Gibraltar Public Services

Ombudsman

'He who comes into equity must come with clean hands'

Annual Report 2013

Gibraltar

The Gibraltar Public Services

Ombudsman

'He who comes into equity must come with clean hands'

Maxims of Equity

The Gibraltar Public Services

Ombudsman

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

The Gibraltar Public Services
Ombudsman

March 2014

The Honourable Fabian Picardo
Chief Minister
Office of the Chief Minister
No. 6 Convent Place
Gibraltar

Dear Mr. Picardo,

Annual Report 2013

It is an honour for me to present the Public Services Ombudsman's fourteenth Annual Report. This report covers the period 1st January to 31st December 2013.

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

Yours sincerely

Mario M Hook
Ombudsman

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

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1
Introduction

The Ombudsman's fourteenth Annual Report

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INTRODUCTION

Words of Wisdom

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 interruption to our work

He is the purpose of it.

He is not an outsider to our business

He is part of it.

We are not doing him a favour by serving him

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

Mahatma Ghandi

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INTRODUCTION

This year (2013) has been as usual a very busy year for my office. We have been undertaking a considerable amount of work in preparation for the forthcoming jurisdiction over complaints relating to the Gibraltar Health Authority. We have also attended a number of conferences, seminars and meetings away from Gibraltar. Our office also hosted a meeting of the Public Sector Ombudsman Group here in Gibraltar in June 2013.

The number of complaints rose for the first time compared to the last few years. It is a difficult exercise to try and establish precisely why complaints have risen. I am of the opinion that complaints are at an acceptable level and compare favourably to other jurisdictions. Perhaps this rise has been due to my offices continued efforts to make the people of Gibraltar aware of the existence of the office, the service which we provide and the fact that we make ourselves available almost on demand without any real waiting time.

For full details of the number of complaints against the entities under our jurisdiction and the different classifications please see page 113-119.

Health Complaints

Throughout 2013 we have been making preparations for the forthcoming jurisdiction over the Gibraltar Health Authority. This has included considering changes to the Gibraltar Public Services Ombudsman Act and developing procedures in order to be able to assist both complainants and the GHA to ensure that complaints are in turn used as learning tools.

In July, I visited the complaints department at the Isle of Wight National Health Trust. The staff displayed a very positive attitude towards complaints and was keen to provide an efficient service to complainants with early resolution, where possible, as one of their main aims.

At present, Review Panels are constituted to consider complaints whenever a complainant is dissatisfied with the replies received from the Gibraltar Health Authority. It is expected that before the 31 December 2014, the Ombudsman will have taken over complete jurisdiction over GHA complaints.

The final stages of our preparations saw the Director of the Northern Ireland Human Rights Commission and the Deputy Ombudsman for Northern Ireland visit Gibraltar to give my office a two day intensive workshop in addressing human rights issues when dealing with health complaints. This workshop proved to be an eye-opener for all of us and certainly provided a very useful learning experience.

I would like to take this opportunity to thank both Ms Virginia McVeigh (NIHRC) and Ms Marie Anderson (NIO) for their excellent workshops, dedication and guidance.

I am of the opinion that at the point when jurisdiction is vested on my office, we will be ready to receive the first health related complaints.

The Kirkham Report

In September 2012, Dr Richard Kirkham carried out an in-depth study of the Public Services Ombudsman in Gibraltar. Dr Kirkham came to Gibraltar at my invitation to carry out an on-site investigation of the workings of my office; this was the first such exercise ever carried out. The exercise culminated in a report that contained many valuable comments and a total of 60 recommendations. Some of those recommendations are for the Ombudsman to implement and some are for consideration by HM Government of Gibraltar. I am happy to state that we are working our way through these recommendations and we are meeting with the Minister for Equality and Social Services on a regular basis to consider the merits, practicality and implementation of the totality of the recommendations.

Dr Kirkham is a well-known writer on matters relating to Ombudsman in the United Kingdom and other jurisdictions. I have to thank Dr Kirkham for having agreed to choose Gibraltar as the starting point for a new series of such exercises which hopefully will assist ombudsmen in improving their own service quality and delivery.

The full report can be found in our website at www.ombudsman.org.gi

Guidance from the Ombudsman

One of Dr Kirkham's most salient recommendations is that the Ombudsman should use his Annual Report to provide generic guidance on administration to those entities falling under his jurisdiction.

In keeping with this recommendation, I make the following comments.

1. Delays in receiving information

The most common complaint received in our offices from members of the public is that relating to delays in receiving replies to letters/emails. Regrettably this office has also been the subject of delays when seeking information pursuant to investigations.

The delay in providing a timely reply to a letter from a member of the public is an act of maladministration. When the delay is in respect of an inquiry from the Ombudsman this maladministration is compounded because it means that the Ombudsman cannot resolve a complaint in a timely manner and the complainant is not provided with the service standards that the Ombudsman advocates. Of course this not only applies to correspondence but to any enquiry made from any public service provider.

2. Service Standards

The Ombudsman would like to encourage all public service providers in Gibraltar to ensure that the service provided to those who attend their counters or seek their assistance is consistently of the highest possible standard.

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Perhaps this is a good juncture in which to remind public service providers and members of the public that the service must be given and used within an environment of mutual cooperation and respect. The Ombudsman's Principles for Good Administration should always be present when a public service provider is dealing with a member of the public. As a whole, I believe that, whilst there is room for improvement, Public Service Providers deliver a good level of service to the citizens of Gibraltar.

3. Ombudsman's Recommendations

The Public Services Ombudsman Act does not confer executive powers on the Ombudsman. Instead he is vested with the authority to make the recommendations.

When the Ombudsman decides to carry out what we term a 'formal' investigation these are usually carried out in a very exhaustive manner as we try to gather all the information available so as to be able to comprehend the circumstances surrounding the complaint. It is only after this exhaustive investigation that the Ombudsman, if he considers it appropriate, will make a recommendation.

By way of an example of a public service reacting in a proactive manner to a recommendation I cite the following:

The Complaint
The Ombudsman received a complaint against the Royal Gibraltar Police ("RGP") in relation to their alleged delay in addressing a claim for compensation for damage, following an incident where the Complainant's motorcycle was damaged by a metal gate in one of the RGP's compounds.

What Happened?
Upon receiving the verbal complaint, the RGP rightly asked the Complainant to produce an estimate of the repair value. Consequently, the RGP rebutted the claim (based upon the value of the damage provided) and also asked the Complainant to produce a multitude of personal documentation. The rebuttal and requests for documentation were time consuming and mostly irrelevant to the nature of the claim and eventually the RGP offered to settle the claim for £45.00 out of the £683.00 which the complainant was seeking. However, in the Ombudsman's mind, the RGP erred and unnecessarily complicated matters by classing the incident as a road traffic accident and investigating the matter themselves when in fact, the matter should have been treated as a simple claim for damages.

What should have happened?
A professional insurance assessor should have been instructed to establish liability (if any) and quantum. If this had been done the claim would have been expeditiously validated.

Recommendation
With this in mind, the Ombudsman recommended that the RGP should appoint a professional independent assessor to assess the quantum payable for the claim. The Ombudsman was pleased to note that the RGP acted proactively, accepted the recommendation and on that basis, the matter was settled by way of an ex-gratia payment amounting to £487.29.

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Employment Service

I have to make special mention of the Employment Service where there has been a significant increase in complaints during this year. The average complaints for the years 2010 to 2012 was 6 per annum, whereas during 2013 we have recorded a total of 23 complaints. The nature of complaints has ranged from lack of replies when seeking information to alleged unprofessional treatment and dissatisfaction regarding claims for payments under the Insolvency Fund.

It is to be hoped that this increase has been due to a transitional period of staff changes and/or shortages. As Ombudsman, I will closely monitor the trend over the coming months and if there is no change I shall have to meet with senior management to express my concerns and offer the assistance of my office to identify and address pockets of concern.

Civil Status and Registration Office

The Civil Status and Registration Office ('CSRO') also warrants mention in this Report.

The CSRO service delivery has gone from strength to strength in recent years. I must highlight that the level of complaints received against this office has dropped from 28 in 2010 to 18 during 2013.

Although the CSRO deals with a myriad of matters ranging from the registration of births, deaths and marriages through to the issuing of Identity, Civil Registration Cards and passports, complaints are mainly in respect of immigration issues. Without doubt immigration matters often give rise to sensitive issues which may affect whole families but which require careful consideration which give rise to complaints of delay.

It is my opinion that if this office continues to be steered as of late, the service to the public will continue to improve and complaints will drop even further.

Term of Office

My term of office was due to expire on 31st December 2013. I requested the Chief Minister to consider extending my tenure as per the provisions of the Public Services Ombudsman Act. The extension was granted and approved by Resolution in Parliament in December 2013.

I would like to express my most sincere gratitude to all Members of Parliament for their kind words towards me (and by extension to my staff) and for having approved the extension of tenure.

I take this opportunity to thank my staff for their hard work and patience with me.

Mario M Hook, Ombudsman

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Ombudsman's Review 2013

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The 'O' Team from left to right: Nicholas Caetano, Senior Investigating Officer, Karen Calamaro, Investigating Officer, Mario M Hook, Ombudsman, Nadine Pardo-Zammit, Public Relations Officer, Steffan Sanchez, IT Administrator, Sarah de Jesus, Graduate Research & Development Initiate

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2.1 Conferences, meetings and seminars

2.1.1 12th Meeting of the First Contact Interest Group - Scottish Parliamentary Ombudsman, Edinburgh.

On Thursday 23rd May 2013 our Public Relations Officer, Nadine Pardo-Zammit, travelled to Edinburgh for a First Contact Interest Group Meeting. This Group was set up in 2008 and brings together those concerned with 'gateway' services within the Ombudsman Association member schemes. It is an open forum to discuss how to deal with complaints and enquiries when they are first received. The Group meet twice a year and proves to be an extremely useful way of sharing information. This group is chaired by Ms Carol Neil, Advice and Outreach Manager of the Scottish Public Services Ombudsman Office ('SPSO').

A total number of 14 people attended the meeting representing schemes from the Parliamentary & Health Service Ombudsman, Scottish Legal Complaints Commission, The Adjudicators Office, Local Government Ombudsman, Pensions Ombudsman, Independent Case Examiner, Public Service Ombudsman for Wales, Scottish Public Services Ombudsman, Housing Ombudsman Services, The Property Ombudsman and the Gibraltar Public Services Ombudsman.

The Agenda for this meeting proved to be extremely interesting with presentations and discussions on issues such as 'Model Complaints Handling from a First Contact Perspective', and 'Communicating the right to request a review of an Ombudsman Decision'. We were also given updates from all the member Ombudsman services present at the meeting and there were general discussions on matters of interest or concern for each of the schemes.

Mrs Pardo-Zammit gave a presentation on the Gibraltar Public Services Ombudsman Offices initiative to introduce Skype as yet another way of contacting our office. The presentation was well received and led to a discussion on each schemes thoughts on this new mode of contact.

Of special mention was also the fact that the SPSO had organised a Samaritans course entitled 'Handling Difficult Contacts' which had proved very insightful for employees at the SPSO. As a result of this course the team went on to explore the type of language used in particular circumstances, for instance, when dealing with difficult and distressed callers and from there the group agreed on a set of flip cards that explained the key questions that needed to be asked when faced with certain scenarios including examples of signposting, and how to deal with escalating calls and even threats of suicide.

As a result of this information the Office of the Ombudsman is currently in the process of organising this same course for our staff as well as other public entities.

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2.1.2 Ombudsman Association Biennial Conference

Our Senior Investigating Officer attended the Ombudsman Association Biennial Conference held at Loughborough University on 16th-17th May 2013.

The Conference was based around the overall theme of "20/20 Vision- looking forward on the Association's 20th anniversary" and was run in the format of plenary sessions and workshops.

The sessions were varied in form and content and were delivered to all delegates by a variety of speakers. The areas covered were- "appropriate dispute resolution forums and legal challenges"; "accessibility- a strategic approach to managing the challenges"; "complaint handlers and relationship with Ombudsmen" and "Ombudsmen- the next 20 years."

There were numerous workshops on offer for attendance and participation. The Gibraltar office elected the "human rights" and "information compliance in complaint handling" options. Both proved to be informative and of practical application to the work conducted by the Gibraltar Ombudsman in our community.

The Gibraltar Ombudsman noted the importance of Gibraltar's participation at events of this nature. "It is imperative that representatives of our office attend key conferences. Firstly, because in the case of the Ombudsman Association the Gibraltar Public Services Ombudsman is a fully voting member of the Association (the highest tier of membership). It is therefore important that our status within the Ombudsman world is preserved. Secondly, by taking part in international events, we gain and share Ombudsmen principles, good practice and advancements. These are applicable in the day to day running of our office, as we constantly strive to improve the service we provide to our community."

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2.1.3 Public Services Ombudsman Meeting - Gibraltar

The Public Sector Ombudsman Group meets three times every year. The meetings are held in the offices of the different Ombudsmen on a rotating basis. On this occasion the meeting was held in Gibraltar on the 27th and 28th June 2013.

The members of the group are the United Kingdom's Parliamentary and Health Services Ombudsman, Dame Julie Mellor, the Local Government Ombudsman for England, Dr Jane Martin, for Wales, Peter Tyndall, for Scotland Jim Martin, for Northern Ireland, Dr Tom Frawley, the Ombudsman for Bermuda, Arlene Brock, for the Cayman Islands Nicola Williams, for the Republic of Ireland, Emily O'Reilly, for Malta Chief Justice Emeritus, Joseph Said Pullicino and Gibraltar.

The purpose of the meetings is to share our experience and learn from the wealth of knowledge that each member brings to the Group.

A feature of our meetings is that each Ombudsman gives an update of events in his office from one meeting to another.

Public Services Ombudsman Meeting in Gibraltar

Importantly for Gibraltar these are always excellent opportunities to learn what is going on in the wider Ombudsman world. We need to know what other Ombudsmen are doing and the way in which the work of the Ombudsman develops.

Specifically, on this occasion following developments in the Northern Ireland office, we have now made contact with the Northern Ireland Human Rights Commission and it is envisaged that we shall be meeting them in the autumn so as to explore the possibility of incorporating Human Rights issues into our investigations as is the case with other Ombudsmen throughout Europe. Attending the meeting on this occasion are the Parliamentary and Health Service Ombudsman, the Ombudsman for Wales and Bermuda and the Local Government Ombudsman for England.

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2.1.4 International Ombudsman Institute Anti-Corruption Training

International Anti-Corruption Academy

Our IT Admin/Project Officer recently attended the International Ombudsman Institute Anti-Corruption Training Course in Laxenburg, Austria (16th-18th September 2013).The custom- designed training course was hosted by the International Ombudsman Institute and delivered by the International Anti-Corruption Academy (IACA).

Thirty participants from 21 different countries from all over the globe including Austria, Sweden, Hungary, Poland, Romania, Norway, Switzerland, Italy, Nigeria, Thailand and South Africa attended the training course. The programme focused on the work of Ombudsman institutes throughout the world, and offered innovative tools for developing sound anti-corruption strategies. The cultural diversity and wealth of knowledge amongst the institutions represented, provided the opportunity to share invaluable experiences and enhance competences in identifying and evaluating procedures and measures on anti-corruption. The three-day programme course which included 11 sessions with a variety of different topics on anti-corruption was co-ordinated by Suzanne Hayden (IACA). There were 9 different speakers, including Mr Martin Kreutner (Dean IACA), and Mr Alex Brenninkmeijer (National Ombudsman of the Netherlands).

All the delegates from global Ombudsmen jurisdictions that participated in the anti-corruption course

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Corruption "The misuse of entrusted power for private gain"

Mr Martin Kreutner first addressed the participants describing the different types of corruption that usually occur in government entities. Some of these are fraud, extortion, nepotism (favouring family members for jobs and contracts), embezzlement and bribery (due to lack of integrity). He further explained that corruption exists in different forms, for example, high level or "grand" corruption refers not so much to the amount of money involved as to the level in which it takes place: grand corruption is at the top levels of the public sphere. Political corruption is any transaction between private and public sector actors through which collective goods are illegitimately converted into private-regarding payoffs, distinguished from bureaucratic or petty corruption because it involves political decision-makers. On the other hand, small scale, bureaucratic or petty corruption is the everyday corruption that takes place at the implementation end of politics, where the public officials meet the public. Petty corruption is bribery in connection with the implementation of existing laws, rules and regulations, and thus different from "grand" or political corruption.

Dean from IACA welcoming all the participants

UNRWA on Whistleblower Protection

We also had representatives from the United Nations Office on Drugs and Crime (UNODC) and the Organisation for Economic Co-operation and Development (OECD) who explained their roles and responsibilities on anti-corruption within their own institutions and also raised awareness issues that they face with the incessant fight against corruption.

Whistleblower Protection

There was also a very interesting lecture on whistleblowing by Mr Lex Takkenberg from the United Nations Relief and Works Agency (UNRWA). We learnt that Whistleblowing is another feasible source to unravel corruption, fraud or other misconducts, be it in a government entity or private company. The session was primarily focused on protecting the reporter against adverse consequences or retaliation because of having made a report disclosing wrongdoings at work. It is important that the identity of the Whistleblower is to be kept confidential. Sources of protection include dedicated legislation on Whistleblower Protection, Criminal codes, Sectoral laws such as Anti-corruption laws, laws regulating public servants and Public Service codes of ethics and conduct.

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Steffan particularly commented "Whistleblower protection is fundamental to encourage reporting of fraud and corruption but awareness-raising to address cultural obstacles in Whistleblowing is as important. The term Whistleblower is often associated with being an informant or traitor when in fact the United Nations Convention against Corruption (UNCAC) describes the term Whistleblower as any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences."

Public Procurement

Vulnerabilities and best practices on public procurement was also another topic that was addressed in the anti-corruption course by Mr. Johannes Schnitzer. Public procurement is highly prone to corruption and studies suggest that up to 20% to 25% of the public contracts' value may be lost to corruption. (EU Commissioner Ms Malmstrom on 5 March 2013 at Anti-Corruption Seminar in Goteborg, Sweden). Vulnerable sectors are Public Works Contracts such as motorways, tunnels, airports and pharmaceuticals and medical devices. Mr Schnitzer explained that sound procurement systems should be based on certain fundamental principles such as transparency, competition, non-discrimination, objectivity efficiency, etc. He also added that whistle-blowing by individuals directly involved in the procurement process is particularly important as these individuals usually have access to procurement documents and thus have the highest potential knowledge of corrupt behaviour within the workplace.

Complaint Management

Last but not least, Mr Alex Brenninkmeijer, the National Ombudsman of the Netherlands gave his presentation talk on the evaluation and handling of complaints. He described how in his office he has copy of the collected works of Franz Kafka and its presence there provokes many interesting conversations about bureaucracy. The word 'Kafkaesque' is used to describe a situation that is incomprehensibly complex, nightmarish and illogical and applies particularly to an advanced and dehumanised society in which the individual, lost in the toils of the state, is unable to control his life. Mr Brenninkmeijer explains he sees many cases that seem Kafkaesque and centre on the loss of autonomy experienced by the citizen who finds himself in the toils of some enormous and inconceivable bureaucratic power. Essentially, proper government action is about being open and clear, respectful, caring and solution focused and fair and reliable, these are the guidelines on proper conduct.

Steffan has commented 'All participants must have surely benefited from this course delivered by the International Anti-Corruption Academy who was outstanding throughout. Abundant information and knowledge has been extracted from all the lectures delivered at the course which will no doubt prove to be of instrumental benefit and significance to our office, especially when we review and evaluate our anti-corruption policies/procedures, and develop new anti-corruption strategies."

Special thanks to the International Ombudsman Institute since this training course was designed upon their request and would not have been possible without them, and also to Ms Ursula Bachler and supporting staff who were wonderful hosts during our stay.

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Our IT Admin/Project Officer together with some of the participants from the course.

Our IT Admin/Project Officer collecting his anti-corruption attendance certificate (IACA)

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2.1.5 Handling challenging contacts with suicide awareness workshop

The Office of the Ombudsman recently organized a day workshop entitled 'Handling Challenging Contacts with Suicide Awareness'. The training was delivered by Ms Pearl McMullan, a qualified training professional from the Samaritans Organisation who is experienced in working across a wide range of organisations.

There was a lot of interest in the workshop so it was decided it would be ran on two consecutive days; On Thursday 14th November 2013 it was held at the School of Health Studies at St Bernard's Hospital and was attended by staff from the Gibraltar Health Authority, Care Agency, Civil Status and Registration Office and Childline Gibraltar.

On Friday 15th November the workshop was held at Bleak House Training Institute and saw public services such as the Prison Service, Housing Authority, Human Resources Department, Department of Social Security, Royal Gibraltar Police, Gibraltar Fire Brigade, Customs as well as the Citizens Advise Bureau and the staff of the Ombudsman Office in attendance.

The aim of the training course was to develop the participants' skills and confidence to acknowledge difficult circumstances and feelings; enabling them to deal with contacts effectively, sensitively and professionally with the candidates able to:

- Understand difficult feelings and circumstances
- Use effective listening tools and techniques
- Defuse difficult contacts
- Use appropriate responses to sensitive subjects
- End contacts effectively
- Provide support for users and colleagues

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Participants at the Handling challenging contacts with suicide awareness workshop—Thursday 14th October

Participants at the Handling challenging contacts with suicide awareness workshop—Friday 15th October

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2.1.6 Presentation talks - Bayside School & Westside School

In October and November 2013 the Office of the Ombudsman held presentations for 'A' Level students at two of Gibraltar's Secondary Schools, Bayside and Westside. The presentation was divided into two parts. The first section touched upon the history and origins of the Ombudsman and the second part provided information on the role of the Ombudsman and its continuous development in contemporary society. We have compiled a very short summary of the presentation.

Delivering presentation on the history and origins of the Ombudsman at Bayside School

History and Origins of the Ombudsman

The roots of the modern Ombudsman date back over two hundred years and are traced back to Sweden in 1809 when the Swedish Parliament appointed an Ombudsman, but the role was created in the early 1700's when Charles XII became King of Sweden. It was because he was engaged at war and away from his country for long periods of time that he created the office of the King's Highest Ombudsman. The purpose of the role was to make sure that whilst the King was away, Government workers, judges and the military were acting properly and following the rules the King had established. When the wars were over and the King returned, the Office of the Ombudsman disappeared for nearly a century but it was not forgotten. In 1809, the Swedish King was taken prisoner by the Russian army and as a result, the Swedish Parliament reinstituted the Ombudsman's Office.

The word Ombudsman is of Scandinavian origin and means 'representative'. An Ombudsman is a person who acts as a trusted intermediary between the state or public organisation and members of the public, and is usually appointed by Government or Parliament. The Ombudsman is independent and is charged with representing the interest of the public by investigating and addressing complaints reported by individuals. He is essentially an advocate of the people, yet his role requires that he remains unbiased and impartial. The Ombudsman should not be mistaken with a lawyer who defends his client. It was after the Second World War that the Ombudsman model became popular in other countries. As Governmental organisations grew bigger and more complicated (e.g. the National Health Service in the United Kingdom) the Ombudsman proved to be a very effective and independent method of keeping check on the fairness for the citizen.

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Gibraltar's first Public Services Ombudsman was appointed in 1998 with the office opening its doors in October 1999.

The Role of the Ombudsman

The Ombudsman is a public official appointed by the legislature to receive and investigate complaints from members of the public relating to alleged acts of maladministration by public services. During the presentation, the students recognised the importance of the Ombudsman's role when it was brought to their attention that we are all users of public services, be it the Department of Education, the Civil Status & Registration Office, the Gibraltar Health Authority, Housing, to name but a few, and that someday the Ombudsman's services might be required by them. Details of the Ombudsman's website were provided to the students, www.ombudsman.org.gi where they could obtain more information about our services and contact details.

Several case samples of investigations carried out by the Ombudsman were put to the students, so that they could understand the vital role of the Ombudsman in the community, translated into everyday life.

The students were also given an overview on the Public Services Ombudsman Act 1998, the statutory framework which allows the Ombudsman to undertake his functions.

It was explained to the students that the present Ombudsman has worked very hard to ensure that the office is well equipped to keep up to date with the latest communications systems, to make the office accessible to as big a spectrum of persons as possible, and to facilitate accessibility for the complaints process. It was also highlighted that the Ombudsman has established strong links with the Ombudsman Association and International Ombudsman Institute and that this has ensured that the office is up to date with the latest Ombudsman trends, news and investigation techniques. Both these factors enable the office to deliver the best possible service to the public.

A rewarding experience for our office to be able to inform people about what we do. Thanks to Westside and Bayside for the opportunity!

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2.2 Distribution of Ombudsman's Annual Report 2012

The Ombudsman team distributed copies of the Ombudsman's 13th Annual Report pertaining to the year 2012 on the 8th November 2013. This year the Ombudsman has changed the format of delivering his annual report by handing it out electronically in USB pen drives along Main Street rather than distributing the habitual printed version outside Parliament House.

Our USB pen drive with the informational trifold pamphlet and survey

The Ombudsman believes this action to be more practical and environmentally friendly. The USB pen drives were presented to the members of the public with an informational tri-fold pamphlet of our office which enclosed additional information of our work. At the same time, an awareness survey was carried out with the people that received USB pen drives. Please see below.

Ombudsman Awareness Survey – 8th November 2013

SURVEY QUESTIONS	YES	NO	TOTAL
1 Have you ever heard about the Ombudsman?	160(86%)	25(14%)	185
2 If the answer is Yes,			160
How did you hear about the Ombudsman?			
Word of mouth	***72***	***45%***	
Friends & people in general	*47*		
Family	*7*		
Work	*18*		
Media	***55***	***34%***	
Local radio/TV	*31*		
Newspaper i.e. Local Daily	*18*		
Other	*6*		
General Knowledge	***30***	***19%***	
Internet	***3***	***2%***	
3 Have you ever used the services of the Ombudsman?	41(22%)	144(78%)	185
4 If the answer is Yes,			41
Were you satisfied with the service provided?	36(88%)	5(12%)	41
5 Would you use his services if required?	168(91%)	17(9%)	185
6 Do you know of anyone who has used his services?	80(43%)	105(57%)	185
7 Do you know the location of our offices?	137(74%)	48(26%)	185

Source: 185 Random members of the public at Main Street, 8th November 2013

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The survey comprised of 7 questions and a total of 185 persons took part in it. 86% of the people taking the survey said that they had heard about the Ombudsman before and from those 160, 45% of them heard about the Ombudsman through word of mouth, i.e. friends, family members and work colleagues who have used our services whilst 14% had never heard about us and interesting to note that the majority that did not know about us were young people from an age group of 16-19 years. On the other hand in our last awareness survey carried out in 2012, 93% of the people had heard about us through word of mouth and only 2% through the media; this new survey shows that since 2012 we have been more engaged with the media as 34% of the people interviewed heard about us through the media (in total 55 - Local radio/TV 31, Newspaper 18 and others 6).

Referring back to our awareness survey of 2012 we calculated that more than half the members of the public had never used our services due to the fact that 54% did not know the location of our office but on analysis of our new survey it shows that although 26% of the people do not know where our office is located, 78% (three times greater) have not used our services before; in other words a large group of the public do know where we are located and aware of the services we provide but have not needed to use them yet. From the 41 out of 185 persons who have used our services, 88% of them have been satisfied with our service.

The Ombudsman feels that conducting surveys is an important tool to improving oneself by taking unbiased opinions from a wide variety of people and this last survey's feedback has shown that the office has maintained a high level of service, and awareness has increased amongst the public on its accessibility.

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2.3 Ombudsman introduces Skype™ support

Further to the launch of our redesigned website in September 2011 which provided support for the submission of online complaints and enquiries, the office expanded its service facilities to its users by introducing Skype™ support.

Our Public Relations Officer using Skype™

The Gibraltar Public Services Ombudsman Office always aims to provide the best service for its users. It is hoped that this novel addition to our office will prove to be another useful opportunity for our users to easily access us. The Ombudsman's Principles of Good Administration dictate that entities should provide services that are easily accessible to their customers. Being able to access us from the comfort of your own computer station opens a virtual door to our office.

If you wish to contact us via Skype™ add us to your contact list. Our Skype™ ID is: gibraltar.ombudsman

We invite you to contact us via this new service.

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The Principles of Good Administration

GETTING IT RIGHT

Having appropriately trained staff that act according to statutory powers, duties, rules and policies governing the service they provide.

BEING CUSTOMER FOCUSED

Highlights dealing with customers helpfully, sensitively and bearing in mind individual circumstances and needs.

BEING OPEN AND ACCOUNTABLE

Refers to being as transparent and as open as the law. Giving reasons for decisions and keeping records.

ACTING FAIRLY AND PROPORTIONATELY

Refers to treating people impartially, with respect and courtesy, and ensuring decisions are proportionate and fair.

PUTTING THINGS RIGHT

When mistakes happen, Entities should acknowledge them, apologise, explain what went wrong and put things right quickly and effectively.

SEEKING CONTINUOUS IMPROVEMENT

Highlights the importance of accepting complaints as constructive criticism and a golden opportunity for reform.

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AQUAGIB LIMITED

Case Sustained

CS/917

Complaint against AquaGib Limited ("AquaGib") in that according to the Complainant her report to AquaGib of increased water bills as a result of possible tampering with her water supply had not been properly investigated and she is now liable to pay for extra water consumption

COMPLAINT

This Complaint arises from the fact that the Complainant, who was the principal of an Academy, complained to AquaGib that since August 2011 her water bills had been increasing despite the Academy being closed over the summer months and even though there is only a hand sink servicing the Academy. The Complainant was of the view that the rise in water bills was attributable to the fact that the meter box was being tampered with by third parties, due to its location and it not being secured within an enclosed and lockable cabinet.

BACKGROUND

On 7th December 2011, the Complainant wrote an email to AquaGib raising her concerns and asking for the matter to be investigated. The Complainant explained to AquaGib that in the preceding month of August, there was a substantial rise in the Academy's water bill from the average amount of £10 to £46, despite there only being a hand sink in the Academy's premises. The rise was also suspicious to the Complainant due to the fact, (as contained in her email to AquaGib), that the Academy had remained closed for the summer holidays from the 17th June to the 13th September. Additionally, the Complainant explained (and provided photographic evidence) of the meter enclosures' location, which was within an unsecured cabinet (with no doors) located in a courtyard outside the Academy, easily accessible by third parties. It also appeared that the water pipe appeared to have been replaced by an unidentified person/s. In her communication to AquaGib, the Complainant further stated that this was now the second time in two years she had received a substantially increased bill and requested that they investigate.

The Complainant received a holding reply via email from AquaGib stating that the meter had been checked for leaks but that none were found. The Complainant was informed that the matter would be investigated and that the findings would be communicated to her. The email further stated that the Complainant would also be notified on her request to move the meter closer to the Academy. No substantive reply in relation to either of the two matters were received by the Complainant.

On 25th May 2012 the Complainant, after attending AquaGib's offices to pay her utility bills and upon being informed by the cashier that there was another high bill relating to March 2012, wrote to AquaGib once more, complaining about the high consumption and that her complaint that the Academy's meter was being tampered with had not been addressed. She also stated that she would not pay for bills which the Academy was not responsible for. The fact that the meter had still not been properly secured with doors or moved closer to the premises was also highlighted by the Complainant. As a result, the Complainant filed her complaint with the office of the Public Services Ombudsman.

INVESTIGATION

The Ombudsman subsequently wrote to AquaGib presenting the complaint and requesting information. Further to a holding reply from AquaGib acknowledging the Ombudsman's initial letter and apologising for the delay in reply, a substantive reply was received on 29th August. The letter stated that according to their findings, the Academy's meter had not been tampered with.

AquaGib in their reply quoted the Public Health Act, which under section 136(i) defines the area of responsibility of Government (AquaGib) in relation to the "communication pipe" for which they are responsible. AquaGib stated that their responsibility ended at the meter and that "the consumer shall be responsible for any overflow, leakage, or other waste which may arise from or be occasioned by the pipes, taps,cocks,tanks or other fittings or apparatus beyond the outlet side of the meter." The assertion therefore, was that the consumer was responsible for the supply pipe, i.e., the outlet of the water meter. Upon review of the pertinent legislation the Ombudsman has been able to verify that this is the correct position.

In so far as the location of the water meter is concerned, rule 58 of the Public Health Act- Water Rules, states that "all water meters shall be placed in a convenient easily accessible position, to be determined by the Director and where in a position where the public have access, in a locked box, a key of which shall be kept by the Director. In general, all meters must be fixed as near the main as reasonably practicable." However, the stop cock on the communication pipe is not required to be contained within a locked cabinet, but simply "enclosed in a covered box or pit" pursuant to rule 21. The rationale behind this, in accordance with good industry practice is the practical need for the stopcock to be accessible as to enable the water supply to be cut off in the event of emergency. This is the policy adopted by AquaGib. The Ombudsman does note however that the cabinet containing the Academy's stop cock was not enclosed with doors.

The responsibility for the location of the meter cupboard lies with the proprietor. For the purposes of this complaint, the meter cupboard in question was, according to the information the Ombudsman had received, going to be fixed by a private contractor. AquaGib informed the Ombudsman that, in order to assist the Complainant, they contacted the private contractor several times to ensure that the meter cupboard was properly secured . AquaGib also assured the Ombudsman that they would be inspecting the site to ensure that the meter cupboard complied with AquaGib's specifications and extended the site visit to the Ombudsman.

Since as stated above, overflows and leakages are the responsibility of the consumer and given the existence of section 134(1) Public Health Act which states that …"Where the Government supply water under this Act by meter, the register of the meter shall be prima facie evidence of the quantity of water consumed," the Ombudsman was able to determine from previous information requested in relation to another complaint of this type, that AquaGib's view was that they had no discretion to waive amounts on bills which are evidenced by actual meter readings. Section 134(2), enables the Magistrates Court to determine the matter if brought before it, so the consumer does have legal redress to this issue if he/she so wishes.

In their reply to the Complainant, AquaGib offered two potential solutions to the issues raised. The first being the suggestion that the Complainant disconnect her supply during the summer months and reconnect again in September, at no cost to the Academy . The second being AquaGib's willingness to accept the outstanding monies owed at the rate of £5 per month.

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CONCLUSIONS

In relation to the substantive complaint that; (i) the increased water readings had not been properly investigated by AquaGib and (ii) that the Complainant was obliged to pay for the extra consumption, the Ombudsman, after detailed analysis has reached the view, in relation to (i) that AquaGib did in fact investigate and reverted to the Complainant by email with its initial findings and to the Ombudsman with a more detailed reply some 9 weeks later, having previously apologised for the delay. The Ombudsman is therefore unable to sustain the complaint in this regard.

In relation to (ii) after having reviewed the legal position and the obligations placed on Government/ AquaGib by s134 together with AquaGibs' "offer" for the Complainant to settle the outstanding amount in monthly instalments of £5, the Ombudsman dismisses the Complaint.

CLASSIFICATION

Not Sustained

RECOMMENDATIONS

(1) Although the Ombudsman has dismissed the Complaint, given the peculiarity of this case, the Ombudsman recommends that AquaGib make a recommendation to Government that the latter exercise their discretion in favour of the Complainant and waive the outstanding water bills. This recommendation stems from the fact that the Academy was closed over the summer months and, that had a door to the meter been in place, albeit an unlockable one, this may have acted as a deterrent and prevented third parties from tampering with the stop cock.

(2) That the now redundant Water Rules be updated by Government, a recommendation that AquaGib fully endorses, in the interest of consumers.

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Civil Status & Registration Office

Case Partly Sustained

CS/927

Complaint against the Civil Status & Registration Office for not allowing his wife (a non-resident in Gibraltar) to apply from Gibraltar for a visit visa to the United Kingdom; and the non-reply to emails dated 26th October and 1st November 2012

COMPLAINT

The Complainant was aggrieved because the Civil Status & Registration Office ("CSRO") would not allow his wife (a non-resident in Gibraltar) to apply from Gibraltar for a visit visa to the United Kingdom. He was further aggrieved because the CSRO had not replied to his emails of the 26th October and 1st November 2012.

BACKGROUND

The Complainant (a British Citizen) worked in Gibraltar and resided in Spain with his wife (non-EU national).. His Complaints stemmed from information provided by the CSRO, which the Complainant claimed was erroneous, to enquiries he had made on behalf of his wife who needed to urgently apply for a visit visa to the United Kingdom to visit relatives in the UK over the Christmas period. According to the Complainant, the CSRO informed him on the 25th October 2012 that because his wife was not resident in Gibraltar she would have to apply through the UK Embassy in Madrid. On the basis of that information, the Complainant looked up the United Kingdom's Home Office UK Border Agency (Home Office) website http://www.ukba.homeoffice.gov.uk/countries/gibraltar/applying/?langname=null and noted the following:

(Extract from Home Office website)

Applying for a UK visa in Gibraltar

This page explains how you can apply for a visa to come to the UK if you are currently in Gibraltar.

If you currently have temporary permission to stay in Gibraltar (for example, as a student or a visitor), you can only apply for some types of UK visa - see 'More information' below.

More information

Applying for a UK visa if you have temporary permission to stay

If you have temporary permission to stay (for example, as a visitor) in the country where you are currently living, you cannot apply for most types of UK visa in that country. You can only apply for:

- *a visitor visa*
- *a Tier 5 (Temporary worker - creative and sporting) visa*
- *an EEA family permit*

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Your application may be referred back to your country of residence, which may cause delays.

To apply for any other type of UK visa, you must apply under the procedure for your country of residence. You can find this procedure by selecting your country of residence in our country finder .

In an email to the CSRO dated the 26th October 2012, the Complainant put the above to them stating the information they had provided was wrong and requested details on how to apply from Gibraltar for his wife's visit visa to the United Kingdom. CSRO replied later that day and enquired about his wife's nationality in order to give as complete a reply as possible. Nonetheless, based on the premise that his wife was a UK visa requiring national who lived in Spain, CSRO stated that both the information they had provided and that contained in the Home Office website was correct and that his wife should apply from the British Embassy in Madrid. The CSRO advised the Complainant to contact the United Kingdom visa section if he continued to be dissatisfied and provided him with the relevant email address.

The Complainant immediately replied to CSRO reiterating that as a visitor to Gibraltar, his wife should be able to apply for a visit visa to the United Kingdom from Gibraltar and questioned CSRO's interpretation of 'visitor'. In this last email the Complainant stated that he would refer CSRO's reply to the Home Office to see what they had to say. Six days later and not having received any further communication from CSRO, the Complainant once again emailed them with his query. In this last email, the Complainant referred the CSRO to ECB5 in the Home Office website, a reference pointed out to him by an immigration lawyer in the UK, to further substantiate his argument that his wife could apply from Gibraltar. [Ombudsman Note: For completeness of records, in the course of the investigation the Complainant informed the Ombudsman that he had in fact not written to the Home Office].

No reply having been received by the 26th November 2012, the Complainant put his Complaints to the Ombudsman.

INVESTIGATION

The CSRO's reply to the Ombudsman's enquiries explained that the Complainant's email of the 26th/27th October 2012 was not replied to because they did not consider a reply was necessary. CSRO explained that in said email, the Complainant had stated that they would not be applying for a visa and finished by stating he would refer the matter to the Home Office. CSRO failed to note that in the same email, the Complainant had provided the information previously requested by CSRO regarding his wife's nationality and questioned CSRO's interpretation of the term 'visitor'. As such, regardless of being minded to direct his enquiries to the Home Office, the Complainant expected a reply.

In respect of the email of the 1st November 2012, CSRO stated that the non-reply had been due to an oversight and offered their apologies.

Regarding the substantive matter, CSRO stated that they had now (10th January 2013) considered the contents of the Complainant's email and confirmed that the Home Office had changed their instructions with regards allowing applications for visas to visit the United Kingdom from non resident third country nationals with the exception of applications for PBS or settlement visas. The Ombudsman asked CSRO to expand on how the change in instructions had come to their attention, i.e. had CSRO communicated with Home Office as a result of the Complainant's email or had other factors contributed. CSRO explained that they had not realised that the UK Borders Agency had changed their policy with regard to who could be issued visitors visas in time for the Complainant's wife to apply.

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CSRO explained that their staff had now been instructed to check the Home Office website on a monthly basis for applicable changes and/or updates. The Ombudsman enquired as to when this particular policy change had been implemented by the Home Office and was informed by CSRO that they could not easily obtain that information as the website mentioned the change but not the effective date. The Ombudsman checked the Home Office website in March 2013 (date on which report was being compiled) and noted that the last update related to ECB05 was 25th August 2011, two and a half years ago.

On the 11th January 2013, the CSRO finally wrote to the Complainant providing the relevant information on how his wife should go about applying for the UK visitor's visa from Gibraltar.

CONCLUSIONS

Not allowing his wife (a non-resident in Gibraltar) to apply from Gibraltar for a visit visa to the United Kingdom

It is clear from the findings of the Ombudsman's investigation that the CSRO provided erroneous information to the Complainant in this case because they had failed to check updates/changes made by the Home Office. Had it not been for the Complainant's perseverance and conviction as a result of which he brought his Complaints to the Ombudsman, the CSRO would have continued this stalemate, i.e. providing erroneous information to the public. It was as a consequence of this investigation that CSRO admitted to not having checked updates/changes in Home Office policy

CSRO, the official body tasked with handling visa applications for the United Kingdom should have been abreast of any changes which affected the service they offered the end user.

As a result of this investigation, CSRO staff has now been instructed to check the Home Office website on a monthly basis for updates/changes, something which CSRO should have routinely been doing in order to provide clear, accurate and timely information as advocated by the Principles of Good Administration.

Non-Reply to emails dated 26th October and 1st November 2012

The reasons given by CSRO for not replying to the Complainant's emails was due to not considering a reply was necessary with regards the 26th October 2012 email and due to an oversight with regards the second email. In effect not giving the service required to the Complainant which resulted in his wife being unable to apply for the UK visitor visa and unable to spend Christmas with their relatives. CSRO took the stance that the information they had provided to the Complainant in the first instance was correct and relied totally on the Complainant's statement that he would direct his enquiries to the Home Office without addressing the queries the Complainant was putting to them. The Complainant's email of the 1st November 2012 was finally considered and replied to by the CSRO on the 11th January 2013 as a consequence of the Ombudsman's investigation into the Complaint.

CLASSIFICATION

Not allowing his wife (a non-resident in Gibraltar) to apply from Gibraltar for a visit visa to the United Kingdom – Sustained

Non-Reply to emails dated 26th October and 1st November 2012 – Sustained

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Gibraltar Health Authority

Case Not Sustained

CS/988

Complaint against the Gibraltar Health Authority Primary Care Centre:

(i) Dissatisfied with the reply she had received which was confusing and did not answer questions she had put to them

The Civil Status & Registration Office:

(ii) Refusal to update her Civilian Registration Card

COMPLAINT

The Complainant was aggrieved at the Gibraltar Health Authority's Primary Care Centre. She was dissatisfied with the reply she had received which was confusing and did not answer questions she had put to them.

She was further aggrieved against the Civil Status & Registration Office ("CSRO") for their refusal to update her Civilian Registration Card.

BACKGROUND

In 2011 the Complainant, a British Citizen who claimed to have lived in Gibraltar since the 1970s, applied to be registered under the Group Practice Medical Scheme ("GPMS") which would entitle her to access free state medical care. Two years earlier, the Complainant had turned 60 and was therefore in receipt of a Government old age pension and quarterly household allowance from a local private charitable fund ("Community Care Limited"). The Complainant claimed her GPMS application was refused on the grounds that her Civilian Registration Card denoted the letters 'NC' (Non-Contributor) and as such she would have to pay approximately £20 a week to be covered through the GPMS. [Ombudsman Note: The 'NC' categorisation is the pivot around which this complaint revolves].

In August 2011 the Complainant wrote to the Primary Care Centre ("PCC") Manager ("the Manager") to complain about the refusal of her application and requested details of the laws that had been applied to her case. The reply received from the Manager a month later referred her to the Medical (Group Practice Scheme) Act, the Medical (Group Practice Scheme) Regulations, the UK/Gibraltar Reciprocal Agreement and EC Regulations 1408/71 and 547/72. The Manager directed the Complainant to the specific section of the Medical (Group Practice Scheme) Act which referred to entitlement for registration in the GPMS and to the Medical (Group Practice Scheme) Regulations with regards provision for payment of contributions. The Manager provided the Complainant with the Gibraltar Government's website address in which she would be able to access Gibraltar's laws but nonetheless drew her attention to the complexity of some of the rules and the extreme difficulty to summarise them. To conclude, the Manager advised the Complainant that in order to process her application for registration to the GPMS she would need to update her Civilian Registration Card at the Civilian Status Registration Office ("CSRO"). Confused and dissatisfied with the reply received, the Complainant brought her Complaint to the Ombudsman.

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[Ombudsman Note: A second Complaint was received when the Complainant attempted to update her Civilian Registration Card at the CSRO as directed by the Manager and is dealt with separately in this report.]

INVESTIGATION

Confused & Dissatisfied with the Reply Received from the PCC Manager

The Ombudsman requested comments from the Gibraltar Health Authority ("GHA") with respect to the Complaint and a reply was received from the Manager. She stated that she had met the Complainant on a number of occasions and explained at great lengths the rules of entitlement and its procedures; as the Complainant still had concerns about the explanations provided, the Manager directed her to the Gibraltar Government website and the various regulations on the issue.

The Manager pointed out that at the time of application the Complainant had not provided the PCC with proof of address by way of a utility bill in her name as was requested from all applicants to the GPMS and highlighted that the Civilian Registration Card showed that the Complainant was a NC. The Manager further explained that when a Civilian Registration Card showed the letters 'NC' after the personal number, the document had been issued on the basis that the person had produced their own private medical insurance so as not to become a burden on the state.

The Ombudsman had requested information from the Manager as to why the letter she had sent to the Complainant showed her address as a c/o address. The reason given by the Manager was that the Complainant did not appear on the deeds of the property and as such she felt it was appropriate to write to her c/o the address where she lived.

The Manager provided a copy of an email she had sent to the CSRO requesting information on the Complainant's legal status in Gibraltar. Information on said email noted that the CSRO's only record of the Complainant was that she had held a Civilian Registration Card between December 1993 and December 1998 and that she had not held any further residence documentation until September 2010 when she reapplied for residence. The CSRO cast some doubt as to the proof of address provided by the Complainant at the time of application, an old age pension book dated 3rd September 2003 which showed the Complainant's present address; said property had not been purchased by the Complainant's son and his partner until six years later and CSRO could not understand how the Department of Social Security ("DSS") had issued an old age pension book stating that residence when the Complainant did not hold a residence permit to prove it.

The Ombudsman believed that the 2003 date quoted by the CSRO was incorrect, as the Complainant had not attained the age of 60 (pensionable age for women in Gibraltar) until 2009. He made enquiries at the DSS who confirmed that the Complainant had not received her pension until 2009 and that the role of the DSS in this case had been to calculate the Complainant's entitlement for a pension not her residency.

In mid-January the Ombudsman requested a meeting with the Complainant to clarify a number of issues but this was delayed for three months until the Complainant returned to Gibraltar in April 2012. At said meeting the Ombudsman enquired about the period 1998 to 2010 during which the CSRO stated they had no record of residence documentation. The Complainant explained that during that period she had been back and forth between Asia (where her elderly parents resided) and Gibraltar. On the matter of having been unable to present a utility bill at the PCC, the Complainant stated that was due to the fact that the property in which she resided did not belong to her but to her son who had been born in Gibraltar and lived here all his life.

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For the purpose of further clarification on the circumstances of this case and on the NC status, the Ombudsman met with the PCC Manager.

PCC Manager explained that she met the Complainant when she first applied to the GHA for a medical card. The Manager stated that at that meeting the Complainant had informed her she was living in Spain (something the Complainant denies) but was planning to come to live in Gibraltar with her son. The Manager advised the Complainant that she would first need to register with the CSRO. The Manager explained to the Ombudsman that the CSRO had the resources to undertake the necessary due diligence to confirm the Complainant's residence status which would determine if she would have to produce a private medical insurance before a Civilian Registration Card could be issued or whether in fact she met the criteria to be included in the GPMS..

The Manager explained that until 1989, pensioners and unemployed persons had to contribute to the GPMS. From then on, a Social Assistance Fund was created for the purpose of the payment of contributions on behalf of the aforementioned persons. Government has the discretion to authorise payments from that fund to persons who meet the criteria required and at monthly meetings between the Manager and the Minister for Health and the Environment ("Minister"), cases are presented and decisions on whether persons qualify are taken.

The Manager explained that in her present status the Complainant would have to pay £21.12 a week voluntary contribution to the GPMS.

The Ombudsman referred the Manager to the fact that the Complainant was in receipt of a Gibraltar pension and Household Allowance (paid by Community Care Limited, a charitable trust, and which as far as the Ombudsman was aware required that the applicant reside in Gibraltar) and enquired if it followed that due to the acceptance of her status by Community Care Limited the Complainant should also be entitled to the GPMS card.

Regarding the NC categorisation, the Manager stated that it was the CSRO who should determine whether or not a person was entitled to an Identity Card ("ID")/Civilian Registration Card with or without the NC categorisation. Once that had been determined, the PCC could make a decision on whether a person was entitled to be registered with the GPMS.

When asked by the Ombudsman what the PCC would require from the Complainant for her application for a GPMS card to be processed, the Manager stated they would require an affidavit from the Complainant's son confirming that she resided in his property and her Civilian Registration Card to be updated by the CSRO and the NC categorisation removed.

The Complainant was informed of the above and she undertook the necessary steps to comply with the instructions. Nonetheless she stated that the Manager had never asked her for an affidavit. The latter was signed by her son and was handed in at the PCC. Upon attempting to update her Civilian Registration Card this was refused. At that point the Complainant informed the CSRO that in order to obtain the Civilian Registration Card she had taken out private medical insurance but because that was very expensive, she had shortly after had no choice but to discontinue the monthly contributions. According to the Complainant the CSRO told her that she had lied to obtain the Civilian Registration Card and at that, the Complainant left their offices and lodged a second Complaint with the Ombudsman.

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CSRO's Refusal to update the Complainant's Civilian Registration Card

Further to the Complaint and the Ombudsman's meeting with the Manager in which she had pointed out that the NC categorisation was determined by the CSRO, the Ombudsman requested the following information from the CSRO:

The rules governing the issue of an ID/ Civilian Registration Card without the 'NC' classification;

Reasons as to why the Complainant had been issued with a Civilian Registration Card denoting the 'NC' classification despite being in receipt of a local pension and household allowance.
The CSRO set out the legal framework for the issue of Civilian Registration Cards and stated that the rules required that any person who entered Gibraltar had to apply to the Registration Officer for registration within three days of entry and the Registration Officer was required to issue the Civilian Registration Card or ID upon receipt of the application and payment of the prescribed fee. The decision as to whether a person is issued with an ID card or Civilian Registration Card is determined by Schedule 1 of the Civilian Registration Act.

The CSRO stated that the Complainant, an old age pensioner and Economic European Area National was considered to be a self-sufficient person and therefore a 'qualified person' under Section 55E of the Immigration, Asylum & Refugee Act but referred to Section 55C(4)(b) which determined that the self sufficient person must have comprehensive sickness cover in Gibraltar. CSRO stated that holding a comprehensive private health insurance or an official GPMS card had always been considered adequate. The Complainant did not hold a GPMS card at the time of application for the Civilian Registration Card and was advised to enquire at the PCC on her eligibility. CSRO stated that it was upon the Complainant's return to their offices stating that the PCC Manager had refused to issue a GPMS card that she was advised to obtain a private medical insurance required for the issue of a Civilian Registration Card. In July 2010 the Complainant produced the insurance and a Civilian Registration Card was issued for five years. Given that the Manager had declared that the Complainant did not qualify for GPMS medical care, CSRO stated that the Civilian Registration Card was endorsed with the letters 'NC' as a non-contributor (not having contributed towards GPMS).

The CSRO stated that having obtained what she wanted, the Complainant cancelled the private medical insurance and once again applied to the PCC for a GPMS card. Noting the 'NC', the Manager refused to issue the Complainant with the medical card, on this occasion pointing to the NC as being the reason for the refusal.

CSRO stated that they cannot and would not determine whether a person is entitled to state medical cover or not as that was a matter for the GHA. Therefore, CSRO emphasise that the 'NC' annotation would always come after the GHA had determined entitlement.

CSRO concluded that:

(i) the Manager refused to confirm whether the Complainant was entitled to GPMS medical cover;

(ii) DSS confirmed that the Complainant was an old age pensioner with a local address and had paid social insurance contributions during the period 1971 to 1989 which should ordinarily make her eligible to some state medical cover.

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On the basis of the above, the CSRO stated that they were satisfied that the Complainant was an old age pensioner and an EEA national but required comprehensive sickness cover in Gibraltar which she did not have. CSRO had therefore issued instructions to staff to issue a 6 month renewable permit of residence and a Civilian Registration Card for the same period without the 'NC' annotation subject to the Complainant providing a copy of the private medical insurance. If at any time after the six months the Complainant produced a GPMS card, CSRO stated that both her residence permit and Civilian Registration Card would be renewed for five years. As a matter of policy, all other cases presenting similar circumstances would also be issued with 6 monthly renewable permits in accordance with Section 18(1)(ee). Additionally, CSRO staff had been instructed to issue Civilian Registration Cards with NC annotation when it was obvious that the applicant had never resided in Gibraltar or the GHA/ PCC confirmed in writing that the person was ineligible to state medical cover.

The Manager was informed of CSRO's reply and she agreed that both departments had to meet to establish procedures and protocols to ensure this situation was not repeated and felt that legal guidance was required in order to arrive at a consensus.

Summary of Positions of the Three Parties

The Complainant

The Complainant, a British national who claimed to have resided in Gibraltar since the 1970's and was in receipt of a local old age pension and household allowance, applied for a GPMS card to be covered by state medical care. Her application was refused by the PCC on the grounds that her Civilian Registration Card contained the letters NC (Non-Contributor to the GPMS). The PCC therefore directed the Complainant to the CSRO for her card to be updated. This was refused by the CSRO on the basis that the PCC had determined that the Complainant was not entitled to be covered by state medical cover. As a result, in order to meet the requirements for the issue of the Civilian Registration Card under Section 55C(4)(b) of the Immigration, Asylum & Refugee Act the Complainant had to produce private medical insurance. She did so in order to obtain the Civilian Registration Card and once that was issued, discontinued the monthly payments for the insurance and continued to pursue her application for the GPMS card. The Complainant continues to have no private medical insurance and is not covered by the GPMS. She is presently awaiting the outcome of the Ombudsman's investigation.

PCC

When the Complainant first applied for the GPMS card in 2010, the Manager claims to have been told by the Complainant that she resided in Spain but wanted to move to Gibraltar to live with her son. At that point the Manager informed the Complainant that she would first have to register with the CSRO. At her meeting with the Ombudsman, the Manager expanded on the reason and explained that the CSRO, equipped with the most adequate resources, would undertake due diligence in the Complainant's case to determine her residency status based on which the Manager would base her decision for eligibility to the GPMS. The comment which the Manager purports was made by the Complainant about living in Spain set off alarm bells in the Manager to the effect that the Complainant did not meet the criteria required for payments from the Social Assistance Fund (as explained above it is the Manager and the Minister who determine on a case by case basis who is eligible). Nonetheless the Complainant visited the CSRO to register. It was there that due to not having had her GPMS application accepted and in order to obtain a Civilian Registration Card, the Complainant had to produce private medical insurance and as a result, the 'NC' categorisation noted on her Civilian Registration Card.

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Now in possession of the Civilian Registration Card and unaware of the repercussions that those two letters would have in her reapplication for a GPMS card, the Complainant returned to the PCC.

PCC's stance at that stage was that the letters 'NC' excluded her from being eligible. Furthermore, the Complainant was unable to present a utility bill as proof of her local address because the property in which she resided belonged to her son and his partner. To substantiate the doubts arisen in relation to the Complainant's residency, the Manager provided to the Ombudsman a copy of an email sent by the CSRO in September 2011 after she enquired about the Complainant's legal status in Gibraltar. The email stated that for the period 1998 to 2010 the Complainant had not held residency documentation and that prior to that she had held a civilian registration card between 1993 and 1998. The email cast doubt on the Complainant's address at the time of application for the Civilian Registration Card as CSRO claimed the Complainant had presented an old age pension book dated 2003 which showed her residence at that time as being the property which her son had purchased in 2009, six years later. The Ombudsman notes that notwithstanding the aforementioned, CSRO issued a Civilian Registration Card with the address in question.

As a result of the Ombudsman's investigation and meetings with the PCC Manager, their position is:

(i) that the Complainant would have to present an affidavit signed by her son attesting that she resides with him and his partner;

(ii) that the CSRO update the Complainant's Civilian Registration Card so that the letters 'NC' are removed, in order for the Complainant's application for a GPMS card to be successful.

CSRO

The CSRO states that it was the PCC Manager's refusal to provide a GPMS card to the Complainant which required them to request the Complainant to present private medical insurance. As a result the letters 'NC' had to be included in her Civilian Registration Card. The 'NC' categorisation therefore prevented her from a successful reapplication for a GPMS card.

The CSRO, reacting to the Complainant's statement that she had discontinued contributions to the private medical insurance after having been issued with a Civilian Registration Card for a period of five years have now put measures in place to in as much as possible, prevent a recurrence of this situation. Additionally, staff had been instructed to only make the 'NC' annotation when it was obvious that the applicant had never resided in Gibraltar or the GHA/PCC confirmed in writing that the person was ineligible to state medical cover.

CONCLUSION

Rights convey responsibilities. In this case, although the Complainant had a right to reside in Gibraltar, she failed to renew her Civilian Registration Card for the period 1998 to 2010. Had the Complainant maintained the renewal of her documentation it is likely that this problem would never have arisen. Nonetheless this case is a question of entitlement. Is the Complainant entitled to be included in the GPMS or not? From the findings of this investigation it is clear that adequate due diligence was not carried out in this case in order to determine entitlement.

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The Ombudsman referred to the Complaints brought by the Complainant:

(i) Confused & Dissatisfied with the Reply Received from the PCC Manager;

(ii) CSRO's Refusal to update her Civilian Registration Card;

and referred to Lord Denning's words in R V Local Commissioner for Administration for the North and East Area of England ex parte City of Bradford Metropolitan Council, (1979)

> *"In the nature of things, a complainant only knows that he has suffered injustice. He cannot know what was the cause of the injustice. It may have been due to an erroneous decision on the merits or it may have been due to maladministration somewhere along the line leading to the decision. If the Commissioner looking at the case – with all his experience can say: "It looks to me as if there was maladministration somewhere along the line – and not merely an erroneous decision" – then he is entitled to investigate it. It would be putting too heavy a burden on the complainant to make him specify the maladministration: since he has no knowledge of what took place behind the closed doors of the administrators' offices."*

By this stage, the Ombudsman had found that there was an administrative impasse which was causing injustice to the Complainant and was a continuous act of maladministration. He was minded to invoke Section 21 of the Public Services Ombudsman Act:

> **Special Reports to Chief Minister**
>
> 21. If, after conducting an investigation under this Act, it appears to the Ombudsman that an injustice has been caused to the person aggrieved in consequence of maladministration and that the injustice has not been, or will not be, remedied, he may, if he thinks fit submit a special report upon the case to the Chief Minister who shall lay the same before Parliament within 60 days.

Before embarking on a special report, the Ombudsman thought that it would be prudent to engage the GHA further. After a series of meetings and correspondence at which the matter was discussed at length, and after having studied the Ombudsman's draft report on the Complainant's case, the GHA decided to accede to the Complainant's request for registration for the GPMS.

The GHA decided to agree to the registration because it was considered that from the Complainant's perspective the situation was confusing and unhelpful which could have seemed unjust to her.

In the closing stages of the investigation, the Ombudsman was informed that the Minister was of the opinion that the present GPMS legislation was unhelpful and needed to be redrafted and stated that the GHA would be initiating discussions with the Legislation Support Unit for the legislation to be reviewed.

CLASSIFICATION

Gibraltar Health Authority: Sustained.

Civil Status & Registration Office: Not Sustained

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Gibraltar Port Authority

Case Sustained

CS/1008

Complaint against the Gibraltar Port Authority ("GPA") due to the fact that the Port Authority stated that a berth was required as a pre-requisite for the registration of the Complainant's inflatable vessel

COMPLAINT

The Complainant complained that he was unable to register his three metre inflatable boat ("the boat") because the GPA stated that a berth was required for its registration.

BACKGROUND

The Complainant had been the owner of an inflatable boat which he imported into Gibraltar in the year 2000, under the Imports and Exports (Control) Regulations, and which was subsequently registered under the relevant legislation and a Red Book issued.

In October 2012, the Complainant bought a new inflatable boat [this was in order to replace his old boat] but when stopped at the land frontier on a routine search, was unable to provide the relevant documentation for it. An import licence was granted by H.M.Customs ("HMC") and the Complainant was advised to contact the GPA for its registration. Further to communication between HMC and GPA, the boat was impounded because the Complainant did not have a berth for it.

The Complainant had intended to keep the boat in his garage. The Complainant stated that the law did not say that a berth was required in order to register the boat. He believed that the imposition of this pre-requisite was as a result of an informal arrangement between the Royal Gibraltar Police ("RGP") and the GPA dating from 2008. This he found to be unfair and wrong.

On the 20th November 2012 the Complainant wrote to the Captain of the Port explaining his predicament and requesting his comments. The Complainant received a reply confirming that the decision not to register boats unless they had an allocated berth dated from 2008. An informal agreement ("the Agreement") had been reached between the then Acting Captain of the Port and the Acting Commissioner of Police, in an attempt to restrict the illegal tobacco smuggling trade. Therefore, the Complainant would not be allowed to register the boat if he did not have a berth for it.

As a result, the Complainant filed his complaint with the Ombudsman.

INVESTIGATION

The Ombudsman presented the Complaint to the GPA on the 4th February 2013 setting out the Complainant's grievance and asking for their comments. The Ombudsman also sought guidance from GPA on the legislation or rules relating to the registration of vessels which were of a similar type to that of the Complainant.

A prompt reply was received on the 5th February 2013 for which the Ombudsman was grateful. The letter explained the history leading to the Complainant's complaint.

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The letter stated that in October 2012 H.M.Customs ("HMC") stopped the Complainant at the land frontier, conducted a routine search of his vehicle and found the boat therein. When the Customs Officer requested the import licence for it, the Complainant was unable to produce the documentation. GPA stated that the Agreement (which appears to be applied by the RGP, GPA and HMC) provides that "no person will be granted an import licence for a vessel unless the individual is capable of demonstrating that the GPA has confirmed in writing that the individual has a birth." The Complainant, not being the holder of a berth for the boat, was unable to demonstrate that requirement.

The letter went on to state that "on closer inspection by HMC it was noted that the craft being imported was not the original purchased as the documentation for the new vessel did not match that of the original information on the red book licence (granted to [the Complainant] in 2000). It was at this point that HMC informed the GPA. HMC decided that they would grant an import licence if the GPA could confirm that the owner had a berth. This could not be confirmed as [the Complainant] was intending to store the craft in a garage."

GPA also confirmed to the Ombudsman that the Agreement "which was enacted in 2008" was put in place as a solution for the purpose of controlling illegal activities (smuggling).

In conclusion to the factual background, the letter finalised by stating that the Complainant had been the owner of an inflatable craft prior to the Agreement being put in place and he had been able to register it. However, according to GPA, the Complainant had "forfeited his licence when he decided to purchase a new craft without prior consultation".

As a result of the content of GPA's letter, the Ombudsman replied to them seeking that they direct him to the relevant legislation under the laws of Gibraltar which prohibited the registration of inflatable vessels in the absence of a berthing facility, and also requested a copy of the Agreement "enacted in 2008." The Ombudsman was subsequently invited to a meeting at GPA Headquarters to discuss the issues.

The meeting proved to be beneficial to all the parties concerned. It was admitted by GPA that there was a lacunae in the law in relation to the issue being the subject of this complaint. They stated that they would assist the Ombudsman in any manner they could and that they would welcome the Ombudsman's report. The Deputy Captain of the Port explained that the GPA operates under the Port Act and Port Rules 1960 and that vessels can be registered by the Captain of the Port if there is an accompanying berth.(The Ombudsman has reviewed the legislation and there is no evidence to support this). It was also stated that there was a verbal agreement made between the GPA and the RGP (at the latter's request) in 2008, which established that owners are disallowed from storing or keeping inflatable vessels within private property. For these vessels to be registered, they must be berthed. However, this pre-condition is not expressly stipulated under any written agreement, act or regulation. At the meeting, GPA also stated that there was a discretion on the Captain of the Port to issue a licence. The positive exercise of this discretion would consequently enable a vessel to be registered. The Ombudsman asked whether he could be referred to the legislation addressing this.

Subsequent to the meeting, the GPA wrote to the Ombudsman agreeing with his comments (which had been made at the meeting), that "the law is not specific [in] regard to the issue appertaining to this [complaint]." The Ombudsman was directed to the "Small Vessels (Mooring Control) Rules, 1990. Section 4 which makes references to the granting of permits. It states:

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4(1) "The Captain of the Port may, in his absolute discretion, grant the owner of a small vessel or to an individual intending to purchase a small vessel a permit to moor the vessel within a ***designated area."***

4(4)"The permit granted under this rule shall be valid in relation to the small vessel to which it is expressed to relate"

The rationale applied by the GPA, in relation to the discretion afforded to the Captain of the Port by the legislation, was that since *"the key words were designated area, the house/ garage of the Complainant could not be interpreted as being a* ***designated area****."*

The Ombudsman disagreed with this interpretation.

CONCLUSIONS

The Agreement

The Agreement which, according to GPA was enacted in 2008, is contained within a letter between the RGP and GPA as referred to above. It stated that "no person will be granted an import licence for a vessel unless the individual is capable of demonstrating that the GPA has confirmed in writing that the individual has a berth."

The Ombudsman is well aware of the issues surrounding the illegal tobacco smuggling trade and appreciates that the Agreement was reached in an attempt to control the same. However, it appears to have been reached on an informal basis since (contrary to that stated by the GPA) it has not been enacted in law and there is no document available for inspection, reflecting the Agreements' terms. Due to this, the Ombudsman's view is that unless the Agreement is incorporated into Gibraltar law, any action taken by RGP, HMC, GPA or indeed any other public body in pursuance of the Agreement, would be ultra vires. The public entity seeking to enforce it would be acting beyond the powers granted to it by statute.

The Captain of the Port's Discretion

In regard to section 4 of the "Small Vessels (Moorings Controls) Rules 1990, the Ombudsman disagreed with the interpretation applied by GPA to the Captain of the Port's discretion. The law provides that the discretion applies to granting "owner(s) of a small vessel or individuals intending to purchase a small vessel, a permit to moor the vessel within a designated area." For the purposes of this complaint, the Complainant was not seeking to moor the boat but simply to import it into Gibraltar, register it and store it within his property. There is no provision within the legislation which obliges individuals to moor small vessels and no provision which states that if a vessel is not moored, the owner cannot import it into Gibraltar and/or store it in any location other than a berth. Since small vessels are not classed as "prohibited imports" and there is no obligation to moor them, the Ombudsman was of the opinion that in not allowing the Complainant to register the boat after its importation, the GRA/Captain of the Port was not acting in accordance with established procedures.

The Ombudsman formed this view based upon the following:

(a) The Complainant's boat was classed as a "small vessel" (a three metre inflatable boat with an outboard engine). The legal definition of "small vessel" as contained in Section 2 of the Small Vessels (Moorings Controls Rules) 1990 is " a fishing vessel, pleasure boat or sailing boat of a length not exceeding 30 feet, but does not include a fast launch"

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(b) Upon presentation of the boat's documentation and import licence issued by HMC at the time of import into the territory of Gibraltar, the Complainant was entitled as of right, to have his boat subsequently registered.

(c) There was no specific legislation within the laws of Gibraltar setting out additional requirements for the registration of small vessels.

(d) The Captain of the Port had an absolute discretion under Section 4, Small Vessels (Moorings Controls Rules) 1990 to "grant the owner of a small vessel…..a permit to moor the vessel within a designated area". The definition of "designated area" within t he Act is explicit and does not include private property. The discretion does not apply to the registration of small vessels.

(e) The Complainant was not seeking to moor the vessel within a "designated area", but simply to register it subsequent to its legal importation, as approved by HMC.

(f) In consequence, the Captain of the Port had no discretion to disallow the Complainant to register his boat based on the fact that he did not have a berth for it.

(g) The requirements for the registration of the Complainants boat as a "small vessel" were duly met by the Complainant and there was no specific legislation the Ombudsman reviewed within the laws of Gibraltar, which imposed further conditions for the boat's registration. The Ombudsman reviewed the Port Act and Port Rules 1990. The Ombudsman noted that rule 81(1) of the Port Rules provided for all vessels used within the Port to be registered, but that rule did not lay down any specific conditions for registration, whether of small vessels or otherwise.

Therefore, in not registering the Complainant's boat pursuant to the Agreement, the Captain of the Port/ GPA, was not acting within established procedures.

The Ombudsman is conscious of the problems that are from time to time encountered by the authorities relating to smuggling activities. If small craft with small outboard engines are considered to be instruments conducive to increased smuggling activities, then, without doubt, there is a need to properly regulate the importation, registration and use of these small crafts. However, whilst acknowledging that the GPA's actions have been carried out following the recommendations of the RGP and with Gibraltar's best interests in mind, in a Parliamentary Democracy such actions cannot be sanctioned and the rule of law must prevail. We therefore cannot have any authority or enforcement agency making and implementing their own laws when they have not been called to do so by any Parliamentary enactment. The Ombudsman would be making a copy of this report available to the Ministry for Justice in order to make them aware of the predicament being faced by the GPA in their desire (as well as that of the RGP) to regulate small vessels.

RECOMMENDATIONS

1. That the GPA grant the Complainant the necessary documentation to register the boat.

2. That if the GPA and HMC intend to continue the current practice in pursuance of the Agreement, the Government of Gibraltar enact legislation to enable these Departments to act within their powers and the law.

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Housing Authority

Case Sustained

CS/948

Complaint against the Housing Authority:

(i) Allocated a Government rented flat in the knowledge that the property had dampness problems;

(ii) Claim for compensation not accepted;

(iii) No External Works Undertaken

COMPLAINT

The Complainant was aggrieved against the Housing Authority because he claimed that they had allocated him a Government rented flat ("Flat") in the knowledge that the property had dampness problems. He was further aggrieved because a claim for compensation in respect of damages caused to personal belongings and furniture was not accepted by the Housing Authority and because no external works had been undertaken to prevent further dampness problems.

BACKGROUND

The Complainant resides in a Government rented flat ("Flat") which was allocated to him and his family in May 2009 via the Medical A+ List due to his son's medical condition. At the time when the Flat was offered to the Complainant he was informed by Housing Authority staff that one of the existing bedrooms had in the past, undergone a conversion but the Complainant explained that at no time did he think that the room was not fit for purpose. The Flat had originally been a two bedroom and a laundry room had been converted to serve as a third bedroom. The external wall of said laundry room had ventilation holes which allowed air in for the purpose of drying the clothes, the room's original role. A wall had been erected internally but the ventilation holes on the façade remained. The Complainant explained that water accumulated in those holes, seeped through to the interior wall and resulted in wet patches around the room which ultimately caused dampness problems which affected other parts of the Flat. The Complainant maintained that external works were required to remedy the water ingress and that until those works were undertaken problems would continue.

The Complainant was very aggrieved at the situation he and his family were being forced to endure. Resulting from dampness problems, the Complainant stated that personal belongings and furniture had been damaged. He wrote to the Housing Authority putting his claim for the damages and received a short letter which informed him that the Ministry of Housing did not entertain claims of the nature he had highlighted.

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Distressed at the reply and lack of support towards his situation, the Complainant placed his Complaints with the Ombudsman.

(i) Allocated a Government rented flat in the knowledge that the property had dampness problems

INVESTIGATION

The Ombudsman met with the Housing Manager ("HM") in relation to this Complaint. The HM explained that when a tenant vacates a Government property, keys are handed in to the Ministry for Housing. Thereafter, a housing inspector carries out an assessment of the property to determine whether repairs are required or whether the property is in a good state and only requires cleaning and clearing prior to allocation. Once the necessary tasks are completed, the key is handed over to the Housing Authority as 'stock ready for allocation'.

The HM explained that the former tenants of the Flat vacated it in January 2009 to move into a property they had purchased. The Complainant was allocated the Flat in May 2009. .

Works Order reports were requested to ascertain the Flat's history of dampness problems. The Housing Authority's Reporting Office provided copies of reports related to the Flat which dated back to 2001. From those reports, the Ombudsman noted that there was one report outstanding for repairs required in the Flat in the interim period prior to allocation to the Complainant. The Ombudsman did find that between 2001 and 2006 there were three reports of heavy dampness in the Flat.

Report	Date	Works Order	Description	Status
1	10.01.01	14801	Heavy dampness in Flat	Cancelled – To be dealt with major works to Building
2	02.01.03	29682	Heavy dampness persisting in flat	Cancelled – Works to be carried out by tenant as problem is due to condensation
3	12.10.05	72760	Dampness in Bed-room	Completed 08.06.2011

The HM reviewed the copies of the reports (Works Orders) presented by the Ombudsman and noted that there had been no reports of dampness since February 2006, three years prior to the allocation. What did not escape the Ombudsman's notice was that Report 14801 dated January 2001 made in respect of heavy dampness in the Flat had been cancelled and the reason given by way of comment in the cancelled report stated: "To be dealt with the major works to [Building]" referring to general external repairs required to the building; those works had not been carried out yet the report was shown as cancelled.

CONCLUSION

The Ombudsman sustained this Complaint against the Housing Authority. Despite having allocated the Flat following established procedure of stock ready for allocation, it was the Ombudsman's view that the Housing Authority should have been aware that external major works to the building had been pending since 2001 and that the Flat was inadequate for allocation to a person on the Medical A+ List. The Ombudsman was critical that reports related to pending external repairs are not kept in the same system as all other pending repairs to public housing.

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It appears that the dampness in the Flat is directly related to the lack of external repairs, a record of which does not appear in the system other than by way of comment in a report which was cancelled in 2001 (referred to above), but any record of these major works are not apparent when properties are allocated

Given the state of the Flat and the fact that it was allocated on a Medical A+ basis, the Housing Authority should urgently address this family's predicament.

(ii) Claim for compensation not accepted

The Complainant explained that dampness problems in the Flat had caused severe damage to personal belongings and furniture in the region of £3,000-. On the 8th June 2011, the Complainant wrote to the Housing Authority with his claim enclosing photos of the damaged items. Three days later he received a reply from the Housing Authority informing him that they did not entertain claims of the nature highlighted in the letter.

INVESTIGATION

As a result of earlier investigations into complaints of a similar nature, the Ombudsman was familiar with the issues encountered by prospective claimants and informed the Complainant of these at the early stages of this investigation. Until March 2011 when the Buildings & Works Department ("B&W") was restructured, claims had been handled by B&W through an internal claims procedure. The Ombudsman found in previous investigations into complaints related to claims that the procedure had created a cumbersome and perilous system which claimants had relied upon often to their detriment. The investigation in this and similar cases highlighted potential serious disadvantages to claimants and found that claimants developed an expectation with regards their claims which in most cases did not materialise. Apart from the inexplicable and unreasonable delays on the part of B&W in processing claim forms, said claims were ultimately sent to the Attorney General's Chambers for legal advice and in the majority of cases the legal advice provided concluded that the claim should be denied. After the restructure of B&W, the Ministry for Housing took over the claims and continued to handle these in a similar manner to that of B&W's.

As a result of a number of Ombudsman investigations in 2011 in relation to claims (CS885, 895 and 904), specifically on delays on the part of B&W in processing claims for compensation, the Ombudsman made the following recommendation:

'That the current approach taken by the Department in relation to the internal claims be stopped. The current approach is not feasible to claimants and in fact the approach is misleading in that it creates a high expectation on persons relying on it.'

In September 2011 the Chief Secretary wrote to the Ombudsman and informed him that the Housing Authority had adopted the recommendation. The internal claims procedure for compensation would be suspended and instead, claims would be pursued through the legal system; in most cases the Small Claims Court where upon payment of a small fee claims of under £5,000- could be submitted.

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

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

CONCLUSION

The Ombudsman sustains this Complaint as the information provided by the Housing Authority to the Complainant that his claim for compensation could not be entertained was inadequate. In June 2011 (the time when the Complainant put his claim) the claims procedure was still in place and because of B&W's restructure was at that point handled by the Housing Authority. The latter should therefore have provided the Complainant with information on how to make a formal claim to the Housing Authority as the recommendations given by the Ombudsman were not adopted until September 2011.

(iii) No External Works Undertaken

INVESTIGATION

From the Works Order reports provided, the Ombudsman noted the report of heavy dampness in the flat in January 2001 which had been cancelled and a note inserted which stated that works would be dealt with in the major works to be undertaken in the building. Upon further investigation, the Housing Authority informed the Ombudsman that those major works were of an external nature and had to date, eleven years later, not been undertaken. This outcome points to flaws in the manner in which the Housing Authority records Works Orders in their system. Despite procedures in place for the inspection of vacant properties prior to allocations, major works required to the building went undetected because there was no record of the pending works in Reporting Office's system. The role of the housing inspector was to inspect the Flat which he deemed was in good condition at the time of inspection. Notwithstanding, once the rainy season commenced the Flat experienced water ingress and dampness problems which with the passage of time can only worsen unless the appropriate repairs are carried out. Works Order reports denote that substantial internal works were undertaken in the Flat to buffer the effects of dampness problems, notwithstanding, the water ingress into the building originated from the exterior.

CONCLUSION

The Ombudsman compiled an extensive report in 2011, CS950, in respect of complaints of delays on the part of the Housing Authority to carry out external repairs some of which dated back to 2005. The reasons for the delays were in most cases due to budgetary constraints and prioritisation of repairs and since 2011 apportioned to the previous administration's decision to put out to tender external repairs known as 'Measured Term Contracts' which to date have not yet been awarded.

It is an indisputable fact that as time passes, buildings continue to deteriorate if not adequately maintained and persons residing in affected properties suffer the consequences of this on a daily basis be it through damage to personal belongings or health issues. The Ombudsman therefore urges that an urgent adequate and realistic plan of action for external repairs is compiled.

The Ombudsman sustains this Complaint against the Housing Authority due to the unreasonable period of time elapsed during which no external repairs have been undertaken. He is critical of the futile efforts and monies spent in internal repairs in the Flat which did not address the root of the problem and would undoubtedly continue to resurface until the root problem was addressed.

CLASSIFICATION

Allocated a Government rented flat in the knowledge that the property had dampness problems – Sustained

Claim for compensation not accepted – Sustained

No External Works Undertaken - Sustained

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Case Not Sustained

CS/961

Complaint against the Housing Authority for the delay in the Complainant being allocated a room at the Devil's Tower Hostel.

COMPLAINT

The Complainant complained that he applied for accommodation at Devil's Tower Hostel ("DTH") in 2006 but that despite there being vacant rooms, to date (2012) he had not been allocated one.

BACKGROUND

The Complainant explained that he applied for a room at the DTH in June 2006 (at the time the hostels came under the Ministry of Social Affairs until 2009 when responsibility was transferred to the Ministry for Housing). The procedure for application was the completion of a form specific for the purpose. In the said form, the applicant was given the choice of applying to either of the two Government hostels (the other being Buena Vista Hostel ("BVH")); in his case the Complainant opted for DTH. Thereafter, the Complainant was required to renew the application on an annual basis if no offer of accommodation had been made during a given year, requirement which the Complainant claimed to have complied with**.**

After five years on the hostels waiting list ("List") the Complainant explained he became aware there were vacant rooms at DTH. The Complainant stated that by that point his circumstances had changed and an allocation had become very urgent; whilst his past employers had allowed him the use of a room in which to reside, the concession had now been withdrawn and the Complainant had to resort to the hospitality of friends to take him in temporarily.

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The Complainant stated that despite having put his grievance to both the Hostels Manager ("Manager") and the Principal Housing Officer ("PHO") he saw no solution in sight and resorted to bring his Complaint to the Ombudsman.

INVESTIGATION

The Housing Authority informed the Ombudsman that there was a great demand for rooms at DTH and that irrespective of the List, there had been many occasions in which the Housing Authority, under instructions from relevant authorities, had to accommodate persons not necessarily on the List. Examples given of those cases were asylum seekers, persons evicted from their homes and persons leaving the local rehabilitation centre after extensive treatment and counselling. The Housing Authority regretted the Complainant's long wait but stated that under the circumstances it had been very difficult to provide accommodation in DTH in line with the position on the List.

The Ombudsman put it to the Housing Authority that the Complainant had as much right to a room as the cases highlighted. Furthermore, although conscious of the fact that the Housing Authority had to follow instructions when an emergency arose, that had to be balanced with the needs of applicants on the List.

The Housing Authority reverted to the Ombudsman and advised that subsequent to the Complaint and due to the change in the Complainant's circumstances, the PHO had issued instructions to the Manager to check for availability of rooms at BVH (although he was aware that the Complainant wanted a place at DTH) in order to alleviate the Complainant's accommodation situation. The Manager verbally informed the Complainant that a room could be made available at BVH but the Complainant turned it down. The Complainant explained to the Ombudsman that he could not accept the offer as due to BVH's location he would require transport to get to and from work. As he did not have private means of transport he would have to rely on public transport and that was not operational at 5am in the morning, the time at which he finished his shift. Furthermore, the Complainant had preference for DTH which would offer the privacy of a room rather than the dormitory style of BVH.

[Ombudsman Note: It must be explained that whereas DTH accommodation offers the privacy of individual rooms with communal kitchens and bathrooms, accommodation at BVH is comparable to a dormitory which has been divided into cubicles by way of plasterboard partitions. Kitchen and bathroom facilities at both hostels are shared. Regarding location, DTH is situated in Gibraltar's north district and is a short fifteen minute walk to the town centre and other amenities, whereas BVH is located in the south district and is about a forty five minute walk from the town centre (regular bus services during the day link both the north and south districts to the town centre)].

The Ombudsman sought a meeting with the Manager in relation to the present procedures in place for allocations at the hostels and sought his comments with respect to the Complainant's claim that there were vacant rooms at DTH.

Regarding availability of rooms at DTH, the Manager stated that the hostel was full to capacity. Nonetheless, eight to ten rooms although rented out remained unoccupied for the majority of the time. The reason given by the Manager was that those rooms were rented to persons who whilst in residence had attained pensionable age and since retiring spent the majority of the time away from Gibraltar. The reason why those pensioners continued to rent a room was for the purpose of having a local address which the Manager explained entitled them to a range of benefits only available to Gibraltar residents.

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In relation to the List, the Manager explained that priority for allocations of a room at DTH would be given to residents at BVH who requested a transfer.

The above information varied from that offered by the Manager in relation to previous Ombudsman investigations, namely cases CS854 and CS813. On those occasions the Ombudsman was informed that if an applicant was allocated a room at BVH and then requested a transfer to DTH, the date which would be taken into account for the purpose of application would be the date on which the transfer was requested, and not the original date of application for accommodation. Allocations would then be made in chronological order in conjunction with the List.

On a final note, the Manager explained that there had been very few allocations to applicants on the List due to an influx of cases referred for accommodation from relevant authorities which had to be accommodated.

The Ombudsman held copies of the List dated October 2008 and July 2009 in which the Complainant was shown as being in twelfth and sixth position respectively. For completeness of records, a copy of the current List was requested as was statistical information on the employment status of residents at BVH and DTH i.e. number of employed, unemployed, pensioners. The information provided was as follows:

STATISTICAL INFORMATION ON STATUS OF PERSONS RENTING ROOMS AT DTH & BVH

DTH

EMPLOYED	UNEMPLOYED	PENSIONERS	TOTAL
68	18	27	113
60%	16%	24%	

BVH

EMPLOYED	UNEMPLOYED	PENSIONERS	TOTAL
41	23	35	99
41.4 %	23.2 %	35.4 %	

MARCH 2012 WAITING LIST FOR DTH, BVH AND REQUEST FOR TRANSFERS FROM BVH TO DTH

DTH

On inspecting the above List the Ombudsman noted that between July 2009 (date of last List held) and March 2012, only one room had been allocated from the DTH List to the applicant in position 1. Noteworthy is the fact that said applicant had in 2009 brought his complaint to the Ombudsman of having been in the List since 2004, and his position having been overlooked at the time of allocations. The complaint was sustained.

BVH

Three rooms were allocated to applicants on the List during the period 2009 to 2012 in chronological order of application.

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TRANSFERS FROM BVH TO DTH

Three rooms were allocated to applicants on the List during the period 2009 to 2012. Discrepancies in the order of allocation whereby the List had not been strictly adhered to with regards applicants' positions on the List was noted and the Ombudsman would raise the matter with the Housing Authority.

ALLOCATION OF ROOMS AT DTH & BVH TO PERSONS NOT INCLUDED IN LIST

DTH: 14 persons
BVH: 6 persons

COMPLAINANT'S POSITION ON LIST

In March 2012 the Complainant was in fourth position on the DTH List with the date of application stated as being the 28th June 2006.

In March 2012 during the course of the investigation the Manager contacted the Ombudsman and informed him that a room at DTH had become vacant and would be allocated to the Complainant. By way of explanation as to why the Complainant who was in fourth position was being offered the room, the Manager advised that of the three applicants in positions above the Complainant, one had retired, the other lived in Spain and a third one was not contactable.

Despite the fact that at the time of the above allocation there were four applicants awaiting a transfer from BVH to DTH, albeit their date of application being subsequent to that of the Complainant's, the procedure for allocation as explained by the Manager in this case (priority for allocations of a room at DTH would be given to residents at BVH who requested a transfer) was not adhered to.

CONCLUSION

A number of issues have arisen as a result of the investigation into the substantive Complaint and the Ombudsman will be addressing these individually in his conclusion.

Substantive Complaint

The Complaint brought to the Ombudsman was that after a five year wait on the List and despite vacant rooms available at DTH, the Complainant had not been allocated a room. The Ombudsman's investigation into this case found that the vacant rooms were in fact occupied by pensioners who spent the majority of time away from Gibraltar.

Three issues arise:

(i) *Depending on how many days a year those pensioners actually reside in Gibraltar, it could prove to be the case that they are availing themselves of benefits to which they are not entitled;*

(ii) *A much needed room is left to lie vacant for long periods of time;*

(iii) *The original aim of the hostels was to house workers; given the current scenario (24% of the rooms at DTH are allocated to pensioners and approximately 35% of rooms at BVH) the hostels could potentially become a senior citizens hostel.*

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The above issues should be urgently addressed by the Authorities who could consider implementing a system akin to public housing whereby under Section 6 of the Housing Act 2007, tenants of public housing have to comply with certain rules in order to maintain their tenancy. Regarding the issue of the workers hostels potentially becoming a senior citizens hostel, the Ombudsman was of the opinion that this issue should also be urgently addressed.

Procedure for Allocation of Rooms

It goes without say that rooms at DTH, due to its location and its individual rooms rather than BVH's co-habitation in a dormitory sectioned off by partitions affording little privacy, are much preferred by persons who apply for accommodation at the hostels.

In order for the allocation process to be a fair one, the List has to be managed appropriately. The procedure for allocation should therefore be clearly documented and stringently followed. Notwithstanding, the Ombudsman understands that although situations can arise where persons not on the List would urgently require accommodation over and above those on the List, that should not be the norm.

In Case CS773 the Ombudsman made the following recommendation:

That the Hostels Section, by no later than the end of January in each and every year draws up and puts up in a place open to public viewing the two updated Hostel Waiting Lists.

As at 17th February 2012 the above recommendation was still under consideration by the Housing Authority.

In Case CS854 the Ombudsman made the following recommendation:

The Ombudsman was concerned at what appeared to be a very loose system of administration at the Hostels and would continue to meet with the PHO to ensure that an adequate administrative system was in place for the allocation of rooms at the Hostels.

As at 17th February 2012 the above recommendation was still under consideration by the Housing Authority.

Procedure for Allocation at DTH

There should also be a clearly documented procedure to be followed for the allocation of rooms at DTH as on two occasions different procedures for allocation were applied:

(i) Priority for allocation to DTH to persons residing at BVH who had requested a transfer;

(ii) Regardless of the original application date, the relevant date for the purpose of relocation to DTH would be the date on which the transfer was requested. Allocations would then be made in chronological order in conjunction with the List.

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The fact that fourteen rooms at DTH rather than at BVH, were allocated to persons (not on the List), as a result of instructions from relevant Authorities, and that during that period only one person on the List was given an allocation at DTH is quite striking, considering that at the time there were persons waiting to be transferred from BVH to DTH. Perhaps consideration could be given to a procedure whereby persons not on the List to be given an allocation at BVH and those on the List moved to DTH. The Ombudsman therefore recommends that the allocation procedure should also be clear on the aspect of allocation of rooms to persons who are not on the List but due to their urgent circumstances are referred for accommodation by a relevant Authority.

CLASSIFICATION

Not sustained

RECOMMENDATIONS

That the Housing Authority implements the recommendations made in CS773 and CS854 as follows:

CS773

That the Hostels Section by no later than the end of January in each and every year draws up and puts up in a place open to public viewing the two updated Hostel Waiting Lists.

CS854

The Ombudsman was concerned at what appeared to be a very loose system of administration at the Hostels and would continue to meet with the PHO to ensure that an adequate administrative system was in place for the allocation of rooms at the Hostels.

- -

Case Sustained

CS/ 990

Complaint against the Housing Authority over the delay in undertaking external repairs to the property and in removing an external beam in danger of falling, despite Housing Authority representatives having inspected the problem

COMPLAINTS

The Complainant was aggrieved because the Government rented flat ("Flat") she resided in had experienced water ingress since 2003, and by 2012 no permanent repairs had been undertaken. She was further aggrieved because of the delay in the removal of an external beam in danger of falling, which she claimed Housing Authority representatives had inspected in January 2012.

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BACKGROUND

COMPLAINT 1

The Complainant (an eighty year old lady who resided in the Flat with her husband and family) claimed to have experienced water ingress to the Flat since 2003 and explained that as at the date of lodging her complaint, the only action taken by the Housing Authority had been to fit a tarpaulin over the roof of the Flat; a temporary measure to minimise water ingress.

The Complainant explained that during subsequent years she had relied on her son to occasionally readjust the tarpaulin into place (loosened by the elements) to ensure the roof was as adequately covered as possible, but nonetheless water penetration was inevitable. The Complainant stated that during that time she had verbally complained to the Housing Authority but no repairs had been carried out.

In August 2011 the Complainant brought her Complaint to the Ombudsman for the first time. Her Complaint formed part of a systemic investigation, CS 950, and a summary of the conclusion of that investigation has been included in the 'Investigation' section below. Subsequent to that investigation and no works having been carried out by January 2012, the Complainant once again verbally complained to the Housing Authority who responded by carrying out an inspection of the property. By June 2012 no works had been carried out.

COMPLAINT 2

The Complainant explained that in January 2012, at the time of the inspection of the property, she pointed out to the Housing Authority representatives ("HA Reps") a beam located on an external section of the Flat which she claimed was in danger of collapsing. The Complainant stated that despite photographs having been taken of the beam, as at June 2012 it had not been removed.

Desperate about her situation, the Complainant put her Complaints to the Ombudsman.

INVESTIGATION

Summary of Conclusion of Ombudsman's Systemic Investigation - CS950

The Ombudsman undertook a systemic investigation into complaints made by a number of Government tenants about the delay on the part of the Housing Authority in undertaking external repairs to the properties in which they resided. The Complainant's case was included in that investigation which in November 2011 concluded the following:

- The number of Complainants waiting for external works was very worrying;
- the delays could have repercussions on the future needs of other tenants and in all probability could have an effect on the properties;
- external repairs had been pending for an excessive amount of time;
- Measured Term Contracts ("MTC") which were going to be awarded to private contractors to clear the backlog of external repairs had not begun a year after that decision was made;
- the Complaints against the Housing Authority were sustained. The period elapsed from when the Complainants had originally reported the problems, to date, amounted to an unreasonable period of time to be waiting for repairs.

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The Ombudsman did not make any recommendations in his report because the matter of external repairs was at the time being actively considered.

Complaint 1 - Delay in Undertaking External Repairs to the Property

In this new Complaint, the HWA's initial response to the Ombudsman's enquiries was that the Complainant was the only tenant left in the small complex which comprised a number of flats which had been vacated and not offered for reallocation because of the poor state they were in. Before proceeding with any works, HWA advised that they would contact the Housing Authority for information as to their intentions regarding the property.

A copy of the email HWA sent to the Housing Authority on the 25th June 2012 was forwarded to the Ombudsman. HWA stated that the Flat suffered severe water ingress, as did the other flats in the property which for that reason remained vacant, and requested information as to whether the Housing Authority had plans to decant the Complainant and sell the property, or alternatively, if the plans were for the property to be refurbished.

At this point, the Ombudsman would like to highlight that there was considerable delay in receiving this information because HWA's email to the Housing Authority had been incorrectly addressed. It was only as a result of the Ombudsman pursuing a reply to said email directly with the Housing Authority that they became aware of the enquiry. [Ombudsman Note: The Ombudsman found incomprehensible, HWA's unconcerned attitude as they should have noticed that the email was incorrectly addressed because the system would automatically have alerted them by way of returning the email to the sender (HWA in this case). In the event that the email had been delivered, HWA should have chased for a reply and not waited in excess of two months and still not done anything about it.]

In December 2012, the Housing Authority's reply stated that to begin a decanting procedure, a technical report had to be prepared for Government's consideration and confirmed that no report had been provided by HWA. The circumstances that would lead to a technical report being commissioned would be as a result of:

(i) The tenant notifying the Housing Authority, either through a meeting or by letter, that the property was in a bad condition;
(ii) HWA due to repairs/maintenance works;
(iii) Emergency attendance at the property.

The Housing Authority stated that it would then be the responsibility of whoever generated the report to forward it to the Housing Manager to be presented to Government.

Also in December 2012, and in response to an earlier request by the Complainant, she met with HWA. This resulted in HWA requesting that an inspection of the Flat be carried out and the required works scoped and passed to the Ministry for Housing's Technical Division ("MfHTD") which at the time was tasked with tendering out external works to private contractors.

In January 2013 the MfHTD, subsequent to having received the scope of the works required to the Flat, wrote to HWA and informed them that a housing inspector had advised that the Complainant was about to be rehoused because the building was in need of major refurbishment. MfHTD was of the opinion that it would be easier to carry out the works once the property was vacated and thought it would be best to wait for the Complainant to be rehoused for the works to commence. A suggestion with which HWA agreed.

On the basis of the above information, the Ombudsman once again requested the Housing Authority's input. The Housing Authority reiterated that the Complainant was not included in any Government Housing Waiting List for the purpose of being rehoused. This was put to the HWA who replied that the issue of rehousing had been brought up by the Complainant at their meeting in December 2012. Regarding the repairs required to the Flat, HWA appeared to point at the Complainant having been at fault for not making the necessary reports. HWA stated that a high number of tenants failed to make reports with the Housing Authority's Reporting Office ("RO"). In other instances, HWA highlighted that tenants made reports with the RO and repairs were carried out but if the original problem returned, the tenants automatically assumed that the initial report was outstanding.

For completeness of records, the Ombudsman requested copies of reports made by the Complainant with the RO related to water ingress to the Flat for the period 2003 to 2012. Four reports were provided all of which related to water penetration to the Flat which showed that the repairs carried out had been unsuccessful (See Appendix 1 – Table of Reports). The last report was dated 13th December 2012 and arose from the inspection of the Flat subsequent to HWA's meeting with the Complainant. From the reports, the Ombudsman concluded that contrary to the assertions of the HWA, the Complainant had complied with the established procedure when reporting the water ingress problems.

The Ombudsman sought information from the Housing Works Agency ("HWA") as to whether the repairs had been included in the MTC programme. The HWA's final response confirmed that:

(i) there was a backlog comprised of several thousand reports which the Flat was a part of;

(ii) the situation had to be looked at in its entirety as resources are not limitless.

The HWA's final word on this Complaint was that considering other similar defects which were affecting other Government properties, they were unfortunately at this stage unable to provide a start date for the repairs. In March 2013, the MfH informed the Ombudsman that external repairs were being dealt with in one of two ways. In some cases, the reports would be passed to a wholly owned Government company who would tender out the works to a private contractor. If the works were of a high cost, the contract documents would be prepared by the MfHTD or by Government approved consultants and then put out to tender.

By way of update, the Complainant informed the Ombudsman that she had met with the Minister for Housing ("Minister") regarding her case. According to the Complainant, the Minister asked her if she wanted to move from the Flat to which she replied she did not for the time being because she liked the Flat which afforded the luxury of a patio. According to the Complainant the Minister asked HWA to proceed with the repairs. The Complainant stated that if she had been told to move she would have complied.

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Complaint 2 - Delay in removing an external beam in danger of falling, despite Housing Authority representatives having inspected the problem

The Ombudsman requested a copy of the report made as a result of the January 2012 inspection to substantiate that the Housing Authority representatives had in fact identified the beam. The RO did not have a record of a report having been made in relation to this issue.

The Ombudsman contacted the Complainant to update her on the above and requested that she contact the RO to officially report the matter. On the basis of this report by the Ombudsman and on the premise that the Complainant reported the matter, the Ministry for Housing has been put on notice vis-à-vis the beam.

In the event of the beam collapsing, the Ministry for Housing could well be liable for damages.

In light of the various inspections undertaken at the Flat and no permanent works carried out, the Ombudsman enquired as to the purpose of those inspections. HWA explained that in some cases, further to a report, several site visits are required to ascertain the scope of the works required.

The Ombudsman met with the MfHTD to determine if the report of the January 2012 inspection made reference to the beam. MfHTD were unable to provide details of that particular inspection but had photographs available from a previous visit. The MfHTD pointed out a photograph of the beam but stated that it was not in danger of collapsing. To be able to remove that beam, scaffolding would have to be erected and MfHTD was of the opinion that this should be done once the Flat was vacated for the repairs to be carried out.

The Ombudsman pointed out to the MfHTD the information provided by the Housing Authority; that the Complainant was not going to be rehoused and that a technical report would have to be submitted by HWA if rehousing was required. The MfHTD stated that it was the Housing Authority who would have to request this report. Furthermore, MfHTD stated that the reason why no repairs had yet been carried out in the Flat was because the repairs required could not be undertaken with persons living there; the residents would have to be temporarily rehoused. Regarding the roof of the Flat where the water ingress originates from, the MfHTD stated that the roof was built privately by the Complainant for the purpose of extending the Flat and did not meet technical specifications. However, there have never been any objections from the Ministry for Housing nor, to the best of the Ombudsman's knowledge, has there ever been a request to the Complainant to demolish the structure.

CONCLUSIONS

Complaint 1 - Delay in Undertaking External Repairs to the Property

HWA

The findings of this investigation conclude that despite four reports of persistent water ingress throughout a ten year period, at the time of finalising this report (May 2013) the HWA's position is that there is a backlog of several thousand reports of which the Flat is a part of; a situation which had to be looked at in its entirety as resources are not limitless.

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Housing Authority

The Housing Authority was not aware prior to this Complaint, of the problems being endured by the Complainant due to the bad condition of the Flat. Notwithstanding, when they were notified of the situation, their position was that the Complainant is not in any Government Housing Waiting List waiting to be rehoused. For that to happen, the HWA would have to present a technical report to the Housing Manager which she in turn would pass on to Government for their consideration.

The Ombudsman would have hoped that by now this procedure would have been evident to all those involved in the management and maintenance of Gibraltar's public housing stock.

MfHTD

The MfHTD highlights that the roof through which the Flat is experiencing water ingress was privately built by the Complainant and did not meet technical specifications. However, as pointed out above, no action appears to have ever been taken by any official to remedy this situation.

MfHTD pointed out that it would ordinarily be the Housing Authority who would request the technical report. Regarding the works required in the Flat, MfHTD stated that the Flat was in need of major refurbishment and the works could not be carried out with persons living in the Flat.

GENERAL CONCLUSION

From the findings of this investigation it is clear that the matter of 'who' should request the technical report is a sticking point. From the information provided by the Housing Authority as to what circumstances would lead to a technical report being commissioned, the Complainant meets the criteria of all three instances quoted by the Housing Authority. The Housing Authority should therefore request the technical report in respect of the Flat and once that has been compiled, the Housing Authority, MfHTD and HWA should meet and discuss what the way forward in respect of the Flat will be. It is noteworthy that this was how it all started; HWA asking the Housing Authority what their plans for the Flat were.

From the copies of the reports with the RO there is no doubt that for a period exceeding ten years, the Flat suffered water penetration which undoubtedly caused and continues to cause the Complainant and her family hardship and at the same time persistent damage to the Flat which can only serve to deteriorate the property further. Only temporary repairs were carried out during that time by way of a tarpaulin having been fitted to prevent water penetration. The information provided by HWA as to the probable reason for the inordinate delay are to say the least poor and appears to exempt HWA of being at fault putting the onus on the Complainant not having made the relevant reports. The reality is that there were four reports between 2003 and 2012.

The Ombudsman is appalled at this state of affairs as he cannot fathom how this case cannot be categorised as one of utmost urgency, after the problem has persevered for a ten year period and most of the other flats within the complex remain unallocated because of the poor state they are in. Instead, HWA's stance is to state that there is a backlog and the repairs to the Flat have not yet been included in the MTC programme. The Ombudsman notes with regret that most of the findings of CS950 continue to be prevalent to date:

- The number of Complainants waiting for external works was very worrying;
- the delays could have repercussions on the future needs of other tenants and in all probability could have an effect on the properties;

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- external repairs had been pending for an excessive amount of time;
- The period elapsed from when the Complainants had originally reported the problems, to date, amounted to an unreasonable period of time to be waiting for repairs.

A lamentable state of affairs which is accentuated further because of the advanced age of the Complainant and her husband.

The Ombudsman is aware from past investigations that the lack of maintenance of numerous properties during a prolonged period of time has inevitably contributed to further deterioration of those properties and resulted in the backlog referred to by HWA. Notwithstanding, since the abolishment of the Buildings & Works Department well over two years ago and the establishment of the HWA, a reasonable period of time has passed during which the backlog of repairs should have been prioritised and a substantial number of reports should have been completed.

The Ombudsman referred to the information provided by the MfHTD, that the roof was built privately by the Complainant and did not meet technical specifications. He (the Ombudsman) was critical of the fact that when the water ingress was first reported in 2003, this had not been identified and the necessary steps undertaken by the Ministry for Housing to take adequate action against the Complainant for works which appeared to have been done without their knowledge or consent. Not having addressed the root of the problem has snowballed to what is now a mammoth and costly task to put right. In view of the fact that the Ministry for Housing has decided to ignore this issue and take on the repairs, the Ombudsman abstained from further comment.

The Ombudsman sustained this Complaint due to the ten year period elapsed throughout which no permanent repairs had been carried out. Furthermore, a continued act of maladministration as there is as yet no technical report in place which is required for the Complainant and her family to be temporarily rehoused nor is there a firm date on which works will commence.

The Complainant claimed to have pointed out to the HA Reps the wooden beam in danger of falling and believed that they had reported the matter. As is clear by the fact that the RO had no report related to that issue the HA Reps did not report the matter. The MfHTD asserted that the beam was not in danger of falling and would deal with the matter when scaffolding was erected for repairs to the Flat. The Ombudsman investigates complaints of maladministration and therefore cannot comment on technical issues like the one arisen here. Notwithstanding, based on the photographs taken and MfHTD comments that the beam would be removed when works to the Flat were undertaken, it can be said that a report should have been put in place by the person/s carrying out the inspection so as to action this along with the future works in the Flat.

CLASSIFICATION

Delay in Undertaking External Repairs to the Property – Sustained

Delay in removing an external beam in danger of collapsing, despite Housing Authority representatives having inspected the problem – Sustained

RECOMMENDATIONS

1. The Housing Authority, MfHTD and HWA should meet to decide the future of the Flat, taking into account the state of the other flats within the small complex.

2. The Housing Authority should notify the Complainant of the decision and the course of action that will be taken.

Partly Sustained

CS/1004

Complaint against the Housing Authority over the delay in the allocation of a Government rented flat and the unsuccessful attempts from the Complainant to report to the Housing Authority that there were squatters in the Government rented flat

COMPLAINTS

Complaint 1

The Complainant was aggrieved because of the long delay on the part of the Housing Authority in the allocation of a Government rented flat ("Flat") which had been earmarked for her.

Complaint 2

She was further aggrieved because on attempting on two occasions to report squatters in the Flat, she was first told that she could not be attended to because of a computer breakdown and on the second occasion informed that it was a matter for the Complainant to deal with and not the Housing Authority.

BACKGROUND

The Complainant obtained British nationality in 2008 and applied for Government rented accommodation in March 2011. The application was accepted by the Housing Authority and the Complainant informed that she had been included in the Government's Housing Waiting Pre-List ("Pre-List") [Ombudsman note: Under the present Housing Allocation Scheme, new applicants are included in a Pre-List for a period of one year during which the application lies dormant. At the end of the period, the application is automatically transferred to the Government Housing Waiting List ("List") which is in effect the point at which the application is activated]. The Complainant explained that the conditions in her present accommodation (shared with her husband and adult son) were dreadful; a privately rented one-bedroom flat in a dilapidated building. The Complainant claimed that for the last three years they had been the only residents in the building because Government had decanted the other residents (due to the terrible state of the building) whilst she undertook treatment in the United Kingdom for a medical condition. A preliminary investigation from the Ombudsman into this claim found that one family in the building had been offered Government accommodation but that had been as a result of an eviction order. Furthermore, the Housing Authority stated that there were no plans to decant the Complainant.

The Complainant explained that due to her desperate situation she wrote to the Housing Authority for them to consider waiving the one year Pre-List period and also consider her medical condition for the purpose of medically categorising her application. Both requests were put to the Housing Allocation Committee ("HAC") who decided to medically recommend the Complainant's application which was categorised as Medical 'A' but did not waiver the one year Pre-List period.

In May 2012 the Complainant was offered a flat which she stated she had no choice but to refuse. The flat was located on the eleventh floor and she had a phobia of lifts (she stated she suffered a panic attack on the day on which she viewed the property) and a fear of heights. Furthermore, the Complainant claimed the flat was in a very bad state.

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The Complainant identified the Flat (located in the area in which she presently resided) and put her request to the Housing Authority for consideration by HAC for it to be allocated to her. In December 2012 the Housing Authority informed the Complainant that HAC had agreed to earmark the Flat and informed her that once the Housing Authority received the keys to the property, the point at which it would be ready for allocation, they would contact her.

The Complainant was upset by the Housing Authority's statement as she knew the former resident of the Flat, and was aware that it had been vacated over a year earlier.

To add to the Complainant's misgivings she saw lights on in the Flat on the night of the 31st January 2013 and suspected squatters had broken in. Fearing that the allocation would be further delayed as a result, the Complainant visited the Housing Authority's counter the following day (Friday) to report the matter and alleged she was told that due to a computer breakdown they could not attend to her nor note down her grievance and asked to return on the following Monday. Upon her return she claimed to have been told that the matter was for her to deal with and not the Housing Authority. The Complainant was provided with a contact telephone number scribbled on a torn piece of paper. Determined that it was the Housing Authority who should pursue her report and desperate that there was no solution in sight to her situation, the Complainant put her Complaints to the Ombudsman.

Complaint 1 - Delay in the allocation of a Government rented flat

INVESTIGATION

The Ombudsman was aware from previous investigations that when a property was vacated, Housing Inspectors undertook an inspection before it was offered to applicants on the List. The inspection determined if the property was fit to return to housing stock or required repairs or total refurbishment prior to being allocated. If the latter was the case, the Ministry for Housing's Technical Division ("MfHTD") would scope the required works and then pass on to the Housing Works Agency ("HWA"). If no works were required, the property would be cleaned and cleared and the keys passed to the Housing Authority for allocation. Noting that the Housing Authority was not in possession of the keys, the Ombudsman directed his enquiries to the HWA.

The HWA's initial response was that they had received the keys in February 2012 and that those had been passed on to the MfHTD. Upon further investigation it was found that HWA had in fact received the keys for refurbishment of the Flat in October 2011, the time when the last tenant vacated. HWA explained that during that period, HWA were still the only entity undertaking all internal refurbishments to Government flats. Then in February 2012 to accelerate internal repairs to Government flats, the MfHTD was tasked by Government with allocating repairs to private contractors; a role which at a later stage was passed on to a wholly owned Government company, Gibraltar General Construction Company Limited("GGCCL"). According to HWA this measure would be put into effect whenever HWA was fully committed, so as not to create an unacceptable delay due to the urgency that normally accompanies repairs of this nature.

The Ombudsman expressed his concern that the Flat had remained vacant for a year and a half (October 2011 to April 2013 (time of writing this report)) and no works undertaken. HWA explained that this was due to a large number of empty flats which required refurbishment and the Flat not being a top priority.

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HWA stated that instructions had now (February 2013) been issued for the MfHTD to inspect and refurbish the Flat prior to it being allocated to the Complainant but stated that a commencement date could not be provided because the scope of works would be passed to the GGCCL for the repairs to be undertaken by a private contractor [Ombudsman Note: The GGCCL is presently outside the Ombudsman's jurisdiction and complaints against this entity can therefore not be investigated].

CONCLUSION

The Housing Authority states that the Complainant was made three offers of allocation, in May, July and September 2012, all of which were refused by the Complainant and said refusal accepted by the Housing Authority. No maladministration can be found by the Ombudsman towards the Housing Authority in this respect. Notwithstanding, the Complaint brought to the Ombudsman was the delay in the allocation of the Flat and that is what the Ombudsman has investigated.

Housing stocks are finite and therefore there is a limit to the flats which the Housing Authority can allocate. The Housing Authority is entirely dependent on properties becoming vacant or new flats being built in order to allocate to those on the waiting lists. Given the shortage of properties, delays in the allocation of vacant flats because they need to be refurbished are unacceptable, moreso after the establishment of HWA and the fact that works are being passed on to GGCCL. In the Ombudsman's view, there can be no excuse for delays within the present setup. This is substantiated by HWA's explanation regarding the instances when GGCCL would award repairs to private contractors, i.e. when HWA was fully committed so as not to create an unacceptable delay due to the urgency that normally accompanies repairs of this nature. It goes without say that this has not been the Complainant's case. To date, the Complainant is still waiting to be allocated the Flat. In the meantime, she and her family continue to live in precarious conditions in the privately rented flat which due to persistent rains in the last months have worsened. The Complainant explained that part of their bed has now been affected by water ingress and they have no choice but to sleep on the wet bed. HWA's statement that the Flat was not a priority is therefore inappropriate under the circumstances being endured by the Complainant and her family.
For these reasons the Ombudsman sustains this Complaint.

On analysis of the above findings, the Ombudsman is of the opinion that the Housing Authority and the MfHTD are not communicating. It was the role of the Principal Housing Officer ("PHO") to bring the two sections together but since the post was vacated in 2012, to date this has not been filled. Whilst the Housing Authority maintains contact with applicants which enables them to gauge the urgency of individual cases, the MfHTD appears at times to be oblivious to the human aspect of many cases and how persons lives are affected by their living conditions; the MfHTD's remit it that of scoping works and noting them down in a list for subsequent repairs.

Complaint 2 - Two unsuccessful attempts to report to the Housing Authority that there were squatters in the Flat

INVESTIGATION

The Ombudsman put the above Complaint to the Housing Authority.

The Housing Authority's reply stated that they had made enquiries and established that the Complainant was provided with erroneous information by one of the new clerks at the Allocation Unit. The clerk believed that the Complainant had to report the matter because the Flat was earmarked for her and sent her to the Reporting Office and also provided the number for the MfHTD.

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The Housing Authority informed the Ombudsman that all staff at the Allocation Unit and Reporting Office had now been updated on the procedure applicable and any reports of squatters should in the first instance be passed to the Head of Allocation who would initiate the appropriate procedure.

On the issue of the torn piece of paper given to the Complainant with the telephone number, the Housing Authority advised that the matter had been addressed by the introduction of a customer advice slip with the most frequently requested telephone numbers being placed on all housing counters.

CONCLUSION

It is clear from the information the Housing Authority provided to the Ombudsman, that the new officer had not been given adequate training regarding the procedure in place to deal with reports of squatters. The Ombudsman welcomes that as a result of this Complaint, staff at the Housing Authority and the Reporting Office have been updated on the present procedure. The Ombudsman was of the opinion that the Housing Manager acted in a prompt and proactive manner when the issue came to her notice. The Ombudsman decided not to sustain the Complaint because of the Housing Manager's actions.

The implementation of slips with frequently requested telephone numbers is also a very positive resource which will undoubtedly prove very useful to tenants of Government housing.

CLASSIFICATION

Complaint 1 - Delay in the allocation of a Government rented flat – Sustained

Complaint 2 - Two unsuccessful attempts to report to the Housing Authority that there were squatters in the Flat – Not Sustained

UPDATE

IN A BID TO FURTHER ASSIST THE COMPLAINANT, THE OMBUDSMAN CONTACTED HWA TO ENQUIRE IF SHE COULD BE ALLOCATED THE FLAT ON A SELF-REPAIR BASIS. THE COMPLAINANT ASSERTED THAT SHE HAD SEEN THE FLAT WHEN THE PREVIOUS TENANT RESIDED IN IT AND THAT IT WAS IN AN IMMACULATE STATE. HWA ACCEDED TO THE REQUEST. THE OMBUDSMAN THEN CONTACTED THE HOUSING AUTHORITY REFERRING TO HWA'S ASSENT AND ARRANGEMENTS WERE MADE FOR THE COMPLAINANT TO VIEW THE FLAT. DURING THE TIME THAT THE FLAT HAD BEEN VACANT, IT HAD SUSTAINED DAMAGES TO SUCH AN EXTENT THAT IT WAS IMPOSSIBLE FOR THE COMPLAINANT TO OPT FOR THE SELF REPAIR BASIS.

THE ABOVE IS ANOTHER SIGNIFICANT REASON AS TO WHY FLATS SHOULD NOT BE ALLOWED TO REMAIN VACANT FOR EXTENDED PERIODS OF TIME.

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Case Sustained

CS/1017

Complaint against the Housing Authority ("HA") and Housing Works Agency ("HWA") due to the fact that scaffolding had been erected around the Complainant's government rented flat for six years and the entities complained against seemed to have no knowledge of its existence

COMPLAINT

The Complainant complained that scaffolding had been erected around the building where she lived for the past six years and that no works had ever been carried out. She informed the Ombudsman that bags of sand and cement had been lying on the ground throughout and that those materials had solidified and were of no use. This, together with the rubbish which had accumulated constituted a health hazard.

BACKGROUND

The Complainant stated that she had been complaining about the issue to the relevant authorities from the first anniversary that the scaffolding was erected but that no-one took an interest in her complaint. In December 2012, after years of complaining and upon noticing that the scaffolding had by then corroded and was dangerous, she arranged to meet with a representative of HA to formally lodge a complaint. The Complainant met with the mentioned representative who kept photographs of the scaffolding that the Complainant had provided him with. He promised to revert to her with information relating to the issue. She was also informed that she would be given priority for re-allocation.

The Complainant alleged that in January 2013 she also attended the HA Reporting Office to complain but was told that they could not accept the complaint because the nature of it fell outside their remit. Instead, she claimed that they provided her with a telephone number and asked her to contact HWA. The Complainant was able to speak to an HWA employee who in turn advised her that she needed to speak with the Technical Section of the Ministry for Housing. The Complainant spoke with the person concerned who allegedly promised to look into the matter and telephone her. Two weeks elapsed and no call was received.

The Complainant subsequently called HA requesting an update regarding the meeting she had attended in December 2012. She was apparently told that the issue was not for HA and that she should file a report with HWA. The Complainant informed the Ombudsman that she made attempts to call HWA but that their telephone line was constantly engaged.

Frustrated with the unacceptable state of affairs and given the inordinate amount of time which had by then elapsed with no action taken, the Complainant filed her complaint with the Ombudsman on the 11th February 2013.

INVESTIGATION

The Ombudsman formally presented the Complaint to HA and HWA in writing on the 13th February 2013 and requested their respective comments.

HA replied with a short, non-explanatory reply shortly afterwards, suggesting that the matter should be addressed to HWA.

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The Ombudsman, whom in order to properly fulfil his functions expects full replies from entities who are subject to a complaint, expressed his dissatisfaction to HA. A more substantive reply then followed.

In their reply HA stated that the Complainant had attended a meeting with one of their senior employees in December 2012 and that at that meeting, the Complainant complained about the state of the building, the accumulation of rubbish in the patio and the scaffolding which had been erected six years earlier.

HA referred the matter to the Ministry's Technical Section and requested a report on the building which once prepared, would be referred to Government. The letter also stated that the PA to the Housing Manager had sent a chaser for the report at the end of February 2013, some weeks after the initial request was made. It was further confirmed that HA could not provide the Ombudsman with information on the nature of the scaffolding since unfortunately, the matter was a technical one outside the HA's remit.

Subsequent to the exchanges in correspondence between the Ombudsman and HA, the Ombudsman received a reply from HWA to his initial letter setting out the complaint.

The letter confirmed that instructions had recently been issued to have the scaffolding removed. It was admitted that it had been in place for several years, but the explanation given was that its purpose was to access the buildings' roof, since leaks had been affecting the Complainant's neighbour's property. Despite that explanation, the Ombudsman had learnt during the course of his investigation that the neighbour had in fact vacated the property in 2012.

As to the Complainant having contacted the HWA to no avail, the HWA defended its non replies and lack of action by stating that HWA were no longer responsible for external works since "as explained on separate occasions concerning other cases" these were now contracted by Government to independent contractors via Gibraltar Construction Company Limited ("GGCL").

Further to various chaser emails from the Ombudsman in April, May and June 2013 requesting information as to when the scaffolding would be removed, HWA finally confirmed, on the 20th June 2013, that the scaffolding had been dismantled.

CONCLUSION

The Ombudsman was dissatisfied with the handling of this case by the public bodies concerned from the outset.

It was in his view, wholly unacceptable for the Complainant to have had to endure the unnecessary nuisance of the scaffolding being affixed to her Government rented property for an unjustifiably long period of six years. This curtailed the enjoyment of the property and given the deterioration of the structure and accumulation of rubbish and materials, also constituted a health hazard.

It was also questionable in the Ombudsman's mind whether any works were conducted to the building at all. Prior to HWA's letter explaining that the structure had been erected to access the roof as a result of a complaint from the neighbour (who had long since vacated the building), neither the HWA nor HA seemed to have provided the Complainant with any reasonable reply, information or explanation as to why the structure remained in place. The nature of the works carried out or when it would be removed were not addressed either.

It may well have been that the scaffolding was not the responsibility of HA or HWA. According to HA, they requested a report on the building from Technical Services in order to present its findings to Government. This never materialised. The Ombudsman did note however, that the request for the report was made in February 2013. Given that the Complainant had been complaining for a period of six years, the time it took HA to respond and react to the complaint was inordinate and excessive, regardless of whether they held responsibility for the scaffolding or not.

Insofar as HWA was concerned, although the Ombudsman was aware that responsibility for externals vested via GGCCL, the transfer of said responsibility from HWA to GGCCL became effective in 2011. The Complainant had first complained of the issue affecting her some four years earlier. Mindful of this, action should have been taken by HWA much sooner. Indeed, it was as a result of HWA's request to have the scaffolding removed that it was finally dismantled in June 2013. The Ombudsman considered that had the instruction to dismantle been given earlier, the Complainant would have been saved considerable time, trouble and frustration.

As a result of the above, the Ombudsman found that both HA and HWA failed in their duty of care to the Complainant. They should have at the very least, informed the Complainant on procedure and advised her on where she could have sought redress. Instead, both entities "ignored" the grievance on the ground that it did not fall within their remit. They sent the Complainant from pillar to post with repeated unsuccessful results. This fell far short of a good administrative practice standard. Had the Complainant not filed her complaint with the Ombudsman, it is possible, given the complaint's long history, that the issue would have been resolved at a much later date, if at all.

OMBUDSMAN NOTE

The Ombudsman would seek a meeting with the Chief Secretary to discuss this case which he considered to be an administrative travesty. He would endeavour to impress upon the Chief Secretary that this type of administrative action was no longer acceptable in a modern Gibraltar.

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Housing Works Agency

Case Sustained

CS/994

Complaint against the Housing Works Agency for failure to address reports of the poor condition of the kitchen wastepipes of the Government rented flat ("Flat") the Complainant resided in

COMPLAINT

The Complainant was aggrieved because reports she had made at the Ministry for Housing's Reporting Office ("RO") had not been addressed. The reports related to the poor condition of the kitchen wastepipes of the Government rented flat ("Flat") in which she resided.

BACKGROUND

The Complainant, who claimed that she suffered from a muscle debilitating condition, explained that she was a single mother on social benefits and had three children. In June 2012 she reported to the RO, severe dampness problems in the Flat and leaks in the kitchen wastepipes which prevented her from using either the kitchen sink or the washing machine. The Complainant stated that two months after that report, a member of staff of the Housing Works Agency ("HWA") visited the Flat and after undertaking an inspection informed her that the pipes were very old and had to be replaced and that he would inform his supervisor of his findings. Subsequent to that visit and no repairs, the Complainant explained that she went to the RO to enquire and was informed that in their database, the works order generated for the report she had made showed that the repairs had been carried out on the 11th September 2012. The Complainant assured the officer who attended to her that nothing had been done and claimed to have been told that the matter would be looked into. Unable to withstand the situation any longer, the Complainant put her grievance to the Ombudsman and explained that until repairs were carried out she had been left with no choice but to temporarily move in with her sister.

INVESTIGATION

The Ombudsman put the Complaint to the HWA and requested their comments. HWA's reply stated that there was only one works order (214829 dated 19th July 2012) related to a leak in the Flat and that repairs had been carried out on the 11th September 2012. HWA advised that there were four different reports outstanding (copies provided) pertaining to the Flat and those related to (i) severe dampness, (ii) main door lock, (iii) bathroom unit replacement and (iv) kitchen wastepipe for inspection dated 2nd October 2012 and estimated on the 4th October 2012 (coincidentally the day on which the Ombudsman put the Complaint to HWA).

The Ombudsman made further enquiries in relation to the repairs HWA's records showed had been carried out at the Flat (contrary to what the Complainant stated) and requested information on what steps had been taken by HWA since the Complainant's visit to the RO in September 2012 to clarify the matter. Despite a reply from HWA which provided information on other aspects of the investigation, one of which was the cancellation of the original report (28th June 2012) due to duplication, the information requested by the Ombudsman was not provided.

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To determine whether works had been carried out or not, the Ombudsman arranged a site visit with HWA representatives which after two deferrals (on the Complainant's part) finally took place in March 2013. At that site visit, HWA representatives established that no repairs had in fact been carried out (contrary to what their records showed) and quickly pointed out that in all probability, repairs pertaining to another works order had been erroneously charged to that of the Complainant's. [Ombudsman note: Although the reason provided by HWA was not substantiated by facts resulted from an internal investigation into the matter, the Ombudsman accepted as valid, the explanation that in this case, human error was to blame]. At the site visit, HWA inspected the bathroom and dampness problems in the Flat on which reports were outstanding and informed the Complainant that they would attempt to prioritise the works required. The Complainant pointed out that her fresh water supply had by now been cut off due to arrears and she was advised to address that issue as water would be required for the works to be carried out to which the Complainant agreed.

The Ombudsman brought to HWA's attention the time elapsed since the reports of dampness (June/July 2012), bathroom defects (September 2012) and the last report in respect of the kitchen wastepipe (October 2012) to the attention of HWA. They explained that in most cases, reports were attended to within a maximum of three months. The explanation offered in this case was that the delay could have been as a result of more urgent reports having arisen during the period or because the Complainant had been unavailable. Nonetheless, HWA stated that the reasons for the delay would have been documented. The Ombudsman requested the documentation but once again HWA, despite various reminders from the Ombudsman, failed to provide this.

The Ombudsman inspected copies of reports dating back to the 28th June 2012, the date on which the Complainant originally reported the dampness and kitchen wastepipe problems. That report was cancelled and partly transferred to a new report dated the 9th July 2012; 'partly' because the new report contained the dampness problems but omitted the kitchen wastepipe issue. The reason given by HWA for the cancellation of the first report was duplication which occurs when there is a report in place and a further report is received by the RO on the same issue. The correct action would have been for the original report (earlier date) to have remained in place and the more recent report cancelled.

A report dated 19th July 2012 was for a leaking pipe in the kitchen and the replacement of a kitchen unit and was the one erroneously marked in HWA records as having been completed. A further report dated 2nd October 2012 related to the kitchen wastepipe for inspection. Despite the report having been scoped on the 4th October 2012, by February 2013 no repairs had been carried out. Strike one, strike two and strike three.

Regarding the cancellation of reports, HWA informed the Ombudsman that by having more than one report for the same or part of the same problem, their data gave the impression that there were a higher number of outstanding reports than there actually was. To rectify that situation, the Ministry for Housing and the HWA had agreed to a procedure whereby those reports would be cancelled and carried out under one single report. HWA confirmed that there had been and would continue to be a high number of cases where this procedure would be applied.

CONCLUSION

The Ombudsman concluded that there was gross maladministration in this case.

A string of errors, beginning with the cancellation of the original report (June 2012) which resulted in the kitchen wastepipe problem being omitted and distorted the original date on which the problem arose, through to no investigation carried out by HWA to clarify the matter of the Complainant's report to the RO of no repairs having been carried which contradicted the information on the RO's database.

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The end result being that the Complainant and her three children endured prolonged hardship which could have been avoided. Instead, HWA's inaction left the Complainant with no option but to bring her Complaint to the Ombudsman, without whose assistance the stalemate would have continued indefinitely.

HWA cannot dispute that they had knowledge that the Complainant had informed the RO that no works had been carried out contrary to RO's records. Even if it was the case that the RO failed to pass the information on to HWA, they were made aware of the circumstances surrounding this case in the Ombudsman's letter of the 7th November 2012 and neither provided the specific information requested regarding that issue nor took any action to ascertain the facts. It took the Ombudsman's intervention for a site visit to be arranged to ascertain that no works had in fact been carried out. As to the exercise currently being undertaken by HWA of cancelling reports due to duplication, the Ombudsman, judging on what has transpired in this case, is extremely concerned that the outcome could be detrimental to the end user because of the manner in which it is being carried out. A structured procedure has to be in place for the purpose of undertaking a uniform and meticulous exercise and minimising errors like the ones experienced in this case:

(i) Original report cancelled thereby erasing the original date of the report and replacing it with a later date. Distorting facts.
(ii) The original report only part transferred to the new report thereby omitting part of the original report. Omitting facts.

The Ombudsman is very critical of the manner in which HWA failed to provide information requested by the Ombudsman, namely:

1. Documentation to substantiate the reason/s for the delay in undertaking repairs which HWA had stated would be clearly documented;
2. Information on what action HWA took, further to the Complainant having informed the RO that no works had been carried out in respect of works order 214829, and the RO stating that the matter would be looked into.

In light of the information requested by the Ombudsman to HWA not having been produced, the Ombudsman concludes that HWA did not keep adequate records in the Complainant's case and could therefore not produce the information required. HWA should have notified the Ombudsman of the situation rather than make him believe that appropriate records had been kept. The Ombudsman was dissatisfied at the manner in which HWA acted vis-a-vis assisting his office in the course of the investigation. The Ombudsman is tasked under the Public Services Ombudsman Act to undertake investigations, and those under his jurisdiction are duty bound to assist the Ombudsman in the course of said investigation. The Ombudsman therefore needs to reiterate, especially to the HWA in this instance, that timely cooperation with the Ombudsman is of the utmost importance in order to provide first class service to our citizens.

UPDATE

AT THE TIME OF CLOSING THIS REPORT THE COMPLAINANT ADVISED THAT THE BATHROOM WORKS WERE ONGOING AND THE DAMPNESS PROBLEMS WERE BEING ADDRESSED. REGARDING THE KITCHEN WASTEPIPE, SHE WAS UNABLE TO SAY WHETHER THE REPAIRS HAD BEEN CARRIED OUT BECAUSE SHE HAD NOT RECONNECTED THE WATER SUPPLY. [OMBUDSMAN NOTE: THIS IS A CLEAR EXAMPLE OF HOW A PERSON PURSUING HER RIGHTS (HWA TO UNDERTAKE REPAIRS TO THE FLAT) HAS FAILED IN HER RESPONSIBILITY, WHICH IN THIS CASE, FURTHER TO THE SITE VISIT, WAS HER COMMITMENT TO RECONNECT THE WATER SUPPLY BY COMING TO AN AGREEMENT WITH THE WATER SUPPLY COMPANY. THE OMBUDSMAN NOTED THAT THE COMPLAINANT NO LONGER HAS ANY INTEREST IN THE CASE].

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Case Sustained

CS/1010

Complaint against the Housing Works Agency for having made the Complainant wait for eight years for repairs to be undertaken to stop water ingress and dampness to her government rented flat ("Flat").

Complaint

The Complainant, who resided in the Flat with her partner, sister and two children, was aggrieved because she had been waiting for eight years for repairs to be undertaken to stop water ingress and dampness to the Flat.

Background

The Complainant explained that in 2004, a few months after having moved into the Flat, she reported dampness problems to the Ministry for Housing's Reporting Office ("Reporting Office"). The reports were included in a repairs waiting list by the Buildings & Works Department ("B&W") (tasked with the maintenance and repair of Government rental housing stock until March 2011 when B&W was abolished and the Housing Works Agency ("HWA") established to undertake the task in its place). According to the Complainant, in 2007 labourers from B&W went to the Flat and painted over the damp patches which resulted in the problems reappearing shortly after and the Complainant having to report the matter once again. The Complainant stated that after a three year wait and frequent complaints, workers undertook repairs in September 2010 which again proved futile as dampness reappeared two weeks later. The Complainant stated that as a result of those works, windows were stained with cement as were the patio tiles and a window was broken when scaffolding was being dismantled by the workers, which led to the window having to be removed; this window was never replaced. The Complainant reported the problems and for the next two years pursued the repairs through the Ministry for Housing, B&W and HWA but none materialised. Desperate about the long term situation she and her family were having to endure, the Complainant brought her Complaints to the Ombudsman.

Investigation

The Ombudsman requested copies of reports from the Reporting Office, made in respect of dampness in the Flat. Repairs in respect of the report made in October 2004 were carried out in April 2008 (not 2007 as thought by the Complainant). The scope of works for that report included the removal of the bathroom, adjustment to pipework, the construction of internal cavity walls, the removal of a damaged area of plasterboard ceiling, investigation of a possible leak from the flat above, installation of plasterboard with adequate finish, hacking off loose plaster from facade, re-plastering, applying bonding agent and painting.

In April 2009, a year after repairs, a new report of dampness in the Flat was made at the Reporting Office and works carried out in September/October 2010. The works carried out included the replacement of the bathroom ceiling (suspected leak from flat above), flaking paint scraped off in the living room and corridor walls and ceiling, plasterboard dry lining put in place in the bedroom's south facing wall, spalling plaster hacked off, replastering and painting, ceramic wall tiles fixed to window sills and pipe-work repaired.

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In June 2011 there was a new report of water leaking through the Flat's ceiling which originated from the external corridor above which was immediately classified as an external job. [Ombudsman Note: In 2011 a change in Government policy led to the abolishment of B&W, the establishment of HWA (initially to undertake internal repairs to Government housing stock) and a decision to tender to private contractors, repairs to Government housing stock of an external nature, in order to clear an extensive backlog; a decision which took nearly two years to get off the ground.]. A second report also in June 2011 for repairs to the Flat due to damage by water ingress was classified as 'Sleeping' pending completion of external repairs.

In 2011 the Ombudsman undertook a systemic investigation into complaints made by a number of Government tenants about the delay on the part of the Housing Authority in undertaking external repairs to the properties in which they resided. The report concluded the following:

- The number of Complainants waiting for external works was very worrying;
- the delays could have repercussions on the future needs of other tenants and in all probability could have an effect on the properties;
- external repairs had been pending for an excessive amount of time;
- Measured Term Contracts ("MTC") which were going to be awarded to private contractors to clear the backlog of external repairs had not begun a year after that decision was made;
- the Complaints against the Housing Authority were sustained. The period elapsed from when the Complainants had originally reported the problems, to date, amounted to an unreasonable period of time to be waiting for repairs.

The Ombudsman did not make any recommendations in that report because the matter of external repairs was at the time being actively considered.

Eventually, in March 2013, a private contractor was sent to the Flat to undertake external repairs. This was done via the Gibraltar General Construction Company Limited ("the Company") a wholly owned Government company over which the Ombudsman does not have jurisdiction. The Complainant reported that only the facade was painted, and in such a shoddy manner, that the paint started flaking away immediately. The Complainant stated that when the private contractor finished the painting they left the site. Not having jurisdiction over the contracting entity, i.e. the Company, the Ombudsman was unable to pursue this matter, as neither HWA nor the Ministry for Housing (the Landlord) provided any replies on the basis that the works had been carried out under the auspices of the Company.

In April 2013, the Ombudsman arranged a site visit to the Flat which HWA attended. At that visit, HWA identified all defects in the Flat and a request was made for the scope of works to be passed on to the Company before the end of that month for the works to be put out to tender. The Complainant took the opportunity of the site visit to point out damage caused to personal belongings and furniture as a result of the dampness conditions in the Flat.

The Ombudsman contacted the Complainant for an update at the time of writing this report (June 2013). She stated that a number of private contractors had inspected the Flat during the last few months but no works had been carried out.

On the 6th June 2013 HWA confirmed that the scope of works had been sent to the Company and that they had expressed to them how urgent the repairs were.

Conclusion

The Complaint brought to the Ombudsman was that the Complainant had been waiting for eight years for repairs of water ingress and dampness to the Flat. The investigation showed that although some repairs were carried out during the eight years, it took three and a half years for B&W to action the first report made in 2004, and a year and a half to action the second report made in April 2009; excessive periods of time which undoubtedly contributed to further deterioration of the property and prolonged hardship to the Complainant and her family. Furthermore, it can be deduced from the scope of works that in the main, internal repairs were carried out by way of cavity walls, dry lining and repainting, instead of extensive external repairs which appeared to be the origin of the water ingress to the Flat.

The Ombudsman had no doubt in upholding this complaint. The hardship, distress and anxiety caused to this family because of the sheer inefficiency of those concerned with the repairs and maintenance of this property could only lead to a claim for compensation. The Ombudsman suggested that the Ministry for Housing, i.e. the Landlord should seek to compensate the Complainant.

Classification

Sustained

Case Sustained

CS/1024

Complaint against the Housing Works Agency for failure to replace window of flat and for failure to tackle repairs on the Complainant's collapsed bathroom floor

Complaint

The Complainant, who resided in a Government rented flat ("Flat") with her partner, sister and two children, was aggrieved because a window which had been removed in September 2010 had to date not been replaced. Furthermore, the bathroom floor of the Flat had collapsed in September 2012 and no repairs had been undertaken at the time of writing this report (June 2013).

Background

The Complainant explained that in 2010, workers from the Buildings & Works Department ("B&W") (tasked with the maintenance and repair of Government rental housing stock until March 2011 when B&W was abolished and the Housing Works Agency ("HWA") established to undertake the task in its place) undertook repairs in the Flat. According to the Complainant, a window was broken by the workers when scaffolding was being dismantled which led to the window having to be removed; this window was never replaced. The Complainant reported the problem and for the next two years pursued the replacement of the window through the Ministry for Housing, B&W and HWA but none materialised.

In September 2012, part of the Flat's bathroom floor collapsed and the Complainant urgently reported the matter to the Ministry for Housing's Reporting Office ("Reporting Office"). According to the Complainant the bathroom was inspected by Ministry for Housing personnel, but despite assurances that urgent repairs would be carried out, by December 2012 nothing had been done and no measures taken to make the area safe.

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According to the Complainant, the only advise given by HWA was not to use the bathroom. To be able to comply with the instruction, mainly for fear that the entire bathroom floor would collapse, the Complainant and her family resorted to using the bathroom facilities at the Complainant's brother's home. Desperate about the long term situation she and her family were having to endure, the Complainant brought her Complaints to the Ombudsman.

Complaint (i)

Investigation

Window removed two years ago and not replaced

The Ombudsman requested information from HWA on the missing window. The initial response in February 2013 stated that from two reports dated November 2011 related to windows, neither suggested that there was a missing window which needed to be replaced.

The Ombudsman requested copies of reports from the Reporting Office dating back to 2010, the year in which the Complainant claimed the scaffolding was removed and the window broken and removed as a result. The reports were as follows:

Date	Works Order No	Description	Status
22.09.10	117360	Window previously boarded with plasterboard broken by scaffolding works according to tenant	In Progress
09.11.11	207549	Windows for inspection – Tenant reporting damaged windows due to repairs on facade. Clean & remove marks on affected windows	Scoped
11.11.11	207590	Patio window for inspection – Fix missing window including frame in affected opening	Scoped

From the reports above, the Ombudsman concluded that there were in fact two reports related to the missing window (117360 and 207590). During the Ombudsman's & HWA's site visit on the 12th April 2013, HWA pointed out that the missing window had been replaced the previous week.

Conclusion

In September 2010 the Complainant reported that a window had been broken when scaffolding was being removed. For two and a half years the Complainant waited for it to be replaced. During that time, the Complainant wrote to the Ministry for Housing on numerous occasions with her plight but nothing happened.

In the Ombudsman's initial enquiries, HWA stated that there was no report of a missing window. It was as a result of the Ombudsman's insistence that HWA delved into the issue further, confirmed that there was a window missing, and, coincidentally, a week before the site visit by the Ombudsman, installed the window.

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The Ombudsman sustains this Complaint. Immediately after the report was made by the Complainant, B&W should have interviewed the workers to identify what had happened. If in fact the workers had accidentally broken the window, it should have been promptly replaced; the appropriate course of action. Instead, nothing was done which resulted in the Complainant and her family having to put up with the consequences of the inaction for two and a half years. Furthermore, it took the Complainant having to bring her Complaint to the Ombudsman for the matter to be taken on hand by HWA.

Investigation

Complaint (ii)

Bathroom floor collapsed in September 2012 and no repairs undertaken

[Ombudsman Note: In 2011 a change in Government policy led to the abolishment of B&W, the establishment of HWA (initially to undertake internal repairs to Government housing stock) and a decision to tender to private contractors, repairs to Government housing stock of an external nature, in order to clear an extensive backlog; a decision which due to lack of proper leadership took nearly two years to get off the ground. A wholly owned Government company, Gibraltar General Construction Company Limited ("Company"), was tasked in the Complainant's case with tendering out to private contractors the external repairs required in the Flat. In March 2013 a private contractor instructed by the Company, undertook some external repairs at the Flat and it is those entities that are referred to in the Ombudsman's investigation below].

In September 2012, part of the Flat's bathroom wooden floor collapsed. HWA's records showed that the incident had been reported after hours and classified as an emergency. HWA stated that when they attend to an emergency call, their response is to make the area safe. Following substantial enquiries by the Ombudsman, HWA ultimately stated that in this case nothing was done to make the area safe.

Regarding the considerable period of time elapsed during which no repairs had been undertaken (September 2012 to June 2013), HWA initially stated that they had decided that the private contractor engaged by the Company would undertake those internal repairs alongside the externals and had advised the private contractor and the Company accordingly. Despite HWA's arrangement, for unknown reasons, the contractor left the Flat after painting the facade and as a result, the bathroom floor was not repaired. [Ombudsman Note: The Company lies outside the Ombudsman's remit. Not having jurisdiction over the contracting entity, i.e. the Company, the Ombudsman was unable to pursue this matter as neither HWA nor the Ministry for Housing (the Landlord) provided any replies on the basis that the works had been carried out under the auspices of the Company].

As at the time of writing this report (June 2013) no repairs had been undertaken. Regarding the Ombudsman's enquiries as to why HWA had not carried out the repairs between September 2012 and March 2013 (prior to the private contractor arriving on site) or indeed after the departure of the private contractor, HWA stated that they could not provide an explanation.

Informed by the Complainant that she had made reports to the Environmental Agency in respect of termites in the bathroom, both in May 2012 and in May 2013, the Ombudsman obtained copies of both reports. The May 2012 report stated that adult termites crawling outside the wood had been treated but highlighted that the problem lay with the insects inside the wood. All affected wood needed to be removed and replaced with pre-treated wood. This report was passed to the Reporting Office. At the second visit, May 2013, the Environmental Agency stated that the wooden floor of the bathroom had been severely affected by the termite infestation and that there was a hole through the floorboards through which the flat below could be seen.

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The Environmental Agency stated that the damage extended beneath the bath, something which was of great concern as when full, the bath could be very heavy. Furthermore, it appeared that the supporting joists were also affected and the Agency was concerned about the structural integrity of the floor of the Flat. Both reports were sent by the Environmental Agency to the Reporting Office.

The Ombudsman forwarded the reports to HWA and the Housing Authority (as landlord) and requested the following information from both entities:

i. The steps taken to appoint a contractor to undertake the urgent works required;
ii. The procedure followed by the Reporting Office when reports from the Environmental Agency are received.

The Housing Authority (despite being the Landlords) advised that the matter fell outside their remit. Regarding the appointment of contractors, HWA stated that the report had been passed to the Company who had been notified of the urgency of the repairs but explained that there was little else they could add. As to the procedure followed by the Reporting Office regarding reports received from the Environmental Agency, HWA stated it was dealt with in the same way as any other report. Notwithstanding the above information, by June 2013, the time of writing this report, no repairs had been carried out in the bathroom.

Conclusion

HWA, the entity tasked to undertake internal repairs to the Government housing stock, failed to act on the recommendation made on the Environmental Agency's first report which would possibly have avoided the part collapse of the bathroom floor. HWA also failed to carry out repairs on the partly collapsed floor which the Complainant had reported in September 2012 and which were of an internal nature and fell under their remit. The only proactive action taken on the part of HWA was to have instructed the private contractor to carry out the bathroom floor repairs, six months after the report was made, notifying the Company of the arrangement, which in the end did not materialise. Notwithstanding the aforementioned, HWA have also failed to undertake urgent repairs as a result of the Environmental Agency's second report which should have by now set alarm bells ringing. HWA have instead opted to pursue the Company to appoint a contractor to carry out the works which is incomprehensible given the present set-up. As to HWA's statement that they cannot offer an explanation as to why they did not carry out the repairs, the Ombudsman finds this reply unacceptable. At the very least, reasons should be documented, failing which they can only be attributed to inefficiency and total lack of care to the end user. HWA not having undertaken the necessary works has resulted in the Complainant and her family having been deprived of the use of a bathroom, a basic necessity, for a period of nine months (as at June 2013). Furthermore, on the basis of this report and the report compiled by the Environmental Agency, the Ministry for Housing (in their capacity as landlord) has been put on notice vis-à-vis the supporting joists having been affected, raising concerns about the structural integrity of the floor. If the situation escalates, the Ministry for Housing could well be liable for damages.

The Ombudsman sustains this Complaint. There has been a total failure to act on the part of the landlord and the HWA, aggravated by the fact that the state of the joists supporting the bathroom could lead to a disaster if not addressed promptly.

Classification

Complaint (i): Window removed two years ago and not replaced – Sustained

Complaint (ii): Bathroom floor collapsed in September 2012 and no repairs undertaken - Sustained

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Case Partly Sustained

CS/1025

Complaint ("the Complainant") against the Housing Works Agency ("HWA") in respect of non reply to letters sent as a result of dirty water seeping through the walls in the Complainant's store and HWA's alleged failure to conduct works in relation to the seepage.

COMPLAINT

The Complainant complained that since August 2012, dirty water was seeping through the walls in his store at Witham's Road. Despite site visits, the cause had not been identified and water continued to seep through, allegedly causing a health and safety hazard. Personal goods belonging to the Complainant also sustained damage.

BACKGROUND

The Complainant explained that he originally wrote to the Minister for Housing in the first week of September 2012 setting out his grievance. That letter was acknowledged by the Minister on the 7th September 2012 and replied to on 26th September. The Minister informed the Complainant that he had forwarded a copy of his letter to the HWA Principal Officer for the requested attention and action.

The Complainant informed the Ombudsman that six months elapsed from the date of receipt of the Minister's letter and no action was taken. Water continued to filter through the walls into the store. He was of the opinion that this constituted a major health hazard and believed that Government was being negligent by not taking the issue as seriously as they should. In addition, the Complainant stated that his repeated phone calls and letters to HWA remained unanswered.

According to the Complainant the Environmental Agency had analysed water samples which showed traces of salt water and dirty sink and bath water.

The Complainant also sent letters to HWA in November 2012 and January 2013 where he requested information relating to the plan of action/schedule of works that HWA would be undertaking and an indication as to when the problem would be remedied. No replies were received to those letters.

As a result of the above, the Complainant filed his complaint with the Office of the Ombudsman.

INVESTIGATION

The Ombudsman presented the complaint to HWA on the 15th February 2013 requesting their comments.

In their letter in reply, HWA apologised for not having written back to the Complainant due to an "oversight" but explained that they had kept him abreast of developments at all times via telephone. HWA did admit however that this did not excuse the lack of written replies. They did provide the Ombudsman with a copy of a letter of apology they had sent the Complainant (also dated 15th February 2013) for his records.

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HWA stated that action on the complaint had indeed been taken. They supplied the Ombudsman with a trail of relevant inter-departmental email correspondence and also informed him that they had liaised with both Ministry for Housing and Environmental Agency representatives in late 2012. They had also contracted the services of a local sewer specialist firm, to jet clean all the drains and to carry out a CCTV survey of the internals to the drains, as a result of the Complainant's insistence that the leakage and dampness was caused by a damaged sewer drain. In their letters to the Ombudsman and Complainant, HWA explained that despite the action taken, there was no straightforward solution to the problem but that as a mitigating remedy, it would be recommended that a false wall be erected to contain the seepage/dampness. With regard to time scales, it was explained that HWA had numerous urgent repairs to conduct to dwellings and that once these were completed, the Complainant's issues would be addressed.

The Ombudsman met the Complainant towards the end of February to discuss the content of HWA's explanations which in the Ombudsman's mind seemed reasonable. The Complainant agreed with this view and expressed satisfaction with the apology received. Given the fact that the Complainant had also received a telephone call confirming that another inspection to the store would imminently be carried out, he seemed happy for his complaint to be closed as "resolved".

A period of approximately five months elapsed and the Complainant returned to the Ombudsman's office. He stated that no action had been taken and was concerned that the continuing seepage and dampness constituted a hazard. He informed the Ombudsman that he had held a conversation with HWA some three weeks earlier and that he was promised that a representative would attend to re-inspect. To the Complainant's dismay, this did not materialise. Upon the Ombudsman's suggestion, he proceeded to write to HWA setting out the background to his grievance. The Complainant subsequently attended upon the Ombudsman in July 2013 to request that his complaint be re-opened.

The Ombudsman wrote to HWA and requested information on the state of affairs, to enable him to update the Complainant, given that no further communication had been forthcoming. Further to a chaser email, a reply was received some three weeks later.

HWA's written reply of the 21st August 2013, stated that although no further correspondence had been sent to the Complainant as alleged, he had been attended over the telephone on numerous occasions and it was explained to him that all the drains which collected sewage within the vicinity of the store had been lined. This had been done in order to eliminate what the HWA described as a possible (not the sole) cause of the water ingress. No date could be given as to when the false wall would be built. It was also confirmed that since the problem was not within the internal confines of a dwelling, the Gibraltar General Construction Company Limited ("GGCCL") (a wholly owned Government company over which the Ombudsman has no jurisdiction), would be dealing with the issue and that rightly so, GGCCL was concentrating on historical works of a higher priority. Despite that position, a reminder had been sent by HWA to GGCCL.

Further emails from the Ombudsman to HWA followed throughout September and October 2013 seeking updates but due to GGCCL's involvement, HWA was unable to provide any information as to progress.

To the date of drafting this report, no works had been conducted on the store and the issues affecting it persisted.

CONCLUSION

The Ombudsman was aware from other investigations of this nature that since the creation of HWA in April 2011, it had been solely tasked with conducting internal works to Government properties. Insofar as external works were concerned, HWA would prepare scopes for specific works which would then be passed to the Ministry for Enterprise Training and Development ("METE"). The works would then be contracted out by METE to independent contractors via GGCCL.

Despite the above, neither the Ombudsman or the Complainant were made aware that the works being the subject of this complaint would be outsourced via GGCCL, until this was confirmed by the HWA in their letter to the Ombudsman of 21st August 2013 (almost one year after the Complainant made his grievance known to HWA). The Ombudsman did not consider this delay was reasonable in the circumstances.

Additionally, the Ombudsman considered the repeated absence of replies to the Complainant's correspondence (notwithstanding updates to him by HWA via telephone), as not conducive to good administrative practice. To this extent, HWA failed in its duty of care to the Complainant.

CLASSIFICATION

In relation to HWA's non-replies to correspondence- Sustained

In relation to HWA not conducting works- Not sustained (due to GGCCL's involvement as explained in the body of this report)

UPDATE

IT SHOULD BE NOTED THAT THE OMBUDSMAN DOES NOT CURRENTLY ENJOY JURISDICTION TO INVESTIGATE ANY COMPLAINTS MADE AGAINST GGCCL. HE IS THEREFORE UNABLE TO COMMENT ON GGCCL'S INVOLVEMENT INSOFAR AS THIS COMPLAINT IS CONCERNED AND WILL ALSO BE UNABLE TO CONDUCT ANY OTHER INVESTIGATIONS OVER COMPLAINTS MADE RELATING TO "EXTERNAL" WORKS TO GOVERNMENT PROPERTIES, UNLESS THE JURISDICTION OF HIS OFFICE IS EXTENDED TO GRANT HIM THE AUTHORITY TO MAKE ENQUIRIES OVER GGCCL.

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Income Tax Office

Case Not Sustained

CS/1015

Complaint against the Income Tax Office due to the Complainant being dissatisfied with the reply received from them regarding non-payment of multiple social insurance contributions vis-a-vis his claim for old age pension

COMPLAINT

The Complainant was dissatisfied with the reply he had received from the Income Tax Office ("ITO") regarding non-payment of multiple social insurance contributions vis-a-vis his claim for old age pension.

BACKGROUND

The Complainant contacted the Contributions Section ("Section") of the ITO in January 2013. He would attain pensionable age, 65, in June 2013 and made preliminary enquiries on how to claim his old age pension. According to the Complainant he was advised to request a pension forecast from the Department of Social Security ("DSS"). He obtained this and on perusal noted that the estimated amount, £349.47 per month, fell short of what he believed was a full pension amounting to £385.00 per month (full pension was in fact £415.51). The Complainant made enquiries at the Section and claimed to have been informed that there were social insurance contributions ("Contributions") missing for the period 2006 and 2007. The Section explained that they were pursuing the matter with his former employer ("Employer") but to date had not received the documentation required for the Contributions to be credited to the Complainant. According to the Complainant, the Section suggested that he contact his Employer directly, to enquire on the matter. The Complainant explained he was reluctant to do that but conceded, in order to expedite a resolution. The Employer's response was to ask the Complainant to return the following week, a time delaying tactic in the opinion of the Complainant which would serve no purpose.

The Complainant notified the Section of the outcome of the meeting and highlighted that they (Section) should be in possession of the P8 form (for the relevant period 2006 and 2007) which is submitted annually by employers to the Section, and on which are listed payments collected by the employer from employees on behalf of Government, in respect of income tax and Contributions [Ombudsman Note: The P8 did not come into use until April 2007 and the issue is addressed at a later stage in this report] The P8 would prove that the Contributions had been deducted from his salary during that period. The Complainant claimed that the Section confirmed that they had the P8 (in the investigation the Ombudsman found that the Section did not have this document) but explained that the issue was that they had not received the monies.

On the 12th March 2013 the Complainant wrote to the Principal Secretary of the DSS to request that they resolve the issue of missing Contributions for the period 2006/07. The Complainant was not in possession of pay slips for that period as proof of the Contributions having been deducted. The Complainant explained that he had worked for the same Employer during the period October 2001 to December 2007 and requested that urgent attention be given to this matter so that the situation could be rectified and his pension would not be affected.

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The prompt reply received from the DSS advised him that his letter would be passed on to the Section who were looking into the matter. On the 3rd April 2013, the Complainant wrote to the Section stating that he was very concerned that the matter was "dragging on". A reply from the Section was issued on the same day as follows:

"Since we last met I have been dealing with your case. Once all missing years have been settled I will get in contact with you".

The Complainant found the reply very unsatisfactory. Notwithstanding the fact that his Employer had always deducted the Contributions from his salary, he had failed to pass those monies to the ITO. The Complainant felt that through no fault of his he was being penalised by having to chase around to be able to obtain the pension he was entitled to.

The Complainant felt aggrieved with the content of the letter which implied that until such time as outstanding monies for Contributions were collected, he would not receive the pension he was entitled to, and therefore lodged his Complaint with the Ombudsman on the 19th April 2013.

INVESTIGATION

The Ombudsman directed his enquiries to the ITO who confirmed that when in January 2013 the Complainant approached them to begin the process of claiming his old age pension they had contacted the Employer regarding missing Contributions. On the 29th January 2013, the Section met with the Complainant and asked him if he had proof that the Contributions had been deducted from his salary (by way of payslips); the Complainant had no proof. The ITO explained that they continued to chase the Employer for the 'insurance schedules' to be submitted in respect of the period affecting the Complainant and once that was received the relevant Contributions would automatically be credited to the employee's record [Ombudsman Note: The ITO informed the Ombudsman that up to March 2007, quarterly social insurance schedules were submitted by employers to the DSS which detailed employees' weekly social insurance deductions from their wages/salaries. As from April 2007 the Department of Social Insurance Contributions Section (Section) was merged with the ITO and from then on, social insurance deductions together with earnings and tax deducted was submitted in the P8 form).

As to the Complainant's claim that the Section had asked him to approach his previous employer, ITO had spoken to the officer concerned who could not recall the event but accepted that she may have suggested that action to speed things up.

Referring to the letter the Section had sent to the Complainant in April 2013, ITO clarified that it was a holding letter, as the issue continued to be pursued. ITO confirmed that the insurance schedules in relation to the missing Contributions had now (May 2013) been prepared by the Section and signed by the former employer thereby agreeing to the amount of Contributions declared. The Complainant was informed of this by phone and by letter dated 9th May 2013 (copy provided to the Ombudsman). Said letter stated that the issue of the 'missing' Contributions had been resolved. The Pensions Section at the DSS had been informed and suggested that the Complainant contact them again for an updated pension forecast.

The basis of the Complainant's grievance was that the statutory provisions relating to contributions provided a safeguard to contributors, where the employer had failed to make the corresponding contributions to the ITO. The statutory provisions relating to the matter state the following:

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Late or unpaid contributions

7.(1) Where a contribution under the Act payable by an employer on behalf of an insured person is paid after the due date or is not paid, and the delay or failure in making payment thereof is shown to the satisfaction of the Director not to have been with the consent or connivance of, or attributable to, any negligence on the part of the insured person, the contribution shall, for the purpose of any right to benefit, be treated as paid on the due date.

On the basis of the information provided by the Section that the matter had now been resolved, the Complainant did not think it important to request another forecast. The Complainant was finally awarded a pension of £365.96 per month out of a maximum £415.51(not £385- as thought by the Complainant). The Complainant was somewhat surprised at the fact that he was still not eligible for a full pension. He was under the impression that the only missing Contributions in his record had been those highlighted by the Section officer. The Complainant advised the Ombudsman that he recalled a problem in the 1990's of non-payment of Contributions when he worked for a different company but believed that matter had been resolved many years ago. Notwithstanding, the letter sent to the Complainant by the DSS informing him of his pension entitlement, afforded the opportunity to appeal the sum awarded and the Ombudsman advised him to do so if he was not in agreement. The Complainant did not want to appeal as he did not want the payment of the pension to be delayed. He did state that he might contact the person who used to carry out the accounting duties of the company at that time in order to clarify what happened.

The Ombudsman put this issue to the ITO. They confirmed that the Section had informed the Complainant that between 1994 and 1997 when the Complainant was self-employed there was no record of Contributions having been deducted from his salary/wages. The ITO explained that as a self-employed individual, the Complainant was responsible for payment of those Contributions for that period.

CONCLUSIONS

1. In January 2013, five months before his old age pension was due to him, the Complainant made preliminary enquiries and found that there were missing Contributions which would affect the amount of old age pension payable to him. There were two specific periods:

- 1994 to 1997, the Complainant accepted that Contributions were not paid in that period but would make enquiries;
- 2006 to 2007 when the Complainant's Employer deducted Contributions from the employee's salary but failed to pass either the monies due or the insurance schedule for the pertinent period.

2. Six or seven years had gone by during which the matter of missing Contributions remained outstanding despite the Arrears Section of the ITO having chased the Employer. It is therefore understandable that further to a meeting with the Section and their subsequent letter, the Complainant believed that until the missing Contributions were settled, his pension would be affected. The letter turned out to be a holding letter and at no time did the ITO mean to alarm the Complainant. By May 2013 the issue had been resolved and the Complainant obtained the old age pension payable to him by the due date.

3. On balance of the outcome of the investigation, the Ombudsman does not find maladministration in this case but would suggest that the ITO review the wording of the letter to prevent a recurrence for future similar cases.

4. Regarding the Complainant's claim that the Section had asked him to visit the Employer, the Ombudsman does not doubt the claim but understands that the suggestion was made in good faith to try and exert more pressure on the Employer.

SUGGESTIONS

The DSS should print out the information relating to old age pension entitlement and requirements and have those printouts readily available for prospective claimants.

The Ombudsman suggests that the printout be attached to pension forecasts provided to claimants, to enable them to compare their entitlement to the maximum number of Contributions and maximum amount payable in old age pension and in that way identify any anomalies at that stage.

The Ombudsman would urge the ITO to restart the process of sending out annual letters to employees informing them of the Contributions made in a given year in order that any missing Contributions can be identified by employees at an early stage.

UPDATE

THE DSS INFORMED THE OMBUDSMAN THAT THEY WOULD BE ADOPTING THE OMBUDSMAN'S SUGGESTED RECOMMENDATIONS AND THE INFORMATION RELATED TO OLD AGE PENSIONS WOULD BE MADE AVAILABLE TO PROSPECTIVE CLAIMANTS, IN ADDITION TO THIS BEING INCLUDED WITH PENSION FORECASTS REQUESTED BY INDIVIDUALS.

APPENDIX 1

Issues Arising in the Investigation

Form P8

The ITO clarified that prior to April 2007, quarterly insurance schedules were submitted by employers to the ITO which detailed employees' weekly social insurance deductions from their wages/salaries. In April 2007 the Department of Social Insurance Contributions Section (Section) was merged with the ITO and thereafter, details of Contributions, earnings and tax deducted for the year have been included in Form P8. The missing Contributions pertained to the period prior to the merge. Notwithstanding, the ITO confirmed that since the merge, insurance schedules not handed in had been chased by the Arrears Section and most recently by Contributions.

The Social Security (Open Long-Term Benefits Scheme) Act 1997 makes provision in Part II (7) for employers who fail to pay Contributions as follows:

"An employer or insured person who fails to pay any contribution which he is liable under this Act to pay, is guilty of an offence and is liable on summary conviction to a fine at level 3 on the standard scale".

The ITO did not exercise the above.

Information to Persons Claiming Pension

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The DSS explained that the information held on the Government website on old age pension was not very informative and as a result of the Ombudsman's query had updated the section and replaced it with simpler but more informative explanation (See Appendix 2). At present there are no leaflets informing persons on how to apply for an old age pension.

DSS stated that they did not have the mechanism in place to contact future pensioners. A database would be required for that purpose which would not only identify the persons coming of pensionable age but calculating whether they have an entitlement to an old age pension. The Ombudsman commends the DSS on having updated the information held on the Government website on old age pension as a result of his query. The DSS might want to print that information and have this readily available for prospective claimants who do not have access to the internet. The Ombudsman would also suggest that the printout be attached to the pension forecast so that claimants can compare their entitlement to the maximum number of Contributions and maximum amount payable in old age pension and in that way identify any anomalies at that stage.

Information to Employees of Annual Contributions

The Ombudsman was aware that until a number of years ago, the DSS had on an annual basis sent out to employees a letter informing them of the number of Contributions declared by employers in the insurance schedules. If employers had defaulted in passing on the Contributions to the DSS, employees would have been alerted of this at an early stage via the letter. The Ombudsman made enquiries as to why this exercise had been discontinued. The ITO explained that letters had been sent out up to 2006 but since the merge in 2007, due to programming problems, that had been discontinued. ITO stated that the matter was being looked into and they will soon be in a position to provide that service.

ITO highlighted that in 2006 the Complainant would have received a letter informing him of any arrears in Contributions due up to 2004.The Ombudsman would urge the ITO to restart the process of sending out annual letters to employees informing them of the Contributions made in a given year in order that any missing Contributions can be identified by employees at an early stage.

APPENDIX 2

Old Age Pension

Pensionable age is 60 for a woman and 65 for a man. This pension is only payable to a person who has paid or been credited with enough social insurance contributions during their working life. In the case of a woman a working life is 20yrs to 60yrs and in the case of a man 20yrs to 65yrs.

The amount of pension received depends on the number of contributions paid. The most you can currently get is £415.51 per month (full pension) and the smallest amount £207.80 per month (minimum pension).

In order for a man to obtain a full old age pension a total of 2250 social insurance contributions is required as opposed to 585 social insurance contributions for a minimum pension.

A woman requires a total of 2000 social insurance contributions to obtain a full pension and 520 social insurance contributions for a minimum pension.

You will not receive your Old Age Pension automatically on reaching pension age. You need to make a claim and this can be done up to four months before reaching pension age. This form can be downloaded from this website or obtained from our offices at 14 Governor's Parade.

The above information can be found at the following address:

https://www.gibraltar.gov.gi/ministry-for-equality-and-social-services/social-security under 'Old Age Pension'.

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Ministry for Enterprise, Training and Employment

Case Sustained

CS/1007

Complaint against the Government Hostels Manager (Ministry for Enterprise, Training and Employment) due to the Hostels Manager not providing the Complainant with a rent card for the period 2013 because he was in arrears of rent. The Complainant required the rent card to prove residence in Gibraltar

COMPLAINT

The Complainant, a Moroccan national and a resident of the Government Hostel at Devil's Tower Road ("the Hostel"), was aggrieved because after requesting his rent card from the Hostels Manager, the request was refused. The Complainant required the rent card for the purpose of proving residence in Gibraltar.

BACKGROUND

The Complainant, who was of retirement age, had not been able to pay rent due to illness which rendered him unfit/unable to work. The Complainant was in receipt of £292.71 a month by way of pension. He claimed that from this amount, he had to send money to his wife and family in Morocco. He therefore found himself in a position where he could not afford to make rental payments for his room within the Hostel.

Upon the refusal by the Hostels Manager to provide the Complainant with the rent card, the Complainant verbally complained to him on two separate occasions. The manager was adamant that he would not issue the rent card (even though the Complainant continued to reside at the Hostel), due to the arrears of rent accrued.

As a result, the Complainant filed his complaint with the office of the Gibraltar Public Services Ombudsman.

INVESTIGATION

The Ombudsman presented the complaint to the Ministry for Enterprise, Training and Employment ("METE"), requesting their comments. Numerous attempts were also made by Ombudsman staff to contact METE on the telephone but these were unsuccessful. Pursuant to a further letter, a reply was received on the 29th January 2013. The letter stated that METE'S Senior Executive Officer had requested from the Hostels Manager, that he provide the Complainant with the rent card to enable the Complainant to prove residency. According to METE, the Hostels Manager had advised that the Complainant should attend his office and request the card from him directly. This request was communicated by METE to the Complainant.

Allegedly, when the Complainant visited the Hostels Managers office to retrieve the rent card, he was informed by staff that it would not be made available to him. As a result, the Complainant, shortly after, returned to see the Hostels Manager and also took the opportunity to pay an amount of rent. This payment was not accepted and the Complainant was allegedly advised to make a payment in the ensuing month of March.

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The Complainant complained to METE and to the Ombudsman. METE informed the Ombudsman that according to the Hostels Manager the Complainant had never attended his office to retrieve the rent card. This was contrary to the Complainant's version of the facts.

The Ombudsman proceeded to request a meeting with METE in order to clarify the position which was causing the Complainant distress and, additionally, because the Ombudsman was faced with two opposing accounts as to events.

A meeting was held at the METE offices on the 26th March 2013. It was established that the Complainant was not listed as "unemployed" at the Employment Service. The reason being that he was not actively seeking employment due to ill health.

The Ombudsman was informed at the meeting that according to the Hostels Manager, there was no record of the Complainant ever having paid rent, since he had never been employed. This fact was never disputed by the Complainant. However, the Ombudsman was also informed that the Gibraltar Government does not have a policy in place which governs tenants in the Complainant's position, i.e., tenants who are out of work and therefore do not pay rent at the Hostel. It was also communicated that there exists an understanding between the Government and the Hostels Manager that if a hostel tenant is unemployed, there is no obligation on that tenant to pay rent, nor any mechanism (nor apparent desire) for Government to pursue arrears of rent.

The Ombudsman also examined the Complainant's rent receipts. Upon their review, the reasonable interpretation would be that rent was indeed paid. Entries were all countersigned and dated, despite bearing an insertion that there was "no record". When the Ombudsman asked whether there was an established procedure or system for issuing rent receipts, the reply from METE was that the Hostels Manager had devised his own system which only he appeared to understand.

CONCLUSION

Due to the fact that the Government had not established a policy which governs Hostel tenants in the Complainant's position, it was the Ombudsman's view, that the Hostels manager was no justification in withholding the Complainant's rent card when it was requested. The Hostels Manager thus created an issue which in turn caused the Complainant an unnecessary grievance and hardship.

The added lack of structure in the formulation of the rent receipts was also misguided and not in keeping with good administrative practice.

Further, despite the Complainant not being listed as "unemployed", no attempts or requests were made by the Hostels Manager to METE, for a review or examination of the Complainant's file at the Employment Service. By carrying out this simple exercise the Hostels Manager could have ascertained the Complainant's status in accordance with fair administrative practice.

Based upon the above, the Ombudsman sustained the Complaint.

CLASSIFICATION

Sustained

RECOMMENDATIONS

1. That METE, in the pursuit of good administrative practice, draft and make guidelines accessible for use by the residents of the Gibraltar Government Hostels.

2. That METE (to whom the Hostels Manager is ultimately answerable), devise a standard rent card/receipt format which is workable in practice.

COMMENTS

The Ombudsman noted the lack of sound management and established practices exercised by METE and the Hostels Manager in relation to Hostel tenants. The Ombudsman expects that the acceptance and implementation of his recommendations will facilitate the future workings of the Hostel and will assist tenants in the recognition of their rights and obligations.

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Royal Gibraltar Police

Case Sustained

CS/986

Complaint against the Royal Gibraltar Police ("RGP") over delay in addressing a claim for compensation for damage caused to the Complainant's motorbike

COMPLAINT

The Complainant was aggrieved because of the delay on the part of the RGP in addressing his claim for compensation which he had handed in at the RGP headquarters following an incident where his motorbike was damaged by a metal gate ("Gate") in one of the RGP's Community compounds ("Compound").

BACKGROUND

The Complainant explained that on the 26th March 2012 his motorcycle, parked in a designated motorcycle bay located in the public highway and just outside the Compound was damaged by the Gate in the Compound. The Complainant claimed the incident occurred as a result of the Gate leading onto the Compound having swung open due to the RGP not having secured it properly. The Complainant explained that in the past he had verbally complained about this problem and as a result a metal latch was installed so the Gate could be secured to the ground. However, according to the Complainant, with the passage of time, members of the RGP stopped securing the Gate and due to weather conditions on the day of the incident, it slammed into the Complainant's motorcycle causing significant damage.

The Complainant explained that on the morning of the incident he walked into the Compound complaining about the incident and was allegedly told by an inspector to present an estimate of the damages so the RGP could compensate him; the Complainant did so later that same day. Furthermore, the Complainant was also called into the RGP headquarters to present his insurance, driving license and Ministry of Transport's roadworthiness certificate for the vehicle (M.O.T.) approximately two weeks after handing in the repairs estimate and was advised that he would be contacted shortly.

On May 7th 2012, not having heard from the RGP the Complainant wrote requesting an update on his claim. His letter was acknowledged and he was informed that the matter had been forwarded for the Chief Inspector of Operations to deal with it. Two months elapsed, and not having received any information on his claim, the Complainant once again wrote to the RGP. On that occasion he was told that the details of his claim had been passed to the Ministry of Finance for their recommendation and he would be informed of the outcome as soon as a reply was received.

Not having received any further information during the ensuing two weeks, on the 23rd July 2012, the Complainant wrote to the RGP's Commissioner to bring the matter to his attention. The RGP replied saying that the matter was still receiving attention.

By the 16th August 2012, almost five months since the incident and having lost faith in the RGP's ability to deal with the claim in an adequate manner, the Complainant brought his Complaint to the Ombudsman.

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INVESTIGATION

Delay in Initiating the Claim Process

The Ombudsman initiated his investigation on the 17th August 2012 by way of letter addressed to the RGP. He presented the Complainant's grievance and requested comments in relation to the delay and the lack of substantive updates made available to the Complainant during the course of the RGP's investigation. The RGP's reply to the Ombudsman provided a timeline of events to cover the period from the 26th March 2012 (date on which the incident occurred) to August 2012. The RGP informed the Ombudsman that there had in fact been substantial dialogue between the RGP officer investigating the Complainant's case and the Complainant (the Complainant informed the Ombudsman that the only time when he had spoken to the RGP, after the initial incident, was when he was asked to produce his licence, insurance and M.O.T. – this could hardly be classed as substantial dialogue). The RGP also confirmed that as soon as they received the Complainant's first letter of the 7th May 2012, a procedure for an ex gratia payment was initiated by the RGP.

The RGP however was of the view that the Complainant had claimed for more damage than had originally been reported on the day of the incident. They believed that the Complainant's estimate was an amalgamation of damages of the incident of the 26th March 2012 and of previous incidents in which the Complainant also claimed his motorcycle had suffered damages.

Upon receiving the RGP's reply, the Ombudsman made further enquiries surrounding the RGP's handling of the Complainant's claim:

1. The Ombudsman questioned the reason why the RGP only generated the procedure for an ex gratia payment upon receiving the Complainant's letter of the 7th May 2012 and not when the Complainant first lodged his claim in March 2012.

2. The RGP was also asked for an explanation as to why the incident was being referred to as a 'road traffic accident' considering that the Complainant's motorcycle was stationed at the time in which the events had occurred and the damage had been caused by an iron gate.

The RGP replied to the Ombudsman providing detailed explanations as follows:

1. The reason it took until May 2012 for the RGP to issue a request for an ex gratia payment was because in compliance with Government procedures, departments are required to provide an evidenced submission to the Financial Secretary in order for Government to consider the approval or otherwise of said request. In this case, the Investigating Officer in charge of the Complainant's claim concluded his investigation on the 15th May 2012.

2. Unless there was evidence of intentional damage, incidents of accidental damage involving a motor vehicle were classified as "Road Traffic Accidents".

Ex gratia payment

During the course of the Ombudsman's investigation, the Financial Secretary ("FS") approved the RGP's request for an ex gratia payment. Eventually, in early September 2012 the Complainant was issued a cheque for the amount of £45-. The Complainant did not accept the cheque and insisted his Claim be re-assessed given that the estimate which he had submitted was for the amount of £683-. Allegedly, the Complainant was informed that the matter would once again be investigated and that this time it should not take longer than two weeks to be finalised.

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The Ombudsman's investigation was into maladministration in relation to the RGP's delay in processing the Complainant's claim for compensation, however, for completeness of records, the RGP was asked for an explanation on the procedure used when determining claims such as the one presented by the Complainant. The Ombudsman was particularly interested to learn why the compensation awarded (£45) was so inordinately disproportionate to the amount being claimed (£683).

At this stage, the Ombudsman reminded the RGP of the importance of keeping customers updated in accordance with the Principles of Good Administration.

Following the Ombudsman's correspondence to the RGP, the Complainant received an update and an apology by way of letter on the 9th November 2012 for not having been informed of the outcome of the reassessment of his claim. The RGP explained that although the claim had been revisited, the initial amount of £45 still stood.

The RGP addressed the Ombudsman's queries regarding the procedure applied when determining the level of compensation awarded. The RGP pointed out that this was solely decided by the FS and that the RGP simply provided the FS evidence to support the claim. Further adding, "The decision on the level of compensation by way of ex gratia payment is made by the FS on the basis of the information supplied by the relevant Government Department, in this case ourselves".

In an effort to fully understand how Government processes ex gratia payments in practice, the Ombudsman requested that the RGP provide a copy of the evidence report provided to the FS to support the Complainant's claim.

The Ombudsman noted that it had taken the RGP six weeks from the date on which the investigation had concluded until it was passed to the FS. The letter consisted of a one page summary of the incident of the 26th March 2012 and the request for a £45 ex gratia payment. The RGP's request stated:

> *"The Complainant's claim is for £683 which encompasses the present, and previous alleged damages to his motorcycle. We are only requesting an ex gratia payment of £45, which is the damage related to his current request for damages".*

The Ombudsman noted that the RGP's letter to the FS rather than being in report format providing evidence of the investigation was more of a request for a £45 ex gratia payment containing very little evidence of an investigation and findings.

The Ombudsman observed (from the documents made available by both parties) that the RGP believed the Complainant was claiming for damages for a string of incidents which had taken place prior to the 26th March 2012. The Ombudsman sought to clarify that the Complainant's claim was based on the one incident (26th March 2012). Although previous incidents were mentioned in the Complainant's initial letter to the RGP dated 7th May 2012, the Complainant maintained throughout that in one case damage was caused to his son's motorcycle (which they no longer owned) and on another occasion the damage caused to his motorcycle was very minor. The Complainant highlighted that no claim for compensation from the RGP was made in those cases. The Complainant categorically stated that the damage as shown in the estimate presented to the RGP on the 26th March 2012 was solely based on the damage caused on that day. To resolve the impasse, the Complainant at the suggestion of the Ombudsman, put it to the RGP that a damage assessor should be contracted who would ascertain the extent of damage caused in that one incident.

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Meeting between the Ombudsman and the RGP

The Ombudsman met with the RGP at their Headquarters on the 21st November 2012. During this meeting a few matters were discussed in relation to the RGP's investigation prior to the ex gratia payment request:

Photographs of the Complainant's motorcycle

The Ombudsman enquired as to how claims of this nature were handled. The Ombudsman questioned whether any photographs had been taken at the time of the incident. The RGP officer informed the Ombudsman that a photograph was taken of the scratches that the Complainant had pointed out. Two weeks later, upon inspection of the file, the RGP noticed that it was a bad photograph and therefore asked to take further pictures. At this point the Complainant showed the RGP officer taking the pictures some more damage which he claimed to have been made aware of once he had taken his motorcycle for the repairs estimate. It is noteworthy that the Complainant stated that he was unaware of pictures having been taken on a second occasion and that the foregoing version of events does not conform to reality.

The RGP officer however formed the opinion that the estimate included damages caused by previous unreported incidents. The Ombudsman queried whether the RGP had a mechanism in place where they seek the opinion of an expert when dealing with these cases. The RGP explained that they had not seen this necessary as the RGP officer formed an opinion based on the damage shown and the estimate provided.

Lack of information/updates

The Complainant was not given thorough information relating to the status of his claim during the course of the RGP's investigation. He was told that the matter was being passed from one section to another with no extensive updates. The Complainant was also told that his case was going to be revisited a second time but was not informed of the outcome. This is not in keeping with the RGP's Customer Care Charter which states:

"When you send us a letter, email or fax, we will provide a full response within 14 days and ensure that our correspondence is clear and easily understood…..When you complain to us, you have the right to expect high quality services from us……We will investigate the complaint thoroughly and let you know the outcome".

Information passed onto the FS.

The Ombudsman wanted to know how and who decided what evidence to pass onto the FS for a request for an ex gratia payment considering that regardless of the £683 stated on the works estimate, an amount of only £45 was requested. The RGP stated that the RGP officer formed an opinion based on that which is reported, observed and investigated and in this case the RGP officer's opinion was that the damage caused to the Complainant's motorcycle amounted to £45. The RGP officer investigating the case claimed that he had tried to find previous reports to include in his investigation but was unsuccessful as there was no record of those ever being made. The RGP's stance was that the Complainant's reported damage was historical rather than that solely sustained on 26th March 2012.

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CONCLUSIONS

Throughout the years, the Ombudsman has received complaints in relation to the very poor standard of service that those claiming against the Ministry for Housing receive. Indeed, the investigations reveal that there is a rather lengthy period of time between the claim being lodged and a final resolution, which is usually that liability is denied. In fact, the claims procedure which the Ministry for Housing had in place was so poorly structured, almost unworkable and unfair to the claimant, that the Ombudsman had no option but to recommend that it should be scrapped. This recommendation was accepted and those claiming against the Ministry for Housing are now told to pursue their claim via the judicial process (usually the Small Claims Court).

It is important to explain that the complaints relating to claims which are brought to the Ombudsman's attention are small domestic claims (hardly ever in excess of £1000) which have resulted from such matters as allegations of poor workmanship or lack of maintenance resulting in loss and damage of personal property (the Ombudsman presumes that large scale claims are dealt with via lawyers and insurers).

The claim presented by the Complainant fell into the same category of claim, i.e. a small claim.

In order for the Ombudsman to reach a decision as to whether to uphold this Complaint or not, he decided to contrast 'What Happened' to 'What Should Have Happened'. In order to carry out this exercise, the Ombudsman sought the expert opinion of an insurance company

What Happened

This is a claim of a very simple nature in which the RGP was presented with a claim for damages to a motorcycle which had allegedly been caused by a gate within their precinct.

Upon receiving the verbal complaint, the RGP rightly asked the Complainant to produce an estimate of the value of the repair. The RGP decided to class this incident as a Road Traffic Accident when in reality this was no more than a claim for damages caused by a gate to a stationary motorcycle belonging to the Complainant. Further, the Complainant was also asked to produce his driving licence, insurance and MOT for no good reason as this was not a road traffic accident. There then follows the photograph events where the first photo taken was deemed to be of a poor quality and more pictures were necessary. The RGP provide an account of how these were obtained and how the Complainant had showed them additional damage whilst the Complainant states that those events never took place. Also, the Ombudsman queried whether the RGP had a mechanism in place where they seek the opinion of an expert when dealing with these cases. The RGP explained that they had not deemed this necessary as the RGP officer formed an opinion based on the damage shown and the estimate provided.

At the stage of providing information to the Ministry for Finance to seek payment, the RGP provide an account by the RGP officer who formed an opinion based on that which is reported, observed and investigated and in this case the RGP officer's opinion was that the damage caused to the Complainant's motorcycle amounted to £45 and that the Complainant's reported damage was historical rather than solely sustained on the 26th March 2012.

It is clear to the Ombudsman that the RGP acted as judge and jury when dealing with this claim.

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What Should Have Happened

If the claim had been handled by a professional insurance company, the steps and time frames would have been as follows:

In contrast to the above, an insurance company would in the first instance seek to establish liability. The claim would be validated on the basis of whether there has been negligence or otherwise. If negligence is established, then liability is admitted. Based on the facts, the RGP accepted liability (albeit for settlement on an ex gratia basis).

Once a claim is accepted, an independent professional assessor is appointed to deal with the actual damage caused by the incident and establish the value of the claim. Usually, the findings of the independent assessor are binding on both parties.

Past or Present Events?

The RGP maintained the opinion that the Complainant was claiming for historical damage which had happened prior to his reported incident of the 26th March 2012. However, we have to note that the Complainant clearly explained the present and past events to them in his letter of 7th May 2012 where he stated that he did not think the previous incidents warranted formal reports as they were of minor importance.

This sort of disparity of events and misunderstandings could be avoided by appointing an independent assessor.

From an administrative perspective, the Ombudsman was disappointed at the delay of almost nine months in processing what should have been a straightforward claim and formed the view that such a delay was unreasonable in the circumstances.

SUGGESTION

It is now time for HM Government of Gibraltar to consider implementing a uniform procedure across all Government departments and Agencies which will be simple to use and understand and importantly, where fairness and time frames will be of the essence.

CLASSIFICATION: SUSTAINED

RECOMMENDATIONS

Given the difference of opinion between the RGP and the Complainant, the RGP should, without any further delay, appoint a professional independent assessor to assess the true quantum payable for this claim.

UPDATE

ON 31ST JULY 2013 THE RGP INFORMED THE OMBUDSMAN BY WAY OF EMAIL THAT AN INDEPENDENT ASSESSOR HAD INDEED EXAMINED THE DAMAGE ON THE COMPLAINANT'S MOTORCYCLE. THE ASSESSOR HAD ALSO INTERVIEWED BOTH THE OFFICER RECEIVING THE REPORT AND THE COMPLAINANT HIMSELF. THE ASSESSOR ESTIMATED THE DAMAGE TO BE £487.29. CONSEQUENTLY A REQUEST FOR AN EX-GRATIA PAYMENT WAS BEING MADE TO THE FINANCIAL SECRETARY TO BRING CLOSURE TO THIS INVESTIGATION.

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Partly Sustained

CS/ 999

Complaint against the Royal Gibraltar Police and the Employment Service for non-replies to the Complainant's letters of complaint dated 13th September 2012 regarding the lack of investigation into his complaint in April 2012 that his signature on a termination of employment form had been forged

COMPLAINT

The Complainant was aggrieved because the Royal Gibraltar Police ("RGP") had not replied to his letter of complaint dated 13th September 2012 regarding the lack of investigation into his complaint in April 2012, that his signature on a termination of employment form ("Form") had been forged.

He was further aggrieved because the Employment Service ("ES") had not replied to his letter of complaint dated 13th September 2012 regarding the lack of investigation into his complaint in April 2012 that his signature on the Form had been forged and monies due to him by his employer had not been paid to him.

BACKGROUND

The Complainant explained that because the Company ("Company") he worked for had defaulted in payment of his wages he notified them that he would not return to work until the matter was resolved. A number of weeks later, mid-April 2012, the Complainant claimed to have visited the ES and was informed by one of the labour inspectors that his employment had been terminated as per the Form filed by his employer and signed by him (the Complainant). When the Complainant was shown the Form he stated that he had not been paid monies due to him which included annual leave and notice (but yet two payments were shown on the Form) and pointed out to the labour inspector that the signature on the Form was not his. According to the Complainant, the labour inspector based on the allegation of forgery, directed him to the RGP for the matter to be investigated. Nonetheless, the Complainant believed that the ES would investigate his Complaint of not having received payments due to him by the Company.

The Complainant reported the matter to the RGP later that day but claims that despite having requested updates by visiting RGP Headquarters in person during the ensuing months and phoning, he had been unable to obtain information and only recently been told by the RGP that they could not look into the matter of the forged signature; he was informed that it was a matter for the labour inspectors. On the other hand, the Complainant claimed that the ES had told him they could not continue to investigate his case without an RGP report on the matter. Furthermore, the Complainant stated that on another occasion, the labour inspector had told him that they could not help him and that everything was in order.

In September 2012 the Complainant wrote to the RGP to complain about the service provided and the fact that his report had not been investigated thoroughly. Not having received a reply by October 2012 after having sent a chaser letter, he put his Complaint to the Ombudsman.

The Complainant followed the same procedure with the ES. The outcome, non-reply, was the same in this case and so the Complainant also brought this Complaint to the Ombudsman.

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INVESTIGATION

(i) Complaint against RGP

The Ombudsman sought information from the RGP as to how the Complainant's case had been handled. RGP explained that on being approached by the Complainant in mid-April 2012 with the allegation that his signature on the Form had been forged, the RGP officer ("Officer") who attended to him informed him that employment matters were dealt with by the ES. The RGP stated that they furnished the Complainant with the contact details for the labour inspectors at the ES and also contacted one of the labour inspectors who confirmed that those matters did fall within the ES' remit and would be looked into. According to the Officer, over the coming months, the Complainant visited New Mole House Police Station ("Police Station") on several occasions and informed them that he was unhappy with the service being provided by the ES. The Officer explained that as a result of the Complainant's claims a meeting was arranged with one of the labour inspectors which he and another RGP officer attended. According to the Officer, at that meeting the labour inspector stated that the Complainant's case had been investigated and that the ES was satisfied with the employer's actions and the Form handed in at the ES and added that the Complainant would be informed accordingly. On the 7th September 2012, the Officer stated that the Complainant visited the Police Station. On this occasion he requested a copy of the RGP's report (on the date when he reported the matter of the forged signature on the Form) which he stated the labour inspectors had asked him to obtain so that they could continue to look into the matter. The Ombudsman inspected a copy of the report and noted that it was dated 7th September 2012 and not April 2012, the original date on which the Complainant reported the matter. The RGP explained that in April 2012 the matter was not recorded as a crime as it was decided that the matter fell more appropriately with the ES and stated that their (RGP's) involvement ceased at that point. RGP stated that the request from the Complainant for a police report should be seen within the backdrop of the RGP's belief that the matter was being exclusively handled by the ES and that in a bid to assist the Complainant entered a crime report. RGP emphasised that between April and September 2012 nothing had changed and explained that the problem with the types of allegations like the one brought by the Complainant was that a large proportion of the initial stages was spent in establishing whether or not a criminal offence had been committed. RGP explained that on occasions it was easier to get a positive result for the Complainant through regulatory offences than through the criminal justice process as the latter required a higher balance of proof. RGP stated they could have taken the case on but assessed that it was better for the Complainant if it was dealt with by the ES. RGP stated that if ES had disagreed with that view they would not have accepted their referral and would not have taken the investigation on board.

Regarding the non-reply to the Complainant's letters of the 13th September and 4th October 2012, the RGP confirmed that they had not replied, on the assumption that the matter was being handled by the ES but noted that as is common courtesy, they should have been acknowledged.

(ii) Complaint against the Employment Service

The Ombudsman met with ES staff (labour inspector and higher executive officer ("HEO")) who explained that in April 2012 the Complainant had visited the ES offices to complain that he had not been paid redundancy on termination of his employment. On checking their records, the labour inspector noted that the Form had been signed by the Complainant thereby agreeing to the payments stipulated by the Company on the Form (Basic -300£; Basic 560£) as having been made at the date of termination.

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On inspecting the Form, the Complainant alleged that the signature on the Form was not his and that he had not been paid notice of termination nor been paid the hours stated in the contract. The ES asked the Complainant to complete a 'Statement of Witness' ("Statement") for the Ministry of Enterprise, Training & Employment. The Ombudsman was shown said Statement which contained:

(i) the Complainant's employment period (just over a year with the Company);

(ii) the Complainant's claim that he had not been paid notice of termination;

(iii) the Complainant's allegation that the signature on the Form was not his and that he had not been paid the hours stated in his contract.

The ES also provided a copy of a standard form for complaints to labour inspectors which the Complainant had completed noting:

(i) Redundancy not paid;

(ii) Why not paid remuneration as per contract.

The ES explained that the allegation of the forged signature on the Form could give rise to a criminal offence and could only be investigated by the RGP. Dependent on the outcome of the RGP's investigation, the ES could then pursue their investigation into the other claims made by the Complainant against the Company. Until then, the ES was satisfied that the information contained in the Form was correct. The ES explained that all terminations of employment were accepted by the ES as being true and correct. They explained that the onus was on the Company to notify the Director of Employment and there was no way to verify that the information provided was correct/ true, unless a complaint was made to the labour inspectors and an investigation undertaken.

The ES explained that in similar cases, they had provided a certified true copy of the Form to the person making the allegation and directed them to the RGP. The ES could not recollect the Complainant's case specifically but was certain that a copy of the Form would have been provided to him and he would have been advised to report the matter to the RGP.

The labour inspector confirmed that he had met with the RGP informally and discussed the Complainant's case and been told by the RGP that they did not have the resources to investigate the Complainant's allegation. The latter statement was substantiated by a contemporaneous note made by the HEO on the Complainant's file on the 15th June 2012 following a conversation with the RGP which stated that the RGP had explained that they did not have the resources to follow up the Complainant's claim and would let it rest. Notwithstanding the aforementioned, the HEO contacted the Attorney General's Chambers and noted (also from a note on file) that until the RGP proved that the signature on the Form was not that of the Complainant's, ES could not instruct the Company to either pay notice nor issue a summons against them.

The ES stated that they had verbally updated the Complainant with the aforementioned information but explained that he did not want to accept the explanation. An undated note in the Complainant's file supported the statement. There is no record on file at the ES of the RGP having been notified of the Attorney General's Chambers advice.

Regarding non-reply to the Complainant, the ES provided a copy of their reply to the Complainant's letter dated 4th October 2012. In the letter, the ES apologised for the delay in replying and provided the Complainant with the information as already stated above; the RGP having informed the ES that they were unable to verify the signature and the advice received from the Attorney General's Chambers. ES stated on the letter that this had been explained to the Complainant but he did not want to accept the explanation. The Ombudsman noted that the Complainant's address on his letter of the 13th September 2012 was different to the address stated in his letter of the 4th October 2012 and enquired if the ES had sent a copy of the reply to the Complainant's new address. The ES confirmed that was the case. Notwithstanding, the Ombudsman highlights that the Complainant had a duty to notify the ES of his change of address.

Regarding the way forward, the ES stated that the Company was no longer trading in Gibraltar. The Ombudsman queried on what recourse would have ordinarily been available to the Complainant under the circumstances. The ES stated that in the event that an investigation substantiated the Complainant's claims that the Company owed him monies, there was a possibility that those payments could be met through the 'Insolvency Fund'.

For completeness of records the Ombudsman requested a company profile from Companies House which noted that the last annual return of the Company had been filed in November 2012. As far as Companies House records, the Company was active.

CONCLUSIONS

The Complainant's allegation of his signature having been forged on the Form was in the opinion of the ES, the matter that had to be investigated before his complaints of not having received monies due to him by the Company could be looked into. Until such time as it could be proven that the signature on the Form was not that of the Complainant's, the ES took the contents of the Form as being true and correct.

The Ombudsman was astonished at such a statement. The Complainant had informed the ES that he had not received the sums as stated in the Form, yet all that the ES could (unbelievably) do was to sit and await the outcome of a non-existing investigation by the RGP and accept the contents of the Form as TRUE and CORRECT irrespective of the Complainant's claim that he had not received the monies as mentioned in the Form.

At the very least, the ES should have contacted and visited the employer to check their records against the allegations of the Complainant. Furthermore, the Ombudsman observed that although Section 13 of the Form requested details of payments made on termination of employment, the Form in this case noted two amounts which did not specify the type of payment being made to the Complainant, i.e. annual leave, notice, redundancy payment, etc. The ES should have queried the Form in the first place and should have, in any event, sought clarification from the Company as to the nature of the payments.

Without doubt, the Complainant has been ill served and the ES has failed in the duty which they are called to perform.

For these reasons, the Ombudsman decided to sustain this part of the complaint against the ES.

Regarding the complaint of non-reply, the Ombudsman's investigation found that the ES did reply to the Complainant.

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The allegation of forgery made by the Complainant could give rise to a criminal offence and as such fell within the remit of the RGP to investigate and not the ES. Noteworthy is the fact that contrary to the ES' statement that the RGP did not have the resources to follow up the Complainant's allegation and would let the matter rest, at no time in this investigation have the RGP provided this information to the Ombudsman. To the contrary, the RGP have stated that they could have taken the case on but assessed that it was better for the Complainant if it was dealt with by the ES and that if the latter had disagreed with that view they would not have accepted their referral and would not have taken the investigation on board.

From the outcome of this investigation it is clear that despite approximately one whole year having elapsed since the Complainant first made his allegation, no investigation has been carried out by either the RGP or by the ES in respect of the Complainant's allegations of being owed monies by the Company. In the meantime, the Complainant, if his allegations are true, has been left out of pocket and according to the ES the Company is no longer trading in Gibraltar.

The Ombudsman sustains the Complaint of non-reply by the RGP to the Complainant's letter of the 13th September 2012 and lack of investigation into his allegation that his signature had been forged. Regardless of the explanation provided by the RGP that the matter was being handled by the ES, it must be noted that the Complainant's letter was one in which he stated that he was formalising his complaint to the RGP and as such should have received attention. Regarding the allegation of the forged signature, the Ombudsman's investigation has established that because this could give rise to a criminal offence, the issue could only be investigated by the RGP.

Regarding the Complainant's request to the RGP for a police report, the Ombudsman can only conclude that the Complainant was unclear as to what the ES had told him, i.e. that the RGP had to investigate the allegation of the forged signature before the ES could issue a summons or instruct the company to pay notice.

CLASSIFICATION

RGP

Sustained: Non-reply to Complainant's letter of complaint dated 13th September 2012 regarding the lack of investigation into his complaint in April 2012 that his signature on a termination of employment form had been forged.

Employment Service:

(a) Not Sustained: Non-reply to Complainant's letter of complaint dated 13th September 2012.

(b) Sustained: Lack of investigation into his complaint in April 2012 that his signature on a termination of employment form had been forged – Sustained

RECOMMENDATIONS

That the RGP urgently investigate the Complainant's allegation of the forged signature and that the ES be informed of the outcome to enable them to conclude the matter. The ES' findings will determine if the Complainant is entitled to payments from the Insolvency Fund or otherwise.

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Case Sustained

CS/1003

Complaint against the Royal Gibraltar Police ("RGP") in relation to non reply of two emails sent to the RGP Commissioner ("the Commissioner") dated 21st September and 1st November 2012

COMPLAINT

The Complainant was aggrieved because after various exchanges of correspondence with the RGP in relation to an ongoing investigation, he emailed the Commissioner on the 21st September 2012 and subsequently on the 1st November 2012. No replies were received to either mail.

BACKGROUND

The Commissioner wrote to the Complainant on the 14th September 2012. This followed from various exchanges in correspondence and a meeting held between the RGP and the Complainant, relating to a complaint which the Complainant had lodged with the RGP. The Commissioner's letter set out the RGP's view on the complaint and stated that it was based upon the results of enquiries conducted and legal advice received.

The Complainant replied on the 21st November. In his letter he sought answers to what he deemed to be issues which had not been appropriately addressed in relation to the complaint. Six weeks elapsed and in the absence of a reply, the Complainant again wrote to the Commissioner requesting answers to the various issues raised. No reply was received. The Complainant was of the view that this constituted administrative malpractice and that he should have been afforded the courtesy of a reply. As a result, he filed his complaint with the office of the Gibraltar Public Services Ombudsman.

INVESTIGATION

The Ombudsman presented the complaint to the RGP requesting their comments. The Ombudsman received a holding reply shortly thereafter. A substantive letter followed stating that there had been contact between the RGP and the Complainant, commencing at the time that the Complainant lodged his complaint in August 2011. The letter stated that two meetings had been held and that there had been an exchange of correspondence between the Complainant, the Commissioner and the RGP investigating officers. This resulted in the Commissioner writing to the Complainant on the 14th September 2012 detailing the outcome of the inquiry. As far as the RGP was concerned, the content of the 14th September letter set out the RGP's "definitive position" on the matter. However, there was an admission in the RGP's letter to the Ombudsman that the Complainant's letters of the 21st September and 1st November remained unanswered. A suggestion was made to the Ombudsman that the lack of reply to the Complainant could be mitigated by the RGP view that the enquiry could be taken no further. This proposition could not be accepted by the Ombudsman as constituting good administrative practice on the RGP's behalf.

CONCLUSION

The implied suggestion by the RGP that a reply to the Complainant was not necessary because the enquiry could be taken no further is, in the Ombudsman's judgement, not the appropriate course to have followed and was not in keeping with established administrative procedures.

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The RGP under its Customer Care Charter states:

"When you send us a letter, email or fax, we will provide a full response within 14 days and ensure that our correspondence is clear and easily understood…. When you complain to us, you have the right to expect high quality services from us… We will investigate the complaint thoroughly and let you know the outcome"

On the basis of the above extract, the RGP failed in the following respects:

" [To] provide a full response within 14 days";
"[To] provide high quality services"

The Ombudsman sustained the Complaint on the basis of the RGP's failure to adhere to good administrative practice and to its own Customer Care Charter, despite the RGP view that the case had been closed.

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Case Not Classified

CS/1020

Complaint against the Royal Gibraltar Police ("RGP") in respect of (1) the imposition of a parking ticket when the RGP had made it known that penalties would not be issued and (2) the non-cancellation of the fine further to an appeal by the Complainant

COMPLAINT

The Complainant complained that she had been issued with a parking ticket unjustly and was also aggrieved by the fact that the RGP had dismissed her subsequent appeal to have the ticket cancelled.

BACKGROUND

The Complainant complained that she was issued with a parking ticket on the 30th April 2013 for parking a vehicle "on a footpath contrary to Regulation 3(4) of the Traffic (Parking and Waiting) Regulations 2011". The ticket carried a fixed penalty of £50 with a standard 50% discount if paid within fourteen days. The Complainant felt aggrieved because only a few days prior to the imposition of the ticket, she had received a leaflet ("the Leaflet") from the RGP which stated; "…as you are aware, we are currently not enforcing parking legislation on vehicles parked on the pavement. In saying so, we kindly ask that motorists do not abuse this and park vehicles indiscriminately, without taking into consideration that they are blocking the whole of the pavement making it impossible for elderly persons using mobility scooters and persons pushing prams to use the pavement…we thank you for your cooperation"

The Complainant informed the Ombudsman that she had parked her car on the pavement within the Edinburgh estate, allowing plenty of space for pedestrian use. After having received and read the Leaflet, the Complainant had knowingly parked her car with consideration for other users. The Complainant left the stationed vehicle on the pavement whilst she took her shopping home. She was of the view that she had not parked "indiscriminately" and as a result should not have been fined.

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On the 2nd May 2013, the Complainant completed an RGP "parking fine cancellation form" and gave reasons for seeking the cancellation. As an attachment to the form she stated that she had received the Leaflet from the RGP and having noted its contents, assumed that vehicle owners who parked their cars on the pavement with consideration for pedestrian users would not be fined. She also included a copy of her "Morrisons" shopping bill as proof that she had at the time been unloading goods from her car and was taking them home.

The Complainant received a reply to the request for cancellation some days later from the RGP. It stated that "after due consideration…the Fixed Penalty Notice will not be cancelled". The Complainant did pay the fine but unhappy with the state of affairs, filed her complaint with the Office of the Ombudsman on the 22nd May 2013.

INVESTIGATION

The Ombudsman presented the complaint to the RGP on the 13th June 2013 and requested their comments. A telephone call was received by way of holding reply, followed by a substantive letter towards the end of July. The reply received accepted that the Flyer was "ambiguous in terminology and sent a mixed message in that on the one hand the police were not enforcing parking laws whilst on the other [they] would be reporting offenders who parked indiscriminately." According to the RGP the meaning of the Flyer was intended in a community friendly manner to give notice that the RGP were giving "a sort of period of grace" to advise residents not to park indiscriminately following which enforcement would be started. It was this mixed message insofar as the RGP was concerned that created the ambiguity. The letter went on to state that as a matter of record, parking on footpaths was an offence irrespective of whether a vehicle blocked the said footpath or not. Due to the uncertainty created by the wording of the Flyer and with the explicit caveat that parking on a footpath was illegal, the RGP took the view that the parking ticket issued being the subject of this complaint, be cancelled.

The Ombudsman sent the RGP further correspondence to enquire on the steps the Complainant should take for reimbursement of the amount of the fine. The Ombudsman was subsequently informed by email that the Complainant would receive a cheque in the post.

CONCLUSION

The Ombudsman was grateful to the RGP for their prompt attention to this complaint which led to its speedy resolution, and was also pleased with the fact that the RGP, upon a reassessment of the parking ticket, gave the Complainant the "benefit of the doubt". By way of comment, the Ombudsman noted that the RGP had stated that parking on footpaths was illegal and that the Leaflet had perhaps been unclear on the RGP's intentions.

However, upon review, the Ombudsman found the content of the Leaflet to be quite clear and in his mind, created no ambiguity in its wording in that it stated… "we are not currently enforcing parking legislation on vehicles parked on the pavement". The Leaflet simply requested the exercise of consideration towards other users by car owners in circumstances where they did park on the pavement/ footpath, adding that indiscriminate parking "[would be] reported for process" ie fined. Therefore, the entire community friendly exercise was dependent upon the subjective assessment of the officer issuing the parking ticket as to whether the vehicle was parked indiscriminately or otherwise. These type of scenarios may create problems as has occurred with the complaint in hand. In the opinion of the Ombudsman, the RGP in pursuing their community friendly campaign could have issued instructions for parking tickets not to have been issued for the duration of the "grace period," except where a member of the public may have made a justified complaint of a particular vehicle. Given the Ombudsman's views as expressed above together with the fact that the issue was satisfactorily resolved, the Ombudsman did not think it appropriate to classify this complaint.

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Department of Social Security

Case Sustained

CS/1000 - CS/1011

Complaint against the Department of Social Security ("DSS") in relation to delays by the DSS in dealing with applications filed by the Complainants for disability allowance.

COMPLAINT

The First Complainant complained that she applied for disability allowance in respect of her young son in May 2012 and that to the date of filing the complaint with the Ombudsman, she had not received a reply from DSS.

The Second Complainant was aggrieved because he made an application for disability allowance in October 2012 and at the date of filing his complaint with the Ombudsman his application had not even been acknowledged by DSS.

BACKGROUND

The First Complainant

The First Complainant complained that she applied for disability allowance for her one year old disabled son in May 2012. To the date of filing her complaint with the Ombudsman six months later, she had still not received a reply to the application from DSS.

The Complainant stated that she had chased the matter vigorously. She needed the extra income she had applied for desperately, since both she and her partner were unemployed. The Complainant alleged that she knew that the paediatrician who had been treating her son, had written a medical report for the DSS, close to the time of the application. Yet, when she made enquiries at DSS, she was told that they were still waiting for the doctors' report.

The Second Complainant

The Second Complainant complained to the Ombudsman that he applied for disability allowance in October 2012 and that he had not received a reply to his application from DSS.

The Second Complainant was 32 years old and lived alone in a Government allocated flat. He was experiencing hardship since he was only in receipt of social assistance benefit in the amount of £40.20 every two weeks. The Second Complainant's mother informed the Ombudsman that he had suffered a major accident some years ago and that his injuries consisted of trauma to the brain, problems with his lungs and gallbladder and liver. As a result, he left employment on medical grounds and as a consequence, was unable to survive on the benefits he received. He was therefore in desperate need of a reply to his application for disability allowance from DSS.

INVESTIGATION

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

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The First Complainant

The Ombudsman presented the complaint to DSS on the 6th November 2012 and requested their comments. A reply by e-mail was received a few days later. In their reply DSS stated that disability allowance was not supported by specific legislation but that it operated under administrative arrangements. DSS correctly defined the allowance as a "non- contributory allowance payable to persons who are permanently and severely disabled from birth." The reply went on to state that the benefit was introduced many years ago to cater for disabled persons mainly with down syndrome, severe cerebral palsy and severe mental retardation.

The following are the provisions within the "Social Assistance Arrangements" for awarding disability allowance:

"Assistance for severely disabled persons only applies to persons who are severely disabled from birth except for such cases which may be specifically approved by the Director in his discretion."
"On the production of a medical certificate or other evidence to the satisfaction of the Director, a monthly allowance may be awarded to or in respect of a person of whatever age, who is permanently severely disabled by physical or mental disability."

The Ombudsman noted the discretion conferred upon "the Director".

DSS also stated in its reply that there had been an upsurge in applications for disability allowance. In view of the brief guidance available, the Ombudsman considered that given the potentially wide spectrum of medical conditions which would inevitably result in applicants making claims, DSS would benefit from more clearly defined parameters and would need to rely on specific medical advice from doctors in individual cases. This would allow DSS to properly assess applications on a case by case basis.

In accordance with the Ombudsman's view, the reply also stated that…. "in order to assess this situation Government is set to review the disability allowance system currently in place. They have an electoral manifesto commitment to establish clear and objective criteria to address the problems faced by those who become disabled but were not born with the disability."

DSS also confirmed that the persons who had made a claim for disability allowance, such as the First Complainant, had been "reassured" that if approved, the allowance would be paid retrospectively from the original date of the application.

Although the Ombudsman was appreciative of the very frank and substantive reply from DSS, the statement that "[claimants] for disability allowance had been reassured", was not in keeping with the First Complainants complaint that six months had elapsed from the date of her application and that she was still awaiting a reply from DSS. Instead, the First Complainant had alleged that every time she approached the DSS counter requesting an update on the nature of her application, she was given conflicting information such as "the doctor has not replied with the relevant information" or even that "her son was not a severe enough case [to qualify for benefit]". As a result, the Ombudsman wrote to DSS again, setting out the contradictory versions provided by the First Complainant and DSS, and requested clarification.

Subsequently, a letter was received from DSS confirming that the First Complainant's application had been retrospectively approved with effect from the date of the application, i.e., May 2012.

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Although the Ombudsman was pleased with DSS's decision to grant the First Complainant's application, he was also puzzled at the approval, given the earlier information provided by them setting out the disability criteria. The Ombudsman wrote to DSS and sought further clarification of the process that had been involved and of the circumstances which had prompted DSS's decision to grant the application.

For completeness of records and in order to provide full information for any similar future enquiries which may arise, the Ombudsman requested a copy of the new criteria that, to his mind, must have been agreed upon by DSS for all disability benefit applications. DSS wrote back confirming that there was "no new criteria for the award of disability allowance" and that the First Complainant's application had been "approved on the basis of updated medical reports recently submitted by the First Complainant's son's doctor[s]".

Since at the time when the application was being assessed by DSS, there had existed a factual disparity between the information provided by both the doctor and DSS to the First Complainant as to when the medical report had been submitted, the Ombudsman wrote to DSS once again requesting information as to when the medical report had been provided to them, and at who's request.

Although no written reply was received to this query, the Ombudsman was invited and accepted a request for a meeting by DSS to discuss the content of the First Complainant's application and the circumstances which led to its approval.

The Second Complainant

The Ombudsman set out the Second Complainant's grievance by letter to DSS on the 7th February 2013. The Ombudsman stated that four months had elapsed from the date of the application for disability benefit but that the DSS had not furnished the Second Complainant with a reply. Additionally, he referred to the fact that according to the Second Complainant, his mother regularly visited DSS offices for an update on the application but had been allegedly told, that there was a back log of applications and that since DSS were reviewing all applications individually, they could not provide her with a reply.

To the date of drafting this report, DSS did not reply to the Ombudsman's letter setting out the Second Complainant's complaint.

CONCLUSION

The Ombudsman found this Complaint (particularly in relation to the First Complainant), difficult to reconcile. Conflicting chronological accounts were provided by the First Complainant (based upon what her son's doctor had told her as to when he had submitted the medical report) against DSS's version. Irrespective on when the report was prepared and made available, the Ombudsman could only find that despite the information provided to the Ombudsman at his meeting with DSS, the First Complainant had suffered considerable and unnecessary delay in having her application acknowledged and subsequently granted.

In regard to the Second Complainant, the Ombudsman was disappointed not to have received a reply to his letter setting out the grievance of delay in respect of his application for social benefit. This he found unacceptable and not in keeping with good administrative practice.

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Although the Ombudsman was satisfied that in the end the First Complainant's application was approved, he was concerned with the lack of guidelines within the "Social Assistance Arrangements" provisions which would ordinarily determine the result of disability benefit applications. This lacunae, together with the vagueness attributed to the Director's exercise of his discretion within the provisions, does little, if anything, to assist the DSS in its task of assessing applications and less still for Complainant's seeking to apply for what would in all likelihood be necessary financial assistance for sufferers of disabilities.

In addition to expressing concern on the lack of guidelines, the Ombudsman also noted the significant absence of any criteria (old or new) and lack of general policy adopted by successive Governments in relation to disability benefit. However, the current Administrations' recognition of these issues in their manifesto, and their pledge to address them by establishing "clear and objective criteria to address the problems faced by those who become disabled but were not born with the disability…," is a factor which the Ombudsman welcomed.

Despite the above, on the basis of the Ombudsman's "what happened and what should have happened" principle as the yardstick of good administrative practice, the Ombudsman could only find that due to the lack of clearly defined policy, information and the delay suffered by both Complainants, the DSS failed in their treatment of both Complaints being the subject of this investigation and report.

CLASSIFICATION

First Complainant- sustained on the basis of delay;

Second Complainant- sustained on the basis of delay, lack of acknowledgement and action on the application

RECOMMENDATION

That the DSS review the disability allowance system currently in place and that they implement criteria in order to clarify and facilitate the application process for disability benefit to those applicants who may be eligible to receive it.

UPDATE

SUBSEQUENT TO THE DRAFTING OF THIS REPORT, FURTHER LETTERS CLAIMING DISABILITY ALLOWANCE HAD BEEN SUBMITTED TO DSS. THESE HAD BEEN ACKNOWLEDGED AND CLAIMANTS HAD BEEN INFORMED THAT THEIR REQUESTS WERE RECEIVING DSS'S ATTENTION.

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Case Sustained

CS/1023

Complaint against the Department of Social Security ("DSS") due to their non reply to an application for a child welfare grant

COMPLAINT

The Complainant complained that she had made an application for a child welfare grant ("the Application") at the offices of DSS on the 14th February 2012. Up to the date of filing her complaint with the Ombudsman some thirteen months later, she had not received a reply to the Application.

BACKGROUND

The Complainant stated that she had declared her income on the Application since she had been working at the time but left her employment in September 2012. She also declared her same sex partner's income. The Complainant's civil partnership had been registered in Scotland, but since same sex civil partnerships are not legally recognised in Gibraltar, the Complainant had been unable to register her partner's name on their daughter's birth certificate. Nevertheless, the Complainant thought it prudent to state that her partner also had an income. Apparently, this had been the issue which has caused the delay in DSS reverting on the outcome of the Application.

The Complainant also informed the Ombudsman that throughout the intervening period from the time when she made the Application up to the date upon which the complaint was filed with the Ombudsman, she had regularly telephoned the DSS and attended their counter in person to enquire on progress, yet she had been consistently told that no decision had been made. The Complainant proceeded to request a meeting with the head of DSS. The request was granted and a meeting ("the Meeting") was subsequently held on the 24th July 2012. The Complainant informed the Ombudsman that the meeting was attended by her together with her partner and the president of the Gibraltar Gay Rights Movement ("GGR") in support of the Complainant. The Complainant alleged that at the Meeting she was informed that her file had been passed to the Minister with responsibility for Social Affairs, and that since this was the case, DSS could not provide any further assistance.

In August 2012, the Complainant's partner asked the Minister's secretary for an update and was informed that she would receive a call. That call never materialised. A month later, the Complainant's partner met with the Minister outside her office and took the opportunity to ask on the progress of the Application. The Minister was allegedly unable to provide any information.

The Complainant stated that in hindsight, she should not have declared her partner's income on the Application. Had she not done so she would have, in all likelihood, been entitled to the family allowance. She felt that as a consequence of having attempted to do things properly and be transparent, her family had suffered as a result.

The Complainant was aggrieved by the delay in the Application being processed and due to this, filed her complaint with the Office of the Ombudsman on 25th March 2013

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INVESTIGATION

The Ombudsman presented the Complaint to DSS and requested their comments. Pursuant to a chaser letter, a reply was received shortly afterwards.

The letter in reply made reference to the allegation that "to date [the Complainant] had not received a reply." DSS acknowledged that although no written reply had been received to the Application, "face to face meetings" had taken place and that additionally, the Complainant had been appraised on the telephone on numerous occasions.

The letter also stated that at the Meeting, the Head of DSS did not say that the file had been passed to the Minister and that as a result, DSS could not assist any further as alleged by the Complainant. Instead, what was in fact said according to DSS, was that Government was looking into the matter given its declared commitment to the introduction of the Civil Partnership Act. Those present at the meeting were then allegedly informed that Government was in the process of drafting the appropriate legislation and until said law was enacted, the Complainant's Application for a Child Welfare Grant could not be considered.

CONCLUSION

The Ombudsman was unable to reconcile the different versions of events provided by the Complainant and the DSS.

Despite this, the Ombudsman was of the view that the Complainant should have been replied to formally in writing on the status of the Application by DSS.

In accordance with the principles of good administration, the application of which is the yardstick against which all investigations made by the Ombudsman over public bodies are measured, the Ombudsman opined that it would have been desirable for the DSS to have proceeded as suggested and responded to the Complainant in writing.

It would have also been beneficial to the Complainant if the DSS could have provided her with an estimated time frame of when the pertinent legislation would be effective. The Ombudsman considered that had this information or advice been made available, the Complainant could have then freely exercised the choice of whether to have allowed the Application to have taken its course or as a possible alternative, withdrawn it and re-applied for the Child Welfare Grant as a single mother. The Complainant would have been perfectly entitled to proceed in this way given that since same sex marriages are not currently legally recognised in Gibraltar, the Complainant was, for all events and purposes insofar as Gibraltar law is concerned, a single mother with no legal obligation to declare her partner's income.

CLASSIFICATION

Sustained due to the lack of a formal reply to the Complainant's Application for a child welfare grant.

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4
Statistical Information

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4.1 VOLUME

Complaints received, completed and current by month – 2012 & 2013

Table 1	2012			2013		
	Received	Completed	Current	Received	Completed	Current
			80			72
January	10	13	77	39	29	82
February	18	23	72	39	41	80
March	15	17	70	14	17	77
April	19	17	72	19	25	71
May	29	20	81	15	15	71
June	22	21	82	21	22	70
July	20	14	88	16	15	71
August	19	24	83	22	21	72
September	27	21	89	30	38	64
October	29	38	80	60	44	80
November	31	29	82	25	22	83
December	12	22	72	11	18	76
TOTAL	251	259		311	307	
Enquiries		131			135	

This year, we received 311 Complaints in our office, an increase of 60 Complaints compared to 2012, where we received 251 Complaints. Taking into account the active complaints brought over from the previous year, a total of 307 Complaints were completed by the end of this year which left 76 Complaints open by the end of 2014. This year we recorded 135 Enquiries, an increase of 4 compared to 2012, when we received 131.

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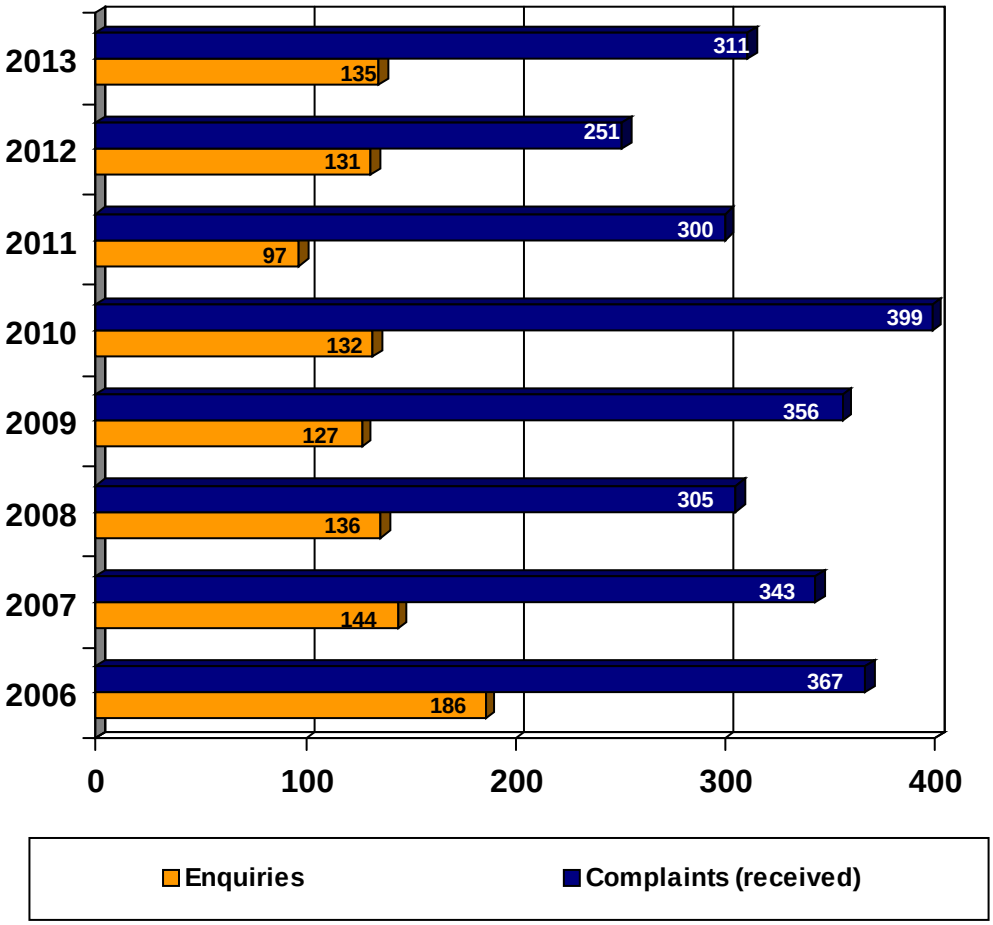
4.1 (CONT)….

Chart 1 - Breakdown of Complaints and Enquiries received from 2006 to 2013



This year we have received 311 Complaints and 135 Enquiries.

From the 311 Complaints we received, 69 were against private organisations that fall outside the Ombudsman's jurisdiction. This left a total of ***242*** Complaints received against government departments, agencies and other entities which fall under our jurisdiction. (*See Table 2 Page 114*- ***Complaints/Enquiries received by departments/entities in 2013***).

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4.2 GOVERNMENT DEPARTMENTS AND OTHER ENTITIES

The trend of Complaints has continued similar to previous years with the Housing Department (68), the Housing Works Agency (57), the Employment Service (23), the Civil Status and Registration Office (18) the Department of Social Security (14) the Income Tax Office (11) and the Gibraltar Health Authority (10) attracting the highest number of Complaints.

Table 2 - Complaints/Enquiries received against departments/entities in 2013

Dept/Agency	Enquiry	Complaint	Dept/Agency	Enquiry	Complaint
Archives	0	1	**Housing Works Agency**	3	57
Attorney General's	0	1	**Human Resources**	1	0
Aqua Gib	3	4	**Income Tax Office**	2	11
Care Agency	1	8	**Land Property Services Ltd**	1	2
Civil Status & Registration	17	18	**Office of the Chief Minister**	1	0
Courts Service	1	3	**Port Authority**	1	1
Development & Planning Com	1	0	**Prison Service**	0	1
Education & Training	2	1	**Royal Gibraltar Police**	5	6
Employment Service	5	23	**Social Security**	8	14
Environmental Agency	1	1	**Sports & Leisure Authority**	0	1
Gibraltar Electricity Auth	0	1	**Technical Services**	2	0
Gibraltar Health Auth	9	10	**Town Planning & Building**	1	2
Gibraltar Post Office	0	1	**Transport & Licensing**	1	4
Gibtelecom	0	1	**Treasury**	0	2
Housing Authority	59	68	**TOTAL :**	**125**	**242**

As in previous years complaints relating to housing issues (Housing 28% and Housing Works Agency 23%) continues to be the most prevalent form of complaint lodged in our office. Although complaints against the Housing Authority have decreased this year from 91 to 68, one must note that complaints against the Housing Works Agency have increased substantially from 13 to 57.

This year we have to highlight the amount of complaints against the Employment Service (23) which has surprisingly replaced the Civil Status and Registration Office (18) as the department/ entity with the third's most complaints received against. Complaints against the Employment Service were in respect of the lack of replies for information, alleged unprofessional treatment received at the counter at the Employment Service and the dissatisfaction of members of the public with issues regarding payment of claims under the Insolvency Fund.

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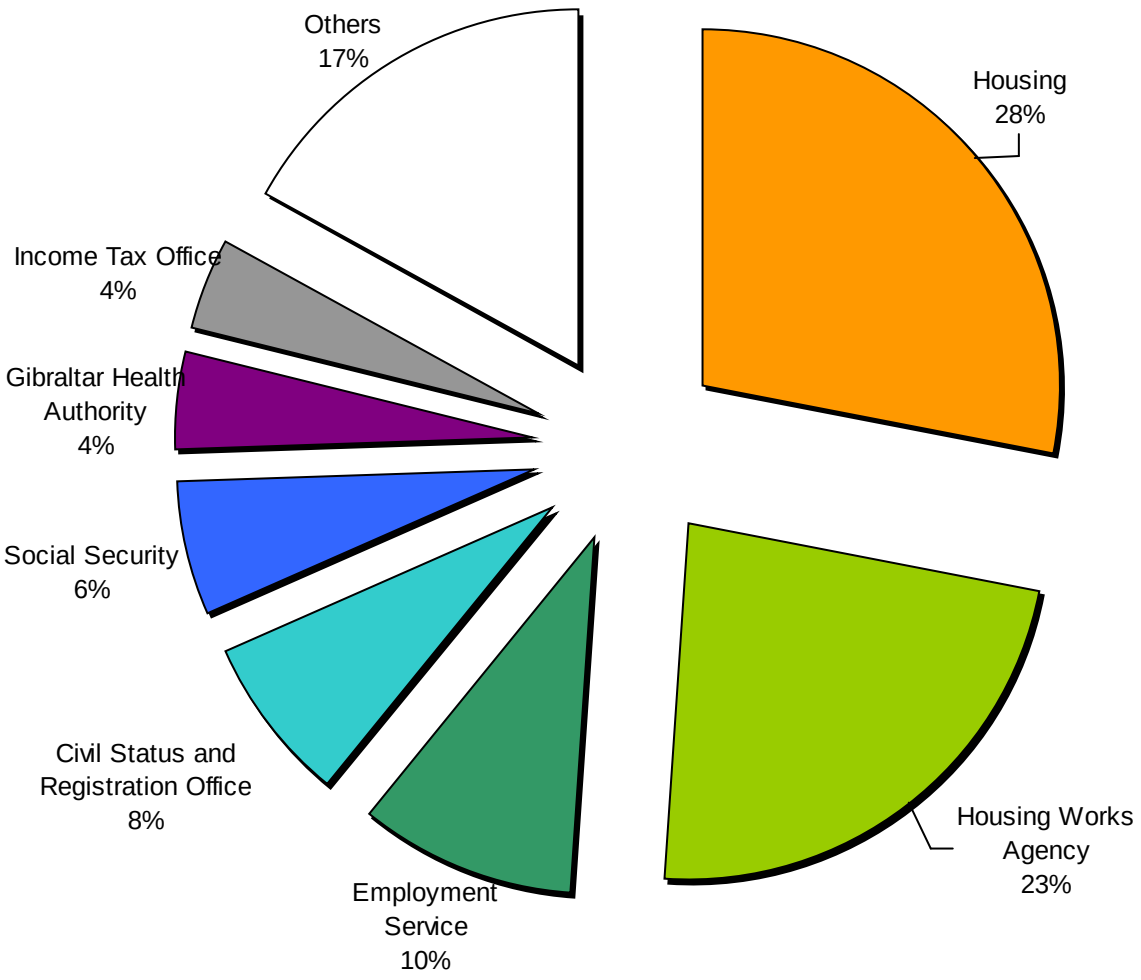
4.2 (CONT)….

Chart 2 - Complaints received by departments/entities in 2013



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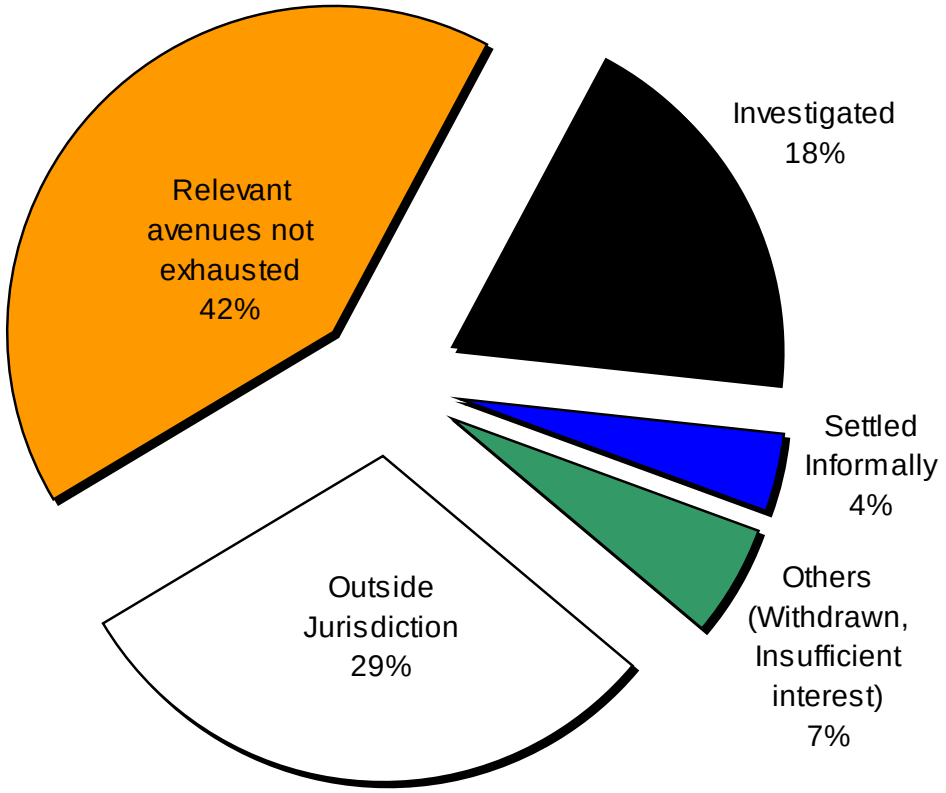
4.3 PROCESSING DATA

There were 307 Complaints classified this year out of which, 90 (29%) were classified as outside jurisdiction, hence they could not be investigated by the Ombudsman. 128 (42%) were closed as 'Relevant Avenues Not Exhausted' (RANE).

Twelve (4%) of the Complaints were settled informally as they were resolved by assisting the Complainant without the need to initiate an investigation. A further 20 (7%) were classified as 'Others', they were either withdrawn or after our initial inquiries into the complaint there was insufficient personal interest shown by the Complainant.

Chart 3 - Classification of Concluded Complaints (%)



Fifty seven Investigations (18%) were concluded by the end of the year. Out of the 57 (30 sustained, 21 not sustained, 5 partly sustained and 1 was not classified), 24 of the Complaints were resolved through informal action, whilst the other 33 warranted an extensive report (16 brought forward from 2012 and 17 from 2013) Out of these 33, 19 were sustained, 8 were not sustained, 5 were partly sustained and 1 was not classified.

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4.4 RECOMMENDATIONS

Identifying where there is a need for improvement in the administrative machinery is a major function of any Ombudsman. An Ombudsman's worth within a community may be measured against the quality of recommendations and whether these recommendations are accepted and subsequently implemented. Over the last twelve months we have made a total of 18 recommendations on 13 cases that we have investigated and completed in 2013. Twelve of these recommendations have been accepted and implemented whilst the remainder (6) have been accepted, we are still pending confirmation by the relevant departments of there implementation.

Nine out of the 18 recommendations drawn up this year have been of cases investigated against the Ministry for Housing. Some of them involved specific recommendations to the investigations but there were also general recommendations made. There was an instance were there was a failure to address numerous reports of water ingress to a Complainant's flat from the neighbour's flat above. It was recommended that in cases where the Housing Works Agency (HWA) find that damage to public housing is being caused as a result of negligence due to private repairs/works which a tenant has undertaken, HWA notify the Housing Authority accordingly for the matter to be pursued and exercise the powers of entry to abate the damage being caused by the Neighbour. *(see CS/985, Annual Report Annex 2013)*

We also made a recommendation that more substantial checks should be conducted to ensure that applicants for Government Housing are eligible to apply and that preconditions for eligibility such as continuous residence in Gibraltar and non-ownership of private housing locally remain in force and are reviewed as thoroughly as possible. Declaration forms submitted by applicants prior to and at the time of allocation of properties should also be thoroughly checked and verified, and that sanctions be imposed in cases where the information provided by applicants is inaccurate, false or materially incorrect. *(see CS/991 Annual Report Annex 2013)*

We also made specific recommendations on two separate investigations against the Royal Gibraltar Police (RGP). The first investigation involved delay by the RGP in addressing a claim for compensation for damage caused to the Complainant's motorbike and given the difference of opinion between the RGP and the Complainant in respect to the value of the claim, we recommended that the RGP should appoint a professional independent assessor to assess the true quantum payable. This recommendation was acted upon as soon as the investigation was finalized. *(see CS/986, Page No.91)* The other investigation involved the lack of investigation into a complaint that the Complainant's signature on a termination of employment form had been forged and we recommended the RGP to urgently investigate the Complainant's allegation of the forged signature and that the Employment Service be informed of the outcome to enable them to conclude the matter. This recommendation was also acted upon once the report was drafted. *(see CS/999, Page No.97).*

All other recommendations included in our case reports in our Annual Report 2013 & Annual Report Annex 2013.

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Table 4 - Breakdown of classification of complaints received by departments / entities in 2013

Dept/Agency	Avenues not exhausted	Out of Jurisdiction	Withdrawn/IPI, Trivial, Others	Formal Investigation		Resolved through informal action		Settled Informally	Open	Total
				Sustained	N/Sustained	Sustained	N/Sustained			
Aqua Gib	2	1	-	-	-	-	1	-	-	**4**
Archives	-	-	-	-	-	1	-	-	-	**1**
Attorney Generals	1	-	-	-	-	-	-	-	-	**1**
Care Agency	2	4	-	-	-	-	-	-	2	**8**
Civil Status & Registration Office	10	-	1	-	-	-	-	2	5	**18**
Courts Services	2	1	-	-	-	-	-	-	-	**3**
Education	1	-	-	-	-	-	-	-	-	**1**
Employment Service	15	5	-	1	-	-	-	1	1	**23**
Environmental Agency	-	-	-	-	-	-	1	-	-	**1**
Gibraltar Electricity Auth	-	1	-	-	-	-	-	-	-	**1**
Gibraltar Health Authority	5	2	-	-	-	-	1	1	1	**10**
Gibraltar Sports & Leisure	1	-	-	-	-	-	-	-	-	**1**
Gibtelecom	1	-	-	-	-	-	-	-	-	**1**

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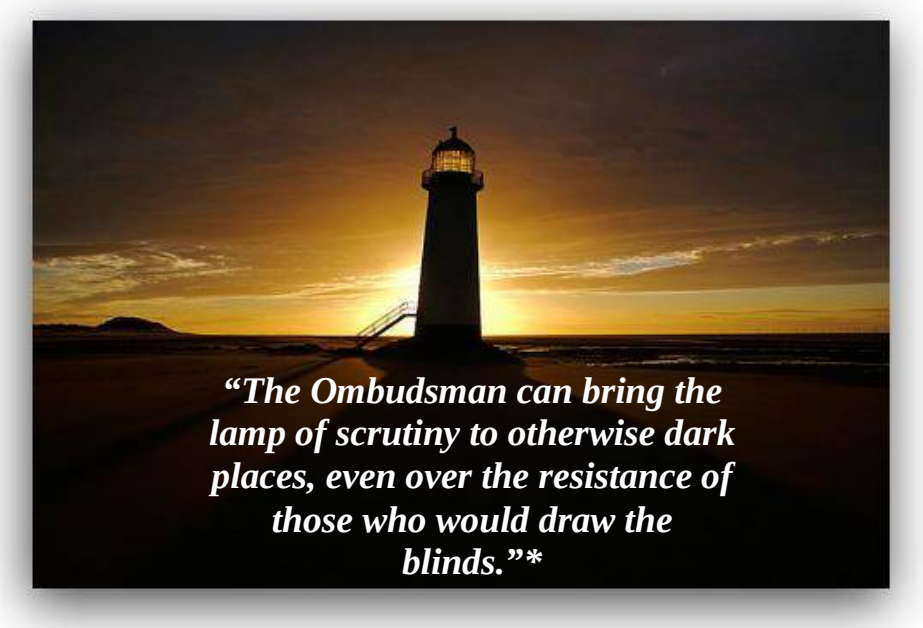
Table 5 - Breakdown of classification of complaints received by departments / entities in 2013

Dept/Agency	Avenues not exhausted	Out of Juris-diction	With-drawn/IPI, Trivial, Others	Formal Investigation		Resolved through informal action		Settled Informally	Open	Total
				Sustained	N/Sustained	Sustained	N/Sustained			
Housing Authority	38	2	4	1	2	4	3	-	14	**68**
Housing Works Agency	28	-	8	3	-	2	1	5	10	**57**
Income Tax Office	8	-	-	-	1	-	-	-	2	**11**
Land Property Services	1	-	1	-	-	-	-	-	-	**2**
Port Authority	-	-	-	1	-	-	-	-	-	**1**
Prison Service	-	-	1	-	-	-	-	-	-	**1**
Royal Gibraltar Police	2	3	-		-	-	-	-	1	**6**
Royal Gibraltar Post Office	-	-	-	-	-	1	-	-	-	**1**
Social Security	7	-	1	2	-	-	3	-	1	**14**
Town Planning & Building	1	-	-	-	-	-	-	1	-	**2**
Transport & Licensing	2	-	1	-	-	-	-	-	1	**4**
Treasury	1	-	-	-	-	-	-	1	-	**2**



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

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The Gibraltar Public Services

Ombudsman

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Gibraltar Public Services

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