GIBRALTAR PUBLIC SERVICES OMBUDSMAN

Annex Report 2013

The Gibraltar Public Services

Ombudsman

"He who comes into equity must come with clean hands."

Maxims of Equity

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CS/979

Complaint against the Ministry for Housing ("MFH") in relation to various issues affecting the enjoyment of their property ("the Property").

Complaint

The Complainants were aggrieved by a series of long standing issues relating to the management of the area in which they lived and also in respect of matters of confidentiality and possible breaches of data protection. The grievances complained of were; (a) blocked drains (b) revocation of parking licences for skips (c) painting/demarcation of parking bays and (d) contravention of data protection.

Background

Poca Roca is comprised of four properties, three of which had been purchased by the sitting tenants from H.M. Government of Gibraltar (GoG) the remaining property was owned by GoG and was let as rental property. The Complainants were one of the families who purchased the Property.

(a) Blocked Drains

The Complainants reported the issue of blocked drains to MFH In December 2011. They alleged that access to the passageway where the drains were located was being purposely blocked by their next door neighbour ("the Neighbour") in an attempt to restrict access. Although the drains serviced the Complainants property exclusively, they were located in a passageway between the Complainants and Neighbours houses. This passageway had been demised to the Neighbour in their Deed of Underlease.

(b) Revocation of Parking Licences for Skips

The Complainants (having acquired the necessary planning permission) had been carrying out works to the Property. They subsequently received a telephone call from the Environment Agency that there had been a complaint about rubble and building materials being deposited outside the Property. The Complainants accordingly sought and obtained a permit to restrict parking to enable them to place three skips outside the Property. Signs were erected to this effect. A couple of days later, they telephoned the police as a neighbour had not moved his car in compliance with the aforementioned signs. The Complainants were informed by the police that their permit had been voided by MFH. The Complainants alleged that this action was taken as a result of the Neighbours employment within MFH.

(c) Demarcation of Parking Bays

The Complainants alleged that MH had painted parking bays in the communal area leading to the Property without consultation. Upon enquiries made by the Complainants, Land Property Services Limited (GoG land property agents) ("LPS") informed them that MFH could not have taken said action without full consultation with the owners. The Complainants again cited this action by MfH resulting from the fact that the Neighbour worked for MFH.

Potential Contravention of Data Protection

The Complainants also complained that the Neighbour, who as referred to above, was an employee of MFH had, as a result of her employment there, abused her position vis-à-vis their Complaint. The allegation was that the Neighbour, together with another Poca Roca resident and close friend, had both quoted from private correspondence sent to MFH by the Complainants as well as from several letters that had been previously sent to LPS by the Complainants, and copied to MFH for their records.

Given the lack of replies to the Complainants calls or letters in relation to the above matters, the Complainants lodged their complaint with the Office of the Ombudsman.

INVESTIGATION

The Ombudsman presented the Complaint to MFH on the 26th March 2012 requesting their comments. He sent a further chaser letter before receiving a reply from MFH on the 4th May.

A copy of a General Report on Data Protection conducted by the Gibraltar Regulatory Authority against MFH dated March 2012 was made available to the Ombudsman, as an attachment to MFH's reply. However, the reply made no mention of the Complainants' grievance in relation to the issue of the alleged breach of data protection.

The MFH's lack of explanation and substance in its reply to all the points which had been raised as complaints was not to the Ombudsman's satisfaction. As a result, the Ombudsman again wrote to them stating that the letter received did not suitably address the matters being complained of and requested full answers. A more substantive letter ("the Substantive Letter") on behalf of the Principal Housing Officer, followed some weeks later, on the 27th June 2012.

(a) Blocked drains

The Substantive Letter stated that the drains were situated between the Property and the Neighbour's property and that there was a need to establish who was ultimately responsible for them as it was possible that they could have formed part of either owners' private property for which MFH was not responsible. This could be established by making enquiries over the existence of any contractual arrangement for maintenance between LPS and the tenants. As a result, the Ombudsman again wrote to MFH to enquire as to the steps being taken by them to establish ultimate responsibility for the drains and to LPS, in an attempt to determine who was responsible for their maintenance and repair.

MFH reverted by stating that it was only LPS who could establish this and sent the Ombudsman copies of emails MFH had sent LPS for this purpose. LPS sent the Ombudsman a holding reply stating that the matter was being looked into. After an onsite meeting between LPS and MFH at the Property, both entities wrote to the Ombudsman. The view was reached and it was indeed confirmed that MFH would make itself responsible for the repair of drains as "a gesture of good will" due to "the poor accessibility of the drains" but only for as long as the sole tenant (who had not purchased the property from Government) continued to remain a Government tenant. It was made clear that MFH would cease to accept responsibility for the drains if the Government tenant bought his property in future. No guidance was given as to where responsibility for the drains lies. As a result, the Ombudsman sought to obtain a plan of the underground drains system from LPS but marked delineations were not available. The issue of MFH obtaining access from the Neighbour to unblock the drains (located in a corridor between the Property and the Neighbour's property which had been assigned to the Neighbour) was not addressed either.

The Ombudsman understands that to date, the Neighbour is continuing to prevent access to enable the task of unblocking the drains to be carried out.

(b) Painting of Parking Bays

The Ombudsman in his investigation sought answers in relation to the painting of the demarcation of parking bays. In the Substantive Letter, MFH confirmed that this had been carried out by them, at LPS's request. Upon receipt of this information, the Ombudsman proceeded to write to LPS seeking confirmation of this. In its reply, LPS stated that the parking bays were NOT painted at their request. This assertion was also confirmed in a telephone conversation. However, at a meeting held between the Ombudsman and MFH, MFH stated that LPS had instructed them to demarcate the parking bays. At the time of drafting this report, neither entity admitted responsibility for having given the instruction to have the parking bays painted. In any event, whoever gave the instruction did so without consulting the tenants. There was no mention either by MFH for the reason of the revocation of the licence for skips.

(d) Contravention of Data Protection

No comments were initially made on this issue in response to the Ombudsman's original letter of complaint (as stated above). The Ombudsman expressed his dissatisfaction to MFH in respect of the lack of attention paid to this grievance. He specifically sought answers on the procedures taken by MFH on the allegation that the Neighbour had abused her position, particularly having had sight of the Data Protection Report the MFH had previously made available to the Ombudsman. The Ombudsman took note and expressed concern over its contents. The Report stated that "Whilst the MFH appears to have a satisfactory knowledge of customer confidentiality, very little appears to have been in place, to ensure that any personal data which it processes is done [so] in accordance with the Data Protection Act. To this end, there do not appear to be policies or procedures in place as guidance for staff to follow with regards to any data protection issues. Such issues would include disclosure of information to third parties, safe disposal of personal data, data retention policies and access to personal data by unauthorised staff." The report concluded that it was found that "various aspects of the MFH's manner of working, breach the DPA." It recommended that action be taken to ensure compliance with it.

The Substantive Letter in reply to the Ombudsman's further request for information, stated that the matter had been passed to the Housing Manager in her capacity as head of administration for her to address. Some weeks elapsed and the Ombudsman issued further correspondence, highlighting the fact that the complaint in respect of breach of data protection was very serious in nature. A letter from MHF followed on the 24th July 2012. The letter stated that the issue had been brought to the attention of the Housing Manager, the Principal Housing Officer and the Neighbour's line manager. The information given was that they had "spoken" to the Neighbour and asked whether she had seen any confidential correspondence, paying particular emphasis on the importance of the Data Protection Act and the sensitivity of the issue. The Ombudsman was informed that according to the Neighbour, all the information she was privy to was as a result of information provided by the Complainant in the course of an argument between them.

CONCLUSIONS

The Ombudsman was dissatisfied in the manner that these complainants were handled by MFH from the outset.

The initial reply received from MFH in response to the Ombudsman's first letter which set out the various grievances forming the Complaint, was far from satisfactory. The Substantive Letter which followed shed some additional light on the issues of concern but again, was far from complete and failed to provide any prospective solutions to them.

(a) Blocked Drains

The Ombudsman was concerned with the amount of exchanges in correspondence required, in order to receive replies from both MFH and LPS in relation to this issue. Although he was appreciative of MFH's attempts in liaising with LPS and was grateful to both entities for scheduling an onsite meeting in order to determine responsibility for the drains, the problem of responsibility and access however, remained unresolved and to the Ombudsman's knowledge, still exists. The Ombudsman welcomed MFH's "commitment" to maintain the drains "as a gesture of goodwill". This "gesture" however failed to provide the Complainants with any degree of certainty. From the standpoint of good administrative practice and procedure, it would have been more acceptable if there would have existed delineated plans of the drains system or a contractual arrangement between the residents and LPS. This would have contributed to establishing the responsibility which was lacking. There would have also been no need for MFH to maintain the drains' upkeep and maintenance "as a favour".

The access to the blocked drains issue was also a matter which concerned the Ombudsman. However this is a private law matter over which the Ombudsman has no jurisdiction and cannot opine.

(b) Revocation of Parking Licences for Skips

The Ombudsman was unable to reach a conclusion on this issue due to lack of information provided by MFH.

(c) Painting of Parking Bays

The Ombudsman expressed disappointment at both MFH and LPS for their conflicting accounts and for neither body accepting responsibility for authorising the demarcation of the parking bays. Again, this specific issue required an unnecessary amount of letters and phone calls in an attempt to resolve the matter, albeit unsuccessfully. Be that as it may, wherever the instruction originated from, it was from the Ombudsman's review, conducted without consulting the tenants of the Property.

(d) Contravention of Data Protection

The Ombudsman was dissatisfied with the way in which MFH handled this issue, particularly given the findings and recommendations of the GRA's Report on data Protection which was directed specifically at MFH, following an inspection of that department. It is also noteworthy that the report was released almost concurrently to the events being the subject of this Complaint..

In the Ombudsman's view and given the nature of the very serious allegations made, MFH should have conducted a formal investigation into this specific complaint and should have followed established "policies or procedures" in accordance with the findings of the Report. The casual manner in which, in MFH's own words, the Neighbour [as employee] was approached and "spoken to" and her explanations accepted at face value, fell short of Good Administrative Practice. It is important to add that the Ombudsman did not make any assumptions or judgements on the veracity or otherwise of the Neighbours account of events. He was simply giving his opinion on MFH's handling of the allegation, which he considered lacked substance and proper investigation.

CLASSIFICATION

Sustained

RECOMMENDATIONS

That in circumstances where there is mixed ownership of properties by Government (sitting tenants) and private individuals (owner/occupiers), guidelines be put in place as to issues of maintenance and responsibility for drains and utilities.

That MFH follow established procedures for Data Protection compliance, in accordance with the GRA Report.

UPDATE

ONCE THIS INVESTIGATION WAS UNDERWAY, THE OMBUDSMAN RECEIVED FURTHER COMPLAINTS FROM THE COMPLAINANTS IN RESPECT OF USE AND ACCESS OF THEIR WATER AND ELECTRICITY METERS AND ON AN ISSUE RELATING TO THE SAFETY OF A BOUNDARY WALL. LETTERS WERE SENT TO LPS, THE UTILITIES PROVIDERS AND TO THE GOVERNMENT OF GIBRALTAR TECHNICAL SERVICES. ALL THE ENTITIES CONCERNED PROVIDED REPLIES AND THE OMBUDSMAN IS IN THE PROCESS OF FURTHER INVESTIGATING THE ISSUES COMPLAINED OF.

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Case Not Sustained

CS/980

Complaint against the Housing Authority for the Delay in making a second offer of allocation of a government rented flat to the Complainant after having rejected a first offer

COMPLAINT

The Complainant was aggrieved because of the delay on the part of the Housing Authority in making her a second offer of allocation of a Government rented flat after having rejected a first offer. She was further aggrieved because two months after the first offer, her position on the Government Housing Waiting List ("List") had moved down from first to seventh place.

BACKGROUND

The Complainant explained that on the 26th March 2012 she viewed a Government rented flat which the Housing Authority had offered her for allocation. She stated that after viewing the property she refused the offer because of the bad state the flat was in. She claimed there were holes in walls, dampness and condensation around windows and walls, mould, and signs of water damage in the main bedroom. Furthermore, the Complainant explained that she had spoken to neighbours and was told that the two previous tenants had to be relocated from the flat because it was uninhabitable. The Complainant stated that she wrote to the Housing Manager to explain the reasons for the refusal but claimed that her letter was never answered. During the next two months she claimed to have on numerous occasions called, written and visited the Housing Authority pursuing information regarding a second offer but was told that there were no flats available.

The Complainant stated that on the 24th May 2012 her husband called the Housing Authority and was told that their position on the 2RKB List had gone down to seventh. Taken aback by that information the Complainant wrote to the Housing Authority (addressing the letter 'to whom it may concern') asking for an explanation and putting it to them that to her knowledge, when a first offer of allocation was refused, the applicant was made two other offers before going down the List. The Complainant was concerned that if their position on the List continued to down spiral they would never be allocated a Government rented flat. To substantiate her reasons for the refusal of the first offer, the Complainant enclosed photographs of the flat.

On the 29th May 2012 the Complainant received a reply from the Minister for Housing who stated that there were no hard and fast rules about applicants having three chances to accept/reject an offer of allocation. The Minister for Housing reassured the Complainant that she would not lose her position in the List and stated that as soon as a flat of the right room composition was identified, an offer would be made.

Not having received a second offer by July 2012, the Complainant put her Complaint to the Ombudsman.

INVESTIGATION

The Ombudsman presented the Complaint to the Housing Authority and received a reply from the Housing Manager ("HM"). The HM explained that when Government flats became vacant and were returned to housing stock for subsequent allocation they were inspected by Housing Inspectors. Regarding the Complainant's statement that the flat suffered dampness problems, the HM stated Housing Inspectors informed her that was not the case. As to the Complainant's claim of a previous tenant having been relocated, the HM explained that the relocation was due to medical reasons and not because of dampness and water ingress to the flat.

The HM stated that 2 RKB's (the Complainant's entitlement) which had become available, subsequent to the first offer made to the Complainant, had been committed to applicants on the medical and pensioner exchange lists. The HM was aware that the Complainant had not been made another offer as that was dependent on availability and stated that an offer would be made as soon as possible. The HM confirmed that the Complainant was presently (24th July 2012) in seventh position on the 2RKB List and explained that positions fluctuated within the housing lists. However, the fact that the Complainant had received an offer when she reached the top of the List would be taken into account when a 2RKB flat that was not committed became available for allocation.

The Ombudsman requested further information from the HM on the issues listed below. The HM's reply is provided alongside.

(a) <u>The process of committal to other tenants and criteria applied for committal</u>

The HM explained that flats can be committed for a number of reasons and provided two examples listed below:

(i) A property reverts to housing stock and due to location and accessibility is suitable for an applicant on the Medical List;

(ii) Requests for an exchange made by an applicant who releases a large flat for a smaller one.

(b) Whether the Complainant could take any action to facilitate a property being committed to her. The Ombudsman failed to see how the Complainant could have moved down to seventh position instead of retaining firstt position attained in March 2012, the time when the offer was made

The HM explained that Government Housing Waiting Lists are points based hence the reason for fluctuation within said Lists and the explanation as to why applicants cannot retain their position. The HM stated the Complainant was made an offer because she reached the top of the List. Her position on the 31st August 2012 was third.

(c) Procedures in place for Housing Inspectors to follow in order to classify a property as being of an acceptable standard for allocation

The HM stated that the above was not within her remit and directed the Ombudsman to the Housing Works Agency.

(d) Whether the Complainant's refusal of the offer of allocation was accepted by the Housing Authority and if so requested that a copy of the reply be provided

The HM advised that when the Complainant signed the refusal form for the offer of the flat she attached a letter addressed 'To Whom It May Concern' and the Complainant was verbally informed by the Housing Officer who dealt with allocations/refusals that the refusal had been accepted.

In her letter, the HM advised that the Complainant had expressed an interest in a property that she was aware would be returning to housing stock and had been informed that that her request would be considered if the property did indeed return to the Housing Authority. The aforementioned does not appear to have been a factor affecting the period of time taken for the Housing Authority to make a second offer.

The HM extended an invitation to the Ombudsman for a meeting to discuss first hand, current procedures in place with regards allocations and this was readily accepted by the Ombudsman. At the meeting, the HM explained that her role was that of managing the various Lists which apart from the General Housing Waiting List included Decanting, Medical, Social, Approved Exchange and Pensioner Exchange Lists. The HM advised that priority for allocation was given to the Medical and Social Lists on an equal standing and secondly to the Decanting and General Lists. Approved Exchange Lists and Pensioner Exchange Lists were not a priority.

For completeness of records the Ombudsman requested a breakdown of 2RKBs allocated for the period 27th March to 30th September 2012. The following information was provided:

General Housing Waiting List	6
Medical Housing Waiting List	11
Social Housing Waiting List	7
Approved Exchange List	3
Decanting List	2

The Ombudsman directed his enquiries in relation to (c) above to the Housing Works Agency ("HWA"). In their initial response it was explained that when a Government owned flat became vacant, Housing Inspectors viewed it before it was offered to other applicants on the Lists to determine if the property was fit to return into housing stock or whether it required repairs or a total refurbishment. In the latter case, an estimator would visit the flat, ascertain the scope of works required and prepare an estimate/quote which would then be passed on to the HWA or an approved Government contractor for the works to be undertaken. Noting the absence of information on the procedures which Housing Inspectors are required to follow, the Ombudsman once again approached the HWA with the request. On that occasion the HWA stated that Housing Inspectors were technical personnel who were fully aware of the state a flat should be in prior to allocation.

The Ombudsman having been informed by the HM that the flat was unoccupied and that no works had been carried out requested a site visit to the flat. From the visual inspection at which photos were taken (see Appendix 1) it can be noted that substantial works were required to the balcony, kitchen, bathroom and corridor of the flat. No pungent smells of dampness were noted, although mould was visible on some window frames and paint was flaking off one of the balcony walls.

Enquiries were made as to why seven months after the offer of allocation, the flat remained vacant. The HM explained that in April 2012 the flat had been offered and accepted by another applicant. Said applicant had then exchanged the flat with an elderly relative who in August 2012 returned it to the Housing Authority to because she was moving in with her daughter. In September 2012 the flat was again offered and refused and in October 2012 accepted by another applicant who is awaiting refurbishment to be undertaken by the HWA. The HM confirmed that the Complainant had also been given the option of the flat being refurbished as were all applicants but had refused the offer.

By way of update, the Complainant contacted the Ombudsman and informed him that she had accepted a second offer of allocation made on the 1st October 2012.

CONCLUSION

When the Complainant reached first position on the List she was offered a Government rented flat which she refused; said refusal accepted by the Housing Authority. The Complainant awaited an imminent second offer which did not materialise until six months later. The Housing Authority's explanation to the Ombudsman for the time taken to make a second offer was that the List was points based and as such, applicants cannot maintain a position.

It must be understood that the majority of applicants on the List take a considerable time to attain first position and it is therefore the Ombudsman's opinion that once this is achieved, applicants should retain that position until they are allocated a flat. Notwithstanding, the Housing Authority should have the right not to accept refusals by applicants if the reason/s for the refusal are found to be unreasonable or have no basis. The Housing Authority's criteria for accepting or not accepting refusals should therefore be clearly documented. Applicants should be notified by letter of the Housing Authority's decision to accept or not the refusal of the offer of allocation.

During the six month period, twenty nine allocations of 2RKBs were made i.e. an average of five allocations per month. If the method recommended by the Ombudsman had been in place, the Complainant could have been made a second offer of allocation at an earlier stage. Notwithstanding, under the current system in place by the Housing Authority, the Ombudsman could not sustain the Complaint.

It was at the last stage in the investigation that the Ombudsman found the Housing Authority had offered to refurbish the flat prior to it being allocated to the Complainant. Up to that point the Ombudsman had been given to understand the flat would be allocated in its present state and the Ombudsman was minded to make recommendations whereby the Housing Authority should put in place standards which properties had to meet prior to allocation. Noting the offer of refurbishment, the Ombudsman decided that no recommendations were warranted at the present time.

CLASSIFICATION

Not Sustained

UPDATE

THE OMBUDSMAN WAS MINDED TO MAKE A RECOMMENDATION TO THE EFFECT THAT WHEN AN APPLICANT ON THE GOVERNMENT GENERAL HOUSING WAITING LIST ("LIST") ATTAINED FIRST POSITION AND WAS MADE AN OFFER OF ALLOCATION BY THE HOUSING AUTHORITY, WHICH THE APPLICANT REFUSED AND SAID REFUSAL WAS ACCEPTED BY THE HOUSING AUTHORITY, THE APPLICANT SHOULD RETAIN FIRST POSITION ON THE LIST AND BE MADE AN OFFER OF THE NEXT SUITABLE PROPERTY AVAILABLE.

HOWEVER, THE HOUSING MANAGER INFORMED THE OMBUDSMAN OF THE IMPRACTICALITIES OF IMPLEMENTING SUCH A RECOMMENDATION AND SAID IT WOULD ALMOST PROVE UNWORKABLE WITHIN THEIR PRESENT MANAGEMENT SYSTEMS. NOTWITHSTANDING, THE HOUSING MANAGER STATED THAT AS PROPERTIES RETURNED TO THE HOUSING STOCK FOR ALLOCATION, THE HOUSING AUTHORITY WOULD TAKE INTO CONSIDERATION THAT THE APPLICANT HAD BEEN MADE A FIRST OFFER (DUE TO HAVING ATTAINED FIRST POSITION ON THE LIST) AND WOULD BE MADE AN OFFER AS SOON AS POSSIBLE, AS LONG AS THE FLATS BEING RETURNED HAD NOT BEEN IDENTIFIED/EARMARKED FOR ANOTHER APPLICANT.

IT WAS AGREED THAT INSTEAD OF THE PROPOSED RECOMMENDATION, THE HOUSING AUTHORITY WOULD AMEND THEIR PRESENT FORM FOR 'ACCEPTANCE/ REFUSAL OF OFFER OR RE-ACCOMMODATION' TO INFORM APPLICANTS ON THE LIST THAT IF THE REFUSAL WAS ACCEPTED, THE APPLICATION WOULD BE REINSTATED IN THE LIST AND WOULD SLOT IN, IN ACCORDANCE WITH THEIR CURRENT POINTS. FOR THE AVOIDANCE OF DOUBT AND SO AS TO MAKE THE IMPLICATIONS OF A REFUSAL CLEAR, APPLICANTS WOULD ALSO BE INFORMED THAT THE POSITION ON THE LIST COULD FLUCTUATE, AND A FURTHER OFFER OF ACCOMMODATION WOULD ONLY BE MADE ONCE THE APPLICATION REACHED THE TOP OF THE LIST AS PER STANDARD PROCEDURE.

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Case Not Sustained

CS/985

Complaint against the Housing Authority for failure to address numerous reports of water ingress to the Complainant's Government rented flat

COMPLAINT

The Complainant was aggrieved because during the period May to August 2012 he had contacted the Housing Authority's Reporting Office ("Reporting Office") and made numerous reports of water ingress to his Government rented flat ("Flat") which had not been addressed.

BACKGROUND

The Complainant explained that for three months, water had continuously seeped through the light fitting in the bathroom ceiling. He claimed that during that period he had reported the matter to the Reporting Office on at least four occasions but to date no repairs had been undertaken and no inspection had been carried out. The Complainant and his wife, both in their 80's, were very anxious for the problem to be resolved as they claimed that on a daily basis they collected two buckets of water and every night had to disconnect the electricity to the room, worried that if water seeped into the wiring it would cause a fire. According to the Complainant he had spoken to the resident of the flat above his ("Neighbour") where the leak appeared to originate from, who advised him that he too had reported the matter and was waiting for repairs to be carried out. On the 9th August 2012, the Complainant put his Complaint to the Ombudsman.

INVESTIGATION

The Ombudsman wrote to the Housing Works Agency ("HWA") who responded on the 22nd August 2012. Their records showed one outstanding works order dated 7th August 2012, in respect of water ingress to the Flat and a second order dated 16th August 2012 from the Neighbour's flat. HWA advised that instructions had been issued for the two flats to be inspected and repairs undertaken.

To contrast the information provided by the Complainant in respect of the reports he had made, the Ombudsman requested copies of water ingress reports at the Reporting Office during the previous six months in respect of the Flat and the Neighbour's flat. The copies provided dated back a number of years and the Ombudsman noted that the last report (other than the two outstanding ones) had been lodged on the 6th July 2009, three years earlier.

The Ombudsman reverted to the Complainant with his findings and the Complainant reiterated that he had reported the matter on various occasions on a casual basis to an employee of the Reporting Office and added that the Neighbour had told him that the reports were being ignored. The Complainant advised that the works had now been completed.

For completeness of records, the Ombudsman requested information from HWA as to the origin of the leak and the nature of the repairs they had undertaken. HWA reported that the Neighbour's bathroom was in a very bad state. The water ingress to the Flat was attributed to a shower (privately installed in the Neighbour's flat) not having an enclosure, resulting in water not being contained. HWA replaced ten missing tiles but the shower enclosure was the Neighbour's responsibility. HWA referred this to the Neighbour who replied that he would soon be refurbishing the bathroom. HWA advised that the report had been classified as a normal routine job and that works were completed on the 31st August 2012.

CONCLUSIONS

The Complaint lodged by the Complainant with the Ombudsman was that numerous reports of water ingress to the Flat made at the Reporting Office during a three month period had not been addressed. The Ombudsman's investigation found that the Complainant had made one formal report with the Reporting Office on the 7th August 2012 and that the other reports referred to by the Complainant were made on a casual basis to an employee of the Reporting Office. On that basis, the Ombudsman would be unable to sustain this Complaint. Notwithstanding, the Ombudsman was very critical of the manner in which this matter was handled by the HWA. Although their records noted that the report was attended to and the works completed on the 31st August 2012, that is indeed not the case. The action taken by HWA was to replace a number of missing tiles in the Neighbour's flat but the main source of water ingress to the Flat, no shower enclosure in the Neighbour's flat, was allowed to continue because HWA stated that was the Neighbour's responsibility. In effect, HWA have allowed the 'offence' to continue. What should have happened is that HWA should have immediately informed the Housing Authority (landlord) of their findings. Under the Housing Act 2007, the Housing Authority have powers of entry upon public housing as part of their duty of care as follows:

Powers of entry.

16.(1) Where the Housing Authority considers it is necessary to-

> (a)…
> (b)…
> (c) abate any damage that has occurred to that or any other public housing or prevent any further damage; or
> (d)…
>
> *a person authorised by the Housing Authority may, after giving 7 days notice in writing to the tenant, enter such public housing, accompanied by such persons as he may deem necessary, for any of the purposes mentioned in paragraphs (a) to (d)*

Had the HWA reported their findings to the Housing Authority, the latter could have called upon the powers of entry to abate the damage being caused by the Neighbour. Not having done so has left the Complainant at the mercy of the Neighbour, who continues to cause damage to the Flat and hardship to the Complainant and his wife.

RECOMMENDATIONS

That in cases where HWA find that damage to public housing is being caused as a result of negligence due to private repairs/works which a tenant has undertaken, HWA notify the Housing Authority accordingly for the matter to be pursued. HWA and the Housing Authority should therefore implement a procedure whereby HWA can report the case to the Housing Authority.

Case Not Sustained

CS/991

Complaint against the Ministry for Housing ("MFH") in relation to the allocation of Government flats to third party applicants whom according to the Complainants were not eligible for housing

COMPLAINT

The First Complainant was aggrieved because he claimed that an individual had been allocated a Government flat even though that person had not lived in Gibraltar for the past ten years.

The Second Complainant claimed that while she had to wait for the allocation of a flat on the Government waiting list, other people were given flats which she did not believe they were entitled to. According to the Second Complainant, these individuals did not reside in Gibraltar, owned properties in Spain and made themselves "eligible" by claiming that they resided in Gibraltar in the properties of other tenants/relatives.

BACKGROUND

The First Complainant

The First Complainant set out his grievance to MFH by letter on the 7th August 2012. He complained that a named individual had been allocated a Government flat even though he had not lived in Gibraltar for a period of ten years. A prompt letter in reply was received. MFH informed the First Complainant that the allocation had been made in accordance with established procedures but that due to the existence of the Data Protection Act, MFH were unable to provide further details. The First Complainant was dissatisfied with the reply received. He was adamant that this person was not entitled to a flat since he had not lived in Gibraltar for a year prior to the allocation. This he found to be extremely unfair particularly given that he himself was in desperate need of government housing.

The Second Complainant

The Second Complainant complained that people known to her had been allocated Government flats when she had knowledge that they did not reside in Gibraltar. She stated that most of these individuals had privately owned properties in Spain but they wanted to have an address in Gibraltar for convenience sake. As a result, she claimed that those citizens who were in a real and desperate need for housing and who were patiently waiting their turn on the housing list for the purpose of allocation, had to wait a longer period to be offered a property.

The Complainant cited the names of three persons whom she alleged were allocated flats even though they did not reside in Gibraltar

INVESTIGATION

As a result of the similarities between the Complaints received, the Ombudsman decided to investigate and report on both Complaints jointly.

The Ombudsman presented the Complaint to MFH on the 21st November 2012 and requested their comments. In his letter, the Ombudsman requested that MFH outline the processes and checks conducted by them prior to the allocation of properties to applicants. A reply was received setting out the process/ chronology which MFH conducted, from the time when an application for housing was first submitted through to final allocation of a property.

The letter explained that once an application was accepted, a letter was sent to applicant's informing them that they were required to contact the Environmental Health Officer within a period of two weeks to arrange an inspection and measurement of the premises. An Environmental Health Housing Report ("EHHR") (listing the identities of the persons living in the flat, the sleeping arrangements and room measurements), was then prepared by the relevant Officer and sent to MFH. These details were then kept within the applicant's file. If there was a change in family circumstances and the MFH was notified of such change by the applicant, another EHHR would be requested in order to update the applicant's file.

MFH also stated that throughout the time when the application was active, a yearly review letter (copy draft letter provided to the Ombudsman), was sent to applicant's on the anniversary of their application. They then had to confirm (by signing and returning the review letter), that there had been no changes in circumstances.

Of significance to note was the "Family Composition of Application Declaration" attached to the anniversary letter, which applicants' were obliged to complete and return to MFH. By signing the Declaration, applicants recognised that if the information they had provided in the Declaration was false or materially incorrect, applications could be rejected by MFH and the applicant's would be held potentially liable to a penalty. If on the other hand, they did declare that their household circumstances had changed, MFH would subsequently update the individual applicant's file noting the change in circumstances. Accordingly it was presumed that at the time of allocation, the applicants details held on file would be correct.

In their letter to the Ombudsman, MFH also confirmed that upon allocation, an applicant would be required to sign a tenancy agreement. A declaration form would also be signed in which as the prospective tenant to a flat, the applicant would acknowledge that the Housing Allocation Committee could withdraw the offer of accommodation, even if an acceptance form had been signed by the prospective tenant. The withdrawal of an offer of accommodation would occur in situations where MFH had reason to believe that false or misleading information had been provided by an applicant.

Upon the Ombudsman's review of all the information provided in correspondence, he wrote to MFH seeking confirmation that the "Family Composition of Applicant Declaration" was, in practice, utilised by MFH on a regular basis, especially at the time of actual allocation. The Ombudsman wanted to know if in practice, information received from a member of the public was actually checked against the applicant's declaration and if found to be misleading or false, what action was taken. Information was also requested as to whether action was taken by MFH when an applicant was found not to be providing true or accurate information in cases where their circumstances had changed from the time of application to allocation, and the applicant had failed to declare said change. Additionally, the Ombudsman also enquired as to the number of times the form had been actioned, if any.

MFH replied by stating that the Declaration which the Ombudsman sought further information on, was indeed actioned by MFH on "a regular basis for every application", as it formed part of the review letter sent to every applicant on the anniversary of their application.

MFH explained that the signed Declaration had to be returned to the Ministry by applicants in order for applications to be re-activated, as once the review letters had been forwarded, the applications were suspended pending the return of the signed form. According to MFH, action was taken by them on the Declaration based upon the information supplied or confirmed by the applicant, or pursuant to any other additional information MFH may have been aware of and had the necessary proof in order to amend an application. An example given to the Ombudsman of "action" being taken on a Declaration, was when a member of the applicant's household purchased a private property and MFH was not notified of this. The Ombudsman was informed that MFH had a procedure in place to confirm these purchases and amend the corresponding tenancy/applications accordingly.

However, the Ombudsman had received additional information from a member of the public (not the subject of this complaint), in relation to the allocation of a flat where an applicant's son had purchased a property in one of the new government co-ownership estates, to the effect that at the time of allocation, this family member no longer lived with his parents. Despite the purchase and the obvious reduction in number in the applicant's household, the applicant was allocated a three bedroom Government owned property. The information received was contrary to the procedure MFH had previously informed the Ombudsman, "was in place".

Although MFH's letter to the Ombudsman was substantive, he considered it was too generic in its content and that the specific issues he had raised remained unanswered. He therefore sent MFH a further letter seeking information on the procedure/action taken in relation to the specific applicants' the First and Second Complainants had complained about. The Ombudsman also made reference to the information he had received on the allocation of the Government flat to the family whose son had purchased a property prior to the allocation. In the conclusion to his letter, the Ombudsman requested that the files relating to the Complaint under investigation be made available for his inspection. A meeting was held shortly afterwards where the Ombudsman was able to review said files and discuss the issues with MFH.

At the meeting, all files relating to applicants' whose allocations by MFH had been the subject of this Complaint, were facilitated by MFH and were reviewed by the Ombudsman.

<u>The First Complainant</u>

The Ombudsman inspected the applicant's file in relation to the Complaint received (that the Complainant had not resided in Gibraltar for a period of ten years and for one year preceding the allocation).

The Ombudsman found that all correspondence on MFH's file referred to the Applicant residing locally. There were also medical letters from the Gibraltar Health Authority confirming this. File notes also existed, noting the fact that the applicant would attend MFH offices regularly in person to check his position on the list and to update MFH on his living conditions. The Ombudsman discovered that the applicant had accumulated the necessary points on the public housing list and had reached the top of said list when he was allocated a flat.

The Second Complainant

The Second Complainant had claimed that three applicants' had been allocated housing when they were not entitled to it. According to the Second Complainant, the named applicants did not live in Gibraltar, owned properties in Spain and made themselves eligible by claiming that they resided in the properties of other tenants/relatives.

The Ombudsman also inspected these applicants' individual files:

1. In relation to the first applicants' complained of, the Ombudsman found that they had owned property in Gibraltar in the past which they later sold. They subsequently moved in to their son's privately owned flat in order to look after their grandchildren. MFH allowed them to become enlisted as applicants for housing after a financial assessment was conducted, with the result that they qualified for public housing due to their limited income. The couple, who were retired, were only in receipt of community care. They had no pension or savings. The applicants' son then sold his property and the Applicants moved into their elderly uncle's home, also privately owned. An assessment of living conditions was carried out by the Environment Agency. The report which followed stated that one of the applicants slept in a "pull out bed". As a result, they were allocated a flat by MFH when sufficient points on the list were accrued.

2. The second applicant complained of had also owned a flat privately. As a result of financial hardship, his parents in law sold their flat and moved in with the applicant and his wife. This led to overcrowding and severe problems. Relationships became strained.

The applicant then separated from his wife and provided MFH with a copy of his legal separation agreement in which he assigned his property rights to his wife exclusively, while he maintained joint custody of his two children. The applicant then became homeless. MFH's Housing Allocation Committee conducted an assessment and drafted a report. In accordance with the reports' recommendations, the applicant was socially categorised by MFH. An offer of allocation on the social waiting list was made and accepted.

3. The final allocation being complained of concerned an applicant who lived with his mother in law and accrued points on the waiting list over a period of time. At the time he joined the list, the applicant declared in writing that he had a minority interest in a property holding company. MFH seemed to overlook this declaration. Once the applicant accumulated sufficient points, he was offered a flat for himself and his teenage daughter. The applicant accepted the offer. On the day that the tenancy agreement for the flat was to be signed, MFH realised that the applicant owned property (in theory at least, given the minority interest/shareholding in the company). As a result, the allocated flat was assigned to the applicant's daughter, with the proviso that the daughter could never apply for Government housing as long as she held the shares in the company. The share transfer was undertaken and the flat allocated.

Additional Information

The information received by the Ombudsman that MFH had allocated a flat to a family who had decreased in number from the time of application to allocation, given that one of the applicant's children had purchased a property, was also discussed by the Ombudsman and MFH at the meeting.

MFH explained that they had an arrangement with Land Property Services Limited ("LPS") whereby LPS notifies MFH of all transactions involving the sale or purchase of Government co-ownership properties, irrespective of whether any of the parties to the transaction are on the Government housing waiting list. (At the meeting the Ombudsman was shown and he inspected hundreds of letters to this effect). MFH then checks individual applications for housing against the list.

The Ombudsman was informed that MFH had only realised that the applicant's son had purchased a property after the allocation had been made. MFH stated this was due to delay by Gibraltar Residential Properties Limited (for the Government) in providing MFH with the information on the purchase, due to backlog on their part.

CONCLUSIONS

The Ombudsman was grateful to MFH for their replies to his letters and for making the applicants' files available for inspection so promptly. Despite the efforts of MFH to avail itself of updated information on the circumstances of applicants throughout the life of applications, by way of review letters and declaration forms, the Ombudsman was of the view that more stringent tests should be applied by MFH. Vigorous action should be taken in instances where the content of information provided by applicants to MFH was found to be false or materially incorrect.

In their final letter to the Ombudsman, MFH explained the action they took when applicants' stated that their circumstances had changed or when MFH had proof, for instance, that a member of the applicants' household had purchased private accommodation. In this instance, it was stated that corresponding tenancy agreements or housing applications would be amended.

The Ombudsman considered that in such cases, more stringent action should be taken such as the rejection/withdrawal of applications and the imposition of penalties to act as a deterrent against fraudulent information being provided. The Ombudsman expressed this view particularly given that MFH already makes provision in the Declarations presented for signature by applicants, that it may act in this way and impose penalties/sanctions. Applicants are made aware of the repercussions of providing misleading or untrue information when they sign the Declarations.

It was also unclear if MFH carried out additional checks (in addition to receiving completed anniversary letters from applicants), as to whether applicants did in fact reside in Gibraltar or whether they owned private accommodation in Spain, as alleged by the Second Complainant. The only information the Ombudsman received in this regard was that MFH has no power to make checks as to whether applicants own property abroad since it is "out of their jurisdiction." No figures were provided either (as had been requested), on the number of instances where untrue declarations by applicants had been properly actioned and the sanctions imposed in any particular case.

In the case of the family who was allocated a flat larger than they were entitled to, due to the son purchasing a property prior to the allocation, although MFH stated that they did not receive information on the purchase from Government until after the flat was allocated, it must have been the case that the applicant did not declare this when the tenancy agreement was signed. Although this specific instance was not directly complained of by the Complainants and therefore did not form the subject of this investigation or report, it did appear to the Ombudsman that MFH took no action against the applicant, albeit post allocation, on the basis of a potentially untrue or misleading Declaration made by her.

CLASSIFICATION

The Ombudsman was unable to find evidence of maladministration relating to the applicants' against whom complaints were lodged and as a result, did not sustain the Complaint.

Not sustained

RECOMMENDATIONS

The Ombudsman is acutely aware of the fact that MFH does not possess the resources or manpower to investigate every application and the subsequent allocation which in time, follows. However, mindful of this fact he makes the following recommendations:

1. That more substantial checks should be conducted to ensure that applicants for Government Housing are eligible to apply and that preconditions for eligibility such as continuous residence in Gibraltar and non-ownership of private housing locally remain in force and are reviewed as thoroughly as possible.

2. That Declaration forms submitted by applicants prior to and at the time of allocation of properties are thoroughly checked and verified, and that sanctions be imposed in cases where the information provided by applicants is inaccurate, false or materially incorrect.

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Case Sustained

CS/996

Complaint against the Ministry for Housing ("HA") due to the inordinate delay in the Complainant waiting for gutters to be unblocked and thereby stop water ingress into her Government rented flat ("the Flat")

COMPLAINT

The Complainant complained that she had been waiting since 2009 for HA to unblock a gutter located on the exterior wall to the Flat, and thereby prevent water ingress seeping into the Flat when it rained.

BACKGROUND

The Complainant initially filed her complaint with the Office of the Ombudsman in September 2010. At that time, the Complainant explained that the gutter was unblocked and cleaned on an annual basis but that since January/February 2009 this had not been done and as a result, the Flat suffered water ingress through one of the windows and consequent damage.

Prior to filing her complaint with the Ombudsman, the Complainant had issued letters of complaint to HA directly, to no avail. Further to an investigation conducted by the Office of the Ombudsman and to subsequent numerous exchanges in correspondence between the Ombudsman, HA and the Housing Works Agency ("HWA"), the Ombudsman issued a systemic report against the Ministry for Housing in November 2011. The outcome of that report sustained the complaint of delay against MFH in not attending to the Complainant's grievance within a reasonable period of time. The Ombudsman did make reference however, to the fact that from the 1st of April 2011 responsibility for organising external defects to Government properties had been restructured by the Government of Gibraltar and as a result, from the period April to October 2011, no external repairs had been executed on any Government property. The Ombudsman noted that that fact contributed to the delays the Complainant had been subjected to in respect of the necessary repairs she had reported as necessary. The Ombudsman also noted that there had been confirmation by HWA that there was a programme in place with the aim of allowing for a systemic and gradual completion of outstanding works, under which, the issue affecting the Complainant would be resolved.

Despite the content of the Ombudsman's report, the repairs to the Complainants Flat were not carried out. She therefore proceeded to file a second complaint with the Office of the Ombudsman in respect of the same issue on the 17th April 2012.

INVESTIGATION

Upon receipt of the complaint, the Ombudsman immediately wrote to HWA and referred to a previous letter where the HWA had stated that "several reports raised by the tenant have been actioned. Presently there is one outstanding order for the cleaning of the gutter NO 208005 raised on the 24th November 2011." In his letter the Ombudsman also requested information on another works order which had been raised by the tenant on the 7th January 2009 regarding the unblocking of gutters. According to the Complainant that report had not been actioned either.

In their reply, HWA indeed confirmed that the works orders the Ombudsman had raised queries over had not been carried out and that these were one of many external works which had been "left in abeyance" (during most of the preceding year) at the time of the Government restructure for external works. HWA's letter concluded by stating that the Complainants grievance would be carried out as part of the Government's external works programme by one of their approved contractors but that to date, no start date for works could be given.

A period of three months elapsed. Towards the end of September the Ombudsman contacted HWA for an update on the matter. A reply was received shortly thereafter confirming that a recent inspection of the Complainant's housing estate had been carried out by the Ministry for Housing's Technical Division with the view of tackling all external defects. This would also include the cleaning of all blocked gutters as well as the Complainant's. HWA also stated that the work would be outsourced to the most cost effective contractor but that physical works would not commence until after the festive season.

Despite the information provided, the Ombudsman took a telephone call from the Complainant in mid December 2012, in which she claimed that workers had visited the Flat and informed her that they were under orders to clean out specific gutters which did not include the one that she had reported. The Ombudsman contacted HWA for their comments on this, given the previous information they had provided which stated that physical works would not start until after the festive season since they were being scoped and tenders needed to be awarded, and that the cleaning of blocked gutter which gave rise to the Complaint would be included. The reply received stated that the first phase of works which included roof and gutter repairs was currently being performed but had not been completed and again reaffirmed that the gutter being complained of would be cleaned although on indication was given of when this would take place.

On the 22nd January 2013, the Ombudsman received an email from the Complainant stating that according to information she had received, works on the Complainant's housing estate had been completed but that the gutter affecting the Flat had not been included.

Correspondence ensued between the Ombudsman, MFH and HWA throughout 2013. The last email received from HWA in September 2013 (at the time of drafting this report) stated that the Gibraltar General Construction Company Limited ("GGCCL") who was carrying out works to the entire housing estate, would also clean the gutters complained of. The Ombudsman interpreted the implication behind this response as being that works on the housing estate had in fact not been completed.

Given the inordinate delay since the complaint was filed and the Complainants extraordinary patience insofar as the lack of progress on works was concerned, together with the repeatedly unfulfilled promises by HWA and MFH, the Ombudsman took the view that he would no longer engage in correspondence with the public entities concerned for further requests of information. He would instead proceed to draft this report on the basis of delay.

CONCLUSION

The Ombudsman was of the view that it was wholly unacceptable that four years had elapsed from the time the complaint was made by the Complainant to the HA and that the grievance had not been addressed or rectified within this period.

The Ombudsman noted that delays of this nature are not only inconvenient to tenants who are forced to suffer as a result of them, but they may also bring repercussions on the future needs of other tenants and may also occasion adverse effects on the affected properties themselves. When there are unreasonable delays in carrying out repairs or remedial works, the damage caused to buildings is not contained or mitigated and due to this, the cost to the taxpayer almost invariably increases when long overdue works are eventually carried out.

The HA owes a duty of care towards the effective management of our public housing stock and its occupants. The Ombudsman was therefore of the firm view that the nature of the grievance which gave rise to this complaint, should have been assessed and actioned in a far more diligent manner than was the case. The Ombudsman could not reconcile the fact that this longstanding complaint had not been tackled when works had in fact been carried out to the remainder of the housing estate which the Flat formed a part of. This could in his view, only have been as a result of neglect and/or maladministration. Although the Ombudsman was aware from other cases that responsibility for external repairs had been restructured and was now vested via GGCCL, and he was also aware of the lack of generic external works conducted by HWA on Government properties throughout most of 2011, this did not justify the four year delay in respect of the issue affecting the Complainant.

As a result of the above, the Ombudsman sustained the complaint on the basis that the delay from the time of making the complaint to the date of drafting this report was unreasonable in all the circumstances.

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Case Sustained

CS/998

Complaint against the Housing Authority for the unfair decision to refuse the Complainant's request for reallocation from her Government rented flat on medical grounds

COMPLAINT

The Complainant was aggrieved because the Housing Authority had refused her request for reallocation from her Government rented flat ("Flat") on medical grounds. The refusal was made on the basis that the block of flats ("Building") in which the Flat was located was serviced by two lifts. The Complainant was seeking reallocation on the basis that she lived in the fourteenth floor and claimed that because the lifts were frequently out of order, due to her medical condition, this resulted in her not being able to access her Flat until repairs were undertaken. The Complainant believed that given the state of the lifts, the refusal was unfair.

Background

The Complainant explained that the Flat was located on the fourteenth floor of the Building. She stated that despite the Building being serviced by two elevators, both frequently broke down. Due to her heart condition (she stated she had undergone surgical procedures for four stents and a bypass) she was unable to climb up fourteen floors of steps when the lifts broke down and had no choice but to wait for repairs which normally took a few hours. Desperate about her situation, in April 2012 the Complainant asked the Housing Authority to consider her case for reallocation on medical grounds to a flat in a lower floor, and submitted a letter from her doctor to substantiate her case. She also provided the Housing Authority with the address of a vacant flat located on the second floor of the Building which she had identified as being suitable.

In August 2012 the Housing Authority informed the Complainant that her case had been put to the Housing Allocation Committee ("HAC") and based on the contents of the medical letter and noting that the Building had lift access, no medical recommendation was made. Regarding the vacant flat referred to by the Complainant, the Housing Authority informed her that it was earmarked for an applicant on the Government's General Housing Waiting List.

In October 2012 the Complainant wrote to the Housing Authority to state that she was dissatisfied with the decision and asked that her case be reconsidered. She expressed her concern that HAC had not taken into account that the elevators were frequently out of order, and that on those occasions, due to her medical condition, she was unable to gain access to her Flat until repairs to the elevators were undertaken. Furthermore, the Complainant informed the Housing Authority that she would be willing to move into a smaller flat (from 4RKB to a 3RKB) as the number of residents in the Flat had changed; only her child now lived with her. The Complainant referred the Housing Authority to the case of a neighbour (name and address provided) whose request for reallocation had been approved on medical grounds because access to his flat was impeded when the elevators broke down.

Two weeks after her request, the Housing Authority notified the Complainant that HAC had reviewed her case. Based on the contents of the medical letter and on analysis of her housing situation in which it was noted that the Building had lift access, HAC again made no medical recommendation in her case and deemed to have treated her case fairly.

Dissatisfied with the outcome and of the opinion that the major fact affecting her case had not been put by the Housing Authority to HAC, the Complainant brought her Complaint to the Ombudsman.

INVESTIGATION

The Ombudsman wrote to the Housing Manager ("HM") presenting the issues raised by the Complainant and enquiring if HAC had been provided with reports related to lift breakdowns when the Complainant's case was considered. Minutes of the two meetings at which the Complainant's case were discussed were requested.

The HM's reply explained that HAC had on two occasions considered the Complainant's request to be placed on the Medical Housing Waiting List and that no medical recommendation had been made. As to the Complainant's claim that her neighbour had been reallocated as a result of a medical recommendation, the Housing Authority confirmed that he had been reallocated but via the 'Approved Exchange List' not the Medical Housing Waiting List. The Ombudsman enquired if that possibility had or could be extended to the Complainant and the HM stated that the Complainant could write to HAC asking them to consider a request for an exchange other than from a medical point of view. Regarding the reports of lift breakdowns, the HM stated that those were not provided to HAC as that had never been standard practice. On the issue of the vacant flat located on the second floor of the Building, identified by the Complainant as being suitable for her needs, the HM stated that it had been earmarked for another applicant on the Government Housing Waiting List.

From the minutes provided, the Ombudsman noted that there was no record of the issue of frequent lift breakdowns having been discussed, not even at the second meeting which the Complainant had requested so that HAC could reconsider their decision taking this main factor into account. At the latter meeting the agenda stated:

> *"Mrs… has written as she is discontent with the Committee's decision. Mrs… claims that she is aware that her neighbour from (address provided) was medically categorized even though that person also had lift access. Mrs… feels she is been treated unfairly & would like her case to be re-assessed".*

For the avoidance of doubt that the issue had not been raised at either of HAC's meetings, the Ombudsman sought information from the HM who confirmed that the matter had not been discussed. No reason for the omission was provided.

For completeness of records, the Ombudsman sought information from the Housing Authority's Reporting Office of reports of lift breakdowns for 2012. The Ombudsman also approached the City Fire Brigade and requested reports of lift rescues carried out in the Building during the same period. The Reporting Office had received 55 reports for the year and the City Fire Brigade had carried out 17 rescues during the period. Only 4 of the 17 rescues coincided with dates of reports with the Reporting Office. For the purpose of this exercise the Ombudsman has added the two sets of reports amounting to a total of 72, which averages 6 reports per month.

CONCLUSION

The Ombudsman's investigation found that there had been maladministration in the Housing Authority's handling of this case.

When HAC refused the Complainant's request to have her case medically categorised for the purpose of being reallocated to a flat on a lower floor, the Complainant requested that the decision be reconsidered taking into account the frequent breakdown of the two lifts which serviced the Building. In that same letter and in order to substantiate her request, the Complainant cited the name and address of a neighbour who she believed had been reallocated as a result of a medical recommendation based on the fact that the breakdown of the lifts impeded his access to his flat. When the Housing Authority put the Complainant's case for reconsideration, no mention was made of the frequent lift breakdowns, no discussion on the issue, and hence as a result, no medical recommendation and the Complainant left to her fortunes. The Housing Authority did not offer the Complainant any other route to being reallocated. From the investigation carried out by the Ombudsman it was noted that the neighbour was reallocated via the 'Approved Exchange List'; nonetheless, the Housing Authority should have notified the Complainant of this option.

The Housing Authority mishandled the Complainant's request for HAC's reconsideration of her case. The Housing Authority should have investigated the Complainant's allegation to ascertain the number of lift breakdowns in a given year and the number of times in which both lifts coincided in not being operational. The Ombudsman will therefore make a recommendation in this case which will include that the Complainant's case should be reconsidered by HAC, this time taking into account all relevant information, including the fact that the Complainant would leave a 4RKB for a 3RKB. The Complainant found unfair the decision by the Housing Authority to refuse her request for reallocation on medical grounds from her Government rented flat. The findings of the Ombudsman's investigation into the Complaint warrant a recommendation that when presenting a case to the Housing Allocation Committee for consideration, the Housing Authority should ensure that ALL information relevant to the case should be presented.

In the case of the Complainant, the Ombudsman therefore recommends that the Housing Allocation Committee reconsider her case and that the Housing Authority present to them all relevant information to the case which should include:

(i) The Complainant's letter to the Housing Authority requesting that the Housing Allocation Committee's decision reconsider their decision;
(ii) Findings of the Housing Authority's investigation into the Complainant's allegations of frequent lift breakdowns in the building in which the flat is located;
(iii) The fact that the Complainant will leave a 4RKB for a 3RKB upon reallocation.

Case Not sustained

CS/1009

Complaint against the Housing Authority on how they had handled the Complainants application for a Government rented property to her dissatisfaction.

COMPLAINT

The Complainant was dissatisfied with how the Housing Authority had handled her application for a Government rented property.

BACKGROUND

The Complainant explained that as a result of their family business having gone into difficulties, in December 2007 they had to sell their home and their business shortly after. Despite the difficulties, the Complainant and her husband ("Husband") (both in their late fifties) were able to find alternative employment enabling them to afford the rental of a private flat. In June 2012, the Husband suffered an accident and broke his spine. By that time the Complainant had lost her job and the only income came from the Husband who needed twenty four hour care which the Complainant provided. The Husband unable to work meant that the family could no longer afford the private rental. With no money coming in, the Complainant had to accept the charitable offer of a friend who owned a property in order to have a temporary (the friend's offer was for a period of six months) roof over their heads.

The Complainant had obtained British nationality in November 2011 and explained that at a meeting with the Housing Minister in March 2012 she was made aware that due to her new status she was eligible to apply for Government rented housing. According to the Complainant, her Husband submitted a housing application ("Application") to the Housing Authority in April or May 2012. After the Husband's accident, and because of their dire financial situation, the Complainant wrote to the Housing Authority on the 16th July 2012 seeking a meeting with the Housing Manager to discuss her case. The meeting took place on the 17th September 2012 and her case submitted a week later to the Housing Allocation Committee ("HAC") for their consideration, after which the Complainant was informed that she had to provide repossession documents from the bank, for HAC to consider her case. As the property had in fact not been repossessed, the Complainant submitted on the 27th November 2012 documents supporting the sale of the property.

On the 14th January 2013 the Complainant complained to the Housing Authority that her case was not being dealt with adequately and that she had not had a decision from HAC despite having handed in all the documents requested. According to the Complainant, the clerk informed her that her case was on hold because the Housing Authority thought that she owned another property; something which the Complainant denied. Furthermore, the Complainant stated that despite having submitted annual mortgage payments she was told by the clerk that she now had to provide monthly mortgage payments statements.

According to the Complainant, the clerk advised her to get her lawyer to write a letter stating that she did not presently own a property but the Complainant was very concerned that would cost money which they did not have. The Complainant opted to go to the offices of Land Property Services Limited ("LPS") (land registry office) to ask if they could provide information which would disprove the Housing Authority's suspicions, but all LPS were able to provide was information related to her old property which had been registered in the Complainant's name.

Dissatisfied with the manner in which her Application was being handled, the Complainant put her Complaint to the Ombudsman.

INVESTIGATION

The Ombudsman requested from the Housing Authority, copies of letters sent to the Complainant related to the Application. The first letter was dated 27th March 2012 in response to the Application (dated 19th March 2012). The letter informed the Complainant that homeowners (Complainant was a previous homeowner) were not eligible to apply for Government housing under the provisions of Clause 5 (d) of the Housing Allocation Scheme and that in order for HAC to consider the Application she would have to submit a Financial Assessment. The Housing Authority enclosed the relevant form and instructed the Complainant to submit this accompanied by supporting documentation at the Housing Authority's counter.

The Complainant handed in the documentation on the 27th November and 12th December 2012. The Housing Authority provided the Ombudsman with a copy of the letter sent to the Complainant on the 19th December 2012 upon receipt of the documents and informed her that:

1. She had not submitted proof of monthly mortgage payments which was crucial for the completion of the financial assessment;

2. A copy of the completion statement (for the sale of the property) mentioned the deduction of £150,000- for the purchase of another property.

On the 30th January 2013, the Complainant submitted and the Housing Authority accepted, a copy of a statement of account of monthly payments made in 2002 to expedite the matter but highlighted that the statement should have been the 2007 one, the year in which the property was sold. The Ombudsman sought clarification from the Housing Authority as to why this was required when the Complainant had already submitted annual mortgage payments. The Housing Authority explained that they were in possession of annual mortgage interest payments but not mortgage repayment statements and advised that this was required for the financial snapshot to be accurate. On perusal of the 2002 monthly payments it was noted that the mortgage was an endowment type mortgage (capital amount is repaid at the end of the term) and not a repayment mortgage, so no monthly mortgage repayments were being made.

Regarding point 2 above, the Complainant asked the Housing Authority for a copy of the letter from the Complainant's lawyer which mentioned the purchase of another property as this was not shown on the completion statement, contrary to the Housing Authority's assertion in their letter of the 19th December 2012 to the Complainant. The Housing Authority forwarded the document which was a 'Legal Fees Quote' dated 1st June 2007 (sale of property was completed in December 2007). The first part of the quote referred to fees for the sale of the property and the second part of the quote referred to fees for the purchase of a property for £150,000-.

The Complainant had informed the Ombudsman that she had gone to LPS to obtain a document which would disprove that she owned any other property. The Ombudsman found this rather odd as it should have been the Housing Authority checking with LPS if the Complainant owned any other property and not the Complainant. From communication with the Housing Authority it was confirmed that they had at no time directed the Complainant to LPS; the Complainant confirmed this and stated she had taken the initiative to go to LPS.

The Housing Authority had in fact advised her through the clerk at the Counter that she should obtain a letter from her lawyer stating that the transaction never took place. The Complainant was reluctant to request this letter because of the expense involved but acceded in the end and the letter from the lawyer was submitted to the Housing Authority on the 7th February 2013. That same day, the Housing Authority sent out a letter to the Complainant informing her that her case would be put to HAC on the 1st March 2013. On the 7th March 2013, the Housing Authority informed the Complainant that HAC had accepted her Application and she would be included in the Government Housing Pre-List (she would remain in that Pre-List for one year before being passed to the Government Housing Waiting List).

Due to the circumstances of their case, the Complainant asked that the Housing Authority waive the time on the Pre-List and consider recommending their case as a social case; they were homeless. The Housing Authority put the request to HAC who agreed to waive the time on the Pre-List but did not recommend the case as a social case. The Complainant has since appealed this decision and is presently awaiting the result. Being categorised as a social case would reduce the waiting time for allocation as the Application would be included in the Social List (a priority list for urgent cases).

The Ombudsman needs to highlight that it was due to information from his office that the Complainant became aware that she could request the waiver of the time on the Pre-List and found out of the existence of a Social List. In the Complainant's mind she believed that because she and her husband had always worked and contributed to the public purse, in their hour of need, the social housing system would have a property readily available for them or worst case scenario, in the short term. That was not what happened. HAC did not consider the Complainant and her husband homeless because they had a place to live in which had been lent to them by a friend. The Complainant's view is that no one buys a flat to lend to a friend; whilst she and her family reside there, the friend is being deprived of the use of the flat; be it for rental income or for one of the friend's family members, e.g. daughter who would shortly be finishing studies abroad and returning to Gibraltar. The Complainant is sick with worry about the situation she is in and needs a flat to be self sufficient again and not have to rely on charity.

CONCLUSION

In order to adequately manage the social housing stock, one of the Housing Authority's roles is to carry out appropriate due diligence which will satisfy the necessary requirements for a housing application to be processed. In the case of persons who have been homeowners, as is the Complainant's case, the Housing Allocation Scheme under Clause 5(d) provides that they cannot apply for Government rental housing unless the applicant submits a Financial Assessment form supported by relevant documentation. HAC then consider the case and decide if the sale was genuinely necessary.

The Ombudsman is of the opinion that the Housing Authority's request for a statement of monthly mortgage repayments was necessary in order that the Housing Authority could achieve an accurate picture of the Complainant's outgoings in relation to the family home at the time of sale.

When in March 2012, after receiving the Application, the Housing Authority sent the relevant form to the Complainant for completion, she did not immediately complete or hand in the form. It was as a result of the Husband's accident (July 2012) that the matter became very urgent and was then pursued by the Complainant. At that point the Complainant sought a meeting with the Housing Authority for clarification and/or guidance in relation to the Financial Assessment, and also her now very urgent and precarious housing problem, which meeting was not granted until the 17th September 2012. After her meeting with the Housing Manager the Complainant provided the financial assessment and supporting documentation, the last of which, mortgage repayment statements, were submitted on the 30th January 2013.

On analysis of the events, the Ombudsman concludes that there was no maladministration in this case in the manner in which the Housing Authority handled the application. However, he wishes to highlight that to have to wait for a period of two months to meet with an official from the Authority can at times be considered excessive. Perhaps, the Authority could enquire as to the nature of a request for a meeting and, if deemed to be of an urgent nature, provide an early appointment with a housing official (which does not necessarily have to be the Housing Manager).

The Ombudsman highlighted an issue which arose out of the Housing Authority's letter to the Complainant in March 2013. In the said letter the Housing Authority referred to Clause 5 (d) of the Housing Allocation Scheme (Revised 1994). However the Housing Authority later informed the Ombudsman that printed copies of the Scheme were not available to the public. Mention must be made that the Housing Allocation Scheme (Revised 1994) is also the document which contains information on applicants' entitlement to points (the Government Housing List is points based) and other general matters in respect of their application.

The Ombudsman is of the opinion that the Housing Authority is acting unfairly by referring applicants to a document which is not readily available to applicants or to the general public. The Housing Authority should either cease to refer people to the provisions of this document or cause it to be inserted into the statute books. The present position is untenable and bound to cause a serious problem. The question for the Housing Authority to consider is whether they are acting outside the law.

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Case Sustained

CS/1013

Complaint against the Housing Authority ("HA") due to delay in the re-allocation of a Government rented flat

COMPLAINT

The Complainant complained that the HA was taking too long to make her further offers of housing re-allocation. She alleged that the last offer made to her was in 2011 and the one prior to that, in 2009.

BACKGROUND

The Complainant had been waiting for a re-allocation since late 2011. At that time, she was offered a flat in the upper town which she rejected for numerous reasons: her ex-partner lived in the area; the flat was only a one bedroom when the Complainant was, according to her, entitled to two bedrooms, and its elevated location within the upper town would have been difficult to access and detrimental to her ill health.

The Complainant explained that she was desperate to move out of her current government flat situate at Lime Kiln Steps ("the Flat"). Her neighbours were alleged drug and alcohol addicts as well as squatters and anti-social cases. The Complainant informed the Ombudsman that she had been constantly struggling with drug and alcohol dependency throughout her adult life as a result of being subjected to physical and sexual abuse as a child. She was now in counselling and doing her utmost to remain clean. Unfortunately, her living environment was just a reminder of her previous life and the Complainant feared that being subjected to such an environment would cause her to relapse. Those were the reasons why the Complainant had requested a prompt re-allocation.

The Complainant also suffered from vascular necrosis of the wrist and severe asthma. The fact that the Flat was not well situated within the upper town aggravated her medical condition.

To worsen matters, the Complainant informed the Ombudsman that she was allegedly assaulted by a neighbour on the 13th February 2013 as a result of which she was taken to the accident and emergency department at St Bernard's Hospital. She requested a police report of the incident and subsequently made a copy of it available to HA.

Due to the hardship the Complainant was suffering together with the frustration she was experiencing as a result of the delay in re-allocation, she filed her complaint with the Ombudsman on the 14th February 2013.

INVESTIGATION

The Ombudsman formally presented the complaint in writing to HA on the 18th February 2013 and requested their comments. At the same time, the Complainant contacted the Ombudsman by telephone to inform him that she had not slept in the Flat the previous night out of fear she would suffer another assault. She did stay after that but did not switch on the lights or television in an attempt to avoid bringing attention to herself. In their conversation, she also informed the Ombudsman that on the 19th February, HA had offered her a bedsitter but that she had rejected it due to its size. The Complainant became upset and did not understand why the HA was so unsympathetic to her circumstances.

The Ombudsman subsequently telephoned the HA and made enquires as to why a bedsitter had been offered. Their explanation was that it was only done so on a temporary basis while suitable alternative accommodation was identified. When this was explained to the Complainant, she stated that she had rejected the bedsitter because when she had previously accepted temporary accommodation she had had to endure living in substandard conditions, for two years. The Complainant also claimed that when the bedsitter was offered, she was informed by a clerk at the HA offices that it was "in bad condition."

On the 4th March 2013, HA sent the Ombudsman a holding reply to his letter setting out the complaint. HA stated that the Complainant's case had been discussed by the Housing Allocation Committee and that a substantive reply would soon follow. However, in an earlier telephone conversation between the Ombudsman and HA, HA stated that they were apparently still waiting for a Social Services report on the position regarding the Complainant's children (who were in foster care due to the Complainant's drug/alcohol issues). Until this was confirmed, HA could not offer the Complainant a flat with a bedroom for her children since she was not their legal guardian. The fact that HA required confirmation over the status of the children, was reconfirmed in HA's substantive letter to the Ombudsman, which was received shortly thereafter. The letter also stated that the Complainant was in eighth position on the 1RKB "approved exchange list" and that unfortunately, it was "one of the slowest moving lists since priority was given to the "medical and social" lists".

Further to various chaser emails sent by the Ombudsman to HA throughout April, May and June 2013 in order to determine the outcome of the Housing Allocation Committee's discussions on the Complainant's case, the Ombudsman was pleased to receive a letter from HA which confirmed that the Committee had agreed that priority should be given to re-allocate the Complainant to a 2RKB, based upon the information provided by Social Services. HA stated that the Ministry for Housing was doing "everything possible to identify a [suitable] flat for [the Complainant]."

The Complainant is currently awaiting an offer of re-allocation.

CONCLUSION

Throughout the course of the Investigation, the Ombudsman was disappointed to have received conflicting accounts from HA and the Social Services Agency in relation to the information which HA had confirmed they required from Social Services, in order to properly assess the Complainant's eligibility for re-allocation. Although HA did state on more than one occasion that they were awaiting confirmation of the position vis-a vis the Complainant's children, in order to enable them to categorise the type of flat that the Complainant was eligible to be awarded, Social Services on the other hand, confirmed that the requested information had already been made available to HA, in 2012.

Due to these differing accounts, the Ombudsman was unable to attribute responsibility for the unacceptable delay of two years for a suitable offer of re-allocation to the Complainant, given her unfortunate personal circumstances.

Be that as it may, the Ombudsman was of the opinion that this case warranted more pro-active action by HA in an attempt to alleviate the Complainant's living conditions and her efforts to escape from the drug/alcohol environment in which she had previously been immersed. To the Ombudsman's mind, if HA did receive the information in 2012, more expeditious action should have been taken by HA in categorising the Complainant. Conversely, if Social Services did contribute to the delay by not issuing the material requested in a timely manner, HA should have pursued them more vigorously in view of the Complainant's circumstances.

CLASSIFICATION

Sustained

UPDATE

THE OMBUDSMAN WAS PLEASED TO NOTE THAT THE COMPLAINANT WAS OFFERED A SUITABLE PROPERTY BY HA IN JULY 2013 WHICH SHE DULY ACCEPTED.

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Case Not Sustained

CS/1019

Complaint against the Housing Authority ("HA") because the Complainant alleged that HA did not award him the appropriate points to reflect the state of his privately rented flat ("the Flat") or his family circumstances

The Complainant applied for Government Housing in August 2011 due to the fact that the Flat was in a bad state and that it suffered from dampness and water ingress. He was also aggrieved because his family was living in overcrowded conditions. The Complainant complained that HA did not allocate him "mixing of sexes" points at first instance nor any discretionary points to reflect his living conditions. Additionally, no consideration was given to his daughter's medical issues which according to him were aggravated by the family's living circumstances.

Background

The Complainant stated that in January 2012 his family's general medical practitioner wrote to the Housing Medical Advisory Committee outlining the Complainant's daughter's medical condition and supporting the family's request for government re-housing on medical grounds.

Although HA was already aware of the family composition, in his letter, the doctor explained that the family comprised of the Complainant and his wife, their three sons (then aged twelve, twenty and twenty four years respectively) and their seventeen year old daughter. The younger two siblings shared the living room, the remaining brothers slept in the second bedroom and both parents in the main bedroom. The sleeping arrangements were in the Complainant's and doctor's view, inadequate and detrimental to all concerned, especially to the daughter who was an "A" Level student suffering from severe hemiplegic migraines (to the extent that she had required hospitalisation). The brothers also suffered from asthma which, in the doctor's opinion, was exacerbated by the damp and overcrowded conditions. The letter concluded by requesting that the family be re-housed on an urgent basis in view of the young lady's "severe short and long term adverse effects on her physical, mental and emotional health"

The Complainant received a letter dated 14th March 2012 in response to the doctor's medical letter which stated that "… the Housing Authority, based on the recommendation of the Housing Allocation Committee, made no medical recommendation based on the contents of your daughters medical letter and agreed you wait your turn on the waiting list".

In January 2013 a further medical letter was sent by the GHA in respect of the Complainant's wife supporting the Complainant's request for Government housing. This was followed by a letter from the Complainant to HA in April 2013, seeking a copy of his "points" letter. The "points" computation was not made available at that stage although the Complainant was informed that a further fifty points had been awarded to him under the "mixing of sexes" category. The letter also stated that the recent medical letter which had been submitted in respect of his wife, would not be considered until the Housing Allocation Committee reconvened.

Dissatisfied with the state of affairs, the Complainant filed his complaint with the office of the Ombudsman in May 2013.

INVESTIGATION

The Ombudsman put the complaint to HA and the Environment Agency ("EA") since it transpired during the preliminaries to the investigation that the EA had inspected the Flat in 2011 and prepared a report which had been made available to HA at their request.

A copy of the report with accompanying transcript was provided to the Ombudsman. The report's contents set out the physical delineations of the Flat and the sleeping arrangements. Reference was also made to the fact that leaks had caused dampness and that in some instances there was condensation damp and black mould growth due to a lack of adequate ventilation. The author of the report also found that the lack of sufficient space did not permit good hygiene and sanitary practices and as a result, the Flat was generally dirty and disorganised.

In August 2013 the Complainant was provided with the points computation letter he had previously requested. This was made available to the Ombudsman for his review. It was also confirmed to him by HA that he was on the list for a 5RKB.Upon examination of the computation letter, the Ombudsman subsequently wrote to HA for clarification as to how the points had been calculated, why the mixing of sexes points had only been awarded after the Complainant had made HA aware that his family was entitled to them and why no medical points had been granted despite the medical letters provided, particularly in respect of his daughters condition.

HA replied to the Ombudsman setting out the procedure applied. The computation formula for "overcrowding" was explained with which the Ombudsman was satisfied. In regard to "medical" points, the letter stated that the medical letters submitted by or on behalf of the Complainant were presented and had been considered by the Housing Allocation Committee but that upon their review, they had not considered it appropriate to make any recommendation. HA confirmed that the initial lack of the "mixing of sexes" points had been due to human error since those points were entered into their system manually. Nonetheless, the Ombudsman was informed that HA had instructed their IT Operator to award those points automatically in order to avoid future errors from re-occurring.

CONCLUSIONS

The Ombudsman was sympathetic with the Complainant's living conditions and his family's circumstances and considered that the Complainant suffered some delay in receiving replies to his requests. He was also of the view that (as admitted by HA), an error had taken place whereby the "mixing of sexes" points were not awarded in a timely manner and that they were only granted after the Complainant raised the issue with HA. The Ombudsman did find in favour of the Complainant insofar as that specific grievance was concerned

However, the Ombudsman was satisfied with the explanation provided by HA in which they set out the formula and method by which points are calculated and subsequently awarded. Mindful of this, he did not consider that the Complainant had been treated less favourably by HA in this regard and was not of the view that maladministration had taken place.

CLASSIFICATION

Not Sustained

Case Sustained

CS/1026

Complaint against the Ministry for Housing ("Ministry), for the delay in undertaking repairs to a flight of steps ("Steps") leading to the Government rented flat ("Flat") in which the Complainants resided

COMPLAINT

The Complainant was aggrieved because of the delay on the part of the Ministry in undertaking repairs to the Steps leading to the Flat in which he and his wife resided.

BACKGROUND

The Complainant (who was in his early eighties) explained that in August 2010 he reported to the Ministry's Reporting Office ("Reporting Office") the bad condition of the Steps. Approximately two years later (May 2012) and no repairs having been undertaken, the Complainant wrote to the Housing Manager informing her of their situation. He explained that due to the bad state of the Steps and the fact that there was no handrail, his wife (who was in her late seventies) had recently sustained a fall and suffered injuries to her arm and leg and lost one of her front teeth.

The Housing Manager issued a prompt reply and explained that the matter was outside her remit but the letter had been passed on to the Ministry's Technical Section ("Technical Section") for consideration. The Housing Manager confirmed that there was a report in place at the Reporting Office.

Three months had passed since he wrote the letter and there had been no developments. The Complainant was very concerned that until repairs were carried out he or his wife would once again fall. The Complainant initially lodged a Complaint with the Ombudsman in August 2012. From preliminary inquiries, the Ombudsman found that the fitting of a handrail would be dealt with as a health and safety issue. Regarding the Technical Section not having contacted the Complainant, they apologised and explained that the matter was being processed with a view to providing a permanent solution rather than a short term one. Initially some basic repairs were going to be undertaken but it was decided that those repairs would not have been long-lasting nor removed the risk totally as the Steps would still have been dangerous to use. Therefore, plans for a new flight of stairs had been designed and only just that day (9th November 2012) been completed. The Technical Section were in the process of sending a pre-estimate to the Ministry of Enterprise, Training and Employment (tasked at the time with tendering out external works to private contractors) for a contractor to be awarded the project. The Technical Section stated that they would request that the works be prioritised to ensure that they be carried out as soon as possible and would write to the Complainant to advise them accordingly (a copy of said letter was sent to the Ombudsman). Considering that the matter was in hand and the works were imminent, the Ombudsman classified the Complaint as sustained and as having been dealt with 'Through Informal Action'.

Unfortunately, three months later, the stalemate continued and in February 2013 the Complainant once again wrote to the Technical Section complaining that no works had as yet been carried out.. The response he received reiterated that the matter was with the Ministry of Enterprise, Training and Employment who had to choose a private contractor to carry out the works but requested that the Complainant contact the HPTO (Higher Professional Technical Officer) of the Technical Section if he did not see any progress over the following few weeks.

By June 2013, (now seven months later) still no works had been undertaken. Despite the HPTO's offer for the Complainant to contact him if there was no progress, the Complainant claimed he attempted on countless occasions to do so but only managed to speak to the HPTO once and only to be told that he would look into the matter and revert to them, which did not happen.

The Complainant brought his grievance to the Ombudsman for the second time.

INVESTIGATION

The Ombudsman directed his enquiries to the HPTO and highlighted the urgency of the repairs considering the delay experienced. The HPTO advised that he would follow up the enquiry and revert as soon as possible. On the 21st August 2013, two weeks later, and not having received any information, the Ombudsman contacted the HPTO who advised that they were obtaining quotes from private contractors to allow for the revised scope of works that he had recently prepared. [Ombudsman Note: By way of explanation, the HPTO had been seconded to the Ministry of Enterprise, Training and Employment for the purpose of assisting in the exercise of awarding contracts to private contractors for repairs to public housing]. The HPTO contacted the Ombudsman at the end of August 2013 and informed him that the works had been completed. The Ombudsman contacted the Complainant to enquire about the works and was told that a handrail had been fitted and the Steps repaired.

The Ombudsman was taken aback by the information provided by the Complainant as the Technical Section had maintained that the main cause for the delay had been the design of a new flight of stairs and the awarding of those works to a private contractor. The Ombudsman contacted the HPTO and was informed that two handrails had been fitted on each side of the Steps and the Steps repaired where necessary, ensuring that the Complainant and his wife were comfortable with what was being provided. The HPTO provided photos of the finished works (see photos appendix 1 – before and after).

The Ombudsman delved further as to why those repairs, which were in the end not of a major nature, taken three years. The HPTO explained that the stairs were public and did not come under the Ministry's remit. It was only as a result of his direct involvement in the case, on the basis that this was a health and safety issue, that the works had finally been carried out, if not, the HPTO believed that the matter would have in all probability continued to be passed from department to department. The HPTO further explained that a private contractor who carried out works to a nearby park in 2011 was meant to have repaired the Steps but left without doing so. In this respect the Complainant had told the Ombudsman that the private contractor had informed her they had been stopped from undertaking those repairs.

CONCLUSIONS

In 2010 the Complainant reported the bad state of the Steps in the belief that those would be promptly repaired. Instead:

- It took three years for the works to be done;
- It took the Ombudsman's intervention;
- Issues were raised as to which department was responsible for the repairs considering the Steps were public;
- The Complainant's wife had a fall and is still suffering the consequences;
- The reason given by Technical Services for the delay during the last year which was that a new flight of steps would be built did not materialise.
- Repairs to the existing Steps were undertaken despite the Technical Section having stated that those would not be long lasting nor would have removed the risk totally as the Steps would have still been dangerous to use.

In retrospect, there is no justification for the three year wait, especially considering the final nature of the repairs which was to repair the existing Steps and the fitting of a handrail. Added to the aforementioned is the fact that the Complainant and his wife are elderly and therefore this health and safety issue should have been urgently addressed. Failure to have done so has resulted in prolonged hardship to the Complainant and his wife who lived in fear of falling every time they came to, or left the Flat.

New Flight of Steps

The information provided by the Technical Section in November 2012 that repairs to the Steps would not have been long lasting nor would have removed the risk totally, leaves the Ministry/Government exposed to future claims from persons who suffer falls in those public Steps and does not give confidence in respect of the repairs undertaken.

Responsibility for Repairs

The Ombudsman's investigation found that these type of repairs appear to fall in a grey area. Although the Steps were the only access to the Flat they were also public and the Ministry therefore had reservations on whether they were responsible for the repairs.

Ombudsman recommends that the Ministry puts in place a procedure to deal with repairs that fall into a similar category as those referred to in this case. The Ministry should be clear with regards setting parameters on their areas of responsibility in relation to repairs and have a system in place to immediately pass on to the relevant department, reports which do not fall within their remit. This set up should serve to expedite repairs. Had a timely decision been made in this case perhaps the Complainant's wife's fall could have been averted.

In this case, had the Complainant not brought his grievance to the Ombudsman it is clear that no repairs would have been carried out. As the HPTO explained it was his direct involvement in the matter, through the Ombudsman's investigation of the Complaint, that the repairs were carried out (health and safety issue) if not the matter would have been passed from department to department.

Private Contractor

Regarding the different versions of the HPTO and the Complainant, in relation to the private contractor who undertook works in a nearby park and should have repaired the steps, the Ombudsman finds this to be a situation which warrants grave concern. Despite private contractors being awarded repairs/projects, those must be overseen by a pertinent Government authority who will ensure that the commissioned works are carried out adequately and to completion which was clearly not what happened in this case. It appears on the HPTO's side that the private contractor was left to his own devices whereas the Complainant's version was that they were stopped from undertaking repairs. No documentation has been provided which would clear up what really happened.

RECOMMENDATION

The Ombudsman recommends that the Ministry puts in place a procedure to deal with repairs that fall into a similar category as those referred to in this case. The Ministry should be clear with regards setting parameters for their areas of responsibility in relation to repairs, and have a system in place to immediately pass on to the relevant department, reports which do not fall within their remit.

The Gibraltar Public Services

Ombudsman