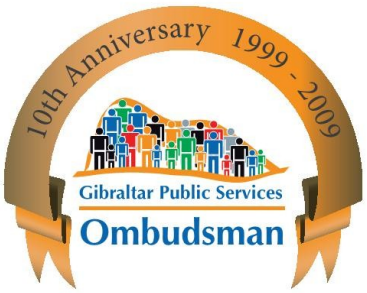


‘It is not the straining for great things that is most effective;
it is the doing the little things, the common duties,
a little better and better’

The Gibraltar Public Services

Ombudsman

The masculine form is used in this text to designate both male and female, where applicable.

Front cover quote by *Elizabeth Stuart Phelps.*

The Gibraltar Public Services
Ombudsman

March 2010

The Honourable Peter Caruana Q.C
Chief Minister
Office of the Chief Minister
No. 6 Convent Place
Gibraltar

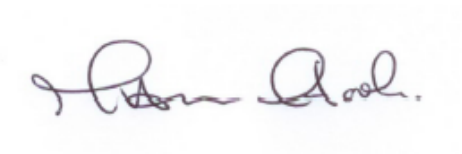
Dear Mr. Caruana,

Annual Report 2009

It is an honour for me to present the Public Services Ombudsman's tenth Annual Report. This report covers the period 1st January to 31st December 2009.

This report has been prepared in accordance with the Public Services Ombudsman Act 1998. It contains summaries of investigations undertaken and completed during this period together with reviews and comments of the most salient issues of this last year.

Yours sincerely



Mario M Hook
Ombudsman

EDUCATION & TRAINING
gha
Gibraltar Health Authority
magistrate's court
AquaGib
Environment
Gibtelecom
SOCIAL SECURITY
housing department

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1
Introduction

The Ombudsman's tenth Annual Report...

Guest speakers on our 10th Anniversary Celebration

The Ombudsman, Mario Hook delivering his presentation entitled 'Complaints are Valuable Learning Tools'

INTRODUCTION

On 1st October 2009 the Public Services Ombudsman in Gibraltar celebrated its tenth anniversary.

The Government of Gibraltar, following a manifesto commitment, moved a Bill in December 1998 for the creation of an Ombudsman in Gibraltar.

> *'I have the honour to move that a Bill for an Ordinance to make provision for the appointment of an Ombudsman for the investigation of administrative action taken by or on behalf of the Government of Gibraltar and providers of certain services to the general public, to regulate the functions thereof, and for the purposes connected therewith, be read for the first time.' (Gibraltar-House of Assembly-3 December 1998)*

With these words the Chief Minister of Gibraltar paved the way for the Public Services Ombudsman to become a reality in Gibraltar.

In April 1999, Mr Henry Pinna was appointed as Gibraltar's first Public Services Ombudsman. In October of that same year he opened the doors of a fully functional office to the public.

Almost from the very first day, the people of Gibraltar welcomed and availed themselves of the services offered by the Ombudsman. As at the end of 2009 we had processed 5258 Complaints and 1264 Enquiries, these figures are in itself a testament to the wide recourse to the Ombudsman by those who require assistance and/or are aggrieved as a result of some administrative action.

Tenth Anniversary

On the occasion of the tenth anniversary, which we celebrated on the 1 October 2010, we hosted an event to which the Heads of those entities under our jurisdiction were invited. Her Worship the Mayor, the Speaker and all Members of Parliament were also invited.

During the course of the evening, presentations on various topics were given by Mr James Rosado, the Ombudsman's Senior Investigating Officer, Mr Henry Pinna, (Gibraltar's First Ombudsman), Ms Emily O'Reilly, Ombudsman and Information Commissioner for the Republic of Ireland, Ms Ann Abraham, United Kingdom's Parliamentary and Health Services Ombudsman, The Hon. Edwin Reyes, Minister for Culture and Heritage and the Gibraltar Public Services Ombudsman..

The theme of my presentation was 'Complaints are Valuable Learning Tools'. Referring to those under our jurisdiction, I reminded them that anyone can receive a complaint at any one time; it is these Complaints that can be positive aspects of our work if used as learning tools.

A complaint is as an act which enshrines a person's right to voice discontent against a service provider who, to that person's mind at least, has failed to provide that service which he/she is entitled to receive. The complaint gives the service provider the opportunity to address the alleged grievance caused. If it transpires that there was an action that led to maladministration, then that entity has the golden opportunity to put it right, provide an explanation and if needs be an apology. Equally important is the fact that it also offers that entity the opportunity to review and improve the service which they provide.

INTRODUCTION

After having been operating for ten years the staff in the office of the Ombudsman have gained a vast experience in the area of administration and complaints handling. The Ombudsman is here to help. We are available if anyone wishes to meet with us to review their complaint handling procedures or indeed any administrative procedure.

Principles of Good Administration

On the occasion of the anniversary, we presented the Ombudsman's Principles. These are a set of principles divided into three categories, Principles of Good Administration, Principles of Good Complaint Handling and Principles for Remedy.

Ann Abraham, United Kingdom's Parliamentary and Health Service Ombudsman, gave an overview of the Principles during the course of the anniversary event.

It is our intention to visit all those within our jurisdiction within this Anniversary year to explain in detail the Principles of Good Administration. Hopefully by the end of the exercise, these Principles will have been implemented and will be the bench mark to follow.

On this our tenth Annual Report it is fitting to pay tribute to two persons that have been an important part of the development of the Ombudsman in Gibraltar.

Henry Pinna

There is no doubt that Henry Pinna, Gibraltar's first Ombudsman, accomplished the task assigned to him and successfully brought the office of the Ombudsman in Gibraltar to full fruition during his term of office. In a few short months, he opened a fully staffed and fully functional office to the public. Since its infancy – if ever indeed the office experienced an infancy – Henry managed to establish the office as an entity of excellence delivering unbiased opinions and trusted by all who required his assistance.

Dr Leslie Zammit

The Ombudsman declared a conflict of interest in respect of a complaint. The Public Services Ombudsman Act provides for such an eventuality and pursuant to these provisions, the Chief Minister appointed Dr Leslie Zammit to act as Ombudsman for the purposes of that one investigation.

Dr Zammit carried out a thorough investigation of what proved to be rather a complicated matter which required sensitivity and a high degree of objectivity.

This has been the only time when an Ombudsman has been appointed on the occasion of a conflict of interest and it is appropriate to record this event in this the tenth Annual Report.

Conclusion

I have been Gibraltar's Public Services Ombudsman since 1st January 2003. I have always been involved in the service sector so it is no coincidence that throughout my tenure as Ombudsman my staff and I have strived to deliver an ever increasing quality of service to those who come to us seeking our assistance, thus making the customer the most important person in our premises.

Those who seek our assistance bestow on us the huge opportunity to serve them. I would encourage the continued use of our services. I wish to thank the people of Gibraltar for the trust that they have placed on the Ombudsman.

Finally, I would also like to express my gratitude to my staff. I honestly have a great team. I have no hesitation in stating that they perform a truly amazing job every single day. We pride ourselves in our service delivery and without doubt we are always conscious that those who seek our assistance are not an interruption of our work but rather they are the purpose of our work.

The Ombudsman Team on our 10th Anniversary event; from left to right, James Rosado, Senior Investigating Officer; Nadine Pardo, Public Relations Officer; Mario Hook, Ombudsman; Karen Calamaro, Investigating Officer and Steffan Sanchez, System Administrator

Mario M Hook
Ombudsman

March 2010

Tenth Anniversary Celebration
VIPs and Guests

Tenth Anniversary Celebration
Our Senior Investigating Officer, Mr James Rosado delivering a presentation on the ten year history of the Ombudsman in Gibraltar .

2
Ombudsman's Review 2009

Group Photo February 2010 Certificate in Ombudsman and Complaint Handling

OMBUDSMAN'S REVIEW 2009

Professional Award in Ombudsman and Complaint Handling Practice

Queen Margaret University
Edinburgh

The Professional Award & Certificate in Ombudsman and Complaint Handling Practice is the first professional, validated course of its kind in the Ombudsman field. It was designed and delivered by Queen Margaret University (Edinburgh, Scotland) in association with the British and Irish Ombudsman Association (BIOA). Gibraltar was officially invited to form part of the pilot scheme intake and Investigating Officer Mrs Karen Calamaro and Public Relations Office Mrs Nadine Pardo-Zammit attended.

It was in 2007 that BIOA decided to set up an 'Accreditation Working Group' with the purpose of introducing acceptable training for Ombudsman staff and associated complaint handling organisations. The reason being that BIOA is not a professional regulatory body and could therefore not accredit or certify professional competence. Therefore, BIOA proceeded to determine the key aspects of 'acceptable training' in order that individuals who undertook the courses could be granted awards and certificates.

BIOA agreed that the purpose of the Award and Certificate would be to '…equip assessors and investigators with the practical skills and background knowledge necessary to discharge those functions to a high level of competence.' Whilst the Award would be principally aimed at individuals who had been in the complaint handling field for a relatively short period of time (say one or two years) and would concentrate more on the training at a practical level, it was agreed that the content of the Certificate training would be at a higher academic level. It was therefore agreed to run two University level courses; an Award (Level I - 10 credits) and a Certificate (Level III - 15 credits).

In the pilot Award there were a total of thirty participants representative of twenty two different schemes based in England, Ireland, Northern Ireland, Scotland, Wales and Gibraltar. In the pilot Certificate, there were eighteen persons representing a total of thirteen schemes. The schemes included services with jurisdiction over Public Services, Financial Services, Parliamentary & Health Services, Police, Law Societies, Barristers, Prisons, Education, Pensions and Defence Services.

The Award course took place in October 2009 at Queen Margaret University over a period of four days. It encompassed issues such as Complaint Assessment & Standards, Law, Procedure & Investigation, Evidence Gathering, Communication & Interviewing, Decision Making and Recommendations & Report writing. It culminated in an assessment case study of 3,000 words. We are pleased to confirm that both Karen Calamaro and Nadine Pardo-Zammit successfully passed the Award course.

The Certificate course took place in February 2010 and begun with an overview and history of Ombudsman and Complaint Handling. The course then moved on to issues of Alternate Dispute Resolution, Conflict Management, Data Management & Data Protection, Personal Work Planning and Working with Diversity.

Karen and Nadine are now in the process of writing a 3000 word dissertation using a combination of the learning experiences from the Certificate and their own personal work experience.

The Award and Certificate training has proved a great learning experience and will no doubt enhance their skills which will improve the service the Office provides, both to those who come seeking our assistance and to the entities under the Ombudsman's jurisdiction. The diversity of schemes and people who took part in the two training courses provided Nadine and Karen with a first hand opportunity to share and discuss experiences and working practices.

Class in progress—October 2009 Award in Ombudsman and Complaint Handling

A mention must be made of the two tutors who ran the courses, Carolyn Hirst and Eric Drake, who expertly delivered the training for both the Award and Certificate courses, and whose experience in the field of complaint handling proved invaluable. A mention too must be made of Carol Brennan, Academic Director (Marketing, Retail and Consumer Studies) School of Business, Enterprise and Management at Queen Margaret University who also contributed to the compilation and delivery of the courses; she was always at hand to assist the students, even if it meant going out of her way to do so. Thank you for a great experience.

The IXth International Ombudsman Institute World Conference

Stockholm
9 – 12 June 2009

The Gibraltar Public Services Ombudsman is a full voting member of the International Ombudsman Institute. The IOI World Conference is held every four years, the previous world conference was held in Quebec, Canada.

The world conference offers a unique opportunity to meet Ombudsmen from across the globe, listen to what we each have to say and exchange views and ideas.

The IXth World Conference was held in Stockholm, hosted by the Swedish Parliamentary Ombudsman. The organisation was superb and the chosen venue offered excellent facilities to ensure a very successful conference.

The event was opened by the Mr Per Westerberg, Speaker of the Swedish Parliament, this was followed by an address by Mr Bill Angrick, President of the International Ombudsman Institute.

The first plenary session dealt with '*Current global trends affecting the work of Ombudsmen'*. The first speaker was Mr Kofi Annan, former Secretary General of the United Nations, who delved into the subject of '*The State of the Individual*'. Later Ms Navanethem Pillay, United Nations High Commissioner for Human Rights, spoke on the '*Current Challenges to the Protection and Promotion of Human Rights*'.

After a well earned break, Mr George Okoth-Obbo, Director of the Department for International Protection Services, United Nations High Commissioner for the Protection of Refugees, gave a presentation on *'Challenges Ahead in Ensuring the Right to Political Asylum'*. This first Plenary Session was brought to an end by Mr Hendrik Jordahl, Research Institute of Industrial Economics, Sweden, who spoke on the subject '*Privatization – is Dismantling Public Authority an International Trend?*'

I attended two workshops which I considered to be of practical application to our work in Gibraltar. The first workshop was entitled *'The Ombudsman as Human Rights Defender'* and the second was on the subject of *'Protecting the Particularly Vulnerable'*.

The following is a very brief account of the Human Rights workshop.

Professor Victor O Ayeni*[1] who presented a paper entitled '*Ombudsman as Human Rights Institutions – The New Face of Global Expansion'* said that there has been a phenomenal popularity of the institution of the Ombudsman worldwide as demand for its particularly flexible and cost-effective services continues to grow.

*1 Prof Victor O Ayeni is Director, Governance and Management Services International, Suite 7, 2 Shad Thames, Tower Bridge, London, SE1 2YU, United Kingdom (www.gmsiuk.com)

He went on to state that the ombudsman in 2009 is a significantly different institution from its ancestor*₂ and that the role of the ombudsman has evolved from its traditional function, expressed exclusively in terms of administrative justice, to a broader role that explicitly addresses the protection and promotion of human rights. Contrary to the uncertainties expressed in this regard even as recently as a decade ago, it is safe to conclude that the human rights role has now evolved into an integral part of the ombudsman function, inextricably linked to the fundamental character of the institution. In other words, today's ombudsman is undeniably a human rights institution, and cannot succeed otherwise in the face of the issues and challenges that confront it in the Twenty-first Century environment.

Prof. Ayeni said that the aim of this paper was to elucidate this 'new face' of the ombudsman. In doing so, it would show that the ombudsman, in whatever form it is created, does not any longer undertake human rights work just as an add-on or incidental function but as an essential and necessary part of its fundamental existence. Nor, is a human rights role the preserve of some so called newer or 'hybrid' offices. Indeed, ombudsmen are as much human rights bodies as they are institutions for the advancement of administrative justice. The two functions have become fused for 'old-styled' and 'newer' ombudsman offices alike. This conclusion is the outcome of the last two decades or so of the ombudsman's two hundred years history.

Ms Ritta-Leena Paunio, Parliamentary Ombudsman, Finland, presented a paper entitled '*The Ombudman as Human Rights Defender*'. Ms Paunio said that the Ombudsman institution comes in a great variety of forms, and there is no one-size-fits-all model. The Ombudsman's role as a defender of human rights has been deliberated at our conferences and has been the focus of comparative studies in the legal literature. In these studies, our organisations are often divided into so-called classic institutions, in which oversight of legality is the main task and human rights defenders-type bodies, in which the principal aim is to intervene in violations of human rights and promote these rights.

In Ms Paunio's view protection of human rights is an essential part of the work that all Ombudsmen do. Irrespective of different roles and emphases, the tasks that Ombudsmen perform are closely linked to upholding the rule of law and respecting the fundamental principles that this involves.

The conference proved to be very beneficial for me and I came back to Gibraltar with the definite resolve of including Human Rights issues in my reports. As such, we be holding in-house seminars for our staff to ensure that we are all able to identify when a Human Rights issue arises in any one complaint.

*2 Referring to the Swedish Ombudsman which was established 200 years ago.

Personal perspective from our Investigating Officer

Mr. Mark Clive Zammit

Upon the resignation of the Senior Investigating Officer in the latter part of the year, Mark Clive Zammit joined the Ombudsman's team as Legal Adviser / Senior Investigating Officer.

Mark served some 10 ½ years with the Royal Gibraltar Police, where apart from general police duties, he spent a number of years in the police marine section in what were very challenging times. He left the police in 2001 in order to go to university where he read law and subsequently qualified as a Barrister having completed his BVC at the Inns of Court School of Law (City University). In 2005, after being called to the Bar of England and Wales Mark returned to Gibraltar where he practised within the litigation team of one of Gibraltar's leading law firms.

Since his return to Gibraltar 4 ½ years ago, Mark has worked mainly in the criminal and family jurisdictions. He has been involved in numerous high profile cases involving attempted murder, arson, GBH with intent, and publication of indecent images of children. Mark has a preference for the Criminal jurisdiction although he also enjoyed his time at the family courts. Family Practice, because of the nature of the work, is a rather specialised and demanding area of law, particularly when the interests of children are at stake; Mark has found that this area of work can be very rewarding. Additionally, he also did work in the Coroner's Court and Admiralty jurisdiction.

The combination of his professional achievements and considerable years of experience of dealing with people, often in difficult circumstances, will no doubt assist Mark in discharging his duties as part of the Ombudsman's team. The team of which Mark is now a part is a vibrant and committed team focused in securing a good and efficient public service for Gibraltar.

Mark's early impressions of how the role of the Ombudsman is put into practice have been very positive. There is a very professional and courteous approach by most public bodies towards the Ombudsman and any ongoing investigations. Mark comments that there is also a very noticeable and commendable environment of 'non- interference' with the Ombudsman on the part of politicians.

The electronic age.

Looking to the future Mark hopes that public awareness of the important role of the Ombudsman's Office will increase and expects that persons aggrieved by possible acts of maladministration will make continued use of the Ombudsman and his team. Mark is also conscious of adapting to the social changes and recognises that more focus is required to enhance the electronic facilities such as the email and website enquiries. This will open the Ombudsman to a wider spectrum of members of our society, who may be unable to initially come into our office with a grievance or who may just find it easier to enquire via e-mail.

Awareness is essential

Mark is also keen to disseminate and create awareness of the Principles of Good Administration and Complainant Handling within those entities falling under the jurisdiction of the Ombudsman. There are plans to do this by means of presentations and circulation of literature. The Principles are already being introduced in numerous reports to point out best practice as a way for public bodies to improve their service.

Fundamental Rights

Shortly, the Ombudsman will be considering the feasibility of introducing a structure within his team that would allow for references to be made to possible infringement of human rights which are enshrined in our Constitution Mark will be tasked with assisting the Ombudsman in the identification of such cases and provide the legal background and basis of any such infringement. This important concept is encouraged by the European Commissioner for Human Rights and will ensure that investigations are more complete particularly in areas where there is a possible infringement of human rights by virtue of maladministration.

3
Case Reports

The Ombudsman expects those entities under its jurisdiction to provide assistance in his investigations. With this in mind, we have issued guidance as to the time limits that we expect from those whom we write to as follows:

Ombudsman's General Guidance

The Ombudsman expects an acknowledgment of receipt of the complaint to be sent within 4 days of receipt of the complaint at the very latest.

With regard to an Initial Reply letter, the Ombudsman expects this to issue within 7 days of receipt of the complaint at the very latest.

A substantive reply to the Ombudsman's letter informing the Department of the Complaint, is expected from the Department by no later than 2 to 3 weeks from the date of his letter.

Should the Department for any reason be unable to provide a substantive reply within 3 weeks, a suitable holding letter should issue from the Department to the Office of the Ombudsman explaining why the 3 week time frame cannot be adhered to and confirming when the Department will be in a position to forward a substantive reply.

Buildings and Works Department

Case Sustained

CS/837

Complaint against the Buildings & Works Department, for not undertaking the works required to stop water ingress into the Complainant's property which originated from the flat located above her own.

Complaint

The Complainant was aggrieved because Buildings & Works Department ("the Department") had not carried out the works required in the flat located above her property to stop water ingress into her flat ("the Flat").

Background

The Complainant, an elderly lady who suffered from a heart condition, lived in a privately owned Flat within a building ("the Building") in which the remainder of the flats were owned by Government. In July 2007 the Complainant contacted the Reporting Office of the Ministry for Housing to report water ingress into her Flat which originated from the flat above her own. The Complainant explained that the problem of water ingress had been a recurring situation throughout a number of years and recalled that in 2004 she had suffered this due to squatters having taken over that flat.

The Complainant believed that on this occasion, July 2007, the cause of water ingress was the fact that a bathroom had been constructed in an area of the property which had not purposefully been prepared to contain a bathroom; this area had been fitted with wooden flooring which would allow water to channel its way down to the Flat. The Complainant claimed that on one occasion, the Emergency Section of the Department had attended at her Flat and seen the water penetration. They had tried to contact the tenant ("the Tenant") of the flat and because they were unsuccessful proceeded to turn off the water supply which would stop further water penetration into the Flat and force the Tenant to contact them for repairs to be carried out before the supply was returned. The Complainant stated that the Tenant did not contact the Department but water ingress continued. This could only be explained by the fact that the supply had been restored.

The Complainant stated that the Department officials had asked that she contact them when she heard that the Tenant was in the flat so that they could immediately attend, but the Complainant claimed that on the occasions when that had occurred she had telephoned the Reporting Office and had been unable to get through.

By January 2009 the Complainant alleged that the water ingress had increased to such an extent that she had to place four buckets around one of the rooms in her Flat to collect the water coming through from the flat above. She also stated she was afraid to leave the Flat because she was worried that the buckets would overflow and cause damage to her belongings but would have no option when due to medical reasons she would have to travel to the United Kingdom.

Desperate to resolve the situation, the Complainant contacted the Ombudsman with her grievance.

Investigation

The Ombudsman proceeded to write to the Department to explain the Complainant's problems and requested their comments on the matter.

A reply was received from the Department in February 2009 in which the Chief Executive ("the CE") confirmed that the cause of the leak to the Flat stemmed from the flat located above. The CE explained that although the Department had tried on various occasions to contact the Tenant and arrange access to the flat they had not been successful. It was not until the CE happened by chance to meet the Tenant that the former informed him the Department had been trying to contact him due to water ingress problems originated from his flat. The Tenant explained he had changed his mobile telephone number and updated the CE with the new details. The CE explained that shortly after that chance meeting, the necessary arrangements were made for estimators from the Department to inspect the premises and it was then ascertained that the cause of the water ingress was the bathroom. The CE stated that the Department intended to refurbish the entire bathroom, which would include tiling of the wall and floor areas, and that commencement of works was pending the arrival of the materials required. The CE did not envisage any problems with regards access but advised that he would inform the Ombudsman if any difficulties arose.

The Ombudsman wrote to the CE and requested that he advise of the interim measures which had been taken by the Department to stop water ingress into the Flat until:

Access was arranged with the Tenant
The refurbishment of the bathroom in the flat above was undertaken

He also requested information on whether the Ministry for Housing had considered the provisions conferred upon it by Section 16 of the Housing Act 2007 which stated the following:

Power 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).

(2) Notwithstanding the requirement to give 7 days notice under subsection (1), if it is considered necessary as a matter of urgency to enter any public housing for any of the purposes mentioned in subsection (1)(a) or (c), a person authorised by the Housing Authority may at any reasonable time, on giving 24 hours notice to the tenant, enter such public housing.

A reply was received from the CE of the Department in which he explained that the repairs in the flat had commenced on the 10th March 2009. He advised that they intended to carry out all outstanding repairs, especially the full refurbishment of the bathroom where faulty pipes and bath seals were the cause of the leak which affected the Complainant. He further explained that the pipe work had already been checked and any leaks or pipes in doubtful condition had been repaired. The Department would replace the bath with one that completely, or as near as possible, fitted between the side walls. This would greatly reduce the possibility of water ingress originating from that section of the bathroom. The wall tiles would be extended to all walls surrounding the bath up to the ceiling instead of the standard wall tile splash back and any plasterboard wall found to be damp would be replaced. Once the works were completed, the CE confirmed that neither the bath nor any associated plumbing should be the cause of any further leaks that would affect the Complainant.

The Ombudsman convened a meeting with the CE because no information had been provided on whether the Ministry for Housing had invoked the powers conferred upon it by Section 16 of the Housing Act in order to gain access to the flat above the Complainant's to enable the Department to make the necessary repairs to stop water ingress at an early stage.

At the meeting, the CE explained that numerous attempts had been made to contact the Tenant by phone and by written request in the form of a handwritten note left in his flat for him to contact the Department, but these attempts did not prove successful. The water supply had also been turned off but subsequently reconnected by an unknown person/s. Regarding procedure for gaining access into Government rented properties, the CE explained that this began by attempting to contact the tenant/s by phone or by means of a note to request them to contact the Department for the relevant access arrangements to be made. Once those options were exhausted, the Department would notify the Ministry for Housing that they had been unable to gain access and the Ministry would then proceed to write to the tenant/s stating the date and time on which the property would be inspected. On the arranged date, officials from the Department accompanied by a housing inspector and on occasions by the Police would attend at the property. The CE explained that if all the aforementioned steps failed, then the matter would progress to the courts via lawyers which would be a process that could take months.

Conclusions

Buildings & Works Department, upon attending to an emergency call from the Complainant in relation to water ingress, identified the source as being located in the flat above. They could not gain access to the property because the tenant was not in the flat, so the decision was made to turn the water supply off and a note left for the tenant to contact the Department immediately, in order that the cause of the leak could be inspected and the necessary repairs undertaken. The tenant did not contact the Department despite various notes having been left at his flat and numerous attempts made to contact him by phone. As the water supply was reopened, the Complainant continued to suffer from water ingress to the Flat which became progressively worse. The Department should be provided with a device which would ensure that when they turned off the water supply this would be firmly secured in order that no one but them could reopen it. This would ensure that tenants would have no option but to contact the Department.

It was only by chance that the CE of the Department met the tenant who then provided his new contact details which enabled the Department to make the necessary arrangements to inspect the flat and carry out the required works. From July 2007 when the Complainant reported the matter of water ingress to January 2009 when the CE of the Department by chance met the tenant of the flat causing this, a period of approximately eighteen months had elapsed. No mention of the notes left by the Department was made.

The Department should have in place clear time scales which should be adhered to with regards contacting the Ministry for Housing for access to Government rented properties. If the Department's standard procedure of contacting a tenant for access to the property fails, they should proceed to contact the Ministry for Housing, within a determined period of time, who as Landlord would invoke the powers of entry as per Section 16 of the Housing Act 2007. Tenants should not be made to suffer loss and stress because third parties cannot be contacted.

In relation to the Complainant having been requested by the Department to contact them when she was aware that there was someone in the property, and the Complainant's statement that on various occasions when this had occurred she had been unable to get through to the Reporting Office, the Department should have provided the Complainant with a mobile telephone number on which to contact them to allow them to attend the premises urgently.

Considering the above, the Ombudsman could only but sustain this complaint. Additionally, the Ombudsman made recommendations for a review of the procedures in place for the access to properties by the Ministry for Housing.

Recommendation

That the Ministry for Housing should produce clear guidance notes on the procedure to be followed by Buildings & Works Department whenever the need arises for this Department to gain access to a Government property.

Case Sustained

CS/839

Complaint against the Buildings & Works Department for not having undertaken repairs to a leaking wastepipe and for failure to reply to the Complainant's letter in relation to their delay in carrying out the repairs.

Complaint

The Complainant was aggrieved because the Buildings & Works Department ("the Department") had not carried out repairs to a wastepipe which was leaking onto the stairwell of the building ("the Building") in which her Government rented flat ("the Flat") was located.

The Complainant was further aggrieved because she had not received a reply from the Department to her letter in relation to their delay in undertaking the repairs.

Background

In August 2008, the Complainant contacted the Reporting Office of the Ministry for Housing to report a wastepipe which continuously leaked onto the stairwell of the Building in which the Flat was located. The Complainant claimed that she had to use this slippery stairway on a daily basis to gain access to the Flat which, coupled with her age, resulted in her experiencing great difficulty in reaching her destination. On one occasion, and as a result of the area being very slippery, the Complainant claimed that she had suffered a fall.

During the first week of October 2008 and because the leak continued, the Complainant accompanied by her daughter attended one of the depots of the Department and proceeded to report the matter once again.

On 22nd October 2008 and due to the repairs still not having been undertaken, the Complainant proceeded to write to the Department and explain her situation and on the 21st November 2008 again reported the matter at the Reporting Office.

By 8th January 2009, due to the repairs not having been undertaken and because she had not received a reply from the Department to her letter, the Complainant contacted the Ombudsman.

Investigation

On the same day, the Ombudsman wrote to the Department on behalf of the Complainant and requested information as to when she could expect a reply.

As no reply was received by 26th January 2009, the Ombudsman opened an investigation in respect of:

Non-Reply to letter

Not having undertaken repairs to a leaking wastepipe

The Department replied to the Ombudsman by way of letter and explained that a site inspection had been carried out and the soil and vent pipe had been unblocked. They advised that minor repairs were going to be carried out to the aforementioned pipe.

The Ombudsman wrote to the Department to establish why the required works had not been carried out at an earlier stage, i.e. circa the 22nd October 2008 when the Complainant wrote to them.

A reply was received in which the Department explained that the first notice they had received in respect of the leaking wastepipe was through the Complainant's letter of 22nd October 2008. After receipt of the letter, the Department awaited for the relevant report to be electronically transferred form the Reporting Office to the Estimating Section but this did not materialise. They explained they had wrongly assumed that the Complainant had reported the issue at the Reporting Office.

The Department explained that they responded to the report upon receipt of the Ombudsman's letter of 8th January 2009 and a subsequent visit from the Complainant to their Help Desk. A specialist firm was engaged in early January 2009 to unblock the wastepipe and scaffolding was subsequently erected to inspect/repair the pipe. The source of the leaks was traced to two rodding eyes located on the pipe which were leaking due to wear and tear. A third leak originated from a kitchen sink pipe embedded in the wall of the Complainant's neighbour's flat. The latter took longer to repair because the wall had to be broken into in order to gain access to the pipe.

The Ombudsman sought a meeting with the Chief Executive ("the CE") of the Department to seek clarification on certain issues of the investigation. At the meeting, the Ombudsman advised that an Emergency Works Order dated 18th August 2008 and a Works Order dated 21st November 2008, had been generated in respect of the reports made by the Complainant. The CE explained that the former report had been acted upon immediately as it was categorised as an emergency. He stated that workers had attended to the site and unblocked the wastepipe. It would appear that this only served as a temporary solution because the problem resurfaced a couple of months later, judging from the Complainant's letter of 22nd October 2008. In relation to the second report dated 21st November 2008, this was not categorised by the Department as an emergency and was therefore not given maximum priority until the Ombudsman's letter was received and through which the Department was made aware of the urgency of the repairs to be undertaken.

Conclusions

When the Complainant first reported the leaking wastepipe on 18th August 2008, an Emergency Works Order was issued, a repair undertaken by the Department and the Works Order duly closed. The Complainant was unaware that works had been carried out and because the problem persisted, she believed that the report she had made had not been attended to by the Department.

On the matter of the second report dated 21st November 2008, the Department did not categorise the repair of the leak as an emergency, even though a month earlier the Complainant had sent a letter to them explaining her predicament. It was not until they received the letter from the Ombudsman in January 2009, by which time approximately seven weeks had elapsed, that they were made aware of the urgency of the repairs to be undertaken.

The Ombudsman decided to sustain the Complaint. Since August 2008 when the problem of the leaking wastepipe first arose, the Complainant had made two reports, written a letter to the Department and attended personally at the depot. Throughout that time, a period of five months, she lived in fear of slipping on the way to or from the Flat and of sustaining injuries which would have possibly resulted in serious consequences considering her age. Unnecessary anxiety was caused to the Complainant which could have been avoided.

Regarding the Complaint of non-reply to her letter, the Ombudsman decided to sustain the Complaint. The Department should have acknowledged and replied to the Complainant in order to address the issues contained in her letter. In drafting their reply, the Department would have noted that there was no active report on the matter and would have been able to advise the Complainant of the course of action required from her for the situation to be attended to.

Case Sustained

CS/841

Complaint against the Buildings and Works Department, for not having undertaken repairs, which had been outstanding for a number of years, to the Government rented flat the Complainant resided in.

Complaint

The Complainant was aggrieved because she had been waiting for years for repairs and refurbishment works to be carried out in her Government rented flat ("the Flat"). In 2001, the Ombudsman wrote a report regarding the state of the property but the Complainant claimed that by December 2008 still many of the repairs had not been undertaken.

Background

In February 2008 the Complainant wrote a letter to the Ombudsman to present her complaint. She explained that due to the state of neglect and disrepair the Flat was in, she had made representations since 2003 to the Housing Department to be reallocated. She explained that for the past three years she had been in first position on the 6RKB housing list. The Complainant did not believe that a property of this size would ever become available and for that reason had suggested to the Housing Department that as an alternative, they consider offering the family two flats.

The family was comprised of her husband, her four sons and herself and they all resided in the Flat. The Complainant explained that cohabitation between her two older sons and the other members of the household was at times quite tense, and on occasions she had been forced to ask them to leave the Flat. The Complainant therefore felt that if the Housing Department offered them two flats in place of the 6RKB, one of the flats could be allocated to the two older sons who were housing applicants on their own right.

The Complainant stated that whilst she waited for reallocation, her Flat, the cause of an investigation by the Ombudsman in 2001, was falling apart. Rainwater ingress affected the property and buckets and pots had to be distributed around different areas of the Flat to collect the water. As a result, the flat suffered from dampness and the electrical installation was affected.

In the Ombudsman's report in 2001 it was agreed that works would be undertaken to the property, but the Complainant stated that to date she was still waiting for most of these to be undertaken. She stressed that all she wanted now was to move out of the Flat into a property with no problems and to be able to enjoy peace and quiet in her life.

On 29th May 2008, the Complainant once again wrote to the Housing Manager ("the Manager") to reiterate the fact that the Flat was in a neglected state and made reference to the Ombudsman's report with regards the repairs required. The Complainant once again highlighted to the Manager that her two older sons were a constant nuisance to the rest of the family and requested that they allocate two separate flats to the family, in place of one 6RKB.

In December 2008, a formal Complaint was lodged against the Buildings & Works Department ("the Department") because repairs and refurbishment works had not been carried out in the Flat.

Investigation

The Ombudsman listed the pending works at the Flat:

> The fluorescent light in the kitchen had to be replaced weekly due to the defective electrical installation. The Complainant had resorted to using a portable lamp to avoid switching on the fluorescent light;
>
> The upstairs corridor light fitting was unusable;
>
> The downstairs corridor lighting was disconnected because the light fixtures started to smoke whenever they were turned on;
>
> Rainwater filtered through every part of the Flat when it rained;
>
> Most walls in the Flat were flaking and in some areas there were holes and cracks where one could see through to the outside;
>
> A hole had opened up in the bathroom floor as a result of water ingress. The Complainant had repaired this by having the hole filled up, but the matter still had to be looked into;
>
> The kitchen taps did not close properly;
>
> There were plumbing leaks around the Flat.

The Chief Executive (Ag) ("the CE") of the Department replied to the Ombudsman and enclosed copies of all the reports they had on record. He advised that he had sought information from the Estimators of the Department with regards the reports.

On inspecting the copies of the nine reports, the Ombudsman noted that these ranged from the year 2000 to 2008 as follows:

Date	Report	Action	Reason	Report No
15.11.00	Recently installed ceiling allowing water penetration.	Cancelled	No reply from tenant after two months.	13696
13.12.01	Tarpaulin Required.	Paid	Work done.	22016
14.11.02	Water penetration into bedroom.	Cancelled	Tenant has not responded after several months.	28864
28.07.03	Floorboards in bathroom are defective/rotten and have caused a dangerous cavity.	Cancelled	(No reason stated)	34164
06.06.05	Flat for inspection as it is in need of a large number of repairs. Housing inspectors have attended the premises and suggested to tenant to make the report with B&W.	Pending		69517
07.08.07	**Patio walls defective. Plaster flaking off badly.**	**Pending**		**88977**
23.10.07	**Walls for inspection.**	**Pending**		**90989**
23.10.07	**Pipe work for inspection.**	**Pending**		**90988**
01.02.08	**Pipe tap leaking.**	**Pending**		**93536**

Three reports had been cancelled and the reason given in two of the instances was that the tenant, in this case the Complainant, had not responded after several months had elapsed so the Department had proceeded to cancel the reports.

One report regarding the installation of tarpaulin had been marked as 'Paid' which indicated that the work had been carried out.

The remaining five reports, between 2005 and 2008, were marked as 'Pending'.

The CE of the Department forwarded a copy of the memo he had sent to the Estimators in which he had noted that all reports pertaining to the Complainant had been cancelled due to lack of response from her or had not been estimated. He assumed that the reason why some of the works had not been estimated was due to unavailability of access. The CE requested that the Estimators forward to him, if available, copies of any written proof that they had in respect of requests left for the Complainant to contact the Department, if they had visited the Flat, so that these could be presented to the Ombudsman.

He also requested that access be arranged with the tenant. If this was going to be done by means of a note, the CE requested that he be provided with a copy and that another copy be placed in the property's file.

On the 25th March 2009, the CE wrote to the Ombudsman and advised that on the 10th March 2009 the Project Manager (Ag) ("the PM") had given written instructions to action the four pending reports listed in the table above and shown in 'bold print'. He explained that the reports had been estimated and the PM had given instructions to the Depot for the repairs to commence towards the end of May beginning of June.

No reference is made to Report 69517. This was not specific to one repair but referred to the Housing Inspectors having advised the Complainant to file a report with the Department. The Flat was in need of a large number of repairs and had to be inspected by the Department.

The Ombudsman wrote to the CE and requested information as to the precise commencement date of the works. He also enquired as to whether the Complainant had been advised accordingly and the necessary arrangements made with her with regards access to the premises.

The CE replied to the Ombudsman and stated that it was their intention to begin the repairs as soon as they possibly could. He explained that the works involved the erection of scaffolding because repairs had to be carried out to the roof. CE stated that the Department had a scaffolding contract and that due to other emergencies where this had been required, they had been unable to commence the works at the Flat. He explained that on a monthly basis they were perusing the list of estimated jobs that required scaffolding, in order to give priority to the most urgent cases. For that reason, he was unable to provide a commencement date for the repairs but explained that they would do their utmost to deal with the case at the first possible instance.

Conclusions

Despite the Ombudsman's report in 2001, the Complainant was still suffering the inevitable consequences of the state of disrepair the property was in. Through the years, water ingress had worsened to the extent that the electrical installation of the Flat had been affected in certain sections and had reached the point were it posed a danger to the persons residing in the property. The state of the walls in the Flat was also a visible sign of the increased water penetration.

The reason given by the Department as to the cause of the cancellation of two reports related to water ingress to the Flat in 2000 and 2002 was that there had been no reply from the Complainant to their request for her to contact them to arrange access to the Flat. The Department were unable to produce any written communication by which they had requested this from the Complainant. Nevertheless, the Department had a duty to maintain public housing and should have persevered in making arrangements with the Complainant for access to the property. The result of continued water ingress into the property for the last nine years, without repairs being undertaken, resulted in damage continuing to be caused to public housing.

In the Ombudsman's report of 2001, the Complainant claimed that the Flat had not suffered from water ingress through the roof until works had been carried out on it, although she had never made a report in that respect. At a meeting between the Department, the Complainant and the Ombudsman in 2001, the Department had explained that the cause of the water ingress was a leak on the adjoining roof. This had to be repaired but they were unable to set a definite date on which these would be carried out.

Eight years had now elapsed since the report was written and the repairs had not been carried out. The reason given now by the Department was that due to the scaffolding contract which they have in place, works had to be prioritised and they were unable to provide a commencement date for the repairs.

Regarding the plumbing repairs, the Department could have undertaken these independently from the roof works required.

The Ombudsman wished to highlight this case as it portrayed a system where duty of care had been completely ignored. When a Government tenant makes a report requesting repairs, this needs to be reasonably followed up by the Department. Cancelling a report on the basis of the tenant not having been at home when the Department called is not conducive to good service.

The Ombudsman decided to sustain this case. Great distress was being caused to the Complainant and her family due to the delays on the part of the Department in addressing the state of disrepair of the property.

Recommendations

The Department should have a process by which to contact tenants of public housing in respect of access to the property. Once the procedure is exhausted, the Department should request from the Housing Department that they make the necessary arrangements in order to gain entry into the property to abate any further damage from being caused to a public property.

Case Sustained

CS844

Complaint against the Buildings & Works Department for not having completed repairs to the main entrance door of the building in which the Complainant's flat was located.

Complaint

The Complainant was aggrieved because the Buildings & Works Department ("the Department") had not completed repairs to the main entrance door ("the Door") of the building ("the Building") in which her Government rented flat ("the Flat") was located.

Background

The Complainant explained that the Flat was situated at ground floor level within a Building. In the year 2000, when she and her husband were allocated the Flat, she found that due to its location it did not afford them much privacy; the entrance door to the Flat looked onto the road from where passers-by could look into the property. Furthermore, the Flat's front door was the only protection which they had from inclement weather and when this occurred they suffered from rainwater ingress and cold conditions in the Flat.

Due to these reasons, in 2001, the Complainant and her husband requested permission from the Ministry for Housing to enclose a small area adjacent to the Flat to construct a porch. (It must be pointed out at this stage that numerous tenants who resided in ground floor flats in various Government owned estates around Gibraltar have encroached on to public land to construct porches or simply to add more space to their flats). This would allow them to make an opening from the Flat into the small porch in order to relocate their front door and in that manner resolve their problems.

Later that year and subsequent to an inspection of the site, the Ministry for Housing informed the Complainant and her husband that permits were no longer being issued for these areas to be enclosed by tenants. The alternative offered to them to resolve their situation was for the entrance to the Building to be enclosed by means of a door and the installation of this was given top priority.

The Complainant explained that the Door was installed in early 2002 and that ever since, the problems had been ongoing. The glass panes of the Door had broken on a number of occasions as a result of this being banged against the frame, caused by persons entering and exiting the Building, and also due to bad weather conditions. As the Door could not be locked due to fire safety reasons, this allowed access to all and sundry. The Complainant claimed that on some occasions, where possible, her husband had carried out minor repairs to the Door.

Although throughout the period 2002 to 2008, repairs to the breakages reported at the Reporting Office had been carried out, the Complainant stated that the repairs had only been partly completed in relation to the last report made in August 2008:

> *The door closing mechanism, which served as a buffer when the Door closed, had to be removed in September 2008 in order to be repaired but to date, January 2009, had not been replaced. In order that the glass pane would not break as a result of the Door banging against the frame, workmen from the Department tied a rope around the Door and secured this to a clothes rail, attached to the wall adjacent to the door area. The Door had to remain open at all times.*
>
> *The size of the new glass pane fitted was smaller than the area it had to be installed into.*

The Complainant stated that due to inclement weather the rope had snapped. This caused the Door to close with a bang and break the glass pane once again.

The matter was again reported at the Reporting Office in November 2008 and given works order number 101091. A month elapsed and the Complainant stated that the report was not attended to. She claimed the repairs should have been carried out as a matter of urgency due to it being the time of year in which inclement weather is to be expected. The Complainant therefore proceeded to contact the Department and claimed they informed her they could not continue to undertake such frequent repairs to the Door as other repairs had to be attended to around Gibraltar.

Feeling that she had exhausted all avenues with the Department, the Complainant contacted the Ombudsman with her grievance in January 2009.

Investigation

The Ombudsman proceeded to write to the Department on the 20th January 2009 and set out the Complainant's allegations as described above, requesting their comments.

A reply was received from the Department in which ten works orders marked as completed were enclosed, as proof that repairs had been carried out to the Door as follows:

REPORT DATE	*ORDER NO.*	*REPAIR*	*COMPLETION*
05.08.2002	*1450*	*Repair Door*	*09.10.2002*
15.11.2002	*1751*	*Repair Door & change pane for Georgian Glass*	*25.03.2003*
27.01.2003	*1752*	*Repair Door*	*25.03.2003*
03.06.2003	*1860*	*Repair Door & stick fablon paper to Georgian Wire glass*	*05.06.2003*
15.08.2003	*2262*	*Repair Door*	*13.11.2006*
02.07.2004	*2701*	*Repair Door*	*15.07.2004*
08.05.2007	*3940*	*Repair Door*	*16.05.2007*
21.11.2007	*4170*	*Repair locks & closing mechanism*	*04.12.2007*
20.06.2008	*4617*	*Replace hinges & repair bolts to frame*	*01.08.2008*
21.08.2008	*4753*	*Replace broken glass & install door closure unit*	*14.09.2008*

The works order 4753 dated 21st August 2008, which noted that repairs to the door closing mechanism were required, was also enclosed and marked as completed.

The Department stated that although some of the repairs undertaken could be considered as having been as a result of fair wear and tear, some were as a direct result of misuse by unknown persons. They stated that they would once again try their best to repair the Door but that due to the huge backlog, it could take some time. The Department could not provide either the Ombudsman or the tenant with a tentative start date for the repairs but advised that if the damage deteriorated to a point were their health and safety monitor considered the repair necessary, they would bring the repair to the top of the waiting list as was done when the Door was originally installed in 2002. As a final comment, the Department stated that they had attended to all reports in the past and intended to continue with that policy depending on availability of resources.

The Ombudsman inspected the area on the 27th March 2009 and ascertained that the door closing mechanism had still not been reinstalled and one of the glass panes of the Door had not been replaced after it broke in November 2008. Two small glass panes located on the top part of the doorway were also cracked and there was a possibility that if they were not removed and replaced could be dislodged as a result of the force of the Door banging against the frame with a risk of causing injury to passers by. Photographs of the door area were taken and have been attached.

A copy of the works order 101091 dated 17th November 2008 was obtained and its current status was 'pending visit'.

Conclusion

The Door was installed in early 2002 and at the time of compiling this report, April 2009, eleven reports had been made in respect of repairs required. Apart from those, some minor repairs were also carried out by the Complainant's husband. The expense incurred in undertaking the repairs, the current condition of the door and the Complainant still being aggrieved would suggest that this solution had proved to be ineffective.

1: Doorway, being access to the Building, showing section where pane needs to be replaced.

2: Looking into front door of the Flat from the Door. To the right of the picture is the clothes rail to which the rope was secured to. Cracks on the glass in the upper area of Door are also shown.

3: Upper section of the Door on which the door closing mechanism was positioned.

4: Closer view of the front door of the Flat as seen from the outer part of the Building.

5: Notice affixed to the Door.

The Department was aware that many repairs had been carried out to the Door which would indicate to them that the solution provided to the Complainant had not proved to be successful. In that respect, the Department could have discussed the situation with the Ministry for Housing with a view to finding an alternative solution. As an example, a sturdier door installed with acrylic panes as an alternative to glass could have been one of the options. The cost for the replacement of glass panes would disappear and an element of risk to users of the Door, at risk of broken glass injuring them, would be eliminated.

Recommendation

The parties involved are urged to re-evaluate this matter.

Case Sustained

CS/846

Complaint against the Buildings & Works Department for delays in addressing water ingress to one of the rooms of the Government rented flat in which the Complainant resided

Complaint

The Complainant was aggrieved because more than a year had elapsed since he first reported water ingress to one of the rooms of the Government rented flat ("the Flat") in which he resided. Throughout that time, the Buildings & Works Department ("the Department") had not addressed the problem and had not undertaken the necessary repairs to prevent further water ingress.

Background

On the 9th January 2008, the Complainant went to the Reporting Office to report water ingress to one of the walls in the living room of the Flat and explained that the problem originated because the exterior wall was in need of repairs. He was advised that the report would be passed on to the Department.

Three months later, in April 2008, the Complainant claimed that the situation remained unchanged and no one from the Department had inspected the Flat. He therefore attended the Department's offices to complain about the situation and was informed that an Estimator would go to the Flat within the next two weeks; failing this he was advised to return to the offices, where the officer who attended to him would write to the pertinent section. Approximately twenty days later, and because there had been no developments, the Complainant returned to the offices of the Department. Here he was shown the letter that had been sent to the Estimators Section on the same day of his visit and was informed that they would once again be contacting them as no reply had been received.

It took another visit from the Complainant to the Department's offices two weeks later, and a further two weeks, for an Estimator to finally inspect the Flat on the 28th May 2008. The Complainant claimed he was then informed that the fault had now been identified and that he would now only have to wait for the repairs to be carried out.

Three months elapsed throughout which the Complainant contacted the Department for information with regards the repairs and claimed he was finally informed by an officer at the Department, that there was no scaffolding available and that it would take a couple of years before any repairs could be undertaken. Taken aback with these news, the Complainant returned to the Department's Head Office to discuss the matter.

The officer at the Department then proceeded to arrange a meeting for him with the Chief Executive (Acting) ("the CE (Ag)") of the Department. At that meeting the Complainant was informed that repairs to the Flat were included in a waiting list, pending availability of scaffolding. The Complainant explained that over seven months had already gone by. He claimed that in the same way as he complied as tenant with prompt payment of the rental for the Flat, he expected the Department to fulfil its obligations on behalf of the Landlord (Government of Gibraltar). A further meeting was then arranged for the 2nd September 2008 with the CE (Ag) in which the latter assured the Complainant that the works would be completed by mid-October. The CE (Ag) then wrote a letter to the Principal Technical Officer ("the PTO") with the relevant instructions, and advised the Complainant that if the works had not been undertaken by the aforementioned date he should return to see him.

By the end of October 2008, the Complainant alleged that no repairs had been carried out. He attended the Department's offices and a meeting was convened for the 4th December 2008. The Complainant was advised that the repairs should have already been completed and would therefore be making enquiries.

On 8th January 2009, the Complainant once again returned to see the CE (Ag) and was informed that the repairs would be completed by January 2009.

On 12th February 2009, still no works had been carried out and the Complainant once again met with the CE (Ag). The Complainant told the CE (Ag) that nothing had happened and for that reason he had arranged to meet the Ombudsman on the 19th February.

On the 18th February 2009, an employee of the Department visited the Flat. Upon inspection, he informed the Complainant that scaffolding would be in place by the 23rd February 2009 and repairs would commence.

By the 12th March 2009, and having been given further explanations, upon enquiring, as to why the scaffolding had not been erected (due to bad weather conditions), the Complainant decided to contact the Ombudsman.

Investigation

The Ombudsman wrote to the CE (Ag) of the Department on 23rd March 2009 and informed him that a Complaint had been lodged. This was in respect of the delays experienced by the Complainant with regards to repairs to the exterior of the Flat which had been the cause of water ingress and dampness in the Flat.

The CE (Ag) replied on 27th March 2009 and explained that there had been a short delay but advised that the Complainant had constantly been informed by the Department's representative who had been dealing with the issue.

The CE (Ag) explained that three weeks earlier they had tried to carry out the repairs, but that because of strong windy conditions this had to be postponed. The repairs involved the use of fibreglass matting and a special exterior paint that adhered to the wall surface to seal any cracks on the area. As the Complainant's Flat was located next to the street and parking area, the repairs had to be undertaken when the weather was dry and there was no wind to ensure that when the paint was applied, this would not be blown onto parked vehicles with the subsequent result of claims against Government, as had occurred on previous occasions. The CE (Ag) stated that the Department's representative had explained this problem to the Complainant on several occasions but had guaranteed to carry out the repairs as soon as possible. Upon receipt of the Ombudsman's letter, the CE (Ag) mentioned that he had requested one of his members of staff to contact the Complainant and update him on the situation.

The CE (Ag) explained that permission was required from the relevant authorities in order to erect scaffolding as this would infringe on the pavement and parts of the road.

The Ombudsman replied to the CE (Ag) and stated that the fact of the matter was that the works were still outstanding after having been reported over a year ago, with the consequent grievance caused to the Complainant and his family. The Ombudsman noted that although the Department's letter showed a willingness to carry out the repairs, it did not provide any indication as to when the works were likely to be carried out and therefore requested that the information with regards the likely commencement date of the works be provided.

On 1st May 2009, a reply was received from the CE (Ag) in which he informed the Ombudsman that the repairs had been completed on the 28th April 2009. He highlighted that problems had emerged at the last stages of the process, related to the erection of the scaffolding which prolonged the issue, as the required clearance could not be obtained. By the time permission had been obtained, the Department had already agreed on an alternative method of access to the area which was by means of a 'cherry picker'. Even this, the CE (Ag) explained was not without difficulty, as the only one available for hire was temporarily out of service awaiting the arrival of spare parts before repairs could be carried out to it. On the 28th April 2009, the equipment was hired and the repairs carried out on the same day.

Conclusions

It took over one year and three months for the repairs to the Flat to commence and be completed by the Department. It took approximately five months and numerous enquiries from the Complainant before the Flat was inspected for the repairs to be estimated, and a further eleven months for the works to finally be commenced and finished in the space of one day.

Although it is understandable that certain products can only be applied dependent on weather conditions, when the matter was reported in January 2008 by the Complainant, a representative of the Department should have informed him that this would be a main concern taken into consideration prior to the repairs being carried out. Nevertheless, a temporary solution to the water ingress should have been found and the repair works carried out in the spring/summer of 2008 when weather conditions were most likely to meet the appropriate requirements. As it turned out, these were finally undertaken in spring of 2009.

Regarding the information obtained by the Complainant, this was provided by the Department when the Complainant attended their offices and at meetings. The Department did not volunteer any updates on the situation to the Complainant.

The repairs were finally carried out in one day by hiring a 'cherry picker'. Unnecessary stress to the Complainant and delay in undertaking the works could have therefore been avoided.

The Ombudsman decided to sustain this case because the assurances given by the Department to the Complainant were not met. He was of the opinion that much distress to the Complainant could have been avoided, if the Department had provided him with precise and timely information from the outset as to when the works could realistically have been carried out.

Recommendation

The Department should keep those awaiting repairs regularly updated on the reason or reasons for the delays, and where possible, establish commencement dates for the works.

Civil Status & Registration Office

Case Not Sustained

CS/848

Complaint against the Civil Status and Registration Office ("Department") that the Complainant was not being allowed into Gibraltar.

Complaint

The Complainant a Chinese national contacted the Ombudsman and then wrote to him with her Complaint. In her letter she explained that she had married her husband ("Mr H") a Gibraltarian national on 23 July 2008 in Gibraltar, who unfortunately had passed away on 8 March 2009 due to an illness he had been suffering from. She stated in her letter that she had held a 6 monthly renewable permit of residence since 2 October 2008 which had been given by the Chief Minister exceptionally on humanitarian grounds. She then explained that on the 8 April 2009 when she was on her way from Spain to Gibraltar she had been stopped at the frontier and told that her residence permit had been cancelled because Mr H was dead and there was no reason for her to come to Gibraltar anymore.

Investigation

As a result of the Complaint the Ombudsman wrote to the Department on 12 May 2009 presenting the Complaint. The letter explained the Complaint in detail as set out in "Circumstances giving rise to the Complaint" above, and concluded by asking the Department for their comments.

The Department replied within 7 days by way of a letter dated 19 May 2009. In their letter to the Ombudsman the Department explained that in April 2008 the Immigration Section of the Royal Gibraltar Police authorised the issue of a standard visitors visa for Gibraltar for the Complainant, a Chinese National born in China. The purpose of entry was to accompany Mr H, a British Overseas Territories Citizen (BOTC) Gibraltarian by birth, to visit his family in Gibraltar. The Complainant, at the time had a valid UK visa and a valid visa for Schengen. The visa application was supported by a letter from a hotel in Dubai confirming that both Mr H and the Complainant were in gainful employment there. Furthermore a copy of travel itinerary from Dubai to London departing Dubai on 9 April 2008 and returning to Dubai on 10 June 2008 was provided.

The visa application was also supported by a letter from Mr H stating that the Complainant accompanied him to London on his quarterly visits to the UK where he was undergoing medical treatment. It further stated that the Complainant would be staying in his apartment in Spain whilst he was convalescing and that she would accompany him to Gibraltar to visit his family.

The visa for Gibraltar was issued on 14 April 2008 and expired on 14 October 2008.

In July 2008 Mr H and the Complainant approached the Marriage Section of the Department in order to make the necessary arrangements to marry in Gibraltar. The Department in their letter went on to explain that under standing Government policy which had been in place since January 2002, the issue of visas for Gibraltar was not normally authorised where the purpose of entry was to marry a resident belonger in order to remain. Couples were expected to marry abroad. Furthermore if the intention was to take up residence once the marriage had taken place, the Gibraltar resident needed to submit written representations to Government for consideration. Requests were carefully assessed by Government in order to establish that the marriage was valid in law and that the relationship was genuine and not one of convenience.

The accommodation which the couple were to occupy, other relatives who might have to live with them and the ability of the resident to maintain his or her spouse without recourse to public funds were factors that were also taken account of.

The Department stated that it had been explained to Mr H and the Complainant that in view of the above they would be unable to marry in Gibraltar. Mr H, however, insisted that they would not be taking up residence in Gibraltar. The couple were informed that if this was the case they would have to confirm this in writing to the Head of the Department. The couple approached a local law firm who in turn provided the Department with a letter dated 22 July 2008 confirming that the couple would not remain or reside in Gibraltar following their marriage.

They went on to explain that Mr H and the Complainant married in Gibraltar on 23 July 2008 and that Mr H returned to the Department's office a few days later in order to seek a residence permit for Gibraltar for the Complainant. He claimed that the Complainant was unable to re-enter Spain because her Schengen visa had expired. The Department informed Mr H that any representations for a permit of residence for the Complainant would have to be considered by Government and that Mr H would have to make these representations in writing.

The Department was later informed by Mr H's brother-in-law that Mr H was terminally ill in a clinic in Spain and that the Complainant (who was in Gibraltar) wanted to travel to the UK to apply for a Schengen visa from the Spanish Consular authorities in London so that she could be with Mr H. The Department advised the Complainant that it was unlikely that she would succeed but nevertheless they assisted her by issuing her with a 6 month standard UK visa. The UK visa was issued on 12 August 2008 and expired on 12 February 2009.

Mr H had sought an appointment with the Chief Minister in September 2008 in order to explain his circumstances. He was, by then, very ill and his intention was to stay with his sister and brother-in-law so that he could be looked after by his immediate family, including the Complainant. In the circumstances, the Chief Minister agreed exceptionally and on humanitarian grounds to the issue of 6-monthly permits of residence to the Complainant to enable her to stay in Gibraltar with Mr H for the remainder of the latter's illness and therefore not require a visa every time she needed to enter Gibraltar.

Soon after the Complainant's permit was issued Mr H's health deteriorated to the extent that he had to be admitted to a clinic in Spain where he passed away on 8 March 2009. The Department was informed of this by Mr H's brother-in-law who also advised the Department that the Complainant had not taken up continuous residence with them in Gibraltar and now that Mr H had passed away would not be doing so.

The Department concluded their letter to the Ombudsman by stating that since the Complainant had not actually become a resident of Gibraltar, had no entitlement to reside, was not in employment and had no place to stay and given that the reason behind Government's agreement to the issue of a 6-monthly permit and visa waiver to the Complainant no longer existed, instructions were given to the Immigration Authorities to cancel the issue of the permit of residence and waiver to the Complainant.

Subsequent to receipt by the Ombudsman of the Department's letter dated 19 May 2009, the Ombudsman e-mailed the contents of the letter to the Complainant on 26 May 2009 asking for her comments.

The Complainant came back to the Ombudsman with her comments contained in 2 e-mails which were received by him later that same day.

In the first e-mail the Complainant confirmed that Mr H and herself were only allowed to get married in Gibraltar on condition that they signed a letter saying that after they got married they would not remain or reside in Gibraltar. That although they did not really want to sign the letter they had been forced by circumstances to do so since in their situation they had no choice if they wanted to get married.

In the second e-mail, the Complainant explained that whilst Mr H was sick, she could not look for a job in Gibraltar because he needed somebody to be with him 24 hours and she was with him all the time. After he passed away, she had started to look for a job in Gibraltar and had send her CV to several companies. However her residence permit had been cancelled so quickly that she did not have enough time to get a job, which given her qualifications and very good work background she believed she would have got.

Comments and Considerations

The Ombudsman having carefully considered the matter in detail including the Complainant's comments as set out above, decided not to sustain the Complaint for the following reasons.

It was clear to the Ombudsman from the Department's letter dated 19 May 2009 that the Chief Minister had agreed exceptionally and on humanitarian grounds to the issue of 6-monthly permits of residence to the Complainant to enable her to stay in Gibraltar with her husband Mr H for the remainder of the latter's illness and therefore not require a visa every time she needed to enter Gibraltar.

As further explained in the Department's letter, subsequent to the death of Mr H on 8 March 2009, since the Complainant had not actually become a resident of Gibraltar, had no entitlement to reside, was not in employment and had no place to stay and given that the reason behind Government's agreement to the issue of a 6-monthly permit and visa waiver to the Complainant no longer existed, instructions had been given to the Immigration Authorities to cancel the issue of the permit of residence and waiver to the Complainant. The Ombudsman therefore did not sustain the Complaint.

Although the Ombudsman found no maladministration by the Department in this case, he was very strongly of the view that the communication to the Complainant of the cancellation of her residence permit could have been carried out in a more delicate and less abrupt manner, particularly in this case involving a person who only a month previously had become a widow. In these circumstances the Department could have written to or contacted the Complainant and asked her to come in for a meeting with them at their offices, where the reasons for the cancellation of her residence permit could have been explained to her. Additionally with regard to the cancellation of the permit itself, the Department potentially had many time options, some of which might have been, cancellation (a) at the end of the period of its validity (b) 7 days later (c) 2 days later (d) with immediate effect, and whichever chosen option could have been communicated to the Complainant at the above mentioned meeting.

Options (a), (b) and possibly even (c) would have given the Complainant time to digest the whole matter and also have allowed her time to put any matters she might have had pending in Gibraltar in order. The Ombudsman believed that even option (d) following an appropriate meeting, would have been more humane and appropriate than just informing the Complainant of the permit's cancellation and turning her away at the Gibraltar frontier.

Whilst the Ombudsman recognised that there might be extremely special reasons and/or circumstances where a residence permit had to be immediately cancelled and the person prevented from entering Gibraltar he was most strongly of the opinion that this case by no means fell into that category. In his view it would have been far more appropriate for the Department to have acted as set out above.

Case Sustained

CS/847

Complaint against the Department of Enterprise & Development for not having replied to his letters.

Complaint

The Complainant was aggrieved because he had sent two letters to the Department of Enterprise & Development ("the Department"), and had not received a reply.

Background

On the 28th January 2009, the Complainant explained that he wrote a letter to the Department complaining that it had come to his attention that a company ("the Company") was importing furniture, and he believed they were doing so without being in possession of a trade licence ("the Licence"). He therefore requested that the Department investigate the matter and inform him of the outcome.

On the 19th February 2009, the Complainant once again wrote to the Department and informed them that the Company was now selling furniture from their premises. He therefore requested information from the Department with regards their investigation and enquired if it would be possible to speak to an officer of the Department.

On 5th March 2009, the Complainant contacted the Ombudsman because he claimed he had not received either an acknowledgement or a reply to his letters from the Department.

Investigation

The Ombudsman wrote to the Department the following day requesting information as to when the Complainant could expect a reply.

A reply was received from the Department dated 13th March 2009 in which they advised that although there had been no written reply, the Complainant and/or his employees had received verbal replies and acknowledgment on at least three separate occasions. They also advised that they had met with the Complainant at his shop on the 10th March 2009 and had agreed to inspect first hand, the source of his original complaint; that of alleged unlicensed trade being carried out by the Company.

The Department explained they had no powers to deal with unlicensed traders and would therefore forward the Complaint to the Royal Gibraltar Police ("the RGP"). The Department claimed they had explained to one of the Complainant's employees that the act of trading without a licence was an offence and could only be investigated by the RGP who could then if appropriate, bring charges against the offending individual or company.

On 22nd April 2009, the Ombudsman wrote to the RGP and informed them of the Complaint that had been lodged and of the Department's reply as stated above. The Ombudsman requested the RGP's comments on the situation. The RGP replied to the Ombudsman and informed him that they had written to the Collector of Customs on the matter and a copy of the letter was enclosed for his perusal. The letter explained that the RGP had identified, through the Trade Licensing Act, that the enforcement agency in relation to the Act was HM Customs and therefore requested that they duly investigate the matter.

In June 2009, HM Customs wrote to the Ombudsman and informed him that the Complaint had been investigated. The outcome showed that the Company was the holder of a valid Trade Licence and was authorised to trade in furniture.

The Complainant was duly updated by the Office of the Ombudsman of the outcome of the investigation although he advised that he had already been made aware of the findings.

The Ombudsman contacted the Department to inform them of the RGP's letter which had identified HM Customs as being the enforcement agency in relation to the Trade Licensing Act, and advised them of the outcome of the investigation. On receiving the information, the Department stated the following:

> The act of trading without a licence was an offence and had to be investigated by the RGP.
>
> In the past, the Department had always referred these cases to the RGP for investigation as they did not have the powers to carry out the investigation themselves.
>
> In May 2009, an officer of the Department had been authorised under Section 24 of the Trade Licensing Act. This meant that he could now enter premises and request the production of licences.
>
> The Department had received an email from the RGP dated 25th March 2009 in which they advised that they had carried out an investigation into the matter and had concluded that the Company had a licence to import, export and sell furniture.

The Ombudsman requested a copy of the aforementioned email and enquired if the Complainant had been notified of the findings of the investigation. The Department advised they believed an employee of the Company had been verbally informed of the outcome, but could not recall the date on which this was done.

The Ombudsman informed the officer that upon receipt of the email from the RGP, the Department should have notified the Complainant and the Ombudsman in writing, in keeping with the principles of good administration.

For clarification with regards the enforcement agency for similar cases which might arise in future, the Ombudsman contacted HM Customs with regards the investigation they had carried out in this case. They explained that they had perused the Trade Licensing Act and sought legal counsel on the issue but advised that this Act did not mention them as the enforcement agency. They explained that when an Act is 'silent' in this respect, it follows the RGP is the enforcement body. Nevertheless, HM Customs investigated the Complaint from the angle of compliance with import regulations; if the Company did not have a trade licence it could not import goods.

Conclusions

The Complainant first wrote to the Department in January and followed this up with another letter in February 2009. Although in his reply to the Ombudsman dated 13th March 2009, the Department stated that they had verbally communicated with the Complainant and/or his employees on at least three separate occasions, no written reply was sent to the Complainant.

If on the 25th March 2009, upon receipt of the RGP's email informing them of the investigation and outcome of the matter, the Department would have informed the Ombudsman and the Complainant, valuable time and resources would have been saved. As this did not occur, the RGP, the Ombudsman and HM Customs were involved in resolving this matter, even though the RGP had already investigated and closed the matter approximately three months earlier.

The Ombudsman decided to sustain this case due to the following reasons:

No written reply from the Department to the Complainant's letters;

Failure on the part of the Department to inform the Ombudsman of the findings of the RGP's investigation as per their email of the 25th March 2009 which would have concluded the case.

Ombudsman's Comment

Although this was not a complaint against the RGP, the Ombudsman highlighted that the RGP appeared to have failed to note that when the Ombudsman wrote to them in April 2009, they had already investigated the complaint the previous month and had reported back to the Department. Instead, they instigated a second investigation only that on this occasion they also involved HM Customs.

Gibtelecom

Case Not Sustained

CS/855

Complaint against Gibtelecom for having disconnected her landline and mobile phone line as a result of late payment due to postal delay; and for having demanded that she pay a reconnection fee if she required the telephone lines.

Complaint

The Complainant was aggrieved because Gibtelecom ("the Company") had disconnected her landline and mobile phone line ("the Lines") due to late payment. She claimed this was as a result of a postal delay and believed it was unfair that the Company now demanded a connection fee for the telephone lines to be reconnected.

Background

On the 5th May 2009, the Complainant claimed that she posted a cheque in settlement of telephone bills for the months of January, February and March 2009, plus payment for the fee incurred with regards a cheque she had sent to the Company which was returned unpaid. She explained that with the payment she had enclosed a note informing the Company that the bill for April 2009 would be settled by the end of May 2009.

On the 19th May 2009, the Complainant contacted the Company with regards the Lines having been disconnected. She was informed that these had now been permanently disconnected and she would have to reapply to have them reinstated. A connection fee would also have to be paid. The Complainant claimed that a work colleague had experienced the same problem, line disconnected due to bills being outstanding since February 2009, and after going to the Company's offices to sort out the matter only had to make payment of the current month's bill and the line was reconnected immediately with no additional charges incurred. The Complainant therefore requested that the Company notify her of when the Lines would be reactivated. She enquired if the payment she had sent on the 5th May 2009 had been received and the Company confirmed that it had been processed on the 15th May 2009.

In reply to her claim in relation to her colleague, the Company informed the Complainant that they could not discuss third party details with other customers.

Regarding the reconnection, the Company informed the Complainant that there were still monies outstanding on her account. They advised that payment for the latter, plus the connection fee for the Lines would have to be settled prior to the Lines being reinstated.

The Complainant emailed the Company on 26th May 2009 and advised them that she was aware there was one bill outstanding in her account and explained that as per the note she had enclosed with the payment, this would be settled by the end of May 2009 but notified them that under no circumstances would she pay a connection fee. She explained that the Lines were disconnected without prior notice having been given, despite the fact that the Company held a deposit, paid when the Lines were first connected from which they could have deducted the monies outstanding. The Company replied and advised that their records did not show a deposit had been paid but requested that she bring in the receipt in case their records were incorrect.

The Complainant stated that the Company had placed the onus on her to prove that she had paid a deposit, when they were well aware that the policy of payment of a deposit had been in place for many years. Once again she mentioned that another of her colleagues had his/her line cut-off at the same time as hers and had it reconnected as soon as he/she paid the outstanding bills and was not charged a connection fee.

The Company replied to the Complainant and explained that once an account had been permanently disconnected for non-payment, all charges applied. If the account had been temporarily out of service then it would have been reconnected upon settlement of all outstanding bills and no extra charges incurred.

On the 28th May 2009 the Complainant emailed the Company and requested a reply with regards her suggestion to resolve the situation; that the Company reconnect the Lines without charging a connection fee and she would then settle the outstanding bill.

On the 2nd June 2009 and due to not having received a written reply from the Company (although the Company assured the Ombudsman that there had been verbal communication) the Complainant contacted the Ombudsman.

Investigation

The Ombudsman contacted the Company on 4th June 2009 and he was provided with a verbal account of the circumstances which had led to the disconnection of the Lines. The Ombudsman requested a written account from the Company and informed the Complainant that she would be contacted once this was received. This did not materialise until the 2nd July 2009 and only after the Ombudsman persistently pursued the matter. Apologies for the delay were received from the Company. They explained that they had been involved with moving into new premises and as a result of technical problems associated with the move had been unable to attend to the matter earlier.

In their written account, the Company explained that payment by cheque had been received from the Complainant on the 20th March 2009 in respect of bills outstanding for January, February and March 2009 but stated that the cheque was returned unpaid on the 31st March 2009. On that same day the Lines were temporarily disconnected, i.e. outgoing calls were barred. Subsequently, the Lines were permanently disconnected on 5th May 2009. The Company explained that once an account was permanently disconnected, their accounting system would adjust the final bill the following month by issuing a credit for the rental.

The Company confirmed that on the 15th May 2009 they had processed the Complainant's second cheque for payment of January, February and March 2009 bills but stated that April and May 2009 invoices remained outstanding. They explained that customers who were permanently disconnected had to settle their arrears before reapplying and incurred a connection fee of £50-.

On the 17th July 2009 the Complainant contacted the Ombudsman and informed him that she had just found out through one of her clients that her mobile phone number had been contracted to another person. The Complainant felt that considering the matter was being investigated by the Ombudsman, the Company should not have reassigned the number until the investigation was concluded.

To clarify the Company's procedures with regards disconnections and allocation of telephone numbers, the Ombudsman sought a meeting with the Company which was convened for the 22nd July 2009.

At the meeting, the Company explained that when fixed lines are disconnected, the policy is not to reassign the numbers until eighteen months have elapsed. One of the aims of this exercise is to ensure that the contents of the telephone directory for the current year are as accurate as possible. They explained that until recently there had been a shortage of numbers and during that time, up to three different clients could have had the same telephone number in a given year, due to cancellations and disconnections. In relation to mobile phone numbers, a period of sixty days is observed after disconnection before the numbers can be reassigned to a new customer.

Regarding the Complainant's claims as follows:

The Company had not given her notice prior to the disconnection taking place;

The fact that she had paid a deposit.

The Company replied that their invoices were payable on demand, i.e. on a monthly basis as they are received, and each invoice had a due date by which payment should be made. If those invoices were not settled, notice was given on subsequent invoices advising that failure to settle outstanding amounts would result in disconnection of the service.

Regarding the issue of a deposit, the Company explained that they had looked through their records and these did not show that a deposit had been paid. They had informed the Complainant accordingly but had asked her to bring in a receipt of the deposit she claimed to have paid in case their records were incorrect. The Complainant had stated that she did not have the receipt, considering that eighteen years had gone by since her telephone line was connected. The Company pointed out that clients often mistook the connection fee for the deposit, possibly due to the fact that both charges were £50-. The difference was that the connection fee was charged in every case, whereas the deposit was waived if the person applying for the account had resided in Gibraltar for the previous five years or the prospective client was an established business.

On the matter of disconnections, the Company explained that they were carried out in three phases. The first being mobile phone numbers, followed by fixed lines and subsequently, internet connections. In the first instance, temporary outgoing call barring would be activated for a period of two weeks, a period of grace prior to permanent disconnection of the line, throughout which the customer could settle outstanding invoices and not incur any further charges. If that did not occur, then the Company proceeded with the permanent disconnections. At that stage, in order to have the lines reconnected, the customer would have to settle all outstanding invoices and pay a connection fee of £50- due to the fact that once permanent disconnection occurred, the account was treated as a new one. Nevertheless, the Company stressed that dependent on circumstances, there where instances in which they had met with their clients in order to arrange an arrears repayment plan and in that way tried to offer their assistance. They stated that they were quite willing to speak to the Complainant with regards a repayment plan if this was required.

In the Complainant's case, the mobile phone line and the fixed line were temporarily disconnected on the 31st March 2009. The permanent disconnection in the case of the mobile line was carried out on the 16th April 2009 (sixteen days after temporary disconnection) followed by the fixed line on the 5th May 2009 (thirty five days after temporary disconnection).

The Ombudsman contacted the Complainant with the information obtained at the meeting. The Complainant was not satisfied with the explanations provided by the Company as she felt that their procedures were discretionary and were therefore not applied in every case like in the matter of her colleagues. At that point the Ombudsman requested that the Complainant furnish him with the details of the two colleagues so that a like for like analysis could be carried out.

The Complainant forwarded information provided by one of her colleagues with regards what had occurred in her case. On contrasting the information against that of the Complainant's it was noted that the colleague had bills outstanding for the period February to April 2009, payment for which she claimed had been mailed on the 5th May 2009 whilst the Complainant sent payment on the same date in settlement for the months of January to March 2009. By that time both the fixed and mobile Lines had been permanently disconnected by the Company. The colleague stated that her telephone line had been disconnected on the 8th May 2009, at which point the cheque had not been received by the Company, and explained that after pursuing the matter by phone with them, proceeded to go to their offices on the 15th May 2009. The colleague claimed that after informing the officer at the Company that she had mailed a cheque about a week earlier, and upon the officer checking with the Credit Department, she was told that if she settled the May invoice her line would be reconnected. The colleague claimed that a couple of hours after she arrived home the line was reinstated and pointed out that the Company had taken her word as proof that payment had been remitted. The colleague claimed that her cheque was not processed until the 21st May 2009.

Conclusions

Regardless of the postal delay, the Complainant claimed to have mailed the cheque on the 5th May 2009 by which time the Company had permanently disconnected the Lines. The two week 'grace period' given by the Company in the Complainant's case ran from the 31st March to the 14th April 2009. Throughout that time, the Complainant could have settled all outstanding invoices or arranged an arrears repayment plan with the Company, without having the Lines permanently disconnected and without incurring the subsequent connection fee. In the case of the fixed line, this was not permanently disconnected until the 5th May 2009 which implies that no connection fee would have been charged if payment had been received prior to that date.

On the matter of the Complainant's colleague, although it would appear that the Company took her word that payment for the period February to April 2009 had been mailed, it goes without say that the actions of the colleague with regards contacting them on various occasions during that week to ascertain if the cheque had been received, attending the Company's offices and settling payment for the month of May 2009 backed her credibility. The possibility that there could have been a delay in the postal service could also have been a contributing factor in the Company's decision. Nevertheless, the Company could not have requested payment of a connection fee in the colleague's case as her line had been temporarily disconnected on the 8th May 2009, the fourteen day period would not have expired until the 22nd May 2009, and the cheque she had mailed was processed on the 21st May 2009.

The Ombudsman decided not to sustain this Complaint as he was of the opinion that there had been no maladministration in this case, although he felt he should comment on the fact that the Company should have provided a written reply to the Complainant's last email of the 28th May 2009.

Update

Upon reading the Draft Report, the Company informed the Ombudsman that as part of ongoing reviews of internal procedures, as from 1st October 2009, mobile phone numbers would not be reassigned until eighteen months had elapsed, the same period of time as was provided for fixed lines.

In future, the situation that arose with the Complainant's number having been allocated after sixty days will not reoccur.

Housing Department

Case Not Sustained

CS/821

Complaint against the Housing Department for not having approved an exchange from the Complainant's tenancy to another Government rented apartment

Complaint

The Complainant was aggrieved because the Housing Department had not approved an exchange from her Government rented flat to another Government property.

The Complainant explained that she lived in a Government rented flat located on the fourth floor of a building. The accommodation consisted of four rooms, kitchen and bathroom and was shared by her husband, son and granddaughter who had suffered from a heart condition since birth. The Complainant's daughter also lived in the same building on the first floor with her family. The Complainant stated that because she suffered from chronic back problems she sought to exchange her flat for one situated on a lower level. She was aware that for a number of years, a flat ("the Flat") located on the first floor of the same building had remained unoccupied because the tenant, an elderly lady, had been admitted to hospital with a condition which the Complainant believed would not allow her to be discharged from hospital. According to the Complainant the lady was blind and mentally unstable. The Flat was located opposite the one occupied by the Complainant's daughter. She also stated that her daughter had a serious heart condition and was pending heart surgery. For all these reasons, the Complainant felt that it would be extremely beneficial for herself and her family to move into the Flat by way of an exchange.

In January 2008, the Complainant forwarded a letter to the Housing Department ("the Department") from the chiropractor who had treated her for her back problems. Apart from explaining her condition, the chiropractor stated that in his opinion, living in a ground floor flat would greatly improve his patient's condition and stop further deterioration. Shortly after, the Department replied to the Complainant and informed her that her case had been submitted to the Medical Advisory Committee ("MAC") and they had requested that she provide them with a detailed medical letter from a local practitioner. The Complainant duly complied and forwarded to the Department a letter from her doctor.

In April 2008, the Department wrote to the Complainant and informed her that MAC had made no recommendation on her case, as her application had not been categorised after her illness was analysed in relation to her housing problem. Subsequently, the Complainant sought a meeting with the Department to discuss her case. At the meeting the Department reiterated that her request had not been accepted. Dissatisfied with the outcome, the Complainant proceeded to again write to the Department in June 2008, explaining her situation and appealing against the decision of MAC in not having allowed the exchange. She claimed that moving to a flat on the first floor of the building would make life much easier for her as she would not have to be dependent on her son or grandchildren to assist her with carrying bags up to her flat and she would not have to travel up four floors of stairs to reach her home, especially because of her back condition. She also stated that moving to the flat opposite her daughter's would allow the Complainant to help her with her four children, given the fact that her daughter (the Complainant's daughter) was due for a heart operation. The Complainant sent a similar letter to the Housing Tribunal appealing for them to accept her proposal for the exchange to be carried out.

The Department acknowledged receipt of the Complainant's letter and informed her that her case would be submitted at the next meeting of MAC. Approximately a month later, in July 2008, the Department wrote to the Complainant and informed her that MAC had made no recommendation on her case.

The Housing Tribunal informed her that they were unable to entertain her appeal because they *'did not enjoy rights of appeal against the Medical Advisory Committee nor were they empowered to terminate tenancies*.'

In October 2008, unhappy with the decisions taken, the Complainant decided to place the matter in the hands of the Ombudsman.

Investigation

The Ombudsman proceeded to write to the Department. He explained that the Complainant had lodged a complaint against the Ministry for Housing because of their decision not to approve an exchange within the same building where she resided. The Complainant alleged that the Flat had been unoccupied for almost three years; the elderly lady who resided there had been admitted to St. Bernard's Hospital and at a later stage transferred to KGV Psychiatric Hospital. The Complainant claimed that she did not believe the lady would ever return to the Flat due to her condition. The Complainant had also alleged that her flat was in an excellent condition whereas the Flat required many repairs to be carried out. Whilst the Ombudsman understood that the Department acted on the advice received from MAC, he was of the opinion that the advantages of allowing the requested exchange might not have been fully explored. The Ombudsman advised the Department that no substantive reply had been provided to the Complainant as to why her request had not been granted and asked for the Department's comments on the matter.

Reply from the Housing Department to the Ombudsman

The Department replied to the Ombudsman's letter and gave a detailed summary of events with regards communications with the Complainant.

Regarding the Complainant's request for the exchange, the Department explained that had she been medically categorised, her entitlement would have been three rooms, kitchen and bathroom, as only her son was authorised to reside with the Complainant and her husband. Her granddaughter was not authorised to reside with her. This information was duly confirmed by the Ombudsman with the Department.

The Department informed the Ombudsman that the Flat consisted of four rooms, kitchen and bathroom so therefore even if this had been available for allocation, the Complainant would not have been entitled to it.

The Complainant was informed of the reply received from the Department. She pointed out that she believed her granddaughter had been included in the tenancy of her flat because her son had received an *'anniversary letter'* from the Department in which she claimed they had awarded him extra housing points due to the fact that there was another person residing in the property. The Complainant alleged that the person could only be her granddaughter. The Ombudsman requested that the Complainant provide him with a copy of the said letter, to which the Complainant agreed. Unfortunately, and even after several requests from the Ombudsman, the letter was not produced.

Regarding the issue of long term hospital patients who were tenants of a Government property and were not likely to be discharged from hospital, the Ombudsman reiterated the need for the GHA and the Housing Department to liaise in this matter in order to implement a procedure which could be applied in these cases.

At this stage, the Ombudsman highlighted that in 2006 (Case Number 713) he had expressed his concern, both in his report and through correspondence with the Chief Secretary, that there was no mechanism in place whereby the Gibraltar Health Authority ("GHA") could notify the Department when a patient, being the sole tenant of a Government rented property, was admitted to hospital in a condition where the doctors believed it unlikely that he/she could ever return to their former accommodation, which resulted in some Government properties remaining unoccupied for a very long time with the consequent deterioration. Given the short availability of housing stock, the Ombudsman was of the opinion that a procedure should be established between the GHA and the Department to tackle these situations as and when they arose and where possible have properties released for reallocation.

The Chief Secretary took the Ombudsman's comments on board, and requested the GHA to develop a system to notify the Department of long term patients who were tenants of a Government property and were not likely to be discharged from hospital. In reply to this request, a copy of which was sent to the Ombudsman, the Chief Executive of the GHA explained to the Chief Secretary that all patients had a right to expect that all information held by them would be kept confidential and added that there was no legal cover for them to divulge information in the manner which the Ombudsman had suggested. He also explained that the Data Protection Act precluded them from disclosing information to third parties. The Chief Executive of the GHA stated that whilst they could seek permission from patients to release the information, the GHA expected that patients would return home once their episode of care was over and they had been medically discharged from hospital. He felt that to assume the GHA should introduce a system that would operate to the contrary would aggravate an already intolerable situation. He added that the GHA had an interest in the matter and were very keen to assist in any way they could, particularly because of the impact this would have in improving the bed occupancy situation. The Chief Executive of the GHA claimed that they would welcome the introduction of legislation to enable them to provide specific information to the Government which would assist them in the implementation of policies. This legislation he suggested could include a review of benefits payable to patients (within the category in question) and the necessary authority for them to release information to the relevant parties.

The Ombudsman wrote to the Chief Secretary in relation to the issues raised by the Chief Executive of the GHA. He expressed his opinion that it was untenable to allow Government tenants, who for social or health reasons could not leave hospital to return to their rented accommodation, to remain as the legal tenants of those properties, at times for several years. The Ombudsman stated that the effect of those instances was that the flats ended up being occupied illegally by other family members or left unattended for a considerable period of time, with its consequent deterioration.

Two years later, the issue has not been resolved as can be noted by the case in hand.

Conclusions

The Ombudsman concluded that there had been no maladministration in this case. Starting with the Complainant's letter to the Department in January 2008 to MAC's decision in April 2008, the subsequent appeal from the Complainant and MAC's decision in July 2008, the Ombudsman was of the opinion that the matter had been dealt with within a reasonable time frame and adequate replies had been provided.

Case Sustained

CS/836

Complaint against the Housing Department for not having repaired the Government rented apartment the Complainant resided in with her children and for not having re-housed them when the state of the property deteriorated due to the lack of repairs

Complaint

The Complainant was aggrieved because she claimed the Government rented property ("the Flat") she had lived in with her two children for the past eight years, had deteriorated due to the lack of repairs on the part of the Housing Department ("the Department"). She alleged that the Department had not offered to rehouse her and her children even though she claimed the Flat had become uninhabitable.

Background

The Complainant explained that for the last eight years approximately, she and her two sons had lived in the Flat which consisted of four rooms, kitchen and bathroom. The property was in a state of disrepair because, the Complainant claimed, the Department had not carried out the works required to keep the property in an acceptable condition. As the years passed, the Flat suffered from water ingress in various rooms. The inclement weather conditions which Gibraltar suffered towards the end of September 2008 badly affected the Flat, and the Complainant had to contact the Emergency Section of the Buildings & Works Department for them to attend to the premises. The Complainant's main concern was that the water penetration had affected the electrical installation of the Flat and she feared for her safety and that of her children. Upon attending to the premises, the Buildings & Works employees had to cut off the electrical supply to part of the property because of this water ingress and she was informed that this could not be reconnected until the installation was completely dry. As a result, the Complainant claimed that they had to endure living without electricity in part of the Flat for over a month and in fear of being electrocuted if there was further water ingress into the electrical installation. As a further consequence of damage caused by water penetration, the Complainant alleged that part of the ceiling in her son's bedroom had caved in. The situation was further aggravated when the Complainant noticed that a rat or rats had gained access to the property via this hole and she was now faced with another serious problem. The Complainant explained that some members of her family had subsequently assisted her in temporarily covering the hole, by placing some cardboard to cover the area and thus avoiding a bigger infestation by rats or other form of pests into the Flat. The Complainant pointed out that cardboard would obviously not be able to prevent rainwater from coming in through the ceiling.

The matter was immediately reported by the Complainant to the Reporting Office of Buildings & Works Department. On the 24th October 2008 she claimed the Flat was inspected by the Technical Section of the Ministry for Housing and photographs were taken to accompany the survey which would be compiled in order to identify the repairs required. During the inspection, the Complainant pointed out that most of the windows of the Flat did not close properly and explained that these had been reported eight years ago when they first moved in. The only two windows which had been replaced throughout the eight year period were the one in the bedroom, due to a ball having broken the glass pane, and the bathroom window which had been replaced recently. The Complainant explained that the bad condition of the windows aided the water penetration.

On the 4th November 2008, and due to not having been contacted by Buildings & Works Department as to when they would carry out the repairs, she proceeded to write a letter to them to explain the situation she and her children were being forced to endure and also sent a letter to the Department to ensure that they were aware of their plight. In her letter, she also explained that her health and that of her sons was being severely affected due to the damp conditions in the Flat. She also explained that although the electricity supply had still not been reconnected, she lived in fear that future water ingress would again endanger their lives as there was no doubt in her mind that the electrical installation would again be affected.

The Department replied to the Complainant's letter and explained that the issues identified in the survey had been referred to the Buildings & Works Department, together with a request to have the remedial works to the Flat prioritized as a matter of urgency. They also informed her that although they sympathised with her predicament, the matter was now in the hands of the aforementioned department and any enquiries should be addressed to them.

Buildings & Works Department also replied to the Complainant's letter and informed her that they had given instructions to one of their estimators to contact her before the end of November to have the Flat inspected.

It was after receiving the replies from the relevant departments that the Complainant decided to contact the Ombudsman, as she did not feel that her situation was being given the urgency it required.

Investigation

The Complainant explained her predicament to the Ombudsman and brought a copy of the letter she had sent to the Buildings & Works Department and the Housing Department with their pertinent replies. She claimed that apart from the physical suffering she and her children were going through, the dampness in the flat was causing them all respiratory problems, she felt that the whole situation she was having to endure had now also taken a toll on her psychological state. She explained to the Ombudsman that her sister ("the Sister") had contacted the Housing Manager on her behalf and had explained to her that due to severe water ingress into the Flat, the electrical installation had been affected and they had been without electricity in part of the Flat for over a month. The Sister also informed the Housing Manager that there were now rats in the Flat. The Complainant claimed that the Housing Manager had told the Sister that she could not do anything about the water ingress problem as this had to be dealt with by Buildings & Works Department. Regarding the rats, the Housing Manager explained that the Environmental Agency was the department that they would need to contact. As to the reconnection of the electricity supply to part of the house, the Housing Manager advised that once the installation was dry, an electrician would reconnect this.

The Ombudsman was very dissatisfied with the manner in which the case was being handled by the Ministry for Housing. He contacted the Principal Housing Officer ("the PHO") in relation to the Complainant's situation and explained that the matter was very urgent. The PHO requested that copies of the letter sent by the Complainant to the departments and their subsequent replies be faxed to him so that he could attend to the matter.

The following day, the 11th November 2008, the Complainant telephoned the Ombudsman to inform him that the Environmental Health Officers ("the EHOs) had gone to the Flat and laid rat traps which would need to be in place for five days. After this, they would return to obtain the indicators from the traps and would then notify the Department of their findings and of the course of action required. After the five days had elapsed, the EHOs returned to the Flat. The Complainant claimed they had informed her that there was no indication from the traps that there were rats in the Flat. The Complainant told them that she had seen droppings around the property and had found a scarf which had been chewed by what appeared to her to be a rat. The EHOs told her to immediately notify them if she found any more droppings in the Flat and they would investigate the matter further.

Regarding the dampness in the Flat, the Complainant alleged the EHO's had confirmed to her that the Flat was affected by fungus due to the severe dampness caused by water penetration, and it was this that was affecting her health and that of her children.

On the 14th November 2008, the Ombudsman again contacted the PHO in relation to the Complainant and was informed that her case would be given high priority. The PHO had written to Buildings & Works Department and he expected something would be happening very soon. The Complainant was informed of this immediately. On contacting her she mentioned she had just received a letter from Buildings & Works dated the 4th November 2008 in which they advised her that they had given instructions for one of their estimators to contact her before the end of November to have the Flat inspected. The Complainant felt that the survey carried out in the property should have been sufficient for the purposes of effecting the necessary repairs, considering that these were of an urgent nature.

A week later, the Ombudsman contacted the Complainant to enquire if there had been any developments with regards the repairs. She explained that according to the Reporting Office they only had one report filed for repairs to her Flat and this was to erect scaffolding and place a tarpaulin on the roof. There was no report filed to fix the hole in the bedroom ceiling. She had been told that Buildings & Works personnel would go to the Flat to carry out temporary repairs. The hole would be covered with plasterboard and a tarpaulin would be placed on the roof to prevent further water ingress in case of inclement weather.

On the 26th November 2008, the Complainant was again contacted by the Ombudsman. She explained that workmen from Buildings & Works had gone to her Flat. They had fixed a tarpaulin in place on part of the roof and had prioritised the repairs required in order to carry out the most urgent works first. This was the removal of the ceiling in the bathroom which they were going to replace with plasterboard. Once this was removed it was noted that the roof was in a very bad state and would have to be refurbished, so the ceiling could not be replaced. Regarding the corridor area, the Buildings & Works personnel decided not to remove the ceiling until the roof had been repaired. In their opinion, the Complainant claimed, no temporary repairs could be carried out. To make matters worse, the Complainant was very nervous of what could happen as a result of further water ingress as it had been raining since the night before and water had been coming in through the corridor and bathroom. She had been told that the bathroom was out of bounds because of the state of the roof. The Complainant claimed that the electricity supply to the bathroom had been reconnected the previous week but this had again been disconnected due to the circumstances. Regarding works to repair the roof of the property, the Complainant claimed she was informed by Buildings & Works personnel that there was no set date for the scaffolding to be erected and this was required to carry out the works on the roof.

The following day, the Complainant came to the Office of the Ombudsman to inform him of her ordeal the previous night. She explained that at approximately 18.00hours she had called the Royal Gibraltar Police ("the RGP") to assist her and her children. She informed them that she had severe water ingress in the Flat and did not know who to call. She explained that the RGP officers assisted her by contacting the Housing Manager in order that someone from the Department could attend to the Flat. At approximately 20.00hours, the Complainant claimed that two persons from the Buildings & Works Department came to the Flat and saw that there was rainwater coming in through the exposed beams on the ceiling of the bathroom and via the ceiling of the corridor. They proceeded to contact one of their inspectors so that he/she could give the go ahead for the Complainant and her children to be moved into alternative accommodation for the remainder of the night, because of the dangerous and precarious situation the property was in. They were put into a local hotel and the Complainant was told to go to the Department the following day so that they could help her resolve the situation. On contacting the Reporting Office earlier that morning they informed her that she did not need to contact the Department but Buildings & Works so that they could go and check for the repairs that needed to be carried out at the Flat. Regarding the temporary accommodation, the Department allocated them a room in a hostel for one week, throughout which Buildings & Works and the Department would try and carry out the works required to enable them to return to the Flat. The Complainant felt that by this point, the Department should have offered to rehouse them, as the works that needed to be carried out to the property to make this habitable again would require a long period of time due to the major works which had to be effected. The Complainant alleged that she and her children could not be expected to continue living in the Flat.

The Ombudsman arranged a visit to the Flat with an officer ("the Officer") from Buildings & Works, to which the Complainant also attended. Upon opening the door to the property, the stench emanating was overpowering. This was caused by mould from the damp conditions in the Flat due to the water ingress and further aggravated by the fact that the Complainant had to keep the windows closed for fear that someone might get into the property. In the bathroom, the roof beams were completely exposed and the fact that light could be seen in certain areas substantiated the need for the roof to be repaired. To avoid water ingress to the neighbour below her, the Complainant had laid duvets on the floor in the area of the corridor for these to absorb the water. However, the floor was wet and there were puddles dotted along the bathroom and corridor. Regarding the electricity supply, only one of the children's bedrooms had power. Water had also penetrated into one of the children's bedrooms through the cardboard which had been temporarily placed on the ceiling to cover the hole made when that part caved in. The Officer said that they were going to place a waterproof membrane on the ceiling of the bathroom, corridor and bedroom and that this would be done either that same day or the following one. He was not aware of water ingress in the sitting room but would look into this. The Officer stated that in a few weeks, the areas affected by water ingress would dry up and Buildings & Works would be able to make repairs to the interior of the Flat. The Complainant explained that workers from Buildings & Works had told her that it would take a long time for the Flat to dry. The Ombudsman told the Officer that the Complainant and her children would have to be decanted due to the uninhabitable state of the property and informed him that he would focus on getting them rehoused. The Officer had been very helpful and had provided the Ombudsman with all the required information and assistance; however rehousing was outside his remit. Upon contacting the Department the following day, the Ombudsman was informed that a decision had been made to find alternative accommodation for the Complainant and her children.

The Complainant came to see the Ombudsman to explain to him that shortly after the site visit she had gone to the offices of the Department and there they had informed her that they would be reallocating them. They explained to her that before they could proceed they needed written confirmation from Buildings & Works that because of the bad state of the property they could not return to live in the Flat. The Department therefore extended their stay at the hostel for another week and told her that they would be allocated a flat in the course of the week.

On the 12th December 2008, the Ombudsman contacted the Complainant so that she could update him on their situation. She informed him that two days after she had spoken to the Department, they had phoned her at the hostel and informed her that they had a flat for her. Needless to say, she and her children were ecstatic about the news. Unfortunately, when the Complainant went to view the flat, she explained that this was in a very sorry state due to the fact that a squatter had gained access to the premises and had lived there for a short period of time. Nevertheless, the Complainant explained that she had accepted the property and had already signed the tenancy agreement at the Department and was in possession of the keys to the flat. She mentioned that she had opted to receive vouchers from the Ministry for Housing in order to carry out the refurbishment to the flat herself, with the assistance of family members, rather than have the work carried out by Buildings & Works which she claimed would undoubtedly take longer.

The Complainant claimed they would be unable to move in immediately due to the state of the property but explained that the Department had told her that they could no longer stay at the hostel due to the fact that the accommodation was required by other people. The Complainant mentioned that they therefore had no other alternative but to temporarily move in with a family member until the flat was refurbished.

Reports Filed at the Reporting Office in Respect of the Flat

The Ombudsman requested that the Reporting Office of Buildings & Works Department provide him with copies of reports made in respect of the Flat and which related to water ingress/dampness. It was noted that in July 2002, the Complainant had made the first report relating to dampness in the Flat. Dampness was again reported in March 2005, March 2006 and October 2008. Throughout that period, she also made several reports in relation to the windows which she claimed were faulty and were aiding the water penetration. In March 2006, apart from having reported dampness in the Flat, she reported water ingress.

In October 2008, the report read that there had been rain water penetration to the Flat and in another report of that same day it stated that this had affected the electrical installation. In a third report filed on the same day, it stated that the roof had to be inspected because when it rained the water penetrated and affected the electrical installation and caused dampness in the property.

In November 2008, there were three reports filed on the same day. One related to there being no electricity in the bathroom, the other to the bathroom and corridor ceilings needing repairs due to water ingress and the last one to flooring being defective. There was one last report on the 27th November 2008 which stated that there was rain water ingress into the Flat and this had to be attended to by after hours emergency services.

Prior to the report in October 2008, dampness was treated by scraping the loose paint, washing the affected surface and applying paint. In November 2008, the Department fixed a tarpaulin to part of the roof as a temporary measure to prevent further water ingress into the Flat.

Conclusions

Since 2002 when the Complainant made the first report, through to November 2008, more than six years had elapsed. The severity of water ingress into the Flat increased through the years and this was mainly due to the state of the roof which had deteriorated. If throughout the period the necessary repairs had been carried out to the property, the problem would not have exacerbated to the proportions which it did; the lives of one adult and two children could have been endangered because of the rainwater having penetrated into part of the electrical installation.

Further consequences of rainwater penetration were the dampness caused throughout the Flat which allegedly caused the Complainant and her children to suffer from respiratory problems and the caving in of part of the ceiling in one of the bedrooms through which the Complainant claimed a rat/s had gained access, thus creating a further problem.

Regarding the caving in of part the ceiling, it was fortunate that no one was injured when this occurred.

Recommendation

Buildings & Works Department should focus on identifying and repairing the root of the problem, i.e. water ingress through the roof in this case, instead of patching up the consequences. This would prove to be more cost effective to the Department in the long term and would avoid the repercussions to the Government tenants and to the integrity of the building itself which is a part of the Government housing stock.

Case Sustained

CS/834

Complaint against the Ministry for Housing ("Department") for delay in resolving a water leak into the Complainant's Flat emanating from the bathroom of the flat of the Complainant's upstairs neighbour.

Complaint

Complaint against the Ministry for Housing ("Department") for delay in resolving a water leak into the Complainant's Flat emanating from the bathroom of the flat of the Complainant's upstairs neighbour.

Background

The Complainant came to see the Ombudsman on 12 December 2008. She explained that she was wheelchair bound. She complained that her Flat which she rented from the Government of Gibraltar has been suffering from water ingress from her upstairs neighbour's bathroom ever since her neighbour refurbished her bathroom privately. It appeared that every time her neighbour used her shower large amounts of water filtered through to the Complainant's bathroom and kitchen below.

The Complainant had reported the problem to the Department's Reporting Office as well as to the Department's Emergency 'outside working hours' line. On one occasion even the fire brigade had to be called in.

The water ingress was causing damage to the wall and ceiling of her Flat as well as to the electricity supply to the rooms in question. She had reported this matter as far back as 13 March 2008.

The Complainant explained to the Ombudsman that she already suffered from physical health problems as well as anxiety due to her condition and this problem was making matters much worse.

Investigation

The Ombudsman wrote to/faxed the Department on 16 December 2008. He explained that this complaint would normally have been directed towards the Buildings and Works Department ("Buildings and Works") but he had decided to send it to the Department as he felt that this matter required their input. [Ombudsman's note: The Buildings and Works Department forms part of the Ministry for Housing, one of its responsibilities being the repair of the public housing of the Government of Gibraltar.]

The Ombudsman then set out the complaint as explained in "Circumstances Giving Rise to the Complaint" above. He concluded his letter by stating that given the circumstances and the amount of time that this matter had been pending resolution, he would be grateful for the Department's reply before the forthcoming Christmas and New Year break.

The Department replied on 19 December 2008 by way of letter which was received by the Ombudsman on 23 December 2008. The Department stated that Buildings and Works would investigate this further as this was a response maintenance matter. The Department would revert back to the Ombudsman as soon as they learnt of any new developments. The Department enclosed a letter dated 19 December 2008 which they had sent Buildings and Works.

The Department in their letter to Buildings and Works asked them to investigate the matter quickly and find a satisfactory solution to the water ingress problem. The Department went on to state that there had been a considerable delay in response by Buildings and Works in resolving the matter and therefore, they would like to see real in-roads in the very near future. The Department enclosed a copy of the Ombudsman's letter dated 16 December 2008. The Department concluded their letter by stating that should Buildings and Works encounter any problems when trying to access the above flat they were reminded that there was a set procedure in place that should be followed whereby if necessary, the Department might have to intervene.

When by the beginning of February 2009 nothing further had been heard from either the Department or Buildings and Works, the Ombudsman decided to follow up the matter. He therefore wrote to the Department on 6 February 2009 seeking an update. The Ombudsman went on to inform the Department that when he was last in contact with the Complainant on 30 January 2009 she had been very upset since the water ingress into her Flat from her upstairs neighbour's bathroom continued unabated. Given the above and since some time had passed and he had not heard further from the Department, he required an update in relation to this case. The Ombudsman particularly required to know what steps had been taken by the Department to remedy the problem of the water ingress into the Flat. The Ombudsman concluded his letter by stating that he looked forward to hearing from the Department as soon as possible.

The Ombudsman not having received a reply from the Department by the 23 February 2009, again wrote to them. He referred to his letter dated 6 February 2009 to which he had not received a reply and asked them to attend to this matter.

On 2 March 2009 the Department replied apologising for the delay in supplying the information requested. The Department informed the Ombudsman that on the 2 March 2009 in the afternoon they had met with Buildings and Works and sought an explanation for the unacceptable delays in resolving the Complainant's water ingress problem. The Department went on to explain that Buildings and Works had highlighted that access to the flat above was being denied by the respective tenant ("Tenant A"), and that Buildings and Works would be writing accordingly to acquire this as quickly as possible. Buildings and Works would also be keeping the Ombudsman up to date on any progress.

On the 6 March 2009 the Ombudsman received from Buildings and Works a copy of the letter they had sent Tenant A dated 5 March 2009. In their letter Buildings and Works informed Tenant A that as she was already aware, due to her leaking shower tray, her downstairs neighbour the Complainant's Flat was suffering from water ingress. Buildings and Works would therefore appreciate her assistance in allowing them access to replace her shower. This had now become very urgent and the repairs could no longer be delayed any further. The letter then asked Tenant A to contact one of a number of Buildings and Works representatives giving their telephone numbers with a view of arranging access. Their letter concluded by stating that Tenant A's assistance would be most appreciated by the Complainant and thanked Tenant A in anticipation.

On 11 March 2009 the Ombudsman wrote to Buildings and Works referring to the copy of their letter to Tenant A. The Ombudsman however expressed great concern at the fact that the matter of the water leak to the Complainant's Flat emanating from Tenant A's bathroom had been ongoing since the 13 March 2008 and was still unresolved. He therefore required a detailed chronological breakdown of all the steps that had been taken by Buildings and Works to remedy the problem of the water ingress into the Complainant's Flat covering the period from 13 March 2008 to 11 March 2009.

On the 19 March 2009 the Ombudsman received from Buildings and Works a copy of the memo they had sent the Department dated 12 March 2009. In this memo Buildings and Works advised the Department that after repeated attempts by their representatives to gain access to Tenant A's flat to repair the leak affecting the Complainant and as requested by the Department, Buildings and Works had written a letter to Tenant A on the matter a copy of which they attached (This was a copy of the letter from Buildings and Works to Tenant A dated 5 March 2009 referred to above).

The memo then stated that on 11 March 2009 Tenant A had called in at Buildings and Works help desk and confirmed that she was not denying them access as long as they tiled the whole of her bathroom floor to ceiling as it then was. Unless Buildings and Works confirmed to the affirmative she would not let them in.

The memo then went on to state that the reality was that as a direct result of Tenant A's decision to refurbish the bathroom herself years back, the Complainant was suffering the consequences. Buildings and Works therefore requested advice whether to cede to Tenant A's request and if this was not acceptable to the Department, for the Department to assist them in gaining lawful access once and for all. The memo ended by requesting the Department to please note that this was an ongoing saga.

On the 25 March 2009 the Ombudsman received a letter from Buildings and Works dated 18 March 2009 setting out the sequence of events as requested by the Ombudsman in his letter dated 11 March 2009, the salient points of which were the following:

1. The first time Buildings and Works knew of the problem was as a result of the Complainant reporting the defect at the Reporting Office. The order number was dated 13 March 2008.

2. On 22 April 2008 Buildings and Works after receiving a call from the Complainant, send the Head Estimator a reminder that the site visit was still pending.

3. On 6 May 2008 the Head Estimator passed the information and instructed one of his estimators to arrange a site visit and prepare an estimate. It was at this stage the access problems commenced.

The estimator identified the cause as a leak from the upstairs flat of Tenant A. In the meantime the estimator had already prepared the estimate to have the Complainant's Flat repaired.

4. On 2 July 2008 the Chief Executive of Buildings and Works requested an update from the Head Estimator. He confirmed that Buildings and Works were still having problems arranging access to the Complainant's upstairs neighbour's flat to repair the defect.

5. On 23 July 2008 Buildings and Works wrote a memo highlighting the fact that the leak was due to the private works carried out by Tenant A to her bathroom. Once again Tenant A confirmed to Buildings and Works' representative that she would not co-operate and allow them in to tackle the problem.

6. On 24 July 2008 Buildings and Works wrote a letter on the subject to the Department.

7. On 19 December 2008 the Department replied to the Ombudsman's letter of the 16 December 2008 and copied it to Buildings and Works.

8. Buildings and Works continued to be in contact with Tenant A who continued to state she would not allow them in to repair. This time Tenant A stated, that she would allow Buildings and Works in, only if they refurbished her bathroom with coloured tiles floor to ceiling etc.

9. As this was not Government policy Buildings and Works contacted the Department who were in essence the landlord, and verbally requested they assisted Buildings and Works in lawfully gaining access and requested an update via a letter of the 9 February 2009.

10. The Department's verbal response was for Buildings and Works to write to Tenant A. By this time it was early March and on the 5 March 2009, Buildings and Works wrote a letter to Tenant A on the subject.

11. Consequently on 12 March 2009, as Buildings and Works had already tried yet again via a letter to Tenant A to gain access, they found no option but to contact the Department once again requesting their assistance as well as whether Buildings and Works should cede to Tenant A's demands. If Buildings and Works did not receive a reply from the Department by the end of play on 24 March 2009 Buildings and Works would send the Department a reminder.

Finally, on 29 April 2009 the Ombudsman wrote to Buildings and Works. In his letter the Ombudsman referred to his letter dated 11 March 2009 and to the letter from Buildings and Works dated 18 March 2009 in reply the contents of which were noted. The Ombudsman advised Buildings and Works that he now intended preparing a report on this case and therefore required an update generally and particularly in relation to whether any works had been carried out by Buildings and Works at either the Complainant's Flat or at Tenant A's flat. The Ombudsman concluded his letter by stating that he looked forward to hearing from Buildings and Works in this regard as soon as possible. As at the date of writing this report the Ombudsman had not received a reply to his letter.

Comments and Considerations

The Complainant had reported the water leak emanating from the bathroom of the upstairs neighbour Tenant A on the 13 March 2008. It was on the 22 April 2008 over 5 weeks later, after receiving a call from the Complainant that Buildings and Works sent the Head Estimator a reminder that the site visit was still pending. Two weeks later on 6 May 2008 an estimator was instructed to arrange a site visit and prepare an estimate. The Ombudsman considers that this over 7 weeks delay between the Complainant reporting the problem and Buildings and Works sending an estimator to be unduely lengthy.

It was at this stage on or about the 6 May 2008 that the access problems commenced since Tenant A stated that she would not allow Buildings and Works into her flat to effect the repairs. Buildings and Works continued and indeed continue to have this problem with arranging access to Tenant A's flat which is rented from the Government of Gibraltar. It appears that Tenant A's position has as time has gone by changed from an outright refusal to allow Buildings and Works into her flat to effect repairs, to one in which she will only allow Buildings and Works in to effect repairs if they refurbish her bathroom with coloured tiles floor to ceiling.

Although there have been continuing communications between the Department, Buildings and Works and Tenant A, the problem faced by the Complainant of damage to her Flat resulting from a water leak emanating from Tenant A's bathroom appeared to the Ombudsman to be no closer resolution in May 2009, 1 year and 2 months later than it did on 13 March 2008 the date the Complainant first reported the matter at the Department's reporting office.

The Ombudsman also noted that although the Department in their letter to Buildings and Works dated 19 December 2008 had stated "Should you encounter any problems when trying to access the above flat then please be reminded that there is a set procedure in place that should be followed whereby if necessary, [the Department] may have to intervene." and Buildings and Works in their memo to the Department dated 12 March 2009 requested "We therefore request advice whether to cede to [Tenant A]'s request and if this is not acceptable to [the Department], for you to assist us in gaining lawful access once and for all." over 2 months later at the date of writing this report, it did not appear to the Ombudsman that the Department had taken steps to gain lawful access to Tenant A's flat thereby enabling Buildings and Works to effect the required repairs.

The Ombudsman finds the above extremely surprising particularly in view of the Housing Act which came into operation on 1 June 2008 and the extensive powers the Housing Authority has pursuant to sections 16 and 17 thereof to deal with exactly the kind of situation the subject matter of this report, which powers the Department can request the Housing Authority to exercise.

Sections 16 and 17 of the Housing Act reproduced in Appendix 1 below, in essence bestow on the Housing Authority extensive powers of entry upon public housing for the following reasons amongst others, to abate any damage that has occurred to that or any other public housing or prevent any further damage as well as to carry out any routine maintenance of the public housing, the building of which it forms part or any adjoining building. Section 2 of the Housing Act defines "Housing Authority" as the Minister or such other body or person as the Government may designate from time to time by notice published in the Gazette; and "public housing" as a flat, house, building or part of a building owned by the Government and occupied by a tenant or available for allocation to be occupied by a tenant as a residence, under an agreement.

The Ombudsman considered that the delay in resolving the water leak emanating from Tenant A's bathroom was made all the worse because of the Complainant's particular circumstances referred to in the introduction to this report namely that she was wheelchair bound and her physical health problems as well as anxiety due to her condition were being greatly exacerbated by this ongoing problem.

Conclusion

The Ombudsman could only sustain this case voicing his strongest possible concerns. The Ombudsman considered that the manner in which the landlord, i.e. the Ministry for Housing, had managed this case amounted to serious maladministration. This was a matter of a leaking ceiling from an upstairs neighbour which fourteen months after being reported had not yet been repaired.

The Ombudsman reminded the Ministry that they were a public service and owed a duty of care to the tenants who rented flats from the Government of Gibraltar. Without any doubt, they had failed, and continued failing this tenant, whilst they were embroiled in internal administrative discussions in relation to this case.

From the above investigation the Ombudsman therefore concluded that there had been serious maladministration in that there had been delay amounting as at the time of writing this report to 1 year and 2 months, in resolving the water leak into the Complainant's Flat emanating from the bathroom of the flat of the Complainant's upstairs neighbour Tenant A.

Recommendations

The Ombudsman therefore made the following Recommendations:

(1) That the Department puts in place an administrative system to ensure that all reports are attended to by an estimator within 3 weeks of the date the report is made. That in those cases where the matter is an urgent or very urgent one, the administrative system allows for and as far as it can ensures that an estimator attends within 1 week of the date the report is made.

(2) That the Department in consultation with Buildings and Works clearly defines and decides upon their respective roles, responsibilities and duties in dealing with problem cases, such as the one the subject matter of this report where a tenant is denying access to Buildings and Works to effect repairs to their particular flat. A matter that clearly needs to be decided on in relation to who has responsibility for the same is who writes the letter to the tenant requesting access.

(3) That the Department in consultation with Buildings and Works and the Housing Authority draw up an "Entry Upon Public Housing Protocol" setting out the steps that have to be taken by each of them and the time periods within which these steps should be taken including recourse to sections 16 and 17 of the Housing Act to secure entry upon public housing in cases similar to the one the subject matter of this report.

Power of entry.

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

(a) carry out a survey or examination of any public housing in order to determine whether any damage has occurred to, or is likely to occur to the public housing, the building of which it forms part or any adjoining building; or

(b) carry out a survey or examination of any public housing in order to determine whether any powers under this Part should be exercised in relation to the public housing; or

(c) abate any damage that has occurred to that or any other public housing or prevent any further damage; or

(d) to carry out any routine maintenance of the public housing, the building of which it forms part or any adjoining building;

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).

(2) Notwithstanding the requirement to give 7 days notice under subsection (1), if it is considered necessary as a matter of urgency to enter any public housing for any of the purposes mentioned in subsection (1)(a) or (c), a person authorised by the Housing Authority may at any reasonable time, on giving 24 hours notice to the tenant, enter such public housing.

(3) A tenant may waive the requirement in subsection (2) to be given 24 hours notice.

(4) An authorisation for the purposes of this section shall, if so required, be produced for inspection by the tenant.

(5) If the public housing is unoccupied or the tenant is temporarily absent, a person entering under the authority of this section shall cause as little damage as is reasonably possible and shall leave the public housing as effectively secured against trespassers as he found them and shall as soon as is reasonably possible inform the tenant of the entry.

(6) Any person who without reasonable excuse refuses or delays the admission of or obstructs any person authorised by the Housing Authority in exercising his right of entry pursuant to subsection (1) or (2) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Warrant to authorise entry.

17.(1) Where a justice of the peace is satisfied, on a sworn information in writing, that admission to the public housing specified in the information is reasonably required by a person authorised by the Housing Authority for any of the purposes mentioned in section 16(1) he may by warrant under his hand authorise that person to enter on the public housing for any of those purposes.

(2) The justice shall not grant the warrant unless he is satisfied that admission to the public housing has been refused and that admission was sought after not less than the required period of notice of the intended entry under section 16(1) or (2), as the case may be, had been given to the tenant.

(3) The power of entry conferred by a warrant under this section-

(a) includes power to enter by force (if necessary); and

(b) may be exercised by the person on whom it is conferred either alone or together with other persons.

(4) A warrant under this section shall, if so required, be produced for inspection by the tenant.

- -

Case Sustained

CS/838

Complaint against the Ministry for Housing for not having undertaken repairs required to the Complainant's flat which had been reported two years earlier, on the 12th January 2007 and for not having marked the report filed on the 12th January 2007 as completed and paid

Complaint/Background

The Complainant was aggrieved because on 12th January 2007 he had reported water ingress to one of the walls in the living room ("Report 1") of his Government rented flat ("the Flat") which had as a result caused dampness. Two years later, 20th January 2009, the Complainant claimed the repairs had still not been carried out.

The Complainant was also very concerned that upon having requested in November 2008, a copy of the works order (generated as a result of Report 1) at the Reporting Office of the Ministry for Housing ("the Ministry"), he had noted that it had been marked as having been completed and paid when as far as he was aware, no repairs had been undertaken.

Due to water ingress to one of the walls located in the living room of the Flat, which had subsequently resulted in dampness, the Complainant proceeded to make a report at the Reporting Office of the Ministry on 12th January 2007, i.e. Report 1. According to the Complainant, when the property was inspected by officers of the Ministry he was advised that he should paint the area concerned and the problem would be resolved. The Complainant explained to them that he had painted the area on various occasions but because water continued to penetrate, painting the affected area did not address the core of the problem. He also informed them that he had taken it upon himself to seal a number of cracks on the exterior of the property, as he believed that this could have been the cause of water penetration when it rained, but because the water ingress persisted, he had discarded that possibility.

In May 2008 and because no repairs had been carried out, the Complainant made enquiries at the Reporting Office about Report 1, with regards the works required to be undertaken at the Flat and was informed that the works order had been marked as having been completed and paid. The Complainant was surprised upon receipt of this information because as far as he was concerned, no repairs, either in whole or in part, had been carried out but nevertheless he proceeded to report the matter once more ("Report 2").

On 20th January 2009, the Complainant contacted the Ombudsman with his Complaint because two years had elapsed since he had first reported the matter and to date the problem persisted. The Complainant claimed that as time had passed the problem had worsened; the wet patch in the living room had become larger and he could only assume that water ingress was on the increase.

The Complainant provided the Ombudsman with copies which he had obtained on the 17th November 2008 of Works Order **83864** pertaining to Report 1 marked as 'Paid', and **96347** in respect of Report 2 marked as 'In Progress'.

Investigation

The Ombudsman wrote to the Principal Housing Officer ("the PHO") and informed him that a Complaint had been lodged against the Ministry. The Ombudsman explained that the Complainant was very concerned that after having reported the problem of water ingress to the Flat approximately two years earlier, no repairs had been undertaken. Moreso, the Complainant was troubled because Report 1 had been marked as having been paid when in fact no works had been carried out.

The Housing Manager replied to the Ombudsman on 18th February 2009 and explained that she had received information from the HPTO (Higher Professional Technical Officer) in charge of works in the estate where the Complainant resided. According to their records the Complainant had made various reports due to problems with dampness which had also affected a different section of the Flat. In November 2005 he had reported problems with dampness on the east façade of the Flat. The Housing Manager explained that repairs were duly carried out and stated that to date no further signs of dampness had been reported in that part of the property. Therefore, as the works had been completed satisfactorily, the works order was duly paid.

The Housing Manger continued by stating that on 12th January 2007 the Complainant had made Report 1 due to water ingress to the Flat's living room. The company which carried out the facilities management of the estate attended to the report and concluded that no action was required as the dampness was insignificant.

On 20th May 2008 the Housing Manager noted that the Complainant had made Report 2 due to dampness to his living room. She explained that their records showed the facilities management company had carried out some repair work to the terrace of the property located above the Flat, which was thought to be the cause of the dampness in the Flat.

The Ombudsman contacted an officer of the Ministry's Technical Division to further clarify the matter of works orders having been marked as 'Paid' even if it was established that no action was required. The officer explained that until recently, due to limitations in their I.T. system, works orders were marked as having been 'Paid' if:

> *works had been undertaken and payment made for these;*
>
> *an inspection was carried out and it was established that no works were required and no payment actually made.*

The system had now been adjusted in order to enable users of the system to mark the individual works order with the actual action taken.

The Ombudsman wrote to the Housing Manager to inform her that he had spoken to the Complainant who had informed him that the problem of water ingress to the Flat continued and had become progressively worse. The Ombudsman requested that she advise him of what works were planned by the Ministry in order to identify the source of the water penetration and when these works would be carried out.

The Housing Manager replied to the Ombudsman on 4th March 2009 and explained that she had again contacted the HPTO in charge of works at the estate. The HPTO had advised that the Complainant should generate a report via the Reporting Office in order to reactivate his case, as works orders generated in relation to water ingress to the Flat were shown as having been completed. The Housing Manager could not advise of when the works would be scheduled for as this was dependent on when the report was made by the Complainant.

The Ombudsman met with the Complainant in April 2009 so that the latter could update him on whether any works had been carried out to the Flat since their last meeting on 18th March 2009 on the matter of water ingress.

The Complainant explained that after being informed by the Ombudsman of the contents of the Housing Manager's letter of the 4th March 2009 he had spoken to the Principal Housing Officer ("the PHO") and informed him that even though he had filed reports of water ingress to the living room on the 12th January 2007 and 20th May 2008, to date, both works orders had been closed and the problem remained. The PHO informed him that he would look into the matter but requested that he file another report with the Reporting Office.

The Complainant duly complied and explained that four or five days after filing the report, the HPTO, PTO and Site Manager of the Estate inspected the Flat and agreed that the wall was being affected by dampness due to water ingress. They explained to the Complainant that in the past, repairs on a trial and error basis had been undertaken but these had not proved to be effective in stopping the water ingress.

Shortly after the inspection, the Complainant explained he had met the Site Manager of the estate who informed him that they had been given the go-ahead for a pre-estimate to be drawn up for works to be carried out on the balcony above the Flat, believed to be the cause of water ingress. The works would be undertaken when the weather improved.

Conclusions

The Complainant was not informed that resulting from Report 1 it had been established by the facilities management company that no action was required because the dampness was insignificant. As a result, the works order had been closed whilst the Complainant believed that the report was still active waiting for repairs to be carried out. The Complainant should have been notified of the decision that no repairs were going to be undertaken in relation to his report.

In May 2008, upon having enquired at the Reporting Office and subsequently being told that the works order for Report 1 had been marked as paid and completed, the Complainant made Report 2 in relation to the same matter.

When he came to the Office of the Ombudsman in January 2009, he believed that Report 2, works order having been marked as 'In Progress', was still in place and would be attended to. This is supported by the fact that when the Complainant tried to report the matter again in January 2009, he was told that it was not possible as there was already one active report on the matter. He was only made aware that this works order had been closed via the letter sent to the Ombudsman by the Housing Manager on 4th March 2009. The Complainant should have been informed by the Department that repairs had been carried out and the works order had been closed.

In relation to works order 83864 generated by Report 1 having been marked as paid, even though no works were carried out, the Ombudsman was of the opinion that works orders should be marked with the appropriate action taken; in this case the order should have been marked as having been inspected and no action taken but certainly not marked as 'Paid'. The Department should never have had a system in place which allowed for inaccurate/misleading information to be posted on the system.

After careful consideration of the facts of this case and the manner in which the Ministry had acted in relation to the Complainant's enquiries, the Ombudsman sustained this complaint. The Ministry should always take into account that it is providing a public service and it owes a duty of care to those whom they serve. Keeping a tenant in the dark as to what action has been taken when a report for repairs is made, is commensurate to maladministration and a failure on the part of the service provider.

Recommendation

Works Orders for which no works have been undertaken should not be marked as 'Paid'.

Update

The Department provided information to the Ombudsman as follows:

> Tenants are informed accordingly of whatever action is taken in relation to any given Works Order. Tenants are asked to sign a 'Tenants Satisfaction Report' provided by the Facilities Manager Contractor which explains the works carried out in relation to the particular Works Order. The form is then attached to the contractor's invoice for the Department to check if the works have been carried out satisfactorily.
>
> In reference to the Complainant, it must be noted that no works were carried out with regards to the first report. Thus the form was never presented to him as no invoice was sent to the Department by the contractor. Regarding the second report, it must be stressed that works were actually carried out to the flat above the Complainant's, therefore the persons who undertook the works only informed the said tenant and not the Complainant.

Ombudsman's Note

However it had to be noted that due to internal procedures the Works Order was marked as 'Paid'.

Case Not Sustained

CS845

Complaint against the Housing Department, due to the Complainant's dissatisfaction with the manner in which works on a new electrical installation had been carried out

Complaint

The Complainant was aggrieved because the new cable installation in his mother's Government rented flat ("the Flat") carried out by the Gibraltar Electrical Authority ("the Authority"), had been surface mounted on the walls of the Flat. The Complainant stated that these cables should have been embedded in the walls, as was the original installation, because the exposed cables were unsightly and could be dangerous.

Background

The Complainant explained that in 2005, after having made numerous reports in respect of works that needed to be carried out at the Flat, the Buildings & Works Department ("the B&W") undertook various repairs. As some of the works related to the electrical system, the Authority was engaged to carry these out. During the course of those works, the Authority made some checks to the installation and noted that there was a fault in the distribution system. The Complainant claimed that the faulty electrical installation was disconnected and an alternative route provided by laying cables externally around the rooms in the Flat.

The Complainant stated that at the time, he contacted both the Authority and the B&W on various occasions to express his concern at the danger involved in having the cables exposed and at the unsightly way in which these had been laid. He was aggrieved at the fact that the persons suffering the consequences of the issues would be his Mother and his Aunt, both elderly persons who suffered from serious medical conditions. The Complainant claimed that the general feedback he received from B&W and the Authority was that neither was responsible for the new installation to be embedded into the walls of the Flat, as had been the case with the original installation.

In October 2007, the Complainant proceeded to write to the Authority to explain the situation to them and requested that they either rectify the works carried out or alternatively clarify the matter.

The Authority replied promptly to his enquiry and explained that upon inspection of the electrical installation at the Flat, various cables that formed part of the ring main were found to be defective. Due to the original harness system of wiring, the Authority advised that they were unable to replace the damaged cables which would have been done in the case of a conduit installation (a conduit is a rugged protective tube through which cables are pulled).

The Authority explained that the only alternative available was to carry out a surface mounted installation to enable a safe and prompt solution to the problem. Although the Authority agreed that this type of installation was unsightly, they reassured the Complainant that it did not pose a danger to the tenants of the Flat. They also explained that they dealt exclusively with electrical matters and did not have at its disposal, the resources required to carry out an embedded installation. The Authority stated that it was the industry's standard that any 'chasing' required would be carried out by an entity equipped for this purpose with the masonry personnel and tools needed to undertake this work.

The Authority ended the letter by advising the Complainant that they had always made their position clear to their clients, the Housing Department, with regards the fact that they only provided electrical services. They also mentioned that they had explained the situation to him and his family at the time when the works were undertaken but nevertheless advised that if he needed further information he was free to contact them.

In March 2008, the Complainant proceeded to write to the Minister for Housing in relation to the matter. In January 2009, the Minster replied to him apologising for the delay. He advised that they had checked their records and that these showed the Electricity Authority had repaired the electrical installation, which included the modification of the existing installation, by fixing surface mounted trunking. He advised that these were specifically used for electrical cabling and were standard practice for all electrical installations to Government housing stock. The Minister confirmed to the Complainant that the wiring was carried out strictly in accordance with the current Statutory Regulations and in consultation with the tenant.

In March 2009, the Complainant received confirmation, by way of letter, from the B&W that they did not cut chases for the wiring of any part of a flat's electrical installation.

The Complainant felt that there was a contention between the Authority and B&W with regards the issue of 'chasing' cables into the walls and was of the opinion that one of them was responsible for this. In order to have the situation clarified, the Complainant decided to contact the Ombudsman.

Investigation

On the 8th April 2009, the Ombudsman proceeded to write to the Principal Housing Officer ("the PHO") at the Ministry for Housing ("the Ministry") and set out the Complaint. He explained that the Complainant had stated that the new installation was unsightly and could prove to be dangerous due to the way in which the cabling had been laid.

The Ombudsman then referred the PHO to the reply sent by the Minister for Housing to the Complainant, dated 9th January 2009. In it he had stated that their records showed the Electricity Authority had checked and repaired the electrical installation, including the modification of the existing installation, by fixing surface mounted trunking. The Ombudsman included photographs taken of the new electrical installation during a site visit to the Flat, which showed that the cables had not been affixed to surface mounted trunking. The installation had been surface mounted but was not covered with trunking.

On 21st April 2009, a reply was received from the Ministry in which they informed the Ombudsman that the repairs had been undertaken by the Authority and that the information provided to date was based on their records. The Authority had informed the Ministry that the installation had been carried out strictly in accordance with the current electrical regulation. Nevertheless, the Ministry would contact the Authority for further information as they were of the opinion that first hand and detailed information would avoid any misunderstanding of terms and afford a full explanation of the works carried out.

On 3rd June 2009, after having sent two reminders to the Ministry with regards not having received any information from the Department, they wrote to advise that they relied on the Authority to provide them with information and explained that they, in conjunction with the Authority, would be arranging a visit to inspect the Flat.

The site visit took place the following day, and the Ministry wrote to the Ombudsman to inform him of their findings. They explained that after having met with the Authority at the Flat, it was evident that there had been a misunderstanding in the use of a technical definition of an electrical term.

The Ministry explained that the Authority had forwarded information in which was stated that the installation was fixed onto the wall in a 'PVC, PVC sheath'. The use of this term was taken erroneously to be trunking. However, during the site visit it was noted that only a very small part of the installation was mounted on trunking whilst the remainder was surface mounted PVC, PVC sheath, firmly fixed to the wall, which according to the Authority, complied with local IEE Regulations. The Ministry stated that during the interim period, the tenant had carried out works to the premises and had embedded part of the installation in the living room area. As a result, a loose cable originated from a socket was visible but the Ministry stated that as originally fixed, the installation complied with current regulations.

The Ombudsman wrote back to the Ministry so that they could inform him of what their requirements as Landlord were with regards the end product delivered by the Authority, in relation to electrical installations and whether this should be contained within trunking as opposed to exposed PVC, PVC sheath.

The Ministry replied and stated that to their knowledge, their requirements had always been that the installation should comply with the local IEE Regulations and that they relied on the Authority's expertise on any issue related to electrical installations.

The Complainant was kept updated by the Ombudsman throughout the investigation process, in line with the Principles of Good Administration.

Conclusions

From the explanations provided by the Ministry throughout the course of the investigation, it could be concluded that the Authority carried out the electrical installation in compliance with local IEE Regulations. This would therefore mean that the installation was safe, albeit unsightly, and the cables, although surface mounted, were not exposed but covered with a PVC sheath as a protection.

Regarding the cables being embedded into the walls, the Authority explained that they could only have done this if the original installation had been a conduit one in which case the new cables would have been installed via these conduits.

In the case of B&W, they informed the Complainant that they did not cut chases for the wiring of any part of a Government rented property in relation to electrical installations.

Given that the work had been done in accordance with the legislation applying at the time, the Ombudsman did not sustain this Complaint.

Land Property Services Ltd

Case Not Sustained

CS/842

Complaint against Land Property Services Limited, for having issued a notice of termination of a licence for the rental of a garage

Complaint

The Complainant was aggrieved because Land Property Services Limited ("LPS") had issued a notice of termination to her mother ("Mother") in respect of a licence ("Licence") for the rental of a garage ("Garage") which had been rented to her late father ("Father") since 1992.

Background

The Complainant explained that in 1992 her Father had signed a Licence Agreement with LPS (property management agents for the Government of Gibraltar) for the rental of the Garage located within the estate in which he resided. Her Father passed away in 2006 and in June 2008, LPS wrote to her Mother and informed her they had received complaints from neighbours that the Garage was not being used by her and requested that she call at their offices with a copy of the vehicle's certificate of registration together with her driving licence, to clarify the situation. A subsequent reminder from LPS followed in July 2008, after which the Complainant wrote to them in August 2008 seeking further clarification on the situation and putting their case across.

She explained that her Mother had presented the documents requested by LPS (vehicle registration and driving licence both under the Complainant's name) and that upon inspection of these was verbally instructed to vacate the Garage, given that her Father had passed away and her Mother did not possess a driving licence.

The Complainant stated she found this decision to be very unfair because:

Rent payments on the Garage were up to date;

Her Mother resided at the same address as when the Licence was signed by her Father;

The car was used to transport her Mother on a daily basis;

Apart from being a parking and shelter for the car, surplus area in the Garage was used as storage.

The Complainant also mentioned that she and her Mother felt very anxious about this matter. There were severe parking problems in the area and her Mother, an elderly 82 year old with a heart condition (she had two bypasses) and hip problem which required a hip replacement, could not be left unassisted whilst she looked for an appropriate parking.

On 20th August 2008, prior to receiving the Complainant's letter (this was dated 13th August 2008 but was faxed to LPS on 22nd August 2008), LPS wrote to the Mother and advised that:

'in the absence of the documentary evidence requested we have no option but to terminate the licence for the above mentioned garage.'

Notice of termination by 30th September 2008 was given to the Mother, on which date she was required to hand in the keys to the Garage at the offices of LPS.

On 22nd September 2008, LPS wrote to the Mother and referred to the Complainant's letter dated 13th August 2008. They explained that they regretted any inconvenience and distress the action may have caused her but stated that this was the course they were required to take, as with other garages or parking facilities administered on behalf of Government. Standard procedure required them to *'terminate the licence for a garage or parking bay whenever the licensee or any other tenant of the household is no longer the owner of a vehicle or holds a valid driving licence.'* LPS further explained that the use of the premises was exclusively as a garage and not as a store and that any request to keep the premises for use as a store could not be considered. Therefore, they again requested that the keys and the premises be surrendered on the 30th September 2008.

The Complainant, on behalf of her Mother, wrote to LPS on 26th September 2008 and once again explained that the car kept in the Garage was used by her to transport her Mother. She also stated that there were other garages in the area that were being used solely for storage, which was by far not the case in their situation. As a result, the cars had to be parked in public parking areas thereby depriving other residents who did not have a garage from a much needed parking space. The Complainant advised LPS that in view of the unreasonable manner in which they were exercising their authority, she would contact the Ombudsman and requested that they forward to her a copy of the licence contract between her late Father and LPS.

Several days later, the Complainant once again wrote to LPS with reference to their letter of 22nd September 2008 in which they had referred her Mother to the fact that standard procedure required them to terminate the licence whenever the licensee or any other tenant of the household was no longer the owner of a vehicle, or the holder of a valid driving licence. To that effect, a copy of the vehicle's certificate of registration, now under the Mother's name, and the corresponding insurance cover were enclosed. The Complainant now felt that her Mother met the criteria required by LPS and that the notice of termination would now be withdrawn.

In February 2009, four months after their last letter to them, the Mother received a letter from LPS in which they informed her that the matter had been put to Government for its consideration and instructions had been received. LPS explained that although Government understood their position, it also had an obligation to other tenants who had resided in the estate from its inception and had not enjoyed the benefit of a garage, despite having waited patiently for many years. LPS therefore advised that Government would be grateful for the necessary arrangements to be made for the Garage to be vacated and surrendered, and informed her that a reasonable period of time would be allowed for this.

In March 2009 the Complainant, on behalf of her Mother, contacted the Ombudsman with her grievance.

Investigation

The Ombudsman wrote to LPS and informed them that the Complainant had lodged a Complaint against them. She believed that despite her Mother meeting the requirements for the continued possession of the Garage, she had been asked to vacate and surrender it. The Ombudsman requested LPS' comments on the matter.

LPS replied to the Ombudsman on the 9th April 2009 and explained that the licence of the Garage was originally issued in the Father's name and that he had sadly passed away in 2006. In June 2008, LPS received complaints from neighbours in the estate that the Garage was not being used by the Mother, who apparently did not drive, but by her daughter who lived in another estate. LPS therefore requested that the Mother produce proof of ownership of the vehicle being garaged as well as a driving licence. As no such evidence was presented, LPS explained that a reminder was sent on 29th July 2008 and a letter on 20th August 2008 terminating the licence by the 30th September 2008. Two days after that letter, LPS stated they received a letter by fax from the Complainant in which she requested clarification and the revocation of the notice of termination. LPS advised that the fax confirmed the reasons for the notice of termination which was that the person using the Garage was the Complainant and not her Mother.

LPS continued by stating that although there was no specific clause in the licence whereby it would be terminated if the licensee was not the owner of a vehicle or was not the holder of a valid driving licence, it went without say that no licence would ever be issued to anyone who did not satisfy any of those criteria. As a consequence, whenever they were made aware of a licensee falling into that category, Government was obliged to issue the relevant notice of termination. Government did not agree that a person could hold over a parking facility on the basis that their partner had a vehicle and held a driving licence. LPS explained that what happened in those cases was that a relative, usually a son or daughter who resided outside the estate, made use of the garage or parking bay within the estate at the expense of other residents who did not have a parking facility and had waited patiently for years for the opportunity to acquire one.

Regarding the documentation provided, LPS advised this was obtained after the notice was issued and mentioned that the Mother had not produced a valid driving licence which in itself would have been grounds for the issue of the notice.

The Ombudsman wrote to LPS and referred them to the fact that there was a legally binding agreement, which as they had rightly stated, did not contain any provision to the effect that if the owner of a vehicle was not in possession of a valid driving licence, the garage Licence would be revoked. He pointed out that although Government may not have issued a garage licence or indeed a parking space to someone who did not own a vehicle and/or was not in possession of a valid driving licence, the fact of this particular case was that the Complainant, being the legal successor of the original Licence holder as provided in the Licence Agreement in Clause 1.1(e), was the registered owner of the vehicle. The Ombudsman therefore requested information as to the legal basis of LPS' request for the Complainant's Mother to surrender possession of the Garage.

LPS replied to the Ombudsman's enquiry and explained that although there was a legally binding agreement which did not contain any provision to the reasons behind the decision, Clause 5(i) of the Licence Agreement (see transcript below) allowed the licensor to terminate the licence at any time and for any reason.

5(i) This Licence may be determined by the Licensor if the Licensee ceases to reside at [address], or at any time by either party giving to the other not less than one calendar month's notice in writing.

LPS explained that the above clause *'allowed the Government to manage certain situations depending on its policy on the allocation of garages by terminating the licence, and should be viewed in serving the wider public interest, more particularly those of the residents of the area in question.'*

Conclusions

The Licence Agreement had been signed between the Complainant's Father and LPS in 1992. The Father had passed away in 2006, and due to complaints received in 2008 from neighbours of the estate that the Garage was not being used by the Mother, LPS proceeded to request proof that being the only tenant of the household, a requisite to enable the continued rental of the Garage, the Mother produce copies of the vehicle's certificate of registration and driving licence as proof that she owned and could drive a car. The Mother was able to prove that she was the registered owner of the vehicle but did not possess a valid driving licence.

For that reason, LPS concluded that the complaints made proved to be substantiated. They explained that in their letter of 9th April 2009 they had outlined the reasoning behind Government's requirement for the surrender of the Garage, although the Licence Agreement did not contain any provision to the reasons behind the decision. Ultimately, contained in the Licence Agreement was a Clause which allowed either party to terminate the Agreement by giving the other party not less than one calendar month's notice in writing.

The Ombudsman was of the opinion that there had been no maladministration on the part of LPS and therefore decided not to sustain the case.

In keeping with the Principles of Good Administration, the Ombudsman frequently updated the Complainant throughout the duration of the investigation.

Port Authority

Case Sustained

CS/822

Complaint against the Port Authority ("the Department") in respect of the manner in which the Department had dealt with the provision of a berth for the Complainant's boat.

Circumstances giving rise to the Complaint

The Complainant's explanation of what had occurred was as follows:

Early in 2007 the Complainant and a friend ("Friend") bought a pleasure fishing boat ("Boat") and at the end of March 2007 the Complainant approached the Department in order to sort out the paperwork. The Friend already had a berth as his previous boat had sunk, and the idea was for them to continue using his Friend's berth.

The clerk from the Department who attended to the Complainant informed him that there was no need to include his Friend's name in the paperwork. The clerk filled in the Licence book under the Complainant's name (even though the Boat was in his Friend's name) and then informed the Complainant that it would be in his interest to pay the arrears and get the berth rent up to date. The Complainant therefore proceeded to pay £57.50 towards the years 2005, 2006, 2007 and then an extra £40 until 31 December 2007. The Complainant berthed the Boat there for all of the year 2007 without any problem.

On 22 January 2008 the Complainant paid £20 for the berthing until 31 December 2008. Around March 2008 he received a call from the Department informing him that the berth that he had been given was a temporary berth and that he now had to leave. He complained that this was very unfair and that this was not what he had been told when he had paid all the arrears. The Complainant had no where to take the Boat so he left it where it was and the next thing he knew was that the Port Authority had moved it. After leaving it a week where the Port Authority had taken it, and having complained that he had no where to berth it, he had no option but to take it to Western Beach.

The Complainant was unhappy with what had occurred and he therefore wrote to the Department on 28 August 2008 explaining all the above. He concluded his letter by stating that he would appreciate an explanation as to what had happened and why their berth had been taken away from them. He added that he would also appreciate a berth within the port as soon as possible.

Not having received a reply by the 18 September 2008, the Complainant wrote again requesting a reply as soon as possible as he was increasingly concerned about the safety of his Boat at Western beach.

The Department wrote to the Complainant on 25 September 2008. In their letter the Department apologised for the delay in replying to his letter and went on to state that their understanding was that the Boat had been registered to the person who sold them the Boat ("Vendor") and that this was reflected in their records (the Boat originated from a Marina and was not eligible for a berth under the Department's registration). In the original Bill of Sale, the only names that appeared were those of the Vendor selling the boat to the Friend. **Obviously the Officer who attended the Complainant at that time made an erroneous entry by registering the Complainant's name to this boat** (Our emphasis). A temporary berth had been given to the Complainant in good faith.

Regarding the berth allocated to the Friend, the Department informed the Complainant that this berth was registered under the name of another person ("Person") who was the actual legal occupier under Government berthing registration and that Government moorings were not transferable.

The Department then referred to the payments the Complainant had made explaining that the Complainant had been treated fairly and paid his dues correctly regarding the temporary berth he had been allocated The payment of £20 that he had been charged for the year 2008 reflected only the licensing of the vessel and not the mooring fee (The Licence book annual fee which was £20 and the mooring fee which depended on the length of the vessel were two separate issues).

The Department sympathised with the Complainant regarding his concern in relation to where his vessel was now situated, but informed him that berthing was extremely scarce and they did not have a berth available at that moment. They would keep the Complainant's name on their mooring waiting list and advise if a mooring became available.

The Complainant was unhappy with the reply he had received from the Department and he therefore came to see the Ombudsman with his Complaint following which he wrote to the Ombudsman on 1 October 2008 explaining his Complaint in detail.

In his letter the Complainant explained that he wished to complain about the way he had been treated by the Department and the fact that he felt he was misled by the clerks at the Department. He thought that the berth that he had been given was on a permanent basis, instead of a temporary basis as he was now being told.

He was concerned that his Boat had had to be moored at Western Beach and he was getting increasingly concerned about the safety of his Boat due to the start of the winter season.

His contention was that the berth belonged to his Friend and the Boat belonged to his Friend. The Complainant had been wrongly advised to put everything in his name when he went to sort out the paper work even though he had said that the Boat belonged to the Friend and the Complainant had the sale contract to prove it.

Furthermore he had been advised to pay all arrears outstanding with respect to the berth and boat fees. This he had done in order to get all the paper work up to date, and he wanted the Department to note from the paperwork that the receipts were in his name and stated that everything had been paid up to and including the end of 2008.

The Complainant concluded his letter to the Ombudsman by stating that he felt that there were elements of maladministration and malpractice in his case that should be investigated by the Ombudsman.

Investigation

Visit to the Department by the Ombudsman

The Ombudsman decided to visit the Department to discuss the complaint and get a general feel of the Department's administrative procedures in place in relation to the transfer of ownership of vessels, the allocation of berths, and their respective recording in the Department's pertinent registers and ledgers.

This visit took place on the 28 October 2008 when the procedures were discussed in detail and the Ombudsman was given access to all the pertinent records, files and documents he requested.

The Ombudsman would like to commend the Department for the way it promptly afforded all the necessary access to records and files as well as having a member of the Department's staff permanently available during the visits to assist and answer queries.

The Ombudsman's Correspondence with the Department

Subsequent to his visit the Ombudsman wrote to the Department on 13 November 2008 formally informing them of the Complaint. He informed them that the Complainant had lodged a complaint in respect of the manner in which the Department has dealt with the provision of a berth for his Boat. The Ombudsman then explained the complaint as detailed in the first three paragraphs of "Circumstances giving rise to the Complaint" above.

The Ombudsman's letter continued by explaining that the Complainant contended that the berth belonged to the Friend and the boat belonged to the Friend and that he had been wrongly advised to put everything in his name when he went to regularise the paperwork even though the Complainant had said that the Boat belonged to the Friend and he had the sale contract to prove it.

Furthermore the Complainant claimed that he had been advised to pay all arrears outstanding with respect to the berth and boat fees. This he had done in order to get all the paperwork up to date; the relevant receipts were in the Complainant's name and everything has been paid up to and including the end of 2008.

The Ombudsman's letter ended by asking the Department for their comments.

It took two chaser letters respectively dated 17 December 2008 and 9 January 2009 to elicit a reply from the Department which came by way of letter dated 14 January 2009, received 15 January 2009, 2 months from the date of the Ombudsman's letter. This was well over the time scale considered appropriate by the Ombudsman for a reply. The Ombudsman referred the Department to the **Ombudsman's General Note for Departmental Guidance** in this regard.

The Department in their letter dated 14 January 2009 apologised for the delay in replying to the Ombudsman. They explained that the statement that the Friend had a berth as his previous boat had sunk was partially incorrect. The Friend was in fact sharing a berth with the Person who was the original occupier of the berth. (The Friend had his name down as the second owner of the vessel and was not the berth owner). When the Person left to the new complex at Cormorant Camber, the berth was struck off as the Person had been the original occupier. The Friend did not therefore become a berth licence holder.

The Department explained that no one could register a boat and be issued with a Licence book for that boat unless they first showed proof of the availability of a berth for the boat. The Department then went on to explain that what had occurred in relation to the Licence book being filled in under the Complainant's name, even though the Boat was in the Friend's name, was not the correct procedure. **The Port Official should not have allowed a boat to be registered to a different person from the one occupying the berth** (Our emphasis).

The Department then confirmed that it was true that on 22 January 2008 the Complainant paid £20 for the berthing until 31 December 2008 and that around March 2008 he received a call from the Department informing him that the berth that he had been given was a temporary berth and that he now had to leave. The Department had subsequently moved the Boat and the Complainant had some time later taken it to Western Beach. The Complainant had been removed from where he was positioned because at that time the Department was instructed by Government to submit a survey of everyone who owned a boat and was occupying a berth.

The Complainant had been personally instructed that he had to move from where he was berthed and had been given the option to move to the old Reporting Berth Station pontoon where he had been berthed before he was wrongly given the temporary berth at the Watergardens mooring. When the Complainant informed the Department that he had experienced problems in that same place due to bad weather they helped him further and told him to move to Western Beach because they did not have any other options.

The Department went on to state that the following principles were involved in this situation.

The first was that a boat should have one registered owner and the berth licence should come under that name.

Secondly that berth licences were only valid for a 12 month period. There was no guarantee that because you had a berth licence for one year, you would get a licence the following year. However, the Department tried to achieve this in most cases.

Finally, **the Complainant, was mistakenly registered as the boat owner and berth occupier** (Our emphasis). Even if he had paid the dues wrongly advised, he was honoured the place given until such time in 2008 when the survey mentioned was done and the matter addressed. He had just been charged the Licence book fee of £20 for the boat registration that year not the berthing fee.

The Department's letter ended by informing the Ombudsman that they were studying the current situation with regards to this berthing saga and would endeavour to improve the system.

Comments and Considerations

This investigation revealed that the administrative systems currently in place in the Department in relation to accepting changes of ownership of vessels as well as the allocation of berths, and their respective recording had to be greatly strengthened and improved.

The above was plainly visible from the facts of this case and was additionally admitted by the Department in their statements above:

> "**Obviously the Officer who attended the Complainant at that time made an erroneous entry by registering the Complainant's name to this boat."**
>
> **"The Port Official should not have allowed a boat to be registered to a different person from the one occupying the berth."**
>
> **"the Complainant, was mistakenly registered as the boat owner and berth occupier**."

The Ombudsman however noted positively that the Department were studying the current situation with regards to this berthing saga and would endeavour to improve the system.

The Ombudsman wished to comment that through a series of errors and administrative malpractice the Complainant had ended being the registered owner of a boat and not having a berth for that boat. This situation appeared to be directly contrary to the rules in place whereby no one could register a boat and be issued with a Licence book for such a boat unless the person could first show proof of the availability of a berth. This situation had directly been brought about by the Department itself and yet subsequently the Complainant had his boat removed from the berth. This can only be classified as serious maladministration causing an injustice to the Complainant.

The Ombudsman also wished to comment on the principles that berth licences were only valid for a twelve months period. Again the Department's rules would be breached if a boat is allowed to be registered on the basis that the owner has the availability of a berth and then the berth is removed. What would the position of the boat owner then be? Such an owner would have a boat registered to his name and yet not have the availability of a berth, yet the boat was only originally registered to that owner precisely because of the availability of a berth.

Whilst acknowledging that the Department had a very difficult job to carry out with respect to the scarcity and allocation of berths, the Ombudsman was concerned at the manner in which this particular case had been handled by the Department.

Conclusion

Given all the above the Ombudsman was of the opinion that there had been maladministration causing injustice to the Complainant.

Recommendations

The Ombudsman additionally made the following Recommendations:

> That the Department within the next 6 months carry out an internal audit to ascertain how many other errors there have been if any, appertaining to the transfer of ownership of vessels and the allocation of berths, and their respective recording in the Department's pertinent registers and ledgers.
>
> That if any errors are found these be immediately corrected.
>
> That consequent on the audit, the Department implement appropriate administrative procedures and improvements in relation to the transfer of ownership of vessels, the allocation of berths, and their respective recording in the Department's pertinent registers and ledgers to make certain that this type of incident did not re-occur in the future.
>
> That the Department's "Application Form for A Berth/Mooring" should specify that berths are not transferable, if it does not already do so.

The Ombudsman strongly believed that the implementation of these Recommendations should result in no more incidents such as the one the subject matter of this Complaint reoccurring.

Royal Gibraltar Police

Case Not Sustained

CS/835

Complaint against the Royal Gibraltar Police for refusing to cancel a fixed penalty notice

Complaint

The Complainant was aggrieved because the Royal Gibraltar Police ("RGP") had refused to cancel a fixed penalty notice ("Parking Ticket") which he claimed had been issued unfairly.

Background

The Complainant explained that on the morning of Thursday 9th October 2008 he parked his car at Wellington Front, beside the old Jehovah's Kingdom Hall. He alleged that he had checked the notices affixed to the adjacent walls of the area and noted that no parking was allowed there on Tuesdays and Wednesdays between 5.30pm and 9.00pm. He left his vehicle there, feeling confident that he was not infringing the law. Upon returning to the area he claimed to have found a Parking Ticket on the windscreen of his vehicle. Certain that he had not failed to observe the parking restriction notices affixed to the walls, he proceeded to take photographs of the area to support his claim with regards the unfairness of the situation.

He alleged that there was an empty, portable traffic sign frame situated approximately five metres away from his car, but pointed out that there was no notice on this. He mentioned that it was only when he approached a Police Sergeant ("Sergeant") who was nearby and asked him why he had been fined, that he was informed there was a traffic notice board located at the top of the hill which informed drivers of the parking restrictions in that area.

The Complainant claimed that he went and checked the notice, but alleged that this was an 'unnoticeable scribble' which he believed was situated fifty metres away from his car.

Due to what he believed to be the unfairness of the situation, the Complainant explained that he had gone to the Police Station where he proceeded to explain the situation to the receptionist. He stated that he was provided with an application for *'cancellation of fixed penalty notices'* which he duly completed and submitted. He also emailed the photographs he had taken on the day accompanied by the relevant information, to the RGP Administration Inspector who replied to him the following day and advised him that the information had been passed on to the Community Safety Unit. Subsequently, the Complainant received a letter from this Unit to inform him that the Parking Ticket would not be cancelled. He therefore then proceeded to complain about this situation to the Police Complaints Board who in turn requested him to contact the Ombudsman with regards his complaint.

Investigation

Upon receiving the complaint, the Ombudsman proceeded to write to the Commissioner of the RGP to inform him of the situation and explained that the Complainant was aggrieved because he believed that the Parking Ticket was issued incorrectly, given the notices on the walls detailing when parking would not be allowed in the area. These notices stated days and times which did not apply to him. Further still, he claimed there were no signs prohibiting parking in the area other than the one at the entrance which he did not see, especially as he had exited from the area of Wellington Front into Queensway.

A reply was received from the RGP in which they explained that portable parking prohibition signs ("Signs") had been placed at thirty metre intervals along the length of Wellington Front, on Monday 6th October 2008. This was at the request of the Government Sewers Section who were preparing for inclement weather expected and needed to carry out work in the vicinity. Parking was prohibited between 13.00hours and 18.00hours on Thursday 9th October 2008 and all the signs contained this information. In addition to the ones placed inside Wellington Front, a Sign was placed at the entrance of the said area at its junction with Line Wall Road, to advise drivers of the restrictions. The RGP advised that these notices gave ample time for car owners to assimilate the restrictions and move their vehicles.

The RGP reiterated that all the Signs were placed at intervals and were visible to road users. Testimony of this they stated, was the fact that most of the vehicles were removed by their owners (including those that were broken down) and only a few parking tickets had to be issued. The RGP stated that four cars had to be towed away from the area on the day.

In reference to the Complainant claiming that the RGP acted unfairly in not cancelling the parking ticket because he saw no signs where his vehicle was parked, other than the empty traffic notice frame, the RGP stated that a police sergeant from the Traffic Unit who was in the area was approached by the Complainant and had pointed out all the Signs to him, including the one at the entrance to Wellington Front. At the Complainant's insistence that the parking ticket had to be cancelled, he was informed by the police sergeant that this had been correctly and justifiably issued but that he could contest the matter in Court if he so wished.

The Complainant decided to apply for cancellation of the Parking Ticket on the basis that there were no Signs where his vehicle was parked. The RGP stated the application for cancellation was refused because it was deemed that the Parking Ticket had been correctly issued.

The RGP explained that it was possible that the Complainant did not see the Signs but that this did not mean that they were not there. The fact that the Complainant photographed an empty traffic sign frame was not disputed by the RGP but they reiterated that there were plenty of Signs along the route from the entrance of Wellington Front on both sides of the road and on either side of the square by the old Jehovah's Kingdom Hall where the Complainant's car was parked.

Regarding the Complainant's claim that he had exited Wellington Front via Queensway, the RGP stated that this had no bearing on the issue of the Parking Ticket as the Complainant had admitted that he had parked his car in the area on the morning of 9th October 2008 and had therefore driven past the information board located at the top entrance of Wellington Front and at least four Signs on route to his parking spot.

The RGP noted as a matter of interest, that no other applications for cancellations of tickets or reimbursement of towing fees had been received. This seemed to indicate that all persons who had been dealt with in the same way as the Complainant had no grounds to complain. The RGP again mentioned that the Complainant had the option to contest the matter in Court when he received the summons for non-payment of the Parking Ticket.

The Complainant was requested to meet with the Ombudsman so that he could read the letter the RGP had sent to the Ombudsman. At this meeting, and after reading through the letter, the Complainant had two queries. He wanted to know whether the RGP had been negligent with the Signs they had displayed as he was under the impression that traffic signs should be displayed on an amber background with black lettering. He also wanted to know whether the notices on the wall prohibiting parking in the area on certain days should have been covered up due to having been superseded by the portable traffic signs.

The Ombudsman clarified to the Complainant that the RGP did not have to cover up the signs on the wall and that the lettering in the portable signs did not contravene regulations. For completeness of the report and in order to ascertain the position of the Signs on the 9th October 2008, the Ombudsman carried out an in situ investigation at Wellington Front. The Sergeant attended and pointed where the Signs had been placed along the route taken by the Complainant. The first Sign was situated at the entrance to Wellington Front. Proceeding down the access slope, another sign was situated on the opposite side, and then at approximately twenty metre intervals before reaching the square where the Complainant actually parked his vehicle another two Signs had been placed. The Sergeant confirmed that in the actual Square, two Signs had been placed on either side of the said area.

Conclusions

The Ombudsman concluded that the Complainant had parked his vehicle in an area which had been designated as a no parking zone, by way of portable parking restriction signs, for a certain period of time, other than those stipulated in the signs affixed to the nearby walls,. The signs had been placed by the RGP on the 6th October 2008, three days prior to the actual day on which the area had to be cleared of vehicles, in order to give vehicle owners ample time to remove their vehicles. The Complainant went into Wellington Front and claimed that he did not see the portable parking restriction sign situated at the entrance of the area nor any of the other signs which the RGP had placed in the area. Nevertheless the fact remains that the signs were there even though the Complainant did not see them.

Recommendations

In order to avoid similar complaints, the Ombudsman made a recommendation that where a decision is taken by the RGP not to cancel a fixed penalty notice and the person writes to them expressing his/ her dissatisfaction with the decision, the RGP should explain to him/her the reasons behind their resolution.

Case Not Sustained

CS/843

Complaint against the Royal Gibraltar Police ("RGP") for failing to act in a proper manner vis -à-vis the payment of monies by the Complainant's son ("Mr A") to a clamping and tow away company ("Company")

Complaint

Complaint against the Royal Gibraltar Police ("RGP") in respect of events that occurred in Gibraltar on or about the 4 October 2006. The Complainant being of the opinion that the RGP did not act in a proper manner vis-à-vis the payment of monies by her son ("Mr A") to a clamping and tow away company ("Company").

Background

Mr A parked his car in a place where he erroneously thought he could park. The Company towed away the car and placed it in their compound. When Mr A found that his car was missing he sought information as to where the compound was and he made his way there. Once at the compound, he found to his surprise that there was no one in attendance. There was however a telephone number; he phoned but no-one answered.

After a long time passed and concerned at the fact that he had to catch a plane to Barcelona, he managed to open the gates of the compound which according to Mr A were partly opened and he drove off in his car towards the frontier.

The Company's version was that the compound gates had been locked and had been forced open which damaged both the bolts of the gates and its supports.

> *Ombudsman's Note:*
>
> *Irrespective of whether the gates were opened or locked, it is necessary to highlight that Mr A removed his car from the compound, in the knowledge that it was being lawfully held, without having paid the pertinent tow away fee.*

When the Company noticed that the compound gates were open and Mr A's car was missing, they immediately telephoned the RGP and informed them of what had happened.

As a result of the above a police officer stopped Mr A driving his car towards the frontier and after putting the allegation to him and hearing his explanation arrested Mr A on suspicion of causing damage to the gates of the compound. In the police officer's statement he explains that the explanation Mr A gave him was that he had parked his vehicle at the Naval Ground parking area and at about midday when he went to get his car a Gibraltar Services Police officer told him that his vehicle had been towed away and impounded by the Company. Mr A further stated that he had gone to the compound to reclaim his vehicle and on arriving at location he saw his car inside a locked compound. Mr A then stated that he climbed into the compound and then got into his car and drove his vehicle into the gates and left the area.

Mr A's allegations subsequent to the arrest

Mr A's version subsequent to his arrest was that he was taken by the police and placed in cells in the police station because they accused him of having with his car caused damage to the gates of the compound even though his car had no damage. Additionally Mr A alleged that the RGP told him that if he did not pay the amount specified by the Company he would have to sleep in cells which he considered unjust. The RGP accompanied him to a cash point to get the money and he had had to pay £1,300.

On payment of the £1,300 to the Company, it issued a receipt to Mr A for £1,300 in respect of "TOW AWAY – DAMAGE TO PROPERTY".

> *Ombudsman's Note:*
>
> *The issuing by the Company of its official receipt was a correct and proper procedure that had been followed. This allowed for a proper audit trail in relation to the £1,300 that had been paid by Mr A to the Company – (£1,250 damages and £50 tow away fee).*

Circumstances Giving Rise to the Complaint

The Complainant telephoned the Ombudsman and wrote to him on 10 October 2008 explaining her Complaint in detail. In her letter the Complainant explained that she was writing in relation to a complaint which had still not been sorted out. For the previous two years she had been involved with this matter and it still had not been resolved. She then went on to pose the following questions:

(1) Why did they threaten Mr A with putting him in a prison cell, if he did not pay when he had not refused to pay the fine?

(2) Why did the RGP collect the cost of a wrought iron gate from Mr A which he had not broken and which was not replaced?

(3) Why did the RGP act as Judges when no offence had been committed?

(4) Why did the RGP make Mr A sign a paper that he was not going to report the matter nor claim damages?

Investigation

The Ombudsman carried out a preliminary investigation followed by a meeting with senior officers from the RGP. The Ombudsman subsequently wrote to the RGP on 20 February 2009 presenting the Complaint as set out in "The Complaint" above. He went on to request copies of a detailed dossier the RGP had on the matter.

The RGP forwarded a copy of their investigation and relevant paperwork on this matter ("File") to the Ombudsman on the 10 March 2009. The Ombudsman carefully considered the contents of the File and then made a request to the RGP for further details on police procedures/practice together with a Time Line of how the events unfolded on the 4 October 2006, and the rationale behind the actions taken by the officers concerned.

The RGP's Explanation of Police Procedures/Practice, Sequence of Events and Rationale.

The RGP replied to this request by way of letter dated 26 June 2009. In their letter the RGP explained that when a person was arrested, he/she was brought before the Custody Sergeant who then decided whether or not to accept the arrest and authorise detention. The decision being based on the information given by the arresting officer on the evidence available to support the arrest.

The person arrested was then processed in the Custody Suite and a full record of particulars (known as a custody record) was completed. These particulars were broken down into sections as follows:

1. Details of Arrest
2. Detention
3. Personal details
4. Detained person's status
5. Other particulars
6. Requirement for appropriate adult and/or interpreter
7. Rights and entitlements
8. Risk evaluation
9. Personal property
10. Other risk factors
11 . Log of events

The RGP then explained that the victim(s) of a crime, for which a person had been arrested, played an integral part of the investigation. Their evidence was usually crucial in preferring charges. In most instances the victim was seen and interviewed as soon as possible and informed of the course of the police action. Specifically in cases of damage to property, victims were asked whether they would want compensation for the damages from the accused person, as there were provisions for the Crown to apply for compensation to the courts, on the victim's behalf, in the event of a conviction.

There were some instances when compensation could be settled before the attendance to court. This normally happened if the victim wanted to do so by mutual and private agreement with the accused. The settlement would usually result in the victim withdrawing the allegation and the accused paying an agreed compensation. The police would have difficulty in charging or bailing an accused person knowing that the victim had in fact withdrawn the complaint. The judgement was made taking into consideration the seriousness/nature of the offence(s) disclosed. The RGP added that the withdrawal of complaints was not uncommon and in the more serious cases, before an accused person was released with no charge, consultation was held with the Attorney General's Chambers to assess whether it was in the public interest to proceed with the case irrespective of the wishes of the victim.

The RGP were very conscious of not being unreasonably drawn in to matters of compensation and this was made very clear from the outset. The RGP did not collect monies on behalf of private individuals and only assisted in putting either the victim or the accused in communication with each other (be it directly or through a third party e.g. a relative), whoever it was that instigated the issue of the compensation.

It was a common sense and practical approach that was adopted to deal with such matters. If the accused was the one who wanted to pay compensation for damages he/she might have caused, this information was relayed by police to the victim. This would happen under the Custody Sergeant's supervision. A host of arrangements could be carried out for this payment to be made to the victim, examples of which were as follows:

- The accused had money on him/her and paid the victim outright.
- A relative or friend was contacted by the accused and paid directly to the victim.
- A relative or friend brought the money to the Station where it was handed over to the accused to pay the victim.
- The accused was escorted to a cash point machine to withdraw the money - was brought back to the Station where he then paid out to the victim.
- (This option would only be carried out if the Sergeant felt there was no risk of the accused absconding or causing any harm to officers or any other person).
- Payment was made by the accused to the victim at a later date.

The above points could also serve the situation when it was the victim who made the proposal that if the compensation was paid he/she would not pursue the criminal case - in which case this information was passed on to the accused for consideration. As previously stated, these arrangements were not set in stone and it was up to the discretion of the officers dealing with the matter to adopt whichever option suited best given the particular circumstances the accused found himself in. More often than not a victim would raise the issue of compensation because they did not want to go through the court process and the delays that went along with this - they wanted an early resolution and as long as they got compensated they were happy not to proceed with the matter. The RGP in their letter to the Ombudsman then set out the sequence of how events unfolded together with the rationale behind the actions taken.

1. Mr A was arrested by a Police Constable at 1845hrs on 4th October 2006 for the offence of causing damage. He was conveyed by two other Police Constables in the police van to New Mole House Police Station ("Police Station") arriving at 1903hrs.

2. At the Custody Suite Mr A was informed of the reasons for his arrest and he signed the Custody record to acknowledge this. A Police Sergeant authorised his detention.

3. He was afforded his rights for which he signed setting out that he understood them.

4. He declined to speak to a lawyer.

5. At 2000hrs he was allowed to make numerous phone calls in excess of his entitlement.

6. At 2045hrs Mr A was placed in the holding cell whilst enquiries and case preparation were carried out on the matter.

7. A Director of the Company ("Director") met up with his employee at the Police Station and asked the Custody Team whether he could speak to Mr A. He wanted to let Mr A know of the damage that had been caused and that if the Company was to be compensated for it the Company would re-consider pursuing the matter through the courts. (this information was obtained by the RGP from the Director on the 24 June 2009 pursuant to the Ombudsman's investigation).

8. The Police Sergeant allowed the Director to speak to Mr A. The latter did not raise any objection to speaking to the Director.
RGP's comment in relation to this:
This was acceptable practice on the part of the Police Sergeant given that he was taking into account the wishes of the victim. The Police Sergeant saw it acceptable to allow them to communicate as he felt they did not pose a threat to each other. Perhaps another Custody Sergeant would not have allowed this communication to take place. There was no right or wrong on this other than applying common sense and practicality within legal limits.

9. The Director recalled that when he spoke to Mr A there was a Police officer present though he could not recall who this officer was.

10. There was disagreement as to the amount which should be paid by Mr A to compensate the Company and so, the Director then left the police station leaving the matter to be dealt with by the courts.

11. In his statement the Director stated that he was called back to the station by Police as Mr A wanted to speak to him about the compensation.

12. In his statement, the Director stated that when he spoke to Mr A on the second occasion they came to an agreement on the sum of compensation to be paid. Mr A was still under police custody when he offered to pay the monies to the Company. The Police Sergeant saw it practical for Mr A to be allowed to withdraw his money under police escort (as he still had not been released from the arrest).
RGP's Comment in relation to this:
In doing this, the Police Sergeant did not breach any procedures. If he had not adopted this practical approach Mr A would not have been able to acquire the money to settle the issue with the Company meaning that he would have probably have had to either remain in custody to appear in court the following morning or secure a surety that would guarantee his attendance in court the following day, something which Mr A was trying to avoid at all costs, as according to the Police Sergeant, he stood to sustain financial loss having to remain in Gibraltar overnight.

13. A receipt for the compensation paid by Mr A was issued by the Company. The Director then indicated that he did not wish the matter to proceed any further. Consequently, Mr A was released from arrest and allowed to leave with no charges preferred against him.

The RGP concluded their letter to the Ombudsman by stating that they hoped this served to assist his investigation and asked the Ombudsman not to hesitate to contact them should he require anything further.

The Ombudsman having carefully considered the matter concluded that there had been no maladministration by the RGP in this case. The Ombudsman wished to highlight that his investigation did not concern the amount of damages claimed by the Company nor any matter concerned with the Company's claim for damages. The investigation concentrated exclusively in whether the RGP had acted in a proper manner.

This case involved Mr A, a Spanish national who had been arrested by the RGP on the 4 October 2006 on suspicion of causing damage to property. He was conveyed to the Police Station where following established procedures a Custody Record was completed and a Police Sergeant authorised his detention. Mr A signed the Custody Record after section 1 Details of Arrest when the reasons for his arrest had been explained to him. Additionally he signed after section 7 Rights and Entitlements, that a notice setting out his rights had been read to him and that he understood his rights. He also signed confirming that he did not want to speak to a solicitor at that time. Additionally Mr A signed confirming the answers he had given to section 8 Risk Evaluation and also section 9 Property where he certified that he had been searched and that the record of his property was correct.

Had the matter ended there and the Director not come up to the Police Station, what would have occurred given that Mr A was visiting Gibraltar and not resident in Gibraltar, would have been that the RGP would have required a surety to guarantee Mr A's attendance in the Magistrates Court of Gibraltar the following morning. If Mr A had been unable to find a surety which might have been difficult for him, given that he was a visitor to Gibraltar and that it was already 7pm, he might well have had to remain in cells in the Police Station until his court appearance the following morning. In these circumstances, had the RGP adopted a strict attitude which legally they had absolutely every right to do, they would have refused to allow the Director to speak to Mr A which would as explained above have probably resulted in Mr A having to spend the night in police cells. It was only because the RGP exercised their discretion and allowed the Director and Mr A to speak to each other and later on allowed Mr A (under police escort) to withdraw money for the payment of the damage to the gates, that Mr A's probable overnight stay in police cells was averted.

The Ombudsman is strongly of the view that the exercise in appropriate cases of discretion, as demonstrated by the Police Sergeant in this case, is to be commended. It represents the all essential human face of intelligent policing which should be the hallmark of police forces.

Finally the Ombudsman would like to mention that the results of this investigation confirmed to the Ombudsman that the RGP had no involvement in the setting of the amount of compensation for damage to the gates or in the collection of the same, and that the payment by Mr A to the Company was solely as a result of a mutual and private agreement between them.

Ombudsman's Final Comments

Although the Ombudsman understood that it was extremely unpleasant for anyone to be arrested for causing damage and taken to the Police Station, this would not have occurred had Mr A waited for the Company to arrive at the compound and paid the pertinent tow-away fee, thereby securing the proper release of his car. Had he waited he would not have set in motion the ensuing train of events.

It was impossible for the Ombudsman to find any viable justification for the actions of the Complainant's son in unlawfully entering a car compound and removing his car which was being lawfully held under lien by the tow-away company.

The Department of Social Security

Case Not Sustained

CS813

Complaint against the Department of Social Security for not having provided the Complainant with a satisfactory reply to his letter regarding an application to transfer from his current accommodation to the Devil's Tower Hostel and for not having advised him of the position he held in the waiting list.

Complaint

The Complainant was aggrieved because the Social Services Agency ("the Agency") had not satisfactorily replied to his letter in which he had made enquiries with regards an application he had submitted, to be transferred from his current accommodation at Buena Vista Hostel to the Devil's Tower Hostel. In the letter he had also requested that they inform him of the position he held in the waiting list ("the List").

Background

The Complainant explained that since applying for a transfer to the Devil's Tower Hostel in June 2006, he had been placed on a List by the Agency. Approximately two years later, and due to not having received any updates with regards his position on the List, he had made enquiries at the offices of the Agency. He claimed he was informed by the officer who attended to him, whom the Complainant believed to be the Hostels Manager's Personal Assistant, that there were still no rooms available.

On the 1st July 2008 the Complainant wrote to the Agency and explained that he had experienced problems in his current accommodation with one of his roommates and that due to the stress suffered he had to seek medical attention. The Complainant added that he was sixty years old and had to get up daily at 4.00a.m. to get ready for work. He explained that all his roommates smoked and stayed up late and requested that the Agency take these factors into consideration and allocate a room to him at the Devil's Tower Hostel on social and medical grounds. A reply was subsequently received by the Complainant from the Hostels Manager ("the Manager") at the Ministry for Housing ("the Ministry") in which he mentioned that they were aware that he had on several occasions made enquiries with regards his position on the List. He confirmed that the Complainant was on the List for persons awaiting transfers to the Devil's Tower Hostel but explained that they were unable to advise him of when a room would be allocated to him. The Manager referred the Complainant to the paragraph in his letter in which he mentioned that he had been informed by his 'PA' as to the availability of a room but informed the Complainant that regrettably he did not know who he was referring to.

In reference to the problems being experienced by the Complainant in his current accommodation, the Manager advised that he was aware of the incident that had arisen but informed him that to his knowledge, the problem arose because of the Complainant's inconsiderate nature towards other tenants. The Manager explained that social and medical grounds were not an issue that was considered when allocating rooms at the hostels.

On a final note, the Manager stated that the List was strictly adhered to when allocating rooms. The Complainant proceeded to contact the Ombudsman because he was dissatisfied with the reply he had received.

Investigation

The Ombudsman wrote to the Principal Housing Officer ("the PHO") at the Ministry, and explained that the Complainant had lodged a Complaint to the effect that he was waiting for a room at the Devil's Tower Hostel and had not been informed of the position he held in the List.

The Ombudsman referred the PHO to the letter the Manager had sent to the Complainant and explained that he wanted to raise different issues which concerned the reply received.

He referred to the Manager having stated that the Complainant claimed in his letter that his 'PA' (the Manager claimed he did not know whom the Complainant referred to) had informed him of the availability of a room. The Ombudsman explained that this statement was incorrect and somewhat dismissive. He was of the opinion that the Manager, in his mistaken belief, should have obtained the relevant information from the Complainant as to when he was told, and should have requested the telephone number of the person whom he had received the news from. This would have been commensurate with good public service and good administrative procedures.

Regarding the Complainant's position on the List, the Ombudsman asked the PHO if there were any objections to informing the Complainant, or any other persons in the List, of their position. The Ombudsman took the opportunity of bringing to the PHO's attention that this matter had been the subject of various complaints and that he was of the opinion that the lists should at least be available for inspection by those who required it.

The Ombudsman referred the PHO to the Complainant's letter, in which he explained that he had to call the police due to an incident with his roommates and mentioned other matters which had resulted in a negative effect on his health. The Ombudsman stated that the Manager appeared to dismiss the Complainant's claims, except by mentioning that he was aware of the incident and that to his knowledge/understanding, the problem had arisen due to the Complainant's *'inconsiderate nature towards other tenants'*.

The Ombudsman requested that he be provided with the details of the Manager's investigation of the incident, and a detailed assessment of how he reached the conclusion that it was the Complainant's inconsiderate nature that caused the said incident. He also requested the latest waiting lists in respect of Buena Vista and Devil's Tower Hostels.

A reply was received from the Head of Administration (Ag) (HoA). She explained she had been informed by the Manager that at the particular time being mentioned there was no vacant room available at the Devil's Tower Hostel. The Manager felt that the reply he had given to the Complainant was correct and had not been intended to be dismissive.

In relation to the waiting lists, the Manager agreed that whilst these should not be made public, information could be given to the applicant upon request.

The Manager's investigation into the incident led him to the conclusion that the problem arose from the Complainant's *'inconsiderate nature towards other tenants'*. The HoA explained that on the day of the incident, the Security Guard at the Hostel called the Royal Gibraltar Police who acceded to attend if the dispute could not be resolved without their attendance. However, the dispute was resolved and police involvement was not required. The Manager's comment derived from the fact that although the Complainant referred in his letter to one individual, the general feeling of the rest of the tenants of his dormitory was that he was difficult to get on with as he tended to complain and grumble about any insignificant issue or comment.

Furthermore, the HoA explained that the Complainant was offered the room at Buena Vista Hostel due to his desperate situation and given preference to others on the list. The Complainant, stated the HoA, knew that he would remain at the Buena Vista Hostel until such time as he was eligible for a room at Devil's Tower Hostel. The HoA noted that the Complainant had accepted this offer under protest and did not seem to understand that he took it with this condition.

The HoA enclosed, as requested by the Ombudsman, the waiting lists pertaining to the Buena Vista and Devil's Tower Hostels up to the 27th October 2008. These lists were comprised as follows:

- Applicants Waiting List for Devil's Tower Hostel- **37 persons**
- Applicants Waiting List for Buena Vista Hostel - **22 persons**
- Applicants Waiting List for Transfer from Buena Vista- Hostel to Devil's Tower Hostel **6 persons**

- Applicants Deleted from Waiting List and offered Accommodation as per instructions Devil's Tower Hostel - **2 persons**
- New Applicants Waiting List for Devil's Tower Hostel- **2 persons**
- New Applicants Waiting List for Buena Vista Hostel - **1 person**

Upon perusal of these lists, it was noted that the Complainant was in first position on the list for applicants waiting to be transferred from Buena Vista Hostel to Devil's Tower Hostel. However, in the Waiting List of applicants for Devil's Tower Hostel, there were ten persons awaiting a room allocation who had been on the list prior to the Complainant having requested the transfer. The Complainant was therefore in eleventh place.

Conclusions

In cases where persons have to cohabit, as is the case with the hostels, issues will inevitably arise in which the different lifestyles of the tenants will cause some conflict. Tolerance and constructive solutions between the residents would be one of the routes to pursue in order to improve their living conditions until the circumstances, in this case the Complainant being transferred to the Devil's Tower Hostel, change.

The Ombudsman decided not to sustain the Complaint, with some reservations. The Complainant had received a reply, albeit it could have been drafted in more adequate terms. The Hostels Manager could have provided the Complainant with the information of his position on the List, which would have set the Complainant's mind at ease.

The Hostels Manager could also have dealt with the information received by the Complainant from the 'PA' in a more sympathetic manner, by for example inviting the Complainant to meet him to discuss this matter.

Case Partly Sustained

CS/851

Complaint against the Department of Social Security, because the Complainant considered unjust, their decision not to approve his application for social assistance benefit; and for not having provided him with a written detailed explanation as to the reason/s why his application for social assistance benefit had been refused.

The Complaint

The Complainant was aggrieved, because he considered unjust the decision taken by the Department of Social Security ("the Department") not to approve his application for social assistance benefit ("SA"), and was further aggrieved because they had not provided him with a written detailed explanation as to the reason/s for the refusal.

Background

The Complainant explained that since having suffered a traffic accident in 2001 he had been unable to work. He claimed that since then until the end of 2005 he had been in receipt of SA which ceased upon receipt of a financial settlement from the insurance company, in compensation of the injuries he had sustained. For a period of approximately three years, the Complainant stated that he managed to live off the money received from the insurance settlement. He explained that in January 2009, having exhausted those funds and being unemployed (although he stated he was actively looking for work through the Employment Service) he was left with no choice but to apply for SA.

On the 25th February 2009, the Complainant wrote to the Department to complain about the way his case was being handled. He explained that he was in a financially desperate situation and four weeks had gone by since he had lodged his application for SA. He claimed he had given the Department the documentation requested, invoices and bank statements required to assess his case, but to date had not received any news from them with regards a decision on his application.

The day after sending the letter, the Complainant explained he was contacted by phone by the Department and verbally informed that he would not be entitled to SA until November 2009. Nevertheless, they requested further documentation related to expenses for previous years (purchase of household items, etc), in order to further assess his case. The Complainant explained that he would find it difficult to produce receipts requested, some of which were over a year old, but would try his utmost to present these.

On the 23rd March 2009, the Complainant once again wrote to the Department. In his letter he explained that he had also been able to present the invoices requested by them in the second instance but had once again been contacted verbally by the Department to inform him that upon further assessment, his application for SA had been refused for the time being but would now be granted in October 2009. The Complainant requested a written explanation from the Department as to the reasons why he was not immediately eligible for SA. He explained that he was in the process of looking for employment but had not yet been successful and once again pointed out to them that he had no means of supporting himself.

Approximately one month after sending the letter and not having received a reply, the Complainant contacted the Ombudsman.

The Ombudsman wrote to the Department on the 21st April 2009 and requested information as to the reasons why no written replies had been provided to the Complainant. The Department replied and informed the Ombudsman that a written reply had been sent to the Complainant on the 14th April 2009 (copy enclosed) which explained the following:

> *"Social Assistance arrangements are not supported by specific legislation but operate under administrative arrangements designed to provide financial assistance on a basis of need. Awards are discretionary on the basis of a case-by-case consideration of individual need.*
>
> *As previously explained to you, social assistance payments are means tested and therefore all income, including personal savings, has to be regarded at the time of assessment. Taking into account the substantial sum of money that was paid to you on 28th April 2006, I regret to inform you that you are not eligible to receive social assistance payments at present. Your case is due for review in October 2009."*

In May 2009, the Complainant lodged a further Complaint with the Ombudsman to the effect that he considered unjust the Department's decision not to approve his application for SA and further considered their decision not to review their ruling until October 2009 as an excessive period of time which would cause him hardship.

The Ombudsman wrote to the Department in early June 2009 setting out the Complaint. He informed them that their letter of the 14th April 2009 to the Complainant was devoid of any substantial explanation as to the reasons for the refusal, and pointed to the principles of good administration which dictate that public services must be open and accountable; as such, they were required to provide a detailed reply to the Complainant explaining the reasons for their decision. The reply received from the Department stated that on the 26th February 2009, the Social Assistance Manager had informed the Complainant of the decision not to approve his case until a later date. On the 19th March 2009 he had been informed of the reasons why he was not eligible for SA. The Department stated that the explanation provided to him had been open and accountable as he was given the facts and figures which had enabled them to reach their decision of not approving his application. Furthermore, the Department stated that on the 24th March 2009 the Senior Manager of the Social Assistance Unit also gave him an explanation as to the reasons for their decision. The Department referred the Ombudsman to their letter to the Complainant of the 14th April 2009 in which he was advised to contact the Social Assistance Manager if he required further information on the matter. They advised that if the Complainant would have requested it, another meeting would have been arranged to provide him with detailed explanations.

The Ombudsman wrote back to the Department on the 2nd July 2009 and pointed to the fact that although they had provided the details of the various meetings held with the Complainant, they had not provided the detailed written explanation in respect of how they had arrived at their decision. On the 9th July 2009, the Complainant met with the Ombudsman and informed him that he had just been released from hospital after having suffered an episode of Post Traumatic Stress Disorder. He claimed that in mid-June 2009 he had met one of the Chief Minister's assistants to whom he had explained his situation and stated that shortly after the meeting he received SA backdated from the beginning of May 2009. After several telephone communications between the Ombudsman and the Department, a meeting was convened. The Ombudsman requested that the Department provide him with information as to what criteria had been applied under the discretion vested in the Department, with regards their refusal of the Complainant's application.

At the meeting, the Department explained that in December 2005 they became aware that the Complainant had received interim settlement payments from the insurance company (compensation for injuries suffered in the traffic accident).

A meeting was therefore arranged with the Complainant at which he was informed of their findings and was requested to sign a declaration of change of circumstances which stated that he was aware that SA would be cancelled due to having received part of the insurance compensation which he would now be able to use to maintain himself. The final settlement was received by the Complainant in April 2006.

In January 2009, the Complainant applied for SA because he had spent all his money. Following the criteria under the Department's discretionary powers, his application was refused and the Complainant proceeded to register with the Employment Service. The formula used by the Department was explained in detail to the Ombudsman. Their working out was based on the final payment received by the Complainant. The Department explained that in order to ease the Complainant's claim, they had deducted from the final settlement, the maximum amount which could be held in savings by a person who applied for SA, in order that they had funds to see them through until the SA was arranged, and had also deducted a sum used to purchase household items. The formula was applied to the remaining amount and the Department concluded that SA could not be paid to the Complainant until October 2009, the time by which the Department had calculated/ estimated the funds would become exhausted.

The Department explained that their role in this situation was to assess each case individually, based on the information provided by the applicant, and stated that once a decision was reached which was not favourable to the applicant, it was not the Department's role to provide for him/her. They claimed that in most cases that were refused, the applicants were fit and able to seek employment, so the Department proceeded to advise them to register with the Employment Service as was done in this instance.

Regarding the explanation provided to applicants, the Department stated that a meeting is arranged at which the applicants are verbally informed of the decision taken and are given the reasons why that conclusion has been reached. Applicants can avail themselves of the opportunity to request detailed explanations from the Department with regards their resolution. A short letter is also sent to the applicant notifying them of the decision. In the Complainant's case, the Department stated that the reason for not having written a lengthy explanation to the Complainant was because of the sensitive nature of his case. By way of an update, the Department explained that on the 4th May 2009 the Complainant's circumstances changed. The Department, through a letter from the Consultant Psychiatrist, was informed that the Complainant had been admitted to hospital. This development forced the Department to review their decision with regards the Complainant having prematurely spent the monies obtained from the insurance settlement and SA was then granted as from the 4th May 2009.

The Ombudsman decided not to sustain the Complaint with regards the Department's decision not to approve the Complainant's application which was based on the information provided by him by way of bank statements, invoices and expenditure. He was of the opinion that the Department had examined the documentation correctly and based on those facts had reached a conscientious decision. It was only due to developments with regards the Complainant's admittance into hospital and subsequent information provided by the Consultant Psychiatrist, that the Department reviewed their decision and decided to award SA to the Complainant. On the matter of not having provided the Complainant with a written detailed reply, the Ombudsman decided to sustain the Complaint. The Department's letter to the Complainant dated 14th April 2009, received by the Complainant after having requested a written explanation with regards their refusal, did not address in detail how they had reached that conclusion. Notwithstanding the fact that the Complainant had received verbal explanations by the Department, principles of good administration dictate that public services must be open and accountable and as such should have provided a detailed reply to the Complainant, explaining the reasons for their decision.

Department of Transport

Case Sustained

CS/850

Complaint against the Department of Transport for having imposed requirements contrary to law.

Complaint

The Complainant was aggrieved because the Complainant claimed that the Department of Transport ("the Department") had imposed requirements which were contrary to law.

Background

The Complainant explained that he had sold a car owned by his company ("the Company"). When the person who had bought the car ("the Purchaser") went to the Department to carry out the vehicle transfer documentation, he was informed that they required this to be duly stamped with the Company's rubber stamp ("the Stamp"). The Purchaser informed the Complainant of the Department's requirement. As the Company did not have the Stamp, the Complainant proceeded to write to the Department on the Company's letter headed paper in which he confirmed the sale of the vehicle. This was not accepted by the Department who insisted on the document being stamped. The Complainant therefore wrote to the Ministry of Enterprise, Development, Technology & Transport ("the Ministry") to explain the situation as described above and to request that they confirm if this requirement was Government policy. He also pointed out that a rubber stamp had no legal standing as these were readily available in stationery shops.

The Ministry replied to the Complainant and explained that in order that the Licensing Authority would transfer a company vehicle, it had to be satisfied that the transfer had been authorised by the company. To protect the interest of the Department, it had adopted the policy of not accepting a transfer without the company stamp or seal. The Ministry stated:

> *'This is to ensure that the person signing the transfer is an authorised company signatory and is empowered by the company to transfer the vehicle. For this to be acceptable it must be accompanied by the company stamp or seal. In the case of an individual owner the Department can check the signature on file, whereas it is unable to check the signatory of a company.'*

The Ministry explained that because company vehicles are valuable company assets, the Licensing Authority had to be satisfied that the transfer was effected as accurately as possible in order to safeguard the company and to avoid legal repercussions. Therefore, departmental policy required the company's rubber stamp or seal for the transfer of ownership of a company vehicle.

The Complainant explained that it was his understanding that there was no statutory duty for a company to have a stamp or seal and sought advice on the matter. He was advised that upon having perused the Companies Act, Section 15 (3) stated the following:

'A company may, but need not, have a seal for use in Gibraltar.'

Investigation

The Ombudsman wrote to the Department and explained that a Complaint had been lodged to the effect that they required a company seal or stamp in order to transfer ownership of a vehicle by a limited company, when pursuant to the provisions of Section 15(3) of the Companies Act there was no legal requirement for a company to have a seal for use in Gibraltar.

The Department replied to the Ombudsman in exactly the same terms as to the Complainant but added that they had looked at the provisions of Section 15 (3) of the Companies Act and agreed that there was no legal requirement for a company to have a company seal. However, the Department stated that they had never encountered a situation where a company did not have a seal or stamp but acknowledged that there would always be a first time.

Under the circumstances, the Department advised that they would request alternate proof from the Complainant that he was a signatory of the company by way of documentary evidence to that effect, or a Certificate of Good Standing from Companies House.

The Department explained that they at all times strived to assist members of the general public and continued to develop up to date working practices but advised that these measures had to run parallel to safeguarding its and its stakeholders interests.

The Complainant was duly informed of the Department's comments on the matter.

Conclusions

Until this Complaint was lodged, it had been the Department's policy to request that the form for the transfer of ownership of company vehicles should show the company's stamp or the company's seal *'to ensure that the person signing the transfer is an authorised company signatory and is empowered by the company to transfer the vehicle'*. The Department had never encountered the situation where a company did not have a company rubber stamp or seal. The Complaint brought to the attention of the Department that under the Companies Act, there is no requirement for a company to have a seal for use in Gibraltar. The Department informed the Ombudsman that in cases where a company was not in possession of either the company's rubber stamp or seal, they would now have to request alternate proof that the person requesting the transfer was a signatory of the company.

The Ombudsman agreed with the Complainant that anyone can produce a rubber stamp with a company name and that this on its own did not substantiate that the person signing the transfer form, purportedly on behalf of the company, was an authorised company signatory or indeed had any relationship with the company at all. Rubber stamps are available and no company documentation is requested when these are acquired which means that no checks are made with regards the person purchasing a rubber stamp made out with a company name having to be authorised signatories of companies. Nevertheless, it was departmental policy to accept the transfer of vehicle ownership form duly stamped and signed.

With regard to company seals, this is a considerably more formal means of verifying authenticity than a rubber stamp. For the Department to request that the company seal be attached to the application form for an application for the transfer of ownership of a company car is a proper and reasonable requirement.

The Complainant had made a valid point and had duly complained to the Ombudsman. The Ombudsman conducted an investigation and would be making recommendations to the Department in respect of the documentation required for the transfer of ownership of a company vehicle in the event of a company producing a declaration that it does not hold a company seal.

The Ombudsman sustained the Complaint on the grounds that the Department had imposed the requirement of a rubber stamp or company seal without offering any alternatives.

Recommendation

The Ombudsman recommended that the Department should review its requirements for the transfer of ownership of a company vehicle. The application form should contain clear instructions as to the requirements, especially in the event of a company not having a company seal.

Needless to say, when formulating the application form, proper account must be taken *'to ensure that the person signing the transfer is an authorised company signatory and is empowered by the company to transfer the vehicle'.*

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4
Statistical Information

4.1 VOLUME

This year, we received 356 Complaints in our office, an increase of 51 Complaints compared to 2008, where we received 305 Complaints. Taking into account the open complaints brought over from the previous year, a total of 342 Complaints were completed by the end of this year which left 63 Complaints open by the end of 2009.

Complaints received, completed and current by month – 2008 & 2009

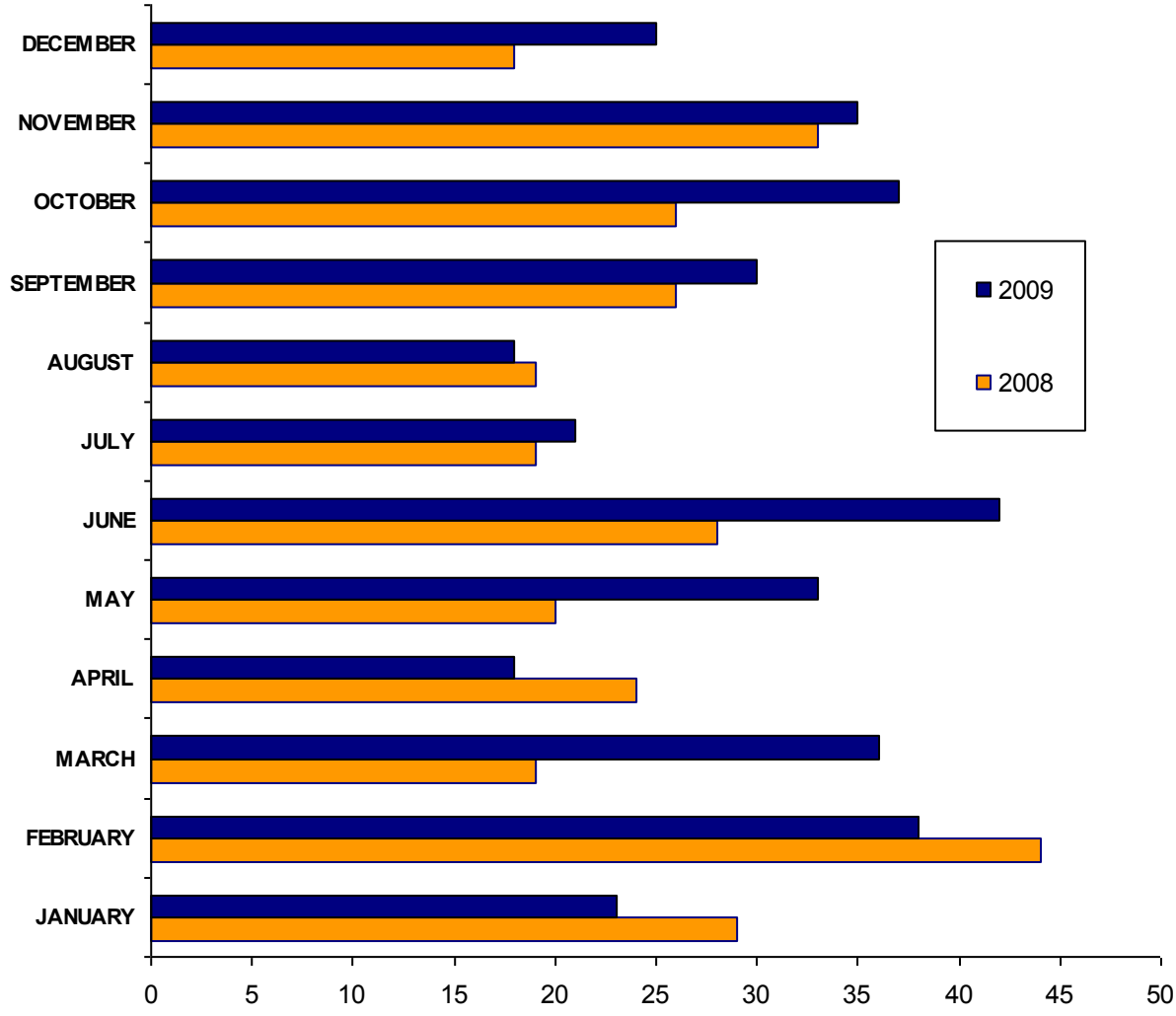
Table 1	2008			2009		
	Received	Completed	Current	Received	Completed	Current
			33			49
January	29	22	40	23	23	49
February	44	30	54	38	35	52
March	19	11	62	36	29	59
April	24	27	59	18	21	56
May	20	25	54	33	35	54
June	28	37	45	42	43	53
July	19	20	44	21	22	52
August	19	16	47	18	25	45
September	26	25	48	30	25	50
October	26	23	51	37	27	60
November	33	32	52	35	28	67
December	18	21	49	25	29	63
TOTAL	305	289		356	342	
Enquiries	136				127	

This year we recorded 127 Enquiries, a reduction of 9 Enquiries compared to 2008, when we received 136. Similar to last year the month of January was a slow month in respect to complaints received in our office, but in February (Generally, February is always one of the busiest months for us) and March, complaints gathered momentum and indeed was a busy period. In April there was a significant drop in complaints, (the lowest of the year, 18) then complaints increased in May 2009 to 33. Although June is generally the month where the number complaints decrease possibly due to the fact that many members of the public are absent on holidays or enjoying the good weather, surprisingly enough it was the month we received most complaints with a total of 45.

4.1 (CONT)….

On analysis those 45 Complaints we received in June 2009, shows that most of the complaints were received were in the earlier part of June before the Summer Hours began. During the Summer months of July and August complaints decreased substantially (July, 21; August, 18) which is the normal trend for this time of the year. October and November were also busy months with the number of complaints rising to 37 in October.

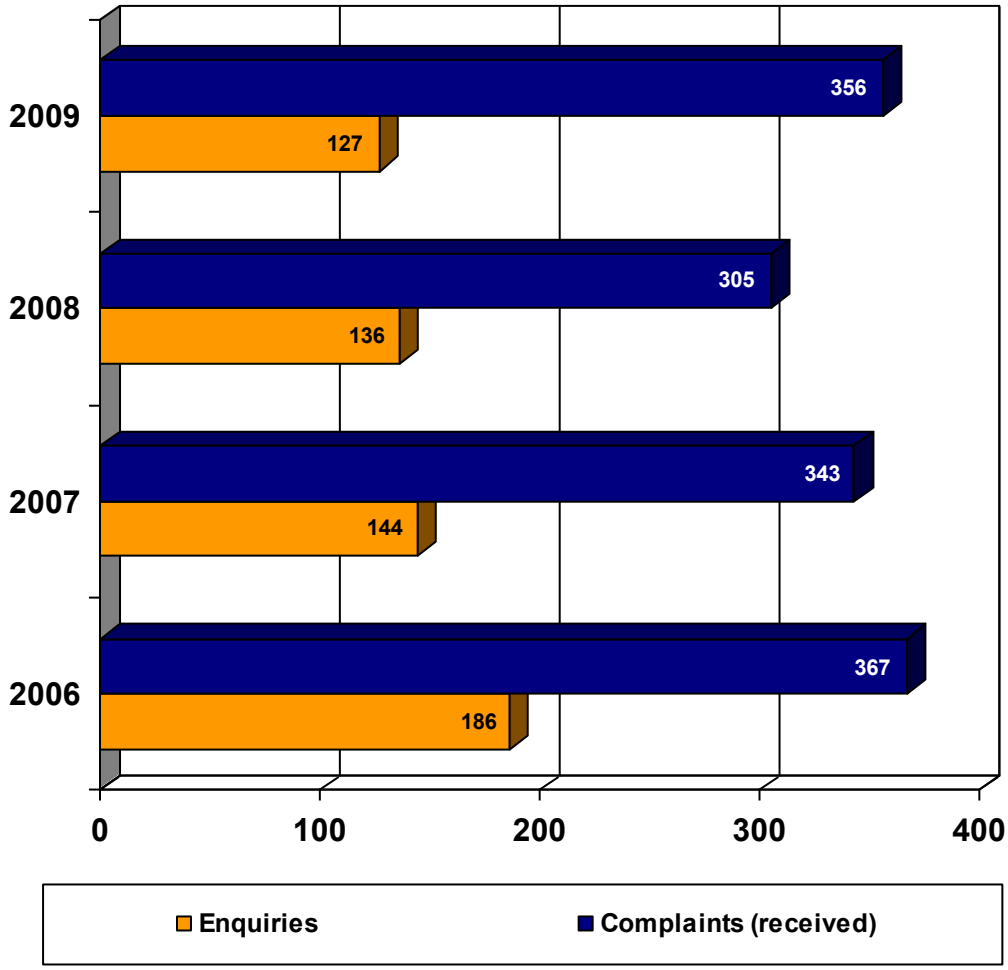
Chart 1 - Comparison of monthly complaints received 2008 & 2009



An analysis of the monthly statistical information by quarterly periods shows that the busiest quarters of 2009 have been the first and last with 97 Complaints each for those three months respectively which can be attributed to the busy two month periods during February/March 2009 and October/November 2009.

4.1 (CONT)….

Chart 2 - Breakdown of Complaints and Enquiries received from 2006 to 2009



This year we have received 356 Complaints and 127 Enquiries. Enquiries have been decreasing on a yearly basis (2006-186, 2007-144, 2008-136 and 2009-127) which is welcoming news for the Ombudsman but nevertheless there is still room for improvement. Complaints have increased, and we have to go as far back as 2006 (367) to have received more complaints than the 356 of this year.

From the 356 Complaints we received, 58 were against private organisations that fall outside the Ombudsman's jurisdiction. This left a total of ***298*** Complaints received against government departments, agencies and other entities which fall under our jurisdiction. (*See Table 2 Page 101-* ***Complaints/Enquiries received by Government Departments/Agencies/ Others in 2009***).

4.2 GOVERNMENT DEPARTMENTS, AUTHORITIES & OTHER ENTITIES

The trend of Complaints has continued along the same lines as in previous years. The 'Big Six' (Housing Department, Buildings and Works Department, Civil Status and Registration Office, the Department of Social Security, the Gibraltar Health Authority and the Royal Gibraltar Police) again top the list attracting the highest number of Complaints but in different ranking order to last year. Complaints against the Housing Department have increased significantly and this has been due to the Housing Tribunal not having dealt with a number of appeals brought to their notice following the announcement that tenants and housing applicants have the right to appeal against any and every decision of the Housing Department or the Housing Allocation Committee. This year we also have to highlight the innovation of having received 9 complaints against the Magistrate's Court thus making it the seventh entity most complained against.

Table 2 - Complaints/Enquiries received by Government Departments/Agencies/Others in 2009

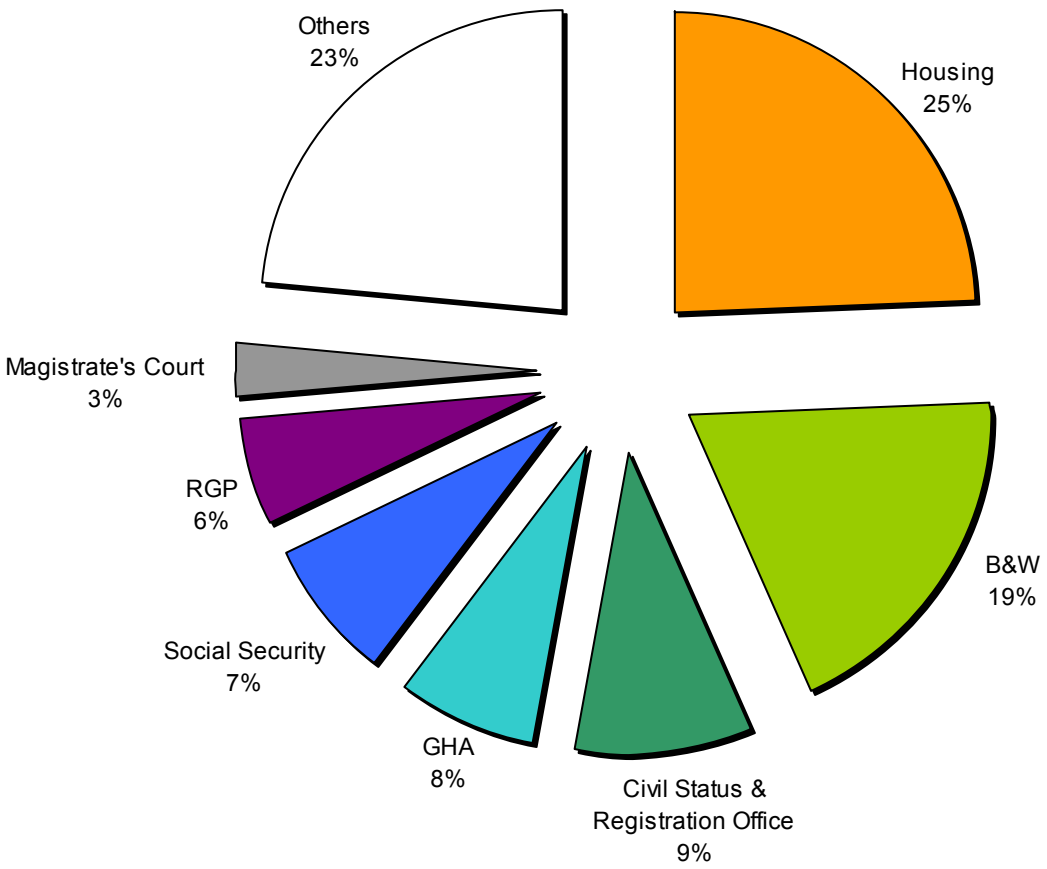
Dept/Agency	Enquiry	Complaint	Dept/Agency	Enquiry	Complaint
Aqua Gib	2	1	GRP Investments	2	3
Buildings and Works	4	56	Housing Department	45	73
Civil Status & Registration	21	28	Human Resources	—	2
CTS (Gib) Ltd	-	2	Income Tax Office	-	3
Education & Training	5	2	Land Property Services Ltd	2	3
Elderly Care Agency	1	2	Magistrate's Court	2	9
Employment (Ministry of)	-	1	Office of the Chief Minister	1	5
Employment Services	1	7	Port Authority	1	2
Enterprise & Develop (Min)	-	1	Royal Gibraltar Police	5	17
Enterprise & Development	—	4	Social Security	12	22
Environmental Agency	2	-	Social Services Agency	1	4
Gibraltar Electrical Auth	2	8	Sports and Leisure Auth	1	-
Gibraltar Health Authority	11	23	Technical Services	1	3
Gib Joinery Building Serv	—	1	Traffic Commission	-	1
Gibraltar Police Authority	1	2	Transport & Licensing	-	5
Gibtelecom	-	4	Treasury	-	3
Gibraltar Tourist Board	-	1	TOTAL :	127	298

After analysing the Enquiries we note that the pattern of previous years almost repeats itself. Whilst enquiries in relation to the Housing Department have decreased substantially, there has been an increase in respect of the Civil Status & Registration Office. We have logged a total of 21 Enquiries this year as opposed to 13 for the previous exercise, the increase can be attributed to members of the Moroccan Community seeking information from us on immigration and nationality issues.

4.2 (CONT)….

This year the two departments of the Ministry for Housing, i.e. the Housing Department and the Buildings and Works Department attracted the most complaints. The two attracted 44% of all the complaints received; Housing 25% and Buildings and Works 19%. The Housing Department by itself accounts for one quarter of all the complaints we receive in our office. Complaints against Buildings and Works have increased from 41 Complaints to 56. Complaints against the Civil Status and Registration Office, the Gibraltar Health Authority, the Department of Social Security and the Royal Gibraltar Police have slightly decreased this year.

Chart 3 - Complaints received by Government Departments/Agencies/Others in 2009

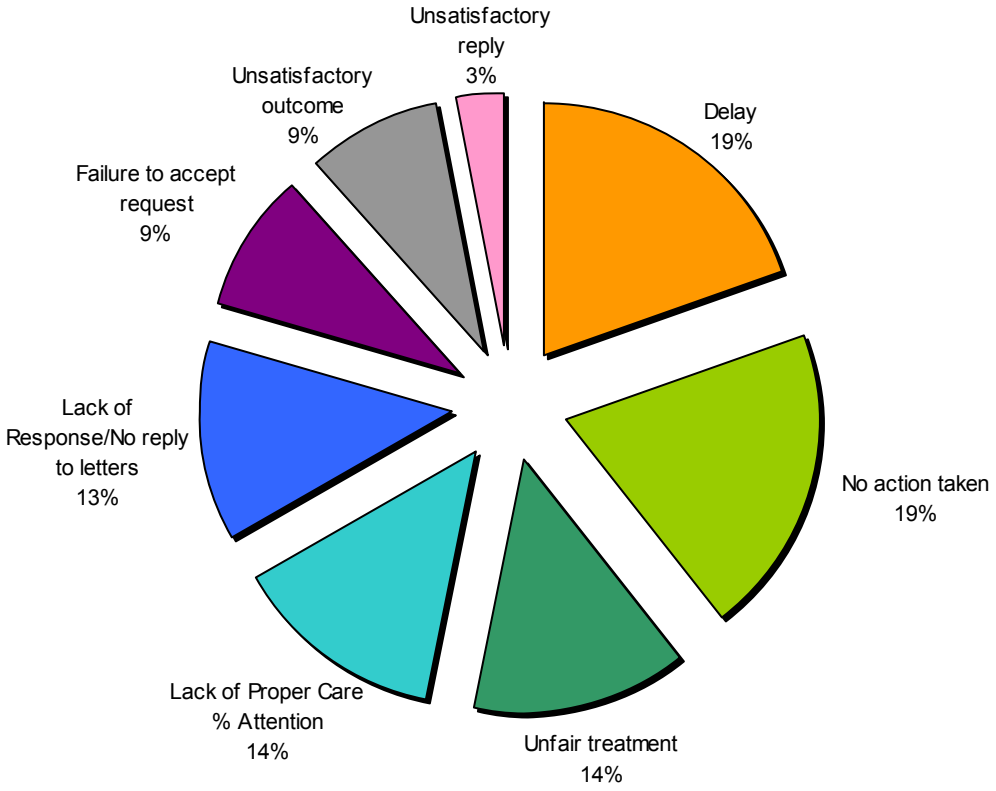


Noteworthy are the 9 Complaints received against the Magistrate's Court. Three of these complaints were in respect of fines/warrants of arrest. The Complaints emanate from the fact that fines have been paid and the payment not adequately recorded, therefore the fine has remained outstanding. The Ombudsman made initial enquiries into this matter and subsequently passed the information to the Principal Auditor who, at the time of writing this report, was actively conducting his own investigation. The Ombudsman decided to keep this file in abeyance until such time as the Principal Auditor concludes his findings.

4.3 NATURE OF COMPLAINTS

Nature of Complaints received by Government Departments/Agencies/Others in 2009

Chart 4 - Nature of Complaints



The most common complaint that the office has received this year is that of delay (19%). The most common types of delay are of excessive waiting time in having repair works carried out by the Buildings and Works Department, delay in having naturalisation applications processed by the Civil Status & Registration Office, and the waiting time by the Housing Department in allocating flats. 19% of the complaints are also of no action taken by the relevant authorities on the Complainant's grievance. Some members of the public also complain about the unfair treatment and the lack of proper care and attention they receive (14%).

Thirteen percent of the Complaints received this year are over the failure in not replying to members of the public by way of not answering letters, and this is worrying news as in 2007, 7% of the Complaints were of this nature, whilst in 2008, it increased to 11% and in 2009, it has again increased to 13%. Other types of complaints include the department's 'failure to accept' requests in the form of applications, claims, registrations, exchanges, permits, etc and the unsatisfactory outcome reached by the authorities on relevant issues members of the public have brought to them.

4.4 PROCESSING DATA

There were 342 Complaints classified this year out of which, 84 (25%) were classified as outside jurisdiction, hence they could not be investigated by the Ombudsman. 202 (59%) were closed as 'Relevant Avenues Not Exhausted' (RANE). In such cases, although we do not investigate the substance of the complaint, we give advice to the Complainant as to how to proceed with his complaint and request that they keep us updated so that we may monitor progress and further assist if the need arises. We also provide assistance in letter writing to some Complainants who may have difficulty or be unable to do themselves.

Five percent of the Complaints were settled informally as they were resolved by assisting the Complainant without the need to investigate the complaint. A further 10 were classified as 'Others', they were either withdrawn at a preliminary stage or after our initial inquiries into the complaint there was insufficient personal interest shown by the Complainant.

We completed 29 Complaints which were thoroughly investigated and concluded by the end of the year. Out of the 29 completed investigations, 9 of them were resolved through informal action, whilst the other 20 warranted an extensive report. (see Chapter 3 Page 21—Case Reports). Out of these 20 Complaints, 8 were not sustained, 11 were sustained whilst 1 was 'partly sustained'.

Chart 5 - Classification of Concluded Complaints (%)

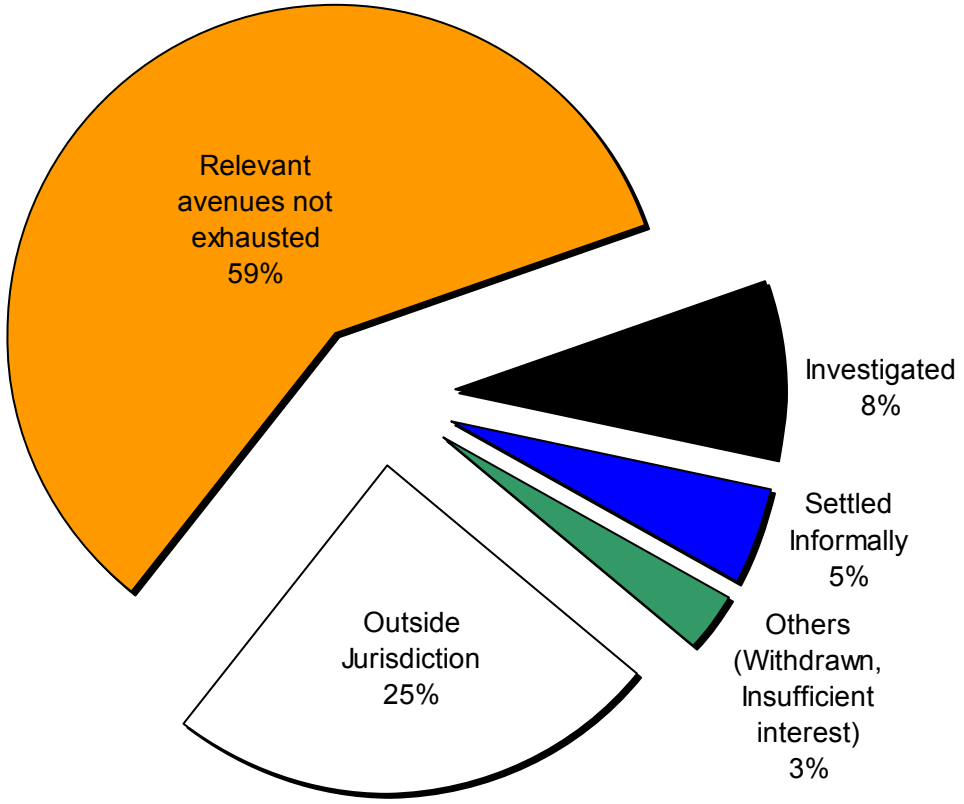


TABLE 3 -SHOWING DETAILS OF RECOMMENDATIONS (I)

No	Nature of complaint	Recommendation(s)	Dept
822	The manner in which the Department had dealt with the provision of a berth for the Complainant's boat.	**1.**That the Department within the next 6 months carry out an internal audit to ascertain how many other errors there have been if any, appertaining to the transfer of ownership of vessels and the allocation of berths, and their respective recording in the Department's pertinent registers and ledgers. **2.**That if any errors are found these be immediately corrected. **3.**That consequent on the audit, the Department implement appropriate administrative procedures and improvements in relation to the transfer of ownership of vessels, the allocation of berths, and their respective recording in the Department's pertinent registers and ledgers to make certain that this type of incident did not re-occur in the future. **4.** That the Department's "Application Form for A Berth/Mooring" should specify that berths are not transferable, if it does not already do so.	Port Authority
834	Delay in resolving a water leak into the Complainant's Flat emanating from the bathroom of the flat of the Complainant's upstairs neighbour.	1. That the Department puts in place an administrative system to ensure that all reports are attended to by an estimator within 3 weeks of the date the report is made. That in those cases where the matter is an urgent or very urgent one, the administrative system allows for and as far as it can ensures that an estimator attends within 1 week of the date the report is made. 2. That the Department in consultation with the Buildings and Works Department clearly defines and decides upon their respective roles, responsibilities and duties in dealing with problem cases, such as the one the subject matter of this report where a tenant is denying access to the Buildings and Works Department to effect repairs to their particular flat. A matter that clearly needs to be decided on in relation to who has responsibility for the same is who writes the letter to the tenant requesting access.**3.** That the Department in consultation with the Buildings and Works Department and the Housing Authority draw up an "Entry Upon Public Housing Protocol" setting out the steps that have to be taken by each of them and the time periods within which these steps should be taken including recourse to sections 16 and 17 of the Housing Act to secure entry upon public housing in cases similar to the one the subject matter of this report.	Ministry for Housing
835	Refusal to cancel a fixed penalty notice.	That where a decision is taken by the Royal Gibraltar Police not to cancel a fixed penalty notice and the person writes to them expressing his/her dissatisfaction with the decision, the Royal Gibraltar Police should explain to him/her the reasons behind their resolution.	Royal Gibraltar Police
836	**1.** Not having repaired the Government rented apartment she resided in with her children and **2.** Not having re-housed them when the state of the property deteriorated due to the lack of repairs.	That the Department should focus on identifying and repairing the root of the problem, i.e. water ingress through the roof in this case, instead of patching up the consequences. This would prove to be more cost effective to the Department in the long term and would avoid the repercussions to the Government tenants and to the integrity of the building itself which is a part of the Government housing stock.	Housing Department

TABLE 4 - SHOWING DETAILS OF RECOMMENDATIONS(II)

No	Nature of complaint	Recommendation(s)	Dept
837	Not undertaking the works required to stop water ingress into her property which originated from the flat located above her own.	That the Ministry should produce clear guidance notes on the procedure to be followed by Buildings and Works Department whenever the need arises for this Department to gain access to a Government property.	Buildings and Works Department
838	**1.** Not having undertaken repairs required to his flat which had been reported two years earlier, on the 12th Janaury 2007. **2.** Having marked the report filed on the 12th January 2007 as completed and paid.	Works Orders for which no works have been undertaken should not be marked as 'Paid'.	Ministry for Housing
841	Not having undertaken repairs, which had been outstanding for a number of years, to the Government rented flat she resided in.	The Department should have a process by which to contact tenants of public housing in respect of access to the property. Once the procedure is exhausted, the Department should request from the Housing Department that they make the necessary arrangements in order to gain entry into the property to abate any further damage from being caused to a public property.	Buildings and Works Department
844	Not having completed repairs to the main entrance door of the building in which the Complainant's flat was located.	The parties involved are urged to re-evaluate this matter.	Buildings and Works Department
846	Delays in addressing water ingress to one of the rooms of the Government rented flat in which he resided.	The Department should keep those awaiting repairs regularly updated on the reason or reasons for the delays, and where possible, establish commencement dates for the works.	Buildings and Works Department
850	Having imposed requirements contrary to law.	The Department should review its requirements for the transfer of ownership of a company vehicle. The application form should contain clear instructions as to the requirements, especially in the event of a company not having a company seal. Needless to say, when formulating the application form, proper account must be taken *'to ensure that the person signing the transfer is an authorised company signatory and is empowered by the company to transfer the vehicle'*.	Department of Transport

4.6 QUALITY OF SERVICE

Two hundred and sixty five Complainant Satisfaction Surveys were sent by post to members of the public who had visited our offices during the year. Out of these 265, 87 were returned. (33%)

The following is a summary of the questions contained in the survey and a sample of the comments received.

Delivery

Were you content with the way our service dealt with your problems?

Yes	75	86%
No	8	9%
N/A	4	

Timeliness

Were you content with the overall time that it took for us to come to a conclusion on your complaint/enquiry?

Yes	75	86%
No	5	6%
N/A	7	

Information

Were you kept informed on the progress of your case?

Yes	77	88%
No	7	8%
N/A	3	

Professionalism

Did you feel we were competent and that we treated you fairly?

Yes	81	93%
No	5	6%
N/A	1	

Staff Attitude

Were we polite, friendly and sympathetic to your needs?

Yes	86	99%
No	0	0%
N/A	1	

4.6 (CONT)…

Comments received from those surveyed

The staff were lovely. They were kind and sorted out our problems.

Nobody paid any attention to our problem until I contacted the Ombudsman. I felt the Ombudsman gave us a say.

I never thought my problem could have been settled so quickly after I had been reporting the problem for four years through the proper channels, and in two days (the Ombudsman) solved the problem.

Staff attitude was exemplary.

Nice to have this service available.

One very satisfied customer of the information given at the Office.

If the powers of the Ombudsman were extended Gibraltar would be a better place to live in.

I feel the Ombudsman is very competent. I was lost and did not know what to do until I met them.. I do not know what I would have done if it were not for their help.

All very helpful, very polite and friendly. May I say that your PRO in my opinion is what you might call an Angel, very caring always helpful and friendly and never busy to help someone in need.

A long stressful haulage of problems was lifted by the Ombudsman and his team. I feel a great deal lighter and happier now.

10 out or 10!

The service we got was second to none – thanks.

We were treated fairly and promptly a quality which others would do well to copy and which is sadly lacking in this day and age. I have no complaints on any issue dealt with by (the Ombudsman)

Friendly and approachable.

THANK YOU NOTES AND CARDS 2009

Bouquet and chocolates received at the office thanking the staff for the advice and help provided.

It's never late to thank you for your kindness and support , best wishes.

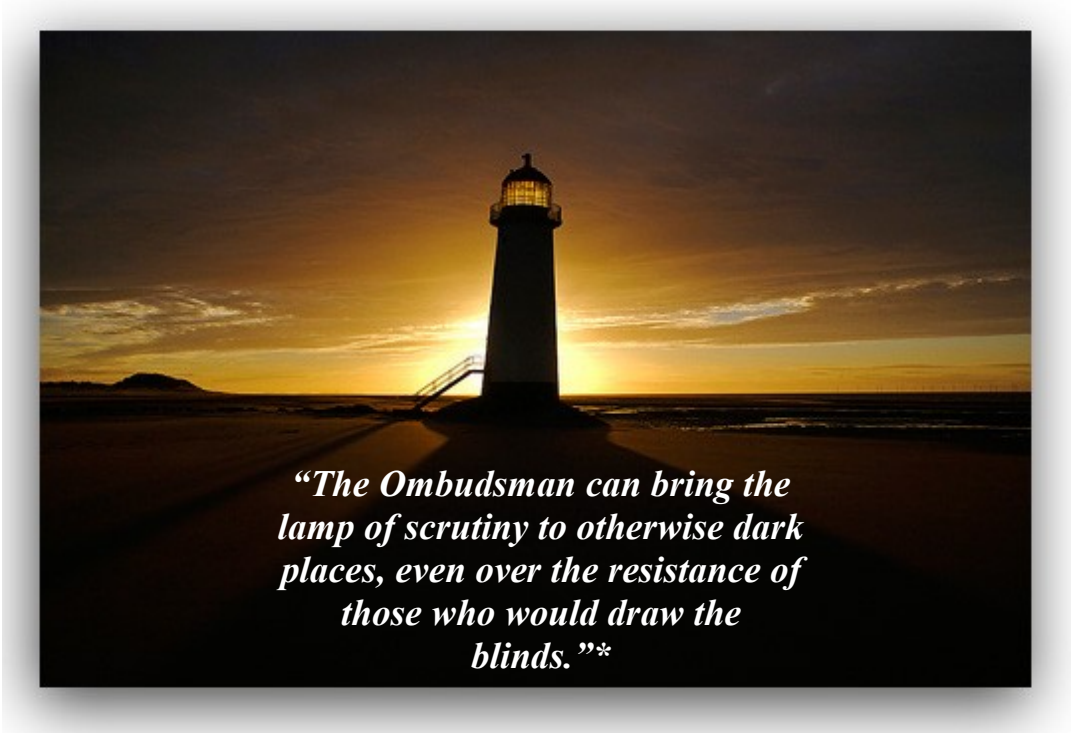
XXXXXXXXXXXXXXXXXXXXXX

Just to inform you that the repairs were carried out yesterday evening. It seems to be working ok. I wish to thank you for your help and attention.

XXXXXXXXXXXXXXXXXXXXXX

Te damos las gracias por atenderemos. Tambien, como sabras, lo conseguimos. Al mismo tiempo, te deseamos a ti y a tu familia unas felices fiestas.

XXXXXXXXXXXXXXXXXXXXXX



*Milvain CJ – Re Ombudsman Act (1970) 72 W.W.R. 176(ALTA. S.Ct.)

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