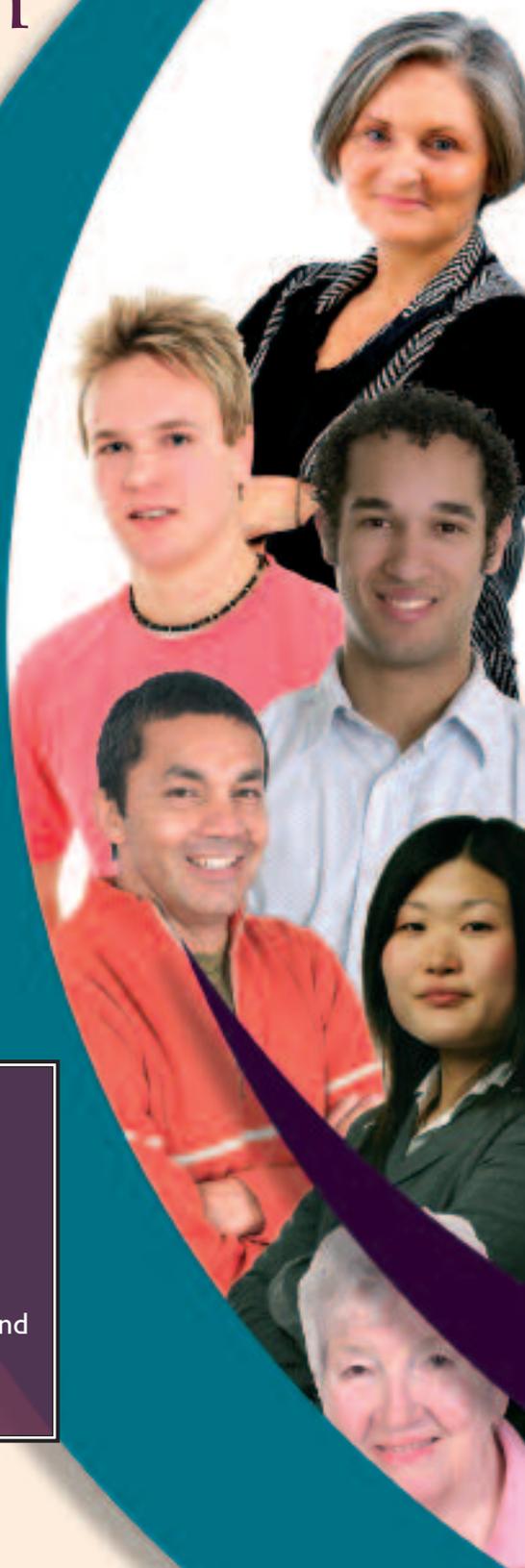




# Ombudsman Northern Ireland



## ANNUAL REPORT

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

2007 - 2008

**NIA 182/07-08**

## **My Role**

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

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

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

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

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

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

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



ANNUAL REPORT of the  
ASSEMBLY OMBUDSMAN  
for NORTHERN IRELAND  
and the NORTHERN IRELAND  
COMMISSIONER for COMPLAINTS  
for 2007/2008

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

**NIA 182/07-08**

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# SECTION ONE

The Year in Review

# THE YEAR IN REVIEW

For the second year in succession I have the honour to lay my Report before the Assembly. My Report not only describes the activity of my Office over the period of the financial year 2007-08, but it is also the document of record, which will enable Assembly Members and Assembly Committees to examine the performance of individual Government Departments and their Agencies and all Public Bodies in Northern Ireland against the experience of individual citizens who have complained about the service they received. The Report, as a document of record, also provides a valuable source of information for Government Departments and Public Bodies into how they have failed to provide services at a standard the public has a right to expect. This can provide both learning and insight that can be applied across the whole spectrum of the public services.



It is important that the public service recognises that complaints can offer a valuable insight which enables learning from what has gone wrong, how to put things right and to look critically at any systemic implications of the complaints that have been investigated. Thus mistakes are addressed to prevent similar problems arising in the future. In this way complaints represent an opportunity for putting things right and restoring the individual's confidence and trust in our public services.

It is important also that civil and public servants note that many citizens do not complain out of a negative spirit – many complain because they want to ensure that the bad experience they or a loved one has endured does not happen to someone else. They make clear in submitting a complaint that they are not seeking compensation but wish to have their negative experience acknowledged and, if appropriate, to receive a relevant and proportionate apology.

The fact that I continue to hold two offices – Assembly Ombudsman and Commissioner for Complaints – is again reflected by the division of this Report into distinct sections, one for each of these Offices, with a further section for Health and Social Service complaints. This year, again, these sections are identified by the use of coloured margins.

## Planning Complaints

Three areas of interest arising from planning complaints warrant particular comment. The first is a matter on which I commented in last year's Report. A complaint again raised the problem of circumstances where planning approval has been given erroneously by the Planning Service. The case in question arose because officials failed to identify that the proposed development was in a planning restricted area. Whilst such complaints are unusual, I believe it is unacceptable that the Planning Service continues to have no means of correcting such errors.

An individual case, which I have summarised in this Report, identified a situation where information provided by the Planning Service, in response to enquiries about the planning history of a property, did not disclose that enforcement action was being considered in respect of breaches of planning approval. The matter is complex as the Planning Service also has to have regard to the Data Protection Act, but I believe that it would be in the public interest if there was a fuller disclosure in reply to the Property Enquiry Certificate.

The third, and continuing, area of disquiet among the public is that of enforcement action where breaches of planning control or approval conditions occur. The decision of whether or not to initiate enforcement action is a matter for the discretion of the Planning Service and has to take account of whether the resource intensive nature of such action is warranted in the overall public interest. However, such issues are not readily understood by interested third parties who view the uncorrected disregarding of planning requirements by developers, both individual and corporate, as representing an unacceptable practice. I believe it would be beneficial if the Planning Service were to conduct an exercise to seek to establish a wider understanding of the planning process and a wider and shared consensus.

### **Health and Social Care**

In 2007-2008 the structure of the Health and Social Care System in Northern Ireland underwent a major organisational reform which saw the number of Health and Social Services Trusts being reduced from 18 to 5. Alongside the administrative challenge presented by such a reform was the need to maintain service at a relevant quality and performance standard, a challenge which is and continues to become more demanding year on year.

Despite 2007-2008 being a period of transition for health and social care, this was not reflected in a dramatic increase in the number of complaints received in my office; something which might have been expected. However, despite the absence of a sharp increase in the number of health and social care complaints received, my office continues to strive to be responsive to the challenges that arise from dealing with complaints relating to this important sector within our public service.

This year my office created a service level agreement with my colleagues in the Office of the Parliamentary and Health Service Ombudsman in England, which enables me to access professional clinical advice in a more efficient and expeditious way than has been possible in the past. Under previous arrangements, such advice had to be sourced, accessed and arranged on a case by case basis, thus significantly adding to the time taken to complete the investigation of a case. Therefore, I am confident that this new agreement will result in a reduction in the overall time taken by my office to deal with those health complaints on which I need to seek clinical advice.

I identified a further area that created a source of delay in the efficient handling of complaints about health and social care and this was the manner in which case information was collated, compiled and forwarded to my Office when requested. In order to address this deficit I have produced a series of guidelines and a checklist which I have asked Health and Social Care Trusts to follow when compiling their complaints records, so that in the event a complaint is subsequently raised with me, after being dealt with through the health and social care complaints procedure, the requested information can be speedily accessed whilst eliminating the need for Trust staff to spend time relocating the requested information.

Finally, my Office has continued to observe the work and discussions being undertaken by the Department of Health, Social Services and Public Safety in respect of the health and social care complaints procedure. My Office awaits the outcome of this work and any resulting impact or challenges that this may pose for it. Challenges which I am confident can be met if anticipated and planned for.

### **Housing Complaints**

Housing related complaints have featured heavily during the year with 84 received. The cases investigated by me continue to feature complaints about housing benefit, standard of workmanship, housing applications and house sales grants.

The number of social housing cases where the complaint was upheld or partially upheld increased from 2 in 2006/07 to 15. I again welcome the level of settlements arrived at during the year. Settlements indicate to me a level of responsiveness to the public which is to be encouraged. My investigations into social housing complaints highlight the need for training in complaints handling by staff who interact with the public. In addition, social housing providers must fully explain their decisions to those who access their services.

I have highlighted in the summaries of investigated cases a complaint made against Oaklee Housing Association. This case raised significant issues regarding the application of the Housing Selection Scheme. The complainant was dissatisfied with the handling by the Association of an application for rehousing. My investigation found that, in its initial assessment of the complainant's rehousing application, the Association had failed to adhere to the rules and operation of the Housing Selection Scheme. The complainant missed out on the opportunity of being rehoused in any one of four properties that were suitable to his needs. A number of other instances of significant maladministration were identified during the course of the investigation. These included serious systemic flaws, significant delay, and unsatisfactory administration by Association officers.

I am anxious to promote best practice in complaint handling by organisations within my jurisdiction. I therefore organised a conference on this subject for social landlords during the year. The conference highlighted the need for robust complaints handling and identified good practice guidelines in complaints handling for the social housing sector. The event was well received with representatives of the Northern Ireland Housing Executive and two thirds of Housing Associations in attendance. Following the event my Office received a number of revised complaints procedures from Housing Associations. I would urge those who have not recently reviewed their complaints procedures to do so.

### **Early Settlement Cases**

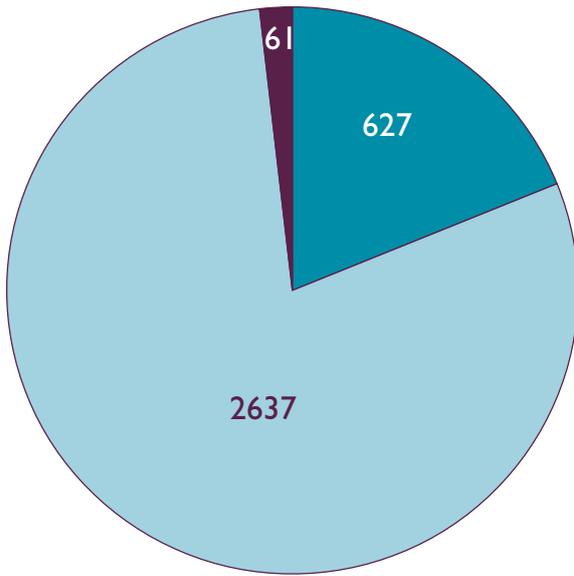
In my last two Annual Reports I have referred to my positive experience in reaching a number of early settlements of complaints with Public Bodies in Northern Ireland. I am happy to report that this proactive approach has been maintained. It is an approach that I would commend to all bodies in my jurisdiction. While recognising that not every complaint has the potential to be settled at an early stage in a way that meets the complainant's specific expectations, early settlements I believe have a positive effect for all the parties involved and also reduce the costs, human and financial, for the public purse.

## Conclusion

I believe my Office has demonstrated this year that it has the capacity to investigate cases ranging from straightforward concerns of citizens to those which identify extensive failings within public administration. I would wish again to record my thanks to all the staff in my Office without whose commitment, enthusiasm and expertise I could not meet the responsibilities attaching to my role.

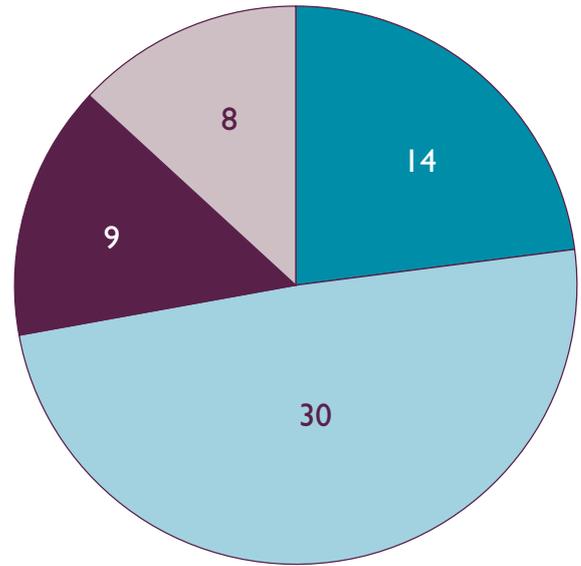
The year ahead offers challenges as the organisations delivering public services continue to be restructured, processes changed and further areas of administration are possibly devolved thereby having the potential to extend my Office's jurisdiction. I am satisfied that my Office can meet these fresh challenges with confidence.

**Fig 1.1: Number of contacts 2007/08**



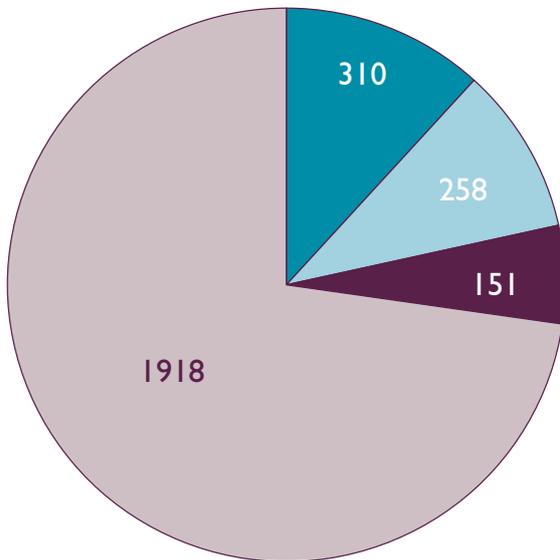
- Written Complaints
- Telephone Calls
- Interviews

**Fig 1.3: Breakdown of Interviews in the Office 2007/08**



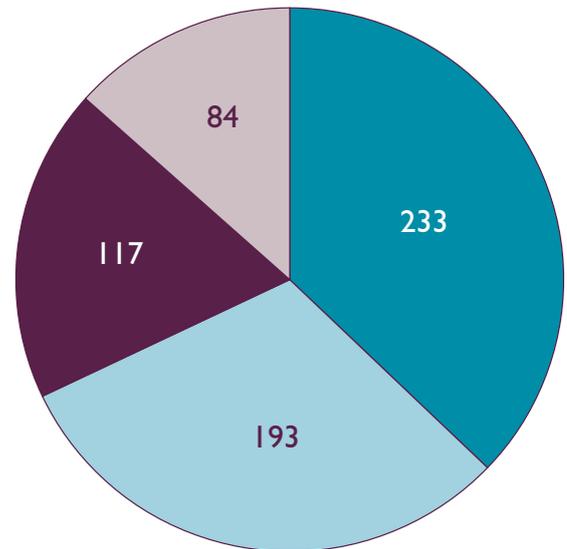
- Assembly Ombudsman
- Commissioner for Complaints
- Health & Personal Social Services
- Outside Jurisdiction

**Fig 1.2: Breakdown of Telephone Calls to the Office 2007/08**



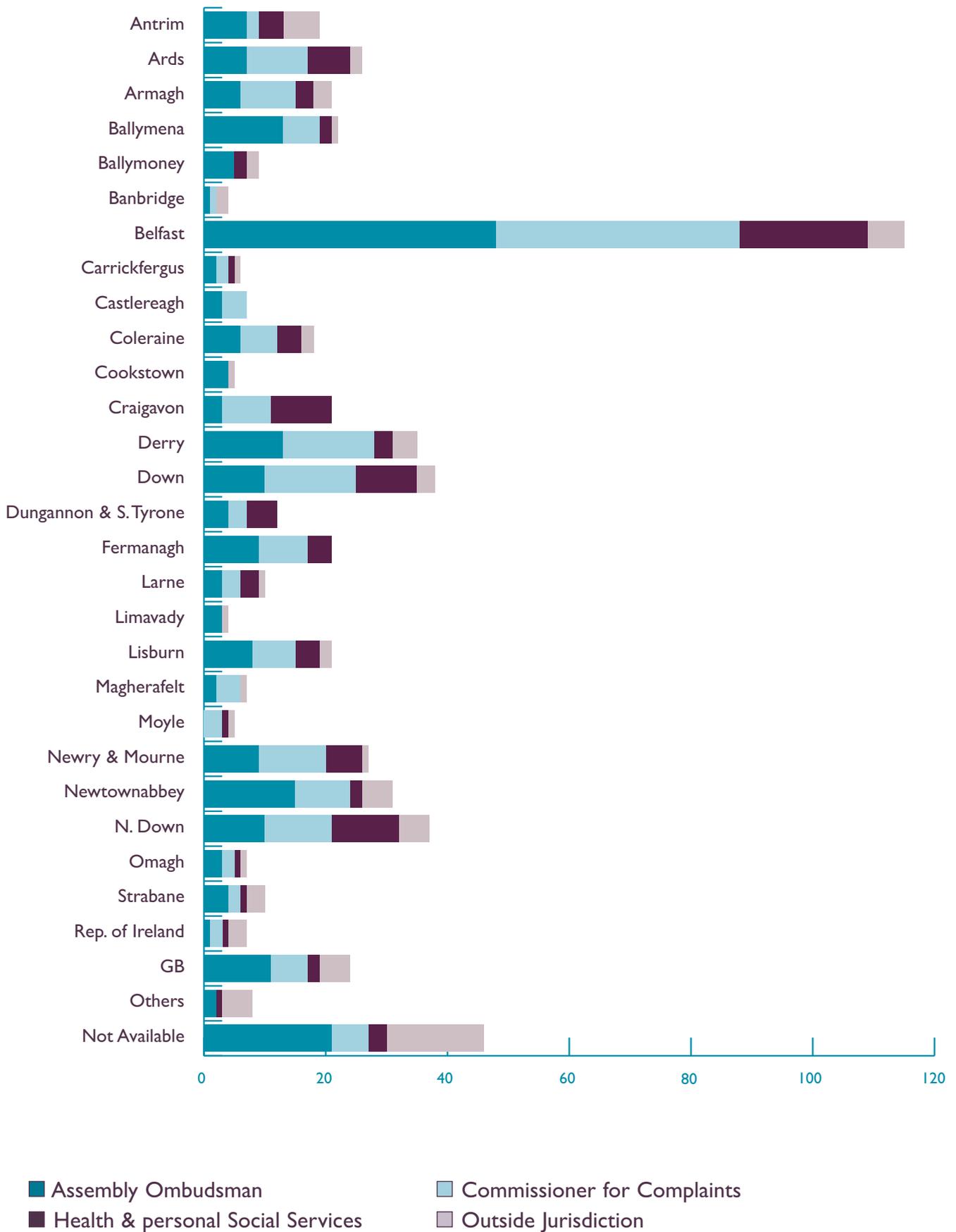
- Assembly Ombudsman
- Commissioner for Complaints
- Health & Personal Social Services
- Outside Jurisdiction

**Fig 1.4: Breakdown of written Complaints to the Office 2007/08**

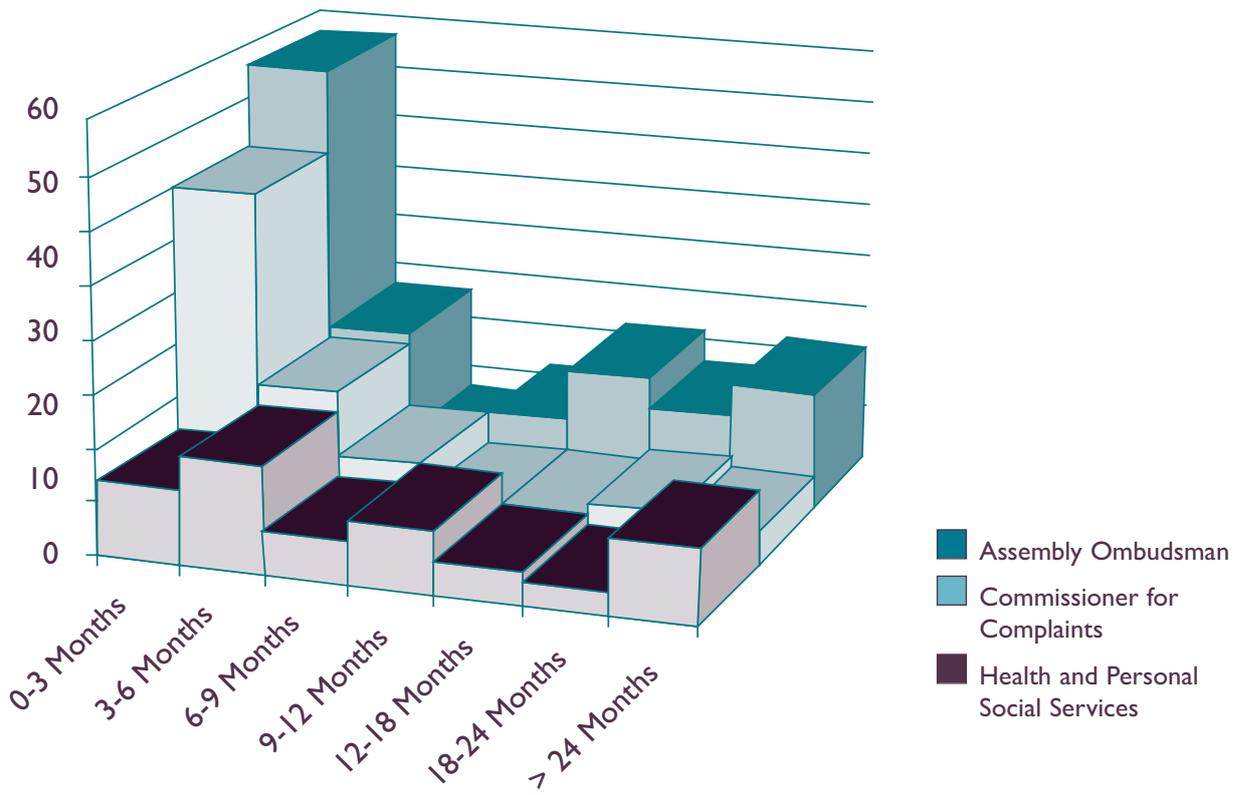


- Assembly Ombudsman
- Commissioner for Complaints
- Health & Personal Social Services
- Outside Jurisdiction

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



**Fig 1.6: Completion Times for Investigation of Written Complaints**



**Fig 1.7: Written Complaints Received by the Ombudsman 1998/99 – 2007/08**





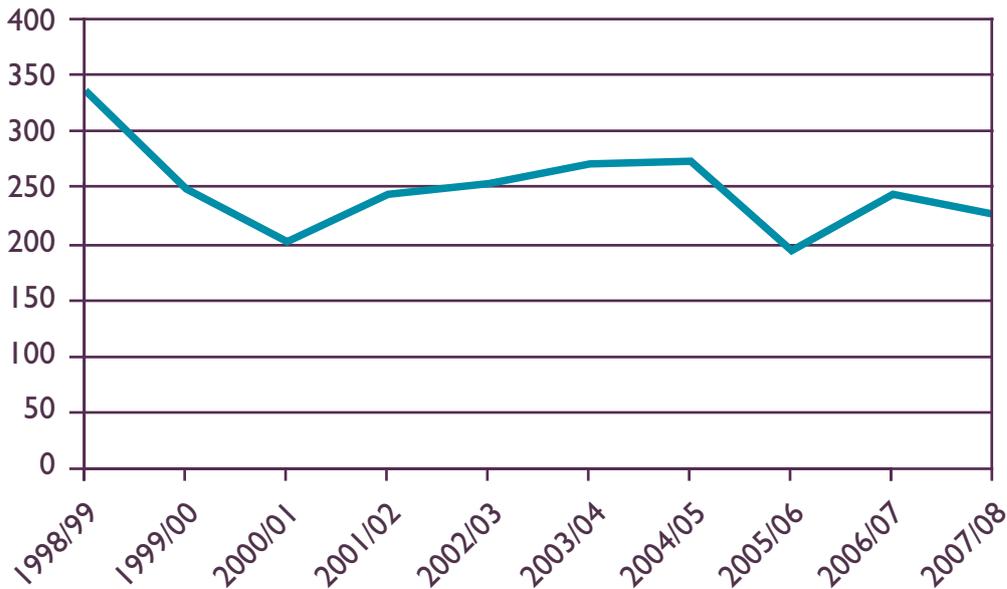
## SECTION TWO

Annual Report of the  
Assembly Ombudsman  
for Northern Ireland

# WRITTEN COMPLAINTS RECEIVED IN 2007/08

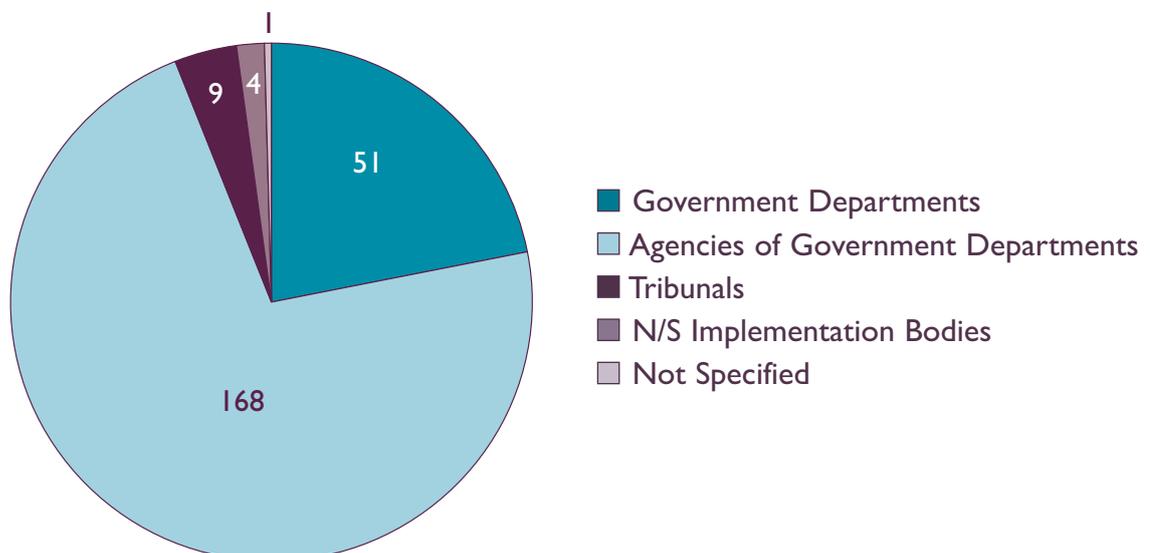
As Assembly Ombudsman for Northern Ireland I received a total of 233 complaints during 2007/08, 17 less than in 2006/07.

**Fig. 2.1: Complaints to the Assembly Ombudsman 1998/99 - 2007/08**



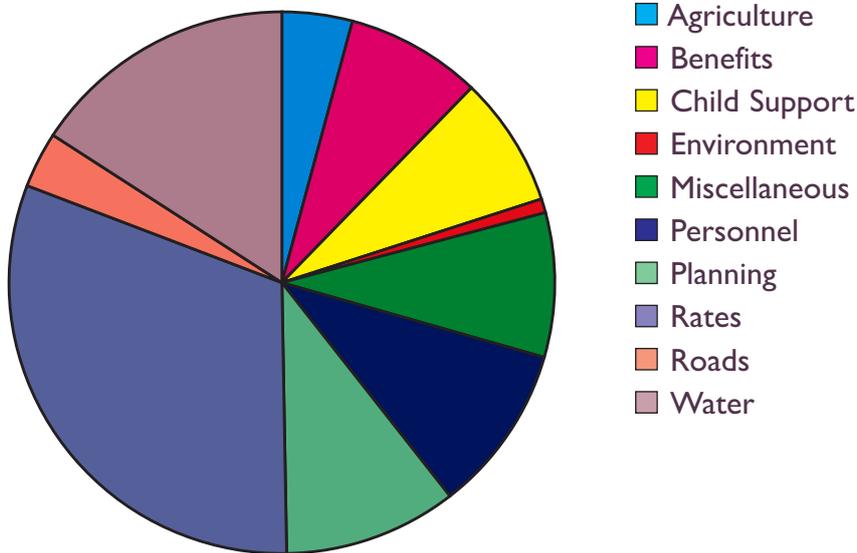
Under the Ombudsman (Northern Ireland) Order 1996, complaints made to me against government departments and their agencies required the 'sponsorship' of a Member of the Legislative Assembly (MLA). Of the 233 complaints received this year 103 were submitted in the first instance by an elected representative and 130 were submitted directly to me by complainants.

**Fig 2.2: Written Complaints Received in 2007/08 by Authority Type**



When their respective agencies are included, the Department of the Environment and the Department for Regional Development attracted most complaints, 90 against the former and 41 against the latter. Of these 121 related to their agencies, with the Planning Service (67) and Roads Service (32) giving rise to the largest number of complaints. In all 168 of the 233 complaints received in 2007/08 related to the agencies of government departments.

**Fig 2.3: Written Complaints Received in 2007/08 by Complaint Subject**



## THE CASELOAD FOR 2007/08

In addition to the 233 complaints received during the reporting year, 27 cases were brought forward from 2006/07 – giving a total caseload of 260 complaints. Action was concluded in 230 cases during 2007/08 and of the 30 cases still being dealt with at the end of the year 5 were at Validation Stage and 25 were under investigation.

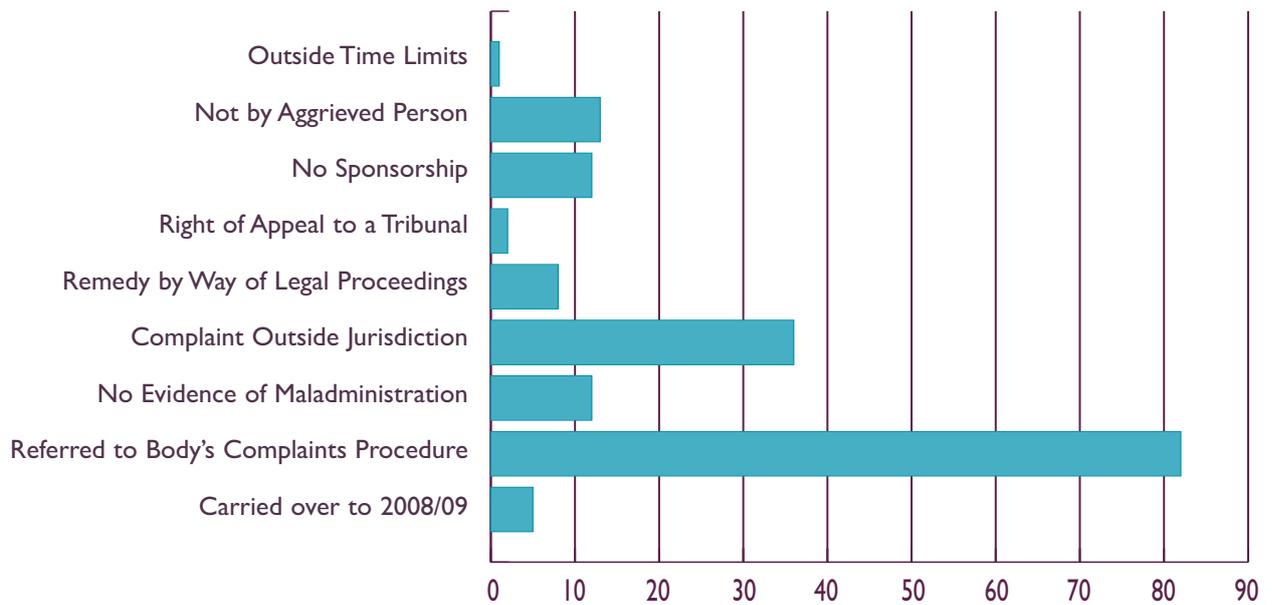
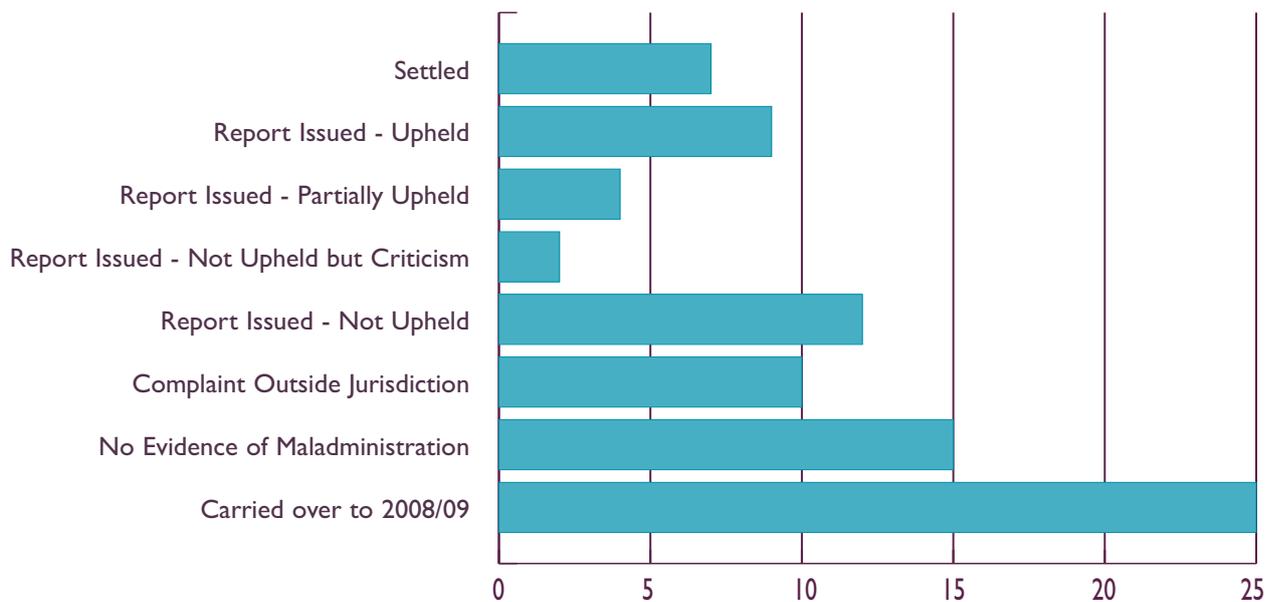
**Table 2.1: Caseload for 2007/08**

Cases brought forward from 2006/07	27
Written complaints received	233
<b>Total Caseload for 2007/08</b>	<b>260</b>

Of Which:

Cleared at Validation Stage	169
Cleared at Investigation Stage (without a Report), including cases withdrawn and discontinued	26
Settled	8
Full Report or Letter of Report issued to MLA	27
In action at the end of the year	30

The outcomes of the cases dealt with in 2007/08 are detailed in Figs 2.4 and 2.5.

**Fig 2.4: Outcomes of Cases Cleared at Validation Stage****Fig 2.5: Outcome of cases Cleared at Investigation and Report Stages**

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

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

The average time taken for a case to be examined, enquiries made and a full Report issued at Report Stage was 61 weeks.

27 reports of investigations (Full Reports and Letters of Report) were issued in 2007/08. Of these cases: 9 were fully upheld; 4 were partially upheld; 2 were not upheld but I criticised the Body complained against; and 12 were not upheld. In all of the cases in which I made recommendations for action(s) by the body complained against these recommendations were accepted by the body.

**Table 2.2: Recommendations in Reported Cases**

Case No	Body	Subject of Complaint	Recommendation
AO 54/04	Water Service	Personnel	Written apology & consolatory payment of £5,000
AO 101/04	DSD	Investigation of complaint against Housing Association	Written apology & consolatory payment of £2,000
200500421	Roads Service	Failure to provide adequate access to road	Written apology & consolatory payment of £8,000
200500490	Roads Service	Road Improvement Scheme	Written apology & consolatory payment of £8,000
200500621	Roads Service	Access to road	Written apology & consolatory payment of £8,000
200500961	Land Registers of NI	Complaints handling & lost documents	Written apology, consolatory payment of £3,000 & reimbursement of reasonable legal expenses.
200600841	Planning Service	Complaints handling	Written apology & consolatory payment of £1,000
200601029	Child Support Agency	Amount of arrears	Collection of approx £3,500 of Child Support Maintenance debt not to be pursued
200601092	DARD	Tie-Up-Aid	Consolatory payment of £2,000
200700099	DARD	Administration error	Written apology
200700231	Child Support Agency	Arrears and failure to enforce	Written apology and advance payment of Child Support Maintenance
200700312	Child Support Agency	Mismanagement of case	Written apology, consolatory payment of £5,000 & reimbursement of cost of obtaining copy documents.
200700673	OFMDFM	Delay in responding to correspondence	Review of procedures.

# SELECTED SUMMARIES OF INVESTIGATED CASES

## DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT

### **TB Restrictions and Testing Regime**

In this case the complainant claimed to have sustained injustice as a consequence of maladministration by DARD in relation to TB restrictions and a testing regime placed on his farming business. The complainant stated that he had delivered cattle to an abattoir and on the same day sent other cattle for export. DARD imposed a restriction order based on tuberculosis like lesions found on a cow which it said had been delivered to the abattoir. The complainant claimed this cow had been exported and not delivered to the abattoir and stated that this was borne out by documentation.

My detailed investigation of this complaint satisfied me that the complainant was mistaken in his belief that the cow tested by DARD had been exported. The evidence, which consisted of copies of a licence to export cattle, passport details and a report by an authorised veterinary inspector, indicated that the animal, which the complainant considered had been exported, had in fact been presented to the abattoir at this time. The volume of evidence, consisting of a statement from an abattoir staff member, the acceptance of the haulier, lairage documentation and details of a post mortem examination, all convinced me that the cow involved had been present at the abattoir and correctly identified.

Although overall I did not uphold the central element of this complaint, I did find reason to be critical of DARD for the altering of papers without consultation with the herd owner when presented with an undocumented animal at a meat plant. I recommended that a suitable remedy for any injustice suffered was for the Permanent Secretary of DARD to write to the complainant apologising for the failure and assuring him that staff have been instructed to ensure that management are contacted if there are any discrepancies in documentation when animals are presented at a meat plant. I am pleased to record that the Permanent Secretary accepted my recommendation. I also urged the complainant to resolve the impasse which had developed with DARD, by allowing testing to take place on his herd as soon as possible. **(200700099)**

### **Claim for Tie-Up Aid**

In this case, the aggrieved person alleged that as a consequence of DARD's erroneous interpretation of EU State Aid Rules on funding, prior to issuing a Press Release on 17 February 2006, he was denied the opportunity to claim Tie-Up Aid in excess of £40,000 in 2006. The complainant, who was a whitefish vessel owner, had received Tie-Up Aid in 2004 and 2005 for opting to tie-up his vessel from 14 February to 30 April each year in order to remove pressures on whitefish stocks during the cod spawning season.

My investigation established that DARD initially believed there was no further provision under EC State Aid Rules to award Tie-Up Aid to whitefish vessel owners in 2006. Although it subsequently transpired that aid could be paid for 2006, the Fisheries Minister decided that a further Tie-Up Aid Scheme for 2006 could not be justified due to competing

resource pressures. This was a discretionary decision taken by the Minister and in the absence of maladministration, I had no authority to question it. However, it was clear to me that DARD's Press Release of 17 February 2006 had misrepresented the EC State Aid Rules and the explanation provided was not sufficiently detailed for the complainant to understand the decision and, if necessary, to challenge it.

Following my recommendation, DARD issued a consolatory payment of £2,000 to the complainant in consideration of its failure to obtain legal advice and provide legitimate reasons behind the decision not to introduce Tie-Up Aid in 2006. In addition, DARD undertook to review the other cases of fishermen who had received Transitional Aid in 2005 to establish if they should receive a payment, on the same basis as I had determined in this case. **(200601092)**

### **Transitional Aid Scheme**

In this case, the complainant was dissatisfied with DARD's decision not to provide aid under the Transitional Aid Scheme 2004, and the way in which it subsequently dealt with her appeal against this decision. According to DARD, the complainant, who was a whitefish vessel owner, did not meet the eligibility criteria for aid under this scheme. Although this complaint centred on the eligibility criteria, my role was limited to examining how the appeal process was handled by DARD.

My investigation established that DARD had 3 stages in the appeal system. Although I identified a weakness in Stage 2 of the process, this did not prevent the complainant from proceeding to Stage 3 of the appeal process. Overall, I was satisfied that the complainant had been given the opportunity to avail of DARD's appeals procedure and therefore I could not uphold the complaint. **(200501029)**

## **DEPARTMENT OF THE ENVIRONMENT**

### **DRIVER AND VEHICLE AGENCY**

#### **Application for a Replacement Driving Licence**

In this case the complainant alleged that the Agency had been negligent in its duties associated with the processing of his application for a Northern Ireland driving licence to replace an existing Spanish licence. In particular, the complainant claimed that he failed to receive a replacement licence until 19 months after the submission of his application.

My examination of the documentary evidence, which I obtained in the course of preliminary enquiries, failed to persuade me that the Agency could reasonably be held responsible for the undoubtedly lengthy delay between submission by the complainant of his initial application and the eventual issue of a licence. I was satisfied that, in the course of protracted correspondence with the complainant and his legal representatives, the Agency had specified the information which it required in order to process the licence application. The evidence indicated that, for reasons which I was unable to identify, it took the complainant some 18 months to comply fully with the Agency's requirements. Although, as a consequence, I did not uphold the complaint, I identified a number of administrative deficiencies in the Agency's records handling and communication with the complainant,

which I asked the Chief Executive to address. The Agency responded by implementing additional staff training and providing a commitment that my comments would be taken into account in a review of information and data security. **(200700549)**

## PLANNING SERVICE

### Property Enquiry Certificate

This was a multi element complaint. One of the most serious accusations was that Planning Service (PS) was guilty of gross negligence by deliberately failing to notify the complainant's solicitor of possible enforcement action with regard to his home prior to him completing the purchase. The complainant said that, at the time his solicitor submitted a property enquiry to PS and prior to contracts being signed, PS had already issued one warning letter with a second warning letter about to issue. He said that the completed Property Enquiry Certificate made no reference to the fact that PS was investigating a possible breach of planning control or that warning letters had been issued. The complainant believed that this information should have been provided by PS on the Property Enquiry Certificate. My investigation revealed that the PS response fully complied with the specific wording of the Property Enquiry Certificate in that the issue of a warning letter did not constitute the serving of a notice or the taking of action under the Planning (NI) Order 1991. I could not, therefore, say that PS was guilty of gross negligence in deliberately failing to record the fact that it had issued warning letters in respect of the property which was the subject of the complainant's enquiries.

However, I was of the firm belief that a potential purchaser of a property had a right to expect a full and comprehensive reply and, in my view, that would have included any information that could potentially have compromised the completion of the purchase. Essentially the response needed to meet the spirit and intention of the enquiry. While I recognised that caution must be exercised in respect of divulging information which could hinder the pursuit of enforcement action or contravene the Freedom of Information and Data Protection Acts, I believed that a potential purchaser had a right to be made aware of the full planning history and current status of the property in question. Only then could the enquirer make a decision whether to proceed with the purchase. I recommended that PS reconsider the wording on the Property Enquiry Certificate with a view to enabling the recording of action other than that taken solely under the Planning (Northern Ireland) Order 1991.

The Chief Executive assured me that PS was continuing to review the matter. Unfortunately, he said, this was likely to require further detailed consideration of a number of key issues and it may not be resolved in the short term.

In my investigation of this complaint I also criticised PS for:

- Long periods of inactivity and delay in following through on threatened enforcement action.
- Delay and inaction in the processing of the complainant's application for a Certificate of Lawfulness.
- Providing incorrect advice to the complainant at a meeting.
- Failing to respond to the complainant's requests for a meeting.

I regarded these administrative failures as constituting maladministration which caused the complainant the injustice of prolonging the uncertainty about whether or not his home would be declared lawful, in addition to frustration and annoyance.

I did not uphold further allegations that:

- PS had adopted an unreasonable approach in its processing of an outline application for a neighbouring property or that it had failed to neighbour notify the complainant in respect of the subsequent reserved matters application.
- PS had deliberately delayed the issue of a Certificate of Lawfulness in order to benefit the developer in gaining planning permission for the additional dwelling to the rear of the complainant's home.
- PS should have informed or invited the complainant to a site meeting which had been requested by the Council.
- PS was guilty of unprofessional conduct.
- There was a relationship between PS and the builder.

I recommended that the Chief Executive should issue to the complainant a letter of apology for all of the failings identified by me together with a consolatory payment of £1,000. I am pleased to record that the Chief Executive accepted my recommendation. **(200600841)**

### **Planning Application for a Neighbouring Property**

The complaint centred on the handling of a planning application for a neighbouring property. The complainant stated that PS failed to give adequate consideration to his objections relating to its impact upon his privacy, the Case Officer failed to visit his home to assess the situation from his perspective and failed to give any reasoned argument for rejecting his objections in the Case Officer's Report.

From my careful study of documentation relating to the administrative process leading to the decision to grant planning permission, I was satisfied that PS did take into consideration objections from neighbours, including those from the complainant, regarding intrusion of privacy. Any potential overlooking or overshadowing issues were considered and documented, but overall were not felt to be so significant a factor as to warrant the refusal of planning permission. Overall, I found no evidence of maladministration in the processing of the application and, in all the circumstances, I had no grounds on which to question the professional judgement underpinning the discretionary decision to grant approval. I did however comment that from my reading of the Development Control Officers (DCO) Report, it was understandable, from the complainant's perspective, how he gained the impression that his objections were treated almost as an afterthought, with his property being mentioned just once. It did give me some concern, that an acknowledged objector to a proposal did not appear to have his particular concerns adequately addressed, and that the reasoning behind a decision to recommend approval in the face of such strongly held objections was not more fully documented. I urged PS to ask its professional planning staff to remain alert to the importance of recording clearly and adequately the reasons for the determinations made in the face of objectors concerns.

I also criticised PS for its failure to neighbour notify at the appropriate time and to record the content of telephone conversations, and recommended that PS should make objectors aware of the posting of the list of applications to be considered by the Planning Committee

of Belfast City Council on the PS website 6 days in advance of a Planning Committee meeting. I also recommended that PS consider introducing the practice of leaving a note when visiting an objector's property and no one is available, stating that an officer had called, giving the name of the officer involved and a contact telephone number. However, taking all the circumstances into account, overall I did not uphold this complaint and was satisfied that as a consequence of visits made to the site, when an area adjacent to the boundary of the application site and its relationship to the complainant's home was viewed, taken together with a study of the plans and photographs, that PS had sufficient knowledge of the layout and orientation of the area on which to base its judgement. **(200601167)**

### **Alleged Trespass by Planning Officers**

The complainant alleged that planning officers had trespassed and taken photographs of his home without his knowledge, awareness and/or consent.

My investigation revealed that the site visit and the taking of photographs was as a direct result of complaints to PS made by the complainant in relation to various matters including the question of neighbour notification, alleged breaches of planning control at a neighbouring property and the installation of first floor windows at another neighbouring property which it was claimed were overlooking the complainant's property.

I established that Article 84A of the Planning (Amendment) (Northern Ireland) Order 2003, which amended the Planning (NI) Order 1991, headed "Rights to enter without warrant", entitles planning officers to enter any land at any reasonable time for, amongst other things, "to ascertain whether there is or has been any breach of planning control on the land or any other land." Furthermore, by his own admission, the complainant's wife had spoken to the planning officers and gave her consent for them to access their property. I was, therefore, somewhat confused as to why it was subsequently alleged that the officers were guilty of trespass. In my view, had there been cause for concern it would have been best voiced at the time. That said, I was aware from previous investigations that it is custom and practice for planning officers to take photographs whilst on site and I found no specific requirement for an officer to seek permission from a property owner in this respect. In the circumstances, I did not find anything sinister in the taking of photographs of the complainant's home. **(200700181)**

### **Unauthorised Landfill**

The complainant wrote to me about a landfill operation adjacent to land which he owned. He claimed that PS had not acted in a prompt and efficient manner to stop the operations and he felt that remedial action was too little too late.

I established that the history of this case dated back to 2003 when PS became aware that landfill operations had ceased and the land had been sold. At that time PS took the view that it was not expedient to pursue the original landowner to remove the unauthorised landfill and the complainant was informed of its decision. In December 2005, the complainant believed that dumping, in the form of lorry tyres, had recommenced on the site. However, it transpired that the tyres had been on site for some time and were uncovered as a result of ongoing drainage work. PS made the owner aware that the tyres should be removed. As this required their removal to an approved facility to undertake the work of disposal, PS recognised that the current owner must be given adequate time to

make such arrangements. I noted that, in his letter to the complainant dated 23 January 2007, the Permanent Secretary of the Department of the Environment confirmed that all visible tyres on the land had been removed to the landowner's yard for removal to a specialist facility. I also noted that, with regard to the restoration of the land, in his letter to the complainant dated 11 September 2006, the Chief Executive of PS stated that the restoration carried out so far was acceptable and that it was not necessary to further import topsoil and sow in grass seed.

In this instance, PS made a discretionary decision not to pursue the original owner of the land to remove the unauthorised landfill, but to attempt to ameliorate matters with the co-operation of the new owner and without recourse to the initiation of formal statutory procedures. Whether or not PS should pursue its enforcement powers available under planning law is a matter which involves the exercise of professional judgement leading ultimately to the taking of a discretionary decision by PS. I have no remit to question the merits of a discretionary decision taken in the absence of maladministration and I found no such evidence. While I recognised the complainant's frustration and annoyance at the time taken to resolve matters, I was of the view that the action chosen by PS was not unreasonable; nor did I find any evidence that the process was attended by maladministration.

**(200700021)**

### **Refusal to Refund Fees**

The background to this complaint was the service of an enforcement notice in relation to tanks the complainant used for a home heating oil business. He had submitted a planning application along with the required fee, however the application required amendment by his agent and the original papers were returned. The complainant stated that he was led to believe that the application would be cancelled and his fee refunded. In the meantime the enforcement action continued, the complainant was fined in Court and the oil tanks were removed. After correspondence and enquiries, he was informed that PS had not considered his planning application cancelled and refused to return the fee. The complainant stated that the application had been put before the local Council, with an opinion to refuse, despite the original application papers having been returned one year before.

My enquiries revealed that the complainant's planning application had been received, validated and processed to an advanced stage and in these circumstances PS considered that a refund would not be appropriate. A fee is not normally refunded once an application has been validated. Article 3(3) of the Planning (Fees) Regulations (Northern Ireland) 2005 states that a refund should be made if an application is rejected as invalid or if sums are not actually required by the regulations, (in other words there has been an overpayment). A fee may be considered for refund after validation if PS considers that it was responsible for an application being made in error (for example, where it has provided incorrect information). I accepted PS's point that a planning fee is charged to cover the costs of processing a planning application. In this case a valid planning application was submitted and advertised, a site inspection took place and consultation was carried out. In the absence of the receipt of requested information and following the completion of the enforcement action, I considered that PS was bound to determine the application on the information available at that point in time. I also noted that the complainant had been given the opportunity of withdrawing his application prior to PS's presentation of an opinion to refuse to the local Council, but that he failed to avail of this opportunity.

The decision as to whether or not a refund of fees should be made is one in which PS is entitled to exercise an amount of discretion, against the background of the limited circumstances in which the Regulations allow for a refund. From my careful examination of all the facts and circumstances of this case, I found that I had no reason to question the discretionary decision not to make a refund in this case. I do not consider that I had grounds to regard the decision made as being so wholly unreasonable that no reasonable person would take it in light of the circumstances. In the absence of evidence of maladministration by PS in reaching its decision I did not uphold the complaint. **(200601246)**

## DEPARTMENT OF FINANCE AND PERSONNEL

### **Alleged Mishandling of Transfer Application**

In this case the complainant believed that she had been treated very unfairly by DFP in its handling of her transfer application from the Home Civil Service (HCS) back to the Northern Ireland Civil Service (NICS). She claimed that DFP had failed to follow NICS procedures, particularly in relation to pay and grading. The key issue in this complaint was the complainant's interpretation of the terms of transfer between the HCS and the NICS. She believed she was entitled to retain her HCS salary, which was equivalent to NICS, EO I grade, on return to the NICS at AO grade. What actually occurred was that, having been offered and accepted a post at AO level, the complainant's salary did not continue at EO I level but was reduced in line with that of the AO grade. I learnt that there is no right of transfer between the various Crown Services. However, having applied for a transfer on compassionate grounds, the complainant's request was granted by DFP. The document setting out the arrangements was a Dear Establishment Officer letter (DEO) issued in July 1998 to NICS Establishment Officers to ensure consistency of approach across the various departments. The DEO was not made available to staff. DFP informed me that the procedures as set out in the DEO were designed to cater for transfers between Crown Services at the same level. The essence of such matters is of a discretionary nature and the fact that the DEO was issued only as guidance to Establishment Officers and was neither intended for nor circulated to staff in general led me to conclude that the interpretation of the DEO was a matter substantially for the issuing department (i.e. DFP) to determine. In my view, the DEO did not have the standing which the complainant believed it to have. I could not say that I found DFP's interpretation of the DEO to be either perverse or so unreasonable or at variance with what any reasonable decision maker was likely to have decided that I could have considered the interpretation itself to be maladministrative.

The complainant also claimed that DFP had, contrary to the requirements of the DEO, deliberately failed to forward her application for transfer to the NICS at EO I grade to all departments. I found that DFP had focused on resolving the complainant's pressing need for a transfer and she was given a choice with regard to the AO post. DFP had advised her that if she decided not to accept the AO post her papers would be circulated to all NICS departments. I found that the complainant had made an informed decision at that time and, by accepting the AO post, this concluded DFP's search for a post. There was, therefore, no requirement to circulate her papers to other departments.

I did not uphold a further allegation that, contrary to the requirements of the DEO, DFP had not obtained the necessary confirmation that all HCS departments with offices in Northern Ireland had been contacted to find a suitable vacancy for the applicant. **(200501242)**

## LAND REGISTERS OF NORTHERN IRELAND

### Loss of Registered Documents

The complainant in this case was dissatisfied with the inability of Land Registers of Northern Ireland (LRNI) to meet repeated requests, made during a nine-month period, for ‘two important legal documents’ she required for a High Court land dispute case. The complainant said she failed to understand how LRNI could lose the two documents ‘without trace’ and she considered the loss constituted gross negligence and incompetence. The complainant was further aggrieved about the way in which LRNI had handled representations made by her and on her behalf concerning the lost documents and, in particular, about LRNI’s handling of the complaints she submitted to it under its Internal Complaints process.

I was pleased to note that, following my involvement in this case, LRNI located the missing documents and issued a copy of these to the complainant. I was further pleased to note that the complainant found my role and intervention in her case helpful in resolving this particular element of her complaint.

As a result of my investigation of this case I established that when LRNI receives a request for documents it initiates a standard request and retrieval process. Having received the complainant’s request for the two documents she needed, LRNI requested the document from its off-site archive. In response, LRNI was informed that one of its officers had retrieved the documents 10 months earlier and they had remained out of the archive since that time. However, it subsequently transpired that the documents needed by the complainant were found among LRNI’s archive records, having been misfiled by contract staff. My investigation further established a failure by an officer in LRNI’s Document Archive Team, who had earlier retrieved the documents, to record their subsequent return to the archive.

I regarded LRNI’s failure to track the movement of the registered documents concerned from its offices in Belfast to its off-site archive as constituting evidence of a systemic failure, which warranted my clear criticism. I considered this systemic failure to have been compounded by the failure of LRNI’s contract staff at its archive to undertake a cross check of documents received against those listed by LRNI as having been returned, as a consequence of which receipt of the documents at the archive was not recorded. As a result of both failures, LRNI was informed that the documents needed by the complainant were in its offices, which proved not to be the case, and its staff were subsequently involved in fruitless searches of its offices in an effort to locate the lost documents.

My investigation also established a number of instances of maladministration by LRNI in the form of delays and various failures, including a failure to keep the complainant regularly informed of its efforts to locate the documents she required along with details of what those efforts involved.

I also found it necessary to criticise LRNI for its handling of this case under its Complaints Procedure. I found it deeply regrettable that a member of staff against whom an element of the complainant’s grievance was directed, was given responsibility to investigate the complaint and, subsequently, to respond to it. I considered that an independent and thorough examination of the complaint by LRNI, at a senior level, would have been

appropriate and would have revealed the full circumstances of the case along with the failures I had identified.

I recommended that the complainant should receive, by way of redress, an appropriate letter of apology from the Chief Executive along with a consolatory payment of £3,000. I also recommended that LRNI should reimburse the complainant for legal costs, amounting to £149.81, she had incurred in her efforts to have her complaint resolved, prior to requesting my involvement. I was pleased to record that the Chief Executive accepted my recommendations. The Chief Executive also informed me of a number of measures LRNI had introduced in order to improve the quality of its services to customers. I noted and welcomed these measures. **(200500961)**

## LAND & PROPERTY SERVICES

### Revised Revaluation Figure

The complainant in this case claimed to have suffered injustice as a result of maladministration by Land & Property Services, formerly the Rate Collection Agency (RCA). The complainant stated that the maladministration was demonstrated by an avoidable delay, faulty procedures in actioning a revised revaluation figure on his property within a reasonable timescale and unfairness in seeking retrospective payments 14 months later.

In response to my enquiries the Chief Executive of the RCA accepted that the RCA's standard of service to the complainant fell below that which ratepayers are entitled to receive, as there was a substantial delay in inputting the correct data concerning the complainant's property on the RCA computer system. However, the RCA is legally obliged to seek collection of the rates which were eventually correctly assessed. The RCA apologised to the complainant and made an offer to enter into a mutually acceptable arrangement regarding the payment of arrears due.

The purpose of any investigation by me of the issues outlined in a complaint is to determine if evidence of maladministration exists which would warrant an in-depth investigation. After giving the matter careful consideration, I did not believe that such evidence had been established in this case. Having examined the documentation and correspondence I found no evidence of maladministration in the decision to issue a revised rates bill to the complainant to include an additional sum. I was provided with a copy of a legal opinion obtained by the RCA from the Departmental Solicitors Office and it was clear to me that the RCA had acted in accordance with the legal advice received. While I could sympathise with the complainant, it was undoubtedly the case that the legal advice given to the RCA was that, while it was unfortunate and regrettable that there had been a delay in the rate demand being issued, this did not alter the occupier's liability. In relation to the delay in inputting the correct data on the RCA system, I acknowledged the Chief Executive's acceptance that this represented a standard of service below that which the complainant was entitled to expect but I considered that the apology and arrangement for payment already offered constituted adequate redress for any injustice suffered.

**(200601409)**

## DEPARTMENT FOR REGIONAL DEVELOPMENT

### ROADS SERVICE

#### **Handling of the Construction of Bypass and Trunk Roads and detrimental effect on properties**

Complaints were received from residents whose properties were affected by the construction of a Bypass. It was their contention that due to Roads Service's (RS) actions they no longer had direct access from their properties to the main road. This affected their vehicle access and the cul de sac, which had been created as a result, was a source of annoyance caused by the 'behaviour' of people parking in the lay-by and increased litter. The complainants were very annoyed and disappointed at the lack of consultation by RS regarding the realigned road which meant that they would no longer have direct access to the road from their driveway.

I should point out that although my role did not allow me to question the professional/technical decisions by RS engineers in the construction of the roads scheme, nevertheless, I did consider the lack of consultation regarding the realigned road. My investigation revealed that it was always the intention of RS that the residents would continue to have direct access to the main road. I carefully noted the comments by RS that the terrain at the area where the complainants resided was particularly difficult. Problems arose when the earthworks were at an advanced stage and deep excavation was required. At this stage RS was assured by the Contractor that the revised design of the road did not compromise the access from the complainants' properties. It became apparent this was not so when the earthworks were at an advanced stage. My investigation also confirmed that problems on this project could be traced back to an initial aerial survey which was carried out on the area over ten years previously.

In my consideration of the facts of the complaint it was the position that RS followed their procedures and used their professional discretion, as they were entitled to do, in dealing with issues arising during the construction of the Bypass and adjacent trunk roads. Nevertheless, my investigation clearly showed that RS failed to carry out consultation with the residents before altering access. Consultation was only opened up when the earthworks were at an advanced and irreversible stage. RS also acknowledged that consultation was inadequate. I pointed out that the public expect, and are entitled to, a high standard of customer service and, in particular, an appropriate level of consultation from government departments and agencies. It is both necessary for RS to be open and transparent when they make these decisions and essential to communicate with those who will be directly affected by such decisions. I had no doubt that the action of RS constituted maladministration which caused the complainants considerable annoyance, inconvenience, frustration and disappointment. RS accepted my recommendation that it should issue a letter of apology to the complainants, together with a consolatory payment of £8,000 in recognition of the substantial injustice it had caused.

At the time of the complaint RS were anxious to complete works to improve the condition of the current access to the properties. This work access also restricted access to the properties by the Council's refuse collection lorry. Due to the steep gradient at the

entrance to the cul de sac the Council's standard bin lorry could not access the hill. As a consequence the complainants had to 'bag and tie' all their weekly rubbish in plastic bags. With regard to the outstanding works I did not have the authority to impose a solution as this had to be agreed between the complainants and RS professional engineers. I therefore encouraged the complainants, in consultation with their MLAs, to come to an agreement with RS to have works carried out to improve the condition of the current access road to their properties. I expressed my concern that the complainants had to go to such lengths to have their rubbish collected each week and would hope that this issue would be taken into account in any agreed solution to the access to their properties. I also welcomed the assurance by the Chief Executive that RS was keen to resolve this issue and assured the residents, in correspondence, that when a satisfactory layout had been agreed between all parties, RS would arrange for the works to be implemented without delay.

It was also the complainants' contention that their properties had been devalued as a result of the realigned road which left them in a cul de sac location. I had to advise the complainants that I had no role to play in their perceived devaluation of their property. I advised them that this matter should be addressed through negotiations between the residents' representatives and the Valuation & Lands and Rate Collection Agencies.

**(200500421; 200500621; 200500490)**

## DEPARTMENT FOR SOCIAL DEVELOPMENT

### Handling of a Complaint

The complaint centred on DSD's handling of a complaint made about Oaklee Housing Association (the Association) while the complainant had been a tenant in one of its properties. In particular, the complainant was aggrieved at DSD's decision to amend the report of its investigation into the actions of the Association and to withdraw its recommendation that the Association should pay a consolatory payment of £250.

DSD carried out an investigation and issued a Report to the complainant and the Association. The Report made a finding of harassment against the Scheme Coordinator and recommended that the Association apologise and pay a consolatory payment of £250 to the complainant.

Following representations from the Association, DSD decided that the conduct of the investigation did not support the finding of harassment and issued a letter to the Association, which it copied to the complainant, advising the finding of harassment had been amended and the recommendation to pay a consolatory payment had been withdrawn. In particular the Association was concerned that the Scheme Co-ordinator had not been interviewed. The complainant, however, was not given any meaningful explanation as to the reasons the Report was amended or the recommendation withdrawn.

The focus of my investigation was on DSD's actions following the issue of the Report although, inherently, it was necessary to examine its decision to amend the Report and withdraw the recommendation. I too concluded that it had been a failing in the investigation not to interview the Scheme Coordinator who was a key witness. While DSD

may have been correct to withdraw the recommendation where there was doubt over the evidence, I believed it was incorrect not to carry out a further investigation to resolve the allegation. The complainant had no other recourse to complain about the alleged harassment and being forced out of the Association's accommodation. DSD had an obligation to fully investigate the complaint against the Association which it failed to do.

I also found that the complainant was not kept informed of developments after the issue of the Report and the right afforded to the Association was not afforded to him as he too had objected to the conduct of the investigation.

I recommended that DSD formally apologise for its handling of the matter and make a consolatory payment of £2,000. **(AO 101/04)**

## CHILD SUPPORT AGENCY

### Child Support Maintenance

The aggrieved person complained that over the years the CSA had failed to secure regular payments of Child Support Maintenance for her child despite having obtained several Liability Orders against the Non Resident Parent (the NRP) for arrears of maintenance. As a result she was owed Child Support Maintenance in excess of £12,000. She further complained that although the NRP had failed to attend Court on a number of occasions in order to provide details of his income, the CSA had not taken committal action against him. Other issues of complaint included confusing information from the CSA regarding which office was dealing with her case; lengthy delays in processing her case; and failure to reply to her letters and return her telephone calls.

Firstly, I wish to put on record that having made written enquiries of the CSA's Chief Executive about this complaint, I finally received the requested information from the Senior Operations Manager some three months after the initial enquiry was made, even though my original letter and the reminder letter were addressed to the Chief Executive. I therefore experienced first hand the failure and delay in communication that was referred to in the complaint. Consequently, I was able to empathise with the sense of frustration felt by the aggrieved person in her dealings with the CSA.

In my investigation of the case I noted the number of instances where the CSA acknowledged maladministration in its handling of this case. It was clear that over the years the NRP had blatantly endeavoured to avoid his legal responsibility to pay Child Support Maintenance and that he had demonstrated a flagrant disregard for the CSA's enforcement process. I formed the view that the NRP's success in this regard was facilitated by the demonstrable lack of resolve and commitment by the CSA in applying the full range and weight of the legal recourse available to it to proactively pursue enforcement of the child maintenance debt.

My investigation identified serious deficiencies by the CSA in the decision making and processing of the case. There were delays in taking action, a failure to document and return telephone calls to the complainant, a failure to reply to her letters of enquiry and a failure to explain the responsibilities of each CSA office in dealing with her case.

To reflect the extent of maladministration in the case and the gravity of its impact on the complainant I recommended that the CSA pay the complainant the total amount of Child Support Maintenance which was owed to her, plus interest, which totalled some £14,000, and that it actively pursued recoupment of these monies from the NRP by whatever means available to it. I further recommended that the CSA Chief Executive should issue the complainant with a letter of apology, together with a consolatory payment of £1,000. I am pleased to record that the Chief Executive accepted my recommendations. **(200700231)**

### **Exceptionally Poor Standard of Service**

The complainant in this case raised several issues concerning the actions of the CSA over a period of time. One of the issues concerned the CSA's failure to implement a Child Support Commissioner's decision dated 27 April 2005. The CSA acknowledged its failure, offered its apologies and said that urgent action had been requested to ensure that the complainant's account was amended accordingly. However, at the time of issuing my report the complainant's account had not been amended. I found the CSA's failure in both respects to constitute maladministration. The fact that the complainant had incurred a substantial debt due to this maladministration represented a very significant injustice to him and warranted serious criticism.

The CSA acknowledged and apologised for giving incorrect information to the complainant's ex partner and admitted to accidentally closing his case on 2 October 2003. It was also acknowledged that the complainant had never been informed of the closure of his case and the CSA had continued to make deductions from his salary by way of a Deduction from Earnings Order. Furthermore, from October 2003 to 2007, although the complainant continued to pay maintenance, it was never passed on to his ex partner. For four years the CSA deprived the complainant's ex partner of money she was entitled to receive and, during that time, the complainant was perceived by her as not contributing to the care of the child which was clearly untrue. I considered the failing to represent a very serious and significant injustice to the complainant.

The CSA also admitted and apologised for the fact that the complainant had not been provided with an accounts breakdown, or indeed any further information since April 2007, and that since the case was transferred to the clerical team in Bolton no progress had been made to ensure that the case was brought up to date. The CSA further admitted that the case should have been monitored more robustly. However, in its response to me, the CSA stated that the manager responsible for the case had been asked to ensure that there were no further unnecessary delays on the part of the CSA in progressing this matter and to keep the complainant advised of the position. I was, therefore, dismayed to learn that two months later the complainant had still not received an accounts breakdown nor had his case been brought fully up to date. I found that the CSA had failed completely to demonstrate any sense of urgency or commitment in seeking to resolve the complainant's case. I considered undue delay, particularly in an issue of such fundamental importance to the complainant, to constitute further maladministration and compounded the injustice he had sustained.

I also found that, having contacted the number and written to the address he had been given by the CSA, the complainant was not provided with any information on his case nor did he receive a reply to his correspondence. This was yet another example of what I regarded as an indifferent and therefore discourteous approach by the CSA to its customers.

The CSA subsequently lost the complainant's case papers which meant that no further action could be taken until he had assembled details of information provided to the CSA some years earlier.

This was one of the worst cases I had investigated in terms of the many and significant failings by the CSA which I found cumulatively to have constituted gross maladministration, causing a clear injustice to the complainant in terms of stress, annoyance, frustration, the impugning of his character and being left with a significant debt without any opportunity to manage that situation.

By way of redress, and bearing in mind that the complainant's case had still not been concluded, I recommended that the CSA should:

- absolve the complainant from any debt which he had, in ignorance, accumulated due to the CSA's manifest failure – when that debt was finally determined;
- make an advance payment of arrears to the Parent with Care;
- make a consolatory payment of £5,000 to the complainant;
- definitively determine the complainant's liability no later than three weeks from the date of the report;
- in the event of failing to make a definitive determination within that period, to pay the complainant a further amount of £300 and £300 thereafter in respect of each week of further delay;
- make a payment of £94.30 to the complainant to cover the cost of providing copies of mortgage statements dating from April 2002 due to the CSA having lost his case papers.

I also considered that a letter of apology was warranted from the Chief Executive of the CSA to the complainant. I am pleased to record that the CSA agreed with my findings and recommendations and promptly made a definitive determination of the complainant's liability. **(200700312)**

### **Misinformation Regarding Treatment of Student Loan**

The complainant stated that, in 2003, he was informed by the CSA National Helpline that his student loan would not be taken into account when calculating the amount of Child Support Maintenance (CSM) he was liable to pay, even if he was also working part-time and receiving wages. He had subsequently received a CSA booklet which confirmed the advice he had been given. However, when he was informed of the rate of his CSM liability, in May 2005, his earnings and his student loan had been included in the CSM calculation. Furthermore, the CSA backdated his liability for maintenance to February 2003 which meant he owed CSM arrears of approximately £5,000. The complainant stated that, had he been provided with the correct information initially regarding the treatment of his student loan, he would not have taken up part-time employment.

It is important to point out that the CSA National Helpline is not within my jurisdiction as it comes within the remit of my colleague the Parliamentary Ombudsman in England. During my investigation I established that a student loan can only be disregarded as income for the purposes of calculating CSM liability where the individual has no other source of income. However, I noted that the CSA guidance booklet relating to the treatment of student income could be open to misinterpretation. I also noted that the complainant, who was a full time University student, had ceased his part-time employment when he

discovered that his student loan would be taken into account as income for child support assessment purposes. I further established that there was a lengthy delay by the CSA in assessing the complainant's CSM liability which I regarded as wholly unjustified, constituting maladministration. The consequences of the delay resulted in 78 weeks income from the complainant's student loan falling to be assessed in addition to his part-time earnings. The additional arrears thereby created constituted an injustice to the complainant.

I established that, notwithstanding the maladministration which occurred, the complainant's CSM debt which had accumulated remained payable in accordance with the relevant CSA legislation. Furthermore, the CSA has no power to write off any element of the CSM debt. However, I am pleased to record that, in recognition of the maladministration and injustice, the CSA's Chief Executive agreed to exercise discretion not to pursue collection of the element of the debt created by the unjustified delay, subject to the complainant establishing and maintaining an acceptable CSM compliance record. This effectively relieved the complainant of some £3,500 of debt which I regarded as an appropriate remedy in the circumstances of this complaint. **(200601029)**

## SOCIAL SECURITY AGENCY

### Disciplinary Procedures

The complaint was in relation to disciplinary procedures taken against him by the SSA which resulted in the issue of a formal written warning. The complainant contended that disciplinary proceedings were initiated only after he filed formal complaints against his line manager and that disciplinary proceedings would never had started had he not filed these complaints. He complained that the SSA acted against proper procedures in that no effort was made to ascertain whether he suffered from any underlying health or personal problems which might be affecting his conduct or behaviour and that complaints about him from members of the public and other staff members were not dealt with fairly or promptly.

Having investigated this complaint and studied background papers, I did not consider the discretionary decision of the SSA, given the serious nature of the events complained of, to initiate disciplinary action, to be unreasonable. I was satisfied that the entire disciplinary process was properly documented and that the decision to impose a disciplinary penalty was a discretionary decision for the SSA, as an employer, to take. I noted that the complainant availed of the SSA appeal procedures to Chief Executive level and, represented by his trade union, had a full opportunity to present his case and any mitigating factors. I was satisfied that he had ample opportunity to make known the full detail and background of his case and to fully inform those hearing his appeals. I did not uphold the complaint that disciplinary proceedings were only commenced after he filed formal complaints against his line manager. The evidence identified that such action was contemplated and commenced well before this date. With regard to the issue of the state of the complainant's health being taken into account, I had no doubt that this issue was considered and noted that the disciplinary penalty decided upon was the minimum level referred to in the staff handbook. Having considered all the information available to me, I did not identify any shortcomings in the process that could sustain the argument that the decision was flawed and I did not uphold the complaint. **(200601445)**

# SELECTED SUMMARIES OF CASES SETTLED

## **Child Support Agency**

The complainant was unhappy that the CSA had insisted on the recovery of arrears totalling nearly £3,000 despite those arrears arising directly as a result of a number of its own errors. My enquiries revealed that the CSA's Chief Executive had decided the arrears should not be collected. However, the complainant had already paid nearly £300 towards the debt. In the circumstances, I took the view that if it was appropriate for the CSA to forgo collection of the remaining arrears, then monies already paid by the complainant should be repaid to him. **(200601239)**

## **Department for Regional Development**

The complaint in this case related to the complainant's employment position following a career break from the Department's Water Service and her wish to return to the Northern Ireland Civil Service (NICS) rather than to the newly formed Northern Ireland Water Limited. In response to my enquiries the Permanent Secretary of the Department reviewed the case and decided to permit the complainant's return to the NICS at the end of her career break. **(200700136)**

## **Planning Appeals Commission**

A lady complained that, because inaccurate information regarding the outcome of her appeal had appeared on the Commission's website, she was led to believe that her appeal had been upheld. However, she subsequently received a letter from the Commission which stated that her appeal had, in fact, been dismissed. My investigation revealed that the Commission had recognised and acknowledged the mistake which occurred and had provided unqualified apologies to the complainant. In these circumstances I decided that there would be nothing more to be gained from further investigation of the complaint. **(200700317)**

## **Department of the Environment**

This complaint concerned the Department's handling of an application for a post and a subsequent appeal. Whilst I found no evidence of maladministration in the Department's handling of the complainant's application, I did consider that its communication with the candidate during his appeal was not conducted at a standard I would expect of a public body. As a result the Permanent Secretary of the Department agreed to issue the complainant with a written apology for the poor communication in this case. **(200700520)**

## **Child Support Agency**

A lady complained about irregular payment of child support received from the CSA and a failure by the CSA to adequately respond to her concerns. In its response to my enquiries the CSA acknowledged and apologised for a number of significant deficiencies in its handling of the complainant's case. In addition the CSA calculated that an advance payment to the complainant of arrears amounting to £20,534.74 could be made. I secured the CSA's agreement that an offer of advance payment would issue to the complainant as a matter of urgency. **(200700522)**

## Land & Property Services

This complaint related to the way in which the LPS processed a refund to the complainant of overcharged rates. As a result of my enquiries of the Chief Executive, LPS reviewed and subsequently reduced the valuation of his property. This reduction was applied from 1 April 2003 and the complainant received a further refund of rates from that date. In addition the LPS agreed a payment method with the complainant for the 2008/09 rates and the Chief Executive issued a written apology together with an ex-gratia payment of £1,500 for the errors that had been made in the handling of the case. **(200700739)**

## Planning Service

The crux of this complaint was that PS failed to inform the complainants that a planning application had been received for approval of reserved matters in relation to an extension to an existing retail unit in close proximity to their home in Newtownabbey. In response to my enquiries the Chief Executive agreed that the Divisional Planning Officer would write directly to the complainants apologising for PS's initial failure to neighbour notify them. **(200700741)**

# STATISTICS

**Table 2.3: Analysis of Written Complaints Received in 2007/08**

	Brought forward from 2006/07	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/08
Government Departments	8	51	35	2	8	4	2	8
Agencies of Government Departments	19	168	123	5	17	9	12	21
Tribunals	0	9	7	1	1	0	0	0
N/S Implementation Bodies	0	4	3	0	0	0	0	1
Non – Specified AO Body	0	1	1	0	0	0	0	0
<b>TOTAL</b>	<b>27</b>	<b>233</b>	<b>169</b>	<b>8</b>	<b>26</b>	<b>13</b>	<b>14</b>	<b>30</b>

**Table 2.4: Analysis of Written Complaints Against Government Departments**

	Brought forward from 2006/07	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/08
DARD	3	11	2	0	3	2	1	6
DE	0	5	4	0	0	0	0	1
DEL	0	2	2	0	0	0	0	0
DETI	0	1	1	0	0	0	0	0
DFP	2	6	5	0	2	0	1	0
DHSSPS	0	7	6	0	1	0	0	0
DOE	1	1	1	1	0	0	0	0
DRD	1	9	7	1	1	0	0	1
DSD	1	4	3	0	1	1	0	0
OFMDFM	0	5	4	0	0	1	0	0
<b>TOTAL</b>	<b>8</b>	<b>51</b>	<b>35</b>	<b>2</b>	<b>8</b>	<b>4</b>	<b>2</b>	<b>8</b>

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

	Brought forward from 2006/07	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/08
Child Support Agency	3	19	12	2	2	3	0	3
Driver Vehicle Agency	0	19	15	0	2	0	1	1
Environment & Heritage Service	0	3	3	0	0	0	0	0
Land & Property Services	2	13	12	1	1	0	1	0
Land Registers	1	0	0	0	0	1	0	0
Planning Service	8	67	40	1	10	1	9	14
Rivers Agency	0	1	0	0	0	0	0	1
Roads Service	3	32	30	0	0	3	0	2
Social Security Agency	1	14	11	1	2	0	1	0
Water Service	1	0	0	0	0	1	0	0
<b>TOTAL</b>	19	168	123	5	17	9	12	21

**Table 2.6: Analysis of Written Complaints Against Tribunals**

	Brought forward from 2006/07	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/08
Appeal Tribunals	0	1	1	0	0	0	0	0
Fair Employment Tribunal	0	1	1	0	0	0	0	0
Planning Appeals Commission	0	7	5	1	1	0	0	0
<b>TOTAL</b>	0	9	7	1	1	0	0	0

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

	Brought forward from 2006/07	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/08
Special European Union Programmes Body	0	3	3	0	0	0	0	0
Waterways Ireland	0	1	0	0	0	0	0	1
<b>TOTAL</b>	0	4	3	0	0	0	0	1





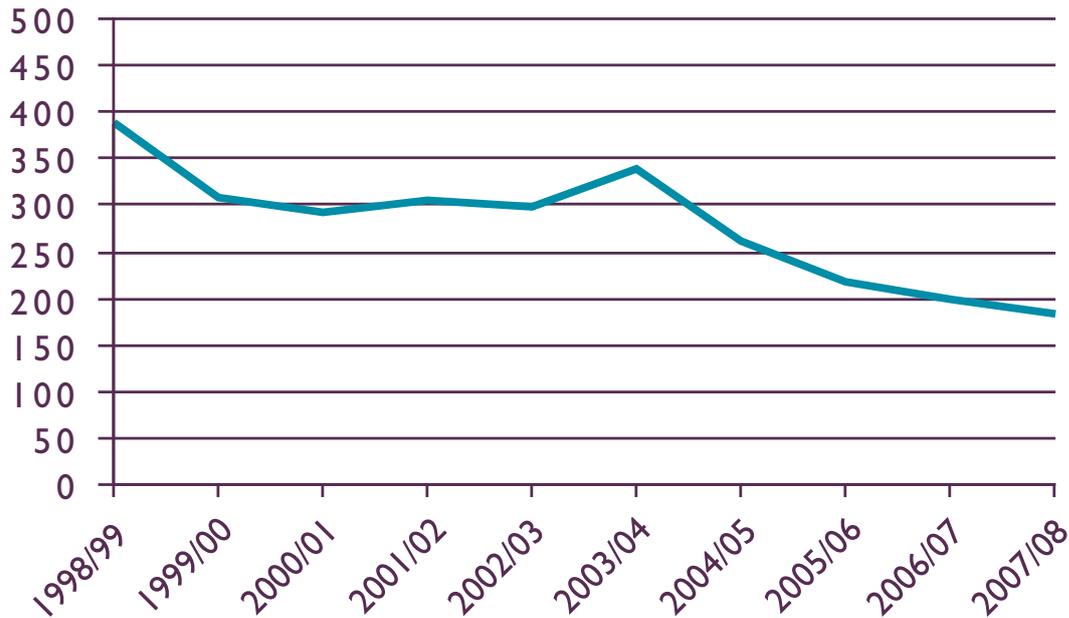
## SECTION THREE

Annual Report of the  
Northern Ireland  
Commissioner for Complaints

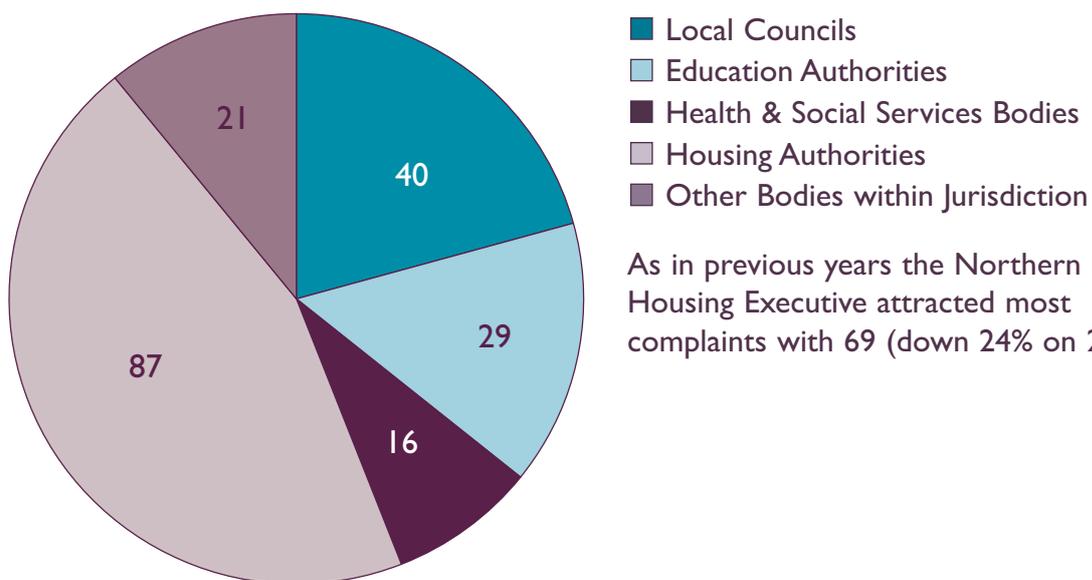
## WRITTEN COMPLAINTS RECEIVED IN 2007/08

As Northern Ireland Commissioner for Complaints I received a total of 193 complaints during 2007/08, 7 less than in 2006/07.

**Fig 3.1: Complaints to the Commissioner for Complaints 1998/99 - 2007/08**

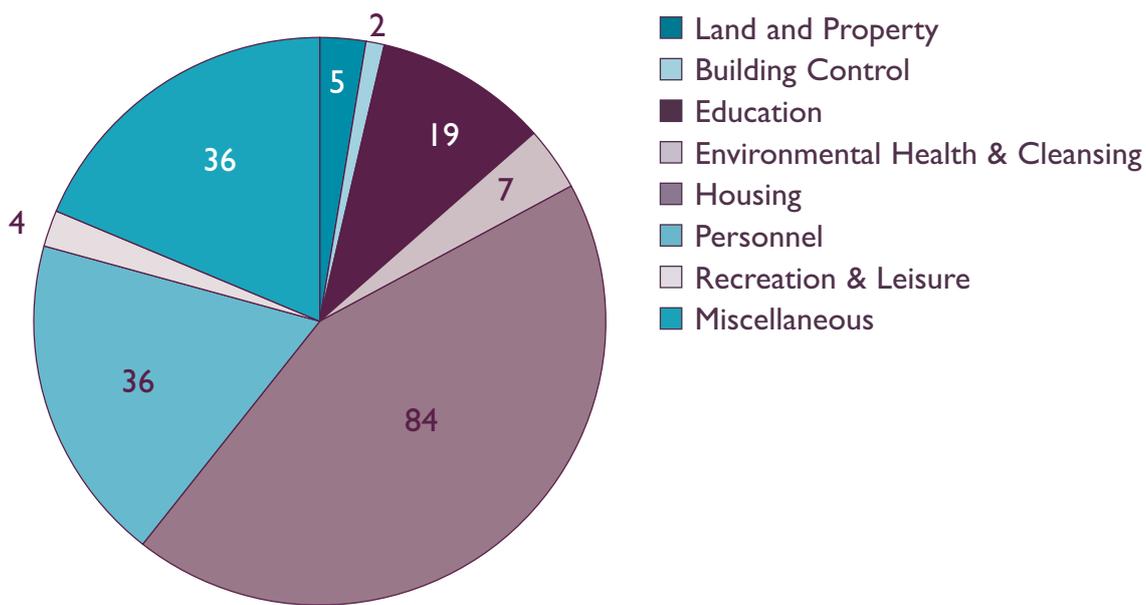


**Fig 3.2: Written Complaints Received in 2007/08 by Authority Type**



As in previous years the Northern Ireland Housing Executive attracted most complaints with 69 (down 24% on 2006/07).

**Fig 3.3: Written Complaints Received in 2007/08 by Complaint Subject**



## THE CASELOAD FOR 2007/08

In addition to the 193 complaints received during the reporting year, 61 cases were brought forward from 2006/07 – giving a total caseload of 254 complaints. Action was concluded in 210 individual complaints during 2007/08. Of the 47 cases still being dealt with at the end of the year, 2 were at Validation Stage and 45 were under investigation.

**Table 3.1 Caseload for 2007/08**

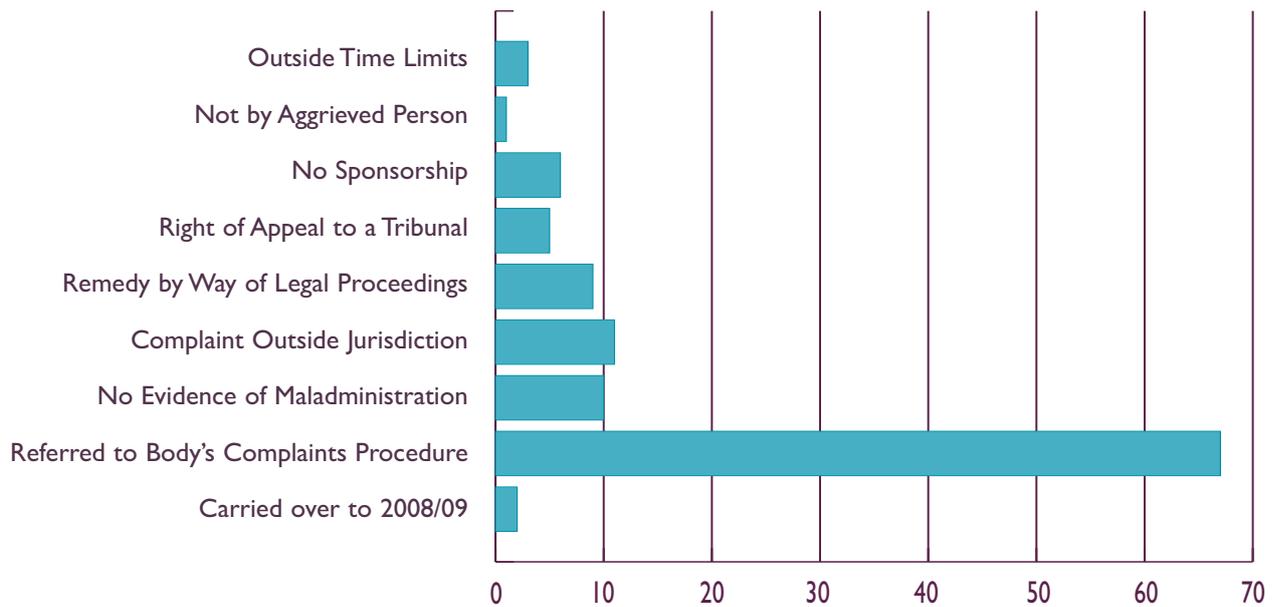
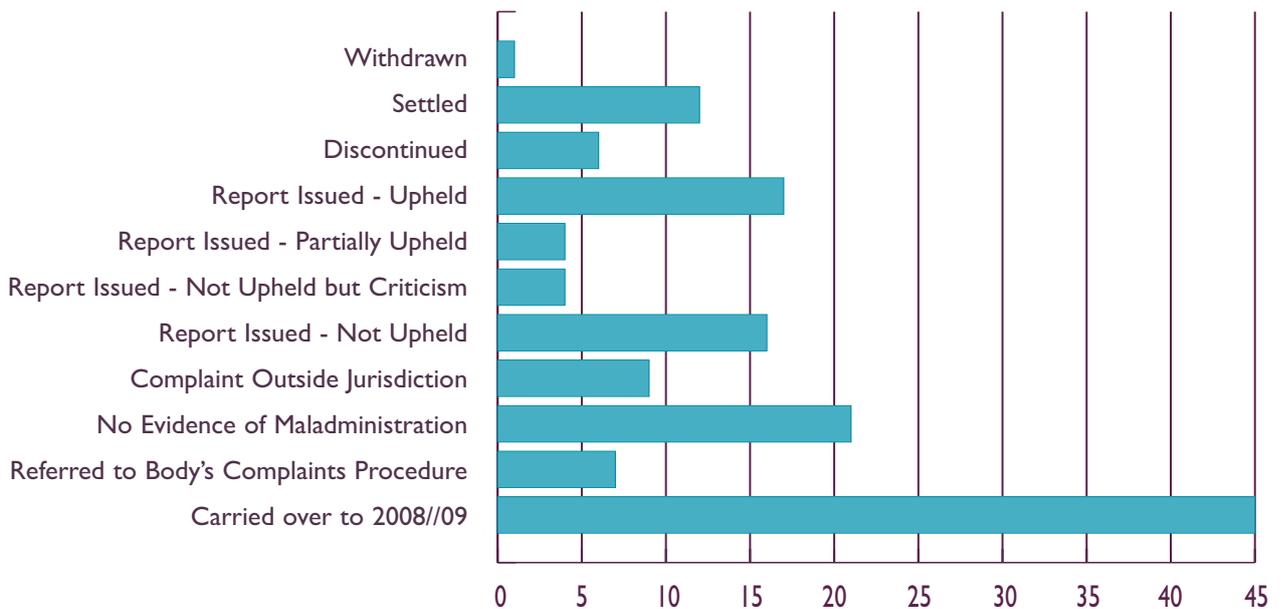
Cases brought forward from 2006/07	61
Written complaints received	193
<b>Total Caseload for 2007/08</b>	<b>254</b>

Of Which\*:

Cleared at Validation Stage	111
Cleared at Investigation Stage (without a Report), including cases withdrawn and discontinued	45
Settled	13
Full Report or Letter of Report issued	41
In action at the end of the year	47

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

The outcomes of the cases dealt with in 2007/08 are detailed in the Figs 3.4 and 3.5.

**Fig 3.4: Outcomes of Cases Cleared at Validation Stage****Fig 3.5: Outcome of cases Cleared at Investigation and Report Stages**

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

The average time taken for a case to be examined, enquiries made and a reply issued at Investigation Stage was 22 weeks.

The average time taken for a case to be examined, enquiries made and a full Report issued at Report Stage was 85 weeks.

41 reports of investigations (Full Reports and Letters of Report) were issued in 2007/08. Of these cases: 17 were fully upheld; 4 were partially upheld; 4 were not upheld but I criticised the Body complained against; and 16 were not upheld. In all of the cases in which I made recommendations for action(s) by the body complained against these recommendations were accepted by the body.

**Table 3.2: Recommendations in Reported Cases**

Case No	Body	Subject of Complaint	Recommendation
CC 97/04	NIHE	Complaints handling and repairs	Written apology, consolatory payment of £3,000 & Home Loss Payment of £1,500
CC 110/04	NIHE	Housing Benefit Claim	Written apology & consolatory payment of £100
200500478	Oaklee Housing Association Ltd	Failure to be rehoused	Written apology, consolatory payment of £4,000, complainant to be rehoused, Report to be brought to attention of DSD & remedial measures and procedural changes to be implemented
200500495	Limavady Borough Council	Enforcement of Public Health Abatement Notice	Written apology & consolatory payment of £500
200500577	NIHE	Property damage & repair	Written apology, consolatory payment of £500 & review of procedures
200500801	NIHE	Change in land boundary	Written apology, consolatory payment of £3,000 & reimbursement of legal fees
200500853	NIHE	Video door entry system	Written apology & consolatory payment of £250
200500980	NIHE	Housing Benefit Claim	Written apology & consolatory payment of £750
200501057	Northern Health & Social Care Trust	Conduct of investigation	Written apology
200501114	NIHE	Handling of a Public Liability Claim	Written apology, consolatory payment of £200 & reimbursement of legal fees
200501195	NIHE	Sale of house	Written apology, consolatory payment of £7,000 & reimbursement of costs and expenses

200501316	NIHE	Claim for damages	Written apology, consolatory payment of £350 & Redecoration Allowance of £180
200600308	Larne Borough Council	Disposal of public land	Written apology, reimbursement of legal fees & re-consideration of tender exercise
200600948	Craigavon Borough Council	Handling of tender competition	Written apology & consolatory payment of £200
200600952	NIHE	Noisy contractors	Consolatory payment of £650
200700012	NIHE	Sale of house	Written apology, consolatory payment of £750 & discussion with complainant re the possibility of a transfer to alternative accommodation
200700054	Southern Education & Library Board	Assessments for Student Loan & Maintenance Grant	Written apology & consolatory payment of £1,000
200700759	Belfast City Council	Anti social behaviour	Written apology

# SELECTED SUMMARIES OF INVESTIGATED CASES

## EDUCATION AUTHORITIES

### Application for Student Finance

A student complained about the Southern Education & Library Board in relation to his application for Student Finance. He stated that on three occasions he received an assessment for Student Finance from the Board informing him that he was entitled to a Student Loan and Maintenance Grant. However on the last day of his first term at University, he was informed that he was not entitled to Tuition Fees or a Maintenance Grant and that he would have to pay Tuition Fees of £3,000 to his University. He also received a notification from the Student Loans Company informing him that he had been overpaid a grant and asking for repayment. He complained through the Board's complaints procedure and received apologies for the errors made in determining his entitlement. In acknowledgement of the errors made, the Board repaid the debt to the Student Loans Company on his behalf. Notwithstanding this, the complainant felt he had been left in an impossible position by the Board's errors and faced financial loss in that he was under pressure from the University to pay Tuition Fees.

My investigation of this complaint established that there was no dispute as to the accuracy or content of the forms completed or of other details supplied by the complainant, nor was it suggested that the Board were supplied with anything other than the correct information upon which to make its assessment of the complainant's entitlement.

I criticised the Board for a failure to adequately notify the complainant of the errors made in assessing his entitlement and to inform him of the likely consequences of the Board's error. While I understood the difficulties faced by the Board, in the context of a new Student Finance software system being introduced and staff having to learn a new system and adapt to changes in regulations, at the same time as making assessments for approximately 10,000 students before the commencement of the academic year, I found the failure to correctly assess the complainant's entitlement on three separate occasions to constitute maladministration. The error was compounded by the notification of the inaccurate information to the Student Loans Company which then raised an overpayment when the correct situation was discovered. I recognised the Board's response to the complainant to be a genuine attempt on its part to respond to his concerns and that the complainant's circumstances may have been slightly unusual in that he had completed a previous course of study and that he had been away from his studies for another period of time. I also took account of the fact that, because of this, the complainant was not eligible for tuition fees or a maintenance grant and the Board had made a payment to the Student Loans Company on his behalf. However I considered that the complainant faced considerable financial hardship as a result of the Board's failings and that this constituted a substantial injustice. In all the circumstances, therefore I recommended that a letter of apology be issued by the Board's Chief Executive to the complainant and that a consolatory payment of £1,000 be made. I am pleased to record that the Chief Executive accepted my recommendation. **(200700054)**

## Teacher's Return to Work

The core of the case was that the complainant was unable to return to work as a teacher despite having submitted several Fitness to Return to Work certificates supplied by her GP.

To ensure that I had a full understanding of the issues surrounding this complaint, I arranged for preliminary enquiries to be made of the North Eastern Education & Library Board; one of my Investigating Officers interviewed a Board official and I obtained relevant papers. Having carefully considered all the information available to me, I decided not to take any further action on this complaint.

My enquiries established that the complainant had been on sick leave from her job as a teacher for almost two years. Following an appointment with the Board's Occupational Health Department she was referred to a Consultant Psychiatrist. The Consultant's report stated that the complainant was unfit for work and recommended that she give approval for him to contact her GP. This approval was refused, and further requests by Occupational Health and the Board were declined. The complainant then invoked the internal grievance complaint process, firstly through the Board of Governors, and then, on appeal, to the Labour Relations Agency (LRA), into what she considered to be a refusal to let her return to work. In not upholding the complainant's appeal, the LRA pointed to the requirement that she "follow any professional advice, including medical, aimed at ensuring a timely return to work" and noted that Occupational Health could not make any progress until she give her unconditional consent to consult and liaise with such professional colleagues/services as considered appropriate. The LRA strongly urged the complainant to give such consent.

Following an inconclusive report from another Occupational Health Doctor on the complainant's fitness to return to work, she was placed on precautionary suspension by the Board; this was the first stage in a process which could ultimately result in the termination of her employment on the grounds of ill health. As part of this process the complainant would receive full pay until a final decision was made. She was also given an appointment to see the Consultant Psychiatrist again, to determine her fitness to return to work, but she failed to attend this appointment

Having given careful consideration to the information available to me and having reflected on all the circumstances of this case, I found no prima facie evidence of maladministration on the part of the Board which would lead me to conclude that it made a flawed decision in relation to the complainant's status. While I recognised the strength of the complainant's conviction as to what the Board's responsibilities should be, I found no reason to challenge the position the Board adopted, namely that it was not in a position to permit the complainant's return to work until it received a report from its Occupational Health specialist that she was fit to do so, notwithstanding any Fitness to Return to Work certificates supplied by a GP. To this end I strongly urged the complainant to attend any subsequent appointments made by the Occupational Health Department and to give her consent to any course of action requested. **(200700725)**

## HEALTH & SOCIAL SERVICES BODIES

### Handling of Allegation Made Against the Complainant

In this case the complainant was aggrieved with the handling by a Social Worker of an allegation which had been made against her by the foster carer of her niece. The complainant was unhappy that information about her alleged actions during an encounter with the foster carer in a shopping centre, which she considered to be false, had been discussed with a third party and was recorded on Southern Health and Social Care Trust files. Although the complaint had been the subject of investigations under the Children Order Representations and Complaints Procedure the complainant remained dissatisfied and therefore referred her concerns to me.

In order to fully to consider the issues raised in the complaint I obtained copies of all the documents which were considered under the Children Order Procedure. Having examined the evidence carefully I was satisfied that the Independent Panel's conclusion that the social worker had acted appropriately in the circumstances was a reasonable one. Although I had some concerns about the way in which the Trust dealt with the complaint, which I brought to the attention of the Chief Executive, I did not uphold the complaint in relation to the social worker's handling of the allegation made against the complainant. I advised the complainant that she might wish to consider referring to the Information Commissioner the specific concerns about her personal information held on Trust files. **(200700094)**

## HOUSING ASSOCIATIONS

### Serious Flaws in Handling an Application for Rehousing

This complainant was dissatisfied with the handling by Oaklee Housing Association of an application for rehousing, which he had made to it four years earlier. The complainant said the Association assessed his rehousing application and, as a result, he was awarded 66 points. However, the complainant said when he subsequently contacted the Association about his prospects of being rehoused, he was informed that 40 points had been deducted from his award, due to an error in the assessment of his transfer application, reducing his points to 26. The complainant contended that, during the period he was on the waiting list for rehousing with 66 points, this award was more than sufficient to enable the Association to offer him suitable alternative accommodation.

The complainant further contended that five other tenants of the Association, whom he identified, had been unfairly offered or allocated alternative accommodation ahead of him. The complainant considered that the Association had failed to take full account of his circumstances, including his medical condition, when considering his rehousing application and, in particular, when considering the allocation of specific dwellings which would have been more suitable to his needs.

The Association, together with other public sector landlords, is required to consider and assess applications it receives for rehousing in accordance with the provisions of the Housing Selection Scheme (HSS). However, having investigated this complaint, I found that, in its initial assessment of the complainant's rehousing application, the Association had failed

to adhere to the rules and operation of the HSS and had failed to interpret the rules and application of the HSS in a way that would be consistent with that of other social landlords. I regarded these failures as constituting significant maladministration for which I expressed clear criticism of the Association. As a consequence, I found that the Association had provided the complainant with a more generous award of points than was merited in the circumstances of his case and thus with a potential advantage over the rehousing of applicants of other social landlords in respect of whom guidance on the interpretation of the rules and operation of the HSS was correctly applied.

My concern regarding the Association's application of the HSS was deepened by an examination, by an Association officer, of the cases of the five other tenants of the Association, whom the complainant had identified to me. The officer concerned, whose responsibility included checking housing assessments completed by the Association, determined that in four of the five cases the applicants concerned had been awarded higher points than those to which they had been entitled.

I also found, in my examination of this case, delay by the Association in assessing the complainant's rehousing application and that the Association failed to have the necessary controls in place to ensure that the assessments of applicants for rehousing, when completed, were added to the waiting list for accommodation. As a consequence of this failure, which I regarded as constituting major maladministration, warranting my particular criticism, I found that, during a period of 21 months and contrary to his belief, the complainant was not on the waiting list to be considered for any suitable alternative accommodation which would become available to the Association, other Housing Associations and the Northern Ireland Housing Executive.

My detailed examination and investigation of this complaint also identified:-

- a number of other instances of significant maladministration;
- a serious systemic flaw;
- significant delay;
- confusion and errors; and
- unsatisfactory administration by Association officers.

My investigation established that, as a consequence of serious failings on the part of the Association, the complainant missed out on the opportunity of being rehoused in any one of four properties that were suitable to his needs and which became available for letting in the areas he had selected for rehousing. In identifying this injustice, I took into account the fact that the complainant was assessed by the Association as being entitled to higher points than those appropriate to the circumstances of his case. However, I was satisfied that, through a further failing, the Association would not have detected the errors and failures that had resulted in the complainant having been 'over pointed' and that, therefore, the complainant would have been added to the waiting list with an incorrect points award.

The remedy I considered as both reasonable and acceptable in respect of the loss of enjoyment of alternative suitable accommodation suffered by the complainant was that he should be rehoused with the utmost degree of priority in suitable alternative accommodation located in his areas of choice for rehousing. I therefore asked the Association to seek approval from the Department for Social Development (the Department) to enable it to rehouse the complainant. I was pleased to record that, in

response to my request, the Association obtained the Department's approval. I was further pleased to note, and welcomed, that the complainant was rehoused within a period of three months.

I also recommended that the complainant should receive, by way of redress, an appropriate letter of apology from the Association's Chief Executive (CE) together with a consolatory payment of £4,000 in recognition of the injustice of loss of enjoyment of alternative suitable accommodation, also stress, worry, frustration, disappointment, inconvenience and annoyance he had experienced. I was pleased to record that the Association accepted my recommendation.

I considered that the matters of concern identified by my investigation of this case warranted the attention of the Department in its audit and compliance role under the Housing (Northern Ireland) Order 1992. I therefore recommended that the CE should bring my Report of the investigation of this complaint to the Department's attention. I was pleased to record that the Association was agreeable to this. I was further pleased to record, and welcomed, that the CE had entered into discussions with the Department regarding the concerns my investigation had raised.

I asked the CE to inform me of the remedial measures and changes which the Association intended to implement to eliminate the various failings and failures I had identified as a result of this investigation, with the aim of preventing a recurrence of the errors and failings which attended the handling of the complainant's rehousing application. I was pleased to note that, in response, the CE provided me with an action plan, formulated by the management of the Association, which detailed a number of remedial measures and procedural changes to be taken by the Association. I further noted, and welcomed, the inclusion in the action plan of an audit of the Association's management of the HSS, also the various initiatives the Association had put in place. **(200500478)**

## LOCAL COUNCILS

### Maladministration in Council Land Sale

My investigation into the disposal by Larne Borough Council (the Council) of surplus Council land in Glenarm uncovered major flaws in the process. I identified significant evidence of maladministration by the Council and its Officials which warranted my severest criticism. As a result of the recommendations arising from the investigation the Council agreed to apologise to the unsuccessful bidder and consider rerunning the competitive tendering exercise. In addition the Council agreed to refund costs incurred by the developer in pursuing his complaint.

The complaint from an unsuccessful bidder centred on the failure of the Council to follow proper procedure when disposing of property it owned in Glenarm. The developer who was one of the unsuccessful bidders was concerned that the Council had failed to follow proper procedures when conducting the disposal exercise in 2006. The Council had investigated his complaint but rejected any allegation of wrongdoing.

The conduct of this detailed and complex investigation was hampered by the often conflicting evidence surrounding the tendering process. In particular oral evidence by key officials was contradictory and added to the time taken to investigate the complaint.

The investigation of this complaint centred on the process used in the disposal of the surplus land owned by the Council. In particular it uncovered a series of serious errors.

The advertising of the opportunity to lead the project was wholly inadequate, thereby restricting interest.

The time allowed for return of Expressions of Interest was insufficient.

No proper shortlisting of potential developers was conducted.

Potential developers were allowed access to Councillors on the Tendering Panel.

Most seriously, the Councillors on the Panel were not provided with details of the development proposals before meeting to consider the award of the tender.

Panel Members had not received any training on conducting such an exercise.

Members were left to rely on poorly prepared and misleading Briefing Notes.

No formal scoring system was used to evaluate tenders against preset and necessary criteria. Only one panel Member provided a completed evaluation sheet at the end of the exercise.

My investigation also uncovered a more concerning aspect of the process. The Report and Recommendation of the Tendering Panel submitted to a Council Meeting for consideration contained significant and misleading information as to the nature of the outcome of the tendering exercise. In particular it presented the conclusions of the Panel by use of the term “preferred development” rather than the advertised role of “preferred developer”. This in effect had the real potential to narrow the ability of the Council or other stakeholder to protect the public interest by influencing the nature of future development at the Glenarm site.

My Report established that the Council and the Panel Members relied heavily on the advice and guidance of the Council’s then most senior Officer. In essence this Officer influenced or had control over the crucial decisions on how the disposal exercise should be conducted.

My Report also criticised the Council for its failure to have adequate policies or controls in place to prevent such complete systems failure in the awarding of public contracts. I stressed the importance of having in place robust processes for the awarding of contracts and development opportunities to ensure they are awarded on the basis of merit and equity. In so doing, value for money and the public interest could be best served and, importantly, protected which clearly had not occurred in this case.

On the basis of my consideration of the process undertaken by the Council and the underlying shortlisting criteria, I did not consider the complainant to have suffered an injustice in not having been selected by the Council as its preferred developer. I did, however consider the complainant had sustained an injustice in seeking to pursue his grievance against the Council with all the attendant cost and frustration that that involved.

In recognition of the injustice I recommended that the complainant receive a written apology from the Council's Chief Executive. I also recommended the Council refund the costs incurred by the complainant in pursuing his complaint after the Council announced its decision. The Council was also invited to revisit its decision in respect of the disposal of the surplus land at Glenarm. I am pleased to record that the Council has adopted my recommendations in full. In addition the Council has commissioned an independent review of procedures in light of my investigation. **(200600308)**

### **Public Health Notices**

In this case, the complaint arose from Craigavon Borough Council's (the Council) decision not to issue Public Health Notices in respect of a property the complainant owned. The complainant was also not satisfied that a critical examination of his complaint had been undertaken by the Council.

The issuing of Public Health Notices (PHNs) is a matter for the discretion of the appropriate officers within the Environmental Health Department. The Council confirmed that PHNs could not be issued because the property was uninhabitable. The complainant was advised of the availability of a renovation grant but did not wish to avail of this because it was means tested. The complainant carried out remedial works and requested PHNs to be issued. The Council confirmed that PHNs could not be issued for nuisances which had already been remedied. My investigation did not find any evidence to suggest the complainant had been dealt with in an unsatisfactory manner or that the Council had not properly considered his complaint. I was satisfied the Council had acted within its authority and in accordance with its policies. I was unable to uphold the complaint. **(200500818)**

### **Poor Handling of Enquiries re Tender**

The complainant wrote to Craigavon Borough Council (the Council) seeking tender documentation in response to an advertisement it had placed in the newspaper. Two days later he noticed what he thought might be a potential legal problem with the wording of the Council's advertisement and he wrote again to the Council to bring this to its attention. Despite his initial request, no tender documentation ever arrived. It later transpired that, as a result of the potential legal problem identified by the complainant, the Council decided to re-advertise the invitation to tender. However, it did not contact the complainant to inform him of its actions; later stating to my Office that this was because he had not provided a contact phone number. The complainant did not notice the fresh advertisement, nor did he receive any communication from the Council concerning his original request for tender documentation.

My investigation established that, of those who had expressed an interest in the original tender advertisement, the complainant was the only one not to have been informed of the decision to re-advertise, even though a simple letter would have sufficed. I found that the complainant had been treated differently to the other interested parties, a situation that I viewed as serious maladministration.

Matters were made worse by the Council's poor handling of the complainant's follow-up enquiries, which led to him raising a complaint with my Office. My investigation identified a catalogue of poor administration on the part of the Council. I found delay in most of the Council's written responses to the complainant and even instances where the complainant's letters were completely ignored by the Council.

As a consequence of my findings, I recommended that the Chief Executive should issue a letter of apology to the complainant together with a consolatory payment of £200.  
**(200600948)**

### **Non-assertion of an Alleged Public Right of Way**

The complainants claimed to have suffered an injustice as a result of maladministration by Ards Borough Council (the Council) in relation to the non-assertion by the Council of an alleged public right of way near their home, which was obstructed when the owner of a new dwelling erected two fences across the pathway. They complained that householders in the area were permitted to improperly close off, for their own use, part of an amenity which they considered had been available to the local community for very many years.

In response to my enquiries the Council explained that because the public may use a path way, perhaps over a number of years, this does not necessarily give the pathway the legal status of 'a public right of way'. My investigation established that the Council was faced with two clearly conflicting opinions as to the status of the pathway and had attempted, through the issue and receipt of Public Right of Way Evidence Forms and correspondence with homeowners in the locality, to elicit opinions. I considered that the Council had consulted widely and properly in its attempts to establish the facts of the case. In the end the Council decided, by virtue of Article 3 of the Access to the Countryside (NI) Order 1983, that one section of the pathway be asserted as a right of way but that another section, which had been adopted by Roads Service, not be asserted. I did not find this discretionary decision to be unreasonable and in the absence of maladministration in the making of the decision, I found that I had no grounds to challenge it. I recognised the complainants' sincerely held belief that the neighbouring section of pathway was a public right of way and their sense of public spiritedness in bringing this complaint to me. However as I did not find any evidence of maladministration by the Council in its handling of their request that a public right of way be asserted, I did not uphold the complaint.

**(200600213)**

### **Anti-Social Behaviour**

The complainant had experienced ongoing difficulties with anti-social behaviour in the grounds of Belfast Castle which was adjacent to his home. He said that, despite ongoing communication with Belfast City Council (the Council) over a three year period, the situation had not improved and assurances given to him by the Council had not materialised. Having submitted a formal complaint to the Council, he remained dissatisfied.

I made enquiries of the Council and was provided with a copy of a letter which had issued from the Chief Executive (CE) to the complainant as a direct result of my enquiries. In that letter it was acknowledged that the Council had failed to follow up on assurances given to the complainant and the CE offered his sincere apologies for the Council's failure in this respect. Because of this failing, it was explained to the complainant that he would not have been aware of the range of actions undertaken by the Council in attempting to address anti-social behaviour in the Castle grounds. The CE had also asked the Director of the Parks and Leisure to contact the complainant with a view to arranging to meet and discuss the specific issues in relation to his property and to establish whether there was any further action which the Council might take.

The complainant also said that, despite having explicitly asked for his complaint to be treated confidentially and not discussed with third parties, the complaint was discussed with the PSNI without reference to him or his wife. I was told that, because of the ongoing partnership working with the PSNI, the generalities of the issues were discussed but not the specifics of the complaint. The CE acknowledged that this was not, however, made clear to the complainant by the Council in its correspondence with him at the time.

I did not uphold further allegations of delays by the Council in the progressing his complaint and of not being taken seriously.

I welcomed the Council's action in response to my enquiries and, in particular, its ready acknowledgement of its failings which, together with the CE's apology, I considered constituted a positive and co-operative response. I considered this action to be a satisfactory resolution to this matter. **(200700759)**

## NORTHERN IRELAND HOUSING EXECUTIVE

### Termination of Tenancy

In this case, the complainant wrote to me about the manner in which the NIHE treated her when she held the tenancy of one of its properties. The complainant lived in an NIHE flat for seven years and, on Christmas Eve 2001, she was informed that the legal tenancy had been terminated because of non payment of rent. Eviction proceedings had commenced. In spite of this, the complainant continued to reside in the flat and was charged payment, equivalent to the amount of rent, for Use & Occupation. The complainant's flat was part of a three storey block of flats programmed for major improvement works. Tenants gradually moved out in advance of the proposed Scheme commencing, however, the complainant was not offered any alternative accommodation because the NIHE deemed her an illegal tenant. The derelict state of the block of flats drew elements of vandalism and anti social behaviour. The complainant cleared her rent arrears and, although the NIHE re-instated her legal tenancy, she was refused a Home Loss Payment when she eventually obtained other accommodation.

The NIHE strongly contended it had obtained an Order for Possession and the complainant was an illegal tenant, hence its inability to carry out repairs, offer alternative accommodation or make a Home Loss Payment. As a result of my investigation I found that the Order for Possession had been stayed by the Court, and the proper procedure to have the Order subsequently enforced had not been followed. The complainant remained a legal tenant. I criticised the NIHE for its lack of evidence to support the actions taken and its inability to provide crucial evidence.

As a remedy for the distress and annoyance caused I recommended that the Chief Executive:

- issue a clear apology to the complainant
- reconsider the Home Loss Payment in light of the complainant's status as a legal tenant
- issue a consolatory payment of £3,000 for the inconvenience, distress and annoyance endured.

The Chief Executive accepted my recommendations. **(CC 97/04)**

## Dampness in the Home

In this case, the complainant alleged the NIHE had failed to deal with a problem of dampness in her home. The damage worsened, causing her stress and anxiety before the necessary repairs were completed. She also complained that the NIHE refused a public liability claim and redecoration grant.

The complainant had reported to the NIHE's Emergency After Hours Service that the walls in her home were wet and water was getting into the electrics; she was advised to contact the District Office the following day. When she contacted the Office the following day the report was classified as an Immediate Call Out, however, a plumber did not attend until 6 days after the initial report.

There were conflicting versions of the report to the Emergency After Hours Service. I believed the NIHE had a responsibility to ensure correct and relevant information was elicited and I recommended it re-examine its procedures for documenting Call Out requests. The NIHE was unable to demonstrate that appropriate action was taken in accordance with its Call Out policies. I found the delay in dealing with the Call Out, and the failure to ensure the plumber tasked to attend the property did so, constituted maladministration. The NIHE had apologised to the complainant implying that the problem should have been reported earlier; I considered the approach unfair.

As a remedy for the distress and annoyance caused I recommended that the Chief Executive:

- issue a clear apology to the complainant
- issue a consolatory payment of £500 for the inconvenience, distress and annoyance endured.

The Chief Executive accepted my recommendations. **(200500577)**

## Mishandling of Housing Benefit

In this case the complainant was unhappy with the time taken by the NIHE to assess his entitlement to Housing Benefit and its failure to regularly notify him of his level of entitlement. As a result the complainant fell into rent arrears with his landlord. My enquiries confirmed there had been a 13 week delay in processing the complainant's claim for Housing Benefit. The NIHE advised me that notifications to claimants could not be issued during this period due to computer problems, although it continued to notify the complainant's landlord of payment amounts. I considered this explanation to be inadequate. The complainant should have received timely notifications from the NIHE of changes to his Housing Benefit entitlement. As a result of my investigation and final recommendations the NIHE agreed to issue an apology and make a consolatory payment of £100. **(CC 110/04)**

## Refusal of Public Liability Claim and Delay in Emergency Repairs

A tenant complained that the NIHE refused to compensate him for water damage caused by a leak in a copper pipe laid beneath the concrete floor in the living room of his home. The pipe had corroded with the passage of time and the resulting leak soaked the floors of the living room, hall and kitchen of the complainant's home. However, the NIHE rejected the complainant's Public Liability Claim on the basis that defects, which are due to fair wear

and tear, such as corroded pipe work, are unforeseeable and beyond its ability to anticipate; therefore, the damage was not attributable to its negligence. The complainant considered that the NIHE, in refusing to compensate him for the damage caused, had treated him very unfairly.

I established that the Tenants Handbook informs tenants of the possibility that, through no fault of their own, their belongings may be lost or damaged by fire, storms, flood or burst pipes and, if they are not properly insured, they will be responsible for the cost of replacing their household goods and possessions. The NIHE, in its Tenants Handbook, therefore “strongly recommends” that its tenants should insure the contents of their homes against accidental damage, loss or theft. I considered it most unfortunate that the complainant had failed to act on this recommendation. I did not uphold the complaint that the NIHE had treated the complainant very unfairly in refusing to offer compensation.

However, I identified that it was not until ten days after the NIHE received a report from the complainant about the water leak that the cause of this was detected and repairs undertaken. In its Tenants Handbook, the NIHE undertakes to deal with emergency repairs, such as a matter that could cause a major inconvenience, within 24 hours at most. The NIHE clearly failed to meet this commitment.

My investigation also established that the NIHE has discretion to pay a redecoration allowance to a tenant following maintenance work that has caused major disruption. I noted and welcomed that, in this case, the NIHE decided to exercise this discretion by offering the complainant the standard rate of redecoration grant, amounting to £180, for the rooms affected by water damage. The NIHE informed me that the complainant had declined this offer and pursued the matter through his Public Liability Claim. However, the complainant contended that he did not refuse the payment. Furthermore the complainant’s Public Liability Claim did not take account of redecoration costs. In these circumstances, I recommended that the NIHE should pay a redecoration allowance to the complainant, having regard to whether he met the criteria for receiving a high rate of redecoration allowance, in which case he would be entitled to receive the sum of £376 and, if not, in the sum of £180 initially offered.

Overall, I considered that the quality of service the NIHE provided the complainant fell far short of the standard that tenants have a right to expect and which, in fairness, the NIHE seeks to deliver. I therefore further recommended that the complainant should also receive, by way of redress, an appropriate letter of apology from the NIHE’s Chief Executive together with a consolatory payment of £350. I was pleased to record that the Chief Executive accepted my recommendations. **(200501316)**

### **Sale of Dwelling**

In this case, the complainants were aggrieved with the NIHE’s handling of the sale of a dwelling which it had earlier acquired under the Scheme for the Purchase of Evacuated Dwellings (SPED). An Agent appointed by the NIHE to act on its behalf offered the dwelling for sale on the open market, and, having made the highest bid for the property, the complainants said their offer for the property was accepted. However, following a Home Buyer’s survey of the property, which had been undertaken on their behalf, the complainants contacted the NIHE, to determine whether it would consider a price

reduction to take account of defects identified in the survey report. The complainants said the NIHE gave them two options i.e. to proceed with the purchase at the amount offered or to withdraw their offer. The complainants further said they received assurances from the NIHE, on two occasions, that, in the event of their withdrawing their offer, the property would again be placed on the open market at which time they would have the opportunity to make a revised bid.

Having informed the NIHE that they were prepared to withdraw their offer, on the basis of its assurances to them, the complainants said the NIHE subsequently informed them that the sale of the property concerned had been agreed with the next highest bidder. The complainants said they failed to understand why this had happened and why, although it was not prepared to negotiate a reduction to them in the sale price of the property, the NIHE was willing to accept a sum that was £20,000 below their offer.

My investigation confirmed the complainants' statement concerning assurances the NIHE gave them that the withdrawal of their offer would result in the subject property being placed on the open market again. It was my firm view, based on the evidence available to me, that the NIHE should not have placed the complainants in the position in which they found it necessary to withdraw from their agreement to purchase the subject property in order that they might subsequently submit a revised bid. Also, I found that a failure by the NIHE to provide its Agent with the full background to the decision by the complainants to withdraw their offer led to the Agent re-opening negotiations with, and receiving a revised offer from, the next highest bidder. I further found that the NIHE, in discussion with the Agent concerning the revised offer, allowed itself "to be persuaded by the Agent to revert to the position in which the complainants had not been involved in the sale", and agreed that the complainants should be excluded from the sale. I regarded the above actions as representing very significant and serious maladministration by the NIHE in its handling of the sale of the subject property. My investigation also identified a number of instances of unsatisfactory administration by the NIHE in this case.

I also identified significant failings by the NIHE in dealing with the attempts made by the complainants, under the NIHE's Internal Complaints process, to obtain a resolution to their complaint.

The question of redress always presents a difficulty, and more so in cases such as this. The primary objective of redress is to put the aggrieved persons in the position they would have been in had the maladministration not occurred in the first instance. Clearly this was not possible in this case. I therefore recommended that the complainants should receive, by way of redress, an appropriate letter of apology from the NIHE's Chief Executive together with a payment of £7,000 for the significant injustice they had experienced. I also recommended that the NIHE should review its written guidance on the disposal of properties acquired under the SPED scheme. I also strongly recommended that the NIHE should review very carefully the conduct of its Agent in this case.

Finally, I recommended that the complainants should be reimbursed some £4,700 which they had incurred in fees and costs in their attempts to buy the property. I am pleased to record that the Chief Executive accepted all my recommendations. **(200501195)**

## Delay in Housing Application

This case was about the NIHE's handling of the complainant's housing application. During my investigation, I established that the complainant had submitted a housing application to the NIHE in September 2005 and, apart from being placed in temporary accommodation by the NIHE, he had to wait until February 2007 before he was finally offered a property by a Housing Association, which he accepted. It is the position that the NIHE is dependent on a property becoming available, which is normally offered to the applicant at the top of its waiting list. Based on the evidence available to me, I did not find the delay in identifying accommodation for the complainant to constitute maladministration. **(200601053)**

## Not Allowed to Purchase a Dwelling

The main element of this complaint related to the NIHE's decision not to allow the complainant to purchase his bungalow. During my investigation, I established that under the NIHE's House Sales Scheme, anyone who was allocated a one or two bedroomed bungalow after 1st September 2002 could not purchase the property, irrespective of how long he or she had been an NIHE tenant. In this case, the complainant's dwelling was a one bedroomed bungalow, the tenancy of which had commenced on 17 April 2006. I therefore concluded that the NIHE's decision not to sell the property to the complainant was taken in accordance with its stated policy and related legislation and therefore it could not be regarded as maladministration. However, I did find the failure to inform the complainant, prior to his acceptance of the tenancy, that he would not be entitled to purchase his property, to have been maladministration. In terms of redress, I recommended that the NIHE should contact the complainant to discuss the possibility of a transfer to alternative accommodation which would qualify for purchase under the current House Sales Scheme. I also recommended that the complainant should receive an apology from the Chief Executive, together with a consolatory payment of £750. I am pleased to record that the Chief Executive accepted my recommendations. **(200700012)**

## Application for Grant Aid

In this case, the aggrieved person complained about the NIHE's decision to process her application for grant aid under the terms of its Do-It-Yourself (DIY) policy, which reduced her entitlement by 50%.

My investigation established that the NIHE had taken the firm view that the complainant had failed to provide the necessary invoices or documentation from her contractor (who was also her son) to enable it to issue full payment of grant aid to her. I consider the production of adequate documentation to be essential for accounting and auditing purposes. It was also clear to me that the NIHE applied its DIY provisions in this case not because the complainant's contractor was her son, but because he had failed to provide the necessary supporting documentation. In the circumstances, I considered the NIHE had adopted a reasonable approach as it resulted in the complainant receiving some grant aid. I was also pleased to note that the NIHE was prepared to reconsider the complainant's award of grant aid on receipt of appropriate documentary evidence from the sub-contractors whom her son stated had undertaken the work. **(200501222)**

## Complaints of Harassment and Intimidation

In this case, the aggrieved person expressed her dissatisfaction with the NIHE's handling of her complaints of being harassed and intimidated by her neighbours, who were not NIHE tenants.

I established that the complainant had reported many incidents of alleged anti-social behaviour on the part of her neighbours against her family, occurring from 1 May 2006 to 27 June 2006. I also established that the NIHE consulted with its Legal Department and the PSNI, to determine whether there was sufficient evidence to proceed to court with a view to obtaining either an Injunction Order or an Anti-Social Behaviour Order against the complainant's neighbours. In order to make a case for such action before a court, the NIHE had to be satisfied that the proposed action was fair, proportionate and reasonable. This required sufficient recent, reliable, verifiable and, preferably, corroborated evidence. In this case, however, it was the NIHE's opinion that this test could not be met and therefore it was decided not to initiate legal proceedings. In the absence of evidence to support the complainant's allegations, I considered the NIHE's decision not to process the case any further to have been reasonable. I am acutely aware of the emotions and sensitivities affecting those who believe they are the victims of harassment and intimidation. In all the circumstances of the case I did not uphold the complaint. **(200600684)**

## Refurbishment of Apartments

In this case, the aggrieved person complained about the annoyance and inconvenience he and his wife endured for 14 weeks during the refurbishment of NIHE owned apartments which adjoined their privately-owned property. I noted that during the period of the works being undertaken by the NIHE, the complainant's wife was recovering from a serious illness and had to move out of her home each day due to the level of noise. I am pleased to record that as a result of representations by my Office, the Chief Executive decided to review this case and made an extra-statutory payment of £650 to the complainant, which included an amount towards the expense incurred in having to power-wash the front of his home. **(200600952)**

## OTHER PUBLIC BODIES

### Application to Secure Funding

The complainant claimed to have suffered injustice as a result of maladministration by Invest Northern Ireland (INI) in relation to his application to secure funding to expand his business. The complainant contacted INI which, while initially appearing supportive, subsequently informed him that it would not support his proposal. The complainant stated that he was not given sufficient information on the process involved to secure funding, that INI did not ask for a business plan and that he was not given a proper explanation for the refusal to fund his proposal.

From my study of the documentation, I was satisfied that the complainant's application for financial support was rejected following an initial assessment of the proposal and if it fitted with INI criteria and was likely to receive support. This stage of the process did not call for a business plan to be submitted. However I was satisfied that the complainant had been made aware that a Business Plan would be taken into account if he submitted one when he was in a position to do so.

A decision on funding is highly discretionary and from my study of the documentation submitted by the complainant, I did not consider the decision taken by INI to be unreasonable. I noted the absence from the papers of much of the information required by INI. I did not identify any evidence that any element of the decision not to support the proposal was attended by maladministration and considered that INI gave due consideration to the information put before it.

In relation to the complaint that he was not given sufficient information on how to secure funding and that he was not given a fair opportunity to present his case, I noted that the complainant had three meetings with INI representatives within a relatively short period of time and that INI received 22 letters or e-mails from him and issued 15 e-mails and letters in return. Overall my examination of the responses from INI to those matters raised by the complainant appeared to me to represent reasonable and genuine efforts on its part to address the queries raised.

Following receipt of his formal complaint to INI, the proposal had been reviewed on two further occasions, one of which had been by the Chief Executive. Both reviews concluded that on the basis of the information provided to date the project was ineligible for assistance. I considered that the complainant had been given ample opportunity to present his case for financial support and to present any additional information he considered would assist his application. I did recommend that INI staff be reminded of the prudence of recording discussions with members of the public but I did not uphold the complaint. **(200600497)**

### **Disposal of an Industrial Estate**

This complaint centred on how Invest Northern Ireland (INI) had disposed of an Industrial Estate. The complainant had not been allowed to bid for vacant land. The complainant stated that he traded from sub let premises on the estate which was in the final stages of being sold to a “management group” comprising of some of the original lease holders of units on the estate. He expressed an interest in purchasing a vacant site on the estate but his request was refused as he was not a client company of INI and did not hold a 999 year lease. He was informed that freehold sales were not made to individuals. The complainant contended that he could never meet the INI criteria for client status because of export requirements for new business and that he was being unfairly excluded. He said that INI breached its own policy in relation to the disposal of freehold land which states that the freehold could only be sold upon completion of a development.

In response to my enquiries the Chief Executive informed me that INI engages in a freehold disposal programme (in line with Government privatisation policy) to facilitate re-deployment of resources away from those estates that are close to or fully developed and not when a development is ‘completed’ as claimed by the complainant. Small areas of undeveloped land, which are considered de minimis in the context of the overall volume of land for disposal, can be included in such a disposal.

Overall, having examined the evidence, I did not consider the position taken by INI in the disposal of its freehold interest in this Industrial Estate to have been unreasonable and considered the actions taken to have been in accordance with its stated policies. I did not consider it to be unreasonable or unfair that INI client companies and leaseholders, but not

sub tenants like the complainant, be invited to take over the running of the estate when INI made the discretionary decision that the estate was close to or fully developed. My examination of this case did not identify any evidence of maladministration and consequently I did not uphold the complaint. **(200601300)**

### **Handling of Complaint**

The complainant was unhappy with the Northern Ireland Tourist Board's (NITB) response to a complaint which she had made about NITB approved tourist accommodation. The accommodation was classified as 4 star self catering accommodation. Having booked the accommodation for a holiday she was dissatisfied with the standard of it. The complainant believed the NITB was guilty of maladministration because it had classified the accommodation as 4 star and she did not agree that it merited the 4 star classification.

To enable me to consider the complaint, I requested written comments from NITB's Chief Executive (CE) and also obtained all the documentation relating to the NITB's handling of the complaint.

I regarded the NITB's handling of the complainant's initial complaint as poor and lacking in detail. Although I was satisfied that the CE had addressed the substantive issues that the complainant had identified in her sequential complaint to him, I took the view that he should have acknowledged and apologised for the inadequate handling of the complainant's initial complaint to the NITB. **(200700825)**

## SELECTED SUMMARIES OF CASES SETTLED

### **Northern Ireland Housing Executive**

A lady complained about the handling of her application for Housing Benefit. The Chief Executive, in response to my enquiries, repeated his apologies to the complainant for the poor administrative handling of her case, agreed to make a consolatory payment of £750 and set out measures which had been introduced to ensure that such failures do not recur. **(200600346)**

### **Northern Ireland Housing Executive**

A gentleman complained about outstanding repairs to his dwelling and the NIHE's failure to award him redecoration grant. I arranged for enquires to be made and, as a result, the NIHE arranged for the repairs to be completed. In addition the complainant qualified for a redecoration grant of £86.00, which was credited to his rent account. **(200601107)**

### **Larne Borough Council**

The complainant, who was a former employee of the Council, primarily complained that, having gone through the proper channels to have a number of pay-related issues dealt with, she had yet to receive any kind of response from the Council. I raised the matter with the Chief Executive of the Council who agreed to issue a formal written apology to the complainant in respect of these failings and to contact the complainant without delay to address the issues raised in her complaint. **(200601202)**

### **Northern Ireland Housing Executive**

The complainant in this case was dissatisfied with the NIHE's refusal to fit a replacement front door to his home under an External Cyclic Maintenance Scheme. In response to my enquiries, and having reviewed the overall circumstances of the case, the NIHE decided, as a goodwill gesture, to replace the front door of the complainant's home. **(200601255)**

### **Northern Ireland Housing Executive**

A lady complained about the NIHE's handling of her mother's application to purchase her dwelling. In response to my enquiries the NIHE reviewed the case and amended the effective date of the application to the date on which the NIHE received sufficient details to enable the house-sale application to be accepted for processing. Following a re-valuation of the dwelling as at this revised effective date, the market value of the dwelling was reduced by £8,000. **(200601422)**

### **Belfast City Council**

A gentleman complained about the Council's handling of his case under its broadbanding scheme (an appraisal system). I arranged for enquiries to be made of the Council. In response to the Council's reply to those enquiries I wrote to the Council to remind it of the importance of ensuring that all appeals from its employees were dealt with in line with best practice principles. The Council agreed to make a £200 consolatory payment to the complainant in respect of the eight month delay. **(200700045)**

### **Northern Ireland Housing Executive**

In this case the NIHE decided that the complainant should not succeed to the tenancy of a property following the death of his mother. I arranged for detailed enquiries to be made of the NIHE and, in response to those enquiries, the NIHE reviewed the particular circumstances of the case and agreed to grant the tenancy of the property to the complainant. **(200700173)**

### **Newry & Mourne District Council**

This unusual case arose because the complainant's neighbour persisted in using the complainant's postal address. I arranged for enquiries to be made of the Council and the Director of Building Control confirmed that the Council had commenced legal proceedings against the complainant's neighbour. He acknowledged however that he had failed to keep the complainant informed of progress and undertook to write to the complainant. He also assured me that he would keep the complainant updated as to further progress. **(200700201)**

### **Belfast District Policing Partnership**

In this case a gentleman complained that contrary to its own documented procedures, Belfast DPP refused to accept written questions from him in advance of a DPP meeting. I arranged for enquires to be made and was pleased to note that the DPP appreciated how these issues had added to the complainant's frustrations with the current procedures. I welcomed this acknowledgement and also the fact that the Belfast DPP has raised these issues with the NI Policing Board. It was hoped that with a pending reconstitution of Belfast DPP the concerns would be addressed. In view of the previous efforts made by Belfast DPP to facilitate the complainant's questions and to address his complaint I decided not to investigate the matter any further. **(200700474)**

### **Northern Ireland Housing Executive**

A gentleman complained about the NIHE's failure to address his concerns regarding the height of a hedge along the lane leading to his dwelling. In response to my enquiries, the NIHE informed me that it had decided to reduce the hedge to 'a manageable height'. **(200700653)**

### **Arts Council**

I received a complaint that the Arts Council had failed to contact the complainant, after my Office had referred his complaint to the Chief Executive for consideration. I was advised by the Arts Council that the matter had been investigated and that a letter informing the complainant of the outcome had just been issued. Accordingly, I deemed the complaint of inaction to be settled. **(200700955)**

### **Belfast Education & Library Board**

The complainant in this case was aggrieved that the Board had allegedly failed to implement undertakings in relation to his student loans. As a result of my enquiries the Board instructed the Student Loan Company to defer recovery of the overpayment until the complainant has completed his course. In addition I was informed that the complainant's maintenance loan for 2007/2008 would be made in full. **(200701314)**

# STATISTICS

**Table 3.3: Analysis of Written Complaints Received in 2007/08**

	Brought forward from 2006/07	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/08
Education Authorities	2	29	15	1	5	1	2	7
Local Councils	7	40	22	3	8	4	2	8
Health and Social Services Bodies	3	16	10	0	1	1	2	5
Housing Authorities*	46	87	53	7	26	15	10	25
Other Bodies Within Jurisdiction	3	21	11	2	5	0	4	2
<b>TOTAL*</b>	61	193	111	13	45	21	20	47

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

**Table 3.4: Analysis of Written Complaints Against Education Authorities**

	Brought forward from 2006/07	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/08
Belfast E&LB	1	3	1	1	1	0	0	1
CCMS	1	5	4	0	0	0	1	1
North Eastern E&LB	0	5	3	0	1	0	1	0
South Eastern E&LB	0	6	4	0	0	0	0	2
Southern E&LB	0	5	2	0	0	1	0	2
Western E&LB	0	5	1	0	3	0	0	1
<b>TOTAL</b>	2	29	15	1	5	1	2	7

**Table 3.5: Analysis of Written Complaints Against Local Councils**

	Brought forward from 2006/07	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/08
Ards BC	1	0	0	0	0	0	1	0
Armagh C&DC	0	4	2	0	1	0	0	1
Ballymena BC	0	1	0	0	1	0	0	0
Belfast CC	0	4	2	1	0	1	0	0
Castlereagh BC	1	3	1	0	2	0	0	1
Coleraine BC	0	1	0	0	1	0	0	0
Craigavon BC	2	3	1	0	1	1	1	1
Derry CC	0	4	3	0	0	0	0	1
Down DC	0	2	1	0	1	0	0	0
Larne BC	2	2	1	1	0	1	0	1
Limavady BC	1	1	1	0	0	1	0	0
Lisburn CC	0	3	2	0	0	0	0	1
Magherafelt DC	0	2	1	0	0	0	0	1
Moyle DC	0	3	2	0	1	0	0	0
Newry & Mourne DC	0	3	2	1	0	0	0	0
Newtownabbey BC	0	1	1	0	0	0	0	0
North Down BC	0	3	2	0	0	0	0	1
<b>TOTAL</b>	<b>7</b>	<b>40</b>	<b>22</b>	<b>3</b>	<b>8</b>	<b>4</b>	<b>2</b>	<b>8</b>

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

	Brought forward from 2006/07	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/08
Belfast Health & Social Care Trust	0	1	0	0	0	0	0	1
Eastern Health & Social Services Board	0	2	2	0	0	0	0	0
General Dental Practitioners	0	1	1	0	0	0	0	0
Northern Health & Social Care Trust	1	2	2	0	0	1	0	0
NI Ambulance Service	0	1	1	0	0	0	0	0
Regulation & Quality Improvement Authority	0	1	0	0	0	0	0	1
South Eastern Health & Social Care Trust	0	1	0	0	0	0	0	1
Southern Health & Social Care Trust	0	4	2	0	1	0	1	0
Western Health & Social Care Trust	2	3	2	0	0	0	1	2
<b>TOTAL</b>	<b>3</b>	<b>16</b>	<b>10</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>5</b>

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

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

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

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

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

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

	Brought forward from 2006/07	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/08
NIHE	41	69	40	7	22	14	10	20
Ark Housing Association (NI) Ltd	0	1	1	0	0	0	0	0
BIH Housing Association Ltd	2	2	2	0	0	0	0	2
Filor Housing Association Ltd	1	0	0	0	0	0	0	1
Fold Housing Association	0	3	2	0	1	0	0	0
Habinteg Housing Association (Ulster) Ltd	0	4	3	0	1	0	0	0
NI Co-ownership Housing Association Ltd	0	1	1	0	0	0	0	0
Oaklee Housing Association Ltd	1	2	1	0	1	1	0	0
Open Door Housing Association (NI) Ltd	0	2	2	0	0	0	0	0
Triangle Housing Association Ltd	1	0	0	0	1	0	0	0
Trinity Housing Ltd	0	1	0	0	0	0	0	1
Ulidia Housing Association Ltd	0	2	1	0	0	0	0	1
<b>TOTAL</b>	<b>46</b>	<b>87</b>	<b>53</b>	<b>7</b>	<b>26</b>	<b>15</b>	<b>10</b>	<b>25</b>

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

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

	Brought forward from 2006/07	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/08
Arts Council	1	3	1	1	1	0	1	0
Belfast Harbour Commissioners	0	1	1	0	0	0	0	0
Consumer Council	0	1	0	0	0	0	0	1
District Policing Partnerships	0	2	0	1	1	0	0	0
Equality Commission	0	2	2	0	0	0	0	0
Health & Safety Executive	0	2	2	0	0	0	0	0
Invest NI	2	0	0	0	0	0	2	0
Mental Health Commission	0	3	1	0	2	0	0	0
NI Fire & Rescue Service	0	2	1	0	1	0	0	0
NI Tourist Board	0	1	0	0	0	0	1	0
Rural Development Council	0	1	0	0	0	0	0	1
Not specified body within jurisdiction	0	3	3	0	0	0	0	0
<b>TOTAL</b>	<b>3</b>	<b>21</b>	<b>11</b>	<b>2</b>	<b>5</b>	<b>0</b>	<b>4</b>	<b>2</b>





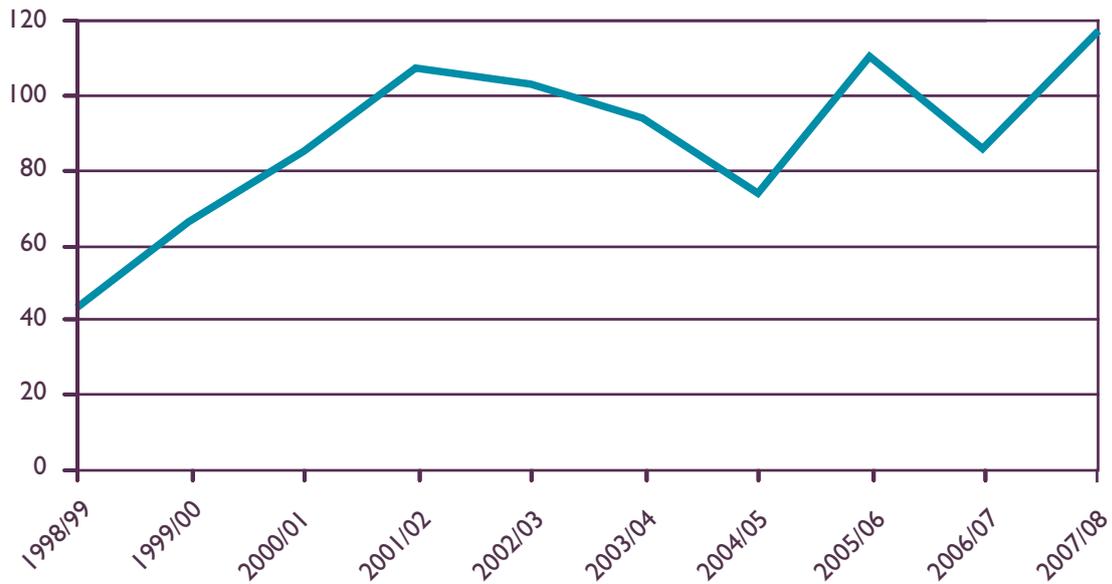
## SECTION FOUR

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

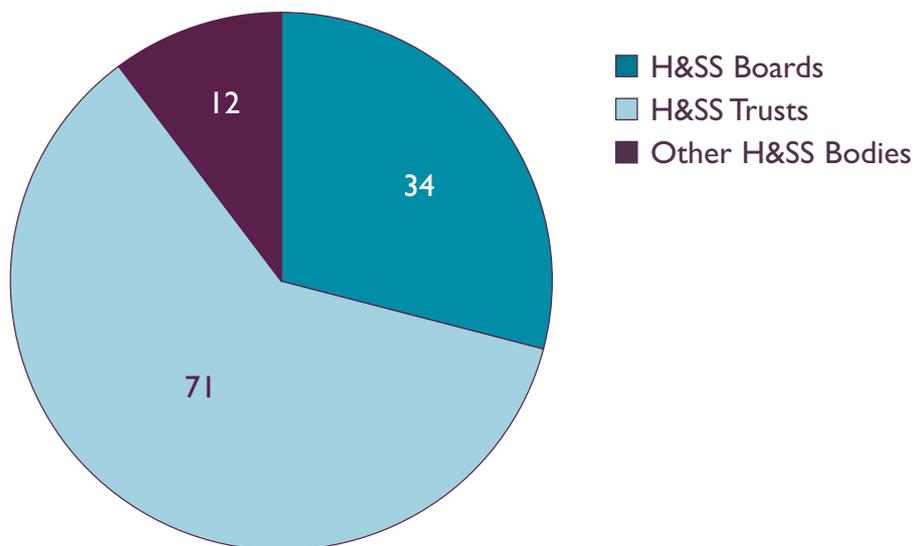
# WRITTEN COMPLAINTS RECEIVED IN 2007/08

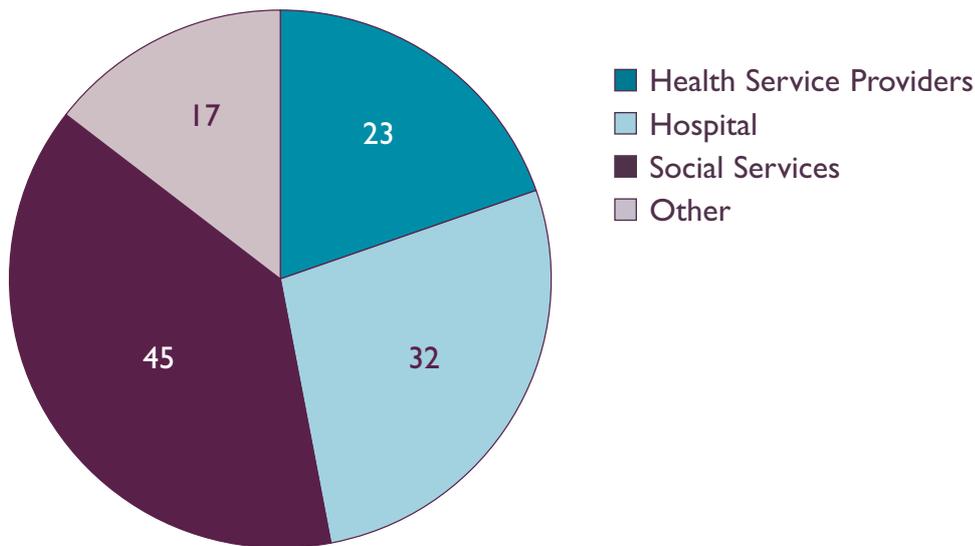
I received a total of 117 complaints during 2007/08, 29 more than in 2006/07.

**Fig. 4.1: Health Services Complaints 1998/99 - 2007/08**



**Fig 4.2: Written Complaints Received in 2007/08 by Authority Type**



**Fig 4.3: Written Complaints Received in 2007/08 by Complaint Subject**

## THE CASELOAD FOR 2007/08

In addition to the 117 complaints received during the reporting year, 27 cases were brought forward from 2006/07 – giving a total caseload of 144 complaints. Action was concluded in 100 cases during 2007/08. Of the 44 cases still being dealt with at the end of the year 5 were at Validation Stage and 39 were under investigation.

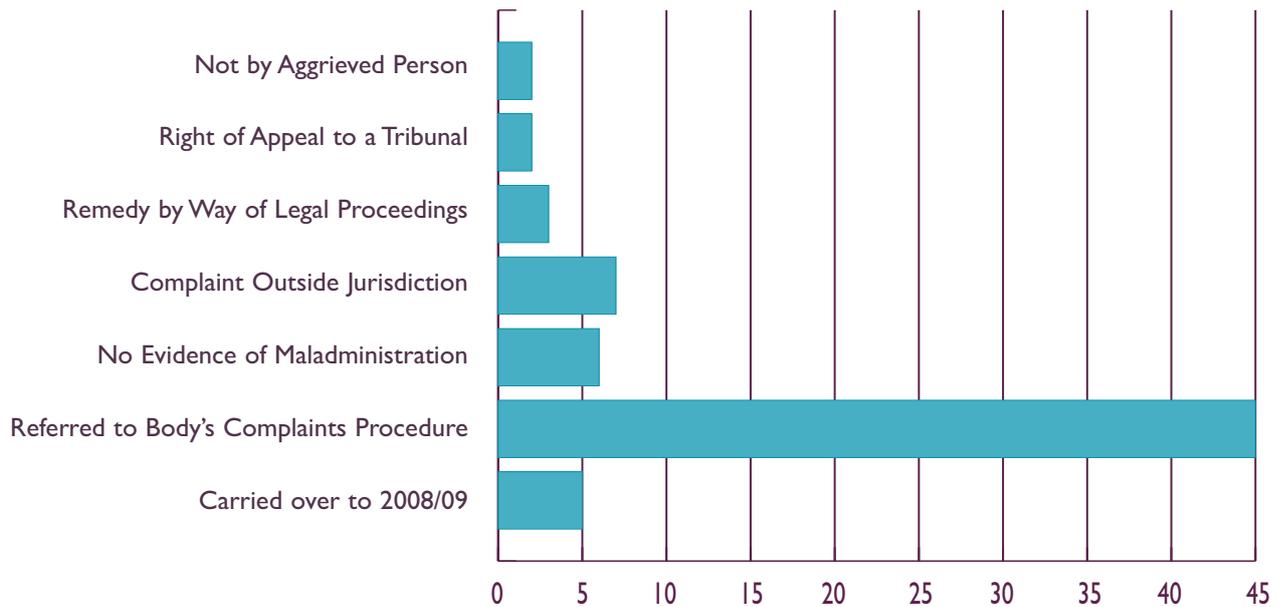
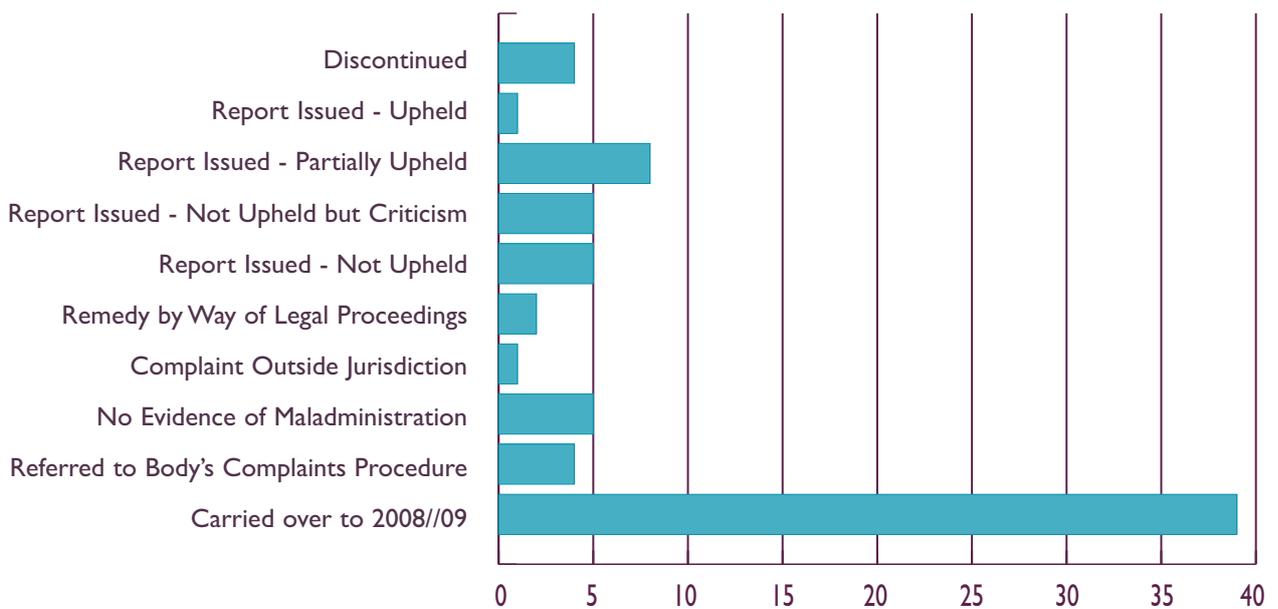
**Table 4.1 Caseload for 2007/08**

Cases brought forward from 2006/07	27
Written complaints received	117
<b>Total Caseload for 2007/08</b>	<b>144</b>

Of Which:

Cleared at Validation Stage	65
Cleared at Investigation Stage (without a Report), including cases withdrawn and discontinued	16
Settled	0
Full Report or Letter of Report issued	19
<b>In action at the end of the year</b>	<b>44</b>

The outcomes of the cases dealt with in 2007/08 are detailed in the Figs 4.4 and 4.5.

**Fig 4.4: Outcomes of Cases Cleared at Validation Stage****Fig 4.5: Outcome of cases Cleared at Investigation and Report Stages**

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

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

The average time taken for a case to be examined, enquiries made and a full Report issued at Report Stage was 97 weeks.

19 reports of investigations (Full Reports and Letters of Report) were issued in 2007/08. Of these cases: 1 was fully upheld, 8 were partially upheld, 5 were not upheld but I criticised the Body complained against and 5 were not upheld. In all of the cases in which I made recommendations for actions by the body complained against these recommendations were accepted by the body.

**Table 4.2 Recommendations in Reported Cases**

Case No	Body	Subject of Complaint	Recommendation
HC 32/03	Belfast Health & Social Care Trust	Care and treatment	Written apology & review of procedures
200501055	Northern Health & Social Care Trust	Conduct of investigation	Written apology & review of policies and procedures
200501159	Northern Health & Social Care Trust	Conduct of investigation	Written apology & review of policies and procedures
200501160	Northern Health & Social Care Trust	Conduct of investigation	Written apology
200501161	Northern Health & Social Care Trust	Conduct of investigation	Written apology
200501162	Northern Health & Social Care Trust	Conduct of investigation	Written apology
200501163	Northern Health & Social Care Trust	Conduct of investigation	Written apology
200501164	Northern Health & Social Care Trust	Conduct of investigation	Written apology
200600451	Western Health & Social Services Board	Dissatisfied with Independent Review of complaint	Written apologies from Board and Western Health & Social Care Trust & explanation of amendment to policy

# SELECTED SUMMARIES OF INVESTIGATED CASES

## Significant Failings in Care and Treatment

The case centred on the care and treatment provided to the complainant's late mother, Mrs M, by the then Belfast City Hospital (BCH), which now forms part of the new Belfast Health and Social Care Trust. Mrs M had been 63 years of age. In making his complaint to me, the complainant expressed the view that BCH had failed to adopt a holistic approach in the care and treatment of his mother and, as a result of that failure, it had failed to identify the source of the probable malignancy it was assumed she was suffering from.

Mrs M had investigations carried out in the Erne Hospital, the results of which were suggestive of a possible ovarian neoplasm; further investigations did not reveal any abnormalities. As her health continued to give cause for concern she was referred to BCH for further investigation.

The substantive issues raised by the complainant in his complaint were as follows:

- Despite the fact that Dr B, Consultant Gynaecologist, BCH was aware prior to his mother's admission to BCH, on Saturday, 7 December 2001, that she was extremely ill and required further investigation, his mother was allowed to self discharge on Monday, 10 December 2001, without any investigations having been carried out. He was not told that his mother had discharged herself.
- He brought his mother to BCH's Accident and Emergency Department (A&E) on 15 December 2001 because she was in severe pain and her left leg was extremely swollen. His mother was not admitted even though it was obvious that she was exceptionally weak and not fit to travel the some 90 miles back to her home in Fermanagh. The following morning he brought his mother back to A&E; she was seen by the same Doctor who had seen her the previous day and was admitted. The complainant alleged that the Doctor's failure to admit his mother on 15 December 2001 was due to professional incompetence;
- Following his mother's admission to BCH her condition was monitored throughout the following week. The medical staff were concerned about a Deep Vein Thrombosis in her left leg. A percutaneous mechanical thrombolysis procedure was carried out on 21 December 2001. His mother's condition rapidly deteriorated and she died within 48 hours with a suspected pulmonary embolism (PE). The complainant believed that a caval filter should have been used to reduce the risk of a PE;
- the complainant believed that BCH should have referred his mother for a post mortem and he expressed the view that a more sensitive approach should have been used when handing over the medical certificate of cause of death.

Having reviewed the documentation relating to the examination of the complainant's complaint under the Health and Personal Social Services Complaints Procedure, and having taken appropriate advice from my Independent Medical Advisor, I decided that the

complaint warranted investigation. I notified the Chief Executive of the BCH of my intention to conduct a formal investigation. To assist me with my investigation, I appointed three Independent Clinical Assessors (ICAs) - a Consultant Gynaecological Oncologist, a Consultant Radiologist and a Consultant Haematologist.

I established that Dr B had agreed to take over the care of the complainant's mother from Dr A, Consultant Gynaecologist, Erne Hospital. I also established that Mrs M's admission to BCH on 7 December 2001 had been arranged with Dr B through her General Practitioner. I was concerned that Dr B, who was not on duty when he agreed to admit Mrs M on 7 December 2001, had failed to make arrangements for the on-call Consultant Gynaecologist or a Senior Specialist Registrar to examine her on admission. Notwithstanding Dr B's failure to make arrangements for Mrs M to be examined by a specialist colleague I was satisfied that some appropriate investigations, including a chest x-ray, had been carried out on 8 December 2001. What I found most concerning was the fact that Medical, Vascular or Haematology advice had not been sought throughout the period of that admission, namely 7 December 2001 to 10 December 2001, even though Mrs M had been admitted with an unresolved DVT. I also found it disconcerting that the Specialist Registrar, Dr J, who examined Mrs M on the morning of 10 December 2001, and was aware that Mrs M intended discharging herself from BCH later that day, had failed to examine Mrs M's left leg, had failed to pick up on an abnormality that a chest x-ray had revealed and failed to seek Medical, Vascular or Haematology advice. Dr J's failure to do so confirmed my view (a view supported by my ICAs) that she had failed to appreciate the potential severity of Mrs M's condition, including the fact that Mrs M was at risk of having a pulmonary embolism. A further matter of concern was the fact that the complainant had not been advised that his mother had discharged herself against medical advice. Whilst acknowledging the right of a patient who is deemed competent to make a decision about her care and treatment, I took the view that, since Mrs M had not specifically directed that her confidentiality be respected, the complainant should have been informed that his mother had discharged herself, despite having been advised of the need for further investigations to be carried out.

It was not possible to establish whether the decision not to admit Mrs M on 15 December 2001 was due to professional incompetence on the part of the attending Doctor or the on-call Vascular Registrar whom he had consulted, because the Doctor who attended Mrs M in A& E on 15 and 16 December 2001 had relocated to Pakistan. My consideration of this aspect of the complaint was inhibited because the attending Doctor had failed to record the details of clinical conversations; information given and advice received. My ICAs advised me that a patient with a severe symptomatic DVT, and a recent hospital admission, should have been admitted to a medical emergency receiving unit on 15 December 2001. They drew attention to the failure of the attending Doctor to check Mrs M's INR (the international normalised ratio used for measuring the extrinsic system in the coagulation pathway). I had no hesitation in concluding that the decision not to admit Mrs M to BCH on 15 December 2001 was a gross error of judgement which I regarded as serious maladministration. The failure of the attending Doctor to make proper records compounded the level of maladministration. The fact that Mrs M was admitted on 16 December 2001, after having been discharged on 15 December 2001, confirmed my view that the decision not to admit her on 15 December 2001 was manifestly wrong.

Mrs M was admitted on 16 December 2001, with what was essentially a severe vascular problem. The Cardiovascular Consultant, under whose care Mrs M was admitted, had

directed on 17 December 2001 that opinion should be sought from haematology and vascular surgery. The Vascular Team was not contacted until 19 December 2001, some three days after Mrs M had been admitted and two days after the Cardiovascular Consultant had directed that vascular opinion should be sought. I was not able to identify why the vascular team had not been contacted until 19 December 2001 nor was I able to establish when the Vascular Consultant had sought advice from the Consultant Radiologist because referral had not been documented nor was there a record of their subsequent discussion. By 19 December 2001 Mrs M's condition was critical. I was surprised to note that there was no evidence that the options considered by the Vascular Consultant and the Consultant Radiologist had been discussed with the staff from the medical and haematology departments, who had been involved in Mrs M's care and treatment. A further matter which I found unacceptable, and most disconcerting, was the failure to document the discussion that resulted in the major decision to perform a mechanical thrombolysis. In addition it would appear that Mrs M's medical notes relating to her previous admission had not been available, the absence of which suggested that neither the Vascular Consultant nor the Consultant Radiologist had realised that Mrs M's DVT was a long standing one.

It was evident that the Vascular Consultant and the Consultant Radiologist were anxious to save Mrs M's left leg, which was highly compromised. The decision to perform the mechanical thrombolectomy procedure was taken because there was a very limited range of options available to them. I could not make a definitive finding on whether the decision not to use a cava filter was wrong because the decision was made on the basis of the clinical evidence that had been available to the Consultant Radiologist at that time. Despite the fact that Mrs M's condition deteriorated approximately 24 hours after the procedure, I was concerned to learn that the Consultant Radiologist was not contacted to allow him the opportunity to review Mrs M to determine if there was any further that he could do.

Following Mrs M's death, the complainant was approached and asked if he would like to have her referred for a post mortem. He declined because he was emotionally and physically drained. The complainant regretted his decision because he never found out the nature of his mother's malignancy. I accepted the explanation provided for giving the complainant the medical certificate of cause of death on the day his mother died.

I concluded that there had been major failings and gaps in relation to the care and treatment afforded to Mrs M during both periods that she was a BCH patient. I arrived at the view that, during her initial stay in BCH, the apparent lack of appreciation that Mrs M was a critically ill patient, who required immediate vascular and haematology input, had contributed to the major failings in the provision of care and treatment. The failure to ensure that Mrs M was reviewed by the appropriate specialities resulted in her being discharged with a serious clinical problem which without appropriate intervention would (and did) lead to what amounted to insurmountable clinical difficulties

I regarded the failure to admit Mrs M on 15 December 2001, when she presented at the A&E Department, as a gross error of judgement that was suggestive of professional incompetence.

The failing which I identified during Mrs M's second period of admission included a delay in making a referral for a vascular opinion, the failure to document consultations, the failure to ensure a named Medical Consultant took over responsibility of Mrs M's care after the

Cardiovascular Consultant went off on leave, the failure to have a round table discussion to discuss various care and treatment management options and the failure to consult the Consultant Radiologist when Mrs M's condition started to deteriorate following the mechanical thrombolectomy procedure.

In recognition of what I considered as the inadequacies of the standard of care and attention provided to Mrs M, I recommended that the Chief Executive of the Trust issue a full and detailed letter of apology to the complainant. In addition, I requested an evaluation report from the Trust on the concerns and criticisms that I identified in my report. The Trust accepted my recommendations, with the view to trying to ensure such matters were handled with sensitivity, that responsibility for discussing the issue of a post mortem should lie with the Lead Doctor or a senior member of his team and the procedures relating to the handling of the medical certificate of cause of death be reviewed.

The Trust provided me with an evaluation report. The Chief Executive also copied to me the letter of apology which he sent to the complainant. In it he expressed his regret that the care provided to Mrs M had fallen below an acceptable standard. He also outlined the action which the Trust intended to take in response to my Report and he offered the complainant the opportunity of a meeting with him and senior members of his team.

**(HC 32/03)**

### **Misdiagnosis leading to infant fatality**

The complainants stated they took their unwell baby to the Out-of-Hours GP who examined the child and diagnosed that he was 'teething'. They complained that the Doctor did not take the baby's temperature as he could not find a thermometer, nor did he advise them what the cause of the spots were on the child's abdomen and neck. A few hours later their baby was admitted to hospital where he died the following day from meningitis.

In my investigation of this sad case I sought comments from the Out-of-Hours GP who expressed his regret on hearing of the baby's tragic death. He informed me that, whilst he could not recall the exact details of the consultation, the baby's temperature had been clearly recorded by him in the clinical notes and that it was his normal clinical practice to use an ear thermometer to do this. He further stated that the clinical notes also recorded that he had examined the rash which was found to "blanche easily" and that it is his normal practice to always advise the parents of his finding in order to reassure them in relation to meningitis in particular. The Out-of-Hours GP Service Provider confirmed that there are two types of temperature recording equipment available to all Doctors working out of hours in the Health Centre, that is, digital thermometers and inner ear probe thermometers.

I obtained the baby's hospital and GP medical records and I arranged for these to be reviewed by my Independent Medical Adviser (IMA). My IMA subsequently provided me with detailed professional medical advice which formed the basis of my conclusions. My IMA explained that the inner ear probe thermometer takes the temperature in approximately 10 seconds and because it is quick and done in the ear he is aware of patients and parents who did not realise that the temperature had been taken. My IMA further stated that given the mother had provided details of a recent reading of the baby's temperature it would not have been unreasonable if the Out-of-Hours GP had not taken a

further reading. My IMA also explained that there are a number of illnesses that can cause fever; many of them are not serious in themselves and so the temperature itself is not a crucial cornerstone in reaching a diagnosis. Having carefully considered this aspect of the complaint I was unable to establish categorically if the Out-of-Hours GP had taken the baby's temperature during the examination.

With regard to the baby's rash my IMA advised me that prior to the characteristic rash occurring (that is, the non-blanching spots) there can be a blanching red rash which is very similar to or identical to the kind of blotchy red rash that can accompany temperature itself or be an accompaniment to viral infections. My IMA further advised that meningococcal meningitis is notoriously difficult to diagnose in its early stages when treatment would be most effective and most likely to prevent death or disability and that the presentation in the early stages overlap with other much more common and much less serious illnesses. My IMA stated that given that meningococcal disease can deteriorate at an alarming rate, there was nothing in the baby's hospital notes to indicate that the Out-of-Hours GP should have done more than he did, given his findings at the time. Consequently, having thoroughly and carefully examined all the documentation in this case and the detailed professional advice provided by my IMA I did not uphold the complaint.

On a final note, my investigation of this complaint revealed that whilst the family GP was informed of the baby's ultimate diagnosis and death, there was no evidence that this information was shared with the Out-of-Hours GP with whom the family had consulted. I therefore recommended that the Western Health and Social Services Board should give consideration to the introduction of a feedback system to the Out-of-Hours GP service to ensure that important information regarding significant injury or death of patients, examined by its Doctors, is relayed to the service in a timely and systematic manner. I also informed the Chief Medical Officer of the Department of Health, Social Services and Public Safety, of my recommendation as there may be regional implications for other Health Boards. I am pleased to record that the Western Health and Social Services Board accepted my recommendation and set up a working group to take the matter forward.

**(200601186; 200700319)**

### **Inadequate Care and Treatment of a Gynaecological Condition**

In this case the complainant alleged that she had been forced to undergo a further avoidable surgical procedure for endometriosis, a painful gynaecological condition, as a result of the failure of a surgeon in the Erne Hospital to perform a planned total abdominal hysterectomy together with the removal of ovaries. The complainant also alleged that her bowel had been cut during the procedure in the Erne Hospital, adding to the pain which she had experienced.

The complainant had previously raised her concerns through the Health and Personal Social Services Complaints Procedure and was dissatisfied that the Convenor of the Western Health and Social Services Board had decided not to grant an Independent Review of her complaint. She therefore asked me to investigate.

In order to determine whether the issues of complaint had been adequately addressed through the HPSS Complaints Procedure I obtained and examined all of the documentation considered by the Convenor. I found no evidence to contradict the clinical advice provided to

the Convenor which indicated that the medical care which had been offered to the complainant was appropriate and relevant. In particular, the advice indicated that the surgeon's decision to perform a partial hysterectomy and to conserve the complainant's ovaries was one which might well have been taken by many Consultant Obstetricians/Gynaecologists in performing that particular operation. Furthermore, the patient's clinical signs and symptoms, recorded post operatively, did not substantiate the allegation that her bowel had been cut. I was satisfied that the Convenor's decision not to grant an Independent Review was reasonable. I therefore decided not to take any further action on the complaint.

**(200601231)**

### **Handling of Complaint**

The complaint centred on the South Eastern Health and Social Care Trust's (the Trust) failure to issue a letter of apology to the complainant within 20 days as suggested by the Convenor of the Eastern Health and Social Services Board who had dealt with his complaint under the Independent Review process. He also complained that the Trust had failed to provide him with updates and its Chief Executive had failed to respond to a letter which he had sent to him.

Having obtained written comments from the Chief Executive and a copy of all the relevant documentation, I was satisfied that the Trust had provided updates to the complainant and the Chief Executive had responded to the complainant's letter. In relation to the Trust's failure to meet the 20 day target for the issue of the letter of apology, I was satisfied that the Trust's decision to seek legal advice on that particular issue was reasonable. However, I took the view that the Trust should have informed the complainant before the 20 days had expired that it would not be possible to meet the 20 day target for the issue of the letter of apology. In notifying the Chief Executive of the outcome of my consideration of the complaint, I advised him that I would have expected the Trust to have informed the complainant, before the expiry of the 20 days, that it would not be in a position to meet the 20 day target. **(200700825)**

### **Inclusion on Child Protection Register**

The aggrieved person complained about the treatment he and his daughter had received from the South Eastern Health & Social Care Trust (the Trust) regarding its decision to include, and then remove, his daughter's name from the Child Protection Register. He stated that he wanted his ex-wife's appeal against the decision to register their daughter's name on the Child Protection Register to be rescinded because it was made outside the time limit. The complainant further stated that he wanted the Trust to confirm that the Child Protection Case Conference was held because of his ex-wife's action and not because he had instigated it. Other issues of complaint included an allegation the Trust had breached confidentiality, had discriminated against him and that it had failed to reply to some of his correspondence.

My investigation established that in implementing the Child Protection Procedures the Trust had taken account of both the referral it had received from the PSNI's Domestic Violence Officer as a result of contact from the complainant's ex-wife, and also the referral made by the complainant himself about his ex-wife's behaviour. I further established that following a Child Protection Case Conference their daughter's name was added to the Child Protection Register and, whilst the complainant agreed with this decision, his ex-wife did

not and she submitted an appeal. I noted that the Trust had accepted the appeal after the 14 day time limit as laid down in the Regional Child Protection Policy and Procedures. However, it was evident that there was a delay by the Trust in providing information to the complainant's ex-wife to enable her to proceed with the appeal and, therefore, the Trust had exercised discretion in accepting a late appeal from her. I did not consider the Trust's action in this matter to have been unreasonable.

On the other issues of complaint my investigation did not identify any evidence to substantiate the complainant's allegation that he had been treated less favourably by the Trust than his ex-wife. With regard to the alleged breach of confidentiality, I noted that the Trust had released a copy of the minutes of the Child Protection Case Conference to his ex-wife in response to her request and that when the complainant expressed his dissatisfaction with the Trust's action it offered to provide him with a copy of the minutes in the interest of 'even handedness'. I felt that the Trust should have made this offer to the complainant at the time it provided the document to his ex-wife and I subsequently wrote to the Trust's Chief Executive on this matter. With regard to the complainant's correspondence, I felt that the Trust had made genuine efforts to respond to the complainant's numerous letters and emails, and that on two separate occasions it had offered to meet with him but he had declined those offers. Overall, I found no evidence of maladministration by the Trust in its dealings with the complainant.

Finally, in conducting my investigation, I was not entirely satisfied that the Regional Child Protection Policy and Procedures explicitly deal with situations where an individual raises complaints about the Child Protection process, rather than the decision to register or de-register a child on the Child Protection Register. I, therefore, wrote to the Chief Executive of the Trust to express my view that there is a need for local arrangements within the Trust to deal with the type of situation which arose in this complaint. **(200601054)**

### **Care and Treatment Afforded to Late Brother**

The aggrieved person complained about the care and treatment afforded to her late brother by the Northern Ireland Ambulance Service (NIAS). She explained that the family had sent for an emergency ambulance when her late brother, who suffered from Muscular Dystrophy and was confined to a wheelchair, became unconscious. She complained about the quality of care provided by the crew when they arrived at the house and stated that they had failed to bring any equipment into the house to assist in the assessment and treatment of her brother prior to his transportation to hospital. She added that she and her mother recalled that the crew did not bring a heart monitor into the house or administer oxygen to him, despite this being recorded by the crew as what happened. The complainant also stated that the portable cylinder which was supplying oxygen to her late brother ran out as they stopped outside the hospital. As such her brother was without oxygen for the length of time it took to remove him from the vehicle and wheel him into the Accident & Emergency department.

To assist me in my investigation I sought independent clinical advice on the treatment provided by the ambulance crew and I also carried out a thorough examination of the investigation of the complaint which had been undertaken by the NIAS. My examination of the documentation in this case revealed that there was a degree of disparity in the recollections of the two ambulance crew members which had not been clarified during the

NIAS's internal investigation of the complaint. I also noted that whilst the complainant and her mother were clear that a pulse oximeter and heart monitor were not brought in or used in the house, they did acknowledge that the equipment had been used when transporting the patient to hospital but could not recall at which point during the emergency call that the equipment had been introduced to the scene.

I further established that there had been a prolonged discussion between the ambulance crew and the family on how the patient would be transported to hospital as the complainant's mother was reluctant for him, because of his frailty, to be removed from his wheelchair and transferred into the emergency ambulance. As a compromise a member of the ambulance crew agreed to accompany the patient to hospital in the family's specially adapted car with the emergency ambulance following behind during the five minute journey. Having carefully reflected on the case I decided that it was unlikely that further clarification of the events could be established. Consequently I was unable to state whether or not, prior to the journey to hospital, the complainant's late brother had been given oxygen or if he had been connected to a heart monitor and pulse oximeter.

On the issue of the oxygen supply running out as the car entered the hospital site, whilst I was satisfied that the ambulance crew had acted in the patient's best interests in deciding to transport him to hospital in the family's specially adapted car, I found it unacceptable that the portable oxygen supply ran out on arrival at hospital. My Independent Medical Adviser subsequently advised me that the brief period without oxygen therapy at the end of the short journey to hospital would not have been significant to the final outcome for the patient.

As a result of my investigation of this sad case I made a number of recommendations to the NIAS regarding the introduction of a written record to be completed by an ambulance crew to demonstrate when the portable oxygen gas cylinders in ambulance vehicles have been replaced and by whom. I further recommended that all ambulance staff should be reminded of the importance of clear communication and that, prior to arrival at the scene of a call, crews should each agree amongst themselves what equipment is required and which member of the crew is responsible for bringing it to the scene. **(200601154)**

# STATISTICS

**Table 4.3: Analysis of Written Complaints Received in 2007/08**

	Brought forward from 2006/07	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/08
H&SS Boards	3	34	7	0	4	1	3	22
H&SS Trusts	21	71	49	0	11	8	5	19
Other H&SS Bodies	3	12	9	0	1	0	2	3
<b>TOTAL</b>	<b>27</b>	<b>117</b>	<b>65</b>	<b>0</b>	<b>16</b>	<b>9</b>	<b>10</b>	<b>44</b>

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

	Brought forward from 2006/07	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/08
Eastern H&SSB	0	20	2	0	3	0	2	13
Northern H&SSB	0	1	1	0	0	0	0	0
Southern H&SSB	0	8	2	0	0	0	0	6
Western H&SSB	3	5	2	0	1	1	1	3
<b>TOTAL</b>	<b>3</b>	<b>34</b>	<b>7</b>	<b>0</b>	<b>4</b>	<b>1</b>	<b>3</b>	<b>22</b>

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

	Brought forward from 2006/07	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/08
Belfast Health & Social Care Trust	3	23	19	0	3	1	0	3
Northern Health & Social Care Trust	11	13	10	0	2	7	0	5
South Eastern Health & Social Care Trust	3	16	10	0	1	0	3	5
Southern Health & Social Care Trust	1	11	7	0	2	0	0	3
Western Health & Social Care Trust	2	7	3	0	3	0	1	2
NI Ambulance Service	1	1	0	0	0	0	1	1
<b>TOTAL</b>	21	71	49	0	11	8	5	19

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

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

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

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

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

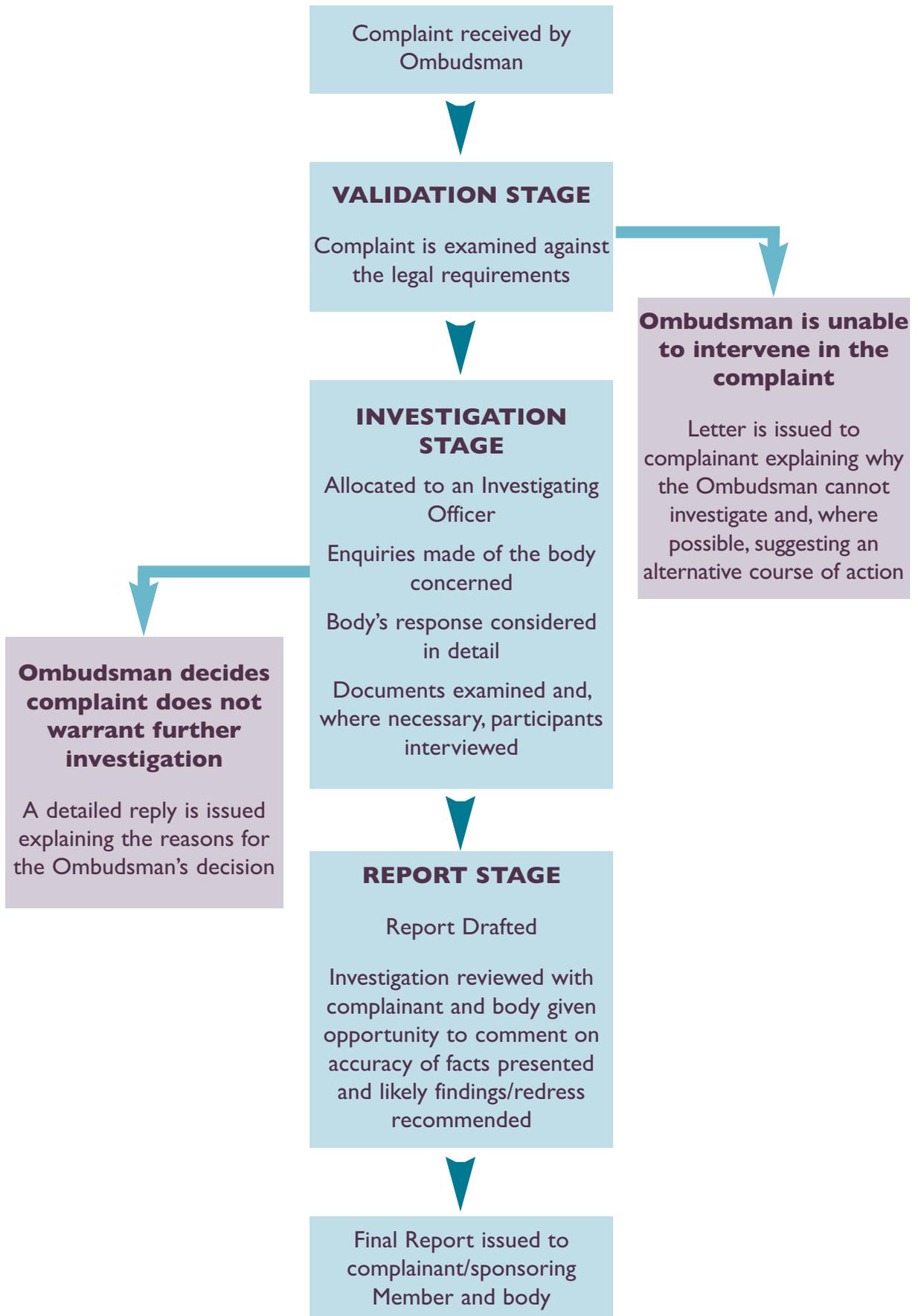
**Table 4.6: Analysis of Written Complaints Against Other Health and Social Services Bodies**

	Brought forward from 2006/07	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	In Action at 31/3/08
Health Service Providers - GDP	0	2	2	0	0	0	0	0
Health Service Providers – GP	3	9	6	0	1	0	2	3
Not specified Health & Social Services Body	0	1	1	0	0	0	0	0
<b>TOTAL</b>	3	12	9	0	1	0	2	3



APPENDIX A  
Handling of Complaints

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



# THE PROCESS:

## Validation Stage

Each complaint is checked to ensure that:

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

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

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

## Investigation Stage

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

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

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

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

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

### **Report Stage**

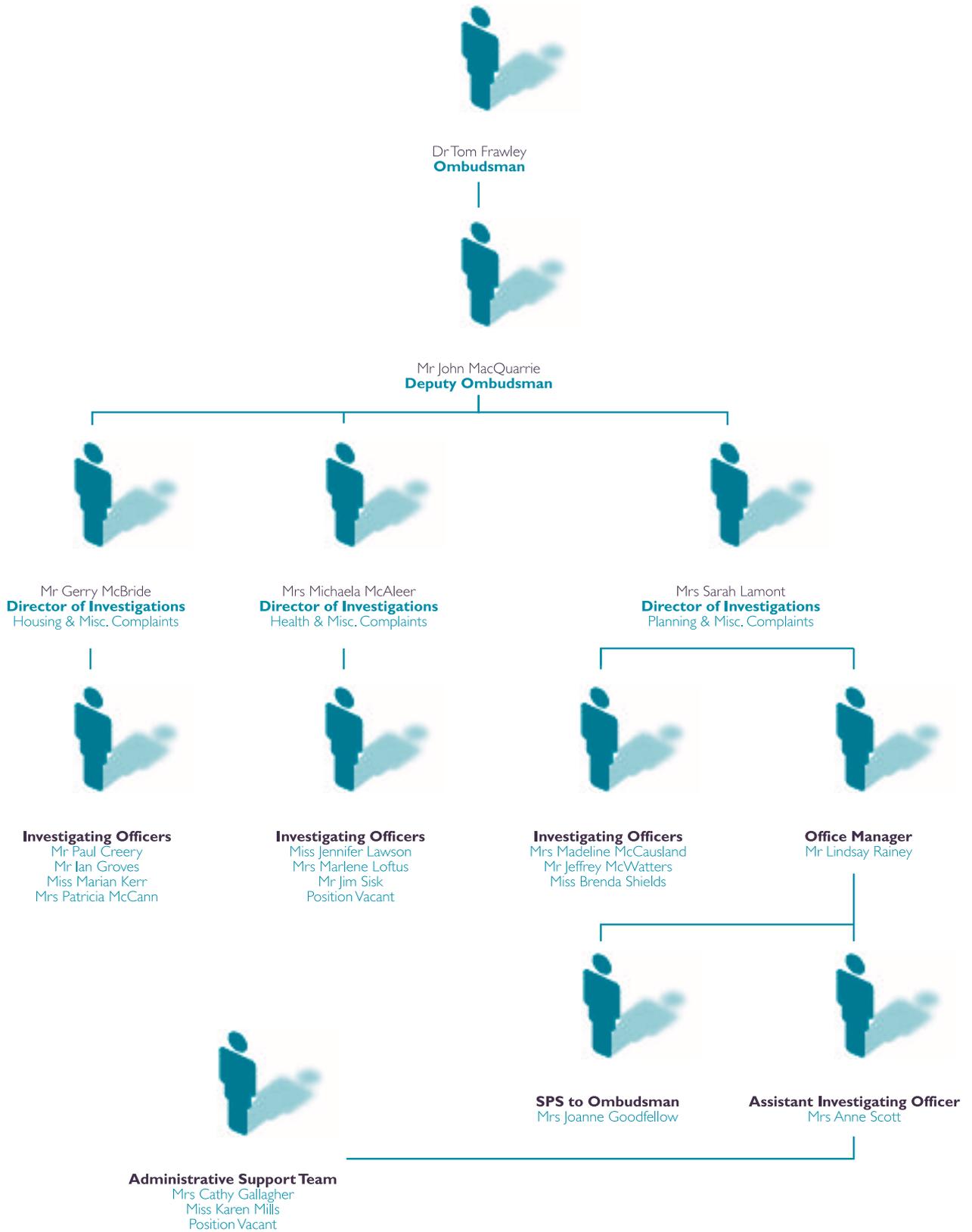
I will prepare a draft Report containing the facts of the case and my likely findings. At this point the case will be reviewed with the complainant. The body concerned will be given an opportunity to comment on the accuracy of the facts as presented, my likely findings and any redress I propose to recommend.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

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



APPENDIX B  
Staff Organisation  
Chart

# STAFF ORGANISATIONAL CHART



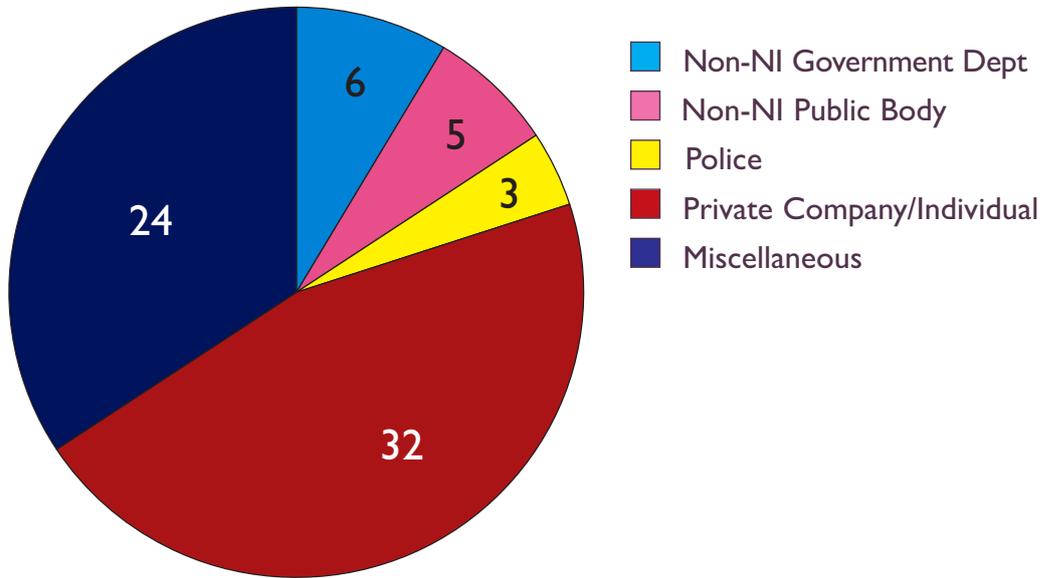


## APPENDIX C

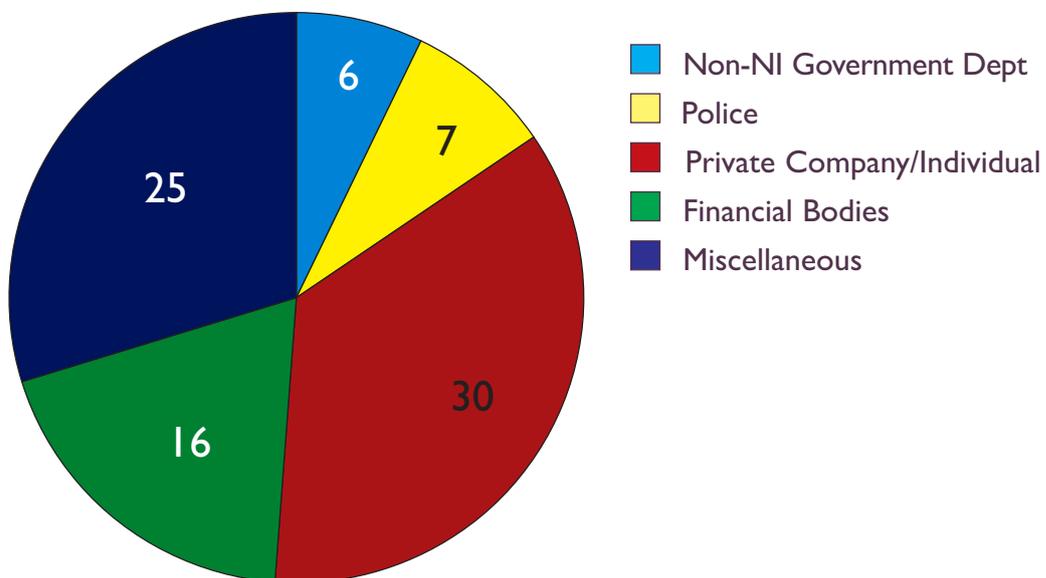
Analysis of Complaints  
Received Which were  
Outside Jurisdiction

My Office received 154 specific complaints and enquiries relating to bodies which were clearly outside my jurisdiction. In such cases Administration Section staff give as much advice/information as they can about other avenues which may be open to the persons concerned to pursue their complaint and, where possible, provide appropriate contact information.

**Breakdown of Telephone Calls and Interviews Outside My Jurisdiction**



**Breakdown of Written Complaints Outside My Jurisdiction**









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# CONTACTING THE OFFICE

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

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

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

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

**By fax:** 028 9023 4912.

**By E-mail to:** [ombudsman@ni-ombudsman.org.uk](mailto:ombudsman@ni-ombudsman.org.uk)

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

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

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

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

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

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