

GIBRALTAR PUBLIC SERVICES OMBUDSMAN



Annex Report 2012



The Gibraltar Public Services

Ombudsman

**“The only time you fail
is when you fall down
and stay down.”**

Stephen Richards

TABLE OF CONTENTS

Buildings and Works Department	5
Housing Authority	11
Magistrate's Court	19

EDUCATION & TRAINING



magistrate's court



SOCIAL SECURITY





Building and Works Department

Buildings and Works Department

Case Sustained

CS/917

Complaints against Buildings & Works Department due to the delay in undertaking repairs to sewage pipes located in communal ducts in the block of flats the Complainants reside in

Complaint

The Complainants were aggrieved because of the delay on the part of the Buildings & Works Department ("the Department") in undertaking repairs to sewage pipes ("the Pipes") located in the communal ducts of the block of flats ("the Building") they resided in.

Background

The Complainants claimed that for the past year they had suffered strong, foul smells in their Flats which originated from the Pipe and that despite numerous reports made at the Reporting Office, no repairs had been carried out. One of the Complainants claimed that the stench was so concentrated it triggered migraine attacks on his son, to the extent that to alleviate the problem, the son was frequently left with no choice but to leave the flat and spend the night at a relative's flat.

Desperate by the inaction of the Department, in October 2010 the Complainants wrote to the Principal Housing Officer ("the PHO") at the Ministry for Housing with their grievance and to the Ombudsman for assistance.

Investigation

In November 2010 the Ombudsman wrote to the PHO. He informed the PHO of the situation the Complainants were enduring and referred him to their letters to which no reply had been received, and to the fact that no action had been taken to resolve the problem.

The Ombudsman also wrote to the Environmental Agency ("the EA") requesting copies of reports made by residents of the Building on the matter.

Response from the Department & PHO

The PHO verbally informed the Ombudsman that prompt action would be taken in this case.

The Department contacted the Ombudsman and advised that a survey of the required works had already been commissioned. In the interim, until repairs were carried out, the duct would be cleaned on alternate days to alleviate the problem.

Environmental Agency

The EA's records showed that in June 2003 they had received two complaints on the issue of bad smells emanating from the sewers and that the matter had resurfaced in June and October 2010. In June 2010, the cause was identified as being due to a broken W.C. (water closet) sewage connection in the duct from which blackish foul water and excrement was leaking. At the time, the EA contacted B&W and noted that the matter had been reported but because major works had to be undertaken the commencement date for the repairs was unknown. The problem continued and another report was made in October 2010.

Noting the four month period (June to October 2010) throughout which the EA were aware of the problem but took no action in relation to the Department not having carried out repairs, the Ombudsman wrote to the EA. He enquired as to the provisions contained in the Public Health Act which precluded the EA from issuing an abatement notice to the Government of Gibraltar ("Government").

The EA explained that the issue of notices for the abatement of nuisances is provided for by Section 82 of the Public Health Act and the EA act as agents for the Government. In cases where statutory nuisances arise in Government owned properties, the EA advise Government when in their view, Government may be responsible for the abatement. EA stated that because Government is aware of the need to abate a nuisance it does not need to serve itself with an Abatement Notice. Additionally by virtue of Section 69 of the Interpretation and General Clauses Act, the Crown is not subject to the statutory nuisance provisions of the Public Health Act.

Ombudsman Site Visit

The Ombudsman undertook two site visits. In the first visit, prior to repairs being carried out, he experienced first hand the foul smells in the duct and saw the sewage that accumulated at the ground floor level, the result of leaks originated from some of the Pipes. Of serious concern also to the Ombudsman was the fact that there was no door in place at one of the ground level access points to the ducts which meant that anyone could gain access. Considering the fact that the duct contains a pit of approximately one and a half metres in depth, the situation had to be urgently rectified.

Regarding access to the ducts from inside the Building, the Ombudsman noted that although the doors to these were secured, residents had in some cases gained access and were using the small area for storage purposes, installation of water heaters, etc. This was not permitted and was clearly spelt out by way of a notice affixed to the access door.

The second site visit took place in January 2011 after repairs had been undertaken in one of the ducts. Although visibly cleaner than the remaining ducts, the foul smells persisted. The Department explained that this was because the two ducts communicated by means of an underground channel and until the required repairs had been carried out, the smells would continue, albeit to a lesser degree. The works undertaken had been the replacement of the soil and vent pipe and all its connections from the ground to the top floor of the Building and had been carried out by a contractor who took circa three weeks to complete. B&W pointed out that connections to the Pipes by residents when undertaking repairs/refurbishments, had contributed to the problems with the Pipes.

The Ombudsman noted that the duct access about which he had raised concerns had now been boarded up.

Conclusion

From the date of the first report made by the residents at the Reporting Office, six months (June to December 2010) elapsed before the repairs were undertaken. Throughout that time, the residents continued to endure the foul, putrid smells in their homes.

Response from the Department & PHO

The Ombudsman's investigation was unable to establish a justifiable reason for the delay in repairs and for that reason sustained the Complaint.

The Ombudsman pointed out that the PHO's and Department's prompt action as a result of his intervention was what the Complainants had expected from these entities from the onset. Unfortunately, that proved not to be the case, to the extent that even when the residents wrote to the PHO with their grievance they did not receive a reply.

Regarding the undertaking by the Department that in order to alleviate the problem, the pit in the duct would be cleaned on alternate days, the Ombudsman found that this did not materialise.

Environmental Agency

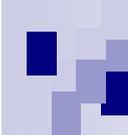
Before resorting to the Ombudsman, the Complainants contacted the EA, the entity they believed would force Government to undertake the necessary repairs. What the Complainants were not aware of was the fact that the EA are not able to enforce the provisions of the Public Health Act against Government because they consider 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.

Ombudsman Site Visit

From his site visits, the Ombudsman concluded that the problems in the ducts were the result of the lack of maintenance and supervision throughout a prolonged period of time. Evidence of this is:

1. The number of repairs that had to be carried out in the duct, these had accumulated through time;
2. The fact that the small area (duct access in the building) was being used by residents in contravention of rules;
3. The open duct access at ground floor level.



Case Sustained

CS/925

Complaint against the Buildings & Works Department due to the delay in processing a claim for compensation

Complaint

The Complainant was aggrieved because of the delay on the part of the Buildings & Works Department (“B&W”) in processing a claim for compensation.

Background

The Complainant explained that on the 6th September 2008 his Government rented flat (“Flat”) suffered water ingress as a result of a burst pipe above the property. The Complainant claimed that months before the incident he had contacted the Housing Authority’s Reporting Office (“Reporting Office”) and reported what was at the time a small leak into the kitchen. He claimed he was told by B&W that repairs required were major and claimed that nothing was done.

According to the Complainant the water ingress damaged kitchen cabinets, laminate flooring, kitchen tiles, the balcony wall and drainage. The Complainant stated that days after the incident, B&W sent a member of staff to take photographs of the damages and at that visit provided him with a claim form which he completed and returned to B&W on the 17th September 2008. The Complainant stated that from then on he regularly visited the B&W help desk to enquire about the claim’s progress but was told on each occasion that there was no news.

In March 2011, two and a half years after submitting the claim form, the Complainant brought his Complaint to the Ombudsman.

Investigation

The investigation began during the period in which the restructure of B&W was being completed and the Housing Works Agency (“HWA”) was being established to carry out building maintenance and repair works to Government rental housing which had until then been carried out by B&W. Due to the workload involved in that exercise, the Ombudsman resolved to place a one month moratorium on investigations related to B&W until such time as the HWA was operational.

In April 2011 the Ombudsman resumed investigations related to B&W.

The Ombudsman now directed his enquiries to the Housing Authority (landlord) and requested information as to the reasons for the delay with regards processing the Complainant’s claim. The Housing Authority informed the Ombudsman that the matter of claims had until then been exclusively undertaken by B&W. Due to the restructure of B&W a package of files in relation to outstanding claims had recently been passed to the Housing Authority but the Complainant’s claim was not included. The Housing Authority put the enquiry to the HWA and requested reasons for the delay in addressing the case.

Months later and not having received any information, the Ombudsman pressed the Housing Authority.



The Housing Authority provided the Ombudsman with copies of documentation amongst which were:

- the Complainant's claim form dated 17th September 2008;
- the works order generated to undertake repairs subsequent to the salt water pipe having burst;
- correspondence in November & December 2008 between B&W and the loss adjustor (instructed by B&W) to ascertain the extent of damage which he calculated to be in the region of £1,930-;
- the invoice submitted by the loss adjustor for £180- in December 2008 and settlement in September 2009;
- internal memos from B&W requesting that an older works order (90473) be actioned as soon as possible;
- a letter from the Housing Authority to the Attorney General's Chambers ("AG") enquiring if legal advice had previously been requested by B&W on the claim and relevant documentation enclosed with respect to the claim. The Housing Authority informed the AG that for no apparent reason the claim had not been processed.

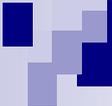
On the 19th April 2012 the Ombudsman requested an update from the Housing Authority and was informed that the AG's advise had been received two weeks earlier and concluded that the claim should be denied. The Housing Authority confirmed that the Complainant would be informed of the decision and this finally materialised on the 2nd May 2012; three and a half years after submitting the claim form.

For completeness of records, based on the Complainant's assertion that a leak had been reported prior to the pipe bursting and the reference by B&W in an internal memo (above-mentioned) to an 'older works order 90473', the Ombudsman requested a copy of the said works order. On perusal of the copy it was noted that a report of water ingress into the Flat's kitchen was made on the 4th October 2007, eleven months before the burst pipe incident. No works were undertaken in respect of that report until after the incident at which time the outstanding works order 90473 was cancelled and the works required included as part of works order 99260, generated on the 22nd September 2008.

Conclusion

In September 2008 when he completed and handed in the claim form provided by B&W, the Complainant trusted that the mechanism to compensate him for the damage caused had been set in motion and had no doubt that the claim form would be processed accordingly. The reality was that despite the Complainant's regular contact with B&W in the pursuit of a decision on the claim, the form was never processed. No explanation can be provided by the Housing Authority as to the reason why.

Based on the findings of his investigation, the Ombudsman found that there was maladministration in this case. The non-processing of the claim form in this case shows carelessness on the part of B&W and the lack of a follow up procedure in relation to the claims system. The restructure of B&W was not to blame in this case as the claim form had been handed in two and a half years before the restructure was completed.



It must be highlighted that had the Complainant not put his Complaint to the Ombudsman, the claim would have remained 'lost' in the system. Copies of the documentation related to the claim were ultimately found in files held by the Housing Authority.

The Ombudsman was critical of the Housing Authority's handling of this case. In the initial stages of the investigation they deflected enquiries to HWA; a newly established entity who could not provide information about B&W as their records had been passed on to the Housing Authority and it was they who ultimately put together the documentation required. The Ombudsman was also critical of the fact that he had persistently had to pursue the Housing Authority for information throughout the investigation. This highlighted how impossible the Complainant would have found it to unravel the situation and obtain a decision. Needless to add that these events caused further delays to the Complainant.

The Housing Authority not having communicated to the Complainant the decision until a month after having received the AG's advice, denotes that not even at the last stage in the resolution of this case did the Housing Authority have consideration for the Complainant. Three and a half years had passed since he submitted the claim form and at the end of the process did not even receive an apology from the Housing Authority. The explanation has been provided by the Ombudsman.

Last year, the Ombudsman undertook a number of investigations related to claims, specifically on delays on the part of B&W in processing claims for compensation. As a result of those investigations (cases 885, 895 and 904) the Ombudsman made the following recommendation:

'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.'

In September 2011 the Chief Secretary wrote to the Ombudsman and informed him that the Housing Authority had adopted the recommendation. The internal claims procedure for compensation would be suspended and instead, claims would be pursued through the legal system.

A further recommendation made by the Ombudsman in a separate case was that the Housing Authority should look into implementing a clause in tenancy agreements which would make it compulsory for the tenant to insure home contents.

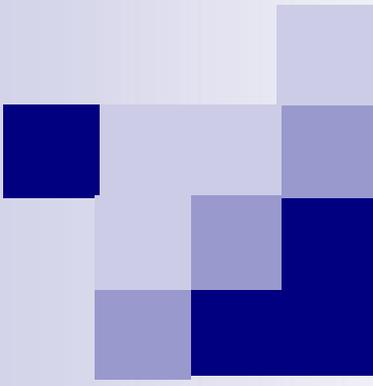
The Housing Authority has recently informed the Ombudsman that they have implemented the above recommendation. This will be incorporated as part of the undertaking when tenants sign the tenancy agreement at the time of accepting the allocation of a property.

Classification

Sustained

Recommendations

That the Housing Authority apologise to the Complainant for the handling and delays experienced in this case.



Housing Authority

Housing Authority

Case Sustained

CS/931

Complaint against the Housing Authority, for the delay in undertaking repairs and finding a permanent solution to problems of water ingress and dampness in the Government rented flat where the Complainant and her family resided

Complaint

The Complainant was aggrieved because of the delay on the part of the Housing Authority in undertaking repairs and finding a permanent solution to problems of water ingress and dampness, in the Government rented flat ("Flat") where she and her family resided.

Background

In May 2006 the Complainant and her children were allocated the Flat located on the top floor of a block of flats ("Building"). In January 2007 the Flat experienced water ingress and the Complainant reported the matter to the Housing Authority's Reporting Office ("Reporting Office"). Four years later and after having unsuccessfully pursued the matter of adequate and permanent repairs through the Buildings & Works Department ("B&W") and the Housing Authority, the Complainant brought her Complaint to the Ombudsman.

The Complainant explained that due to persistent and prolonged water ingress, problems in the Flat had exacerbated; the electrical installation had been affected and walls and ceiling showed cracks, wet patches and mould due to the damp conditions. (Photos Appendix 1). The Complainant stated that those factors had an adverse effect on her children's health. Furthermore, the family lived with much worry and anxiety as they did not feel safe due to the conditions in the Flat.

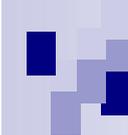
Investigation

In January 2011, the Ombudsman put the Complaint to the Housing Authority who advised that they would request a report on the matter from B&W.

Early in 2011 Government decided to restructure B&W. As a result B&W was abolished and the Housing Works Agency ("Agency") established to carry out building maintenance and repair works to government rental housing and other matters connected thereto. The Agency began operations in April 2011. Delays in providing information to the Ombudsman immediately arose.

[Ombudsman's note: Long delays were experienced by the Ombudsman in obtaining information in this case and many others. This matter has been dealt with separately in this report.]

The Agency provided a report which confirmed that the problems in the Flat had been reported by the Complainant in January 2007 and the works estimated a year later when it was identified that repairs to the roof and external walls had to be undertaken and the gutter replaced.



By April 2010 (over three years since the report was made) as still no repairs had been undertaken, the Complainant met with the Chief Executive of B&W who informed her that the repairs would be included in B&W's programme of works. Some of the repairs which were scheduled to start in July 2010 were postponed to December 2010 because scaffolding could not be erected until other works in the area were completed.

In August 2010 the Complainant met again with the CE B&W to reiterate her concerns about the health and safety conditions of the Flat and to request to be relocated. The Complainant informed the CE that plaster from the ceiling in the bedroom had fallen off. Two inspections were carried out during September 2010 which concluded that the Flat was safe as did the inspection of the electrical installation which deemed it to be in good condition.

In November 2010, repairs were undertaken in the roof. Scaffolding was erected in January 2011 and external repairs completed in March 2011.

In early June 2011, the Ombudsman made further inquiries to the Housing Authority as follows:

- The specific cause/s of the water ingress;
- confirmation that the repairs would prevent a recurrence of the problem;
- information as to the reasons why it had taken B&W one year to estimate the report and over four years to carry out repairs;

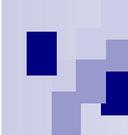
The letter was forwarded to the Agency in August 2011 and a reply received a month later. The Agency explained that due to modifications to the computer system they did not have information as to the reasons for B&W's delay in providing an estimate. As to the delay in undertaking repairs, the Agency stated that it was their understanding that B&W had a backlog of an average 1,500 monthly repairs outstanding on any given month. This coupled with problems experienced by B&W in procuring scaffolding increased the backlog and consequently caused substantial delay.

Points (i) and (ii) above were not addressed.

The Ombudsman obtained reports of water ingress to the Flat in 2002 and 2005 originated from the roof of the Building. Repairs undertaken consisted of the roof being painted with a waterproof product.

Information was requested by the Ombudsman from the Agency in respect of claims made by the Complainant that further repairs to the roof and gutters located on the other side of the Flat were required. A commencement date for internal repairs to the ceiling was also requested.

The Agency advised that at present they were only tasked to undertake internal repairs and referred the Ombudsman to the Housing Authority. Regarding repairs to the ceiling, the Agency stated that the works would be carried out within three months (unless other priorities arose on the part of the Housing Authority) but no commencement date could be provided.



[Ombudsman's Note: Parallel to the creation of the Housing Works Agency, the management of repairs deemed to be of an external nature was transferred to No. 6 Convent Place. In early 2011 (just before the creation of the Housing Works Agency) the PHO informed the Ombudsman that in order to deal with the backlog created by the now defunct Buildings & Works Department, Government was going to put in place Measured Term Contracts whereby both private and in-house contractors would be undertaking repairs of an external nature. Regrettably, at the time of writing this report no such scheme had yet been put in place; indeed the Ombudsman had been informed in mid December 2011 that after the festive season, the responsibility of looking after the repairs of an external nature would once again revert to the Housing Authority].

By way of update before closing the investigation, the Agency informed the Ombudsman that in August 2011 they had visited the Flat in relation to repairs to the ceiling. At that visit it was proposed to build a false ceiling and construct a dry lining to the affected walls and plaster but the Complainant refused the works for the time being as she was by that stage pursuing the option of being decanted from the Flat. The Agency put the repairs on hold until further notice.

In the meantime the Complainant met the Minister for Housing to request that she be relocated. As the property was not deemed to be unsafe, the Complainant could not be decanted or relocated but to assist her in her plight, the Minister agreed to an exchange.

Delay on the part of the Housing Authority, B&W & the Agency in providing information to the Ombudsman

The Ombudsman initiated the investigation into the Complaint in January 2011 and directed it to the Housing Authority. The latter had to obtain some of the information from B&W which due to the workload involved in its restructure and the establishing of the Agency proved a somewhat difficult task. Faced with this scenario, the Ombudsman resolved to put a moratorium of one month (mid-March to mid-April 2011) on cases related to B&W until such time as the Agency was operational.

On 18th April 2011, the Agency provided some of the information requested by the Ombudsman to the Housing Authority. Inexplicably, it took the Housing Authority one month to forward that information to the Ombudsman.

It took three months for the Housing Authority to provide part of the information requested by the Ombudsman in his letter of June 2011. The letter was passed from the Housing Authority to the Agency in August 2011. The Agency reverted to the Housing Authority with their findings. In September 2011 the Housing Authority wrote to the Ombudsman.

Since the inception of the Agency, due to the lack of a proactive approach by the Housing Authority, jurisdictional problems arose. The system that had been allowed to emerge was that once a report had been made by a tenant to the Reporting Office and such a report passed to the Agency, the Housing Authority appeared to abnegate all of its responsibilities vis-à-vis the repairs to the flat. The Housing Authority should have been in complete control as to when works should be done and the order of those works, i.e. prioritize according to urgency, chronological, etc. This did not happen and consequently the Ombudsman was directed to the Agency in order to obtain information. In turn, the Agency contended that they were not the correct entity to provide information and directed the Ombudsman to the Housing Authority.



Notwithstanding the above, the PHO informed the Ombudsman after having read the draft report as follows:

‘...priority for repairs during the period subsequent to the restructure of B&W to the Agency was mainly decided by the latter and not the Housing Authority. Therefore despite the fact that the Housing Authority is ultimately responsible as landlord, Government policy at the time did not allow the former to prioritise particular cases. That said, the period of time in tackling the repairs was unacceptable.’

Conclusion

Four years to undertake repairs to stop water ingress to the Flat throughout which the Complainant persistently pursued the matter, and then no guarantees given by the Housing Authority that the repairs would be a permanent solution. Moreso, judging from similar repairs in the past it would appear that it would only be a matter of time before the problem resurfaced.

During the four years of inaction, the Complainant and her family lived in a Flat ridden with problems. An unacceptable situation which ultimately shows a lack of duty of care by the Housing Authority who under Section 3 (1) of the Housing Act 2007 are vested with the general management and supervision of all buildings comprising public housing.

Nonetheless B&W had been tasked with undertaking repairs and the period of time which it took to undertake these were commensurate with the manner in which B&W had been run, which could only be classified as unsatisfactory. This view has been reflected in the Ombudsman’s many reports in respect of investigations of complaints lodged against them. Expectations are that the newly established Agency will work effectively and meet its proposed targets thus offering those who require their assistance an efficient service.

Delay on the part of the Housing Authority, B&W & the Agency in providing information to the Ombudsman

The Ombudsman was critical of the stance adopted by the Housing Authority of acting as the middle man in the investigation into this case. They limited themselves to passing the Ombudsman’s queries to B&W at the commencement of the investigation and then to the Agency. Understandably, the Agency, a newly established entity, could not provide information about B&W. It was the Housing Authority who held those records and ultimately should have provided the Ombudsman with information.

The Ombudsman was very disappointed about the manner in which the Housing Authority had chosen to deflect queries to the Agency and was critical of the time taken to do this. The Ombudsman was critical that this process completely disregarded the fact that during the time elapsed, the Complainant and her family continued to suffer the consequences.

Classification

Sustained

Case Partly Sustained

CS/954

Complaint against the Housing Authority because the Housing Authority had failed to resolve problems of water ingress to the Government rented property the Complainant resided in and she was further aggrieved because she claimed the Housing Authority had backtracked in their decision to decant her from the property

Complaint

The Complainant was aggrieved because the Housing Authority had failed to resolve problems of water ingress, at the Government rented property she resided in ("Flat"). She was further aggrieved because she claimed the Housing Authority had backtracked in their decision to decant her from the Flat.

Background

The Complainant stated that the problems in the Flat commenced seven years ago when she detected the roof in the main bedroom had dipped and was in danger of collapsing. The Complainant explained that a new roof was built by the Buildings & Works Department but that in 2009 water ingress resumed and in 2010 worsened to such a degree that she had to move out of the main bedroom. The Complainant claimed there was also water penetration into the living room originated from a deep crack on the exterior walls and that large damp patches were visible along the walls.

According to the Complainant, during that time she made numerous failed attempts to get the Housing Authority and the Buildings & Works Department to attend to the problem and in July 2010 finally resorted to request a meeting with the Minister for Housing ("Minister"). By early September 2011 the Complainant claimed that although her letter had been acknowledged no appointment had been provided.

In the interim, the Complainant stated that she contacted No. 6 Convent Place (Chief Minister's Offices) where she was helped by one of the Chief Minister's assistants ("Assistant"). Around August 2011 the Complainant explained that the Assistant and the Chief Executive ("CE") of the Housing Works Agency inspected the Flat and concluded that repairs would be so costly that the best option was to decant her. Following that inspection, the Complainant claimed the Assistant met with the Principal Housing Officer ("PHO") and informed her that the PHO had suggested she should be moved from the Flat.

Shortly after the inspection the Complainant stated some cosmetic works were carried out. She contacted the Assistant to make enquiries with regards the decanting and claimed she was shocked when the Assistant disputed that he had informed her she would be decanted.

Faced with no solutions to her problems, in September 2011 the Complainant brought the matter to the Ombudsman.



Investigation

The Housing Authority advised that the repairs required to the Flat were of an external nature and that those types of works would be carried out as and when 'Measured Term Contracts' were awarded. [Ombudsman note: Further to the restructure of Buildings & Works, 'Measured Term Contracts' were going to be awarded by Government to private and in-house contractors for the purpose of external repairs but at the time of writing this report (February 2012) the Ombudsman was not aware that this process had been initiated].

The Housing Authority stated they had no information on the Complainant being decanted but advised that she had met with the Minister. The Complainant informed the Ombudsman that the meeting took place in September 2011 and that the Minister informed her he was not in possession of the report of the inspection undertaken at the Flat and was therefore unable to assist her. In November 2011 the Complainant pursued the matter of the report with the Minister's office at the same time as she sent a copy of a survey of the Flat which she had privately commissioned. Regarding the Complainant's claim that the PHO met the Assistant, the PHO categorically denied having had a meeting with the Assistant in relation to this case.

In the course of the investigation the Ombudsman was not able to identify the report or whether one had been commissioned at all. The importance of such a report is that on the basis of the recommendations that would be contained therein, the Minister could authorize the decanting of a tenant.

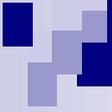
In October 2011 a request for information about pending repairs to the Flat was requested by the Ombudsman to the Housing Authority. The information was received two months later; an overly excessive period of time based on the nature of the request. The inaction unnecessarily delays the Ombudsman's investigation and inevitably reflects negatively in his performance towards the Complainant

Two reports were forwarded by the Housing Authority. The first report made on the 16th June 2010 denoted dampness in the Flat. This was cancelled as a result of a second report in November 2011 which according to the Housing Authority referred to the same defect and was marked as pending an inspection.

Conclusions

After unsuccessfully pursuing her request for repairs to the Flat, the Complainant finally resorted to put the matter to the Minister. Desperate that no one was addressing her problem she contacted No. 6 Convent Place and finally via the Assistant achieved that an inspection of the Flat by the Housing Works Agency was undertaken. The Complainant claimed to have first heard the 'decanting' option at the inspection and shortly after from the Assistant after his meeting with the PHO. According to the Complainant the Assistant subsequently disputed this assertion.

Notwithstanding the veracity of the above sequence of events, the Ombudsman found that decanting can only be authorised by the Minister on the basis of recommendations made in a report by a professional instructed by the Housing Authority. No report had been requested by the Housing Authority to date, so in effect, on the matter of decanting, despite the amount of time elapsed, the process (irrespective of whether assurances had been given to the Complainant by the Assistant) had not yet been set in motion. In the meantime, the Complainant lived and lives in fear that the winter rains will aggravate the condition of the Flat and is anxious for the health and safety of herself and her family.



Comments

The Housing Authority had been aware of the severe water ingress to the Flat and yet nearly two years later the Complainant, despite having desperately tried to bring the matter to the attention of the Housing Authority, the Buildings & Works Department and the Minister, was nowhere nearer to having her Flat repaired.

Parallel to the creation of the Housing Works Agency, the management of repairs deemed to be of an external nature was transferred to No. 6 Convent Place. In early 2011 (just before the creation of the Housing Works Agency) the PHO informed the Ombudsman that in order to deal with the backlog created by the now defunct Buildings & Works Department, Government was going to put in place Measured Term Contracts whereby both private and in-house contractors would be undertaking repairs of an external nature. Regrettably, at the time of writing this report (Feb 2012) no such scheme had yet been put in place; indeed the Ombudsman had been informed in mid December 2011 that after the festive season, the responsibility of looking after the repairs of an external nature would once again revert to the Housing Authority.

The Ombudsman could only conclude the obvious, i.e. that the intended scheme never got off the ground and that the Housing Authority was therefore at the same point it was in early 2011 in relation to external repairs. In the meantime, the Complainant and her family are suffering anxiety, stress, fear and in effect hardship.

The Ombudsman took issue with the cancellation of the first report made by the Complainant in June 2010. In so doing, the true record of events is altered as is the second report made in November 2011 that is shown as outstanding; upon review of outstanding jobs it would appear to the untrained eye that the problem arose in November 2011, especially as there is no mention of the previous report in the second one.

In order to adhere to facts, instead of generating a new report, the Housing Authority should have left the original report in place and updated it accordingly when the second report was made.

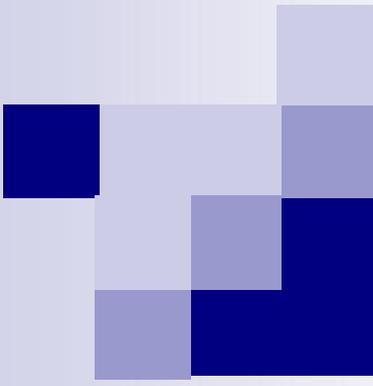
Classification

Sustained: Complaint (i) – Housing Authority’s failure to resolve problems of water ingress to the Flat

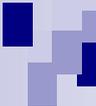
Not Sustained: Complaint (ii) – Housing Authority backtracking on their decision to decant the Complainant

Recommendations

The Ombudsman would have made recommendations, however given the circumstances of this case and the fact that the whole matter of the external repairs was being actively considered, the Ombudsman was of the opinion that it was prudent not to make any recommendations at this stage.



Magistrate's Court



Case Sustained

CS/981

Complaint against the Magistrates Court for the delay in providing the Complainant with a court hearing

Complaint

The Complainant was aggrieved by the Magistrates Court for the delay in providing him with a court hearing in relation to a hit and run case in which he had been involved fifteen months earlier.

Background

The Complainant explained that he had been trying to obtain information in relation to his case with the Royal Gibraltar Police (“RGP”) since February 2011. By late September 2011, after numerous exchanges of correspondence, the RGP advised him that there was nothing they could do to speed up the process in which traffic cases were heard. The problem stemmed from the limited number of slots available in the Magistrates’ Court and therefore he was directed to the Chief Executive of the Gibraltar Court Service if he wished to pursue this matter any further.

The Complainant decided to allow the Magistrates Court more time to address his case before he contacted the Chief Executive. However, by February 2012 (by now a year had elapsed since his road traffic accident), the Complainant once again renewed his pursuit, this time by addressing the Chief Executive of the Gibraltar Court Service (“Chief Executive”). The Chief Executive acknowledged the Complainant’s letter promptly and explained that he had passed his letter onto the Magistrates’ Court and asked them to inform the Complainant as quickly as possible of the date that had been set for his case.

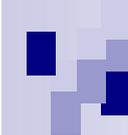
By 22nd May 2012, upon receiving no correspondence from the Magistrates’ Court, the Complainant brought his grievance to the Ombudsman.

Investigation

On the 24th May 2012, the Ombudsman wrote to the Chief Executive presenting the Complaint and asking his comments and for an outline of the steps taken by the Gibraltar Court Service since February 2012 in relation to the Complainant’s case. The Ombudsman did not receive a reply and therefore chased the matter again on the 13th June 2012.

By the 20th June 2012, concerned at the fact that the Ombudsman had not received replies from the Chief Executive in relation to another unrelated complaint since April 2012, the Ombudsman took the matter to the Chief Secretary.

On the 29th June 2012, the Ombudsman received news from the Chief Executive’s office explaining that the complaint in question should not have been directed to the Gibraltar Court Service to begin with because the Complainant was a victim of a hit and run traffic accident, and as such must have reported the incident to the RGP to follow up and prosecute as they deemed appropriate. They further explained that the Courts do not hold any records on victims, only on persons charged with offences brought before the Courts by the prosecution and therefore there would have not been anything under the Complainant’s name.



She also informed the Ombudsman that the Court Service had already contacted the RGP for assistance and had ascertained that the Complainants' case was due to appear before the Magistrates' Court on 28 August 2012.

Conclusions

It would appear that this was a case of erroneous information being given by the RGP to the Complainant.

The Ombudsman was of the 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 completely avoided had simple measures of good administration been taken into account.

The RGP should have been in a position to address the Complainant's queries considering there was an exchange of eight letters between the Complainant and the RGP in relation to his case. Instead, the problem was delegated to the Gibraltar Court Service.

After receiving the Complainant's first letter, the Chief Executive passed it on to the Magistrates' Court who failed to reply to the Complainant. Had they explained the matter as it was later explained to the Ombudsman, not only would they have avoided the unnecessary delay caused to the Complainant but also the Ombudsman's and consequently the Chief Secretary's intervention.

However, a striking feature to this case was the maladministration experienced by the Ombudsman himself through the non replies to his letters by the Chief Executive when all he needed to do was provide simple and available information.

Classification

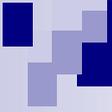
Sustained – The Ombudsman sustains the Complaint given that the Complainant was not given a reply to his query by the Magistrates Court.

UPDATE

BY WAY OF FURTHER INFORMATION, THE OMBUDSMAN WISHES TO INCLUDE IN THIS REPORT, EXCERPTS OF COMMENTS BY THE CHIEF EXECUTIVE OF THE GIBRALTAR COURTS SERVICE IN RELATION TO THEIR WORKLOAD:

“ON AVERAGE, THE MAGISTRATES' COURT DEALS WITH JUST OVER 40,000 INDIVIDUAL CASE MATTERS EACH YEAR... AS YOU CAN IMAGINE, THIS VOLUME OF CASE LOAD PUTS A TREMENDOUS PRESSURE ON THE ADMINISTRATIVE STAFF.... THE WORK OF THE MAGISTRATES' COURTS HAS GROWN SIGNIFICANTLY OVER A PERIOD OF TIME BUT THE STAFFING NUMBERS IN THE COURT HAVE NOT.

WHILE ANY INDIVIDUAL FAILURE IN OUR SERVICE IS REGRETTABLE AND NOT TO BE DISMISSED, I FEEL IT IS IMPORTANT TO PROVIDE SOME IDEA OF THE SORT OF PRESSURES AND VOLUME OF WORK THAT THE MAGISTRATES' COURT IS DEALING WITH ON A DAILY BASIS. I SHOULD ALSO ADD THAT UP UNTIL MAY OF THIS YEAR, THE COURTS' STAFF WERE DEALING WITH ALL THIS IN AN EXTREMELY DISRUPTIVE WORKING ENVIRONMENT DUE TO THE BUILDING WORKS.



IN FACT, FOR THE MAGISTRATES' COURT AND MY OFFICE, THE PERIOD BETWEEN APRIL AND JUNE THIS YEAR WAS PARTICULARLY DIFFICULT AS WE WERE DEALING WITH THE PLANNING AND PACKING FOR THE OFFICE AND COURT MOVES. AFTER THE MOVE ITSELF IN EARLY MAY, THERE WERE NUMEROUS TEETHING ISSUES WITH THE NEW BUILDING AND ADAPTION TO OPERATIONAL PROCEDURES THAT NEEDED TO BE LOOKED AT. IN SHORT, IT WAS AN EXTREMELY DIFFICULT TIME... WE STILL, FACE A LOT OF ADMINISTRATIVE PRESSURE IN OUR ABILITY TO SUPPORT THE RUNNING OF THE COURT DUE TO SHORTAGES OF STAFF

... A NEW COMPUTER PROGRAMME IS IN PLACE TO LOOK AT REPLACING SYSTEMS AND THIS WILL HELP SIGNIFICANTLY IN REDUCING THE PRESSURE ON STAFF AND THE POTENTIAL FOR ADMINISTRATIVE MISTAKES TO BE MADE.

WE ARE SUCCESSFULLY TACKLING BACKLOGS OF WORK... WE HAVE DRAMATICALLY IMPROVED HOW QUICKLY WE ARE PROVIDING HEARING DATES FOR THE SUPREME COURT AND ARE NOW CONCENTRATING ON REDUCING THE BACKLOG OF SUMMONSES IN THE MAGISTRATES' COURTS. IN SHORT, WE ARE WORKING VERY HARD TO PROVIDE A DIFFERENT LEVEL OF SERVICE THAN HAS BEEN PROVIDED IN THE PAST.

FINALLY, I WOULD HOPE THAT AS MORE COURT RESOURCES BECOME AVAILABLE WE WILL ALSO BE IN A BETTER POSITION TO RESPOND TO COMPLAINTS ABOUT OUR SERVICES.”



The Gibraltar Public Services

Ombudsman