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AQUAGIB (PAGES 7-9)

CASE PARTLY SUSTAINED

CS/582

COMPLAINT AGAINST AQUAGIB LTD IN RESPECT OF THEIR FAILURE TO APPROPRIATELY RESOLVE A PROBLEM THE COMPLAINANT HAD WITH HER WATER BILL

The Complainant, the owner of a business in Gibraltar, received a water and electricity bill dated 12th May 2003. The said bill was sent to her by the service provider, Aquagib Ltd ('Aquagib').

The Complainant noted that during the month of April 2003 she had been charged £329.20 in respect of her water bill, when her usual charge was around £15 per month. The Complainant felt aggrieved with Aquagib because when she informed them of the water bill anomaly, despite their assurances that they would look into the matter and revert back to her, these assurances allegedly failed to materialise.

During May 2003 the Complainant phoned Aquagib on two occasions, explaining that she believed she had been incorrectly charged for water consumption during April 2003. Although Aquagib promised to look into the matter, on 20th May 2003 she wrote them a letter explaining her problem once again. She did not receive a written reply or an acknowledgement slip, nevertheless, an Aquagib employee visited her and verbally explained that the excessive bill could have been as a result of a water leak.

The Complainant did not understand why she had not been informed of this possibility before, as she had done nothing to address this potential problem. She then asked the Aquagib employee to investigate the matter for her, and he agreed.

Four months later, the Complainant's query in respect of her water bill had not yet been resolved. She wrote a reminder letter dated 26th September 2003 in respect of which, at the time of complaining to the Ombudsman (12th November 2003), she had not received a reply.

Aquagib had sent the Complainant a reminder notice for the non-payment of bills on 8th September 2003, and informed the Ombudsman that they had received the Complainant's reminder letter dated 26th September 2003 on 7th November 2003 (a lapse of over a month).

Aquagib wrote to the Ombudsman, on 9th December 2003, explaining that their Meter Reader had recorded a high consumption of potable water at the Complainant's business address on 15th April 2003. This had been reported to their technical section on 16th April to investigate for a possible leak. The matter was followed up on 22nd April and no leak was found in the supply pipe to the premises.

Aquagib further explained that they had verbally communicated with the Complainant, therefore a reply had been provided and, additionally, a site visit was carried out on the 28th November 2003, so a letter of reply was staid until that date. Aquagib also explained that no estimated readings were ever made in respect of water consumption at the Complainant's business, only actual readings had been taken.

Aquagib concluded their letter to the Ombudsman by explaining the following:

'Under the Public Health Ordinance the register of the meter is prima facie evidence of the quantity of water consumed. The consumer is always in a better position to

know how it has expended the water registered, than we would ever be. Even if there had been a leak in the supply pipe after the meter, the pipe is the consumer's responsibility to keep in good order and to maintain, so the consumer would be liable to pay for the water leaked'.

The Ombudsman noted that Aquagib had established that there had been no water leak at the Complainant's business address on 22nd April 2003. There was no reason, therefore, as to why the Aquagib employee who visited the Complainant during May 2003 suggested that there may have been a leak.

The Ombudsman was unable to explain why the Complainant's water bill for April 2003 had been over £300 of the normal charge. Aquagib had been unable to elucidate this either, or for that matter the Complainant, and there was no clear explanation other than the fact that the meter had recorded the passage of water.

He considered the fact that the Public Health Ordinance stipulated that the meter was *prima facie* evidence of the consumption of water, for which the consumer was liable, the pertinent section of this Ordinance states as follows:

Section 134 (1)

"Where the Government supply water under this Ordinance by meter, the register of the meter shall be prima facie evidence of water consumed"

The above legislation went on to say that an individual could challenge this presumption by taking the matter to the Magistrates Court. Despite this fact, however, most persons did not pursue this option as it would usually involve the hiring of a lawyer, which is an expensive exercise for many members of the public.

The Complainant had not been able to prove that she had not used all the water she had been charged for during April 2003, but Aquagib had verified that there had been no leak at the supply pipe (which is the customer's property and responsibility to maintain), at the time of inspection. As a result the Ombudsman felt the Complainant was obliged to pay the water bill for April 2003.

In respect of Aquagib's failure to provide written replies to the Complainant, the Ombudsman noted that the Complainant had been verbally assured, during May 2003, that the matter would be investigated. She did not, however, receive any further information until Aquagib's reminder bill dated 8th September 2003 reminding her of the outstanding bill (a lapse of some four months). The Ombudsman explained that in accordance with good administrative practices all complaints made in writing should be replied to in like fashion, and ideally within fifteen working days.

The Complainant, who had been expecting an update, only received the said reminder bill. This left her feeling annoyed and frustrated as she was merely informed that she would have to pay the said bill, and no references were made to the investigation which she had been assured would be carried out.

Aquagib did not follow up their assurances to the Complainant in respect of investigating her complaint, and did not keep her appropriately informed. The Complainant had not been provided with any written replies to her original 20th May 2003 letter until 28th November 2003, this lapse of over six months was excessive. Bearing this in mind the Ombudsman sustained this part of the complaint.

UPDATE

Aquagib's Managing Director wrote to the Ombudsman on 16th December 2004. He highlighted Aquagib's Customer Complaints Procedure, contained in their quality manual, and explained that normal billing queries were replied to within ten working days. Where a site visit was required, an interim reply had to be provided within ten working days of receipt of a letter. Aquagib would then need to provide a substantive reply within twenty working days of receipt of the original letter.

The Managing Director accepted that, in this case, the above procedure was not followed to the letter.

BUILDINGS AND WORKS (PAGES 10-33)

CASE SUSTAINED

CS/428

COMPLAINT AGAINST THE DEPARTMENT OF BUILDINGS & WORKS FOR GROSS DELAY IN CARRYING OUT REMEDIAL WORKS TO THE COMPLAINANT'S FLAT

The Complainant alleged that it had taken nearly two years for the Department of Buildings and Works' (B & W) to commence remedial works on his apartment. This delay claimed the Complainant was unreasonable and constituted a breach of duty towards him.

BACKGROUND CS/237

Before going into the facts of this complaint it is necessary to describe the events recounted in Complaint Number 237 investigated by the Ombudsman during the course of 2001. This current complaint is a continuation of the events set out therein.

THE GAVINO'S DWELLING PREMISES

In December 1998 a 3RKB to be known in this report as the Gavino's Dwelling premises was allocated to the lady who is now the Complainant's partner. The lady lived there with her two daughters. The Complainant who had joint custody of his two children with his former wife moved in shortly after and a child in common was soon born to the couple. The family residing in the Gavino's Dwelling premises complained of humidity and overcrowding from the outset.

**The ceiling
right outside
their front
door
collapsed....**

In March 2001 the ceiling of an external corridor right outside their front door collapsed. The Complainant wrote to the Minister for Housing expressing his serious concern at his dangerous living conditions, and at the length of time being taken by the then Housing Agency to re-house him.

Following the Ombudsman's intervention the Chief Executive of the Technical Services Department was asked by the Housing Department (Housing) to carry out a structural survey of the Gavino's Dwelling premises. The report was submitted on 22 June 2001 and in it, the structural engineer recommended that the Gavino's Dwelling premises be vacated as a matter of urgency.

**....the
Ombudsman
intervened
and a
structural
survey was
carried out....**

Following a second intervention by the Ombudsman the Complainant and his family were moved to another flat hereinafter to be known as the Flat. This was in July 2001

THE FLAT CS/428

The onset of the rains in December 2001 signified the onset of the Complainant's problems, problems which at the time of writing nearly two years later have not been solved.

The Problems Commence

By letter dated 17 December 2001 the Complainant wrote to the then Director of B & W

copied to Housing. The Complainant's words speak for themselves.

“--- approximately 4 weeks ago my wife noticed some mould appearing at the back of the master bedroom.

In early December we started to realise some form of dampness in our girls' room, on 12.12.01 when the rainfalls commenced we noticed that the girls' bedroom was dripping with water --- and a very sticky substance coming from the edge of the ceiling. We then started to check the entire house and found the same problem in my son's room who is 20 months old and whose bed was soaked through with water and this sticky substance.”

The Complainant went on to say that they reported the matter to B & W but due to that department's heavy workload the Flat was not inspected until the following morning.

“By this time (i.e. the following morning) the problem had extended and worsened by 100%. ---.In the master bedroom the excessive water or sticky substance has caused major damage to my bedroom suite, --- and the mattress has mould and is decaying. In my Girls' room---their computer was gone and I am now awaiting the technician. In my toddler's bedroom who is 20 months old, the pine wood bed has started to grow mould and rot.

--- I urge you to come and see for yourself, how a nice house has rotten away from the exterior walls inside causing damage everywhere you look, in just a matter of days. --- my whole family lives surrounded by green/black moulding, the smell of dampness, our attacks of asthma and a general feeling of depression of after having gone through Gavino's Dwelling, we thought our problems had ended, and yet we find ourselves in a worse situation---.”

Neither department replied to or even acknowledged this letter. In a meeting with the Director of B & W in early January 2002 it was decided that a surveyor would be sent to inspect the Flat. This was done but weeks passed and nothing more was heard from B & W. By letter dated 22 January 2002 the Ombudsman asked the Director of B & W:

....& he was rehoused due to the Ombudsman's intervention....

“--- an estimator did go to his flat in early January 2002, but he has had no further news since. Mr --- is anxious to know when you are likely to address his problem.”

....however, the problems pursued him to his new home....

In response to this letter the Ombudsman was informed that an estimate had been prepared for the required works but it was impossible at this stage to give a date on which the works would be carried out.

“I think that I deserve to be re housed”.

The year 2002 blossomed from infancy to the spring of youth and the spring of youth matured to the hot middle age of summer but the works did not commence. On 28 May 2002 the Ombudsman was informed that they would commence “very soon” but May went into June and July into August. The winter rains were now looming over the horizon and the Complainant was now dreading another winter like the one that had just gone by.

On 23 August 2002 the Ombudsman wrote to the incoming Chief Executive of B & W saying that on 25 July 2002 he had been informed that the works would commence within three weeks but the three weeks had come and gone and nothing had happened. Finally on 5 September 2002 the Complainant telephoned the Ombudsman and informed him that the

works had finally commenced. However he warned, he was concerned that what was being done would not stop the acute water penetration he had suffered during the winter of 2001/2002. Unfortunately the Complainant proved to be right. The works were carried out and completed and the autumn progressed into winter. With the winter came the rains and with the rains came the mould, water seepage and dampness. In early January 2003 the Complainant informed the Ombudsman that his television set had broken down due to the extreme humidity, the bedroom walls were black with mould and when they woke up in the mornings the bedclothes were humid. On 14 January 2003 the Flat was again visited by B & W and works were again promised. The walls would be hatched, the windows changed, ventilation ducts unblocked. The Complainant went again to the Ombudsman in desperation. In over 14 months he said, all that had been done was to paint the outer walls of his Flat. His children were all chronic bronchial asthmatics; he had been moved to the Flat because his previous residence had not been habitable. He had been living in substandard conditions since March 2001 *“I think that I deserve to be re-housed”* he said.

MORE WORKS PROMISED

On 3 February 2003 the Chief Executive of B & W visited the Flat and in a telephone conversation with the Ombudsman, he said that the humidity was caused by the lifestyle of the Complainant and his family, the windows he said were always closed and the heaters on, this caused condensation. He added however that in his opinion the family should be rehoused. In a conversation with the Complainant, the Chief Executive allegedly also said that in his opinion the family should be re housed, however since Housing had refused to acquiesce to this alternative he advised the Complainant to put the matter before the Minister.

....“we live surrounded by green/black mould and the smell of dampness” he said....

By letter dated 11 February 2003 referring to his inspection of the Flat, the Chief Executive wrote as follows:

1. *“---We noticed that most of the rooms are affected by mould growth caused by condensation not by ingress of rain.*
2. *We also noticed that Mr--- smokes in the house and owns a large colie, both of which could affect the children’s health.*
3. *We have informed Mr --- that on the basis of the 5 children sharing 1 ½ bedrooms alone we would be recommending --- that he should be relocated to a bigger apartment.*
4. *We have met --- the Housing Manager --- and she has informed us that the Directorate of Housing have more serious cases than Mr --- and that it will not be possible for him to be moved at present. We were also informed that Mr --- had been moved a year earlier after much aggravation.”*

....”in my toddler’s bedroom the pine wood bed has started to grow mould & to rot” he added....

THE SURVEYOR’S REPORT

Whilst this exchange was going on the Complainant approached the Office of the Chief Minister and it was arranged that his Flat would be inspected by a surveyor. This inspection took place on 18 February 2003 and according to the Complainant the surveyor told him that he would recommend that he be re housed.

The following is an extract of the surveyor’s report.

ANALYSIS

Although the tenant alleges that he is experiencing severe water penetration this is considered unlikely initially as the apartment is on the penultimate floor and so the only possible causes of water ingress would normally occur from minor faults in the external building fabric and/or water leaks from the apartment(s) over.

Furthermore, the building has been refurbished recently (some 3 years ago) and as such the numerous damp signs visible should not readily be attributable to rainwater penetration through this refurbished exterior.

STATUS

The tenant claims that the apartment is unfit for habitation

This is because the obvious water ingress forms severe condensation throughout the apartment due to excessive use of heaters and an obvious lack of suitable ventilation. However, it would be safe to assume that most of the possible minor building defects should be repairable.

- *Water ingress from the poor quality aluminium sliding windows.*
- *The position of windows in former balcony areas almost on the outside face of the building, facilitating water penetration from wind-driven rain.*
- *Rainwater penetration through the former low-level balcony walls now converted into part of the internal room areas.*
- *Inadvertently sealing off of air bricks in the external walls during the refurbishment works causing interstitial condensation.*
- *Poor quality refurbishment by Buildings and Works around sensitive areas (e.g. windows and the like)*
- *Peeling off of unsuitable paint on the external facades.*
- *Heating of moist air causing an exacerbation of the condensation.*
- *Lack of adequate through-ventilation of the affected areas.*
- *Inadequate ventilation of the bathroom as this does not now have direct ventilation."*

....as predicted, the works did not solve the problem and with the winter came the rains. With the rains the mould and the humidity....

....“for over two years I have been watching my children’s health deteriorate. How they need to go constantly to hospital for nebulisers & oxygen.”....

By letter date 17 March 2003 the Ombudsman asked Housing whether the report had been considered and if so what steps would be taken. Housing answered on 9 April, stating that five of the windows in the Flat had already been changed since the report was made and additionally, the Flat would be painted internally with a special antifungal paint.

During the rest of the month of April 2003 and throughout May and June contacts ensued between the Ombudsman, the Complainant, B & W and the Housing Department with the aim of determining exactly what works were needed in the Flat. Finally on 1 July 2003 the Ombudsman was informed by the Housing Department that they had written to B & W to co-ordinate the commencement of the works.

APPEAL

In mid June 2003 the Complainant wrote to the Ministry for Housing appealing to be rehoused permanently.

.... Housing....informed them that the Directorate of Housing had more serious cases than the Complainant.....They were also informed that the Complainant had been moved a year earlier after much aggravation.”....

“Today I have received a letter from the Ombudsman’s office, stating that Buildings & Works have come to the conclusion that my house needs the following repairs immediately. --- “

The Complainant went on to describe the history of his family’s travails ever since the Gavino’s Dwelling premises and said that in over two years *“I have had almost everybody from Buildings & Works coming up to my flat and making promises of repairs”* but despite all of the promises said the Complainant nothing had been done. The Complainant claimed that between the Gavino’s

Dwelling premises and his current flat he had spent over £20,000 on his home and other than £2,000 refunded to him for damaged property in the Gavino’s Dwelling premises, he had lost most of this money.

*“For over 2 years I have been watching how my children’s health has deteriorated, how they need to go constantly to hospital for nebulisers and oxygen.---
For the past 6 years we have been living in horrendous conditions and the health of all my family has suffered as a result.--- I would ask you to please re house us permanently for the sake of my young children.”*

This appeal went unanswered and unacknowledged.

A REQUEST AND A REFUSAL

On 1 July 2003 the Department informed the Ombudsman that Housing was writing to B & W in order to co-ordinate the commencement of the works with the temporary move of the tenants. On 25 July he was further informed that the family would be housed in hotel accommodation and that the works would take no more than two weeks.

....“I would ask you to re house us permanently for the sake of my young children” he appealed

At this stage the Complainant raised the problem that his son’s bedroom was no larger than a box room and he requested that the door to that room be moved a few metres in order that he be able to fit a wardrobe in the room. According to B & W the cost of meeting this request would amount to £986 but Housing refused to authorise any additional works (the additional works). B & W explained to the Ombudsman that the commencement of the works was delayed by one month due to this issue having been raised by the Complainant.

TO A HOTEL OR NOT TO A HOTEL, THAT IS THE QUESTION

On 1 September 2003 Housing instructed B& W to proceed with the works “that were originally agreed” adding that the Ministry could not authorise any extra expenditure.

The Complainant approached Housing explaining that being in a hotel room with children for two whole weeks was no easy matter. He informed the Ministry that a friend was willing to rent him his home in Spain for the same sum that the Ministry would pay the hotel in Gibraltar (minus the cost of three daily meals). Housing refused saying that it could not be

seen to be re housing its tenants in Spain. The Complainant then said that his friend would move to his Spanish home and rent him his flat in Sir William Jackson Grove for the duration of the works. Housing again refused, saying that it was Government policy that its tenants were only re housed in a hotel. The Complainant turned once again to the Ombudsman in desperation. "Why do they say no to everything, what do they have against me" he asked? On 19 September 2003 the Ombudsman wrote the following letter to Housing:

"A friend of Mr --- is willing to rent him his apartment in Sir William Jackson Grove for the duration of the refurbishment. Mr --- has said that his friend will accept as rent, whatever sum the Ministry for Housing would have to spend on him were he to be re housed in a hotel (minus the cost of meals).

....but his appeal went unanswered & unacknowledged.

*I am informed --- that 'Government' has taken a policy decision, whereby in cases such this the Ministry will **only** accommodate the tenant in a hotel. The Ministry therefore refuses to consent to Mr --- request that he be allowed to rent his friend's apartment for the duration of the works. ---*

I would have thought that the Ministry's main consideration would be to minimise the cost to the public purse. If Mr --- and his three and sometimes five children are housed in a hotel, the Ministry has to provide him with all of his meals, including lunch & supper. If however, he is allowed to rent a flat, as he has proposed, the cost of three daily meals would be avoided, because Mr --- would be able to fend for himself. I would be grateful to know the reason for the Ministry's insistence that the Complainant be temporarily re housed in a hotel."

Parallel to the development of the above saga the Complainant was informed that a triple room and a double room had been reserved for him at a local hotel as from 6 October. On 2 October the Complainant went to the hotel to inspect the rooms and he saw that they were not adjoining. Further enquiries revealed that adjoining rooms were unavailable for at least another month so the works had to be postponed once again.

THREATS OF VIOLENCE

At this and various other stages in the enquiry Housing expressed grave concern at what they termed was the Complainant's violent disposition and his threats to physically harm the Housing Manager and her family. Housing also expressed its unease at the fact that there were other Government tenants living in bad conditions and that the Complainant had been given priority to them all due to his aggressive nature.

THE CHIEF MINISTER

Not being able to accept that he was being given no alternative but to go to a hotel when he had a cheaper and more convenient alternative, the Complainant approached the Chief Minister for a second time. On 17 October 2003 in a meeting with the Chief Minister he explained that the Ministry was insisting to accommodate him in a hotel even though he had a cheaper alternative. He also complained that they were refusing to authorise B & W to carry out the additional works. The Complainant claimed that the Chief Minister denied that his Government had a policy of only accommodating tenants temporarily in hotels and he allegedly instructed that the Complainant be allowed to rent his friend's flat in Gibraltar as requested by him. He also instructed that the additional works be carried out.

THE WORKS AT THE FLAT FINALLY COMMENCED ON 3 NOVEMBER 2003

The Ombudsman is often faced with complaints where the facts speak so loudly that no further comments are necessary. Even though this complaint is one of those, the Ombudsman was still obliged to point out what was and what should have been in order that those responsible should take note for future reference.

This complaint was also unusual in that the subject of the complaint was originally the Department of Buildings & Works, however as the weeks turned into months and the months into years the Ombudsman identified very serious flaws in the way the Housing Department dealt with the matter, flaws that it was his duty to highlight.

THE DEPARTMENT OF BUILDINGS & WORKS

The Complainant claimed that his story was one of neglect. Neglect that was so incomprehensible that it was irrational, unreasonable and grossly negligent. The Ombudsman had to decide whether B & W did what was reasonably expected from them in the circumstances in order to ameliorate the Complainant's living conditions.

The dank humidity affecting the Flat first made itself manifest right after the rains on 12 December 2001 and it was reported by the Complainant to B & W the following morning. He then wrote to B & W on 17 December and had a meeting with the then Director in early January 2002. Communications proceeded throughout the rest of that winter and throughout the spring and summer of 2002 but remedial works involving the repainting of the exterior of the Flat with a waterproof paint, were only carried out in September 2002. At the time the Complainant told the Ombudsman that the works would not solve the problem. He had been informed by B & W said the Complainant, that the inner walls of the flat needed to be hacked and repainted, and this was not being done.

...did Buildings & Works do what was reasonably expected from them in the circumstances?

The Complainant's worst hopes came true and the problem was not solved. Communications with the new administration of B & W proceeded throughout the winter of 2002/2003. Housing inspectors inspected the Flat countless times as did the administration of B & W both former and present. Five of his windows were changed on 25 February 2003 but other than this nothing more was done until 3 November 2003 when remedial works, which at the time of writing were still being carried out, commenced.

Several of the Complainant's children were bronchial asthmatics. The Complainant's health suffered as did that of his children. His furniture and electronic equipment were severely damaged and he went through years of emotional stress. Was it reasonable in the circumstances to keep this family living in such conditions whilst B & W decided what had to be done? The Ombudsman thought not. When the extent of the mould and dampness first became evident in December 2001, B & W should either have taken emergency action or else advised the Housing Department to re house the tenant whilst it decided how to proceed.

....was the Housing Department receptive to the Complainant's predicament?

THE HOUSING DEPARTMENT

The Ombudsman pointed out that even though Housing was only obliged to re house its tenants when B & W said that their current accommodation was not habitable, in a case such as this it should have gone beyond the letter of the law and re housed the Complainant even without B & W's recommendation. The Housing Department is the provider of a service and its tenants are its customers. Like every service provider its aim must always be to provide the best possible service to its customers. In this case the customer's first flat proved to be uninhabitable, the customer was given a replacement, i.e. the Flat, but it too caused the customer problems. The correct thing to do would have been to re house the customer for a second time and then refurbish the Flat whilst it was empty of tenants. Unfortunately this is not what was done and instead Housing dug in its heels, got on its high horse and called the Complainant a troublemaker (whether or not he was a troublemaker is a side issue). Having witnessed the Complainant's travails first hand the Ombudsman concluded that the Housing Department needed to change the attitude it had towards its customers and he called for a radical reform in the way Gibraltar's public housing stock was managed.

In *Smith v Muscat* [2003] EWCA Civ 962 it was held that a tenant was entitled to set-off the rental arrears owed by him against the Landlord's breach of his repairing obligations. Lord Justice Sedley said as follows:

“--- rent today is correctly regarded as consideration not merely for granting possession but for undertaking obligations which go with the reversion---“ (para 30)

The Complainant suffered many years of damage, financial damage, emotional damage and damage to the health of his family. The Ombudsman recommended that the Complainant was fully entitled to demand and to receive damages from the Ministry for Housing for the pain and suffering caused by the most serious breaches committed by its two constituent departments, the Housing Department and the Department of Buildings and Works. The Ombudsman commented that this complaint raised serious questions concerning the viability of the Housing Department in its present form. The Ombudsman was of the opinion that serious thought should be given to how Gibraltar's housing stock should be managed in the future.

CASE SUSTAINED

CS/507

COMPLAINT AGAINST THE DEPARTMENT OF BUILDINGS & WORKS OVER THEIR DELAY IN TACKLING A WATER INGRESS PROBLEM AT THE COMPLAINANT'S FLAT

The Complainant had her son's bedroom window replaced by the Buildings and Works Department (B&W) during December 2001. The Complainant felt aggrieved because during the rainy season water started penetrating through the newly installed window.

The Complainant reported the matter at the Reporting Office on 12th December 2001. A requisition form was prepared on the same date, with instructions to apply a protective paint-like liquid (Decadex) around the window's exposed reinforcement frame. However, although the Complainant's window was never treated with Decadex, the works were categorised as 'coded works', which were supposed to have been completed on 28th March 2003.

The coded works referred to works which required higher operational services (i.e. labour or cost), and covered those jobs which were not part of the day-to-day works undertaken by B&W – works which exceeded 120 hours (or the financial equivalent) were also categorised as coded works.

Because water continued to penetrate through the Complainant's window, she informed the Reporting Office once again. The Complainant felt aggrieved when she was told that the works in question had already been carried out, and she would have to wait her turn before the windows could be worked on again.

The Ombudsman and the B&W Head Estimator had an on-site meeting at the Complainant's premises, on 27th January 2004. It was during this meeting that the Estimator realised that the window's external reinforcement frame had never been treated. He explained that the 'coded works' referred to repairs carried out to the external structure of the Complainant's block of flats. He apologised, as it was apparent that during the said coded works the Complainant's window had been overlooked and not treated at all.

The Estimator explained that he would try and have these works carried out as soon as possible. The Head Estimator provided the Ombudsman with copies of B&W internal correspondence, where instructions were issued for the works to be carried out by mid-March 2004.

The Ombudsman included this case in his bi-weekly meetings as by 23rd March 2004 the works had not yet been carried out. At the meeting he was informed that further instructions had been issued to the Depot in question for the works to be initiated no later than the end of April 2004.

At the meeting, however, the Ombudsman was informed that it may not be possible for the works to be carried out until June-September 2004, which was the original date for the works before being reprioritised. The B&W Project Manager explained that B&W needed more workers as it was being overwhelmed by a backlog of works. The Ombudsman also noted that, at the time of writing this report, B&W workers were carrying out industrial action against their employers.

The Ombudsman pointed out that B&W had acknowledged their error, and tried to remedy it, once the matter had been brought to their attention. The Ombudsman was disillusioned, however, because this matter had not been resolved.

The Ombudsman highlighted the fact that despite the Head Estimator and Project Manager's issuing of instructions, these had not materialised. In fact, the Ombudsman took this opportunity to point out that this was not the first time this had happened.

The Ombudsman explained that B&W was failing (and frustrating) the public by being unable to commit itself to timeframes. In particular, B&W had failed the Complainant, who, through no fault of her own, had a faulty bedroom window which was unable to withstand wet and stormy weather. Additionally, if the Ombudsman and the Head Estimator had not carried out an on-site inspection, the fact that the window had not been treated as required may never have been identified by B&W, and the Complainant would not have been provided with any form of redress. The Ombudsman sustained this complaint, and with these words he closed the case.

CASE SUSTAINED

CS/516

COMPLAINT AGAINST THE DEPARTMENT OF BUILDING & WORKS OVER THEIR DELAY IN REPLYING TO THE COMPLAINANT'S LETTERS

The Complainant wrote to the Department of Buildings & Works (B&W) on 19th November 2003. In her letter she set out a claim for compensation, which drew attention to the fact that B&W workers had damaged a self-standing wall unit whilst carrying out works in her flat. The Complainant felt aggrieved as, despite sending a reminder letter dated 8th December 2003, she had not received a reply.

The Ombudsman wrote to B&W on 9th January 2004, enclosing the Complainant's letters and asking B&W to provide her with a reply. By way of letter dated 23rd January 2004, B&W replied to the Complainant, acknowledging receipt of her letters and apologising for the delay in replying. B&W also asked her to provide further information in order to proceed with the claim.

The Ombudsman pointed out that B&W had taken over three months to reply to the Complainant's letter. The Ombudsman highlighted the fact that when he directed the complaint to B&W, they had been under the impression that a reply had already been issued, but this was not so. He stated that B&W needed to ensure that their records were clear and up to date. It was not acceptable for B&W to frustrate members of the public as a result of their incomplete records. The Ombudsman sustained the complaint on the grounds of maladministration, and with these words he closed the case.

CASE SUSTAINED

CS/523

COMPLAINT AGAINST THE DEPARTMENT OF BUILDINGS & WORKS OVER THEIR DELAY IN QUICKLY AND EFFECTIVELY RESOLVING A DAMPNESS PROBLEM

On 7th March 2003 the Complainant, a Government tenant, reported a crack in her bedroom wall at the Ministry for Housing's Reporting Office. The crack, it appeared, was also affected by the dampness levels in her flat. The Complainant was concerned because she believed the dampness was affecting her health as well as her newborn baby's. In mid-December she vacated her premises and moved into her mother's flat.

The Complainant wrote to the Department of Buildings & Works (B&W), which is the Government Department responsible for maintaining government-owned buildings, expressing her concern at their delay in remedying the dampness problem in her flat. She also explained that the dampness had been spreading to other bedrooms but, she had been informed by the Reporting Office, it was not possible to make another report because the initial report was still pending implementation. Additionally, the Complainant stated that she had been trying to contact B&W in order to find out when the works were likely to be initiated. No B&W staff members were able to provide her with a straight answer, instead she was given different phone numbers to try. Despite phoning these numbers, it was alleged that no one answered the calls.

The Complainant brought her complaint to the attention of the Ombudsman on 20th January 2004, and he included it in his meetings with B&W. During February 2004 he asked B&W for an update. The Project Manager explained that there were two flats in the Complainant's block which needed to be tackled simultaneously, however, B&W were waiting for better weather as the rain (which had been prevalent at the time) would hinder any of the dampness-related works. The Project Manager explained that a rough start date for the works was the end of March 2004.

By the next meeting (March 2004) the B&W Project Manager explained that B&W employees were undertaking industrial action against their employers. This meant that the workers were 'working to rule', which would invariably delay all of B&W programmed works. The Project Manager provided the Ombudsman with a copy of an internal Memo, stating that the Complainant's works should be carried out no later than the end of March 2004. Additionally, the Project Manager went to the Complainant's flat, and explained the situation to her in person.

By way of letter dated 24th March 2004, the Project Manager wrote to the Ombudsman updating him on the Complainant's case. He explained how the problem would be tackled, and assured the Ombudsman that the works would be initiated within the next few weeks.

On Monday 26th April 2004 the Complainant informed the Ombudsman that workers had started going to her flat, and were getting ready to initiate the necessary repairs.

The Ombudsman was satisfied that B&W had made genuine attempts at addressing the Complainant's problem, once he had brought the complaint to its attention. Notwithstanding, the Complainant was not to blame for B&W internal problems, and the lack of B&W manpower (as highlighted by the Project Manager) coupled with the backlog of works, all played a role in delaying the works to her flat.

The Ombudsman felt it pertinent at this juncture to mention that B&W Project Manager had been genuinely trying to reduce B&W historic backlog of works.

The Complainant had waited for over a year for a crack and dampness to be tackled in one bedroom. By the time B&W started the works, the problem had spread to more rooms and become more severe. If the problem had been dealt with *ab initio*, i.e. when it was first reported, then B&W would have been able to correct the problem far more quickly and expeditiously. Instead, a Government tenant (who had been paying rent for use of the property) had been prevented from enjoying her tenancy, to the extent that she moved into her mother's flat until the necessary works were carried out to her flat.

The Ombudsman pointed out that B&W only updated the Complainant because he was carrying out an investigation, otherwise, it was probable, no B&W personnel would have liaised with her at all. The delay, failure to update and the injustice suffered by the Complainant amounted to maladministration, and with these words the Ombudsman closed the case.

CASE SUSTAINED

CS/531

COMPLAINT AGAINST THE BUILDINGS AND WORKS DEPARTMENT OVER THEIR DELAY IN CARRYING OUT REPAIRS TO THE COMPLAINANT'S FLAT

During September 2000 the Reporting Office of the Ministry for Housing issued a requisition form for the replacement of the Complainant's bathroom's interior plasterboard for

‘tacboard’, and to replace the damaged exterior plasterboard. During October 2001 the Reporting Office issued further instructions for the removal of a partitioning wall in the bathroom, and for the building of a new partition together with the reconnection of the basin.

At the time of complaining (22nd December 2003) none of the works had been carried out, and the Complainant’s partitioning wall had collapsed. The Ombudsman was concerned about the delay being experienced, and included this case in his bi-weekly meetings with Buildings & Works (B&W).

The Ombudsman met with the B&W Project Manager on 23rd February 2004. The Project Manager explained that the Complainant was fourth on the waiting list, which meant that the outstanding works would soon be tackled. He advised the Ombudsman that if the Complainant’s works had not been initiated by the end of March 2004, she should bring this to their attention. The Complainant was duly informed.

The Ombudsman again met the Project Manager on 23rd March 2004. He informed the Project Manager that the said works had still not been carried out by B&W.

The Project Manager apologised and explained that B&W workers were currently engaged in industrial action against their employers. The workers were ‘working to rule’, which meant that they were doing the basic minimum and would not carry out any works which did not meet their job description. This was severely adding to the existing backlog of works.

The Project Manager provided the Ombudsman with a copy of the instructions he had issued for these works to be carried out before the end of March 2004.

The Ombudsman noted that although instructions had been issued by B&W for the Complainant’s works to be initiated before the end of March 2004, these had not been possible to execute. The Ombudsman highlighted the fact that this was not the first time that this had happened.

The Project Manager had informed the Ombudsman that he felt there was not enough manpower to effectively meet timeframes, and this was irrespective of the industrial action that was taking place at the time of writing this report.

The Ombudsman sympathised with B&W, but stated that these issues were of no consequence to the Complainant, who was not to blame for B&W internal politics. He explained that B&W owed a duty of care to members of the public, and it had failed to liaise or communicate with the Complainant at all.

The Ombudsman sustained this Complaint as the delay had been inordinate, and B&W had been unable to resolve an unacceptable situation – with these words he closed the case.

CASE SUSTAINED

CS/537

COMPLAINT AGAINST THE DEPARTMENT OF BUILDINGS & WORKS FOR TAKING AN OVERLY LONG TIME TO UNBLOCK A GULLY AND TO RETURN THE WATER SUPPLY TO THE COMPLAINANT’S BATH

The Complainant lived with his wife and six children in a flat that had only recently been completely refurbished by the Department of Buildings and Works (‘B & W’). He approached the Ombudsman recounting that he had realised, after a week of monitoring, that

there was a leak underneath his bath. He explained that the reason why it had taken him so long to identify the leak was that he could not understand how a flat that had only recently been refurbished, could possibly have such a problem. On Saturday 24 January 2004, he rang the Department's emergency line to report the matter. Two workers responded to his call, they removed tiles from his bathroom floor, disconnected the water supply to the bath and then left saying that the job would be finished the following Monday. The Complainant was allegedly informed that they would input a record of the incident into the departmental computer so that the works would proceed through the normal system. By Monday afternoon, no-one had turned up, and it was not until the 16 February 2004, that works actually commenced to unblock the gully that was blocked, remove the old bath, fit in a new one, and replace the broken tiles. Throughout all of this time, the Complainant and his family had no water in their bath.

B & W explained to the Ombudsman that when a flat is refurbished prior to allocation it is Government policy that the fixtures that are in a good condition are not replaced. Pursuant to this policy the bath in the Complainant's flat was not replaced so the workers had no way of knowing that the gully was blocked.

The Ombudsman accepted that B & W could not have known that the gully was blocked however the delay in carrying out the repairs was excessive. The Ombudsman pointed out that once again B & W had failed the public's expectations for a timely and efficient service, and consequently an entire family had been left without water in their bath for several weeks. The Ombudsman considered this failure to be a case of gross maladministration and sustained the complaint in full. He expected a much better effort from this department. With these words the Ombudsman closed his report.

CASE SUSTAINED

CS/538

COMPLAINT AGAINST THE BUILDINGS AND WORKS DEPARTMENT OVER THEIR FAILURE TO MEET A TIMEFRAME IT HAD COMMITTED ITSELF TO

The Complainant's flat was flooded during April 2003, so he reported the matter to the Reporting Office on 23rd April 2003. The Complainant heard nothing from the Buildings and Works Department (B&W), so he wrote to B&W's Chief Executive on 14th July 2003, however, at the time of complaining to the Ombudsman he had still not received a reply.

The Ombudsman included this case in his B&W bi-weekly meetings during 2003, and asked that B&W reply to the Complainant's letter. The Chief Executive wrote to the Complainant on 20th August 2003, explaining that the works had been categorised on the 'Urgent/Priority list', and he envisaged the works would start in early October 2003.

These assurances never materialised so, during the course of the aforementioned meetings, the Ombudsman asked the B&W Project Manager for an explanation. The Project Manager apologised for the delay and explained that the assurance had been made in error, as B&W current workforce would be unable to initiate the necessary repairs until the first quarter of 2004.

The Ombudsman had closed the case during November 2003 because he had been assured that the works would be initiated during January 2004.

By the end of March 2004 the works had not yet been initiated, so the Ombudsman re-opened his investigation. He took this opportunity to highlight that B&W had once again failed to

update the Complainant in writing, and had also failed to verbally inform the Complainant about the reasons for the delay.

The Ombudsman concluded that there was no acceptable reason for having failed to update the Complainant. B&W's reluctance to communicate with members of the public was worrying. The Ombudsman explained that it was good administrative practice (and common courtesy) to keep members of the public informed. By failing to do this B&W was contributing to the public's negative impressions of this department. Having sustained this complaint, the Ombudsman closed the case.

CASE SUSTAINED

CS/539

COMPLAINT AGAINST THE BUILDINGS & WORKS DEPARTMENT OVER ITS FAILURE TO MEET THE COMMITMENT IT HAD ENTERED INTO WITH THE COMPLAINANT

The Complainant lived in Government rented accommodation (the "Flat"). She felt aggrieved with the Buildings & Works Department (B&W) because they had assured her that the windows in the Flat would be replaced within a particular timeframe, nevertheless, these assurances failed to materialise.

The Complainant moved into the Flat during May 2001, she had been in a rush to move in as her previous accommodation had been undergoing major repairs and was greatly inconveniencing her. This is the reason why she did not make a big issue about the fact that five windows needed to be replaced in her newly allocated Flat. She subsequently reported her windows on 10th May 2001, and decided to wait her turn.

The Complainant wrote to B&W on 7th July 2003, explaining that her windows required urgent works and stating that she had already had to wait a long time, she then requested an update from them. B&W failed to reply to the Complainant, so the Ombudsman included this case in his bi-weekly meetings with B&W during 2003.

The case was closed once B&W had informed the Complainant, that two of her windows would be included in the 'one/two item replacement list' and the other three would be replaced at a later date, in approximately four to six months (May 2004).

The Ombudsman noted that by April 2004 none of the Complainant's windows had been replaced. B&W had informed him that there had been no Government contractors for the replacement of windows since December 2003 and, although the situation had now changed, there was a heavy backlog of works.

The Ombudsman was satisfied that B&W's Project Manager had issued all the necessary instructions to the relevant Depots, however, once again B&W had failed to execute them.

The Ombudsman accepted that B&W may not have been to blame for the delay in carrying out the repairs. Nevertheless, it had failed to inform the Complainant that there would be delay. If they had done so, the Ombudsman added, the Complainant may have been more understanding. Instead she had been left in ignorance and feeling very frustrated indeed.

The Ombudsman highlighted B&W's poor public relations policy which appeared to leave members of the public very badly informed. The Ombudsman was of the view that B&W should make it a point to update and communicate with all those members of the public for

whom works needed to be undertaken, but there would be a foreseeable delay or problem; otherwise, B&W would never get rid of its past reputation as a poorly administered department. With these words he closed the case.

CASE SUSTAINED

CS/550

COMPLAINT AGAINST THE DEPARTMENT OF BUILDINGS & WORKS OVER THEIR DELAY IN REPLACING A BROKEN LETTERBOX

The Complainant, a Government tenant, allegedly reported her broken letterbox at the Reporting Office on 2nd December 2003. She felt aggrieved with the Department of Buildings & Works (B&W) when, by 11th February 2004, her letterbox had not yet been replaced.

The Complainant was very concerned when, by January 2004, her letterbox had not yet been replaced. The Complainant was an old age pensioner, and was in receipt of 'Community Care' (a form of charitable financial assistance for residents of Gibraltar who are over 60 years of age). The Complainant's post was regularly tampered with by the children from her housing estate, and sometimes her post was permanently lost. The Complainant was particularly concerned about the cheque which was sent to her via Community Care, as this was one of her principal sources of income.

By way of letter dated 27th January 2004, a senior Social Worker helped the Complainant write a letter to B&W, highlighting her predicament, and requesting that B&W replace her letterbox as a matter of urgency.

The Complainant continued to report her broken letterbox on a regular basis, but B&W did not replace it. The Ombudsman decided to include this complaint in his bi-monthly meetings with B&W.

On 23rd February 2004 the Ombudsman met with B&W, who provided him with copies of the Complainant's reports, which were set out in requisition forms. These, however, recorded the dates of the reports as 20th January 2004 and 27th February 2004 – there were no records of any report made by the Complainant during December 2003.

B&W also explained that no accurate timeframes could be provided in respect of minor works, as these could only be forecasted two weeks in advance.

On 25th February 2004, the Complainant informed the Ombudsman that she would be happy to be given a letterbox by B&W, which she would get one of her sons to affix onto the wall. This would have satisfied her and ended the complaint against B&W, nevertheless, B&W explained that Government policy had evolved so as to exclude this kind of practice. Their reasoning was based on past experience, apparently, in the past, when tenants had been allowed to carry out repair works themselves, this had regularly resulted in faults to a neighbours flat, due to the tenant's faulty workmanship.

The Ombudsman accepted B&W reasoning but, he pointed out, the above scenario could not apply to the case at hand – as no neighbour could be adversely affected by a letterbox being placed on the wall designated for all of the block's letterboxes. He suggested that requests should be dealt with on a case-by-case basis and, considering B&W historical backlog of works, a well administered procedure allowing tenants to carry out simple 'minor' works could serve to reduce the excessive waiting lists presently in existence. The Ombudsman also

explained that all such instances would require the tenants to sign a document, undertaking responsibility for these works themselves.

At the time of the next meeting, dated 23rd March 2004, the Complainant's letterbox had still not been replaced. The Ombudsman highlighted the fact that the delay the Complainant was experiencing was inordinate. B&W explained that the problem was that there were no letterboxes available which matched those in the Complainant's housing estate. B&W assured the Ombudsman that a search for a replacement letterbox had been undertaken, once one was located the works would be carried out. B&W also provided the Ombudsman with a copy of an internal Memo, stating that the works should not be carried out any later than 11th March 2004 – needless to say that this timeframe had already elapsed.

The Ombudsman had no way of reconciling the Complainant's affirmation that she had started reporting her broken letterbox as from December 2nd 2003, and the fact that there were only requisition forms dating back to 20th January 2004 (although this did not make any material difference to the complaint).

He did, nonetheless, draw attention to the fact that B&W did not have a single replacement letterbox for an entire Government housing estate. This had not been explained to the Complainant, instead she had been told that she would have to wait her turn.

The Ombudsman highlighted the fact that B&W was unable to assist the Complainant, an elderly pensioner, whose post was being vandalised by children, and she was told to make alternative arrangements herself.

The poor communication exhibited by B&W had served to further frustrate the Complainant. Even though B&W did not have matching letterboxes with which to replace the Complainant's letterbox, this was of no consequence to the Complainant, as she was not to blame in any way. B&W should have ensured that there was a stock of replacement letterboxes for Government tenants, or at least made representations on the Complainant's behalf in order to have her post safely delivered (as they were indirectly responsible for the Complainant's continuing plight). In the end, B&W's poor public relations skills and their delay in replacing the letterbox did, in the Ombudsman's opinion, amount to maladministration, and with these words he closed the case.

UPDATE

On 4th May 2004 the Complainant phoned the Ombudsman and informed him that her letterbox had been replaced – she thanked him for his intervention.

CASE SUSTAINED

CS/563

COMPLAINT AGAINST THE DEPARTMENT OF BUILDINGS & WORKS OVER THEIR FAILURE TO EFFECTIVELY TACKLE A WATER PENETRATION PROBLEM.

On 14th May 2002 the Complainant reported water penetrating through her kitchen ceiling at the Reporting Office. She was particularly worried because water was seeping through one of the light fittings. Although works were carried out to the roof pertaining to the block of flats where she resided during June 2002, this did not resolve the problem. The Complainant felt aggrieved because, despite persistently informing the Department of Buildings & Works (B&W) that water continued to penetrate through her kitchen ceiling, the problem remained

unresolved. By February 2004 B&W had still not eradicated the water penetration problem, so the Complainant made a new report at the Reporting Office.

The Ombudsman contacted the Reporting Office on 9th March 2004, which provided him with a history of the water penetration problem. He also informed the Reporting Office that, to date, nothing had been done to address the problem. The Officer assured him that he would send a further request for the electrician to visit the flat as soon as possible, and advised that a B&W works supervisor would be visiting the flat the following week as well.

During the course of that same day, the electrician turned up and inspected the problem. He carried out some repairs and secluded some of the cables by rearranging them so that the water penetration would not affect them anymore.

B&W subsequently explained to the Ombudsman that they had been unaware of the Complainant's grievance, until he brought the matter to their attention at one of their bi-monthly meeting, during 13th April 2004. At the meeting B&W explained that the water penetration was as a result of private works carried out by the Complainant's neighbour.

B&W explained that they were not legally obliged to undertake any works as the problems had emerged as a result of private (as opposed to Government) works, however, it was acknowledged that this was not the tenant's fault, and she was a Government tenant. B&W carried out further repairs to the ceiling, which finally resolved the water penetration problem. The Ombudsman was concerned that the original report had been made during May 2002 and, although repairs were carried out during June 2002, the water penetration problem was not resolved until April 2004 – nearly two years later.

Although the Complainant had phoned and complained about her predicament to B&W directly, none of the senior management was ever informed. It was only as a result of the Ombudsman raising the matter directly with B&W that the problem was finally tackled and resolved.

The Ombudsman could only conclude that there had been a breakdown in communication between B&W administrative staff, and its senior management. This, however, was of no consequence to the Complainant, and only served to highlight B&W's poor administrative practices at the time.

The Ombudsman concluded this investigation by sustaining the complaint, and stated that this case was an example of poor and failed administration. The Ombudsman drew attention to the fact that B&W management now kept a file with copies of all letters of Complaint in respect of their Department, and senior management was making itself personally responsible for addressing complaint's or inquiries made by members of the general public.

CASE SUSTAINED

CS/565

COMPLAINT AGAINST THE DEPARTMENT OF BUILDINGS & WORKS, OVER THEIR DELAY IN REPLACING THE COMPLAINANT'S DOORS

The Complainant (a Government tenant) suffered from a medical condition known as Osteoporosis; which refers to the wear and tear of bones. During August 2003 the Complainant informed the Ombudsman that she had been waiting for two years for her front door to be replaced. She felt aggrieved with the Buildings & Works Department (B&W) because, due to her medical condition, her entrance door was too stiff for her to open, and

B&W took an inordinate length of time to replace the said door. She was unable to open or close her entrance door on her own, and usually required a neighbour's assistance in order to get into her flat.

The Complainant originally reported her problem on 9th October 2000. She believed that the wooden door was swelling up as a result of the dampness/humidity in her flat, and this was why the doors were difficult to open. Nevertheless, at the time of complaining six other internal doors also appeared to be suffering from the same problem and, during August 2003, the works requisition form was updated so as to highlight the extra works required.

The Complainant wrote to B&W on 20th August 2003, highlighting her medical condition, and seeking an explanation as to why she had been made to wait almost three years for her entrance door to be replaced, however, she received no reply.

The Ombudsman included this case in his bi-weekly meetings with B&W, during November 2003. By the end of November the Complainant's entrance door had been replaced, and the six internal doors were scheduled to be replaced during February 2004, so the Ombudsman closed his investigation. The case was sustained due to the fact that the Complainant had been severely inconvenienced (due to her medical condition) by B&W's failure to replace her front door. The necessary works had been straightforward, yet despite this fact the Complainant had had to wait for over three years for her entrance door to be replaced.

At the time of closing the report (17th November 2003), the Ombudsman had been assured by B&W that the internal doors would be carried out during January/February 2004. Additionally, by way of letter dated 17th November 2003 B&W apologised to the Complainant for the delay in replying to her letter, dated 20th August 2003. B&W also assured the Complainant that they would contact her as soon as there was a start date for the replacement of the six internal doors within her flat.

At the time of writing this report (April 2004) the Complainant's internal doors had not yet been replaced, nor was B&W in a position to provide a timeframe.

The Ombudsman was very disappointed with B&W who had not only failed to meet their assurance to the Ombudsman (pertaining to the replacement of the doors by February 2004), but had also failed to keep the Complainant informed.

Once again, he expressed his concern about B&W inability to provide any timeframes, and their impotence to assist a member of the public who was not only a Government tenant (and therefore entitled to peaceful enjoyment of her tenancy), but was also a vulnerable individual, due to her medical condition – yet these facts appeared to be of no consequence.

The Ombudsman highlighted the poor public relations skills which had been exhibited by B&W in this case. He believed that the only reason the external door had been replaced during November 2003 was as a direct result of his intervention – this was totally unacceptable, and with these words he closed the case.

CASE SUSTAINED

CS/572

COMPLAINT AGAINST THE DEPARTMENT OF BUILDINGS AND WORKS OVER THEIR DELAY IN REPLACING THE COMPLAINANT'S BATHROOM TILES AND WINDOW SHUTTERS

The Complainant felt aggrieved with the Department of Buildings and Works (B&W) because she had been waiting some two years for her bathroom tiles to be replaced. The Complainant also complained that her window shutters (which were removed by B&W as they were in danger of falling) had not been promptly replaced, and this was adversely affecting her.

Two years prior to complaining to the Ombudsman, the Complainant's bath had been replaced for a shower by B&W, they had also replaced some old and damaged white tiles with new beige ones. B&W then allegedly promised to replace the rest of her old bath tiles in order to have one colour throughout her bathroom. At the time of complaining, two boxes full of beige tiles and cement paste had been left on her bathroom floor for two years and, despite persistently reminding B&W that there were pending works, the tiles were never replaced.

On 8th April 2004, children playing football in the patio area beneath the Complainant's flat, hit and damaged one of her shutters. The Royal Gibraltar Police was called and they made a report to B&W on behalf of the Complainant. The said shutters were removed that very day by B&W but, at the time of writing this report (over three months later), they had still not been replaced.

The Complainant was an 84-year old Government tenant who lived on her own, in a ground floor flat. The Complainant was particularly concerned as it was summer, and she needed to have her windows open at all times. Because she did not have any shutters (and lived in a ground floor) she had very little privacy, additionally, as a result of the lack of shutters, children in her estate had taken to carrying out pranks on her, such as throwing stones at her window. On one occasion the children caught some live pigeons, and put them through the Complainant's open windows – this really frightened the Complainant but, despite informing B&W, the shutters were still not replaced.

The Ombudsman included this case in his bi-monthly meetings with B&W, on 20th May 2004. He asked B&W for an update, and he was informed that the replacement should not take longer than two to four weeks, as from 25th May 2004. This meant that by 22nd June 2004 the shutters should have been replaced.

During late May 2004, the Complainant's bathroom was tiled, although as a result her bathroom sink became blocked. Eventually, some two weeks later, the sink was unblocked, but the Complainant had had her water supply disconnected for two days.

By way of meeting dated 15th June 2004 the Ombudsman asked B&W for a further update. B&W explained that although the shutters had already been ordered, they had still not been received by them. B&W further explained that although the Complainant was on the normal window replacement waiting list, they would prioritise her case once the shutters were actually ready.

The Ombudsman was not satisfied with the above explanation. He highlighted the fact that the Complainant was 84, lived on her own (in a ground floor flat) and had been forced to leave her windows completely open morning, noon and night, due to the heat generated by the summer months. The Ombudsman also pointed out that the Complainant's shutters had been

removed, due to their dangerously damaged state, and she had been left without any shutters at all for over three months.

Due to the above, the Ombudsman decided to contact Window World (Government's subcontractors for the replacement of windows and shutters) and inquired as to the status of the Complainant's shutters. Window World then explained that they had had the shutters for a while, but had been waiting for the correct paint to arrive. The said shutters were ready on 12th July 2004, but the Complainant would have to wait her turn on the list which, the Ombudsman was assured, would not exceed a further two weeks.

The Ombudsman was very disappointed with B&W over the inordinate delay the Complainant had been forced to experience. Despite their assurances, and the original timeframe provided (22nd June 2004), none of these ever materialised. Instead the Complainant was given false hope and assurances, only to have her faith in B&W frustrated once again due to their failure to keep to the commitments they had made.

The Ombudsman, in light of the above, sustained the complaint. The delay experienced by the Complainant had been inordinate, and the assurances which never materialised were a primary example of both poor and failed administration. The Ombudsman concluded this case by recommending that B&W make certain that every effort was made to ensure assurances and timeframes were met.

RECOMMENDATION

The Ombudsman recommended that B&W make certain that every effort was made to ensure assurances and timeframes were met.

CASE SUSTAINED RECOMMENDATION MADE

CS/589

COMPLAINT AGAINST THE DEPARTMENT OF BUILDINGS & WORKS OVER THEIR DELAY IN CARRYING OUT REPAIRS TO THE COMPLAINANT'S FLAT

On 24th February 2003, a works requisition form was issued in order to address dampness problems which were affecting the Complainant's flat. The Complainant, a Government tenant, felt aggrieved when by October 2003 – well into the rainy season – no works had yet been initiated by the Department of Buildings & Works (B&W).

The Ombudsman included this case in his meetings with B&W during November 2003. B&W provided the Ombudsman with copies of Memos and instructions, which they had sent to their pertinent Depot, stipulating that the works in question should be initiated by the end of October 2003. B&W apologised for the works not having been completed, and explained that this was due to the fact that there was a limited workforce. B&W also explained that they were still experiencing problems in relation to the backlog of works they had inherited from the previous management. The Ombudsman was assured that the works would be carried out as soon as possible.

During November 2003, the Ombudsman and B&W personnel carried out an on-site visit at the Complainant's flat. Although the Complainant had initiated private works to combat the dampness problem, which affected her daughter's and son's bedrooms, this was not enough to eradicate the dampness. B&W explained that special works needed to be carried out to the bedroom walls in order to address the dampness problem.

During December 2003, the Complainant's daughter's bedroom had successfully had all the necessary repairs carried out. The Complainant, however, asked for her son's bedroom not to have works carried out, as it had recently been privately redecorated and she wanted to enjoy this, at least during the Christmas season. It was agreed that the works to the son's bedroom would be reinitiated during January 2004.

The son's bedroom was not a priority as he did not suffer from heavy asthma, whereas the daughter did. This was the reason why the Complainant was prepared to wait until the following month for the son's bedroom to be treated against dampness.

Notwithstanding the above, by way of letter dated March 9th 2004, B&W informed the Complainant that the repairs to the son's bedroom had been re-categorised as 741 on the 'urgent' list. B&W concluded their letter by stating, "*I regret to say that unless we receive instructions from higher up, the repairs to your son's bedroom will have to be done not sooner than the 741 cases*".

By way of meeting dated 13th April 2004, the Ombudsman invited B&W final comments before he started writing this report.

B&W explained that during 2003 the works to the Complainant's flat had been treated as a priority due to her daughter's medical condition. Once the daughter's bedroom had been tackled the works were reprioritised, as the works were not considered as urgent as before. The Ombudsman was further informed that the original requisition form had been in respect of the daughter's bedroom only, and the son's bedroom had wrongly been included in the same requisition form. B&W also accepted that they should not have assured the Complainant that the works would be carried out during January 2004.

The Ombudsman pointed out that the Complainant was not to blame for B&W errors. B&W had committed itself to completing the works to the son's bedroom during January 2004, but failed to do so. It should have known that the works would be reprioritised once the daughter's bedroom was completed – as this is a part of B&W normal administrative functions.

B&W failed to properly advise the Complainant, when they agreed to carry out works to her son's bedroom at a later date. If she had known that the works would be reprioritised and not completed during January 2004, she would probably have allowed B&W to carry out all the works simultaneously. At the time of writing this report, May 2004, the Complainant had no idea as to when the works would be carried out, and B&W was not in a position to provide a new timeframe – she was assured, however, that the son's bedroom would not be repaired prior to the 740 cases ahead of his.

The Ombudsman stressed that B&W had displayed very poor public relations skills. They had failed to inform the Complainant during January 2004 that works would not be initiated according to the original timeframe, and only wrote to the Complainant during March 2004 because her father had been persistently reminding B&W that they needed to finish off the works to his daughter's flat. The Ombudsman reiterated his comments from other investigations of this nature; when a timeframe is given to a person for works to be carried out, this should take into account all relevant considerations, as otherwise it becomes an exercise which serves only to frustrate members of the public. Having sustained this complaint, he then closed the case.

RECOMMENDATION

The Ombudsman recommended that B&W take all relevant considerations into account when providing timeframes, and then undertake all necessary measures to ensure that these are met.

CASE NOT SUSTAINED RECOMMENDATION MADE

CS/591

COMPLAINT AGAINST THE DEPARTMENT OF BUILDINGS AND WORKS FOR FAILING TO REPLACE THE COMPLAINANT'S WINDOWS

The Complainant claimed that she had been waiting for six years for her windows to be replaced. She recalled that on a Friday six years prior to the date of her complaint, she was assured by a private company that was contracted by the Department of Buildings and Works ('B&W') that her sitting room window would be replaced the following Monday followed by all of her other windows; Monday came and went and she was kept waiting. She added that her kitchen window had already been replaced, as had those belonging to all of her neighbours in the top floor of her block.

B&W explained that their records only went as far back as 1999 and having checked the available records the only report in the Complainant's name was made on 25 January 2001 according to which she was 77th on the waiting list and not baring unforeseen circumstances they would be changed during the course of November 2004. B&W declared that in the absence of evidence supporting her claims she had to await her turn.

The Ombudsman sympathised with the Complainant and pointed out that his experiences with B&W convinced him that she was probably saying the truth. At the time of writing however, she had already reached the top of the waiting list and all of her windows had already been changed. In the circumstances the Ombudsman saw no point in apportioning any blame for the alleged delay of six years. He recommended however that in the future no report or requisition form should be destroyed by B&W if the works specified therein had not yet been carried out.

RECOMMENDATION

The Ombudsman recommended that in the future no report or requisition form should be destroyed by B&W if the works specified therein had not yet been carried out.

CASE SUSTAINED

CS/598

COMPLAINT AGAINST THE BUILDINGS & WORKS DEPARTMENT OVER THE DELAY IN REPLACING A WINDOW WITHIN THE COMPLAINANT'S FLAT

The Complainant, a government tenant, had a faulty window which was part of a glass partition separating her living room from the balcony. On 29th November 2001 the Complainant phoned the Reporting Office and reported that the window was in danger of falling.

During March 2002 she complained to the Ombudsman that the necessary repairs had not yet been carried out by B&W. At the time, however, the Ombudsman did not feel there was any maladministration so he advised the Complainant to wait her turn.

On 22nd September 2004 the Complainant informed the Ombudsman that her window had not yet been replaced, and was now in even greater danger of falling. The Complainant was an elderly pensioner and was particularly concerned that she would forget about the damaged window, clean it, and be injured if the window fell on her.

By way of letter dated 28th September 2004 the Ombudsman wrote to B&W, he set out the Complainant's complaint and invited the Department's comments. He received a reply dated 21st October, which stated that B&W records showed that the Complainant had reported her bathroom window on 4th September 2004 and, due to the substantial waiting list, it was not possible to provide a start date for the necessary works to be carried out. He highlighted the fact that the Complainant was presently at the bottom of a waiting list numbering 480 persons.

The Ombudsman met with B&W and explained that there had to be an error, as the Complainant had reported the faulty window in the partition (and not the bathroom) on 29th November 2001. He proceeded to show B&W copies of the requisition form in question, with the allocated job number.

By way of letter dated 29th October 2004, B&W informed the Ombudsman that the Complainant's position had been revised in light of the requisition form. B&W explained that, based on the requisition form dated 29th November 2001, the Complainant was number 119 on the aforementioned waiting list. B&W also provided the Ombudsman with a copy of the revised requisition form.

The Ombudsman noted that the revised requisition form categorised the works as an 'Emergency'. He wrote to B&W on 5th November 2004, and requested that it provide the departmental guidelines in respect of the time recommended for repairs to be carried out to 'Emergency' categorised works.

By way of letter dated 8th November 2004 B&W replied to the Ombudsman, explaining that emergencies were dealt with within an hour of it reaching the Response Maintenance Depot, or the emergency after hour's service. B&W also explained that during the first hour all they had to do was 'make safe' the problem in question, unless it was a minor fault and the response team could deal with it there and then.

The Ombudsman met with B&W during early November 2004, and enquired as to how the Complainant's window had been 'made safe'. B&W explained that the window was safe so long as the Complainant did not try to open it.

B&W also explained that the Complainant had requested various repairs since November 2001, and these had been categorised as completed. It appeared that B&W had carried out the other repairs to the flat and, believing they had all been completed, closed the report in their database. It transpired that the Complainant had again reported the faulty window during September 2004, and B&W had erroneously overlooked the original requisition form dated November 2001.

The Ombudsman was not satisfied with the above explanation. Any confusion arising out of B&W errors should have been of no consequence to the Complainant, and she should not have been penalised as a result. In any event, the Ombudsman had already informed B&W that the Complainant had on at least one occasion forgotten about the faulty window and proceeded to clean it, the window had fallen on her and hurt her neck. Despite the fact that the

window had already fallen on top of the Complainant, B&W were happy to allow the *status quo* to continue until it was the Complainant's turn on the waiting list.

The Ombudsman accepted that there was a backlog of works that B&W had to contend with, and that it had embarked on a new programme aiming to address these backlogs more efficiently, however, the Complainant had been waiting for her faulty window to be replaced by B&W for over three years, and this was neither reasonable or acceptable. The delay was inordinate and, based on this reasoning, the Ombudsman sustained the complaint.

CIVIL STATUS AND REGISTRATION OFFICE (PAGES 34-37)

CASE PARTLY SUSTAINED

CS/459

COMPLAINT AGAINST THE CSRO FOR DENYING THE COMPLAINANT A PERMIT OF INDEFINITE RESIDENCE AND AGAINST THE HOUSING DEPARTMENT FOR REFUSING TO ACCEPT THE COMPLAINANT'S APPLICATION FOR GOVERNMENT HOUSING

The Complainant was aggrieved at the refusal of the Civil Status & Registration Office (the 'CSRO') to grant him a Permit of Indefinite Residence.

THE CIVIL STATUS & REGISTRATION OFFICE

The Complainant was a 71 year old Spanish national who had been living and in continuous employment in Gibraltar since 1964. On 6 December 2002 the Complainant wrote to the CSRO asking for a permit to remain in Gibraltar indefinitely under the provisions of section 50B(a) of the Immigration Control (European Economic Area) Ordinance 2000, ('the Ordinance'). The Complainant pointed out that in his opinion he satisfied the provisions of this section.

The CSRO refused his application stating that the provisions of the Ordinance applied, *inter alia*, to a worker who had reached pensionable age *and* had ceased his employment. The Complainant, pointed out the CSRO, was still in employment.

Not satisfied with this reply the Complainant approached the Ombudsman who took the view that the Complainant satisfied the provisions of section 50B and he should have been granted the requested permit.

The Ombudsman put his views to the CSRO, who got a legal opinion from the Attorney General's Chambers. Crown Counsel advised the CSRO that their interpretation of the Ordinance was correct and the right to Indefinite Residence would not apply whilst the Complainant was still in employment.

EU LAW V NATIONAL STATUTORY PROVISIONS

Article 249 of the Consolidated Version of the Treaty establishing the European Community stipulates that directives are binding upon each Member State to which the directive is addressed, but it leaves to the national authorities the choice of form and method. Regulations are directly applicable in all member states and come into force solely by virtue of their publication in the Official Journal of the European Union, as from the date specified therein. All methods of implementation are contrary to the treaty, although there are exceptions. Articles 39-42 contain the EU treaty provisions relating to the freedom of movement of workers, and Articles 43-48 contain the parallel provisions regarding the self-employed. Since Article 40 grants the European Commission the power to adopt a regulation giving workers the right to remain in the country of immigration on retirement but Articles 43-48 do not grant the Commission a similar power with respect to the self employed the Council passed a directive granting these same rights to the self-employed. The effect of this is that the national legislation implementing the directive would grant EU rights to the self-employed but not to employed workers, which could result in confusion. In such a situation, the member states may reproduce the regulations in their national provisions for the sake of uniformity.

Section 50B of the Immigration Control (European Economic Area) Ordinance 2000 gives effect in Gibraltar to EC Regulation 1251/70.

Article 2 of EC Regulation 1251/70: ('the Regulation')

"1) The following shall have the right to remain permanently in the territory of a Member State:

*(a) a worker who, **at the time of termination of his activity,***

b) has reached the age laid down by the law of that Member State for entitlement to an old-age pension and

c) who has been employed in that State for at least the last twelve months and has resided there continuously for more than three years"

Section 50B(a) of the Ordinance differs slightly but very significantly as far as the Complainant is concerned, from the article it is meant to be enforcing:

"The following persons shall be permitted to remain in Gibraltar indefinitely-

*(a) an EEA national who has been continuously resident in Gibraltar for at least 3 years, has been in employment in Gibraltar or any EEA State for the preceding 12 months and **has reached the age of entitlement to a state retirement pension;***

Whereas the Regulation specifies that a European Economic Area national **must be retired** in order to qualify for indefinite residence, the Ordinance is much wider and it only demands that he must have **reached the age of entitlement** to a state retirement pension, which the Complainant had. The Ombudsman brought this difference to the notice of the CSRO pointing out that the advice received by them from the Attorney General's Chambers appeared to be an instruction not to implement the local legislation. The authorities considered this matter until the Complainant was finally informed that he could remain in Gibraltar indefinitely.

THE HOUSING DEPARTMENT

Section 4 of the Housing Allocation Scheme (Revised 1994) provides as follows:

"The following persons are eligible to apply for Government housing:

- i. Persons who are registered in the Register of Gibraltarians.*
- ii. Persons who are not registered Gibraltarians, but who at the time of application, have a right of permanent residence.*
- iii. Persons who are British Dependent Territories citizen by virtue of a connection with Gibraltar, as defined by the British Nationality Act 1991.*

The Ombudsman was informed by the CSRO that the statutory provisions relating to permanent residency had been superseded by those relating to indefinite residency.

On receiving the Permit of Indefinite Residence signed by the Head of the CSRO (the 'Head'), the Complainant went to the Housing Department (the 'Department') to apply for Government housing. To his surprise and consternation, the Department asked him for confirmation that he was a registered Gibraltarian. To obtain this confirmation, he was advised to return to the CSRO and ask that his application form be signed by them. The CSRO expressed surprise at the Department's request. The Complainant already had a letter from the Head certifying that he had a Permit of Indefinite Residence; this should be sufficient to establish that he was entitled to apply for Government housing.

Baffled, the Complainant returned to the Ombudsman who contacted the Department and was advised that he should return to their Offices with a copy of the Permit. The Complainant did as suggested and following the Ombudsman's instructions, he asked to see the Housing Manager to whom he presented his Permit of Indefinite Residence. The Housing Manager

allegedly informed him that since he was not British he was not eligible to apply for Gibraltar Government Housing.

On enquiry by the Ombudsman, the Department informed him that the matter had been referred to the Principal Housing Officer for a decision. The Ombudsman was then informed that the Department had written to the CSRO for their comments on the implications to housing on the decision to grant a Spanish National indefinite residence and he was finally told that the matter had been passed on to the Chief Minister for a policy decision.

Government considered the matter at length until finally on 30 January 2004, the Ombudsman was informed that the Complainant's application would be accepted.

THE CSRO

The Ombudsman had to consider whether the CSRO had committed maladministration. On the one hand, section 50B of the Ordinance is very clear and unambiguous and according to the provisions of this section, the Complainant was undoubtedly entitled to a Permit of Indefinite Residence. On the other hand, however, the CSRO based its initial decision on its own interpretation of the statute. Furthermore, when the Ombudsman expressed the view that the result of their decision was that they were enforcing the EU Regulation over the local statutory provision; the CSRO placed the matter once again before the Attorney General before finally going to Government for a policy decision. The Ombudsman concluded that in these circumstances the CSRO had not committed maladministration.

THE HOUSING DEPARTMENT

The Ombudsman noted that unlike the CSRO, which had based its initial refusal to grant the Complainant a Permit of Indefinite Residence on its own interpretation of the Ordinance, the interpretation of the Housing Allocation Scheme was never an issue. Section 4(b) thereof very clearly gives the Complainant the right to apply for housing and at no time did the Department argue to the contrary. Thus, despite the fact that the Complainant had the right to apply for housing the Department refused his application.

The Ombudsman viewed with the utmost concern how this major Department had literally flapped around in bewilderment when the Complainant, a Spanish national had appeared at their front desk and applied for housing. At first he was denied what was his by right, and then he was sent back to the CSRO, this despite the fact that he already held a letter from the Head of the CSRO stating that he had the right of indefinite residence. This was another example of the Department's lack of proactivity and initiative.

The Ombudsman has had to grapple with the issues raised by this complaint on more than one occasion.

In complaint number 339 the Ombudsman had the following to say against one of the Government departments:

"It is ironic, observed the Ombudsman, that the very authority entrusted with the duty of exacting from citizens what is due from them to the state are themselves guilty of not exacting from the state what was due to a citizen."

The report on case 339 was closed by the Ombudsman in July 2002. It was most unfortunate that at the time of writing this report nearly nineteen months later, he had similar words to say concerning two other Government departments.

Whilst the CSRO did not commit maladministration and both it and the Housing Department finally granted the Complainant what was rightfully his, the Ombudsman expressed grave

concern at the fact that the Complainant was only granted the Permit of Indefinite Residence and was eventually allowed to apply for housing because of his intervention.

The Ombudsman concluded his report by expressing the view that laws or rules that are no longer viable or practicable should be amended if the authorities so desire but whilst they are in force those entitled to something by virtue of the law as it currently stands should be granted their entitlement with efficiency and good grace. With these words the Ombudsman closed the report.

ELDERLY CARE AGENCY (PAGES 38-39)

CASE NOT SUSTAINED

CS/488

COMPLAINT AGAINST THE ELDERLY CARE AGENCY FOR REFUSING TO PROVIDE HER WITH DOMICILIARY CARE

The Complainant was a 71 year old lady who had suffered from Polio as a young child and now lived alone in one of the housing estates. The illness severely impaired her mobility as Polio is wont to do. Approximately four months before she first complained to the Ombudsman she fell and broke her hip, this exacerbated her existing mobility problems and allegedly she could now only walk a few steps before her legs gave way. She claimed to have no contact with her family and she depended on the support and sympathy of her friends and neighbours in order to carry out her daily chores. Very often when she had no alternative she would clean her floor from her wheelchair, holding the broom or the mop with one hand and wheeling herself with the other. As far as her cooking was concerned it was more complicated as it was very difficult for her to stand by the kitchen sink for more than a few minutes at the time. On one occasion she rang the Ombudsman in tears, crying that she had been trying to get to the kitchen in order to make herself a cup of tea and her legs had given way. She claimed that she had lain on the floor for one whole hour before she managed to alert a neighbour.

The Complainant approached the ECA explaining her situation and applying for domiciliary care. The Domiciliary Care Committee ('the Committee') rejected her application explaining that when considering an application, the Committee considered the applicant's circumstances in general taking the following criteria into account:

- “
1. Whether the applicant is housebound.
 2. Is the applicant incontinent.
 3. Is the applicant suffering from dementia.
 4. What network support is available to the applicant.

Under your present circumstances, the Committee felt that you did not meet the criteria.” (extract from letter from Domiciliary Care Coordinator dated 14 April 2003)

The Complainant appealed.

“I read your letter of 14 April 2003 with regret. I am housebound and I can only walk a few footsteps before my legs begin to tremble & I have to sit down. Thankfully however I have my electric car which gives me an element of mobility but I can hardly cook or clean sitting on my electric chair can I?”

Thank God I am not incontinent nor do I suffer from dementia. If that were the case domiciliary help twice a week would hardly be sufficient, I would probably have to move to Mount Alvernia.

You probably saw that my house is spotless, that is thanks to my neighbours who cook and clean for me. You will realise though that they have their own lives and it is not fair that I impose myself on them the way I am currently doing.”

In its reply the ECA informed her that she simply did not qualify for domiciliary care.

THE OMBUDSMAN'S ENQUIRY

In response to the Ombudsman's enquiry, the Domiciliary Care Coordinator explained that the Committee is entrusted by the ECA with coordinating the provision of domiciliary care to elderly people who but for this extra help, would find it very hard to continue living in their home environment. She further explained that when considering an application for domiciliary care, the Committee looks at how the person manages on his own generally, including at whether he or she is housebound. The Complainant, she said was a very independent woman who managed very well on her own. She also had an electric buggy which meant that she was not housebound. There were people who were much worse off than she was and the set criteria had to be applied very strictly due to budgetary constraints. The Coordinator added that if the Complainant's circumstances had indeed changed since her application and she was now housebound as claimed by her, she would be happy to reassess her current situation and bring it to the Committee on the strength of a re-referral by a health care professional. The ECA described to the Ombudsman that in one of the Coordinator's conversations with the Complainant, the latter had expressed concern that she would shortly be undergoing a very serious operation and that she would need help at home when she returned. The ECA informed the Ombudsman that on that occasion and on several others the Complainant was advised that if she was not happy with the Committee's decision or if she felt that her circumstances had changed, she should reapply for domiciliary care but the Complainant never did. The ECA concluded that if she had needed home help as urgently as she said she did, she would surely have reapplied.

The Ombudsman derives his jurisdiction from the Public Services Ombudsman Ordinance. Section 5 of the Ordinance denies from the Ombudsman the authority to question a decision taken without maladministration, and maladministration covers the manner in which a decision is reached or discretion is exercised: but not the merits of the decision or of the exercise of the discretion.

The Committee came to its decision knowing that the Complainant was disabled and housebound, that she had no contact with her relatives and that she depended entirely on the goodwill of her friends and neighbours. They also knew that she was a very forceful and independent character who seemed to be managing very well on her own. All of this in conjunction with the ECA's budgetary constraints made them conclude that she could not be granted domiciliary care.

The Ombudsman visited the Complainant in her home a few times and he was personally acquainted with the extreme difficulties encountered by her to do things that most of us take for granted.

The Ombudsman applauded the ECA for helping elderly people retain their dignity by helping them remain in their home environment however, he himself was a witness to the difficulties encountered by the Complainant just to carry out common everyday chores. The Ombudsman wondered whether the ECA was placing too much emphasis on the Complainant's personality and whether a more docile character who was not so determined and independent would have been granted the required help. He also could not help but express concern that the criteria for providing domiciliary care might be so strict that people who should be helped were slipping through the net. With this thought the Ombudsman closed the report.

ENVIRONMENTAL AGENCY (PAGE 40)

CASE NOT SUSTAINED

CS/551

COMPLAINT AGAINST THE ENVIRONMENTAL AGENCY FOR NOT DOING ENOUGH TO STOP THE NOISE AND AIR POLLUTION EMANATING FROM THE CAMMELL LAIRD SHIP REPAIR YARD AND FROM THE MINISTRY OF DEFENCE GENERATING STATION

The Complainant who was a resident of the South District complained to the Ombudsman that the Environmental Agency was not doing enough to control the noise and air pollution emanating from the Cammell Laird ship repair yard and from the Ministry of Defence generating station. In particular he complained about the noise pollution emanating from both locations during the silent hours which he said, constituted a nuisance.

After a protracted correspondence the Complainant informed the Ombudsman that following the intervention of the Environmental Agency, night operations at the ship repair yard were curtailed, and “the difference was immediately noticeable”. Furthermore by letter dated 5 August 2004 from the Environmental Agency to the Complainant, but copied by the Agency to the Ombudsman, the Agency described the discussions held between them and Cammell Laird aimed at reducing or minimising nuisances caused by dust from the grit blasting processes.

As regards the Ministry of Defence generating station, the Ombudsman pointed out that he had dealt with this matter at length and in great depth in his report on case number 57 (see the Ombudsman’s annual report for the year 2002) and he was therefore of the opinion that a further investigation was not warranted however, discussions with the Hon. Minister for the Environment, Roads and Utilities are continuing with a view to solving this ongoing problem.

Taking all of the above into consideration the Ombudsman came to the conclusion that the Environmental Agency were doing their best to solve the problems complained about and he therefore decided that no maladministration had been committed. The Ombudsman stressed however, that contacts with the relevant ministry would continue in order to solve the serious problem of noise pollution during the silent hours.

GIBRALTAR HEALTH AUTHORITY (PAGES 41-43)

CASE SUSTAINED

CS/477

COMPLAINT AGAINST THE GIBRALTAR HEALTH AUTHORITY (GHA) OVER THE DELAYS EXPERIENCED IN PROGRESSING FROM ONE STAGE OF THE GHA'S COMPLAINTS PROCEDURE TO THE NEXT

The Complainant, the daughter of a GHA patient, felt aggrieved with the GHA because of the delay she was experiencing whilst waiting for her complaint to progress from one stage of the GHA complaints procedure to the next.

A GHA Consultant Surgeon carried out a mastectomy on the Complainant's mother during 1994 when, allegedly, there was no need for it.

Initially, the Complainant wrote to the Minister responsible for Health, but he advised her to write directly to the Hospital Services Manager (the 'Manager'). There was an exchange of correspondence between them, which led to a meeting where they discussed the clinical aspects of the complaint.

The Complainant again wrote to the Manager on 27th February 2001, explaining that her mother had asked her to highlight her concerns. By way of letter dated 7th March 2001, the Manager wrote back acknowledging the Complainant's letter and explained that they were considering its contents, and that she would be in contact with her in due course.

Some time later, the Manager verbally requested that the Complainant provide a letter stating the financial compensation required. The Complainant wrote back explaining that she felt the complaint should be investigated, and the outcome made known, before a figure could be put forward.

Some six months later the Complainant had not yet received an update. She brought her complaint to the attention of the Ombudsman who, by way of letter dated 30th November 2001, asked the Manager to provide an update in writing.

Consequently, the Manager replied to the Complainant, apologising for the delay and explaining that the GHA's legal representatives were '*...still investigating your grievance with a view of negotiating with you adequately should they conclude that ...there has indeed been malpractice with unnecessary/undesirable consequences*'. The Manager also assured the Complainant that she would inform her as soon as she had any further news.

On 11th January 2002 the Consultant Surgeon wrote to the Complainant. The said letter was harsh and regrettable, so much so that it was subsequently retracted and the Complainant received a formal apology on behalf of the Consultant Surgeon and the GHA as a whole.

The Manager wrote to the Complainant on 20th March 2002 reiterating the apology and providing a chronology of the events as documented in the Complainant's mother's medical file. However, the Complainant wrote back explaining that she disagreed with the GHA's version of events. The Manager then replied accepting that she was not fully satisfied with the explanation provided, and informing her that steps had been taken to proceed to the next stage of the complaints procedure.

The Complainant waited for a reply to no avail, she felt it necessary to inform the Ombudsman once again. The Ombudsman asked the Manager to inform the Complainant as

to what stage in the GHA's complaints procedure she was now at. The Manager provided the Ombudsman with a copy of a letter dated 23rd May 2003, which she had written for the Director of Public Health (the 'Director'). The letter explained that the GHA's Chief Executive had instructed her to discuss the case with the Director, and then to meet with the Complainant with a view to resolving the complaint.

The Ombudsman was disappointed with the fact that he had to intervene, requesting the Director for an update. By way of letter dated 17th October 2003 (some two months after the Ombudsman's request) the Director assured him that he had provided the Manager with a detailed report on 25th September 2003. He also explained that earlier that year an office building ceiling had collapsed, the room had flooded and there had been extensive damage to papers and files. The cleaners had arbitrarily removed these items and it appeared that the Complainant's mother's files were lost as a result.

The Director explained that this was the reason why the case had not made the expected progress. However, the GHA was eventually able to reconstruct the file from copies of papers stored elsewhere. The Ombudsman pointed out that the GHA should have kept the Complainant informed, this way she would not have been left under the impression that her case was being ignored, additionally, she would have understood that there were genuine reasons behind the delay.

The Complainant received a copy of the Director's report, enclosed with a letter dated 13th November 2003. In the letter the Manager explained that the information provided her with an acceptable explanation and, if the GHA did not hear from her by 31st December 2003, they would consider the matter closed. However, the Complainant replied on 16th December 2003, explaining that she was not satisfied and wished to progress onto the next stage in the complaints procedure so as to discuss the complaint with the Director himself.

At this juncture the Ombudsman felt it was important to note the various stages of the GHA complaints procedure.

Stage 1

The Complaint should be raised in an informal discussion with the Staff Member concerned to try and resolve the problem immediately.

If the matter has not been resolved it progresses to stage 2.

Stage 2

The Complainant should refer his/her complaint to the Hospital Services Manager...who will try to solve the complaint informally and if necessary by initiating a more formal investigation. He/she will decide whether the complaint is clinical or non-clinical.

If the matter has not been resolved it progresses to stage 3.

Stage 3

If it is a clinical complaint

- 1. The clinical supervisor in charge of your case will discuss your complaint with you and see if it can be resolved.*

If the matter has not been resolved

- 2. The Public Health Director will review the Complaint in discussion with the clinical supervisor.*

If the matter has not been resolved

3. *The Public Health Director may decide that there should be an independent clinical review of the case. They will examine the matter within 3 weeks after being asked by the Public Health Director to investigate.*

If the matter has not been resolved it progresses to stage 4.

Stage 4

The Chief Executive will either investigate the matter himself or assess whether he should recommend to the Health Authority that an investigation or inquiry take place. The Chief Executive will reply within 2 to 6 weeks if further action will be taken.

If the matter has not been resolved it should be referred to the Ombudsman.

The Ombudsman explained that he had decided to investigate this complaint as it was a complaint about the delay being experienced as a result of the complaints procedure itself not being adequately administered.

During his investigation, the complaint had progressed onto the third stage of the GHA's complaints procedure, and the Complainant was, at the time of writing, requesting that her Complaint progress to the fourth and final phase.

The Ombudsman noted that this complaint had never actually started at stage one of the complaints procedure. The Complainant should have been encouraged to discuss her concerns with the Consultant Surgeon on an informal basis, but this part of the said procedure was never properly followed. Instead the Complainant wrote to the Minister, who referred the matter directly to the Manager, which is stage 2 of the procedure. In any event, the Ombudsman accepted that it may not have been prudent for the Complainant and the Consultant Surgeon to meet, given the animosity which appeared to have existed between them.

The Ombudsman was concerned about the fact that the Complainant had written to the Manager on 28th May 2002, but a reply had only been forthcoming on 13th November 2003 (eighteen months later), and only as a result of the Ombudsman's investigation. The Ombudsman stated that the delay experienced had been inordinate and unnecessary. The Complainant had also not been provided with a reason as to why the Director had taken almost four months to deliver his clinical review, nor was a reason provided for failing to keep her informed whilst she waited. With this in mind, the Ombudsman decided that the GHA's actions (or lack of action) amounted to maladministration.

The Ombudsman felt very disappointed with the way the GHA complaints procedure had been applied in this case. The Complainant had not been kept updated and the Ombudsman had detected reluctance in the GHA's management in resolving this complaint. It appeared to him that they had tried to ignore the Complainant as much as possible (and for as long as possible), until the Ombudsman became involved.

Given the disturbing circumstances of this case, the Ombudsman sought the following undertaking from the GHA so as to ensure these events were never repeated. Given that the GHA had decided to make available an in-house complaints procedure for those members of the public who believed that they had cause to make a complaint against the GHA, the service should be made to operate in a user friendly and efficient manner. Timetables should be strictly adhered to, Complainants kept as fully informed as possible of all aspects of their complaint, including reasons why delays were being incurred (if any).

HOUSING DEPARTMENT (PAGES 44-94)

CASE SUSTAINED

CS/481

COMPLAINT AGAINST THE HOUSING DEPARTMENT OVER THEIR FAILURE TO FOLLOW UP ASSURANCES THAT THEY MADE TO THE COMPLAINANT

The Complainant felt aggrieved because he had written to the Housing Department (the 'Department') on 15th January 2003 requesting an update as to when structural repairs would be carried out to his rented Government accommodation, but he never received a reply. All the Complainant received was an acknowledgement slip, dated 1st April 2003.

The Complainant also claimed that he and his wife had phoned the Department on numerous occasions. Although they had been told that the Housing Manager (the 'Manager') would revert back to them on the same day (which prompted them to leave their phone number), regrettably these assurances never materialised.

The Ombudsman wrote to the Department on 8th April 2003, requesting their comments. The Department replied, informing him that they were investigating the reasons why the Complainant's calls had not been returned. The Department also advised that the Complainant report the necessary works at the Reporting Office, for a record to be made and a works requisition initiated. The Department further explained that they would be forwarding the Ombudsman's letter to the Buildings & Works Project Manager.

The Ombudsman wrote back to the Department on 23rd April 2003, explaining that the Complainant's complaint referred to the Department's failure to revert back to him. The Complainant had written a letter to the Department and the Department needed to write back to the Complainant, with quality replies to the issues he had raised.

By way of letter dated 28th April 2003 the Department wrote to the Ombudsman explaining that their investigations had revealed that two structural surveys had been carried out, both reaching similar conclusions. Both surveys concluded that the main cause of the structural problem was due to the construction of a kitchen extension directly onto the patio floor, without the use of foundations and directly adjacent to the retaining wall. At the time, it was not clear whether or not repairs could be carried out. Nevertheless, the Department assured the Ombudsman that the Manager would write to the Complainant explaining the situation.

The Ombudsman wrote to the Department on 5th May 2003 explaining that he would be monitoring this case. He again wrote to them on 20th May 2003 requesting an update. The Department replied, explaining that the matter had been passed onto the Technical Division of the Ministry for Housing, '*...with a view of establishing a solution to this problem subject to costs involved*'. The Department further informed the Ombudsman that they would provide him with another update as soon as it had more information.

The Manager wrote to the Complainant on 5th May 2003, explaining that two structural surveys had been carried out. She explained that due to the Complainant's reluctance in being decanted, and the family's desire to remain in the flat, the Department was considering the possibility of reconstructing the kitchen extension.

The Ombudsman sent a further letter requesting an update from the Department, dated 27th June 2003. The Department informed the Ombudsman that a further survey was being carried out so as to test the soil conditions.

The Ombudsman noted that by January 2004, the results of the survey had not yet been communicated to the Complainant. As a result, he included this case in his meetings with the Department, where it was decided that the case would be taken to the Minister for Housing. The Minister was to consider the matter, and take a decision on how to proceed with this case (i.e. whether the Complainant would be decanted or otherwise).

Two structural surveys had been carried out, and a third had been required in order for the Department to obtain all the pertinent information. The Ombudsman pointed out, however, that the complaint had been in respect of the Department's failure to keep the Complainant informed, and its failure to phone him back when it had committed itself to doing so.

It had taken the Department three months to reply to the Complainant's letter, and it appeared that this was only forthcoming as a result of the Ombudsman's intervention. Although an apology was provided in respect of the delay, no reasons were given as to why the Manager had not returned the Complainant's calls.

Finally, the Department did not provide the Complainant with any further updates, or explanations in respect of the delay. The Complainant's main source of information turned out to be the Ombudsman's Office, and this was wholly unacceptable. The Ombudsman stated that it was the Department's responsibility to keep their clients informed. The Department had failed in its responsibilities in respect of communicating with and updating a member of the public – the Ombudsman sustained this complaint.

**CASE NOT SUSTAINED
RECOMMENDATION MADE**

CS/491

COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR ITS REFUSAL TO ALLOW THE COMPLAINANT TO APPLY FOR GIBRALTAR GOVERNMENT HOUSING

The Complainant was aggrieved at the refusal of the Housing Department (the Department) to allow him to apply for Gibraltar Government housing.

The Complainant was the divorced father of one child. In the separation agreement dated 29 January 1999, the Complainant was ordered to continue paying the mortgage of the matrimonial home for his former wife and their 11 year old daughter until she reached the age of eighteen. The Complainant who was 31, moved back to the parental home, sharing a bedroom with his 29 year old sister and his daughter whenever she was with him.

The Complainant attempted to put his name on the housing list but was refused, the reason being that he was a property owner and as such he was not eligible to be in the housing list. By letter dated 4 July 2003, he wrote to the Department. He explained that he could not afford to purchase another property nor to rent in the private sector, he described that he had invaded his sister's bedroom and her privacy and he asked the Department to allocate a house either to him, to his sister or to his wife and daughter. The Department refused and instead it suggested that he transfer the ownership of the matrimonial home to his former wife. When he objected to this it amended its suggestion and said that he could transfer it to his father or put it on trust for his daughter. The Complainant again refused saying that he meant to sell the property as soon as his daughter reached the age of eighteen.

This complaint raised an issue that in the Ombudsman's opinion went to the very heart of Gibraltar's housing problem. The Department has a long standing policy that property owners may not be in the housing list, the reasons for this are logical and obvious. Property owners should reside in their own properties, leaving the public housing to others less fortunate than themselves. This is the way it should be and even though the Ombudsman applauded the Department for this policy he felt the need to point out that human beings are as diverse as their problems and however appropriate or justifiable a policy might be, it should not be applied blanket fashion without giving due consideration to an individual's personal circumstances. The Complainant was technically a property owner, technically because he could not live in his property nor could he sell it until his daughter reached the age of eighteen. He was living in the parental home in extremely overcrowded conditions, sharing a bedroom with his sister and sometimes his eleven year old daughter. In these circumstances it was intolerable that he be considered a homeowner and not be allowed to register in the housing list.

The Department explained to the Ombudsman that the reason why they were enforcing their policy so strictly was that as soon as the Complainant's daughter reached the age of eighteen, the Complainant would 'recover' his property and find himself with his own flat as well as with a Government tenancy. The Ombudsman understood the Department's concerns however, he was of the opinion that the Department was once again displaying its usual rigid stance and was more concerned with the blanket enforcement of their policies than with the problems being faced by the Complainant. There were other more 'user friendly' ways of safeguarding the Department's position.

The Ombudsman received this complaint with the utmost concern for in his opinion it raised an issue that went to the very heart of Gibraltar's housing problem. Our Government housing stock is one of Gibraltar's most precious assets and on the one hand a property owner may not be on the housing waiting list and rightly so, but then there are borderline cases such as the Complainant's. There are also Government tenants who own luxury holiday homes in Spain but then there are fellow Gibraltarians who live in horrendous conditions for lack of a home or worse who are actually homeless. The Ombudsman felt that this was a most serious anomaly and he felt obliged to bring this to the attention of the authorities.

The Ombudsman agreed that property owners should not be allowed to be on the housing list but he was of the opinion that this policy was being implemented too strictly. He was also of the opinion that Government tenants should not be allowed to own luxury homes in Spain. If somebody can afford such a home said the Ombudsman, he should buy a property in Gibraltar and vacate his Government flat in favour of somebody who really needs it. The Ombudsman recommended that the Complainant should be allowed to apply for housing providing that the Department would be fully entitled to safeguard its position once real ownership of the property was recovered by the Complainant.

CASE NOT SUSTAINED

CS/493

COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR ITS FAILURE TO REPLY TO CORRESPONDENCE AND FOR ITS FAILURE TO ALLOCATE THE COMPLAINANT WITH A SUITABLE APARTMENT

The Complainant was an eighty year old lady who was on the Pensioner Exchange List for a ground floor flat. The Complainant commented to the Ombudsman that whenever she identified an empty flat that might be suitable for her she would request it from the Housing

Department (the 'Department') but allegedly she was always told that direct allocations to empty flats were not allowed.

By letter dated 23 June 2003, the Complainant drew the attention of the Department to a particular flat that had become vacant approximately eight months previously when the tenant passed away.

Within a few days she was informed that she was not entitled to the flat in question and she later found that it had been earmarked for an elderly husband and wife whose son lived next door to the said empty flat. The Complainant explained that she found this very strange, as she knew that the couple in question were not registered in any of the medical lists and that they already lived in a first floor flat in the same housing estate. Furthermore, they would be getting a direct allocation to an empty flat; something which the Complainant had been told was not possible.

The Complainant further explained that a few weeks later she was approached by the husband who told her that he had heard that she wanted the flat. Allegedly she was informed that they had declined to accept it and urged her to apply for it.

The Complainant went on to say that the flat was never offered to anyone else and then some time later, when the wife passed away, the very same flat was apparently again offered to the husband who accepted it.

The Complainant asked why the husband was offered an empty flat, and why the flat was left pending for him for so many months. She also asked that if the policy not to allocate empty flats to pensioners in the exchange list had changed, she would now like to be allocated a ground floor flat in her daughter's building, that had been empty for over a year. Like that other gentleman she said, she would also like to live close to her family.

The Ombudsman put the complaint to the Department who justified the allocation made to the husband on the individual facts of the case. As far as the Complainant was concerned, the Department informed the Ombudsman that the flat she had requested was currently under refurbishment and an offer of accommodation would be made to the Complainant on availability as soon as a suitable empty flat was identified.

The Department stood by its word and in March 2004, the refurbishment works on the flat requested by the Complainant completed, it was offered to her, an offer which she accepted.

The Ombudsman closed the report with the comment that the Complainant had been offered accommodation in her preferred location and that the Department had not committed any maladministration.

CASE SUSTAINED

CS/499

COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR FAILING TO ADEQUATELY ASSIST THE COMPLAINANT WHILST MAKING A COMPENSATION CLAIM

The Complainant felt aggrieved because his kitchen had been flooded (and furniture damaged) on various occasions and, despite informing the Housing Department (the Department) that he would be claiming for compensation in July 2003, by November 2003 the Complainant was still waiting for an update on his claim.

The Complainant brought his complaint to the attention of the Ombudsman on 22nd July 2003. He had explained that since January/February 2003 his kitchen had been flooded about eleven times.

The Complainant alleged that despite having carried out private refurbishment works to his flat some two years ago, his kitchen had been left in a terrible state by the flooding. Nevertheless, the Complainant had stated that he would be willing to accept the replacement of his privately purchased kitchen for Government's standard issue kitchen units.

Although the Complainant originally wrote to the Buildings and Works Department, asking for a decision to be taken on his claim for compensation, he had also phoned the Department Infrastructure Manager on various occasions inquiring about the claim.

The Department of Buildings and Works informed the Complainant that he should write a letter to the Department outlining his claim in order for them to have a written record of his claim.

Although the Complainant had been incorrect to lodge a claim for compensation at the Buildings and Works Department, he had been involved in verbal communication with a Department representative – yet it was Buildings and Works who advised him to write to the Department. The Ombudsman was of the opinion that Buildings and Works should have been more helpful and made the letter sent to them (by the Complainant) available to The Department.

The Ombudsman wrote to The Department on 5th September 2003, and invited its comments. Despite subsequent reminder letters (and The Department's holding letters), The Department only provided a quality reply by way of letter dated 12th November 2003.

The letter informed the Ombudsman that The Department had explained to the Complainant that an assessment of the kitchen furniture had been carried out; this had revealed that only the Kitchen's skirting boards needed to be replaced. The Department also explained that their contractor had agreed with the Complainant to replace the said skirting boards.

The Ombudsman subsequently phoned the Complainant, who confirmed that he was in agreement with having only his skirting boards replaced – as the kitchen furniture had not been severely damaged.

The Ombudsman was unsure as to why the the Department Infrastructure Manager had not informed the Complainant, *ab initio*, to put his complaint in writing. It was Buildings and Works who advised the Complainant to make his claim through The Department.

The Ombudsman was disappointed with The Department for not having explained to the Complainant that he should have written to them and set out his claim. Instead, The Department had allowed verbal (undocumented) conversations to be undertaken, whilst failing to point out the correct procedure for the Complainant to make his claim.

Even when the Ombudsman formally required The Department to consider the Complainant's claim on 5th September 2003, despite having been informed of the situation during July 2003, it still took The Department over two months to resolve the matter.

The Ombudsman decided to sustain this case. The Department had not informed the Complainant how to make a claim, even though they were the appropriate Department to do this.

The Department should have been in a position to resolve the claim soon after it was brought to their attention. It appeared that The Department only resolved the Complainant's claim once the Ombudsman had become personally involved in the matter; with these observations the Ombudsman closed the case.

CASE PARTLY SUSTAINED

CS/502

COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR HAVING REMOVED THE COMPLAINANT FROM THE HOUSING WAITING-LIST, WITHOUT PRIOR WARNING, AND OVER DELAY IN RE-HOUSING

Prior to complaining, the Complainant had been residing in Government rented accommodation and was waiting to be decanted. It was alleged that at the time of allocation to this flat, the Housing Department (the 'Department') had assured the Complainant that it would be temporary accommodation, so she was allowed to remain on the housing waiting list and accumulate points for future reallocation.

Some time later the Complainant experienced some matrimonial problems and legally separated from her husband. Consequently, the Housing Manager (the 'Manager') allegedly gave her permission to move into an empty flat in the same Government owned block of flats, whilst she awaited her reallocation. However, her flat was subsequently burgled, and she moved in with her daughter where, at the time of complaining, she had been residing for some five years. The daughter was also waiting to be reallocated to another flat.

The Complainant had asked the Manager if she could be included in her daughter's tenancy, so that they could be reallocated together. She offered to give up all her housing points in exchange for a flat with her daughter. The Manager did not accept this offer, and informed the Complainant that she could only be allocated a flat of her own.

The Complainant regularly visited the Department so as to check her progress on the housing waiting list; during one such visit she realised that her name had been removed from the waiting list. This prompted her to write to the Manager on 16th September 2003, outlining various problems that she had been experiencing, and asking the Manager for an explanation as to why she had been taken off the waiting list.

Having not received a reply, by way of letter dated 3rd October 2003 the Complainant sent the Manager a reminder. The Ombudsman wrote to the Department on 8th December 2003, requesting that they reply to the Complainant. The Department provided the Complainant with a reply by way of letters dated 9th December and 15th December 2003. The Department informed the Complainant that the Housing Allocation Committee had reviewed her case, and she had been reinstated onto the waiting list. Additionally, the Complainant's situation had been reassessed and she had been awarded an additional 300 points. This placed her in first position on the 1RKB Waiting List.

In addition to the above, the Complainant had a meeting with the Manager on 15th October 2003. She was informed that the reason why she had been taken off the waiting list was because the Department had written to her (twice); this had been so as to arrange the measuring of the flat she was residing at, for the purpose of point allocation, but she had never replied to the letters. The Complainant explained that she had never actually received these letters from the Department.

The Ombudsman highlighted the fact that the Department had taken reasonable steps to resolve the Complainant's grievance, once it had been brought to their attention. He pointed out, however, that it should not have taken the Department approximately three months to reply to the Complainant. No written explanations had been provided as to why she had been taken off the housing waiting list, and only verbal replies were provided in her meeting with the Manager. The Ombudsman once again highlighted the need for clear written explanations to be provided in order to avoid confusion, misunderstandings and, more importantly, for transparency to prevail.

This case was sustained in part.

The Ombudsman explained that once the Department had established that the Complainant's case was genuine, it took all the necessary measures to restore the Complainant's position on the waiting list, thus remedying her grievance.

CASE NOT SUSTAINED

CS/505

COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR REFUSING TO ACCEPT AN APPLICATION FOR GOVERNMENT HOUSING ON THE GROUNDS THAT HE DID NOT HAVE A PERMANENT ADDRESS

The Complainant became homeless when his marriage broke down. The couple eventually got divorced and the family home was sold, the proceeds divided between both parties.

The Complainant approached the Ombudsman alleging that the Housing Department refused to allow him to apply for housing because he did not have a permanent address.

On enquiry with the Housing Department the Ombudsman was informed that the Complainant had misunderstood what had been requested from him. His case was discussed by the Social Advisory Committee which could not make a recommendation because it did not have a copy of the completion statement from the sale of the family home. Housing claimed that the Complainant was informed that this was the situation and as soon as he provided them with a copy of the completion statement his case would be considered by the committee.

The Ombudsman was satisfied that there was no maladministration and he closed his enquiry.

CASE SUSTAINED

CS/508

COMPLAINT AGAINST THE HOUSING DEPARTMENT OVER DELAY IN RE-HOUSING THE COMPLAINANT

The Complainant felt aggrieved because she had allegedly been waiting for about six years to be decanted from her Government flat. The Complainant was due to be decanted as the block her flat was located in had been earmarked, in order to develop a Government project at a later date. The Complainant was further aggrieved by the situation because her flat required various minor works carried out to it. Government, however, had given instructions that non-essential works were not to be carried out to the block, allegedly because it would be a waste of money as the tenants were due to be decanted in the future.

The Complainant regularly and persistently went to the Housing Department (the “Department”) in order to find out if there was a prospective timeframe for her decanting. On each occasion the reply was negative, so the Complainant applied to be re-housed. At the Department’s counter the Complainant was informed by a clerk that she could not be re-housed, as she was due to be decanted and different procedures applied in each case.

By way of letter dated 7th March 2003, the Ombudsman wrote to the Department setting out the Complainant’s complaint, and inviting its comments. The Department’s reply, in the Ombudsman’s opinion, was of serious concern,

“[We are]... not in a position to confirm when [the Complainant] will be re-housed. However the situation is being monitored with a view of decanting [her] to another suitable accommodation as soon as possible

The Ombudsman felt the above reply was quite unsatisfactory. He pointed out that (at the time) Gibraltar Community Projects had been commissioned to investigate the state of the building some six years ago, and they had apparently found the block of flats in question to be in an unsatisfactory state. The Ombudsman felt that for the Department to simply state that it was not in a position to confirm when the Complainant would be decanted, was to make a statement lacking in substance.

The Ombudsman highlighted the fact that, six years down the line, the Complainant was still being given vague replies when she attended the Department in order to make inquiries reference her decanting.

The Department referred the matter to the Technical Services Department (the “TSD”), as they were under the impression that the TSD was involved in the redevelopment of the site. The TSD, however, informed the Department (by way of letter dated 12th May 2003) that it was not involved in the redevelopment project, and it was their understanding that it was being handled by a company by the name of Commercial Developments Ltd. He advised the Department to make inquiries with them directly, or with Land Property Services, who were representing Government’s interests in the redevelopment project.

The Ombudsman requested an update and by way of letter dated 18th August 2003 the Department explained that there had been no further developments on the Complainants case. In the letter, the Department noted that the Complainant was not an applicant on the Housing Waiting List. The said letter concluded by stating,

“Notwithstanding her situation, [the Complainant] can still become an applicant for housing and therefore enter into the Housing Waiting List if she so wishes. I should be grateful if you would communicate this to her”

The Ombudsman explained that during late August the Complainant had called at the Department in order to apply for housing, as advised. The officers at the counter had informed her that she could not apply, as hers was a decanting case. Since then, and allegedly prior to August, the Complainant had tried to apply, but was always turned back on the aforementioned grounds.

The Department’s reply was, once again, less than satisfactory, it stated:

“As you are aware the Complainant resides in... [an]...area which is earmarked for further development. [The Complainant] will therefore be decanted, although I am unable to put a date as to when the decanting will occur. This will in all probability be sooner than being offered a flat through the Waiting List”.

The Ombudsman was left bemused at the Department's apparent muddled approach and advice. The Department appeared to be out of touch with the Complainant's predicament, and did not seem aware of all the avenues she had already pursued.

The Ombudsman included this case in his bi-monthly meetings with the Department during 2004. As a result of these meetings the Department decided to authorise minor repairs at the Complainant's flat, to be carried out by the Buildings & Works Department. Regrettably, at the time of writing this report (May 2004), no flat had yet been earmarked for the Complainant.

The Ombudsman felt disillusioned with the Department because it never made inquiries from Commercial Developments Ltd or Land Property Services, as advised by the TSD. The Ombudsman was left under the impression that the Department expected him to make the inquiries himself, however, he stressed that it was the Department's responsibility to make representations on behalf of their clients, so as to be able to furnish them with complete and up to date information. As things stood, the Department did not know how long the Complainant would have to wait to be decanted, and only made efforts to find out at the Ombudsman's request.

The Department had been completely insensitive to the Complainant, and did not really assist her in any way. Instead they provided her with conflicting information, but never with the timeframe in respect of her decanting – which was what she really wanted to know, after approximately six years of waiting.

The minor repairs to the Complainant's flat only materialised as a result of the Ombudsman's intervention, and were not far reaching enough to, for example, repair a small hole in the bathroom floor (as these were classified as 'non-essential works').

In view of the above, the Ombudsman was of the opinion that the Department had incurred in gross maladministration, furthermore, the Complainant had been allowed to suffer an injustice by being expected to accept her situation indefinitely. The Department had absolutely no qualms about allowing this situation to continue – without even providing the Complainant with a prospective timeframe. Having sustained this complaint, the Ombudsman closed his investigation.

CASE SUSTAINED

CS/515

COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR THE DELAY INCURRED IN RETRIEVING THE OCCUPATIONAL THERAPIST'S REPORT FOR THE MEDICAL ADVISORY COMMITTEE'S CONSIDERATION

The Complainant, who was an eighty two year old senior citizen living in a Government flat situated in the upper area of town, suffered from heart disease and severe Osteoarthritis back and knees condition. He explained to the Ombudsman that due to his medical condition he was experiencing difficulties with the accessibility to his flat. He also claimed that the flat suffered from acute dampness which allegedly was also a significant factor for his health deterioration.

The Complainant claimed to have submitted numerous medical letters which were put to the Medical Advisory Committee (MAC) on the 14th March 2001. Consequently, MAC categorised the Complainant on the Medical 'C' list.

On the 7th July 2003 he wrote to the Housing Department (the “Department”) stating that his health was deteriorating and requested to be re-housed to a more accessible area of town. A medical letter was also submitted. Subsequently, the Department informed him that MAC had discussed his case and had requested a report from the Occupational Therapist (the “OT”), an appointment was arranged with the OT for the 22nd August 2003.

Five months had elapsed since the OT inspected the Complainant’s flat and since there was no response by the Department on this particular case the Ombudsman decided to open an investigation after the Complainant made him aware of the situation. On the 14th January 2004 he wrote to the Department requesting an update and a meeting was arranged for the 6th February 2004 by the Ombudsman and the Department to discuss this case.

The Ombudsman’s main concern was what action was being undertaken by the Department in resolving the Complainant’s housing problem. He requested a copy of the OT report as mentioned in the Department’s letter to the Complainant.

The Department explained that he had not yet received the report from the OT. They had tried phoning the OT on numerous occasions, but to no avail, they also wrote. The Department explained that he would be providing the Ombudsman with copies of his letter to the OT and subsequent reminder letters. It followed that MAC had not yet been provided with the said report for its consideration.

The Department stated that there was no forum through which they could complain about delays incurred as a result of other departments.

The Ombudsman suggested that the Department complain, via letter, directly to the Gibraltar Health Authority’s Chief Executive about the communication problems he was having with the OT. A further meeting was arranged on the 4th March 2004 to again review the Complainant’s case.

The Ombudsman was informed that the OT had now provided them with a copy of his report. It was also confirmed that the report would be considered by MAC on their next meeting on 22nd March 2004 as the Ombudsman had asked, considering that the Complainant had first written to the Housing Department on 7th July 2003.

Although the delay originated from the OT’s failure in making the report available, the Ombudsman concluded that the main party involved with the Complainant’s plight was the Housing Department. The Ombudsman was of the opinion that it was unacceptable for the Housing Department to have been unable to make progress since August 2003. He pointed out that seven months was a significant delay to retrieve an OT report and did constitute a degree of maladministration in the sense that the Department could have expedited matters if they would have contacted the GHA’s Chief Executive. With these words he closed the case.

UPDATE

Further to the meeting held on 22nd March 2004 the Medical Advisory Committee discussed the case and recommended that the Complainant be categorised on the Medical ‘A’ list.

CASE NOT SUSTAINED

CS/517

COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR UNDER-HOUSING THE COMPLAINANT, AND OVER DELAY IN THE RE-HOUSING OF THE COMPLAINANT AND HER FAMILY

The Complainant was a single mother with four children, three daughters aged 9, 11 and 20 respectively, and a son aged 18. The family resided in a 3RKB flat, and the Complainant felt aggrieved at the overcrowded circumstances she and her family had to live in. The family had been residing in the said flat for a number of years, during which time they had had to tolerate high dampness and condensation levels.

The Complainant was concerned about the fact that her eldest son and daughter had no privacy, as the son had to sleep in the living room. At times his sisters would wake him up; on other occasions he would wake them up, i.e. when arriving home late from work. The living situation, the Complainant complained, was far from ideal.

The Housing Department (the 'Department') confirmed that the Complainant was awaiting a 5RKB. The Department pointed out that the Complainant was 3rd on the 5RKB waiting list, notwithstanding, at the time of writing, the Department could not foresee any 5RKB flats becoming available in the immediate future.

The Department also informed the Ombudsman that the Complainant owed rent arrears exceeding £4,000. They explained that even if a 5RKB did become available for the Complainant, she would not be given the flat until her rent arrears were paid in full, this being Government's Policy.

The Ombudsman did not sustain this complaint as the procedure in place was being properly applied by the Department. There were no 5RKB flats available, and the Complainant would have to wait her turn on the waiting list.

The Ombudsman was concerned at the fact that the Complainant had rent arrears amounting to a substantial sum. He added that if the Complainant did not tackle her arrears problem soon, it would become an unmanageable amount to repay and, given Government policy, whenever a suitable flat was earmarked for the Complainant the offer would then be made subject to the arrears being paid in full.

**CASE NOT SUSTAINED
RECOMMENDATION MADE**

CS/519

COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR FAILING TO RE-HOUSE THE COMPLAINANT IRRESPECTIVE OF THE DANGER SHE FACED WHILST REMAINING IN HER GOVERNMENT FLAT

The Complainant felt aggrieved because the Housing Department (the "Department") had earmarked a flat for her, but would provide no timeframe as to when she would be allowed to move in. This was irrespective of the fact that she was being harassed and victimized by her son, who lived with her.

The Complainant's son was involved in a traffic accident during 2000. As a result of this he was prescribed morphine and, as at the date of this report, he continued to take this medication. He became depressed and started drinking alcohol, which affected his character in such a way that he started becoming aggressive towards his mother.

The Complainant was assisted by social workers from the Social Services Agency, who made representations to the Department recommending that she be re-housed. The Complainant

also visited her General Practitioner, who wrote three letters recommending that both the Complainant and her son be provided with separate dwellings.

The Complainant felt aggrieved because, during December 2003, the Department gave verbal assurances that a flat would be earmarked for her as soon as possible. Consequently, the Complainant had no alternative other than spending her time walking around Gibraltar, avoiding her son, and returning home when he was not there.

The Ombudsman included this case in his meetings with the Department. At his meeting dated 6th February 2004 he asked the Department what they could do to assist the Complainant. Although the Department acknowledged that the Complainant's situation was far from ideal, they explained that she would have to wait for an available flat. The Ombudsman, nonetheless, emphasized that this case carried with it a degree of urgency, given the danger the mother was apparently exposed to whilst residing with her son.

On 4th March 2004 the Ombudsman asked the Department for a progress report. He knew that the Complainant herself had been identifying various empty flats in the hope that one would be allocated to her, additionally, the Department also agreed that one of the identified flats could be offered. In any event, the Department agreed to write to the Complainant with an update.

At the next meeting dated 25th March 2004, the Ombudsman again asked the Department for a progress report. He was informed that they would not be writing to the Complainant, instead they would be providing her with a verbal update, assuring her that the Department would assist wherever possible. The Department also explained that one of the flats identified by the Complainant had been earmarked for her and was in the process of being refurbished.

The Department further informed the Ombudsman that they had been trying to identify a flat for the Complainant's son, as he would have to move out of his present accommodation at the same time as his mother. The reason being that if he remained in the flat he would be overhoused and also, if he were to remain in the flat after his mother had moved out, it would then prove difficult to make him move to another flat, ideally, both should move at the same time.

During late March 2004 the Complainant, who was also a diabetic, had to be admitted to hospital as her sugar levels were out of control. The Complainant's daughter liaised with the Ombudsman on her mother's behalf and informed him that she had not received any updates from the Department, neither written nor verbal. She asked that no information be given to the Complainant's son (her brother) as it would only have a negative effect on the Complainant once she returned to the flat; the Ombudsman informed the Department that they should only communicate with the daughter. She also expressed the view that her mother was the priority, and she hoped that her mother would not be made to wait longer than necessary because of the Department's need to identify a flat for her brother.

By way of meeting dated 7th April 2004 the Ombudsman asked the Department to provide him with an update. The Department explained that no one had phoned the Complainant's daughter yet, but the Ombudsman was assured it would be done that same day. The Department further explained that the Complainant's son was also being treated as a priority.

The Complainant's daughter was duly called and assured that a Government flat had been earmarked for her mother. The clerk informed her that the reason for the delay was that the Department was trying to identify suitable accommodation for the Complainant's son, so that they could both vacate the flat simultaneously.

The Ombudsman considered the Department's position in respect of their refusal to allow the Complainant access to a flat, which had been earmarked for her, until a suitable flat was

identified for her son as well. The reason for this was that the flat was in the process of being refurbished, and it could not be allocated to her until all necessary repairs had been completed. Additionally, the Ombudsman also knew that the Department was not prepared to allow the son to remain in the flat and, due to his problematic character, the Department wanted to be sure that he vacated the flat at the same time as his mother.

The Ombudsman stressed the point that the Complainant had not been re-housed as the refurbishment works to the flat earmarked for her were not yet completed. Nevertheless, he took this opportunity to state that it would be unjust to make the Complainant wait for a flat to be identified for her son before allowing her to move into the refurbished flat. The Department already had at its disposal the necessary legal mechanisms to deal with such situations – such as the involvement of the RGP, if necessary, to forcibly remove the son from the flat, should he refuse to move once another flat was identified for him.

Throughout this investigation the Ombudsman had noted a genuine willingness on the Department's part to assist the Complainant. Although the Department appeared not to have been proactive, *ab initio*, once the Ombudsman impressed upon them the severity of the Complainant's plight, it appeared to have prompted the Department to take effective measures to assist her.

The Ombudsman did not sustain this case, however, he recommended that once the refurbishment of the Complainant's flat was completed, she should be allowed to move in, irrespective of whether or not a flat had been identified for her son.

CASE NOT SUSTAINED

CS/521

COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR REFUSING TO CATEGORISE HIM IN THE 4RKB LIST

The Complainant lived in a government rented three-bedroom apartment ('4RKB') with his wife and son. He explained to the Ombudsman that his kitchen was located within an extension built by the previous tenants against the retaining wall of the adjacent road and it was the source of a serious problem of water penetration into the apartment.

The Complainant further explained that after years of dealing with the Housing Department over this issue, they had finally accepted responsibility and agreed that he should be rehoused. He claimed that the Department was insisting that since his current family composition only required a two-bedroom apartment ('3RKB'), he would be put in the waiting list for a 3RKB and not for a 4RKB which was what he currently had.

He complained that he had been allocated the apartment with the faulty extension in place and as such it was the fault of the Ministry for Housing that the apartment suffered from water penetration. It was unfair he said, that he now be expected to move to a smaller flat.

The Ombudsman put the Complainant's point of view to the Housing Department who accepted the veracity of the claim and proceeded to categorise the Complainant in the 4RKB list.

The Ombudsman did not sustain the complaint pointing out that the Housing Department had proved itself to be receptive to the Complainant's point of view. Highlighting the positive attitude demonstrated by the Department during his enquiry into this complaint the Ombudsman closed the report.

CASE NOT SUSTAINED

CS/522

COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR HAVING LOST HER APPLICATION FOR HOUSING

The Complainant allegedly submitted an application for housing sometime in 1989. However, in her conversations with the Ombudsman she could not recall whether her application was acknowledged by the Housing Department at the time nor could she recall whether in the years that followed she ever received correspondence from that Department concerning her application. Between the years 1989 and 2002, a period of thirteen years she made no attempt to verify whether her name appeared in the housing list and if so in what position.

In November 2002, she made enquiries at the Housing Department, to be told that her name did not appear on the housing list and that they had no record of her application. On giving the counter-clerk her current address which happened to be a Government flat she was allegedly informed that according to their records the tenant of her flat was a male bearing her same surname. The records made no mention of her daughter who had been living with her ever since she was first allocated the flat.

The Housing Department rejected the complainant's claim, saying that there was no application form in her tenancy file and that the burden of proof lay on her to bring evidence in support of her assertion that she had applied for housing as claimed. At the time of writing this report the Department informed the Ombudsman that the Complainant had failed to produce such evidence.

The Ombudsman was of the opinion that judging from the number of people who had come to him with a similar complaint he had no trouble accepting that on the balance of probabilities the Complainant did submit an application in 1989 and the application was probably lost. Having said this the Ombudsman considered that thirteen years was an extremely long time and the Complainant's lack of interest in her application as demonstrated by her failure to follow it up for so many years made it impossible for him to make any recommendations on her behalf. On the facts of this particular case, the Ombudsman could not sustain the complaint. However, he felt it was his duty to highlight that this type of complaint had arisen several times in the last year. With these words the Ombudsman closed the report.

CASE SUSTAINED

CS/524

COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR ACCUSING HIM OF CONNECTING THE ELECTRICAL SUPPLY IN HIS PRIVATE PATIO TO THE LANDLORD LIGHTING

BACKGROUND – CS/462

What now is the Complainant's apartment once used to be divided into several independent housing units and his patio was a communal patio and therefore illuminated by the Landlord lighting. With time, the neighbours died or moved away and his wife's family, in whose apartment he lived, were allowed to expand their flat into the neighbouring empty premises.

The patio became a private patio but the electricity supply remained connected to the Landlord lighting.

The Ministry for Housing's ('the Ministry) longstanding instructions to the then Electrical Section of the Technical Services Department (the 'TSD') were that when its workers identified Landlord (i.e. public) supply of electricity leading into private areas, the supply of electricity to that area should be disconnected. In mid November 2002 workers of the Electrical Section had attended the area of the Complainant's house as a result of the receipt of a fault report. On inspection, the workers determined that a cable leading into an enclosed private area, namely the Complainant's home, was causing the fault. They proceeded to implement the Ministry's long-standing instructions and disconnected this area from the public supply of electricity. The Complainant lodged a complaint with the relevant authorities and by letter dated 12 February 2003 the Chief Executive of the TSD informed him that authority had been received to re-connect the patio light supply, from the communal lighting in the area, and an instruction to this effect has already been issued to the Electrical Section.

THE COMPLAINT

By letter dated 2 December 2003, the Complainant received a letter from the Ministry in which he was informed that they had been advised by the Electricity Authority that he had connected the electrical supply in his private patio to the Landlord lighting. The Ministry added that having checked their records they had verified that permission had never been granted to him for him to carry out these connections. Under such circumstances they would be instructing the Electricity Authority to disconnect him from the Landlord lighting.

The Complainant complained to the Ombudsman that he had been wrongly accused of carrying out the connection himself when in fact the TSD itself had carried out the reconnection.

Following representations by the Ombudsman, on 15 March 2004 the Ministry wrote a letter of clarification:

"I understand that this irregular connection was apparently in place before you were allocated the flat and it would be difficult at this stage to establish who carried out the connection.---

I sincerely hope that this note will finally settle any misconceptions you might have about this matter."

The Ombudsman agreed that it was unsustainable that a member of the public should be using electricity free of charge however the Complainant had written to the Ministry as far back as December 2002 suggesting *"to meet with yourselves and agree a contribution from myself towards the cost of the supply"* but his offer was not taken up. The Ombudsman expressed displeasure at the insensitivity of the Ministry but was pleased that the matter was eventually resolved to everybody's satisfaction.

CASE SUSTAINED

CS/526

COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR NOT GIVING HER HOUSING APPLICATION DUE ATTENTION

The Complainant, her partner, and son lived in private rented accommodation. Claiming that her landlady would soon be sending her an eviction notice because she was unable to pay the monthly rent she went to the Housing Department asking for help. She was allegedly told that before anything could be done for her she would have to be homeless for a month. This

statement was allegedly repeated to her on another occasion when she was told that she would have to keep a diary of where she slept and even this would not secure her an apartment.

In December 2003 the Complainant handed in to the Housing Department a financial assessment form which would enable them to determine whether the Complainant could afford her current private rented accommodation and if not to categorise her in the appropriate emergency housing list. Three months later she complained to the Ombudsman that she had yet to hear from the Department in connection to the financial assessment.

The Department explained to the Ombudsman that had the Complainant provided them with a copy of her eviction order the matter would have been put to the Social Advisory Committee at the first opportunity however to the best of their knowledge she had not received such an order. The financial assessment was considered on 24 March 2004 and it was decided that she did earn enough to meet her rental obligations.

The Department acknowledged that the delay in considering the assessment was wrong and it said that the procedures would be changed so that such a delay would not happen again.

The Ombudsman sustained the complaint, pointing out that a delay of three months to answer any letter was an inordinate amount of time and more so in the Complainant's circumstances. He accepted the guarantee of the Department that such a delay would not happen in the future, expressing the hope that this would indeed be the case.

CASE NOT SUSTAINED

CS/527

COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR REQUIRING THAT SHE SIGN A TENANCY AGREEMENT OVER AN APARTMENT FROM WHICH SHE WOULD EVENTUALLY HAVE TO BE MOVED

The Complainant lived in a one-bedroom flat with her two young children. She explained to the Ombudsman that the flat was very damp and suffered from water penetration and cockroach infestation. It also had no bathroom facilities.

The Complainant claimed that the Housing Department had asked her to sign a tenancy agreement over the flat and she had refused saying that she wanted to be rehoused. She complained to the Ombudsman that it was unreasonable of the Housing Department to expect her to sign a tenancy agreement over an apartment that was in such a dilapidated condition.

During the course of his enquiries the Ombudsman learnt that the Complainant had signed the tenancy agreement and decided to refurbish the flat.

The Ombudsman dismissed the complaint saying that the Complainant had obviously been too quick to blame the Housing Department because as it turned out, she herself agreed that their request was a perfectly reasonable one.

CASE NOT SUSTAINED

CS/529

COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR FAILING TO REPLY TO THE COMPLAINANT'S LETTERS

The Complainant felt aggrieved with the Housing Department (the 'Department') because he did not receive a reply to his letter dated 5th December 2003, or his reminder letter dated 7th February 2004.

The Complainant received acknowledgement slips immediately after hand-delivering his letters, nonetheless a reply to the issues raised was not forthcoming. In his letter, the Complainant had stated that he was on the Medical A-list, and had been waiting for a flat since 24th June 2003. Additionally, the Complainant was a Gibraltar Health Authority sponsored patient, as he had had surgery to his spine and required further operations in the UK.

The Ombudsman included the complaint in the Agenda for his bi-weekly meetings with the Department. Nevertheless, this proved unnecessary as events were superseded by the Department's reply letter dated 28th January 2004.

The letter explained that the Complainant was not on the Medical A-list – contrary to that stated in his December letter – but he was on the Social A-list. The Medical Advisory Committee had considered his application on 13th October 2003, but no recommendation had been made.

The Department's letter also explained that, '...your back trouble will be taken into account when you are allocated your own Government flat'.

The Ombudsman was pleased that the Department had resolved this complaint as soon as it had been brought to their attention. The Ombudsman was unsure whether the Department had replied to the Complainant as a result of his intervention, or whether the reply letter was already being compiled prior to the Complainant's reminder letter dated 7th February 2004.

The Ombudsman decided he would give the Department the benefit of the doubt in this case. However, he reminded the Department that good public relations skills, such as keeping members of the public informed, was the key to avoiding complaints *ab initio*. With these words the Ombudsman closed the case.

CASE NOT SUSTAINED

CS/530

COMPLAINT AGAINST THE HOUSING DEPARTMENT OVER ITS FAILURE TO REPLY TO THE COMPLAINANT'S LETTER

The Complainant wrote a letter (the "Letter") to the Housing Department (the "Department") on 6th November 2003, highlighting the fact that she had recently been verbally informed by the Department that her application for a Government flat had been put on hold until she handed in copies of the deed of the sale of her previously owned property. She explained that she had never been informed of this decision and alleged that, in any event, her partner had submitted all the relevant information on 24th June 2003.

She requested that her application be reinstated as from the date of the sale of the said property. She further explained that her partner, their seventeen month old child and herself were currently homeless, and as a result her parents had allowed them to temporarily reside at their flat. The parent's flat was a government owned, and rented, 4RKB; one bedroom for the Complainant's parents, another for the Complainant and her family, and the third was used for storage, as the Complainant had nowhere to keep the furniture and other belongings from her previous apartment.

The Complainant lodged her complaint at the Office of the Ombudsman on 2nd February 2004, pointing out that she had not yet received a reply to her Letter. The Ombudsman included this case in his bi-monthly meetings with the Department.

By way of meeting dated the 4th March 2004, the Ombudsman asked the Department to reply to the Letter.

At the following meeting, dated 25th March 2004, the Department explained that the Complainant's father should go to the Department (pursuant to a calling card sent to him circa November 2003) and register his daughter, son-in-law and granddaughter as living in his flat. This would enable the appropriate points to be allocated to the family, and it would regularise the household composition.

The Department explained to the Ombudsman that it had sent the Complainant a housing application on 21st August 2003. This had been submitted by the Complainant, together with a request to be included in her parent's household composition. The request had been approved on 10th November 2003, and subsequently a calling card was sent so that the Complainant's parents could attend the Department, in order to sign (and thus authorise) the Complainant and her family's inclusion in their flat.

In spite of the above, the Complainant's parents failed to attend go to the Department and as a result the housing application could not be processed.

By way of meeting dated April 7th 2004, the Ombudsman provided the Department with a letter from the Complainant's father (who was himself vacating the flat as he was divorcing his wife) authorising his wife to sign any document which would authorise his daughter, son-in-law and grandchild to be registered as living at the flat. On 29th April 2004 the Department informed the Ombudsman that the Complainant's mother had signed the inclusion form, and the tenancy would take effect retrospectively from 23rd August 2003, the date of the original application.

The Department wrote to the Complainant on 23rd April 2004, explaining that the Department had taken all necessary measures to process her application form. All that was now required was for the Complainant to contact the Environmental Agency so as to arrange for her living quarters to be measured, for point allocation purposes.

The Ombudsman's meetings with the Department were proving to be very constructive, as they provided a positive avenue in which to address grievances from the public in a more direct and proactive manner. Once all relevant information had been obtained, the Complainant was informed in writing, and her grievance resolved.

In this case the Ombudsman did not sustain the complaint, as the Department had undertaken reasonable measures to redress the Complainant's grievance once it had been brought to their attention.

CASE SUSTAINED

CS/532

COMPLAINT AGAINST THE HOUSING DEPARTMENT OVER THEIR DELAY IN RE-HOUSING THE COMPLAINANT AND HER FAMILY

The Complainant, a Government tenant, had been waiting to be decanted from her accommodation for a number of years. Her flat suffered from dampness and water

penetration, and the block in question had been classified as 'derelict' by Government. The said block was due to become part of a Government project, and all the tenants were to be decanted as a result.

The case at hand had initially been informally investigated by the Ombudsman during November 2000. At the time the Complainant had been waiting for a 6RKB flat to become available, as seven of her children continued to live with her. The investigation, however, brought to light the fact that there were no 6RKB flats available, and the Ombudsman concluded by acknowledging the fact that the case would only be resolved once works to the Complainant's block were initiated, and she was decanted elsewhere.

Notwithstanding the above, at the time of writing this report (May 2004) over three and a half years had passed since the Ombudsman's initial involvement, the Complainant had not yet been decanted, and the dampness/water penetration problems had deteriorated even further.

The Ombudsman included this case as part of his bi-monthly meetings with the Housing Department (the "Department"). At this point another child had left the flat, and the Complainant was waiting for a 5RKB, but would be willing to accept a large 4RKB instead. During March 2004, the Department identified a flat which was suitable for the Complainant, and it was subsequently earmarked for her.

The Ombudsman suggested to the Department that the Complainant be invited to inspect the flat as soon as possible, so that she could verify it was suitable to her needs; as this would avoid potential future disagreements in respect of the suitability of the flat. The Department agreed with the Ombudsman on this point, nevertheless, the flat in question needed to be refurbished, and the Department would only show the Complainant the flat in question once it had been brought up to an adequate standard for her to inspect.

The Department subsequently interviewed the Complainant, in order to ensure all the relevant paperwork was up to date. This was done in order to facilitate the housing re-allocation process for the Complainant.

The Ombudsman highlighted the fact that the Complainant had been waiting to be decanted for well over three and a half years – which was the length of time that had elapsed since the Ombudsman's first involvement.

The Complainant's flat had also been allowed to deteriorate, apparently because the block in question had been reserved for a Government Project, and Major Works would only be initiated once the tenants were decanted, and the Project got underway.

The Ombudsman was very disappointed that this situation had been allowed to exist for so long and it seemed that a flat was only finally earmarked for her as result of the Ombudsman's investigation.

The delay in question had been excessive and inordinate. The Complainant was suffering an injustice by being expected to wait indefinitely to be decanted, and being refused the Major Works required to her flat. Having sustained the complaint, the Ombudsman closed the case.

CASE SUSTAINED

CS/533

COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR FAILING TO UPDATE THE COMPLAINANT, AND FOR FAILING TO EXPLAIN WHY SHE WAS NOT ENTITLED TO RENT RELIEF

The Complainant originally applied for rent relief subsequent to her husband's death, when she realised that there were a lot of extra expenses as a result of the funeral. She submitted her application during October 2002 at the Housing Department (the 'Department'). At the counter, a clerk allegedly advised her to stop paying her rent whilst the application was considered.

The Complainant's application was unsuccessful and she received a letter to this effect dated 23rd October 2002. She was not satisfied with this so she arranged a meeting with the Rent Section's head. The head explained that she was not entitled to rent relief as she was in receipt of a favourable Old Age Pension and Work Pension, nevertheless, she assured her that she would investigate the matter.

The Complainant did not receive a reply, so she made further verbal inquiries. By way of letter dated 24th September 2003, the Department informed her that her application for rent relief had been successful, and it would be backdated to March 2003. The Complainant immediately went to the Department in order to sort out the repayment of her rent arrears. She was disappointed, however, when a clerk informed her that the letter had been issued in error and she was not, in fact, entitled to rent relief.

The Complainant was unhappy with the Department's decision and sought a meeting with the Housing Manager (the 'Manager'), whom she met on 3rd December 2003. After discussing her predicament, it was decided that she was still not entitled to rent relief, but the Manager assured her that she would look into the matter. The Complainant asked her not to take too long as her rent arrears had been mounting up over the last year.

The Complainant phoned the Department on 5th January and 4th February 2004, asking for an update. Although she was assured that the Manager would return her call, this never materialised.

On 4th March 2004, the Ombudsman was assured by the Department that it would provide the Complainant with an explanatory letter. The Complainant received a letter dated 12th March 2004, the Department informed her that it had reviewed her circumstances but, despite sympathising with her predicament, they could not offer temporary rent relief. The Department further explained that the reason for this decision was based on the fact that the Complainant appeared to be in financial difficulties due to the repayments of a personal loan. Government policy did not allow personal loans to be taken into account when applying for rent relief.

The Complainant's Old Age Pension was £183 and her husband's work pension amounted to £245, which totalled £428 per month. The Complainant's personal loan amounted to £220 per month, which left her with £208 per month for her rent (approximately £50 per month) and living expenses.

The Department had failed in its responsibility to keep the Complainant informed. It had failed to conclude the matter expeditiously, and the Complainant had accumulated rent arrears for over a year.

Despite the Complainant's pleas, the Department should have upheld its original decision, especially as there were no apparent grounds which would have resulted in a different conclusion, or considered her appeal expeditiously and timely. Although they may have been trying to help the Complainant, in the end this procedure caused much more harm than good.

Finally, although the Department wrote to the Complainant, erroneously informing her that she had been granted rent relief, the Ombudsman considered this as unfortunate, but was satisfied that this was of no consequence as immediately after sending the letter the Department informed the Complainant that it had been issued in error.

CASE SUSTAINED

CS/535

COMPLAINT AGAINST THE HOUSING DEPARTMENT OVER THEIR DELAY IN REPLYING TO THE COMPLAINANT'S LETTER

Prior to complaining, the Complainant had been allocated a ground floor flat at Varyl Begg Housing Estate. There was a wall surrounding her patio, but it was unfinished. The Complainant decided to finish off the wall, with the intention of placing a roof once it was completed. However, a Housing Officer informed the Complainant that she required planning permission from the Housing Department (the 'Department') before she structurally altered any part of a Government owned flat.

The Complainant duly wrote to the Department requesting planning permission on 20th October 2003. Not having received a reply, by way of letter dated 22nd January 2004 she sent a reminder. The Complainant halted the works and waited for a reply from the Department, however, all the Complainant received were acknowledgement slips.

The Ombudsman included this case in the Agenda to his bi-weekly meetings with the Department and requested that they reply to the Complainant's letter, with copy to him. The Ombudsman met with the Housing Department's Head of Administration (the 'Head') on Thursday 4th March 2004. The Head explained that the Department had already written to the Complainant on 27th February 2004, and he provided the Ombudsman with a copy.

The Ombudsman was pleased that the Department had quickly and effectively resolved the complaint by replying to the Complainant. The matter had been referred to the Technical Department for their consideration however it was decided not to grant planning permission. The Department also explained that it was not the Department's policy to allow the extending of premises for habitable use, especially in the area of Varyl Begg Housing Estate.

The Ombudsman noted that a reply to the Complainant's letter had been forthcoming once he had initiated his investigation. He was left with the impression that the Department may have only replied because the Ombudsman was investigating the matter – this was a source of concern.

The Complainant initially wrote to the Department on 20th October 2003, she received a reply by way of letter dated 27th February 2004, over four months later. This delay was inordinate and amounted to maladministration. However, the Ombudsman took this opportunity to highlight the fact that the Department appeared to be approaching complaints brought to their attention with a new and proactive approach.

**CASE NOT SUSTAINED
RECOMMENDATION MADE**

CS/536

**COMPLAINT AGAINST HOUSING DEPARTMENT FOR CANCELLING HER
ENTITLEMENT TO RENT RELIEF WITHOUT PRIOR NOTIFICATION**

The Complainant was first granted rent relief on 14 October 2002 renewable after twelve months.

The Complainant claimed that eleven months later, in September 2003, she filled in a new application form for rent relief which she handed in at the Rent Section of the Ministry for Housing.

After several months, not having heard from the Housing Department she contacted the Rent Section where she was allegedly told that she was no longer entitled to rent relief for not having disclosed back in October 2002, that she had then been in employment. She complained to the Ombudsman that she never received neither an acknowledgment nor a written reply to her application of September 2003. She expressed concern however, at the fact that she could not afford to pay the full rent and her rental arrears were mounting up.

The Housing Department denied that the Complainant's rent relief had been cancelled for the reason expressed by the Complainant. Instead it explained that on 22 September 2002 a letter was sent to the Complainant informing her that her rent relief was up for review and advising her to return the attached application forms before her review date, 13 October 2003. On 15 October 2003, another letter was sent to the Complainant stating that since she had not returned the application forms her rent relief had therefore expired as from the date of that second letter.

In response to the question whether correspondence to tenants was sent by registered mail the Department explained to the Ombudsman that the low incidence of complaints such as the one being dealt with herein made it impractical for them to incur the administrative cost of sending all correspondence by registered mail. The Department added that in any case, in a case such as this, if the tenant turns up within a reasonable period of time reapplying for rent relief he is given a credit backdated to the expiry date of the previous rent relief, if he is still so entitled.

The Ombudsman pointed out that on the one hand the Department claimed that the Complainant had been warned that if she did not reapply for rent relief it would be allowed to expire and on the other the Complainant denied ever having received either of the letters allegedly sent by the Housing Department. Since the Ombudsman was unable to verify whether the letters were indeed sent by the Department as claimed but got lost in the post or were not sent at all, he could not sustain the complaint. However, he expressed concern at the fact that letters of such an important nature were sent by ordinary post and he recommended that notwithstanding the Department's reservations, in the future, the final reminder letter before the rent relief is cancelled should only be sent by registered mail.

CASE NOT SUSTAINED

CS/541

COMPLAINT AGAINST THE HOUSING DEPARTMENT OVER THEIR REFUSAL TO ACCEPT THAT THE COMPLAINANT WAS RESIDENT IN GIBRALTAR AS FROM THE SAME DATE AS HER CHILDREN STARTED FULL-TIME EDUCATION

The Complainant (a single mother) came to Gibraltar during March 2002; at the time she was informed by the Housing Department (the 'Department') that she would need to be resident in Gibraltar for a year before she could apply for Government Housing. After waiting the required year, the fact that her children had been in full time education since April 2002, was not accepted as proof of her residency in Gibraltar by the Department. Her application was only accepted as of October 2003, when she finally found employment, and could therefore prove her residency in Gibraltar.

The Complainant had three children, a son aged 16 and two daughters aged 14 and 13 respectively. When they moved to Gibraltar, the Complainant and her family moved in with the Complainant's uncle. His flat had two bedrooms, one for himself and the other for the Complainant and her two daughters – the son had no alternative other than sleeping on the sofa. The overcrowded conditions in the flat generated a lot of stress for her uncle, this was worsened by the fact that he had suffered a heart attack a few years earlier.

In order to alleviate her uncle's medical condition, the Complainant and her children spent the weekends at her mother's flat which, like the uncle's flat, only had two bedrooms and she suffered from a medical condition. Additionally, her husband was a Security Guard and his work was shift based – hence he needed to sleep at unsociable hours.

On 4th March 2004 the Ombudsman invited the Department's comments on this case, and highlighted the fact that since her application had been accepted in October 2003, the Complainant had not received any further information from the Department. As a result of these meetings the Department re-evaluated their administrative practices, and decided that all future housing applicants would be sent a letter setting out their application status, upon submitting a completed application form.

At the next meeting the Ombudsman asked the Department for an update. The Department explained that they had written to the Complainant on 10th March 2004, explaining that she was on the 4RKB Pre List, with a total of 3570 points. They further explained that, *'on the 9th October 2005, your application will enter the 4RKB Waiting List, where you will be able to view your position on the List'*.

The Department informed the Ombudsman that the reason for the delay had been because the Complainant had taken a long time to hand in her completed application form, which could only be processed once it was submitted.

The Complainant, however, explained that when she first arrived in Gibraltar she was told she needed to be a resident for twelve months, before being eligible to apply for a Government flat. Twelve months after her arrival she tried to submit an application form, nevertheless, this was refused on the grounds that she required proof of residence during the preceding year.

The Complainant had explained to the Department that her children had been attending school for over a year, and this should have been accepted as sufficient proof of her residency. She was informed, however, that whereas her children may have been attending a local school, this was not proof that she herself had been resident in Gibraltar during that time. During

October 2003, when she finally managed to secure employment, her application was accepted by the Department.

At the next meeting, the Department asked the Ombudsman to inform the Complainant that she should seek documentary evidence from the Department of Education, proving that her children had, in fact, been attending school as claimed; and she should provide the Department with copies. They also advised that the Complainant should get her mother and uncle to write to the Department, highlighting the duration of time that she had been living with them. This evidence would then be placed before the Housing Allocation Committee (HAC), for them to take a decision on whether to backdate her application as requested.

The Ombudsman highlighted the fact that the Complainant had not been properly informed of her housing status after her application was accepted during October 2003. The Department only wrote to the Complainant at the Ombudsman's instigation on 10th March 2004, nevertheless, he was pleased to note that the Department would be implementing new procedures. All future housing applicants would be sent a letter outlining their housing status, highlighting their accumulated points and position in the waiting list.

The HAC and not the Department, the Ombudsman noted, was the pertinent authority to decide whether or not to backdate the Complainant's application. In light of this, there was no evidence of maladministration on the Departments behalf. The Department did, however, appear to only have referred the matter to HAC as a result of the Ombudsman's intervention. This was of concern as it implied that if the Complainant had not sought the Ombudsman's assistance, she would not have been provided with any form of redress.

CASE SUSTAINED

CS/562

COMPLAINT AGAINST THE HOUSING DEPARTMENT OVER THEIR REFUSAL TO ACCEPT THE COMPLAINANT'S HOUSING APPLICATION FORM DUE TO HIS INABILITY TO PROVIDE A PERMANENT ADDRESS

The Complainant was a homeless Gibraltarian and he sometimes slept at his Grandmother's flat, on other occasions at his father's apartment and sometimes he stayed with friends. He felt aggrieved with the Housing Department (the "Department"), when it refused to accept his housing application as a result of his inability to provide a permanent address.

The Complainant alleged that he had suggested including either his grandmother's or father's address, but the Department explained that his father or grandmother would need to sign a consent form, (the clerk he spoke to also allegedly implied that this would be a very cumbersome procedure).

The Complainant wrote to the Department on 5th April 2004, complaining about the fact that he was homeless, but was unable to submit a Housing Application form as a result of the Department's internal procedures. Enclosed in the letter was a completed application form, and he stressed "...[I] hope that it is accepted without any further problems, as any further delay will only mean that I am homeless longer".

The Ombudsman, with whom the Complainant had lodged his complaint, was in possession of the 'Procedure for dealing with applications for housing by homeless persons', which was given to him by the Department on 5th November 2003. By way of letter dated 16th April

2004, the Ombudsman informed the Department that the aforementioned procedures did not appear to have been applied in the Complainant's case.

The procedures made specific provisions for a clerk to meet with any homeless person and collect all the necessary details in order to establish whether the homelessness had arisen intentionally, unintentionally or whether it had been self inflicted. A Housing file should then have been opened in order to document all details in respect of the case. In the Complainant's case, all he was asked for were copies of his mortgage papers.

The procedures in question also stated that the homeless person should be informed that he/she must provide the Department with a place of contact (where he/she is sleeping). The homeless person should also be informed that Housing Inspectors would be monitoring the situation and carrying out random checks, which were to be kept on record. Regrettably, the Complainant was also not informed of this.

The procedures in question also stipulated that the homeless person would be issued a letter, informing him/her of all the above, and the fact that any changes in circumstances or to the location where he/she was sleeping had to be notified to the Department on a weekly basis, or sooner if there has been a change in location. The Complainant never received any such letter.

In light of the above, the Ombudsman wrote the aforementioned letter dated 16th April 2004, explaining that in the case at hand it did not appear that the prescribed procedures were being applied correctly. The Ombudsman also pointed out that the Complainant had only heard of the Homeless Report (which documents where homeless persons stay at night) via the Ombudsman's Public Relations Officer, and this was a matter of concern, so he invited the Department's comments.

The Department replied to the Ombudsman's letter on 20th May 2004, explaining that the procedure for dealing with homeless persons was being adhered to in general, but, at the moment, due to a lack of resources, the Housing Inspectors were not monitoring homeless situations as much as the Ministry for Housing would have liked – this meant that the 'informative letter' mentioned in the procedures, was not being used. The Department assured the Ombudsman, however, that the said letter would now be amended in order reflect the current position, and would be reintroduced and issued to future homeless persons.

The following is an extract of the Department's letter, which also referred to the Complainant's inability to provide a permanent address.

“As explained to you, persons who declare themselves homeless can if they so wish follow two procedures. If the person wishes to provide a care off address or temporary place of abode, the Ministry, subject to the approval of the Housing Allocation Committee (HAC), will accept the address given for application purposes. If the person cannot give a temporary place of abode, the case is taken to the Social Advisory Committee (SAC) with the homeless report and any other information relating to the case for an assessment to be carried out

In [the Complainant's] case, it appears that there was some confusion as to which of the two avenues he wanted to proceed. However I am glad to learn that [the Complainant] had apparently been issued with a homeless report which has already been filled and handed in to the Ministry. The case has now been assessed by the SAC and a category 'A' has been granted. Alternatively his case will also be presented to the next HAC and consideration will be given to accept his housing application from his temporary place of abode...”

The Ombudsman highlighted the fact that the Complainant had been advised by the Department to bring them his mortgage papers during December 2003. The Complainant had great difficulty in acquiring these, and was only able to do so on 22nd March 2004. The Ombudsman pointed out, however, that during December 2003 the Department had failed to explain any of the options contained in the procedure for dealing with applications for housing by homeless persons. Consequently, the Complainant was oblivious to the options which should have been made available to him.

There were two options the Complainant could have pursued, *ab initio*. Firstly, the Complainant could have provided a care off address in his housing application – and the address should have been accepted for application purposes – once it had been submitted to HAC for their consideration. Secondly, the Complainant could have provided no address, and submitted a completed Homeless Report with his application, for consideration by SAC.

The Department alleged that, *'In [the Complainant's] case, it appears that there was some confusion as to which of the two avenues he wanted to proceed'*. The reality, however, was that the Complainant was never made aware of either option. He never had the opportunity to proceed under any avenue, and his application was only accepted during April 2004, when he submitted it together with his letter.

The Ombudsman was pleased that once the Complainant submitted all the relevant forms, together with his letter of complaint, the Department quickly processed the application. The Ombudsman sustained this case as it was an example of poor and failed administration. Despite the fact that the Department had procedures in place to assist the Complainant, this was never actually communicated to him, and he was only informed of his options by the Office of the Ombudsman. With these words the Ombudsman closed the case.

CASE NOT SUSTAINED

CS/573

COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR LOSING HER HOUSING APPLICATION FORM

In late 2003 the Complainant, her husband and two children returned to Gibraltar from the UK where they had been living.

According to the Complainant she handed in an application form for Government housing on 15 October 2003. Attached to the application were medical reports relating to her young son who suffered from autism. She claimed she was given a letter of acknowledgement as proof of receipt.

Some time in January 2004, she went to the Housing Department to enquire about the status of her application to be told that they had no such application on record.

The Housing Department denied that the Complainant could have submitted an application form in October 2003 as claimed by her. It explained that according to the Housing Allocation Scheme (Revised) 1984, applicants for Government housing must be living in Gibraltar for at least one year in order to be eligible to apply for housing and in October 2003 the Complainant did not yet satisfy the residency requirement. The Complainant however did submit medical letters which due to the urgency of her case were presented to the Housing Allocation Committee ('HAC'). (The Ombudsman noted that HAC considered the Complainant's case before she actually applied for housing). These were considered by HAC on 29 March 2004 who decided to waive the remaining qualifying time. Pursuant to the

decision of HAC she was sent an application form by mail and she also attended the counter where another application form was given to her. As at 21 May 2004 the application form had yet to be returned.

The Ombudsman could not sustain the complaint, noting that he had asked the Complainant to show him the letter of acknowledgement allegedly sent to him by the Housing Department but she had failed to do so. Acknowledging the flexibility shown by the Housing Department in its dealings with the Complainant the Ombudsman closed his report.

CASE SUSTAINED

CS/580

COMPLAINT AGAINST THE HOUSING DEPARTMENT OVER THEIR FAILURE TO PROCESS THE COMPLAINANT'S SONS' APPLICATION FORMS BECAUSE THERE WERE OUTSTANDING RENTAL ARREARS AT THE ADDRESS WHERE THEY WERE RESIDING

The Complainant was the widowed daughter of a government tenancy holder. The Housing Department's (the 'Department') records documented her deceased father as being the tenancy holder of a government rented flat. The Complainant's two sons lived with their mother and grandmother in the said government flat. The Complainant helped her sons complete their application forms so that they could become applicants for government housing in their own right, and these were handed in to the Department on 28th August 2002.

The Complainant felt aggrieved when, during October 2003 (some fourteen months after the applications were submitted), she was informed that her sons' applications had not been processed as there were rent arrears in respect of the government flat. The Department also informed the Complainant that her sons' applications could only be accepted as from 22nd September 2003 and not as from the application date, i.e. August 2002, as a result of a change in government policy.

At the time government policy stipulated that government tenants who owed rent arrears were not allowed to change the tenancy holder's name, or include new persons as residing at the address. The policy was developed so as to persuade/cajole government tenants into meeting their obligations, by way of the payment of their rent. It was the sole intention of government to recover their tenants' rent arrears, by not allowing changes to the tenancy until the outstanding rent was paid.

During September 2002 the Department phoned the Complainant and informed her that her sons' applications could not be accepted as they were not registered as living in their grandmother's flat. The Department also informed the Complainant that the tenancy of the flat needed to be regularised, which meant a change of names from her deceased father to her mother.

On 26th September 2002 the Complainant went to the Housing Department and filled in an 'application to include/exclude persons on tenancy'. The application documented the tenancy holder as the Complainant's mother, and included the Complainant and her two sons as family members residing with the tenancy holder.

The Department alleged that the Complainant was sent a 'calling card', on 29th October 2002, for her to go to the Department as changes to the tenancy agreement could not be approved

due to rent arrears. The Complainant never attended, explaining to the Ombudsman that she never received any such card.

On 8th November 2002, the Department allegedly informed her via a telephone call that the sons' applications and the change of name in respect of the tenancy could not be approved as there were rent arrears. The Complainant, however, alleged that the Department only informed her that the name of the tenancy could not be changed because of the arrears, and at no time was she made aware that her sons' applications would not be accepted/processed. The Complainant allowed the matter to lie dormant as it was her mother, and not her, who wanted the tenancy holder's name to be changed.

The Department sent the Complainant a 'calling card' on 14th October 2003, which she did receive. When she attended the Department she was advised that there had been a change of policy – the name of a tenancy holder could now be changed and new persons included in the tenancy despite the existence of rent arrears.

The Complainant was surprised as until this point she had been under the mistaken impression that her sons' applications had been processed. Although her children did not receive any sort of confirmation for their housing applications, this was not perceived as an anomaly by the Complainant as she knew that her sons would need to be two years on the housing pre-list (which is standard practice for all new government housing applicants) before entering the normal housing waiting list.

The Department explained to the Complainant that her sons' applications could only be accepted as from 22nd September 2003 (as this was the date of the change of policy), but only once the tenancy agreement had been updated and signed by the Complainant's mother. The Complainant was livid as she believed the Department was now deliberately mixing these two separate issues, to the disadvantage of her sons. She insisted that her children's applications should be accepted as from 22nd August 2002, the date the applications were originally submitted.

The Ombudsman highlighted one of his most persistent criticisms against the Department, namely their failure to write to their clients in respect of important matters. He also criticised their insistence in verbally communicating this type of information, which invariably left their clients with no records whatsoever as to what had been decided. It also meant that there was no documentary evidence to support the Department's allegations either.

The Complainant could not be expected to understand the intricacies of the Department's practices so, when she was verbally informed by telephone, it is entirely possible that either she did not understand what she was told, or the Department failed to explain the situation properly. With the limited documentary evidence at hand the Ombudsman was unable to ascertain whether the Department or the Complainant was accurately describing what was verbally discussed over a year ago.

The Ombudsman considered the fact that the Complainant's children had always resided at the same government flat. They had used the same address all of their lives (for example to be registered by the Department of Education and for employment purposes) they were not, however, Government tenants per se. What was obvious to the Ombudsman was the fact that the Complainant's children had no say as to whether the rent was paid or not. Because the payments were beyond their control, and they had no say in the matter, the Ombudsman concluded that the children should not be penalised for their grandparents' debts.

Notwithstanding the above, the Ombudsman thought it prudent at this juncture to point out that the Complainant's children had not been particularly proactive in pursuing their applications. They did not contact the Department themselves at any stage, and neither did

they complain in person to anyone. Their only defence, as aforementioned, was the fact that they knew they were required to be two years on the Housing pre-list, before they could join the normal waiting list.

The Ombudsman was of the view that the Department had incurred in maladministration as they had failed to properly inform the Complainant in writing that her sons' applications would not be processed/accepted. The Department had also failed to communicate directly with the housing applicants (the Complainant's sons), and instead they opted to deal with a third party (the Complainant). Their reasons for acting in this manner could only be explained to be as a result of poor, and failed, administration.

Given that the Department never provided the Complainant's sons with any kind of information in relation to their housing applications, and the Ombudsman's opinion that the Complainant's children were not to blame for their grandparent's rent arrears, he recommended that the son's applications be backdated to 26th September 2002. The reason for this was because the Complainant had gone to the Department on this date in order to regularise the tenancy agreement, and submitted all the pertinent information, she had therefore done everything that she could reasonably be expected to do to update the Department's records. It was the Department who was unable to update any records until the rent arrears were paid or, as happened, when there was a change in government policy.

The Ombudsman felt that there had been too many obstacles to the Complainant's children's applications. Although they had always resided at the same address, their applications could not be accepted by the Department until the arrears were paid and the tenancy agreement updated. The problem lay, in the Ombudsman's opinion, in the fact that the Complainant's two children were not to blame for their grandparent's arrears, or for the fact that their grandparents had not updated their tenancy agreement.

It must be stressed once again that the Department never had any contact, or even attempted to, with the actual applicants. This can never be correct and can only be contrary to sound and fair administration.

Given the Department's blanket application of the policy, the Ombudsman concluded that all cases should be considered on their individual merits. He stressed that in this case the Complainant's children had absolutely no control over the rent arrears or the updating of the tenancy agreement.

The Ombudsman reiterated the fact that neither the Complainant nor, especially, her sons were to blame for the rent arrears, so it would be wrong to penalise them as a result.

RECOMMENDATION

Given that the Department never provided the Complainant's sons with any kind of information in relation to their housing applications, and the Ombudsman's opinion that the Complainant's children were not to blame for their grandparent's rent arrears, he recommended that the son's applications be backdated to 26th September 2002.

**CASE PARTLY SUSTAINED
RECOMMENDATION MADE**

CS/581

**COMPLAINT AGAINST THE HOUSING DEPARTMENT AS A RESULT OF BEING
ON THE HOUSING WAITING LIST FOR SIX YEARS, YET BEING UNLIKELY TO
BE ALLOCATED A FLAT IN THE FORESEEABLE FUTURE**

The Complainant (an applicant for a Government flat in Gibraltar) had been waiting her turn on the Housing Waiting List for six years, in addition to a further two years on the prelist. She felt aggrieved with the Housing Department (the ‘Department’) because, as a result of the housing point’s allocation system in place, she was unlikely to be allocated a flat in the foreseeable future.

The Complainant was a single mother with two young children, a boy aged eight and a girl aged six. She was in part-time employment, and lived with her parents in a 4RKB flat, which had been converted into a 5RKB. Her parents had one bedroom, her sister had another (which had been split in two in order to accommodate for the Complainant’s son), and the last bedroom was shared between the Complainant and her daughter. The Complainant was fortunate as, unlike other cases that the Ombudsman had investigated, she had a good relationship with her parents.

The Complainant had approached and spoken with the Housing Manager, the Minister for Housing and the Chief Minister, in respect of her situation. All of whom allegedly agreed that the housing allocation procedures were not working in her favour (as she and her children were housed without being particularly overcrowded, and was therefore not a Social Case), yet the said allocation procedures remained unchanged. The Housing Manager even, allegedly, sympathised with her and acknowledged that she would never get to the top of the list.

The Complainant first wrote to the Minister for Housing on 16th October 2002, asking for an interview in order to explain her situation. In the letter the Complainant highlighted the following,

“In October last year [2001] I wrote a letter addressed to [the Housing Manager] requesting a reassessment of my situation and asking her [to] clarify certain things. I was then granted an interview in November where she said it was very difficult for me to progress in the waiting list, as overcrowding was my only problem and I could not be granted points for any other reason! I was given very little hope of ever improving my housing situation”.

At the time of the interview with the Housing Manager (October 2001) the Complainant had been waiting four years since she applied for a flat, but she was repeatedly told by the Housing Manager that there was nothing that could be done to push her application further up the list. The Complainant also included medical letters, which highlighted that her living conditions were far from ideal, and appeared to be having a detrimental effect on her health.

The Complainant wrote a subsequent undated letter to the Housing Manager, explaining that shortly after breaking up with her boyfriend, *he* had been allocated a flat. She, on the other hand, had been taken off the waiting list as a precondition to her parents being offered flat at Varyl Begg Estate – she had accepted this, although she felt she had been treated very unfairly; especially as, at the time, she had been pregnant with her second child.

By way of letter dated 17th October 2003 the Complainant again wrote to the Housing Manager requesting an appointment with her, so as to explain how unfairly, in her opinion, she felt she was being treated. She acknowledged that the reason for her lack of progress on the waiting list was as a result of the point's allocation system, but stressed that the said system, in effect, worked against her.

The Complainant wrote a further letter to the Housing Manager on 25th February 2004, subsequent to their meeting dated 4th February, regrettably no copy was kept of this letter. The Department replied by way of letter dated 12th March 2004, explaining the following,

“As explained to you during the appointment held with the Housing Manager on 4th February 2004, the Housing Allocation Scheme is based on overcrowding. We are aware of your current predicament and that your application has not been progressing on the wait list. The Department is currently reviewing these cases with a view to aiding these applications in some way...An appointment will be offered when there are more details or information that we can communicate to you. I trust that this information aids in some way and relays the department's commitment to help all applicants for Government housing.”

Regrettably, however, the Complainant heard nothing from the Department, until 27th September 2004 despite having written to the Housing Manager on 30th April 2004. In this letter she pleaded for an interview and begged the Department to consider the fact that she and her children needed their independence, which could only be brought about within the stability of a family home.

The Ombudsman included this case in his bi-monthly meetings with the Department on 15th July 2004. He noted, however, that there was nothing administratively wrong with the way the Department had been processing the Complainant's housing application. The Complainant was correctly placed on the waiting list nevertheless, there were new proposals in respect of persons in her situation as a result of a case study made at the Ombudsman's behest. He noted, however, that not only had the Department failed to reply to the Complainant's letter dated 30th April 2004, they had also failed to provide the Complainant with any sort of update (as stipulated in their letter), since 12th March 2004 – a lapse of four months.

By the following meeting dated 16th August 2004, the Complainant had not yet received the Department's letter, although the Ombudsman was assured that the letter in question had already been sent to her. The Complainant received the said letter on 7th September 2004, which explained that the Department had collated most of the information they required, and a report was being prepared in respect of the new proposals. The Department assured the Complainant that she would be offered an appointment as soon as there were more details that the Department could relay back to her.

The Ombudsman found maladministration in respect of the Department's failure to reply to the Complainant's letters, and in their failure to provide updates on a regular basis, however, the Complainant was correctly placed on the housing waiting list and there was no maladministration in respect of the points she was being allocated.

The Ombudsman recommended that the Department make every effort to reply to letters sent by members of the public, and that monthly checks should be carried out by the Department's Head of Administration to ensure that all letters had been attended to.

The Department assured the Ombudsman that he would be kept updated in respect of the new proposals.

RECOMMENDATION

The Ombudsman recommended that the Department make every effort to reply to letters sent by members of the public, and that monthly checks should be carried out by the Department's Head of Administration to ensure that all letters had been attended to.

CASE NOT SUSTAINED

CS/585

COMPLAINT AGAINST THE HOUSING DEPARTMENT OVER THEIR REFUSAL TO GRANT THE COMPLAINANT AN ADDITIONAL EXTENSION OF THREE MONTHS BEFORE MOVING INTO HIS NEW FLAT

The Complainant was a Government tenant who was waiting to be reallocated to another Government flat by the Housing Department (the 'Department'). He requested a flat on a self-repair basis (which meant he would have to refurbish and repair the flat himself before moving in) and this was granted. The standard amount of time given for new Government tenants to move into their flat is three months. The Complainant felt aggrieved with the Department when it rejected his subsequent request for an extension of a further three months.

Prior to complaining, however, he had already been granted a two-week extension but, by way of letter dated 2nd July 2004, he wrote to the Department explaining that he would not be able to meet the agreed timeframe for various reasons.

He highlighted the fact that repairs to his flat's salt water pipes had only been carried out by the Buildings & Works Department ('B&W') three weeks after he had signed his housing contract, and claimed that this had adversely affected the repairs he was carrying out. He also raised the point that, at the time, he did not have fresh water in his new flat, and claimed that this too was affecting the said repairs. He explained the various works he was expected to carry out himself and drew attention to the fact that he suffered from Chromes Disease (which gave him sever abdominal pain), and provided medical letters to this effect.

The Department replied on 6th July 2004 and explained that,

“Due to the high demand and low availability of flats returning to the housing stock, the Ministry for Housing is unable to offer lengthy extensions on the standard time limit offered to tenants refurbishing Government flats...I wish to bring to your attention that an extension has already been granted. However, due to your medical requirements, a further extension of two weeks has been approved”

As illustrated above, his request for a three-month extension was refused, but he was granted a further two weeks.

The Complainant informed the Ombudsman that although he had accepted the original three-month timeframe, he had only done so as he felt he had no other alternative. At the time, he had informed the Department that he did not believe this would be enough time to carry out all the necessary repairs to his flat, nevertheless, he did accept the Department's stipulated timeframe.

By way of letter dated 26th July 2004, the Ombudsman informed the Department of the Complainant's complaint, and invited its comments. He further informed the Department that the Complainant had alleged that another Government tenant who had also been given a flat

on a self-repair basis had been told to repair the flat at his own pace. The Complainant could not understand why he was, apparently, being discriminated against.

The Department wrote to the Ombudsman on 9th August 2004 and explained,

“Upon enquiries made, I have been informed by the Allocation Unit that [the Complainant] was allocated the above flat on 29th March 2004 whereupon he was granted a three month extension period that expired on 28th June 2004. A further extension was granted until the 12th July 2004. Upon expiry of this deadline [the Complainant] made a further request that was substantiated with a medical letter. This request was considered and approved, and a further three weeks were granted. He has now submitted another medical letter requesting a further extension.”

Additionally, the Department also made reference to the Complainant’s allegation concerning the way he was being treated when compared to another Government tenant in an allegedly similar situation. The Department made the following point,

“She [the tenant in question] was admitted into hospital the same day she signed her contract and was discharged three months later. The Department possesses due verification to this effect. As you can understand, and under these special circumstances where the tenant was hospitalised for three months, a further three months were granted.”

The Ombudsman noted that the Department had provided the Complainant with two extensions, in addition to the original three months. He highlighted the fact that the Complainant had accepted the terms and conditions of the flat on a self-repair basis, and agreed to move in within the original specified three-month timeframe. Although the repairs to the flat were substantial, the Complainant could have rejected the flat if he had not been in agreement with the amount of time he had been given to repair it, but he accepted the terms and conditions (albeit reluctantly).

The Complainant could have found alternative means to complete the flat within the specified date. He could have taken his annual leave at an earlier stage, or have subcontracted individuals to assist him with the repairs. The Department was obliged, given the demand for Government flats, to avoid unnecessary delays in the housing allocation process. The Complainant’s failure to complete the repairs to his flat was not the Department’s fault, therefore, the Ombudsman did not sustain the complaint.

CASE NOT SUSTAINED

CS/595

COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR TAKING TOO LONG IN APPROVING AN EXCHANGE FOR THE COMPLAINANT’S ELDERLY MOTHER FROM HER CURRENT FLAT TO ONE MORE SUITED TO HER NEEDS

The Complainant’s 85 year old mother (‘the mother’) was the tenant of a one-bedroom apartment in the upper town area. In an assessment addressed to the Housing Department, the Gibraltar Health Authority’s Occupational Therapy Department (‘the OT’), explained that prior to admission to St Bernard’s Hospital, where she was at the time of the assessment being prepared, the mother was finding it increasingly difficult to manage due to the many steep hills and steps that she had to climb in order to get to her flat. The OT recommended that she

be re-housed in a more suitable location in the lower town area, preferably in a ground floor flat or in a flat with lift access and that a shower cubicle be installed for safety and to promote independence.

The Complainant explained to the Ombudsman that the Flat, which she claimed had been empty for a considerable time, was ideal for her mother and she complained that it was taking the Housing Department an inordinate amount of time to consider and approve the exchange. The Department had told her that they could not approve the exchange until it was considered by the Medical Advisory Committee ('MAC') which apparently was currently under selection. In the meantime however, her mother was occupying a bed in the Maternity Ward as the hospital was full.

The Ombudsman initiated his enquiries by establishing that the Flat had not been empty for a considerable time as alleged by the Complainant. The Department revealed to the Ombudsman that the Flat's previous tenant had handed it back to the Housing Department on 23 December 2003, and between March 2004 and October 2004 it was offered to no less than six individuals, all of whom had refused to accept it.

MAC approved the exchange during the course of October 2004. It was then offered to and accepted by the Complainant's mother.

Noting that the delay in allocating the Flat to the Complainant's mother was attributed to the fact that the Housing Advisory Committee ('HAC') could not approve the allocation until it was considered by the Medical Advisory Committee ('MAC') which was under selection at the time, the Ombudsman referred to rule 3 of the Housing Allocation Scheme (Revised 1994) ('the Housing Allocation Scheme' or 'the Scheme') which sets out the terms of reference of MAC pointing out that MAC only 'advises' and 'recommends' to HAC, but the ultimate decision is made by HAC.

When the Complainant lodged her complaint, her mother had been in hospital for two months. She could not be discharged, apparently because she could not return to her flat due to its location. To make matters worse the Complainant claimed that the hospital was full and her mother had been transferred to the Maternity Ward (letter from the Complainant to the Housing Manager dated 8 July 2004).

Whilst the Ombudsman appreciated that the Flat was eventually allocated to the mother, he stressed that MAC's role is only advisory and in a case such as this where the housing applicant was unnecessarily occupying a bed in hospital, HAC should have taken the decision itself without reference to MAC.

The Ombudsman added that in his opinion people in the mother's situation should not have to wait unnecessarily for an allocation and in such cases the Housing Manager should be given the jurisdiction to make the decision herself, thus saving the committee's time, the GHA money, freeing up a bed in the hospital and last but by no means least saving the person concerned the distress of being in hospital for longer than required.

The Ombudsman further pointed out that elderly persons who are admitted to Mount Alvernia are required to vacate their government flats but those who are in hospital are not. He wondered how many empty government apartments there were whose tenants were in St Bernard's or King George the Fifth Hospital with no prospects of ever returning home.

The Department explained to the Ombudsman that they had attempted to come to an agreement with the Gibraltar Health Authority ('the GHA') as they had with the Elderly Care Agency whereby the GHA would inform them whenever, in their opinion, a patient would

never again be able to return home and live independently as he had in the past but they had been unable to reach agreement.

The Ombudsman could not sustain the complaint pointing out that the Department had not committed maladministration. On the contrary it had dealt with the Complainant's mother properly, putting her case to MAC at the first opportunity and then approving the exchange as requested by the Complainant. He pointed out however that in his opinion in cases such as the present one, there had to be a more efficient way of allocating flats than the one set out in the 1994 Housing Allocation Scheme. An option would be to vest the Housing Manager with wider powers. The Ombudsman went on to declare that government flats are a precious commodity and all government departments should try to find a way of cooperating with the Housing Department as regards the identification of empty apartments.

CASE SUSTAINED

CS/596

COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR NOT TAKING ACTION AGAINST THE COMPLAINANTS' ANTISOCIAL NEIGHBOURS WHO WERE ALLEGEDLY SUBLETTING THEIR PREMISES FROM THE LEGAL TENANT

The Housing Department ('the Department') was not taking action against the Complainants' antisocial neighbours who were alleged to be wrongfully subletting their premises from the Department's legal tenant.

A young couple who lived in a government flat with their two young children ('the Complainants') complained to the Ombudsman that the people ('the illegal occupiers') who were living in the flat immediately above them ('the neighbouring premises') made an unreasonable amount of noise at all hours of the night, waking up their two young children. They explained that they would approach the illegal occupiers politely asking them to behave with consideration towards their neighbours but they would just laugh in their face. They would then report the noise to the police who would come and ask the people concerned to lower the noise levels but the problem was that as soon as the police left they would raise the noise levels once again.

The Complainants pointed out to the Ombudsman that they believed that the illegal occupiers were subletting the flat from the legal tenant, something that was not allowed by his tenancy agreement with the Department. For the past two months they had been complaining to the Department almost on a daily basis but their complaints fell on deaf ears. The Complainants alleged that on one occasion the clerk at the Housing Department counter had even advised them to go and complain to the legal tenant of the apartment.

The Ombudsman duly informed the Department that a complaint had been lodged against them. The Department immediately took action and within a short time the illegal occupiers vacated the premises.

The Ombudsman initiated his enquiries full of bewilderment, bewilderment because all tenancy agreements signed between the Department and would be tenants stipulate that the tenancy may not be assigned or sublet in any way but yet, despite allegations that a government owned apartment was being sublet, the Department had shown no inclination to establish the veracity of the allegations and if necessary to enforce the provisions of the tenancy agreement. To make matters worse the people who were allegedly subletting the

premises i.e. the illegal occupiers, were denying from rightful tenants of neighbouring flats the right to quietly enjoy their premises and still the Department took no action.

Failing to comprehend the Department's inaction the Ombudsman stressed that in consideration for the rent paid by its tenants the Department had the obligation to ensure and safeguard their quiet possession and enjoyment of the rented premises. The Ombudsman added that judging from the number of complaints received by him over the years from victims of antisocial tenants it was evident that the problem of antisocial behaviour by government tenants was unfortunately not uncommon and to the best of his knowledge the most that the Department had ever done was to transfer the long suffering victim of the antisocial behaviour to another flat. At no time had the Department ever issued an abatement notice to an antisocial tenant, nor had they ever sought an injunction to prevent the tenant for example from playing loud music in the early hours, which was one of the common causes of complaint.

The Ombudsman referred to complaint number 394, investigated by him during the course of 2002. In that case two tenants of the Edinburgh House Estate were complaining that antisocial tenants were making their lives a misery and the Housing Agency as the Department was then known, was doing absolutely nothing to remedy the situation. The Ombudsman recommended that the Department develop a system whereby complaints concerning anti-social behaviour are processed and a rapid and efficient course of action taken. The following is an extract of his 'Conclusions and Recommendations' as set out therein:

"The Ombudsman declared that the Housing Agency as the Complainants' landlord had the responsibility to enforce all of the terms of the neighbour's rental agreement and to safeguard the Complainants' quality of life. The Ombudsman recommended that the Housing Agency in conjunction with the RGP should develop a system whereby complaints concerning anti-social behaviour by Government tenants are processed and a rapid and efficient course of action taken. The course of action taken should be tough enough to constitute a deterrent for other possible offenders. Unruly tenants should be made aware of the fact that complaints have been received about their behaviour and that this is not acceptable and measures would be taken to put a stop to it. The Ombudsman observed that Government estates had been a free for all for far too long and it was time that the landlords took full responsibility for its property to ensure that tenants lived free from all sorts of harassment."

Needless to say his recommendations were not accepted and nothing was done to deal with this problem.

The Ombudsman highlighted the Department's lack of action in this regard and he suggested that when faced with a complaint by a tenant regarding antisocial behaviour by a neighbour, the Department should seek to establish the extent and frequency of the alleged neighbour nuisance. This should be done by asking the complainant to monitor the nuisance by completing diary sheets documenting the nature of the nuisance and the times thereof. The Department should also find out whether the complaint about neighbour nuisance is reciprocal as this would have an input as to how it would deal with the problem.

The Ombudsman further suggested that some element of rent rebate in compensation would be appropriate in the following cases:

QUANTIFIABLE LOSS

People who experience neighbour nuisance are sometimes driven to vacate their own homes and stay with family or friends, until the problem is resolved. Where the Department delays unjustifiably in taking action in a case of neighbour nuisance, it may be appropriate to

consider reimbursement of additional living expenses incurred by the complainant in escaping the nuisance.

LOSS OF A NON-MONETARY BENEFIT

Where the complainant is a tenant who has been deprived of the enjoyment of his or her home, some element of rent rebate may be appropriate. On one occasion, for example, one of the UK Ombudsmen recommended that the council should not charge the complainant rent from the date of the Ombudsman's report until such time as the council's action against the perpetrator was processed by the courts.

Lost opportunity

Compensation under this title would be relevant where a student could establish that he had been prevented from studying by constant noise or the complainant establishes that performance at work was affected by being deprived of sleep.

DISTRESS

Distress is the most common feature of neighbour nuisance cases and will always be relevant to a greater or lesser degree. Some element of financial compensation will usually be applicable and the calculation of this needs to reflect a number of factors, of which the following are examples (although not an exhaustive list).

- a. The length of time for which the neighbour nuisance persisted before the Department took effective action.
- b. The severity of the neighbour nuisance.
- c. The frequency of occurrence.
- d. The number of people affected in the property in addition to the complainant.
- e. The vulnerability of the complainant, or any other people affected (for instance, they may be elderly, disabled or children).
- f. The extent of the Department's maladministration.

The Ombudsman pointed out that the above points were guidelines issued by the England Local Government Ombudsmen and he was putting them to the Department for their consideration in order to deal with the problem of neighbour nuisance in a more effective manner.

After considering all of the above the Ombudsman suggested that the Department seriously consider offering the Complainants and others like them, a rent rebate for a limited period in compensation for the Department's lack of action and for the distress suffered by them. The Ombudsman declared that he would take up this matter with the Department with view of aiding them to come up with a way of dealing with the problem of neighbour nuisance.

CASE NOT SUSTAINED

CS/600/601

COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR REFUSING TO EXCHANGE THE COMPLAINANTS' THREE BEDROOM FLAT FOR TWO SMALLER APARTMENTS

A father and his daughter complained that the Housing Department was refusing to exchange their three bedroom flat ('4RKB') for two smaller flats.

A father ('the First Complainant' or 'the father') and his wife lived in a three bedroom apartment ('4RKB') with their grown up daughter ('the Second Complainant' or 'the daughter') and her young child. The family did not get on and their vociferous disputes were well known to all of their immediate neighbours, to the Housing Department in their capacity as landlords, and to the Royal Gibraltar Police ('the RGP') who were often summoned by worried neighbours.

The family were always at each others throats and conscious that the present situation was untenable both father, and daughter approached the Department with a proposal. In a letter dated 2 September 2004 the daughter explained that her family disputes were well known and that they were now escalating to such an extent that the police were involved on an almost daily basis. She explained that other family members who lived in the same block were also involved and this meant that her family problems were causing considerable disturbance to their neighbours, she was embarrassed for this, but there was nothing she could do to avoid it. She went on to outline her medical problems and she requested that she be categorised as social/medical case.

On 15 September 2004 the father wrote to the Department on the same lines as his daughter, suggesting that they be categorised in the housing list for urgent re housing on social grounds ('the Social A list') and that the Department exchange his 4RKB for a one bedroom flat ('2RKB') for himself and his wife and a two bedroom flat ('3RKB') for his daughter and grand daughter.

The Department rejected the requests of both father and daughter, pointing out that the Complainants were more than adequately housed. They lived in a three bedroom apartment where one bedroom was occupied by the First Complainant and his wife, the other by the Second Complainant and the third by the Second Complainant's young daughter. Housing applicants who were categorised in the Social A list were usually people who were either homeless or living in extremely poor or overcrowded conditions. The Complainants problem was a family problem and not a housing problem. It would be very unfair to give them priority over fellow applicants who were living in much worse conditions. The daughter was in the 3RKB waiting list, she would just have to await her turn to be allocated a flat.

The Second Complainant rejected the Department's decision pointing out that that she was an emotional wreck and that she suffered from depression and panic attacks. By refusing to accept her father's proposition and exchange their 4RKB for two smaller flats the Department was just prolonging her misery, her parent's misery and their neighbours' misery.

The Ombudsman considered this double complaint with interest. On the one hand he agreed with the Department that the Complainants were adequately housed. They lived in a relatively big apartment with each of the family members, including the young child having their own bedroom and to give them priority over fellow housing applicants who were living either in very poor conditions or in some instances were actually homeless would be very unfair. On the other hand however, the First Complainant and his wife lived in misery, their daughter

was in emotional turmoil, the RGP was apparently being asked to intervene on a very frequent basis, and the neighbours were constantly being disturbed by the Complainants' antisocial behaviour.

The Ombudsman pointed out that looking at the problem from a strict, legalistic point of view the Department was correct. Their duty was to provide adequate housing and this they had done. The Complainants' problem had nothing to do with the Housing Department.

Looking at the matter from a wider perspective however, the issue was not so clear cut. The Complainants were clearly unable to live together and expecting them to do so was like locking up a dog and a cat in a room and saying that what happened inside the room was the problem of the RSPCA. The Complainants' endless quarrels and arguments were both inevitable and unbearable for all concerned and the Ombudsman was of the opinion that it was very possible that they constituted a nuisance vis-à-vis the neighbouring tenants, a nuisance which the Department as landlord could have a contractual duty to eliminate.

The Ombudsman went on to refer to the First Complainant's proposal and to the Department's refusal pointing out that as far as the Second Complainant was concerned there were two possible scenarios. In the first scenario the situation between her and her parents would deteriorate to such an extent that the Department would see itself with no option but to re house her. In the second scenario she would reach the top of the 3RKB list and would be allocated a flat. In whatever scenario transpired the Second Complainant would eventually be allocated a flat of her own and when that happened her parents, would remain over-housed in their large 4RKB,. If the father's proposal was accepted however the First Complainant and his wife would move to smaller accommodation thus freeing their 4RKB for allocation. The Department should consider their alternatives very seriously before declining to re house the Complainants.

What is a successful manager asked the Ombudsman? A successful manager is someone who not only runs the enterprise over which he has responsibility on a daily basis, he also has his eyes set on the future and acts today to ensure that his enterprise is well equipped to deal with future challenges. The Housing Department are the managers of the government's housing stock and in order to ensure that they 'run the enterprise' successfully every decision has to be taken after careful consideration of the repercussions of the decision and with an eye on the future needs of the Department.

The Ombudsman considered that by rejecting the First Complainant's proposal the Department was effectively insisting that the First Complainant and his wife remain in their large three-bedroom flat when eventually, the Second Complainant was allocated her own apartment. The Ombudsman did not know whether this was good management.

The Ombudsman could not sustain the complaint pointing out that the Department had had a legitimate reason for refusing to categorise the Complainants in the Social A however, he advised them to seriously consider whether it was not in their interest to rehouse the Complainants.

**CASE SUSTAINED
RECOMMENDATION MADE**

CS/610

**COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR REFUSING TO
PROCESS THE COMPLAINANT'S HOUSING APPLICATION BECAUSE SHE
WAS NOT YET TWENTY-ONE DESPITE THE FACT THAT SHE WAS CLAIMING
TO BE HOMELESS**

The Complainant and her siblings had a long history of family problems, including allegations of physical and mental abuse. The Complainant was twenty years old when she was asked by her mother to leave the family home.

Having been made homeless she went to the Department on or about April or May 2004 pleading for help. Initially she was given an application form for government housing but she was then informed her that she was not even eligible to apply for housing because she was not yet twenty one. She was allegedly told that the only way that the application form of somebody who was not yet twenty one years old could be accepted was if she was pregnant or had a child.

*The
Complainant
was twenty
years old
when she
was asked by
her mother
to leave the
family home.*

Following the Ombudsman's advice she wrote to the Department on 12 May 2004 explaining that she was homeless and asking them to consider her as an urgent social case. She then handed in her housing application. To the Complainant's declared dismay the application form was returned to her by post with a copy of the Housing Allocation Scheme (Revised 1994) attached ('the Scheme').

It was only in a subsequent meeting with the Housing Manager that the Complainant's housing application was finally accepted and she was informed that her case was pending a social worker's report and would then be included in the Social Advisory Committee's agenda for the following month. The Complainant pointed out that her application was only finally accepted because of her persistence.

On 2 August 2004 the Complainant was informed as follows:

*"The Housing Advisory Committee discussed your case at the meeting held on ---.
As a result of this, you have been categorised on 'A', once you attain the age of twenty-one
and are therefore entitled to government housing."*

The Ombudsman understood from this letter that although the Complainant had been placed on category A, meaning that the Department acknowledged that she had to be housed urgently ('the Social A list), the categorisation would only take effect after her twenty-first birthday.

In its reply the Department did not directly refer to the Ombudsman's query as set out in the preceding paragraph. Instead it pointed out that in order to qualify for allocation of government housing an applicant had to be over eighteen and married, or a single parent, or over twenty-one. In certain circumstances however, the Scheme gave the Housing Advisory

Housing Allocation Scheme (Revised 1994)

14. In the special circumstances of any case, the Housing Allocation Committee may, in its discretion:

(a) award discretionary points up to a maximum of 500 points;

(b) In very exceptional circumstances recommend that the applicant be allocated accommodation --- if the reason for the exceptional circumstances is attributable to either social and/or medical grounds;

Committee ('HAC') the discretion to waive the requirement that a housing applicant who was not yet twenty-one be married, or a single parent.

By coincidence the Complainant had just turned twenty-one but the Department pointed out that had she still been underage, the discretion would have been exercised in her favour. The Department went on to confirm that HAC had approved a priority allocation for the Complainant and in order to speed up the allocation process she had been categorised both in the Social A list and in the decanting list (her mother was waiting to be decanted from her pre-war accommodation).

Within days of this confirmation the Department informed the Ombudsman that a flat had been allocated to the Complainant who eventually accepted the allocation.

In his considerations the Ombudsman pointed out that the allocation of government housing is regulated by the Housing Allocation Scheme (Revised 1994), rule 5(b) of which specifies that in order to qualify for government housing an applicant who is single and has no children must be twenty-one years old or over. Rule 14(b) sets out that in "*very exceptional circumstances*" HAC may recommend that the applicant be allocated accommodation "*if the reason for the exceptional circumstances is attributable to either social and/or medical grounds.*" It was based on these two rules that the Complainant's application was initially returned to her but later on accepted and a flat allocated to her.

The Ombudsman contrasted the provisions of rule 5(b) of the Housing Allocation Scheme to section 4 of the Minors Ordinance which specifies that a person becomes of full age on attaining the age of eighteen and he highlighted the incongruity of rule 5(b). Whereas an eighteen year old can get married as of right (as opposed to a sixteen and seventeen year old who needs the parents' consent) and may vote in House of Assembly and European elections, he may not apply for government housing in the absence of "*very exceptional circumstances.*" The Ombudsman could not understand the reason for this anomaly.

The Ombudsman could not sustain the complaint pointing out that the Department had not committed maladministration. Initially they had applied rule 5(b) of the Housing Allocation Scheme but they then reconsidered their decision and exercised their discretionary powers in her favour. The Ombudsman stated however that the Scheme should be amended to reflect the social reality of young people who were under the age of twenty-one and who were homeless through no fault of their own. The Scheme should reflect the increasingly common occurrence of couples breaking up and going their own way, leaving the children of the marriage who on occasions were over the age of eighteen but not yet twenty-one, homeless.

This Complainant was only one of many who had walked through the doors of the Ombudsman's office complaining that they were homeless. (See C/S 432, Public Services Ombudsman, Annual Report 2003, pp 98-101, where a twenty eight year old single mother and her ten year old son spent over two years sleeping in a car, on a bunk bed together with her son and another young boy in her friends' small apartment, at a room in the Methodist Church, and squatting in a derelict flat before being evicted by the Housing Department and finally offered a flat. See also C/S 433, *ibid* at pp102-104 where a young man spent over a year sleeping in a room at St Theresa's Church because he had nowhere else to go. At the time of writing the Ombudsman was dealing with another single mother and her one year old child who were both homeless and with another young man who was forced to sleep either in his car or with a friend).

The lack of affordable housing has had dire consequences for the young who in numerous cases see themselves in the streets.

The breakdown of the nuclear family together with the lack of affordable housing and the virtual non-existence of private rented accommodation has had dire consequences for the young who in many cases see themselves in the streets. The young mother with whom the Ombudsman was currently dealing used to spend nights at the New Mole House Police Station, where she used to go to feel safe. (She stopped going however, when she was told that the Social Services could remove her child if she was not able to care for it).

In all of these cases and others not mentioned in this report the crux of the problem was the lack of housing. Taking this problem into account and in order to provide a temporary solution, the Ombudsman took this opportunity to renew a recommendation made by him in a previous investigation (C/S 490), also a complaint made on behalf of another homeless young person:

“After considering the trials and tribulations of all of this Complainant and many others like her the Ombudsman recommended that the Department should seriously consider converting one of its older properties into temporary accommodation for homeless people. The criteria for admission should be strictly defined and those accepted as being legitimately homeless should be entitled to stay there until a more permanent solution was found to their housing problem.

The matter of a shelter for homeless young people goes beyond the scope of this report but in an affluent society such as ours nobody should have to sleep in a car or on a couch in a friend’s house. With this recommendation the Ombudsman closed the report.

INCOME TAX OFFICE (PAGE 86-89)

CASE SUSTAINED

CS/511

COMPLAINT AGAINST THE INCOME TAX OFFICE OVER THEIR DELAY IN REPLYING TO THE COMPLAINANT'S LETTER

The Complainant had written to the Income Tax Office on 2nd April 2003 and 30th April 2003, and he subsequently received verbal replies to his written enquiries. However, he was not satisfied with the explanations provided by the Income Tax Office (the 'Office') and wrote a further letter dated 28th August 2003 requesting further information. No reply was received by the Complainant so a final chaser letter was sent on 22nd December 2003. The Complainant did not receive a reply to this letter either.

The Complainant complained to the Ombudsman on 7th January 2004, highlighting the delay he was experiencing in receiving a reply. As a result, the Ombudsman wrote to the Commissioner of Income Tax (the 'Commissioner') on 8th January 2004, outlining the complaint and requesting that the Commissioner provide the Complainant with a written reply.

The Commissioner sent the Complainant a holding letter dated 20th January 2004, and on 24th January 2004 provided a written reply to the issues raised by the Complainant.

The Ombudsman was of the view that the Complainant should not have been made to wait over four months without receiving a reply from the Office. The Commissioner himself explained in his reply letter to the Complainant, '*...there is no reason why you have not received the written reply you sought...when by letter dated 28th August 2003 you reopened this matter*'.

The Ombudsman agreed with the Commissioner's explanation that there was no (valid) reason as to why the Complainant had not received a reply to his inquiry. He again noted the pro-active manner in which the Commissioner had dealt with the complaint.

Once again the Ombudsman commented that Head of Departments should always be prepared to help those who had recourse to their assistance.

CASE SUSTAINED RECOMMENDATION MADE

CS/603

COMPLAINT AGAINST THE DEPARTMENT OF INCOME TAX FOR NOT AMENDING THE COMPLAINANT'S PAYE TAX CODE TO REFLECT HIS NEW CIRCUMSTANCES AND FOR NOT INFORMING THE COMPLAINANT THAT IT WAS HIS RESPONSIBILITY TO ENSURE THAT HIS PAYE TAX CODE HAD BEEN SO UPDATED

When the Complainant retired in November 1999 his occupational pension was assessed as being subject to income tax at source at the rate of 35%.

In February 2000 he took up employment and he was given the tax code of 45% in respect of his employment income. The tax code in respect of his pension was not updated and the Complainant alleged that at no time was he informed that the existing code would apply to his pension which remained at 35%.

Every July thereafter the Complainant completed and returned his income tax assessment form giving details both of his pension and of the income from his employment but he was never informed by the Department that he should update the percentage rate payable on his pension and that failure to do so would result in a tax debt at assessment time at the end of the tax year.

His assessments for the tax years 1998/99 and 1999/00 raised in May 2002 resulted in tax debts of £229.69 and £115.64 respectively which the Complainant paid without demur. His assessment for 2000/01 for the sum of £348.00 was issued in March 2004 but this time he went to the Department to enquire as to the nature of the debt and to complain that he should have been informed as far back as 1999 that his pension PAYE deduction should also be raised to 45%. He also complained that he had been completing his tax returns every year and asked why had his pension PAYE deduction not been adjusted accordingly? The Complainant was allegedly told by the clerk at the Department that someone in the office should have picked this up at the time.

Having put his complaint to the Department in writing the Department responded explaining that the responsibility fell on the tax payer to inform them of change in income as this could result in a need to alter the percentage rate in a code although, if by chance, such an anomaly would be spotted it would be corrected. The Department added that it was their policy, to inform the taxpayers to in turn, inform them of any change in income when a code with a percentage rate was initially issued, so that it could be accordingly amended. If this was not done at the time the Department offered its apologies.

The Complainant rejected the Department's explanations, pointing out that he had never been given this information. Furthermore he did advise them of his change in circumstances, both at the time and in his annual tax returns ever since. Due to the Department's apparent failure to inform him that he had to request specifically that his pension also be taxed at the higher rate, the code had not been updated and as a result he was now seeing himself with a very large tax debt.

In response to the Ombudsman's enquiry the Department explained that the PAYE Regulations provide for the issue of a PAYE code dependent on the allowances to which an individual is entitled (Regulation 4(3)). Such PAYE code shall be lodged with his employer and if he has more than one source of income subject to PAYE deduction at source it shall be lodged with the employer who pays the higher emoluments (Regulation 5). Any other employer is required to deduct tax at 30% from the emoluments paid to any employee who has not lodged a PAYE Code (Regulation 8(2)). It follows that any taxpayer whose marginal rate is higher than 30% will 'suffer' under deduction of tax at source that will materialise into a tax debt at assessment time.

The Departmental practice in such cases is to try and determine the taxpayer's marginal rate and deduct tax at a higher rate than 30%, if deemed necessary and the taxpayer so instructs. The Complainant had tax deducted from his pension at 35% since he took up employment and had not sought an increased percentage deduction notwithstanding the assessments for 1998/99 and 1999/00, raised in May 2002 that resulted in tax debts of £229.69 and £115:64 which he paid. Had he queried these debts as he did when the 2000/01 assessment was issued, his income would have been reappraised back then, thus avoiding tax debts in the future.

The Department did not accept the Complainant's assertions that they had acted incorrectly or inefficiently in this case. The 35% deduction agreed at the time of taking up employment was correct and until April 2004 there had been no request to reappraise his level of taxable income to determine if a higher rate should apply. The Department pointed out that they could not realistically be expected to monitor such cases and it was up to the taxpayer to request a higher rate to avoid a possible liability at assessment time.

The Department added that the problem was further compounded by the fact that the Complainant's assessments for 2001/02, 2002/03 and 2003/04 would also result in amounts payable given that the 45% Code was not issued until March 2004. They pointed out however, that when the assessments would be issued, they would be willing to enter into an arrangement to collect whatever amounts were due by monthly instalments or by deduction from his employment or pension income in the same manner that he was settling his 2000/01 liability.

The Ombudsman considered the Department's statement that it was the taxpayer's responsibility to seek the correction of his PAYE code and he pointed out that it was not up to him to question the policy of a government department as long as the policy was properly and equitably applied. The Ombudsman stressed however, that the Department could not just assume that the taxpayers were somehow aware of their rights and responsibilities under the Income Tax legislation. They have the duty to ensure that the taxpayer was properly informed of these rights and duties.

When the Complainant went to the Department to register his new employment he was given the appropriate PAYE tax code in respect of his employment income, however at no stage was he advised of the fact that the *totality* of his monthly income was liable to income tax at the same (higher) rate. Furthermore the Department has no leaflets or pamphlets informing the public of this their responsibility. The Ombudsman wondered how the Complainant was supposed to know that it was up to him to seek the correction of his PAYE codes.

The Ombudsman went on to refer to the Department's statement that the Complainant had paid the first two tax debts without making any enquiries as to the reason for the debt, agreeing that had he made such enquiries his income would have been reappraised as far back as 2002, thus avoiding tax debts in the future. The Ombudsman pointed out however, that even though this failure to make enquiries could be considered to be 'contributory negligence' on the part of the Complainant, the Ombudsman stressed that this contributory negligence in no way minimised the Department's responsibility towards the Complainant.

The Ombudsman declared that even though the Department could not be expected and indeed did not have the duty to take measures to correct inaccurate tax codes without the matter being brought to their attention by the taxpayer concerned, the complaint would be sustained. The Ombudsman explained that the Complainant had reported to the Department that he was in receipt of income from employment, which income was categorised as being liable to income tax at 45%. Furthermore every year he had filled in his tax return, specifying that he was in receipt of both employment and pension income. The Complainant had been under the impression that the higher tax code was being applied to the totality of his income, including his pension. If what he had done was not sufficient and he was required to specifically request that his PAYE code in respect of the pension be reappraised, he should have been informed. The Ombudsman explained that in the norm the man in the street has no way of knowing what his responsibilities (and rights) in these matters are unless informed of the particular needs by the relevant Department.

RECOMMENDATION

In order to improve the service provided by the Department to the general public the Ombudsman recommended that the Department publishes a comprehensive guide to income

tax setting out every thing that the taxpayer needs to know with regard to personal income tax. With this recommendation the Ombudsman closed his report.

UPDATE

The Department informed the Ombudsman that a pamphlet containing basic information regarding the rates of Income Tax and the available allowances already existed and would be made available to the general public.

LAND PROPERTY SERVICES LTD (PAGES 90-92)

CASE NOT SUSTAINED

CS/552

COMPLAINT AGAINST LAND PROPERTY SERVICES FOR FAILING TO REPLY TO THE COMPLAINANT'S LETTER, AND FOR FAILING TO KEEP THE COMPLAINANT INFORMED

The Complainant felt aggrieved with Land Property Services (LPS) because he wrote to them on 14th October 2003, and by 12th February 2004 he had still not received a reply. The Complainant also felt aggrieved due to the fact that he had applied to purchase his Government flat, but LPS allegedly failed to keep him updated in respect of Government's delay in finalizing the leasing arrangements.

During November 1998 Government published a Government Notice to sitting tenants in multi occupied pre-war properties. It invited tenants to express an interest in purchasing their properties, although it further reserved the right not to proceed with any or all of the sales should it not be in its interest to do so. Two tenants from the Complainant's Housing estate (the 'Estate') declared an interest in purchasing their properties. At this stage the Complainant had not declared an interest.

On 13th February 2001 LPS received a letter from three more tenants from the Estate (including the Complainant) expressing their interest in purchasing their premises. A letter was sent to them on 7th March 2001 confirming that Government had decided to embark on a scheme to evaluate the proposed sale to sitting tenants in multiple occupations. They were informed that once this policy had been formulated they would be contacted.

On 6th June 2001 LPS received a new letter confirming that all the tenants in the Estate had now declared an interest in purchasing their properties. During this period the question of multi-let sales had been tabled before the Land Management Committee. Instructions were received to obtain legal advice on the documentation which could be used for the sale of this type of premises. At the same time, the formula to assess the purchase price was also being reviewed. Until then the price that had been offered was based on 60% of the open market value although a new formula was being considered.

On 3rd March 2003 a letter was sent to the Department of Trade, Industry & Telecommunication regarding the proposed sale to four sitting tenants. The prices, as mentioned above, had been assessed at 60% of the open market value.

By way of letter dated 24th April 2003, LPS was informed by the Department of Trade, Industry & Telecommunication that the new formula had been approved, which arrived at a premium based on 40% of the open market value, subject to the payment of a premium (a fixed sum based on the original premium) if the premises were reassigned during the initial 10 years of the term.

This matter was tabled by the Land Management Committee at a meeting held on 12th June 2003, and it was approved in July 2003. During August 2003 LPS offered the tenants the purchase of their flats. The replies were received between August and September 2003, and this revealed that one of the tenants from the Estate was no longer interested in purchasing his flat.

On 8th October 2003 LPS sent letters to all tenants confirming that not all of them were purchasing their properties. In view of issues relating to common responsibilities the matter was to be referred to Government for further instructions. By way of letter dated 10th October 2003, LPS also informed the Department of Trade, Industry & Telecommunication about one tenant's decision not to purchase his flat, additionally, they discussed access arrangements to a cave situated in one of the tenant's patios.

On 14th October 2003, the Complainant wrote to LPS expressing his concern at the length of time it was taking to conclude the purchase of his flat. He explained that a LPS Representative had inspected his flat (which was different to the others as it was completely detached), and informed him that his entitlement to purchase his property would not be jeopardised by other tenants declining to buy. The Complainant, therefore, could not understand why the matter was being referred to Government once again. LPS did not reply to his letter so he sent another on 10th December, which also remained unanswered, and then he sent a further chaser letter dated 11th February 2004.

By way of letter dated 29th March 2004, the Ombudsman wrote to LPS, explaining that the Complainant had made a complaint about LPS's failure to reply to his letters, and the length of time it was taking for him to purchase his property.

LPS replied on 6th April 2004, and provided a chronology of events. LPS also explained that although the Complainant's house was detached from the others, there were substantial common responsibilities which meant that it was advisable to deal with the properties together for leasing purposes. This would be even more so when one tenant was not willing to purchase his property. These common responsibilities included communal access to the premises incorporating parking facilities as well as sewage, water and electrical distribution. Access to the cave in question was through one of the tenant's patios, and this had been referred to the Land Management Committee for instructions, and was scheduled for discussion on 27th April 2004. They also explained that the dissenting tenant had once again expressed an interest in purchasing his house, so the documents had been drafted and were pending Government instructions in respect of access to the cave.

By way of letter dated 17th May 2004, the Ombudsman requested an update from LPS. The update was provided on 25th May 2004, where LPS explained Government would be requesting a right of access to the cave in question. This would now be referred to the Land Management Committee and the Gibraltar Council for approval.

On 28th May 2004, LPS contacted the tenants and informed them that the deeds to their properties would be ready the following week. Once the tenants (including the Complainant) received the draft deeds, they referred these to their lawyers. The tenant's lawyers made amendments to the draft, which LPS then referred to Government once again. LPS then gave themselves a time-limit for the completion of sale for October 2004.

The Ombudsman highlighted the fact that during June 2001 all tenants had declared an interest in purchasing their properties, however, although LPS continued discussions with Government bodies and interested parties, the matter was not tabled before the Department of Trade, Industry & Telecommunication until 21 months after they had written to the Complainant.

From March 2003 until September 2003 LPS liaised with various Government Departments, which was documented in the chronology of events provided by them. The Ombudsman noted that at the time the Complaint was lodged the Complainant had been engaged in trying to purchase the property for almost two and a half years.

The Complainant was further aggrieved when LPS failed to reply to his letter dated 14th October 2003, and his subsequent reminders. LPS wrote to the Ombudsman explaining that they had spoken with the Complainant (and other tenants) via telephone on various occasions, explaining that the matter was pending final instructions. The Ombudsman, however, pointed out that it was good administrative practice to give written replies to written inquiries.

The complaint to the Ombudsman concerned the non-reply to letters. Although LPS had not actually provided sufficient replies they had updated the Complainant whenever he contacted LPS.

The Ombudsman decided not to sustain the complaint on the grounds that updates had been provided when requested. However, he pointed out that for the avoidance of doubt, misunderstanding and concern, it is always desirable to provide written replies to those who themselves seek information by way of the written word, i.e. written replies to letters are always desirable.

Given that LPS are Government Agents and act upon the instructions of their principals, the Ombudsman could not point at LPS for the delay experienced in the sale of these properties. Nevertheless, he said that he would be making representations to the Chief Secretary highlighting the length of time that it had taken for this transaction to be completed.

In light of the fact that purchases of properties can represent the single greatest investment an individual may make (affecting his security and even stability), therefore the Ombudsman recommended that it was imperative that Government ensure these transactions are carried out as expeditiously as possible.

MASTER SERVICES LTD (PAGES 93-94)

CASE NOT SUSTAINED RECOMMENDATION MADE

CS/611

COMPLAINT AGAINST MASTER SERVICES LTD FOR CONTINUOUSLY WAKING THE COMPLAINANT WITH CLEANING MACHINERY DURING THE EARLY HOURS OF THE MORNING

The Complainant, who lived in a flat situated directly above Casemates Square (a leisure/entertainment area comprised mainly of bars and restaurants), felt aggrieved with Master Services Ltd ('Master Services' - a company subcontracted by the Government of Gibraltar for the cleansing of Casemates Square), because they would start operating their cleaning machinery at Casemates Square between 5:00am-6:00am, and this would wake him up and deprive him of his sleep.

Prior to Complaining to the Ombudsman, the Complainant had been involved in correspondence with Master Services and other entities, such as the Royal Gibraltar Police (the 'RGP') and the Environmental Agency. The Complainant had sent these Departments' short, hand-written notes during March 2002 and June 2003, explaining his grievance and requesting that they assist him in preventing Master Services from continuing to operate the cleaning machinery between 5:00am-6:00am.

Master Services replied to the Complainant by way of letter dated 7th July 2003, where it was explained that Master Services worked, "*...a very tight schedule and to meet our targets we have to commence work rather early. Initially we started work at 5:00am, but [so] as not to inconvenience neighbours unduly, we are making the later start of 6:00am... [We] regret that we cannot clean the Square to the standards required if we delay the commencement hour any further*".

The Complainant had been under the impression that the bars/restaurants at Casemates could only start taking out their tables and chairs as from 10:00am, which meant that Master Services could have started cleaning the area at around 6:30am or 7:00am. It transpired, however, that there was a rotating system for the cleaning of these areas, and most bars/restaurants started setting out their tables and chairs at around 8:00am or 8:30am, and this required that the area be cleaned before then.

The Complainant also argued that the Environmental Agency's cleaning standards were unnecessarily rigid. He believed that too much time was spent on the cleaning of Casemates, and this was part of the reason why the cleaning had to commence at such an early time.

The Environmental Agency, however, explained that the cobbled stone that had been used at Casemates was of a particular type of material which stained extremely quickly and easily. It was essential, therefore, that vigorous cleansing of the area be carried out on a daily basis, in order to adequately protect the cobbled stones from deterioration.

By way of letter dated 15th January 2004, the RGP confirmed that, "*under the premises' lease, time of placing of tables and chairs as per the Schedule, these should not be placed until 1000hrs, which would allow Master Services to start cleaning at 8 am rather than later*". The Complainant, however, was well aware that Master Services did not start cleaning Casemates at 8:00am.

The Ombudsman wrote to Land Property Services ('LPS') on 5th March 2004, requesting their views on the apparent breach of the said lease. By way of letter dated 17th March 2004 LPS wrote back to the Ombudsman stating, "*I can confirm however that tables and chairs are not placed in the square by the restaurants until 10.00hrs. Master Services usually commence their cleaning between 07.30hrs and 08.00hrs, but are unable to start any later due to them being required to complete the cleaning before 10.00hrs when restaurants begin to open their doors*".

The Ombudsman pointed out that if the cleaning of Casemates had been taking place between 7:30am-8:00am the Complainant would not have complained, as this was the time he wanted Master Services to start cleaning the square. The Ombudsman himself had visited Casemates and noted that the tables and chairs were sometimes already placed by 8:00am, and others were set up before 10:00am.

The Ombudsman met with Master Services in order to ascertain at exactly what time they needed to start cleaning Casemates. He was informed that the vigorous cleansing programme could not be initiated any later than between 5:30am and 6:00am. Master Services explained to the Ombudsman that the cobbled stones making up Casemates Square were made of a material which required daily cleansing so as to avoid staining, and he accepted that Master Services had no alternative other than starting to clean Casemates Square as from either 5:30am or 6:00am the earliest in order to meet their contractual arrangements.

The Ombudsman felt it was necessary to highlight the fact that the Complainant had been sent on a 'wild goose chase'. He had been originally informed by Master Services that they could not start cleaning Casemates Square any later than 6:00am, then, the RGP wrote to him stating that Master Services should start cleaning at around 8:00am, however, the Environmental Agency also wrote, explaining that cleaning usually commenced between 7:30am-8:00am.

Master Services, it had been accepted, could not start cleaning Casemates any later than 5:30am or 6:00am. The Ombudsman did not find any maladministration in Master Service's actions, but pointed out that the Complainant's predicament was most unfair. He recommended that Government take action to limit the nuisance caused by Master Service's cleaning machinery, for example by offering to install double glazed windows in the flats at Casemates Square. The complaint was not sustained, but the Ombudsman expressed his concern at the Complainant's predicament.

RECOMMENDATION

The Ombudsman recommended that Government take action to limit the nuisance caused by Master Service's cleaning machinery, for example by offering to install double glazed windows in the flats at Casemates Square.

REPORTING OFFICE (PAGE 95-106)

CASE NOT SUSTAINED

CS/567

COMPLAINT AGAINST THE REPORTING OFFICE (MINISTRY FOR HOUSING) FOR FAILING TO CATEGORISE A REPORT AS AN EMERGENCY

The Complainant suffered from an Obsessive Compulsive Disorder Syndrome, which meant she was reluctant to deal with most members of the public, and spent most of her time at home taking care of her mentally disabled daughter.

The Complainant, a Government tenant, had a water leak by her kitchen sink. She contacted her friend (the 'Representative') and a neighbour, who then reported the matter at the Reporting Office (the 'Office'). The matter had been on-going for a couple of days, so the Representative, believing that the works should be treated as an 'emergency', phoned the Office and inquired as to when the works would be tackled. The Office explained that the works could not be categorised as an emergency, so the Complainant would have to wait her turn on the normal waiting list.

The Complainant felt aggrieved with the Department because she believed that her case warranted being categorised as an emergency. She had to put her alarm on every few hours (day and night) so as to empty a bucket collecting water from the leak. Additionally, the Complainant was worried because sometimes she would forget to change the bucket and it would overflow, thus flooding her kitchen floor. As a result of this, the Complainant was worried that her downstairs neighbour's flat would suffer from water penetration/ingress. The Complainant's neighbour (another Government tenant) was in UK at the time, so there was no way of establishing whether or not her flat was being affected as a result. However, the Ombudsman was unable to ascertain whether or not the Complainant had explained this problem to the Office.

The Representative contacted the Ombudsman and informed him of the situation. The Ombudsman phoned the emergency number expressing his concern about the Complainant's neighbour's flat, which was potentially being flooded. The personnel there then decided to send a worker right away. The Complainant's kitchen leak was then tackled and resolved to the satisfaction of the Complainant.

The Ombudsman knew that the Office had been sent an internal memorandum from the Buildings & Works Department, which explained which works could be classified as an emergency; a kitchen leak, as reported at the Office, could not be classified as an emergency.

The Ombudsman decided not to sustain this Complaint as the Department had followed the correct procedure, which did not allow the leak to be classified as an emergency. The Ombudsman highlighted the fact that he had not been able to ascertain whether the Complainant had, in fact, informed the Office about the potential danger to her neighbour's flat. Thus the Office could not have classified the works as an 'emergency'.

In light of the above, the Ombudsman did not sustain this complaint, and with these words he closed the case.

ROYAL GIBRALTAR POLICE (PAGES 96-98)

CASE NOT SUSTAINED

CS/501

COMPLAINT AGAINST THE RGP AND THE CHIEF SECRETARY FOR FAILING TO ADDRESS THE NOISE POLLUTION AT CASEMATES SQUARE

The Complainant felt aggrieved because during weekends the Casemates bars/restaurants would allegedly not close their entrance doors after midnight. This meant that a lot of noise emanated from the bars, and this constituted a nuisance for the Complainant, who lived in the Casemates area.

The Complainant had written to the Attorney General on 17th November 2002, and to the Minister for Trade, Industry and Telecommunications, on 7th December 2002, but he never received any replies.

The Complainant approached the Office of the Ombudsman, who referred the Complainant to Land Property Services (LPS). The Complainant wrote to LPS, setting out his grievance, on 30th January 2003.

By way of letter dated 3rd April 2003, LPS replied to the Complainant, explaining that LPS dealt with the leasing arrangements of the premises, and this did not regulate the closing times nor the level of noise which may emanate from the premises. They referred the Complainant to the Licensing Authority (Ministry for Trade & Industry), who regulated the opening hours; LPS also referred the Complainant to the Environmental Agency, who were responsible for noise pollution, and also highlighted the fact that the RGP was the authority responsible for ensuring that licensing laws were complied with.

The Complainant had already written to the RGP on 20th March 2003, but had not received a reply, so he sent a reminder letter on 11th April 2003. By way of letter dated 8th September 2003, the RGP replied to the Complainant, apologising for the delay in replying to his letters.

The RGP made reference to the Police Officer from the Community Policing Unit (which is based at Casemates during weekend nights), who had been liaising with the Complainant over the previous months, and trying to resolve the problem. The RGP assured the Complainant that the, *'...issues are being addressed and officers on duty at Casemates will react accordingly'*. The RGP also informed the Complainant that, *'although the RGP will enforce any breach of law, matters of noise pollution should be directed to the Environmental Agency, for them to collate and act accordingly'*.

The Complainant explained to the Ombudsman that the noise levels at Casemates would be tolerable if the RGP ensured that the Casemates bars/restaurants closed their doors after midnight. This was all that the Complainant wanted as he accepted that Casemates was a leisure area which would produce some noise during weekends.

The legislation in question was the Leisure Areas (Licensing) Ordinance 2001, the pertinent sections are reproduced below,

Section 2 (1) (a) *'music shall only be played in a manner that constitutes moderate background music as audible outside the premises'*

Section 2 (1) (b) 'no music shall be played in any relevant establishment in a manner which constitutes a nuisance to nearby residents after 12:00 am'

Additionally, the Ombudsman pointed out, the License Agreement between Government and the Casemates bars/restaurants made particular provisions for sound-insulation systems to be installed in the Casemates bars/restaurants. The Ombudsman drew attention to the fact that the bar/restaurant most often complained about had sound proofing on its windows and doors. The fact that the doors were kept open by the establishment meant that the sound-insulation system was highly ineffective.

The Ombudsman had liaised with the Office of the Chief Secretary as from November 2003, who provided him with copies of correspondence between the Chief Secretary and the RGP, highlighting all the complaints lodged by Casemates residents. The Chief Secretary also provided copies of correspondence, which pointed out that all complaints received by the RGP had been sufficient to have the doors closed or music lowered to the comfort of the residents in the Casemates area.

Notwithstanding the above, the Complainant insisted that the RGP did not always action the complaints that he lodged. On occasions the RGP would only ask the relevant establishment to close its doors over half an hour after complaining. On other occasions the establishment would close its doors, but re-open then at around 1:30 am or later, once the RGP Policing Unit had left the Casemates area.

The Ombudsman felt it necessary to draw attention to the fact that it did not appear that any one Government Department or Agency had absolute control over the Casemates area. Casemates appeared to be run and supervised as a result of the concerted efforts of the RGP, LPS and the Office of the Chief Secretary.

Despite the above the Complainant had not had his grievance resolved to his satisfaction. Although the RGP did record most if not all complaints made by the Casemates residents, it did not appear that their subsequent actions were always satisfactory to the Complainant.

The Ombudsman did not find any concrete evidence of maladministration, although there had been some delays in respect of replies to the Complainant's letters. The Complainant's letters were, however, replied to (with apologies for the delay), and attempts to furnish the Complainant with all relevant information were made by the aforementioned public bodies.

The Ombudsman explained that the Leisure Areas (Regulations) Ordinance 2001 intended for noise levels at Casemates to be purely of a background level of noise as from midnight. This was supposed to be complemented by the soundproofing, which was a prerequisite for a license at the Casemates area. The fact that some bars/restaurants kept their doors open appeared to be frustrating the intention of the said legislation.

In light of Government's intention, the Ombudsman recommended that the RGP ensure that during weekends all Casemates bars/restaurants kept their doors shut as from midnight. This would ensure that the soundproofing systems in the bars/restaurants fulfilled their function.

CASE SUSTAINED

CS/578

COMPLAINT AGAINST THE ROYAL GIBRALTAR POLICE FOR NOT GIVING HER AN EXPLANATION AS TO WHY HER CLAIM FOR DAMAGES AGAINST THE PERSON IN WHOSE POSSESSION HER STOLEN MOTORCYCLE WAS FOUND WAS NOT PRESENTED TO THE MAGISTRATE'S COURT BY THE PROSECUTION

On 8 March 2003 the Complainant's motorcycle was stolen. When it was found by the police it had suffered substantial damage. A prosecution was brought against the person in whose possession the vehicle was found ('the accused') and the Complainant was advised by the Royal Gibraltar Police to obtain an estimate of the repairs required so as to submit the claim as part of the prosecution.

The accused pleaded guilty in court and the Complainant was allegedly advised by the police to go to the court to obtain the money due to her. At the court the Complainant was informed that the accused had only received a fine and that her claim for compensation had never been submitted to the court.

By letter dated 15 July 2003, she complained to the police that her claim was never submitted to the court and as a result she had lost out on her claim.

By letter dated 25 May 2004 she complained to the Ombudsman that to date she had not received an explanation from the police as to why her claim for damages was not presented to the court.

In response to the Ombudsman's enquiries the police explained that the person in whose possession the motorcycle was found was charged on 7 April 2003 for theft, taking a conveyance without the owner's consent and for using a motorcycle without insurance. On 7 May 2003 however, the charge of theft was withdrawn as there was insufficient evidence to prove that the accused had actually stolen the vehicle. Claims for compensation can only be brought upon the person who has caused the damage and there was no evidence to suggest that the accused was the one who caused the damage.

The Ombudsman accepted the explanations given to him by the police but he pointed out that had the RGP given these explanations directly to the Complainant when she first wrote to them, there would have been no need for her to seek his intervention.

The Ombudsman sustained the complaint in full pointing out that as with any other Government department or agency, the RGP had a duty to reply and to give substantive replies to incoming correspondence, where doing so would not prejudice any investigation.

SOCIAL SERVICES AGENCY (PAGES 99-100)

CASE NOT SUSTAINED

CS/547

COMPLAINT AGAINST THE SOCIAL SERVICES AGENCY FOR ITS FAILURE TO PROVIDE THE COMPLAINANT WITH AN EXPLANATION FOR ITS ACTIONS

On 17 May 2003 the Social Services Agency ('the SSA') advertised a vacancy for permanent and supply care workers. The Complainant applied for the post and on 17 June 2003, she allegedly received a call from the SSA informing her that her application had been successful and that she would be given a permanent position. She was given the address of a flat in which some of the children under the care of the SSA and whom she would be looking after lived, and was told to be there by midday the following day in order to receive instructions and commence work the following Monday.

The Complainant did as she was told but to her bewilderment when she met her superior the following day she was allegedly told not to return to work but to ring the SSA instead.

Repeated attempts to contact the SSA proved to be fruitless until she was eventually told that she had been employed on a supply basis as opposed to a permanent basis as was her belief.

She complained to the Ombudsman about her treatment by the SSA in general and in particular about how she was never given an explanation as to why she was employed as a supply worker after she had been told that she would be a permanent worker.

In response to the Complainant's accusations the SSA stated that the Complainant was never informed that she would be appointed on a permanent basis. The SSA explained that all new staff are employed on a supply basis. This is the current policy and was also the case in this instance. All supply staff are called as and when required. There are instances when a supply worker may be required to work over a prolonged period to cover for a staff member who may be away from work.

The SSA further explained that the Complainant was not seen by the Chief Executive Officer because he does not deal with matters that are best dealt with at manager level. The SSA guaranteed however that it would seek clarification from the above mentioned superior.

The Ombudsman sought the Complainant's response to the SSA's version of events but she failed to show an interest in doing so. The Ombudsman did not sustain the complaint citing the Complainant's lack of interest as a reason.

CASE SUSTAINED

CS/574

COMPLAINT AGAINST THE SOCIAL SERVICES AGENCY FOR ITS FAILURE TO DEAL WITH THE COMPLAINTS OF LOCAL RESIDENTS

The Complainant was the private owner of a flat in an apartment block ('the block or the apartment block/s'). Sometime in mid to late 2002 the Social Services Agency ('the SSA') were forced to house several mentally disabled young people in apartments owned by Government in the apartment block.

On 15 November 2002, members of the management company responsible for the block ('the Management Company') wrote to the Chief Minister pointing out that they were all paying heavy mortgages, rates and maintenance fees and did so in order to provide themselves with a higher than average quality of life. They went on to complain inter alia that the disabled people who were currently being housed in the Government owned apartments made a lot of noise that was "*unbearable and spontaneous at any hour of the day or night.*" Eight months later, by letter dated 14 July 2003, the Management Company wrote to the SSA again complaining about the unacceptable noise levels emanating from the Government owned flats. The following is an excerpt from that letter:

"The attention of flat No 7 had recently to be called when music was being played at unacceptably high levels, and a couple of weeks ago a -- youth ---- proceeded to lower his trousers in full view. --- Of particular concern is the inmate of flat 15, who appears to suffer from violent fits. He screams and bangs furniture etc. being the cause of great concern for the residents of the flats immediately above, both of which include very young children. They are naturally frightened and disturbed with this unusual behaviour."

By mid-2003 all of the young people had been moved out except for the occupier of flat 15. At a meeting between the Management Company and the Minister for Social Affairs held on 28 October 2003, the Minister committed herself to doing her best to vacate the said flat as soon as possible. She pointed out that whether or not she would be able to do so depended on the "*contractor's availability in carrying out the works that are required to move the service user into his new home.*"

On 11 February 2004 the Management Company wrote once again to the Chief Minister pointing out that since all of the glass had been removed from flat 15 and been replaced with Perspex it appeared that the occupier of flat 15 was there to stay. They went on to complain that since their meeting with the Minister the previous October, the behaviour of the individual concerned had sadly deteriorated. His sudden attacks were more frequent and the shouting and screaming were causing undue and unwarranted trauma to at least three families above and adjacent to the flat.

On 11 April 2004 one of the Complainant's neighbours wrote yet another letter to the Chief Minister complaining that her children were very often woken up in the early hours by this person's shouting and screaming.

On 22 April 2004, the Complainant lodged her complaint with the Ombudsman. In response to the Ombudsman's enquiries the SSA informed him that they were temporarily using two flats in the block. They confirmed that it was planned to move the two service users to other locations although they could not commit themselves to a timescale. On 7 July 2004 however, the Minister for Social & Civic Affairs confirmed to the Ombudsman that there was a strong possibility that the young person concerned would be moved out very shortly. The Ombudsman pointed out that however unfortunate the plight of these individuals was, they had been originally housed in the apartment block on a temporary basis. Nearly two years had passed since then and they were still there. The Ombudsman stressed that this complaint was **only** about the excessive noise made by the individuals concerned and not against the individuals themselves. The Ombudsman went on to say that the SSA seemed to be ignoring the fact that the residents were paying very high mortgages and that they did so in order to improve their families' quality of life. Two years were far too long he said.

The Ombudsman expressed the view that a flat in a private estate was hardly the most appropriate place to house mentally disabled individuals. He sustained the complaint in full pointing out that the SSA was failing to take this into account. The Ombudsman hoped that the SSA do its utmost to move the individual concerned to a more appropriate environment as soon as possible.

DEPARTMENT OF SOCIAL SECURITY (PAGES 101-110)

CASE NOT SUSTAINED RECOMMENDATION MADE

CS/498

COMPLAINT AGAINST THE DEPARTMENT OF SOCIAL SECURITY FOR FAILING TO DISCHARGE ITS DUTIES TOWARDS MEMBERS OF THE PUBLIC IN NEED OF ITS SERVICES

The Complainant alleged that the Department of Social Security (the DSS) had failed in its duty to her as a social insurance contributor and to others like her by not having information readily available.

BACKGROUND

The Complainant's son was diagnosed as being mentally impaired at the age of 4. At the time of writing he was 15 years old, he was in Bayside Comprehensive School but still going to St Martins School for extra help.

In late 2002 the Complainant heard that there was such a thing as Disability Allowance. She applied for it on behalf of her son and her application was accepted. She was awarded the allowance together with arrears of six months from the date of application.

The Complainant was aggrieved at the fact that her son had been eligible to receive the allowance from when he was first diagnosed as having a disability but she had never applied for it because it had never even occurred to her to assume that her young son could be possibly entitled to some sort of financial social benefit. She expressed to the Ombudsman anger at the fact that the DSS did nothing to bring their services to the attention of those who were most in need.

The Ombudsman's enquiry dealt with the following question. Does the DSS have the duty to make the public aware of the range of benefits available to them or is the policy that it currently espouses the proper one? This question has been considered by the Ombudsman in a variety of cases in all of which the Complainants were aggrieved at the fact that he or she had either not claimed money they were entitled to or in the case of married women, that they had been paying the reduced Married Women's Election not knowing and never having been told that they would not be eligible to receive an old age pension in their own right on reaching state retirement age.

The position of the DSS regarding this question was dealt with comprehensively by the Ombudsman in an enquiry carried out during the course of 2002 (C/S 417).

C/S 417 - THE FACTS

The Complainants were two Spanish frontier workers who had been employed in Gibraltar since mid-1996. On 19 March 1997, a daughter was born to one of the Complainants and on 30 January 2000, a son was born to the other. Pursuant to European Union Social Security regulations, they went to the DSS on 20 March 1997 and 31 March 2000 respectively to fill in the E106 form in which they registered the details of their newborn children. The Complainants did not know that they were entitled to apply for a maternity grant and when they visited the DSS to fill in the form they were not informed that they had such a right. As a result of this lack of information they lost the money to which they were entitled.

In that case the Principal Secretary Social Affairs wrote to the Ombudsman as follows:

“First of all, I should point out that although the "contributions" and "benefits" sections of the Department of Social Security are housed under the same roof, and there is obviously some interaction between each other, it does not necessarily mean that the "contributions" staff dealing with E 106 forms are fully familiar with our wide range of benefits", some of which are quite complex and outside the ambit of their responsibility. As you are aware we have several public counters within the department that deal with the different types of benefit and contributions related matters. In these circumstances, one cannot expect an individual counter clerk to be able to give detailed advice on every aspect of social security.

As you rightly say we have no duty to contact people to inform them of their entitlement. However, we do have on public display copies of a very comprehensive insured persons' guide to social insurance which is available free of charge to contributors and members of the public. One would reasonably expect that any worker who starts paying social insurance and taxes in a foreign country would make the pertinent enquiries about his rights and privileges in that country.”

(Ombudsman’s observation: *at the time in question there was and at the time of writing there still is no guide to social insurance in Spanish.*

The essence of the policy is contained in the last sentence of the letter. *“One would reasonable expect that any worker who starts paying social insurance and taxes in a foreign country would make the pertinent enquiries about his rights and privileges in that country”*. This is the response of the DSS to complaints made by married women paying the reduced contribution and to disabled people who never applied for disability allowance for not knowing that such an allowance existed.

In C/S 417, the Ombudsman contacted the Local Government Ombudsman in the UK and asked her what was the practice in local authorities with a large ethnic minority population as regards the dissemination of explanatory literature. The Local Government Ombudsman answered as follows:

“---both government departments and local authorities in areas of the UK which have sizeable ethnic minority communities, try to make a large part of their information available in minority languages. For example, the Department for Work and Pensions make most of their commonly requested leaflets available in nine other languages. This is thought to be good practice and a way of trying to make sure that all citizens have a way of finding out more about the services available to them”.

The Ombudsman contrasted this policy to the philosophy of our own DSS and noted that his recommendation in C/S 417 made in December 2002, i.e. that the existing guide to social insurance be made available in Spanish and Arabic, had not yet been accepted.

In *Associated Provincial Picture Houses LTD. v Wednesbury Corporation [1947] 2AER 680* the Court of Appeal considered the question of whether and if so when, the courts can review the exercise of a discretion by a local authority. In that case Lord Greene M. R. said as follows:

“When an executive decision is entrusted by Parliament to a local authority, what purports to be an exercise of that discretion can only be challenged in the courts in a very limited class of case.”

Lord Greene went on to rule that:

“--- the court is entitled to investigate the action of the local authority with a view to seeing whether it has taken into account matters which it ought to take into account or conversely, has refused to take into account matters which it ought to take into account. Once that question is answered in favour of the local authority, it may still be possible to say that the local authority, nevertheless have come to a conclusion so unreasonable that no reasonable authority could ever have come to it.”

For the purposes of this report, the Ombudsman substituted the words ‘local authority’ in Lord Greene’s judgement, with ‘DSS’. The DSS has been entrusted by the legislature with administering our social security system and it has to do so in the best and the fairest possible way. Part and parcel of the process of administration is to ensure that there is literature readily available describing the range of benefits it provides and what class of persons is entitled to them. As regards the latter the DSS have refused to exercise their discretion, the argument being that it is up to the general public to go to the DSS counters and make the appropriate enquiries. The question that the Ombudsman asked himself was ‘was this decision so unreasonable that no reasonable authority could ever have come to it?’

The Ombudsman placed himself in the shoes of the average man or woman. Such a person has no way of getting to know about his or her rights and benefits other than by word of mouth. As such, people only hear about the most commonly known benefits, old age pension, unemployment benefit, social assistance and suchlike. Disability allowance is only claimed by the disabled who might or might not readily talk about their financial affairs and in any case not everybody knows a disabled person who might be in receipt of disability allowance. Since this is the situation and judging from information gleaned from other jurisdictions the Ombudsman was of the opinion that a reasonable authority would do much more than the DSS was doing in order to acquaint people with their rights.

The Ombudsman pointed out that the current policy of the DSS was the root cause of much unfairness and steps should be taken to remedy the situation. With a view to achieving the above the Ombudsman recommended that explanatory pamphlets describing all of the benefits and allowances provided by the DSS should be placed prominently in locations frequented by people who are most in need of their services. The Ombudsman cited the Social Services Agency, the Primary Care Centre, St Bernadette’s Occupational Therapy Centre, St Martin’s School & the Maternity Ward at St Bernard’s Hospital by way of example. The DSS appeared to agree to this recommendation but cited it as being a problem of resources.

As regards the Complainant’s very special circumstances, the Ombudsman said that he would be writing to the Chief Secretary with the view of obtaining an extended back payment. With these words the Ombudsman closed the report.

CASE NOT SUSTAINED

CS/510

COMPLAINT AGAINST THE DEPARTMENT OF SOCIAL SECURITY OVER THEIR DELAY IN REPLYING TO THE COMPLAINANT’S LETTER

The Complainant felt aggrieved because despite writing to the Department of Social Security (DSS) on 28th October 2003 and 17th November 2003, at the time of complaining to the Ombudsman he had still not received a reply.

The Complainant suffers from paraplegia and had only been able to work under fifteen hours a week since 1999. Additionally, the Complainant had been informed by family and friends

that persons with disabilities should not pay the full social security stamp, however, the Complainant had always paid the full social security contribution. The Complainant informed the DSS of the above by way of the said letter dated 28th October 2003. The letter also requested assistance and advice on ensuring that he would have an adequate pension.

The Complainant did not receive a reply, so he sent the said reminder letter dated 17th November 2003. At the time of complaining the Complainant had not yet received a reply to his letters, so the Ombudsman wrote to the DSS requesting that they reply to the Complainant, with a copy to be sent to his Office. The DSS subsequently sent the Complainant a holding letter dated 11th December 2003.

The Ombudsman wrote to the DSS on 8th January 2004, explaining that he had still not received an update on the case, and he requested a prompt reply from the DSS.

The DSS replied to the Ombudsman by way of letter dated 21st January 2004, explaining that the Department had issued the Complainant with an application for credits under regulation 11 (6) of the Social Insurance (Contributions) Regulations. On the return of the completed form they would be, *'processing his application promptly and liaise, if necessary, with his present employer'*.

The Ombudsman felt that the Department had fulfilled their obligations by providing the Complainant with an application for credits. However, he was concerned about the fact that they only appeared to have done so once the Ombudsman had brought the complaint to their attention.

The Complainant had not received any reply, or acknowledgement, to his letters until the Ombudsman's involvement, and this was a source of concern. Nevertheless, the Ombudsman noted that the DSS quickly resolved the complaint once it was brought to their attention and for this reason he did not sustain this complaint.

CASE NOT SUSTAINED

CS/542

COMPLAINT AGAINST THE DEPARTMENT OF SOCIAL SECURITY OVER THE LOW OLD AGE PENSION RATE RECEIVED BY THE COMPLAINANT

The Complainant was a frontier worker who had been employed in Gibraltar between the years 1978 and 1996. During these 18 years he claimed to have paid all of his Social Insurance contributions without failure. On his retirement he was assessed as being eligible to an old age pension of £91.35 per month on his own behalf and £45.70 per month on behalf of his wife.

The Complainant was extremely disappointed at the low pension rate and he complained to the Ombudsman that he had friends who had worked for less time and were getting a higher rate of pension than he was. He also complained that the Spanish Ministerio de Trabajo y Asuntos Sociales in Cadiz had written to the DSS on at least three occasions requesting information on his pension but that they had yet to receive a reply.

The DSS explained to the Ombudsman that under current legislation a man is entitled to an old age pension on attaining 65 years of age provided that he satisfies certain contribution conditions. In order to obtain a full pension a total of 2500 social insurance contributions must have been paid by the insured throughout his working life (the ages of 20 to 65 years). Where there are less than 2500 contributions, the pension entitlement is calculated on a yearly average basis.

The following are the yearly contributions made by the Complainant in Gibraltar until his retirement on 11 August 1996.

<i>Year</i>	<i>Contributions</i>	<i>Year</i>	<i>Contributions</i>	<i>Year</i>	<i>Contributions</i>	<i>Year</i>	<i>Contributions</i>
1978	41	1983	52	1988	52	1993	51
1979	44	1984	53	1989	49	1994	52
1980	47	1985	52	1990	53	1995	52
1981	50	1986	52	1991	52	1996	30
1982	52	1987	51	1992	52		
Total Number of contributions: 885							

The DSS explained that the Complainant had made a total of 885 contributions in Gibraltar during his working life. Unfortunately the pension rates in Gibraltar were very low and according to the current rates, the Complainant was only entitled to £91.35 per month.

The DSS further explained that in cases where the insured has paid contributions in European Union countries other than Gibraltar, the pension entitlement is also calculated using the formula set out in the relevant EU regulation, taking the totality of the insured's contributions in all member states into account. In such a case the pension entitlement will be the highest of the two calculations (i.e. the Gibraltar calculation and the EU calculation). In the case in question, the Complainant had also made contributions in Spain and in Germany however, since the calculation that only took the Gibraltar payments into account was higher than the EU calculation, this was the one he was getting. The Ombudsman added that the Spanish ministry had requested information regarding the Complainant's pension and the requested information had already been provided.

The Ombudsman pointed out that after having gone over the Complainant's DSS file he was satisfied that he was getting what was due to him. The Ombudsman was also of the opinion that the pension rate in Gibraltar was very low, but, he said, that was not a matter for the Ombudsman. The Ombudsman concluded that there had been no maladministration and he closed the report.

CASE NOT SUSTAINED

CS/551

COMPLAINT AGAINST THE DEPARTMENT OF SOCIAL SECURITY OVER THE DELAY IN PROCESSING HER APPLICATION FOR MINIMUM INCOME GUARANTEE

The Complainant who was a sixty-one-year-old pensioner felt aggrieved by the Department of Social Security ("the Department") over the delay in processing her application in respect of Social Assistance by way of the Minimum Income Guarantee.

The Complainant explained to the Ombudsman that she was in financial difficulties after being in receipt of a UK Pension of £135p/m, a Gibraltar Pension of £44p/m and the Gibraltar Community Care (£400 every quarter). After waiting nearly a month for the application to be processed and still without any news on the matter she decided to contact the Department where she claimed she was told that her application was being processed and it would take the time it normally takes with all other applications. The Complainant was discontented and she highlighted to the Ombudsman that the shallow reply, together with the delay, was the main factor for her to resort to his office.

The Ombudsman initiated his enquiries by writing to the Department. He was concerned that the Complainant had heard nothing further from them and questioned the Department on what was the latest situation regarding her application.

The Department explained that there was a lot of administrative work involved when dealing with these kind of applications, as in order to be eligible to get these payments there were certain conditions that had to be satisfied before any payments were made, these included :-

1. The applicant had to live alone, or with another elderly person
2. The annual income (interest) earned from savings in excess of £10,000 is included in any calculation of the applicant's overall income.
3. All income or potential income from all sources had to be taken into account when calculating eligibility to benefit.

The Department concluded by saying that to obtain this information the Department relied on other departments to pass on the relevant information and obviously this procedure took time. They assured that immediately the Department had the feedback on the necessary information, the Complainant would be notified of the outcome.

The Ombudsman was satisfied with the Department's duty in ensuring that applicants met the criteria set out for the receipt of the benefit but highlighted the fact that if a person had applied for this benefit it was essentially because such a person would have an income below of that which Government considered to be the minimum income that a person should be in receipt of. It followed that such a person would be in immediate need of assistance.

The Ombudsman also highlighted that the needs of the person seeking assistance should be proportionally balanced against the administrative action in deciding eligibility. The apparently lengthy and/or laborious process described under the conditions set out in the criteria did not lend itself in providing prompt assistance to those who might need it. Given the above, the Ombudsman suggested that the administrative process should take a maximum of ten working days. Alternatively, at the time of accepting the application for process, the claimant should be given a definite date by when the application would have been assessed and a decision as to eligibility taken; something which, the Ombudsman pointed out was nonexistent in this case.

The Department wrote to the Ombudsman and guaranteed that their policy was to deal with applications expeditiously. They assured the Ombudsman that the interest of their claimants was paramount and every effort was being made to ensure that beneficiaries received the best services at all times. The Department claimed that there are some instances, in which they are able to compile the necessary information within a week of application, and payments are effected forthwith; on the other hand, there are cases of a more complex nature where it is of a vital importance that the process of verification is carried through.

During their investigation, the Department were able to ascertain that the Complainant was in receipt of a UK Pension of £202.75p/m and not the initial £135p/m declared by the Complainant. By applying the current procedure in investigating cases in depth the Department ensured that claimants were getting the correct amount thus preventing overpayments which would be then almost impossible to recover. The Ombudsman highlighted that this case was a prime example of the Department's need to investigate the application thoroughly.

It should be noted that once the claim was approved by the Department it was paid from the date of application, and if eligible, the claimant would receive six months in arrears from date

of application. Given the above and considering the Department's policy in dealing with applications thoroughly and as expeditiously as possible, the Ombudsman considered, that although the ideal administrative process would be a maximum of ten working days, the Department was acting in the correct manner on this case. With these words he closed the case.

UPDATE

By letter dated 7 April 2004 the Complainant was informed that her application for Minimum Income Guarantee had been approved at the rate of £11.05 per month. The Department pointed out that as she commenced employment on 5 April 2004 there was a one off payment made to her of £32.35 which covered the period 7th January 2004 to 4th April 2004.

CASE NOT SUSTAINED

CS/558

COMPLAINT AGAINST THE DEPARTMENT OF SOCIAL SECURITY OVER THEIR REFUSAL TO GRANT THE COMPLAINANT A GOVERNMENT PENSION

The Complainant felt aggrieved with the Department of Social Security (the 'Department') because when he applied for his Government Pension, he was informed that he was 28 Social Security Stamps short from being entitled to it. The Complainant requested that he be allowed to pay the difference in the value of the stamps so as to satisfy the criteria and be entitled to a pension. Although the matter was referred to the Director of the Department, it was decided that he should not be allowed to pay the value of the outstanding stamps in order to receive the said pension.

Before seeking the Ombudsman's assistance, the Complainant liaised with the Moroccan Association and the Trade & General Worker's Union and, although they made representations to the Department on his behalf, this did not change the Department's position.

The Ombudsman noted that the Complainant had been statutorily barred from making voluntary contributions towards his pension, as per the Voluntary Contributions – Social Security (Insurance) Ordinance. The reason for this was that one of the prerequisites for a person to be able pay for outstanding Social Security Stamps, was that he/she apply to make the voluntary contributions within twelve months after the contribution week during which they were last engaged in employment. The Complainant had not been in any form of employment for around two years subsequent to his last employment.

Events were superseded, however, when the Ombudsman realised that there was a discrepancy between the Complainant's alleged date of birth, and the Department's records. The Complainant had been under the false impression that his date of birth was 1938, which would have made him 66 years old, however, the Department's records stated the Complainant's birth was in the year 1941, which made him 63 years old.

The Ombudsman asked the Department for an explanation, as he could not understand how some of the Complainant's documents (such as his marriage certificate) stated his birth was in 1938, whilst others (for example his ID Card) documented the date as 1941. The Department explained that on many occasions Moroccans did not know their date of birth, this was usually a big problem as sometimes various documents showed conflicting dates. The date of birth, as far as Gibraltar was concerned, was the date documented at the Civil Status & Registration Office, and in the Department's own Social Security records. The Department

insisted that the Complainant was only 63 years old, and was therefore not entitled to a pension until he reached the age of 65.

The Ombudsman informed the Complainant of the situation. He advised him to seek normal employment until he had paid the outstanding 28 Social Security Stamps, he would then be entitled to apply for a Government pension on attaining 65 years.

The Ombudsman was satisfied with the Department which had, albeit inadvertently, assisted in resolving the Complainant's complaint. He noted that the Department was not guilty of maladministration, as they had been applying the law correctly. The fact that the Complainant was confused as to his date of birth was not the Department's fault, and with these words the Ombudsman closed the case.

CASE NOT SUSTAINED

CS/571

COMPLAINT AGAINST THE DEPARTMENT OF SOCIAL SECURITY OVER THEIR REFUSAL TO GRANT THE COMPLAINANT A GOVERNMENT PENSION

The Complainant was unable to work on medical grounds. On 17 September 2003 he went to the Department of Social Security ('the DSS') and applied for social assistance but over seven months later, on 29 April 2003, he complained to the Ombudsman that whenever he enquired about the status of his application she was always told that his application was still being considered.

On 12 May 2004, the DSS informed the Ombudsman that the Complainant's application was not approved when he first applied in September 2003, as he did not satisfy the rules of eligibility under the present administrative arrangements for the payment of social assistance. However, having regard to his medical condition he was advised that his case would be monitored and reviewed periodically to determine whether special provisions could be made for exceptional payments of benefit. On 28 June 2004, the Ombudsman was informed that a decision had been taken to 'exceptionally' approve the payment of social assistance to the Complainant, subject to quarterly reviews.

The Ombudsman did not sustain the complaint, pointing out that the Complainant had been given verbal updates whenever he made enquiries and that finally social assistance was granted to him.

CASE NOT SUSTAINED

CS/577

COMPLAINT AGAINST THE DEPARTMENT OF SOCIAL SECURITY OVER THEIR DECISION TO WITHHOLD THE COMPLAINANT'S SOCIAL ASSISTANCE/PENSION PAYMENT, BECAUSE THE MEDICAL APPEALS COMMITTEE HAD NOT BEEN CONVENED

The Complainant (a Moroccan National) was in receipt of disablement pension payments totalling £413.45 per month, due to a medical disability. The Complainant felt aggrieved with the Department of Social Security (DSS) because it was decided to withhold these payments as the Medical Appeals Tribunal (MAT) had not been convened.

On 1st April 2004 the Complainant met with the Ombudsman, he explained that his disablement pension payments were his main source of income, and that if these payments were withheld, he would find himself in a financially difficult situation.

The Ombudsman liaised with the DSS Assistant Principal Secretary and explained the situation. She agreed with the Ombudsman that the way the Complainant had been treated was not correct, and his payments were reinstated that same day.

The Ombudsman met with the DSS during November 2004, in order to ascertain why the decision had been taken to withhold payments, the DSS explained that this had been as a result of a genuine error. The DSS highlighted the fact that the MAT had been comprised of staff from the Royal Naval Hospital (which was independent from government), however, during June 2003 they had informed the DSS that they would no longer participate in the MAT.

At the time of writing this report (November 2004) no new appointees to the MAT had been made. The DSS assured the Ombudsman that they were actively trying to do so as soon as practicable, and informed the Ombudsman that they foresaw the new MAT being set up within the next couple of months.

Notwithstanding the above, the DSS explained that although no new MAT had been convened, during October 2003 up until March 2004 the Complainant had been able to retrieve his disablement pension without any problems. The reason for this was that the counter staff had been fully aware of the MAT situation and had been authorised to provide the Complainant with a three month extension, authorising his payments to be continued despite the MAT not having been convened. This first extension expired during December 2003, and the second during March 2004.

The error had occurred, according to the DSS, when during April 2004 senior staff members were away on sick-leave. A new Executive Officer had also recently been appointed and, additionally, new counter clerks had recently started working at the counter. Although familiar with most situations, the Complainant's predicament was new to the counter clerks. The clerk attending the Complainant had erroneously informed him that his payments would be withheld until the MAT was reconvened.

The DSS assured the Ombudsman that there were only two on-going cases of this nature, therefore the new counter clerks had never experienced this type of situation. Although the counter clerks had not been briefed in respect of these cases, usually a senior clerk would be available to deal with them (but, as aforementioned, the senior clerk was on sick-leave at that time). As a result, the clerk who dealt with the Complainant checked his file and noted that the MAT needed to review the case. They were not aware that a continuation of the Complainant's payments had been authorised, by way of extensions, until the MAT was reconvened.

The DSS also informed the Ombudsman that, although the new staff had finished their training during December 2003, at the time the Complainant approached the counter clerks they were still receiving on-going training. This type of training consisted of gaining experience at the counter whilst attending members of the public.

The Ombudsman considered the DSS explanation that there had been a genuine error and the fact that the complaint had been resolved on the same day it was lodged. This prompt action had been thanks to the Assistant Principal Secretary's initiative, once the matter had been brought to her attention by the Ombudsman.

In light of the above, he concluded that there had not been any maladministration. His conclusion was based on the fact that the DSS had made a genuine error but, once this had been brought to their attention, immediate action was taken to resolve the problem. Ultimately, the Complainant did not suffer any injustice thanks to the prompt action taken.

DEPARTMENT OF TRANSPORT (PAGES 111- 114)

CASE SUSTAINED

CS/492

COMPLAINT AGAINST THE DEPARTMENT OF TRANSPORT FOR REFUSING TO PROVIDE THE COMPLAINANT WITH A DUPLICATE OF HIS GIBRALTAR DRIVING LICENCE

The Complainant, who at the time of lodging the complaint was a resident of Spain, alleged that the Department of Transport's Licensing Division ('the Department') refused to issue him with a duplicate driving licence after his original licence was accidentally destroyed.

The Complainant explained that he was originally issued with a Gibraltar driving licence in 1991. On 21 December 2002, whilst in Spain where he currently lived, the Complainant's car and all of its contents including his Gibraltar driving licence were destroyed in an accident.

On 20 January 2003, the Complainant came to Gibraltar and applied for a duplicate driving licence. His application was refused on the grounds that he was currently resident in another member state of the European Union and as such he should apply to the competent authorities of that member state for a new driving licence. As required by European law he was given a Certificate of Driving Entitlement and told to attach it to his application in Spain. Following this advice, the Complainant applied for a driving licence to the Spanish authorities but consistent with their practice of not recognising the jurisdiction of the Gibraltar authorities, his application was rejected. The Complainant returned to the Department and explained his predicament but they just repeated what he had been told before. He was once again given a Certificate of Driving Entitlement and informed that he should apply to the authorities of the country where he was resident.

THE OMBUDSMAN'S ENQUIRY

This was not the first time that the Ombudsman considered a complaint of this nature. In complaint number 27('C/S 27'), investigated by the Ombudsman during the course of 1998-1999, the facts were identical to those set out above, the only difference being that in that case, the driving licence was stolen.

In C/S 27, the Ministry for Tourism and Transport acknowledged that the Transport Commission had a discretionary power to issue a duplicate licence in a situation where the original driving licence had been issued in Gibraltar and where the licence holder was unable to obtain such a duplicate in his Member State of residence. It was also subsequently acknowledged by the Chief Secretary ('the Chief Secretary's Letter') that in the case in question (C/S 27), there were grounds for the issue of a duplicate licence and he instructed the Department to issue the same.

Pursuant to events in C/S 27, the Ombudsman wrote to the Department enclosing a copy of the Chief Secretary's Letter. The Department responded to the Ombudsman with the allegation that unlike C/S 27 where the Complainant had obtained his original driving licence correctly and legally, this was not necessarily the case here. The Department claimed to have information that the Complainant was not a resident of Gibraltar during a period of six months out of the twelve preceding his driving test and should not therefore have been allowed to take the test. The Department added that should the Complainant produce evidence that he indeed was resident in Gibraltar prior to sitting his driving test there would be no difficulty in providing him with a duplicate licence.

By letter dated 18 November 2003, the Ombudsman asked the Department what evidence they had to support their allegation that the Complainant had deceived the then Transport and Licensing Department. In response he was informed that the burden of proof lay with the Complainant to convince the Department that he had been entitled to be issued with his original driving licence. The Department went on to inform the Ombudsman that a Gibraltar identity card or permit of residence valid at the time that the Complainant took his driving test and giving an address in Gibraltar would suffice as evidence that his original driving licence had been properly issued. The Complainant provided the Department with the required evidence and the duplicate was duly issued.

The Department eventually informed the Ombudsman that their allegation had been that the Complainant had made a false declaration in order to obtain the *replacement licence*. In the address section of the application for a replacement licence he had given his old matrimonial address in Gibraltar which was of course false since he now lived in Spain.

The Ombudsman dismissed this saying that in their letter to the Ombudsman dated 13 November 2003, they had said that his *original driving licence* had been improperly obtained.

The Department also informed the Ombudsman that under Article 8, paragraph 5 of Council Directive of 29 July 1991 on driving licences (91/439/EEC) a replacement for a driving licence which has been lost or stolen **may** be obtained from the competent authorities of the State in which the holder has his normal residence. The Department pointed out that the word ‘may’ could be interpreted as purely voluntary but the custom in Gibraltar was generally to follow UK practices and the UK Driver and Vehicle Licensing Agency does not issue driving licences to drivers who no longer live in Great Britain. In such cases the licence holder is provided with a certificate of entitlement to be presented to the authorities of the member state in which he currently resides.

1. Two issues emerge from this complaint:

- i. On both occasions that the Complainant approached the Department requesting a duplicate he was told that since he now resided in another member state he should apply for a replacement driving licence to the competent authorities of that State.

The Ombudsman had to consider whether this was appropriate in the circumstances.

- ii. The Complainant was never given the opportunity to defend himself against the allegation that he had deceived the then Transport and Licensing Department. The Ombudsman noted for the record, that on both occasions that the Complainant enquired at the Department regarding a duplicate driving licence he was never told that he was suspected of having acquired his original licence on the basis of having deceived the authorities. In fact the first that he heard of this allegation was by letter to the Ombudsman dated 13 November 2003 (see paragraph 6).

POINT I

The Ombudsman noted that the Directive used the word ‘may’ as opposed to for example ‘shall’. He accepted that it was natural that Gibraltar should tend to follow UK practices in EU matters however; Gibraltar’s status and standing within the EU is very different to that of the UK and whereas no EU country would reject the validity of a UK driving licence, the same is not true of Gibraltar. Thus whilst it might be suitable and appropriate for the UK to refer the licence holder to the authorities of the member state in which he currently resides, as far as Gibraltar is concerned this is not appropriate because Spain refuses to recognise Gibraltar’s jurisdiction and in general will not issue a duplicate to a Gibraltar driving licence.

In his letter dated 11 January 1999, the Chief Secretary wrote as follows:

“It seems to me that there are grounds for the issue of a replacement licence. The Spanish authorities as host Member State, have refused to issue Mr --- with a driving licence on the grounds that they do not recognise the Gibraltar Certificate of Entitlement. I do not share Senior Crown Counsel’s view that there is nothing we can do to assist Mr --- in this respect. Given that Mr --- is being denied his community right to obtain a Spanish driving licence and that he is only seeking to obtain a replacement document for a Gibraltar licence, I consider that the licensing authority should exercise its discretion and issue him with a replacement licence.

The Ombudsman pointed out that unfortunately, the Chief Secretary’s words were as relevant in 2004 as they were in 1999 and it was inappropriate for the Department to have a blanket policy of refusing to issue such a duplicate, without taking the licence holder’s individual circumstances into consideration.

POINT II

The Department expressed to the Ombudsman concern at the “significant number” of Spanish residents fraudulently obtaining a Gibraltar driving licence and it pointed out that in the case in question the Department had simply wanted to establish that the driving licence had been properly issued to a person with the relevant residential qualifications as prescribed by law.

The Ombudsman agreed that this was indeed the duty of the Department however, where the matter of the alleged deception is the only hindrance to the issue of a duplicate driving licence, the suspicion should be put to the Complainant so as to give him the opportunity to prove to the Department that this information was unreliable, as he ultimately did.

The Ombudsman sustained the complaint in full and he pointed out that it is his task to investigate the way in which government bodies and their staff have conducted themselves in the performance of their duties *vis-a-vis* members of the public and to give a judgment on these actions. The Ombudsman’s enquiry and intervention are geared towards helping, in individual cases, to resolve problems in the relations between citizens and public authorities. By way of follow-up, his analyses and possible recommendations are aimed at preventing similar cases arising in the future.

Having said this, the Ombudsman declared that it was unacceptable that he should have to reinvestigate complaints that could have been avoided had the counter staff at the relevant department been given the appropriate instructions. The Ombudsman pointed out that in C/S 27 he had made the following recommendation:

The Ombudsman felt it was important that the Transport & Licensing Department and the Ministry of Tourism and Transport rectify the position, in future, of other holders of TLD issued driving licences who are now resident outside Gibraltar. Duplicates should be issued where the licence holder satisfies all of the following conditions :

- *The information given in the original application for the driving licence is true and correct;*
- *Driving licences remain within the validity period;*
- *The licence holder has proved to the satisfaction of the Commission that the licence has been lost, stolen or defaced and*
- *The licence holder has been refused a replacement licence by the Spanish Authorities after production of the Gibraltar Certificate of Entitlement’ and the proof of*

residence in Spain for over 185 days in the year, as per Directive 91/439/EEC.

The Ombudsman renewed these recommendations and expected the Department to instruct its staff at the Licensing Division accordingly.

The Ombudsman added that if the Department had reason to believe that the Complainant had deceived the Transport and Licensing Department he should have been informed that this was the case by the Department at the relevant time and certainly not via the Ombudsman. The allegations should have been put to him with a full explanation as to why the Department was now of the view that he might have not been resident in Gibraltar when he took his driving test. He was pleased however, that the case was finally resolved.

With these words the Ombudsman closed the report.