The Gibraltar Public Services

Ombudsman

'Sometimes we feel that what we do is just a drop in the sea, but the sea would be less without this drop'

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

Front cover quote by *Mother Teresa of Calcutta.*

The Gibraltar Public Services
Ombudsman

March 2009

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

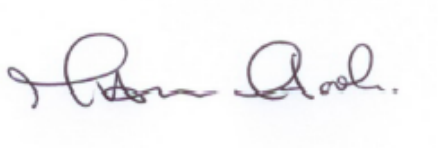
Dear Mr. Caruana,

It is an honour for me to present the Public Services Ombudsman's ninth Annual Report. This report covers the period 1st January to 31st December 2008.

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.

The Report includes a separate Annex, in mini CD format, which contains all the investigations which we have completed during the year 2008.

Yours sincerely



Mario M Hook
Ombudsman

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1
Introduction

The Ombudsman’s ninth Annual Report...

INTRODUCTION

This is my sixth Annual Report and overall the ninth for the Public Services Ombudsman in Gibraltar. Soon we shall be celebrating the tenth anniversary of the establishment of an Ombudsman in Gibraltar. We shall be marking the anniversary on the 1st October 1999, which is the day when the doors of a fully functioning office of the Ombudsman first opened to the public.

As at the 31st December 2008, the total number of Complaints that we have dealt with since October 1999 stood at 4902 plus a total of 1137 Enquiries. By the time this Report is in print we shall have surpassed 5000 Complaints.

Over the years we have developed the style of our Annual Reports and, importantly, the skills to carry out our investigations. Consequently, whilst our first three Annual Reports contained an average of five hundred pages, our present ones contain about eighty pages. Without doubt, the present format is considerably more user-friendly than our original Annual Reports. The other advantage of the present format is its cost of production and distribution. We printed the first three Reports in-house using conventional desktop printers adopting a file-type approach. We only printed enough for the members of the then House of Assembly and a few extra copies for the media and for our own use. At present we outsource the printing and can obtain one thousand copies at a reasonable cost that keeps the expenditure within our budgetary limits.

Hand in hand with the development of our Annual Reports has been the improvement of our investigative skills and subsequent report writing. I am of the opinion that, whilst our investigations have, from the very first day that we began our work, always been carried out in a conscientious manner and to the best of our ability, at present we conduct considerably more thorough investigations and produce much better quality reports at the conclusion of every investigation. I firmly believe that to some degree this is the result of our frequent attendances at seminars, conferences and meetings.

During this last year we have been busy attending events which were of interest to us. As such we attended Public Services Ombudsman meetings in London and Dublin. I was invited as a panellist to the Caribbean Ombudsman Association 5th Biennial Conference held in Bermuda. I gave a presentation entitled ‘Challenges of Ombudsman Work in Small Jurisdictions’.

Our Senior Investigating Officer attended the British and Irish Ombudsman Association’s Annual Conference in Edinburgh and also took part in an Advanced Investigative Training Seminar, possibly the best of its kind in the world, hosted by the Ontario Ombudsman. The theme of the seminar was ‘Sharpening Your Teeth’ and was designed for administrative watchdogs. Also our Public Relations Officer attended a seminar, together with the Senior Investigating Officer, on the subject of Knowledge Management. This seminar was hosted by the Financial Services Ombudsman under the auspices of British and Irish Ombudsman Association. The Public Relations Officer together with our Investigating Officer also attended a seminar on the very important subject of first contact with the customer. As a continuation of having attended this seminar, she will also be attending a meeting with the First Contact Interest Group in Liverpool in May 2009.

INTRODUCTION

This Annual Report covers the period from 1st January to 31st December 2008. During this period we recorded a total of 305 Complaints and 136 Enquiries. This compares with a total of 343 Complaints and 144 Enquiries recorded during the previous year. The reduction of 38 Complaints can be attributed to the coming into being of the Housing Tribunal pursuant to the provisions of the Housing Act 2007. Government tenants can now direct appeals from decisions by the Housing Department to the Tribunal. Undoubtedly, in the coming year people will be made aware of the Tribunal's role resulting in more people directing grievances towards them.

Out of the 305 Complaints received, I decided to write reports in respect of 38 cases. Out of these 38 we completed 21 investigations and reports leaving a balance of 17 on-going investigations. We also carried forward 14 reports from the previous year (2007); all of these reports were completed this year, thus making a total of 35 reports being included in this Annual Report.

I would like to thank all those who took the time to respond to our 'Satisfaction of Service' survey. I find that the feedback that we obtain from the survey is of utmost importance to our work. Every year we open ourselves to the scrutiny of the service users thus making them an important part of the way in which this office operates. Once again thank you for your kind assistance in our work. I am of the opinion that we already offer a very good service both to complainants and to the entities under our jurisdiction however our desire to offer an ever improving service will continue.

This year, as opposed to what has been the norm in previous years, I have not included any comments on the individual entities for which we are publishing reports. I am of the firm opinion that the quality of our current report writing speaks for itself. Every investigation for which we have written a report contains a detailed account of every aspect of the complaint including the circumstances leading to the complaint as well as our opinions, suggestions and recommendations for improvement.

Mario M Hook
Ombudsman
Gibraltar

March 2009

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Ombudsman's Review 2008

REVIEW 2008

Conferences, meetings and seminars

The policy of the Gibraltar Public Services Ombudsman is one of fostering international relations with similar bodies in the United Kingdom and worldwide with the aim of keeping the Office fully informed of all developments relating to the work done by Ombudsmen and their staff in other jurisdictions.

To this end our Senior Investigating Officer attended two very important Ombudsman events which took place during the course of 2008:

1. The British and Irish Ombudsman Association 2008 Annual Meeting, and

2. The Ombudsman of Ontario's Advanced Investigative Training Seminar for Administrative Watchdogs entitled "Sharpening your Teeth".

The British and Irish Ombudsman Association 2008 Annual Meeting

This event took place on the 9th May 2008 in Edinburgh, Scotland, and was entitled "**Ombudsmen and the Changing World in which we operate**".

On the 8th May 2008 there was an all afternoon "Fringe" event at the Office of the Scottish Public Services Ombudsman comprising workshops consisting of talks and discussions for managers and complaint handlers. This event was well attended and very informative. Approximately 40 members of different schemes attended the three workshops which were on the subjects of "Internal Appeals", "Learning from Complaints" and "Dealing with Challenging Behaviour".

Later on that evening the Association Dinner took place at the George Hotel which was attended by around 130 persons. This event allowed the large number of Ombudsmen and staff members from different jurisdictions who were present to exchange ideas and experiences from their respective fields.

On the 9th May 2008 the Association's 2008 Annual Meeting took place. It was held at the premises of the Royal College of Physicians of Edinburgh and was attended by around 160 members, staff of member schemes and guests.

At the Annual Meeting all the formal business of the Association was dealt with. This was followed by various talks by a number of highly qualified and knowledgeable speakers on the subjects of "Consumer Issues", "Regulation" and "Administrative Justice" respectively. These presentations were tied into the British and Irish Ombudsman Association 2008 Annual Meeting's theme of "Ombudsmen and the Changing World in which we operate".

All in all it was a very interesting and instructive 2 days in which what was learnt at the fringe event as well as at the talks at the Annual Meeting was extremely valuable.

The Ombudsman of Ontario's Advanced Investigative Training Seminar for Administrative Watchdogs entitled "Sharpening your Teeth".

This was a Training Seminar par excellence. The Advanced Investigative Training Seminar entitled "Sharpening Your Teeth" run by the Office of the Ombudsman of Ontario is one of if not the top training seminar of its kind in the world.

The seminar was introduced by the Ombudsman of Ontario and was presented by a highly experienced and qualified team.

The training seminar which took place between the 22nd and 24th September 2008 was held at the St. Andrews Club and Conference Centre, Toronto, Canada. It was very wide ranging, dealing with the Principles and Challenges of Investigations, Selecting and Conducting Systemic Investigations, Investigative Plans and their Preparation, Witnesses and Interviewing, Assessing the Evidence, Report Writing and Making Yourself Heard. There were also case studies and scenarios. Although the seminar's main focus was on systemic investigations there was plenty which could be learned and applied to investigations generally.

The seminar occupied three very full days, starting at 8.00 in the morning. There were approximately 55 participants from Ombudsman and other similar offices from Canada, United States of America, United Kingdom, Scotland, Ireland, Netherlands, Bermuda, Antigua and Gibraltar.

Apart from the above, on the 23rd September 2008 in the evening there was also a reception at the Offices of the Ombudsman of Ontario which allowed participants from the seminar to meet and exchange views with each other as well as with staff from the Offices of the Ombudsman of Ontario.

Although there had been a lot of time spent as well as long distance flying to get to this seminar, the resultant benefits derived from attending this superlative seminar were well worth the effort.

The Gibraltar Public Services Ombudsman is in no doubt that the resulting cross transfer of experience and knowledge gained by attendance at these types of Meetings and Seminars can only but enhance the local service that is provided to the persons who come to the Office of the Gibraltar Public Services Ombudsman with their administrative complaints seeking our assistance and advice.

Managing Knowledge in an Organisation

In April 2008 the Pubic Relations Officer and the Senior Investigating Officer attended the British and Irish Ombudsman Association ('BIOA'), Operational Management Seminar entitled 'Knowledge Management – a key organisational aspiration'.

Since then we have acknowledged that managing knowledge is an emerging discipline of vital importance for any organisation such as the Public Services Ombudsman in Gibraltar, and that steps need to be taken in order to collect in an organised data system all the pockets of information that we have acquired both individually and as a team over the past ten years.

Knowledge is the condition of knowing something through experience. It is a corporate asset and from an Ombudsman's point of view it could thus be considered as one of the most valuable assets. Good knowledge about how a system works saves on investigation time and assists the Ombudsman and his team in not having to 'reinvent the wheel'.

Organisational knowledge can be divided into two areas; 'explicit knowledge' and 'tacit knowledge'. Whereas explicit knowledge can be easily stored as data because it is structured and conscious, tacit knowledge is information that is not visible and can not be easily explained or described. An example of tacit knowledge would be the intrinsic peculiarities of each particular area within our jurisdiction. This was the type of knowledge that our Ombudsman was most concerned about; capturing the tacit knowledge that we are not fully conscious that we even possess individually, and then using it for the benefit of the rest of our team and our service to the community.

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In January 2003 our first Ombudsman Mr Henry Pinna retired as Public Services Ombudsman after three years of service. With his departure he unknowingly and inevitably took with him some of the tacit knowledge and information that he had acquired during that period. We have also seen Investigating Officers come and go throughout the past ten years and with each departure they have taken with them all the tacit information that they have acquired in the course of their investigations during their working life with the Ombudsman Office.

Knowledge Management ('KM') should thus focus on facilitating knowledge sharing and whereas it is evident that knowledge is acquired individually it must be gathered and stored in a manner that can be easily accessed by all staff members.

Shortly after attending the KM course a new Investigating Officer joined our team. Teaching her the workings of the Ombudsman and sharing with her the information that we had acquired over the years has also proven to be a catalyst for the Ombudsman Team to start seriously looking into the idea of gathering information, with the ultimate goal of capturing knowledge.

KM is a continuous learning agenda. The involvement of all staff is important and the value and expertise of each individual employee should be taken advantage of. A small Ombudsman team such as ours can have its advantages in that it might be easier to share work experiences and knowledge but it can also have its disadvantages as we can quickly become 'professionals' within our own little subject areas. Either way what is important for us is to capture the information and make sure it is available for others to use.

Technologies are extremely useful at this stage because they facilitate the creation of new knowledge through data. Information therefore not only needs to be stored but also easily accessible and retrievable. Our Computer Systems Controller is therefore in the process of developing our very own intranet in the hope that we can make both explicit and tacit knowledge available to all team members.

Our ten year anniversary is fast approaching and we need to be more reactive and proactive and put to good use the knowledge that each individual and the office in general have acquired in these past ten years. A solid KM base has a direct effect on the kind of service provided to clients; it increases knowledge flow, decreases time spent on acquiring information and thus increases productivity. It empowers the front line and raises the standard of the service provided, thus highlighting the Gibraltar Public Services Ombudsman ethos of a client centred workplace.

Time is an important factor in the development of a knowledge management infrastructure and in a small team we each have to make an extra effort to find time for this new area of work that needs attention.

The Ombudsman and all his team are committed to developing an efficient Knowledge Management system not only to assist in our present work, but also to leave a legacy of knowledge for those who will follow us.

Caribbean Ombudsman Association 5th Biennial Regional Conference

The Ombudsman of Bermuda hosted the Caribbean Ombudsman Association 5th Biennial Regional Conference. She kindly invited me to take part in the conference and give a presentation entitled 'Challenges of Ombudsman work in a small jurisdiction'.

Before starting with my presentation I talked about Gibraltar's geographical position and also provided some details about our economy and way of life.

My presentation dealt with the practical aspects of being an ombudsman in a small jurisdiction; there are both advantages and disadvantages. I spoke about the role of the Ombudsman in a small jurisdiction and the challenges that this can present.

The Ombudsman becomes a very well known figure in a small jurisdiction, no doubt better known than in larger countries. The Ombudsman might become the territory's central point where the aggrieved member of the public goes to seek help even if it is not on a subject related to his jurisdiction. This is my experience. In Gibraltar it is not uncommon for me to be stopped in the street, the supermarket or even in church to be consulted on some matter or other.

Although, one of the advantages of knowing practically everyone is that when you need information you just pick up a phone, we have developed a policy of requesting information by letter. Not that we wished to create a rigid bureaucratic system, but because we have found it more advantageous to create a letter trail from the very start of any investigation.

Without exception, the legislative provisions to create an office of the Ombudsman in any territory, has been put in place by its Government and it is therefore the express wish of the people to have such an institution. It follows that all officers, no matter their rank must comply with the requests of the Ombudsman for information and in a timely manner. If there are persistent delays, the Ombudsman must be prepared to take appropriate steps in line with their legislative provisions. In general delays are not acceptable and should not be tolerated.

Everyone that comes to our office is logged into our data base. For example the nature of the visit may be logged as a complaint or as an enquiry. The important thing to note is that we log everything in our system and at the end of every month we provide information to the entities concerned about how many complaints have been lodged against them or how many enquires we have received and the nature of the enquiry. We believe that this information assists those under our jurisdiction to consider whether the service that they provide needs improving.

I also spoke about the importance of sharing information with other ombudsmen. The Ombudsman is often faced with difficult decisions to make and whatever decision the Ombudsman makes might have far reaching consequences.

I find that it is useful to be able to share experiences and also to be able to consult with other Ombudsmen when the need arises. I am fortunate in that I belong to a group of Public Sector Ombudsmen.

The members of this group are the United Kingdom's Parliamentary and Health Service Ombudsman, the Public Sector Ombudsmen from England, Scotland, Wales and Northern Ireland, the Republic of Ireland and Malta, Bermuda and Gibraltar. It is obvious that such a group of Ombudsmen have an enormous pool of experience.

Although the group meets on an informal basis in that we do not have a formally constituted association of any form, meetings carry a full agenda and the Parliamentary Ombudsman kindly provides the secretarial and organisation services. The meetings are hosted and held in the offices of the different Ombudsmen on a rotational basis.

For my part, I must say that I find these meeting of tremendous help and I always obtain valuable information and experience to bring back to Gibraltar.

The collective experience of our group assists me a great deal and it also serves in a large way to provide comfort that I am not alone, but there exists a group of friends with whom I can exchange views or seek their advice.

I thoroughly enjoyed participating in the conference which was very well organised and had a well balanced agenda. All the speakers gave presentations of a very high calibre which made the conference a very successful event. My congratulations to the Bermuda Ombudsman, Ms Arlene Brock, and her team for organising a first class event.

Personal perspective from our Investigating Officer

The role of Investigating Officer at the Office of the Ombudsman is both challenging and rewarding. When a Complainant brings a complaint to the Ombudsman, my job is to remain impartial whilst gathering all the information that is required to assess the case objectively. The unique thing about my position is that one is able to communicate with both the Complainant, who is the aggrieved party, and the relevant Public Services entity. Once all the data relating to the case is obtained, it is perused and considered and a report is compiled. At times this is like putting together a jigsaw puzzle. Once all the pieces have been assembled, the picture emerges. It is at this point when as Investigating Officer I will be able to draw my conclusions from the data collected. The report of the investigation will then be prepared and passed on to the Ombudsman who will thoroughly peruse this and ultimately give his recommendations and comments on the matter to the relevant issues if these are so required.

I would like to add that it is in my nature to try and be as thorough as possible, and in my view this will be an asset in carrying out my role as efficiently as possible. The benefit to the Complainant is that they can be assured at all times that as the avenue of last resort, their complaint will be investigated conscientiously, as pursuant to the provisions of the Public Services Ombudsman Act 1998 we have at our disposal all the tools required to carry out an investigation.

The position of Investigating Officer provides personal satisfaction upon closure of the matter at hand, regardless of which of the two parties is right or wrong. The role of the Office of the Ombudsman is to promote fairness in the administrative actions of all entities under our jurisdiction and in doing so promoting and enhancing confidence in the public administration. Therefore, if the entity being investigated has done their work correctly, the report will reflect this and all parties will in theory be satisfied with the conclusion after the impartial investigation has concluded. In the case of the Complainants, they will be reassured that their case was handled in a fair manner within accepted administrative parameters. On the other hand, if the report is favourable to the Complainant then the Ombudsman's Recommendation should avoid a repetition of the complaint in future. Needless to say, this will be beneficial to us all as users of the Public Services.

Throughout most of my life I have endeavoured to find the career path to which I would be best suited. When I applied for the post of Investigating Officer at the Office of the Ombudsman, I did so in the hope that I would be chosen and in that position be able to provide assistance to persons who felt that they had been treated unfairly by the public administration. I will strive to provide that service.

On a final note, I would like to mention that for the short period of time that I have been with the Ombudsman, I have found that the entities I have dealt with up to now have been extremely cordial and courteous and this has made my work easier.

The interface between the Office of the Ombudsman and the Office of the Chief Secretary

Under Section 23 of the Ombudsman Act, the Chief Minister may serve on the Ombudsman a notice that the disclosure of a document or class of documents or information specified in the notice would be prejudicial to the public interest. In practice, this has developed into a procedure under which the Ombudsman refers his draft final report on the investigation of a complaint to the Chief Secretary so that it can be confirmed to the Ombudsman that there are no objections to the publication of the report.

The procedure has an added benefit, which perhaps was not originally envisaged. As a result of being sent all the reports, I make a point of reading them closely in order to get an understanding of what aspects of the work of Government Departments are the cause for complaints on the part of the general public. It allows me to become aware of areas of Government work that are lacking in appropriate procedures that will ensure that the public is properly served.

As a direct result of reading the Ombudsman's reports, changes have been introduced in Departments on my instructions in order to address matters highlighted in the reports that are capable of improvement by doing things differently.

Managers in some Government Departments are sometimes so busy dealing with their everyday schedules that they are not always in the best position to identify areas of activity that would benefit from a refocus and from the introduction of new practices. The interface between the Office of the Ombudsman and the Office of the Chief Secretary is therefore acting as a catalyst for the scrutiny by me of departmental procedures, where these have fallen short of the public's expectations, and the introduction of new procedures and practices.

The Ombudsman's role is necessarily linked to the investigation of complaints and the identification, where it exists, of malpractice. A corollary of my close following of the work of the Ombudsman is that I can better appreciate that many Civil Servants in every Government Department are providing a valuable public service, to appropriate standards, even if this is not expressly and publicly recognised. The areas of complaint are remarkably few, given the wide range of activities undertaken by Civil Servants. This is a source of satisfaction to me in my capacity as Head of the Civil Service.

Finally, I am grateful to the Ombudsman and his staff for their courtesy at all times, and the useful dialogue that we have developed in many areas.

R J M Garcia
Chief Secretary

11 December 2008

The Royal Gibraltar Police on their working relationship with the Ombudsman

The Royal Gibraltar Police has a good working professional relationship with the Office of the Ombudsman.

When the Office of the Ombudsman was established and first contact was made it became evident that we required having a structured system on how to manage enquiries from their office.

All the correspondence from the Ombudsman on complaints are routed via the Commissioners Office.

The structure created is in two tiers.

The Ombudsman has direct access to the Deputy Commissioner for any urgent matter or for any consultation and there is also direct contact with the Commissioner should it be required.

The Ombudsman's investigators and staff have direct access to the Chief Inspector in charge of the Professional Standards Department. This senior police posting caters for the maintenance and enhancement of Professional Standards in the Royal Gibraltar Police with a remit to investigate any procedural matters making improvements.

Once the Ombudsman has made his final report and before ratifying it, he submits a draft to the Royal Gibraltar Police for our comments. We are able to comment on any factual matters or express a police view on aspects of the report. The Ombudsman then takes the final decision once this consultation is carried out regarding the content of the final report. We welcome this consultation.

This structure has facilitated communication and in many instances the early resolution of enquiries.

One of our last investigations submitted to the Ombudsman resulted in the Police being commended for their efforts and resolution of a complicated matter.

The Royal Gibraltar Police ethos is of a continuous self-assessment on what service we provide the general public. Our contacts with the Office of the Ombudsman have on occasions brought to light police procedures that could be improved upon and we welcome this. We always endeavour to change and enhance systems to provide a better quality of service to our Community.

Some of the enquiries from the Office of the Ombudsman have been straightforward whilst others have led to exhaustive enquiries. These investigations have been reported in the Ombudsman Annual Reports of which we recognise and endorse as an accountable organisation to the public we serve.

As always practice makes perfect and we believe in examining ourselves and improving our professional relationship with the Ombudsman's Office and will continue to do so in the future.

We are also aware that the Office of the Ombudsman have linked up with the Police Complaints Board in order to cooperate on any police related matter. This is also welcomed and enhances cooperation on policing matters.

3
Case Reports

The Ombudsman expects those entities under his 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.

AquaGib Limited

Case not sustained in relation to the main issue

Case sustained in relation to the subsidiary issue

Recommendations made

CS/798

Complaint against AquaGib Limited ("AquaGib") arising from the fact that the Complainant who was the Principal of a Dance Academy ("Academy") was being asked by AquaGib to pay a January 2006 water bill of £461.42 sent to her arising out of a flooding which occurred in the communal toilets used by the Academy as well as others, which flooding the Complainant strongly believed was due to the water meter situated outside the building not being enclosed in a cabinet, leaving the exposed water meter open to tampering by strangers thereby having access to it.

Complaint

The Complainant was the Principal of a Dance Academy ("Academy"). There was a communal toilet used by the Academy as well as two other academies in the building although the water usage bill was sent to the Academy. The communal toilets had flooded, which flooding the Complainant strongly believed was due to the water meter situated outside the building not being enclosed in a cabinet, leaving it open to tampering by strangers thereby having access to it.

Subsequent to receipt of the water bill for January 2006 the Complainant wrote to AquaGib on 1 June 2006. In her letter the Complainant referred to the bill and explained that this bill corresponded to a flooding which occurred in the communal toilets, which were still under the name of the Academy. She went on to explain that these toilets should have had their own water and electricity meters installed when they were built but instead she was still waiting for this to happen.

In addition, the water meters, which were outside the building, had been exposed as per the photographs which she had attached to her letter, until only four weeks prior to her letter. Due to her insistence, a proper cabinet was now in place.

The Complainant went on to add that the Academy had been paying for the electricity and water bills arising from these communal toilets, which were also used by the other two academies in the building. She hoped that the aforesaid meters would be installed as soon as possible since she felt this was a very unfair situation.

The Complainant went on to state that, moreover, the flooding which accrued the bill in question, was caused by strangers tampering with the exposed water meters during the Christmas holidays when the academies were all closed. She ended her letter by stating that she sincerely hoped that the meters would be installed soon and this bill be put aside, as this flood was not caused by the user's negligence.

AquaGib replied on 10 July 2006 acknowledging receipt of her letter and informing her that the matter was being investigated and the Complainant would be contacted shortly.

The Complainant heard nothing further on the matter until the Academy received a letter from

AquaGib dated 22 January 2008 in which they were informed that their water account was in arrears in the amount of £461.42. AquaGib therefore asked that these arrears be settled by the 5 February 2008 failing which there could be a disconnection without further notice and a subsequent reconnection fee would have to be paid before this could be restored.

There followed a letter from AquaGib to the Academy dated 14 February 2008 which referred to a telephone conversation on 1st February 2008 and went on to state that the Academy, as the account holder was responsible for the amount of water that went through the meter between the 21/12/05 and 30/1/06, January 2006 account. The letter went on to explain that the meter was checked at the time and no leaks were found. The meter was found to be correct. AquaGib stated that their responsibility ended at the meter, any overflow, leakage or waste that may arise after the meter is the responsibility of the consumer. AquaGib therefore requested that the outstanding balance be paid as soon as possible. The letter ended by suggesting that the Complainant disconnect the supply under her name and that all the academies apply as a group for this meter.

Following on from the above, the Complainant not being happy with the situation came to see the Ombudsman at the end of February 2008 with her complaint.

Investigation

Ombudsman's Correspondence with the Department

Subsequently the Ombudsman wrote to AquaGib on the 1 April 2008 confirming the complaint as set out above. In his letter the Ombudsman went on to explain that the Complainant had informed him that she wrote to AquaGib after having received the above mentioned water bill dated 31 January 2006, that she had no reply to her letter and therefore wrote a further letter on 1 June 2006 receipt of which was acknowledged by AquaGib. In their letter AquaGib informed her that the matter was being investigated and that she would be contacted shortly.

The Ombudsman then referred to the fact that the Complainant further informed him that there had been no further communication from AquaGib until she received a letter dated 22 January 2008 addressed to the Academy requesting payment of arrears of £461.42.

The Ombudsman then asked for AquaGib's comments generally, as well as specifically in relation to the delay in replying to the Complainant's correspondence and in relation to the delay in following up the outstanding arrears.

The Ombudsman in his letter then requested the following information for consideration:

1. Did AquaGib enclose its water supply meters in a cabinet?

2. If so, did it do this as a result of a legal obligation or duty?

Furthermore, given that the Complainant had also informed the Ombudsman that she had appealed to AquaGib to waive the outstanding amount on the basis that the meter had not been enclosed, the following information was also required:

3. Confirmation as to whether AquaGib had a discretion to waive outstanding water bills owed?

4. If there was a discretion was this exercised in a discretionary manner case by case, or was there written guidance on the exercise of this discretion?

5. If there was written guidance on the exercise of this discretion, a copy thereof was requested.

6. If there was a discretion, how many times during 2006, 2007 and 2008 respectively had this been exercised. The Ombudsman also required a breakdown of the dates and individual amounts involved.

AquaGib acknowledged receipt of the Ombudsman's letter within 8 days by way of letter dated 9 April 2008 informing him that the matter was being looked into and he would be contacted shortly. They informed the Ombudsman that they had never received the first letter sent by the Complainant after she received her water bill dated 31 January 2006.

AquaGib's substantive reply to the Ombudsman's letter came by way of letter dated 24 April 2008. In their letter AquaGib replied to the Ombudsman's questions as follows:

"Additional information

1. Yes, AquaGib does enclose its water meters in suitable meter boxes. This is not to say that some meter boxes are not damaged or that there may be some meters not so enclosed and predating Lyonnaise/AquaGib. AquaGib has an ongoing meter box repair/ maintenance programme.

2. Under the Public Health Act - Water Rules, section 58.
Location of water meters

58. All water meters shall be placed in a convenient easily accessible position, to be determined by the Director and where in a position to which the public have access, in a locked box, a key of which shall be kept by the Director. In general all meters must be fixed as near the main as practicable.

3. AquaGib does not believe that it has discretion to waive outstanding water bills owed. The rights and powers under the Public Health Act are expressly reserved to Government of Gibraltar under the terms of the AquaGib/Government of Gibraltar Agreement. Furthermore Part III Section 134 of the Public Health Act states:

Register of meter to be evidence

134. (1) Where the Government supply water under this Act by meter, the register of the meter shall be prima facie evidence of the quantity of water consumed.

(2) Any question arising between the Government and a consumer with respect to the quantity of water consumed, may, on the application of either party, be determined by the magistrates' court. "

AquaGib's letter ended with an open invitation to arrange a meeting to discuss the issues raised by this case.

AquaGib's replies to the Ombudsman came just outside the Ombudsman's guidelines for attending to correspondence from him.

Subsequent to a meeting between the Ombudsman and AquaGib at AquaGib's offices on 13 June 2008, AquaGib provided the following additional information and made the following points for consideration by the Ombudsman:

(1) Should the occupiers of the premises wish to have a different arrangement for the metering and billing of their potable water supplies, then the onus was on them to make an application to AquaGib. Up to the 19 June 2008 AquaGib has received no such application.

(2) Although the Complainant's letter was dated 1 June 2006, AquaGib's records showed that it was received on the 28 June 2006. AquaGib had a Customer Contact system of logging in and tracking of all correspondence and has a target of two weeks for a response to be made from date of receipt. In this case this was 12 July and an acknowledgement dated 10 July was sent.

(3) AquaGib accepted that there had beem no substantive letter of reply to the Complainant's letter dated 1 June 2006 and that the Complainant should have received one, but that it was not quite correct that the Complainant "heard nothing further on the matter until the Academy received a letter from AquaGib dated 22 January 2008" since AquaGib's Customer Contact records show that their Superintendent Customer Services, spoke and explained the situation to the Complainant on the 31 July 2006.

(4) AquaGib drew attention to the different positions in relation to water meters as opposed to stopcocks. Water meters had to be enclosed in a locked box pursuant to rule 58 of the Water Rules whilst stop taps (stopcocks) had to be enclosed in a covered box or pit pursuant to rule 21.

AquaGib stated that there was a practical need to have the stopcock accessible so as to enable the water supply to be cut off in the event of an emergency. This follows good industry practice. They explained that the stop cock itself formed part of the service pipe (the communication pipe) for which they were responsible under the Public Health Act. The water meter (the property of AquaGib) was placed on the part of the service pipe which would have been the responsibility of the consumer (the supply pipe) but for which the consumer's responsibility was taken to be as from the outlet of the water meter.

AquaGib further explained that section 129 of the Public Health Act which dealt with interference with valves and apparatus did make provision that "Provided that this section shall not apply to a consumer closing the stopcock fixed on the service pipe supplying his premises, so long as he has obtained the consent of any other consumer whose supply will be affected thereby." This could only be the case if the stopcock was accessible to the consumer and not locked in a cabinet.

Furthermore rule 22 of the Water Rules stated: "22.(1) In addition to any stop tap fitted in pursuance of rule 21, every service pipe supplying water to any building, or to any part of a building the supply of which is separately chargeable shall be fitted with a stop tap inside, and as near as possible to the point of entry of such pipe into the building or part thereof." Having this stop tap in the location stipulated enabled the consumer to isolate his domestic system at any time.

AquaGib then explained that the point being made was that whether or not the meters themselves were in a locked cabinet was not relevant to this particular case as the stop cock on the communication pipe was not required under the Water Rules to be in a locked cabinet and

as such was by necessity accessible. Any issues with the domestic internal system could be addressed by shutting off the supply of water by means of the additional stopcock inside the building. On the assumption that such a stopcock, as was required to be, was installed in the Complainant's premises, then during periods such as the Christmas breaks it would have been prudent to isolate the system with this stopcock.

Finally AquaGib wished to point out that although the cabinet in which the stopcock (and meters) would have been located was not there at the time thus making the stopcocks more accessible than usual, the location of the manifold, stopcocks and meters arrangement was away from the street and in a secluded passage way out of the general public.

(5) In relation to the possibility of the exercise of a discretion to waive outstanding water bills owed, AquaGib wished to draw attention to Section 134 of the Public Health Act which stated

> *"**Register of meter to be evidence.***
>
> *134. (1) Where the Government supply water under this Act by meter, the register of the meter shall be prima facie evidence of the quantity of water consumed.*
>
> *(2) Any question arising between the Government and a consumer with respect to the quantity of water consumed, may, on the application of either party, be determined by the magistrates' court."*

AquaGib felt that section 134(1) of the Act restricted the ability of even the Government to exercise any discretion as the register on the meter was prima facie evidence of the quantity consumed. Section 134(2) then enables the matter to be determined by the magistrates' court.

(6) AquaGib finally explained that the Water Rules dated from 1975 and that in the intervening 33 years the water industry had evolved as had the technology and materials it employed. Many of the British Standards it quoted were obsolete. Recognising that the Water Rules formed part of the Laws of Gibraltar and as such there was a requirement to keep to the law, the changes in technology since 1975 also needed to be recognised. So had the requirements of the consumer who, for example and in the main, had an expressed need to have access to his meter to check his consumption of potable water, something difficult to achieve if the meter were in a locked cabinet and given the configuration of the meters.

AquaGib in 1991 had inherited the vast majority of water meter/manifold/stopcock assemblies not all of which were in enclosures. Since 1991 it has introduced new technologies in all areas and in the case of metering has bought new meters, meter boxes and was in the process of introducing remote meter reading systems. As previously stated in their letter to the Ombudsman of 24 April it had an ongoing programme of meter box refurbishment. There were over 14,500 meters in the field all over Gibraltar and in practice it would take some time to cover them all with limited resources.

The way forward in this matter was having the Water Rules updated to reflect not only the new technologies and methods that were based on good up to date industry practice but also to take into consideration consumer requirements. This was a recommendation that they would put to the Government under whose responsibilities the Water Rules and the Public Health Act fell.

Comments and Considerations

Arising from the above the Ombudsman noted the following:

(1) The disputed water bill appertained to the month of January 2006. The bill was dated 31 January 2006 and addressed to the Academy.

(2) The Complainant had explained her views and position in full by way of a letter dated 1 June 2006 enclosing two colour photographs showing the fact that her water meter had not been enclosed by any kind of box. The Complainant's letter ended by requesting that the bill be put aside as the flood which resulted in this level of expenditure of water was not caused by the user's negligence.

(3) AquaGib acknowledged receipt of the Complainant's letter stating that the matter was being investigated and the Complainant would be contacted shortly.

(4) AquaGib never replied substantively in writing to the Complainant's letter.

(5) AquaGib's Customer Contact System for logging and tracking all correspondence ("Customer Contact System") should have ensured that apart from the letter acknowledging receipt, a substantive reply to the Complainant's letter should have issued within a reasonable time, taken by the Ombudsman to be, by no later than 2 weeks from AquaGib's acknowledgment letter dated 10 July 2006.

(6) Subsequent to AquaGib's letter dated 10 July 2006, no further written communication was received by the Complainant until AquaGib's letter dated 22 January 2008 asking her to settle arrears amounting to £461.42 by 5 February 2008.

(7) This was followed by another letter from AquaGib dated 14 February 2008.

(8) Subsequent to the Ombudsman writing to AquaGib on 1 April 2008 with the Complainant's complaint, AquaGib wrote back on 24 April 2008 explaining their position.

The Ombudsman particularly noted that AquaGib had not specifically replied to his specific request for comments in relation to the delay in replying to the Complainant's correspondence and in relation to the delay in following up the outstanding arrears of £461.42.

(9) Also of great interest to the Ombudsman was the fact that the legal obligations/duties imposed on AquaGib pursuant to the Public Health Act – Water Rules were different in relation to water meters as opposed to stopcocks. Water meters had to be enclosed in a locked box pursuant to rule 58 of the Water Rules whilst stop taps (stopcocks) had to be enclosed in a covered box or pit pursuant to rule 21.

Impact on Ombudsman's considerations of the fact that although stop cocks had to be enclosed in a covered box or pit, there was no requirement for the said box to be locked.

In view of the fact that AquaGib's legal responsibility only extended to providing a covered box and not a locked box for the stop cock, the Complainant's argument as put to AquaGib in her letter dated 1 June 2006 that the flooding had not been caused by their negligence but by strangers tampering with the exposed water meters which the Ombudsman takes as meaning "strangers tampering with

the exposed stop cocks", is not conclusive. The reason for this being that even if the stop cocks had at the time had the covered box, strangers could still have tampered with them since this would not have been lockable.

That said the Ombudsman also had to mention that had the stop cock been enclosed in a covered box albeit an unlockable one, that might possibly have acted as a sufficient deterrent and prevented strangers from tampering with the stop cock in question.

In this regard although the Ombudsman took account of the fact that AquaGib had in 1991 inherited the vast majority of water meter/manifold/stopcock assemblies amounting to over 14,500 not all of which were in enclosures, he also noted that in 2008 there were still exposed meter/manifold/ stopcock assemblies which he felt strongly given the length of time 17 years that had passed, should no longer be the case.

Conclusion

Relating to the substantive element of the Complaint ("Main Issue")

In relation to the substantive Complaint the Ombudsman having carefully considered the matter in detail decided not to sustain the Complaint, his conclusion in this regard flowing from his analysis of the fact that AquaGib's legal responsibility only extended to providing a covered box for the stop cock and not a lockable one.

Relating to the subsidiary element of the Complaint ("Subsidiary Issue")

From the above investigation the Ombudsman concluded that there had been maladministration since there had been no substantive written reply by AquaGib to the Complainant's letter dated 1 June 2006, or at best an inordinate delay in replying if one takes AquaGib's letter dated 14 February 2008 as the reply. It appeared to the Ombudsman that AquaGib's Consumer Contact System had in this case failed.

Recommendation(s)

The Ombudsman therefore made the following Recommendations:

Specific to the Complainant

(1) That given the particular circumstances of this case, AquaGib recommended to the Government of Gibraltar that they exercise their discretion and waive this particular outstanding water bill owed. (This recommendation stemmed from the Ombudsman's observation above that had AquaGib as was their legal responsibility, enclosed the stop cock in question in a covered box albeit an unlockable one, that might possibly have acted as a sufficient deterrent and prevented strangers from tampering with the stop cock).

General Recommendations

(2) That AquaGib make the necessary changes to their Customer Contact System to ensure that all correspondence received (in the Complainant's case being her substantive letter dated 1 June 2006) is not only acknowledged but is also replied to substantively within a reasonable period of time.

(3) That AquaGib carry out an audit to ascertain how many water meters do not have the required lockable meter boxes fitted.

(4) That consequent on that audit they put in place a meter box installation programme with the aim providing meter boxes to all water meters within a finite reasonable period of time. (This meter box installation programme is considered by the Ombudsman as distinct from AquaGib's ongoing meter box repair/maintenance programme which he is aware of).

The Ombudsman noted AquaGib's concerns that the Water Rules were now outdated and that they considered the way forward in this matter was having the Rules updated to reflect not only the new technologies and methods that were based on good up to date industry practice but also taking into consideration consumer requirements. This was a recommendation that AquaGib would put to the Government under whose responsibilities the Water Rules and the Public Health Act fell. This was good proactive administrative practice which this complaint and the resultant investigation had no doubt impacted on.

However, the Ombudsman was strongly of the view that since as AquaGib rightly recognized, the Water Rules formed part of the Laws of Gibraltar, if they intended recommending their updating to the Government, this should be done as soon as possible, and that regardless of the same his recommendations (3) and (4) above should be taken up expeditiously and continue to be acted upon until such time as the Water Rules were updated if indeed any changes were made to the current legal requirement for water meters to have a lockable meter boxes fitted.

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Buildings and Works Department

Case not sustained
Recommendations made

CS/779

Complaint against the Buildings and Works Department ("the Department") for non reply to the Complainant's letter containing a claim for water damaged items in her home arising from ingress of rain water from blocked gutters and pipes for which the Government of Gibraltar were responsible, and for the delay in determining her claim.

Complaint

The Complainant was a senior citizen of little financial means. On the 28 January 2007 there was ingress of water into the Complainant's home as a result of blocked gutters and pipes which caused damage to a large number of everyday household items in her home.

The Complainant wrote to the Department on the 1 February 2007. She referred to the incident and listed the damage she had suffered. The list gave details of the individual items that had been damaged and advised that all damaged goods were still very damp and bedrooms were beginning to smell. Also mould was setting and this would create more damage to other clothing and household goods.

In spite of numerous subsequent verbal contacts with the Department the Complainant had as at the beginning of September 2007 **over 7 months later** not yet received a substantive reply as to whether her claim was admitted or denied, would be met wholly or even in part. She was most distressed at this and decided to lodge a complaint with the Ombudsman.

Investigation

The Ombudsman wrote to the Department on 27 September 2007 informing them of the Complaint, namely that up to that date the Complainant had not received a reply from them. The Ombudsman concluded his letter by stating that given the long time the Complainant had been waiting for a reply to her letter and claim he would be grateful for the Department's prompt reply.

The Department replied by way of a letter dated 1 October 2007. In their letter the Department informed the Ombudsman that it appeared that the letter was attached to the claim form as an annex listing the damaged items. This was delivered by hand and in accepting the claim the Executive Officer ("E.O.") 'Claims' saw no need to acknowledge the letter separately.

The letter explained that the claim was received on 1st February 2007 and was subsequently investigated by the E.O. Claims and sent to the Attorney General's Chambers ('AG') for legal advice on the 13th April 2007. The delay in forwarding the claim to the AG Chambers was due shortage of staff (two members of staff were missing. The Department's Higher Executive Officer was out for 3 months and an Administrative Officer post had not been replaced since August 2006 and was not replaced until April 2007).

A reminder was forwarded to the AG on 26th April 2007. On that same day a reply was received with supplementary questions. The Department investigated the points raised by the AG and replied on 17th May 2007. On 8th June the Department asked the A.G. if they could proceed but no reply was

received. Other reminders followed this on 22nd June 2007, 13 July 2007 and 3rd August 2007 (faxed). On 3rd August 2007 the Department was advised by the AG that they had not fully replied to one of the questions and additional details were required. The Chief Executive issued instructions that the matter needed to be investigated and he informed the Ombudsman that he expected to reply to the A.G. within the next 5 days.

The Department explained that on receipt of the legal advice (barring any additional information) the Complainant would be advised within a few days if the claim was denied. However, if the claim was accepted the Department would write to the Chief Minister's Legal Office for confirmation that Government accepted liability. Once confirmation was received the Department would then write to the Financial Secretary for approval and if approval was granted the Department would then contact and inform the Claimant.

The Department also explained that members of their staff had been in telephone contact with the Complainant all along the process.

Since no further communication had been received by the 26 November 2007 over 7 weeks later, the Ombudsman wrote to the Department requesting an update in relation to the Complainant's claim.

On the 3 December 2007 the Department replied informing the Ombudsman that they were still waiting for legal advice from the AG.

On 30 January 2008 the Department wrote to the Ombudsman confirming that they had received advice from the AG on this claim and had forwarded the recommendations to No. 6 Legal Office for approval. Once approval was received and the budget office authorized payment they would be in a position to advice the Complainant of the outcome of the claim.

Since no further communication had been received by the 5 March 2008, the Ombudsman reminded the Department that this claim had been received by the Department on 1 February 2007 and that over a year later it was still pending final resolution. The Ombudsman therefore required the Department's update as soon as possible.

On the 11 March 2008 the Department replied to the Ombudsman informing him that they were still awaiting advice from the Office of the Chief Minister. A written reminder to this effect had been sent on the 4th March 2008 a copy of which was attached. The reminder referred to three cases, one of which was the Complainant's case and went on to refer to the Department's letters dated 21 January 2008 and 1 February 2008. The letter then stated that due to the pressure that the Department had in respect of each of these individual cases, the Department would be grateful if the Office of the Chief Minister could let the Department know whether it was now in a position to advise the Department if the claims for compensation could be met or not.

Given that no further information had been provided, on the 14 May 2008 the Ombudsman again wrote to the Department. He referred to the Department's letter dated 11 March 2008 and went on to state that he had not received any further information from the Department as to whether the Complainant's claim would be met or otherwise. The Ombudsman informed the Department that he had on 14 May 2008 spoken to the Office of the Chief Minister, who had indicated that they would be dealing with this matter in the next few days and would then be writing to the Department.

The Ombudsman went on to remind the Department that the Complainant first submitted her claim on 1 February 2007 and that up to the 14 May 2008 it remained unresolved. There could not be a reasonable explanation for such a delay. The Ombudsman then stated that undoubtedly, he would be

writing a very unfavourable report on the claims procedure the Department had and requested to be updated upon receipt by the Department of information from the Chief Minster's office.

The Department replied to the Ombudsman on 21 May 2008 stating that they had that same day faxed No.6 Convent Place a reminder of the information/approval the Department originally requested, a copy of which they attached for the Ombudsman's perusal. The fax stated that the Ombudsman was now pressing for the latest update regarding the Claimant's claim for compensation. The fax then went on to urgently require instructions on whether liability should be admitted and an ex-gratia payment afforded to the Complainant as requested in previous correspondence of the 1st February 2008 and 2nd April 2008.

The Ombudsman's Correspondence with the Office of the Chief Minister

On the 6 August 2008 the Ombudsman wrote to the Office of the Chief Minister. He referred to the fact that the Department was still awaiting a reply from them in order to proceed with this claim and pointed out that the Department first wrote to them on this matter as far back as the 1 February 2008.

On the 4 September 2008, the Ombudsman again wrote to the Office of the Chief Minister informing them that he had not yet received a reply to his letter dated 6 August 2008. The letter from the Ombudsman advised that the matter was so much overdue that he was considering submitting a report with the information available to date. The Ombudsman added, that given that on the information available he could but only conclude that an injustice had been caused to the person aggrieved in consequence of maladministration and that to date the injustice had not been remedied, after submission of his report, he would consider submitting a Special Report to Parliament pursuant to the provisions of section 21 of the Public Services Ombudsman Act. The Ombudsman concluded his letter by advising that he expected a reply without any further delay.

On the 9 September 2008 the Office of the Chief Minister replied to the Ombudsman enclosing a copy of their letter to the Ombudsman dated 13 August 2008, as it appeared that the Ombudsman might not have received it or it had been misplaced. (*Ombudsman's note: There is absolutely no doubt that the letter dated 13 August 2008 was not received in the Ombudsman's office before the 9 September 2008*). The letter went on to explain that claims made against Government departments were referred by the respective department to the Attorney General's Chambers for advice on the merits of the claim. Once the relevant department has received the advice from the Attorney General's Chambers, instructions were sought from the Office of the Chief Minister, by the department or at times by the Attorney General's Chambers, on how to proceed. How the Government chose to conduct itself in relation to litigation or in relation to claims for compensation being made against it was a matter of policy decision for Ministers. The matter was then referred to Ministers for instructions on how to proceed.

In his reply dated 12 September 2008 the Ombudsman required an update on what actions or steps had been taken for a final decision to be arrived at in relation to the Complainant's claim for compensation. Additionally the Ombudsman sought information as to the time frame involved from time of initial contact by Buildings and Works to their being given an answer in relation to the payment of a claim.

The Ombudsman concluded his letter by stating that he would be writing a report explaining in detail all the administrative procedures and steps involved in the determination of the Complainant's claim for compensation and therefore looked forward to a reply as soon as possible.

Not having received a reply, on the 3 October 2008 the Ombudsman wrote to the Office of the Chief

Minister requesting prompt attention to this matter.

On the 6 October 2008 the Ombudsman received a letter from the Office of the Chief Minister dated 2 October 2008 stating that "*The administrative procedure by which this claim was dealt with was done promptly*" and the matter had been referred to the Government for a policy decision on how to proceed. The letter went on to explain that it was not for officials to determine the Government's timetable for arriving at a decision. Additionally, the letter stated that "*Any claim received from the Buildings and Works department or indeed any Government department is dealt with in a timely fashion.*"

On the 10 October 2008 the Office of the Chief Minister wrote to the Ombudsman informing him that approval had been given to the Department to offer the Complainant an ex gratia payment of £1,500 in full and final settlement of her claim.

Subsequently the Department on the 7 November 2008 wrote to the Complainant informing her that her claim for compensation had been accepted and a payment of £1,500 would be paid to her in full and final settlement. Finally on the 17 November 2008, the Complainant signed a disclaimer form and was handed a cheque for £1,500 in full and final payment of her claim.

Conclusions and Comments

As stated in the introduction of this report, the Complainant was an elderly lady of little financial means; the loss had been of a considerable importance to her. Her claim was in respect of the loss through water damage of assorted household items. Since she first lodged the complaint she had frequently expressed her concerns to the Ombudsman. She often explained that, in addition to the ever present fact that her claim might possibly not be admitted, the grinding uncertainty of what at many times appeared to her to be a completely open ended wait, was causing her stress and anxiety. The cold facts of this case were that the Complainant had lodged her claim on the 1 February 2007 and it was not until the 10 October 2008, over 1 year and 8 months later that approval was given to the Department to offer the Complainant an ex gratia payment of £1,500 in full and final settlement.

After having carefully perused all the information available, the Ombudsman formed the opinion that this claim which had caused the Complainant considerable loss, stress and anxiety could have possibly been settled at an earlier stage. In the normal course of events, this case would have been sustained on the basis of maladministration causing delay. However, although the complaint was directed at the Department, there were other entities involved in the complaints handling process. The Attorney General's Chambers and the Office of the Chief Minister were also involved, the momentum of which was completely outside the control of the Department.

Given the above, the Ombudsman decided not to sustain the complaint on the basis that to do so would be unfair to the Department given the involvement of others. However, the Ombudsman had to highlight the over 2 months lapse before the claim was sent to the AG for advice. It was not acceptable for the Department to justify the delay as being caused due to shortage of staff.

It took over 9 months for the Department to receive the advice sought from the AG. When considering the correspondence trail between the Department and the AG, which started on 13 April 2007, their last communications were on 11 December 2007 to the AG providing requested information and on 24 January 2008 from the AG providing the Department with the awaited advice.

The communication between the Department and the AG had been frequent and showed no signs of delay.

Subsequently to the receipt of the advice from the AG, it took a total of a total of over 8 months for the Office of the Chief Minister to approve the claim on the basis of an ex-gratia payment. The claim was submitted to them by the Department on 1 February 2008. There was a request for further information on 26 March 2008 to which the Department replied on 2 April 2008. Subsequently there was a wait until October 2008 for the approval.

In this context, the Ombudsman wished to highlight the general assertions made by the Office of the Chief Minister as contained in their letter dated 2 October 2008 that "*The administrative procedure by which this claim was dealt with was done promptly*" and that "*Any claim received from the Buildings and Works department or indeed any Government department is dealt with in a timely fashion*." These assertions in no way appeared to apply to the case under consideration, since the investigation of the Complainant's complaint in no form or fashion bore this out.

Although the Ombudsman had not sustained this complaint, he wished to highlight his serious concerns at the unduly lengthy time, over 21 months it had taken for the Department to be in a position to finally inform the Complainant of whether her claim would be met.

Having carefully considered all aspects of this case and all matters brought to light by the investigation, the Ombudsman came to the strong conclusion that the administrative procedures currently in place for dealing with claims such as the Complainant's one, should be expedited given that at present they require the input of a multiplicity of departments, entities and persons including the Department ("the Considering Bodies") that were involved in investigating, considering, advising on, deciding, authorizing and paying the Complainant's claim.

The Ombudsman believed that the Considering Bodies, as providers of services to members of the public, could not possibly be satisfied with a level of service which resulted potentially in the passage of a lengthy and uncertain period of time, which in this instance took 21 months from the time the Complainant made her claim to decision/outcome. There was certainly room for improvement.

Recommendation(s)

The Ombudsman therefore made the following Recommendations:

(1) That the Department puts in place an administrative system to ensure that all claims received are processed by way of forwarding to the AG for their legal advice without delay so that the over 2 months delay experienced by the Complainant's claim in this regard, never reoccurs.

(2) That the Department consult with the other Considering Bodies to see if there are ways in which the current procedures in relation to claims, particularly low value claims like the Complainant's one, can be streamlined so as to achieve resolution within a shorter time frame.

Upon reading this report, the Chief Secretary informed the Ombudsman that he had been alerted to the fact that where a claim for compensation can be admitted or where the Government is prepared to make an ex-gratia payment, it would be desirable to have an expedited procedure in place. Consequently, the Chief Secretary wrote to the Principal Housing Officer setting out what this procedure should be.

Complaint against Building and Works for the delay in repairing the Complainant's flat.

Case Sustained

CS/809

Complaint

The Complainant had been waiting for seven years for repairs to be completed in her flat. She explained that in October 2000 she reported to Buildings and Works ("B&W") via the Reporting Office that there were cracks both inside and out of her flat which were allowing rain water to seep into the building.

In 2002 she returned to B&W as no repairs had been made and pieces of the flat's ceiling were becoming dislodged. She further explained that Estimators visited her flat and promised that the house would be painted in the interior and that exterior work was not possible at present as scaffolding had to be erected to undertake the work.

The promised interior work was not carried out and scaffolding had been erected twice and taken down without completing the exterior work. The Complainant also explained that she had spoken to a myriad of people both in B&W and the Reporting Office in regard to the outstanding work, but to no avail. This prompted the complainant to seek the assistance of the Ombudsman in July 2007.

Investigation

B&W informed the Ombudsman that although they had a record of the Complainant reporting dampness in her flat in 2000 the work had been cancelled and programmed to be done under an incentive scheme. The works order under the incentive scheme was again cancelled due to a computer update in 2004. B&W explained that

> "*in 2004 the then Senior Management decided to arbitrarily cancel all outstanding works that were more than two years old without informing the tenant*"

no further details were recorded as to why the work was cancelled a second time. The current Senior Manager further expanded that

> "*Whilst I support the decision to cancel work, that had been outstanding for a long time in order to filter those jobs, which are actually required to be done as an acceptable strategy, I am obviously very disappointed that at the time we did not record the decision adequately or inform the tenant. This will probably not be the only job that got cancelled and similar problems may arise in the future.*"

> "*Please note that in the* [current] *exercise we are carrying out to filter out jobs, that are no longer required, we are recording the action being taken and contacting tenants to confirm if work is still required*"

In regard to the scaffolding being erected and taken down without the Complainant's outstanding work being completed, B&W explained that this had been done by a private contractor in order to remedy falling guttering that had damaged a vehicle below; it had not been to undertake the Complainant's outstanding works.

Given that the work was still outstanding B&W arranged for the works-order to be re-instated and to include all known defects. The external work was completed late February 2008, almost eight years after the initial report.

Comments

In this instance, the request for the work had first been made in October 2000 and was later cancelled and programmed to be done under an incentive scheme. The work was obviously not done under the incentive scheme either and was later unilaterally cancelled by management in an exercise to reduce their backlog in 2004; disastrously without informing tenants whose jobs were still outstanding and being cancelled! It was only due to the Complainant's insistence and her seeking the assistance of the Ombudsman that the work was eventually done.

The Ombudsman had become ever increasingly concerned at the effectiveness of B&W administrative system to manage their backlog. He had expressed these concerns in previous reports and in the 2006 Annual Report and had therefore decided to look more closely at how they managed their backlog. This investigation was one of four that the Ombudsman had selected for the purposes of such an investigation. With the full co-operation of B&W the Ombudsman was able to obtain a greater understanding of the management of the administrative system. The exercise in 2004 to remove reports older than 2002 without recording details or contacting tenants had been a unique exercise, no additional administrative exercise had been conducted in order to identify the errors made during that period and there appeared to be a sole reliance that the tenant would report the outstanding work again. Surely, this could only be classed as a grossly sub-standard service.

Conclusions

There was little doubt that the delay of almost eight years in repairing the Complainant's flat had been mainly caused by the administrative exercise in 2004 to remove outstanding work that had been reported before 2002. The complainant had returned to both B&W and the Housing Department's Reporting Office on numerous occasions highlighting the delay, yet it was not until the Ombudsman became involved that the matter was resolved. The lack of record keeping in regard to the cancelled jobs and failure to inform tenants of their administrative exercise in 2004 was clearly maladministration, for these reasons the Ombudsman sustained the Complaint. However, the Ombudsman was pleased that the current administrative exercise of cancelling jobs that are no longer required was being done with the necessary administrative records being kept and tenants being contacted.

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Civil Status and Registration Office

Case sustained in relation to the main issue

Case not sustained in relation to the subsidiary issue

Recommendations made

CS/778

Complaint against the Civil Status and Registration Office ("the Department") since the Complainant had not up to the 23 November 2007 received a substantive reply to his application made on 2 May 2007 for exemption under section 12(2) of the Immigration Control Act.

Complaint

Complaint against the Civil Status and Registration Office ("the Department") since the Complainant had not up to the 23 November 2007 received a substantive reply to his application made on 2 May 2007 for exemption under section 12(2) of the Immigration Control Act.

The Complainant on 2 May 2007 applied for exemption under section 12(2) of the Immigration Control Act.

He received a letter from the Department dated 9 May 2007 acknowledging receipt of his application dated 22 January 2007 handed in on 2 May 2007.

The Department's letter explained that the Complainant had applied to His Excellency the Governor, for the discretionary grant of exemption from the immigration restrictions to which he was subject under the provisions of section 12(1) of the Immigration Control Ordinance.

The letter informed him that exemption could only be granted for the sole purpose of subsequent naturalisation as a British Overseas Territories citizen under section 18 of the British Nationality Act 1981. Therefore, if the Complainant's exemption application was successful and he were not to apply for naturalisation within 3 months from the date on which exemption was granted, or if his subsequent application for naturalisation were to be refused, the Governor would be able to exercise his powers under section 12(2) of the Immigration Control Ordinance and revoke the exemption.

The letter then explained that in practice, this meant that the Complainant's application for exemption would be assessed in the light of current naturalisation policy criteria and the statutory requirements for naturalisation under section 18 and Schedule 1 of the British Nationality Act 1981. It would not be possible for the Governor to grant exemption if he did not consider that the Complainant's application satisfied these criteria and requirements.

The letter then went on to explain that the Complainant was interviewed on 2 May 2007 where the naturalisation process was explained in detail and his knowledge of English was tested.

His application, together with an assessment as to the extent to which he satisfied the statutory requirements and policy criteria, would be submitted to Government for initial consideration. This assessment would include all those material factors and circumstances which were deemed to be relevant to his case. The Complainant's application, together with the Government's recommendations, would then be referred to the Governor for his decision.

The letter then confirmed that at the interview the Complainant was made aware that sufficient knowledge of the English language was a statutory requirement for naturalisation, which, under the provisions of the British Nationality Act 1981, the Governor was unable to waive and must accordingly be fulfilled. The Complainant would be formally advised, in writing, of the Governor's decision when this was taken.

The Department's letter ended by advising the Complainant that the process was a lengthy one and applications had to be very carefully assessed and considered. This, together with the number of applications that were currently at different stages of the process, meant that it was not possible at this moment to give an indication, with any degree of accuracy, as to the time that it would take before the Department was able to inform the Complainant of the outcome of his application. It was equally not practically possible to provide each and every applicant with written periodic updates on the progress of applications.

On the 17 July 2007 the Complainant not having heard anything further wrote to the Department referring them to their letter dated 9 May 2007 that he had heard nothing further from them and asking for an update in relation to his application.

On the 4 September 2007, the Complainant wrote a chaser letter. In it he referred to his letter dated 17 July 2007 and went on to state that up to then he had not received a reply and he would therefore be grateful for their reply.

On 27 September 2007 the Department replied to the Complainant. This over 2 months delay in replying to the Complainant as well as the fact that he had to write a chaser was **not good administrative practice**.

The Department in their letter referred to the Complainant's letters and apologised for not having replied sooner. The letter stated that their records showed that the Complainant handed in his application for exemption on 2 May 2007, that he was interviewed on that date and his knowledge of English was tested, that his application was acknowledged on 9 May 2007.

The Department then explained that there were a large number of applications which were outstanding and they were doing their utmost to process them as quickly as possible. However, at that moment they were unable to give a clear indication of when the processing of the Complainant's application was likely to be completed. However, the Complainant could rest assured that his application would be processed as soon as they were able to do so.

The Complainant had by the middle of November 2007 not yet received a substantive reply to his application made on 2 May 2007. He was unhappy and concerned about the time his application was taking and he therefore approached the Ombudsman with his Complaint.

Investigation

As a result of the Complaint the Ombudsman wrote to the Department on 23 November 2007 informing them of the Complaint.

The Ombudsman explained that the Complainant was aggrieved because he had not up to that date received a substantive reply to his application made on 2 May 2007 for exemption under section 12 (2) of the Immigration Control Act.

The Ombudsman referred to the Complainant's letters to the Department dated 17 July 2007 and 4 September 2007 and to the Department's reply dated 27 September 2007, and then went on to

explain that the Complainant felt that by then, over six months post application, he should have received a substantive reply with the outcome of his application.

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

The Department sent a substantive reply within 7 days by way of a letter dated 28 November 2007. The above time taken to reply to the Ombudsman's letter was well within his guideline parameters. (see page 22 for guidance).

In their letter dated 28 November 2007 the Department confirmed that the Complainant was interviewed and his knowledge of English was assessed on the same day that he submitted his application for exemption (ie on 2 May 2007). The application had been processed and would very shortly, hopefully within the next week or so, be referred together with a number of other applications, for consideration and final determination by the Governor.

The letter concluded by stating that whilst the Department could give a reasonably clear indication of the time that they would take to submit applications for consideration by Government and the Governor, they could not predict with exactitude when the Governor would be able to determine this and the other applications that were put before him.

The Ombudsman wrote to the Department on 4 January 2008. He referred to their letter dated 28 November 2007 and requested confirmation that the Complainant's application for exemption had already been referred for consideration and final determination by the Governor and the date on which this was done. The Ombudsman also requested an update from the Department when the application was returned duly processed by Government and the Governor.

It took two chaser letters respectively dated 18 January 2008 and 6 February 2008 to elicit a reply from the Department which was received on 7 February 2008, over 4 weeks from the date of the Ombudsman's letter. This was well over the time scale considered appropriate by the Ombudsman for a reply to the requested information and was not good administrative practice. The Ombudsman referred the Department to the Ombudsman's General Note for Departmental Guidance (see page 22 for guidance).

The Department in their letter dated 5 February 2008 confirmed that the Complainant's application had been submitted for consideration on 28 January 2008.

The Department replied to the Complainant substantively by way of letter dated 23 May 2008. In their letter they referred to the Complainant's application for exemption under Section 12(2) of the Immigration Control Act. They then explained that Section 12(2) of the Immigration Control Act enables the Governor, in his absolute discretion, where he was satisfied that any person who would, but for his inability to comply with the freedom from immigration restrictions requirement of paragraph 7(c) of Schedule 1 to the British Nationality Act 1981, be otherwise eligible to apply for Naturalisation as a British Overseas Territories Citizen under the provisions of Section 18 of the Act, to exempt such a person from the requirements of Section 12(1) of the Act, to hold a permit of residence.

The letter then explained that one of the statutory requirements that an applicant for naturalization under Section 18 of the BNA 1981 must satisfy, was that of knowledge of English. This meant that applicants for naturalisation must be able to make simple conversation about themselves, their family and way of life. They must also be able to communicate sufficiently to deal with everyday situations. This requirement could only be waived on grounds of old age (ie in respect of persons over 65), mental or physical infirmity.

The letter then informed the Complainant that his knowledge of English had been assessed but it was considered that he did not fulfil this requirement to the prescribed standard. Since the Complainant did not therefore satisfy the statutory requirements for naturalisation, His Excellency the Governor was therefore unable to order that the Complainant be exempted from Immigration Restrictions under Section 12(2) of the Immigration Control Act.

The Department's letter ended by informing the Complainant that it was open to him to re-apply for exemption, when he felt that he was able to satisfy this requirement.

On the 19 June 2008 the Ombudsman wrote to the Department referring to their letter dated 28 November 2007 in which the Department confirmed that the Complainant was interviewed and his knowledge of English was assessed on the 2 May 2007 and went on to state that the application had been processed and would very shortly, hopefully within the next week or so, be referred together with a number of other applications, for consideration and final determination by the Governor. The Ombudsman then referred to the Department's letter dated 5 February 2008 in which the Department further informed him that the Complainant's application had been submitted for consideration on 28 January 2008. The impression the Ombudsman got from the above was that the Complainant passed his knowledge of English test since otherwise why would his case proceed for consideration and final determination by the Governor, since as far as the Ombudsman was aware the knowledge of English test was a statutory requirement in relation to which there was no discretion. The Ombudsman therefore asked the Department to confirm whether the Complainant on the 2 May 2007 passed or did not pass his knowledge of English test.

The Ombudsman in his letter then commented that the above seemed at odds with the Department's letter to the Complainant dated 23 May 2008 in which the Department informed the Complainant that his knowledge of English had been assessed but it was considered that he did not fulfil this requirement to the prescribed standard. The Ombudsman then asked the Department that if the Complainant failed to pass his knowledge of English test on 2 May 2007 why was this not communicated to him on 2 May 2007 or shortly thereafter.

The Ombudsman concluded his letter by stating that perhaps there was some information or simple explanation that was missing that would immediately clarify the above mentioned matters and asked for the Department's replies and comments in this regard as soon as possible.

The Department replied to the Ombudsman's letter on 19 June 2008. The Department explained that all exemption applications for subsequent naturalisation which were accepted, had to be referred to Government for consideration and to the Governor for his final decision. The Department had no authority to formally refuse applications administratively.

The Department went on to explain that in cases where the statutory residence requirements were satisfied, the application form was in order and the necessary documentary evidence was submitted, acknowledgment letters were issued. When an applicant's turn arose, applicants were called in to attend an interview in order to confirm particulars and circumstances, and to assess their knowledge of English.

A verbatim record of the language assessment was taken and was submitted for consideration to Government together with a factual report on each case. Given the considerable number of applications which were continuously received, the normal procedure was to submit these applications in batches when they were ready.

Comments and Considerations

In relation to the substantive Complaint the Ombudsman having carefully considered the matter decided not to sustain the Complaint. Although the Ombudsman was concerned at the fact that the Complainant's application had at the end of the day taken just over a year to process he took account of the fact that certain aspects of the application procedure were outside the control of the Department. He nevertheless urged the Department to attempt to process applications from submission to final determination of application and advising Applicants of the decision, within a 6 months maximum time frame.

In relation to the subsidiary matter of lack of a timely reply to the Complainant's request for an update by way of letter dated 17 July 2007, the Ombudsman sustained this element of the Complaint.

Conclusion

Case not sustained in relation to the Main Issue but sustained in relation to the Subsidiary Issue.

Recommendation(s)

In the circumstances the Ombudsman felt it was extremely important to repeat the Recommendations made in his Report on Case No. 772 dated 23 May 2008, as follows:

1. That the Department within the next 3 months carry out an internal audit to ascertain average time taken in processing the different nationality related applications it deals with. (This recommendation is made as a result of the Ombudsman's continuing concerns that it appears that applications are taking longer to be processed than is administratively reasonable).

2. That consequent on that audit, the Department implement appropriate time brackets for the processing of applications generally and particularly in relation to the various procedural administrative steps undertaken by the Department leading to the application's final determination.

The Ombudsman also made the additional Recommendation that the Department takes the required internal administrative steps to ensure that similar instances to the "**not good administrative practice**" instances highlighted above do not reoccur.

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Complaint against the Civil Status & Registration Office for not authorising the issue of a visitor's visa to the Complainant's son.

Case not sustained

CS/817

Complaint

The Complainant, a Moroccan national who had lived and worked in Gibraltar for thirty three years, was aggrieved because the Civil Status & Registration Office ("CSRO") had refused the issuing of a visitor's visa to his son. On 14th July 2008, the Complainant applied for a visa to the CSRO so that his seventeen year old son could come and stay with him in Gibraltar for the month of August.

On 18th July 2008 he received verbal communication from an Immigration Officer that the request for the visa had been denied. Upon enquiring for a reason for the refusal he was informed that he should contact the CSRO for information. There he was informed that the request had been refused because his son would soon be attaining the age of eighteen and had never visited Gibraltar before.

On 21st July 2008 the Complainant appealed the decision by sending a letter to the CSRO. He explained that his family had never felt it necessary to travel to Gibraltar, as his wife and three children lived in Morocco and he had always gone back for the holidays to be with them. It was only on this occasion that the Complainant thought that it would be a pleasant experience for his oldest son, who would turn eighteen in the next few months, to travel to Gibraltar and spend some time with him before he continued his studies in Morocco. The Complainant pointed out to the CSRO that he had lived in Gibraltar for thirty-three years and had contributed to local taxes and social insurance and therefore felt that he was entitled to make this request.

Investigation

The Complainant contacted the Ombudsman on 6th August 2008 because he had not received a reply from the CSRO to his letter in which he had appealed against their decision of not authorising the issue of a visitor's visa for his son. The Ombudsman proceeded to write a letter to the CSRO and on the 11th August 2008 received a reply. A letter dated 29th July 2008 which had been sent to the Complainant was enclosed for his information. The letter stated as follows:

"Under current Government policy, I am unable to authorise the issue of visitors visas to the children of resident non-EU nationals in cases where the child has never visited Gibraltar before and is nearing the age of 18. Since your son will be 18 in November this year and has never visited Gibraltar, your request for a visa could not be considered favourably."

Pursuant to Section 18(5) of the Public Services Ombudsman Act 1998, the Ombudsman is not authorised to question the merits of Government policy.

The said section specifically states:

> *18 (5) It is hereby declared that nothing in this Act authorises or requires the Ombudsman to question the merits of Government policy or a decision taken without maladministration by any Authority in the exercise of a discretion vested in that Authority.*

For completeness of this report, the Ombudsman sought more information about the origins of this policy. He therefore wrote to the Minister with Responsibility for Minorities (the Moroccan community is a minority ethnic group in Gibraltar) seeking information as to when the policy was implemented. The Minister replied stating that, "*if indeed this were to be a Government Policy, it is not one that I am aware of or indeed participated in its formulation and decision.*" The Minister directed the Ombudsman to the Chief Secretary to seek an explanation. The Ombudsman proceeded to write to the Chief Secretary and a reply was promptly received. He confirmed that the CSRO had correctly reflected the Government's policy in their letter to the Complainant dated 29th July 2008. The Chief Secretary informed the Ombudsman that this had been policy for many years, dating back to 1996, before which he claimed even stricter criteria had been applied.

Conclusion

With this information available, the Ombudsman concluded that there had been no maladministration by the CSRO as they had acted pursuant to current Government policy.

H M Customs

Case sustained in relation to complaint 1
Case not sustained in relation to complaint 2

Recommendations made

CS/812

Complaints against H M Customs (hereinafter referred to as "Customs") as follows:

1. In relation to the time taken by Customs to reply substantively to her letter dated 17 March 2008 ("Complaint 1").

2. Consequent on her having had to pay Customs £10 banking charges over and above £5.43 import duty owed, as a result of Customs' working practice in relation to the requirement of a signed "amount blank" cheque (hereinafter referred to as a "blank cheque") for payment of import duty. ("Complaint 2").

Complaint

The Complainant's son ("son") received a notification to collect a parcel from the offices of a Gibraltar courier firm ("courier firm") as result of which the Complainant gave her son a blank cheque for him to complete in case import duty was levied. An employee of the courier firm informed her son that duty was payable on this parcel but that this could only be quantified by Customs at a later date. In any case, the parcel could only be released upon the issue of a signed blank cheque that would be prospectively completed by a third party upon Customs' eventual assessment of duties payable.

The son left the blank cheque with the courier firm and took the parcel. When he later informed the Complainant, she immediately contacted her bank for advice and they confirmed the personal risk that this represented. This unsettled the Complainant and she issued instructions for a 'stop order' and informed the courier firm.

The Complainant also phoned Customs to verify the courier firm's assertion that there was no other way to accomplish the transaction. The Customs Official verified this and the Complainant complained and informed the Customs Official that, following her bank's recommendation, she had placed a 'stop order' on the blank cheque although she was prepared to pay a specific amount of duty immediately if required.

It then transpired that a third party, unknown to the Complainant as being a courier firm operative or Customs Official unilaterally completed the cheque and Customs processed it for payment.

When this cheque for £5.43 import duty was presented by the Gibraltar Government ("Government") to their Bank it was returned to the Government as an unpaid cheque as a result of the Complainant having placed the stop order on it.

On the 5 February 2008 Customs wrote to the Complainant in relation to the dishonoured cheque. Customs informed the Complainant that she had presented a cheque for payment of import duty for the amount of £5.43 and this was "referred to drawer" by the bank for lack of funds. A £10 charge had been levied against the dishonoured cheque making the total payable £15.43. Customs ended

their letter by giving the Complainant notice that unless payment was effected by 22 February 2008 the matter would be forwarded to the Attorney General's Chambers to institute legal proceedings.

The Complainant on the 17 March 2008 wrote to Customs. She referred to their letters dated 5/2/08 and 22/2/08 regarding charges levied on a dishonoured cheque and went on to express her dissatisfaction with the impracticable payment method forced upon her and the public at large.

She then outlined the sequence of events leading to her issuing 'stop order' instructions to her bank.

The Complainant in her letter then commented that she considered it abusive to ask the public to risk the security of personal funds, as would be the case by issuing a blank cheque, and expressed her surprise that Customs would endorse such a ludicrous practice. She then went on to state that she believed this to be tantamount to offering ones wallet to a stranger so that he could help himself to an undetermined amount of cash!

The Complainant then stated that it was unethical and grossly unfair to demand that she pay charges of £10 when this predicament was the direct consequence of a flawed and inadmissible working practice.

In her letter she then mentioned that she had taken this matter up with the Office of the Ombudsman who had advised that she pay the full amount (including £10 charges) pending their prospective investigation of her complaint.

Finally the Complainant enclosed a cheque in full payment of import duty and bank charges in the sum of £15.43.

Customs replied to the Complainant on 20 March 2008 acknowledging receipt of her letter the contents of which had been noted.

The Complainant waited for a substantive reply from Customs but when 6 weeks later this had not yet been received, she came to see the Ombudsman with Complaint 1.

The Ombudsman wrote to Customs on 7 May 2008 informing them of Complaint 1 and requested information as to when the Complainant could expect a reply.

Customs replied to the Ombudsman on 28 May 2008 confirming that they had replied to the Complainant.

Customs' reply to the Complainant was by way of letter dated 27 May 2008. In their letter Customs explained that their Entry Processing Unit dealt with approximately 80,000 declarations a year (about 320 a day). These declarations ranged from a simple one-item declaration to a complex multi-item one. The automated system for Customs data (ASYCUDA - the system in use for the collection of duty) required that a declaration be registered, inputted, checked and assessed before the cashier could collect the relevant import duty.

That as a result of the sheer volume of imports this process was impossible to manage unless a practical system was used whereby importers got quick release and delivery of their goods whilst Customs held security for import duty due on the goods - Fast Line Clearance.

Customs then explained that importers and Customs Clearance Agents when acting for importers use Fast Line Clearance. This was conditional on the importer handing in a cheque, with the declaration,

made out to "Government General Account" i.e. not an entirely blank cheque. An Officer of Customs would subsequently complete the cheque by filling in the amount payable once the process had been finished. A Customs Clearance Agent held a prepayment account (deposit account) with Customs and all duties payable by their clients were offset against this account. There was nothing, however, stopping an importer from clearing uncustomed goods without using the fast line clearing system or a Customs Clearing Agent. The importer would, however, for goods in stores, have to wait at least 24 hours after handing in the declaration before being able to pay and have the goods released.

This particular method of payment for fast line clearance had been in use for many years. Though not perfect, it had been an accepted practice and considered practical for both importers and Customs; The importer would have his goods released immediately or within hours because Customs had security for the import duty due, and the importer did not need to return every time to the Entry Processing Unit to change a closed cheque should the amount collectable be different (because of a mistake in calculation, declaration, exchange rate used, etc.) from that completed by him. On the other hand Customs would fill in the correct amount once this has been established without having to chase importers every time there were discrepancies.

Customs went on to explain that a Customs Clearance Agent would, under normal circumstances, clear the goods and pay the import duty on behalf of their clients. They would then invoice their clients for their services (that might include transport charges, delivery, customs clearance, import duty paid, etc.)

The courier firm cleared goods frequently for their users. Whilst Customs were not totally familiar with their policies, the fact that the Complainant's son was asked to leave a blank cheque (which Customs assumed was made out to "Government General Account") lead them to believe that the company was not prepared to charge their prepayment account with the department and then invoice the Complainant for their services including the import duty payable. Because of this, it appeared that they applied the general practice of requesting a "blank cheque" for the quick release of imported goods.

Customs reiterated that the method of payment by "blank cheque" was not imposed on importers. It was nevertheless widely used by those who wished to avail themselves of the fast line clearance system. Unfortunately, because of the volume of imports and priorities of work, non-fast line clearance users would have to wait for the declaration to be processed through the system before being able to pay duty and have their goods released.

Customs then referred to the matter of the £10 charge. This was a charge that the bank had imposed on Customs, on this occasion it would appear, because of the "stop order" the Complainant placed. This charge together with the import duty due had to be recovered from the importer whose cheque the bank had not honoured.

Customs concluded their letter by asking the Complainant not to hesitate to contact them should she require further explanations or indeed should she wish to meet. The Complainant being unhappy at what she considered to be a flawed and inadmissible working practice asked the Ombudsman to look into her Complaint.

Investigation

Ombudsman's Correspondence with the Department in relation to Complaint 2.

The Ombudsman wrote to Customs on 19 June 2008 informing them of Complaint 2 and requested their comments.

This was followed by a meeting with Customs at Customs House on 27 June 2008 at which the case was discussed in detail.

The Ombudsman then wrote to Customs on 3 July 2008 and requested the following additional information:

Specifically in relation to this Complaint:

1. How did the fact that the cheque had been stopped come to the knowledge of H M Customs ("Customs")?

2. What action was taken by Customs to collect the then outstanding import duty and bank charges?

Generally:

3. What happened to any outstanding import duties arising from cheques being stopped, there being no funds available when cheques were presented, or any other similar situation, which Customs was at the end of the day unable to collect?

4. If there was a procedure to write off amounts of uncollected import duty, could this be explained?

5. On the assumption that there was a procedure to write off amounts of uncollected import duty, confirmation of the value of uncollected import duty written off as well as the value of collected import duty for the years 2005, 2006 and 2007 was requested?

The Ombudsman concluded his letter by stating that as explained at their meeting he already had a copy of the letter from Customs to the Complainant dated 27 May 2008 and there was therefore no need to repeat the explanations provided in this letter when Customs wrote to him with their replies to questions 1 - 5 above.

Customs sent a substantive reply within 3 weeks by way of a letter dated 22 July 2008 and provided the additional information in the order requested, as follows:

1. Although Customs did not hold a copy of the actual Treasury notification, the Accounts Officer in their Administration section would have received such a notification, on or about 21 January 2008, stating that the cheque had been returned unpaid with the answer "payment stopped".

   However, it appeared that around the time of import the Complainant did complain and informed a Customs official of her actions in relation to the cheque. This could have been to an Officer at the Entry Processing Unit.

2. Customs enclosed a copy of their dishonoured cheques record and pointed out that the Ombudsman would note from this record that the department did try to contact the Complainant over the telephone on several occasions and that she was written to on 5th February 2008 and then, it appeared, on 22nd February 2008.

   The Complainant subsequently paid the amounts due. It also appeared that she did so on the advise of the Office of the Ombudsman.

By way of background in relation to their answers 3, 4 and 5 below, Customs explained that the bank would return a dishonoured cheque with an advice to the Government's Treasury. The Treasury would then forward the cheque with a notification to the department concerned for action. The department would then take the necessary steps to make good the cheque either by representing it, obtaining a new cheque or collecting cash. The Treasury would subsequently issue a receipt once the money collected by the department was reimbursed.

3&4. If an amount was irrecoverable, the Collector wrote to the Financial Secretary with a view to obtain authorisation for the debt to be written off. If approved, these were written off to "losses of public funds" within the Customs expenditure vote.

5. The value of collected duty and value of amounts written off were as follows:

Financial year:	2004/2005	2005/2006	2006/2007
Import duty collected	£30,337,953	£30,967,590	£35,275,320
Written off	£141	Nil	£215
As a % of Import duty	0.0005	0	0.0006

Comments and Considerations

Relating to Complaint 1

In relation to Complaint 1 the lack of a timely reply to the Complainant's letter dated 17 March 2008, the Ombudsman sustained this Complaint.

The Ombudsman came to this conclusion since although Customs had acknowledged receipt of the Complainant's letter on 20 March 2008, the Complainant had subsequently not received a substantive reply until over 2 months later after the Ombudsman had written to Customs with Complaint 1.

Relating to Complaint 2

In relation to Complaint 2 the Ombudsman having carefully considered the matter in detail decided not to sustain it.

The following facts, matters and considerations were instrumental in the Ombudsman arriving at his decision in this regard:

(1) Customs' clear, thorough and informative letters to the Complainant dated 27 May 2008 and to the Ombudsman dated 22 July 2008 addressing the issues raised in Complaint 2.

(2) Given the volume of declarations amounting to 80,000 a year, approximately 320 a day processed by the Entry Processing Unit, an optional Fast Line Clearance system whereby importers get quick release and delivery of their goods whilst Customs hold security for import duty on the goods - Fast Line Clearance was absolutely necessary.

(3) Customs not only allowed Fast Line Clearance to be used by Customs Clearance Agents but also by members of the general public under the "blank amount cheque made payable to Government General Account" system.

(4) It was clear to the Ombudsman that the system not only worked but worked well, as could be seen from:

a. The amounts of import duty collected by Customs in the financial years 2004/2005, 2005/2006 and 2006/2007 as contrasted with the infinitesimal amounts written off.
b. The fact that this was the first complaint of this nature that had ever come to the Office of the Ombudsman.

(5) That the import duty collection system had failed the Complainant only to the extent that she had not been advised by the courier firm of the fact that the Fast Line Clearance system requiring the depositing of a "blank amount cheque made payable to Government General Account" was only optional and that she could instead have opted for Non-Fast Line Clearance with its attendant delay, under which users have to wait for the declaration to be processed through the system before being able to pay duty and have their goods released.

(6) The Ombudsman was satisfied that a fully functioning procedure operated covering:

a. How stopped cheques or other defaults in payment came to the attention of Customs.

b. The action taken by Customs to collect any outstanding import duty and bank charges.

c. The writing off of irrecoverable uncollected import duty.

Conclusion

Case sustained in relation to Complaint 1 but not sustained in relation to Complaint 2.

Recommendations

Relating to Complaint 1

(1) That Customs puts in place an effective administrative system to ensure that all correspondence received (in the Complainant's case being her substantive letter dated 17 March 2008) is not only acknowledged but is also replied to substantively within a reasonable period of time.

Relating to Complaint 2

(2) That all customs officers charged with the collection of duty in these type of cases are instructed to advise users of both types of clearance methods involved and of their pros and cons.

(3) That Customs officially advises all Customs Clearance Agents it deals with of the fact that the above mentioned two modes of payment of duty namely Fast Line Clearance as well as Non-Fast Line Clearance are available to users and that the Customs Clearance Agents advise users of this.

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

Update

The Collector of Customs informed the Ombudsman that he had noted the Ombudsman's General Note for Departmental Guidance (see page 22 for guidance), and accepted that although they had acknowledged receipt of the complainant's letter, they did not issue a substantive reply within a reasonable period. In this respect, he would immediately put in place the contents of the recommendations.

Further update

Further to the Ombudsman's Recommendations (1), (2) and (3) above, the Collector of Customs on 25 September 2008 issued the following instructions to staff to implement the recommendations:

Correspondence

All correspondence received must be acknowledged and replied to substantively within a reasonable period of time.

All correspondence received will be acknowledged by the recipient within four days of receipt. The Heads of Sections must be made immediately aware on receipt of a complaint. The Head of Section or Collector of Customs will ensure that a substantive reply is made within a reasonable period (no later than two or three weeks after receipt of complaint).

Fast Line/Non Fast Line Clearances

Customs Officers are instructed to advise users of both types of clearing methods and of their pros and cons. Further, Customs must inform clearing agents that they are to make their users aware of the two types of clearance and payment methods.

Customs Officers charged with the collection of duty in these types of cases are instructed to advise users of both types of clearing methods involved and of their pros and cons. Higher Executive Officers are to officially advise all Customs Clearing Agents they deal with of the fact that the above mentioned two modes of payment of duty are available to users and that the customs clearance agents advise users of this.

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Department of Education & Training

Case not sustained

CS/818

Complaint against the Department of Education & Training for not having allowed the Complainant's fifteen year old daughter to continue her schooling at Westside Secondary School and not having replied to his letters.

Complaint

The Complainant was aggrieved because his fifteen year old daughter ("the Student") had not been allowed to continue her schooling at Westside Secondary School ("Westside"). He claimed he had not been informed of this during the summer period, prior to her return to Westside for the start of the new school year.

He was further aggrieved because stemming from this situation, he had subsequently written two letters, one to the Headmaster and one to the Deputy Headmistress of Westside but had not received replies.

Background

The Complainant explained that in the last term of the previous school year, he was informed by his daughter's year coordinator at Westside that she had been absent from school for weeks at a time. The Complainant claimed he was astounded that he had not been immediately informed of this situation by the Student's form teacher, as a period of approximately six weeks had transpired before he was notified.

The Complainant attended a meeting with the school's year coordinator in which it was agreed that the Student would be given a chance to prove herself and would therefore be 'put on report' for the remainder of the term. Shortly after, the Complainant explained he was again contacted by the year coordinator and informed that the Student was failing to hand in the report card. Both the year coordinator and the Complainant spoke with the Student to clarify what was expected of her. The Complainant recalled that there was mention around that time, that if the Student attended all her classes every day she would start the new school year with a clear sheet.

Soon after this meeting, the Complainant alleged he was informed by the Student that she was going to be suspended for not complying with the year coordinator's instruction of handing in the daily report card. Following the suspension, the Student returned to Westside.

During one of the last few days of the end of the school year, the Student informed the Complainant that for the last few weeks of term she had been removed from classes by the year coordinator and was made to follow her around the school. The Student also told the Complainant that she had been informed that she would not be allowed to attend Westside the following year. In order to clarify the situation, the Complainant contacted Westside. He claimed that he spoke to the Deputy Head who advised him that he would be the first one to be informed if his daughter was not going to be allowed to continue her education in Westside. Having this in mind, the Complainant explained that the Student attended Westside on 2nd September 2008, the start of the new school year. She was assigned a locker and given some books, but when the year coordinator saw the Student she approached her and asked her to leave the school as she was no longer a student in Westside and had

been informed of this at the end of the previous school year. The Student informed the Complainant who then proceeded to contact Westside. Unable to get through to the school over the phone, he contacted the Department of Education & Training who advised him that someone would call him back regarding the situation. Later that day, Westside's Deputy Head telephoned the Complainant and told him that due to various issues, the Student had been asked to leave Westside. They recommended that she should apply to the College of Further Education ("the College") to further her studies as she had fallen too far behind in her schoolwork. A few days after this conversation, the Complainant received a letter from the Deputy Head of Westside dated 2nd September 2008, setting down in writing the contents of the conversation.

On 4th September 2008 the Complainant wrote a letter to the Headmaster of Westside to inform him of his displeasure at the way his daughter had been asked to leave the school and explained the situation. He also stated that the Student had applied to the College and was waiting to see if she would be accepted. The Complainant mentioned that he personally felt she should remain in Westside where she would hopefully be better supervised. He mentioned that as a parent he felt let down by Westside in having failed to inform him that his daughter was no longer accepted in School. All he had received was a verbal explanation from the Deputy Head and he was of the opinion that this had only occurred because he had complained to the Department.

On 11th September 2008 the Complainant wrote to the Deputy Head of Westside in reference to her recommendation for his daughter to attend the College. He mentioned that he believed they had a verbal agreement whereby the Student would start the new school year with a clean slate if she attended school every day for the last weeks of the previous school term. He claimed that the Student could not be held responsible for not attending classes throughout that period as she was removed from her classes by the year coordinator. He was of the opinion that this gave her even less chance to catch up on her work, as did the withdrawal of all her text books at the end of the school year.

The Complainant informed the Deputy Head that his daughter had applied to the College but had been informed that she should have applied in April and was therefore placed on a waiting list. He felt that youths should be given as much opportunity to succeed as possible and believed that due to statistics, it was to the advantage of the schools to 'clear out any possible dead wood' so a higher success rate on the part of Westside could be presented to the Department. The Complainant enquired as to how many children are actually taken out of school at fifteen, and denied the opportunity of obtaining academic qualifications.

Investigation

On 3rd October 2008, the Complainant contacted the Ombudsman who proceeded to write to the Department. He explained that the Complainant was aggrieved at the manner in which the education authorities had managed his daughter's case. The Complainant alleged he was not informed at the end of the last school term, or during the ensuing summer, that the Student would not be allowed to continue her schooling at Westside. The Student had been verbally and informally told of this in the school corridor, on the first day of the new term and after having been assigned a locker and provided with text books.

The Ombudsman was also concerned that there had been no reply from the Department to the Complainant's two letters, one to the Headmaster and one to the Deputy Head of Westside.

Regarding the Student's application to the College, the Ombudsman had been informed by the Complainant that after applying and being placed on a waiting list, he had received a phone call from

the College to inform him that his daughter would be enrolled for the current academic year and could start the classes immediately.

The Ombudsman requested the Department's comments on the matter.

The Director of Education & Training ("the Director") wrote to the Ombudsman to explain the summary of events in relation to this matter and pointed out that the Department had a complete dossier of reports, letters and other documents on the Student.

He explained that at a meeting held at Westside on 22nd May 2008 between the Complainant and the Deputy Head of the school, and given all existing issues, some extremely serious, including non-attendance at GCSE courses which made continuation at Westside impossible, the Complainant was told that it was advisable for the Student to join the Vocational Training Scheme and he accepted this. Subsequently, the Director explained that the Complainant suffered a change of heart which resulted in a further meeting held on 13th June 2008 this time between the Complainant, the Student and Westside's year coordinator. This was held after the Student had been suspended for having refused to conform to instructions. At the meeting, the Student was given another chance to prove herself during the last three weeks of term but the Complainant was told that if the Student failed to comply she would be advised not to return to school. The Director explained that no improvement was noticed during that period and that the Complainant was regularly informed of this by the year coordinator. As a consequence, at the end of the term, the Student was given a 'school-leaving form' ("the Form") which she duly completed. The Director mentioned that Westside understandably assumed that the Complainant would have drawn the only possible conclusion which was that the Student could not return to school in September 2008, the start of the new school year.

The Director felt it was essential to mention the amount of teachers' effort and time that had gone into dealing with problems caused by a student who had failed to comply with school regulations and who should have been focused on her exams. He also pointed out that the Student was beyond compulsory school age which in Gibraltar is fifteen years old.

The Director continued by explaining that when the Student turned up in Westside despite having handed in the Form at the end of the previous school year, she was informed that she was not registered in the school and that the most suitable course in her circumstances would be the one offered by the College. Regarding the fact that she was given a locker and books, the Director mentioned that this was due to the Student's form tutor having assumed that she had returned to Westside. The Director pointed out that students are changed from class to class in response to emerging needs, and final arrangements are confirmed as students are accommodated to these needs. Given a locker and books by a teacher on the first day of school did not constitute a commitment to any course of action by the school.

The Director informed the Ombudsman that when it transpired the appropriate course at the College was fully subscribed, both Westside and he had interceded on behalf of the Student and she was subsequently accepted.

In reference to the Complainant's letters not being replied to, the Director explained this was because Westside had assumed the issue had been dealt with in their letter dated 2nd September 2008 following the telephone conversation of the same day. He added that Westside had continued to deal with the situation in making representations to the College on the Student's behalf. Regarding the second letter dated 11th September 2008, the Director explained that after this was received, it became apparent to Westside that a place had been made available for the Student at the College. The Director mentioned that he had received a letter from the Complainant and as a result had taken a personal interest in the matter; together with Westside's Headmaster he had made representations to

the College. Once the College was able to rearrange its classes and find extra places for students on its waiting list, the Student was accommodated. The Director felt that the fact the Student was able to start classes immediately should be seen as the result of the priority given to this case. He felt that for the Complainant to feel aggrieved because of the manner in which the education authorities had managed his daughter's case was very disheartening but explained that fortunately both Westside and the Department always strived to give students maximum opportunities and would not be derailed in their efforts despite negative feedback from the Complainant.

Stemming from the Director's reply, the Ombudsman queried two items regarding procedure. One referred to whether there was a process in place whereby parents/tutors of students were promptly informed of children's absenteeism from school. If this was the case he wanted to know whether this procedure had been followed in this case. The other query was in respect of the Form which the Student had been asked to complete and hand in at the end of the summer term. The Ombudsman requested a copy of the Form, information on the process with regards its issue and who the parties required to sign the said Form were.

The Director replied to the Ombudsman and confirmed that there was a system in place to promptly inform parents that their children were suspected of playing truant. He also confirmed that the Complainant's parents were informed of her absences during the course of the year and mentioned that Westside did not wait until the last term of the school year to inform them of the situation, as had been alleged by the Complainant. The Director was satisfied that the correct procedures had been followed in this case and the Student's parents had been kept informed at all times.

In relation to the 'school leaving form', the Director mentioned in his letter that he had recommended that this be modified to include a field for parental signature to ensure that there were no doubts as to the involvement of the parents in the process.

Conclusions

After receiving the explanation from the Director on how events had transpired in this case, the Ombudsman was satisfied that procedure had been followed by Westside with regards having promptly informed the Complainant of his daughter's absenteeism.

Regarding the Student not being allowed to continue her schooling in Westside, the Complainant had agreed to this at the meeting he attended with the school's Deputy Head. It was after the Student was suspended that the Complainant requested a second meeting, this time with the school's year coordinator. The Student also attended this meeting in which she was told that she would be given another chance to prove herself but should she fail to comply with instructions she would be told not to return in September 2008.

The Complainant was kept informed by the year coordinator that there was no improvement on the Student's part throughout the period. As a consequence, the Student was given the Form at the end of the term which she duly completed and handed in. The form only required the student's signature; the Student was beyond compulsory school age, so in essence parents/tutors were not a party to signing the document which would discharge their child from school. The Ombudsman took note of the Director's initiative to amend the form so that parents would also be required to sign the said Form.

Non-Reply to Letters

On 2nd September 2008, the Complainant and the Deputy Head of Westside had a telephone conversation with regards the Student having been asked to leave the school. On the same day, following from this conversation, the Deputy Head of Westside wrote to the Complainant, addressing the various issues. However, on 4th September 2008 (possibly before receiving the letter from the Deputy Head) the Complainant wrote to Westside's Headmaster raising various matters related to his daughter having been requested to leave the school. When asked by the Ombudsman, the Department stated that they were of the opinion that their letter of 2nd September 2008 already addressed the issues in the Complainant's letter of 4th September 2008.

The Ombudsman was of the opinion that the contents of Westside's letter did not address all the issues posed by the Complainant. In effect, this letter should have been sent to the Complainant at the end of the previous school year to officially notify him that his daughter would be unable to continue her schooling at Westside.

Regarding the Complainant's letter dated 11th September 2008 to Westside's Deputy Head, a copy of which was sent by the Complainant to the Director, no reply was received. In its place, both the Headmaster of Westside and the Director made direct representations to the College to assist in finding a place there for the Student. The Ombudsman was of the opinion that there was lack of communication on the part of Westside and the Department with the Complainant in this matter. Had they written to the Complainant, they could have informed him that they were assisting him and his daughter in obtaining a place for her at the College so that she could continue her schooling. As this was not the case, the Complainant felt that he and his daughter had been left to fend for themselves with no help from the pertinent entities.

In the present case, the Ombudsman was able to ascertain that the authorities were acting in the Student's best interests. However, the Ombudsman wished to highlight that he always advocates for replies to letters as non-replies are considered to be acts of maladministration.

Recommendation(s)

In this case the Ombudsman would have recommended that the School Leaving Form should be signed by parents as well as students. However, following the Ombudsman's inquiry on the matter, the Director instituted the changes without the need for a recommendation. This was an example of good administration.

Update

The Complainant has informed the Ombudsman that his daughter seems to have settled very well at the College.

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Housing Department

Case Sustained

CS/775

Complaint against the Housing Department for not receiving a substantive reply to the Complainant's letter of complaint.

Complaint

The Complainant explained that he had been on the housing waiting list since he was 21 years of age (6 years) and had still not been allocated a flat. On the 9 November 2007 he wrote to the Department explaining that he had entered the housing list six years ago from his family home. He later moved to his partner's parents' home where he lived with his partner and their 3 year old son. All three slept in a small room as the other two bedrooms were taken by his partner's parents and the other by his partner's 21 year old brother. He was a tenant of his partner's parents' flat and had been awarded overcrowding points as per the Housing Allocation Scheme. In the letter the Complainant stated:

> *"…I wish to complain that even though I have been in the waiting list for many years and not been offered an allocation to date, yet others have been made allocations and have been in the waiting list for less time. For example, the case of* [Couple B], *who got married about six months ago and has a child of just two months and had already been given a flat".*

The Complainant also sought an explanation about this particular case and asked for an appointment to see the Housing Manager.

The Department replied stating that they sympathized with the Complainant's plight and understood his current predicament. The established procedure for the allocation of Government Housing was for offers of accommodation to be made via the respective waiting list. This meaning that no offer could be made until the applicants reached the top of their respective list. With regards to the allegations in respect of "Couple B", the Ministry for Housing could not supply any information as such an action would contravene the Data Protection Act.

The Complainant was not satisfied with this reply and believed it to be a standard statement that had not considered either the facts of his own application for housing nor that of the example he had given where an allocation seemed to have been made out of turn, furthermore, there was no mention of the requested appointment in the reply. He therefore brought his complaint to the Ombudsman for further investigation.

Investigation

Initially the Ombudsman advised the Complainant to take the copies of his letters directly to the Housing Counter at the Town Hall and ask for an appointment with the Housing Manager. When he explained at the counter that he had asked for an appointment by letter and the reply did not contain any reference to the requested meeting, the counter staff allegedly told him that he had to write again requesting the appointment. At which point he returned to the Ombudsman who decided to take on the complaint.

The Ombudsman wrote to the Department explaining the details of the complaint and asked for the Department's comments. The Ombudsman highlighted three main issues:

(i) The Complainant had been six years on the waiting list and still no allocation.
(ii) "Couple B" had already been given an allocation with a lot less waiting time.
(iii) The Complainant's request for an appointment had not been addressed.

In their reply, the Department explained that they believed the reply sent to the Complainant seemed adequate with the exception of the request for an appointment, which they promptly addressed by contacting the Complainant by phone and making the necessary arrangements.

With respect to the allocation to "Couple B" who had been allegedly waiting less time, the Ombudsman had been concerned that this was not the first complaint brought to his attention of this particular couple's allocation. He had therefore decided, under an investigation for a separate complaint, that a formal investigation was warranted in order to allay peoples concerns about the allocation. The investigation was reported in case no CS791 and the relevant paragraph is quoted below:

> *"The Housing Department explained that Mr B of "Couple B" had applied for government housing in October 2002, when he was single and resided with his parents. He had updated his application in March 2007 when he married and he was included in the tenancy of his in-laws. He had therefore initially been on the 1RKB waiting list and then moved to the 2RKB waiting list where he had been 2nd with 6420 points. When they became parents in August 2007 their son was also included on the tenancy and their application moved from the 2RKB to the 3RKB waiting list and he was first on the list with a total of 7970 points, he was subsequently offered accommodation on 17 October 2007."*

Subsequent to the Complainant's meeting with the Housing Manager and being informed of the results of the Ombudsman's investigation in CS791 the Complainant accepted that the allocation of "Couple B" had not been in contravention of the Housing Allocation Scheme and was reassured that his own application was being processed correctly by the Department.

Conclusion

The Ombudsman formed the opinion that the letter written by the Complainant to the Department on 9 November 2008 had not been given adequate consideration. The request for an appointment had only been met after the intervention of the Ombudsman. The Department had failed on two occasions to meet the request, first in their letter of reply to the Complainant and second when the Complainant attended the Department's Counter. The request was only addressed when highlighted by the Ombudsman.

The Complainant's concerns vis-à-vis that of "Couple B" had not been adequately addressed by the Department. Although the Department were correct in their interpretation of the Data Protection Act, in that they were not permitted to disclose personal details to someone else, they appeared to be using this Act in order to dismiss the applicant's concerns. The Data Protection Act did not prevent the Department checking the status of the applications submitted by the Complainant and "Couple B", therefore once the Department were reassured that all was in order, they could inform the Complainant that his concerns had been thoroughly investigated and found to be unfounded (or otherwise if that had been the case). No personal details need to be disclosed, but such a letter stating that the Complainant's concerns had been addressed would have gone a long way to allay the concerns brought to the Department's notice.

The Ombudsman sustained the Complaint as he was of the opinion that the Department had not met the required standard of service expected of a public entity.

Complaint against the Housing Department for not having replied to the Complainant's letters and for not having included her son and herself in the tenancy of her partner's mother and therefore not awarded overcrowding points in respect of her housing application to reflect their living conditions.

Case sustained

CS/782

Complaint

The Complainant was aggrieved because the Housing Department ("the Department") had declined to include her son and herself in the tenancy of her partner's mother ("the Tenancy Holder") and therefore not awarded her overcrowding points in respect of her housing application that would reflect the time throughout which she had lived in those conditions.

Background

The Complainant explained that she had been living with her mother in Spain until early 2006, when at the age of fifteen she became pregnant and moved in with her partner who lived in a three bedroom Government rented flat ("the Flat") the tenancy of which was in her partner's mother's name. The brother and two sisters of the Complainant's partner also resided in the Flat.

When the Complainant's son was born in October 2006, she applied for Government rented accommodation at the Housing Department ("the Department"). However, after she received acknowledgement of her application from the Department, she received no further communications for the next five months.

In February 2007 the Complainant's doctor wrote to the Department and explained that she had suffered from a pulmonary disease for the last three years. He was concerned that the Flat was damp and the conditions unsuitable and stated this had started to have a negative effect on her health.

Shortly after, the Complainant received a 'calling card' for her to attend the counter at the Department. She explained that she complied with the request, and once there was asked by the officer who attended to her to provide the details of her living conditions and of the persons residing in the Flat. Subsequently, the officer handed her a letter which the Tenancy Holder had to sign to confirm that the Complainant resided in the Flat. She alleged that the officer informed her she would receive a letter to notify her of a medical interview. About a week later, the Complainant advised that she received a phone call from the Department to request her sister-in-law's birth certificate. On this occasion she stated that she enquired as to when the medical interview would take place and she was informed that "*this did not exist*". The birth certificate was duly presented at the Department as requested.

On 18th May 2007, the Department sent a letter to the Tenancy Holder and informed her that at the meeting of the Housing Allocation Committee ("HAC") held on 16th May 2007, the request for the Complainant and her son to be included in her tenancy had been denied due to "gross overcrowding".

The Complainant wrote to the Department on 31st May 2007 and again explained her situation to them. She wanted to know if her application was still active and whether her doctor's letter had been referred to the Medical Advisory Committee ("MAC"). She also informed them that the only place where she could reside was in the Flat, as her parents did not live in Gibraltar.

On 2nd August 2007, not having received a reply to her letter of 31st May 2007, the Complainant wrote to the Department.

Upon not having received a reply to either of her letters, the Complainant contacted the Ombudsman on 4th September 2007.

Investigation

The Ombudsman wrote a letter to the Department on the same day, and brought to their attention that the Complainant had approached him because she had not received an acknowledgement or reply to her letters dated 31st May and 2nd August 2007.

The Department replied to the Ombudsman on 6th September 2007. They explained that upon receipt of the Complainant's letter of 2nd August 2007, they had noted that her letter of 31st May 2007 had been left attached to her request for inclusion in the tenancy of the Flat, and had not been replied to. The Department stated that they had sent a reply to the Complainant on 10th August 2007, copy of which was attached, and advised her that the letter from her doctor would have been discussed at the Medical Advisory Committee ("MAC") meeting on 3rd August 2007 but this had been cancelled and no alternate date had been set at that point. The Department now confirmed that MAC would meet on 7th September 2007 and the Complainant would be notified in writing of their decision.

On 28th September 2007, and upon receipt of a letter from MAC to the Complainant in which they informed her that no recommendation had been made in her case and that her matter had been referred to the Social Advisory Committee ("SAC"), the Ombudsman wrote to the Department and requested information about what had happened to the Complainant's housing application dated early October 2006. On the same day, the Complainant wrote to MAC to request that they award medical points towards her housing application, considering the environment which she was residing in, an overcrowded flat which suffered from dampness problems which could worsen her medical condition.

On 15th October 2007, the Department replied to the Ombudsman. They explained that the Complainant had submitted a request in February 2007 to include herself and her son in the tenancy of the Flat. HAC considered the matter but denied the inclusion. However, due to an oversight, HAC had not discussed the possibility of accepting the application for housing from the Complainant from that address, for application purposes only. The Housing Manager was informed of this and the case would be discussed at the next meeting of HAC on 18th October 2007. The Department advised that the decision would be communicated to both the Ombudsman and the Complainant and that the latter would receive an apology for the oversight and distress that this could have caused her.

Regarding the referral by MAC of the Complainant's case to SAC and the request from the Complainant to MAC that she be awarded additional points for her medical condition, the Department stated that both these reviews had to be carried out and the outcome would be communicated to the Ombudsman.

On 31st October 2007, the Department wrote to the Complainant to inform her that HAC had not approved her inclusion in the tenancy but had accepted the address for application purposes only. She was informed that she would not receive any additional points towards her application for overcrowding and was requested to attend the Housing Allocation Counter with the Tenancy Holder, in order to sign the necessary declaration form for her application to be processed.

On 27th November 2007, the Complainant remitted a letter from her doctor to the Department. This

referred to her medical condition and to his support for her application due to the situation in her current accommodation, dampness and overcrowding. Shortly after, her doctor sent another letter to the Department to be presented to MAC. In it he explained that the Complainant was suffering from depression. A three bedroom flat in which eight people resided and the small, damp bedroom which she shared with her partner and her son had contributed to the problem. The situation had made the Complainant very anxious and distressed and had resulted in her having to begin medical treatment for her condition.

The Ombudsman wrote to the Department on 18th December 2007 and referred to the information which had been provided to him by the Complainant regarding HAC's decision to approve her current accommodation address for *'application purposes only'* and which he assumed would be dated from October 2006, the original date on which the Complainant applied. He reiterated the fact that the Complainant had a child in common with her partner and all three were residing in her partner's family home with his mother and siblings. The Ombudsman requested that further information be provided as to the basis on which HAC had decided not to allow the Complainant and her child to be included in the tenancy, thereby denying them the overcrowding points that their living conditions reflected. The Ombudsman noted that the Housing Allocation Scheme (Revised 1994) under Section 5(d) referred to circumstances where overcrowding points would not be earned; this being in relation to ex-property owners moving into Government rented accommodation creating an overcrowding situation, but did not feel that this appeared to be relevant in this case. The Ombudsman requested the Department's comments.

Approximately a month after having sent the letter, the Department replied to the Ombudsman and confirmed that at HAC's meeting of 17th October 2007 it was agreed to allow the Complainant to become an applicant at the Flat for *application purposes only*. However, at the meeting on 16th January 2008 HAC agreed to backdate the Complainant's application to 1st December 2006, the date on which the Department stated the Complainant had originally applied for Government rented accommodation. The Complainant was duly informed of this decision.

In relation to HAC's decision to deny the Complainant's inclusion into the tenancy of the Flat, and in so doing denying overcrowding points, the Department confirmed that the decision had been taken on the basis that:

> *"…they could not agree to purposely cause gross overcrowding in the property."*

Following the letter from the Department, the Ombudsman wrote to them on 28th January 2008 to request that they verify by what legal authority HAC were empowered to deny the allocation of overcrowding points on that basis.

The Department replied and advised the Ombudsman that HAC had discussed his letter and referred the case to the Department's lawyer owing to the legal nature of the question posed. The Department further advised that the next meeting of HAC would be held on 19th March 2008.

On 28th March 2008 the Department informed the Ombudsman that the Complainant's case had been left pending.

On 14th April 2008, the Ombudsman wrote to the Department and highlighted eleven weeks had elapsed from his letter of 28th January 2008, and no substantive reply had been received. The Ombudsman informed the Department that this delay had seriously hindered the investigation and requested a full explanation as to the cause of the delay, to include specific dates of when and what action had been taken to meet his request, including the date when a concise reply could be expected.

The Department immediately replied and apologised for the delay but informed him that the matter had been actively pursued and a reply would be sent as soon as possible. The Ombudsman noted that the Department had indeed been actively pursuing the matter and had been reassured by the Principal Housing Officer (PHO), by way of telephone conversation, that the matter had been given the utmost attention by all concerned.

The Ombudsman took the opportunity to inform the Department that he had received another complaint in regard to HAC not having authorised the overcrowding points, but advised that this complaint would be held until a reply to the current complaint was received.

Notwithstanding the assurances received by the Ombudsman, given the continued delay he wrote to the PHO on 20th May 2008, concerned at the unreasonable time they were taking to provide a reply on this matter. He mentioned that 'delay' was classed as an act of maladministration and that delay in providing replies to the Ombudsman could only be classed as gross maladministration and possibly obstruction of an investigation. He requested that the matter be addressed promptly as otherwise he would be left with no option but to invoke the powers conferred to the Ombudsman by the Public Services Ombudsman Act 1998 vis-à-vis the offence of obstruction.

On 10th June 2008, the Department replied to the Ombudsman. They informed him that the advice received had been,

> *'that all HAC sought to do was to facilitate an application by agreeing to accept the application from [the Tenancy Holder's address]. HAC did not approve the inclusion of [Complainant's name] in the tenancy of the said address on the grounds that to do so, they would have purposely caused overcrowding.'*

The Department mentioned that each case is considered and assessed on its own merits and assured the Ombudsman that the Ministry for Housing did its utmost to assist and help in genuine cases and felt that this had been exercised in this case. On a final note, the Department apologised for the unacceptable delay which they explained had been out of their direct control and deeply regretted any inconvenience that this may have caused.

Ombudsman & Department Meeting

The Ombudsman formed the opinion that the reply received from the Department did not answer his question and therefore convened a meeting with the PHO and the Head of Administration (Ag) ("HoA"). At the meeting, both officers again apologised for the delay and agreed that the question posed by the Ombudsman had not been answered but since it was the information they had received from their legal advisors they were unable to do anything more.

The Ombudsman pointed out that the issue remained as to whether HAC had authority not to include an applicant on the tenancy and deny them overcrowding points. The HoA explained that HAC did not wish to purposefully cause overcrowding as this would have a detrimental effect on the Housing Waiting List. However, if an applicant was already a tenant and they wished to include their partner, HAC would accept the inclusion because not to do so would split up a family unit. In the opinion of the HoA, the main reason why the Complainant had not been allowed inclusion in the tenancy was because even though her partner had originally resided in the Flat, he did not reside there at the time when the **Asset Register** was taken and his mother did not include him as living there. (For information purposes, the Asset Register is a methodology to acquire information as to the condition of Government properties. This then allows the Ministry for Housing to develop and plan future works. Details of the persons residing in the properties are also obtained by the officer conducting

the Asset Register survey). It was therefore considered by HAC that to allow the Complainant's partner to return to the Flat and to once again include him in the tenancy would create an unacceptable overcrowding situation.

It was worthwhile to note that if the applicant had been a private tenant, HAC would have had no control over inclusion in the private tenancy and overcrowding points would have been awarded.

The Ombudsman thanked the Department for their clear explanation but disagreed with the decision as it appeared to deny applicants the benefits of the Scheme when they had no alternative but to live with their parents. The reality of the housing market in Gibraltar was that there was not an affordable alternative in the private sector to purchase or rent, and applicants were therefore sometimes left with no other option but to return to their parents' home for genuine reasons.

Having been provided at the meeting with the information that the Complainant's partner was not listed as being a tenant in the Flat, the Ombudsman inspected the Flat's tenancy file held by the Ministry for Housing. There it transpired that an error was made by the person/s taking the details for the Asset Register, when writing down the details of the Complainant's partner.

A different forename had been listed on the file but all of his personal details accompanied this entry. The Ombudsman had requested that the Complainant's partner's Identity Card be checked by the Civil Status & Registration Office to verify that this was the same number stated on the tenancy file against the 'different forename'.

The Ombudsman wrote to the Department on 11th August 2008 to notify them of the anomaly. He understood that there was no requirement for any tenant registered in the Asset Register to complete, inspect and/or sign any document to confirm the details which had been entered in the form. The Ombudsman informed the Department that he would certainly make recommendations in respect of the Asset Register but commented that the details obtained in such a seemingly casual manner could hardly be used as credible evidence. He was certain that in this case, reliance on such poor evidence appeared to have caused a great deal of inconvenience and distress.

The Ombudsman requested that his letter be made available to HAC for their reconsideration of the case, given that it had been confirmed upon investigation, that the Complainant's partner had lived in the Flat uninterruptedly for the past fourteen years, since it was allocated to his mother.

The Department acknowledged receipt of the Ombudsman's letter and advised that they would be presenting this to HAC at their next meeting, for which no date had yet been set.

Due to not having received any communication from the Department, on 15th September 2008, the Ombudsman wrote to them because he was unsure as to whether the Housing Allocation Committee had been formally appointed and wanted to establish the following:

- *Had the Housing Allocation Committee been appointed?*
- *When was it appointed?*
- *When did it meet for the first time, or when would it meet for the first time?*

If HAC had not been appointed, the Ombudsman then requested the following information:

- *Why had it not so far been appointed?*
- *When was it envisaged that the Committee would be appointed?*
- *When was it envisaged that they would hold their first meeting?*
- *To date how many cases were pending for referral to the Committee?*

The PHO replied to the Ombudsman and informed him that the Government had announced the formal appointment of the new HAC. He added that the Committee would meet for the first time on 26th September 2008 to begin the process of familiarisation. The Ombudsman thanked the PHO for his reply and requested information as to how many cases were pending for referral as per his letter dated 15th September 2008. He also enquired as to when the Complainant's case would be considered by HAC.

The Department replied by advising that the next meeting would be held on 8th October 2008 but that due to the ninety eight cases that needed to be discussed, a further meeting had been convened for 22nd October 2008.

At a meeting with the HoA, the Ombudsman was informed that HAC had reconsidered the Complainant's case, taking into account the information provided by the Ombudsman, and had decided to include her and her son in the Flat's tenancy, thereby awarding overcrowding points retrospective from the date of the application.

Conclusions

The Ombudsman sustained this complaint due to the administrative delay the Complainant experienced with regards the handling of her application for Government rented accommodation in October 2006 and then in May 2007.

The Ombudsman was extremely concerned about the procedure used for compiling the information held in the Asset Register in relation to the persons residing in Government rented accommodation. There was no requirement for any tenant registered in the Asset Register to complete, inspect or sign any document to confirm the details which had been entered in the form. Yet, this information was used to update the tenancy files of the Government properties. It was due to erroneous information having been passed on from the Asset Register to the tenancy file which caused this complaint. If the Complainant's partner's name had been correctly stated in the tenancy file, the Complainant and her son would have been, immediately upon application, included in the tenancy of the Tenancy Holder's flat and awarded overcrowding points.

Recommendation(s)

The Ministry for Housing should re-evaluate the method for collating information in respect of the Asset Register. Without doubt, the information gathered should be verified and signed by the Tenancy Holder, otherwise it would continue to be of little value and open to examination.

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Primary Care Centre (GHA)

Case not sustained

CS/788

Complaint against the Primary Care Centre for not permitting the Complainant to register at the Centre in order to obtain a health card.

Complaint

The Complainant was an EU National from Portugal, he had been living and working in Gibraltar for 30 years.

The Complainant explained that he had tried, unsuccessfully, to register with the Group Practice Medical Scheme (GPMS) in order to be issued with his health card; this would enable him to use the services of the Primary Care Centre (PCC).

On receipt of the complaint from the Ombudsman the PCC explained that in order to register with the GPMS applicants must be contributing to the Scheme as per section 4(1) of the Medical (Group Practice Scheme) Act. Normally contributions are made through employee/employer Social Insurance Contributions.

The Complainant had been asked if he was in employment and if he had a Civilian Registration Card (CRCard). The complainant was able to satisfactorily prove his employment status but on checking the CRCard the clerk noticed that it had expired in 2004. When questioned by the clerk the complainant explained that he no longer lived at the address stated on his CRCard as he was currently homeless after a divorce settlement. The clerk then advised him to update his CRCard at the Civilian Status and Registration Office before being issued with a health card. The clerk also advised the complainant that if in the meantime he needed to see a doctor he could do so as he was eligible to use the PCC services because he was contributing to the GPMS.

The Complainant was not able to renew his CRCard until he had a permanent address and was confused and frustrated by the effect his homelessness was having on his ability to obtain a health card. The Ombudsman also noted that although the complainant was not being denied the use of the PCC whilst the issue of his CRCard was being sorted out, he would not have the benefit of the European Health Insurance Card (EHIC) if travelling within the EU if he did not have the health card, as the health card also included (on the reverse) his EHIC registration details.

The PCC confirmed that there was no legal requirement for a valid ID/CRCard when registering for GPMS, it was an administrative requirement in order to prove identity and address. In fact Frontier Workers are registered onto the GPMS using their Passport number, their health cards expiring the same time as their work contract

The PCC referred the matter to the GPMS Registration Board who authorised the complainant's registration and issue of his health card. In respect of a bona fide address they agreed to apply the same policy as a Frontier Worker and accept his workplace as address for registration purposes.

Conclusions

This issue was resolved for the complainant by the PCC within just a few days. However, the administrative practice of using the Identity Card or Civilian Registration Card as a proof of identity

and in particular residential address still continues and it should be noted that this practice can be a cause of complaint when the administration treat the cards as the only means of complying with the requirement of proving identity/residence, as opposed to one of many other forms that may be available.

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H M Prison

Case not sustained
Recommendations made

CS/811

Complaint against the H M Prison Gibraltar ("Prison") in respect of the state and condition of the prison.

Complaint

The Complainants had a relative ("Relative") who was serving a prison sentence at the Prison. They visited their Relative on a regular basis at prison visiting time and were extremely unhappy about the state and condition of the Prison.

The Complainants therefore came to see the Ombudsman with their Complaint. Subsequently on 11 April 2008 they handed in their letter of Complaint to the Ombudsman. Their letter read as follows:

> "Re: Breach of Human Rights
>
> Dear Mr (Ombudsman)
>
> We are writing to file a complaint in respect of breach of human rights of our (Relative). (Our Relative) was sentenced to imprisonment on …… .
>
> After visiting (our Relative) throughout the past 3 months, we feel the need to complain about the state and conditions of the prison, the lack of hygiene within, is both inhuman and degrading.
>
> Below are some points (our Relative) has mentioned:
>
> (1) Shared cells with no sanitation (no toilet or sink). They are provided with a bucket to do their necessities. This poses many health risks, infections, etc.
>
> (2) Unable to wash hands after using the toilet, again posing serious health risks.
>
> (3) Cells with poor ventilation, thus giving rise to bad odours where they sleep, eat, and store food.
>
> (4) Shower units are located in a hut in a corner of a patio, and regularly apes go in, leaving behind fleas and even excrements, again giving rise to possible infections.
>
> (5) Apes are regularly found inside cells looking for food, leaving behind fleas etc.

(6) Mice, rats and many insects are seen wandering around cells and about on a regular basis.

(7) Hot water in showers sometimes not available for over 2-3 weeks.

(8) Most cells do not have a table or chair. Being there no communal area where to eat, they are forced to have their meals sitting on the bed, and close to bucket where they have to do their necessities.

(9) In 'D' wing, only 1 working toilet available which has to be shared at times by over 30 inmates.

(10) During periods of heavy rain, some cells became flooded.

(11) Visiting room floor has holes, giving rise to dangerous accidents for adults and small children.

Overall conditions in prison are inhuman and degrading.

They can take away your freedom but never your dignity. "

Investigation

Ombudsman's Correspondence with the Department

The Ombudsman wrote to the Superintendent of Prison ("Superintendent") on 22 April 2008 informing him of the Complaint in respect of the state and condition of the Prison. The Ombudsman enclosed a copy of the Complainants' letter for perusal and ended his letter by requesting the Superintendent's comments.

The Superintendent sent a substantive reply within 8 days by way of a letter dated 30 April 2008. The above time taken to reply to the Ombudsman's letter was well within his guideline parameters. (see page 22 for guidance).

The Superintendent replied in the same numbered order as contained in the Complainants' letter, as follows:

"1. There are indeed some cells within the prison without sanitation. A staged refurbishment program was initiated some years ago to address this situation. This invoked major works to install all the necessary services to enable in-cell sanitation. Two wings were completed. Aside from this there are another six cells (3 in juvenile wing and 3 in female wing) that also have internal sanitation. This makes a total of 17 cells with internal sanitation out of a grand total of 34 cells in the prison. This can be expressed as 50% of cells having internal sanitation. When the Gibraltar Government decided to build a new modern prison the refurbishment programme was stopped. With the advent of the new prison being built at Lathbury (completion date currently December 2008) it is unfortunately not feasible to undergo the major infrastructure works involved in providing sanitation to the remaining cells. Every wing is equipped with toilet facilities to be used by the inmates during most of the day. it is mostly after evening lock-up (20.00hrs) when inmates without in-house sanitation have to use the buckets provided, these come equipped with lids.

2. Plastic washbasins are freely available for all inmates to use. These can be replenished with clean water just prior to lock-up in the evening to allow inmates to wash their hands.

3. All cells have ventilation holes and indeed every single cell has been certified by the director of medical and health services in accordance with the law (Prison Act sec 24).

4. There are shower rooms in each of the wings and the reference to "shower units located in a hut" is simply incorrect. Shower rooms are built of masonry and tiled from floors to ceilings. All common areas including showers and ablutions are thoroughly cleaned daily by the inmates themselves. Wing officers supervise these chores daily to ensure that all cells, corridors and common areas are cleaned. Materials including disinfectant are provided daily in ample quantities to ensure a good level of hygiene is maintained. The Senior Officer on duty also conducts regular checks on a daily basis to ensure the prison is kept clean.

5. The Barbary apes are indeed a daily problem. This is exacerbated by the inmates themselves who encourage the apes to go into the cells by offering them food. Cell doors can be locked on request to the Wing Officer to avoid this problem. Unfortunately inmates tend to encourage this kind of behaviour throughout the day, making it difficult to control. Officers are being instructed to be even more pro-active in their approach to this problem.

6. Rats have been a problem in the past due to the proximity of the upper rock. This is however kept under control to as much an extent as is possible under the circumstances. The Environmental Health Agency pays regular visits and sets traps where necessary. The same applies for insects; due to the location it is of course an unavoidable problem. Having said this, whenever there is a particular problem e.g. bees making a hive, environmental health is contacted and the problem tackled either by fumigation or other means.

7. Showers in individual wings are supplied by high capacity boilers (some are 200 litres in capacity). These tend to be a good source of hot water throughout the day. Invariably these boilers sometimes break down and need to be fixed, and this is carried out as soon as humanly possible. Whilst repairs are carried out inmates in the affected wing are allowed to use the shower rooms in other wings. Having said this, it would be completely incorrect to state that there is a problem with the supply of hot water in the prison.

8. This is simply not correct. Most cells have fixed furniture, and those that do not are provided with stools and wooden tables. A quick inspection of the (Relative's) cell reveals that he has one wooden stool, and his cell has one fixed large table with two benches, situated just below the cell window. This location is the farthest physically from the cell door, the corner of which is routinely used to house the bucket (with lid). It is of consequence to note that H.M.P. Gibraltar has an open policy, and as such inmates are out of cells for most of the day. Those inmates without internal sanitation in their cells only need to use these buckets when they are locked-up.

9. This is incorrect. In 'D" Wing there are 4 toilets for inmates. One of them is out of order and a second one tends to leak. The remaining two toilets are in perfect working order. The leaking toilet is in the process of being repaired. The total number of inmates in the prison is currently 36, of those only the 16 (not over 30) inmates housed in "D" wing use the "D" wing toilets, the rest of the inmates use toilets provided in their wings.

10. Flooding of cells is an extremely rare occurrence. This in my experience in almost 30 years in the prison service has only occurred on a few occasions (low single figures). There are two cells in the whole prison that are more susceptible to flooding due to their location. This has only occurred on a few occasions during the heaviest rainfalls and whenever it has happened it has been tackled effectively. This is simply not a problem.

11. No reports have been received suggesting dangerous conditions in the visits room area. Nonetheless and as a result of the complaint an inspection has been carried out. The only finding in this regard is some loosening of floorboards at the very end of the visits hall (opposite end of the entrance). This has already being fixed by our Works section.

An independent Board of Visitors (Prison Board) that is chaired by a Justice of the Peace pays monthly visits to the prison to ensure that inmates are treated humanely and that everything is kept clean. Inmates are free to speak to the visiting Prison Board member and address any issues or complaints. Once the visit is over the visiting member compiles a report which is discussed at the monthly Prison Board meeting with the Prison Superintendent.

I know that conditions in our present location are far from ideal, this is why a new modern prison is under construction, where conditions will improve dramatically.

Comments and Considerations

In relation to the substantive Complaint the Ombudsman having carefully considered the matter in detail decided not to sustain the Complaint. The following facts and matters were instrumental in the Ombudsman arriving at his decision in this regard:

(1) The prompt reply to the Ombudsman's letter.
(2) The Superintendent's clear, thorough and informative letter answering the issues raised in the Complaint.
(3) The frank and proper immediate acknowledgment of certain problems which exist as seen in answers 5, 6, 7, 9 and 11, together with reasons and explanations for the same as well as remedial actions taken.
(4) The information contained in the Superintendent's letter to the effect that an independent Board of Visitors (Prison Board) chaired by a Justice of the Peace pays monthly visits to the prison to ensure that inmates are treated humanely and that everything is kept clean, that inmates are free to speak to the visiting Prison Board member and address any issues or complaints, and that once the visit is over the visiting member compiles a report which is discussed at the monthly Prison Board meeting with the Prison Superintendent.

With regard to the functioning and role of the Prison Board, the Ombudsman believed he could do no better than to reproduce the comments he made in relation to the Prison Board in his Annual Report 2006:

"PRISON BOARD OF VISITORS

It is not often that we receive complaints from prisoners held at HM Prison in Gibraltar. During the early part of this year we received one such complaint from a Spanish national being held there.

We wrote back and advised the complainant about the various complaints mechanisms available to him. We informed him of the role of the Board of Visitors (Prison Board) and that they were available and would deal with his complaint if so requested. Lastly we informed him that we would intervene if required.

In order to find out about the role of the Board of Visitors, and in order to ascertain whether they were in a position to assist this prisoner, we requested a meeting with the Board.

The meeting provided us with useful information as to the services available to inmates of HM Prison in Gibraltar whenever a grievance arises; this information received proved to be very useful to us for future reference.

We were left with no doubt that their work provided an excellent service to those members of society who found themselves within the confines of a prison serving a custodial sentence.

Not much is published about the work of this group of dedicated volunteers. It is important, within the context of complaints mechanisms to highlight the work performed by this Board. The sense of responsibility and disposition to assist those in custody displayed by the members of the Board was a breath of fresh air and an example to be followed by others.

These volunteers give up a lot of their time to tend those less fortunate and certainly deserve a well earned recognition of their unenviable work. "

The Ombudsman would however add the rider to his "Complaint not sustained" conclusion, that regardless of the fact that a new modern prison is under construction, the ongoing daily and other recurring maintenance to the fabric and installations of the Prison should continue unabated. Indeed because of the new modern prison which will soon be available, there is currently all the more reason to maintain the Prison in the best possible condition.

Recommendations

(1) That the toilet in "D" Wing which is out of order be repaired and put back in working order as soon as possible and in any event by no later than 3 weeks from the date of this report, if this has not already occurred.

(2) That the leaking toilet in "D" Wing if not already repaired be repaired as soon as possible and in any event by no later than 2 weeks from the date of this report.

(3) That the ongoing daily and other recurring maintenance to the fabric and installations of the Prison continue unabated.

Update

The Prison informed the Ombudsman that in relation to his three Recommendations:

1. The toilet in 'D' Wing, which was out of order, was repaired and put in working order at the beginning of May 2008. Unfortunately inmates tended to dispose of all sorts of rubbish by throwing the same into the toilets thus blocking them, even though they were ordered not to carry out this practice but to use the bins provided for the disposal of rubbish. The works section of the Prison had to continuously keep unblocking the toilets in order to keep them in working order, this was done every time they got a report of a toilet being blocked.

2. The leaking toilet in 'D' Wing was also repaired at the beginning of May 2008.

3. The ongoing daily and other recurring maintenance to the fabric and installations of the Prison was carried out mainly by the Works section of the Prison and was done on a daily basis. With the Prison being such an old building the maintenance of the same was an ongoing task. At times there were various jobs to be tackled and the Works department had to prioritise in order to carry out the most important jobs (e.g. security issues would take precedence) prior to continuing with other jobs. The Ombudsman could rest assured that the maintenance to the fabric and installations of the Prison would continue unabated.

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Royal Gibraltar Police

Case not sustained

CS/795

Complaint against the Royal Gibraltar Police ("RGP") for having taken the Complainant to New Mole House Police Station and been made to pay a fine that was not his under duress.

Complaint

The Complainant came to see the Ombudsman and wrote to him on 14 February 2008 explaining his Complaint in detail. In his letter the Complainant explained that approximately three years previously, he was telephoned by a police officer while at home, and asked to go up to New Mole Police Station as he had a fine outstanding. When he got there he was told that he had a fine outstanding for a drug offence and that the court had fined him £300. The Complainant immediately informed the police officer that he had never committed such an offence and that they had a case of mistaken identity. It seemed that the person who had committed the offence had the same name as the Complainant, and the same date of birth, but a different address. The police officer then told the Complainant that he was free to leave, and that he would sort out the administrative error.

In his letter the Complainant went on to explain that about a year and a half previously he had been arrested by Casemates Square for being drunk and disorderly. The lawyer who represented him in court asked for a docket, and once again the drug offence conviction appeared on his file. The Complainant further informed the Ombudsman that his lawyer investigated the matter and mentioned the matter in court. Allegedly the lawyer later confirmed to the Complainant that the issue had been solved and that it had been found that the man in question was not the Complainant, but another person living in Gibraltar who was married with children.

The Complainant then explained that on Friday 8 February 2008 at around 8pm while driving in Gibraltar with his girlfriend, he was stopped by a police officer. This police officer asked for his driving licence, insurance and ID card. The police officer then contacted the Police Station and was informed that the Complainant had a warrant of arrest. The Complainant asked what it was for and the police officer replied that it might have to do with a parking ticket. The police officer then got into the Complainant's car and they drove up to New Mole House Police Station. It was there that the Complainant was informed about the £300 fine. The Complainant then asked what the fine was for and after some investigation was told that it was the drug offence conviction again. The Complainant told a police officer that he had already dealt with this issue on two other occasions and that he thought it had already been sorted out. The Complainant told this police officer that it had nothing to do with the Complainant and that he would not pay the £300, to which the police officer replied that if the Complainant did not pay it, he would be arrested and sent to jail for 15 days. In fact since it was the weekend the Complainant would at the very least have had to spend the weekend in jail until he could clear the matter up on Monday in court. The Complainant felt that he therefore had no option but to pay the amount under duress. The same police officer who had stopped him driving, therefore accompanied him down to Natwest Bank where the Complainant withdrew £250 since he was unable to withdraw more and his girlfriend withdrew another £50 from her own account. The Complainant then handed over the money to the police officer and was issued with a receipt there and then.

Investigation

The Ombudsman wrote to the RGP on 15 February 2008 explaining the Complaint and requested the RGP's comments. The Ombudsman enclosed a copy of the receipt the police officer had given the Complainant on payment of the £300 fine for ease of reference. He concluded his letter by stating that given the nature of the Complaint a speedy reply would be appreciated.

The Ombudsman received a reply by way of letter dated 19 March 2008 confirming that the RGP were actively investigating this matter however they were unable to disclose full details. The letter went on to explain that they had already met with the Complainant and explained the procedure to him. The letter concluded by confirming that they would be writing with a full explanation as soon as their investigations were complete.

The substantive reply came by way of letter from the RGP dated 8 April 2008. In their letter the RGP confirmed that they had completed their investigation, which indicated that some person had pretended to be the Complainant when he was stopped entering Gibraltar through the land frontier. This same person was in possession of the Complainant's identity card and was found to be in possession of cannabis resin when challenged by Customs Officers. That person was subsequently convicted in the Magistrates' Court under the (false) name of the Complainant and ordered to pay a £300 fine. When that fine was not paid a warrant was issued for the Complainant's arrest.

The RGP had discussed the case with the Customs Officer who originally arrested the man claiming to be the Complainant and arranged a meeting between the Complainant and the Customs Officer concerned. At that meeting the RGP were informed that the Complainant was not the man that was arrested by the Customs Officer and subsequently convicted in the Magistrates' Court. The Customs Officer had provided a witness statement to this effect.

Based on the results of the RGP investigation they were satisfied that the Complainant had a conviction recorded against his name which was not correct.

The RGP confirmed that they had met with the Clerk of the Magistrates' Court and explained the Complainant's case to him. They had been informed that the conviction had to remain on record until an order was received from the Supreme Court to amend it. They had also been informed that this had to be done by way of appeal to the Supreme Court.

The RGP had also made enquires as to how the £300 that the Complainant paid could be refunded. The Clerk of the Magistrates' Court informed them that he would refund the money on either (a) direction of the Supreme Court (as a result of a successful application for appeal to the Supreme Court) or, (b) on the authority of the Accountant General.

The RGP in order to expedite this part of the complaint had written to the Accountant General explaining the facts of the case seeking his approval to refund the money paid.

As an interim measure they had instructed their Crime Management Unit to amend the Complainant's conviction record so as not to reflect the drugs conviction. The RGP however stressed that the record would still contain a reference to this case until they were instructed by the Supreme Court to delete it.

The RGP then went on to explain that the matter concerning the person using the Complainant's identity has been referred to the Criminal Investigation Department and was under investigation; as such they were unable to disclose anything about that at this stage.

On the 22 May 2008, the Ombudsman wrote to the RGP requesting an update in relation to the refund of the £300 paid by the Complainant and shortly after the Ombudsman met with the Commissioner of Police and discussed the case. On the 5 June 2008 the RGP confirmed that the Complainant had on 4 June 2008 received a cheque of £300 from the Accountant General by way of refund.

On 5 September 2008 the Ombudsman wrote to the RGP requesting an update in relation to the steps they were taking to secure that the erroneous conviction against the Complainant was removed from the Court records.

The RGP replied by way of letter dated 12 September 2008 in which they confirmed that on the 22 May 2008 they has discussed the matter with the Attorney-General's Chambers who had undertaken to set in motion the legal steps necessary to remedy the erroneous conviction.

The RGP went on to inform the Ombudsman that the Attorney-General's Chambers had written to the Complainant enclosing a form for him to sign and return which would authorise the Crown to act on his behalf. Once this was done the Attorney-General's Chambers would be pursuing this matter in the Supreme Court.

On 16 October 2008 the RGP wrote to the Ombudsman providing an update. They confirmed that they had followed this matter up with the Attorney-General's Chambers who had informed them that they had met with the Complainant who had signed the consent form for the Attorney-General's Chambers to act on his behalf; that an application seeking leave to appeal had been lodged with the Supreme Court and that once leave had been granted the matter would be pursued through the Magistrates' Court.

Comments and Considerations

This was a case in which a conviction had been wrongly recorded against the Complainant as a result of someone else assuming the Complainant's identity. As such the RGP had behaved correctly in taking action on the warrant for arrest issued against the Complainant and in collecting the outstanding £300 fine, since at the time the Complainant apparently owed the £300 fine.

The Ombudsman therefore concluded that there had been no maladministration by the RGP in this case.

Furthermore, on the matter being brought to the RGP's attention by the Ombudsman, they had immediately carried out an investigation and once satisfied that the Complainant had a conviction recorded against his name which was not correct, behaved in a very positive, proactive way with a view to setting things right for the Complainant, as follows:

(1) The RGP had met with the Clerk of the Magistrates' Court and explained the Complainant's case to him in order to ascertain the position in relation to the wrongly recorded conviction against the Complainant and how this could be removed.

(2) They had also enquired of the Clerk of the Magistrates' Court as to how the £300 that the Complainant had paid could be refunded.

(3) The RGP had written to the Accountant General explaining the facts of the Complainant's case seeking his approval to refund the money paid.

(4) They had secured the refunding of the £300 to the Complainant.

(5) The RGP had as an interim measure instructed their Crime Management Unit to amend the Complainant's conviction record so as not to reflect the drugs conviction, although the record would still contain a reference to this case until they were instructed by the Supreme Court to delete it.

(6) The RGP had discussed the matter with the Attorney-General's Chambers so that they would set in motion the legal steps necessary to remedy the erroneous conviction and had followed this up with the Attorney-General's Chambers.

(7) They had proactively provided the Ombudsman with an update as contained in their 16 October 2008 letter.

Conclusion

Given all of the above the Ombudsman did not to sustain the Complaint.

Commendation

The Ombudsman arising from his Comments as set out above therefore commended the Royal Gibraltar Police for the positive proactive professional way in which they had acted on receipt of this complaint.

The Ombudsman was very strongly of the view that this proactive attitude and willingness to help the Complainant to the fullest extent possible to set things right, demonstrated an extremely good positive approach to this case by the Royal Gibraltar Police.

Department of Social Security

Case not sustained

CS/794

Complaint against the Department of Social Security for denying the Complainant one year of his Old Age Pension payments

Complaint

On initial receipt of this complaint the Ombudsman made informal enquiries with the Department in order to establish whether there were indeed grounds for a formal investigation. This is sometimes necessary when the details presented by the Complainant are not sufficiently clear.

The Complainant, a Moroccan national, was aggrieved that he had been denied his Old Age Pension (OAP) payments from 4 February 2006 to 31 January 2007 because he had not claimed it within twelve months of the payments becoming due.

The Complainant explained that while working in Gibraltar he had contributed to an OAP through the Social Insurance Scheme. He had reached retirement age on 1 January 2006 and sent his application form for OAP on 14 July 2006 to the DSS from Tangier where he was now living. When claiming his OAP at the DSS counter in Gibraltar on 9 January 2008 he had been told that he had forfeited the first year's pension because he had not claimed it within a year of its due date.

The DSS had sent an approval letter dated 5 December 2006 which explained the amount of OAP to be paid and a warning that if it was not claimed with twelve months his right to claim it would be extinguished. The Complainant explained that he had not received this letter until his friend obtained a copy for him in June 2007.

The DSS also sent a letter to the Complainant dated 21 March 2007 which gave details of the new pension rates recently announced by the Government. The Complainant had received this letter, but it did not include any warning of claiming within twelve months.

The Complainant explained that it had taken him some time to make all the arrangements necessary to be able to travel to Gibraltar to collect his pension and he did not think it was right that he should lose a year's pension especially as he had not received the letter of approval sent by the DSS in December 2006 until his friend obtained a copy for him.

The Law

The claim and payment of OAP is governed by **Social Security (Open Long-Term Benefits) (Claims and Payments) Regulations 1997**

Time for claiming

7.(1) *The time for claiming benefit…is six months from the date on which, apart from satisfying the condition of making a claim, the claimant becomes entitled to the benefit*

If a person fails to make a claim within that time he shall be disqualified for receiving benefit for any period more than six months before the date on which the claim is made

A claim to old age pension may be made at any time not more than four months before the date on which the claimant will, subject to the fulfilment of the necessary conditions, become entitled to such a pension

A claimant can make a claim for his OAP four months prior to reaching retirement age and up to six months after. A claim would only be backdated to a maximum of six months

Extinction of right to payment of benefit

13. The right to any sum payable by way of benefit shall be extinguished if payment of the sum is not obtained within the period of twelve months following the date on which the payment becomes due"

The due date is the date of the letter informing the applicant that the pension had been approved, which in the Complainant's case was 5 December 2006, he therefore needed to collect his payments of OAP before the 5 December 2007 to avoid extinction of his right to payment.

Informal enquiries

The DSS had sent two letters to the Complainant regarding his OAP, 5 December 2006 and 21 March 2007. The complainant alleged he received his copy of the December letter from a friend who obtained it from the DSS. The DSS explained that if a copy of the letter had been obtained by someone other than the addressee they would like further information to be able to investigate the matter as documents of this sort are not permitted to be given to anyone other than the person they are addressed to. The Complainant did not want to give any further information.

The Complainant's visa application (copy submitted by the Complainant) was dated 4 April 2007 and included details of the new amount of pension the Complainant qualified for, which was referred to in the letter from the DSS of 21 March 2007. This would suggest that the complainant began his attempt to visit Gibraltar to collect his pension from this date, eight months before his payment would be extinguished.

The Complainant's application form held at the DSS was different to the copy given to the Ombudsman by the Complainant. The DSS copy had been completed with the assistance of the British Consulate and was dated 23 June 2006, it was stamped by the DSS as received on 4 August 2006, this would explain why the Complainant's pension had been calculated from 4 February 2006 and not 1 January 2006 when he reached retirement age, see s7 of the Regulations above.

Conclusions

The Complainant's grievance had been that he had lost a year's pension because he had not received a letter sent to him in December 2006, prompting the beginning of the twelve month deadline to collect his pension. However, the Complainant had received the letter by June 2007, albeit by suspicious means, and he had also received a letter in March 2007, which appeared to prompt his visa application to visit Gibraltar. The Complainant had taken over eight months to collect his pension payments and he had been certainly aware of the deadline for six months before coming back to Gibraltar to collect his pension.

The informal enquiries made at the DSS had enabled the Ombudsman to establish that although the complainant had been understandably disappointed that he had lost a year of his pension, there was no basis for a complaint for the Ombudsman to investigate any further.

Complaint against the Department of Social Security for not having yet made a decision in respect to the Complainant's application for social assistance.

Case sustained
Recommendation made

CS/833

Complaint

The Complainant was aggrieved because approximately three months had elapsed since he had applied to the Department of Social Security ("the Department") for social assistance and to date had not received a decision from them in respect of his application.

Background

The Complainant, a British Citizen who had lived in Gibraltar for the past five years, explained that he had been made redundant from his workplace in February 2008 after having worked for the same employer for the past four years. As a result, he was given a redundancy package upon termination of employment. The Complainant stated that he was divorced from his wife and they had a daughter; the custody was shared between both parents and he had care and control of the child. His ex-wife lived in Spain and was able to see their daughter one afternoon during the week and on alternate weekends.

From February 2008 until approximately the end of August 2008, the Complainant and his daughter lived off his redundancy package and help from his parents who were pensioners. The Complainant explained that he was able to claim unemployment benefit for a period of four weeks and that towards the end of August he applied to the Department for social assistance. The reason for this being that as a single parent, he was finding it hard to find a job where the working hours would suit the child's needs. He had no family who could assist him in looking after his daughter in Gibraltar but did not want to leave; his daughter was settled here and he had a verbal agreement with his ex-wife whereby he would remain in Gibraltar so that mother and daughter could see each other as often as possible.

After having submitted his application to the Department, the Complainant explained that he complied with their requests in presenting to them the documentation required but found that he had been held up by them at every junction.

The Complainant explained that he attended the General Counter at the Department in October 2008 to enquire about progress with regards his case and was told by the officer that she did not understand why he had been 'messed about like that'. The Complainant claimed he asked the officer if she thought he would have been assisted already had he been a single mother and the officer allegedly replied that in her opinion he would have.

On 18th November 2008 the Complainant claimed he went to the Department, he had been going there nearly every day, and was informed that his case was actually being dealt with at that time. They asked him to phone the following day by which time they would have arrived at a decision. The Complainant complied with this but upon contacting the Department was told that no decision had been arrived at. He was asked to continue to call into the offices of the Department every day and claimed that they told him they would have an answer for him either by the 20th or 21st November 2008. The Complainant stated that he again called into the Department on 20th November 2008 and was told that the person who was dealing with his case would be away until 24th November

2008. It was at this point that the Complainant decided to bring his complaint to the Ombudsman.

Investigation

On the 20th November 2008 the Ombudsman proceeded to write to the Department explaining the Complainant's situation and requesting their comments on the matter. The Ombudsman informed the Department that he had accepted this complaint without having requested the Complainant to write to them first because it appeared that the matter had gone on for some time, and the Complainant had attended the Department on various occasions in relation to his application for social assistance.

The following day, a thank you letter was received by the Ombudsman from the Complainant in which he thanked members of the Office of the Ombudsman for the help he had received from them. He mentioned that as a single parent struggling to get by in Gibraltar he had felt quite isolated. The Complainant informed the Ombudsman that since his intervention in the case it had taken the Department twenty-four hours to reach a decision; the matter had been resolved and the Department had granted him social assistance.

The Department wrote to the Ombudsman on the 26th November 2008 in reply to his letter and explained that the Complainant had applied for social assistance on the 19th August 2008. They claimed that a few days later they had sent him a letter asking him to get in touch with the Department in order to arrange for an interview and this was convened for the 9th September 2008. At the meeting he was informed that he had to produce documentation as evidence for his case to be considered, in the form of bank statements, lawyer's letter in respect of his daughter's care order, his daughter's birth certificate and mortgage deeds. The Department stated that the information requested was not submitted by the Complainant until the 30th October 2008. By way of explanation, the Department informed the Ombudsman that social assistance was designed to provide, on a discretionary basis, financial assistance assessed on the basis of need, to Gibraltarians and other persons who had a right of permanent residence. In order to establish eligibility, additional information was required from individual applicants depending on their nationality, past employment history and place of residence. The Department continued by explaining that because the Complainant's case did not meet the basic criteria for social assistance payments, his case had to be investigated further in order for the Director of Social Security to exercise his discretion on the basis of the applicant's individual circumstances. They informed the Ombudsman that his case had been approved and social assistance payments had been made accordingly.

Conclusions

After the initial application for social assistance, and the subsequent interview which took place on the 9th September 2008, it took the Complainant more than seven weeks to submit the documentation which the Department had requested. After frequently calling into the Department to see how his case was progressing and not obtaining any results, the Complainant contacted the Ombudsman. The latter immediately sent a letter to the Department explaining the Complainant's case. The following day, the Complainant was informed by the Department that his case had been approved and he would be given social assistance.

Recommendation(s)

(i) The Department should issue guidelines with regards likely time frames required for them to process the applications for benefits or financial assistance which they provide.

(ii) There should also be an expedited procedure for those cases deemed to be urgent.

4
Statistical Information

4.1 VOLUME

This year, we received 305 complaints in our office, a reduction of 38 complaints compared to 2007, where we received 343 complaints. 289 complaints were completed by the end of the year and this only left 49 complaints open by the end of 2008.

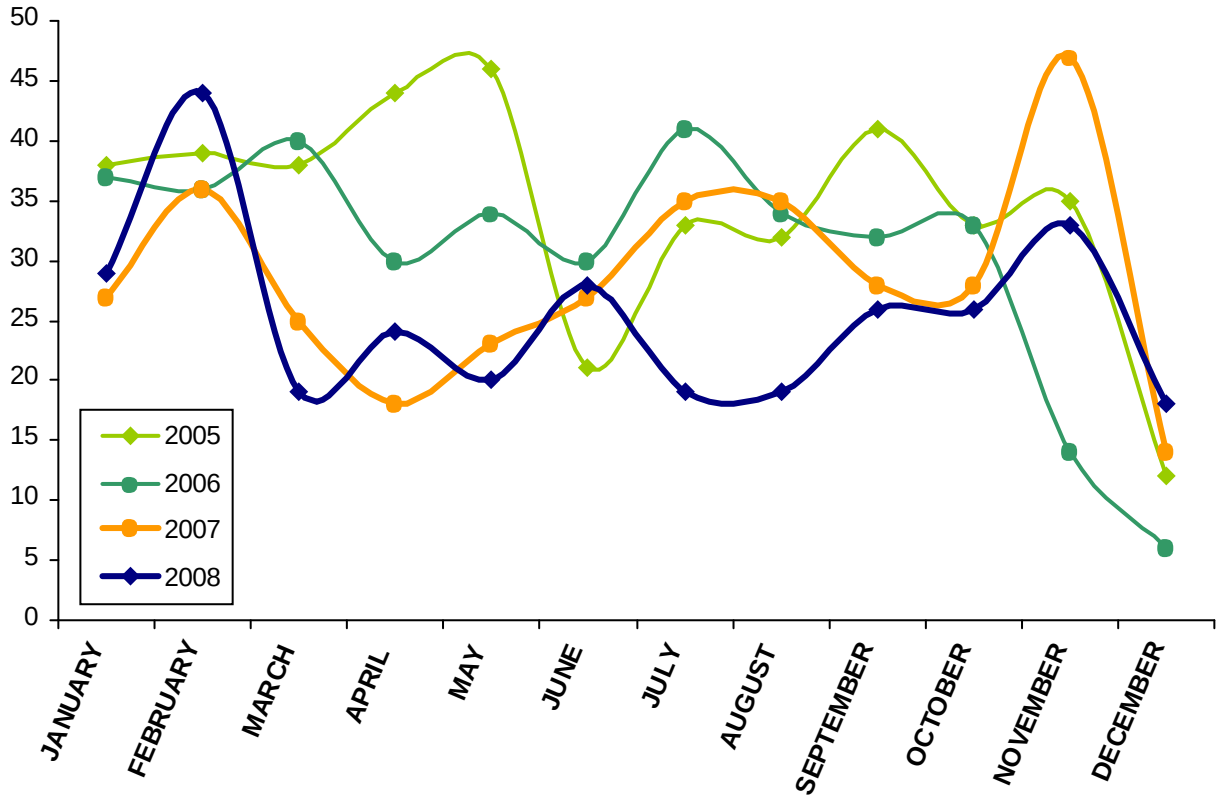
Complaints received, completed and current by month – 2007 & 2008

Table 1	2007			2008		
	Received	Completed	Current	Received	Completed	Current
			28			33
January	27	13	42	29	22	40
February	36	17	61	44	30	54
March	25	21	65	19	11	62
April	18	25	58	24	27	59
May	23	26	55	20	25	54
June	27	25	57	28	37	45
July	35	22	70	19	20	44
August	35	29	76	19	16	47
September	28	43	61	26	25	48
October	28	29	60	26	23	51
November	47	49	58	33	32	52
December	14	39	33	18	21	49
TOTAL	343	338		305	289	
Enquiries	144			136		

This year there were also 136 enquiries received, a reduction of 8 enquiries as compared with 2007, when we received 144 enquiries. Similar to last year the month of January was a quiet one in respect to complaints received in our office, but February on the contrary was the busiest month of the year with 44 complaints. In March there was a significant drop in complaints, but in general the Spring months appear to be similar to those of last year's figures. (2007-25,18,23,27; 2008-19,24,20,28).

4.1 (CONT)….

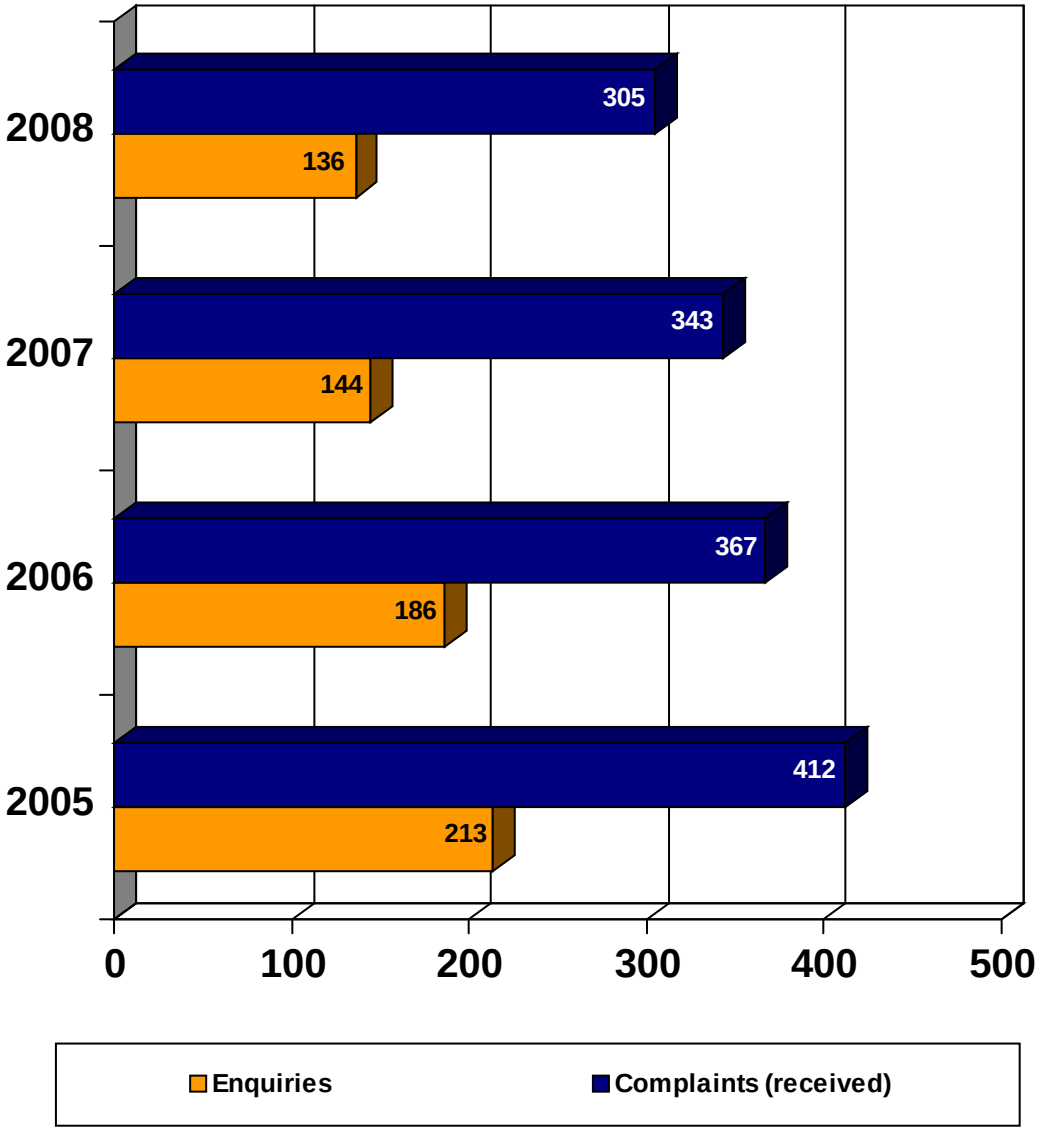
Chart 1 - Progression of monthly complaints received from 2005 to 2008



In the Summer months it is understandable that we receive less complaints due to the warm weather which members of the public enjoy at the beach or take holiday vacations, but nevertheless one must highlight the fact that in July and August there were only 19 complaints received each month, which is substantially lower in comparison to last year's 35 complaints per month for the same period. The following months picked up momentum in relation to complaints received; September and October both recorded 26 complaints each, but still, it did not reach the average (calculated from 2005 to 2008) of 31. By calculating averages it can be concluded that the busiest month for receiving complaints in the office is February, followed by January and then November. Last year November was the busiest month of 2007, with 47 complaints received, and this year in November although there have not been as many complaints as in the same month last year, it surprisingly is one of the busiest months, with 33 complaints received. In December there were only 18 complaints received which is low, but is comprehensible due to the festive season. Of interest, 18 complaints is the highest number we have received in any December since 2004.

4.1 (CONT)….

Chart 2 - Breakdown of Complaints and Enquiries received from 2005 to 2008



This year we have received 305 complaints, 42 were against private organisations that fall outside the Ombudsman's jurisdiction. This left a total of 263 complaints received against government departments, agencies and other entities which fall under our jurisdiction. There were also 136 enquiries. As one can see from the chart above, (*Breakdown of Complaints and Enquiries received from 2005 to 2008)* complaints and enquires have decreased. From 2005 to 2006 there was a decrease of 45 complaints, from 2006 to 2007, 24 less complaints and from 2007 to 2008, a decrease of 38 complaints.

4.2 DEPARTMENTS/ENTITIES

The trend of complaints has continued along the same lines as in previous years. The Housing Department, Buildings and Works Department, Department of Social Security, Civil Status and Registration Office and the Gibraltar Health Authority again top the list attracting the highest number of complaints but in different ranking order from last year.

Table 2 - Complaints/enquiries received in 2008 - Government Departments/Agencies/Others

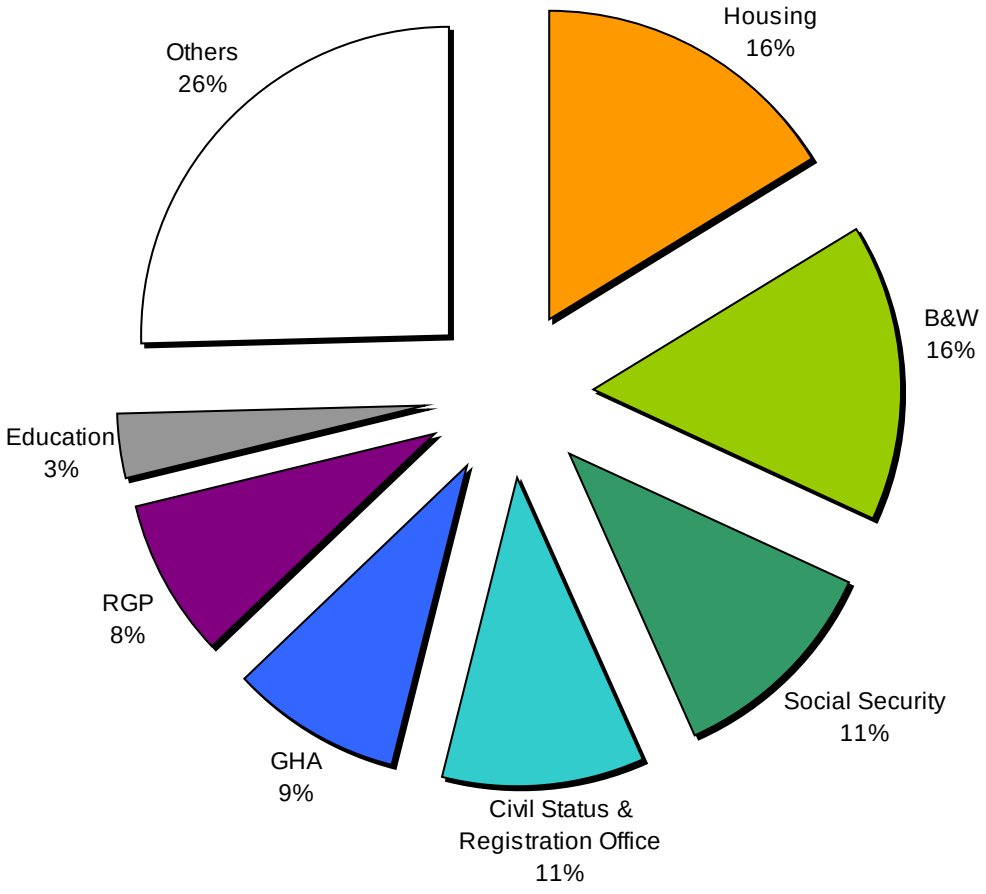
Dept/Agency	Enquiry	Complaint	Dept/Agency	Enquiry	Complaint
Aqua Gib	-	2	**GRP Investments**	1	2
Attorney Generals	-	1	**Housing Department**	57	43
Bruce's Farm	-	-	**Human Resources**	-	2
Buildings and Works	5	41	**Income Tax Office**	3	6
City Fire Brigade	-	-	**Land Property Services Ltd**	-	7
Civil Status & Registration	13	28	**Magistrates' Court**	2	1
Companies House	1	-	**Office of the Chief Minister**	1	6
Customs	-	2	**Port Authority**	-	4
Education & Training	2	9	**Prison Service**	-	1
Elderly Care Agency	-	-	**Reporting Office**	-	-
Employment Service	4	5	**Royal Gibraltar Police**	3	22
Environment	-	1	**Social Security**	14	30
Environmental Agency	-	-	**Social Services Agency**	1	3
Financial & Develop Sec	-	-	**Sports and Leisure**	-	-
Gibraltar Broadcasting Corp	-	-	**Supreme Court**	-	3
Gibraltar Electricity Auth	2	2	**Technical Services**	1	5
Gibraltar Health Authority	11	23	**Transport & Licensing**	8	7
Gibraltar Police Authority	-	2	**Trade, Industry & Tel**	-	1
Gibraltar Post Office	1	2	**Transport Commission**	-	-
Gibtelecom	-	1	**Treasury**	-	1
			TOTAL :	**130**	**263**

It is interesting to note that members of the public continue to make most enquiries about the same departments as in previous years. The number of enquiries relating to the Housing Department have increased this year. This is due to the setting up of the Housing Tribunal which has made members of the public unsure about how to proceed with their complaint(s) against the Housing Department, hence their enquiring at our offices for advice.

4.2 (CONT)….

This year the two departments composing the Ministry for Housing, i.e. the Housing Department (16%) and the Buildings and Works Department (16%) have again attracted the most complaints with a combined total of 32% of all complaints received. There was also an increase in the number of complaints against the Civil Status and Registration Office and Social Security with 11% each (9% & 7% respectively last year).

Chart 3 - Breakdown of Complaints received in 2008 Government Departments/Agencies/Others



Two other departments followed closely in numbers of complaints received. These were the Gibraltar Health Authority with 9%, the Royal Gibraltar Police with 8%. The most significant change has been the decrease in complaints against the Housing Department from 29% in 2007 to 16% in 2008. Possibly this has been due to the establishing of a Housing Tribunal, where members of the public can now direct their grievances to this tribunal. The Buildings and Works Department have more complaints than last year, nearly double, an increase from 9% to 16%. We believe that the setting up of the Buildings and Works Helpdesk which was seen as an initial positive approach by our office has fallen short of expectation with the public, hence service users bringing their disappointment to light at our offices.

4.3 NATURE OF COMPLAINTS

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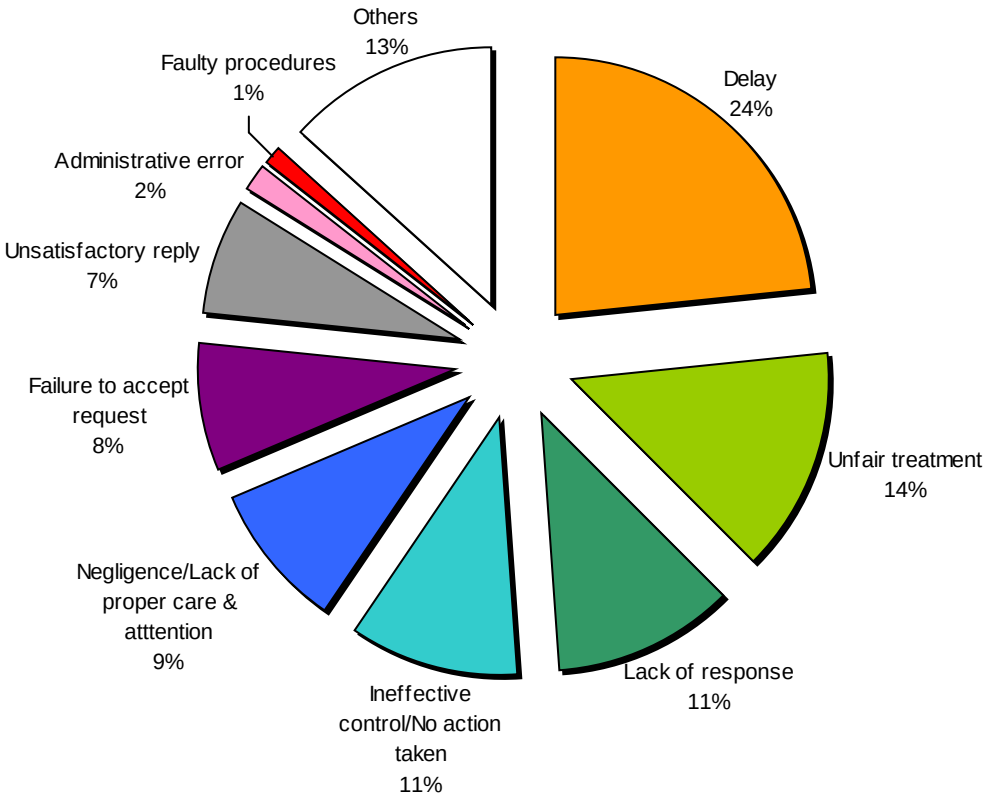
Breakdown of complaints received in 2008

Chart 4 - Nature of Complaints



The most common complaint that the office receives is that of delay. This year nearly one quarter of all the complaints lodged in our office has been of delay (24%). Common types of delay include 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, delay in receiving social assistance payments from the Department of Social Security and the irregular waiting time by the Housing Department in allocating flats. 14% of complaints have been of unfair treatment and this includes matters such as unreasonable decisions made by the department/entity, and discriminatory or disrespectful attitude towards members of the public. One must highlight the substantial number of complaints lodged in our office over a lack of response (11%) which mainly is due to members of the public failing to receive a written reply from the department after having written to them. Other type of complaints include ineffective control and the consequent non-action by the relevant department/entity, negligence due to lack of proper care and attention, failure to accept requests, unsatisfactory replies, administrative errors and faulty procedures.

4.4 PROCESSING DATA

There were 289 complaints classified this year out of which, 59 (20%) were classified as outside jurisdiction, hence they could not be investigated by the Ombudsman. 165 (57%) were closed as 'Relevant Avenues Not Exhausted' (RANE). In such cases, although we do not investigate the allegations of the complaint, we give advice to the Complainant as to how to proceed with his complaint and request that they keep us informed of progress so that we may further assist if the need arises. Some of these RANE complaints return to our offices and are investigated as a result of the Complainant having exhausted all possible avenues of redress and still being dissatisfied with the outcome of their complaint. During this process, the nature and circumstances of the complaint might change. *e.g. 'Complainant complains about delay in receiving social assistance and we advise complainant to put grievance to the Department of Social Security. Complainant writes and receives no reply. Complainant comes back to our offices and complains. The Ombudsman then initiates an investigation as a result of the department's failure to reply to the Complainant'.*

4% of the complaints were settled informally as they were resolved by assisting the Complainant without the need to investigate the complaint and another 4% 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. This year there have been 42 complaints which have been investigated constituting 15% of all complaints, 7 of them have been resolved through informal action and the remainder (35) have warranted an extensive report. Out of these 35 complaints which warranted a report, 12 have not been sustained, 14 have been sustained whilst 8 have been 'partly sustained' and 1 was discontinued.

Chart 5 - Classification of Complaints completed in 2008 (%)

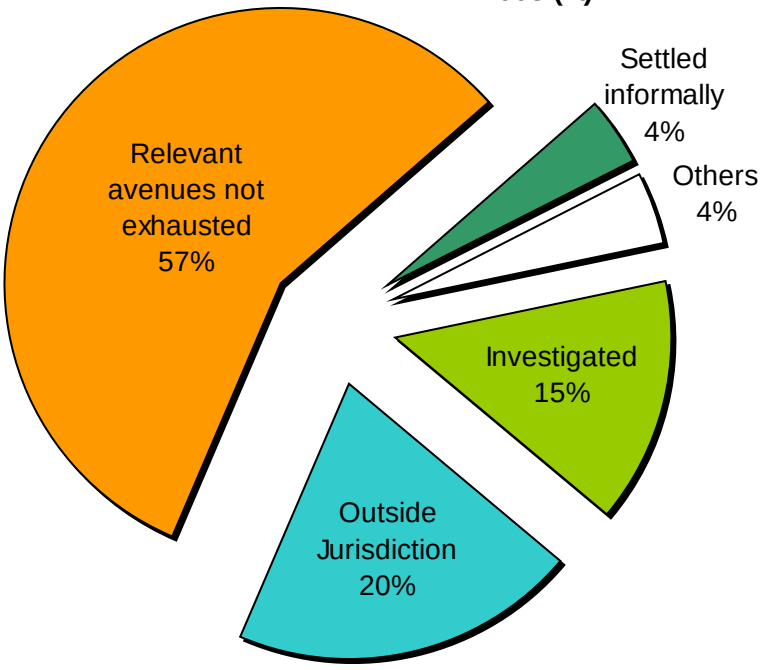


TABLE 3 -SHOWING DETAILS OF RECOMMENDATIONS MADE IN 2008 (I)

No	Nature of complaint	Recommendation(s)	
765	That the Department was only renewing the Complainant's residence permit for periods of 3 months.	That the Department acted proactively and considered exercising their discretion to grant the Complainant a lengthier residence permit given the Complainant's particular circumstances including (1) his over 27 years residence in Gibraltar (2) his good conduct (3) the reason for his move to the hostel (4) the fact that he was not eligible to apply for government rental housing and the fact that private rental housing in Gibraltar was very scarce and expensive.	Immigration Department
771	Delay in registering the Complainant's boat.	That the Authority updated their website to include information regarding Fast Launch Licences and that clearer guidelines were given to applicants on the path of their application, with the aim of ensuring the minimum delay.	Port Authority
772 **778**	Delay in processing the Complainant's application for exemption under section 12(2) of the Immigration Control Act. Non receipt over 6 months post application of a substantive reply to his application for exemption under section 12(2) of the Immigration Control Act.	That the Department within the next 3 months carry out an internal audit to ascertain average time taken in processing the different nationality related applications it dealt with and that consequent on that audit, the Department implemented appropriate time brackets for the processing of applications generally and particularly in relation to the various procedural administrative steps undertaken by the Department leading to the application's final determination.	Civil Status and Registration Office
773	Over three years after having applied for a room at the Devils Tower Government Hostel, the Complainant had not yet been given a room there.	That the Ministry: **1.** Put in place an effective administrative system to ensure that all letters of application for Hostel accommodation were promptly acknowledged and replied to. **2.** By no later than the end of January in each and every year draw up and put up in a place open to public viewing the two updated Hostel Waiting Lists.	Government Hostel
779	Non reply to the Complainant's letter containing a claim for water damaged items in her home arising from ingress of rain water from blocked gutters and pipes for which the Government of Gibraltar were responsible, and delay in determining the Complainant's claim.	That the Department: **1.** Put in place an administrative system to ensure that all claims received were processed by way of forwarding to the Attorney General's Chambers for their legal advice without delay so that the over 2 months delay experienced by the Complainant's claim in this regard, never reoccurred. **2.** That the Department consulted with the other Considering Bodies to see if there were ways in which the current procedures in relation to claims, particularly low value claims like the Complainant's one, could be streamlined so as to achieve resolution within a shorter time frame.	Buildings and Works Department

TABLE 4 - SHOWING DETAILS OF RECOMMENDATIONS MADE IN 2008 (II)

No	Nature of complaint	Recommendation(s)	
780	Delay in issuing a visa to enable the Complainant's wife to enter Gibraltar as well as the disrespectful attitude displayed by the Department towards him.	That the Head of Department issued guidelines for the conduct of interviews, if these did not already exist.	Civil Status and Registration Office
798	Being asked by AquaGib to pay a water bill arising out of flooding which occurred in communal toilets which the Complainant strongly believed was due to the water meter situated outside the building not being enclosed in a cabinet, leaving it open to tampering by strangers thereby having access to it.	**1.** That given the particular circumstances of this case, AquaGib recommend to the Government of Gibraltar that they exercise their discretion and waive this particular outstanding water bill owed. **2.** That AquaGib made the necessary changes to their Customer Contact System to ensure that all correspondence received was not only acknowledged but was also replied to substantively within a reasonable period of time. **3.** That AquaGib carried out an audit to ascertain how many water meters did not have the required lockable meter boxes fitted and that consequent on that audit they put in place a meter box installation programme with the aim of providing meter boxes to all water meters within a finite reasonable period of time.	AquaGib Limited
800	Non reply to the Complainant's letters in relation to his application for a firearms licence.	**1.** That in all cases applicants received a written reply in answer to their application for a firearms licence/certificate. **2.** That if a firearms licence/certificate was refused the letter to the applicant communicating the same give reasons for the refusal. **3.** That the letter of refusal also informed the unsuccessful applicant of his right pursuant to section 4 (8) and Schedule 1 of the Firearms Act to appeal to the Magistrates' Court against the Commissioner's refusal as well as the time limit within which to appeal. **4.** That an unsuccessful applicant should be called in by the Police to collect the above mentioned letter of refusal in person or alternatively it be sent to the person by registered post.	Royal Gibraltar Police
801 802	In relation to the manner the Complainant was treated by the labour inspectors. Additionally the Complainant was aggrieved at the Ministry's decision to accept a backdated dismissal notice.	**1.** The heading of the Ministry's complaint form should be 'Complaint Form' and not as at present 'Record of Possible Breaches of the Ordinance' (in any event it should read 'Act' and not 'Ordinance') **2.** The Complaint Form should be precisely that, a complaint form, detailing the complaint as presented to the inspectors. No other information as to any action taken should be contained in that form. **3.** The Complaint should be signed by the Complainant. **4.** There should be a clear record of the inspectors' actions and the reasons for such actions.	Ministry of Employment

TABLE 5 - SHOWING DETAILS OF RECOMMENDATIONS MADE IN 2008 (III)

No	Nature of complaint	Recommendation(s)	
811	In respect of the state and condition of the prison.	**1.** That the toilet in "D" Wing which was out of order be repaired and put back in working order as soon as possible and in any event by no later than 3 weeks from the date of the report, if this has not already occurred. **2.** That the leaking toilet in "D" Wing if not already repaired be repaired as soon as possible and in any event by no later than 2 weeks from the date of the report. **3.** That the ongoing daily and other recurring maintenance to the fabric and installations of the Prison continue unabated.	H M Prison
812	(a) The time taken by the Department to reply substantively to the Complainant's letter. (b) The Complainant having had to pay the Department banking charges over and above the import duty owed, as a result of the Department's working practice in relation to the requirement of a signed "amount blank" cheque for payment of import duty.	(a) **1.** That the Department put in place an effective administrative system to ensure that all correspondence received was not only acknowledged but was also replied to substantively within a reasonable period of time. (b) **1.** That all officers charged with the collection of duty were instructed to advise users of both types of clearance methods involved and of their pros and cons. **2.** That the Department officially advised all Customs Clearance Agents it dealt with that the two modes of payment of duty namely Fast Line Clearance as well as Non-Fast Line Clearance were available to users and that the Customs Clearance Agents advised users of this.	H M Customs
814	The fact that although the Complainant had applied to the Department for his old age pension in January 2008 enclosing the relevant documentation which showed his date of birth as 1 January 1943, he had been informed that his pension payments would commence as from August 2008.	That the Department puts in place an effective administrative system to ensure that all correspondence received was both promptly acknowledged and also replied to substantively within a reasonable period of time.	Social Security Department
833	Delay in coming to a decision in relation to the complainant's application for social assistance	**1.** The Department should issue guidelines with regards likely time frames required for them to process the applications for benefits or financial assistance which they provided. **2.** There should also be an expedited procedure for those cases deemed to be urgent.	Social Security Department

4.6 QUALITY OF SERVICE

293 Complainant Satisfaction Surveys were sent by post to members of the public who had visited our offices during the year. Out of these 293, 60 were returned. (20%)

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

1. What did you expect from us before you came to our office?

Advice	29%
Help in solving my problem	53%
Solve my problem for me	18%

2. Overall, are you satisfied with our service?

Excellent	43	73%
Good	12	21%
Satisfactory	2	3%
Unsatisfactory	2	3%

(*1 of the surveys received did not provide an answer to this question)

This question also provided space for comment. The following are some of the comments:

- Helpful at all times and a willingness to help was very evident.
- The attention and professionalism shown by all in your office was second to none.
- I recommend it to all, the Ombudsman is there for advice and to defend citizens.

3. My inquiry was responded to promptly?

Excellent	38	66%
Good	14	24%
Satisfactory	5	8%
Unsatisfactory	1	2%

(*2 of the surveys received did not provide an answer to this question)

4. I was treated courteously.

Yes	60	100%
No	0	0%

This question also provided space for comment. The following are some of such comments:

4.6 (CONT)…

- All very well mannered and make you feel at home; in essence a very humane touch.
- I have nothing but praise for the services that the Ombudsman provides.
- I was treated with respect and dignity.

5. Were updates provided to your complaint?

Yes	48	87%
No	7	13%

(*5 of the surveys received did not provide an answer to this question)

6. Tell us about the outcome of your complaint/enquiry were you

Satisfied	46	92%
Dissatisfied	4	8%

(*10 of the surveys received did not provide an answer to this question)

7. Are you satisfied with the time it took for the Ombudsman to deal with your complaint?

Yes	51	94%
No	3	6%

(*6 of the surveys received did not provide an answer to this question)

- I am very pleased because every time something new arose, I would be updated and given an explanation on everything.
- Not only satisfied, but very pleased and thankful for vital advice and assistance given.
- When I asked for an appointment I was given one for that same week.

8. If you had a complaint or enquiry would you come to the Ombudsman?

Yes	59	98%
No	1	2%

- Without doubt, a service where information and advice is provided without prejudice.
- It is always good to have a responsible body willing to help you where all other doors have closed up on you.
- I strongly recommend everyone to approach the Ombudsman.

THANK YOU NOTES AND CARDS 2008

Bouquet received by our Public Relations Officer thanking her for the advice and help provided.

We would like to thank you for having assisted us so well. As you know we were successful. We also wish you all well in this festive season.

- -

To all the staff at the Office of the Ombudsman
I would like to thank you very much for the help I have received from you. As a single father struggling to get by in Gibraltar I felt quite alone and isolated. Special thanks for taking up my case with great speed. A member of staff actually took a letter up to the Department in question personally in his lunch time. I feel this action went above and beyond what was expected by myself. Since your intervention the case in question has been resolved (in my favour) within 'one day'. Once again thank you so very much.

- -

Thank you for your kind words and help in my time of need. I shall always remember them.

- -

This letter is to thank you for your kindness and your kind efforts to assist me. I would also like to thanks all members of staff.

- -

I just want to thank you and your team for having solved my five year old problem in less than a week. God bless.

PHOTOGRAPHIC COMPETITION

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