

CASE SUSTAINED

CS/513

COMPLAINT AGAINST THE ROYAL GIBRALTAR POLICE FOR ITS FAILURE TO INVESTIGATE A COMPLAINT

The Complainant was a fishing enthusiast who used to go to the coastline below Rock W/T Station ('the area' or 'the area in question') to practice his hobby. Concerned that on several occasions he had been unable to access the area because the gate at the top of the steps leading to the said zone was locked, he wrote to the Chief Minister. In response, the Office of the Chief Minister investigated the problem and by letter dated 10 November 2003 they informed the Complainant that Land Property Services had been instructed that public access to the area, via the steps, should be restored and that the gate should not be kept locked. The tenants of the area had also been instructed that the gate should be kept open at all times.

On Saturday 10 January 2004 the Complainant went to fish as was his habit and he found that the gate was locked once again. He went to the Royal Gibraltar Police ('RGP') Headquarters at New Mole House to make a complaint, showing the officer in charge a copy of the letter from the Chief Minister's Office, but he was allegedly informed that this was a civilian matter and that the police could not interfere.

In his complaint to the Ombudsman, the Complainant pointed out that outside the gate there was an official looking sign warning would be visitors to the area that "Authorised Personnel & Key Holders Only" were allowed beyond that point. In its response to the Ombudsman's investigation the RGP explained that Land Property Services had assured them that the gate was unlocked and that residents of the area had been sent letters informing them that it should be kept unlocked at all times. The RGP added that the gate and lock in question were faulty and that persons wanting access had to lift the gate, before pushing it open. They went on to repeat that the RGP was not responsible for matters such as this which should be resolved between Land Property Services, the residents of the area and the Government of Gibraltar. They added that its officers would only intervene if a Breach of the Peace were taking place or were likely to occur as a result of residents clashing with fishermen.

The Ombudsman questioned the RGP's statement that the matter of access to the area did not fall within their ambit and that they would only intervene if a Breach of the Peace was taking place. By way of illustration following the RGP's argument, the Ombudsman pointed out that if all of the residents of say Governor's Lane, were to put up a gate at each end and close it at will, the police would only intervene in response to a report of a Breach of the Peace and not merely to a report that this thoroughfare had been unlawfully closed. This was clearly ludicrous, said the Ombudsman.

In response to the Ombudsman's criticism, the RGP explained that the police are a law enforcement agency and as suggested by this term they may only act to enforce the law of

the land. Where a highway is blocked without authority, the RGP is empowered by statute to take steps to enforce the right of the public to use the highway freely and without obstruction. The area in question however cannot be classified as a highway, and as with any other property in Gibraltar, public or private, the RGP may only enforce access or prevent access as the case may be, on instructions from the landlord. The area is the property of the Government of Gibraltar, managed by LPS. In this case it seems that the residents of the area complained to LPS that suspect types used to wander around the area in the hours of the night, compromising their safety and privacy. LPS apparently instructed them to lock the gate at the entrance to the area and a copy of the key was given to the RGP, the fire brigade and the ambulance. The RGP explained to the Ombudsman that when the Complainant first approached them reference access to the area, they put the matter to LPS awaiting their instructions which instructions never came. In the absence of word from the landlord instructing them to restore access to the area, the RGP were powerless to act.

The Ombudsman accepted the explanation of the RGP but he sustained the complaint pointing out that the Complainant had brought with him to police headquarters a copy of the Chief Minister's letter and he was given no satisfying explanation as to why the RGP could not act on the basis of that letter. The Ombudsman further pointed out that the man in the street is not acquainted with the intricacies of the RGP's role as described to him and when approached by the Complainant he should have been given an explanation as to why the RGP was powerless to act notwithstanding the Chief Minister's letter and perhaps also advised that his complaint would be put by them to LPS once again. The Ombudsman pointed out however, that he was pleased to say that the problem seemed to have been resolved through the good offices of the Chief Minister. With these words the Ombudsman closed the report.

ADDENDUM

At the time of writing LPS had removed the lock from the gate but the sign warning would be visitors from entering the area was still in place.