

AILG-OPR Planning Training Webinar

26 February 2021



Presentation on Planning Complaints to the Ombudsman





Overview

- Examines complaints against public service providers (known as reviewable agencies)
- Part of the checks and balances that hold public service providers accountable
- Other than legal routes, last port of call for citizens
- Not an advocate for either party
- Inquisitorial rather than adversarial





Legislation

- The Ombudsman Act 1980 describes the powers of the Ombudsman as regards the examination and investigation of complaints
- Most recent and significant amendment to this Act contained in the Ombudsman (Amendment) Act 2012





Role

- Examine if there is maladministration and adverse affect

If there is:

- determine appropriate redress
 - ensure learning and prevent recurrence
- First and foremost a complaint handler but secondary role to drive improvement in public administration (sometimes systemically).





Remit

- Section 4 outlines the functions of the Ombudsman – examining/ investigating admin action once there is adverse affect arising
- Section 5 outlines exclusions – e.g. matters before Courts and reserved functions of elected members.



But the Ombudsman may decide not to investigate if....
the action complained of is:





- ✗ trivial and vexatious
- ✗ the complainant has insufficient interest
- ✗ the complainant has not taken reasonable steps to seek redress
- ✗ satisfactory measures to remedy, mitigate or alter the adverse affect have been or are proposed to be taken.




Role of the Ombudsman in relation to planning



 The Ombudsman cannot examine the making of planning decisions

 The Ombudsman can examine complaints concerning the administration of the planning process and concerning **planning enforcement**

 LAs have discretion to pursue enforcement action - Ombudsman examines whether a LA has exercised its discretionary powers in a reasonable manner.





Complaint types

 Planning administration complaints, e.g. site notices




 Delays in pursuing enforcement action

 LA decisions not to pursue enforcement action for a variety of reasons.....

Common issues observed

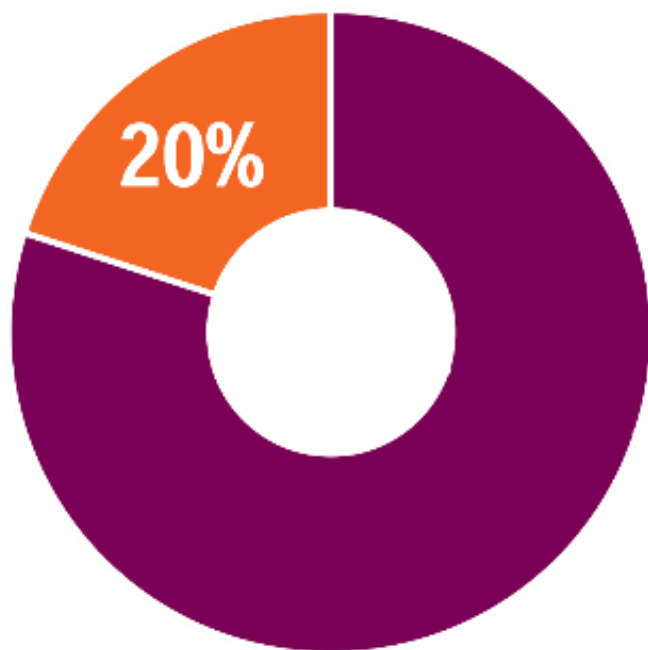
Recurring issues across complaints include:



-  Delays in pursuing enforcement action due to lack of staff resources/ awaiting decisions on retention applications
-  Failure to provide reasonable substantive updates on the progress of enforcement action
-  Clearly explaining the reason(s) for decisions not to pursue enforcement action.

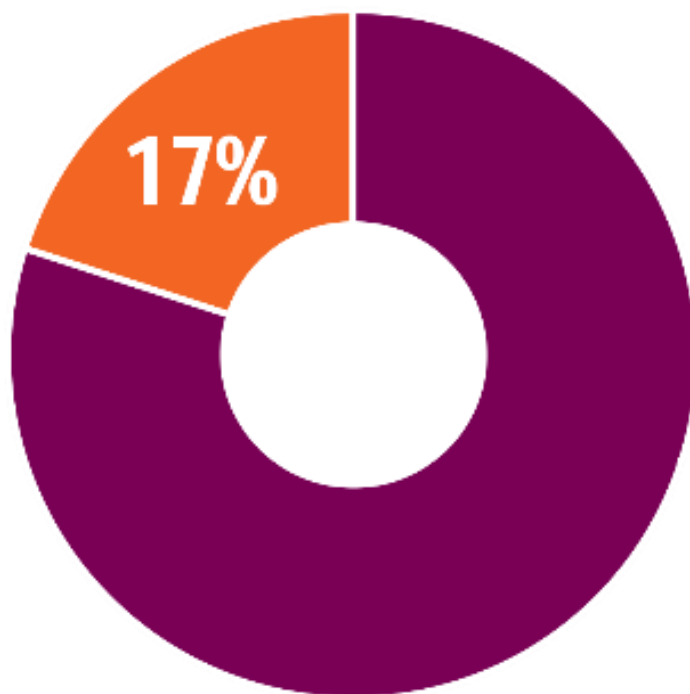
Complaints received





**20% of 2020
complaints Upheld
/ Partially Upheld**

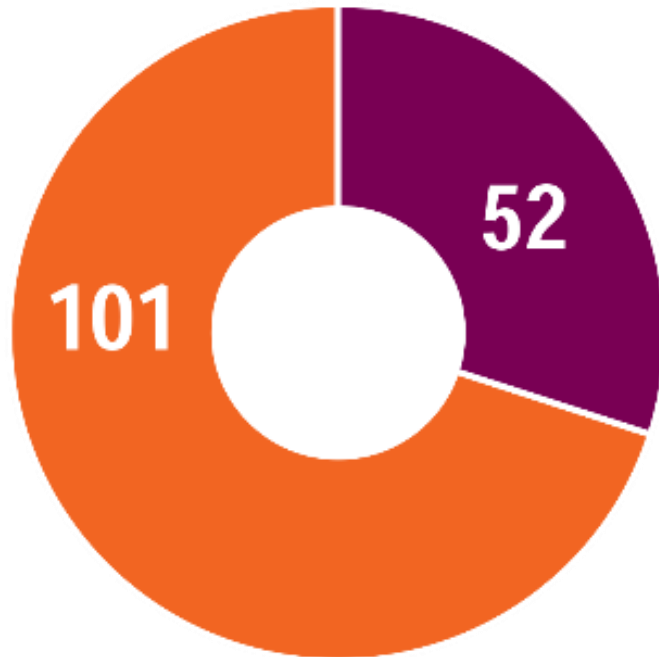




**153 planning
complaints
received**



153 Planning complaints



**52 Planning
administration**
**101 Planning
enforcement**



MOU between the Ombudsman and OPR

Its purpose is to minimise duplication of effort and assist speedy and efficient examination of complaints and:



Foster mutual communication and cooperation



Share relevant information



Optimise the use of public resources



Strengthen practical arrangements for handling complaints



Keep the best interests of complainants central to decisions on jurisdiction over complaints



Oifig an Ombudsman
Office of the Ombudsman

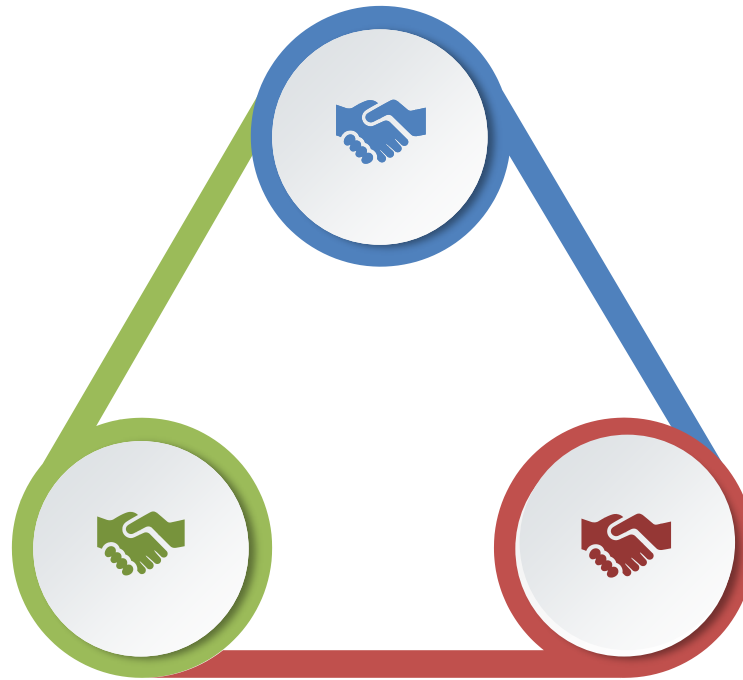
Implementation of MOU

Ombudsman's Office

Deals with individual complaints regarding administration

OPR

Deals with complaints regarding systemic (pervasive/systemic or patterns in relation to planning policy/decision making)



Ombudsman & OPR

communicate on matters to avoid duplication of effort and agree remit regarding marginal (grey area) cases



Examples of planning complaints






The last planning investigation by the Ombudsman was in 2010 see link -

<https://www.ombudsman.ie/publications/reports/investigation-report-on-a/>

Roads section buying aggregates from a quarry while Planning section pursuing enforcement action against it

LA entered contract under Repair & Lease scheme with a developer but subsequently had to pursue enforcement action re development



-  LA refused to pay €28K interest on builder's 15 year development bonds
-  'Time & trouble' payment for pursuing a complaint - LA spent 2.5 years deliberating on initiating Court action
-  Quarry refused PP for expansion then won tender to upgrade road and proceeded to widen it, i.e. one of the original reasons for refusal



Investigations



decides

- Section 6 of the Act provides that when the Ombudsman decides to carry out an investigation he or she must inform both the complainant and the reviewable agency of the results
- The reviewable agency must be afforded an opportunity to consider the matter and make representations before any adverse finding or criticism is made
- Where it appears to the Ombudsman that a response to a recommendation is not satisfactory....
- He or she may make a special report on the matter to the Oireachtas.



Conclusions



Lack of enforcement can result in erosion of public confidence in the planning process.

Disconnect between the public's perception of LA's obligations re enforcement action and the reality on the ground.

Resourcing: Appears to be an issue for the enforcement functions of many LA's.

High cost of/risks of litigation also a material consideration in pursuing court action.



- LA Case Management: Complaints may be mitigated through better (regular) communications with complainants.
- LA Complaint Procedures: These could be highlighted more to ensure complainants exhaust all available avenues first.
- LA Planning Enforcement Sections should be properly resourced and greater communication with complainants at the outset explaining process, i.e. managing expectations.



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