

GIBRALTAR PUBLIC SERVICES OMBUDSMAN



The Gibraltar Public Services

Ombudsman

Annex Report 2011



The Gibraltar Public Services

Ombudsman

**'I'll go anywhere
as long as it's forward'**

David Livingstone

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The Gibraltar Public Services

Ombudsman

Case Sustained

CS/895

Complaint against the Building & Works Department in respect of the delay in processing the Complainant's claim for compensation

Complaint

The Complainant, a Government tenant, was aggrieved by the delay experienced in relation to the Building & Works Department ("the Department") processing of her claim for compensation ("the Internal Claim"). The claim concerned damage / loss sustained by the Complainant on 29th September 2009 to her personal property within her residence. Such damage valued at £400 was alleged to have been caused by the Department's removal of a bathroom panel subsequently found to contain asbestos in its composition and which contaminated all the bathroom linen. For the purposes of making the claim the Department referred the Complainant to an internal claim form which the Complainant completed and submitted on the 30th September 2009.

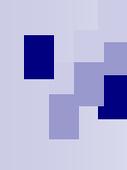
The Ombudsman must stress that whilst the parties repeatedly refer to this as the Claim or as the Claim Form the status of the process is merely an internal procedure. In other words it is not a claim in the context of legal proceedings and that is why the Ombudsman considers it appropriate to refer to the process as the Internal Claim; thereby drawing an important distinction. This is particularly relevant due to the impact that the internal process can have on the right to issue legal proceedings.

It is unnecessary to recount in detail the chronology since September 2009 regarding the efforts made by the Complainant to get a decision on her internal claim. Suffice to say that the Ombudsman's investigation established that the Internal Claim was submitted on the 30th September 2009 however the Department did not process it until the 26th November 2009.

Commentary / Observations

The Ombudsman has found that the Department, via their internal claims procedure, have created a cumbersome and 'perilous' system which claimants have relied upon often to their detriment. The investigation in this and similar cases unmasked potential serious disadvantages to claimants.

The evidence in this case, as well as other related cases has shown that the claimants have developed an expectation with regards to their internal claims. The Ombudsman discovered that for no apparent reason the Department has subjected the Internal Claim to unreasonable delay before processing them. On being asked the Department were unable to provide reasons for the delay in acting on the Internal Claim form submitted by the Complainant. Moreover, the cumbersome features of the process come into play at the stage where the Department does indeed act on the form because their procedure is to refer the same to their lawyers. In so doing the Ombudsman finds that the Department undermines the very essence of the merits of having an internal process. It has to be borne in mind that the claims are often minor in substance. In this case the claim was for £400. It does not take a great level of analysis to work out that resorting to legal advice will incur costs; which may be disproportionate in the context of the value of the claim. Additionally, the Ombudsman took account that, such a practice by the Department, inevitably inflicted delay on the determination of the claim because of the transmission of the papers to the lawyers, consideration of them by the advisors, and the subsequent written advice being produced by the lawyers to the Department.



In the ‘historical’ development of events, in respect of these types of claims, the Ombudsman recalled the input by the Chief Secretary in another case. The Chief Secretary on the 11th December 2008 wrote to the Principal Housing Officer (“the PHO”) instructing him to put in place the following revised procedure when handling an internal claim for compensation:

- a. The claim needs to be considered internally by the Housing Ministry / Department.
- b. If there appears to be possible merit in the claim and / or legal advice is required, the claim should be referred to the Attorney General’s Chambers.
- c. If the advice of the Attorney General’s Chambers (“AG”) is that the Government should consider making an ex gratia payment or paying compensation, and the amount involved is not large, the case should be referred to the Minister for Justice for Government’s policy instructions and decision. If the Minister determines that a particular case requires broader consideration by Government, he will refer it direct to the Office of the Chief Minister.

The Chief Secretary made further comments as to what should be supplied to the AG Chambers to avoid undue delay. Notwithstanding these instructions the fact was that the Department was in reality referring every Internal Claim to their lawyers. Furthermore, not only was this referral a problem in itself but also the situation was exacerbated by the fact that the Department failed to process the claims for weeks or, some cases such as the instant case, for months on end. The Department referred the claim to the AG on the 26th November 2009 and a follow up was sent to the AG on the 22nd December 2009. On the 4th January 2010 the legal advisors wrote back to the Department outlining their legal advice on the Internal Claim. The Ombudsman was not concerned with the decision itself but the time and manner of the decision making process.

To that end the Ombudsman wrote on the 17th February 2010 to the Chief Secretary and took issue with the delay being experienced by the Complainant and other complainants. In his reply of the 20th April 2010 the Chief Secretary stated that most claims required careful examination and more often than not legal advice. However, that comment, it has to be said, does not reflect the Department’s practice, which conversely to the Chief Secretary’s comments, is to refer all internal claims for legal advice. That approach was applied to this claim notwithstanding its simple nature.

Significantly, the Chief Secretary also alluded to the time required to obtain the legal advice and he pointed to the commitments and workload of the lawyers at the AG Chambers. However, the fact is that the most worrying aspect of the overall delay was not the time taken by the AG to provide the advice but rather the time the Department took to pass on the papers to the AG and the time taken to make a decision on the Complainant’s Internal Claim. In this case it took the Department approximately *two months* to process the claim by sending the papers to their legal advisors and a further *nine months* to make a decision on the claim. Therefore, broadly speaking, in effect, it took the Department **nearly a year** to make a decision on this minor claim.

The Ombudsman finds that such a timescale represents an unreasonable and precarious state of affairs. Not only is the length of time taken to make a decision too prolonged but such a delay also considerably erodes into the Complainant’s right to issue legal proceedings. The Ombudsman is conscious that such a legal right is restricted by time limitations imposed by laws. The Ombudsman is further aware that generally speaking claimants often put reliance on the Internal Claim instead of pursuing their legal rights and are confused by the nature of what the former really is. It is also noteworthy that the claimants will not embark on using legal advice whilst perusing the Internal Claim whereas the Department did use legal advice in this and all other Internal Claims.

Conflict within the Internal Claims procedure

The Ombudsman managed to have sight of a letter from the PHO the Chief Secretary in respect of this claim. The PHO was categorical that the claim should not be entertained although the PHO gave no reasons to support his comment. Instead the PHO commented in general terms that there was a growing claims culture and that it was advisable that Government tenants took out their own insurance. He went on to say that in his opinion no claim for damage against personal belongings should be entertained.

The PHO also stated that the current procedure relied heavily on the input from the AG and subsequently, any delays, introduced at this juncture would have a knock on effect to the overall timeframe of the Internal Claim.

Administrative issues

On the 15th July 2010 the Office of the Chief Minister replied to the Ombudsman apologising for the delay in replying which they attributed to an oversight. In the reply they stated that:

“How the Government chooses to conduct itself in relation to litigation or in relation to claims for compensation being made against it is a matter of policy decision for Ministers.”

This correspondence came about because the Internal Claim had been referred to the Minister for Justice on the 10th February 2010 who then passed to the Office of the Chief Minister forthwith.

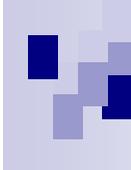
The Ombudsman does not accept the Office of the Chief Minister’s proposition that the matter of the Internal Claims procedure is, in its entirety, a matter of policy decision for Ministers. Evidently, the Department decided to set up an internal procedure to handle claims for compensation and that is an administrative process. The administration of the procedure does not rest with Minister but rather with the Department and therefore the Ombudsman is entitled to investigate any failing relating to the maladministration of the Internal Claims procedure.

Moreover, there are no Regulations in this regard delegating Ministerial responsibilities for the internal claims procedure and therefore there cannot be an inherent assumption of administrative functions by the Office of the Chief Minister.

The Ombudsman finds compelling reasons to sustain the complaint in relation to the unreasonable delay in processing the Complainant’s Internal Claim. The Ombudsman has also found that the Chief Secretary had failed to ensure that the Department adopted the recommendations he [the Chief Secretary] made of having an expedited procedure for these minor claims. Instead we continue to have a referral of all claims in the same manner.

Recommendations

The Ombudsman strongly recommends that the current approach taken by the Department in relation to the Internal Claims be stopped. The current approach is not feasible to claimants and in fact the approach is misleading in that it creates a high expectation on persons relying on it.



Case Sustained

CS/898

Complaint against the Buildings & Works Department for the delay in addressing a sewage leak and lack of professional service in respect to the amount of time that works are taking to be done

Complaint

The Complainant was aggrieved because of the delay on the part of the Buildings & Works Department (“the Department”) in addressing a sewage leak. She was further aggrieved because of the lack of professional service in respect to the amount of time that works were taking completed.

Background

The Complainant claimed that circa 2006, the bathroom and kitchen of the Government rented flat (“the Flat”) she resides in started to suffer dampness problems. She claimed to have reported the matter to the Reporting Office (“the Office”) several times throughout a two year period but stated that on each occasion she was informed that there was no previous record of the report. The Complainant informed the Ombudsman that in October 2008 the Flat was finally inspected and highlighted that by then the damage caused by the dampness had worsened. The inspection concluded that the Department would deploy personnel to investigate the matter and repair the leak. Repairs to the damage in the bathroom would be included in a waiting list. Six months later, the Complainant advised that she was contacted by the Department and informed that the leak had been found. The origin had been a salt water pipe in the water-mains duct which ran the height of the building (“the Building”) in which the Flat was located. Repairs to the bathroom commenced a week later but the Complainant explained that the final result was so poor that she and her partner had to redo part of the works themselves, despite having called in one of the Department’s duty inspectors to complain. Furthermore, the Complainant claimed that the leak had not been fixed.

In January 2010 the Complainant resumed the process of reporting the leak. During the ensuing three months, whilst waiting for repairs, she had to contact the Emergency Section of the Department on two occasions because the water leakage into the duct intensified. Personnel from the Department attended on those occasions. They informed the Complainant that they believed the leak came from the duct above the Flat but were unable to investigate; the duct was locked and the tenant of the said property unavailable. The leak persisted and the consequences continued to be felt by the Complainant and her family. They continued to suffer further damage to the bathroom and the putrid smell of sewage. The Complainant resorted to contacting the Environmental Health Agency (“the EHA”) so that an inspection of the Flat could be carried out, for fear that her family’s health would be affected, and this was duly undertaken. In April 2010 the Complainant wrote down her grievances and delivered the letter to the Office requesting that it be handed to the Manager. No reply was received and feeling desperate, the Complainant lodged her Complaint with the Ombudsman.

Investigation

Resulting from inquiries from the Ombudsman, the Department arranged an onsite visit to the Flat at which it was confirmed that the leak originated from waste pipes above. The Department stated that access to the duct might result in some delay in undertaking the repairs but these would be carried out.

The Complainant subsequently informed the Ombudsman that the Department had informed her they would engage a private contractor to undertake the repairs. Given that the repair work had apparently been contracted out by the Department, the Ombudsman made inquiries to this effect. The Ombudsman was satisfied with the explanations provided in relation to the contracting out of the works.

On the matter of repairs to the damage caused in the bathroom and kitchen, the Department explained that they had spoken to the Complainant and it had been agreed that the Complainant would undertake the works and that the Department would provide the materials.

Reports recorded by the Reporting Office

The Ombudsman was concerned at the fact that the Complainant informed him that between 2006 and 2008 she claimed to have reported the matter to the Office numerous times and that on each occasion she was informed that there was no previous record of the report. For their part, the Office and the Department stated they had a total of three reports in their records in respect of water leaks affecting the Flat as follows:

	Date Report Received	Nature of Report	Date Works Completed
1	11 th April 2002	Pipe leak in duct affecting Flat	9 th November 2004
2	19 th May 2008	Fresh water leak in duct affecting Flat	11 th August 2008
3	12 th May 2010	Service ducts to be inspected and repaired as required	15 th June 2010

There was a further report for the repair of the damage caused by water ingress to the bathroom dated 17th September 2008, completed 9th April 2009.

Report by the Environmental Agency

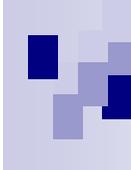
The Ombudsman sought and obtained a copy of the report of the inspection undertaken by the EHA on the 22nd April 2010. The EHA found that the Flat in general was affected with heavy dampness and that the bathroom and kitchen were affected by a salt water leak from the flat above. This in the end resulted to be sewage water emanating from the duct and not the flat above.

Conclusion

Leaks from waste pipes

Based on the investigation undertaken, the Ombudsman was of the opinion that the time taken by the Department to address the leaks was unjustified. The time elapsed between the reports and the completion of the works resulted in:

- (i) Extensive damage to the bathroom (as can be verified by the extent of the repairs required);
- (ii) Substantial increase in expenses for repairs;
- (iii) Stress and potential health hazard to the Complainant and her family owing to the nature of the leak.



Although access to the duct above the Flat appeared to be a potential hindrance for the undertaking of repairs, this proved not to be the case; in the end the origin of the leak was found to have been waste pipes in the duct two floors above the Flat.

Repairs to the Flat

The Complainant agreed to the Department's suggestion of undertaking the repairs to the bathroom on a self-repair basis. This decision was strengthened because of the Complainant's dissatisfaction with the repairs carried out by the Department in April 2009, after which she and her partner had to redo part of the works.

Reports recorded by the Reporting Office

The Office and Department records denote only three reports, two of which were made by the Complainant.

The Complainant's claim that for a two year period, between 2006 and 2008, she made reports to the Office which were not logged cannot be substantiated. The system operated by Office should provide each person making a report with a number which can be traced if the need arises. This has been recommended by the Ombudsman in a previous report. Of interest to the Ombudsman was the chronology of the events which preceded the last report. He was puzzled as to why the Complainant would have contacted the CE (15/4/10), the EHA (22/4/10) and the Ombudsman (26/4/10) prior to the report being logged (12/5/10). The Department did not offer an explanation for this.

Report by the Environmental Health Agency

It was the Department's failure to attend to the Complainant's report that led her to the desperate situation of having to contact the EHA. The inspection report states that the bathroom and kitchen were affected by a salt water leak. This later proved to be water which originated from a waste pipe which contained sewage and could have proven to be a health hazard to all the residents in the Flat.

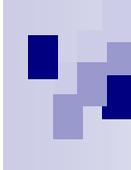
Recommendations

The Ombudsman once again recommended that as a reference to tenants at the time of making a report, the Reporting Office should provide a report number to tenants which would be proof of the report having been made.

Considering the above, the Ombudsman decided to sustain the Complaints. The Department did not provide a service commensurate with modern expectations. Their delays increased costs for the taxpayer and caused stress and anxiety to the Complainant and her family.

UPDATE

Upon reading the Ombudsman's draft report, the Complainant referred to the Reporting Office's records and offered an explanation as to the reason for the last report having been logged on the 12th May 2010.



The Complainant explained that on the 11th May 2010 she received from the CE an acknowledgement of the letter she had hand delivered to the Reporting Office for the attention of ‘the Manager’ on the 15th April 2010. In his reply, CE informed her that he had received the letter on the 28th April 2010, that it should have been sent to the Reporting Office and stated that works in the duct had been undertaken. As a result of the reply which left the Complainant dumbfounded she sought a meeting with the CE. At the meeting she explained she had personally delivered the letter to the Office and informed him that the works had not been undertaken. The CE informed her that he had received the letter unopened, thirteen days later. It was as a result of the meeting and the situation being clarified that the CE proceeded to make the report at the Reporting Office on the 12th May 2010.

The Complainant also pointed out that the EHA had in fact undertaken two inspections in the Flat within a short period of each other. The one referred to in the Ombudsman’s draft was a routine one related to the Complainant’s housing application.

As a result of the above information, the Ombudsman requested the second report from the EHA which was undertaken at the request of the Complainant because of the unhealthy conditions in the Flat.

The report dated 3rd June 2010 concluded that dampness in the Flat appeared to have originated from a leaking soil pipe within the service duct located in the bathroom. EHA had been informed by the Department that the matter had now been dealt with and that prior to repairs, the damaged ceiling and walls had to be allowed to dry.

Case Partly Sustained

CS/910

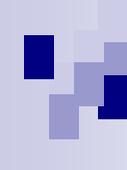
Complaint against the Buildings & Works Department for not having undertaken repairs to shutters; not having given the Complainant an assurance that all shutters and windows in the property (“the Building”) overlooking his flat had been made safe and for not having undertaken repairs to the concrete wall and guttering of the Building

Complaint

The Complainant was aggrieved because he claimed that approximately eight months had passed since he had made a report to the Buildings & Works Department (“the Department”) that a shutter from the Building overlooking his flat (“the Flat”) had fallen onto his patio and to date, no works had been undertaken. Furthermore, he had not received an assurance from the Department that all other shutters and windows in the Building had been made safe. The Complainant was further aggrieved because no action had been taken with regards large cracks on the wall of the Building and lumps of concrete and guttering falling onto the patio from the aforementioned wall.

Background

The Complainant is the tenant of the Flat, which is privately owned and contains a patio, which is overlooked by the Building owned by the Government of Gibraltar and which comprises a number of flats. The Complainant explained that apart from being used as a recreational area, the patio is the access to the main door of the Flat.



One evening, circa November 2009, a shutter from one of the flats of the Building fell onto the patio. Concerned for the safety of his family, the Complainant contacted the Department's Emergency Section and on the same day, personnel attended to inspect the situation. The Complainant also contacted the Environmental Agency ("the EA") on the matter.

Eight months after the incident, the Complainant stated that as far as he was aware nothing had been done by the Department and had therefore still not received an assurance from them that all windows and shutters (overlooking his property) in the Building had been checked and made safe.

The Complainant noted that some of the shutters had been tied together by tenants who resided in the Building and had informed him that they constantly contacted the Department for the shutters to be repaired.

As a result of the shutter falling onto the patio, some damage was caused to the Complainant's property and he was advised by the Department to complete and hand in a claim form listing the damaged items which totalled £216.95. The Complainant complied with the instructions and stated that although it took a considerable time for the Department to acknowledge receipt of the form he was happy to have received their acknowledgement. Nevertheless, he stated he would have preferred to have received a letter from the Department assuring him that the shutters and windows had been made safe. Regarding the wall overlooking his property from which broken guttering and concrete lumps had fallen and on which there were large cracks which needed to be repaired, the Complainant stated that no works had been carried out.

Investigation

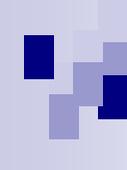
The Ombudsman's initial enquiries to the Department found that their system did not show any reports from the Reporting Office regarding making the shutters safe. A member of staff confirmed no report existed as the Reporting Office did not accept the Complainant's report because he was not a Government tenant.

The reply from the Department caused concern to the Ombudsman who then sought information from the Principal Housing Officer ("the PHO") as to why the report made by the Complainant had not been accepted, and requested information as to which of the flats in the Building overlooking the Complainant's patio belonged to the Government of Gibraltar and which of those were occupied.

The information provided by the PHO stated that after having carried out an extensive investigation into the records at the Reporting Office, two reports were found related to the matter. The first one (**Report 1**) referred to the incident of the 23rd January 2010 and was taken by the Department's after-hours service. The second report (**Report 2**) was the one made by the Department in August 2010, stemming from the Ombudsman's enquiries. The PHO stated that the results proved that the Reporting Office had recorded the Complainant's report.

Not having undertaken repairs to shutters

Resulting from the Ombudsman's enquiries and because the Department did not find the report lodged by the Complainant, in August 2010 the Department proceeded to inspect the site and found no signs of any other shutters in danger of falling. Nevertheless, a report (**Report 2**) was logged at the Reporting Office for all shutters in one of the vacant flats to be tied back, regardless of their current condition. At the time of writing this report, January 2011, the works had not been carried out.



In respect of the report made by the Complainant (**Report 1**) the works order denoted that the matter had been reported to the after hours emergency service on the 23rd January 2010 and personnel had attended to check out the situation. The works required, 'to make safe and repair if possible', were estimated three days later and the task undertaken on the 2nd February 2010. The works order did not specify the flat number from which the shutter fell. The works order did not provide the detail of what works were undertaken that but further investigation by the Ombudsman determined that the nature of the works was to check that the remainder of the shutters in the Building were not in danger of falling. In December 2010, the Ombudsman carried out an onsite visit to the Flat to see first hand the fallen shutter which the Department had still not collected from the Complainant's patio. The Complainant pointed out that the shutter was relatively new and that the reason for having fallen was that one of the hinges had snapped as a result of strong winds.

Not having undertaken repairs to the concrete wall and guttering of the Building

The Department advised that they had checked their data and had not found any reports lodged on this matter. Contrary to the information provided by the PHO, the Department reiterated that because the Complainant was not a Government tenant, the Office could not action his reports. The Department had therefore raised an internal requisition for works to request the repairs.

Reports by non Government Tenants

In light of the differing information as to whether a report would be accepted from a non-government tenant, the Ombudsman sought clarification from the PHO. The latter explained that the Ministry for Housing have a system in place whereby reports made by private tenants on issues of Health & Safety in respect of Government properties will be lodged. When the private tenant contacts the Reporting Office, staff will request the relevant details and identify if the matter is one of Health & Safety. From then on the report is lodged and subsequently acted upon. The PHO explained that if the Reporting Office staff had reservations on the decision made, they would contact him for a final decision.

Reports of defective shutters in the Building

The Ombudsman requested from the Reporting Office, copies of reports made by tenants of the Building about defective shutters in their flats during the last three years. Although four reports were provided, only two related to defective shutters each from a different flat within the Building. One report for Flat A had been lodged in September 2009 and estimated the following month but at the time of writing this report no repairs had been undertaken. The other report for Flat B was made in November 2009 but to date had not been estimated. In light of these reports, the Ombudsman made further enquiries to the Department and the Complainant to ascertain where the shutter had fallen from and found that it had been from Flat B.

The EA provided printouts of two complaints held in their database in respect of the issues mentioned by the Complainant.

In 2008 a report of debris from the Building falling onto the Complainant's patio and the note made by the EA that the matter had been reported to the Department and the Complainant had been advised to contact the Reporting Office with his complaint.

In January 2010 when the shutter fell, the Complainant contacted the EA. A note from the EA on the report stated that the EA had reported the matter at the Reporting Office although the Complainant had already done so. Some correspondence on the matter was also provided by the EA.



Conclusions

Not having undertaken repairs to shutters

The Department's action as a result of the report made by the Complainant was to check that the remaining shutters in the Building were not in danger of falling. The inspection determined that there was no danger and therefore no works were required in that respect. For the reasons stated above, the Ombudsman decided not to sustain this part of the Complaint.

The Ombudsman did however want to raise his concern that the shutter had fallen from Flat B from which a report regarding a defective shutter had been made at the Reporting Office two months earlier and had not been estimated by the Department. It could well have been the case that a timely inspection could have prevented the incident. The Ombudsman was critical of the Department who due to not having found the report lodged by the Complainant, generated a second works order and undertook an inspection which had already been carried out.

The Department not having given the Complainant an assurance that all shutters and windows in the building had been made safe

The Ombudsman concluded that although the Department had checked the remaining shutters in the Building, they had not given the Complainant an assurance that all shutters in the Building had been made safe and for this reason sustained this part of the Complaint.

Not having undertaken repairs to the concrete wall and guttering of the Building

On updating the Complainant on the above information it transpired that he had not reported the matter to the Department or the Reporting Office. The only record available is the one held by the EA who the Complainant contacted on the matter at the time.

Environmental Agency

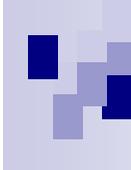
Whilst the Complainant appeared to have reported to the EA the issue of the loose masonry, the Ombudsman highlights that the EA will not be able to enforce the provisions of the Public Health Act against Government because the EA consider the Government to be exempt by virtue of Section 69 Interpretation of Clauses & General Orders Act. Therefore, when a person refers a matter involving the Government of Gibraltar to the EA, and that matter is related to a provision under the Public Health Act, the EA consider that they have no obligation in law to act against the Government of Gibraltar. The EA simply bring the issue to the attention of the Government.

Reports by non-Government Tenants

Although the Ministry for Housing was clear on the procedure in place for reports made by non-Government tenants with regards Government properties, this is not the case with the Department. At the meeting held with the PHO, the Ombudsman recommended that the Ministry for Housing clarify the issue with the Department.

Recommendations

The Ombudsman recommends that in cases where the person making a report is not a Government tenant the Department update them accordingly on the action taken.



Case Sustained

CS/922

Complaint against the Buildings & Works Department due to their failure to replace the badly corroded bath in the Government rented flat the Complainant resided in

Complaint

The Complainant was aggrieved because the Buildings & Works Department (“B&W”) had failed to replace the badly corroded bath (“Bath”) in the Government rented flat (“Flat”) she resided in.

Background

The Complainant explained that approximately three years earlier she had reported the bad state of the Bath at the Reporting Office.

Throughout those years, the Complainant pursued the matter via the Reporting Office and B&W but the works were not undertaken. Estimators inspected the Bath on two occasions and later informed her that Government had implemented a policy whereby it was the responsibility of tenants to replace certain fittings, including baths. The Complainant stated she was aware of the policy but informed the estimator that the report had been made prior to the implementation of the policy. During the course of those years the state of the Bath continued to deteriorate to the point that it became a safety hazard (see photos Appendix 1).

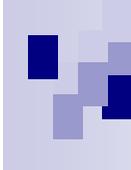
In October and November 2010 the Complainant wrote to the Chief Executive (“CE”) of B&W with her grievance. Not having received a substantive reply by December 2010, the Complainant lodged her Complaint with the Ombudsman.

Investigation

The Ombudsman sought information from B&W.

The CE stated that according to his records, they had offered to replace the Bath with the standard issue (a white bath) but the Complainant declined the offer because she wanted the replacement bath to be the same colour as the existing one. Nevertheless, the CE confirmed that he had just written to the Complainant with an offer to replace the bath with a standard issue one.

The Ombudsman put the information to the Complainant who immediately denied that the offer had ever been refused by her. To reaffirm her statement the Complainant explained that she and her family were waiting to be moved to alternative accommodation in the short term and, in the meantime, would be content with any replacement bath offered. In light of the information received, the Ombudsman requested that B&W provide copies of records related to the Complainant’s refusal to accept the standard issue bath as a replacement. B&W provided two copies of the works order generated as a result of the Complainant’s report in April 2008 (“Works Order”). These copies had been printed on the 19th August 2010, by which date the Works Order showed that it had been cancelled. B&W had cancelled the Works Order on 9th July 2010 but showed no reason for having done so.



The Ombudsman perused the copies of the Works Order. One of the copies had a handwritten note from the Project Manager to the Head Estimator for the Complainant to be offered the standard white bath. It stated that if she insisted on a colour bath she was to be informed that B&W could not install a colour bath and the Works Order would have to be cancelled. The Project Manager requested that a record be kept of the date on which the Complainant was contacted and her decision.

On the other copy of the Works Order was a handwritten instruction from the Head Estimator to the estimator to action the Project Manager's request; beneath that the note from the estimator who actioned the request which stated '*Unable to get in contact with tenant*'.

B&W also provided the Ombudsman with a copy of the letter sent to the Complainant in December 2010. B&W stated that the letter was returned undelivered by the Royal Gibraltar Post Office.

In the said letter, the Ombudsman noted the statement made by the CE that records noted she had declined the offer of the replacement bath, and also noted the following:

'I have perused the file and can comment that according to the information contained therein it appears that there has been a breakdown in communication'.

The Ombudsman sought clarification from the CE as to why the works order had been cancelled in July 2010. The CE provided a recent printout (February 2011) of the works order to show that it was currently live in their system. Regarding the cancellation, the CE was unable to provide details because the Project Manager had been transferred from B&W and the estimator who cancelled the Works Order had retired.

In March 2011 the Ombudsman wrote to the CE informing him that he had difficulty in accepting as valid, the reasons for not being able to offer clarification on the cancellation. The Ombudsman determined that there should be a system in place whereby information should be documented in order that the organisation did not have to rely solely on the knowledge of individual employees and so requested an explanation of the events.

Due to the restructure of B&W into the Housing Works Agency ("Agency") and the pressing workload on B&W during March and April 2011, the Ombudsman decided to put in place a moratorium on investigations for a period of one month by which time he envisaged that the Agency would be fully operational. After the moratorium the Ombudsman resumed the investigation but in view of the restructure now directed his queries to the Principal Housing Officer ("PHO") the landlord, and enclosed relevant correspondence. The PHO's reply stated that he would contact the CE of the Agency for information.

At the time of writing this report, July 2011, no further information had been received from either the PHO or the Agency. The Ombudsman contacted the Complainant in mid-June 2011 and was informed that the Bath replacement had just been completed.

Conclusion

The Ombudsman decided to sustain this Complaint on the basis that the reasons provided by B&W for the failure to replace the Bath, i.e.

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- (i) The Complainant refused the standard issue white bath because she wanted her coloured bath to be replaced with one of a similar colour; and
 - (ii) Breakdown in communication;

could only be attributed to maladministration.

Contrary to the information provided by the CE, the investigation revealed that that B&W had no written record of the Complainant having refused the installation of the standard issue white bath. Furthermore, the B&W staff members involved in the case, estimator and Project Manager, no longer worked at B&W and were therefore unavailable to provide evidence to that effect nor provide reasons as to why the works order was cancelled in July 2010. As pointed out by the Ombudsman there should have been a system in place whereby information would have been documented so as not to have to rely solely on the knowledge of individual employees.

The Ombudsman noted that the CE had not made any reference to the ‘breakdown in communication’ with the Complainant, in the correspondence maintained between them. It was only as a result of receiving a copy of the letter B&W had sent to the Complainant that the Ombudsman became aware of this. The only breakdown in communication that the Ombudsman identified was on the part of B&W. This was blatant in the handwritten note on the works order by the estimator which stated that he had been unable to contact the tenant. There is no record of what method was used to contact the Complainant, but the correct administrative method would have been to have left a calling card to request that she contact B&W. This was not done.

The Ombudsman was critical of the three year period which it took for B&W to replace the Bath. Throughout that time the Bath deteriorated tremendously and became a health and safety hazard. Not acting in a timely manner in these type of cases can potentially cause a stream of problems. Regarding delays in replies on the part of B&W, the Ombudsman had to impose a moratorium period of one month, the time by which he envisaged the HWA would be fully operational. Unfortunately, at the time of writing this report, July 2011, the Ombudsman had still not received a substantive reply to his April 2011 letter to the PHO which was passed to the HWA. The Ombudsman notes this type of inaction and concludes that the administrative procedures in place for a smooth transition have left a lot to be desired. The consequence of this is that aggrieved persons, like is the case with the Complainant who had already endured substantial delay, had to put up with even further setbacks.

Human Resources



The Gibraltar Public Services

Ombudsman

Case Sustained

CS/940

Complaint against the Human Resources Department (“the Department”) for failure to furnish the Complainant with a reply as to his entitlement or otherwise to a gratuity payment

Complaint

The Complainant was a former employee of the Government of Gibraltar and was aggrieved by his employer’s failure to furnish him with a reply as to his entitlement or otherwise to a gratuity payment. The Complainant had written to the Department on various occasions with regards to the subject matter of his entitlement but had not received a satisfactory reply.

Investigation

In essence the Ombudsman was only concerned to investigate the reasons for the Department’s failure to reply to the Complainant in an adequate manner.

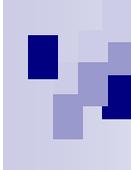
On the 16th March 2011 the Ombudsman wrote to the Human Resources Manager (“HRM”) presenting the complaint and asked for reasons to be given for their decision not to pay the employee’s gratuity.

There being no acknowledgement or reply to his letter on the 30th March 2011 the Ombudsman wrote again to the HRM

On the 8th April 2011 the HRM sent the Ombudsman an acknowledgement letter in which she outlined the fact that the matter had been dealt with by an officer who had since retired and the file was overlooked. Moreover, the HRM stated that she would require to familiarise herself with the case before she could reply. The HRM confirmed that, in due course, she would reply to the Complainant and that she would in the meantime update him accordingly.

The following is a breakdown of the time taken by the Department to provide a full reply to the Ombudsman:

- 5th May 2011 Ombudsman wrote to HRM asking her to provide a reply.
- 9th May 2011 HRM acknowledges the Ombudsman’s letter but says in order to reply files & information dating back 40 years have had to be examined as well as involving other departments. However, the necessary information had now been extracted and a reply would be forthcoming shortly.
- 20th May 2011 Ombudsman again has to write to the HRM seeking the reply to his letter of the 30th March 2011.

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- 26th May 2011 The HRM explained that she is still not in a position to reply and that the matter had been submitted to government The HRM accepted that the matter was taking longer than would desirable but once again alluded to the need to have to interpret and analyse events that occurred over four decades ago. As in her previous letter the HRM stated that her reply would be forthcoming shortly.
 - 6th June 2011 there being no reply the Ombudsman sent a letter to the HRM informing her of his decision to conduct a formal investigation and requesting clarification on the reasons for the delay given that back in October 2010 the Complainant had been told that the matter had been extensively considered by the Department. The Ombudsman also asked for confirmation of the basis for the decision made back in 2010 and to whom or what department the papers had now been submitted.
 - 30th June 2011 the Ombudsman receives the substantive reply from the HRM.

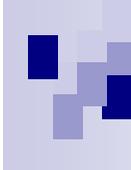
Conclusions

It is appropriate to begin with the issue of the delay, which after all, was the main issue affecting the Complainant at the time he presented his complaint to the Ombudsman. Regrettably, the issue of delay was significant to the Complainant as it was to the Ombudsman's investigation and therefore it was considered as a matter of priority by the Ombudsman in his findings.

The Ombudsman was of the initial view that this complaint did not necessarily warrant a formal investigation because the issue of delay seemed to him to be one which could have been surmountable. Given that perception, the Ombudsman first sought a reply in March 2011 and it became evident by June 2011 that the delay was going to be so prevalent so as to require a formal investigation to determine the reasons for the time taken by the HRM to provide the reply.

The predominant reason put forward by the HRM for the delay was said to be attributable to the cumbersome nature of the enquiry in that it required the interpretation, examination and analysis of files and events that dated back four decades. At face value that appeared to be a fact with which the Ombudsman could not argue. However, the chronology of the subsequent facts were such that the Ombudsman could see that there was further need to clarify the extent and manner of how the Department had handled the initial enquiry by the Complainant and the Ombudsman's own requests.

Working on the basis that the Department had informed the Complainant in October 2010 that they had extensively considered the matter and had decided not to make a payment the Ombudsman found it strange that the matter took so long when it was revisited at his intervention. The Ombudsman accepts that the HRM had been replaced and that a degree of familiarisation would have been necessary before the incumbent manager could have replied to the Ombudsman. It so transpired that, through the HRM's reply, the Ombudsman became aware of certain administrative shortcomings which he believes were unacceptable and which had the effect of delaying the matter unreasonably. The first of these shortcomings related to the overlooking of the Complainant's personal file by the Department which had the consequential effect of having to waste time searching for the information and to have to re consider the relevant issues; with the added burden of not having all the information which may have been available.



A further striking feature to this case was the maladministration found in the Department's handling of the communications with the Complainant prior to the Ombudsman's intervention, as well as, the communications with the Ombudsman. The Department's letter to the Complainant was very poor and somewhat delayed. That initial reply was comprised of 3 sentences and came about a year after the Complainant had made the query with regards to his entitlement. To add 'insult to injury' the reply which purported to communicate a decision gave no reasoning for such a decision; something which the Ombudsman cannot emphasize enough to be maladministration in its most raw form. The Ombudsman expects that, in keeping with the Principles of Good Administration and the principles of natural justice, reasons need to be given for decisions. This is a fundamental and basic requirement with which all public authorities comply including the judiciary and the Ombudsman himself.

The matter of how the Department handled its responses in this case is further compounded by the fact that the initial Ombudsman's letter merely sought an explanation for the non reply to the Complainant's letter and for the lack of reasons. However, following a meeting with the HRM the Ombudsman was able to ascertain that the subsequent delay may have come from the HRM's desire to make diligent investigations before she replied to the Ombudsman. This meant she basically conducted a new investigation.

The Department confirmed that the determination of the claim in October 2010 was after extensive consideration of files and materials dating back decades. The Department also confirmed that the decision made in October 2010 was considered by the Financial Secretary and they went on to outline the basis upon which the decision had been arrived at. Therefore, whilst recognising the admirable intentions to be diligent, the Ombudsman, does not see a justification why precisely that explanation could not have been communicated to him and / or to the Complainant straight away. It was evident from the papers, that even though, the officer who dealt with the matter may have retired from the public service there must have been a record or file note outlining that explanation.

It would be unfair not to highlight that the task of assessing such enquiries as that presented by the Complainant, are nothing short of daunting, for many reasons. In the first place because of the number of years that have usually elapsed since the person commenced his employment then there is the fact that there may have been conditions of service or laws affecting rights and entitlements. Moreover, to all this cumbersome state of affairs the Ombudsman noticed that there was a filing system which it has to be said may not have been the most ideal. That was so because there was a general personal file on the person but there were then numerous files on specific matters that affect the individual. For instance there could be a file on gratuity and a file on pensions. In other words there are topic files which necessarily have to be located, searched and considered in these sort of enquiries. The overall size of those records was considerable given that there were files since the Department came into existence. With the assistance of the HRM the Ombudsman came to understand the complexity of the system they are made to work under when it comes to records, files etc and whilst this does not exonerate the Department from some degree of maladministration it does mitigate the degree of such maladministration. Of course the mere fact that the system of record keeping and filing may not be ideal can be in itself a point of maladministration.

The Ombudsman sustains the Complaint given that the initial reply given to the Complainant was inadequate and because the Ombudsman would have expected the information he requested to have been made know to him and to the Complainant much earlier on in the day although he concedes that this may have been due to the intention of the HRM to be diligent rather than an it being an intentional disregard of the Ombudsman's request.

Transport (Minister of)



The Gibraltar Public Services

Ombudsman

Transport (Minister of)

Case Sustained

CS/919

Complaint against the Minister for Transport for his refusal to grant a parking permit

Background

The Complainant explained that was aggrieved by the Minister's refusal to grant him a parking permit. The Complainant was the owner of a property in Gibraltar but was not a resident in the sense that he was not in Gibraltar for more than 183 days in a year and as such his motor vehicle was not registered in Gibraltar. The Complainant felt aggrieved by the decision and sought an explanation from the Minister who corresponded twice with the Complainant. The Minister informed the Complainant that the permit was refused on the basis that the Complainant was not a resident in Gibraltar and because his motor vehicle was not registered in Gibraltar.

The Complainant did not consider this decision to be just or reasonable and presented his complaint to the Ombudsman.

Investigation

The Ombudsman wrote to the Minister to enquire:

1. Who had considered the Complainant's application?
2. The basis and criteria upon which the application had been considered? and The date on which the refusal had been communicated to the Complainant?

A reply was forthcoming from the Senior Executive Officer at the Ministry for Transport. In this reply the official confirmed that:

“ Parking spaces were limited in Gibraltar and in certain areas (such as housing estates) parking is controlled so that only residents may park their cars in the area. ‘Resident’ does not mean ‘owner’ or ‘person with an interest in the property’.

If it did, then many more parking permits would need to be issued. The Government policy is to limit the issue of parking permits to genuine residents; if all those ‘with an interest in the property’ were entitled to permits, the control of parking would be pointless.”

The Ministry's official confirmed that the Complainant's application had been considered by the Department for Transport initially and refused verbally on the basis of the above policy.

Conclusions

Given that the Ministry has stated that the above represents the Government policy on the issue of parking permits, the Ombudsman, in accordance with the provisions of section 18(5) of the Public Services Ombudsman Act cannot comment further on the merits of the policy.



The Gibraltar Public Services

Ombudsman