Annual report of the Ombudsman 2006

OMBUDSMAN

ANNUAL REPORT 2006

Office of the Ombudsman
Oifig an Ombudsman

Office of the Ombudsman
18 Lower Leeson Street
Dublin 2

Tel.: 01 6395600
Fax: 01 6395674
E-mail: ombudsman@ombudsman.gov.ie
Internet: www.gov.ie/ombudsman/

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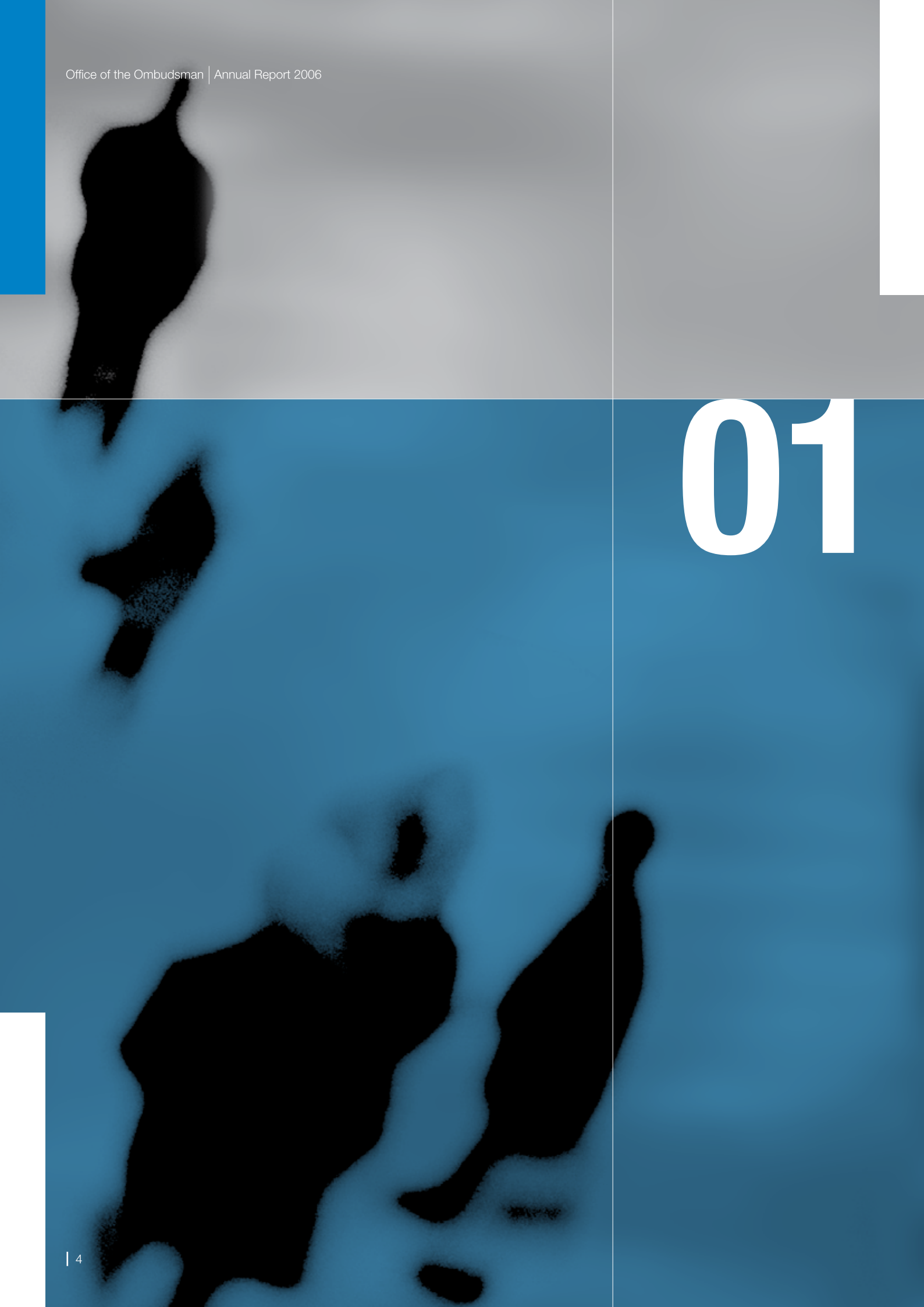
Foreword

I hereby submit my fourth Annual Report to the Dáil and Seanad pursuant to the provisions of Section 6(7) of the Ombudsman Act, 1980. This is the 23rd Annual Report submitted in relation to the work of the Office of the Ombudsman since it was established in 1984.

Ombudsman

June 2007



01

Introduction

Last year my Office dealt with 2,187 complaints, 41% of which were either fully or partially resolved or provided some degree of assistance to the complainant. To put it another way, 897 complainants were better off as a result of having contacted my Office.

While my main function is to carry out independent and impartial examinations of complaints, I am always anxious to ensure that public bodies use the lessons learned from my findings so that, as far as possible, other clients will not have similar cause for complaint. In this way, even though individual complaints can be upsetting for those who feel they have not been properly treated, they can also have positive side effects in that they can help to bring about better quality public administration. In a sense, an Ombudsman's workload, over time, should become increasingly more complex, because, on the one hand, public bodies have taken on board the ombudsman's findings in previous cases and, on the other, public bodies strive to meet the ever increasing demands of the public for more efficient and higher quality public services. In other words, the quality of our public services is a living thing; standards which were accepted or tolerated five or ten years ago are not good enough anymore.

The cases which I have selected for this Annual Report are a rich vein of material illustrating what can happen to people from a wide cross-section of Irish society when things go wrong. Within these cases I found that a high proportion of them could be grouped around a single issue, viz., the failure of public bodies to act correctly in accordance with the law and any other rules and regulations. The fact that such cases have arisen after more than 23 years of scrutiny by my Office, perhaps runs counter to my earlier remarks and underlines the need for constant vigilance and, indeed, constant training of new entrants to the public service, to ensure that they are conscious of the importance of applying the law correctly. It is for this reason that I have made this issue the theme of this Report by devoting Chapter 2 to it under the title *"Getting it Right"*.

Of course, those complainants who were affected by the incorrect application of the law at least had the good fortune to have an avenue of appeal open to them. However, this is not the case for many members of the public. I mentioned earlier that the demand for better quality public services is constantly changing, but so too, is the actual size and composition of the public service. Over the years there has been a hiving off of functions which were traditionally within the remit of Ministers and their Departments and the creation of new single-purpose agencies, for example, FÁS, the Environmental Protection Agency and the Health and Safety Authority. The practice of creating new agencies has accelerated in more recent times.

There are now over 450 such bodies in existence, only a handful of which come within my remit as Ombudsman even though, paradoxically, many do come within the scope of freedom of information legislation. Other accountability mechanisms are also lacking in that they are subject to little or no parliamentary oversight and there has been a diminution in Ministerial responsibility and control over functions which formerly were part of the relevant department. The need for legislation to correct this accountability deficit and to allow users of the services of these public bodies to complain to the Ombudsman is long overdue.

Still on the subject of gaps in my remit I have pointed out many times that the

Ombudsman Act prevents my Office from investigating actions taken in the "...administration of the law relating to aliens or naturalisation...". I am one of the few Ombudsmen in Europe whose jurisdiction is restricted in this way. I believe the restriction is unwarranted and that the full range of administrative actions in the immigration and residence area should be subject to investigation by my Office. My Office receives a small but growing number of complaints in this area which I deal with on an informal basis. Typical complaints relate to failure to give reasons for refusal of a visa application, or being given only partial reasons. Complainants rightly point out that this seriously hampers their capacity to mount an effective appeal against the decision. I have also received complaints involving claims of discrimination on race or age grounds. Other decisions are simply arbitrary. Best international practice demands the full legal scrutiny of an independent Ombudsman in this area.

Finally, I want to thank all my staff for their continued dedication and support throughout the year. In particular, I would like to thank my Director General, Pat Whelan, Tom Morgan, Senior Investigator and John Doyle from our IT Unit for their excellent work in the production of this Annual Report.

02

"Getting it Right"

Public Bodies and their Clients - acting correctly in accordance with the law and any other rules and regulations.

Public servants make decisions on a daily basis which may impact in a significant way on individual members of the public. For example, an application for a local authority house may be granted or denied, a planning permission may be granted or denied, an assessment on the level of tax due from the individual may be made or an entitlement to a nursing home subvention may be determined. In arriving at these important decisions, public servants cannot operate in a vacuum and they cannot act in an arbitrary fashion. Their decisions must be based on some form of authority, whether it be statutory or otherwise.

The authority underpinning a particular decision may be derived from primary or secondary legislation, which in some cases may, in turn, be based on EU legislation. In some cases, the decision may derive from a non-statutory circular letter or rules or guidelines on the implementation of a scheme or the granting of an entitlement. Such rules or guidelines may have been drawn up internally by the public body in question or, for instance, in the case of public bodies such as the Health Service Executive or local authorities, may have been drawn up by a central Government Department for implementation locally. In the latter case, this gives rise to the danger of different approaches being adopted locally by different public bodies following the same rules or guidelines. In particular, where a public servant is enabled to exercise discretion under the relevant rules or guidelines, this may give rise to inequitable treatment of some of the public body's clients. My Office has valuable experience in dealing with common issues across a range of public bodies and this helps to identify inconsistencies of approach at local level, which my Office can highlight at central level and thus help to bring about systemic improvements for the benefit of the public at large.

There is a fundamental question that is addressed by my Office in the case of every complaint received. Do the administrative actions or inactions complained of amount to maladministration? The term maladministration is not used in the Ombudsman Act, 1980 because to define the term is to limit it. Section 4 of the Act, however, very clearly lists certain actions or inactions, which if they adversely affect someone, may be considered as maladministration. Interestingly, the very first action listed in the Act is one which is *"taken without proper authority"*.

More often than not, on first receiving a complaint, the starting point for my Office in the complaint examination process is to examine the extent and nature of the authority which underpins the action in question. If I find that the public body has exercised its authority improperly or unfairly, has exceeded its authority, or, indeed, had no authority to take the action complained of, then I will consider whether appropriate redress is warranted in any particular case where the complainant has been adversely affected. This Chapter includes a number of cases of interest which I dealt with over the year which illustrate the foregoing approach.

In this first case, involving the Department of Education and Science, the interpretation of the terms of a Departmental Circular Letter had serious implications for a complainant. The matter was satisfactorily resolved following my intervention.

I received a complaint from a teacher regarding her eligibility to compete for the position of Deputy Principal under the terms of Circular Letter PPT 06/02- "Revised Arrangements for Eligibility for Promotion Posts in Vocational Schools and Community Colleges to Include Certain Non-Permanent Teaching Service". The circular states that *"Candidates for appointment to the post of Principal and Deputy Principal will be required to have a minimum of five years' whole-time teaching service or its equivalent."*

When the complainant applied for the competition, she was deemed ineligible to compete on the basis that she did not have five years "fully-qualified" service. She pursued the issue with the Department but, while the Department acknowledged that the circular did not contain a specific reference to "fully qualified" teaching service, it had been consistently interpreted by the Department as requiring fully qualified teaching service. The Department indicated that, in view of this, it had no basis for departing from the current arrangements in the case of an individual teacher.

I considered it unfair that the complainant was deemed ineligible to compete in the competition on the basis of conditions which are not specified in the circular. Furthermore, I noted that in previous Departmental circulars, it was specifically mentioned when "fully qualified" was intended. I therefore requested the Department to review its decision in this case and to allow the complainant to compete in the competition. Following my intervention, the Department reversed its decision in this case and the complainant was deemed eligible to compete for the post in the school. She subsequently advised that she was successful in securing the post of Deputy Principal.

In this next case, relating to the Department of Social and Family Affairs, a change in eligibility conditions for Deserted Wife's Benefit had considerable financial consequences for a complainant. Substantial arrears were paid as a consequence of her complaint to my Office.

A woman contacted my Office regarding her entitlement to Deserted Wife's Benefit (DWB). She had initially applied for DWB in 1988, and her claim was awarded. She continued to work during this period, as the legislation permitted claimants to simultaneously work and receive DWB. In 1993 she returned her DWB books to the Department as her husband had returned to live with her on a temporary basis, while recuperating from a road traffic accident. He left again a few weeks later following his recuperation and she re-applied for DWB. One of the conditions for payment at that time, if the applicant was under forty years of age, was that she should have a qualified child/children (i.e. under the age of 18 years) residing with her. The woman was under the forty year age limit at that time. However, whilst she had a qualified child living with her when her husband returned, she did not have when he left again (the child having reached the age of eighteen years in the intervening period). Consequently, her application was refused. As the qualified child condition did not apply to applicants over the age of forty she re-applied on reaching that age in 1994, and her DWB was restored by the Department.

In 1992 a new condition was applied to DWB, in that an earnings limit was introduced for all new claims made on or after 31 August 1992. In effect, the rate of DWB was reduced on a sliding scale where a claimant was working and had earnings of over £10,000 (€12,697.38). Where a claimant's earnings exceeded £14,000 (€17,776.33) their right to a DWB was extinguished. Of some importance in this regard was the fact that the new condition did not apply to claims which had been lodged with the Department prior to 31 August 1992.

In 2004 the Department conducted a review of the woman's earnings, on the basis of the revised legislation, and as her earnings had exceeded the prescribed amount of €17,776.33 her DWB was terminated. She appealed this decision to the Social Welfare Appeals Office, but lost her appeal. She subsequently made a written complaint to my Office about this decision.

I examined the Department's files and discovered that a Social Welfare Officer (SWO) had visited her when she re-applied for DWB in 1993. In her report, the SWO was of the opinion that as the reconciliation was only a short term event the original desertion was still relevant. I presented a case to the Department that, on the basis of this SWO report, it should reconsider that the marriage tie had not re-formed and that a restoration of the original DWB 1988 claim would have been proper in the circumstances. In these circumstances, the income limits introduced in 1992, should not apply to her claim. The Department accepted my argument and duly restored the woman's DWB with effect from the date of review in 2004. My intervention resulted in the payment of over €25,000 in arrears to the woman.

The following complaint against the Department of Social and Family Affairs concerned a reduction in the value of an Invalidity Pension arising from the application of EU Regulations which worked to the disadvantage of the complainant. Following my Office's intervention, her full pension was restored and substantial arrears paid.

A woman complained to me about a decision by the Department of Social and Family Affairs to reduce the payment of her Invalidity Pension (IP) when she became entitled to receive a small UK Retirement Pension at age sixty.

The complainant had been in receipt of full rate IP based on insurance contributions she had in Ireland and the UK. Such an arrangement is provided for under EU Regulations. On reaching sixty years of age she became entitled to receive a UK Retirement Pension. However, she worked in the UK for a relatively short time and, as this pension was calculated by reference to her UK insurance record alone, the value of the pension was only about £8 sterling per week.

As a consequence of her receiving the UK pension, the Department of Social and Family Affairs was obliged, under a separate section of the EU Regulations, to re-calculate her entitlement to IP on a *pro rata* basis by reference to a combination of both her Irish and UK insurance records. This resulted in a reduction of about €47 per week in her IP entitlement and a net loss of about €35 per week in her overall income. There is a provision in UK pension regulations which allows pensioners to either defer or relinquish their entitlement to a pension. If the complainant had exercised this option the Department would not have been obliged to re-calculate her entitlement to IP. She claimed, however, that she was never informed of this option.

When I approached the Department I raised my concerns that the operation of the EU Regulation, which is designed to protect the social security rights of people who move within the EU, had actually disadvantaged the complainant. However, the Department informed me that there were no provisions in Irish social welfare legislation on the overlapping of benefits from other EU Member States. Additionally, no provisions existed to compensate the complainant for the reduction in her entitlement. Following my examination of the matter the Department agreed to write to the Department of Work and Pensions in the UK to suggest that one option open to both administrations would be to allow the complainant defer or relinquish her entitlement to the UK Pension retrospectively, which would place her in the position she would have been in, had she not opted to claim her UK Pension. This would allow the Department to restore her full rate IP retrospectively and to repay any overpaid pension to the UK authorities.

The UK authorities agreed to this arrangement and the complainant was restored to full rate IP. She also received arrears of IP in excess of €9,600. In recognition of the situation the Department sponsored an amendment to the domestic legislation which now provides that a person who qualifies for an Irish IP under EU Regulations will not suffer a reduction of pension if he or she subsequently becomes entitled to a survivor's pension or a retirement pension from another EU Member State.

In the following case, involving the Health Service Executive: Eastern Region, Northern Area and the Health Service Executive: Eastern Region, South Western Area, my Office discovered that the two local offices adopted different approaches to the payment of Domiciliary Care Allowance which had been claimed by the mother of a child with disabilities. My Office's examination of the case resulted in significant arrears being paid to the complainant.

A young separated mother approached my Office regarding her eldest son who was suffering from Asperger's Syndrome and who had been refused Domiciliary Care Allowance (DCA), by the Health Service Executive (HSE): Eastern Region, South Western Area, on medical grounds. DCA is a monthly payment made in respect of eligible children from birth to the age of 16 who have a severe disability requiring continual or continuous care and attention which is substantially in excess of that normally required by a child of the same age. The medical reports indicated that the child had difficulties interacting with other children at pre-school level, and although he was exceptionally bright, he needed the support of a Special Needs Assistant in school, and constant supervision from his mother at home. When the family moved house to their current address the complainant re-applied for DCA for her son and was awarded it by the HSE: Eastern Region, Northern Area. The medical information which was submitted was identical to that which the child's mother had provided as part of her original application to the HSE:

Eastern Region, South Western Area. Once DCA was granted, the complainant applied for backdating of the allowance, but this was refused by the HSE: Eastern Region, South Western Area, on the grounds that the child was not deemed to be medically eligible.

In examining the manner in which both applications had been handled by the two different HSE areas, I noticed that the medical staff in the area in which the complainant had originally lived had focused on the positive information contained in the medical reports about the child's condition. These reports stated that the child was exceptionally bright and that he had a high level of awareness of some of the difficulties that he was experiencing. It appeared to me that this positive information was used to refuse the application.

In contrast, the medical staff who approved the payment of DCA had focused on the actual impact the disability had on the child and his mother, and although they acknowledged the child's positive attributes, they accepted that he did require a level of care and attention which was significantly in excess of that which a normal child of his age would need.

I wrote to the Director of Customer Services and requested that an independent review be undertaken in relation to the case. I also wrote to the Department of Health and Children, outlining the general lack of consistency in relation to the assessment of children for DCA throughout the HSE. Dealing impartially with people means that we should ensure that where a service is based on a scheme of priorities, that this scheme is open and transparent. The young mother at the centre of this complaint was at a loss to understand how one area of the HSE could award the DCA to her son and another could refuse it. Following review, the Director of Customer Services accepted that while there were two opposing medical views governing eligibility in this case, she was satisfied that the HSE could take the favourable opinion and allowed backdating of DCA to the date the child became eligible. Approval was initially granted for arrears amounting to approximately €3,000, based on the date on which the original application was made in November 2002. However, I pointed out to the HSE: Eastern Region, South Western Area, that the Circular governing the scheme allowed for arrears to be granted back to the date from which it was accepted that continuous care and attention commenced, which in this case was 1999. Approval was subsequently granted for additional arrears of €8,000 on this basis, which resulted in total arrears of approximately €11,000.

This complaint against the Health Service Executive: Eastern Region, Northern Area led to my Office identifying an error in the assessment of means for the purposes of the payment of nursing home subvention. When my Office pointed out that the error arose due to the incorrect application of the relevant regulations, full nursing home subvention was awarded to the complainant's mother.

A man approached my Office regarding his mother's entitlement to nursing home subvention. An application had been made by his mother in August 2003 but had been refused on means grounds because she held two joint bank accounts with her son, the complainant. In calculating her possible entitlement to subvention, the Health Service Executive (HSE) correctly assessed half the balance on both accounts against her, and advised the complainant to re-apply once his mother's savings had depleted. The remaining funds in both accounts belonged to the complainant.

In January 2005 the complainant reapplied because all of his mother's savings had been spent on her nursing home care. As a result of this second application, his mother was awarded a reduced subvention because the HSE continued to assess the remaining balance of funds in the joint accounts, which rightfully belonged to the complainant. Following an approach from my Office, the HSE reviewed this woman's entitlement, and agreed to award her full nursing home subvention together with an enhancement with effect from January 2005. This was the second case which my Office dealt with in 2006 in which two different areas of the HSE incorrectly assessed an applicant for nursing home subvention where joint savings were held. While the relevant regulations provides for the assessment of half of these savings, they do not allow for the continued assessment of the remaining half when calculating entitlement.

In the next case, relating to a decision by the Health Service Executive: Eastern Region, South Western Area to refuse nursing home subvention, I concluded that extreme hardship had been caused by an overly rigid exercise of discretionary powers. The decision was reversed and significant arrears paid.

I received a complaint from a man whose mother, a resident in a private nursing home, had been refused a subvention by the Health Service Executive (HSE), towards the payment of nursing home fees. The subvention is a means-tested payment made to persons who go into registered private nursing homes in Ireland.

The complainant's mother was 85 years of age, a medical card holder and had been a resident in the nursing home since 2004. She suffered from a series of age-related illnesses and was in need of twenty-four hour nursing care. The annual cost of her nursing home care was €34,000 and her annual income from pensions was €12,000, leaving a bill for the balance of her nursing home fees of €1,900 per month.

For two years her son's family had, with extreme difficulty, paid the balance of the nursing home fees due from their own resources but now found themselves unable to continue to do so. An application for a nursing home subvention had been made on her behalf by her son but was refused. The reason for the refusal was that his mother was deemed to have assets deriving from the sale of property formerly owned by her. The property had been sold in 2004 for €402,000 and her portion of the proceeds was €267,091. This sum was used, along with the proceeds of the sale of her son's house, to purchase another house. It was the intention of her son and his family to look after his mother in the new home. However, after a short period, her condition deteriorated to the extent that the family was forced to arrange full time private nursing home care for her. Despite the fact that her portion of the receipts from the sale of her home had been used to purchase the new house and was no longer available to her, the HSE deemed it to be an asset in its assessment of her means. As a consequence, her income exceeded the relevant threshold for entitlement to the subvention. As a result, the subvention was refused. The family was experiencing extreme hardship in meeting the nursing home fees. They appealed the decision to the HSE but without any success at which point they wrote to me.

In relation to the provision of in-patient services by the HSE it is my view, and that of my predecessors, that medical card holders should be provided with in-patient services, including services such as the long-stay care of the elderly, directly by the HSE in one of its own institutions, in other publicly funded institutions or by way of a contracting out arrangement between the HSE and a private institution. In this instance, the complainant's mother was a medical card holder and therefore should, to my mind, have had full entitlement to publicly-funded care, free of charge. However, because of the shortage of public nursing home beds, when her health deteriorated the family was left with no option but to seek private nursing home care.

Under the Regulations in place at the material time, subject to which nursing home subventions were payable, provision was made for the consideration of the exercise of a discretion by the HSE, to disregard certain assets in assessing the means of subvention applicants. The exercise of this discretion would, in this instance, have allowed a subvention to be paid. However, the HSE had chosen not to do so and as a consequence the family was experiencing severe hardship in meeting the shortfall in nursing home fees. It seemed to me that there were good grounds to conclude that the HSE's decision not to exercise the available discretion, was unreasonable and contrary to fair or sound administration. In this context, I asked the HSE to undertake a full review of the case. Having conducted a review of the case the HSE agreed to the payment of a subvention of €70.86 per day from a current date and arrears of almost €18,000.

The exercise of this discretion has been considerably restricted by the provisions of the Health (Nursing Homes) (Amendment) Act 2007. In addition, the Department of Health and Children has indicated that these provisions will be further amended in the Nursing Home Care Support Scheme which it proposes to introduce in 2008.

I received the following complaints against the Health Service Executive: Mid-Western Area and the Health Service Executive: Southern Area relating to a dispute about health service entitlements for retired Irish public servants now living abroad. The resolution of the cases will benefit all others who fall in to a similar category in future.

I received complaints from two individuals, both of whom were former public servants (one, a retired teacher, the other a former Health Service employee). Each was in receipt of a pension in respect of their former employment and both now lived outside Ireland but within the EU (France).

Both made application in France to register with their local health services provider there in order to avail of health care services. However, they were

advised that unless they could furnish an E121 form it would not be possible for them to avail of these services. Form E121 is issued under the provisions of Regulation (EC) 1408/71 and entitles Irish citizens who become habitually resident in another European Union/ European Economic Area, Member State or Switzerland to health care benefits in kind under the legislation of that State. The cost of these services is funded by the Irish State.

The complainants applied to the Health Service Executive (HSE) for an E121 form but were advised that under the relevant Regulation, only persons in receipt of a contributory pension from the Department of Social and Family Affairs were entitled to a Form E121. They were informed that, on the advice of the Department of Health and Children, there was no provision made in the Regulation for persons in receipt of public/civil service pensions to qualify for an E121. In their letters of complaint to me they claimed that this was discriminatory as, for example, UK citizens who were former public servants and went to live in other EU/ EEA states, qualified for an E121.

Entitlement to contributory pensions from the Department of Social and Family Affairs is dependent on individuals fulfilling specific social insurance contribution requirements. These contributions, known as Class A, apply to people in industrial, commercial and service type employment. It also includes civil and public servants recruited after 6 April 1995 but civil and public servants recruited prior to that date have their own occupational pension schemes and pay a different class social insurance contribution which does not incorporate a contributory social welfare pension entitlement. In the course of my examination of these complaints I discovered that, in May 1998, the then Department of Social Welfare, had sought clarification on the issue of the extension of Regulation (EC) 1408/71 to cover pension schemes of Irish public servants who entered the public service before April 1995. The advice then given to the Department, by the European Commission Directorat, indicated that the Commission's view was that Irish former civil and public servants, who entered the public service before April 1995 and who were now in receipt of occupational pensions, did not fall within the scope of Regulation (EC) 1408/71. However, the Commission also noted that the Irish Government could make a 'declaration' on the public service pension schemes thereby bringing recipients of these pensions within the scope of Regulation (EC) 1408/71.

In this regard, I sought clarification from the Department of Health and Children on a number of issues, to see what steps, if any, had been taken since 1998 to have a declaration of the type referred to by the Commission made. If a decision had been taken not to proceed with such a declaration, what was the reason for this; if no such action was taken was it now proposed to do so; and if not, why not. At a subsequent meeting between my staff and officials from the Department of Health and Children and the Department of Social and Family Affairs, the Department of Health and Children indicated that it had undertaken a review of this issue specifically with regard to health service entitlement of persons in circumstances similar to those individuals who had made complaints to me. As a consequence of this review, the Department decided that while there was no specific regulatory basis clarifying the issue it was felt, on balance, that these persons were entitled to the Form E121 as they were essentially in receipt of state pensions. Consequently, the complainants, and other former civil and public servants in similar circumstances, were entitled to be issued with the Form E121 on the same basis as those in receipt of contributory social welfare pensions. The complainants were subsequently issued with Form E121.

This following complaint was against the Health Service Executive: Western Area regarding the way it calculated in-patient fees. I found that national guidelines which had been drawn up were not compatible with the relevant parent legislation on which they were based and as such the fees had been calculated incorrectly. As a result of this individual complaint arrears were paid to fifty-one families.

I received a complaint from a woman who felt her husband was being overcharged by the Health Service Executive (HSE) for in-patient services in a nursing home. It appeared that, in calculating the fee for her husband, the HSE took the wife's income into account also.

The complainant indicated that her husband's sole income was €96.10 per week but that he was being charged €120 per week for in-patient services. This was €23.90 in excess of his weekly income. She felt that, in calculating the fee, the HSE should only have assessed her husband's income and it should not have taken her income into account.

On receipt of the complaint, I examined the legislation governing charges for in-patient services, namely the Health (Amendment) Act, 2005 and the Health (Charges for In-Patient Services) Regulations, 2005. I also studied the National Guidelines on Long Stay Charges which were issued by the HSE in July 2005. From my examination of the governing legislation and regulations, I was satisfied that it is the income of the person to whom the in-patient services are provided that is assessed when determining the correct weekly charge. In summary, I found no provision in the parent legislation permitting the income of the wife to be taken into account when calculating the fees for the husband.

However, it would appear that, in drawing up the National Guidelines on Long Stay Charges, dated July 2005, the HSE provided that, in respect of married couples, the income of the spouse should be taken into account in calculating the charges levied. As I was not convinced that this was the correct interpretation of the parent legislation, I asked the HSE and the Department of Health and Children to review the position.

In response, the Department agreed with my interpretation. It clarified that it is the income of the person to whom the in-patient services are provided that should be assessed when determining the weekly charge. It also acknowledged that the original National Guidelines on Long Stay Charges which, in respect of married couples, took into account the income of the spouse when determining the charges levied, were not consistent with the provisions of the Health (Amendment) Act, 2005 or the Health (Charges for In-Patient Services) Regulations, 2005.

In response to my concerns, the HSE prepared revised national guidelines which provided that, in the case of a married couple, only the income which can be attributed to the person to whom the services were provided should be assessed, and, in cases where no income can be attributed to that person, no charge should be levied.

Accordingly, I asked the HSE to re-examine my complainant's case and to let me have details of:

- when it proposed to refund the overpayment,
- the total amount involved, and
- to consider the question of an apology to the complainant.

I also suggested that, in calculating any compensation due, and to cater for the loss of purchasing power, the HSE should use the Consumer Price Index to update any refund due. Given the systemic issue which this complaint highlighted, I also asked the HSE to review all other individuals who were assessed in similar circumstances and to let me know the outcome of that review.

Following my request, a total refund of €1,126 was made to the complainant. In addition, the HSE explained how this refund was calculated. It also apologised to the complainant and her husband for the inconvenience which she experienced as a result of its misinterpretation of the parent legislation and regulations.

In addition, the HSE confirmed that refunds of €131,000 were made to fifty-one families who were deemed to have been overcharged in the short period July 2005 to July 2006. This represented an average refund of over €2,500 per family. This refund included an adjustment for changes in the Consumer Price Index.

This particular complaint identified a systemic ongoing administrative failure which was having a serious adverse financial effect on many economically vulnerable families across the whole country and once I realised this, I was more than happy to pursue the issue to ensure that:

- refunds were made,
- appropriate compensation paid,
- National Guidelines changed, and
- apologies issued.

Finally, I would like to commend the Department of Health and Children and the HSE for the swift manner in which they addressed this problem, once I brought it to their attention.

The following complaint was against Bray Town Council regarding the way it valued a house which was being bought by a Council tenant. I discovered that the Council had not followed the correct procedures as set out in a Departmental Circular Letter. When, as a result of my Office's intervention, the correct procedure was followed there was a considerable saving on the purchase price for the complainant.

I received a complaint from a woman who applied to purchase her house from Bray Town Council in 2005 under the 1995 Tenant Purchase Scheme (TPS). The Council had the house valued by two separate auctioneers

and, following discounts for length of tenancy and improvements carried out to the house by her over the years, they offered to sell her the house. She queried the valuation as she felt the offer price was a big increase on the price quoted when she had previously applied to purchase the house in 2003.

The woman initially made contact with my Office by telephone and was advised to request Bray Town Council to submit the matter to the Valuation Office, who would give a definitive decision on the open market value of the house. However, when she approached the Council she was wrongly informed that it was up to her to submit it to the Valuation Office.

When I took up the matter with the Council it was clear that Bray Town Council had not followed the proper procedures for selling a house under the 1995 Tenant Purchase Scheme. These procedures are set out in Circular HRT 6/95 issued by the Department of the Environment on 18 May 1995. In relation to the valuation of houses, Paragraph 10 of the Circular stated:

> *"Claims from an applicant that the market value of his/her house is less than the value determined by the authority should only be considered if supported by a valuation certificate from another qualified valuer. The extent, if any, to which an authority revise their original valuation on receipt of such a certificate is a matter entirely for the authority,* ***but where the counter valuation differs significantly from that of the authority, the case should be referred to the Valuation Office, 6 Ely Place, Dublin, 2 for a definitive valuation."*** *[my emphasis]*

As the Council was already in possession of two valuations of the property, with a significant difference in market value (€29,550) between the two, I suggested to the Council that there was no need to require the applicant to furnish a third valuation. The Council subsequently agreed that the complainant had been misinformed regarding the procedure for asking the Valuation Office to arbitrate and undertook to submit the matter to that Office for a decision. The outcome was that the Council, having received a definitive valuation from the Valuation Office, reduced the sale price of the house by €21,700.

This case illustrated that Bray Town Council had not been following the correct procedures for dealing with tenant purchase applications where the valuation of the property was disputed. The outcome in this case will be of benefit, not only to my complainant, but to other tenants of Bray Town Council who may wish to purchase their homes in the future.

In this next case, a T.D. complained that Dublin City Council was following incorrect procedures for keeping written records on planning files. I found that the relevant statutory procedures were not being followed and, as a result, new procedures were put in place by the Council.

I received a complaint from a T.D. on behalf of a constituent concerning the manner in which Dublin City Council was implementing Section 247(5) of the Planning and Development Act, 2000. She had previously expressed concern about the fact that the Council had failed to implement this section which concerns the keeping of a written record of any consultations that relate to a proposed development, prior to the submission of the planning application. Following my contact with the Council it accepted that the correct procedure was not being followed, and advised that revised procedure were put in place.

However, the T.D. contacted me again and explained that, notwithstanding the procedural changes, the Council was still not implementing the particular section. She referred to two specific cases where pre-planning consultations had been held, but the minutes were not available on the planning file. She pointed out that the pre-planning minutes were, theoretically, available to members of the public under the new system, but only on request. In her view, this was contrary to the letter and spirit of the legislation, and for it to have any relevance, a paper copy of the minute would have to be placed on the paper file and be available at the public counter. She also noted that the Council had started to place documentation associated with planning applications on its website. She felt that pre-planning minutes should also be available in this way.

The Council explained to my Office that revised procedures had been put in place, but were under review, and were to be amended to take into account the difficulties that had been encountered. It also pointed out that a record of pre-planning applications was available on the website, and as part of the review, it was proposed that the minutes would also be available when the planning application is lodged. The Council subsequently provided me with details of the revised procedures. I was satisfied that if the

protocols are followed, the minutes of any pre-planning consultation should be available with the planning file.

I received two separate complaints against Kildare County Council about the way it was levying service charges for refuse collections in respect of rented properties. The complaints were resolved when I found that the Council did not have the statutory authority to levy the charges in the way it was doing so. It also agreed to review its policy in relation to such charges.

I received complaints from two landlords. In the first case, the landlord was seeking a retrospective waiver of service charges incurred by tenants of his house. The house had been sold and the tenants had moved. An amount of €766.76 had been withheld from the proceeds of the sale by his solicitor on the advice of Kildare County Council. Despite providing evidence to show that the tenants would have been entitled to the waiver, it was refused by the Council on the grounds that each waiver application had to be processed in the financial year to which it related. However, following contact from my Office, the Council stated that it would consider a waiver of the charges on grounds of hardship (as provided for in its Waiver Scheme) if the tenant completed an application form and provided certified details of income for the relevant years.

In the second case, the new tenant of a house contacted the Council with a view to arranging a refuse collection service. The service was refused on the grounds that there were arrears of charges at the address. The Council advised that the arrears were the responsibility of the landlord. On hearing this, the complainant challenged the legal basis for the Council's view.

The legislative basis for the charges is contained in the Local Government (Financial Provisions) (No 2) Act, 1983. This provides that a charge is payable by and recoverable from the person for whom the service is provided, or, where the service is provided in respect of premises which comprises more than one dwelling, by the owner of the premises. In other words, the occupier is liable for the charge if it is a single dwelling, as in the two cases referred to here, whereas the owner is liable if it has more than one unit.

When the matter was referred to the Council it responded that while there is no specific legislation with regard to the liability of landlords, it was the Council's policy to pursue the owner of a property to settle outstanding service charges i.e. the landlord. Following discussions and argument from my Office, the Council sought legal advice on the matter. On the basis of the legal advice obtained, it satisfied itself that it did not have legal grounds for pursuing the owner of the property in either case.

While my complainants were satisfied with the outcome, it remains a matter of concern to me that a local authority would seek to recover charges from a person without having the appropriate legal authority to do so. I understand that Kildare County Council may not be the only local authority engaging in a similar practice. While it is understandable that a local authority would seek, as a matter of policy, to recover arrears of service charges, it must, however, act within the law. However, as a result of these particular cases, Kildare County Council said it would review its policy in relation to refuse charges and rented property.

In this final case, relating to a complaint against Mayo County Council, I found that in its locally drawn up Essential Repairs Grant Scheme it had fettered its discretion in a manner which was not compatible with the relevant legislation governing such schemes. This resulted in a substantially higher grant being paid and an undertaking by the Council to review its scheme.

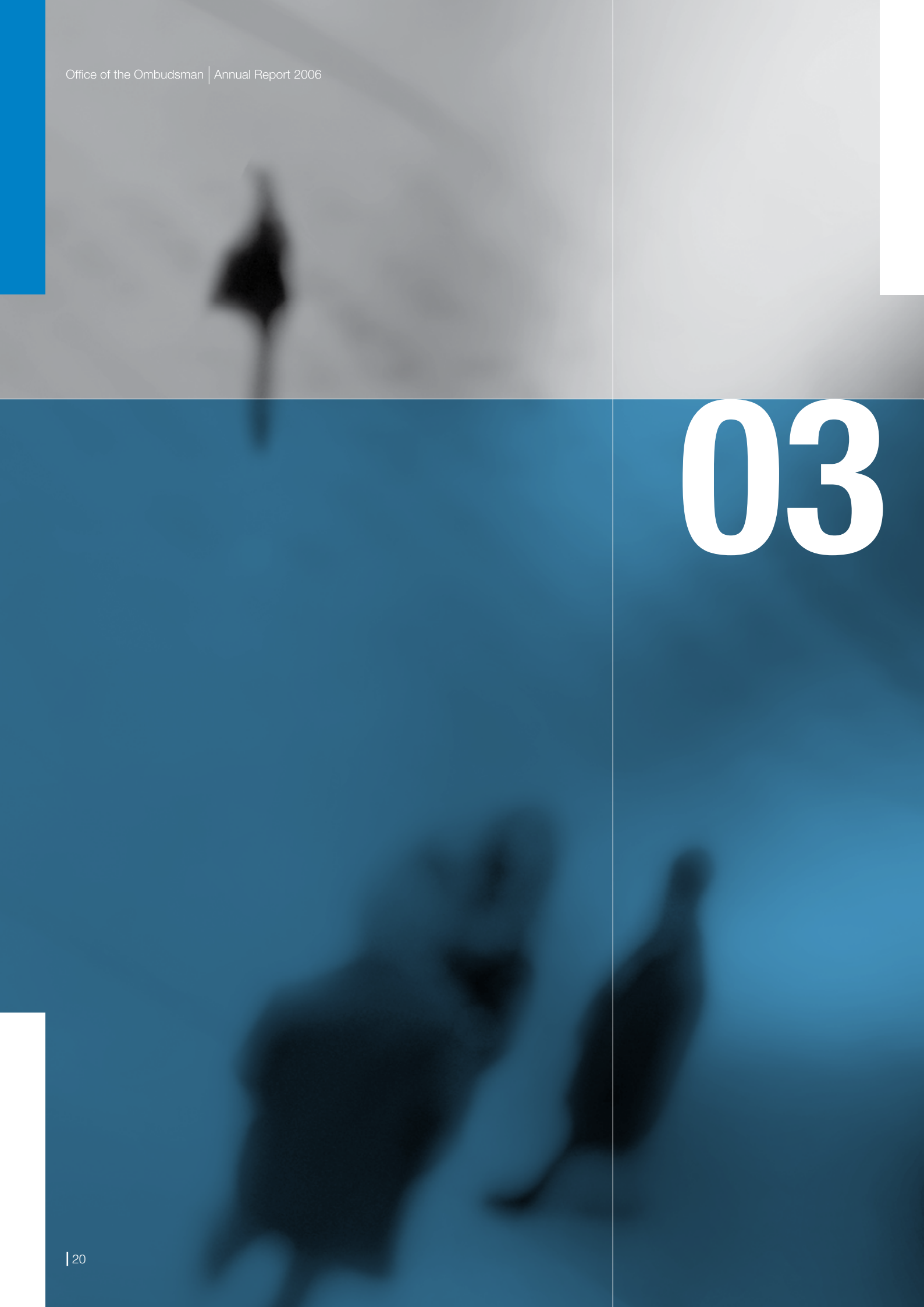
An elderly man applied to Mayo County Council for an Essential Repairs Grant to carry out necessary repairs to his house. The Council approved him for a grant of €6,350 in respect of the repairs, which included the replacement of the roof and the replacement of two external doors in his house. The Council estimated the total cost of the works to be €13,900. The complainant maintained that he was unable to meet the shortfall of €7,550 between the amount of the grant and the estimated cost of the works. The Council offered to consider him for a loan under the Improvement Works in Lieu of Local Authority Housing Scheme in order to fund the shortfall. At almost 70 years of age, the complainant indicated that he was unwilling to take out a fifteen year loan as proposed by the Council. In correspondence with my Office, the Council maintained that in awarding the maximum grant possible for the relevant works under its Essential Repairs Grant Scheme, it had fulfilled its obligation to assist the complainant.

The Essential Repairs Grant scheme operated by Mayo County Council sets out strict limits on the maximum amount of grant which can be paid in relation to specific repairs and does not afford the Council discretion to award grants in excess of these limits, regardless of the circumstances. I pointed out to the Council that the legislation governing the operation of the Essential Repairs Grant scheme sets no upper limit on the level of such grants which a local authority may award, thereby enabling local authorities to award grants of up to 100% of the cost of repairs covered by the scheme. By imposing strict limits on the levels of grant payable, without a provision for the exercise of discretion in exceptional circumstances, I considered that the Council was, in effect, fettering its discretion.

A local authority is entitled to have a general policy on how a discretion will be exercised. However, such a policy must not be allowed to become so rigid in its administration that it blinds the Council to the possible merits of an individual case. While schemes and services administered by public bodies must have in-built eligibility criteria and other standard conditions, it is equally important that the administration of such schemes and services is capable of accommodating unusual cases or unforeseen circumstances. Therefore, in exercising its discretion a public body must take into account all the circumstances of the case before making a final decision.

It seemed to me that in this case the Council's Essential Repairs Grant scheme, as constructed, fettered the Council's ability to exercise its discretion by imposing strict limits on the amount of grant payable and did not afford the Council sufficient latitude to award grants in excess of the limits as provided for in the Housing (Disabled Persons and Essential Repairs Grants) Regulations, 2001. As a consequence, in deciding the level of grant payable in this case, the Council failed to respond adequately to the circumstances of this case i.e. the very poor condition of the dwelling, the applicant's disability, age and limited means, and the significant shortfall between the amount of the grant and the estimated cost of the works.

I requested the Council to review its position. I am glad to say that, in view of the exceptional circumstances, the Council decided to award the applicant a grant of €13,900 i.e. the estimated cost of carrying out the repairs. The Council also undertook to carry out a review of its Essential Repairs Grant scheme and I will monitor the outcome of that review in 2007.



03

Selected Cases

Civil Service

Department of Agriculture and Food

Dispute About REPS Entitlements

A complaint was made to my Office about the administration, by the Department of Agriculture and Food, of the Rural Environment Protection Scheme (REPS). The complainant had returned from abroad to take over her father's modest family farm at his request. Her husband, in agreeing to return home, did so on the basis that he would also buy a modest farm in his own right. In doing so, he intended to keep livestock and also enter REPS. To keep costs down they had the farm put in both their names until they could sort out legal issues relating to the complainant's father's farm.

Before the farm could be transferred to the complainant, a series of tragic events began to unfold. This included the death of her father, intestate, which resulted in difficulties in the farm being transferred to the complainant. A legal error, which was only uncovered after the subsequent death of her mother, meant that she did not, in fact, inherit the farm. As a result, she had to make a settlement with the other members of her family to purchase the farm by way of a mortgage.

The complainant, on the understanding that she was taking over the family farm, had continued to farm to REPS standards on the basis of her late father's REPS plan. After a considerable period, it was discovered that the complainant would, in fact, be required to submit a separate plan in order to qualify for REPS payments in her own name. Around this time it became apparent to the couple that the Department considered that they should not be allowed to farm separately for the purposes of REPS. They appealed this decision to the Department, on the basis that they were, in fact, farming separately and had put themselves in debt to do so.

The Department decided that the decision that they would be required to submit a joint (and therefore, less financially worthwhile) REPS plan should stand. The couple could not understand how and why this decision was reached. They then asked the independent Agricultural Appeals Office (AAO) to examine their case, which it did. Having examined the case, the AAO decided that the Department's decision was correct. Additionally, it decided that the complainant should repay a REPS payment of over €6,000 made to her late father's estate. There was no evidence whatsoever that she had, in fact, ever received this money and was deeply offended by the suggestion that she might have done so.

There is a provision whereby an appeal can be made to the Director of the AAO against decisions of the Appeals Officers and the couple decided to do so. The Director of the AAO examined the case and decided that the Department had "erred in law" in refusing to allow the couple to make separate REPS applications. He did, however, again confirm that the complainant should repay the REPS payment made to her late father's estate. Crucially for the couple, while finding in their favour in relation to their REPS applications, no recommendation was made that they should be compensated for the Department's refusal to allow them entry to REPS. When they queried this aspect of the decision they were advised that they should have made separate REPS applications "under protest".

Following a very detailed examination of this complex case, I concluded that there was no evidence to support the decision that the complainant should

be forced to repay the payment made to her father's estate. More importantly, I formed the view that the way in which their REPS applications had been considered by the Department in their entirety was indicative of maladministration. I therefore recommended that an amount of €35,000, to make up for "lost" REPS payments and the trauma the couple had endured, should be paid. I also recommended that the Department should not pursue the return of the €6,000 REPS payment made to the complainant's father's estate.

There was an initial reluctance on the part of the Department to agree to my recommendation but, after some lengthy discussions with the Department and with the Department of Finance, the payment was made to the couple. I considered this to be a very significant complaint in that the couple had gone through the various layers of the appeals process and still were not, in my opinion, given the correct decision. It took a considerable amount of effort on the part of my Office to ensure that they were finally given what I considered to be fair treatment.

Department of Foreign Affairs

Failure in Customer Services

A student lost her 10 year passport which had been valid until 2012, while abroad in 2004, and was issued with a "temporary" passport by the appropriate Irish Consulate. She paid a fee for this temporary passport which expired in April 2005. She then applied for a new passport using An Post's Passport Express Service. However, this could not be processed in time to allow her travel abroad so she was issued with a new emergency/temporary passport and on this occasion the fee of €50 was waived by the Passport Office. When she returned home she received her new 10 year passport.

However, from 1 March 2004 revised regulations applied to the issuing of passports which meant that the woman would be required to pay a fee for her new 10 year passport. Previously, once she had paid the fee for her temporary passport from the Irish Consulate she would not have been subject to a further fee when this temporary restricted passport expired. She was unaware of this change and believed that the passport following her temporary restricted passport issued abroad would be free of charge. Although a fee of €75 was now due she received conflicting advice from officials in the Passport Office as to whether this was so and eventually, the fee was deducted from her credit card.

She was very disappointed and sought a refund of the fee as a gesture of goodwill for all the confusion and the time she had to spend pursuing the matter. She was also very concerned about the fact that a number of her telephone calls were not returned.

I focused my examination on the customer service aspect of the complaint. I was concerned that there was confusion within the Passport Office regarding new charges, which at the time of the complaint in 2005 had been in place for some time. I was also concerned that telephone calls not been returned to the complainant when she had a reasonable expectation from assurances given by the Passport Office that this would be done. I suggested that a formal written apology was warranted in this case.

The Passport Office acted on my advice and admitted that they had failed in their customer service duty to provide the complainant with correct and accurate information regarding the passport fee and that in this instance some members of staff in their Customer Care section were not aware of "well established policy". The Passport Office also pointed out that a key element of their Customer Charter was to respond as quickly as possible to all telephone calls and that in this case they did not meet this obligation.

The Passport Office, however, was willing to learn from the mistakes that had been made in this case. It reminded all staff of its fee policy by way of internal notice and through training programmes and it used this instance as a case study for staff in Customer Care section to illustrate how a member of the public can be frustrated and inconvenienced when the Office fails to deliver the level of service it aspires to. The Passport Office sent a formal apology to the complainant and as a gesture of goodwill, refunded her the full fee of €75. I was particularly pleased to see the way the Passport Office used the complaint as a positive learning experience for its staff.

Department of Social & Family Affairs

Arrears of Disablement Benefit Refused

A man complained about a refusal by the Department of Social & Family Affairs to pay him arrears of Disablement Benefit. This is a benefit which is payable to persons who, as a result of an accident at work or a prescribed disease contracted at work, suffer loss of physical or mental ability. The amount of payment depends on the

degree of the disablement which is assessed by the Department's Medical Advisers.

In this instance, the man had an accident at work in 1979 severely injuring his back, following which, he was paid Disability Benefit, a short term payment to people who are incapable of working. He said he was examined some months later by one of the Department's Medical Referees (periodic examinations are carried out on Disability Benefit recipients to check on their continued entitlement) and his payment was maintained. In 1982, with the help of his local public representative, he submitted a successful application for Invalidity Pension. This is a payment for people who are permanently incapable of work because of illness or incapacity and who satisfy certain PRSI contribution conditions.

The man had been in contact with the Department on a number of occasions from 1982 about matters concerning his claim. However, when he telephoned the Department in February 2003 an official asked him why he was not in receipt of Disablement Benefit. He indicated that he was unaware of this payment and set about submitting an application which required corroborative evidence from a former colleague who had witnessed his accident in 1979. He was subsequently examined by one of the Department's Medical Assessors who determined that he had suffered a loss of faculty amounting to 80%, all of which was attributed to his occupational accident. He received payment of Disablement Benefit which was backdated for three months prior to his application as provided for in the regulations governing the scheme.

He then applied for arrears of Disablement Benefit on the basis that he was never made aware of the existence of the scheme; he had had a number of contacts with the Department between the time he originally applied for Disability Benefit in 1979 up to the time he was made aware of the scheme in 2003. His application was rejected by the Department's Deciding Officer on the basis that his claim was late and that he had received the appropriate arrears (three months) as provided for in the Department's Claims and Payment Regulations governing the submission of late claims. He appealed the matter to the Social Welfare Appeals Office. An oral hearing of the appeal was convened following which the Appeals Officer expressed the view that it was extraordinary that the man's entitlement to Disablement Benefit had not been identified, particularly as his claims for Disability Benefit and Invalidity Pension had been processed for so long, without the root cause of his injuries coming to light. She referred the matter back to the Department for review. However, the Department indicated that only records from 1996 were available. The Appeals Officer made the comment that the previous papers would have been helpful in determining whether the man had enquired about or had been informed by the Department about his entitlements. She concluded, however, on the basis of the available evidence, that she could not recommend payment of any further arrears and she disallowed the appeal.

Following my detailed examination of the available records and the evidence presented to me by the man, I put it to the Department that it was clear that he had been adversely affected by the loss of his entitlement to Disablement Benefit over a twenty-four year period from 1979 to 2003. While there was no evidence to suggest that the Department had tendered incorrect information/advice to the man about his entitlements in his contacts with various officials over the years, it was clear, given his circumstances, that information as to the possibility of entitlement was not provided to him, otherwise he would certainly have made a claim at the appropriate time. I also pointed out that it would seem that the Department had the opportunity to consider and review his case on a number of occasions when he had been in contact with those officials. While it was unfortunate that the papers relating to his original application for Disability Benefit and his subsequent transfer to Invalidity Pension were no longer available, I felt that there were strong reasons for asking the Department to carry out a complete review of the man's entitlement to further arrears.

The Department subsequently agreed to backdate payment of Disablement Benefit to the date of original entitlement in 1979 and the man received an arrears payment of €92,213.

Office of the Revenue Commissioners

Complaint Regarding Poor Customer Service

A solicitor complained to my Office on behalf of a taxpayer about the manner in which a tax liability had been managed in the Revenue and about the poor service that had been given to him in the course of his professional communications with Revenue on the issue on behalf of the taxpayer. The complaint concerned the assessment of Stamp Duty on a deed of conveyance and the decision to refer the case for audit.

In the course of the initial exercise, on the basis of the documentation supplied, Revenue decided that no tax was payable and conveyed this to the solicitor. He responded and explained that incorrect documentation had been supplied and that the property fell into a different category. He enclosed the appropriate documentation at that point and requested that the tax be assessed. However, in view of the contradictory information supplied, the case was automatically referred for audit. Revenue's communications in regard to the audit were undertaken with the taxpayer's accountant and the solicitor was not made aware of this decision until more than six months later.

During the examination of the case, I identified certain weaknesses in regard to communication both within the operational branches of Revenue concerned with this case, and in relation to the Revenue's communication with the taxpayer and her agents. I also queried the decision to automatically initiate an audit and questioned whether a more flexible response could have been made, given the facts and Revenue's discretion in regard to such cases. In particular, it seemed to me that the solicitor's action in drawing attention immediately to the error that he had made should have been taken into account before referring the matter for audit, and the inevitable burden that this imposed on the taxpayer. I recommended that Revenue review its management of cases such as this to see if improvements could be made.

Revenue reviewed its procedures and the relevant branches agreed that all the known circumstances surrounding a Stamp Duty case will be fully taken into account before a decision to initiate an audit is taken in future and that a reasonable degree of flexibility and pragmatism will inform the process. In addition, Revenue undertook to improve communication with taxpayers and agents, ensuring that they will be notified if an audit is to be initiated.

HEALTH SERVICE EXECUTIVE

Health Service Executive: Eastern Region, East Coast Area

Dispute About Refund of Nursing Home Costs

A woman contacted my Office regarding her late mother whom she had looked after for many years prior to her mother's admission to nursing home care in 1992. Her mother, who suffered from depression and ultimately Alzheimer's, was a medical card holder and she died in 1996. Although the complainant's mother occupied a health board subvented bed in a private nursing home, she had to pay all of her pension to the nursing home and did not receive a pocket money allowance. The complainant herself also had to pay a fee to the nursing home each month, in addition to what her mother paid, to cover the costs of nursing home care. At that time, an arrangement existed between some health boards and private nursing homes whereby a certain number of beds would be made available to public patients at an agreed daily rate, and this rate was claimed by the nursing home from the health board, less the amount contributed by patients by way of contribution from their pensions. It was the practice to allow "comforts money" to the patient which normally amounted to one fifth of their pension. In April 2000 the complainant sought payment of the comforts money allowance on behalf of her late mother (who had never received it) together with a refund of the contributions she herself had made. She was advised by the Health Service Executive (HSE) that no arrears were due in relation to the comforts money issue since the former health board had always allowed one fifth of the Non-Contributory Old Age Pension to be subtracted from income prior to assessing the applicant for subvention. The complainant was also advised that the issue of family contributions was being examined but might take some time before the process was completed.

In 2005, some four years later, the complainant contacted my Office because she had heard nothing further from the HSE. Following contact by my Office, it was established that the HSE could not locate any records relating to the complainant's late mother. My Office, with the complainant's help, forwarded copies of correspondence which the complainant herself had kept relating to her late mother's nursing home payments. Following protracted discussions with the HSE, it agreed to make an *ex gratia* payment of €7,246 to the complainant in recognition of the fact that no comforts money had been paid to her late mother during her care from 1992 -1996, and this payment encompassed family contributions also made by the complainant towards the nursing home costs.

Health Service Executive: Midland Area

Domiciliary Care Allowance Refused

The mother of a young girl approached my Office following the refusal of her application for Domiciliary Care Allowance (DCA) in respect of the child

by the then Midland Health Board (now Health Service Executive (HSE): Midland Area). The young girl, aged nine, had been involved in a road traffic accident and had been admitted to hospital suffering from head injuries and breathing problems. She had subsequently been transferred to the National Rehabilitation Hospital (NRH) in Dún Laoghaire for assistance with her speech and mobility, and had been assessed as having a mild learning disability. The criteria for eligibility for DCA is that a child must be suffering from a mental or physical handicap that is so severe that they require from another person constant care or supervision substantially greater than that which would normally be required by a child of the same age. As this young girl was assessed as functioning within the range of borderline ability, the application for DCA was refused, and the appeal made by the child's mother had also been refused on medical grounds.

In examining this complaint, I noted that the child, who had returned to school following her accident, had the assistance of a special needs assistant, and a resource and remedial teacher which was organised for her by the NRH. She also needed to attend physiotherapy and speech and language therapy on a regular basis. The child had ongoing difficulties with social skills, attention and concentration, impulsivity, behavioural and sleeping problems. It seemed logical to me that if the child required such a high level of assistance in school, then equally she must require a substantial degree of extra care and attention in the home.

Her mother, who was separated from her husband and had three other children to look after, sought practical support from the HSE via the "In Home Care Relief Service", and this request was supported by the NRH. However, despite this request nothing had actually been done to provide practical support and assistance for the family.

I asked the HSE to review this complaint to see what support could be put in place for the child and her mother, and to re-examine the issue of the child's eligibility for DCA. Up-to -date medical reports were submitted by the Senior Clinical Psychologist caring for the child in the NRH which stated that she was experiencing major behavioural problems, and that the damage caused to her brain following the accident was likely to cause her lasting problems in all spheres of her life. Following a full review of the most recent medical reports on the child, the HSE decided to deem her eligible for DCA and agreed to back date the allowance to February 2002. I was very pleased with this outcome and also to learn that the HSE had agreed to make in-home care relief and family counselling available, particularly when the child was in her final year in national school and would benefit significantly from this practical support.

Health Service Executive: Western Area

Motorised Transport Grant Refused

I received a complaint from a mother whose severely disabled daughter had been refused a Motorised Transport Grant. A Motorised Transport Grant is a means tested Health Service Executive (HSE) payment, for people with disabilities, to assist with their mobility. The grant is normally paid to persons who need a car or other vehicle in order to obtain/retain employment but may also be considered in exceptional circumstances for people with severe disabilities who are over 17 years and under 66 years, who live in remote locations and who have difficulties using public transport.

The application was refused on the grounds that the complainant's daughter did not live in a remote location and was not in employment. On the question of employment I pointed out to the HSE that she was engaged in training programmes appropriate to her level of disability in a sheltered environment and had a long-term involvement there. This was open to an interpretation that she was employed at a level compatible with her disability. While she did not reside in a geographically remote area, (she lived on the outskirts of a county town), the fact that she was wheelchair bound, lived at the top of a hill and was totally dependent on other persons to help push her chair, meant that she was isolated, not because of geographical considerations, but more as a consequence of actual social and physical restrictions which impeded her mobility.

In this context, and given the fact that there was no suitable public transport available, it seemed to me that there were strong grounds to support the claim for payment of the grant due to the existence of exceptional circumstances. I asked the HSE to review the decision. Having done so, the HSE agreed to approve the payment of the grant which amounted to €4,807.

LOCAL AUTHORITIES

Kildare County Council

Dispute About Site Notice

One of the requirements of the Planning

& Development Act, 2000 is that the applicant for planning permission is required to erect a site notice which must remain in position for a specific period of time. The purpose of the notice is to inform the public and alert them as to the nature and extent of the development. Third parties can then examine the file at the planning office and lodge a submission or objection if they so wish. Unless a person has made a submission, he/she will not be entitled to make an appeal to An Bord Pleanála, should they be unhappy with the planning authority's decision.

In this particular case, the complainant maintained that he had not seen a site notice. In addition, the report of the Area Engineer in relation to the inspection of the site, which was contained in the planning file, did not make reference to the site notice being in place.

The Council pointed out that the site notice had not been an issue, as the report did not indicate that the site notice was not in place. It was also the custom that the Area Engineer would only comment if the site notice had not been in place at the time of the inspection. The Council pointed out that following the receipt of information from the applicant, which was deemed significant, he was required to erect a revised site notice, and a submission was then received from the complainant.

In correspondence with the Council, my Office drew its attention to a High Court decision concerning Arklow Town Council. This particular case established that the failure to inspect a site within the statutory period invalidated the planning authority's subsequent decision. My Office put it to the Council that it would be more appropriate, if, at the time a site is inspected, the Engineer recorded the fact that the site notice was actually in place. This would ensure that there was no dispute or possible doubt on the matter in the future. The Council subsequently agreed and advised that it was making the necessary arrangements to change its practice and ensure its staff adhered to the new practice.

South Dublin County Council

Dispute About Tenant Purchase Scheme

A woman complained to my Office in March 2006 that South Dublin County Council should not have sold the family home to her brother under the Tenant Purchase Scheme (TPS) because she had a right of residence there. Her brother had been awarded tenancy of the house in 1996 and at the time signed an agreement stating that his sister and their mother would always have a right of residence. Having purchased the house from the Council, her brother then sold it privately and asked his sister, with a child, to leave. She claimed that the Council was aware that she had a right of residence and sold the house to her brother without consulting or informing her. She applied for housing to the Council in November 2003 but received a letter in January 2004 advising that as she had a right of residence she couldn't be considered for housing. The woman wrote several letters to the Council and following a review of her correspondence it placed her on the housing list and gave her the full benefit of housing points retrospective to her initial application in November 2003.

I wasn't happy with the Council's response because it failed to explain why it sold the house to the family member, a brother, when it knew she had a right of residency. I contacted the Council again and I was advised that the information on the right of residency was maintained in Allocations Branch and that Allocations Branch had nothing to do with the sale of the house. Housing Sales Section said it was unaware of the right of residency until after the sale. As a result of poor communication systems within the Council, the complainant's right of residency was not taken into consideration with the result that she and her child had to leave the family home. The Council then used the right of residency agreement as a reason for not including her on the housing list.

Following further discussion with the Council, it agreed to offer the complainant a new 2 bed apartment in her area of preference by way of remedying the complaint. The complainant was happy with this solution. I asked the Council to put in place new procedures to ensure that a similar situation would not arise in the future.

Wexford County Council

Faulty Planning Administration

I received a complaint from a woman on behalf of herself and a number of her neighbours in relation to the manner in which Wexford County Council dealt with their query in relation to a particular planning application. She and her neighbours wished to object to a proposed development beside their homes. When they tried to view the planning application they were informed that the Council had received no such application. Some time later the application was found but it was too late to allow for objections to be made as the time limit had expired. The Council

had explained the delay in locating the planning application. Although the postal address of the proposed development was given on the planning application form, on the site notice and in the newspaper notice, the Council entered the details on the computer system in the Planning Office under the electoral address, as is the Council's normal practice.

In its initial response to my Office the Council accepted that (i) the file should have been available for public inspection on request and (ii) that it was not located because a thorough search for the file had not been carried out. It accepted that the Planning Department was negligent in the matter and that the Council was responsible for my complainant and her neighbours losing their statutory right to object to the planning application, and to make an appeal against the grant of permission to An Bord Pleanála. The Council explained that it has been the custom and practice to use the townland and electoral division rather than the townland and postal address when registering planning applications for ease of administration in assigning planning applications and for easier identification of planning applicants.

I considered that the complainant and her neighbours had been deprived of their statutory right to object to the planning application and, while the Council had accepted this, it had not offered them any redress. It also emerged that the Council had, mistakenly, advised the complainant to apply to An Bord Pleanála for leave to appeal, as is provided for in legislation in specific circumstances. The application, which was accompanied by a fee, was turned down by An Bord Pleanála and the Council accepted responsibility for the costs involved. I, therefore, asked the Council to consider what redress it would provide and also queried whether the Council was still recording planning applications under the electoral address and, if so, what safeguards it would put in place to ensure a similar situation would not occur again.

In its response, the Council agreed to provide financial redress in the sum of €1,000 to my complainant and to each of her neighbours in recognition of their loss of statutory right to appeal, and, in addition, it agreed to refund the fees incurred in seeking leave to appeal to An Bord Pleanála. With regard to its procedures for dealing with queries at its public counter about planning applications, the Council has made changes. Staff are required to wear name badges and if a search is unsuccessful it must be recorded. It also records the postal address on the computer system.

I considered that a fair outcome had been achieved and that the new procedures introduced by the Council should ensure that a similar situation would not occur again.

04

The Year in Review

BUSINESS PLANNING ACTIVITY IN 2006

Case Management

We completed 2,187 cases in 2006 and dealt with 8,103 enquiries. We set an end of year target for cases on hand at no greater than 784, while ensuring that older cases were prioritised for closure. Progress on achieving case targets is monitored at the monthly meetings of the Management Advisory Committee (MAC) and individual staff members are set their own targets under their PMDS plans to reflect the targets set at organisational level.

At the end of 2006 there were 896 cases on hand and those over one year old stood at 194. While overall valid complaints received in 2006 (2,245) showed no increase over the 2005 figure, the actual number received was about 100 greater than that estimated for target purposes. Bearing this in mind, the overall outcome in relation to meeting our targets was very satisfactory.

We are always anxious to ensure that efficient case management is not achieved at the expense of a high quality service to our complainants. We are using the data from our complainant satisfaction surveys (see below) to make our service more responsive to our clients' needs.

Statement of Strategy 2007-2009

At the close of 2006, my Senior Management Team and I developed the broad outline of the Office's Statement of Strategy for the period 2007-2009. Flowing from this process will be a range of action plans and projects to be delivered over the period of the strategy. Principal among them will be the publication of a greater number of reports relating to individual cases and to systemic issues arising from the examination of individual complaints. Certain other issues have been identified for particular attention in light of the recent extension of the Office's remit to cover voluntary hospitals and other areas arising from the Disability Act 2005. Among these is the need to examine the Office's internal operating structures to see if they are best suited to respond fully and effectively to the increased demands which will be made of the Office due to the increased range and volume of complaints which will arise as a result of the extension of remit. In addition, the Office needs to devise strategies to ensure that the extended role of the Office is communicated to those sectors of the public who might need to avail of our services in these new areas. There is also a recognition that Ireland has an increasingly diverse society and there is a need to raise awareness of the Office in all sectors of that society.

Survey of Complainant Satisfaction Levels

I reported last year on a major survey of all complainants who had their cases finalised by my Office within a specific twelve month period. They were surveyed on a broad range of issues in relation to their experience of the service which the Office had delivered in the course of the examination of their complaints. The survey was followed by a series of complainant focus groups on a nation-wide basis, in which the issues identified in the survey responses were teased out in greater detail.

Key suggestions which emerged from the survey were the need to give more information about the role of the Ombudsman from the outset; more information about the complaint examination process; and more information

about how the case was progressing and how much longer it was likely to take. Scope for improvement in our service included the need to involve complainants more in the complaint examination process; the level of personal contact with complainants; and the quality of explanation of final decisions. I undertook a review of our complaint examination practices and procedures and I have introduced a series of initiatives which take on board these suggestions for improvement.

The major initiative which I have undertaken is a process of ongoing quarterly surveys of complainant satisfaction levels following the closure of their cases. The surveys seek their views on how well we have performed under seven key service indicators which have been developed from the main survey and the focus groups.

These include:

- the initial contact with the Office;
- the extent to which the complaint examination process was explained at the outset;
- the extent to which they were afforded an opportunity to make their case;
- the extent to which the Office kept them advised of progress;
- the clarity of the information, oral and written, given to them in the course of the examination;
- the clarity of the reasons given in the final decision letter on their case, and
- the manner in which they were dealt with by individual staff members in the course of the complaint examination.

The results of the surveys to hand at the time of preparation of this Report indicate the following satisfaction rates:

- 83% in relation to the initial contact;
- 76% in relation to our explanation of the investigation process;
- 76% in relation to the opportunity to present their case;
- 61% in relation to being kept advised of progress;
- 67% in relation to the clarity of information;
- 62% in relation to reasons for our decisions, and
- 79% in relation to treatment by members of my staff.

I will be striving to ensure that my Office achieves improved satisfaction levels in all these areas over time. A range of mechanisms are being put in place to bring this about. At an organisational level this includes more detailed information material being provided to every complainant at the outset as to how the complaint process operates. At individual staff member level my Office is using the Performance Management Development System to guide and support individual staff members to provide further improved service to our complainants.

Survey of Oireachtas Members

During the year my Office conducted a survey of Oireachtas members to gauge their levels of satisfaction with the service my Office provides to them in relation to the handling of complaints they refer to my Office. There was a very encouraging response rate of 58.9%.

The survey revealed that the two most important factors in generating satisfaction with my Office's services were its effectiveness in resolving complaints, and the accessibility of the Office to individual Oireachtas members. The results also show that the higher the level of engagement with my Office, the greater the level of satisfaction with the service. This suggests that once members become engaged with my Office, they view it as delivering a high quality service.

The results also revealed that members generally are not frequent users of my Office's services. For example, 39% of Dáil members and 52% of Seanad members did not refer any complaints to my Office in the previous 12 months. Among the reasons given for no contact was unfamiliarity with the Ombudsman's role and complaint examination procedures.

The survey revealed that the members would like the Office to publish more details of case outcomes together with information on the types of issues that the Office can and cannot examine. They also expressed a desire for more information on how to make a complaint, contact points and remit and a briefing session for members on the role of the Ombudsman. I intend to develop a number of initiatives arising from the survey, with a view to improving the overall effectiveness of the Office for public representatives. I will be contacting members after the general election with details of the practical implementation of these initiatives.

Gender Equality

A Gender Equality Group monitors the Office's gender balance targets and the

factors that may influence the achievement of these targets such as:

- staff participation in promotional competitions;
- training and development initiatives;
- the gender makeup of interview boards for internal/interdepartmental competitions;
- the take up of family friendly (Work/Life Balance) initiatives (flexitime, work-sharing, term-time, career breaks);
- the distribution of men and women across the sections of the Office.

It reports on these issues to the Management Advisory Committee twice yearly. The Group also gender proofs relevant new Office policies and documents. The Office's gender targets apply to grades at Executive Officer level and above in the Offices of the Ombudsman, the Information Commissioner and the Secretariat to the Standards in Public Office Commission.

Civil Service Performance Verification Group

The Civil Service Performance Verification Group (CSPVG) was established under *Sustaining Progress* (Social Partnership Agreement 2003-2005) to verify that satisfactory progress was being made by Departments and Offices in relation to the modernisation commitments under the agreement. The Office reported on two occasions during 2006 to the CSPVG on progress achieved. On each occasion the CSPVG agreed that the progress achieved warranted payment of the pay increases due under the Agreement.

Other Activities

Ombudsman (Amendment) Bill

Last year I reported that the Government had approved the Heads of an Ombudsman (Amendment) Bill, with a target date of mid-2006 for publication of the text of this Bill. Once again, as in past years, I have to report that this commitment has not been met. While the Bill is included in the legislative programme for 2007, at the time of writing, it is clear that publication of the Bill will not be realised within the lifetime of the present Government. The purpose of the Bill is to widen the remit of my Office to a range of additional bodies, including Institutes of Technology, Universities, Vocational Education Committees, FÁS, Regional Fisheries Boards and the claims functions of the National Treasury Management Agency. The enactment of this Bill is a very important link in the chain of administrative accountability in Irish public administration, and it is most disappointing to have to report yet more delays in the enacting of this legislation.

Health Act 2004

The establishment of a statutory complaints procedure, which came into effect on 1 January 2007, has brought the major hospitals in the Dublin area, the so called Public Voluntary Hospitals, within my jurisdiction, as well as other similar hospitals in the rest of the country, together with institutions nation-wide providing services on behalf of the HSE to the intellectually disabled. Many of these institutions are unfamiliar with the operation of my Office and, consequently, I commenced a series of initiatives to develop an awareness among these organisations as to their responsibilities under the new procedures. The focus in the initiatives is concentrating on the *Statement of Good Practice For The Public Health Service In Dealing With Patients*, which I have developed from my experience of dealing with complaints against those hospitals that were administered by the former health boards. The Statement also takes account of the ethical guidelines published by the Medical Council and the Code of Professional Conduct published by An Bord Altranais. I see this Statement as a code of good practice for the health service in dealing with patients and, together with the Ombudsman Act, I intend to use it as a framework in my examination of complaints relating to public health services; so as to ensure that, in effect, it becomes a living reality for all patients. The Statement of Good Practice can be viewed in Chapter 8 of the publication entitled *Complaints Against the Public Health Service* which is on my Office's website [www.ombudsman.ie].

Extension of Ombudsman Link Service

I reported last year (2005 Annual Report, page 27) on the **Ombudsman *Link* Service** which is a new service being provided through Citizens Information Services (CICs) in certain areas which allows members of the public easier access to the services of my Office. Basically the service assists CIC staff to identify and submit potential complaints which my Office can examine on behalf of members of the public. It is my intention, over time, to build on this initiative as part of the process of reaching out to potential complainants and to raise wider awareness of my Office's services.

In June 2006 I spoke at the launch of a policy paper on family reunification which was published by the Im-

migrant Council of Ireland (ICI). During my speech I gave a commitment that my Office would enter into discussions with the ICI with a view to the possible introduction of an **Ombudsman *Link* Service** on a pilot basis through the ICI. A number of follow up meetings took place between the ICI and my staff during 2006 and it is hoped to have the pilot project up and running during 2007.

In addition, I have been in contact with the Society of St Vincent De Paul in relation to its network of local conferences as a potential area for further development of the ***Link* Service**, and with Comhairle in relation to its development of a national advocacy service in the same context. I would hope to advance these developments in 2007.

British and Irish Ombudsman Association Annual Meeting

My Office is a member of the British and Irish Ombudsman Association (BIOA) and its 2006 Annual Meeting was held in Dublin in May. The theme of the meeting was *"Ombudsmen - A Perspective from the Island of Ireland"*. On 22 May a series of workshops and seminars was held in the Royal College of Physicians on current All-Ireland and cross border issues and developments. This event was chaired by Dr Tom Frawley, Assembly Ombudsman and Northern Ireland Commissioner for Complaints. After I had welcomed the participants and given an introductory speech, there were contributions from the guest speakers, Dr Maurice Manning, President, Irish Human Rights Commission, Mr Bob Collins, Chief Commissioner of the Northern Ireland Equality Commission, Mr Joe Meade, Financial Services Ombudsman and Nuala O'Loan, Northern Ireland Police Ombudsman.

On the evening of 22 May the Department of the Taoiseach held a reception in Government Buildings for BIOA members and guests. The reception was hosted by Mr Tom Kitt, TD, Minister for State at the Department of the Taoiseach.

On 23 May the Annual Meeting was held in Dublin Castle International Conference Centre. This event was chaired by Ms Ann Abraham, UK Parliamentary Ombudsman and Health Service Ombudsman for England and BIOA Chair. The other speakers were Mr Dermot Ahern TD, Minister for Foreign Affairs and Dr Tom Frawley, Assembly Ombudsman and Northern Ireland Commissioner for Complaints who delivered a speech on behalf of Mr David Hanson MP, UK Minister for State for Northern Ireland who was unable to attend due to other urgent commitments.

Principles of Good Complaint Handling

In 2005, my Office accepted an invitation from the Chairman of the British and Irish Ombudsman Association (BIOA) to participate in a working group to develop a "Guide to Principles of Good Complaint Handling". The Guide was launched at the BIOA Biennial Conference in April 2007. These principles represent models of best practice which will be of assistance to all complaint handling bodies in the United Kingdom and in Ireland. Training workshops, which will allow interested BIOA member organisations to assess their own complaint handling performance, will be held later this year in London and Dublin.

During 2006, my Office also accepted an invitation from the United Kingdom Parliamentary Ombudsman, Ms Ann Abraham, to participate in a working group to develop "Principles of Good Administration". The task of developing the principles drew, to some extent, on the work of other ombudsman offices in this area, including my own Office's "Guide to Standards of Best Practice for Public Servants". The principles, which were recently launched following an extensive public consultation exercise, are broad statements of what public bodies within the UK Ombudsman's jurisdiction should do to deliver good administration and good customer service and they offer a clear explanation for both public bodies and complainants of how her Office approaches complaints. The working group has now moved on to develop guidance on redress - also with the involvement of my Office. This work also parallels a similar project on redress in Ireland which is underway for some time now under the auspices of an interdepartmental high level working group co-ordinated by the Department of the Taoiseach.

Conference on Public Sector Modernisation

On 25 May 2006 I spoke at a major conference on the theme of *Public Sector Modernisation-Change & Challenges from SMI to Benchmarking*. The conference was organised by Public Affairs Ireland and other speakers included An Taoiseach, Bertie Ahern TD, Mr Dermot McCarthy, Secretary General, Department of an Taoiseach and Mr Nick Manning, Head of Division, Public Sector Management & Performance, OECD.

The title of my speech was *Serving the Public: has the Modernisation Agenda Delivered?* Commenting in my speech on the issue of accountability and the Irish public service I stated, *inter alia*, that:

"The bodies that make up the public service should be held accountable by enabling and encouraging members of the public to be vigilant in the following three ways:

- *First, there should be transparency in the decision-making process within public bodies. Members of the public can only begin to understand and develop trust in public bodies if they can follow their actions and have access to their documents.*
- *Second, public bodies should have written criteria or principles of good administration to guide them in carrying out their functions. Members of the public cannot even begin to question the actions of public bodies unless the "rules of the game" are clear to them.*
- *Third, members of the public should have the facility to challenge the decisions of public bodies either through the courts or through alternative dispute resolution mechanisms."*

The full text of my speech is available on my Office's website [www.ombudsman.ie].

Language Rights Charter

The full provisions of the Official Languages Act 2003 became law on 14 July 2006. In advance of that date and to mark the event Seán Ó Cuirreáin, An Coimisinéir Teanga published the country's first Language Rights Charter. The bilingual Charter sets out ten basic rights accorded in law to Irish speakers in dealing with state organisations including the right to the use of Irish in court proceedings and documentation, in the Houses of the Oireachtas, in correspondence, and in specific key documents and mailshots issued by state organisations. The Charter reflects the rights already set out in law and does not create any new rights.

An Coimisinéir Teanga invited members of the Joint-Oireachtas Committee with responsibility for Irish language affairs and a small number of public bodies and Departments to an event held at his Office in An Spidéal, County Galway on 28 June 2006 to mark the publication of the Charter. Framed copies of the new Charter were presented by the Minister for Community, Rural and Gaeltacht Affairs, Éamon Ó Cuív T.D., to representatives of those bodies including my Office, the Office of the Information Commissioner, An Garda Síochána, the Revenue Commissioners and some local authorities, as well as Irish language and Gaeltacht organisations in recognition of the progress made to date in implementing the Act. An Coimisinéir Teanga also acknowledged the specific advice and assistance provided by the Offices of the Ombudsman/Information Commissioner in setting up his Office.

European Year of Equal Opportunities for All

I was very pleased to accept an invitation from the Chief Executive Officer of the Equality Authority for my Office to be involved in the European Year of Equal Opportunities for All during 2007. The European Year in Ireland will be a year to celebrate progress made in promoting equal opportunities for all and combatting discrimination, to acknowledge significant inequalities that persist and to renew commitment to a more equal society.

With this in mind, the Equality Authority, the Citizens Information Board (formerly Comhairle) and my Office, have come together to commission a research project on approaches by statutory bodies in Ireland and in other jurisdictions on the provision of information on rights and, in particular, best practice models in relation to the provision of information on systems of redress for individuals who feel that their rights have been infringed. The project is EU funded and I am hopeful that the results will be a source of new strategic thinking and practical ideas for statutory bodies involved in the provision of information on rights.

Notices issued under Section 7 of the Ombudsman Act, 1980

If there is an unacceptable delay on the part of a public body in responding to my Office in the course of the examination of a complaint a statutory Section 7 notice is issued seeking the required information. A breakdown of the number of notices issued was first published in my Office's 1998 Annual Report. The annual pattern of such notices issued since then has been as follows:

Year	No. of Section 7 Notices Issued
1998	45
1999	27
2000	14
2001	19
2002	16
2003	12
2004	6
2005	31
2006	18

The table below is a breakdown of the Section 7 notices issued in 2006.

Body	No. of Section 7 Notices Issued
CIVIL SERVICE	
Department of Communications, Marine and Natural Resources	2
HEALTH SERVICE EXECUTIVE	
Eastern Region, South Western Area	3
Eastern Region, Northern Area	1
LOCAL AUTHORITIES	
Kildare County Council	5
Dublin City Council	3
Galway County Council	2
Offaly County Council	1
Tullamore Town Council	1
TOTAL	**18**

I noted last year that the number of Section 7 notices which my Office had to issue had reached an unacceptably high level compared to previous years. While there was some improvement in 2006 it is disappointing to see that Kildare County Council was issued with the highest number of Section 7 notices which was also the case in 2005 when I singled out the Council for criticism for repeated delays in responding to my Office (see also page 37).

Public Access and Awareness

During 2006 my Office continued its efforts to bring our services to the general public throughout the country in order to heighten accessibility and raise awareness of those services. During 2006 my staff carried out monthly visits to a number of Citizens Information Centres (CICs) and there were also one-day regional visits to seven other locations.

In 2006 the CIC visits were to Cork, Galway, Limerick and Coolock in North Dublin. A total of 194 new complaints were received during these CIC visits of which 124 were valid and 70 (or 36%) were invalid. We are most grateful for the support of the CICs in delivering this service.

Staff from my Office also made one-day visits to Carrick-on-Shannon, Roscommon, Drogheda, Dundalk, Castlebar, Kilkenny and Carlow. Staff met 264 callers during these visits and 190 new valid complaints were received. The combined total of new valid complaints received as a result of the monthly and one-day visits amounted to 314. Details of the 2007 programme of visits are available from my Office's website [www.ombudsman.ie].

Visitors to my Office

In May 2006 I received a visit from Ms Alison Hirschel, Law Attorney at the Michigan Poverty Law Program. She was accompanied by Ms Maureen Mickus, who is a gerontologist and faculty researcher in the College of Human Medicine at Michigan State University. The purpose of the visit was to share our experiences in seeking to help people in long term care. During our discussions I outlined how my Office is in a position to assist individuals in long term care and also how my Office can bring about systemic improvements arising from the outcome of individual complaints.

Also in May, I met with Ontario's Provincial Ombudsman, Mr André Marin to brief him on the work of my Office. Mr Marin was accompanied by Mr Gareth Jones, Director of the Special Ombudsman Response Team in the Ontario office.

In July 2006 I met with a delegation of five officials from the Office of the Human Rights Ombudsman of the Republic of Slovenia during which I outlined the role and functions of my Office.

ISSUES ARISING FROM INDIVIDUAL COMPLAINTS

Aftermath of Investigation Report on Sligo General Hospital

In my 2005 Annual Report (page 8) I reported on the outcome of an investigation of a complaint against Sligo General Hospital. I want to take this opportunity to publicly acknowledge the comprehensive steps which have been taken in Sligo to rectify past failings in the provision of patient care which were highlighted in my Office's Report.

The complaint came from the members of a family, whose father died in January 2000, two days after he had been admitted to Sligo General Hospital. My investigation dealt with two main issues 1) shortcomings in the standard of care and attention that the hospital afforded to the patient, and 2) the inadequate manner in which the hospital dealt with the family's subsequent complaint in relation to the standard of care and attention.

A Philosophy of Care has been drawn up by the nursing staff working on the ward in which the patient at the centre of the complaint was treated. I am heartily encouraged by the concepts behind the philosophy, which I understand have been embraced by all

members of staff. The words "working in partnership with the patient" and "individuality of care" are key to ensuring that the patient remains the primary focus in the provision of a quality service.

Close to my heart is the issue of dying with dignity and that is why I recommended in my report that protocols should be developed for all staff in relation to treating recently bereaved people with compassion and understanding. I understand that the nursing team sought and obtained the assistance of the Irish Hospice Foundation because their key priority was to change the culture of care in respect of dying, death and bereavement in Sligo General Hospital. This has now led to the development of standards and policies in the area of death, dying and bereavement and I understand that the North West Hospice also assisted Sligo General in their efforts to bring the ethos of hospice care into Sligo General Hospital. By engaging with the Hospice Foundation's national programme, the staff at Sligo Hospital have helped to ensure that they have in place systems, policies and practices which will enable them to provide the best care possible to meet the individual needs of patients and their families.

I was also pleased to learn that a Steering Committee had been established which will drive new initiatives in relation to patient autonomy, integrated care, communication skills and dignity and dying. Perhaps more importantly, this Committee will ensure that these initiatives are acted upon, and are continuously evaluated within the hospital itself.

A communications protocol has also been developed which highlights best practice in relation to the provision of information to patients and their families, and there is an onus on the line manager in each speciality to ensure that all staff working in their area have read and understand the policy and guidelines in operation. In this context, I note that the protocol provides that nursing staff must actively engage with the patient and their families and be pro-active in the communication process. The point had been made to me by the family of the patient who died that they had to instigate contact with the nursing staff, and this lack of communication can often heighten the level of distrust and uncertainty experienced by relatives. The question had also arisen as to why a young medical intern had advised the family regarding their father's medical condition. I am encouraged to note that this area has been addressed in the protocol which states that Senior House Officers and Medical Interns should not be involved in giving information to relatives.

Other important nursing issues which arose in the course of the complaint such as the placing of a fluid restriction notice sign over the patient's bed, and the provision of oxygen to patients have been comprehensively addressed. In addition, I note that a Committee has been established to focus on eleven essential nursing care standards.

I think it is important that the best practice policies and procedures which the staff at Sligo General Hospital have adopted and implemented should be extended to other service providers throughout the Health Service Executive who might not have such protocols already in place.

Treatment of Cohabiting Couples

Over the years, my predecessors have drawn attention in Annual Reports to the difficulties arising from the fact that taxation and social welfare legislation treat cohabiting couples in a different manner. My Office continues to receive complaints about this matter, including three such complaints in 2006.

Basically, the law provides that the Department of Social and Family Affairs treats a cohabiting couple as if they are a married couple, accepting a cohabiting partner as a dependent and taking the joint incomes into account in relation to the assessment of means and eligibility for social welfare payments. On the other hand, the effect of the legislation governing the administration of taxation provides that the Revenue Commissioners treat a cohabiting couple as two separate individuals. Under the taxation code governing the payment of income tax credits may be allowed in respect of dependent relatives. However, the relevant legislation relating to tax credits specifically refers to people who are *married or blood relatives*. Under current tax legislation married couples can opt to be treated as two separate individuals with their own tax credits or have one spouse claim all tax credits in respect of both of them. Cohabiting couples have no such option, and therefore are prevented from transferring credits or making joint claims for reliefs available to married couples.

The complaints that I received in 2006 have highlighted how cohabiting couples are disadvantaged. In one case, a woman complained to me that while her cohabiting partner receives the tax credits of a single person, she would be assessed on his means if she

applied for unemployment assistance and would in fact not be entitled to any payment on that basis. In another instance, a cohabiting couple who had incurred significant expenses arising from IVF treatment, complained that the legislation prevented them from enjoying the tax relief on medical expenses that a married couple in similar circumstances could enjoy. In this case, the Revenue had confined the reliefs to the income tax of the female partner and as her income was taxed at the lower rate, the relief was lower than would have been the case had the couple been subject to joint assessment. I asked the Revenue to review the case to determine if any portion of the medical expenses could be attributed to the man, allowing him as a higher taxpayer, to benefit from higher relief and they agreed to do this in this specific case.

However, the fundamental anomaly remains and can be a cause of confusion and resentment in those households maintained by cohabiting couples. Where public bodies are acting within the law I am limited to drawing attention to the apparent anomalies that may exist between different codes and the clarification of public policy in this area and any attendant legislative changes are a matter for the Oireachtas to pursue.

Review of Disabled Persons Grant (DPG) Scheme

In 2002 my Office wrote to the Department of the Environment and Local Government, now the Department of the Environment, Heritage and Local Government, concerning difficulties in relation to the payment of grants by local authorities under the DPG Scheme. These difficulties were of a financial nature in that some local authorities had been advising my Office that they did not have sufficient funds to meet the number of grant applications on hand.

The DPG scheme is a statutory one provided for in the Housing (Disabled Persons and Essential Repairs Grants) Regulations 2001 (S.I. 607/01). The only conditions set out in the regulations for qualification for the grant are:

- that the works applied for must be "reasonably necessary for the purpose of rendering a house more suitable for the accommodation of a member of the household" who is either physically or mentally handicapped or ill;
- the person must also be normally resident in the house.

My Office recognises that, in the absence of sufficient funds, a local authority may have to devise a system for prioritising applicants for such grants. My Office would have no difficulty with such a system of prioritisation, provided it is open and transparent, and that applicants are properly informed of the qualifying criteria, given reasons for decisions and advised of appeal mechanisms. My Office is aware that some local authorities have been using two common priority indicators i.e. medical need and works to be carried out, but others have added a third indicator in the form of a means test. This had led to inconsistency in the application of the scheme throughout the country.

My Office noted that there is no provision in the DPG regulations for the imposition of a means test and I indicated to the Department that, in my view, there is no clear provision in legislation for the imposition of a means test.

In response, the Department advised my Office that it was reviewing the scheme. This process took a number of years. In 2006 the Department advised that it was revising the scheme with the aim of developing a more seamless set of responses to the housing needs of older people and people with disabilities, by ensuring that "the available funding is targeted to those persons in greatest need of such assistance, to improve equity and consistency and to streamline administrative and operational procedures". The Department stated that it had considered administrative aspects of the scheme with a view to maximising transparency and minimising the administrative burden from an applicant's viewpoint.

In March 2007 the Department advised my Office that three new schemes will be introduced during 2007, a Housing Adaptation Grant for People with a Disability, a Mobility Aids Grant Scheme, and a scheme of Housing Aid for Older People. The revised schemes will address the issues previously raised by my Office with the Department regarding the operation of the current DPG Scheme. The new grants will be administered in a uniform manner across all local authorities and there will be a statutory means test. There will be no variation in the means test applied to applicants or to the levels of grant aid available. A Housing (Miscellaneous Provisions) Bill, currently being drafted and expected to be published by early summer this year, includes provision for internal local authority reviews of prescribed housing decisions relating to individual households. This provision would provide an appeals process for

applicants for the new Housing grants for Older People and People with a Disability.

The introduction by the Department of a uniform scheme of grants for the elderly and for persons with a disability is a significant development and, although long awaited, is very welcome from my perspective. Dealing with complaints from persons who have been subject to differing criteria imposed by different local authorities which resulted in different outcomes depending on where the person lived, has been somewhat frustrating over the years. I look forward to the implementation, nation-wide, of a more transparent and fairer system of grants for some of the most vulnerable groups in our society.

Nursing Home Charges

The Health (Repayment Scheme) Act 2006 made provision for a scheme to repay the illegally raised health charges from fully eligible persons in publicly funded long term residential care. The Act also regulates patient private property accounts by way of the introduction of a statutory framework to protect patients' interests. As with other aspects of the public health services my role in relation to decisions about these repayments is to protect individuals from unfair, unsound or unjust actions on the part of those who are entrusted to make these refunds. I have already received a number of complaints in this regard e.g. from individuals who have been refused admittance to the scheme, parents of adult children with intellectual disabilities and spouses in certain circumstances who have been refused admittance as a "connected person" under the Act. A connected person is an individual who can make an application for a recoverable health charge under the legislation. I anticipate that I will receive many other such complaints during 2007.

Change Urged to Improve Legislation on Planning Administration

My Office wrote to the Department of the Environment, Heritage and Local Government in August 2005 concerning certain defects, as we saw it, in the planning legislation. Among the issues we raised was the lack of provision in the legislation for the correction of errors in planning decisions where such decisions were unclear or administratively erroneous e.g. missing words that change the meaning, typographical errors etc. It appeared to my Office that in the case of decisions of An Bord Pleanála, the Board could not correct, invalidate or withdraw its decision once it had issued the decision to the planning authority. In order to rectify the matter proceedings would have to be initiated in the High Court by the member of the public who had been affected adversely. In certain instances I considered it to be an unfair and unreasonable situation where a third party objector to a planning application, for example, could end up with an unenforceable planning decision because of error, and his/her only remedy would be by way of judicial review in the High Court.

During 2006 new legislation on planning was enacted. I was very pleased to see that it included a provision for the amendment of a planning decision by the planning authority (local authority) or by An Bord Pleanála. Section 30 of the Planning and Development (Strategic Infrastructure) Act 2006 authorises a planning authority or An Bord Pleanála to amend a planning permission granted for the purpose of (i) correcting a clerical error, (ii) facilitating something that was intended but not expressly provided for in the permission or decision (iii) otherwise facilitating the operation of the permission or decision.

Performance by Kildare County Council

A survey of complaints received by my Office against Kildare County Council (KCC) since 2003 identified delay on the part of the Council as a very significant problem for my Office in processing complaints. These delays relate mainly to the provision of reports and responses to my Office in relation to complaints referred to the Council. In the course of 2005 it was necessary to issue a Section 7 notice to the Council on twelve occasions. (A Section 7 notice usually requires a named person to provide the report requested by a specific date, otherwise, the person would be required to attend at my Office to provide the information or report.) The twelve Section 7 notices should be viewed in the context of a total of 27 complaints received against the Council in that year. In 2006, seven Section 7 notices issued in the context of 28 complaints received.

My Office does not take an inflexible approach to the difficulties that bodies within remit may have from time to time in terms of resources and staff. In the course of seminars and meetings held in various local authorities throughout the country over recent years, my Office has stressed the need for local authorities to advise my Office if difficulty and/or delay is likely to arise in relation to a request for a report on any particular complaint. My Office does not issue Section 7 notices lightly, or without first having given the body

concerned ample opportunity through reminder letters and phone calls to deal with the matter. My Office is conscious that the number of Section 7 notices issued to a body is published in my Annual Report (see page 33).

The table below sets out the picture in recent years with regard to the issue of Section 7 notices, generally, and to local authorities, including KCC.

The fact that no Section 7 notices are recorded against KCC in 2003 and 2004 does not mean that I was satisfied with the level or speed of response from the Council to complaints being processed in those years. The number of Section 7 notices issued to KCC in 2005 (12) is unprecedented for a single body when taken in the context of the total number of complaints to my Office against the Council in 2005 (27).

My Office's special report did not set out to analyse the reasons why Kildare County Council has provided a less than adequate service to the Ombudsman. It may be a matter of internal communications rather than any systemic inertia in dealing with my Office's correspondence. Whatever the reason, it is for the Council to address the matter and ensure that its liaison procedures are sufficiently robust to deliver information/reports to my Office in an appropriate and timely way.

Evidence of improvement by KCC is imperative in 2007 and beyond. KCC, needs to demonstrate that it takes notification of complaints from my Office seriously, as the vast majority of local authorities do, and that it is prepared to provide my Office with the information requested in an appropriate and timely manner. I do not wish to be the position of having to make further reports about the Council's performance in the future.

Year	Total Section 7 notices issued - all bodies in remit	Total Section 7 notices issued - local authorities	Total Section 7 notices issued - KCC
2003	12	7	Nil
2004	6	3	Nil
2005	31	22	12
2006	20	12	5

05

Statistics

TABLE 1 - OVERVIEW OF 2006 COMPLAINTS

Complaints	Numbers
Received in 2006	3281
Outside Jurisdiction	1036
Total within Jurisdiction	2245
Carried forward from 2005	838
Total on hand for 2006	3083
Completed in 2006	**2187**
Carried forward to 2007	896
Enquiries	8103

TABLE 2 - 10 YEAR TREND OF VALID COMPLAINTS RECEIVED

1997	3126
1998	2876
1999	2685
2000	2136
2001	2539
2002	2326
2003	2213
2004	2064
2005	2243
2006	2245

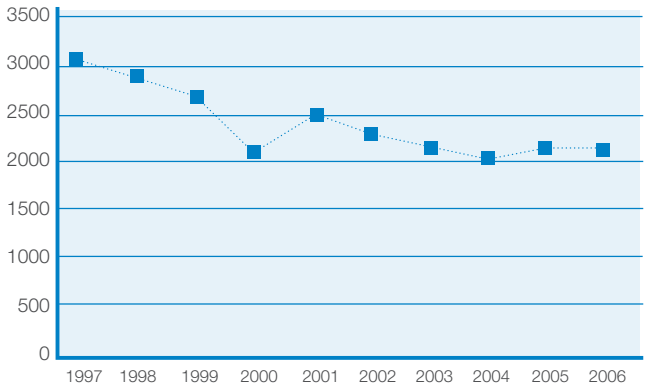


TABLE 3 - ANALYSIS OF VALID COMPLAINTS RECEIVED IN 2006	
Civil Service	888
Local Authorities	845
Health Service Executive	398
An Post	114
Total	**2245**

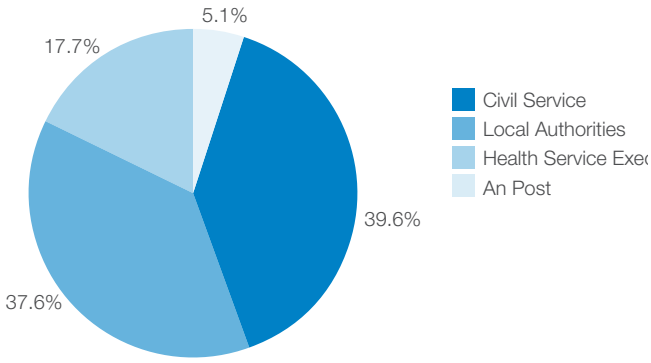
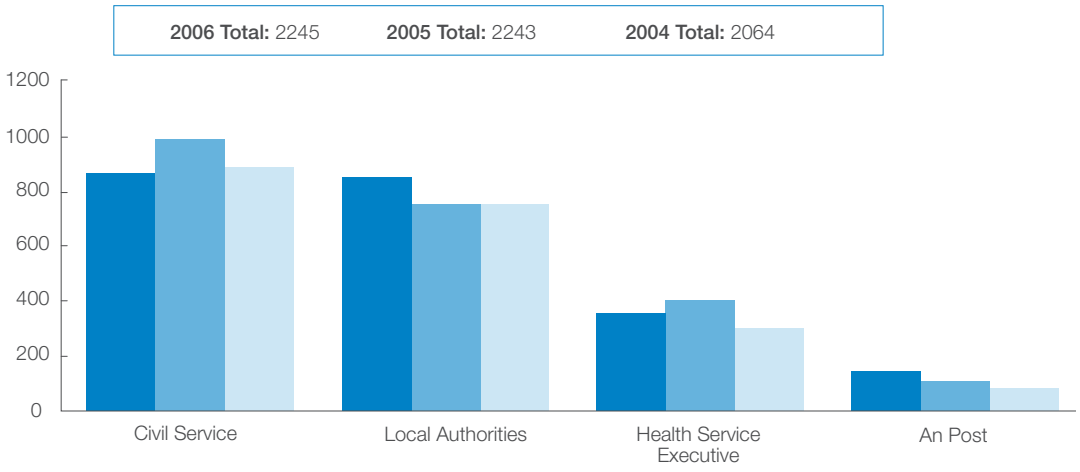


TABLE 4 - THREE YEAR COMPARISON - VALID COMPLAINTS RECEIVED	
2006	2245
2005	2243
2004	2064



2006	888	845	398	114
2005	962	748	447	86
2004	893	749	361	61

TABLE 5 - CIVIL SERVICE - VALID COMPLAINTS RECEIVED IN 2006

	Brought forward from 2005	Received in 2005 in 2006	On hands for 2006
Social and Family Affairs (see 9 (a))	58	257	315
Agriculture and Food (see 9 (b))	59	144	203
Education and Science (see 9 (c))	41	77	118
Revenue (see 9(d))	36	156	192
Justice, Equality and Law Reform (see 9 (e))	31	86	117
Environment, Heritage and Local Government (see 9 (f))	13	18	31
Communications, Marine and Natural Resources (see 9 (g))	11	24	35
Health and Children (see 9 (h))	8	18	26
Transport (see 9 (i))	1	29	30
Foreign Affairs (see 9 (j))	4	9	13
Enterprise, Trade and Employment (see 9 (k))	4	10	14
Others	17	60	77
Total	**283**	**888**	**1171**

TABLE 6 - LOCAL AUTHORITIES - VALID COMPLAINTS RECEIVED IN 2006

	Brought forward from 2005	Received in 2006	On hands for 2006
Carlow*	4	15	19
Cavan	5	10	15
Clare	13	22	35
Cork City Council*	13	23	36
Cork County*	34	64	98
Donegal	36	32	68
Dublin City Council*	36	90	126
Dún Laoghaire - Rathdown	12	22	34
Fingal	19	33	52
Galway City Council*	3	27	30
Galway County*	9	41	50
Kerry	11	31	42
Kildare	24	33	57
Kilkenny*	5	24	29
Laois	13	17	30
Leitrim	2	6	8
Limerick City Council*	6	17	23
Limerick County*	3	19	22
Longford	8	0	8
Louth*	11	40	51
Mayo*	13	51	64
Meath	12	24	36
Monaghan	3	5	8
North Tipperary	1	12	13
Offaly	5	10	15
Roscommon*	8	12	20
Sligo	15	10	25
South Dublin	6	36	42
South Tipperary	7	24	31
Waterford City Council	2	11	13
Waterford County	4	16	20
Westmeath	8	23	31
Wexford	14	18	32
Wicklow	14	27	41
Total	**379**	**845**	**1224**

Complaints received against Borough Councils, and Town Councils are included in the County figures.
*Monthly CIC visits or one-day visits were made to these counties in 2006 and this is likely to have affected the number of complaints received.

TABLE 7 - HEALTH SERVICE EXECUTIVE FORMERLY HEALTH BOARDS - VALID COMPLAINTS RECEIVED IN 2006

	Brought forward from 2005	Received in 2006	On hands for 2006
HSE: Midland Area - Formerly Midland Health Board	7	22	29
HSE: Mid-Western Area - Formerly Mid-Western Health Board	21	40	61
HSE: North Eastern Area - Formerly North Eastern Health Board	5	32	37
HSE: North Western Area - Formerly North Western Health Board	10	25	35
HSE: South-Eastern Area - Formerly South Eastern Health Board	12	19	31
HSE: Southern Area - Formerly Southern Health Board	17	45	62
HSE: Western Area - Formerly Western Health Board	14	44	58
HSE: Eastern Region, Northern Area - Formerly Northern Area Health Board	16	56	72
HSE: Eastern Region, East Coast Area - Formerly East Coast Area Health Board	13	37	50
HSE: Eastern Region, South Western Area - Formerly South Western Area Health Board	29	74	103
HSE: (Eastern) Area - Formerly Eastern Regional Health Authority	4	4	8
Total	**148**	**398**	**546**

TABLE 8 - AN POST - VALID COMPLAINTS RECEIVED IN 2006

	Brought forward from 2005	Received in 2006	On hands for 2006
An Post	28	114	142
Total	**28**	**114**	**142**

TABLE 9(a) - DEPARTMENT OF SOCIAL AND FAMILY AFFAIRS - BREAKDOWN BY MAIN CATEGORIES OF COMPLAINT RECEIVED IN 2006	
Old Age & Retirement Pensions	63
Disability, Invalidity and Maternity Payments	50
Unemployment Payments	42
Widows and One Parent Family Payment	28
Fuel Allowance and Free Schemes	21
Carer's Allowance	13
Back to work / Education Allowance	7
No Reply to Correspondence	6
Occupational Injury Benefit	6
PRSI	5
Child Benefit	5
Family Income Supplement	2
Miscellaneous	9
Total	**257**

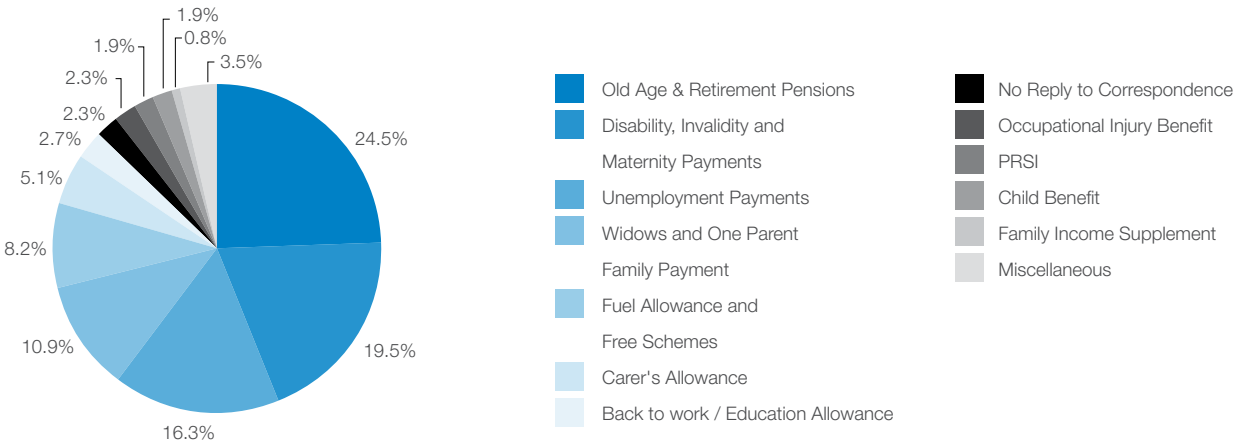


TABLE 9(b) - DEPARTMENT OF AGRICULTURE AND FOOD - BREAKDOWN BY MAIN CATEGORIES OF COMPLAINT RECEIVED IN 2006	
Single Farm Payment	57
REP Scheme	32
Livestock Grants	14
Farm Development Grants	11
Disease Eradication Scheme	6
No Reply to Correspondence	4
Milk Quota	3
Early Retirement Scheme	3
Area Aid	3
Forest Premium Scheme	2
Area Based Allowance	1
Miscellaneous	8
Total	**144**

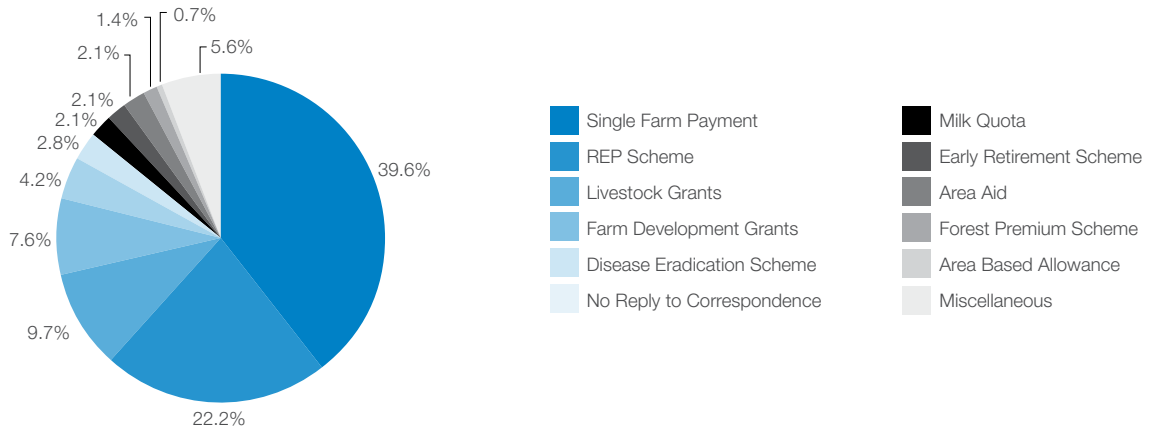


TABLE 9(c) - DEPARTMENT OF EDUCATION AND SCIENCE - BREAKDOWN BY MAIN CATEGORIES OF COMPLAINT RECEIVED IN 2006	
Delay/Failure to Reply	23
Higher Education Grants & Fees	23
Examinations	9
NOVA	4
Special Education	3
School Transport	2
Recognition of Qualifications	2
Incremental Credit	2
School Bullying	1
Miscellaneous	8
Total	**77**

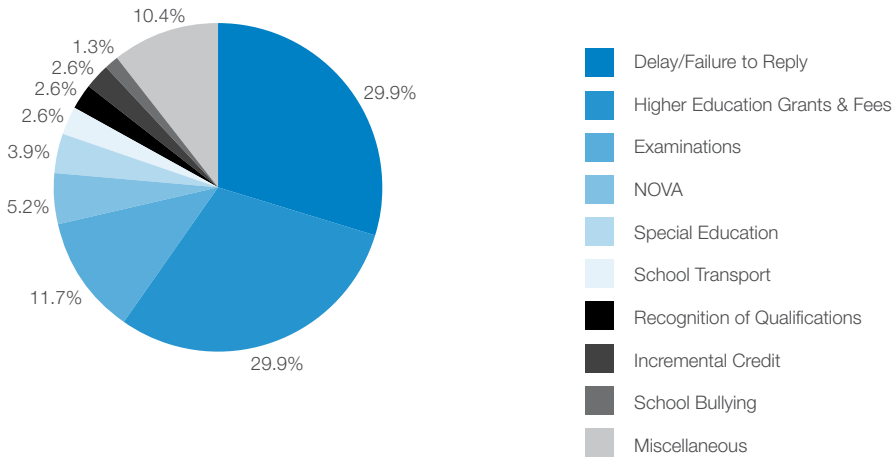


TABLE 9(d) - OFFICE OF THE REVENUE COMMISSIONERS - BREAKDOWN BY MAIN CATEGORIES OF COMPLAINT RECEIVED IN 2006	
Income Tax	116
VAT / Inheritance / CGT	14
Delay/No reply to correspondence	4
Customs and Excise	2
Miscellaneous	20
Total	**156**

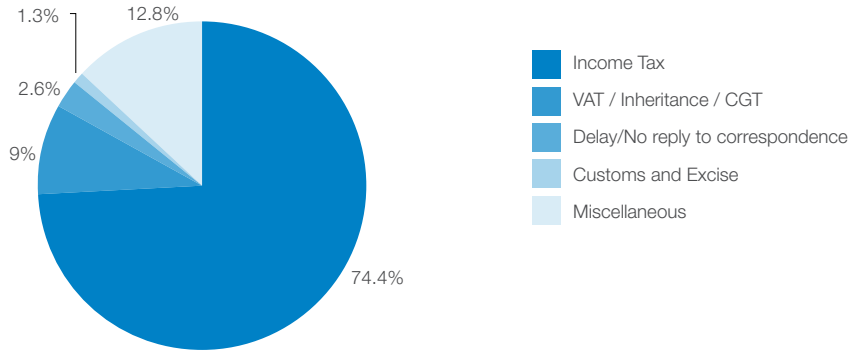


TABLE 9(e) - DEPARTMENT OF JUSTICE, EQUALITY & LAW REFORM - BREAKDOWN BY MAIN CATEGORIES OF COMPLAINT RECEIVED IN 2006	
Administration of Visa or Asylum Applications	33
Delay	19
No reply to correspondence	15
Quality of Service	4
Miscellaneous	15
Total	**86**

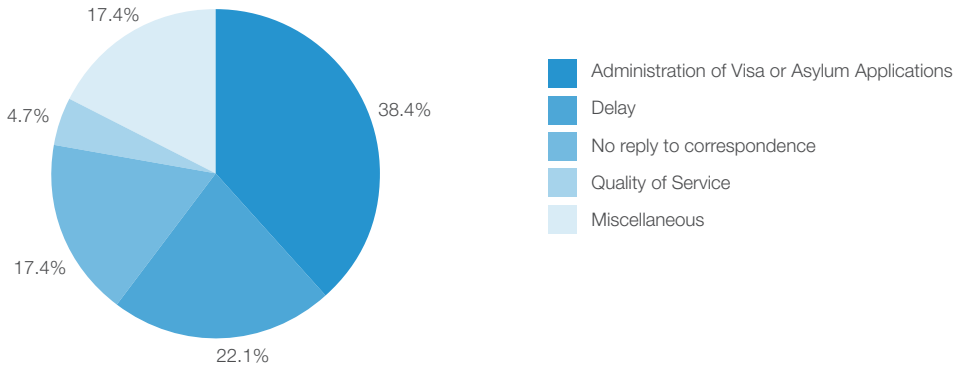


TABLE 9(f) - DEPARTMENT OF THE ENVIRONMENT, HERITAGE AND LOCAL GOVERNMENT - BREAKDOWN BY MAIN CATEGORIES OF COMPLAINT RECEIVED IN 2006	
No Reply to Correspondence	7
Housing Loans and Grants	3
Motor Tax/Driving Licence/Driving Test	2
Miscellaneous	6
Total	**18**

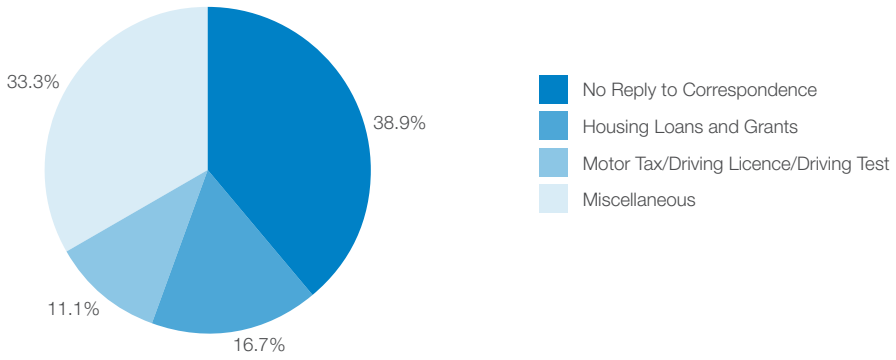


TABLE 9(g) - DEPARTMENT OF COMMUNICATIONS, MARINE & NATURAL RESOURCES - BREAKDOWN BY MAIN CATEGORIES OF COMPLAINT RECEIVED IN 2006	
Sea Fishing & Aquaculture Licensing	11
No reply to correspondence	6
Miscellaneous	7
Total	**24**

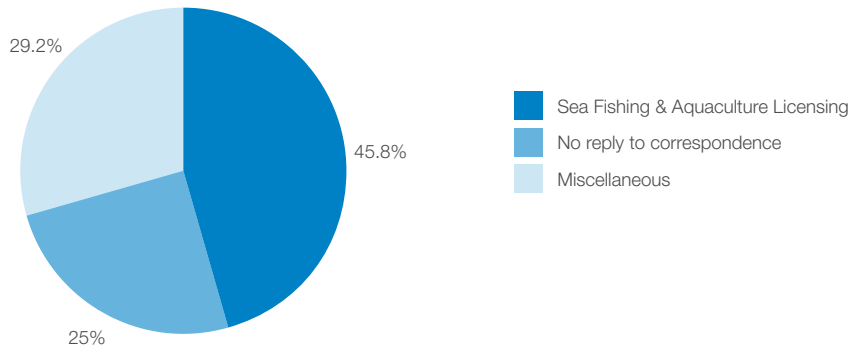


TABLE 9(h) - DEPARTMENT OF HEALTH AND CHILDREN - BREAKDOWN BY MAIN CATEGORIES OF COMPLAINT RECEIVED IN 2006	
No Reply to Correspondence	9
General Registrar's Office	2
Drug Payment Scheme	1
Miscellaneous	6
Total	**18**

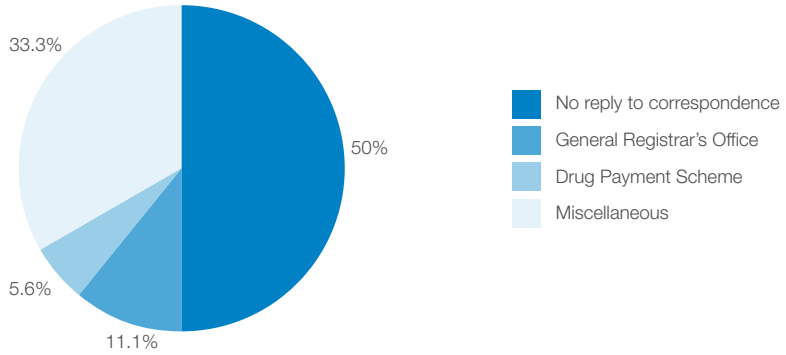


TABLE 9(i) - DEPARTMENT OF TRANSPORT - BREAKDOWN BY MAIN CATEGORIES OF COMPLAINT RECEIVED IN 2006	
Driving test	10
No Reply to Correspondence	6
NCT	6
Miscellaneous	7
Total	**29**

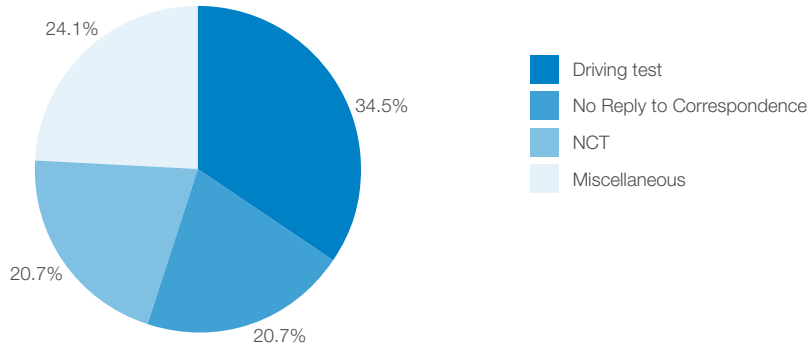


TABLE 9(j) - DEPARTMENTOF FOREIGN AFFAIRS - BREAKDOWN BY MAIN CATEGORIES OF COMPLAINT RECEIVED IN 2006	
Passport Application	8
Miscellaneous	1
Total	**9**

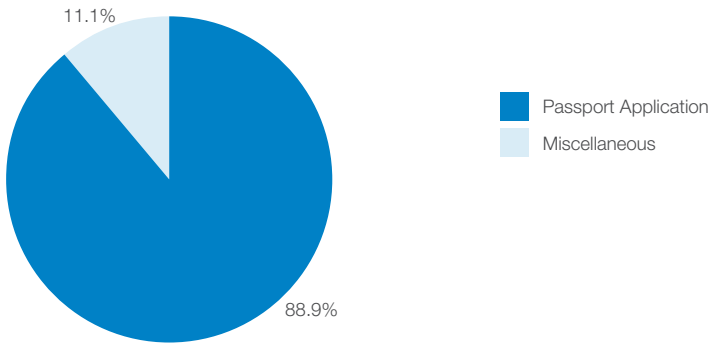


TABLE 9(k) - DEPARTMENT OF ENTERPRISE, TRADE & EMPLOYMENT - BREAKDOWN BY MAIN CATEGORIES OF COMPLAINT RECEIVED IN 2006	
No Reply to Correspondence	2
Miscellaneous	8
Total	**10**

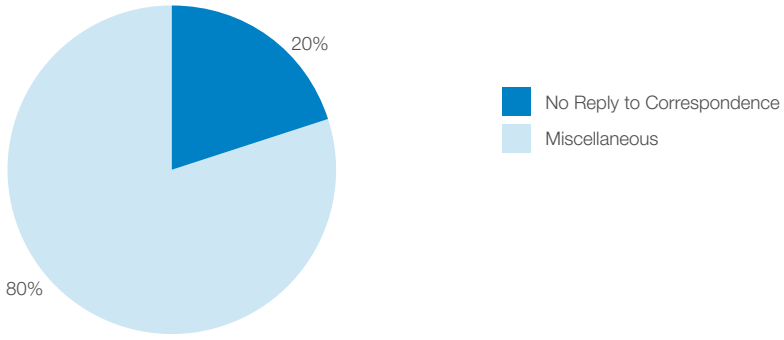


TABLE 10 - LOCAL AUTHORITIES - BREAKDOWN BY MAIN CATEGORIES OF COMPLAINT RECEIVED IN 2006

Housing			256
	Allocations & Transfers	*155*	
	Loans & Grants	*38*	
	Repairs	*32*	
	Sales	*20*	
	Rents	*11*	
Planning			235
	Enforcement	*131*	
	Administration	*104*	
Roads and Traffic			98
Delay/Failure to Reply			81
Waste Disposal			45
Water Supply			25
Quality of Service			21
Motor Tax & Drivers Licence			13
Sewerage and Drainage			11
Service Charges			9
Acquisition of land/rights			6
Parks/Open Space			5
Rates			3
Access to Information on the Environment			3
Provision of Service			3
Miscellaneous			31
Total			**845**

TABLE 11 - HEALTH SERVICE EXECUTIVE - BREAKDOWN BY MAIN CATEGORIES OF COMPLAINT RECEIVED IN 2006

Supplementary Welfare Allowance			93
	Exceptional Needs Payment	*43*	
	Rent and Mortgage Allowances	*14*	
	Back to School - Clothing/Footwear Allowance	*12*	
	Miscellaneous	*24*	
Health Services (General)			43
	Medical Card	*43*	
Hospital Services			79
	Nursing Homes/Long Stay	*57*	
	Miscellaneous	*22*	
Cash Payments (other than SWA)			38
Delay/Failure to Reply			34
Health Services			21
Childcare/Social Work Services			13
Services for the Elderly - Housing Aid			12
Hospital Charges			11
Provision of Service			8
Dental Service			5
Hospital Services Psychiatric			2
Miscellaneous			39
Total			**398**

TABLE 12 - VALID COMPLAINTS RECEIVED BY COUNTY IN 2006

Carlow	33
Cavan	25
Clare	61
Cork	222
Donegal	63
Dublin	605
Galway	148
Kerry	80
Kildare	70
Kilkenny	37
Laois	37
Leitrim	30
Limerick	98
Longford	18
Louth	66
Mayo	119
Meath	80
Monaghan	15
Offaly	15
Roscommon	44
Sligo	30
Tipperary	82
Waterford	57
Westmeath	47
Wexford	46
Wicklow	59
Outside Republic	58
Total	**2245**

TABLE 13 - ANALYSIS OF COMPLAINTS COMPLETED IN 2006

Complaint Resolved	351
Partially Resolved	19
Assistance Provided	526
Not Upheld	634
Discontinued	622
Withdrawn	35
Total	**2187**

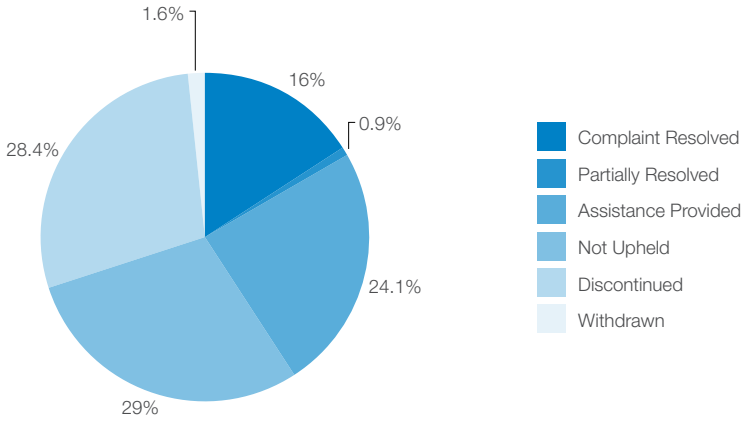


TABLE 14 - CIVIL SERVICE - COMPLAINTS COMPLETED IN 2006

	Resolved	Partially Resolved	Assistance Provided	Discontinued	Withdrawn	Not Upheld	Total Completed
Social and Family Affairs	8	3	24	85	3	98	221
Agriculture and Food	33	0	6	24	1	100	164
Education and Science	11	0	22	16	0	44	93
Revenue	37	1	20	57	3	47	165
Environment, Heritage and Local Government	5	0	10	4	0	5	24
Health and Children	1	0	10	4	0	2	17
Communications, Marine and Natural Resources	0	0	11	9	0	11	31
Justice, Equality and Law Reform	7	1	51	22	3	7	91
Enterprise, Trade and Employment	2	0	7	3	1	0	13
Foreign Affairs	3	0	5	1	0	2	11
Transport	4	0	11	7	0	2	24
Others	4	1	33	20	0	10	68
Total	**115**	**6**	**210**	**252**	**11**	**328**	**922**

TABLE 15 - LOCAL AUTHORITIES - COMPLAINTS COMPLETED IN 2006

	Resolved	Partially Resolved	Assistance Provided	Discontinued	Withdrawn	Not Upheld	Total Completed
Carlow	1	0	1	9	0	2	13
Cavan	3	0	1	0	0	1	5
Clare	3	1	4	10	1	1	20
Cork City Council	12	0	3	11	2	7	35
Cork County	23	1	5	19	2	19	69
Donegal	9	0	6	15	2	13	45
Dublin City Council	17	0	20	41	2	17	97
Dún Laoghaire - Rathdown	5	0	7	5	0	4	21
Fingal	6	0	3	13	1	8	31
Galway City Council	8	0	3	4	0	2	17
Galway County	6	0	4	14	0	6	30
Kerry	8	1	3	5	1	5	23
Kildare	11	3	11	8	1	3	37
Kilkenny	5	1	0	12	0	3	21
Laois	2	0	6	2	1	6	17
Leitrim	0	1	1	2	0	1	5
Limerick City Council	1	0	2	11	0	5	19
Limerick County	4	0	1	4	0	2	11
Longford	2	0	1	0	0	4	7
Louth	1	0	2	15	1	9	28
Mayo	5	0	5	10	0	6	26
Meath	4	0	3	5	0	7	19
Monaghan	1	0	1	3	1	1	7
North Tipperary	1	1	3	1	0	0	6
Offaly	3	0	2	2	0	4	11
Roscommon	2	0	3	4	0	1	10
Sligo	2	0	1	1	0	10	14
South Dublin	6	0	13	9	0	1	29
South Tipperary	1	0	4	7	1	3	16
Waterford City Council	3	0	2	1	0	2	8
Waterford County	4	0	0	5	0	3	12
Westmeath	3	1	3	6	0	4	17
Wexford	9	0	3	5	1	3	21
Wicklow	9	0	7	14	0	5	35
Total	**180**	**10**	**134**	**273**	**17**	**168**	**782**

Complaints received against Borough Corporations, Urban District Councils and Town Commissioners are included in the County figures

TABLE 16 - HEALTH SERVICE EXECUTIVE - COMPLAINTS COMPLETED IN 2006

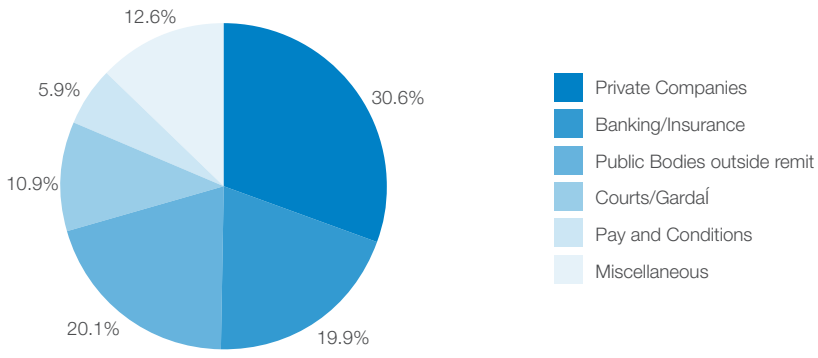
	Resolved	Partially Resolved	Assistance Provided	Discontinued	Withdrawn	Not Upheld	Total Completed
HSE: Midland Area - Formerly Midland Health Board	2	0	8	7	0	3	20
HSE: Mid-Western Area - Formerly Mid-Western Health Board	5	0	13	6	2	8	34
HSE: North Eastern Area - Formerly North Eastern Health Board	1	0	5	7	1	7	21
HSE: North Western Area - Formerly North Western Health Board	3	0	5	8	0	7	23
HSE: South-Eastern Area - Formerly South Eastern Health Board	0	0	7	5	0	7	19
HSE: Southern Area - Formerly Southern Health Board	4	2	9	10	1	20	46
HSE: Western Area - Formerly Western Health Board	3	0	11	9	1	6	30
HSE: Eastern Region, Northern Area - Formerly Northern Area Health Board	10	0	7	12	1	30	60
HSE: Eastern Region, East Coast Area - Formerly East Coast Area Health Board	8	0	9	3	0	10	30
HSE: Eastern Region, South Western Area - Formerly South Western Area Health Board	6	0	22	8	0	30	66
HSE: (Eastern) Area - Formerly Eastern Regional Health Authority	2	0	2	0	0	0	4
Total	**44**	**2**	**98**	**75**	**6**	**128**	**353**

TABLE 17 - AN POST - COMPLAINTS COMPLETED IN 2006

	Resolved	Partially Resolved	Assistance Provided	Discontinued	Withdrawn	Not Upheld	Total Completed
An Post	12	1	84	22	1	10	130
Total	**12**	**1**	**84**	**22**	**1**	**10**	**130**

TABLE 18 - ANALYSIS OF INVALID COMPLAINTS RECEIVED IN 2006

Private Companies	317
Banking/Insurance	206
Public Bodies outside remit	208
Courts/Gardaí	113
Pay and Conditions	61
Miscellaneous	131
Total	**1036**



Staff List

Director General
Pat Whelan

Senior Investigators
Maureen Behan
Michael Brophy
Tom Morgan
Liam Kelly

Investigators
Anne Boland
Roisin Connolly
Patricia Doyle
Patsy Fitzsimons
Tony Hayden
Maurice Kiely
Matt Merrigan
Aoife Nic Réamoinn
Willy O'Doherty
Brendan O'Neill
Anne O'Reilly
Donal O'Sullivan
Bernard Rooney
David Ryan
Aimée Tallon

Support Staff
Walter Barry
Chris Cogan
Elizabeth Culhane
Robert Cullen-Jones
Marion Dillon
Kellie Finnegan
Phyllis Flynn
Jim Hayes
Bernie Kelly
Iris Kilbey
Sarah Van der Mescht
Paul Mallen
Mary McGowan
Barry Meskell
Jacqueline Moore
Brian Murphy
Elaine Nolan
Deborah Smyth
Jean Sullivan

Corporate Services Unit
Stephen Rafferty - Head of Corporate Services
Michael Bell
Mairead Collins
Marie Gleeson
Anne Harwood
Anthony Healy
Geraldine Kelly
Fiona McCarney
Sheila McCarthy
Edmund McDaid
Brian McKeon
Marian Mullen
Stephanie O'Connell
Kieran O'Neill
Mary Pepper

I.T. Unit
Eoghan Halpin - Investigator
John Doyle
Dave Morrissey

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