

INDEX

BUILDINGS AND WORKS

CIVIL STATUS AND REGISTRATION OFFICE

ECUCATION DEPARTMENT

GIBRALTAR HEALTH AUTHORITY

HOUSING

HUMAN RESOURCES

MAGISTRATES COURT

BUILDINGS AND WORKS DEPARTMENT

CASE PARTLY SUSTAINED NO RECOMMENDATION MADE BUT SERIOUS VIEWS EXPRESSED

CS/615

COMPLAINT AGAINST THE DEPARTMENT OF BUILDINGS & WORKS FOR INORDINATE DELAY IN CARRYING OUT WORKS TO THE COMPLAINANT'S FLAT

The Complainant was a longstanding resident of a government flat in the upper town. On 16 October 2001 the Complainant and a neighbour complained to the Ombudsman that they had been waiting for over six years for repairs to be carried out to their building which suffered from water ingress, cracking in the walls, conditions of extreme dampness and a variety of other structural problems. The Ombudsman sustained both complaints (*see C/S 303 and C/S 304 Public Services Ombudsman, Third Annual Report pp 8-12*).

In March 2003 the same two Complainants returned to the Ombudsman. They explained that as a result of his reports the Department of Buildings and Works (B&W) had informed them that refurbishment works on their block would commence in May 2002 but this had not happened. On enquiry, B&W told the Ombudsman that they planned to refurbish all government owned buildings in the Complainants' road and that works on the Complainants' block would commence as soon these were completed on the block adjacent to theirs.

In November 2004 the Complainant returned to the Ombudsman for a third time. She explained that although the exterior of her building had been painted and the roofs repaired she was concerned that the interior of her flat still had to be hacked and re-plastered and the windows replaced. She complained that she had reported her windows in 1992 but when she had asked the Department when these would be changed she was told that she was 300th in the windows replacement list.

The Department confirmed that she was 300th in the windows replacement list, explaining that the earliest report on file concerning the windows was dated 21 October 2003. After searching their old hand written files they informed the Ombudsman that the Complainant had reported her windows in 1992 as alleged by her, but these were replaced with brand new purpose built wooden windows in 1996. The Complainant confirmed that the windows had been replaced in 1996 but, she pointed out, none of the windows in the west elevation of her flat were waterproof. When asked by the Ombudsman whether she would be satisfied if her existing shutters and windows would be repaired and made waterproof she answered in the negative pointing out that new aluminium windows had been installed in all of her neighbours' flats and she also wanted new windows. It was later confirmed to the Ombudsman by the Housing Department's Reporting Office that the Complainant had at no time reported to them that rainwater seeped in to her apartment through her windows.

In his considerations the Ombudsman expressed grave concern at the inordinate amount of time that it took B&W to carry out required works to dilapidated old buildings. He pointed out however, that he had written an exhaustive number of reports on this subject and there was no point in writing another one saying what he had already said before. He suspected that the reason for B&W's inability to eliminate the backlog of required works could be that it lacked the manpower to do so. The Ombudsman called on the authorities to take action to ameliorate the predicament of tenants who were living sometimes for years on end waiting for their buildings to be refurbished.

This investigation raised another issue which the Ombudsman felt required his comments and this is B&W's practice of changing windows without regard to their condition and to the necessity of doing so. As pointed out above, when the Ombudsman asked the Complainant whether she would be satisfied if her existing shutters and windows would be repaired and made waterproof she answered in the negative pointing out that new aluminium windows had been installed in all of her neighbours' flats and she also wanted new windows. Indeed it seemed that B&W were in agreement with the Complainant's reasoning because her name had been put in the window's replacement list without it being evaluated whether this was a necessity. The Ombudsman questioned the practice of changing windows on demand and wondered what the cost of this to Gibraltar's exchequer was.

The Ombudsman sustained the complaint in part, pointing out that it was inconceivable that a tenant wait for years for the walls of her flat to be hacked, plastered and painted. He did not sustain the part of the complaint relating to the delay in changing her windows, pointing out that before somebody's name was put in the windows replacement list B&W should evaluate whether it was more economical to repair the existing windows.

CASE SUSTAINED

CS/620

COMPLAINT AGAINST THE BUILDINGS & WORKS DEPARTMENT FOR THEIR DELAY IN CARRYING OUT WORKS TO THE COMPLAINANT'S FLAT

The Complainant first reported four leaking pipes some time in 1999. Three years later no repair works had yet been carried out by the Department of Buildings and Works (B&W). On 12 February 2002 she wrote a letter of complaint to the Minister for Housing and the following month one of the leaking pipes was replaced. The Complainant felt aggrieved because only one pipe was replaced and, as at the time of lodging that complaint, four more pipes continued to require repairs despite.

On 16 October 2001 the Complainant also reported the dangerous state of her balcony's parapet, which appeared likely to fall down. Although B&W hacked off the concrete that was at risk of falling, the Complainant felt aggrieved because the balcony was not re-plastered and no further repairs were carried out.

In response to the complaint B&W explained to the Complainant that her entire building had been surveyed and the repairs would be carried out as part of their 2005 Major Works Programme.

In her complaint to the Ombudsman, the Complainant explained that she had been waiting for almost six years for the pipes to be replaced and three years in respect of the parapet.

B&W explained that the pipes in question affected the entire building and they assured the Ombudsman that the repairs would be included in the 2005 Major Works Programme.

The Ombudsman highlighted the fact that the Department had embarked on a new initiative aimed at tackling the historical backlog of works. This initiative aimed to complete all outstanding works required to a block of flats simultaneously. That is to say, the pending works to each flat in a selected block would be tackled, until all the flats which required works had been completed, the Department would then move onto the next block of flats on their list.

Notwithstanding the above, the Ombudsman pointed out that the Complainant had been waiting since 1999 and 2001 for two reports to be tackled. At the time of writing this report (February 2005) the Complainant had experienced a delay of about six and three years respectively. During this time the Department failed to update her through its own initiative, and instead provided an update only once she had written to the Department directly.

The Ombudsman was hopeful that the new 2005 Major Works Programme would go a long way to redress the excessive backlog of works. Although pleased to note that the Department was making genuine attempts to resolve this problem, it had taken them far too long in respect of this complaint. Having sustained this complaint, the Ombudsman closed the case.

UPDATE

The Ombudsman noted that as a result of the lack of repairs to the Complainant's flat and heavy rains during February/March 2005, water had started to seep through her balcony wall.

**CASE SUSTAINED
NO RECOMMENDATION WARRANTED OR APPROPRIATE**

CS/621

**COMPLAINT AGAINST THE BUILDINGS & WORKS DEPARTMENT
FOR THEIR DELAY IN REPLACING THE INTERNAL DOORS OF
THE COMPLAINANT'S FLAT**

The Complainant suffered from Osteoporosis and as a result of her illness she could not open the front door to her flat without assistance. Her flat's internal doors were also faulty and in August 2003, she asked that they be replaced. In

C/S 565¹ the Department of Buildings and Works assured the Ombudsman that the doors would be replaced by January/February 2004.

The Complainant was aggrieved that by December 2004 the doors had not yet been replaced.

In response to the Ombudsman's enquiries B&W explained that the Complainant's work's requisition had been updated during August 2003 so as to include the internal doors. The estimator had pointed out that the Complainant suffered from a medical condition but, when the Reporting Office prepared a new requisition form for these works, they did not highlight the said condition. When the then Head Estimator issued instructions for the doors to be replaced, he also made an error and sent a memo highlighting the wrong requisition form number, hence the wrong address. These works were carried out, and B&W presumed that the matter had been resolved.

B&W explained that the fact that they had a limited workforce, coupled with the lack of prioritisation, meant that the Complainant's works had been placed on the normal waiting list, and this was why the said doors had not been replaced. B&W then assured the Ombudsman, however, that they would be looking into the matter as a priority.

On 31st January 2005 B&W contacted the Ombudsman and informed him that the Complainant's internal doors were at the depot and would soon be affixed. The Complainant called the Ombudsman on 2 February 2005 to inform him that all the doors had been fitted, and she thanked him for his intervention.

The Ombudsman was pleased to note the prompt action that had been taken by B&W, once the matter had been brought to their attention. They were able to establish where they had gone wrong, and in under a month and a half had affixed the said doors.

Both the Reporting Office and B&W had contributed towards the delay by not highlighting the Complainant's medical condition and by sending an internal memo with the wrong works requisition number. The Complainant was not to blame for either of the mistakes, which had contributed to the inordinate delay she was made to experience. The inattention plus the fact that the Complainant had been given failed assurances that the works would be carried out during January/February 2004, contributed towards causing the Complainant's grievance. In light of the above the Ombudsman sustained the complaint.

**CASE SUSTAINED
NO RECOMMENDATION WARRANTED OR APPROPRIATE**

CS/623

**COMPLAINT AGAINST THE BUILDINGS & WORKS DEPARTMENT
OVER THEIR DELAY IN CARRYING OUT REPAIRS TO HIS
APARTMENT**

On 1st November 2004 the Complainant contacted the Ministry for Housing's Reporting Office explaining that a leak emanating from his neighbours flat was making its way into his bathroom and there was a constant drip directly over his toilet. The Complainant was also worried that the water could find its way onto the electrical circuit.

Although efforts were made by B&W to identify the source of the leak, these were not successful. B&W personnel again visited the Complainant's flat on 17th November 2004 but, still being unable to identify the source, they told the Complainant that they would return the following day. These assurances did not materialise, however, so the Complainant wrote B&W a letter dated 19th November 2004, setting out his situation and requesting an update.

Not having received a reply, by way of letter dated 12th January 2005 the Complainant sent B&W a reminder, asking them to reply to his said letters at their earliest convenience and when he received no answer he lodged a complaint with the Ombudsman.

The Department wrote to the Ombudsman on 8th February 2005, explaining that works would resume that same day, and the repairs should not take any longer than five working days.

On 15th February 2005 B&W completed the repairs in respect of the leak emanating from the Complainant's neighbour's flat.

The Ombudsman regretted that B&W had not contacted the Complainant during November 2004 to explain that they would not be returning to his flat as agreed. He was also disappointed with the fact that B&W had not replied to the Complainant's letters. As a result of this the Ombudsman concluded that the Department had acted maladministratively he sustained the complaint.

The Ombudsman noted that works had resumed as soon as he had got in touch with B&W and one week later, the repairs had been completed. He was pleased that the Department had resolved the matter quickly, once it had been brought to their attention. He pointed out however, that the complaint only appeared to have been resolved because he had raised the matter directly with B&W, and this should not have been necessary. Having sustained the complaint, he closed the case.

**CASE SUSTAINED
NO RECOMMENDATION WARRANTED
BUT SERIOUS VIEWS EXPRESSED**

CS/627

**COMPLAINT AGAINST THE DEPARTMENT OF BUILDINGS AND
WORKS FOR A DELAY OF SIX YEARS IN DEALING WITH
PROBLEMS OF DAMPNES AND WATER PENETRATION IN THE
COMPLAINANT'S FLAT**

The Complainant a government tenant, complained to the Ombudsman that at the time of writing water had been 'pouring' into her flat from the flat above

(the upstairs flat) for at least five years. She produced evidence supporting her claim that she had been reporting the problem to the Ministry for Housing's Reporting Office at least since September 1999 and she complained that nothing had been done by the Department of Buildings and Works (B&W) to stem the flow of water.

The Complainant explained that the continuous seepage of water into her flat had caused serious damage. Most of her flat now suffered from severe dampness. The cork floor tiles that had been laid by her and her husband when they first moved in had been ruined as had the electrical installation. She claimed to have received an electric shock on one occasions when putting her hand on a light switch to turn the light on. The wall tiles in her bathroom had fallen off. Paint was peeling, flaking and bubbling and her cupboards smelt of damp and mould. The Complainant pointed out to the Ombudsman that her rental agreement imposed on the landlord the duty to keep the structure of her flat in a good state of repair and for many years now they had failed to do so. In protest she had stopped paying rent.

From his enquiries the Ombudsman gathered that throughout this period the tenant of the upstairs flat (the upstairs neighbour) had continuously refused B&W access to her flat. Eventually however in June 2004, further to representations from the Chief Executive of B&W the Housing Manager wrote to the upstairs neighbour requesting that she provide her "fullest cooperation" to the workmen requiring access to her flat. On 12 August B&W wrote to the Housing Manager once again asking whether the upstairs neighbour had been contacted and access arranged. "*The problem is now severe and should be considered very urgent*" said the Chief Executive. "*As soon as access has been arranged we will instigate the repairs.*"

On 24 August 2004 the Housing Manager informed the Chief Executive that they had sent the upstairs neighbour numerous letters requesting access which had been ignored. As a result, the matter had been referred to the Housing Department's solicitors for legal advice and the solicitors had written to the upstairs neighbour reminding her that she had a contractual duty to give access to workers seeking to carry out repairs and informing her that should she fail to comply, proceedings would be issued in the Courts seeking an Order that she be required to give access.

The upstairs neighbour complied with the solicitor's request and gave access to B&W who proceeded to carry out repairs after her brother, who apparently was employed by B&W, privately refurbished his sister's bathroom.

The Ombudsman sustained the complaint in its entirety expressing extremely strong views at the length of time that it had taken the Housing Department, through their contractors, B&W to carry out the necessary repairs to the upstairs flat and at the resultant breach of the landlord's duties towards their tenant. He also criticised B&W's failure to deal with the Complainant's predicament for so long especially since they must have known that the brother of the upstairs neighbour was their employee and they could have asked him to approach his sister. The Ombudsman pointed out that even though B&W had ultimately done what was required from them to enforce their right to enter the upstairs

neighbour's premises and carry out repairs, he could not understand why it had taken them five years to do so.

Noting that the Complainant owed money in rental arrears as pointed out above, the Ombudsman referred to a 2003 Court of Appeal decision in which the court ruled that a tenant who was sued by his landlord for arrears of rent could rely on the remedy of equitable set off for damages for breaches of the disrepairing covenant that had accrued under his previous landlord¹. With the consequences of this ruling in mind the Ombudsman suggested that in cases such as the one under consideration the Housing Department introduce a system of compensation for tenants who have been the victims of maladministration of the type described herein. With this suggestion the Ombudsman closed the report.

UPDATE

After the repairs were carried out by B&W, the Complainant returned to the Ombudsman, complaining that water was again leaking through her ceiling. It seemed that the upstairs neighbour had left a tap running for a considerable length of time and the water had seeped down into the Complainant's flat and through her flat to the neighbour below. At the time of writing the Housing Department was considering to decant the Complainant. The Ombudsman expressed the view that this was not the solution because with the Complainant's flat empty, water would continue to seep through the Complainant's empty flat and beyond, damaging the fabric of the building in the process. The Ombudsman was of the view that the Housing Department should rely on the provisions of the upstairs neighbour's tenancy agreement to move her to a ground floor flat where leaking water would not be a nuisance to any neighbour.

CASE NOT SUSTAINED RECOMMENDATION MADE

CS/646

COMPLAINT AGAINST THE BUILDINGS & WORKS DEPARTMENT OVER THEIR DELAY IN CARRYING OUT REPAIRS TO THE COMPLAINANT'S FLAT

On 18 September 2000 the Complainant contacted the Reporting Office and explained that some of her windows needed to be replaced. When the B&W estimator visited the flat he explained that the said windows were in good condition. The only problem that he could see was that the design of the windows was such that it was difficult to clean them, and he therefore cancelled the report.

On 21 January 2002 the Complainant reported her living room window lock for inspection. The estimator visited the flat, accepted that the lock needed to be replaced, and added that both the bathroom and toilet windows needed to be replaced, as well as the balcony door.

On 18 May 2004 the Complainant (who was in her late 70's at the time) made a further report requesting that her bath be converted into a shower. B&W visited the flat and agreed to replace the bath for a shower tray, including the enclosure.

On 2 December 2004 the Complainant reported the locks on two of her bedroom windows as faulty and on 7 January 2005 the Complainant reported more window locks, as these too were faulty.

At the time of complaining to the Ombudsman, during February 2005, none of the above-mentioned repairs had been carried out.

In reply to the Ombudsman's enquiries B&W explained that the balcony door and some windows had been reported during January 2002. There were a very high number of similar reports however, and the Complainant would have to wait a further thirteen to fifteen months before the works would be carried out. Aluminium door/window replacements had an average waiting time of four years. The bathroom refurbishment, on the other hand, was due to commence during March/early April 2005.

The Ombudsman was disappointed with the above reply and in response to his request for further clarifications B&W pointed out that at present due to lack of resources the waiting time for the replacement of windows and shutters was approximately four years and two months. B&W added that pensioners were usually prioritised on the waiting list but when tenants reported repairs at the Reporting Office, they usually failed to mention whether or not they were elderly/pensioners, and it was not possible for B&W to quantify how many pensioners were on the waiting list without carrying out a very slow and time consuming exercise (namely phoning everyone on the waiting list and ascertaining their actual status).

The Ombudsman was disappointed with the constant delays by B&W to carry out the works. It seemed that there was no hope of improvement, which was demoralising for the Complainant. Notwithstanding the above, B&W had not committed an act of maladministration because the fact was that it took four years and two months for anybody to have their windows replaced, not just the Complainant. The Complainant's predicament was not unique, and she would have to wait like everyone else.

The Ombudsman pointed out that it was unfair on the members of the public that the government department responsible for maintenance and repairs to government owned buildings, was unable to contend with their workload. The Ombudsman noted that the excessive waiting lists had now become an unmanageable aspect of B&W's work.

The Ombudsman recommended the Reporting Office categorise all future reports for repairs, and ask all individuals requesting repairs to point out their status (i.e. unemployed/employed/pensioner/social or medical cases).

CASE NOT SUSTAINED

CS/666

COMPLAINT AGAINST THE DEPARTMENT OF BUILDINGS & WORKS FOR THEIR FAILURE TO CARRY OUT DEAL WITH A PROBLEM OF WATER INGRESS TO THE COMPLAINANT'S FLAT

The Complainant's flat which was located on the first floor of a four storey building suffered from water ingress. He explained that the water was seeping through the light fittings in his kitchen and bathroom and that he had reported the problem to the Department of Buildings and Works (B&W) as far back as December 2004 but at the time of making the complaint nothing had been done to repair the leak in the upstairs flat.

B&W declared that the time taken to resolve the problem was outside their direct control. In this case they were caught up in what appeared to be a family dispute and the apparent unreasonableness of family members to take due care when using their shower. They explained that they carried out numerous tests and changes to the plumbing system of the Complainant's upstairs neighbours who happened to be his father and sister, to ascertain where the water was coming from. The leak was definitely not associated with rainwater ingress nor was it continuous as in the case of a leaking salt or fresh water pipe. The leaks occurred at irregular intervals and apparently not every day.

B&W explained that during one of their inspections they were lucky enough to witness a leak. The plumber who was working in the Complainant's house went upstairs to investigate and found that the bathroom floor was soaking wet as a result of someone having used the shower. The shower had neither curtain nor screen and therefore water was sprayed within the bath and on the surrounding floor. B&W stressed that in case there were any pipe leaks they replaced waste pipes and sanitary fillings, including the Complainant's bath. The reality was that the leaks were not the result of failure of the building fabric but rather the result of improper use by the Complainant's father/sister, his upstairs neighbours. Consequently and although B&W had never received any report from the father/sister, they took the initiative and raised an order to have a curtain rail or screen placed around their bath.

The Ombudsman could not sustain the complaint pointing out that B&W had gone out of their way to identify the source of the water that was leaking into the Complainant's flat and had taken steps to rectify the problem. The Complainant confirmed that the screen that was placed around his father/sister's bath appeared to have solved the problem.

CASE NOT SUSTAINED

CS/698

COMPLAINT AGAINST THE DEPARTMENT OF BUILDINGS & WORKS FOR ITS FAILURE TO CARRY OUT MAINTENANCE WORKS TO THE BUILDING IN WHICH THE COMPLAINANT LIVED

BACKGROUND

Before setting out the details of this complaint it is necessary to describe the events recounted in two other enquiries, both of them involving the same complainant, C/S 24 investigated by the Ombudsman during the course of 1999 and C/S 449 investigated during the course of 2003.

CS/24

The Complainant was the tenant of a government owned flat situated in what can be safely called a semi-derelict building in the Upper Town area (the premises). At the time in question other than the Complainant there was only one other sitting tenant still living in the premises.

In 1998 the Complainant applied to buy the premises but his application was refused on the grounds that selling properties which had a multiple number of tenants in occupation posed a problem and Government had to take a policy decision on the matter.

On 5 August 1999 the Complainant wrote to the Minister for Trade & Industry describing the terrible conditions in which he was living and offering to buy the premises. He committed himself to setting up a management company which would be responsible for the running of the entire building including the common areas and the sitting tenant's flat.

The Minister replied on 23 August 1999, repeating what had been said previously and informing him that no policy decision had yet been taken.

CS/449

In January 2003 the same complainant as in C/S 24 approached the Ombudsman once again. He explained that he was still living in appalling conditions. His roof leaked and his flat suffered from cockroach and flea infestation. He was willing and able to invest in the premises and repair it himself but he was loath to do so until it belonged to him. He claimed that in the past three years nothing had changed and he was still waiting for Government to come to a policy decision on whether to go ahead with the sale.

The Ombudsman proceeded to write to Land Premises Services (LPS) enquiring about Government's intention vis-à-vis the premises and also to the Department of Buildings & Works (B&W) informing them that the premises still belonged to Government and it was in dire need of repair and asking B & W whether they had any plans to refurbish the building.

In its reply B&W explained that the tenant had not paid rent in a very long time and that no works had been done on the building because no problems had ever been reported. B&W added that the Complainant had encroached on public land and had taken over common parts of the Premises. For its part LPS explained that it had last written to the Complainant on 4 July 2000 requesting him to provide them with a plan of the works he proposed to do in the Premises to enable Government to fully consider the matter and decide whether his part of the Premises could be sold to him. The drawings had never been forwarded and

Government had therefore been unable to consider the matter. This problem was communicated to the Complainant who finally submitted the plans on 8 May 2003. Considerations and consultations ensued and finally by letter dated 13 November 2003 the Complainant was informed that Government had finally accepted to proceed with the sale. Unfortunately before completion could take place, the Complainant met with an accident that made him disabled. As a result he had to stop working and he was unable to obtain a mortgage. The sale was cancelled as a result.

In this third complaint, the Complainant alleged that B&W had still not carried out remedial works to the premises which were now in a dangerous state. He complained that the wooden beams supporting the building's inner balcony had rotted and the entire structure was at the point of collapse. Additionally the building was in an advanced state of decay. His windows and shutters had to be replaced, the roof made water tight, and a balustrade fixed to the staircase leading from the entrance to the building to his own front door.

In response to the Ombudsman's enquiries the Department of Buildings and Works (B&W) informed him that that they had propped up the floor of the balcony to remove the risk of collapse and make the area safe. The repair works would be programmed in once the structural engineer was in a position to advise them on the extent of the repairs required. In any case they did not foresee works commencing within the next six months given the huge workload and other priorities that B&W had.

The Ombudsman could not sustain the complaint, pointing out that B&W asserted that the balcony had been made safe and that the other works reported by the Complainant would be tackled in accordance to their level of priority. Having said this, he went on to consider this complaint in the light of the two previous ones and pointed out that this case typified the Ministry for Housing's disregard for the state of their pre-war properties and their tendency to ignore the state of these properties until they were literally collapsing at which time they would either decide that the repairs were too costly to carry out, decant the tenant and declare the building to be 'not fit for habitation' or spend a fortune repairing and refurbishing the premises. The dilapidation and dereliction that surrounded the Complainant's flat, was an appalling condemnation of the Ministry for Housing's management of the properties owned by them in the upper town.

CIVIL STATUS AND REGISTRATION OFFICE

CASE SUSTAINED RECOMMENDATION MADE

CS/624

COMPLAINT AGAINST THE CIVIL STATUS & REGISTRATION OFFICE FOR REFUSING TO GRANT THE COMPLAINANT A MULTIPLE VISIT VISA TO GIBRALTAR WITHOUT GIVING HIM ANY REASONS FOR THERE REFUSAL

The Complainant was a Moroccan national who used to visit Gibraltar on a regular basis for business reasons. In the past he had usually been granted a multiple visit visa, allowing him to visit Gibraltar without requiring a visa for every single visit but when the last such visa expired and he applied to the British Consulate in Tangier, Morocco for its renewal, he was refused. He was never given any explanations for the refusal.

The CSRO explained to the Ombudsman that applications for visas to enter Gibraltar were considered on their individual merits and account was taken of each applicant's personal circumstances in as much as these were made known to that office by the British Consular Authorities in the country where the application was lodged.

The Complainant had been issued with multiple visit visas for Gibraltar since 2001. The visas were authorised to enable him to enter Gibraltar to buy goods for sale in Morocco.

On 11 March 2004 the British Consular Authorities in Tangier referred a further multiple visit visa application for the same purpose from the Complainant for the CSRO's consideration. The CSRO alleged that the Complainant had obtained a Spanish residence permit which indicated that he was residing in the Balearic Islands.

The CSRO explained that it was considered unrealistic that the Complainant should wish to travel all the way from the Balearic Islands on a regular basis to continue to purchase goods in Gibraltar to take to Morocco. Therefore they could not be satisfied as to the real purpose behind his application for a multiple visa. The CSRO further explained that by its very nature, a multiple visa enables its holder to enter Gibraltar, practically as he pleases, with little or no control, whilst it remains valid and there were intrinsic considerations of public policy and public security in such matters which, especially in more recent times, could not be taken lightly. Since they were not satisfied as to the exact nature of the Complainant's proposed activities in and out of Gibraltar, they concluded that it would not be prudent to authorise a multiple visa. However, they would be prepared to consider applications for single entry visas for short periods of stay. The CSRO pointed out to the Ombudsman that the Complainant's parents and brothers (*CSRO's note: one of whom was unemployed*) held valid residence permits for Gibraltar and that standing arrangements under Government policy which enabled the relatives of resident Moroccan nationals to be issued with

visitors visas restricted the issue of such visas to wives and minor children under 18 or in the case of children of such nationals who are over the age of 18 to instances where exceptional compassionate circumstances existed (e.g. bereavement or the ill health of the person residing in Gibraltar).

The CSRO further explained that in the case of visas for the UK, the UK Rules did not specify the criteria that a person must satisfy for a UK visa as a visitor to be granted. Assessing whether or not the purpose of entry, for example, was genuine fell upon the judgement of the entry clearance officer processing the application and, of course the supporting evidence provided by the applicant. The position in Gibraltar was similar in that, the issue of visas for the purpose of entering Gibraltar as a visitor was discretionary and there was therefore no right or entitlement to such visas.

For the record, the Ombudsman pointed out that the Complainant had explained that even though he held Spanish residency, his place of permanent residence was the Moroccan town of Fnideq, which is situated close to the border with the Spanish enclave of Ceuta. The Complainant was civilly married to a Spanish national of Moroccan origin and he had obtained residency in Spain in order to be able to visit her at will. Since they had not married in a religious ceremony they did not cohabit. The Ombudsman went on to point out that the Complainant came to Gibraltar to buy goods for sale in Morocco and was not asking for a visa to visit his relatives, thus making the CSRO's explanations redundant.

In his considerations the Ombudsman referred to Article 18 of the European Ombudsman's Code of Good Administrative Behaviour Code which says as follows:

- 1. Every decision of the Institution which may adversely affect the rights or interests of a private person shall state the grounds on which it is based by indicating clearly the relevant facts and the legal basis of the decision.*
- 2. The official shall avoid making decisions which are based on brief or vague grounds or which do not contain individual reasoning.*
- 3. If it is not possible, because of the large number of persons concerned by similar decisions, to communicate in detail the grounds for the decision and I where standard replies are therefore made, the official shall guarantee that he subsequently provides the citizen who expressly requests it with an individual reasoning.*

This Code has no legal force and it is only advisory in nature, however it is a good yardstick by which to measure good administrative behaviour. With this in mind the Ombudsman declared that even though it was not within his jurisdiction to comment on the decision not to grant the multiple visit visa to the Complainant, he could delve into the administrative aspect of the complaint and comment on the lack of information given to the Complainant explaining the refusal to grant him such a visa.

The Complainant was granted his first multiple visa on 16 October 2001 and it was renewed a three times until the 29 February 2004 when the last such visa expired. The CSRO was obviously correct to refuse to grant such a visa to a visa requiring national seeking to enter Gibraltar at will, when it was of the view that Gibraltar's best interests were served by it doing so, however when refusing such an application they should state the grounds for the refusal which should be not based on brief or vague grounds. By way of example of how the CSRO should respond to visa applications which were being refused, the Ombudsman referred to the response typically received by applicants for a visa to visit Belgium. Where such an application is refused, the applicant will receive a letter notifying him of the refusal and informing him how he can appeal this decision. The letter also outlines possible reasons for the refusal with the appropriate one being ticked by the authorities. Attached to the letter is another long list consisting of more detailed reasons with the appropriate one again being marked.

The Ombudsman sustained the complaint in full, pointing out that if in the judgement of the entry clearance officer processing the application it was not in Gibraltar's interests to grant a multiple visa to the Complainant, he should be given the reason why. He went on to refer to the CSRO's cryptic remark that one of the Complainant's brothers who was in Gibraltar with a residence and work permit, was unemployed, saying that he could not see the connection between the Complainant and his brother's employment status. The Ombudsman closed the report with the recommendation that in the future when rejecting visa applications the applicant should be given an explanation as to why his application had failed.

UPDATE

After the Ombudsman had closed his report he was informed by the CSRO that in June 2005 in response to an enquiry made by the Complainant he had been given a very detailed response as to the reasons why his application for a multiple entry visa had been rejected. The Ombudsman welcomed the response which was very substantive however, he pointed out that the complaint had been sustained on the grounds that applicants should not have to seek such explanations which should be given to them automatically.

CASE NOT SUSTAINED

CS/681

COMPLAINT AGAINST THE CIVIL STATUS AND REGISTRATION OFFICE FOR ITS FAILURE TO REPLY IN WRITING TO THE COMPLAINANT'S LETTER REQUESTING INFORMATION

On 19 August 2005 the Complainant wrote to the Civil Status and Registration Office (CSRO) enquiring about her eligibility to be registered in the Register of Gibraltarians pursuant to the provisions of the Gibraltarian Status Ordinance 1962. In reply to her letter the CSRO wrote to her asking her to attend their office in person in order to determine her family history in detail and so

determine what her exact position under the Ordinance was. The Complainant did so and it was established that she was not eligible to apply under the entitlement provisions. This was explained to her in person.

The Complainant confirmed the above but added that she had insisted that she wanted a written reply to her letter and that the reply should be copied to the Ombudsman but a month later when she had not yet heard from the CSRO she complained to the Ombudsman that her letter deserved a substantive reply in writing.

In its response to the Ombudsman's enquiries the CSRO explained that their recollection of events was that the Complainant had asked them to write to the Ombudsman and to 'the Minister' explaining her case. They explained to her that they would not be able to comply with this request as normal practice was that they do so in response to enquiries raised by these gentlemen. At no time did the CSRO get the impression that the Complainant was expecting a further written communication from them.

The Ombudsman could not sustain the complaint, pointing out that the complaint was the result of 'crossed wires' between the Complainant and the CSRO. Asking this department to write to the Complainant giving her the desired information, which they did, he closed his report.

EDUCATION DEPARTMENT

CASE NOT SUSTAINED

CS/689

COMPLAINT AGAINST THE DEPARTMENT OF EDUCATION & TRAINING FOR DAMAGING THE COMPLAINANT'S BALCONY DURING THE COURSE OF ERECTING A NEW ROOFTOP TO THE GOVERNMENT NURSERY ON THE GROUND FLOOR OF HER BUILDING

The Complainant lived on a first floor in one of the government estates. On the ground floor of her building there was a nursery and the Complainant's balcony overlooked the roof of the nursery.

During August 2005 repair works were carried out to the nursery and the roof was removed and replaced. Whilst the old roof had been about thirty centimetres below the floor level of the balcony, the new roof was adjoined to the balcony. The Complainant expressed her disapproval at the fact that this would affect her wash linen and that the heat emanating from the rooftop would be unbearable in the summer. She also complained that as a result of the building and drilling works, some tiles on her balcony floor had become loose and a crack had appeared on one of the balcony walls.

In a letter of complaint to the Department the Complainant asked for compensation in respect of the damages sustained by her balcony. She also asked whether the Housing Department in their capacity as landlords had given their consent to the works and whether the Department of Education had first obtained planning permission.

In respect of the claim for damages the Department informed the Complainant that before her claim could be processed she should provide the necessary evidence to prove that the works carried out to the roof top had caused the alleged damages. As at the time of writing no such evidence had been provided.

The Ombudsman could not sustain the complaint, pointing out that government does not need planning permission to change the roof of one of its own premises and that his information was that the Housing Department had given their consent to the works. He went on to advise the Complainant to provide the Department with evidence of the alleged damages and they would process the claim. He assured her that if she did provide such evidence and they failed to deal with her claim, he would reopen this enquiry.

GIBRALTAR HEALTH AUTHORITY

**CASE SUSTAINED
NO RECOMMENDATIONS MADE
BUT SERIOUS VIEWS EXPRESSED**

CS/614

COMPLAINT CONCERNING THE GIBRALTAR HEALTH AUTHORITY'S OLD COMPLAINTS PROCEDURE

The events described in this complaint are not only another example, if such an example were needed, that the Gibraltar Health Authority's (the GHA) previous Complaints Procedure was an abysmal failure. This complaint is a shameful indictment of the GHA itself and of its failure to provide an efficient service to its patients.

In February 2000, a relative of the Complainant's (the relative) went to the Outpatient's Department at St Bernard's Hospital complaining of chest pains. A Cardiogram was taken and he was admitted to hospital where he spent six days. Seven months later in a private visit to one of the GHA doctors, the doctor saw the results of the cardiogram that had been carried out back in February and recommended that the relative be sent to the UK immediately for a heart operation.

The operation was carried out in London on 26 October 2000. As a result of the operation the relative suffered severe brain damage, he lost his eyesight and became partly paralysed.

In or about August 2001, the Complainant approached the Ombudsman complaining of the negligent treatment received by his relative at St Bernard's hospital before he was referred to the UK for that fateful operation. At the time he was advised that the Ombudsman could only investigate complaints of an administrative nature, and as such he should refer his complaint to the GHA.

In February 2003 the Complainant returned to the Office of the Ombudsman, complaining that he was frustrated with the GHA complaints procedure which did not work. He explained that he had lodged his complaint way back in August 2001 but he was still waiting for the matter to be investigated.

In its response to the Ombudsman dated 24 March 2003, the GHA explained that at one stage the Complainant had involved a lawyer in the process of his complaint and that in view of this, and as stipulated in the complaints procedure, his complaint could only be entertained through his legal representative. The GHA also expressed concern at the 'over concern' of the Complainant when other closer relatives existed and were not making representations.

The Complainant rejected the GHA's explanations pointing out that (a) he had been informed by the GHA that he could only obtain a patient's medical records through a lawyer and that he had involved a lawyer only to obtain a copy of his relative's medical records (to pursue an independent complaint in the United Kingdom), (b) the lawyers had clearly stated that no legal action was contemplated at present against the GHA and (c) at no stage was he ever informed that the complaint could only be entertained through his legal representative. The Complainant added that he had met the GHA administration many times in relation to this complaint and at one stage he even embarked in a 'hunt' all over St Bernard's Hospital in search of his relative's medical notes which he finally found in Napier Ward. He then returned to the offices of the hospital administration where he went over the notes in detail with one of the hospital officials. Concern was never expressed about his involvement over other closer relatives and neither was a mention ever made of him requiring a legal representative.

By this stage the GHA had involved its legal representatives through which it was communicating with the Ombudsman. The legal representatives wrote to the Ombudsman in July 2003 insisting that the relative confirm in writing that the Complainant was acting on his behalf and that the relative or his representative give a written explanation as to the reasons why they had requested the medical notes. They also demanded a re-statement of the relative's intentions vis-à-vis litigation. The Ombudsman objected, citing all of the reasons given above by the Complainant which were in fact correct.

The GHA via its legal representatives 'strongly denied' that there was any maladministration on their part, pointing out that the complaint had not been dealt with because the GHA had formed the view that the Complainant had requested the medical notes with litigation in mind. They denied that hospital officials had known all along that the medical notes were required in order to pursue an action in the UK.

The Ombudsman expressed serious concern at the manner in which this complaint had been dealt with and at the complete failure of the GHA's own complaints procedure. In particular he expressed grave misgivings at their demand, two years after the complaint was originally made and after hospital officials had been dealing directly with the Complainant, to deal only with his legal representative.

The Ombudsman pointed out that thankfully, as a result of the recent health service review, a new complaints procedure had been agreed and the initial feedback was very encouraging. However, he stressed that he would be very vigilant of the new process and any administrative failures would be highlighted.

The Ombudsman sustained the complaint unreservedly, pointing out that he hoped that this was the last time that such a complaint landed on his desk.

HOUSING DEPARTMENT

CASE NOT SUSTAINED

CS/586

COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR TAKING NO ACTION TO CATEGORISE A HOMELESS PERSON IN THE APPROPRIATE HOUSING LIST

On 26 March 2004 the Complainant's probation officer wrote to the Housing Manager explaining that the Complainant who was currently serving a custodial sentence for a minor offence at H.M Moorish Castle Prison was due to be released within the next few months and on release he would be homeless. He requested that the Complainant's case be considered as an aggravated one which needed attention.

By letter dated 29 April 2004 the Complainant was informed that the Housing Advisory Committee (HAC) had discussed his case on 20 April 2004 and decided that he should follow the normal procedure and await allocation of a government flat on points. Although they recognised the situation he was in, this was taken into account in the awarding of points on his housing application. The letter went on to say that in order to update his application he was required to contact the Environmental Health Officer for the inspection of his current address.

The probation officer responded on 17 May 2004 reminding the Housing Manager that the Complainant was 144th in the housing list with 400 points and that he would be physically homeless on release from jail. He further pointed out that the Complainant would not contact the Environmental Health Officer for inspection of his current address because he had no address for the inspector to inspect. He asked that HAC consider the Complainant's case once again.

The Complainant was eventually released from prison and as predicted by the probation officer he saw himself homeless. He complained to the Ombudsman that the Housing Department was not doing anything to help him. The Ombudsman advised him to request a 'homeless report' from the Department's counter and to fill it in every night setting out where he was sleeping. This would enable the Department to check on him to verify that he was indeed homeless.

The Complainant followed the Ombudsman's advice and filled in the homeless report as required., The Social Advisory Committee ('SAC') considered his situation in their October 2004 meeting when he was finally categorised in the Social A list (the list of applicants who require to be housed on urgent social grounds).

The Ombudsman opened his enquiries with several questions:

Why did the Department not take the Complainant's case to SAC in response to the probation officer's first letter?

Why did they not advise the probation officer that on his release the Complainant should immediately start filling in their 'homeless report' so that his case could be taken to SAC at the first possible opportunity?

The Department explained that any decision taken by SAC is based on Social Services reports or records of interviews carried out at the Department and any other information relevant to the case. Before a case can be properly reviewed and an accurate assessment made, all this information has to be available. It is also a fact that a member of SAC is also an officer who holds a high position in the Social Services Agency and should therefore have background information on the case. It would appear said the Department that it would be of particular interest to this member of SAC that people such as the Complainant be categorised without unnecessary delay.

The Ombudsman accepted the Department's explanations however, he went on to point out that the Government of Gibraltar has no legal or constitutional duty to provide cheap or affordable housing to its citizens but since all Gibraltar Governments had chosen to provide this service to the People of Gibraltar, he was of the opinion that special consideration should always be shown to what are known as 'social cases', namely to the homeless and to those living in bad or extremely overcrowded conditions. Their case should always be heard at the first opportunity and everything should be done to expedite their categorisation in the appropriate waiting list.

The Ombudsman could not sustain the complaint but he took this opportunity to express once again what he had repeated in several occasions. The cost of private accommodation in Gibraltar, whether for purchase or rental, had rocketed beyond the means of many ordinary Gibraltarians. Those who could afford to do so bought a property or rented one in Spain and those who could not, had no option but to remain homeless and/or rely on the kindness of friends or relatives.

The government housing stock is limited and on the one hand some government tenants are extremely well off, in some occasions owning second homes in Spain. On the other hand, there are people such as the Complainant who were waiting for an allocation and who in the meantime were homeless or living in terrible conditions. The Ombudsman was of the opinion that the Department should seriously consider amending its housing allocation policy to ensure that (a) housing applicants are means tested before they are allocated a flat and only those who cannot afford to purchase a property in Gibraltar are given an allocation, and (b) existing tenants whose income exceeds a predetermined level should be encouraged to move to the private sector and vacate their government flats. A possible way of achieving this would be by raising their monthly rent to market levels.

The Ombudsman expressed the hope that the Department would give his views serious consideration.

**CASE NOT SUSTAINED
NO RECOMMENDATION WARRANTED
BUT SERIOUS VIEWS EXPRESSED**

CS/593

**COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR
REFUSING TO CATEGORISE THE COMPLAINANT IN THE LIST OF
APPLICANTS REQUIRING TO BE REHOUSED ON URGENT
MEDICAL GROUNDS**

The Complainant was a single mother who lived with her four year old daughter and one year old son in what she described as a damp two-bedroom flat in the Upper Town (the flat). The son suffered from bronchitis and asthma and she suffered from anxiety and depression which according to the Gibraltar Health Authority's Mental Welfare Officer appeared to be caused by her housing situation.

The following is an extract of a letter of complaint sent by the Complainant to a number of public officials describing her housing situation, which letter speaks for itself:

“The area in which I live is a ghetto into which you gentlemen and ladies who run Gibraltar never venture. Do any of you know where (street name) is (other than ‘somewhere por el castillo’)?---

1. “There is a drain outside my house which is always blocked. Whenever it rains the drain overflows and with the overflow comes the excrement, toilet paper (used), ladies pads and tampons (also used) etc.

2. We (me and my neighbours) have complained many times, the powers that be come and unblock the drains, until the next time they overflow.

3. *There is one particular drain situated --- which is broken and has a pot hole right next to it. The pot hole has been marked with a red cone ever since the summer but to date nobody has come to cover it and to fix the drain.*

4. *The street lighting in my road and other leading to it are grossly inadequate. At night all of the roads are very, very dark and whenever I get home at night I have to fumble with the key before I manage to insert it into the key hole.*

5. *The Royal Gibraltar Police never venture into the area. So much so that drug addicts exercise their addiction in the open air, feeling perfectly safe and at ease. My house is very small so I have no choice but to leave my front door open (weather permitting) and allow my children to play outside. This worries me tremendously because what influence is this environment for them.*

6. *I cannot hang out my washing with peace of mind because the 'nicer' items simply disappear. The police should patrol the area on a regular basis and the drug laws should be enforced the same as they are in all of those luxury housing estates. The street lighting has to be improved. The drains have to be unblocked (permanently). The pot holes have to be filled in. I don't believe that what I am asking for is unreasonable."*

The Complainant pointed out to the Ombudsman that during the course of two years, five different doctors had submitted letters to the Housing Department on her behalf, recommending that she be moved to a more appropriate apartment on medical grounds but the Medical Advisory Committee (MAC) had always decided not to make such a recommendation. The Complainant was also aggrieved by what she said was the Department's failure to take her plight seriously.

On 25 October 2004, MAC reconsidered the Complainant's case, recommending that she be categorised in the Medical B list and adding a further 200 points to her application.

(Ombudsman's note: category B means that although the committee feels that this is a bona fide case, there is no extreme urgency. The cases in this list will therefore be re-considered in the light of there not being any persons in the list of those requiring to be re-housed on urgent medical grounds, the Medical A list. The Department confirmed to the Ombudsman that nobody had ever been allocated a flat on the grounds that he or she was in the 'B' List.)

After considering all of the facts before him the Ombudsman had to decide whether he could fault the manner in MAC had arrived at the decision not to categorise the Complainant as requiring to be rehoused on urgent medical grounds (Medical A list).

On the one hand, she had letters from doctors testifying to the fact that her son suffered from bronchitis and asthma that the damp conditions at home were not conducive to good health. On the other hand MAC considered her situation, categorised her in the Medical B list and awarded her 200 discretionary points. The point here was not whether the Ombudsman agreed with this decision, the point was did they consider all of the Complainant's material circumstances

before reaching a decision? The Ombudsman had no evidence to suggest that it did not. There did not appear to be maladministration as far as the decision making process was concerned.

Having said this, the Ombudsman highlighted two issues which came to the fore as his result of his enquiries. The Complainant provided MAC with letters from several doctors recommending that she be re-housed due to her son's medical problems, which recommendations were not accepted. Why and on what basis does MAC disregard a doctor's recommendation? Was the applicant or the doctor making the recommendation interviewed to elicit more information? Furthermore, an applicant categorised in the B list is only offered accommodation once the A list has been exhausted which the Department confirmed to the Ombudsman, had never happened. It seemed to the Ombudsman that categorisation in the B List, whether Medical B or Social B was but a mere Sop to Cerberus. Was such a categorisation not creating legitimate expectations?

In reply to his first query the Department explained to the Ombudsman that applicants are never interviewed by any of the housing committees. They are interviewed at some stage by the Housing Manager who is always present at the committee meetings (*Ombudsman's note: The Housing Manager provides input to the committee but has no say in the decision*). The Complainant's case was due to have been considered by MAC in September 2004 but it was postponed because her problem was partly of a psychiatric nature and the Consultant Psychiatrist who usually sat in the committee was not present at the September meeting. When her case finally was put before MAC one of the doctors who had made a recommendation on her behalf was present at the meeting as a committee member and to use the Department's words "*took a leading role in the decision making process.*" (*Ombudsman's note: apparently contrary to his own written recommendation*). It was on this basis that MAC took the decision that it did.

As regards the Ombudsman's second query all that the Department could do was to confirm that no applicant either in the Social or Medical B list had ever been offered accommodation as a result of his position in any of these lists. The Ombudsman questioned the existence of both these lists, pointing out that classifying an applicant in the medical or social B list raised the applicant's expectations unnecessarily and could even be considered to be dishonest.

The Ombudsman could not sustain the complaint, pointing out that there was nothing to indicate that MAC's decision making process was flawed however he was of the opinion that the housing allocation procedure should be urgently reviewed with a view to evaluating whether the Medical and Social B lists should be scrapped.

Before closing his report the Ombudsman felt compelled to highlight once again the fact that the same doctor who had recommended that the Complainant should be rehoused, then sat in the Medical Advisory Committee as a committee member and took a leading role in the decision making process when the Complainant was categorised Medical B (a pointless exercise) instead of following his own recommendation.

**CASE SUSTAINED
RECOMMENDATION MADE**

CS/599

COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR THEIR FAILURE TO ASSIST THE COMPLAINANT TO RETURN TO CIVILIAN LIFE

The Complainant was a former Gibraltar Regiment soldier who lived together with his wife, in Ministry of Defence (MOD) regimental quarters. He explained to the Ombudsman that when he joined the Regiment six years before, his housing application had been suspended and he was given to understand by regimental officials that when he would return to civilian life the application would be automatically reactivated and he would be immediately re-housed.

In September 2003 when he decided to terminate his contract with the Regiment he was informed by his Company Sergeant Major that when he left the Regiment he would have to vacate his MOD quarters without being rehoused. The Complainant who had heard from other soldiers that there was an eight-year rule, meaning that any soldier who had served in the Regiment for a period of eight years was entitled to be automatically re-housed by the Housing Department, dismissed this as being one of the intimidatory tactics used by the Regiment to influence him not to leave and he thought nothing of it.

In a meeting with the Housing Manager that took place later on that month, he was allegedly informed that there was a 22-year housing rule, which meant that he would have to serve in the Regiment for 22 years before he would be entitled to be automatically re-housed by the Gibraltar Government. The Complainant mentioned the eight-year rule but the Housing Manager insisted that there was only a 22-year rule. She also explained that his original housing application would not be reinstated until he had returned his regimental quarters to the Regiment.

In September 2004, when the Complainant had already left the Regiment he met the Housing Manager once again and she repeated that his original housing application would only be reinstated once he had vacated the regimental quarters. In the meantime he would have to make his own arrangements as regards accommodation.

The Complainant explained that he could not afford a private rental in Gibraltar, neither would he be eligible for the kind of mortgage required in order to purchase a flat. He further explained that if he opted to live with other family members, he would have to split up his family. He would have to live with his parents, and his wife with their two children would have to live with her parents.

In the meantime on 9 September 2004 the Complainant received a letter from the British Forces Gibraltar, Families Housing Section, informing him that he was required to vacate the regimental quarters by 10 December 2004. He went on to complain to the Ombudsman that it was unreasonable for the Housing Department to demand that he be physically homeless before reinstating his

housing application. He explained that had he been told that he would be automatically rehoused if he served in the army for eight years, he would not have left the Regiment when he did and would have stayed on for another two years.

In response to the Ombudsman's enquiries the Housing Department explained that their agreement with the MOD was that *'employees of the MOD for more than eight years are re-housed automatically. [The Complainant] does not qualify since he was not in the MOD for 8 years.'*

By way of letter dated 13th October 2004 the Ombudsman requested that the Department provide him with a copy of their agreement with the MOD. A copy of this agreement was provided by the Department on 18th October 2004.

In the introduction (and in annex 'A' Provision 1(C) (2)), the agreement between the Minister for Housing and the Land Forces Commander highlights the following as one of its objectives:

'...ensuring the soldier is helped in the process of becoming a civilian at the end of his service, regarding his accommodation'

Sections 3 and 4 of the agreement explain that a soldier that is eligible under the Housing Allocation Scheme prior to any allocation under MOD Service Married Quarters, would, upon MOD allocation, be automatically removed from the waiting list under the Housing Allocation Scheme. Such soldier, so removed, would be carried hypothetically in the waiting list as if he had not been housed by the MOD, and waiting time would also accrue.

Section 5 (B) 1 stipulates that:

'If the soldier has already entered his 8th year of service (i.e. has served not less than 7 years of current 9 year engagement), an offer of allocation will be made by the Housing Manager'.

By way of letter dated 25th October 2004 the Ombudsman asked the Department to explain what arrangements were in place in order to inform MOD personnel of the said agreement. The Department explained that it was their intention to include, in the next series of information leaflets, very general details on the existing agreement. At present, the details of this agreement were discussed only upon request by the applicant.

On 19th November 2004 the Ombudsman went to the Housing Department to view the minutes of the Complainant's meetings with the Housing Manager. There were no records of the September 2003 meeting, but there were of the September 2004. The following is a transcript of those minutes:

'[The Complainant] showed the Housing Manager an eviction letter stating that he has to move out from his quarter before the 4th December 2004... [The] Housing Manager confirmed that at the moment his application is suspended and to be able to reinstate his application he needs to provide an alternative address for the Environmental Health Agency inspectors to go and make a report for the valuation of points and position on the list... [The] Housing

Manager also made it clear to him that Government is only entitled to give alternative Housing accommodation when members of the Royal Gibraltar Regiment have completed full service.'

In response to the Ombudsman's enquiries, the Department explained that 'full service' was twenty two years.

The Ombudsman sustained the complaint, pointing out that the Housing Manager had interviewed the Complainant on two occasions and there was no evidence that she had informed him of his right to automatic rehousing by the Gibraltar Government if he served for eight years in the Gibraltar Regiment. In fact, he was given the wrong information and told that he had to serve twenty two years to be eligible to automatic rehousing. The Ombudsman expressed his concern at the Department's apparent ignorance of the contents of their agreement with the MOD regarding former soldiers recommended that it allow the Complainants' housing application form to be reinstated on the waiting list even though he was still in occupation of the Regimental married quarters.

The Ombudsman went on to point out that the agreement of the Ministry for Housing with the MOD specified that a soldier would be helped in the process of becoming a civilian at the end of his service and this did not appear to have happened. In fact, the Complainant was told that his only options were becoming homeless or splitting his family, not, in the Ombudsman's opinion, a practical way of welcoming a soldier back to civilian life. The Ombudsman stressed however, that this part of the agreement was the responsibility of the employer, i.e. the MOD over which he had no jurisdiction.

**CASE SUSTAINED
NO RECOMMENDATION MADE OR WARRANTED**

CS/607

COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR FAILING TO CONSIDER THE FACT THAT THE COMPLAINANT WAS A SOCIAL CASE, AND FOR NOT GIVING HIM THE CORRECT ADVICE

The Complainant moved to his current flat through the Housing Department's housing exchange procedure. During March 2004 he realised that the repairs his flat required exceeded his finances, so on 30 March 2004 he went to the Housing Department's Reporting Office and requested that he be provided with some assistance. The staff at the Reporting Office allegedly replied that he was not entitled to any assistance until he had been residing in the flat for at least one year.

In a letter of complaint to the Department the Complainant explained that when he first moved into the flat it was in good condition and there was no sign of dampness or humidity, however, the electrical installation was in a very dangerous condition. He had reported the problem to the Reporting Office to be told that no repairs would be carried out in his flat until one year had passed.

Since there were loose wires all over the flat, and he had a young child, he had no option but to engage a private electrician to change the electrical installation at the cost of approximately £600.

The Complainant went on to explain that one month after moving into the flat, water started to seep through the bathroom ceiling. On one occasion, whilst changing the light fitting, water started gushing through and this caused a short circuit. Three months later the leaking had spread throughout the entire flat, and pieces of plaster were falling off as a result. He highlighted the fact that he had plastered all the walls when he first moved in at his own expense, and now this was all ruined. He pointed out that when he first moved in there was no evidence of humidity or water ingress, so it was unlikely to be a structural problem. The Complainant believed that there was a leaking pipe somewhere in the building and the water was finding its way into his flat.

By way of reply the Department informed the Complainant that tenants who willingly exchanged Government flats were unable to report defects relating to refurbishments for a one-year period. However, the Ministry for Housing had noted that the defects related to electrical wiring and water ingress. The reports had therefore been accepted and forwarded to the relevant departments as per standard procedure.

The Ombudsman sustained the complaint, pointing out that the Department had been applying a blanket policy of non-assistance by way of repairs to those government tenants who had not been residing in their accommodation for at least one year. Although the policy was relaxed in extreme cases, no Department representative had ever checked the severity of the Complainant's case before refusing to carry out the repairs. The Ombudsman stressed the fact that had the Complainant not pursued the matter he would not have been assisted despite being eligible.

The Ombudsman was of the opinion that the Department should take steps to ensure that tenants who had exchanged flats via the housing exchange procedure were always kept informed of all of their rights.

**CASE SUSTAINED
NO RECOMMENDATION WARRANTED OR APPROPRIATE**

CS/608

COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR FAILING TO ASSIST THE COMPLAINANT TO APPLY FOR HOUSING

The Complainant was a housing applicant who suffered from anxiety/depression and skeletal pain and was under constant medication. He lived in a privately rented cell-like store room with no toilet facilities or running water and claimed to have been living in these conditions for over 5 years.

He complained to the Ombudsman that he was not in any housing waiting list and that he had written to the Housing Department on a number of occasions describing his predicament and asking for their assistance but they had not replied to any of his letters.

In response to the Ombudsman's enquiries the Department explained that in order to be allowed to apply for housing the Complainant had to submit evidence that he had been in Gibraltar for one year, as required by the Housing Allocation Scheme (Revised 1994) and to date he had not done so.

By way of letter dated 13th October 2004 the Ombudsman drew the Department's attention to a letter from the Complainant's Landlady, which had been sent to them on 11th August 2004, verifying that he had been her tenant for over five years and asked them what further evidence was required, and why.

The Department explained that they already had the landlady's letter on file, but it had not been considered as acceptable proof because it had not been corroborated by rent receipts for the period. The Department emphasised the point that the Complainant had already been informed of this. They required tangible proof that the Complainant had been residing in Gibraltar for the past year. Following the Ombudsman's advice the Complainant acquired a letter from his Landlady's Estate Agents, confirming that he had been renting a room since September 1999. This letter was accepted by the Department and submitted to the Housing Allocation Committee (HAC) for consideration.

The Ombudsman sustained the complaint, pointing out that although the Department had communicated with the Complainant verbally, they had never written to him explaining what was required from him. The Complainant had written to the Department requesting a meeting with the Housing Manager on 19th January 2004 and despite numerous reminders, he was only granted the appointment on 15th October 2004 after the Ombudsman had initiated his enquiries. In fact they only appeared to take an interest in this case once the Ombudsman started carrying out an investigation into the matter.

The Ombudsman suggested that because the Complainant suffered from depression/anxiety, was partially deaf and took strong medication to combat his skeletal pain, this could be why he had failed to understand exactly the kind of information the Department required from him. This was why, the Ombudsman emphasised, verbal arrangements should always be followed up with written confirmation, especially when the Complainant had been writing himself to the Department.

**CASE SUSTAINED
NO RECOMMENDATION WARRANTED**

CS/616

**COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR ITS
FAILURE TO DEAL WITH OR TO ADDRESS THE COMPLAINANT'S
REQUEST**

The Complainant was the allocated user of a parking space in one of the government housing estates (the parking space or the space). The space had once belonged to a disabled neighbour who was now deceased but at the time, in order to ease this neighbour's transit from the car to his flat, a concrete ramp was constructed within the area of the parking space from the road to pavement level, which ramp was still in existence.

On 9 September 2002 he wrote to Land Property Services (LPS) complaining that the residents of the neighbourhood used the ramp to ride their motor cycles in and out of their respective blocks and on more than one occasion he had found scratches and dents to both sides of his vehicle, allegedly caused by motorcyclists riding up or down the ramp. He also had an autistic child and he claimed that he had been nearly run over by motorcyclists riding up or down the ramp. He explained that he had been allocated the parking space back in November 1999 and since then he had had to endure abuse and harassment from the residents of a neighbouring block, users of the ramp. He asked LPS to remove the ramp.

His letter was acknowledged by LPS who informed him that they would communicate his request to the then Housing Agency and they would give him a response as soon as this was forthcoming. The Complainant never received such a response.

On 19 June 2003 he wrote again to LPS complaining that a hand-rail had been fitted on the ramp and that this now caused great inconvenience as his son could not get out of the car on that side of the parking space. He also pointed out that by placing a hand rail on the ramp, they were encouraging people to park their motor cycles on the pavement. LPS replied informing the Complainant that the Housing Manager had given instructions that the ramp and railing be removed as soon as possible.

As it turned out the Housing Department had second thoughts and their instruction that the ramp be removed was withdrawn. The Complainant was never informed.

On enquiry from the Ombudsman the Housing Department explained that when representations were originally made by the Complainant to LPS to remove the ramp this was agreed to rather hastily and a works order was initiated. However, as a result of representations by the local tenant's association to leave the ramp, the matter was reconsidered and the works order withdrawn.

The Ombudsman considered that even though the Housing Department was fully entitled to decide whether or not it wanted to accede to the Complainant's request, the rules of good administration dictated that the person making the request should be told what its decision was, and this the Department had failed to do. The Ombudsman requested from the Department that that the Complainant be informed in writing whether or not the ramp would be removed, copying the letter to his office. The Department complied and on 9 December 2004 they wrote to the Complainant informing him that after careful

deliberation and taking into consideration its usage by other tenants of the estate, they had decided not to authorise the removal of the ramp.

The Ombudsman sustained the complaint, pointing out that the Housing Department's failure to inform the Complainant that they had reconsidered the matter was an act of maladministration. The Ombudsman went on to express the opinion that in order to retain the confidence of the public the Department should always respond to correspondence from the general public as accurately and efficiently as possible.

**CASE SUSTAINED
RECOMMENDATION MADE**

CS/617

**COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR ITS
BREACH OF THE QUIET ENJOYMENT CLAUSE OF THE
COMPLAINANT'S TENANCY AGREEMENT**

The Complainant was the single parent of two children aged 3.5 and 14 years who lived in a government flat in the Upper Town.

On or about 21 September 2004 she wrote to the Housing Department complaining about two squatters in a neighbouring flat, a man and a woman, who were making her life miserable. They did nothing but intimidate, threaten, swear and molest her and other neighbours. She had already been assaulted once and she was too scared to stay at home on her own. She asked to be re-housed.

The Housing Department took no action and the situation deteriorated to such an extent that the Complainant became concerned for her safety and that of her children. She packed up her bags, locked her front door and went out in search of an empty government flat in which she could find shelter. She eventually found one in another part of the Upper Town and at the time of writing she was still squatting there having spent the entire winter in that empty flat with her two children, with no water or electricity. Anything was preferable she said, to the terror of having the squatter hurling abuse and threatening her. She would go to her flat on a regular basis in order to take or fetch belongings but since she was scared to go there alone she would always request a police escort.

Whilst the Ombudsman was investigating this complaint a neighbour of the Complainant's came to him seeking his help. She also had left her flat due to the same neighbour and she was also squatting. At the time of writing a third person who had once lived in the Complainant's building also informed the Ombudsman that he had been forced to ask for an exchange to another part of town because his wife was terrified of the same squatter.

The Department explained to the Ombudsman that the family that was the cause of the disruption were not squatters. The woman was what is known as the common law wife of a Gibraltar who also happened to be in the housing list. They originally entered the flat that they were occupying as guests of the husband's uncle who was the tenant of the flat. They were therefore

unauthorised occupiers and not squatters. The tenant was allocated another flat on medical grounds and on 15 November 2004 the nephew who coincidentally was next in line for an allocation was given a tenancy.

The Housing Advisory Committee (HAC) considered the Complainant's plight in December 2004 and her request that she be moved from her tenancy and be transferred to another flat was turned down, apparently on the grounds that they dealt with cases of conflicting neighbours in every meeting and they could not offer an exchange to everybody who asked for one.

In his considerations the Ombudsman pointed out that this was not the first time that he had had to consider a complaint of this nature, although of all the complaints concerning anti-social neighbours that had found their way to his desk this was by far the most serious. A single mother with her two children had effectively been evicted from their government flat by their anti-social neighbour and as a result they had allegedly spent the long cold winter in a semi derelict flat without water or electricity and their landlords had just shrugged away her plight. The Ombudsman recalled how in one of his conversations with the Complainant she had described how in the September 2004 Gibraltar National Day, the neighbour had triumphantly shouted "los yanitos estan festejando eh? Una española puede mas que todos ustedes" which roughly translated means "so the Gibraltarians are celebrating? Look at how one Spanish woman is stronger than all of you."

The Ombudsman pointed out for the record that all Housing Department tenancy agreements contain a commitment by the tenant not to do or permit to be done any act which may be or turn out to be an annoyance or disturbance to occupiers of adjoining premises and also a similar commitment by the landlords to ensure that the tenant has quiet enjoyment of the premises. He further pointed out that when the Complainant first wrote to the Department asking for their intervention, the anti-social neighbour was not a tenant, she was an unauthorised occupier and not only did the Complainant's landlords, the Housing Department do absolutely nothing pursuant to their contractual duty to guarantee their tenant's quiet enjoyment of her flat, they actually rewarded the antisocial neighbour with a tenancy, in the full knowledge that she already was, and would continue to be in breach of the tenancy agreement.

By way of defence the Department explained that they had no powers to deal with anti-social neighbours and other than seeking an eviction order from the court there was nothing they could do to curb anti-social behaviour. In this particular instance the Ombudsman rejected this argument, pointing out that the Complainant had put her predicament to them towards the end of September 2004 and their response had been to give the anti-social neighbour a tenancy. Their lack of regard for the Complainant's plight was shocking.

The Ombudsman sustained the complaint, expressing extremely strong views on the Department's blatant and callous disregard of their duties towards their tenant. The Ombudsman recommended that in compensation for their breach of the tenancy agreement the Department should waive all of the rent owed by her from the date of her letter i.e. 21 September 2004, until such a time that they

could guarantee her right to quiet enjoyment and if this rent had already been paid, then the sum should be credited to her account and offset against future dues.

At the time of writing, legislation was apparently being drafted to give the Housing Department more powers to deal with anti-social tenants. The Ombudsman welcomed this move by Government and he urged the authorities to enact it as soon as possible. With these words the Ombudsman closed his report.

UPDATE

In the very final stages of this enquiry after the Housing Department had perused the first draft of this report they pointed out to the Ombudsman their objection at his conclusion that they had blatantly and callously disregarded their duties towards their tenant. The Department denied that this was the case, pointing out that the Complainant's case had been put before Housing Advisory Committee as opposed to the Social Advisory Committee because the housing applicants categorised in a social list were only allocated accommodation in pre-war housing, and considering the scarcity of pre-war flats and in order to help the Complainant the matter was passed to HAC which can also allocate post-war flats. At this stage the Department claimed to have requested a police report from the Royal Gibraltar Police to present to HAC in support of the Complainant's allegations but since the matter of the Complainant and the neighbour was apparently sub-judice, this was refused pending the completion of the court case. The Department further explained that HAC did not make a recommendation because they have been dealing with a very large number of neighbour nuisance complaints however the chairman of HAC sought a meeting with the Minister to discuss the problem. The Department finally informed the Ombudsman that the neighbour had been categorised by the Medical Advisory Committee for a priority allocation on medical grounds and that she would be moved as soon as a suitable apartment was identified.

**CASE SUSTAINED
NO RECOMMENDATION WARRANTED
BUT SERIOUS VIEWS EXPRESSED**

CS/639

**COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR THEIR
DELAY IN DECANTING THE COMPLAINANT AND AGAINST THE
BUILDINGS & WORKS DEPARTMENT FOR THEIR DELAY IN
CARRYING OUT REPAIRS TO THE COMPLAINANT'S FLAT**

The Complainant and her family were the last remaining tenants in an extremely old and semi-derelict building situated in Gibraltar's Upper Town. On 19 January 2005 she wrote both to the Housing Department (the Department) and to B&W complaining that she had been allocated her flat on a temporary basis (allegedly two years) but that she had already been living there for over eight

years. She also complained that the flat was in a very bad state and that no repairs were carried out.

The following is an extract from that letter:

'My bathroom for example has quite a large gap running along the roof from one side of the wall to the other. This means that water literally pours down the sides of the wall when it rains. This in turn affects the tiles on the walls, which regularly fall off. The whole flat is also affected with damp as a result of this and my electricity installation does not seem very safe...Last year a tarpaulin was fitted to the roof of my flat, this stopped water filtering through to my bedroom. However this tarpaulin has now been ripped to shreds and I am extremely worried about the effects of this once it starts to rain again.'

The Complainant also explained that there were about eleven empty flats in her block, this meant that she had the added worry of squatters entering and leaving the block at all times, which increased the probability of being burgled.

Not having received a reply from either the Department or B&W, the Complainant wrote them a reminder letter during February 2005, regrettably, there were no replies to these either.

In his enquiries the Ombudsman asked the Department why the Complainant was still in her present accommodation when it had allegedly been allocated to her on a temporary basis over eight years ago. The Department explained that the Complainant had been categorised as requiring to be re-housed on urgent social grounds on 23rd May 1995, and was allocated her current flat on a temporary basis. There were no records however, of an agreement stipulating a timeframe of two years for her Complainant's re-allocation. Currently she was in the seventh position on the two-bedroom ('3RKB') decanting list.

The Department stated that the Complainant could have misinterpreted the fact that pre-war properties were allocated, in the first instance, on a temporary basis until an offer was made in respect of an application for post-war accommodation. They concluded by stating that, in any event, the Complainant used to have a post-war application dated 4 September 1992, but the application had not been maintained and was no longer active.

During April 2005 the Ombudsman wrote once again to the Department asking them to inform him how many government tenants currently resided at the Complainant's block of flats but he never received a reply.

B&W for its part, explained that instructions had been issued to have the tarpaulins replaced and that the works had been re-prioritised from 'urgent' to 'emergency'. However it later retracted this, saying that a tarpaulin would not be affixed to the Complainant's roof, as this would be a temporary solution. Instead, they would be applying water-proofing paint to the bedrooms and kitchen, which would be a permanent solution to the water penetration problem.

By the end of April 2005, the repairs to the Complainant's flat had been completed but at the time of writing she was still waiting to be offered alternative accommodation.

The Ombudsman pointed out that both B&W and the Department had not, initially, replied to the Complainant's letters. It was only once the Ombudsman became involved in a formal investigation that both departments replied, therefore, in this respect, the Ombudsman decided to sustain the complaint.

B&W eventually carried out the necessary repairs. This aspect of the complaint was also sustained; however, as they only did so once the Ombudsman brought the matter to their attention by way of a formal complaint. The Ombudsman pointed out that it should not be necessary for him to investigate a complaint in order for B&W to deliver a quality service. Having said this, he did appreciate that once B&W agreed to carry out the said repairs they were carried out efficiently and expeditiously.

The Ombudsman was less positive, and more concerned, about the Department's management of this complaint. He could not say whether the Complainant had been told as alleged by her, that her temporary accommodation would be for two years and since the Department had a history of only communicating verbally with their clients, it was impossible to verify the veracity of this claim however, it appeared to the Ombudsman that the Department hardly ever accepted that a person claiming to have been given a verbal assurance, could be telling the truth, claiming instead that they were lying or were confused, and in the meantime the Complainant was living in very unpleasant surroundings amongst dereliction and decay. Urging the Department to re-house her as soon as possible the Ombudsman closed his report.

**CASE PARTLY SUSTAINED
RECOMMENDATION MADE**

CS/648

**COMPLAINT AGAINST THE HOUSING DEPARTMENT OVER
THEIR REFUSAL TO HONOUR AN ALLEGED AGREEMENT TO
BACKDATE THE COMPLAINANT'S HOUSING APPLICATION TO
2003**

The Complainant separated from his wife during September 2000, and was issued with an injunction ordering him to vacate the matrimonial home. He then moved into his mother's flat.

During July/August 2002 the Complainant met the then Housing Manager and she advised him to wait until the matrimonial home was sold and the relevant paperwork prepared before applying for his own government flat. The Complainant alleged that she then assured him that his application would be backdated at the relevant time to reflect the fact he had been residing in his mother's flat and living in overcrowded circumstances.

During 2003 the Complainant kept in contact with the Housing Manager and informed her that during August 2003 the flat was sold. He was still waiting, however, for the paperwork to be prepared, so that he could provide the Department with proof of sale.

During January 2004 the Complainant provided the Department with copies of the deeds of sale to his flat, however, the Department then informed him that it had no records of the former Housing Manager's alleged agreement with him. (The Housing Manager had since transferred from the Housing Department).

By way of letter dated 29 January 2004 the Department wrote to the Complainant explaining that the Housing Allocation Committee (HAC) had discussed his case, but no recommendation had been made. This meant that his housing application, once submitted, would not be backdated and he would have to follow the normal waiting procedure.

At the time, the Department noted that the Complainant was not an applicant for post-war accommodation so they enclosed an application form for him to apply. The Complainant had not previously applied for housing because, as aforementioned, he was a property owner and consequently not eligible to apply for government accommodation.

During February 2004 the Complainant contacted the previous Housing Manager and asked her if she could write to the Department highlighting the assurance she had given him. She allegedly replied that as she was no longer in that Department and she did not know whether the agreement was still possible, nevertheless, she arranged a meeting between the Complainant and her successor.

At his meeting with the Housing Manager on 26 March 2004, notes were taken by her, which she explained would be tabled before HAC for consideration. By way of letter dated 21 April 2004, however, the Department informed the Complainant that HAC had not agreed to his request to have his application backdated, and explained that his application for housing would be dated as from February 2004.

In his enquiries the Ombudsman wrote to the Department, highlighting the Complainant's allegations in respect of the Department's refusal to implement his alleged agreement with the Housing Manager. The Department replied by way of letter dated 24 March 2005, enclosing various letters and minutes in respect of the Complainant's case.

The Ombudsman noted two minutes in respect of meetings held between the Complainant and the Housing Manager. This first meeting was dated 11 January 2002, and the minutes acknowledged that the Complainant could not live in the matrimonial home, and was living in overcrowded conditions at his mother's government flat. The only action decided upon, however, was for the relevant documents (i.e. divorce papers and deeds of sale) to be prepared and submitted to the Department. The minutes stated that the Complainant had explained that he needed his own space and wanted HAC to consider his case, taking into account the original date of separation. The Housing Manager advised him to

provide the relevant papers and then his case would be tabled before HAC for consideration. When the matter was considered by HAC however, they decided that the applicant's overcrowded living conditions were already taken into consideration in the number of points awarded to his application.

In his considerations the Ombudsman pointed out that The Complainant and his new partner, lived in his mother's flat and shared a single bedroom with his children (a boy and a girl). This situation was further confounded when the Complainant's partner gave birth to triplets. This meant that the single bedroom was regularly occupied by two adults and five children. Consequently, this subsequently led to health complications with the triplets, as they were weak and exposed to too many germs as a result of the overcrowded conditions.

The Ombudsman noted from the various documents sent to him by the Department that they had been informed of the Complainant's predicament before February 2002. The Department had also known that the Complainant could not enter the matrimonial home as an injunction had been issued against him. The Department's own records accepted that, '*...for the next three years he continued to pay the mortgage, as well as other expenses, so he could not afford to move into private accommodation*'. Although the Complainant was 'technically' still a homeowner, in practice he was not, and the reality of the situation was that he had been forced back to the parental home as he had nowhere else to live.

The Ombudsman acknowledged that the Department's minutes which documented the agreement between them and the Complainant did stipulate that the matter would be tabled before HAC for a decision to be reached by them. The Ombudsman was disappointed, however, with the fact that the Complainant had never been provided with a letter confirming this agreement. This meant that the Complainant was not provided with any documentary evidence which he could refer to when revising his agreement with the Department.

The Ombudsman was of the opinion that the case should have been referred to HAC as soon as the Complainant brought the matter to the Housing Manager's attention, during 2002. He referred to Section 12 of the Housing Allocation Scheme (Revised 1994), which highlights HAC's power to decide on the treatment afforded to applications made as a result of the break-up of marriages. The Ombudsman was disappointed that the Complainant was not advised of this; instead he was allowed to remain in overcrowded conditions until all the legal paperwork could be presented to the Department.

The Ombudsman concluded this case by reiterating what he had stated in various other reports. HAC was an advisory body which did not meet with housing applicants and only considered documentary evidence. The Housing Manager, on the other hand, regularly met with applicants and was in a better position to appreciate the reality of applicants' day-to-day situation. Regrettably, because HAC takes decisions which then have to be implemented by the Department, the Manager's position is frustrated by her inability to take decisions and implement them herself.

The Ombudsman sustained this complaint only in part. He was dissatisfied with the manner in which the Department had dealt with the Complainant ever since he first approached them to explain his predicament. The Ombudsman was of the opinion that in cases where an element of delay is envisaged (like, for example, an impending divorce and division of assets) then written copies of minutes of meetings should routinely be provided to would be applicants to avoid future confusions.

The Ombudsman recommended that the Department allow individuals who are not able to use their flat for genuine legal reasons (such as divorce proceedings and injunctions), to be included on the waiting list. Their applications could be frozen whilst accruing points, but they would only be offered government accommodation as from when the divorce was finalized and all the paperwork completed.

CASE NOT SUSTAINED

CS/659

COMPLAINT MADE AGAINST HOUSING DEPARTMENT FOR FAILURE TO CARRY OUT MAINTENANCE WORKS TO THE COMPLAINANT'S FLAT

The Complainant was an elderly woman who lived alone in a ground floor flat in one of the government housing estates. In May 2004 a local general practitioner (GP) wrote to the Housing Department describing the state of the lady's flat which he said was '*unfit for human habitation*'. The GP described how the main waste stacks for the building travelled over the Complainant's kitchen and bathroom before joining the main sewer and that from the sagging state of the plywood cladding and its rusting metal screws outside her flat it was apparent that there was leakage of wastewater from these pipes. "*The smell of raw sewage laced with ammonia, rotten fish and toilet detergents is apparent on entering her flat*" said the GP "*and indeed the patient's clothes also smelt unpleasant when she consulted me today, though she herself is perfectly clean. I would certainly recommend an urgent visit from the Environmental Health Department.*" The GP went on to say that an inspection from the Housing Department had apparently led only to the promise of a "*lick of paint*", thus completely ignoring the serious health risk. The salty wastewater was causing severe dampness of all walls and all the flat furniture and contents. All her dry condiments such as tea sugar and even her medications have become mildew, and her clothing was also affected.

On 7 September 2004 the Complainant wrote to the Department referring to the May 2004 letter and asking to be re-housed. In response to this letter the Complainant's case was taken to the Medical Advisory Committee (MAC) which requested an Environmental Health Report. The Report made no reference to the terrible living conditions described in the GP's letter. In February 2005 the Complainant's case was considered by MAC once again and they again requested an Environmental Health Report. The Ombudsman had no

record that such a report was ever requested from the Environmental Health Officers.

In June 2005 pursuant to the complaint that the Housing Department had done nothing to ameliorate the state of the Complainant's flat the Ombudsman asked the Department of Buildings and Works to take action but on visiting the site the plumber sent by B&W only saw a small leak from a pipe above the Complainant's patio. This was later verified by the Ombudsman whom on a visit to the Complainant's flat saw no evidence of the terrible living conditions described by the GP. The leak that was identified was later repaired by B&W.

The Ombudsman could not sustain the complaint pointing out that he had visited the Complainant's flat and had not seen or smelt anything that had made him come to the conclusion that it was unfit for human habitation.

UPDATE

The leak that was repaired eventually reappeared and the Complainant wrote to the Housing Department expressing fear that the sewage pipe that ran above the ceiling of her flat could burst and that there would be nobody with her to help her. She also requested that she be moved to a smaller flat within her Estate which request was denied.

CASE NOT SUSTAINED

CS/661

COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR INORDINATE DELAY IN ALLOCATING A FLAT TO THE COMPLAINANT

The Complainant who was a 94 years old man complained to the Ombudsman that he had been in the housing list for applicants who have to be re-housed on urgent medical grounds (the Medical A list), since April 2003 and that over two years later he was still waiting for an allocation. The Complainant's daughter explained to the Ombudsman that since her father had lived all of his life in the South District and it would be very confusing for him to be offered a flat in another part of Gibraltar, the flat to be located to him would have to be in the South District. She then went on to identify several empty flats which she said would be ideal for her father.

The Housing Department explained to the Ombudsman that the flats that had been identified by the Complainant were either in the Department of Buildings and Works' refurbishment list or had already been earmarked for other applicants. It was unfortunate that after two years he was still waiting for what should have been an emergency allocation, but there were simply no flats available. It did not help added the Department, that the Complainant was limiting his options to a flat in the South District.

During the course of this and other enquiries into the lengthy waiting times by housing applicants, the Housing Department admitted to the Ombudsman that it was unacceptable that applicants in the emergency housing lists should have to wait so long for an allocation. It pointed out to him however, that a large number of empty flats were currently held by the Department of Buildings and Works awaiting refurbishment which department did not have sufficient resources to carry out the required works expeditiously. Added to this an extremely large number of government flats situated mainly in the Upper Town were classified as 'Out of Rental' or 'Not for Allocation' due to their bad state of repair and the tendency was for this list to be on the increase. The Department sympathised with the Complainant but, it said, he would have to wait for a suitable flat to become available.

The Ombudsman could not sustain the complaint, pointing out that no maladministration had been committed. He went on to declare that the whole issue of lack of housing for allocation transcended one single report or complaint and he would be writing an in depth analysis of the problem and possible solutions.

CASE NOT SUSTAINED

CS/664

COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR INORDINATE DELAY IN OFFERING ACCOMMODATION TO THE COMPLAINANT'S ELDERLY FATHER

The Complainant's father was an eighty-six year old widower who lived alone in private rented accommodation. The Complainant explained that for most of their lives her parents lived in a third floor flat in the Moorish Castle Housing Estate but as they grew older they started to encounter problems with the location. They found it very hard to climb the stairs, and to go down to town, an ordeal. They applied for an exchange to a ground floor flat but in the year 2000 as their health situation deteriorated they decided that they could not wait for a government allocation any longer and rented a flat in the private sector.

In late 2002 the Complainant approached the Housing Department explaining that her father was an old age pensioner and he could not afford to pay the £366.66 that was his monthly rent. The Department explained that the father's problem was not a medical problem but a financial one and that he was on the Pensioner Exchange List and the bed-sitters waiting list for the Sir William Jackson Grove Housing Estate. Due to non-availability of flats, an offer of accommodation was not possible at present. However, once a suitable flat was identified a further communication would be sent to him.

In June 2005 the Complainant went to the Ombudsman explaining that two years on, her father has not received one offer of accommodation. She felt that since her parents were forced to leave their government house, for medical reasons her father should be treated with consideration and be classified in the Medical A list.

In response to the Ombudsman's enquiries the Department accepted that if the father's condition had deteriorated he could make representations for his case to be considered on medical grounds. Representations were made on his behalf and eventually the father was made an offer which he had to turn down. At the time of writing he was waiting for another offer.

The Ombudsman expressed his concern at the fact that our senior citizens were having to wait for years for a suitable flat to be allocated to them. He pointed out however, that no maladministration had been committed. Sympathising with the Complainant and hoping that her father would be allocated a flat soon, he closed his report.

CASE NOT SUSTAINED

CS/671

COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR THEIR INADEQUATE MANAGEMENT OF THE COMPLAINANTS' HOUSING APPLICATION

The Complainant was a young married woman who lived with her husband, brother in law, and mother in law in the latter's two bedroom house (2RKB). The mother in law occupied one bedroom and she occupied the other together with her husband and brother in law.

In January 2005 she wrote a letter of complaint to the Minister for Housing pointing out that after eight years in the housing list and being fifth on the list for approximately nine weeks she had just been told that they had moved down to sixth place.

In May 2005 the Complainant went up to fourth place in the list but then she went down again and by letter dated 30 June 2005 she said "*I seem to be going up and down the housing waiting list like a yoyo, one week I am third, the next week sixth and this week believe it or not seventh. At this rate it is practically impossible for me to be allocated a flat.*"

In reply to her letters the Housing Department explained that she was currently fourth in the 2RKB list and an offer of accommodation would be made to her in the not to distant future. True to their word by letter dated 19 August 2005 the Ombudsman was informed that the Complainant had accepted an offer of allocation.

The Ombudsman expressed satisfaction that the Complainant's problems had been solved and that she had already been allocated a flat. He pointed out that however hard it might have been for her whilst she was living at her mother-in-law's flat, he could not sustain the complaint. She had been in the appropriate waiting list and the fact that she had been "*going up and down the housing waiting list like a yoyo*" was the inevitable result of being overtaken by housing applicants with more points than her. At the time of writing the housing allocation rules had been amended to the effect that an applicant that had been over ten years in the housing list, would not be overtaken by a more recent

applicant with more points. The Ombudsman welcomed this change pointing out that it made the system fairer.

CASE NOT SUSTAINED

CS/675

COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR NOT BACKDATING HER RENT RELIEF

The Complainant had three children; aged 13, 5 and 3. She was in receipt of only £219.00 every fortnight by way of Social Assistance, and £80.00 every month for Family Allowance. She claimed she was not in receipt of maintenance payments from her eldest daughter's father whom she had divorced, as he was unemployed, and her second partner had passed away three and a half years ago.

The Complainant explained that she was unaware that her arrears were building up until she approached the Department for a parking permit. She explained that her mother had recently bought her a second hand car worth £100 for her birthday and as a result she had approached the Department to get a parking permit to be able to park in her estate. At the counter however she was informed that she was not entitled to the permit until she regularised her position in respect of her rent arrears.

The Complainant claimed that she approached the rent section of the Department and asked about Rent Relief. The complainant alleged that she applied for Rent Relief some years ago, and thought that she would continue to get Rent Relief while she was in receipt of Social Assistance. She asserted that at the counter however she was informed that she needed to apply for Rent Relief on an annual basis and that since she had not applied for a long time she was now in arrears to government in excess of £5,000.

The Complainant explained she was offered an agreement paying £62.20 a week, but on complaining that she could not afford this, she was given an appointment with the Head of Section to discuss her circumstances. At the meeting she explained her history and current situation and was offered an agreement of £5 a week, but they still refused to backdate the rent relief.

The Complainant explained that when she returned to the Department to apply for a parking permit once again her application was again turned down apparently because the payments towards the arrears were too small.

The Department explained to the Ombudsman that tenants on the Rent Relief Scheme are contacted when their current arrangement expires, usually annually. They are sent three separate communications via the post reminding them to re-apply for Rent Relief. They also explained that, resulting from recommendations made by the Ombudsman in a recent case, they had improved their procedures insofar as the last reminder letter was being sent by recorded delivery.

The Department further asserted that in the Complainant's case they had no doubt that she had been contacted in the normal manner i.e. three separate letters. Notwithstanding this, they would be backdating her rent relief once the relevant information from Social Security had been received.

In the meantime they explained that arrangements had been made for her to make mutually agreeable payments of £5 per week towards her rent and that she had been issued a parking permit. However, recent calculations had shown that the Complainant was not entitled to rent relief under the Rent Relief Scheme at the time of writing this report.

The Department explained to the Ombudsman their confusion as to why the Complainant was under the impression the Department would not back date her rent relief as this was procedure since 2001 for all tenants on Social Assistance and was common knowledge through out the counter staff. The Department explained that they could only conclude there had been some misunderstanding during the course of the Complainants enquiries. However, the Department were fully satisfied that the Complainant had received a comprehensive service from the Department; all that could be done had been done.

The Ombudsman could not sustain the complaint, pointing out that the Complainant's grievance with regard to her rent arrears had been resolved by the Department. However, with regard to the Complainant's request for a parking permit the Ombudsman was concerned that the Complainant appeared to have been misinformed by the counter staff at the Department. Specifically on the second occasion when she was allegedly told a permit would not be issued because the repayment of her arrears was too small i.e. £5.00 per week.

The Ombudsman urged the Department to ensure that their service to those who sought their assistance was always kept at the highest of standards. The Ombudsman then highlighted the words of Mahatma Ghandi which are included in his own Office Mission Statement:

*A customer is the most important
visitor on our premises.*

*He is not dependent on us,
we are dependent on him.*

*He is not an outsider to our business,
He is a part of it.*

*We are not doing him a favour by
seeing him.*

*He is doing us a favour by giving us
an opportunity to do so.*

With these words the Ombudsman closed the case.

CASE NOT SUSTAINED

CS/679

COMPLAINT AGAINST THE HOUSING DEPARTMENT FOR INFORMING THE COMPLAINANT THAT HER MONTHLY RENT WAS £0.00 WHEN THIS WAS NOT THE CASE

The Complainant explained to the Ombudsman that it had taken the Housing Department three years for them to notify her that her rent was in arrears and that the arrears were accumulating.

In her complaint she explained that on 9 August 2000 she had received a letter from the Housing Department informing her that as from “*14 August 2000 your rent contribution will be 0.00 and that the Rent Relief granted will continue until 0th 0*”. The Complainant took this to mean that no rent would need to be paid for an indefinite period or until the Complainant’s circumstances had changed.

The Complainant claimed that when she was asked in 2001 and 2002 by the Department to attend the Rent Section to sign forms, the Department did not mention any arrears. Furthermore, in 2003 there had been no communication from the Department regarding any arrears. In May 2005 however, she received a Rent Relief Application which included details of rent payable for the years 2002 to 2005. The Complainant was aggrieved that it had taken 3 years for the Department to notify her that the arrears were accumulating.

The Complainant wrote to the Minister for Housing explaining the situation and met with him, she also arranged for her Rent Relief to be re assessed. The outcome of these meetings resulted in the arrears being reduced from £3,692.25 to £1,788.45 as of 2 August 2005 and the repayment of the arrears to be deducted from the account of her father.

The Complainant claimed that the Department had acknowledged that the letter sent to her on 9 August 2000 was in fact an error, which had not come to light until 2005.

The Department explained that due to the incompatibility of an aspect of two separate pieces of software, approximately 80 tenants had been sent Rent Relief notices that failed to highlight the expiry date (“0 0”), this meant these tenants did not receive their annual Rent Relief notifications from the Department until the error was identified some 3 years later.

The Ombudsman was fully sympathetic to the stress and anxiety this administrative error had caused the Complainant and her family. However, the arrangements made by the Department in rectifying the error, had in the opinion of the Ombudsman, been satisfactory. The Complainant was invited by the Department to discuss the arrears and a re assessment was made, arrangements were also undertaken to pay back the arrears at a more manageable rate.

The Ombudsman noted that there had not been an increase in rent only a change in personal circumstances that effected how much rent relief was awarded.

The Ombudsman was informed by the Department that the 80 tenants that had been identified as being affected by the error in 2000 had all been contacted and invited to attend the Department to discuss arrangements for reassessment, and if necessary, repayment of arrears on a mutually convenient basis.

The Ombudsman found the professional and empathetic manner in which the Department had dealt with this administrative error refreshing, with these words he closed the case.

HUMAN RESOURCES DEPARTMENT

CASE NOT SUSTAINED

CS/632

COMPLAINT AGAINST THE HUMAN RESOURCES DEPARTMENT OVER THEIR FAILURE TO REPLY TO LETTERS WRITTEN ON THE COMPLAINANT'S BEHALF

On 21 February 2004 the Gibraltar Pensioner's Association (GPA) wrote to the Office of the Financial & Development Secretary (F&DS), explaining the following:

'The [Complainant], a member of this Association, retired from the Education Department on 1st September 1996 on reaching retirement age...On retirement this lady was paid a gratuity and reduced pension for her service. From 15th September 1970 to 30th June 1972 she worked as a permanent experienced teacher; and from 1st July 1972 until her retirement on 1st September 1996. Prior to 15th September 1970 she worked as a temp. unqualified teacher from 1st February 1962 until 14th September 1970. She was paid a gratuity and for maternal reasons she resigned and immediately after (15th September 1970) commenced work on a part time basis (mornings only)...On retirement the period [January/February 1962] to [14th September 1970] was not taken into account for pension purposes. It is our view that this period should have been taken into account as there was no broken service and she had paid the full rate of insurance stamps...we are informed that other similar cases have been favourably considered and would be most grateful if [this] case were looked into'.

The F&DS wrote back to the GPA explaining that the Pensions Ordinance Regulations stated that no account would be taken of service which was terminated by voluntary resignation unless any gratuity awarded was refunded. The F&DS explained that this was specified under the Pensions Directions rule 27(3)(b)(i), and this was why the Complainant's work as a temporary unqualified teacher from 1962 to 1970 was not taken into account for pensions purposes. He also pointed out that despite the suggestion that there were similar cases which had been favourably considered, this was not so. The Pensions

Ordinance (Section 16(2)(d)) did allow for a break in service to be treated as pensionable, provided that the break was not more than one week and the officer retired on or before 31st March 1992 on account of abolition of post. The F&DS concluded by pointing out that the GSD Government had raised in their 2003 manifesto the issue of the pension scheme and breaks of service. *“So that the Government are aware of your representations I am forwarding this letter to the Human Resources Department, to whom you should direct any further correspondence”*.

The GPA then wrote to the Human Resources Department reference the Complainant’s grievance. They pointed out that the Complainant had been *‘forced to resign’*, due to her family commitments, in order to be able to continue in employment as a part-time teacher and argued that at no time had she been made aware that by not refunding the gratuity when she took up part-time employment, she would be compromising her pension entitlements. The GPA insisted that the Department of Education or the officers dealing with her case should have made her aware of the future consequences of accepting the early gratuity. The GPA stated Pensions Directions 27(3)(b)(i) should be applied in this case, and the Complainant would be willing to refund the gratuity she was paid at the time.

Not having received a reply, the GPA wrote a reminder letter on 19th April 2005 and another one on 5th May 2005. This last one crossed in the mail with an acknowledgement dated 7th May 2005 from the Department. Eventually, by way of telephone conversation, the Department explained that the Complainant’s file had been misplaced but a reply would be provided once this was found. The Department also allegedly alluded to the Government’s election commitment, stating that they would consider paying for broken periods of service and consequently, if implemented, it would apply to the Complainant. The Department, however, pointed out that there was no timeframe as to when this matter would be addressed.

After a few more months without a reply, the GPA wrote another reminder letter dated 4th October 2004. Not having received a reply, they lodged a complaint with the Ombudsman.

In reply to the Ombudsman’s enquiries the Department explained that the whole question of breaks in service was a matter which was currently being looked at by Government and the Department was in no position to advise the Ombudsman, or the Complainant for that matter, as to specifics at that stage. The Department assured the Ombudsman that a further communication would be sent to the Complainant once they were in a position to do so.

By way of letter dated 18th February 2005 the Ombudsman wrote to the Department highlighting the fact that the Complainant felt aggrieved because of the Department’s failure to reply to the GPA letters written on her behalf; the Ombudsman concluded the letter by asking when the Department would be in a position to update the Complainant.

The Department telephoned the Ombudsman on 29th April 2005, explaining that there was very little information available with which to update the

Ombudsman. They assured him that the report in respect of the breaks in service was at an advanced stage, but the exercise involved a large amount of work and considerations. They could not provide a timeframe for its resolution or implementation.

In his conclusions the Ombudsman pointed out that the GPA on the Complainant's behalf was seeking information as to when the commitment given by Government as part of their 2003 election manifesto would be implemented. Although the preparatory work, i.e. that of producing facts and figures for Government's consideration were the task of the Human Resources Department, in reality whether the issue of the breaks of service were implemented or otherwise was a matter for the Government to decide and, as such, was not an administrative procedure but a political decision.

Undoubtedly, the Department was not the entity tasked with deciding whether to implement the envisaged changes to the Pensions Ordinance however, the GPA were correct in addressing their enquiries to them.

The matter at hand is a very important issue for those Government employees who, for different reasons, had a break in their service and consequently were awarded lower pension entitlements upon reaching retirement age. Given the election manifesto, these ex-employees were now expecting to receive news as to whether their pensions would be re-assessed or not. Perhaps, by way of a suggestion, the Ombudsman stated that the Department should invite the GPA to a meeting and set an agenda for regular updates.

In respect of the events in 1970 that led the Complainant to resign and re-join the service the following day, the Ombudsman stated that consideration should be given to the Complainant's allegations that no information or advice was provided on the consequences that the one day break in service would have on her pension.

MAGISTRATES COURT

CASE NOT SUSTAINED

CS/685

COMPLAINT AGAINST THE MAGISTRATE'S COURT OF GIBRALTAR FOR ORDERING THE ARREST OF THE COMPLAINANT'S SON FOR A CRIME THAT HE HAD ALREADY PAID FOR

The Complainant's 20 year old son was convicted of an offence and opted to spend ten days in prison rather than pay a fine of £150. Some time later whilst he was out on bail for an unrelated offence he was arrested by the Royal Gibraltar Police for not paying the £150 and was told that he either pay the fee or would be jailed. The Complainant alleged that she pointed out to the police officer at the time that this fine had already been paid but she was told that they had a warrant of arrest which had to be carried out. She went on to claim that

since then she had complained to the Clerk at the Magistrates who had allegedly told her that she should make enquiries at the Prison Service. She said that she had spoken to at least three different prison officers, they allegedly promised to look into the matter and pass her queries to the Superintendent but as at the time of making the complaint she had not been given any answers. She further alleged that she was also told that she “should speak to the person who was taking notes at the time of the court hearing”. She claimed to have waited for this person outside the Magistrates Court, to no avail and she spoke to at least three different prison officers on several occasions who promised to look into the matter and pass her queries on to the Superintendent of the Prison, but she had not received any answers.

The Clerk to the Magistrates explained to the Ombudsman that the son who had many previous convictions was remanded in custody because the Court had fears that given his record, he would commit further offences whilst on bail. He was granted legal aid and a lawyer was appointed to represent him throughout.

He further explained that from recollection, but he could not be one hundred per cent sure, he believed that the Complainant’s lawyer may have indicated at some stage during the proceedings that he wished to have a fine imposed on his client for an unrelated offence, remitted through the remand in custody for other matters but the Magistrate indicated that he would not be amenable to such an application, if it was made, as it would in effect be writing the fine off. In any event, such an application was never made in the requisite form and therefore never considered properly by the Court.

It was when the son was eventually released and he was arrested for failing to pay the fine that the Complainant went to the Magistrates Court stating that the fine had already been paid through custody. It was explained to her at length that no formal application had been made in Court and as such no Order had been made by the Court.

The Ombudsman did not sustain the complaint pointing out that he accepted the explanations of the Clerk to the Magistrates and was of the opinion that the son had not paid twice for the same offence.