance with planning policy and procedures, and was deemed acceptable in planning terms.

As the PS does not monitor conditions outlined in planning approvals, I asked the Chief Executive to explore with her officials the possibility of including, in planning notifications to objectors, advice on reporting non compliance with conditions attached to planning approvals to PS. I am pleased to record that the Chief Executive accepted my recommendation.

**(200701218)**

#### **Avoidable delay**

The complainant contacted PS to enquire whether his neighbour's building work required planning permission. The work included a sun room extension, raised ground levels and a retaining wall, which he noticed had been built close to a Water Service wayleave (now the NI Water Company Ltd). It transpired that planning permission was necessary and, having warned his neighbour about possible enforcement action, PS received a retrospective planning application. The

complainant submitted an objection to it based on grounds that included issues of privacy. PS later granted retrospective planning approval.

A period of three years lapsed between the complainant's first enquiry and the date retrospective planning approval was granted. It was the complainant's view that it took PS an excessive amount of time: -

to determine whether planning permission was necessary;  
to establish there had been a breach of planning control; and  
to process the planning application received in retrospect;

Although he raised a number of matters, the complainant's other main area of complaint was that, despite his requests, PS did not fully explain to him how it assessed the retrospective planning application. Having examined the documentation, I did not find any evidence of maladministration relating to this aspect of his complaint.

While I found valid explanations for most of the time spent by PS in this case, my investigation found some avoidable delay and, in particular, an avoidable delay of six months where PS had failed to follow up a request it had issued to Water Service for information relating to the way leave. This constituted maladministration and I recommended a consolatory payment of £300 be made to the complainant.

I also found that PS had failed to reply to a letter the complainant had sent to it, even after the then Chief Executive had

apologised for the delay in replying. I also judged this to be maladministration and recommended a further £200 consolatory payment.

I recommended that the Chief Executive should write to the complainant to apologise for these failures. My recommendations were accepted by the Chief Executive. **(200700595)**

## DEPARTMENT OF FINANCE AND PERSONNEL (DFP)

### Land & Property Services (LPS)

#### Assessment of domestic rates

This complaint was in relation to how Land and Property Services (LPS) assessed and determined the level of the complainant's domestic rates. The complainant had moved within Northern Ireland in 2005 having constructed a new build property on the site of a previous dwelling. She paid any rates requested by direct debit. She was later informed that the construction of her new build was not amended on the rating system and that due to a series of delays, including workload and the introduction of a new computer system, the correct information on her situation was not input to the rating system until 2007. The complainant then received a rates bill, dated October 2007, for the period beginning 1 April 2007, which was approximately £1,000 higher than previous bills. She complained of the delay from April 2007 to October 2007 in the issuing of a revised bill and considered that she and her family were penalised as a result of processing delays and errors by

LPS. When the complainant complained to LPS, she explained that there was a delay in receiving responses which prolonged the stress she and her family experienced.

My investigation revealed that LPS do not have discretion to waive the payment of rates once properly assessed and are legally obliged to seek to recover rates which have been levied and which are properly due. Whilst I acknowledged the complainant's concern at receiving an unexpectedly high rates demand, I found that this did not alter her liability as the occupier to pay rates on her property.

I found that the excessive delay, which extended from September 2005 to October 2007, in issuing a revised rates demand to the complainant constituted maladministration. I was also critical of LPS in the administration of its complaints process. I recommended that the Chief Executive of LPS write a letter of apology and make a consolatory payment of £200 to the complainant in relation to the identified maladministration. **(200800171)**

## DEPARTMENT FOR SOCIAL DEVELOPMENT (DSD)

### Child Support Agency (CSA)

#### Delays in obtaining maintenance payments

The complainant (the parent with care) was awarded child maintenance of £5.00 per week effective from May 2004 to be paid by the children's father (the non resident parent, NRP). However the NRP proved to be an unreliable payer and maintenance

payments very quickly fell into arrears. The complainant looked to the CSA for help.

The complainant raised her complaint with me in October 2007 claiming the CSA had been totally ineffective and incompetent in dealing with her case over the preceding three and a half years. For example, she complained the CSA had failed to act on written details of the NRP's earnings which she herself had obtained and provided to CSA staff in person. She also alleged that having sent the CSA's Chief Executive two letters of complaint in June and July 2007, she had received no response.

In 2008, while my investigation was continuing, the CSA was reconstituted as the Child Maintenance and Enforcement Division within the Department for Social Development. Its Chief Executive became Head of Division but retained Accounting Officer responsibilities.

When my investigation reached its conclusions, I found that while the CSA had in fact collected some outstanding monies which it had forwarded to the complainant in 2005, there were significant periods, amounting to more than two years, where it had apparently been inactive. I found nothing in the CSA's documentation to justify these delays. I also found that while the CSA had sent an acknowledgement to the complainant in respect of each of her two letters to the Chief Executive, no response had issued to her. I viewed these failures as constituting maladministration and I recommended that the Chief Executive, now Head of Child Maintenance and Enforcement Division, should issue a letter

of apology and make a £400 consolatory payment to the complainant.

During my investigation I discovered a draft response which the CSA had intended to issue in response to the complainant's correspondence. The draft letter admitted the delays and offered an apology together with a consolatory payment. However, I concluded that a final version of that draft letter had never issued. Had the CSA issued that letter this complaint may well have not arisen. **(200700790)**

# Selected Summaries of Cases Settled

## Department of Education (DEL)

The father of an 18 year old youth who suffers from Attention Deficit and Hyperactivity Disorder and Tourettes Syndrome, submitted a complaint to me about the lack of official funding to enable his son to obtain the personal support he required to participate in education. This case highlighted a situation where the services proposed occasionally are not structured to meet the needs of a particular individual. DEL was also involved because of the boy's age and the Minister referred the case to the Ministerial Sub-Group on Children and Young People by way of illustration of the gap in provision and to seek a long term solution to such cases. At the request of the Minister, DEL officials met with the complainant and representatives of the institution in England which his son currently attends and agreed to provide the necessary funding to allow the youth to take full advantage of his placement. I considered these actions a satisfactory resolution of the complaint. **(200800325)**

## Child Support Agency (CSA)

The Child Support Agency failed to take into account the pension contributions made by the complainant when calculating his Child Support liability. On receiving notification from me that I had received a complaint the CSA carried out a detailed review of the case which showed that the CSA had failed to carry forward arrears for a previous period. The outcome of this review was that, taking into account the non-inclusion of his pension contributions, the complainant in fact owed a substantial

sum of arrears. Because the arrears circumstances arose from failings on the part of the CSA, in settlement it was agreed that the complainant did not have to pay any arrears, he received a letter of apology and a consolatory payment of £150. I commended the Chief Executive of the Agency and the Permanent Secretary of the Department of Social Development for their helpful responses in this case.

**(200700734)**

## Planning Service (PS)

An intending planning applicant decided to check the location of a greenbelt boundary but found the Ordnance Survey map at his local Divisional Planning Office too small in scale to be useful. He was told large scale maps were not available and a computer-generated map issued to him contained an error. Before the issue of the maps was resolved draft PPS14 was published. The subsequent planning application submitted was refused on the basis of PPS14. I found that Planning Service had missed two opportunities to provide the applicant with accurate information although I could not say that the outcome of the refused application would have been different. The Chief Executive agreed to issue a letter of apology together with a consolatory payment of £500, which I regarded as a satisfactory outcome. **(200701014)**

# Statistics

Table 2.3: Analysis of Written Complaints Received in 2008/09

	Brought forward from 2007/08	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/09
Government Departments	11	72	44	2	12	3	5	17
Agencies of Government Departments	18	124	95	1	19	4	8	15
Tribunals	0	9	6	0	3	0	0	0
North/South Implementation Bodies	1	6	1	0	2	0	0	4
Non-Specified AO Body	0	1	1	0	0	0	0	0
<b>TOTAL</b>	<b>30</b>	<b>212</b>	<b>147</b>	<b>3</b>	<b>36</b>	<b>7</b>	<b>13</b>	<b>36</b>

Table 2.4: Analysis of Written Complaints Against Government Departments

	Brought forward from 2007/08	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/09
DARD	6	13	5	0	6	1	5	2
DCAL	0	2	0	0	2	0	0	0
DE	1	6	3	1	0	1	0	2
DEL	0	4	3	0	0	0	0	1
DETI	0	4	4	0	0	0	0	0
DFP	0	4	1	0	0	0	0	3
DHSSPS	0	4	4	0	0	0	0	0
DOE	0	4	3	0	0	0	0	1
DRD	1	1	2	0	0	0	0	0
DSD	0	9	3	0	2	0	0	4
DSD CMED	3	19	15	1	2	1	0	3
OFMDFM	0	2	1	0	0	0	0	1
<b>TOTAL</b>	<b>11</b>	<b>72</b>	<b>44</b>	<b>2</b>	<b>12</b>	<b>3</b>	<b>5</b>	<b>17</b>

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

	Brought forward from 2007/08	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/09
Driver Vehicle Agency	1	8	6	0	1	1	0	1
Northern Ireland Environment Agency	0	3	1	0	0	0	1	1
Land & Property Services	0	11	6	0	2	1	0	2
Planning Service	14	51	34	1	12	2	7	9
Rivers Agency	1	1	2	0	0	0	0	0
Roads Service	2	35	33	0	2	0	0	2
Social Security Agency	0	14	12	0	2	0	0	0
Health Estates Agency	0	1	1	0	0	0	0	0
<b>TOTAL</b>	<b>18</b>	<b>124</b>	<b>95</b>	<b>1</b>	<b>19</b>	<b>4</b>	<b>8</b>	<b>15</b>

Table 2.6: Analysis of Written Complaints Against Tribunals

	Brought forward from 2007/08	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/09
Appeal Tribunals	0	2	1	0	1	0	0	0
Fair Employment Tribunal	0	1	1	0	0	0	0	0
Planning Appeals Commission	0	4	2	0	2	0	0	0
Industrial Tribunal	0	1	1	0	0	0	0	0
Mental Health Review Tribunal	0	1	1	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>9</b>	<b>6</b>	<b>0</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>0</b>



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

	Brought forward from 2007/08	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/09
Special European Union Programmes Body	0	2	1	0	0	0	0	1
Waterways Ireland	1	1	0	0	2	0	0	0
Lough Agency	0	3	0	0	0	0	0	3
<b>TOTAL</b>	<b>1</b>	<b>6</b>	<b>1</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>4</b>





# Section Three

Annual Report of the  
Northern Ireland Commissioner  
for Complaints



**Ombudsman** Northern Ireland

# Annual Report

## WRITTEN COMPLAINTS RECEIVED IN 2008/09

As Northern Ireland Commissioner for Complaints I received a total of 186 complaints during 2008/09, 7 less than in 2007/08.

Fig: 3.1: Complaints to the Commissioner for Complaints 1999/00 - 2008/09

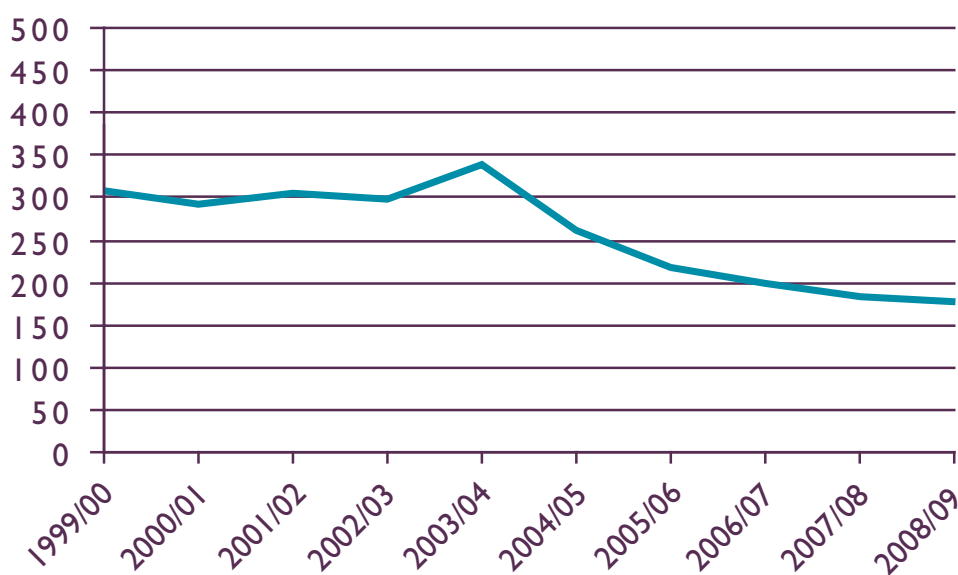
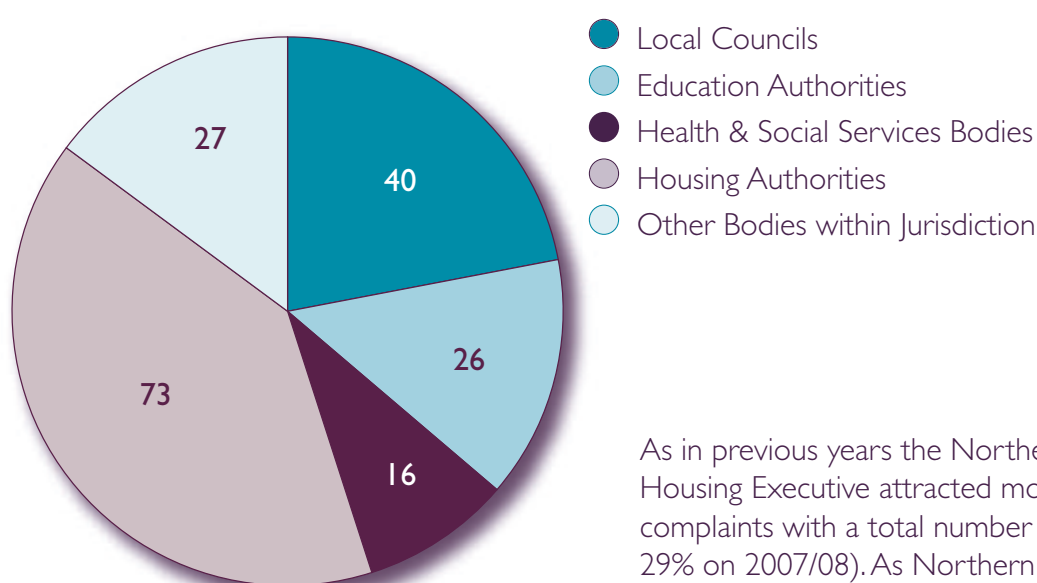
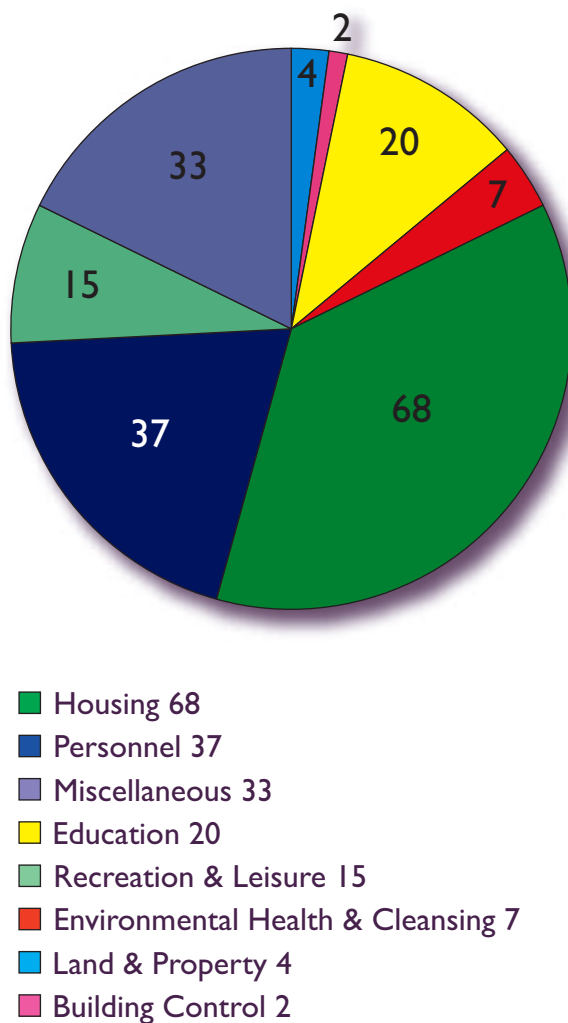


Fig 3.2: Written Complaints Received in 2008/09 by Authority Type



As in previous years the Northern Ireland Housing Executive attracted most complaints with a total number of 49 (down 29% on 2007/08). As Northern Ireland's main social housing provider 49 complaints received is not that surprising.

Fig 3.3: Written Complaints Received  
in 2008/09 by Complaint Subject



## THE CASELOAD FOR 2008/09

In addition to the 186 complaints received during the reporting year, 47 cases were brought forward from 2007/08 – giving a total caseload of 233 complaints. Action was concluded in 192 individual complaints during 2008/09. Of the 42 cases still on the books at the end of the year all 42 continued to be under investigation.

Table 3.1: Caseload for 2008/09

Cases brought forward from 2007/08	47
Written complaints received	186
Total Caseload for 2008/09	233
<b>Of Which*:</b>	
Cleared at Validation Stage	109
Cleared at Investigation Stage (without a Report), including cases withdrawn and discontinued	47
Settled	8
Full Report or Letter of Report issued	28
In action at the end of the year	42

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

The outcomes of the cases dealt with in 2008/09 are detailed in Figs 3.4 and 3.5.

Fig 3.4: Outcomes of Cases Cleared at Validation Stage

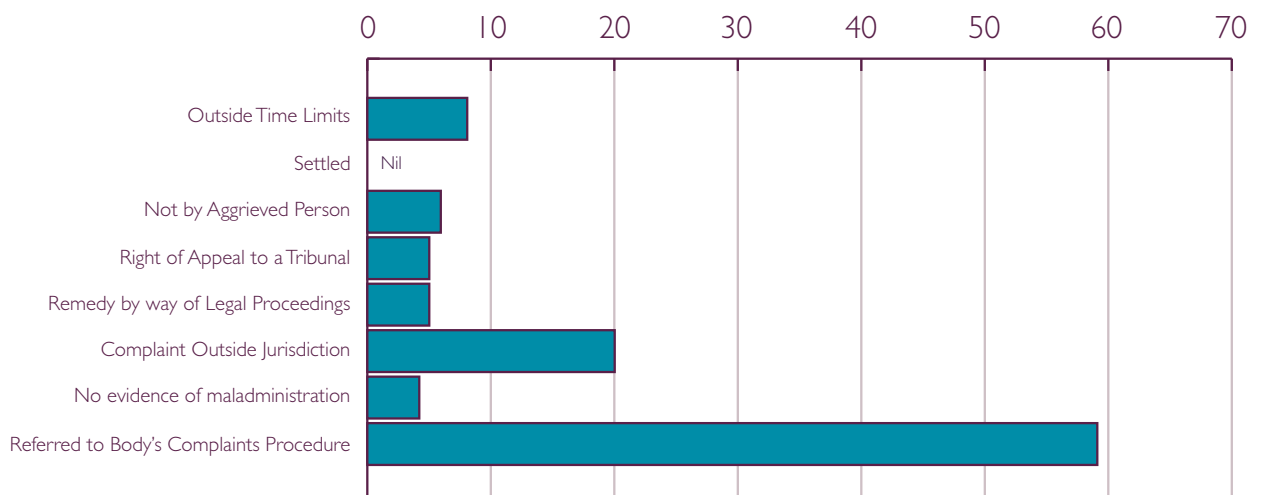
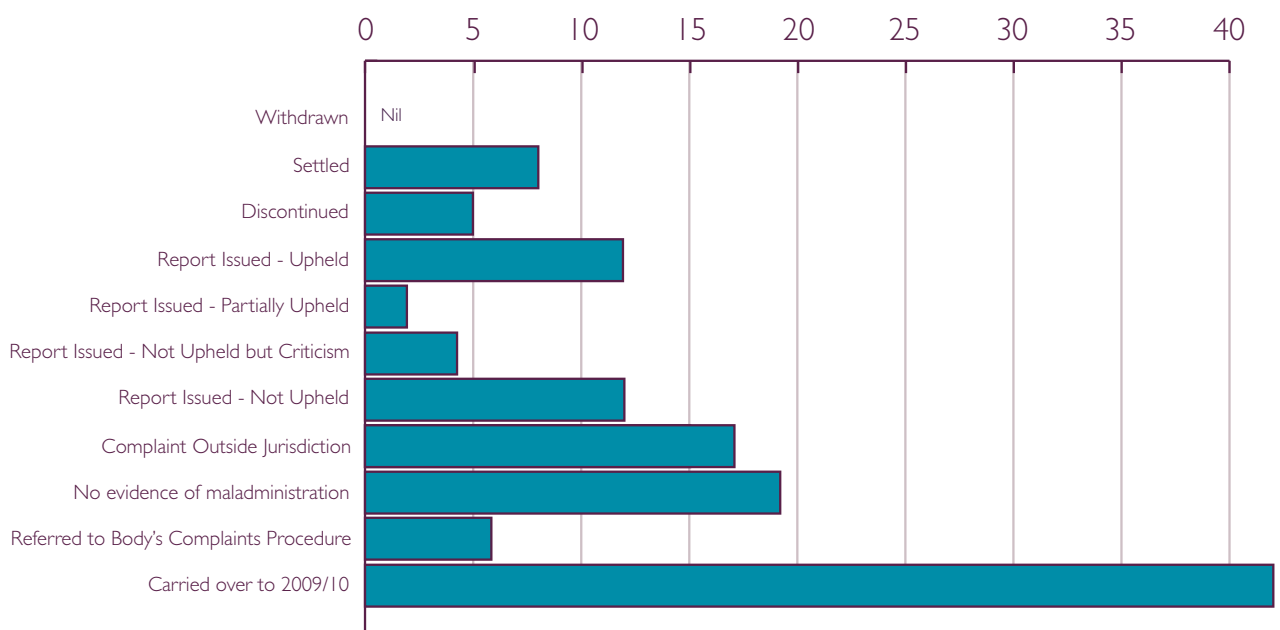


Fig 3.5: Outcome of cases Cleared at Investigation and Report Stages



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

The average time taken for a case to be examined, enquiries made and a reply issued at Investigation Stage was 9 weeks.

The average time taken for a case to be examined, enquiries made and a full Report issued at Report Stage was 80 weeks.

28 reports of investigations (Full Reports and Letters of Report) were issued in 2008/09. Of these cases: 11 were fully upheld; 2 were partially upheld; 4 were not upheld but 1 criticised the Body complained against; and 11 were not upheld. In all of the cases in which I made recommendations for remedy by the body complained against, these recommendations were accepted by the bodies concerned.

**Table 3.2 Recommendations in Reported Cases**

Case No	Body	Subject of Complaint	Recommendation
200600406	Filor Housing Association	Complaints Handling	Written apology, consolatory payment of £150
200501074	Northern Ireland Housing Executive	Allocation & Transfers	Written apology, consolatory payment of £750
200700732	Consumer Council	Complaints Handling	Written apology, and complaint to be re-investigated
200500247	Northern Ireland Housing Executive	Housing Benefits	Written apology, consolatory payment of £400
200500248	Northern Ireland Housing Executive	Housing Benefits	Written apology, consolatory payment of £400
200600176	BIH Housing Association	Complaints Handling	Written apology, consolatory payment of £1,500
200700491	Northern Ireland Housing Executive	Allocation & Transfers	Written apology, consolatory payment of £4,000



Case No	Body	Subject of Complaint	Recommendation
200700650	Trinity Housing Association	Complaints Handling	Written apology, consolatory payment of £500 & £358.38 reimbursement of rental
200700690	South Eastern Health & Social Care Trust	Personnel-Recruitment	Written apology, consolatory payment of £500
200800561	BIH Housing Association	Standard of Workmanship	Written apology, consolatory payment of £250
200800713	Northern Ireland Housing Executive	Housing Benefit	Written apology, consolatory payment of £400
200501315	Northern Ireland Housing Executive	Complaints Handling and Standard of Workmanship	Written apology, consolatory payment of £1,500
200700751	Western Education & Library Board	Complaints Handling	Written apology, consolatory payment of £100

# Selected Summaries of Investigations

## BELFAST CITY COUNCIL

### Building Control fees charge

The complainant in this case claimed to have sustained injustice as a result of maladministration by Belfast City Council (the Council) in relation to a Building Control invoice, dated 2008, issued in relation to building work carried out during 2006 at his business premises. He complained that neither he nor his agent was informed, at the time of the inspection, of the fees involved.

My enquiries established that Building Control fees are payable by statute with the fee being a set amount depending on the category of work. There is no provision in the Fees Order to "write off" all or part of a fee that is due. The legislation does allow for certain exemptions to the fees (e.g. facilities for people with disabilities) which in this case did not apply.

Having examined the legislation and all other documentation in this case, I found no evidence of maladministration in the decision to issue the complainant with a Building Control invoice. It was clear to me that the Council acted in accordance with the legislation relating to this matter; in that it had a statutory duty to collect fees for services provided, and it was therefore required to seek payment from the complainant. I considered that the Council's letter to the complainant, apologising for the late issue of the invoice and an offer to arrange for payment by instalments to be a reasonable recognition of any potential injustice caused. I therefore did not uphold this complaint. (200800185)

## CASTLEREAGH BOROUGH COUNCIL

### Alleged mishandling of selection procedure

This complaint concerned the handling of the selection procedure for a senior management post with Castlereagh Borough Council (the Council) and the complainant's subsequent interaction with the Council. The complainant was not shortlisted. In his complaint he raised several issues and one of the most serious allegations he made was that the Council had introduced a new essential criteria after the closing date for receipt of applications. My enquiries revealed that, prior to examining any of the application forms and conducting the eligibility sift, the panel sought to define a phrase which had been used as part of the essential criteria. I found that the criteria had not been altered and it was the panel's definition which the complainant believed to be a new requirement not previously referred to. I considered the definition applied by the Council was a reasonable one in that it was job related and not inconsistent with the job title and the overall requirements of this senior post. I also considered that the onus was clearly on applicants who had the relevant experience to describe it in presenting how they met the required criteria for the post in question. Unfortunately, unlike other candidates who were shortlisted, the complainant did not do so. Against this background, I could not uphold this part of his complaint. However, I suggested that the Council should reflect on whether such definitions could be made clearer to potential candidates through the documentation issued with the application

forms in order to avoid the potential for a similar circumstance arising in the future.

A further aspect of the complaint related to an alleged lack of a proper appeal process. I identified that, in conducting a recruitment exercise, the Council was required to comply with the Local Government Staff Commission (LGSC) Code of Procedures on Recruitment and Selection (the Code) and, in my examination of the relevant documentation, I found no reference to or requirement for an appeal process with regard to shortlisting decisions. The complainant expressed the view that there should be an appeal process and that the recruitment process should be halted at the point when a candidate makes an appeal against the decisions made at shortlisting. However, it was not for me to say whether or not there should be such provisions. I regarded these matters as discretionary decisions for the Council to determine in conjunction with the LGSC. My role was to satisfy myself that the public body had applied the relevant policy and/or procedures correctly and, in this instance, there was no requirement for either a formally documented appeal process or for the recruitment process to be suspended upon receipt of an appeal against a decision. I could not, therefore, say that the Council failed to comply with the requirements of the Code. Overall, I did not find that the Council had contravened the Code in carrying out its selection procedure for the post in question.

The complainant also alleged that the same shortlisting criteria should have been applied across each of the 4 group areas in Northern Ireland. I established that each

area had held its own recruitment exercise when recruiting for the equivalent post. However, I found no evidence of any requirement (statutory or otherwise) for the Councils to apply identical criteria in the recruitment and selection for the post. In the absence of such a requirement, I could not uphold this aspect of the complaint.

I criticised the Council for having indicated that it would update candidates on the progress of the recruitment exercise and then failing to do so, which meant that the complainant had to pursue the Council in order to obtain information.

I did not uphold further allegations of an unacceptable delay in informing the complainant of his failure to be shortlisted, and unreasonable and unacceptable response times in replying to his correspondence. I did, however, criticise the Council for failing to provide a detailed and full response to each of the questions posed by the complainant in his initial letter. I urged officials to ensure that, when specific questions are posed, a response should seek to address each question on a point by point basis. If a question cannot be answered at that time or, for whatever reason, the Council feels unable to answer the question, it should still be acknowledged and an explanation given as to why it is, or is not, possible to give an answer.

For completeness, I examined the application forms of all twenty candidates who took part in the competition and, based on the information provided by each applicant, I was satisfied that the treatment afforded to all was consistent. I could not

say that I found the process unreasonable or flawed by maladministration. The panel's decision in respect of the complainant was a discretionary one which I had no authority to question since, in this case, I was satisfied that it was taken without maladministration. **(200601316)**

## COUNCIL FOR CATHOLIC MAINTAINED SCHOOLS

### **Failure to apply appointment procedures**

This complaint against the Council for Catholic Maintained Schools (CCMS) arose from an application for the post of school Principal. The complainant complained that the decision to appoint the successful candidate had been taken without due regard for total marks or overall rank order of the interviews.

In my consideration of this complaint, I carefully considered the documentation supplied by CCMS in response to my enquiries. I studied the advertisement, job description and personnel specification required for the post together with the papers associated with the interview process. I noted that, taking the aggregate marks for each candidate, the complainant achieved the highest mark, by one point. The successful candidate in the competition achieved one mark less. However, when each candidate was ranked by the voting members, one member placed the complainant in first place, while three placed him second. The successful candidate was ranked in first place by three voting members and in fourth place by the other panel member.

The major factor in this complaint was the complainant's belief that as he scored the highest aggregate number of marks from the selection panel, he should have been appointed to the post. I considered that it was a discretionary matter for the panel to determine which approach to adopt. I found, therefore, that I had no basis on which to criticise the panel's decision to adopt the approach that it did. Overall I considered that the evidence before me indicated that the interview process was handled correctly and I found no reason to question the panel's discretionary decision to appoint the successful candidate to the position advertised. I did not uphold the complaint. **(200700357)**

## HEALTH AND SOCIAL SERVICES BODIES

### **Inappropriate interview process**

A candidate complained about the questions he had been asked during an interview for an administrative post in the health records department of the South Eastern Health and Social Care (HSC) Trust. He stated that he had been surprised and embarrassed during the interview when he was asked specific work related questions which were not linked to the advertised essential criteria for the post. He complained this had put him at a disadvantage over candidates who had health records work experience and he added that had he known that such experience was required he would not have applied for the post.

In my investigation I established that the vacant post had been internally trawled

throughout the HSC sector and also throughout other public sector organisations. Consequently, the Trust was obliged to consider applications from HSC candidates and public sector candidates against the published essential criteria for the post in the same manner. I further established that of the 6 people interviewed for the post the complainant was the only candidate from outside the HSC.

My examination of the interview questions which were asked of each candidate and the interview panel's 'ideal' answers revealed that the interview panel expected candidates to demonstrate a detailed knowledge of health records work even though work experience was not a stated criterion for the post. I acknowledged the Trust's view that an interview panel should have the opportunity to ask questions which are relevant to job performance, but I took the view that this should be conditional on the body having informed candidates where they can access this information. In this case the Trust had failed to provide this information to candidates.

I found that the Trust's questions and 'ideal' answers were unfair to candidates with no experience in health records work. However, I was unable to say that the complainant would have been successful in securing the job had the questions been of a more general nature.

I found the Trust's handling of the interview process in the recruitment competition constituted maladministration which caused the complainant to suffer injustice and embarrassment and disappointment. I recommended, and the Trust's Chief

Executive agreed, to issue an apology letter to the complainant, together with a consolatory payment of £500. On a final note the Trust informed me that it was currently rewriting its recruitment and selection procedures and it would ensure that the lessons from this particular case were taken into account in the review.  
**(200700690)**

### **Handling of bullying and harassment complaint**

The complainant in this case claimed to have suffered an injustice as a result of maladministration by the Western Health and Social Services Trust (the Trust) in relation to the manner in which the Trust handled her formal complaint of bullying and harassment against two Trust officers. She claimed that the Trust did not investigate her complaint in line with its Bullying and Harassment procedures. The complainant was also aggrieved because a further complaint against the two officers and others was dealt with under the Trust's Grievance Procedure. She considered that the Trust had not provided her with a satisfactory explanation as to why her complaint was dealt with as a grievance instead of a formal complaint under the Trust's Harassment and Bullying Procedures.

My investigation revealed that the complainant had initiated a formal complaint, under the Trust's Policy of Bullying and Harassment, against her line manager. This complaint was investigated by an external inquiry team which concluded that harassment had occurred and following a disciplinary process the line manager had been dismissed. The complainant had

detailed the actions of two other officers in her evidence to the external team in the belief that the Trust would also address this aspect.

In what proved to be a lengthy and complex investigation against a backdrop of unusual and at times confusing circumstances, I was very conscious that the complainant continued to be very distressed by her experience and she considered that the redress already obtained in terms of the dismissal of a Trust officer had been insufficient to address her concerns. I was also aware that, because of the limitations of my own role in relation to employment and personnel management matters, she was disappointed with the scope of my investigation. Overall, my investigation did not find evidence of maladministration on the part of the Trust in its handling of these complaints. I did, however, find reason to be critical of the Trust on two counts, namely the quality of a response to the complainant, and its failure to inform her in a timely manner of a meeting it had held and then to provide her with the related note of the discussion. I urged the Trust to learn lessons from this case, including the need to remain alert to issues which appear of concern to staff and to record these carefully.  
(200700029)

## HOUSING ASSOCIATIONS

### **Failure to consult on building work**

The complainant claimed to have experienced an injustice as a result of maladministration by BIH Housing Association Limited (the Association) in

relation to its handling of his complaint about the building of an extension to a neighbouring property. The complainant stated that he arrived home from work to be told by his neighbour that an extension was to be built at the back of his house and that work was to start the following day. He was upset to find that the garden wall of his property had been demolished, the garden “dug up” and washing, which had been on a clothes line, soiled.

Following my investigation of this complaint I made a finding of maladministration as I was satisfied that the Association had failed to properly consult with and inform the complainant of its intended actions. I also identified a failure to comply with a Planning Informative, failure to ensure that the complainant had effective enjoyment of his property, and failure to ensure that he received an adequate standard of apology from the Association’s contractor. However I did not uphold complaints in relation to the subsequent actions undertaken by the Association to repair the garden, the making of a goodwill offer, or the reassessment of the valuation of the property.

In deciding on a suitable remedy I acknowledged that the Association had applied for and obtained planning permission for the extensions to the neighbouring property through the appropriate planning process and the fact that the Chief Executive had acknowledged the administrative failings and assured me that internal procedures had been amended to ensure that, in future, there would not be a reliance on third parties to pass on information from the Association. I recommended that the Chief

Executive issue an apology for the failings which I had identified and that a consolatory payment of £1500 be made to the complainant. I am pleased to record that the CE accepted my recommendations.

**(200600176)**

### **Response to anti-social behaviour**

A tenant of Ulidia Housing Association (the Association) considered that he had been unfairly treated by the Association in relation to reports he made to it concerning anti-social behaviour by a neighbour who was also a tenant of the Association. The anti-social behaviour took the form of an assault on the complainant, and criminal damage to property owned by him and also the Association. The complainant reported these incidents to the police, which led to a criminal prosecution against the perpetrator for both offences.

My investigation established that, in accordance with its policy on anti-social behaviour, the Association had issued a verbal warning to the complainant's neighbour and a commitment to take further action if informed of her involvement in any further incidents. The Association also subsequently issued the neighbour with a written warning and obtained her consent to enter into an 'Acceptable Behaviour Contract', as measures to prevent a recurrence of any further anti-social behaviour by her.

The Association decided to take no further action in this case, pending the outcome of the prosecution against the complainant's neighbour. Having regard to the full circumstances of this case, I considered that

it was understandable that the Association should defer a decision concerning any further action it should take against the neighbour concerned, pending the outcome of the criminal proceedings.

Following a successful prosecution in this case, the Association decided to take no further action. That decision was based on the fact that there had been no further reported incidents of anti-social behaviour by the complainant's neighbour, nor had there been any breaches of the Acceptable Behaviour Contract that she had entered into.

The Association's decision not to take further action in this case was an example of a discretionary decision. I am not authorised or required, by the legislation that governs my role, to question the merits of such decisions that have been taken without maladministration. In the context of reviewing or questioning discretionary decisions, I could generally only question a discretionary decision if it was so wholly unreasonable that no reasonable person would take it. It was my view that the Association's decision in this case was not incorrect, unreasonable or inappropriate.

I concluded that there had been no maladministration by the Association in this case. Also I was satisfied that the Association had handled the case in accordance with its policy and procedures concerning anti-social behaviour. Consequently, I did not uphold this complaint. **(200700379)**



**Handling of planned maintenance**

This complaint against BIH Housing Association Limited (the Association) concerned the handling of a Planned Maintenance Scheme and an inspection which had been carried out on the kitchen of the complainant's home, the condition of the kitchen floor; the standard of workmanship involved in repairs and the time taken to carry these out.

My overall consideration of this case led me to conclude that the complainant was justified in bringing his complaint to me. I considered that it was certainly the case that he suffered from delay in that the notified period for the completion of works to his home was significantly exceeded. I established that the complainant brought his concerns regarding the standard of workmanship experienced by him to the attention of the Association on an almost weekly basis, and the fact that work carried out on his property had to be repaired confirmed that there was justification in his complaining to the Association and to me. Although outstanding defects, including the discovery of damp following the fitting of a new kitchen and the associated remedial works, might not have prevented the complainant from using his kitchen area, the enjoyment of his home was adversely affected by the delay in the completion of works and the repeated visits by workmen.

Overall I considered that the complainant did not receive the level of service from the Association that, as a tenant, he was entitled to receive. I had no doubt the effort of having to continuously pursue his complaint to enable his concerns to be addressed caused him considerable distress, annoyance

and frustration. I criticised the Association for failing to provide an adequate level of service. I was of the view that the complainant received an unsatisfactory service and that the Association's failure to provide him with the required level of service constituted maladministration. In recognition of the frustration, disappointment, distress and annoyance experienced, I recommended that the Chief Executive issue a written apology on the Association's behalf together with a consolatory payment of £250. **(200800561)**

**Confusion surrounding Rent Account**

The complainant wrote to me because Filor Housing Association (the Association) had incorrectly credited payments to his rent account but, on discovering its mistake, failed to inform him or apologise. The complainant was unhappy because the Association failed to advise him when Housing Benefit was awarded and failed to respond to his written complaints.

The Association was unable to account for the mistake resulting in payments being incorrectly credited to the complainant's account. The Association contended that notification of entitlement to Housing Benefit was the responsibility of the Northern Ireland Housing Executive. The Association considered that the complaint focussed on the delay in Housing Benefit being assessed. As the error of incorrectly crediting payments to the complainant's account had been rectified, and the complainant was unaware of the mistake, the Association did not believe "any real hurt had been caused". Once the complaint was referred to my Office the Association

did not deem it necessary to issue any further correspondence to him.

The complainant had contended that the Association's failures contributed to the confusion surrounding his rent account and the arrears that arose. The complainant had an obligation to pay rent to the Association and had not made any payments. There was delay in assessing the Housing Benefit claim and, in my view, the incorrectly credited payments to the rent account contributed to the confusion surrounding his liability but did not cause a personal injustice. However, I was satisfied that there should have been an explanation of the mistake given to the complainant and I partially upheld this aspect of the complaint. I was satisfied that responsibility for notifying entitlement to Housing Benefit lay with the Northern Ireland Housing Executive and I did not uphold this aspect of the complaint.

I found that the Association had failed to deal with the complaint in accordance with its own procedures because it had effectively ignored the complaint and I criticised the Association for this failure. In recognition of the distress and annoyance the complainant endured as a result of the poor service he received I recommended the Association issue him with a written apology and a consolatory payment of £150. The Association accepted my recommendations. (200600406)

### Delay in Undertaking Repairs

The complainant in this case was dissatisfied with the time taken by Trinity Housing Ltd (the Association) to fix a faulty shower tray

in the bathroom of her home, her tenancy having commenced on 28 May 2007. The complainant said she reported to the Association, on 29 May 2007, that the shower was faulty and that, as a result, water was leaking over the bathroom floor. The complainant failed to understand why, in issuing two Works Orders in relation to the shower, the Association classified the work as 'routine', requiring completion within 28 days, instead of 'urgent', requiring completion within 4 days. A new shower tray was fitted in the complainant's home on 16 August 2007. However, the complainant considered the timescale of 58 working days to resolve the problem to be unacceptable.

My investigation established that, in its Tenants Handbook, the Association provides timescales in which repairs involving emergency, urgent and routine works should be completed. I found that the Association failed to adhere to its published timescales in this case. The Association stated that the information the complainant provided to it indicated that the shower remained operational with a minor repair needed to attend to a small leak between the shower and the door. The complainant refuted this and said the extent of water leaking from the shower was such that she was unable to use it and, as there was no bath in her home, she had no bathing facilities for almost three months.

I found that, prior to arranging repairs, the Association did not determine the exact nature of the problem with the shower and, although the Association's Building Inspector undertook a subsequent inspection of the shower, there was a failure on the part of

the Association to assess the extent of the problem.

My investigation identified maladministration by the Association in its handling of, and response to, the complaint the complainant made to it regarding a fault with her shower.

I concluded that the quality of service that the complainant received from the Association fell far short of the standard that citizens have a right to expect from public bodies and which, in fairness, I am satisfied the Association aspires to deliver. I could therefore understand why the complainant considered it necessary to complain to me. I had no doubt that, as a consequence of the maladministration and unsatisfactory administration, the complainant experienced injustice and significant annoyance, disappointment, frustration and inconvenience.

Prior to my involvement in this case, the Association's Chief Executive (CE) had offered the complainant his sincere apologies for the delay in replacing the shower tray in her home and any inconvenience she may have experienced as a result. Also, the Association had made a payment of £25 to the complainant as a goodwill gesture. However, as a remedy, I recommended the complainant should receive an appropriate letter of apology from the CE in relation to the overall standard of service the Association provided in this case and the injustice she experienced as a result. I also recommended that the Association should make a further consolatory payment of £500 to the complainant.

The complainant did not move into her home until 5 July 2007 because of the fault with the shower. The complainant stated that, following her acceptance of the tenancy, she had the property redecorated which took only three days to complete and she contended that she then paid rent for a house she did not have use of. In recognition of this fact I further recommended that the Association should reimburse the complainant the sum of £358.38 in respect of the full rental costs charged to her in respect of the period 28 May to 5 July 2007.

The CE accepted my recommendations.  
**(200700650)**

#### **Unfair consideration of rehousing application**

The complainant in this case claimed that Habinteg Housing Association (the Association) had treated her very unfairly in relation to her application for rehousing. The Association offered the complainant alternative accommodation but, having visited the property, she considered it unsuitable due to the size of its garden, also because of reports that there were problems of anti-social behaviour in the area. She therefore refused the offer. The complainant said she expressed her interest in obtaining the tenancy of a newly built house owned by the Association, her transfer to that property having been supported by, among others, social services staff. However, the complainant was aggrieved that, despite having the highest number of points on the waiting list for accommodation, the Association did not offer her the tenancy of the property concerned. Instead, the Association offered

the complainant another property, which, she contended, was in such poor condition that it was not habitable.

Having investigated this complaint, I established that the first property offered to the complainant is located in an area that has not, at any time, been classified by the PSNI as one in which anti-social behaviour is prevalent. I therefore found it regrettable that the complainant decided to refuse what the Association considered, and I also considered, to have been a reasonable offer.

I further established that the Association decided that the tenancy of its newly built property should be allocated to an applicant for rehousing who had been awarded Management Transfer status. At the same time, the Association offered the complainant the tenancy of another house. Under the rules of the Housing Selection Scheme, which governs the allocation of social housing, landlords may transfer tenants, who, under certain circumstances, have been awarded Management Transfer status, without reference to their points award. The Association's decision, therefore, to offer the new property on a Management Transfer basis was an example of a discretionary decision. I am not authorised or required, by the legislation that governs my role, to question the merits of such decisions that have been taken without maladministration. It was my view that the Association's decision in this case was not incorrect or unreasonable. My investigation also established that the house, which was the subject of the second tenancy offer to the complainant, was in a reasonable condition and was not statutorily unfit.

In the absence of any maladministration by the Association, I did not uphold this complaint. **(200800182)**

## NORTHERN IRELAND HOUSING EXECUTIVE (NIHE)

### **Failure to rehouse in unoccupied dwelling**

The complainant applied to the NIHE to be rehoused due to very difficult circumstances she was experiencing at the time. As the complainant was aware of suitable accommodation that had been unoccupied for a period of five months, due to the elderly tenant of the property having been admitted to a nursing home, she expressed her interest to the NIHE in obtaining the tenancy of that property. Due to her circumstances, the complainant's transfer to the unoccupied property was supported by several organisations, including Social Services. The complainant said she firmly believed, as did the representatives acting on her behalf, that the tenancy of the unoccupied property would be allocated to her as soon as the dwelling became available for letting. However, the complainant said she was 'devastated' when she discovered that the tenancy had been allocated to someone else who had been awarded a higher level of points than her.

In my detailed investigation of this complaint, I examined carefully the handling by the NIHE of the complainant's application for rehousing. As a result, I identified a number of instances of maladministration and unsatisfactory administration on the part of the NIHE. I also examined the actions taken by the NIHE to regain possession of

the unoccupied dwelling concerned. I considered that the admission of an elderly NIHE tenant, who lived alone, into a nursing home would not be an unusual occurrence. Therefore, I found it necessary to express my deep concern that the NIHE had no policy or procedures for regaining possession of a dwelling in those circumstances. Whilst I acknowledged the need for the NIHE to exercise care and sensitivity, where this was required, I was most concerned that the relevant property had lain unoccupied for a period of approximately 16 months before it was re-let.

The placement of the elderly tenant concerned into nursing care required the involvement of, and would indeed have been arranged by, Social Services. However, I found that the NIHE had no contact with Social Services in relation to the former tenant of the unoccupied property until 10 months after her admission to a nursing home. The evidence available to me indicated that the NIHE had not entered into discussion with the relevant Health Trust about the need to develop an information sharing protocol in those circumstances in which one of its tenants is vacating a property on a full time basis due to health or social care needs. I considered it necessary to express my grave concern at the NIHE's failure to establish such a protocol, a failure I considered it to represent a serious systemic flaw for which I criticised the NIHE.

My investigation also established a number of other failures, periods of inactivity, delay and an abdication of responsibility by the NIHE, the latter having occurred during a

five-month period, in the absence of any action to obtain vacant possession of the unoccupied property. I considered that maladministration by the NIHE excessively and unacceptably delayed that process. In this regard, the periods of inactivity by the NIHE throughout the process accounted for a total duration of 38 weeks. It was my view that, had the maladministration I had identified in this case not occurred, vacant possession of the relevant dwelling would have been achieved very much earlier and at a time when the complainant was first on the waiting list for that accommodation.

I concluded that the complainant was fully justified in complaining to me about the failure of the NIHE to allocate the tenancy of the unoccupied dwelling to her. I had no doubt that, as a result of the systemic failure and significant maladministration, the complainant experienced injustice in terms of considerable hardship, anxiety, stress, frustration, and, ultimately, deep disappointment. In addition, the complainant suffered the loss of the security and comfort of alternative suitable accommodation. Against that background I concluded that the complainant should receive what I considered to be appropriate redress from the NIHE.

The question of remedy always presents a difficulty, and more so in cases such as this. The primary objective of remedy is to put the aggrieved persons in the position they would have been in had the maladministration not occurred in the first instance. Clearly this was not possible in this case. Consequently, I recommended that the complainant should receive, by way of

redress, an appropriate letter of apology from the CE along with a financial acknowledgement, in the sum of £6,000, of the significant injustice caused to her.

I also recommended to the CE that the NIHE should enter into early discussions with the five Health Trusts in Northern Ireland, with the objective of establishing a protocol in those circumstances in which one of the NIHE's tenants is vacating a property on a permanent basis due to particular health or social care needs. I further recommended to the CE that he should arrange, also as early as possible, for the NIHE to formulate a policy and procedures to be implemented by its staff to proactively secure possession of its dwellings in those cases where a property has been vacated due to a tenant's permanent placement in nursing home care. The CE accepted my recommendations.  
**(200500703)**

### **Failure to rehouse in single-storey accommodation**

The complainant was dissatisfied with the failure of the Northern Ireland Housing Executive (NIHE) to transfer her from the two-storey house she shared with her elderly uncle, to bungalow or single storey accommodation. The complainant said that, due to his medical condition, her uncle was unable to climb the stairs in their home and, therefore, he had to use the living room of the house as a bedroom and washroom. The complainant considered that, during the 2 ½ to 3-year period from when she had originally applied for rehousing, the Executive had ignored her pleas, and those

of a political representative, acting on her behalf, for assistance.

I established that the complainant had sought to be rehoused by the NIHE in accommodation located in a relatively isolated area, and, very explicitly, not in another housing estate. I found that, while it had proved possible for the NIHE to offer the complainant the type of accommodation she required on three occasions, she had refused these offers as being unreasonable. On this basis, I formed the clear view that the complainant's extremely narrow choice of where she wished to be rehoused limited the NIHE, to a very large degree, in its attempts to resolve her difficult housing situation by identifying alternative accommodation that she would accept from its housing stock in her narrow area of choice.

My investigation also established that, although the Community Occupational Therapist had recommended to the NIHE that the complainant's home should be extended to provide a ground floor bedroom with shower facilities, the complainant refused this option, preferring instead to be rehoused.

My investigation of the main elements of this complaint identified several aspects of maladministration by the NIHE, but I was satisfied that the complainant had not experienced an injustice as a result. However, my investigation identified maladministration on the part of the NIHE in its handling of a request made to it by a political representative, on the complainant's behalf, that a house should be specially purchased to



meet her requirements. Based on the evidence available to me, I concluded that the complainant did not meet the criteria which would allow the NIHE to consider the purchase of accommodation for her. However, in this instance I regarded the quality of service that the Executive provided to the complainant as having fallen far short of the standard that citizens have a right to expect and which, in fairness, I accept the Executive seeks to deliver. I had no doubt that, as a consequence, the complainant experienced anxiety, frustration, disappointed expectations and annoyance.

I therefore recommended that the complainant should receive, by way of redress, an appropriate letter of apology from the Chief Executive together with a consolatory payment of £750. My recommendations were accepted.  
**(200501074)**

#### **Incorrect assessment of Housing Benefit**

From my investigation of this complaint it was evident that the complainant's entitlement to Housing Benefit was incorrectly assessed on two occasions, firstly following his wife's receipt of Retirement Pension in September 2007 and then following an "investigation" and reassessment at the first stage of the Executive's complaints procedure in October 2007. The error was not noticed until April 2008 when the CE had the matter investigated under the second stage of the Executive's complaints procedure. As a result of the CE's review, Housing Benefit was reinstated from September 2007 and a sum was credited to the complainant's rent account.

In this case the Chief Executive agreed to issue an apology together with a consolatory payment of £400 to the complainant. I welcomed the CE's apology to the complainant for the distress and inconvenience caused. I also welcomed his acceptance that the error should have been discovered at a much earlier stage, and that the complainant should not have had to wait eight months, and go through the complaints process, before the error was corrected. The CE also stated that the error would be brought to the attention of the relevant staff to ensure that such an event should not occur again. In this regard I acknowledged and welcomed the leadership shown by the CE in this situation.

**(200800713)**

#### **Improper processing of Housing Benefit and Discretionary Housing Payment**

The complainants in this case were dissatisfied at the manner in which the NIHE had dealt with their application for Housing Benefit and Discretionary Housing Payment.

My investigation showed that there had been an initial delay by the NIHE in issuing notifications regarding the amount of Housing Benefit due to them. It also transpired that the complainants in this case were not informed of the amount of their Housing Benefit award nor that it was being paid to their landlady. This arose following the introduction of a new computer system to process Housing Benefit. During this period the NIHE's old computer system was closed down. This meant that there was an initial delay in assessing claims due to the close-down period, combined with a

number of technical problems with the new system, which also affected the administration of their claims. I believe it is essential that, when issuing payments from the public purse, recipients are clearly advised and understand what it is they are being paid. I considered that this was poor administrative practice on the part of the NIHE.

The complainants had also requested that the rates element of their Housing Benefit should be paid direct to the [then] Rates Collection Agency (RCA). Due to problems with the new computer system the Housing Executive, rather than withholding payment until a solution to the computer problem had been implemented, decided that the rates element of their award would be paid to either the landlord or the tenant. The NIHE checked with the RCA as to whose address was on their records for billing. However, instead of confirming the information with the complainants the NIHE decided to pay the rates element of the Housing Benefit direct to their landlord. The Chief Executive acknowledged that as no notifications had been issued regarding the payment of the rates element it was understandable why neither party realised that the rates were being paid to the landlord. The consequences of the Housing Executive not issuing notifications meant that enforcement action was taken by the RCA for non payment of rates. This legal action was only discontinued following communication between the Housing Executive and the RCA. I considered that this situation caused further unnecessary stress and anxiety for the complainants.

Finally the complainants' application for Discretionary Housing Payment was not dealt with properly. Despite the complainants' request that money be paid directly to them the NIHE paid it to their landlady. The NIHE informed me that their landlady had informed the NIHE that she had received no payments from the complainants. The NIHE accepted that this subsequently turned out to be untrue. I was also informed that as the complainants had been threatened with eviction this was another reason why the NIHE did not make the payment to the complainants. However, having considered the explanation provided, I concluded that the failure of the NIHE to consult the complainants before making payment to their landlady constituted maladministration. By making payments to the complainants' landlady it caused them extreme inconvenience and stress which was recognised by the Chief Executive. The complainants chose not to try to recoup the money which they stated was owed to them by their landlady. As the complainants had a legal remedy available to them I was unable to comment further on this aspect of their complaint.

Having carefully considered all of the information I found the NIHE's actions in the handling of this case to have constituted maladministration which resulted in an injustice to the complainants. I concluded that the complainants, in recognition of the distress, anxiety and inconvenience they had been caused by the NIHE's handling and processing of their application for Housing Benefit and Discretionary Housing Payment should receive a letter of apology and a consolatory payment of £400 each from the



Executive. The Chief Executive accepted my recommendation. **(200500247/200500248)**

### **Alleged bias in treatment by the NIHE**

The aggrieved person alleged that he was unfairly targeted by the NIHE because he “dared” to make a complaint about its handling of his preliminary enquiry and subsequent application for grant aid to undertake improvements to his home.

During my investigation, I established that in its processing of the complainant’s enquiry for grant aid, the NIHE exercised its discretion in favour of him on at least two occasions. First of all, the NIHE allowed the complainant’s enquiry for grant aid to proceed to formal stage, even though he could have been deemed ineligible for renovation grant aid because he had completed the improvements to his property before he had received written approval to begin the work. Secondly, the NIHE set aside the requirements for a warranted builder to undertake the works, despite the fact that the cost of the total works exceeded the £5,000 threshold.

I was satisfied that the NIHE processed the complainant’s grant enquiry and subsequent formal application, in accordance with, and even on occasions exceeded its procedures and Standards of Services. As I found no evidence of any bias on the part of the NIHE against the complainant, I could not uphold the complaint. **(200700212)**

### **Failure to take timely action**

This case centred on the complainant’s

request to be re-housed in a property suitable for his complex needs, having lost both his lower limbs 30 years earlier. He was also a single parent of four children who lived with him.

I established that although the complainant wrote to the NIHE in December 2002, requesting his housing application to be processed under the homelessness legislation, he was not awarded full-duty applicant status (i.e. accepted as homeless and a priority applicant) until December 2003. I considered it ought to have been clear to the NIHE, from the outset, that it had no suitable property within its existing stock to meet the specific needs relating to the complainant’s disability and the size of his family. To make matters worse, although the complainant asked the NIHE, in December 2004, if he could be considered for accommodation under the Acquisition of Satisfactory Housing (ASH) Scheme, the NIHE did not commence this process until October 2006. Although I was pleased to note that, in August 2008, Belfast Community Housing Association Ltd completed the purchase of a property, which, following adaptations, should meet the complainant’s specific needs, I considered that if the NIHE had started the acquisition process in December 2004, the complainant and his family could have been living in their new suitably adapted property much sooner. Overall, I considered the NIHE’s failure to properly process the complainant’s housing application under the homeless application legislation, and subsequent handling of his request for consideration under the ASH Scheme to have constituted maladministration for which I criticised the NIHE.

By way of redress for the delay, inconvenience, frustration and annoyance experienced by the complainant, I recommended that he should receive an apology from the Chief Executive, together with a consolatory payment of £4,000. I am pleased to record that the Chief Executive accepted my recommendations.

**(200700491)**

### **Failure to Undertake Repairs**

The complainant was dissatisfied with the response of the NIHE to reports and representations he made to it of rain penetration at the living room window and back door of his home; also his report of rainwater overflowing from the gutters of the property.

I established that in response to two separate reports it received from the complainant about rain penetration, the NIHE inspected the complainant's home, following which it ordered its contractors to undertake the repairs it considered necessary to address this matter. On this basis, I was satisfied that the NIHE had responded appropriately and satisfactorily on both occasions. In response to subsequent further representations made by the complainant, the NIHE again arranged that its contractor should call with the complainant to examine water penetration to the windows of his home. However, my investigation established that when the NIHE's contractors called to the complainant's home, on three occasions, they were not permitted access. Having considered an account provided by the complainant of an exchange he had with the workmen concerned, I found the attitude he

adopted to have been unreasonable and unhelpful in resolving his problem with rain penetration at his home. I further found the complainant's communication with the workmen to have been unhelpful and patronising. My investigation further established that the NIHE remained willing to have all remedial works, to stop rain penetration, undertaken to the complainant's home, although it required his co-operation to achieve this outcome.

Although the complainant said he also reported that the gutters of his home were overflowing, the NIHE had no record of this. I welcomed the statement by NIHE's Chief Executive that one of its contractors would be asked to check the guttering at the complainant's home when undertaking remedial work required in relation to the rain penetration at the property. However, I expressed my disappointment that the NIHE failed to address this matter on receipt of full details provided to it by my Office of the matters about which the complainant felt aggrieved.

I did not uphold this complaint. However, I identified several instances of unsatisfactory administration on the part of the NIHE in its dealings with the complainant, which led me to conclude that the quality of service he received from the NIHE fell short of the standard that citizens have a right to expect and which, in fairness, I accept the NIHE strives to deliver. As a remedy, I recommended that the complainant should receive an appropriate letter of apology from the NIHE's Chief Executive. I was pleased to record that the Chief Executive accepted my recommendation. I suggested

to the Chief Executive that he should ensure that rain penetration at the complainant's home was effectively addressed. I was pleased to record that the Chief Executive accepted this suggestion. I also suggested to the complainant he should co-operate fully with the NIHE and its contractors in the arrangements needed to rectify the maintenance problems he was experiencing at his home. **(200701237)**

#### **Failure to carry out renovations**

The complainant wrote to me because she was unhappy with the renovations carried out to her home by Northern Ireland Housing Executive (the Executive).

Although the defects referred to the Executive were eventually rectified, with the exception of the windows, she was concerned it took an extended period of time and a lot of complaining on her part to have them completed.

The Chief Executive (CE) informed me initially that the defects to the flat were rectified with the exception of those relating to the windows, two months after the complainant had returned to her flat. In fact, following her complaint to the CE, and as part of the investigation of that complaint, an inspection was carried out at her home. This inspection revealed that the problems outlined had not been resolved, in particular the standard of the windows had not been addressed, a period of six months after she had returned to the property.

The complainant had brought her concerns regarding the standard of workmanship to

the Executive on many occasions since she returned to her property after the renovations work had been completed. When her concerns were raised at the second stage of the Executive's complaints process, the resulting inspection confirmed the problems she had complained about. I consider that the complainant did not receive the level of service from the Executive that, as a tenant, she was entitled to receive. I have no doubt the ordeal of having to complain to enable her concerns to be addressed, at a time of ill health, caused the complainant distress, annoyance and frustration. I criticised the Executive for failing to provide an adequate level of service to the complainant which I considered constituted maladministration.

I concluded that the complainant was justified in complaining to me about the NIHE's dealings with her in relation to the problems she experienced on returning to her home following the improvement scheme. The Chief Executive accepted my recommendation and issued the complainant with a written apology on the Executive's behalf together with a consolatory payment of £1,500. **(200501315)**

## **RURAL DEVELOPMENT COUNCIL**

### **Failure to pay Peace II grant**

The complainant claimed to have suffered an injustice as a result of maladministration by the Rural Development Council (RDC) in relation to its consideration of a Peace II grant application. The complainant, as Chairman of a sports club, had received a

letter from the RDC stating that the assessment panel had deemed the club's application unsuccessful as it had failed to meet the eligibility criteria. The reason given was that assistance was not available towards projects which had already been started. The appeal submitted to the second stage review upheld the original decision.

Having carefully considered all the documentation provided to me, both by the club and the RDC, I did not find any evidence of maladministration in either the decision or the process followed by the RDC. Essentially the complainant disagreed with the RDC's assessment that the construction of a steel shell constituted commencement of a project. I noted that the RDC leaflet issued to applicants outlining the aims and objectives of the measure is explicit in stating that projects which have already started will not be funded. While I considered that the club were genuine and open with the RDC in the information they provided, I did not consider the decision by the RDC, that the project as referred to in the application form had already started, to be so unreasonable that no reasonable decision maker would have made it. In the absence of maladministration, I did not uphold the complaint. **(200701239)**

# Selected Summaries of Cases Settled

## South Eastern Education & Library Board

The mother of a 16 years old youth complained that the Board had failed to provide the educational and psychological support her son needed to allow him to achieve his full potential. When asked by his school to repeat primary one because of his age the boy started to exhibit behavioural problems. I did not proceed with the case because the majority of the issues brought to me were either outside my jurisdiction or outside my time limits. I did however criticise the Board for its failure to keep the complainant informed about efforts to arrange Educational Psychology support for her son. The Board agreed to issue a letter of apology and a consolatory payment of £500 to the complainant. **(200700801)**

## Down District Council

I received a complaint from the Newcastle Harbour Regeneration Community Association that letters they had sent to the Council regarding issues affecting the harbour and associated car park had not been replied to. Following my enquiries a meeting took place between the Chief Executive of the Council and the Association which produced a satisfactory outcome and I therefore decided to take no further action. **(200800041)**

A resident wrote to me to complain about the Council's failure to acknowledge or respond to her complaint about the failure to empty her bin. After an approach from my Office the Council issued a letter of

apology which the complainant regarded as a satisfactory settlement of her complaint. I therefore closed my file. **(200800670)**

## Larne Borough Council

In this case, the aggrieved person alleged that as a consequence of the Council's failure to collect certain bulky items from his mother's house, which complied with the instructions provided on the Council's webpage, he incurred unnecessary expenditure of £305.50 to arrange to have the items removed himself. Following representations by my Office, the Council decided to review this case and agreed to issue an apology to the complainant for the poor service he received, together with a payment for £305.50 to reimburse for the additional expenditure he incurred. In addition, the Council amended its webpage and bulky collection form to include a stipulation regarding the maximum number of items per collection and to specify exemptions from its free service. **(200701341)**

## Castlereagh Borough Council

The complainant said she had suffered injustice because of the manner in which the Council had managed the registration process for the Council's Community Services Summer Scheme. The result was that her children did not receive a place at their preferred venue. In response to my enquiries the Chief Executive told me the Council had initiated its own investigation and as a result a number of measures had

been identified and accepted to prevent a recurrence of the problems which were acknowledged had attended the registration process. The Chief Executive apologised to the complainant and in addition guaranteed places on the complainant's preferred scheme for 2009, on payment of the appropriate fees. The complainant accepted the offer and I discontinued my investigation. **(200800440)**

### Derry City Council

The Chief Executive of a Community Development Group complained about the withholding of funding from his Group. I learned that an independent audit of Advice Services had highlighted certain matters which gave the Council cause for concern. However, on further investigation and cross-checking of data the Council was satisfied that funding could be restored. The Community Development Group also undertook to introduce remedial measures to its working arrangements. On this basis I decided to take no further action. **(200800307)**

### The Consumer Council

The complainant in this case was dissatisfied with the Consumer Council's (the Council) handling of a complaint which she had made to it about Northern Ireland Electricity PLC (NIE). In response to my enquiries and having considered the documentation provided to me by the Council, I could not accept that the issues raised by the complainant had been thoroughly

investigated by the Council. The Chief Executive subsequently acknowledged the inadequacies in relation to the Council's handling of the complaint. I therefore decided to refer the complaint back to the Council to have it re-investigated. I also recommended that the Chief Executive send the complainant a letter of apology for what I considered was inadequate handling of her complaint. **(200700732)**

### Northern Ireland Housing Executive

The central issue in this complaint was a decision by the Executive to cancel an application for grant aid under the Houses in Multiple Occupation Scheme. On receipt of my letter of enquiry the Executive reviewed the circumstances of the case and agreed to reopen the grant enquiry to allow a further opportunity to complete the grant application. The Chief Executive asked the Acting Manager of the Grant Office to contact the complainant to assist her through the remainder of the process. The complainant expressed her satisfaction at the outcome of my enquiries and I discontinued my investigation. **(200800200)**

# Statistics

Table 3.3: Analysis of Written Complaints Received in 2008/09

	Brought forward from 2007/08	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/09
Local Councils	8	40	23	5	6	0	3	11
Education Authorities	7	26	17	1	9	1	1	4
Health and Social Services Bodies	5	20	12	0	4	1	2	6
Housing Authorities *	25	73	41	2	22	10	7	17
Other Bodies Within Jurisdiction	2	27	16	0	6	1	2	4
<b>TOTAL*</b>	<b>47</b>	<b>186</b>	<b>109</b>	<b>8</b>	<b>47</b>	<b>13</b>	<b>15</b>	<b>42</b>

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

Table 3.4: Analysis of Written Complaints Against Local Councils

	Brought forward from 2007/08	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/09
Antrim BC	0	1	0	0	1	0	0	0
Ards BC	0	1	1	0	0	0	0	0
Armagh C&DC	1	0	0	0	0	0	0	1
Ballymena BC	0	1	0	0	1	0	0	0
Banbridge DC	0	2	2	0	0	0	0	0
Belfast CC	0	2	1	0	0	0	1	0
Carrickfergus BC	0	1	0	0	1	0	0	0
Castlereagh BC	1	6	4	1	0	0	1	1
Coleraine BC	0	2	2	0	0	0	0	0
Craigavon BC	1	1	1	0	0	0	0	1
Dungannon & South Tyrone BC	0	2	1	0	1	0	0	0
Derry CC	1	2	0	1	1	0	0	1
Down DC	0	2	0	2	0	0	0	0
Fermanagh DC	0	1	1	0	0	0	0	0
Larne BC	1	2	1	1	0	0	0	1
Limavady BC	0	1	0	0	0	0	0	1
Lisburn CC	1	3	1	0	0	0	0	3
Magherafelt DC	1	0	0	0	1	0	0	0
Moyle DC	0	1	1	0	0	0	0	0
Newry & Mourne DC	0	3	2	0	0	0	0	1
Newtownabbey BC	0	3	3	0	0	0	0	0
North Down BC	1	1	0	0	0	0	1	1
Omagh DC	0	2	2	0	0	0	0	0
<b>TOTAL</b>	<b>8</b>	<b>40</b>	<b>23</b>	<b>5</b>	<b>6</b>	<b>0</b>	<b>3</b>	<b>11</b>



Table 3.5: Analysis of Written Complaints Against Education Authorities

	Brought forward from 2007/08	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/09
Belfast E&LB	1	3	2	0	2	0	0	0
CCMS	1	2	0	0	2	0	1	0
North Eastern E&LB	0	4	2	0	1	0	0	1
South Eastern E&LB	2	6	5	1	1	0	0	1
Southern E&LB	2	9	7	0	2	0	0	2
Western E&LB	1	2	1	0	1	1	0	0
<b>TOTAL</b>	<b>7</b>	<b>26</b>	<b>17</b>	<b>1</b>	<b>9</b>	<b>1</b>	<b>1</b>	<b>4</b>

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

	Brought forward from 2007/08	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/09
Belfast Health & Social Care Trust	1	6	5	0	0	0	0	2
Central Services Agency	0	1	1	0	0	0	0	0
Eastern Health & Social Services Board	0	1	0	0	1	0	0	0
Northern Health & Social Care Trust	1	2	0	0	1	0	0	1
Northern Health & Social Services Board	0	3	2	0	0	0	0	1
Regulation & Quality Improvement Authority	1	3	1	0	1	0	0	2
South Eastern Health & Social Care Trust	1	1	1	0	0	1	0	0
Southern Health & Social Care Trust	0	2	2	0	0	0	0	0
Western Health & Social Care Trust	2	1	0	0	1	0	2	0
<b>TOTAL</b>	<b>5</b>	<b>20</b>	<b>12</b>	<b>0</b>	<b>4</b>	<b>1</b>	<b>2</b>	<b>6</b>

**Belfast Health & Social Care Trust** – incorporates the former Belfast City Hospital, Greenpark, Mater Hospital, N&W Belfast, Royal Hospitals and S&E Belfast Health and Social Services Trusts

**Northern Health & Social Care Trust** - incorporates the former Causeway, Homefirst Community and United Hospitals Health and Social Services Trusts

**South Eastern Health & Social Care Trust** - incorporates the former Down Lisburn and Ulster Community & Hospitals Health and Social Services Trusts

**Southern Health & Social Care Trust** - incorporates the former Armagh & Dungannon, Craigavon Area Hospital, Craigavon & Banbridge Community and Newry & Mourne Health and Social Services Trusts

**Western Health & Social Care Trust** - incorporates the former Altnagelvin Hospitals, Foyle and Sperrin Lakeland Health and Social Services Trusts

Table 3.7: Analysis of Written Complaints Against Housing Authorities\*

	Brought forward from 2007/08	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/09
NIHE	20	49	27	2	19	6	5	11
Ark Housing Association (NI) Ltd	0	3	1	0	1	0	0	1
Ballynafeigh Housing Association	0	1	1	0	0	0	0	0
Belfast Community Housing Association	0	1	1	0	0	0	0	0
BIH Housing Association Ltd	2	3	2	0	0	2	0	1
Filor Housing Association Ltd	1	0	0	0	0	1	0	0
Fold Housing Association	0	6	2	0	2	0	0	2
Grove Housing	0	1	1	0	0	0	0	0
Habinteg Housing Association (Ulster) Ltd	0	1	0	0	0	0	1	0
NI Co-ownership Housing Association Ltd	0	1	1	0	0	0	0	0
North & West Housing Ltd.	0	2	2	0	0	0	0	0
Oaklee Housing Association Ltd	0	3	1	0	0	0	0	2
Trinity Housing Ltd	1	1	1	0	0	1	0	0
Ulidia Housing Association Ltd	1	1	1	0	0	0	1	0
<b>TOTAL</b>	<b>25</b>	<b>73</b>	<b>41</b>	<b>2</b>	<b>22</b>	<b>10</b>	<b>7</b>	<b>17</b>

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

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

	Brought forward from 2007/08	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/09
Consumer Council	1	1	1	0	0	1	0	0
Fisheries Conservancy Board	0	4	2	0	2	0	0	0
Health & Safety Executive	0	3	2	0	0	0	0	1
Labour Relations Agency	0	4	3	0	1	0	0	0
Local Gov. Staff Commission	0	2	0	0	2	0	0	0
Mental Health Commission	0	1	1	0	0	0	0	0
NI Children's Commissioner	0	1	1	0	0	0	0	0
NI Fire & Rescue Service	0	3	0	0	1	0	1	1
NI Local Gov. Officer	0	1	1	0	0	0	0	0
NI Medical & Dental Training Agency	0	1	0	0	0	0	0	1
Rural Development Council	1	0	0	0	0	0	1	0
Sports Council for NI	0	2	1	0	0	0	0	1
Staff Commission Education & Library Boards	0	1	1	0	0	0	0	0
No specified body within jurisdiction	0	3	3	0	0	0	0	0
<b>TOTAL</b>	<b>2</b>	<b>27</b>	<b>16</b>	<b>0</b>	<b>6</b>	<b>1</b>	<b>2</b>	<b>4</b>



Section Four  
Annual Report of the  
Northern Ireland Commissioner  
for Complaints ~  
Health Service Complaints



**Ombudsman** Northern Ireland

# Annual Report

## WRITTEN COMPLAINTS RECEIVED IN 2008/09

I received a total of 95 complaints during 2008/09, 22 fewer than in 2007/08.

Fig: 4.1: Health and Social Care Complaints 1999/00 - 2008/09

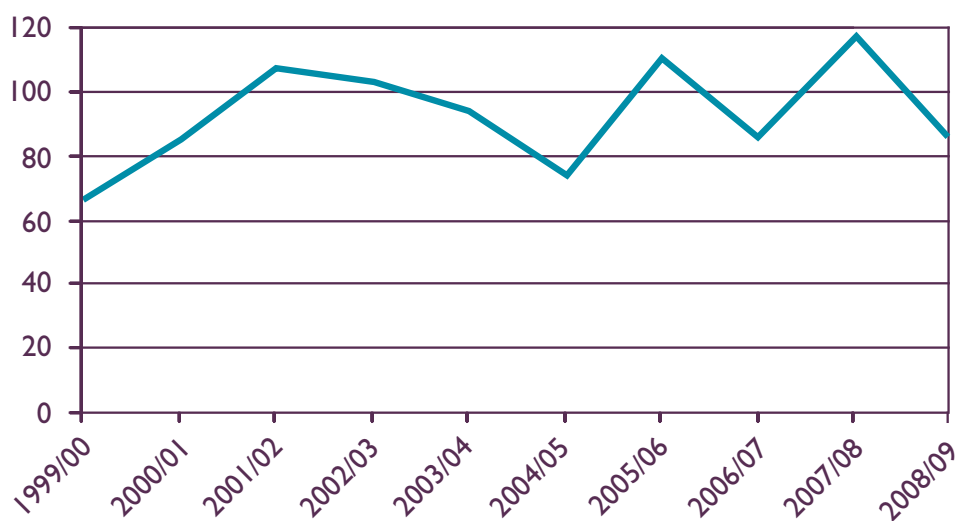


Fig 4.2: Written Complaints Received in 2008/09 by Authority Type

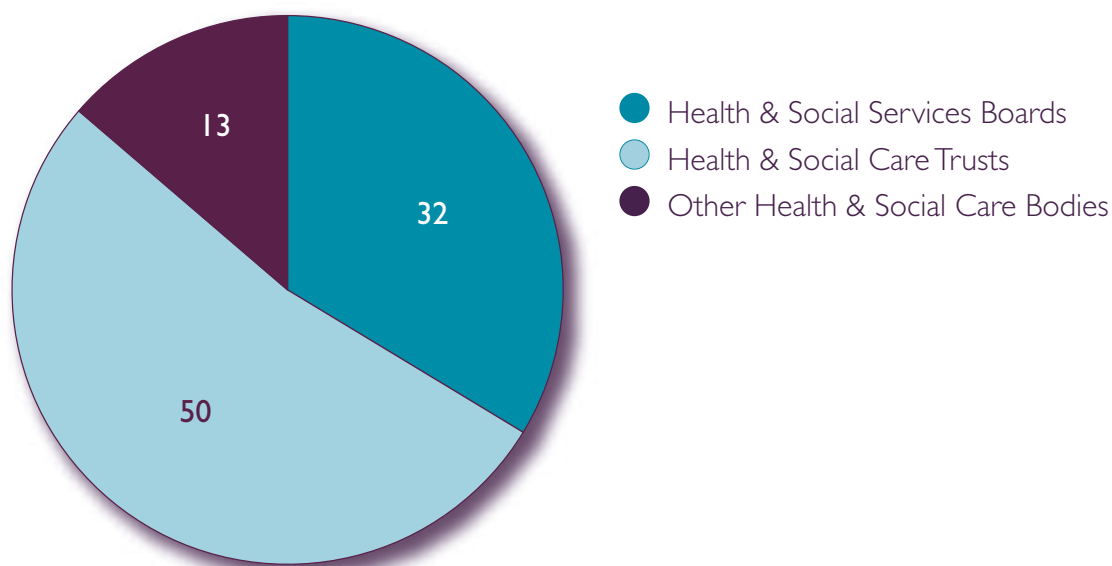
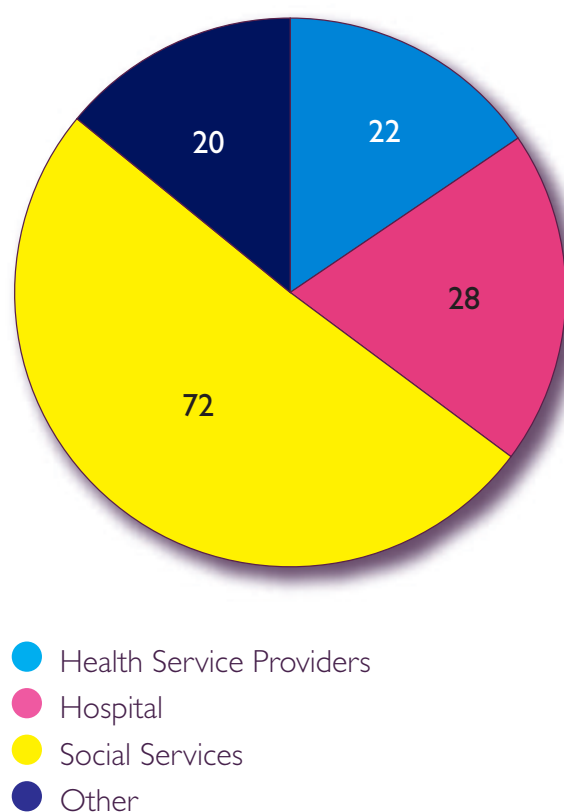


Fig 4.3: Written Complaints Received  
in 2008/09 by Complaint Subject



## THE CASELOAD FOR 2008/09

In addition to the 95 complaints received during the reporting year, 44 cases were brought forward from 2007/08 – giving a total caseload of 139 complaints. Action was concluded in 104 cases during 2008/09. 35 cases were still being dealt with at the end of the year.

Table 4.1 Caseload for 2008/09

Cases brought forward from 2007/08	44
Written complaints received	95
Total Caseload for 2008/09	139
<b>Of Which:</b>	
Cleared at Validation Stage	75
Cleared at Investigation Stage (without a Report), including cases withdrawn and discontinued	12
Settled	4
Full Report or Letter of	
Report issued	13
In action at the end of the year	35

The outcomes of the cases dealt with in 2008/09 are detailed in the Figs 4.4 and 4.5.

Fig 4.4: Outcomes of Cases Cleared at Validation Stage

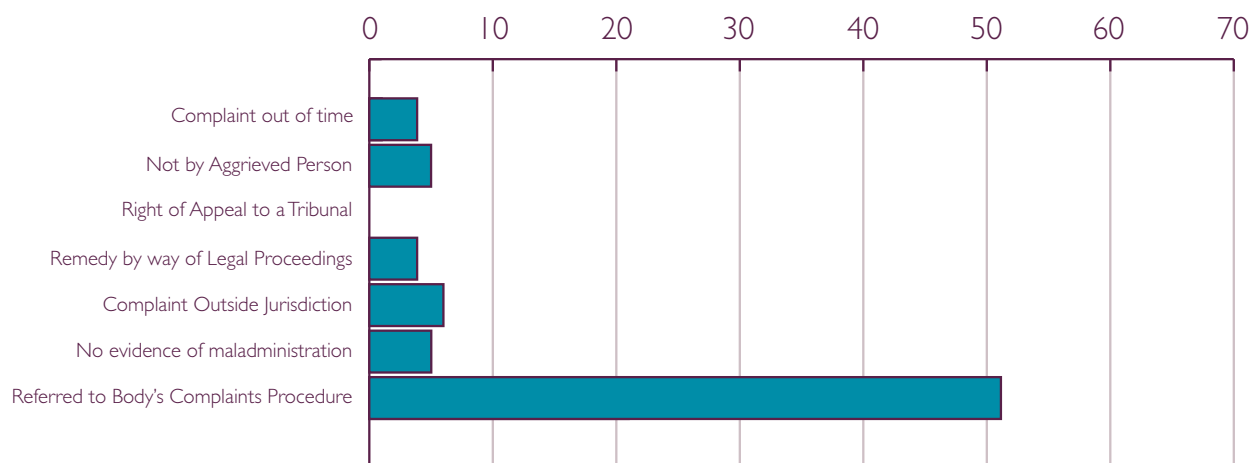
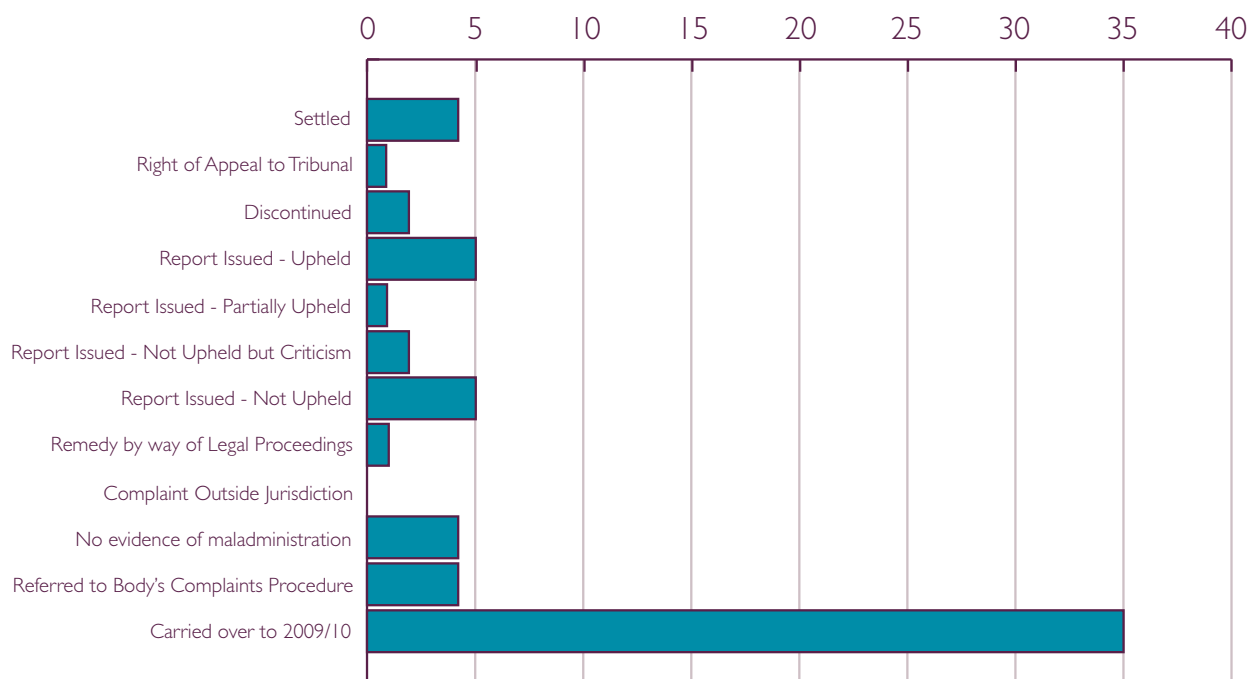


Fig 4.5: Outcome of cases Cleared at Investigation and Report Stages





13 reports of investigations (Full Reports and Letters of Report) were issued in 2008/09. Of these cases: 5 were fully upheld, 1 was partially upheld, 2 were not upheld but I criticised the Body complained against and 5 were not upheld. In all of the cases in which I made recommendations for actions to be taken by the body complained against, these recommendations were accepted by the body.

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

The average time taken for a case to be examined, enquiries made and a reply issued at Investigation Stage was 21 weeks.

The average time taken for a case to be examined, enquiries made and a full Report issued was 74 weeks.

**Table 4.2: Recommendations in Reported Cases**

Case No	Body	Subject of Complaint	Recommendation
200700981	Southern Health and Social Care Trust	Care and Treatment	Written Apology
200701227	Western Health and Social Services Board	Handling of Independent Review request	Written Apology
200501078	Northern Health and Social Care Trust	Conduct of Investigation	Body Criticised
200501083	Northern Health and Social Care Trust	Conduct of Investigation	Body Criticised
200600542	Health Service Provider – GP	Care and Treatment	Written Apology & Review of Policies and Procedures
200701017	Health Service Provider – GP	Delay in Diagnosis	Written Apology & Review of Policies and Procedures

# Selected Summaries of Investigations

## Unclear appointments system

This complaint centred on the way in which the appointment system was operated by the complainant's GP surgery.

In my investigation I was provided with information from both the Convenor of the Southern Health and Social Services Board and the GP Practice. I found that the information about pre-bookable appointments, and booking appointments "on the day", which had been provided to the complainant by the Practice Manager, contradicted the information given in the practice leaflet. My investigation also identified that the arrangements for appointments regarding the first and last half hour of morning and afternoon surgery were not explained. I therefore could not understand how the appointment system could be confusing to patients.

I recommended that the GP Practice should arrange to have the practice leaflet amended to clarify and explain how to make appointments. I also considered that, in terms of clarity and perceived fairness, the practice might want to consider including a statement which reflected that in certain circumstances Doctors may reserve 'on the day' appointments, in advance for patients who in their opinion require clinical review within a specific time. This I believe would help clarify the situation for other patients by enabling them to understand why the "protected" slots are provided..

(200700753)

## Failure to grant Independent Review

The aggrieved person complained to my office following a decision of the Convenor of the Western Health and Social Services Board (the Board) not to grant an Independent Review of his complaint about the care and treatment afforded to his late daughter by her GP Practice. He stated that his daughter had died, suddenly, at the age of 33 on 28 April 2007 from Coronary Artery Atheroma. The complainant alleged that the Convenor had not dealt with his complaint impartially as she had obtained clinical advice from one of the Board's officers. He also alleged that the Convenor had failed to understand the nature of his complaint particularly in relation to his concern about the adequacy of his late daughter's consultation with the GP in March 2006, a month before she died.

In my investigation I established that the Department of Health Social Services and Public Safety's 'Guidance on Implementation of the Health and Personal Social Services Complaints Procedure' clearly indicates that clinical advice in relation to a complainant's request for an Independent Review should be obtained from within the Board unless this might give rise to a potential conflict of interest. I found no indication that any conflict of interest existed. Consequently, I was satisfied that the Convenor had acted within the terms of the guidance and that she was fully entitled to request clinical advice from within the Board.

I noted that in the complainant's letter to the Convenor regarding his concern about the adequacy of the GP consultation with his late daughter he referred in particular to

the failure of the GP to document a family history of heart disease.

He also complained that the medical record did not include important details in relation to the nature of the chest pain that his late daughter had experienced. My investigation revealed that, whilst the Convenor's clinical adviser stated that each consultation with the complainant's daughter had been documented in the GP records, he failed to provide any comment in relation to the adequacy of that documentation, particularly with regard to the consultation in March 2006. The clinical advice that I received from my Independent Medical Adviser emphasised the importance of full and accurate recording of the presenting features on new chest pain. I was not satisfied that this important aspect of the complaint was given sufficient consideration by the clinical adviser in his report to the Convenor. I was therefore critical of the clinical adviser and also the Convenor for failing to request further advice on this aspect of the complaint.

With regard to the family history of heart disease I noted that the clinical adviser stated that the complainant's daughter had no first degree relative with a history of heart disease. However, my examination of the medical records did not reveal any details of family history of heart disease and this information appears to have been provided by the complainant in his letter to the Convenor. Consequently, it was not clear if the GP was aware of the family history when he examined the complainant's daughter in March 2006. Having said that, however, I was satisfied that

information relating to the other risk factors was available to the GP. Furthermore, my Independent Medical Adviser stated that even if there had been a history of disease in the closest relatives of the complainant's daughter, her own risk would continue to have been judged as limited. Therefore, I did not consider the absence of information in the medical records regarding family history as being significant as regards any assessment of the adequacy of the care and treatment which the complainant's daughter received.

I was further advised by my Independent Medical Adviser that the medical record for 6 March 2006 did not provide a sufficient evidential basis for the clinical adviser to state that the symptoms displayed by the complainant's daughter were primarily suggestive of dyspepsia and acid reflux, nor could it be asserted that appropriate investigation and treatment was arranged at that time. Overall, I considered that the clinical advice to the Convenor did not adequately address each of the issues raised by the complainant and therefore the convening process had been deficient in identifying those aspects of the complaint which would have benefited from further local resolution or by convening an Independent Review Panel. I therefore upheld the complaint of maladministration against the Board and I recommended that the complainant should receive a written apology. I also decided to pursue a separate investigation of the GP Practice as I felt that there were questions which remained to be satisfactorily answered in relation to the original complaint. **(200701227)**

### **Complaint handling and allegations of abuse of vulnerable adults**

In January 2006 the complainant and two others wrote to me alleging that they each had sustained a personal injustice as a result of maladministration by the then Homefirst Community Trust, now the Northern Health and Social Care Trust (the Trust). This was a lengthy and highly complex case in which the complainant raised a number of concerns relating to the Trust's handling of an investigation into allegations contained in an anonymous letter received by the Chairman of the then Trust, which included allegations of abuse of certain trainees under the care of a voluntary charity which was set up to provide vocational training for people with a learning disability. The complainant's overriding concern related to the investigative procedures adopted by the Trust.

My review of all the documentation including the Trust's guidance on the protection of vulnerable adults from abuse informed my conclusion that the Trust failed to follow the initial procedures it had in place to determine appropriate action to be taken following the receipt of allegations of abuse of vulnerable adults. I therefore found the Trust responsible for maladministration for its failure to adhere to the procedures that existed for the protection of vulnerable adults. Of equal concern was the absence of any strategy, action plan or methodology for the investigation. I was concerned that the Trust's complaint's officer did not appear to have any involvement in this important investigation by the Trust. I concluded that as a result of the failure to follow the

established procedures and, at the outset, set down a clear, structured plan for the investigation, that the handling of the complaint was inevitably flawed and characterised by maladministration. Also, it left vulnerable adults in a situation of potentially high risk as that risk had neither been assessed nor investigated.

The Trust's investigation did not focus on the allegations contained in the anonymous letter but instead the focus was on other aspects of the voluntary charity's performance such as its operational policies and procedures. I found the focus on the safety and wellbeing of trainees to have been secondary to the pursuit of an investigation into the management and culture of the voluntary charity, with particular emphasis being placed on the policies and procedures under which the organisation operated. Furthermore the focus on the management and culture of the voluntary charity led to the Trust examining, and making recommendations in respect of, specific policies and procedures that the charity was not required to have in place under the terms of its Service Level Agreement with the Trust.

I found the focus of the investigation on the operational policies and procedures of the charity, rather than the allegations of harm to trainees, to be a serious error, that led to a failure in the Trust's duty of care to the vulnerable adults under its care, and that this also constituted maladministration.

Another discrete element of the complaint concerned the Trust's decision to initiate a formal investigation as a result of receiving

an anonymous letter of complaint. While my investigation revealed a range of views amongst Trust staff on this issue it is my view that the Trust would have been guilty of gross maladministration had it decided not to investigate the serious allegation contained in the anonymous letter particularly as the allegations involved the care of vulnerable adults.

The complainant also alleged that the actions of the Trust in their handling of the investigation caused a complete breakdown in the relationship between the Trust and the charity. I studied in detail the documentation relating to this matter and I found that the charity had contributed to the breakdown in the relationship and the breakdown could not be solely attributed to the Trust.

I made a finding of maladministration against the Trust on a number of counts. I recommended that the Chief Executive of the Trust should write to the complainant conveying a full apology for each of the deficiencies I identified and for the distress which had been caused to him, to the staff he employs and most importantly the trainees who attend the facility.

My investigation raised a number of wider concerns about the Trust's governance arrangements and I highlighted some of these as recommendations for immediate action on the part of the Trust.

Finally, I asked the Chief Executive to report back to me within 6 months detailing the action taken in relation to the implementation of these recommendations.  
(200501055)

**Trust Response:** The Chief Executive of the Trust subsequently wrote to me, with copy documentation, to report on the initiatives taken by the Trust to address the matters raised in my report. A new Service User Feedback Policy, which incorporates the Complaints Procedure, has been approved by the Trust Board and is now in place and being implemented. Also, the Trust developed and implemented a training programme in respect of its revised Guidance to Staff on Safeguarding Vulnerable Adults. I was provided with a copy of an Action Plan prepared by the Trust's Governance Department in relation to the implementation of the new Complaints Procedure.

#### Delay in hospital referral

The complainant made a complaint about the care and treatment he had received from his General Practitioner (GP). He stated that when he first presented with clinical symptoms in September 2006, his GP should have referred him to the hospital consultant he eventually saw in June 2007. He stated he firmly believed that had this occurred an early diagnosis could have saved his life. Instead 10 months had passed and during this delay the cancer in his colon spread through his body and when it was diagnosed it was untreatable.

In my investigation of this tragic case I arranged for the complainant's medical records to be reviewed by my Independent Medical Adviser (IMA). The medical records revealed that the complainant had been seen by his GP in September 2006 regarding the monitoring of his blood

pressure and the consultation was not, as the complainant had believed, in relation to his altered bowel symptoms. Rather the complainant had first discussed his altered bowel habit with a locum GP on 1 November 2006 and my IMA advised me that the locum GP had responded reasonably to the symptoms as presented by the complainant at that time.

My investigation established that the complainant saw his own GP on 27 November 2006 in relation to other unrelated medical conditions and his GP noted in the medical records that the complainant was constipated and that this would be discussed at a review consultation in one week. The medical records recorded that the GP had a review consultation with the complainant on 6 December 2006 and arranged for blood tests and a chest x-ray to be carried out. The GP subsequently discussed his concern regarding the test results at a meeting with the complainant on 11 December 2006 and advised him that he would refer him urgently to a consultant urologist. The GP sent a referral letter to a consultant urologist that same day expressing concern that the complainant may have a gastro-intestinal or urological malignancy. On 19 December 2006 he made a follow up telephone call to the hospital to confirm that the referral letter had been received. My IMA advised me that given the complainant's previous medical history and his haematuria (blood in the urine) the GP's action in making a referral to an urologist constituted good clinical care.

The GP saw the complainant again on 17

January 2007 and advised him that the results of the urological referral were normal. Over the next few weeks the GP continued to monitor the complainant's condition. The medical records demonstrated that it was not until 28 February 2007 that the GP sent a further patient referral letter to a hospital consultant marked 'Semi-Urgent' requesting a gastro-intestinal investigation of the complainant's condition. My IMA advised me that following receipt of the normal urological test results, the time taken by the GP to make the subsequent patient referral for a gastro-intestinal investigation was unreasonable.

I acknowledged that the delay by the GP in making the subsequent referral for the complainant may have been influenced, to some extent, by the information in the reply the GP received from the consultant urologist. However, I was advised by my IMA that a gastro-intestinal investigation should have been instigated as soon as it was reported to the GP that the complainant's urological system was not the source of his symptoms. Consequently, I concluded that the six week delay by the GP in referring the complainant for a gastro-intestinal investigation constituted maladministration. I was, however, unable to say that if the six week delay by the GP had not occurred there would have been a different outcome for the complainant. I also formed the view that there may have been periods of delay in the hospital's management of the complainant's care following the subsequent referral to hospital (which I considered as a separate complaint – see below) but, where these had occurred

the GP could not be held responsible for those delays. I recommended, and the GP agreed, to issue an apology letter to the complainant for the six week delay in making the hospital referral and to raise the circumstances of this case at the GP's next annual appraisal.

My investigation of this case identified that the GP had categorised the complainant's referral to hospital as 'Semi Urgent'. I subsequently discovered, however, that the hospital recognise only two referral categories, namely, 'Routine' and 'Urgent'. I therefore recommended that the GP Practice review its patient referral forms to ensure the categories of referral correspond with those recognised by the hospital service. Given the possible regional implications of this matter, I also wrote to the Chief Medical Officer for Northern Ireland so that other GP Practices could be notified of this recommendation.

**(200701017)**

#### **Response by Department of Health in case no. 200701017**

I subsequently received a written reply from the Chief Medical Officer to inform me that as part of a recent initiative in relation to an Elective Access Protocol the Department of Health, Social Services and Public Safety has been working with GPs to develop standardised patient referral pro formas which are now being used increasingly by GPs and the previous non standard patient referral forms are being phased out. The Chief Medical Officer explained that patients who are referred to hospital will be deemed to be either 'Routine' or 'Urgent'

but a small number may be 'red flagged' by the GP/hospital clinician where cancer is suspected. I welcome this initiative by the DHSS&PS.

#### **Management of hospital care**

The above aggrieved person submitted a separate complaint against the South Eastern Health and Social Care Trust (the Trust) about the delay in being seen by each of the hospital consultants to whom he had been referred within the Trust; he stated that when he was eventually diagnosed with cancer it was untreatable. The complainant stated that he should have been referred directly to the consultant he eventually saw in June 2007 and if this had occurred an early diagnosis could have saved his life.

I found that on 11 December 2006 the complainant's GP made an urgent referral on his behalf to a consultant urologist for an investigation of the complainant's urinary tract as a possible cause of his symptoms. On receipt of the referral letter the urologist took steps to 'speed up' the investigative process by immediately arranging an ultrasound scan for the complainant rather than requiring him to first attend an outpatients appointment. A urological cause was excluded for the complainant's symptoms and the urologist reported the results to the GP on 10 January 2007 with the advice that if the complainant's anaemia 'continues' he would require a gastro-intestinal (GI) referral. The urologist explained that it was not his practice to make a consultant-to-consultant referral of a patient without first having seen the patient and in this case he had not personally examined the complainant. In the circumstances, I therefore



accepted that it was appropriate for the urologist to report back to the GP. However, whilst I acknowledged that responsibility lay with the GP to determine the next appropriate course of action, I was of the view that the urologist's report to the GP was somewhat ambiguous. The GP did not make a GI referral for the complainant until 28 February 2007.

My investigation revealed that the GI referral letter was judged by the GP as being 'Semi Urgent', however, this classification was not recognised by the hospital which has only two classification types of referral, namely 'Routine' and 'Urgent'. It also became evident that on receipt the GI referral letter had not been triaged by a hospital consultant as it should have been but was added directly onto the patient waiting list under the category of a 'Routine' referral. I did acknowledge that a new system of managing patient referrals was being set up by the hospital at the time the complainant's referral letter was received. Nevertheless, I was critical of the Trust for this lapse in procedure which had the potential for the complainant having to wait 6 months to be initially seen as a 'Routine' patient. In the event, however, the complainant was actually seen by a consultant within 9½ weeks from the date his referral letter was received.

The Trust explained the complainant's appointment was at an additional clinic which was set up as part of the Waiting List Initiative introduced by the Department of Health, Social Services and Public Safety to reduce hospital waiting lists. I established that the complainant was seen by a consultant in

general surgery who decided that the complainant required a GI endoscopy examination and as he did not perform this procedure he made a referral directly to a consultant colleague. My independent medical adviser informed me that it was not unreasonable for the complainant to have been initially seen by a consultant in general surgery. The complainant subsequently underwent a GI endoscopy examination 8 weeks later and a diagnosis of cancer was made.

Following the diagnosis on 28 June 2007, the complainant waited a further 4 weeks for a CT scan to be carried out to assess the extent and spread of the disease. In providing an explanation for the additional waiting time the consultant outlined the heavy patient demands on CT services. My independent medical adviser confirmed the high demand on diagnostic equipment within NHS hospitals and he advised me that a further 4 week delay was unlikely to have influenced the natural history of the disease in the complainant's case. I was further advised by my independent medical adviser that each stage of the clinical investigations of the complainant's symptoms by hospital staff was appropriate and proceeded in a logical sequence. However, there were a number of separate delays that overall resulted in an unreasonable delay in the complainant being given a diagnosis.

My investigation revealed that the 'system' for referral, investigation, and diagnosis, at the time of the complainant's referral is no longer the system in place. Overall, I concluded that the 119 days



(approximately) taken to diagnose the complainant's cancer was not reasonable for a modern health service. I noted that this is double the time advocated for patients entering the system shortly after the complainant, to be referred, seen and treated. Whilst this demonstrates a significant improvement for future patients it was of little comfort to the complainant. Sadly, the advice I received from my independent clinical adviser indicated that there was a strong possibility that the complainant's cancer may have developed to a considerable degree before he had any symptoms and that it may also have spread microscopically months before he attended his GP.

I subsequently recommended, and the Chief Executive of the Trust agreed, to issue a personal apology acknowledging that the time taken for the diagnosis of the complainant's cancer took too long regardless of the reasons for the delay.

**(200700981)**

# Selected Summaries of Cases Settled

## Belfast Health & Social Care Trust

A lady of retirement age, who had participated in a "waiting list initiative" at a private health facility in England for foot surgery, complained when the Trust refused to pay her taxi fares to and from Aldergrove airport. Following my intervention the Trust agreed to review its decision, and taking account of the individual circumstances of the case agreed, without prejudice and in this case only, to reimburse the lady's taxi fares. I therefore decided to take no further action. **(200800857)**

## Belfast Health & Social Care Trust

This was a multi-element complaint arising from the care and treatment received while the complainant was a hospital in-patient. In response to my initial enquiries the Chief Executive of the Trust acknowledged that the complaint had not been dealt with in a timely manner, and offered to arrange a meeting between the complainant, the Associate Medical Director of Trauma and Orthopaedics and other Senior Management in an effort to resolve the complaint. A member of my staff discussed this offer with the complainant who said she was willing to avail of this proposed way forward. This was in keeping with my desire to see complaints dealt with by those who were originally involved and this agreement allowed me to close the complaint, while keeping open the complainant's option of writing to me again if dissatisfied with the outcome of the proposed meeting. **(200800349)**

## Western Health & Social Services Board

This case arose from delays in responding to the complainant's request for an Independent Review of her complaint about dental treatment received. My enquiries brought to light several failings which the Board addressed by training and strengthening of their administrative procedures. The Board also agreed to issue a letter of apology to the complainant together with a consolatory payment of £250. I regarded this as a satisfactory outcome and closed my file. **(200800052)**

## Western Health & Social Services Board

The complainant in this case was unhappy about the decision of the Board to refuse an Independent Review of his complaint which concerned his removal from the case list of a Consultant Psychiatrist. I identified a number of issues which the Convenor did not seem to have considered in his original examination of the request for Independent Review. I therefore referred the case back to the Convenor for further consideration in relation to the issues I had identified and advised the complainant he could make representations to me again if he was unhappy with the outcome. **(200800650)**

# Statistics

Table 4.3: Analysis of Written Complaints Received in 2008/09

	Brought forward from 2007/08	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/09
H&SS Boards	22	32	14	2	9	1	6	25
H&SS Trusts	19	50	49	2	3	3	1	8
Other H&SS Bodies	3	13	12	0	0	2	0	2
<b>TOTAL*</b>	<b>44</b>	<b>95</b>	<b>75</b>	<b>4</b>	<b>12</b>	<b>6</b>	<b>7</b>	<b>35</b>

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

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

	Brought forward from 2007/08	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/09
Eastern H&SSB	13	10	6	0	4	0	3	12
Northern H&SSB	0	7	5	0	1	0	0	1
Southern H&SSB	6	5	1	0	1	0	3	6
Western H&SSB	3	10	2	2	3	1	0	6
<b>TOTAL*</b>	<b>22</b>	<b>32</b>	<b>14</b>	<b>2</b>	<b>9</b>	<b>1</b>	<b>6</b>	<b>25</b>

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

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

	Brought forward from 2007/08	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/09
Belfast Health & Social Care Trust	3	19	17	2	1	1	0	1
Northern Health & Social Care Trust	5	6	7	0	0	2	1	1
South Eastern Health & Social Care Trust	5	11	11	0	2	1	0	1
Southern Health & Social Care Trust	3	6	6	0	0	0	0	3
Western Health & Social Care Trust	2	8	7	0	0	0	0	2
NI Ambulance Service	1	0	1	0	0	0	0	1
<b>TOTAL*</b>	<b>19</b>	<b>50</b>	<b>49</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>1</b>	<b>9</b>

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

**Belfast Health & Social Care Trust** – incorporates the former Belfast City Hospital, Greenpark, Mater Hospital, N&W Belfast, Royal Hospitals and S&E Belfast Health and Social Services Trusts

**Northern Health & Social Care Trust** – incorporates the former Causeway, Homefirst Community and United Hospitals Health and Social Services Trusts

**South Eastern Health & Social Care Trust** – incorporates the former Down Lisburn and Ulster Community & Hospitals Health and Social Services Trusts

**Southern Health & Social Care Trust** – incorporates the former Armagh & Dungannon, Craigavon Area Hospital, Craigavon & Banbridge Community and Newry & Mourne Health and Social Services Trusts

**Western Health & Social Care Trust** – incorporates the former Altnagelvin Hospitals, Foyle and Sperrin Lakeland Health and Social Services Trusts

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

	Brought forward from 2007/08	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/09
Health Service Providers - GDP	0	2	2	0	0	0	0	0
Health Service Providers - GP	3	6	5	0	0	2	0	2
Health Service Providers - Pharmacists	0	1	1	0	0	0	0	0
Department of Health, Social Services and Public Safety	0	1	1	0	0	0	0	0
Independent HSC Provider - Private nursing Home	0	1	1	0	0	0	0	0
Regulation and Quality Improvement Authority	0	1	1	0	0	0	0	0
No specified Health & Social Services Body	0	1	1	0	0	0	0	0
<b>TOTAL*</b>	<b>3</b>	<b>13</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>2</b>

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





## Appendix A

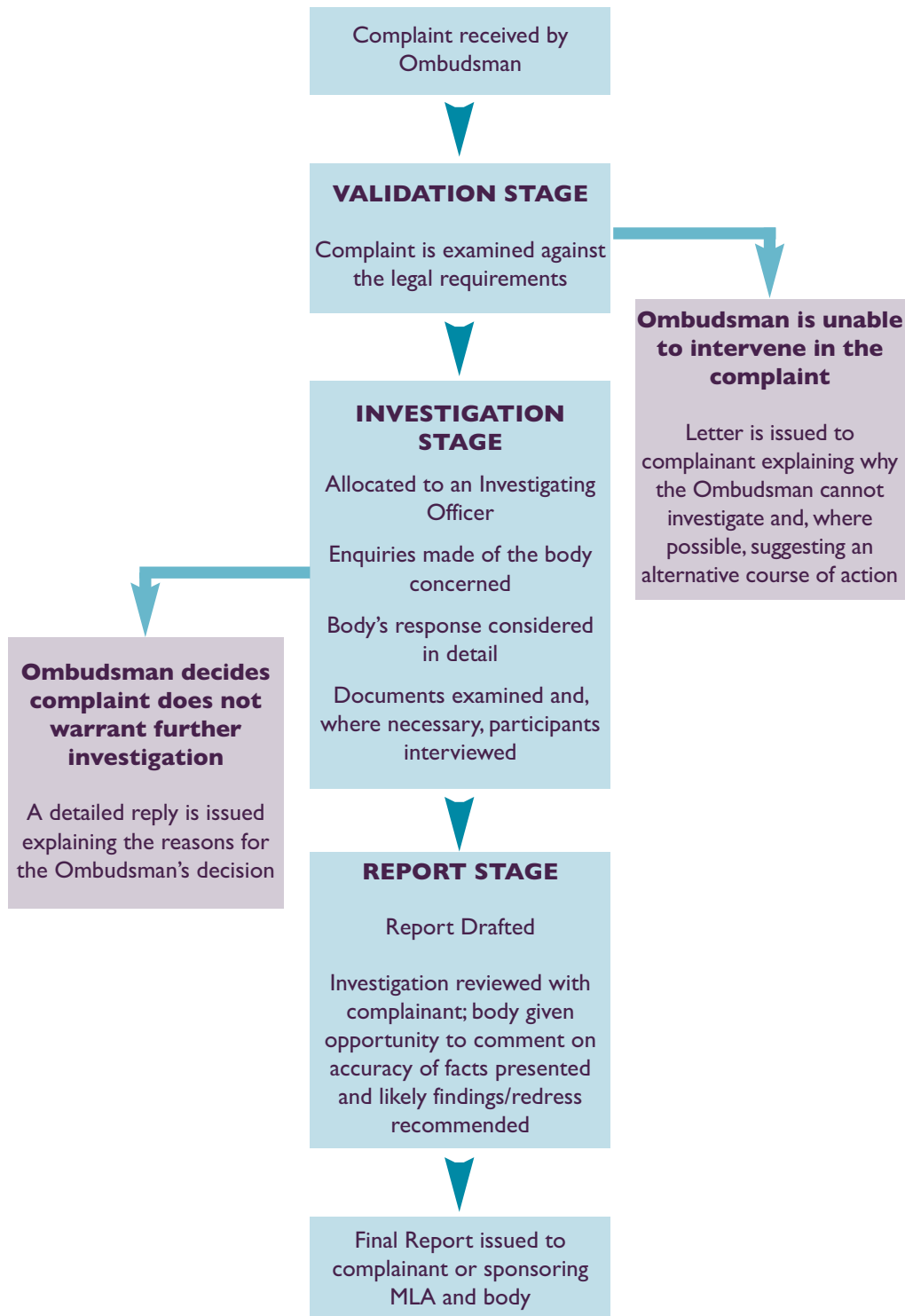
### Handling of Complaints



Ombudsman Northern Ireland

# Handling of Complaints

## HOW A WRITTEN COMPLAINT IS HANDLED BY THE OMBUDSMAN'S OFFICE





## THE PROCESS:

### Validation Stage

Each complaint is checked to ensure that:

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

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

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

### Investigation Stage

The purpose of an investigation is to ascertain whether there is evidence of maladministration in the complaint and how this has caused the complainant an injustice.

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

- a. **Where there is no evidence of maladministration by the body** - a reply will issue to the complainant/MLA explaining that the complaint is not suitable for investigation and stating the reasons for this decision;
- b. **Where there is evidence of maladministration but it is found that this has not caused the complainant a substantive personal injustice** – a reply will issue to the complainant/MLA detailing my findings and explaining why it is considered that the case does not warrant further investigation. Where maladministration has been identified, the reply may contain criticism of the body concerned. In such cases a copy of the reply will also be forwarded to the chief officer of the body; or
- c. **Where there is evidence of maladministration which has apparently also led to a substantive personal injustice to the complainant** - the investigation of the case will continue (see over).

If, at this stage of the investigation, the maladministration and the injustice caused can be readily identified, I will consider whether it would be appropriate to seek an early resolution to the complaint. This would involve me writing to the chief officer of the body outlining the maladministration identified and suggesting a remedy which I consider appropriate. If the body accepts my suggested remedy, the case can be quickly resolved. However, should the body not accept my suggestion or where the case would not be suitable for early resolution the detailed investigation of the case will continue. This continued investigation will involve inspecting all the relevant documentary evidence and, where necessary, interviewing the complainant and the relevant officials. Where the complaint is about a Health Service matter, including clinical judgement, professional advice will be obtained where appropriate from independent clinical assessors. At the conclusion of the investigation the case will progress to the Report Stage.

## Report Stage

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

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



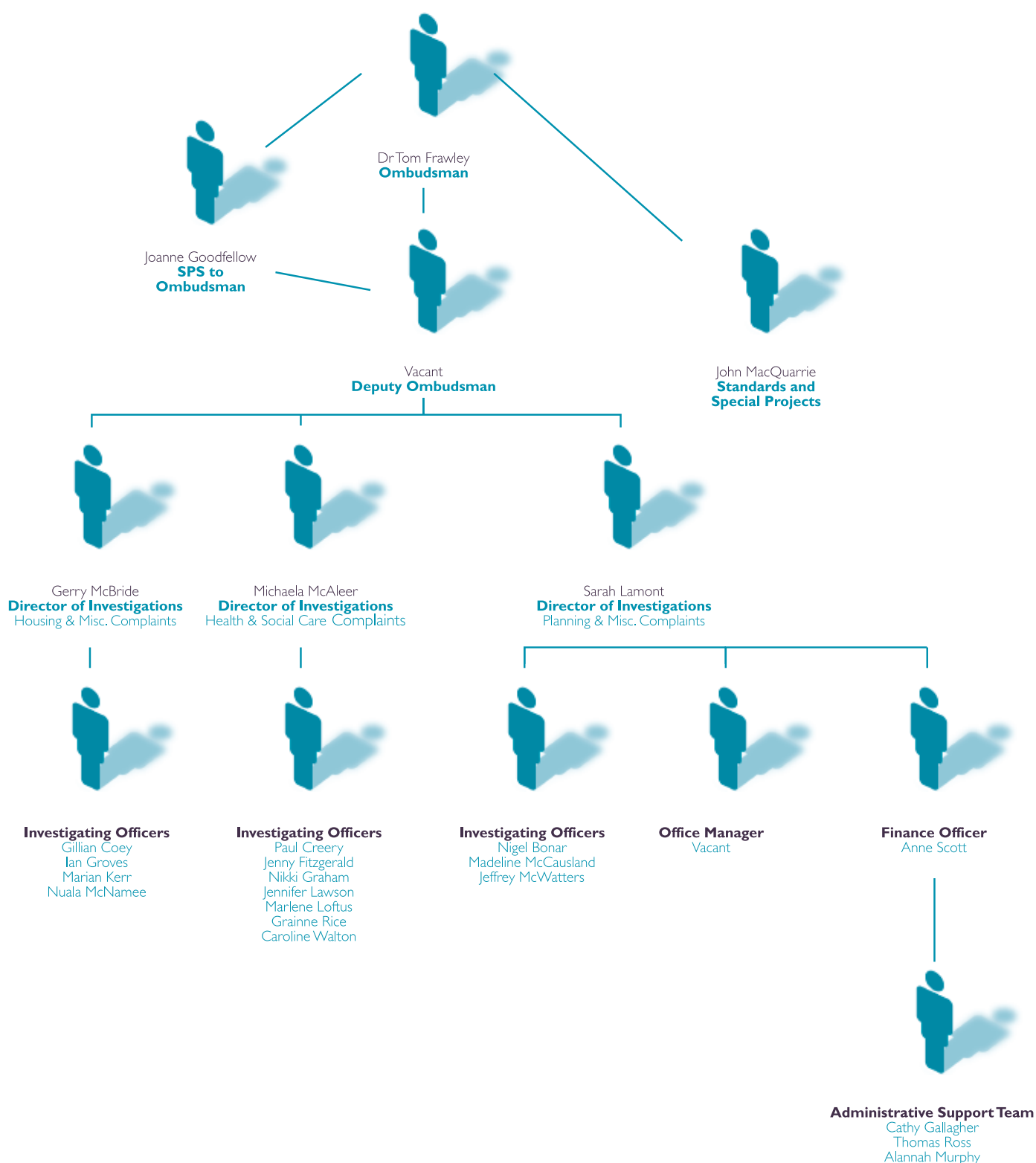
## Appendix B

### Staff Organisational Chart



Ombudsman Northern Ireland

# Staff Organisational Chart (2008~2009)





## Appendix C

Analysis of Complaints  
Received Which Were  
Outside Jurisdiction

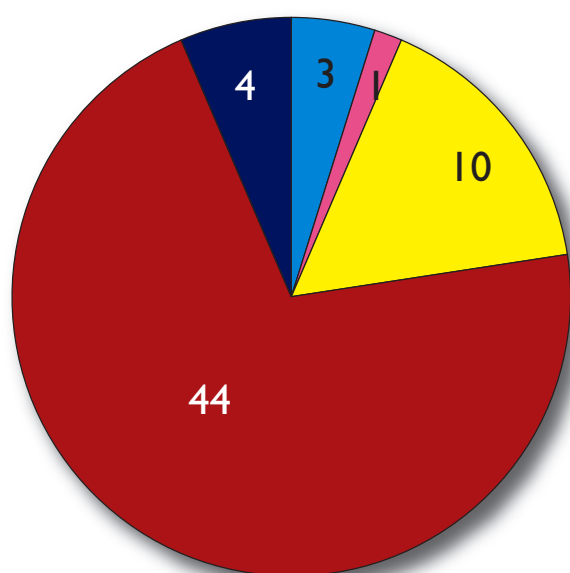


**Ombudsman** Northern Ireland

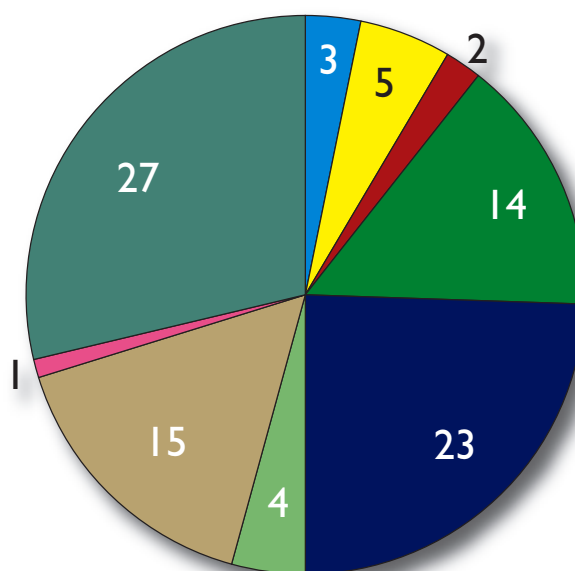
# Analysis of Complaints

My Office received 157 specific complaints and enquiries relating to bodies which were clearly outside my jurisdiction. In such cases Administration Section staff give as much advice/information as they can about other avenues which may be open to the persons concerned to pursue their complaint and, where possible, provide appropriate contact information.

## Breakdown of Telephone Calls and Interviews Outside My Jurisdiction



## Breakdown of Written Complaints Outside My Jurisdiction



# Contacting the Office

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

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

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

**By phone:**

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

**By fax:**

028 9023 4912.

**By E-mail to:**

[ombudsman@ni-ombudsman.org.uk](mailto:ombudsman@ni-ombudsman.org.uk)

**By writing to:**

The Ombudsman  
Freepost BEL 1478  
Belfast  
BT1 6BR.

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

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

**Further information is also available on my Website:**

[www.ni-ombudsman.org.uk](http://www.ni-ombudsman.org.uk)

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



# Ombudsman

Northern Ireland

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