

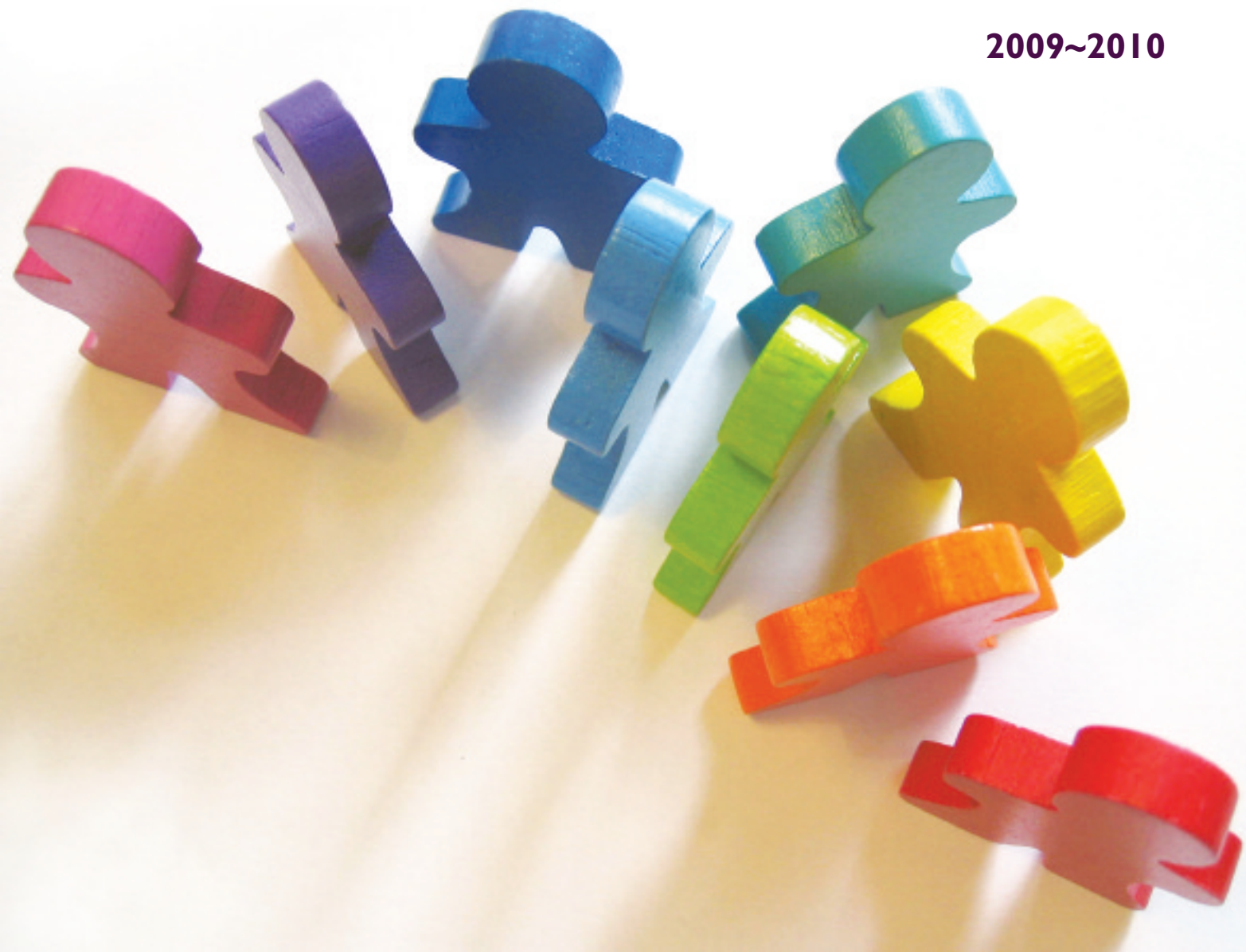


Ombudsman Northern Ireland

# Annual Report

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

**2009~2010**



## 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 agencies and a wide range of other 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 Care Trusts, Housing Associations and the Northern Ireland Housing Executive.

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

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

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ANNUAL REPORT of the  
ASSEMBLY OMBUDSMAN for  
NORTHERN IRELAND and the  
NORTHERN IRELAND COMMISSIONER  
for COMPLAINTS 2009-2010

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



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# Section One The Year in Review





## The Year in Review

I am pleased to lay this Report for the year 2009/10 before the Assembly in this the 40th anniversary year since the creation of my Office. The report outlines our core activities for the year 2009/10 and provides case summaries of investigations into the actions of bodies from across the public sector during the period reported on. These investigations relate to complaints raised with me by Assembly Members and also directly by members of the public. The breadth of my jurisdiction is such that I consider complaints about a wide range of matters including planning, health, housing and education. These complaints touch on almost every aspect of the lives of the citizens of Northern Ireland.

This year has been a significant one for my Office and on 25 November 2009 my staff and I acknowledged the 40th anniversary of the creation of the Office by hosting a conference in Co Antrim. We were joined on that occasion by a number of prestigious speakers, including the Right Honourable Sir Declan Morgan, The Lord Chief Justice of Northern Ireland; the Parliamentary Commissioner, Ann Abraham; the Ombudsman of the Republic of Ireland and Information Commissioner, Ms Emily O'Reilly; as well as a former holder of this office, Dr Maurice Hayes. I was also delighted to welcome former Ombudsmen, Mr Gerry Burns and Mrs Jill McIvor to our celebrations. The 40th event allowed me and my current staff to recognise the significant contributions of all the former Directors and staff who helped to shape and lead this important office over the past 40 years.

This report, which is a document of record, also captures some of the important moments of the 40th anniversary event which charted the journey of the Office from its inception in 1969 to its present role as an integral part of the administrative justice landscape.

In relation to casework, this year has seen a significant increase in complaints to my Office. Overall, this increase totalled 15.4%. Most of this increase arises from the significant change to the Health Service statutory complaints procedure. From 1 April 2009 the Independent Review, a second tier of redress for citizens, was removed from the procedure. Complaints about health and social care now come to my Office directly after the first stage of the relevant health authority's internal process has been exhausted. Further detail is included in the Health and Social Care section (see page 9).

I recognise that in the present economic climate public services are tested, as government and senior management seek even greater economy and efficiency. At such times statutory requirements, the needs of individual citizens and the quality of the delivery of public services can, if we are not vigilant, become secondary. In such challenging times, my Office provides an impartial mechanism for ensuring redress, where appropriate, to the individual citizen. Often, as the case summaries in this Report illustrate, my investigation highlights improvements that are needed if public bodies are to meet their primary objectives of delivering fair, effective and high quality public services. However, importantly for

public servants, my Office also offers a shield against unfair and unreasonable criticism when, at a time of financial retrenchment, public expectations of services also require to be managed more realistically.

In such a difficult context, my continuing frustration at the delay in implementing the 2004 OFMDFM Review of my Office has been well documented in previous annual reports. Some progress has been made this year but much remains to be done to achieve the modernisation of this office. The necessary changes in the legislation that underpins my role are essential in order that the office is equipped to meet future challenges. The challenges facing citizens and public bodies in ensuring standards are maintained will, as I have already indicated, be made ever more difficult by the unprecedented difficulties of the economic downturn and the resultant pressure on public finances, caused by the crisis in global financial systems. This presents a major challenge to government to achieve savings in public spending, which will inevitably lead to pressure on frontline services to the citizen. In such difficult times, as I have already indicated, the Ombudsman has a critical role to play.

The recent interest in the Review of the Office by the OFMDFM Committee in the Assembly does offer some basis to believe this crucial work undertaken in 2004 may at last be moving towards implementation.

## Planning

The number of complaints I received about the actions of the Planning Service increased this year by 13.7%. The complaints were, as previously, almost exclusively from objectors to planning applications, for most of whom my Office remains the only route by which to challenge the actions of the Planning Service, once a planning decision is made and the internal complaint process has been exhausted.

As I have highlighted in previous Annual Reports, my jurisdiction in planning matters is limited and extends only to the examination of the administrative actions that inform the decisions of the Planning Service. The legislation governing my Office does not give me the authority to question technical or discretionary decisions, made by professional planning officers, where there is no evidence of maladministration in their considerations. Although I may personally disagree with a planning approval, I do not have the authority to overturn the decision itself. This can be a difficult concept for complainants to accept and, perhaps unsurprisingly, they sometimes call into question the value of coming to my office with a complaint about Planning Service. Clearly, it is only through changes to the legislation that my role in this area can be strengthened, and I continue to raise this possibility with Assembly Members.

In the meantime, however, I am keen to bring about improvements in those areas over which I do have authority – the administrative actions of the Planning Service. My Deputy, together with the Director of my Planning team, has embarked on discussions with senior officers in the Planning Service to identify areas of concern reflected in complaints and agree how these may be addressed as we move forward. In my role as Ombudsman I often recommend improvements in public services where individual complaints have highlighted specific concerns and failures. Although I cannot substitute my decision for that of a public authority, I do seek to ensure that administrative processes reflect best practice and that customer service is given real priority.

These discussions with the Planning Service at a senior level have enabled some improvements in administrative practice to be identified that I believe, if implemented, will improve service to the public. However I continue to receive complaints from citizens which consistently feature basic administrative shortcomings that are avoidable. Of concern is the fact that these basic errors recur despite the Chief Executive's



acceptance of my findings, and her publication of them - with associated guidance - throughout Planning Service.

For example, as I have indicated, the vast majority of complaints about Planning Service are from objectors. They are unhappy that approval has been granted for a property that, they believe, is going to somehow adversely affect their quality of life and they want to understand how such a decision could have been reached. Planning Service's explanation will frequently make statements such as 'no undue overlooking' or 'objections considered', with no supporting evidence to indicate how conflicting considerations were weighed against each other. An objector is left with the impression that the objection was not fully considered. Even when there is disagreement between planners themselves, the final recommendation may lack sufficient supporting explanation for the complainant to adequately identify the issues considered in reaching the final decision.

I do acknowledge that the Chief Executive of Planning Service is generally supportive of my view that explanations given to complainants need to be more detailed, and also that documents supporting a planning decision need to contain sufficient detail for the decision to be explained, and thus more effectively defended, at a later date, potentially by someone who has no prior knowledge of the case. However, I am disappointed that the Chief Executive's acknowledgement, of what I consider to be a basic requirement of customer service, has apparently not been adopted as common practice. Disappointingly, I see no improvement in general administrative practice despite reassurances from the Planning Service that lessons learned from individual complaints have been fed back to front-line staff. Each new case I investigate is as likely to contain as much of this avoidable maladministration as those cases I have investigated in past years. Many responses to my enquiries of the Planning Service will acknowledge some error - a letter was not replied to, a neighbour was not notified of the proposed development, the information provided to those likely to be affected by a planning decision was incorrect, and so on.

The Planning Service, like other public bodies, faces increasing pressures in a difficult economic climate. However, I do find it unacceptable that citizens should experience poorer service because of these financial pressures. Organisations, and I would include my own Office in this, must learn to 'achieve more with less'. My role as Ombudsman in such challenging circumstances is more important than ever. Therefore I will continue to find maladministration where there is clear evidence that the basic public service is inadequate and has failed the citizen.

While many complainants may not accept my conclusions in planning cases as the outcome they seek, I consider that an approach that would provide insight, and therefore a better understanding of the reasoning behind a planning decision, would provide more confidence in the administrative process.

## Housing

I have continued to receive complaints from tenants and others who are unhappy with the level of service they have received from the Northern Ireland Housing Executive and Housing Associations in Northern Ireland. I acknowledge that, given the significant number of contacts between tenants and their public sector landlord(s) in any given year, the number of complaints which I receive are relatively low.



I am pleased to report that the total number of such cases has fallen during the period of this Annual Report. I continue however to receive complaints and enquiries concerning the standard of repairs, homelessness, award of grants, transfers, and housing benefit.

As I have indicated, I believe complaints provide a unique opportunity for organisations to learn about the services they provide in real time. In my reports to public sector housing providers I regularly highlight which behaviours and processes represent good administrative practice. The summaries of housing cases in this Annual Report suggest a number of areas where improvements can and should be made. These relate in particular to record keeping, the decision making process and communicating with customers.

These cases suggest the need, as in other areas, for housing providers to maintain adequate records of actions taken and of their interaction with customers so that they are in a position to explain the reason(s) for actions taken. A contemporaneous record is both helpful and essential in explaining what was done and why.

In making decisions it is important that public sector housing providers ensure that irrelevant considerations are not taken into account in making a decision. In addition the decision maker should ensure that adequate consideration is given to all relevant and material factors in making a decision, including any special circumstances that may apply in individual cases. Adequate timely and accurate information, explanation and advice should also be provided to customers on the issues that are of concern to them. Public bodies should avoid making misleading or inaccurate statements to members of the public they exist to serve. In particular public bodies must be cautious in the undertakings they give to the public and properly discharge any responsibilities towards citizens which arise from them.

In respect of housing matters, complainants remain concerned about the quality and timeliness of communications. Replies to letters and other enquiries should be made in a courteous manner and within a reasonable time. In addition, administrative processes should ensure that appropriate and relevant action is taken to meet the particular circumstances of each situation.

## *Health and Social Care*

As highlighted earlier in this Review, my Office, during the period of this Annual Report has dealt with an increased workload arising from the changes to the health and social care complaints procedure. These changes, which included the abolition of the independent review stage (second stage), have resulted in a 120% increase in complaints received by my Office about this sector.

In my Annual Report 2008/9, I reported on how my Office had planned and prepared for this change. This was to ensure that complainants who remain dissatisfied, having exhausted the HSC complaints procedure, were effectively informed about the process involved in bringing their complaint to my Office.

I welcome the change in the HSC complaints procedure. Mainly because it allows my Office to investigate issues which are still 'fresh' in the memory. The removal of the independent review stage has resulted in complaints being investigated within a few months of the events which have given rise to the matters complained of. In practical terms this ensures that documents can be more easily retrieved by the record holder; officers involved in the investigation are more accessible and their recall of the matters involved is clearer.



Of concern to me is the fact that in the year 2009/10 I found maladministration on the part of HSC bodies arising from their failure to manage complaints within acceptable timeframes. I am required by legislation to attempt to effect a settlement in any case. In circumstances where complainants have been frustrated because of delays in the body's internal complaints process, I have therefore intervened to ensure more speedy consideration, where possible, of a complaint. I have then asked the HSC body to reconsider the outstanding issues that gave rise to the complaint in the first instance.

In 2009/10, in preparation for the change in the HSC complaints procedure, I, with my staff, held workshops with all 5 HSC Trusts and the NI Ambulance Service. My key objective was to inform these bodies about my role in investigating complaints.

Looking to the future, in 2010/11 I intend to focus outreach activity in the HSC sector on Primary Care (GPs) services and the independent nursing home sector where residents are funded by the public purse.

## Staffing

During this year there have been a number of changes to staffing both in investigative and administrative teams. Significantly, a new Deputy Ombudsman, Mrs Marie Anderson was appointed in May 2009. Marie qualified as a solicitor in 1985 and has gained extensive legal and business experience while working in the private and public sector. Also a number of investigating officers have been seconded to my Office, from across the public service, to assist in the investigation of the increased case volumes arising from the changes in the HSC complaints procedure and the overall increase of complaints to my Office.

I am pleased to report that my staff, both those who are more experienced and the newer staff, continue to demonstrate an outstanding commitment to the values that inform the work of the Office. I would like to take this opportunity to place on record my thanks to them for their commitment and support throughout what has been a challenging year. I am particularly grateful to those who made the 40th anniversary celebrations so memorable.

## Future Challenges

This year has been one of transition. The Office of the Northern Ireland Ombudsman has reached its fortieth anniversary and this has been a significant milestone in its history. This anniversary year has provided an opportunity for us to revisit the past and plan for the future. There are significant challenges ahead; the impact on my jurisdiction of the devolution of policing and justice powers to the Northern Ireland Assembly, as well as the opportunity to enhance the Office's relationship with the Assembly through improved engagement and communications about the work of the Office; the need to focus on completing the (OFMDFM) Review of the Office and developing the legislation that is needed to achieve a Public Service Ombudsman's Office for Northern Ireland as envisaged by that Review (2004). I am particularly aware of the needs of older people and many of the complaints I consider do emanate from older persons. Following initial discussions with the Older Person's

Advocate, I have agreed to focus my outreach activity for the year 2010/11 on older persons. This will enable some joint working to be undertaken with the Older Person's Advocate to raise awareness of my Office's role, particularly in the areas of health and social care complaints.

## Conclusion

In anticipation of these future challenges, I have this year begun a comprehensive review of my Office policies, practices, communication and stakeholder needs. The results of this internal review and external stakeholder analysis have informed the Corporate Plan for the period 2010 to 2013. A key task in the year ahead will be to prioritise work around the 3 strategic objectives identified in that plan. These objectives were agreed following an office wide process that identified priority areas for change. This work was taken forward by a number of working groups. I am proud of the enthusiasm and engagement of all of my staff in this process and in the working groups that underpinned the process.

The important role my Office plays in the oversight of the Northern Ireland public service has been extended by the devolution of policing and justice powers to the Assembly which brings with it a major extension to my jurisdiction. I welcome the opportunity to oversee the administrative practices of the new Department of Justice, its agencies and other justice bodies. This extended jurisdiction presents new challenges but I am satisfied that my staff and I are equipped to meet these challenges going forward.

Interestingly, these new responsibilities resulting from the devolution of policing and justice are transferring to my Office mainly from the jurisdiction of the Parliamentary Ombudsman at Westminster. It will be interesting to learn whether the change in responsibility to a more local office in Belfast will affect the number of complaints being submitted to my Office.

It is important, in the midst of these unfolding changes, to remind ourselves that our core work and commitment continues to be around those things that impact the daily lives of people: housing, health, education and social welfare. This reality is again captured in this Annual Report. Each case summary and each complaint received captures the experience of an individual citizen, and often their family. Their experience of failed public services often affecting their ability to fulfil key aspects of their lives which the rest of us take for granted. In the demanding times that are unfolding all around us I believe the work of this Office is more relevant than ever. In the words of that great Irish Parliamentarian Edmund Burke:

*"I am not one of those who think that people are never in the wrong. They have been so frequently and outrageously, both in other countries and in this. But I do say in all disputes between them and their rulers the presumption is at least upon a par in favour of the people".*

Thoughts on the Cause of the Present Discontent (1770)



## Total Number of contacts 2009/10 ~ 2702

Written Complaints ~ 681 Telephone Calls ~ 1968 Interviews ~ 53

## Total number of Telephone Calls to the Office 2009/10 ~ 1968

Assembly Ombudsman ~ 120 Commissioner for Complaints ~ 128  
Health and Social Care ~ 146 Outside Jurisdiction ~ 1574

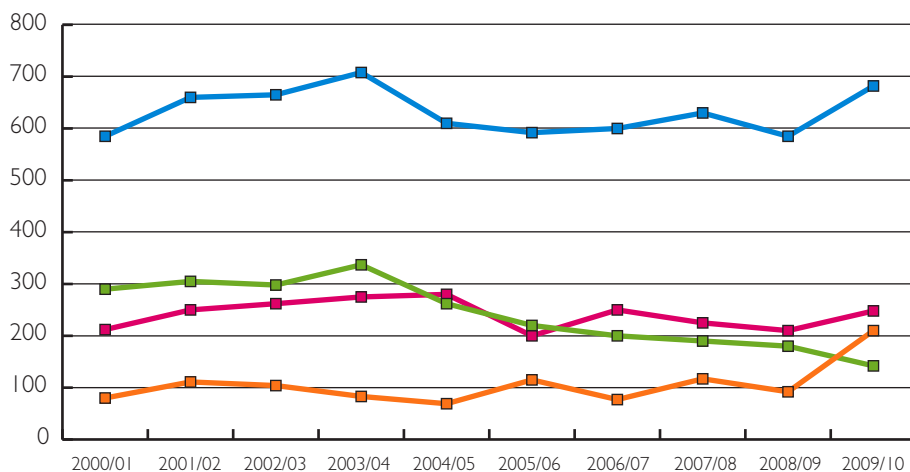
## Total number of Interviews in the Office 2009/10 ~ 53

Assembly Ombudsman ~ 9 Commissioner for Complaints ~ 22  
Health and Social Care ~ 19 Outside Jurisdiction ~ 3

## Total number of Written Complaints to the Office 2009/10 ~ 681

Assembly Ombudsman ~ 248 Commissioner for Complaints ~ 143  
Health and Social Care ~ 209 Outside Jurisdiction ~ 81

## Complaints Received 2000/01 ~ 2009/10



Total Complaints Received  
Complaints Received by the Assembly Ombudsman  
Complaints Received by the Commissioner for Complaints  
excluding HSC below  
Health & Social Care Complaints Received by the  
Commissioner for Complaints

## Section Two

# Annual Report of the Assembly Ombudsman



As Assembly Ombudsman for Northern Ireland I received a total of 248 complaints during 2009/10, 36 more than in 2008/09.

### Written Complaints Received in 2009/10 by Authority Type

Government Departments ~ 86

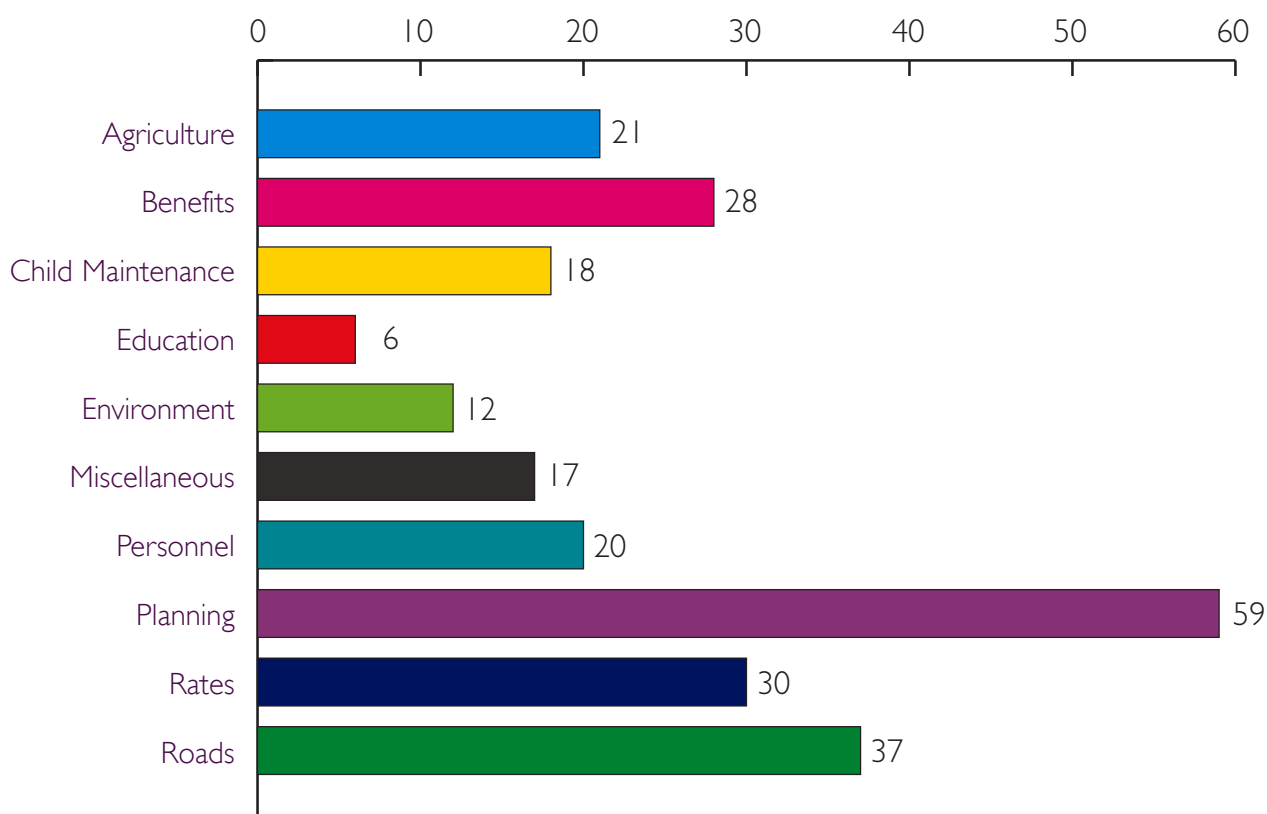
Agencies of Government Departments ~ 159

Tribunals ~ 2

N/S Implementation Bodies ~ 1

When their respective agencies are included, the Department of the Environment and the Department for Social Development attracted most complaints, 74 and 51 respectively. Of these 96 related to their agencies, with the Planning Service (58) and Social Security Agency (26) giving rise to the largest number of complaints. In all, 159 of the 248 complaints received in 2009/10 related to the agencies of government departments.

### Written Complaints Received in 2009/10 by Complaint Subject



## *The Caseload for 2009/10*

Cases brought forward from 2008/09	36
Written complaints received	248
<b>Total Caseload for 2009/10</b>	<b>284</b>
Of Which:	
Cleared at Validation Stage	175
Cleared at Investigation Stage (without a Report), including cases withdrawn and discontinued	30
Settled	7
Full Report or Letter of Report issued to MLA	24
Ongoing at the end of the year	48

### **Outcome of Cases Cleared at Investigation and Report Stages**

Discontinued <b>3</b>	Settled <b>7</b>
Withdrawn <b>1</b>	Report Issued - Upheld <b>7</b>
Referred to Body's Complaints Procedure <b>4</b>	Report issued - Partially Upheld <b>7</b>
Remedy by way of Tribunal <b>1</b>	Report Issued - Not Upheld but Criticism <b>4</b>
Remedy by way of Legal Proceedings <b>0</b>	Report Issued - Not Upheld <b>6</b>
Complaint outside Jurisdiction <b>8</b>	Carried over to 2010/11 <b>48</b>
No evidence of Maladministration <b>13</b>	

24 reports of investigations (Full Reports and Letters of Report) were issued in 2009/10. Of these cases:

- 7 were fully upheld;
- 7 were partially upheld;
- 4 were not upheld but I criticised the Body complained against; and,
- 6 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.



## Recommendations in Reported Cases

Case No	Body	Subject of Complaint	Recommendation
200800696	Land and Property Services	Charges for Services	Written Apology
200800035	Department of Education	Policy & Procedure	Written Apology & Consolatory payment £150
200800880	Land and Property Services	Complaints Handling	Written Apology & Consolatory payment £1500
200800958	Roads Service	Complaints Handling	Written Apology & Consolatory payment £150
200800995	Department for Social Development	Personnel - Harassment	Written Apology & Consolatory payment £2500
200900371	Department for Social Development	Complaints Handling	Written Apology & Consolatory payment £250
* 200800373	Department of Finance & Personnel	Personnel - Pay	Written Apology & Consolatory payment £3500
200700861	Department for Social Development	Child Maintenance	Written Apology & Consolatory payment £5000
200800367	Department of Education	Personnel - Pay	Written Apology & Consolatory payment £1000
* 200800388	Planning Service	Planning Application	Written Apology & Consolatory payment £1750
200900508	Land and Property Services	Complaints Handling	Written Apology & Consolatory payment £750
* 200900210	Land and Property Services	Failure of Communication	Written Apology & Consolatory payment £1626
* 200800963	Department of Finance & Personnel	Personnel -Recruitment	Written Apology & Consolatory payment £4000
* 200801179	Department for Social Development	Child Maintenance	Written Apology & Consolatory payment £5000

Summaries of the Cases marked by \*  
are available at Appendix A



## Statistics

### Analysis of Written Complaints Received in 2009/10

	Brought forward from 2008/09	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	Ongoing at 31/3/10
Government Departments	17	86	57	4	17	8	2	15
Agencies of Government Departments	15	159	114	3	13	6	7	31
Tribunals	0	2	2	0	0	0	0	0
N/S Implementation Bodies	4	1	2	0	0	0	1	2
<b>TOTAL</b>	<b>36</b>	<b>248</b>	<b>175</b>	<b>7</b>	<b>30</b>	<b>14</b>	<b>10</b>	<b>48</b>

### Analysis of Written Complaints against Government Departments

	Brought forward from 2008/09	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	Ongoing at 31/3/10
DARD	2	21	11	0	6	0	1	5
DCAL	0	3	2	0	1	0	0	0
DE	2	6	4	0	2	1	0	1
DEL	1	3	2	0	1	1	0	0
DETI	0	4	2	0	1	0	0	1
DFP	3	10	7	0	3	2	1	0
DHSSPS	0	3	2	0	0	0	0	1
DOE	1	4	2	0	1	0	0	2
DRD	0	6	6	0	0	0	0	0
DSD	4	6	4	3	0	2	0	1
DSD - CMED	3	19	15	1	0	2	0	4
OFMDFM	1	1	0	0	2	0	0	0
<b>TOTAL</b>	<b>17</b>	<b>86</b>	<b>57</b>	<b>4</b>	<b>17</b>	<b>8</b>	<b>2</b>	<b>15</b>



## Analysis of Written Complaints against Agencies of Government Departments

	Brought forward from 2008/09	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	Ongoing at 31/3/10
Driver Vehicle Agency	0	12	12	0	0	0	0	0
Northern Ireland Environment Agency	2	1	1	0	1	0	0	1
Land & Property Services	2	31	19	2	2	4	1	5
Ulster Scots Agency	0	1	0	0	1	0	0	0
Planning Service	9	58	34	1	5	1	5	21
Rivers Agency	0	1	1	0	0	0	0	0
Roads Service	2	29	26	0	0	1	1	3
Social Security Agency	0	26	21	0	4	0	0	1
<b>TOTAL</b>	<b>15</b>	<b>159</b>	<b>114</b>	<b>3</b>	<b>13</b>	<b>6</b>	<b>7</b>	<b>31</b>

## Analysis of Written Complaints against Tribunals

	Brought forward from 2008/09	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	Ongoing at 31/3/10
Fair Employment Tribunal	0	1	1	0	0	0	0	0
Planning Appeals Commission	0	1	1	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

## Analysis of Written Complaints against N/S Implementation Bodies

	Brought forward from 2008/09	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	Ongoing at 31/3/10
Special European Union Programmes Body	1	0	1	0	0	0	0	0
Loughs Agency	3	0	0	0	0	0	1	2
Foras na Gaeilge	0	1	1	0	0	0	0	0
<b>TOTAL</b>	<b>4</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>2</b>

# Section Three

## Annual Report of the Northern Ireland Commissioner for Complaints (excluding Health & Social Care Complaints)



As Northern Ireland Commissioner for Complaints I received a total of 143 complaints (excluding Health & Social Care) during 2009/10, 43 less than in 2008/09.

### Written Complaints Received in 2009/10 by Authority Type

Local Councils ~ 34

Health & Social Care Bodies ~ 14

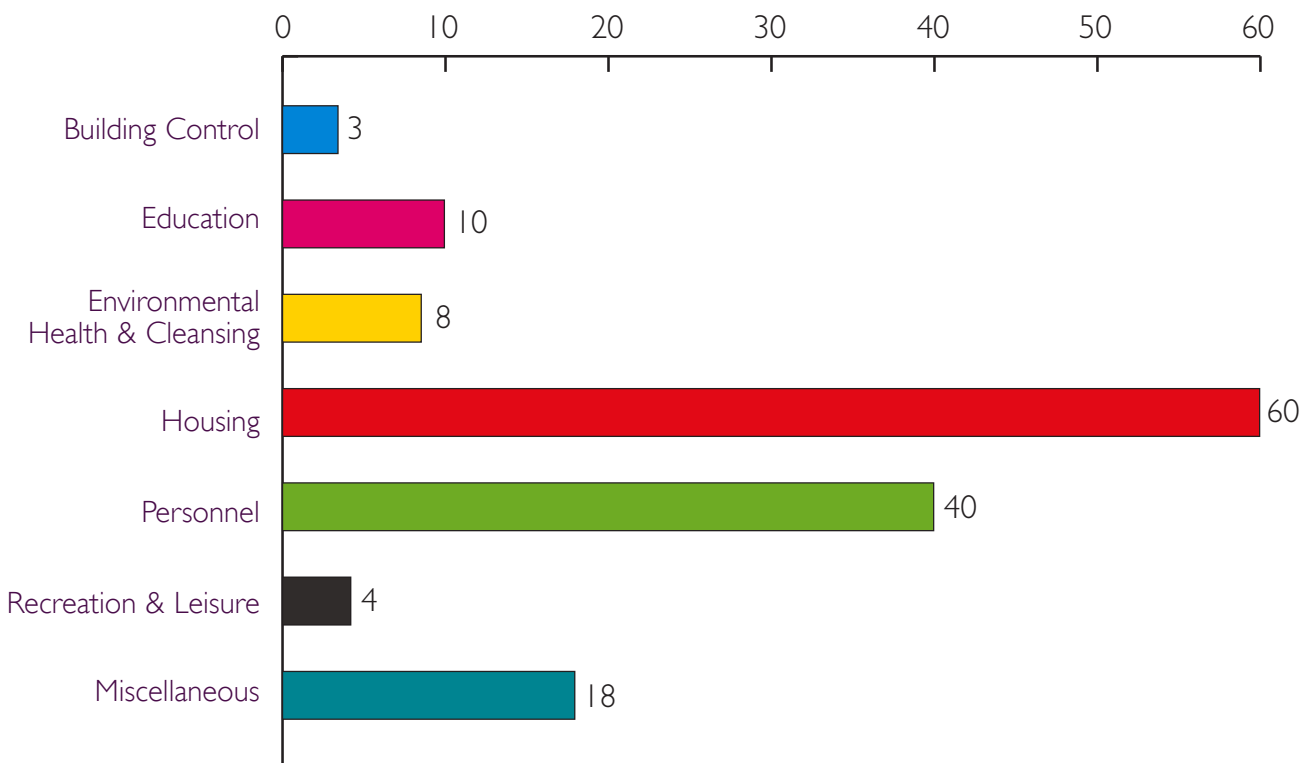
Other Bodies within Jurisdiction ~ 17

Education Authorities ~ 18

Housing Authorities ~ 60

As in previous years the Northern Ireland Housing Executive attracted most complaints with 43 (although this was down 12% on 2008/09).

### Written Complaints Received in 2009/10 by Complaint Subject



## The Caseload for 2009/10

Cases brought forward from 2008/09	42
Written complaints received	143
<b>Total Caseload for 2009/10</b>	<b>185</b>
Of Which	
Cleared at Validation Stage	81
Cleared at Investigation Stage (without a Report), including cases withdrawn and discontinued	32
Settled	9
Full Report or Letter of Report issued	20
Ongoing at the end of the year	43

### Outcome of cases Cleared at Investigation and Report Stages

Discontinued <b>4</b>	Settled <b>9</b>
Withdrawn <b>0</b>	Report Issued - Upheld <b>6</b>
Referred to Body's Complaints Procedure <b>2</b>	Report issued - Partially Upheld <b>7</b>
Remedy by way of Tribunal <b>2</b>	Report Issued - Not Upheld but Criticism <b>3</b>
Remedy by way of Legal Proceedings <b>2</b>	Report Issued - Not Upheld <b>4</b>
Complaint outside Jurisdiction <b>5</b>	Carried over to 2010/11 <b>43</b>
No evidence of Maladministration <b>17</b>	

20 reports of investigations (Full Reports and Letters of Report) were issued in 2009/10. Of these cases:

- 6 were fully upheld;
- 7 were partially upheld;
- 3 were not upheld but I criticised the Body complained against; and,
- 4 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.



### Recommendations in Reported Cases

Case No	Body	Subject of Complaint	Recommendation
200800810	Derry City Council	Handling of Complaint	Written Apology & Consolatory payment £750
200801030	Belfast Health and Social Care Trust	Handling of recruitment completion procedure	Consolatory payment £1,000
* 200700238	Northern Ireland Housing Executive	Handling of complaint	Written Apology & Consolatory payment £4,000
* 200800970	Limavady BC	Complaints handling	Written Apology & Consolatory payment £500
* 200801219	Oaklee Housing Association	Complaints handling	Written Apology & Consolatory payment £1,500
* 200801223	Oaklee Housing Association	Complaints handling	Written Apology & Consolatory payment £1,500
200701236	Craigavon BC	Policy and procedures	Written Apology & Consolatory payment £400
200800812	Northern Health and Social Care Trust	Handling of recruitment exercise	Consolatory payment £1,000
200600390	Northern Ireland Housing Executive	Allocation of housing	Written Apology & Consolatory payment £500
200600861	Northern Ireland Housing Executive	Handling of tenancy assignment	Written Apology & Consolatory payment £5,000
200700228	Northern Ireland Housing Executive	Policy and procedure change	Written Apology & Consolatory payment £5,023.12
* 200800577	Northern Ireland Housing Executive	Standard of repairs	Written Apology & Consolatory payment £2,000
* 200800315	North Eastern Education and Library Board	Handling of complaint	Written Apology & Consolatory payment £750

Summaries of the Cases marked by \* are available at Appendix A

## Statistics

### Analysis of Written Complaints Received in 2009/10

	Brought forward from 2008/09	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	Ongoing at 31/3/10
Local Councils	11	34	15	2	11	3	2	12
Education Authorities	4	18	13	0	2	1	0	6
Health and Social Services Bodies	6	14	4	0	4	2	0	10
Housing Authorities	17	60	36	7	12	7	3	12
Other Bodies Within Jurisdiction	4	17	13	0	3	0	2	3
<b>TOTAL</b>	<b>42</b>	<b>143</b>	<b>81</b>	<b>9</b>	<b>32</b>	<b>13</b>	<b>7</b>	<b>43</b>



## Analysis of Written Complaints against Local Councils

	Brought forward from 2008/09	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	Ongoing at 31/3/10
Ards BC	0	2	0	1	1	0	0	0
Armagh C&DC	1	0	0	0	0	0	0	1
Ballymena BC	0	1	1	0	0	0	0	0
Belfast CC	0	3	2	0	0	0	0	1
Carrickfergus BC	0	2	1	0	0	0	0	1
Castlereagh BC	1	1	1	0	1	0	0	0
Coleraine BC	0	4	3	0	0	0	0	1
Craigavon BC	1	4	3	0	0	1	0	1
Derry CC	1	1	0	0	0	1	0	1
Down DC	0	6	1	1	1	0	0	3
Dungannon & South Tyrone BC	0	1	0	0	1	0	0	0
Larne BC	1	4	2	0	2	0	0	1
Limavady BC	1	1	1	0	0	1	0	0
Lisburn CC	3	2	0	0	2	0	2	1
Newry & Mourne DC	1	0	0	0	1	0	0	0
Newtownabbey BC	0	1	0	0	1	0	0	0
North Down BC	1	0	0	0	0	0	0	1
Omagh DC	0	1	0	0	1	0	0	0
<b>TOTAL</b>	<b>11</b>	<b>34</b>	<b>15</b>	<b>2</b>	<b>11</b>	<b>3</b>	<b>2</b>	<b>12</b>



### Analysis of Written Complaints against Education Authorities

	Brought forward from 2008/09	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	Ongoing at 31/3/10
Belfast E&LB	0	2	2	0	0	0	0	0
CCMS	0	5	4	0	0	0	0	1
North Eastern E&LB	1	3	1	0	2	1	0	0
South Eastern E&LB	1	1	1	0	0	0	0	1
Southern E&LB	2	3	2	0	0	0	0	3
Western E&LB	0	4	3	0	0	0	0	1
<b>TOTAL</b>	<b>4</b>	<b>18</b>	<b>13</b>	<b>0</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>6</b>

### Analysis of Written Complaints against Health and Social Care Bodies

	Brought forward from 2008/09	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	Ongoing at 31/3/10
Belfast Health & Social Care Trust	2	3	2	0	1	1	0	1
Belfast Services Organisation	0	1	0	0	0	0	0	1
Eastern Health & Social Services Board	0	2	0	0	2	0	0	0
Northern Health and Social Services Board	1	0	0	0	0	0	0	1
Northern Health & Social Care Trust	1	0	0	0	0	1	0	0
Regional Health and Social Care Board	0	1	0	0	0	0	0	1
Regulation & Quality Improvement Authority	2	0	0	0	0	0	0	2
South Eastern Health & Social Care Trust	0	1	0	0	0	0	0	1
Southern Health & Social Care Trust	0	3	2	0	0	0	0	1
Western Health & Social Care Trust	0	3	0	0	1	0	0	2
<b>TOTAL</b>	<b>6</b>	<b>14</b>	<b>4</b>	<b>0</b>	<b>4</b>	<b>2</b>	<b>0</b>	<b>10</b>



## Analysis of Written Complaints against Housing Authorities

	Brought forward from 2008/09	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	Ongoing at 31/3/10
NIHE	11	43	25	5	8	5	2	9
Ark Housing Association (NI) Ltd	1	1	1	0	1	0	0	0
Clanmil Housing Association Ltd	0	2	1	0	1	0	0	0
Filor Housing Association Ltd	0	1	0	0	1	0	0	0
Fold Housing Association	2	6	3	1	1	0	0	3
Helm Housing Association Ltd	1	1	1	0	0	0	1	0
NI Co-ownership Housing Association Ltd	0	2	2	0	0	0	0	0
Oaklee Housing Association Ltd	2	3	2	1	0	2	0	0
South Ulster Housing Association Ltd	0	1	1	0	0	0	0	0
TOTAL	17	60	36	7	12	7	3	12

## Analysis of Written Complaints against Other Bodies Within Jurisdiction

	Brought forward from 2008/09	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	Ongoing at 31/3/10
Arts Council	0	1	0	0	0	0	0	1
Equality Commission	0	1	0	0	1	0	0	0
Health & Safety Executive	1	5	5	0	0	0	1	0
Invest NI	0	3	2	0	1	0	0	0
Labour Relations Agency	0	1	1	0	0	0	0	0
NI Fire & Rescue Service	1	1	1	0	0	0	0	1
Northern Ireland Local Government Officers' Superannuation Committee	0	1	1	0	0	0	0	0
NI Medical & Dental Training Agency	1	0	0	0	0	0	1	0
NI Social Care Council	0	1	1	0	0	0	0	0
Sports Council for NI	1	0	0	0	1	0	0	0
Youth Council for NI	0	1	0	0	0	0	0	1
Unspecified body	0	2	2	0	0	0	0	0
<b>TOTAL</b>	<b>4</b>	<b>17</b>	<b>13</b>	<b>0</b>	<b>3</b>	<b>0</b>	<b>2</b>	<b>3</b>





# Annual Report of the Northern Ireland Commissioner for Complaints (Health and Social Care Complaints)

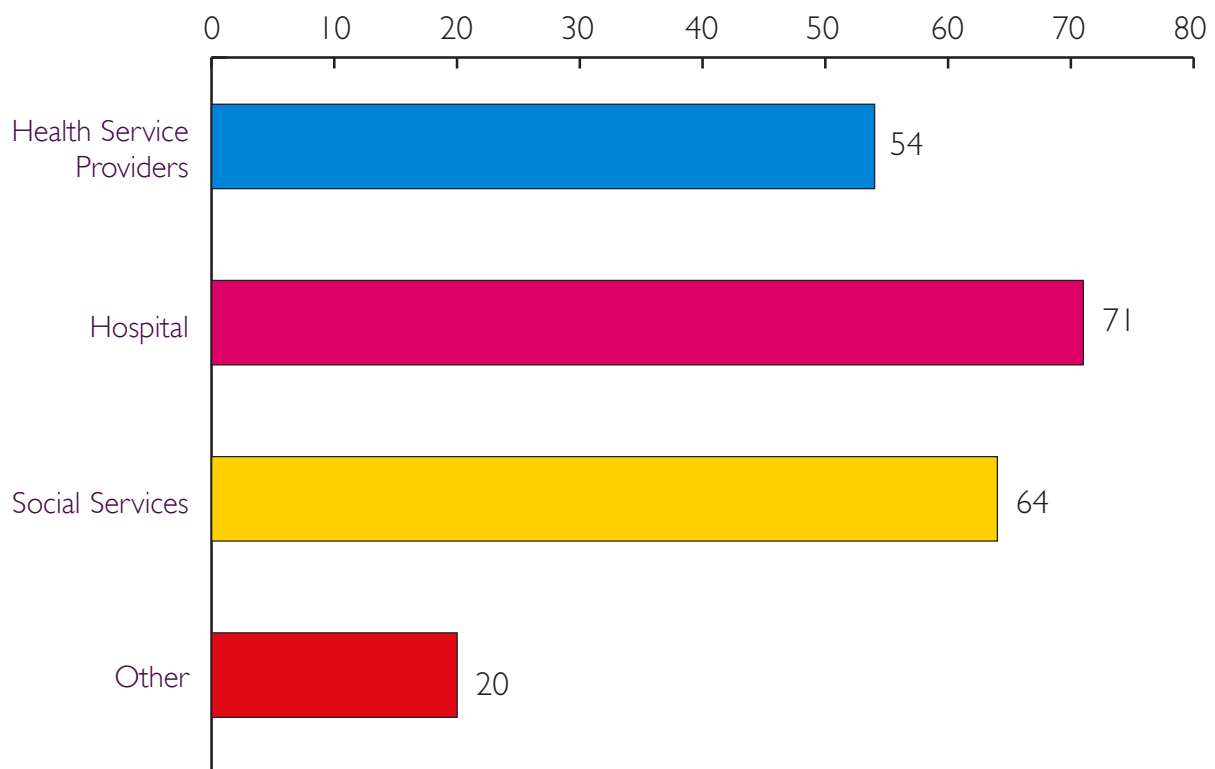


I received a total of 209 complaints during 2009/10, 114 more than in 2008/09.

### Written Complaints Received in 2009/10 by Authority Type

Health & Social Services Boards 16                      Health & Social Care Trusts 151  
Other Health & Social Care Bodies 42

### Written Complaints Received in 2009/10 by Complaint Subject



## The Caseload for 2009/10

Cases brought forward from 2008/09	35
Written complaints received	209
<b>Total Caseload for 2009/10</b>	<b>244</b>
Of Which:	
Cleared at Validation Stage	111
Cleared at Investigation Stage (without a Report), including cases withdrawn and discontinued	28
Settled	9
Full Report or Letter of Report issued	20
Ongoing at the end of the year	76

### Outcome of cases Cleared at Investigation and Report Stages

Discontinued <b>3</b>	Settled <b>9</b>
Withdrawn <b>0</b>	Report Issued - Upheld <b>11</b>
Referred to Body's Complaints Procedure <b>11</b>	Report issued - Partially Upheld <b>3</b>
Remedy by way of Tribunal <b>0</b>	Report Issued - Not Upheld but Criticism <b>2</b>
Remedy by way of Legal Proceedings <b>2</b>	Report Issued - Not Upheld <b>4</b>
Complaint outside Jurisdiction <b>1</b>	Carried over to 2010/11 <b>76</b>
No evidence of Maladministration <b>11</b>	

20 reports of investigations (Full Reports and Letters of Report) were issued in 2009/10. Of these cases:

- 11 were fully upheld,
- 3 were partially upheld,
- 2 were not upheld but I criticised the Body complained against and,
- 4 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.



### Recommendations in Reported Cases

Case No	Body	Subject of Complaint	Recommendation
200900189	South Eastern Health and Social Care Trust	Discharge and transfer procedure	Written Apology & Consolatory payment £250
200700711	Eastern Health and Social Services Board	Handling of Complaint	Written Apology
200701383	Southern Health and Social Services Board	Handling of Complaint	Written Apology
* 200700112	Western Health and Social Services Board	Handling of Complaint	Written Apology
200700572	Eastern Health and Social Services Board	Handling of Complaint	Written Apology & Consolatory payment £500
200800852	Southern Health and Social Services Board	Handling of Complaint	Written Apology
* 200600033	Eastern Health and Social Services Board	Handling of complaint	Written Apology & Consolatory payment £5000
* 200700287	Southern Health and Social Care Trust	Care and treatment	Written Apology & Consolatory payment £1500
200700447	Eastern Health and Social Services Board	Handling of Complaint	Written Apology & Consolatory payment £1000
200700495	Southern Health and Social Services Board	Handling of Complaint	Written Apology & Consolatory payment £500
200701377	Eastern Health and Social Services Board	Handling of Complaint	Written Apology & Consolatory payment £1000
* 200800029	Eastern Health and Social Services Board	Handling of Complaint	Written Apology & Consolatory payment £1000
* 200801057	Western Health and Social Care Trust	Clinical treatment	Written Apology & Consolatory payment £5000

Summaries of the Cases marked by \* are available at Appendix A





## Statistics

### Analysis of Written Complaints Received in 2009/10

	Brought forward from 2008/09	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	Ongoing at 31/3/10
HSS Boards	25	16	5	1	4	11	3	17
HSC Trusts	8	151	83	6	19	3	1	47
Other HSC Bodies	2	42	23	2	5	0	2	12
<b>TOTAL</b>	<b>35</b>	<b>209</b>	<b>111</b>	<b>9</b>	<b>28</b>	<b>14</b>	<b>6</b>	<b>76</b>

### Analysis of Written Complaints against Health and Social Services Boards

	Brought forward from 2008/09	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	Ongoing at 31/3/10
Eastern HSSB	12	4	2	0	1	7	1	5
Northern HSSB	1	4	0	0	0	0	1	4
Southern HSSB	6	3	2	0	1	3	0	3
Western HSSB	6	5	1	1	2	1	1	5
<b>TOTAL</b>	<b>25</b>	<b>16</b>	<b>5</b>	<b>1</b>	<b>4</b>	<b>11</b>	<b>3</b>	<b>17</b>



### Analysis of Written Complaints against Health and Social Care Trusts

	Brought forward from 2008/09	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	Ongoing at 31/3/10
Belfast Health & Social Care Trust	1	54	29	3	7	0	0	16
Northern Health & Social Care Trust	1	22	12	0	3	0	0	8
South Eastern Health & Social Care Trust	1	40	18	2	7	1	1	12
Southern Health & Social Care Trust	3	19	12	0	1	1	0	8
Western Health & Social Care Trust	2	15	11	1	1	1	0	3
NI Ambulance Service	0	1	1	0	0	0	0	0
<b>TOTAL</b>	<b>8</b>	<b>151</b>	<b>83</b>	<b>6</b>	<b>19</b>	<b>3</b>	<b>1</b>	<b>47</b>

### Analysis of Written Complaints against Other Health and Social Care Bodies

	Brought forward from 2008/09	Received	Cleared at Validation Stage	Settled	Cleared at Investigation Stage	Report Issued Complaint Upheld/ Partially Upheld	Report Issued Complaint Not Upheld	Ongoing at 31/3/10
Health Service Provider - GDP	0	3	3	0	0	0	0	0
Health Service Provider – GP	2	29	15	2	5	0	2	7
Health Service Provider - Optometrist	0	1	1	0	0	0	0	0
Health Service Provider - Pharmacist	0	2	1	0	0	0	0	1
Independent HSC Provider - Out of Hours GP Service	0	1	0	0	0	0	0	1
Independent HSC Provider - Private Nursing Home	0	5	2	0	0	0	0	3
Department of Health, Social Services & Public Safety	0	1	1	0	0	0	0	0
<b>TOTAL</b>	<b>2</b>	<b>42</b>	<b>23</b>	<b>2</b>	<b>5</b>	<b>0</b>	<b>2</b>	<b>12</b>

## Appendix A: Summaries



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# Assembly Ombudsman - Selected Summaries of Cases Settled

## *Land and Property Services*

The complainant in this case claimed that he had suffered injustice because of Land and Property Services' (LPS) handling of a matter which resulted in a substantially increased rates bill.

In response to my enquiries LPS acknowledged deficiencies in its handling of this case and that the complainant had acted in good faith throughout in discharging the rate liability notified to him by LPS. Having reviewed the case, LPS agreed to issue a written apology to the complainant in recognition of the deficiencies and the poor level of customer service provided, together with a consolatory payment amounting to £556. This amount was equal to the amount of Transitional Relief that the complainant was awarded for the years 2007/2008 and 2008/2009 and then asked to repay. I considered this to be a satisfactory outcome and therefore decided to take no further action. (200900780)

## *Child Maintenance and Enforcement Division*

A lady wrote to me expressing her deep frustration at the financial hardship that she and her children had to suffer due to the fact that Child Maintenance and Enforcement Division (CMED) had failed to ensure that the Non Resident Parent was providing sufficient funds for the children over the past two years. In response to my enquiries CMED acknowledged and offered its apologies for the fact that the complainant's case was not more robustly monitored and action taken more promptly. I secured an agreement for CMED to make an advance payment to the complainant of the outstanding arrears amounting to £4184.77, together with a consolatory payment amounting to £250 for the deficiencies acknowledged by CMED in its dealing with the complainant's case. CMED also agreed to issue the complainant with a written apology in recognition of those deficiencies and the distress caused to the complainant by its actions. I regarded this as a satisfactory outcome and closed my file. (200801115).



# Assembly Ombudsman - Selected Summaries of Investigations

## *Department of Finance and Personnel*

### **Disagreement with Pay Award**

This case concerned a complaint from a Senior Civil Servant about the Department of Finance and Personnel (the Department) and its handling of the officer's pay award for the 2007 year. That pay award was based on the complainant's performance during the period April 2006 to March 2007. The complainant considered that proper account had not been taken of a significant part of the relevant reporting period, which had been spent working in another NICS Department. In addition, the complainant was of the view that the assessment of performance for the remaining part of the reporting year had been adversely influenced by the nature of work objectives and by a period of sickness absence. The complainant was also aggrieved that the 2006/07 appraisal report was not finalised until after pay award decisions had been taken and that the Department did not fully document the basis for the determination of the award. A further element of the complaint concerned the Department's handling of an appeal made by the complainant about the pay award.

Having investigated the circumstances of the complaint, I found that the Department had failed to seek input from the complainant's previous employing Department to inform the 2006/07 appraisal; that it had not fully documented the basis for its decisions on the complainant's pay award; that it had failed to offer to meet with the complainant to discuss an appeal lodged against the pay award, as required under the Dispute Resolution Regulations; and that it had failed to consider thoroughly that case of appeal. It was my conclusion, therefore, that the decision taken by the Department with regard to the complainant's pay award and the decision not to uphold the subsequent appeal were attended by maladministration. I found no evidence, however, of maladministration with regard to the other elements of the complaint.

It was evident to me that the Department's failings, with regard to the documenting of the basis for its pay award decisions, impacted on the complainant's ability to submit an informed appeal against the award until some four months after notification of the pay award had been issued. In addition, because the Department failed to offer a meeting in relation to the appeal, the complainant was denied the opportunity to provide further information or clarification that might have impacted on the consideration of the appeal. It was also my view that the failure to conduct a thorough review of the appeal meant that the complainant lost the opportunity to have the original determination of the pay award reviewed. In view of the injustice caused to the complainant, including the frustration, disappointment and inconvenience sustained, I recommended that the Permanent Secretary of the Department should issue a written apology to the officer and that a consolatory payment of £3,500 should be made. I also recommended that the Department should review the guidance on the Senior Civil Service pay system that is provided to NICS departments, to ensure that clear direction is given on the nature and extent of the records to be retained on pay award decisions; on the documentation to be made available to Departmental Pay Conferences to inform their decisions on pay awards; and on the

SCS pay award appeal process. I am pleased to record that the Permanent Secretary accepted my recommendations. (200800373)

### **Dismissal from NI Civil Service**

The complainant in this case claimed that she suffered an injustice as a result of maladministration by the Department of Finance and Personnel (the Department) in relation to her recruitment to the Northern Ireland Civil Service (NICS) in July 2008 and her subsequent dismissal, approximately one month later, following the results of a criminal record check. In this regard, the complainant had an unspent conviction for a drink driving offence which, at the time, was regarded by the NICS as indicative of 'serious negligence' on the part of the individual concerned and therefore as representing unacceptable behaviour by a potential employee.

My investigation of this complaint established that all appointees for NICS recruitment competitions must satisfy the Baseline Standard, which consists of identification checks and a criminal record check, prior to taking up their appointments. The Permanent Secretary (PS) of the Department informed me that the complainant had satisfied the identification check but had not satisfied the criminal record check. The PS explained that it was therefore decided, having regard to the urgent business needs of the NICS at that time, to make a conditional offer of appointment to the complainant. The offer letter made clear that the complainant's continued employment in the NICS was conditional upon her meeting "the successful completion of a Basic Security Check". The complainant stated that, having previously given consent to a criminal record check, she regarded the term 'security check' as a check "to be undertaken for the purpose of identifying any applicants who would pose a security threat". In the context of the Northern Ireland situation, I found the complainant's interpretation of the phrase to be perfectly reasonable. The complainant left secure employment to take up the conditional offer of appointment.

I considered that it was absolutely imperative for a public body making a conditional offer of employment to make clear, firstly, that the offer was conditional and, secondly, the full details of those conditions. It was my view that a person in receipt of such an offer could make a fully informed judgement and an assessment of the risk being taken to leave secure employment to take up the conditional offer of employment. I considered that the wording of the offer the complainant received was entirely inadequate for that purpose and this constituted maladministration which had serious repercussions for the complainant.

I had no doubt that as a consequence of maladministration, the complainant experienced the injustice of a very significant degree of embarrassment and humiliation, also stress, annoyance, loss of earnings, and considerable worry, about both her future, in terms of employment and financially, and, in turn, her security as a home owner. I recommended that the complainant should receive, by way of redress, an appropriate letter of apology from the PS of the Department together with a consolatory payment of £4,000. I am pleased to record that the PS accepted my recommendation.

Also, I was pleased to record, and welcomed, the statement by the PS that my investigation of the issues raised in this case had led to the NICS reviewing its policy on the determination of the suitability of candidates with a criminal record for appointment to the NICS. The PS informed me that the review had resulted in a substantially revised policy which is based on the NICS' duty of care to employees and a requirement for honesty and an integrity that reflects the values that inform the NICS Code of Ethics. I was further pleased to record, and welcome, the undertaking given by the PS that the Department would review the wording of the documentation for prospective candidates in order to clarify the requirements they must meet. (200800963).



## Land & Property Services

### Non-communication of change in rates legislation

This complaint arose from a change in the law, which took effect on 1 April 2007, and which placed liability for the payment of rates on rented properties with a Capital Value of £150,000 or less on the owner instead of the occupier. The complainant said his son, who is resident overseas, is the owner of a property which he leases to tenants. Under the terms of the lease agreements the tenants were responsible for the payment of rates on the property. The complainant, who handles his son's affairs, was aggrieved that he was not made aware by Land and Property Services (LPS) of the important change in liability for rates on the property until November 2008 when LPS issued a Rates Demand to his son seeking payment of arrears of rates which had accrued on the property since 1 April 2007.

My detailed investigation of this complaint revealed that, despite accurate information provided by the complainant, LPS had failed to identify the subject property as rented and, as a result, the relevant rates account "was not managed in accordance with the relevant legislation". My investigation further established that it was only as a result of contact by the former tenant of the property that "the error in this case was eventually noticed" by LPS. In October 2008, LPS advised the tenant concerned that the owner of the property was liable for rates from 1 April 2007 and the complainant said the tenant subsequently left the property without notice and in breach of his tenancy agreement.

Although I considered it belated, I welcomed action taken by LPS (a) to develop a training programme for staff which was aimed at ensuring that they promptly identify the particular legislative issues that apply to specific rented properties and (b) to improve communication to ratepayers, through the design of a specific leaflet for landlord properties.

However, I identified evidence of maladministration and examples of what I regarded as several systemic failures by LPS in its handling of the interaction that it had with the complainant in relation to the tenancies of his son's property. These failures also applied to its management of the legislative change which took effect from 1 April 2007 involving the billing of owners of certain rented properties instead of the occupiers. For this reason, I regarded the standard of service that LPS provided to the complainant as having fallen very far short of the standard that citizens have a right to expect from government departments and/or their related Agencies. I had no doubt that, as a consequence, the complainant experienced the injustice of annoyance, worry, frustration and inconvenience. I concluded that the complainant should receive appropriate redress from LPS.

The aim of any financial remedy I recommend is to put the aggrieved person in the position they would have been in had the maladministration not occurred, or had a process not been flawed by systemic failure. I therefore recommended to the Chief Executive of LPS that the complainant should receive a 'consolatory' payment of £1,626, comprising the arrears of rates of £1,226 that accrued, during the period 1 April 2007 to 19 October 2008, in relation to the subject property and a further sum of £400 in recognition of the significant injustice he experienced. I was pleased to record that the Chief Executive accepted my recommendation. (200900210)



## Planning Service

### Failure to contact statutory consultees regarding a planning application

This complaint concerned the handling of a planning application submitted for the erection of a side and rear extension to the complainant's domestic property.

The complainant stated that Planning Service (PS) failed to consult with NI Water whilst processing his planning application. The complainant believed that, had PS consulted with NI Water during the processing of his application, a main trunk sewer that ran under the location of the proposed rear extension would have been identified at an earlier stage and, indeed, before he had dug out and concreted his strip foundations.

My investigation revealed that, whilst there was no statutory requirement for PS to consult NI Water, it was normal practice to do so at the time of the complainant's planning application. In this case, PS failed to consult NI Water. The normal purpose of this consultation was to check if services were available, however, NI Water could, on occasions, state that a main sewer crossed a proposed site. The applicant would have been advised to contact NI Water about the development proposals. I found it unacceptable that PS did not consult with NI Water and therefore upheld the complaint.

I also established that, since 1 October 2008, PS no longer consulted with NI Water. I recommended that PS considered revision of the PS leaflet 'Explanatory Notes on Applying for Planning Permission, Approval of Reserved Matters & other Planning Consents' to emphasise these new procedures. For the administrative failings I recommended that the Chief Executive issue to the complainant a letter of apology together with a consolatory payment of £1750. I am pleased to record that the Chief Executive accepted my recommendations. (200800388)

### Neighbour notification regarding a planning application

This complaint concerned the planning approval for commercial premises adjacent to a newly built block of apartments, one of which was owned by the complainant.

The complainant stated that Planning Service (PS) failed to notify the residents of the apartment block concerning the application for the adjacent commercial premises. My investigation revealed that PS failed to notify the residents of the apartment block regarding the application for the commercial premises and I criticised them for this failure. However, as the complainant acquired the apartment after the consultation process was complete, I found that the complainant did not suffer an injustice as a result of this failure.

Following approval for the office development the complainant claimed that the boundary fence was moved closer to his apartment which resulted in his parking space being substantially reduced and led to bin storage being inappropriately positioned closer to the window of the complainant's apartment. The complainant believed this represented a breach of the planning approval for the apartment complex. I established that the apartment development, as built, did not comply with the original approved drawings. However, PS believed the deviations to be minor in nature and, therefore, concluded that it would not be proportionate to pursue enforcement action. It is for PS to decide if enforcement action is appropriate and such a decision involves the exercise of professional judgement. In this case I found no evidence of maladministration by PS in reaching the decision not to take enforcement action.



The complainant also believed that the failure by PS to take enforcement action allowed the developer to use the same piece of ground twice. My investigation revealed that PS had no conclusive evidence to show that the developers were the same. Indeed, PS has no jurisdiction about the title of lands. This is a matter for the courts. PS did, in fact, in the approval for the new office development, advise the developer to obtain the permission of the owners of the adjacent property for the removal of or building on the party wall or boundary. Overall, I found no evidence of maladministration in the processing of this application. (200800627)

### **Alleged failure to notify about Full planning application**

A planning applicant had obtained outline planning permission to build a dwelling on land adjacent to the complainant's home. However, when a Full planning application was later submitted, Planning Service (PS) failed to notify the complainant in accordance with its policy. The complainant did not discover that an application had been made until two years afterwards. At that point PS had not reached a decision on the application. However, although the complainant was then able to submit a written objection to the Full application, PS lost the letter. At the same time, the applicant began to build the dwelling. However, he did not build it in the position indicated on the plans. Also he turned an area of pastureland between the new house and the complainant's house into paths and gardens; again something that was not recorded on the plans that had been submitted to PS. These developments raised the complainant's suspicions about the authenticity of the process.

When PS discovered the change made to the position of the proposed dwelling, it sought and obtained revised plans to cover the discrepancy. PS did not consider the breach in relation to the paths and gardens to be significant enough to warrant enforcement action. Although my investigation found these decisions by PS to be entirely reasonable, I took the view that PS's communication failings with the complainant had contributed to his suspicions about PS's handling of the application process. I judged that the PS errors constituted maladministration.

However, my investigation found that although PS had failed to neighbour-notify the complainant, he was still able to submit his objections in writing. Similarly, I also found that, although PS had lost his written objection, the letter was found before PS made a decision on the application. I therefore concluded that the complainant had not suffered any personal injustice as a result of these failings. I noted that PS officials (including the Chief Executive) had apologised in writing to the complainant for the errors. I considered these apologies to be sufficient in the circumstances.

Finally, I noted that some documentation provided to me during my investigation was deficient due to original papers being "misplaced" by PS. Given this further example of poor administration, I decided to write to the Chief Executive to express my concern about the level of administrative error associated with this case. (200800884)

## Roads Service

### Dispute over application for disabled parking bay

In this case the complainant believed that Roads Service (RS) did not properly handle his application for a disabled parking bay. In particular he considered that an objection from a member of the public had been given more weight than his own needs as a disabled person. A disabled parking bay in the proposed space had previously been applied for but RS had offered two alternative solutions as a result of an objection, neither of which he considered to be suitable. He complained to Roads Service about how his application was handled and was also unhappy with how Roads Service dealt with this complaint.

The decision to provide a disabled parking bay is a discretionary decision and I am prevented, by the legislation that governs my Office, from questioning a discretionary decision unless it was taken with maladministration. Based on the evidence that I considered I was satisfied that RS followed their procedures when processing the application for a disabled parking bay, and when dealing with the complaint. Consequently, I did not find maladministration. However, as the complainant met the criteria for provision of a disabled parking bay I urged him and RS to continue to examine alternatives to ensure that the complainant is enabled to maximise his mobility. (200801070)

## Child Maintenance and Enforcement Division

### Mishandling of payment of Child Maintenance and subsequent complaint

This case concerned a complaint about the actions of the Child Maintenance and Enforcement Division (CMED) with regard to the complainant's application for child maintenance in respect of her two children.

The complainant was aggrieved that despite CMED having assessed her child maintenance application in early 2007, by the time of making her complaint to me (in February 2009), she had received only two payments, which represented only 6% of the maintenance to which she was entitled. She also complained that CMED failed to provide her with a substantive response to a formal complaint she submitted to it in January 2008, and that it did not reply to written enquiries made subsequently by her MLA on her behalf.

Having investigated the circumstances of the complaint, I found many instances of maladministration on the part of CMED with regard to how it had handled the complainant's case, including that it delayed in taking appropriate action with regard to the initial assessment of her case and also failed to pursue regular maintenance payments from the non resident parent; that it failed to assess the non-resident parent's maintenance liability correctly or to inform the complainant of that assessment; that it failed to take appropriate action to liaise with the Social Security Agency regarding the deduction of maintenance from the non-resident parent's benefit payments; that it failed to take action to establish the non-residents parent's circumstances in order to pursue maintenance payments from him; that it failed to maintain accurate records of the complainant's case and that it failed to follow its procedures in relation to the recording of the content of telephone calls. In addition, with regard to its handling of the complaints submitted to it by the complainant and her MLA, I found that CMED failed to undertake thorough reviews of the complainant's case in order to provide accurate responses; that it failed to provide her with a substantive response to the formal complaint she made in January 2008; that it delayed in responding to the



MLA's enquiries; and that when it did, it failed to provide an accurate response to him. I recorded in the report of my investigation that this case represented one of the worst catalogues of maladministration that I had encountered as Assembly Ombudsman and that I considered that I had found evidence of systemic failure on the part of CMED. In addition, I noted that, despite CMED having already apologised to the complainant on several occasions for the poor standard of service it had provided to her, and having made a number of consolatory payments to her in recognition of that poor service, it continued to fail to deliver the standard of service that the complainant was entitled to expect.

It was evident to me that the complainant had sustained a significant financial loss amounting to £3,288.61 as a direct result of CMED's failings. She had also experienced considerable frustration, disappointment, inconvenience and anxiety over a prolonged period of time as a result of having to enquire continually about her case, as a consequence of CMED's apparent indifference to improving the level of service provided to her or to her MLA. I therefore recommended that the Head of CMED should issue a written apology to the complainant and make a consolatory payment of £5,000 to her. The Head of CMED accepted my recommendations, acknowledging that the complainant's case had been poorly handled by CMED and that she had not received the standard of service that CMED aims to deliver. In addition, the Head of CMED informed me that an advance payment of the child maintenance arrears, plus interest, due to the complainant was to be made to her. (200801179)

# Commissioner for Complaints - Selected Summaries of Cases Settled

## *Fold Housing Association*

The complainant was unhappy with how a renovation grant she had received from the Northern Ireland Housing Executive had been administered by Fold Housing Association, and considered that the work had not been completed to a satisfactory standard. Following contact from my Office a representative of Fold Housing Association met with the complainant, and the outstanding work was subsequently completed to her satisfaction. I was pleased that a satisfactory result was arrived at in this case. (200801168)

## *Northern Ireland Housing Executive*

The complainant in this case was dissatisfied with the Northern Ireland Housing Executive's (the Executive) decision, in June 2009, to refuse his application for a Replacement Grant in respect of his home. The Executive had refused the complainant's grant application because of the impact of the economic downturn at that time on its budget. In response to my enquiries, and having reviewed the particular circumstances of the case, the Executive decided that exceptional circumstances existed and, therefore, that a Replacement Grant would be offered to the complainant. (200900236)

## *Northern Ireland Housing Executive*

In this case, the aggrieved person complained about the Northern Ireland Housing Executive's (the Executive) decision not to install new windows in his home, during a maintenance scheme which was undertaken in his area in 2008.

My enquiries established that because the aggrieved person was not satisfied with the standard of work undertaken by the Executive's contractor, in relation to his neighbour's houses, he would not allow the contractor access to his home. Unfortunately, the Executive was unable to reach an agreement with the aggrieved person before the Contractor moved "off site".

As a result of representations by my Office, the Executive decided to review this case and arranged for a different contractor to install new windows in the aggrieved person's home. I am pleased to report that the new windows were subsequently installed and the aggrieved person was satisfied with the outcome. (200801126)



# Commissioner for Complaints - Selected Summaries of Investigations

## *Limavady Borough Council*

### **Handling of Complaint**

The complainant was dissatisfied with how Limavady Borough Council had dealt with her complaint about a malodour from farm buildings adjacent to her property. She complained that the Council had made a number of administrative errors, which led to her complaint being closed without her knowledge. In addition she believed that she was blamed by the Council for not monitoring the situation. She also felt that the report of a site visit made by Officers from the Council's Environmental Health Department did not accurately describe their visit to her property. The complainant expressed concern that the failure of the Council to respond to Planning Service led to the inability of Planning Service to take enforcement action. She also complained that the report that the Council eventually sent to Planning Service was not a "full, accurate and truthful" account of the site visit. Finally the complainant was disappointed with the Council's complaints procedures when she complained to the Chief Executive about how her initial complaint regarding the smell was handled.

The report that the Council made to Planning Service was a discretionary decision. I cannot question the merits of professional decisions taken without maladministration and consequently I did not uphold this element of the complaint. Although I did not uphold the complaint that the failure of the Council to respond to Planning Service led to the inability of Planning Service to take enforcement action, I was critical of the lack of 'joined-up working' between those bodies and recommended that they both examine ways in which this can be improved. While I was of the opinion that the Council sought to deal with the complaint about the investigation in accordance with its procedures, I believed the initial investigation of the complaint was attended by administrative errors. Firstly the Environmental Health Officers who visited the complainant's home in relation to her public health complaint failed to make a contemporaneous note of the visit. Secondly her correspondence was misfiled and a note of her visit to the Council office was not associated with her file. Finally she was not informed that her complaint had been closed. These failures meant that the Council was unable to deal properly with the complaint. I considered that the failure to follow proper procedure and adhere to good administrative practice, in investigating the complaint, constituted maladministration. I recommended that the Chief Executive of the Council issue an apology to the complainant for the failure of the Council to properly investigate her complaint about malodour and give her a consolatory payment of £500. (200800970)

## North Eastern Education and Library Board

### Handling of Complaint

The child's parents alleged that, while travelling home from school on a bus provided by the Board, their son had been assaulted by the bus escort. My investigation centred on the Board's handling of the subsequent complaint raised by the parents.

While it was clear that the Board had investigated the allegation promptly, I found that a crucial letter to the parents containing the results of the investigation was sent to the wrong address in error. In my opinion this delay, occurring during what was undoubtedly an anxious time for the parents, was avoidable and constituted maladministration.

Subsequent to its investigation, the Board had decided that the child should resume transport on the bus. However, the absence of any written communication with the parents, due to the posting error, made it appear to the parents that the Board had attempted to resume their son's bus transport without first formally communicating to them the results of its investigation. I also found that the posting error caused confusion in the child's transport arrangements which led to the child being taken home by taxi at the same time his parents were driving to school to collect him. I concluded that the maladministration had caused a significant personal injustice, which was amplified by the fact that the child had special needs and, in that sense, was obviously vulnerable. I recommended that the Board should apologise and make a consolatory payment of £750 to the parents.

My investigation also found that the Board had failed to demonstrate any proactive engagement with the complainants during the process. There was evidence that information was not shared including; procedures for investigation; arrangements for the interview of the child; the internal complaints process; child protection information; and details of a review conducted by the Board as a result of the complaint. In light of my findings, I did not view the Board's approach to the complainants to be representative of best practice or to indicate a commitment towards service improvement.

I was pleased that the Board accepted my findings and recommendations, and undertook to review its complaints handling and customer care processes in the light of this case. (200800315)

## Helm Housing Association

### Purchase of Apartment

This complaint centred on Helm Housing Association's decision (the Association) not to accept that in November 1994, the aggrieved person had registered a formal interest in purchasing her apartment.

My enquiries established that the complainant was made aware in November 2004 of the requirement to apply in writing to the Association if she wished to proceed to purchase her apartment. Although the complainant was continually monitoring the progress of her neighbours' applications to purchase their apartments, it was not until June 2006 that she wrote to the Association stating that she wished to proceed with the purchase of her apartment. The complainant acknowledged to me that she wished to know the market value of her apartment before deciding if she could afford to purchase it, because she believed an application to purchase would commit her to do so. Irrespective of the valuation enquiries being made by the complainant since November 2004, the House Sales Scheme (the Scheme) did not permit the Association any

discretion to depart from the date of her written application, which was received by the Association on 31 October 2006.

Overall, I found no evidence to demonstrate that the Association's handling of this case was attended by maladministration. I was satisfied that the complainant was made aware in November 2004 of the requirement to apply in writing to the Association if she wished to proceed to purchase her apartment. In addition, I was satisfied that the complainant's "ongoing interaction" with the Association since November 2004 did not constitute a formal application to purchase the apartment.  
(200601099)

## *Oaklee Housing Association Ltd*

### **Concerns over handling of complaints of anti-social behaviour**

These cases concerned complaints from two tenants of Oaklee Housing Association Ltd (the Association) regarding the Association's handling of their concerns about the anti-social behaviour of one of their next door neighbours and about the service charge applied by the Association for the 2008/09 year. The complainants believed that the Association had not given proper consideration to whether the neighbour was a suitable tenant for their particular housing scheme at the time it had made the offer of a tenancy to him. They were also aggrieved with the manner in which the Association dealt with complaints they made to it about the neighbour's behaviour, in particular; that the Association delayed in taking action to address their concerns; that it did not keep them informed about developments with regard to progressing the matter; and that it failed to notify them that their complaint had been resolved as a result of the neighbour having moved to alternative accommodation. In addition, the complainants were aggrieved that the Association did not respond to a complaint they made to it regarding service charges and that it failed to provide them with written confirmation of a revision of the charge previously notified to them.

Having investigated the circumstances of the complaints, it was evident to me that the complainants had suffered an injustice as a result of maladministration on the part of the Association. Although I found no evidence that the Association acted inappropriately in offering a tenancy to the neighbour, I concluded that it delayed in taking action when the complainants first made it aware of their concerns about the neighbour. I also concluded that the Association failed to keep them informed of progress being made to resolve their complaint about the neighbour and that it failed to inform them that their complaint had been resolved. With regard to their complaint to me about the service charge, my investigation found evidence of maladministration in that the Association did not provide written notification of the revised service charge and failed to provide a timely response to the complaint and to further queries the complainants had put to it regarding that charge.

In recognition of the frustration, annoyance and disappointment sustained by the complainants as a result of the Association's actions, I recommended that the Association's Chief Executive (the CE) issue a letter of apology and make a consolatory payment of £1,500 to each of them. I am pleased to record that the CE accepted my findings and that he implemented my recommendations.  
(2008001219/2008001223)



## Northern Ireland Housing Executive

### Tenancy Rights

The complainant in this case was dissatisfied with the Northern Ireland Housing Executive's decision (the Executive) that he was not eligible to purchase his home on the grounds that it is a one-bedroomed bungalow and he had succeeded to its tenancy, in 1990, from his late grandmother who was over 60 years of age when her tenancy of the property commenced. The complainant contended that the Executive failed to inform him, at the time of his grandmother's death in 1990, or subsequently, that it regarded him as having "inherited her tenancy" and also that it failed to inform him that, as a consequence, he would be ineligible to purchase his home. The complainant therefore contended that the Executive's rejection of his house purchase application was wrong and that he should be allowed to buy his home.

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

Having investigated this complaint, I concluded that the complainant succeeded to the tenancy of his home, in 1990, as he was legally entitled to do and therefore that he was subject to the provision within the House Sales Scheme which prohibited the sale of the property. I was therefore unable to uphold the complainant's contention that he should be entitled to purchase his home.

However, I formed the clear view that the Executive failed to inform the complainant, in 1990 or subsequently, that he was not entitled to purchase his home because it is a type that is excluded from its statutory House Sales Scheme. I regarded this failure as constituting maladministration. My investigation of this case also identified several other instances of maladministration and significant administrative failings by the Executive which, I had no doubt, caused the complainant to experience the injustice of annoyance, frustration and, ultimately, deep disappointment when he found, many years later, that he was prevented from purchasing his home from the Executive.

I therefore recommended that the complainant should receive, by way of redress, an appropriate letter of apology from the Executive's Chief Executive together with a consolatory payment of £4,000. I was pleased to record that the Chief Executive accepted my recommendations.  
(200700238)

### Incomplete Renovations

This case concerned a vulnerable adult with a severe learning disability. His brother complained to me, on his behalf, that the Northern Ireland Housing Executive (the Executive) had shown a lack of consideration towards him. The complaint related to renovations made to his home during a Multi Element Improvement Scheme. He left his home while the renovations were being carried out, however when he returned home in December 2007 he found



that the roof and toilet were leaking, in addition to other incomplete works. He considered that there was undue delay in responding to and rectifying these problems. He also experienced problems with the electricity supply to the property; on one occasion he was without electricity for a weekend.

My consideration of this case leads me to conclude that the complainant suffered an injustice as a result of maladministration by the Executive. Although I recognised that the Executive relied on its contractors to remedy defects, I formed the view that it is the Executive's responsibility to ensure that such action is taken promptly and thus its tenants receive an acceptable standard of service. This is particularly important where a vulnerable person is involved. I recommended that the Executive complete any outstanding remedial work on the complainant's home and that it assist him to submit a public liability insurance claim. The failure of the Executive to provide an appropriate service is unacceptable for any tenant; however it is compounded when the tenant has a severe learning disability. In recognition of the frustration, disappointment, distress and annoyance he experienced I recommended that the Chief Executive issue a written apology to the complainant on the Executive's behalf. I also recommended a consolatory payment of £2,000. I am pleased to record that the Chief Executive accepted my recommendations. (200800577)

# Commissioner for Complaints - Selected Summaries of Cases Health & Social Care

## *Western Health & Social Services Board*

### **Decision not to grant independent review**

The aggrieved person complained to my office about the decision of the Convenor of the Western Health and Social Services Board (the Board) not to grant an Independent Review of his complaint concerning the care and treatment he received in Altnagelvin Hospital in 2001. The complainant, who suffered from urinary retention, alleged that he was not advised, prior to undergoing bladder surgery, that there was a risk of permanent incontinence and it was not until after surgery that he was advised about Intermittent Self Catheterisation. He complained that the bladder surgery had left him permanently incontinent and he was discharged from hospital in a worse condition than when he went in. Consequently, he believed the surgery had failed.

### **Investigation against the Board**

Where a complainant is unhappy with a Convenor's decision not to convene an Independent Review panel, my first consideration is to investigate the decision making process. If I am satisfied that the Convenor has made a reasonable decision then I cannot uphold the complaint. If, as in this case, I am not satisfied with the basis of the Convenor's decision then I can investigate the substance of the original complaint against the Trust.

My investigation of the complaint against the Board revealed that the Convenor had sought advice from a clinical adviser to assist her in her consideration of the complainant's request for an independent review of his complaint. The clinical adviser informed the Convenor that the treatment the complainant had received from the surgeon was appropriate. As a consequence, the Convenor refused the complainant's request for an Independent Review of his complaint on the basis of the clinical advice which had been provided to her.

I sought advice from my Independent Medical Adviser (IMA) on the advice which had been provided to the Convenor. My IMA subsequently advised me that he disagreed with the Convenor's clinical adviser in relation to the appropriateness of bladder surgery and on other aspects of the complainant's treatment. When this information was shared with the Convenor's clinical adviser he subsequently agreed with my IMA's comments that further questions about the complainant's treatment remained to be satisfactorily answered by the Trust.

I, therefore, concluded that the Board's Convenor had prematurely dismissed aspects of the complaint which would have benefited from further local resolution or by the establishment of an Independent Review Panel.

Consequently, I upheld the complaint of maladministration against the Board and I recommended that the complainant should receive a written apology. I also decided to pursue a separate investigation with the Trust regarding the treatment which had been provided to the complainant which is the subject of a separate summary overleaf.



## Unnecessary Surgical Procedures

My investigation against the Trust revealed that the complainant had not previously complained to it about an alleged failure to advise him that bladder surgery carried a risk of causing permanent incontinence, although he had included this issue in his written complaint to me. While I am not required to consider any issue that has not firstly been raised with the body, to avoid further delay I sought independent medical advice on this matter. The independent advisor confirmed that the consent form which was used was the 'old style' and that medical staff were not obliged to document a list of possible complications of the surgery. Consequently, I was unable to conclude precisely the extent of the information provided to the complainant prior to his surgery. It is my understanding that hospital consent forms in current use now record this information. In any event, my advisor informed me that incontinence is not a complication of bladder surgery except in very unusual circumstances, which did not apply in the complainant's case.

On the matter of Intermittent Self Catheterisation I was advised that the complainant's medical records clearly record that he was taught Intermittent Self Catheterisation by a urology nurse in December 2000. This pre-dated the bladder surgery (in January 2001), but it also recorded that he was unable to carry out this procedure.

I was advised that there was nothing in the operation note or associated anaesthetic records to suggest there had been any complications during the bladder surgery.

I was advised, however, that the complainant's consultant could not have known whether or not the bladder neck was obstructed without having performed a video urodynamic study (a group of tests to investigate problems with bladder control) on the complainant before surgery. I was further advised that this did not cause harm or damage to the complainant and there was no evidence to support his claim that it caused him to be incontinent.

In concluding my investigation against the Trust I carefully considered both the clinical advice from my advisor and the complainant's surgeon. I reached the view that the complainant had undergone two unnecessary surgical procedures, namely, bladder surgery and the insertion of a Memokath stent, and that these actions constituted maladministration. I was reassured by my IMA that, while these surgical interventions were unnecessary, they did not cause any harm to the complainant. I found no evidence to uphold the complainant's contention that the surgery left him permanently incontinent. Furthermore, there was no evidence to suggest that the complainant's subsequent deterioration of health in the period since 2001 was in any way connected to this surgery.

In respect of the maladministration identified by my investigation I recommended, and the Trust's Chief Executive agreed, to issue to the complainant a letter of apology, together with £5000 consolatory payment, in recognition of the distress experienced by the complainant in undergoing unnecessary surgical procedures. (200700112 & 200801057)

## Complaint regarding hospital treatment

This complaint centred on the care and treatment of the complainant's late wife, Mrs A, at the Erne Hospital, Enniskillen.

On 25 January 2007, Mrs A was admitted to the hospital with a 4-5 day history of vomiting and lower abdominal pain radiating to her back. She had also experienced significant weight loss over the course of the previous year. Mrs A experienced a delay whilst waiting to be assessed at the Erne Hospital Surgical Ward. During this time she was refused pain relief and her self-administered asthma medication by nursing staff on the ward. After examination, Mrs A was treated with intravenous fluids, intravenous antibiotics, and pain killers. On 26 January, Mrs A's condition deteriorated. Mechanical ventilation was delayed because the Intensive Care Unit was full and no such beds were available in the whole of Northern Ireland. On 27 January, a chest x-ray suggested that Mrs A's stomach had herniated into her chest. Mechanical ventilation commenced later that morning, however, later that afternoon, it was noted that she had possibly suffered from a stroke. This was confirmed after a CT scan on 29 January. Mrs A was made comfortable, but she continued to deteriorate and sadly died on 2 February 2007.

Mr A was not satisfied about the delay in his wife's assessment, the withholding of her medication, the lack of ventilators, and that he was told that his wife was unfit to undergo surgery. He raised his concerns through the Health and Personal Social Services Complaints Procedure and was dissatisfied that the Convenor of the Western Health and Social Services Board decided not to grant an Independent Review of his complaint. He 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 also obtained Mrs A's hospital medical records from the Western Health and Social Care Trust. I arranged for these documents to be reviewed by my Hospital Independent Professional Advisor (IPA).

The Trust in this case has acknowledged the delay was unacceptable and has taken measures to deal with these instances in future.

IPA advice was that the delay in instituting mechanical ventilation was unsatisfactory as Mrs A would have been in considerable discomfort at that time. However, she did not deteriorate particularly at this time, and staff used appropriate treatment in the interim.

The Trust had informed the Convenor that it was in the process of implementing plans to increase the number of critical care beds. In addition, a regional network for critical care had been established. Part of this work was to facilitate a live bed state database across Northern Ireland to improve information on bed status and ease access to available beds.

In light of this and on the basis of the evidence available, I concluded that the Convenor met her responsibilities under the HPSS Complaints Procedure. Having carefully considered the evidence, including, importantly, the advice of my IPA, I was satisfied that the Convenor made an informed and reasonable decision not to grant an Independent Review in relation to this complex complaint. (200800297)



## *Eastern Health and Social Services Board*

### **Decision not to grant an Independent Review**

The complaint in this case concerned the decision by the Convenor of the Eastern Health and Social Services Board (the Board) not to grant an Independent Review of a complaint regarding the actions of social workers employed by the former Down & Lisburn Trust. The complaint was in relation to an accusation of sexual abuse which was made against the complainant by the teenage son of a friend.

In my report I acknowledged the highly emotive and truly distressing circumstances which surround this complaint. I stated that I was firmly of the view that a complainant has a right to expect that any serious allegations of professional failings raised should be tested with the utmost rigour and balance before a conclusion is reached in relation to whether or not they can be sustained. Having examined all of the evidence most carefully and, having taken account of the professional advice which I received, I concluded that the convening process was not sufficiently robust.

I, therefore, recommended that the Board should apologise to the complainant for failing to ensure that he received adequate responses under the HPSS Complaints Procedure to what he described as, his two fold complaint; namely, the alleged non-involvement of him in a proper investigation of the allegations made against him; and the alleged mention of an allegation in front of family and neighbours. I also added that I found the level of delay in my issuing of this report, created by the Board's decision to commission its own independent review of my draft report, to have been totally unacceptable. Therefore in addition to the apology, and in further recognition of the poor standard of complaints handling in this case, I recommended that the Board make a consolatory payment of £1,000 to the complainant. I also decided that the Trust's actions should be the subject of a separate investigation by me under the Order. I am pleased to record that the Chief Executive of the Board accepted my recommendation. (200800029)

### **Failure to adequately investigate death of patient**

This complaint related to the failures of an Independent Review Group (IRG) set up by the EHSSB to properly investigate circumstances surrounding the death of the complainant's wife.

Prior to her death in March 2002, the complainant's wife had been a participant in a chemotherapy research trial for ovarian cancer. As a consequence of discussions between the Trust and the Board, it was agreed that a two-stage investigation should be conducted into the circumstances of the death. Stage 1 of the investigation comprised an internal Root Cause Analysis undertaken by the Trust. Stage 2 comprised an IRG which reported in April 2006. The complainant complained to me that not all the issues relating to his late wife's care had been properly investigated.

I identified and criticised the IRG for a number of failures in its report which included the following:

- failure to acknowledge the seriousness of the oncology clinician's views that knowledge of the deceased's blood count would not have influenced her treatment;
- failure to consider the appropriateness of the clinician's actions arising from an erroneous conclusion regarding the correct grade of clinician treating the deceased;
- failure to investigate the actions of the out of hours GP and clinical staff in Downe Hospital in accordance with the Terms of Reference of the investigation into the case.

In considering these serious errors, I was in agreement with the IRG's recommendation that no chemotherapy patient should be discharged from the Oncology Clinic prior to their full blood count results being available and considered by a clinician. I acknowledged also that the Board had acted in good faith in undertaking its investigation and had displayed considerable sensitivity towards the complainant and his family. Although in this case the Chief Executive agreed to issue a written apology and make a consolatory payment of £5000, I considered there were further issues to be investigated and decided to undertake a separate investigation into the care and treatment provided by the Belfast City and Downe Hospitals, and the out of hours GP. (200600033)

## Southern Health & Social Care Trust

### Care and Treatment

The complainant in this case had a number of concerns about the actions of social workers and other professional staff in their dealings with both her and her daughter. The daughter has Downs Syndrome, epilepsy and major eating problems. The complainant felt that the Trust failed to answer these concerns in its responses to her complaint. She further stated that she regarded these concerns as remaining unanswered, following the processing of her complaint under the three stages of the Children's Order Representations and Complaints Procedure. The main issues of concern were her non attendance at a meeting concerning her daughter, her daughters' absence from school, her admittance to hospital and the introduction of a new health care assistant.

In my investigation of this case I obtained the social work records and arranged for them to be reviewed by my Independent Social Work Advisor (ISWA). My ISWA subsequently provided me with detailed professional advice which formed the basis of my conclusions. I was advised that, in general, the problems identified were poor communication, both within professional groups, between agencies and with the family; poor record keeping; lack of knowledge and non compliance with the child protection processes; and lack of understanding of roles and responsibilities.

In responding to my report the Chief Executive (CE) accepted my conclusions and informed me that a number of the points raised have been addressed in revised management arrangements resulting from the Review of Public Administration. He stated that new processes being introduced regionally through reform implementation teams, including the UNOCINI (Understanding the Needs of Children in Northern Ireland) framework, will help in addressing those matters further. In addition, the CE stated that the Trust has plans to introduce measures for further improvement including, the introduction of a Recording and Administration Policy, the introduction of a Quality Assurance and Performance Management system, and an information sharing protocol for agencies working with children and families.



The CE concluded his response by assuring me that the Trust took the complainant's concerns most seriously and that significant changes to service and practice have been made arising from investigation into this complaint.

I recommended that the CE of the Trust issue an apology to the complainant for:

- a failure to explore the concerns which gave rise to her request for a change of social worker
- the lapse in communication regarding the basis for the attendance of a Child Protection Nurse at a meeting
- the confusing accounts given for admitting the complainant's daughter to Hospital
- the incorrect account given both to the complainant and the Stage 2 panel regarding the introduction of a new health care assistant while the daughter was in Hospital

I also recommended that the CE took steps to ensure that all panel members appointed to investigate complaints under the Children's Order Representations and Complaints Procedure were fully aware of the need to adhere to clear terms of reference which have, as their basis, the unresolved issues of complaint.

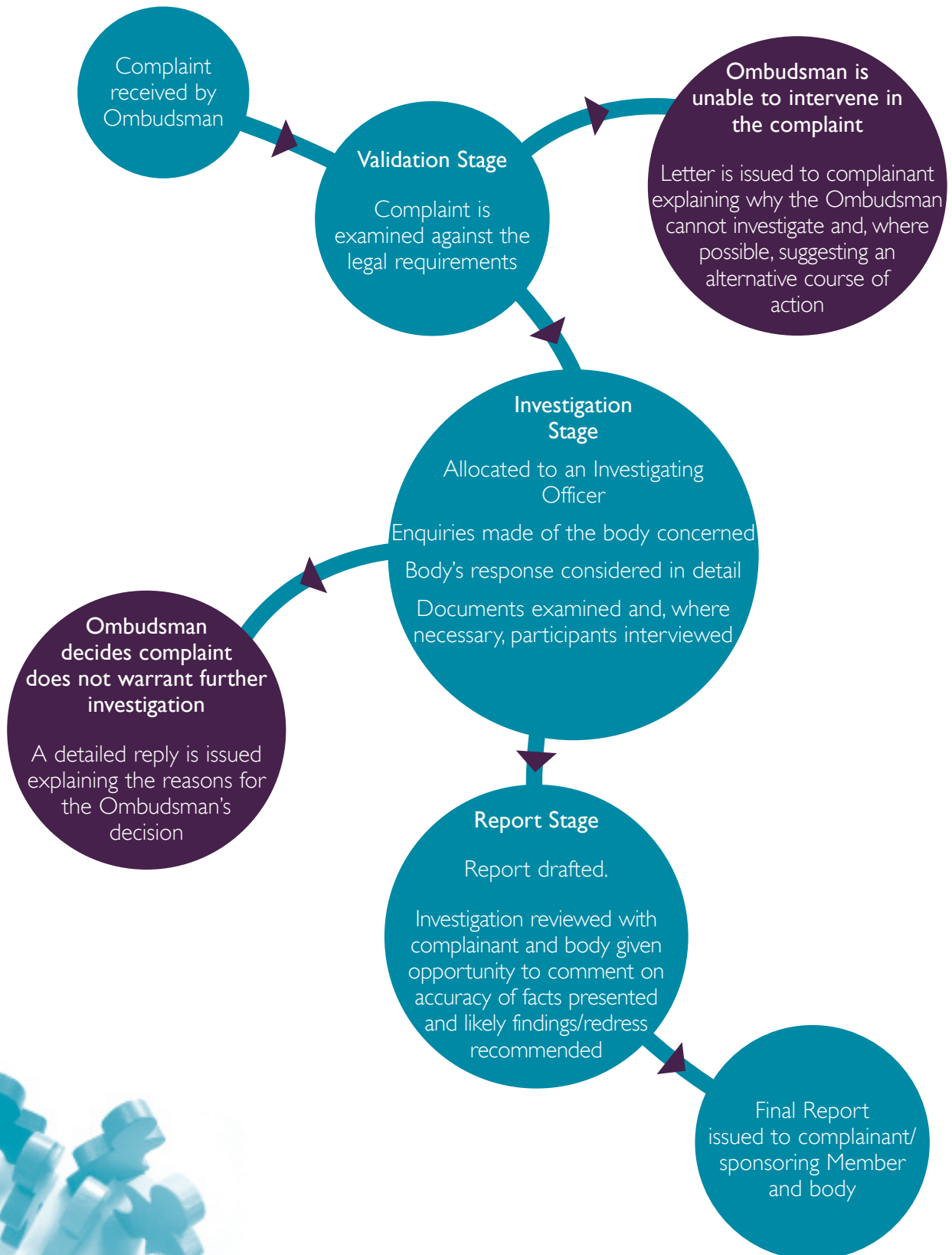
Finally, as a consequence of the maladministration identified, I recommended that the complainant be made a consolatory payment of £1,500 by the Trust as recognition of the personal injustice and distress suffered. I welcome the acceptance of the above recommendations. (200700287)



## Appendix B: 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 the Ombudsman 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 the Ombudsman 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 10 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 further 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 personal injustice – a reply will issue to the complainant/MLA detailing the 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 personal injustice to the complainant - the investigation of the case will continue (see over).



If, at this stage of the investigation, the maladministration and the injustice caused can be readily identified, the Ombudsman will consider whether it would be appropriate to seek an early resolution to the complaint. This would involve writing to the chief officer of the body outlining the maladministration identified and suggesting a remedy which is considered appropriate. If the body accepts the suggested remedy, the case can be quickly resolved. However, should the body not accept the 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**

A draft Report is prepared, containing the facts of the case and the Ombudsman's 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, the likely findings and any redress it is proposed to recommend. Following receipt of any comments which the body may have the final Report will be issued to both the complainant/MLA and to the body. This is a very time consuming stage as the Ombudsman must be satisfied that he has all the relevant information available before reaching his decision.

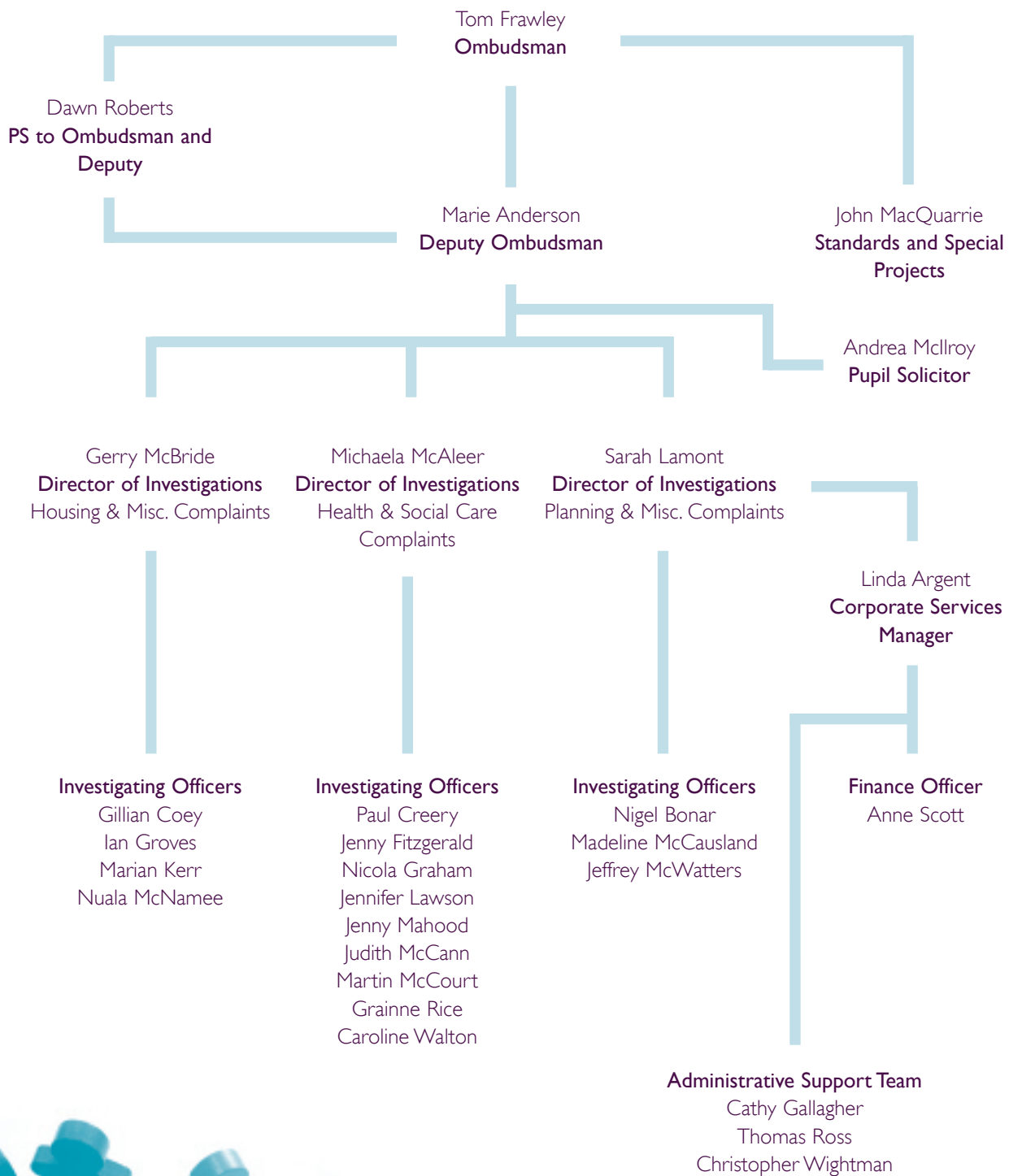
The Office target is to complete the Investigation and Report Stages within 12 months of initial receipt of the complaint.



# Appendix C: Staff Organisation Chart



## Staff Organisation Chart





# Ombudsman Northern Ireland

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