Gibraltar Public Services

OMBUDSMAN

"The only time you fail is when you fall down and stay down."

ANNUAL REPORT 2012 GIBRALTAR

The Gibraltar Public Services

Ombudsman

Title: Public Services Ombudsman Annual Report 2012

Published by: Office of the Ombudsman, Gibraltar

Compiled by: Information Controller, Mr. S. Sanchez

Printed by: Office of the Ombudsman, Gibraltar

Front Cover Quote by: Stephen Richards

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

The Gibraltar Public Services
Ombudsman

March 2013

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

Dear Mr. Picardo,

Annual Report 2012

It is an honour for me to present the Public Services Ombudsman's thirteenth Annual Report. This report covers the period 1st January to 31st December 2012.

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.

A small number of reports of completed investigations which are not contained in this report can be found in an Annex at http://www.ombudsman.org.gi/publications/annual-reports.htm

Yours sincerely

Mario M Hook

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 thirteenth Annual Report

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

INTRODUCTION

I recently heard someone say that a good story needs no explanation. This phrase attracted my attention and my mind was immediately drawn towards the reports that we write upon the conclusion of our investigations. I am of the opinion that we write good stories relating to the manner in which public service providers deliver their services to the public.

This Annual Report, as well as all other annual reports of past years, is full of good stories. Stories about real life situations which affect peoples' lives to varying degrees. The common denominator is that there always is an allegation of maladministration which has led a member of our community to lodge a complaint with the Ombudsman. The reader will note that we take great care to include sufficient detail in our reports so as to offer an insight into the workings of public service providers in Gibraltar.

Public services are an essential part of everyday life in most nations worldwide; indeed they play a very important role in the life of most citizens. Public services are present in peoples' lives almost from birth to death. Registration of important events (e.g. births, marriages, deaths), immigration, health care, are but a few examples. It is vital that those engaged in providing public service offer to the citizen a first class service. This must be so because of the unique and special position that they hold in society.

They operate almost like a monopoly and almost invariably there is little or no choice available to the citizen as to where he or she can obtain a given service. If a person wishes to purchase a television set, that person will have a choice of stockists for the purchase of that television set. Having decided from where to make the purchase, that person will expect a level of service commensurate with the expectations of a modern society. If, that level of service falls short of what would be considered a good service, then that person has a choice to take his custom elsewhere to another stockist who will offer a better service. This is not so when a person requires a service from a public service provider, in this case there is (usually) no choice. This is more noticeable in a small place such as Gibraltar. It is of the utmost importance that those engaged in the delivery of a public service do so with the highest regard to the needs of the community which they serve. This consideration must be paramount in their daily dealings with the public.

As a taster of our reports and in an effort to illustrate my points above, I now summarise several of the reports which we have concluded during this year [2012].

Summary of CS/927 - Partly Sustained

Patiently waiting for my husband

The Complainant was aggrieved against the Civil Status & Registration Office (CSRO) because of the delay in processing an application for a residence permit for her husband, a non -EEA national. The Ombudsman found that it had taken the CSRO one year to forward the application on to the decision maker and that the period of time was excessive considering that there were no compelling reasons to justify the delay.

The Complainant continued to suffer the consequences of further maladministration in the unreasonable time that it was taking to arrive at a decision. The Ombudsman sustained the Complaint.

The Ombudsman recommended that the CSRO should give detailed reasons and explanations to enquiries made by persons waiting for decisions on applications and that CSRO should adhere to a period of no more than six months in which to forward on applications. This recommendation was accepted and implemented.

Full report can be found at Page 33.

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Summary of CS/992 - Sustained

And then there was water!

The Complainant was aggrieved because of the inaction on the part of the Housing Works Agency (HWA) or relevant entities, to remedy the problem of low fresh water supply to the Government rented flat (Flat) in which she resided. The Ombudsman found that HWA had carried out an onsite inspection and was able to ascertain that Aquagib (water supply company) had cut off the water supply to the Flat. HWA wrote to Aquagib to determine why the supply had been cut off. HWA found that the pipe system from the water meter into the Flat was in good condition. On an on-site inspection, Aquagib found that the water pressure up to the meter was good. The situation then was that the entities concerned reported that there were no problems with the supply up to the meter and then from the meter into the Flat, yet the Complainant reported low water pressure.

To resolve the impasse, the Ombudsman convened an onsite meeting with HWA and Aquagib. At that inspection, neither party displayed any knowledge of having cut off the water supply. Coincidentally, the previous day, subsequent to a phone call from an unidentified caller, the water supply was restored but to the Ombudsman's dismay neither HWA or Aquagib claimed responsibility. Although unable to direct his findings against any specific body, the Ombudsman sustained this Complaint and was in no doubt that the supply was restored as a direct consequence of the Ombudsman having convened the onsite meeting.

Full report can be found at Page 95.

Summary of CS/967 - Not Sustained

Under threat of arrest

The Complainant received a notice of fine (Fine) from the Magistrates Court (Court) on the same date on which payment for the Fine was due. The wording on the Fine stated that failure to pay on or before the appointed day would render the person liable to imprisonment. When he complained to a clerk at the Court he was told that because fines usually took a few days to reach defendants, staff at the public counter used a 'common sense' time allowance to cater for this. The Complainant felt that the wording on the Fine should not be taken lightly and under the circumstances amounted to malpractice and so put his Complaint to the Ombudsman.

The Court reviewed the wording and noted that it could worry someone who did not attend the Court in person when the Fine was set. The wording was revised so that the legal consequences of non-payment of the Fine could be explained to defendants. Furthermore, the Stipendiary Magistrate had advised Magistrates to set a fourteen day minimum payment period for a Fine when defendants did not appear in Court. The Ombudsman did not sustain this Complaint because he found no act of maladministration on the part of the Court. He did commend the Court for their proactive approach to this Complaint in the improvements made to the system as soon as the matter was brought to their attention.

Full report can be found at Page 112.

- -

Summary of CS/964 - Not Sustained

Who pays my social insurance?

The Complainant was aggrieved because the Ministry for Finance had failed to credit him with two years of social insurance contributions. The Complainant stated he had provided services as business adviser to a government department through his private company (Company) during that period. The Complainant provided the Ombudsman with the copy of a letter from a-Minister who was in office during the relevant period, to the effect that there was intent to restructure the basis upon which the Complainant provided his services to Government.

The Ombudsman's investigation found that the Complainant's sole income from July 1990 to December 1998 was that of Director's fees derived from the Company; payments to the Company were made without deduction of tax and social insurance to the Company. The Complainant registered as self-employed in October 1996 and the arrangement for the gross payment of fees by Government continued up to December 1998.

The Ombudsman was satisfied that there had been no maladministration in this case. In relation to the Minister's letter, the Ombudsman was of the opinion that there was a strong possibility that a legitimate expectation was created but the intention never materialized. The facts of this case are that the Complainant continued to be paid through the Company and having registered as self-employed in 1996 he should have made his social insurance contributions.

Full report can be found at Page 116.

- -

Summary of Case No 962 – Case Sustained

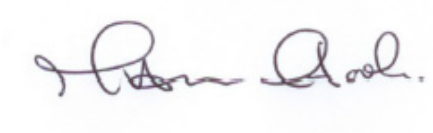
Uninhabitable Flat – Lack of Concern - Lack of Repairs

The Complainant claimed that the Housing Authority had failed to reallocate him from his flat which had become uninhabitable as a result of deterioration after a nine year wait for repairs. After investigating his complaint the Ombudsman found that although the Housing Authority assessed the damages at the time, they failed to carry out the necessary repairs he therefore sustained this complaint and stated that the delays encountered by the Complainant were unreasonable and attributable to poor administration. Notwithstanding, no repairs were carried out and the flat continued to deteriorate. In the long run, the inaction in relation to repairs resulted in a high increase in costs to the public purse which would have been averted had repairs been undertaken in a timely manner. More so, the grief, anxiety and stress caused to the Complainant and his family during a period of over nine years.

The Ombudsman was informed that the Complainant had been placed on an exchange list on medical and social grounds and was categorised as waiting for a 3 bedroom flat. After a long wait, the Complainant was offered a flat which needed extensive repairs. The Housing Manager informed the Ombudsman that works were being carried out through private contractors to speed up the process and not cause any further delay for the Complainant.

The Ombudsman sustained the complaint on the grounds that repairs to the Complainant's flat were never carried out and also on the grounds of the delay in allocating a flat to the Complainant.

Full report can be found at Page 71.



Mario M Hook
Ombudsman

2

Ombudsman's Review 2012

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

OMBUDSMAN'S REVIEW 2012

New Format for Annual Report

The Gibraltar Public Services Ombudsman Office always aims to provide the best service for its users.

In keeping with the opportunities which are available for the dissemination of information, this year we are introducing a new format for our Annual Report. It will now be distributed in USB Pen Drive format along with an information leaflet.

The USB Pen Drive will contain the full Annual Report and a host of links to our website and other websites of interest. It will also cater for 'free' space to be used at will.

(A limited number of hardcopies will be available for special requests)

An Additional Media to Communicate with us.

I am also pleased to announce that further to the launch of our redesigned website in September 2011 which provides support for the submission of online complaints and enquiries, we are now pleased to announce that, at the time of going to press, we are expanding our service facilities to our users by introducing Skype™ support to our office.

It is hoped that this novel addition 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.

Gibraltar Health Authority

In the next few months, we shall be vested with jurisdiction over the Gibraltar Health Authority ('GHA'). The necessary amendments to the Public Services Ombudsman Act have now been completed and the amended Act should be making its passage through Parliament soon.

My office has been busy preparing for this new jurisdiction. I believe that we are now ready to receive complaints relating to the GHA. Once the mentioned amendments find their way onto the statute books, we shall be carrying out an awareness campaign so as to disseminate as widely as possible our extended service to the community.

I would like to record my wholehearted thanks to Dr Tom Frawley, Ombudsman for Northern Ireland, for his assistance in providing training to my staff.

Our Investigating Officers attended training sessions in his offices and additionally, his Director of Health Investigations, Michaela McAleer, spent one week with us in Gibraltar also providing training. These initiatives will allow us to deal with GHA related complaints in an appropriate manner.

Without doubt, when investigating GHA complaints, we shall be dealing with clinical matters of which we have no knowledge or competence. In order to deal efficiently with such issues, we have signed a Memorandum of Understanding and a Service Level Agreement with the Health Service Ombudsman in the United Kingdom for the provision of clinical advice. As such, we shall have the benefit of the services of a large organisation from where to seek clinical advice with the added benefit of being sourced from outside Gibraltar, thus guaranteeing that there is no relationship by those providing the advice with the GHA.

Housing

As expected, the Housing Authority continues to attract the largest number of complaints. Housing has been at the top of the list of complaints since the very first year that the Ombudsman opened its doors to the public.

After dealing with so many complaints, for so long, spreading throughout the whole spectrum of housing issues, it would not be surprising for someone to ask if the Housing Authority is indeed paying any attention to what the Ombudsman is saying. Surely, there cannot be so many issues of maladministration whereby complaints of different nature continue to be lodged at the Ombudsman; the same type of complaint must be dealt with over and over again! Are they then the same type of complaints? Importantly, why is the Housing Authority not paying any attention to the recommendations of the Ombudsman?

In order to consider the above, the first thing that must be understood is that housing and housing related matters are special issues which affects a substantial part of our community. The Housing Authority is landlord to over four thousand domestic properties. This in itself already sets the scene to provide an answer as to why so many complaints. Of course, not all the properties are of recent construction, which gives way to such matters as, water ingress, dampness and a constant need for repairs and maintenance.

In addition to the large number of tenants, there is also the large numbers of people in the housing waiting lists. At any one point it is always in excess of one thousand applicants and behind each application there are two, three, four or more members of the same would-be household. Housing must be Gibraltar's foremost social problem. As explained above, the Housing Authority is landlord to a very large number of rental properties and is also the holder and manager of all applications for government housing. This is bound to generate complaints.

I am of the opinion that the staff at the Housing Authority works hard and carry out their work within a system which, to my mind at least, is old fashioned and wrought with bureaucracy. They put into effect the decisions reached by the Housing Advisory Committee, which is a faceless committee that has never met an aggrieved tenant or applicant; that is left to the Housing Manger and her staff, who face the brunt of complainants.

The public counter is housed within a small area. In all probability, this counter has to deal with more social concerns and related problems than any other counter in Gibraltar. Yet, the Housing Authority provides its service from this small and most inadequate location.

Having provided a brief overall picture of the Housing Authority I state without any doubt that the Ombudsman has had a profound effect in the way in which they provide their service to their customers. In the past there have been persistent complaints about delays in replying to letters, it is now very rare indeed to receive this type of complaint. One-line letters devoid of any meaningful information have also been the subject of many complaints, again this has almost disappeared. In the main, complaints continue to be lodged with us regarding the poor state of properties and the lack of repairs. This is still an unresolved area which I understand is being addressed but unfortunately it is an area which will take a considerable time to be fully addressed given the amount of properties which require repairs of an external nature. Of course, it is important to highlight the historical lack of a maintenance programme

To conclude, I must report that there is a very healthy relationship between my office and the Housing Authority, with almost weekly meetings with the Housing Manager. It is in these meetings where most of the complaints are dealt with and where the Ombudsman is able to offer his guidance.

Undoubtedly, the Housing Authority does take on board the views of the Ombudsman and has gone a very long way to provide a good service to those who need their assistance in circumstances which at times can only be described as difficult.

2.1 Conferences, meetings and seminars

2.1.1 'First Contact' Interest Group 10th Meeting

On Thursday 19th April 2012 the Gibraltar Public Services Ombudsman Office hosted the 10th meeting of the British and Irish Ombudsman Association 'First Contact' Interest Group at the Gibraltar London House at the Strand, London.

Representatives from ombudsman schemes included the Local Government Ombudsman Office, the Public Services Ombudsman for Wales, the Parliamentary & Health Service Ombudsman, the Scottish Public Services Ombudsman, as well as eleven other Ombudsman schemes.

All attendees were formally welcomed by the Gibraltar Public Services Ombudsman, Mr Mario Hook, and a presentation followed, giving a brief over-view of life in Gibraltar, and a synopsis of the workings of the Gibraltar Public Services Ombudsman Office. The Ombudsman then left the group to allow for the meeting to continue with its agenda.

The meeting went extremely well with all 22 attendees sharing valuable information about their experiences and learning's at the front office. Of special interest were the following points:

1. The Legal Ombudsman representative mentioned that her office was a 'paper-less' office, and that as such no paper-matter is printed or kept in the office but scanned and saved in their computer database. Most other Ombudsman schemes were aware of the need to reduce paper consumption and as such were trying to head towards a 'paper-light' office.

2. The possibility of scanning all mail at the point of entry.

3. Consider a 'Paper-Light' policy.

4. Communicate with Complainants/Departments even when nothing has happened as 'absence of information' causes uncertainty and can lead to assumptions being made.

'First Contact' Interest Group Meeting at the Gibraltar London Office in Lon-

2.1.2 2012 Annual Meeting of the Ombudsman Association

The 2012 Annual Meeting of the Ombudsman Association (previously know as BIOA) was held in Northern Ireland on the 17th & 18th May 2012. The Gibraltar Public Services Ombudsman is a voting member of the association. Mario Hook the Ombudsman and Nadine Pardo-Zammit our Public Relations Officer attended the two day event. The event also attracted the attention of international officials including European Ombudsman Prof. Nikiforos Diamandouros.

Annual Meeting of the Ombudsman Association, from left to right: Prof. Nikiforos Diamandouros, European Ombudsman, Emily O'Reilly, Ombudsman for Ireland, Peter Tyndall ,Ombudsman for Wales, Mario M Hook, Gibraltar Ombudsman, Tom Frawley, Northern Ireland Ombudsman

The event started with a lunch which gave everyone a chance to mingle with colleagues from across the world of ombudsmanry before attending the workshops organised for the day.

Mrs Pardo Zammit attended the workshops entitled 'Engaging the Media' led by Emily O'Reilly, Ombudsman for Ireland and 'Performance Management' led by Nicky Maclean, Director of Corporate Services, from the Scottish Public Services Ombudsman. Both workshops were very interactive and a wealth of information was shared by all schemes as to the different experiences each of us have had of using social media such as Twitter and Facebook and managing office performance.

A drinks reception was organised at Belfast City Council before the Association Dinner which was held in the very grand setting of the City Councils Banqueting Hall.

The 19th Annual Meeting followed the following morning at the Baby Grand Auditorium of Belfast's Grand Opera House, when Tony King was elected as the association's new chairman.

2.1.3 In-house training - Director of Health Investigations from the NI Ombudsman

From the 23rd July to the 27th July 2012, Mrs Michaela McAleer, the Director of Health Investigations from the Office of the Ombudsman for Northern Ireland came to Gibraltar for an in-house training at the Gibraltar Public Services Ombudsman Office providing technical and practical information to the Ombudsman and his team.

For Full Report visit our website - http://www.ombudsman.org.gi/announcements/in-house-training-in-our-office-provided-by-the-director-of-health-investigations

Mrs Michaela McAleer providing In-house training to part of our team

Following Mrs Michaela McAleer's visit to our office in Gibraltar, our Senior Investigating Officer, Nicholas Caetano together with our Investigating Officer, Karen Calamaro both underwent training at the Office of the Northern Ireland Ombudsman in Belfast from the 27th August to the 1st September 2012 in the field of Health/Clinical Complaint handling and investigation.

2.1.4 Public Sector Ombudsman Group, Wales

On the 2nd August 2012 the Ombudsman travelled to Cardiff to attend a meeting of the Public Sector Ombudsman group of which Gibraltar is also a member.

The meeting was hosted by the Ombudsman for Wales Mr Peter Tyndall. On the Thursday evening we attended a dinner hosted by Mr Tyndall with members of his staff also in attendance. During the dinner we had the opportunity of discussing matters of mutual interest on an informal basis. The formal meeting was held on the Friday morning with a full agenda.

Public Sector Ombudsman Meeting
hosted by the Ombudsman for Wales Mr Peter Tyndall

As always, from the many issues discussed, the Gibraltar Ombudsman was able to return with new proposals and ideas in order to improve the service which we offer those who seek our assistance.

2.1.5 I.O.I Ombudsman Practice Training Course in Vienna

Our Senior Investigating Officer, Nicholas Caetano, recently attended the I.O.I Ombudsman Practice Training Course in Vienna (17th-19th September). The training sessions were hosted by Queen Margaret University, Edinburgh.34 delegates from global Ombudsmen jurisdictions participated in the course, each one contributing to the forum by sharing their local experiences and raising awareness of the very distinct issues facing different Ombudsmen in their respective territories.

Mr Peter Kostelka together with all the delegates from global Ombudsmen jurisdictions that participated in the course

The course material was extremely varied and informative. Areas discussed both individually and in group/table sessions included:

Operating within legal frameworks (functions of the Ombudsman, limitations to remit, redress and remedies).

- Managing conflict and challenging behaviour from complainants
- Complaint diagnosis and development (making reliable decisions on whether to investigate)
- Investigation planning and reasoning
- Gathering and managing facts/evidence
- Effective interviewing skills
- Critical thinking and decision making
- Reaching and acting on reliable findings-making proportionate recommendations
- Producing clear written documents and reporting persuasively

This is not the first occasion that a member of the "O" Team attends an I.O.I. course accredited by a higher education provider.

Nicholas has commented, "it is invaluable that the Gibraltar Public Service Ombudsman team participate in events such as these. Primarily and most significantly, because by doing so, we are able to share our experience and knowledge and also learn from the working practices of other colleagues within different jurisdictions, the aim of this being, to enable us to improve on the already comprehensive service we provide to our citizens. Secondly, the presence of a Gibraltar representative at international events secures and reiterates the respected position our current Ombudsman holds within the Ombudsman world"

Nicholas exchanging views with fellow European counterparts in the I.O.I Ombudsman Practice Training Course in Vienna

2.1.6 8th Regional Seminar of the European Network of Ombudsmen

On the 14th-16th October, the Ombudsman and Senior Investigating Officer attended the 8th Regional Seminar of the European Network of Ombudsmen in Brussels, jointly hosted by the Flemish Parliament and the Parliament of the Wallonia-Brussels Federation.

The event consisted of two, full day seminars. The first, entitled "the role of the regional Ombudsman" was conducted at the Flemish Parliament. The attendees were addressed by speakers of international repute on the implications for Ombudsmen of the increase in internal dispute resolution mechanisms, and the role and significance of the European Network of Ombudsmen, both from Ombudsmen and Complainant perspectives. This was followed by a dinner hosted at the Flemish Parliament where the Gibraltar representatives took advantage of the opportunity to network and exchange views with their European counterparts.

Events on the second and final day took place at the Parliament of the Wallonia-Brussels Federation and consisted of discussions over the importance of Ombudsmen communicating with citizens and administrations.

Ombudsman, Mario Hook and his Senior Investigating Officer, Nicholas Caetano participating in the 8th Regional Seminar of the European Network of Ombudsmen in Brussels

It is of special importance for the Gibraltar Ombudsman and his staff to participate in international events such as this one. Not only does it reinforce the significance of our local Ombudsman within the European and International framework, it also provides his office with the invaluable opportunity to learn from the experience and views of his counterparts and to share his own experiences with colleagues.

2.2 Evaluation study of our work - Senior Law Lecturer, Dr Richard Kirkham

From the 3rd September to the 7th September 2012, Dr Richard Kirkham, Senior Law Lecturer from the School of Law at the University of Sheffield came over to Gibraltar to conduct an evaluation study of the work we carry out in our office. The background to this proposal is that the direction of Dr Kirkham's current work is to move from reviewing the possibilities of the ombudsman institution to finding ways to evaluate the real impact of the institution.

There has been surprisingly little written on the topic in the ombudsman community itself, but Dr Kirkham believes that his previous work on the ombudsman provided him with the background knowledge and understanding of the institution necessary to put together a thorough review of our office. He has a reasonably clear vision of what an ombudsman office should, ideally, be achieving and how it should, ideally, fit into the wider constitutional/ governance framework.

Dr Kirkham with the Ombudsman on a tour visit of the Upper Rock of Gibraltar

Ultimately, his ambition would be to put together a report which we might be able to use to think about the position of our ombudsman scheme after 14 years of operation and possibly make available more generally. Such a report on our office may also be of use in terms of fostering wider debate about our office or defending it, as the case may be.

The Gibraltar Public Services Ombudsman is set within the classical ombudsman schemes (albeit with an addition and flavour of our own idiosyncrasies given our size) which has been operating in Gibraltar since 1999. Thus we are a relatively young institution which will allow Dr Kirkham to carry out research from its main original players, who are still available for interview and comment.

Ever since he was appointed Ombudsman, Mario Hook's aim has been to deliver a first class service to those who come to us for assistance. For the past ten years this office has been attending conferences, seminars and meetings whenever possible in order to gather as much information as possible so as to ensure that the Ombudsman's aim of providing an excellent service to the community as a whole can be achieved. Mr Hook's opinion is that the Office of the Ombudsman in Gibraltar already provides a very good service and we continue to seek improvement.

Mr Hook unhesitatingly welcomes the proposed evaluation study of this office. We have no doubt that Dr Kirkham's work will provide a good overview as to the worth of the Office in the community and possibly a roadmap for its future direction especially in these changing times.

2.3 Ombudsman's Website

We have registered 24056 web visits in 2012; a monthly average of more than 2000 web visits. When we first launched our website back in the last quarter of 2011 we were registering an average of 1000 visits, they have doubled since, so we can say that our webpage is gaining popularity amongst users who are making good use of the wealth of information it contains within. We have also had 39711 web page views in 2012. *See right, Table 1.*

Part of this growth has been due to the fact that we have our social media webpages and e-newsletters linked to our website and this generates more visits to our webpage. Other factors that have influenced the increase of web visits must be the international conferences that we have been attending during the year. This has surely gained us recognition within the 'Ombudsman World 'resulting in the increase in the number of website visits.

Table 1

Month	*Web Visits*	*Page Views*
January	1089	2751
February	1222	2550
March	1619	3377
April	2827	4674
May	2062	3410
June	2182	3450
July	1869	2692
August	2221	3333
September	2295	3249
October	1991	3274
November	2144	3395
December	2535	3556
TOTAL:	**24056**	**39711**

China by default is the country that tops the table with 5,507 web visits but one must take into account that they have a population of around 1.3 billion! USA with 5257 web visits shows that although they also have a considerable population it is also the most technologically powerful economy in the world and hence the many web visits originating from this country.

Table 2

COUNTRY	WEB VISITS	WEB PAGES
CHINA	5,507	7,898
UNITED STATES	5,257	5,813
GIBRALTAR	**2,135**	**7,619**
UNITED KINGDOM	1,993	3,813

Interesting to note that Gibraltar has recorded 7619 web pages (nearly 4 pages per user) which shows that many users within Gibraltar have been browsing through the contents and information made available from the list of different categories within our webpage, and not just our homepage. One must also mention the United Kingdom who also show that they have been busy browsing through our webpage with 1993 visits and 3813 web page views. *See Table 2 above—Web visits and webpage views of the Gibraltar Public Services Ombudsman website.*

2.4 Personal perspectives from our staff

Development in report writing—An opinion by our Investigating Officer

When in 1999 the Gibraltar Public Services Ombudsman offices opened its doors, there was a massive influx of complaints. Each formal complaint was investigated and a report produced. During the ensuing years, as complaints stabilised somewhat and with the dawn of a new Ombudsman, Mario Hook, the style of report writing changed. His innate entrepreneurial character, a facet of which is to always strive for improvement and development, translates into frequent analysis of the way the Office of the Ombudsman operates across the board. In the report writing field it was therefore decided to produce in-depth reports of investigations of those formal complaints. The finished report contained much more detail than its precursors and also narrated findings in the investigation in a rather chronological manner. Whereas for the complainants and the entities this approach may have been the preferred option because it was concise and detailed, the report could in some cases prove to be somewhat long winded and not user-friendly for the average reader when said reports were published. For that reason, the Ombudsman and the Investigation Team opted on a middle ground style for the current reports. This style conveys the salient and relevant parts of the investigation. Should it be the case that either complainants or entities require further detail on a given point, the file containing the documentation of the investigation can be referred to, and the issue expanded upon.

A contributing factor for our change in style of our report writing and the development of the office has been the links which the Ombudsman has established with the British & Irish Ombudsman Association (now Ombudsman Association) and the International Ombudsman Institute. Through these organisations, staff at the Ombudsman Office have availed themselves of the opportunity to undertake training in relevant courses organised by these entities.

Our Investigating Team has participated in courses which have benefited their investigative and report writing skills and also given them the chance of meeting colleagues from Ombudsman organisations around the world resulting in valuable exchange of experiences and learning.

The Ombudsman encourages his staff to attend courses which will be of benefit to the office, with the ultimate aim of providing the best possible service to those who seek our service.

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Do Public Services deal with complaints effectively? Are Complainants justified in seeking the assistance of the Ombudsman Office? - An opinion by our Public Relations Officer

The Gibraltar Public Services Ombudsman receives an average of two to three new complaints and enquires per day. A lot of the contact made by clients is in the form of requests for information and advice related to problems they are encountering with Public Service Providers ('PSP'). A large aspect of the role of our Office and specifically the frontline-staff is therefore to listen sympathetically to people and sign-post them to where they should direct their complaint or what they should be doing to solve their grievances.

The fact that the general public are using the Ombudsman as much as they do does prompt the question whether PSP are indeed providing a good service to their customers. What we have no doubt of at the Ombudsman Office is that each unheard complaint or client that is prematurely 'dismissed' represents a missed opportunity by the PSP to provide a quality service and, in respect of complaints, an opportunity to reflect on what has gone wrong, put things right and stop mistakes happening again; the result being a better service to the end-user, i.e. the general public.

Many complaints may seem to be about small and insignificant issues e.g. delay in replying to letters or that insufficient or incomplete information has been provided. PSP's must remember that the client is the very reason why they are there in the first place; '*a customer is not an interruption to our work, he/she is the purpose of it',* (this quote by Mahatma Gandhi is one of the fundamental considerations in our office). When handled well, complaints can make a big difference, not only to the individual concerned, but also to the organisation and its future effective service to the general public.

Statistics gathered at the Ombudsman Office over the years have shown a decline in complaints against PSP's, so it seems that these entities are working better towards good complaint handling. Having said this, it is noteworthy that enquires at our office never cease , showing that people still have the need to direct their questions to us, questions which perhaps PSP should be answering themselves.

What is also evident is that there is no common framework between government departments and public entities on how to handle complaints. In order to best handle complaints it is important that the PSP's publish a clear and simple process for clients to use. Service users want complaints resolved within reasonable timescales and want to be listened to and treated with respect. It is therefore imperative that the phone gets answered and emails and letters are replied to in a timely manner. Perhaps we could have a common complaints mechanism for all public services. In UK there is a Cross-Government Complaint Handling Forum with Senior Civil Servants and Government Ministers coming together in order to share best practise and learn from each departments experience and agree on standards.

In July 2011 the UK Government published the Open Public Services White Paper. The open public services agenda is driven by the Government's desire to make sure that everyone has access to the best possible public services, and that the best become better still.http://www.openpublicservices.cabinetoffice.gov.uk/

In effect what is evident is that the 'frontline staff' that needs to be empowered so that information is easily available to them. Complaints at the counter, even those made verbally, must be recorded and counter staff need to have the time to explain matters to their customers and have access to people who can advise and get problems solved. A good organisation will have experienced counter staff with personnel that care about customers and about what they are telling them. Treating people fairly at the front-line means listening to them and giving them useful and valuable information and assistance.

This year it is hoped that the Ombudsman will be able to provide some guidance in complaint handling to all those entities under its jurisdiction with the aim of helping all PSP's deliver a high-quality public service.

I believe that there is room for improvement in respect of PSP's dealing with complaints effectively. Empowering the front-line with people who have knowledge and experience of their job as well as empathy would go a long way in providing a better service for customers. What we can say for certain is that if service users are not happy with the service provided by PSP's then it is evident that people want an ombudsman service that is transparent, open, and objective and has the authority to hold organisations to account for their actions. This I am happy to say is the case with the Office of the Ombudsman in Gibraltar.

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3
Case Reports

Distributing copies of our Annual Report 2011, from left to right: Mario M Hook, Ombudsman, Michaela McAleer, Director of Health Investigations for Northern Ireland Ombudsman, Nicholas Caetano, Senior Investigating Officer, Sarah De Jesus El Haitali, Graduate Research & Development Initiate, Karen Calamaro, Investigating Officer

Civil Status & Registration Office

Case Partly Sustained

CS/927

Complaint against the Civil Status & Registration Office for the delay in processing the Complainant's application for a Residence Permit for her husband; and in respect of the ill-treatment received from a senior member of staff

Complaint

The Complainant, a Gibraltarian woman, married a Non-EEA national man in November 2009 and subsequently made an application for a residence permit for her husband to reside in Gibraltar circa January 2010. The application was made through the Civil Status & Registration Office ("CSRO").

On the 17th January 2011 the Complainant wrote to the Head of the CSRO enquiring about her husband's application and pointing out that she had been waiting for over a year for a decision. She received a reply from the CSRO stating that the application had been processed and had been referred to Government for consideration.

The Complainant was not satisfied with the reply and wrote back to the CSRO pointing out that the reply she had been given was very poor and that it gave no explanations or reasons for the delay. In her letter the Complainant also alleged that she had been treated very badly by a specific senior member of staff. The Complainant alleged the senior member of staff had been rude and displayed a racist attitude when dealing with her enquiries. The Complainant stated that this senior member of staff had even gone to the extent of telling her that she should leave Gibraltar if she wanted to live with her husband.

On the 9th February 2011 the Complainant presented her complaint to the Ombudsman.

Investigation

It became evident to the Ombudsman that three core matters of potential maladministration arose out of the complaint, namely:

The delay in respect of the application;
The adequacy of the CSRO's replies to the Complainant; and
The conduct of the specific senior member of staff.

These core matters were accordingly put to the Head of the CSRO who subsequently replied to the Ombudsman.

So far as the Ombudsman has been able to ascertain there are two distinct methods of obtaining documentation to allow a Non-EEA national to enter Gibraltar. These methods are through the means of a VISA application for those VISA requiring nationals or through a Permit of Residence.

The VISA applications would ordinarily be made at the country of origin of the applicant through the British Embassy / Consulate and the Permit of Residence would be applied for locally through the CSRO.

In the instant case, although both parties made references to VISA applications the Ombudsman has been able to determine through his investigation that no such applications were made. The only application made was in respect of a Permit of Residence.

That important point having been clarified the Ombudsman made the following findings.

The delay

This is not the first case of this nature that has come to the Ombudsman's attention. It is therefore appropriate that the Ombudsman reiterate his conclusions of recent cases of this nature in relation to the issue of delay. The Ombudsman repeats that he is not at this stage concerned with whether the subsequent decision is to be favourable to the Complainant or not. It is the fact that the Complainant is subjected to an unjustified delay that concerns him.

In the jurisdiction of England and Wales it has long been established that unjustified delay is a well recognised and common species of maladministration whether it appears in the form of the main or contributory cause of the grievance. The same principle is applied by the Ombudsman here in Gibraltar. There have been cases where the Home Office in the UK has even had to apologise and make ex gratia payments on account of delay in the processing of immigration entry certificates.

In this context delay can have serious consequences as the issues at stake relate, in some cases, to fundamental rights. In this particular complaint the delay could potentially be affecting the Complainant's right to family life enshrined in the Gibraltar Constitution. Not to mention, the grief and distress, suffered by the Complainant during all the months during which she bore the uncertainty of not knowing whether or not her husband would be entitled to come to live with her.

The application for the Permit of Residence was processed pursuant to section 18(3) (b) of the Immigrations, Asylum and Refugee Act.

The application was made circa January 2010. The CSRO informed the Ombudsman that he had passed the application to the decision maker in January 2011 i.e. one year after the application was made. The Ombudsman is of the opinion that a period of one year to compile the necessary information is an excessive amount of time, unless there have been compelling reasons for the delay. However the Ombudsman has not been made aware that this was the case.

The CSRO should have passed the application earlier for a decision. As it happens there is now an added cause of delay which appears to be at the hands of the decision maker. If, as the CSRO indicates, on the 18th January 2011 the application with all supporting documentation and recommendations was passed to the decision maker, who the CSRO stated was the Minister for Personal Status, the Ombudsman considers that the Complainant has suffered further maladministration in the unreasonable time the Minister is taking to arrive at a decision either way.

The conduct of the specific senior member of staff.

It is much regretted that the Head of the CSRO did not deal with the complaint against the member of staff. In fact, so badly was this issue dealt with, that at the beginning the senior member of staff against whom the complaint had been made replied to the letter of complaint. Not surprisingly, there was a total absence of reference to the staff member's behaviour in the department's reply.

The Head of CSRO's subsequent reply to the Ombudsman on the allegation was a defensive statement. The Head of the CSRO said he rejected this and any other allegation cast on any member of his staff. The Ombudsman noted that there was no consultation, formal interview or other reasoned approach to the problem and yet the Head of the CSRO referred to the absence of concrete evidence on the part of the Complainant. The only point which the Head of the CSRO conceded was the fact that the senior member of staff had replied to the letter of complaint about herself. This, he noted, was much regretted and would be rectified for the future.

The Ombudsman empathised with the Complainant on this issue because of the negligent manner her complaint was dealt with. The Head should have met the Complainant in order to establish her version of events and also collate as much details as to the incident as possible. He should also have interviewed his member of staff to compare and contrast the allegations. At the very least he should have made sure that it was him personally that dealt with the response to the complaint.

Given the facts the Ombudsman would hope to see the introduction of some sort of remedial action to avoid these complaints arising again.

The adequacy of the CSRO's replies to the Complainant

This aspect has dual ramifications; in the first case, the void of reasons/explanations vis-à-vis the complainant of the delay and the second was the manner in which the CSRO replied to the complaint against the senior member of staff.

On the former case, the Ombudsman would advocate that the replies from the CSRO in relation to decisions or enquiries as to any delay should follow the Principles of Good Administration, as well as, the general principles of natural justice. They should therefore include reasons, including the basis for any decision, so that the recipient can properly comprehend the matters which are affecting her so as to enable that person to assess how to proceed.

Even though the Ombudsman makes the above criticisms the CSRO has recently experienced a number of positive new initiatives introduced by the Head of the Department. These include measures such as the introduction of personal interviews away from the public counters on designated days. Other aspects of change have been identified and are being considered in order to improve the service. However, the two prevalent failings highlighted in this report have to be addressed immediately because they impact directly on the fundamental rights of the individuals making use of the service.

Facilities

There is a secondary but relevant matter which the Ombudsman wishes to mention in this report because of its possible impact on the quality of service which individuals receive at the offices of the CSRO; and that relates to the facilities and layout at the office.

The layout and environment at the offices, in particular, those sections which the public make use of at the Passport office are inadequate and conducive to create a volatile environment. This is because of the layout of the place, the limited size of the waiting areas and importantly the lack of privacy. Of course in making these comments the Ombudsman recognises that the above infrastructure adversely affects both customer and the service provider at the counters and that is precisely the point he is trying to make.

It is important to note that the nature of applications dealt with at these offices are not of a type which are dealt within seconds, given that, more often than not additional information has to be submitted and some preliminary questions may need to be asked by the staff.

With regards to the main counters, at the Passport Office, the area in question is so small that it does not even allow for proper queues to be formed. This is relevant because the office operates in the form of individual counters for different requirements. Therefore, the staff at the counter appear to be doing the best they can in an environment which requires addressing in order to achieve a reasonable customer friendly service.

Classification

i). Delay in processing her application for a Residence Permit for her husband – sustained.

The Ombudsman's investigation showed that the Complainant had been subjected to undue delay.

ii). The ill-treatment received from a senior member of staff – not sustained

There were almost two diametrically opposed versions of events. Although the Ombudsman empathised with the Complainant, this was not sufficient to sustain the complaint.

Recommendations

1. The CSRO should give reasons and detailed explanations to enquiries made by persons waiting for applications to be determined.

2. The CSRO should ensure that they adhere to a period of no more than 6 months in order to collate, consider and pass applications of this nature to the decision maker.

3. The Applicants should receive a decision within a reasonable time after the application is submitted by the CSRO to the Minister.

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Development and Planning Commission

Case Not Sustained

CS/988

Complaint against the Development and Planning Commission ("DPC") due to delay in DPC responding to correspondence and communicating their decision on a planning application to which the Complainant formally objected and made representations

Complaint

The Complainant was aggrieved because up to the date of filing this complaint, the 26th June 2012, he had not received formal notification from the DPC in relation to a planning decision over which the Complainant had made objections on behalf of the Client. According to the Complainant, telephone calls and letters seeking the decision remained unanswered. As a result of the DPC's alleged inaction, the Complainant found himself unable to file a notice for judicial review in the Supreme Court of Gibraltar against the DPC within a reasonable time.

Background

The Complainant explained that the Client and his wife bought a flat within a leisure and residential area in Gibraltar. The Complainant informed the Ombudsman their lease guaranteed them "quiet and peaceful enjoyment of their premises". At the time of purchase they were aware that the pathway leading into the area onto which their first floor flat overlooks, was provisionally being used for unloading of construction materials on to the site, the discharging of goods as well as other commercial use. They were also aware that, upon completion of construction, the pathway was to be pedestrianised in accordance with the terms and conditions upon which planning and building permission had originally been granted.

The Complainant informed the Ombudsman that on completion of construction works, it was confirmed by the DPC that the pathway was going to be pedestrianised by the developer upon the joining of pavements by the Government of Gibraltar to the north and south of the western entrance to the pathway. They were told that these works were "imminent". Time passed and to the Complainant's dismay, no works were carried out despite pressing both the developer and the Government. Much to their surprise, the Client and his wife learnt by coincidence, and not from the DPC, that an application had been made to the DPC to retrospectively have their planning and building permit altered so as to allow the pathway to remain permanently open to vehicular commercial traffic. The Complainant gave notice that he would be objecting to such application on the Client's behalf, on the ground of nuisance.

On the day of the application at a public meeting held at the DPC on the 27th March 2012, the Complainant made oral representations setting out the grounds of objection. Up to the date of filing this complaint (June 2012), the Complainant was still awaiting to receive notification of the outcome of the hearing from the DPC. The Complainant stated that by pure coincidence, he learnt, albeit informally, in or around the second week of May 2012, from a member of the DPC, that a decision had been arrived at by the DPC the very same day the hearing had been conducted. It appeared that the objection made by the Complainant had not persuaded the Commission to withhold consent to the application and therefore, permission was granted to have the permit altered, thus enabling the conversion of the pathway into a permanent thoroughfare for commercial and other vehicular traffic, with conditions attached.

The Complainant maintained throughout that it was essential for him to receive official notice of the decision together with written reasons for the grant of the application, from the DPC, as the Complainant had received instructions from the Client to seek a judicial review of the decision if necessary.

The Complainant wrote to the Commission seeking confirmation of the decision with reasons, on the 16th April 2012. In the absence of a reply, the Ombudsman was informed that telephone messages were left and a further letter was sent on 7th May 2012. No replies were received by the Complainant to the messages or letters and the decision reached by the DPC, remained unconfirmed.

Investigation

The Ombudsman put the Complaint to the DPC on the 11th June 2012 and sent a chaser by email on the 26th June, noting that the Complainant had not received a reply to his earlier letter seeking confirmation of DPC's decision on the objections made. Reference was also made to the Ombudsman's letter presenting the Complaint which up to that date remained unanswered. Information as to when the Complainant could expect a reply was requested.

The following day, the Ombudsman received a copy of the DPC's letter to the Complainant, also dated 26th June 2012, setting out the decision reached, which went against the objections made by the Complainant. Of importance to note was the fact that the letter stated that although in real terms, the DPC had reached its decision on the 27th March 2012, they were unable to disclose the nature of the full decision by the Commission until the Minutes of the meeting were drafted and then approved at the subsequent DPC meeting of 26th April 2012. An apology was made for the DPC not having replied to the Complainants letters "in due time" and a further apology was issued for not having responded with a holding reply with the explanation that "…… we are only two town planners with no clerical support….so with regret we are unable to respond to every correspondence as expeditiously as we would want to or expected from the public".

Conclusion

The nature of this Complaint is based on the DPC's delay in replying to the Complainant's letters of the 16th April and 7th May seeking formal notification of the DPC's decision on the application heard on the 27th March. The decision per se does not concern this report.

It seems to be the practice as confirmed in the DPC's letter to the Complainant dated 26th June 2012, that minutes recorded at any given meeting are subsequently ratified by the Board at the next meeting held (within a period of one month). Even when decisions are made contemporaneously with any given meeting, written decisions cannot be issued until those minutes are ratified. It may well be the case that in instances of urgency, the board, in the Ombudsman's view, may be encouraged to approve minutes prior to the next scheduled meeting (by holding extraordinary meetings for instance) in order to be able to formally communicate the findings to both applicants and objectors alike within a shorter time frame. This said, as stated above, although not personally communicated to the Complainant by way of letter, the decision on the application was made at the conclusion of the 27th March meeting in public (as is the practice) and, the Minutes of that meeting were available on the DPC website from 26th April (almost two months before the deadline for the Complainant to file judicial review proceedings against the decision elapsed). Despite this, it was necessary for the Complainant to have received formal written notification of the decision in order to have complied with judicial rules and having been able to lodge the written decision in the Supreme Court of Gibraltar for the purposes of the judicial review application.

The central issue under consideration is whether the DPC acted in keeping with good practice standards, in specific relation to the non replies to the Complainant's letters. The Ombudsman is concerned by the fact, in this case, that even though the Minutes were approved at the DPC's meeting of the 26th April, the Office of the Town Planner/DPC was unable to reply to the Complainant's and Ombudsman's letters (despite the DPC apologising to the Complainant in DPC's letter of 26th June), or to communicate the findings in writing to the Complainant. This appears to be attributable to lack of resources within the DPC, on the DPC's own admission. To the Ombudsman's regret, eight weeks elapsed from the date upon which the Minutes were ratified in the April meeting of the DPC until the decision was formally and personally communicated to the Complainant.

Classification

In the ordinary course of events, the Ombudsman would have sustained this complaint. However, as a result of his investigation, he must take regard of the fact that the DPC's failure to reply to the Complainant's letters was caused purely by the lack of manpower within the offices of the DPC, not by any act of maladministration on their part. On that basis, this complaint is not sustained.

Conclusions

The Ombudsman is aware of and appreciates the valuable work conducted by the town planners and members of the DPC and favours the practice of communicating decisions in public at the conclusion of hearings together with the publication of these outcomes on the DPC website. However, the delays in replying to correspondence and formal communication of the outcome of planning applications is, for the purposes of this Complaint, although not maladministration, not in keeping with the principles of good practice. The Ombudsman cannot however refer to the delays as "unreasonable", on the basis that without support staff, coupled with an onerous workload, there is only so much that the town planners can reasonably be expected to achieve and produce.

The Ombudsman therefore decided to seek a meeting with the Chief Secretary in order to highlight the findings of this report and to suggest that a review of the staff requirements of the Town Planners Office was essential.

UPDATE

SUBSEQUENT TO THE CONCLUSION OF THIS INVESTIGATION, THE OMBUDSMAN HAS ALSO TAKEN NOTE OF THE CONTENT OF AN EMAIL FROM THE DPC TO THE OMBUDSMAN DATED 22ND OCTOBER 2012 AND OF A SUBSEQUENT MEETING HELD AT DPC OFFICES BETWEEN THE TOWN PLANNERS AND THE OMBUDSMAN'S SENIOR INVESTIGATING OFFICER WHERE THE FOLLOWING WAS ESTABLISHED:

IN RELATION TO THIS SPECIFIC COMPLAINT, THE DPC'S POSITION WAS THAT PRIOR TO THE DPC MEETING OF THE 27TH MARCH THERE WERE EMAIL EXCHANGES BETWEEN THE COMPLAINANT AND THE DPC WHEREIN THE DPC INFORMED THE COMPLAINANT THE DATE UPON WHICH THE RELEVANT APPLICATION WAS GOING TO BE DISCUSSED. THE DPC FURTHER STATED THAT THE COMPLAINANT COULD ATTEND AND BE HEARD, THEREBY REFUTING THE CLIENT'S ALLEGATION THAT HE HEARD OF THE APPLICATION TO RETROSPECTIVELY VARY THE BUILDING PERMIT "BY COINCIDENCE".

THAT THERE WAS NO LEGAL OBLIGATION ON THE DPC TO ALLOW THE COMPLAINANT TO MAKE SUBMISSIONS AT THE MEETING SINCE THE APPLICATION DID NOT PROVIDE THE PUBLIC THE OPPORTUNITY TO PARTICIPATE UNDER SECTION 21 TOWN PLANNING ACT, SINCE THE DEVELOPMENT DID NOT QUALIFY AS A SECTION 19 DEVELOPMENT, WHERE PUBLIC PARTICIPATION AT MEETINGS IS REQUIRED .

THE DPC DOES NOT KEEP A LOG OF TELEPHONE CALLS DUE TO THE EXCESSIVE NUMBER OF CALLS RECEIVED AND HAD NO RECORD OF THE COMPLAINANT HAVING MADE CALLS WHICH REMAINED UNANSWERED.

THAT ACCESS TO ALL DPC CASE FILES ARE OPEN TO THE PUBLIC AND THE COMPLAINANT COULD HAVE, IN THE DPC'S VIEW, MADE AN APPOINTMENT IN PERSON TO INSPECT THE FILE AT DPC OFFICES, ON ANY DATE AFTER THE 26TH APRIL 2012.

PRIOR TO ISSUING THIS REPORT, THE DPC COMMUNICATED TO THE OMBUDSMAN THE ADDITION OF TWO NEW MEMBERS OF STAFF, CURRENTLY UNDER TRAINING, TO ASSIST THE DPC IN ITS ADMINISTRATIVE FUNCTIONS.

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Department of Education

Case Not Sustained

CS/971

Complaint against the Department of Education in respect of matters relating to the enrollment in school of the Complainant's children

Complaint

The Complainant was aggrieved because:

The Complainant was never informed that he needed to provide the Education Department with his children's birth certificates in order to enroll them in school.

He wrote to the Director of Education ("Director") on 22nd August 2011 asking for his children to be allowed into school without the birth certificate but his letter remained unanswered as at the time of the complaint (6th September 2011).

He had gone in person to the Education Department and stated that he was willing to pay the enrolment fees while he waited for the children's ID card, but was told that the Department still required the children's birth certificates.

He had asked to meet the Director or the Minister for Education but had been told that they were not available.

Background

The Complainant, a Gibraltarian who had lived away from Gibraltar, moved back in August 2011.

Earlier in the year, the Complainant had visited Gibraltar during Easter and enquired at the Department of Education to find out the requirements for enrolling his children aged 16 and 15 in school. The Complainant stated that he had been told that he would need to present ID cards and proof of residence such as a tenancy agreement or utility bill. He then went to the Immigration Office and was told that to obtain ID cards for the children he would need to show their passports. He was told it would take l0 working days to process the ID cards.

On 22 August 2011, the Complainant went to apply for the ID cards and was told that as his children were not registered Gibraltarians he needed to show proof of his income and obtain private health insurance for the children. As the documents to prove his income were in a container which would take two weeks to arrive in Gibraltar, it was likely to take 6-8 weeks in total before he would obtain the ID cards. That same day he went to the Department of Education and was told that in lieu of the ID cards he could pay a fee of around £l,500 per child per term which would be refunded once he obtained the ID cards. As well as paying the fees and showing a tenancy agreement/utility bill he was told for the first time that he must show his children's birth certificates. Unfortunately the birth certificates were in the container which was scheduled to arrive in Gibraltar after the school term had commenced. It was suggested that he could obtain the certificates by mail, however when the Complainant checked online he discovered that to receive these certificates within the next two weeks it would cost almost £100 per certificate. He considered this to be a great waste of money.

The Complainant returned to the Department of Education to ask whether he could enrol his children using their passports instead of their birth certificates. He explained that he would be able to present the birth certificates in a few weeks time once the container had arrived. The Complainant was advised to write to the Director of Education as apparently this was a decision that only he could make.

The Complainant expressed his hope that the Director would make a quick decision as he wanted to get his children enrolled for school as soon as possible.

The Complainant wrote to the Director on 22nd August 2011 asking for his children to be allowed into school without the birth certificate but his letter remained unanswered. The Complainant said that if the Director or any of his staff had answered his letter promptly and informed him that they had to insist on seeing the birth certificates and advised him to obtain them as soon as he could he would have done so. After writing and going to the Department many times the only response he was able to get was that they would contact the Immigration Department and let him know. He was thus kept waiting for a phone call or email which never arrived and just further aggrieved him.

The Complainant also alleged that he went in person to the Education Department to inform them that he was willing to pay the enrolment fees while he waited for the children's ID card, but was told that he needed to produce the children's birth certificates. The Complainant asked to see the Director in person or the Minister for Education but was told that they were not available.

The Complainant thus complained to the Ombudsman about the events and delay and whether anything could be done to streamline the enrolment process.

Investigation

The Ombudsman wrote to the Director explaining that the Complainant stated that he was never informed that he needed to provide the Education Department with his children's birth certificates in order to enroll them in school.

In his reply to the Ombudsman, the Director was surprised that the Complainant had lodged a complaint to the effect that he was never informed that he needed to provide the Education Department with his children's birth certificates in order to enrol them in school. He stated that this is the essential document without which it is impossible to proceed since, among other things, it helps establish parenthood. The Director assured the Ombudsman that his members of staff dealing with enrolments would not omit such fundamental information. Moreover, the Complainant's reason for asking to see the Director was precisely that he had been told that he could not enrol the children until the necessary documents, particularly the birth certificates, were available. The Director added that he received a number of enquiries by post, phone and e-mail on a daily basis from prospective parents who begin the process before moving to Gibraltar in order to bring with them the necessary documents and, again in particular, the crucial birth certificate. It was important to note that not only, as mentioned above, does this document establish parenthood but is also the instrument the Department uses to prevent situations like a kidnapped child being accepted into the system, with the dangerous and embarrassing consequences involved.

The Director continued by stating that despite the clear advice given to the Complainant at the counter, he personally saw the Complainant in his office without a prior appointment despite the fact that he claimed that neither the Minister nor the Director were available to see him. The Director said that the Complainant was correct when he claimed that the Director had offered (without having the obligation to do so) to contact the Civil Status & Registration Office ("CSRO") in order to intercede on his behalf and speed up the process, thus for the Complainant to claim that this offer was the only response he was able to get was rather disappointing. The Director explained that his intention was to try and help the Complainant to the extent that if CSRO was able to carry out some reliable police or other check, he might have been able to help the Complainant exceptionally while he waited for the birth certificates to arrive.

The Director further explained that the Complainant actually offered to pay for the schooling while he waited and in order to avoid him doing so, the Director offered to try to get clearance from the CSRO as to the children's status. The phone call or e-mail which the Complainant rightly claimed never arrived referred to the days which actually elapsed while the Director waited for some feedback from CSRO between the Complainant's visit to the Director and his turning up at the counter arranging with one of the Department's administrative staff to pay for one of his children's schooling. The Director stated that this was never his preferred option since, apart from addressing any possible non-entitlement; he was keen to satisfy himself of the parenthood issue. Three days later the Complainant enrolled his second child also as a fee-payer.

The Director wished to highlight the fact that the enrolments for the children were the 13th and 16th September 2011 respectively, which also served to place the matter into perspective. He stated that for a person who had turned up at the counter from abroad without the crucial status documents, the children began attending school within two weeks of the start of the academic year, i.e. the period of summer hours. In fact, the Director continued, the Complainant left the Department on the day of their meeting rather grateful for his offer of help and so it came as a complete surprise to receive notice of the complaint.

The reference from the Complainant to the possible streamlining of the enrolment process was noted. The Director explained that the process is very straightforward via which a child generally starts attending school within a day of the enrolment, when the necessary documents are in order.

Subsequently to the above information being provided, the Ombudsman held a meeting with the Complainant who stated that if the Director had said to him that he needed proof of parentage he would have been happy to show him the parental rights agreements. The parental rights agreements (which are Court registered documents) could establish parentage. The Complainant stated that he felt as if he had been fobbed off by saying that he would enquire at the CSRO and the delay just continued, until he finally received the birth certificates and was allowed to enrol the children.

Comments

The Ombudsman had little doubt that this was a case where the parties involved were all working towards the same end with a genuine desire to enrol the children in school. The Complainant, the father of the children, and the Director wanted to enrol the children as soon as possible as they did not wish for them to loose out in schooling. However, the Director was faced with legal and technical issues which he had to resolve before admitting the children into school.

Production of the birth certificate is a requirement as, amongst others, it allows the Department to verify that the person enrolling a child is the parent or legal guardian of the child. In the present case the children's father (the Complainant) did not have the birth certificates available to him given that they were en route to Gibraltar with all his other belongings. Notwithstanding this, the Complainant explained to the Ombudsman that if the birth certificates were essential to prove parentage and avoid cases of kidnapping he had already shown the CSRO the parental rights agreements which he had with him. The Complainant contended that if the Director had told him that he needed proof of parentage he would have been happy to produce the parental rights agreements. The Complainant felt as if the Director was simply dealing with the matter by saying that he would enquire at the CSRO; consequently the delay just continued, until the Complainant finally received the birth certificates and was allowed to enrol the children.

As stated above, there is no doubt that the Director was trying to assist in the enrolment of the children, especially by liaising with the CSRO, however much as he tried, he was unable to register the children without the vital information that only the birth certificates could provide. This is precisely the Complainant's contention, if the Director or any of his staff had informed him that they had to insist on seeing the birth certificates and advised him to obtain them as soon as he could he would have been able to get the certificates and enrol the children before the start of term. He would have had copies of certificates sent from Scotland even at the high cost that it would have entailed instead of waiting for the container with his personal belongings to arrive in Gibraltar.

Classification

Not Sustained

On the balance of the events, the Ombudsman could not sustain this complaint as he found no act of maladministration. There had been a substantial effort by the Director to enrol the children without the requisite birth certificates, but ultimately these efforts did not bear the desired result.

Recommendation

The Department of Education should provide written information to those enquiring as to the required documentation for the enrolment of a child in school in Gibraltar.

Additionally the information and application forms should be made available in the Government of Gibraltar website.

UPDATE

THE OMBUDSMAN WAS INFORMED BY THE DEPARTMENT THAT THEY WOULD IMPLEMENT THE RECOMMENDATION RELATING TO WRITTEN INFORMATION IN RESPECT OF THE REQUIRED INFORMATION FOR THE ENROLMENT OF CHILDREN INTO SCHOOL WITH IMMEDIATE EFFECT.

Housing Authority

Case Partly Sustained

CS/935

Complaint against the Housing Authority due to the Housing Counter staff not being helpful when the Complainant tried to complain about the anti-social behaviour of a neighbour and the delay in undertaking repairs resulted from water ingress

Complaint

The Complainant was aggrieved because staff at the Housing Authority's Counter ("Counter") had not been helpful when she attempted to lodge a complaint about the anti-social behaviour of the neighbour ("Neighbour") who lived in the flat above.

She was further aggrieved because of the Housing Authority's delay in undertaking repairs resulted from water ingress to her flat.

Background

The Complainant was an elderly widow who lived in a Government rented flat ("Flat"). She claimed that around May 2010 the Flat experienced episodes of water ingress which originated from the flat above and resulted in extensive damage to the electrical installation of the Flat and dampness to the bedroom and bathroom walls. The Complainant pursued the matter of repairs; the repair to the electrical installation took approximately three months but she stated that repairs to the bedroom and bathroom walls were never undertaken. She explained that a worker from the Buildings & Works Department ("B&W") had been to the Flat but had only been instructed to replace a number of tiles in the bathroom. The Complainant refused those works on the basis that if the dampness problems of the wall were not addressed, tiles would continue to fall off.

The Complainant wrote to the Principal Housing Officer ("PHO") to that effect and also referred him to repairs to the dampness problems in the bedroom. The PHO's reply in March 2011 informed the Complainant that he would forward the Complaint to the Housing Works Agency ("HWA") (in March 2011 the restructure of B&W was completed and HWA was established to carry out building maintenance and repair works to government rental housing) and would request that the problem be investigated and that the area/wall be properly retiled. Due to the period of time which had already elapsed since the original report (ten months), the Complainant felt that she had exhausted all avenues with the Housing Authority and in April 2011 lodged her Complaint with the Ombudsman.

<u>The Counter staff not being helpful when she tried to complain about the anti-social behaviour of a neighbour;</u>

The Complainant explained that for some time now she had suffered anti-social behaviour from the Neighbour and believed those acts were reprisals because her son-in-law was a senior police officer. The Complainant thought that the episode of water ingress to the Flat had been purposefully caused by the Neighbour and desperate to resolve the situation attempted to report the matter to staff at the Counter. When the Complainant put her problem to the clerk at the Counter she claimed to have been told that they could not assist her and provided her with a telephone number. The Complainant stated that she called the number but obtained no reply. At a loss on how to proceed, the Complainant brought her complaint to the Ombudsman.

Investigation

Delay in Undertaking Repairs

The Ombudsman presented the Complaint to the PHO who explained that with the exception of the retiling, all works had been completed. An estimated completion date for the tiling could not be given because of the transitional phase the HWA was going through. A summary of recent reports in respect of the Flat was provided by the PHO to substantiate the information provided and it was noted that repairs to heavy dampness in the Flat had been completed on the 17th February 2011. This information conflicted with that provided by the Complainant who stated that no works had been carried out to resolve the dampness problems. The Ombudsman undertook a site visit to the Flat in May 2011 and saw signs of dampness on the dividing wall between the bathroom and the bedroom (Photos Appendix 1).

The Ombudsman wrote to the Housing Authority with his findings and asked them to look into the matter. A reply was received from HWA who reiterated that the only works pending in the Flat were the replacement of a number of tiles and that was due to the Complainant having declined the repair because she wanted all the tiles replaced (the Complainant had contracted the tiling privately years earlier when her financial circumstances were different). HWA stated that was beyond their remit as those were not the instructions in the works order; they would require specific instructions from the Housing Authority for that purpose. No information was provided by the Housing Authority with regards past repairs undertaken to resolve dampness problems nor on prospective repairs.

Anti-Social Behaviour

In relation to the Complaint of staff at the Counter being unhelpful, the Ombudsman wrote to the Housing Manager ("HM") for information on the matter. He also made enquiries as to the procedure in place with regards lodging formal complaints with the Housing Authority about anti-social behaviour from neighbours. The letter was copied to the PHO.

The HM advised the Ombudsman that she had spoken to Counter staff and none could recall the incident; nonetheless the Counter staff denied being unhelpful to anyone at the Counter. The HM requested that she be provided with the date on which the incident was purported to have occurred in order to review CCTV footage of the day. The date was provided but CCTV footage was no longer available due to the period of time elapsed.

Regarding the process for lodging complaints of anti-social behaviour, the HM informed the Ombudsman that complaints should be put in writing to the PHO, the nature of the anti-social behaviour explained and copies of reports to the Royal Gibraltar Police ("RGP") (if complaints had been made to the RGP) enclosed.

The PHO's reply to the copy of the letter sent to him was as follows:

"With respect to the alleged anti-social behaviour from the upstairs neighbour, you will agree that it would be difficult to prove that such is true, i.e. that the neighbour is deliberately causing water ingress to flow to the Complainant's flat and, therefore, I am unable to comment."

Conclusion

Delay in Undertaking Repairs

The Complainant reported the dampness problems in May 2010. At the time of writing this report (February 2012) a year and nine months later the Flat still required repairs. Although HWA had attempted to replace loose and missing tiles (Appendix 2), albeit over eight months after the report was made, the Complainant refused those works on the basis that the wall had dampness problems which should be addressed prior to the wall being retiled. In February 2011 she duly informed the PHO of her concerns. Although the PHO informed the Complainant that he would instruct HWA to investigate the problem and properly retile the area/wall, the information provided to the Ombudsman indicated that no instruction had been received to that effect or if received had not been recorded by HWA. The administrative failing resulted in the Complainant's situation remaining stagnant. Having arrived at this stalemate, the Housing Authority (the Landlord) should have been made aware by HWA (the Contractor) of the problem encountered when they attempted to undertake repairs. Consequently, arrangements would have been made by the Housing Authority for the situation to be reassessed by their inspectors and recommended repairs undertaken.

Regarding the dampness problems, HWA records showed that repairs had been carried out whereas the Complainant stated they had not. The Ombudsman's site visit determined that the dividing wall between the bathroom and bedroom was affected by dampness. The Ombudsman's opinion was that even though repairs might have been carried out, the problem was ongoing and had to be addressed. Once again the Ombudsman's advise was for the Housing Authority's inspectors to reassess the situation and make recommendations for repairs.

Anti-Social Behaviour

There is no denying that anti-social behaviour is a serious problem affecting our society and there is no easy fix to it. Nevertheless, it is difficult to understand why the Housing Authority, the entity responsible for the management of Government rented housing, stated that it would be difficult to prove that the Neighbour is deliberately causing water ingress to the Flat and leave it at that with a statement such as 'unable to comment' that is to say that they will not even begin to consider the complaint. The possible repercussions of this position could ostensibly lead to nuisance or damage to property by certain tenants of Government owned properties, without fear of reprisal. The Housing Act 2007 which commenced on the 1st June 2008, three years ago, states under Section 79 (1) the following:

'The Housing Authority shall have as one of its functions the preparation of a policy in relation to anti-social behaviour and procedures for dealing with occurrences on anti-social behaviour and for the reduction of such behaviour'. From the reply provided by the PHO to the Ombudsman it is clear that the Housing Authority have no policy in place in this regard and are therefore not fulfilling their statutory function.

The Housing Act 2007 at Section 80 (1) empowers the Minister to make regulations in relation to anti-social behaviour, including the imposition of sanctions and remedial measures. This matter should be prioritised in order to empower the Housing Authority with the tools to give effect to duty of care to afford protection to both public housing and the tenants residing therein.

Classification: The Housing Counter staff not being helpful when she tried to complain about the anti -social behaviour of a neighbour – Not-sustained. Delay in undertaking repairs resulted from water ingress - Sustained

The Ombudsman recommends that Housing Authority inspectors reassess the matter of the repairs required in the Flat and ultimately ensure that those are undertaken and suggests that the Housing Authority implements an anti-social behaviour policy and procedure as a matter of urgency.

Case Sustained

CS/941

Complaint against the Housing Authority due to:

1. Not having taken action against a complaint of squatters and anti-social behaviour in the building in which the Complainant resided

2. No repairs having been undertaken to the façade of the building;

3. Non-reply to letters

Complaint

The Complainant was aggrieved because no action had been taken by the Housing Authority ("Housing") with regards his complaints of squatters and anti-social behaviour in the Government owned building ("Building") in which he resided.

He was further aggrieved because no repairs had been carried out to the façade of the Building which the Complainant claimed had resulted in water ingress to the Flat.

The Complainant wrote letters of complaint in relation to the above issues to Housing and Building & Works (the entity who dealt with repairs until March 2011 when the Housing Works Agency ("HWA") was established to undertake that role) but no replies were received.

Background

The Complainant's flat ("Flat") located on the top floor of the Building lay beneath a communal terrace ("Terrace"). The Complainant claimed that a room located on the Terrace was being used by squatters and that old furniture, gym equipment and rubbish had accumulated in the area. The Complainant explained that for years, juveniles had made use of the Terrace and he had on countless occasions had to request assistance from the Police as a result of their anti-social behaviour. The Complainant stated that he had verbally complained to Housing about the issues and requested that the Terrace be sealed off but nothing had been done.

The Complainant was also concerned about the fact that there were four vacant flats in the Building which had been broken into; he claimed he had also brought that matter to Housing's attention. In December 2010 the Complainant wrote to Housing with his grievances. Despite sending a chaser letter a month later, the Complainant did not receive a reply.

Regarding repairs required to the Building the Complainant stated that in April 2010 he reported a large crack on the façade of the building which he believed was the cause of water ingress into the Flat. Although scaffolding was immediately put up, the Complainant claimed that was for the purpose of removing masonry and old furniture from the roof of the Building and stated that no repairs were carried out to the façade. In December 2010 the Complainant wrote to Buildings & Works; again, despite sending a reminder the following month the Complainant did not receive a reply.

On the 30th March 2011 the Complainant brought his Complaint to the Ombudsman.

Investigation

The Ombudsman put the Complaint to the Housing Manager ("HM"). A reply was received after a two month delay for which the HM apologised. She explained that she had chased the matter internally and been informed by the Principal Housing Officer ("PHO") that he had requested a report to ascertain the necessary action required. Although a report had been prepared in January 2011, no follow up action had been taken.

The Ombudsman met with the HM in mid-June where she explained that both the Complainant's letters (December 2010 and January 2011) had been passed to the PHO who deals with reports of that nature. The HM stated that although the letters had been acted upon, there had been an oversight and no acknowledgement had been sent to the Complainant. In fact, an inspection was undertaken and a report prepared as a result of the Complainant's letter.

The salient points in the said report were:

- Water was flowing out of vacant Flat 2;
- Vacant Flat 4 had been boarded up due to constant break-ins;
- The door to the Terrace was locked and no inspection could be carried out. The inspecting officer stated that the door had been fitted by the Ministry for Housing and it was his understanding that the Technical Division of said Ministry should hold the keys. The inspecting officer did not know if any of the neighbours held keys but stated that the Complainant had informed him one neighbour did have a key. Under the circumstances, the report concluded that a new lock should be installed on the door and all items in Terrace cleared.

From a handwritten note (dated 2nd June 2011) on the report from the PHO to the Systems Project Manager, the Ombudsman concluded that no action had been taken further to the report and that it was only as a result of the Ombudsman's intervention that the case was revisited.

In late June 2011, the PHO issued instructions for the removal of the Terrace door to enable access to all tenants. The Ombudsman was informed that the works order included instructions for clearing of rubbish.

On enquiring as to what measures would be put in place to prevent a recurrence of the situation endured by the Complainant with regards squatters in the Terrace, the Ombudsman was informed that the Terrace was being used by the boyfriend of one of the tenants and not squatters.

Regarding Housing tackling anti-social behaviour in the Building, the HM stated that she was aware that the Police had been called on a number of occasions but was unable to comment on action taken as the Police had dealt directly with the Complainant and not with Housing.

On the matter of repairs to the façade and non-reply from Buildings & Works, the Ombudsman put the matter to the PHO. The latter informed the Ombudsman that the Government was in the process of outsourcing external works through 'Measured Term Contracts' and regretted that he had no information as to the commencement date of the process. As to the non-reply from Buildings & Works to the Complainant's letters, the PHO advised that the query should be directed to the Chief Executive of the HWA.

In order to complete his investigation, the Ombudsman then put a series of questions to Housing. These questions were never adequately replied to and the Ombudsman had to pursue the matter via a series of letters. Unfortunately this has become a common occurrence since the demise of Buildings & Works and the creation of HWA i.e. the PHO does not provide adequate replies and in any event it takes a very long time to obtain substantive replies to the Ombudsman's inquiries. The Ombudsman wishes to emphasise that this is not because he is being denied information but puts it down to lack of proper procedures and definition of jurisdiction and responsibilities since the creation of HWA.

Conclusion

Not having taken action against his complaint of squatters

The decision taken by the PHO was to remove the Terrace door to enable access to all residents. The Complaint was for Housing to resolve problems of anti-social behaviour which had been experienced for many years as a result of persons using the Terrace. It is the Ombudsman's opinion that the PHO should have investigated the matter thoroughly by way of requesting Police reports, meeting the Complainant and other residents and by identifying the reason/s why the door to the Terrace complete with lock was installed in the first place.

The issue of squatters was not addressed as the HM stated that it was her understanding that the person using the Terrace was the boyfriend of one of the residents; (obviously he must have had the key to the Terrace door).

Complaint of Anti-Social Behaviour

In relation to anti-social behaviour in the Building, the Ombudsman was informed that the Complainant was dealing directly with the Police on the matter. Housing did not get involved in this matter regardless of the fact that the Complainant had written to them to request their assistance. On this occasion Housing failed to address the Complainant's claims of having endured anti-social behaviour from persons using the Terrace in the past and he could only look at Housing to put in place measures that would resolve the problem.

The Ombudsman noted that although the Complainant had stated nothing had been done by Housing in the past and requested that the Terrace be sealed off, the initial report (January 2011) found that there was a door installed in the Terrace area which was locked at the time of the inspection. This door must have been installed by Housing to prevent persons from entering the Terrace. Nonetheless this did not completely stop access as can be concluded from the Complainant's concerns and from the information provided by HM that the boyfriend of one of the residents was the person making use of the Terrace.

The Ombudsman was critical of the inspection undertaken by the officer, the aim of which was to investigate the Complainant's claim with regards the Terrace. Upon having found the Terrace door locked, the officer should have contacted the Technical Division to obtain keys to said door and completed the inspection. Unfortunately, management did not take any action either.

On the matter of anti-social behaviour, the Housing Act 2007 which commenced on the 1st June 2008, three years ago, states under Section 79 (1) the following:

'The Housing Authority shall have as one of its functions the preparation of a policy in relation to anti-social behaviour and procedures for dealing with occurrences on anti-social behaviour and for the reduction of such behaviour'.

The Ombudsman is aware from a previous investigation earlier in the year that Housing has no policy in place in this regard and is therefore not fulfilling its statutory function.

The Housing Act 2007 at Section 80 (1) empowers the Minister to make regulations in relation to anti-social behaviour, including the imposition of sanctions and remedial measures. This matter should be prioritised in order to empower Housing with the tools to give effect to duty of care to afford protection to both public housing and the tenants residing therein.

Non reply to letters from the Complainant and the Ombudsman

The Complainant never received replies to his letters. This is not surprising given the manner in which this whole matter had been dealt with.

As to queries put by the Ombudsman to the PHO with regards vacant flats and securing of these, the Ombudsman is appalled at the manner in which the matter of his inquiries was handled. So much so that the Ombudsman's questions were not addressed; instead questions were put by Housing to HWA which were irrelevant for the purpose of the investigation.

As an example of the lack of substance or quality replies, in June 2011 the PHO decided to remove the Terrace door; four months later in October 2011 Housing asked HWA what action they had taken to secure the Terrace.

Classification

Sustained

UPDATE

FOR COMPLETENESS OF RECORDS, THE OMBUDSMAN SOUGHT INFORMATION FROM THE REPORTING OFFICE AS TO WHETHER THE REMOVAL OF THE TERRACE DOOR HAD BEEN UNDERTAKEN. THE REQUEST WAS EMAILED TO THE REPORTING OFFICE ON THE 21ST NOVEMBER, 1ST DECEMBER, 15TH DECEMBER AND ALSO FAXED BUT NO RESPONSE WAS RECEIVED.

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Case Sustained

CS/946

Complaint against the Housing Authority for their lack of action towards a complaint of the neglected state of Buena Vista Hostel

Complaint

The Complainant was aggrieved at the Housing Authority's lack of action in response to his complaint about the neglected state of the workers' hostel ("Hostel").

Background

The Complainant claimed to have resided in the Hostel for approximately four years. He stated the Hostel was in a neglected state and had been ever since he moved in. The Complainant highlighted that curtains needed to be changed, old and tatty blankets and shower curtains had to be replaced, fused bulbs were not replaced for weeks after being reported and rooms needed repainting. The Complainant explained that throughout those four years, both he and Union officials had on a number of occasions approached the Hostels Manager on the issues and despite assurances that he would tackle and resolve the problems, those remained. In February 2011 the Complainant wrote to the Principal Housing Officer ("PHO") with his complaint. Towards the end of July 2011, not having received a reply from the PHO, the Complainant lodged his Complaint with the Ombudsman.

Investigation

In early August 2011 the Ombudsman presented the Complaint to the PHO and requested his comments. The PHO provided a copy of the reply sent to the Complainant. The letter was dated February 2011 and advised the Complainant that the PHO would approach the Hostels Manager about his concerns. Considering that six months had passed since that letter and the Complainant claimed no action had been taken, the Ombudsman once again wrote to the PHO requesting details on the measures taken by the Hostels Manager.

It took six weeks for the PHO's reply. Regarding repairs to the Hostel, PHO advised that there was a budget in place for that purpose but explained that the building was old and Government was therefore committed to constructing a new hostel as soon as practically possible.

The PHO referred the Ombudsman to a report dated September 2011 compiled by the Hostels Manager as follows:

- Agreed that shower curtains needed to be changed and that would be done as soon as possible. Curtains in the residents' rooms were not the responsibility of the Hostels manager.

- On taking up residence at the Hostel, residents are provided with a mattress cover, one set of bed linen and one blanket. Responsibility for future replacement of those items lies with the residents and not the management. Nonetheless, the Hostels Manager stated that there was a store full of ex-MOD blankets in a useable state which the Complainant could exchange for his.

- Rooms cannot be repainted because residents would have to be decanted for the duration of the works as workers would have to gain access to the high vault ceilings.

- Security guards control a stock of light bulbs for residents rooms. Regarding other areas where fittings are located on the high ceilings, a private contractor is engaged.

- The Hostels Manager denied that he had ever promised any UK Union officials or had meetings with the Union with regards repairs at the Hostel.

The Hostels Manager took the opportunity of informing the Ombudsman that the Complainant was in arrears of more than one year's rent, had been involved in various incidents with other residents at the Hostel in which the Police had to intervene and had caused damage to a communal fridge by way of drilling into it to install a lock. In the Hostel Manager's opinion it was the last incident which resulted in the lock being removed and the Complainant being asked to meet the Hostels Manager on the matter that triggered the Complaint to the Ombudsman.

The arrears were presently being pursued by the Hostels Manager and the PHO was aware of the issue. The Hostels Manager clarified that the Complainant had moved into the Hostel in August 2008 and so at the time of his original letter had been residing there for two and a half years and not four as stated by the Complainant.

In the interim period whilst awaiting the above reply, the Ombudsman arranged a site visit to the Hostel during which he was accompanied by the Hostels Manager (Photos Appendix 1). Bearing in mind that there are approximately one hundred men sharing accommodation, the Ombudsman noted that the kitchen area and appliances were well kept and reasonably clean and toilet areas, although old and worn were also clean. Flaking paint and plaster was observed in various areas around the Hostel.

In the context of both 'Rights & Responsibilities' and 'Health & Safety' some criticism could be made of how some residents make use of common areas by persistently using those for storage purposes. The Hostels Manager commented that despite constantly requesting residents to refrain from storing items in those areas the requests were not complied with. As a result, the Hostels Manager had to resort to removing items from the area on a regular basis.

Although not part of the Complaint itself, the Ombudsman was concerned that there were no railings on the side of the road leading to and from the Hostel. This road is approximately two hundred metres above sea level and there should be adequate protection to prevent accidents at that location.

Conclusion

The Ombudsman's site visit established (from a layman's point of view) that the Hostel was in a habitable condition and reasonably clean but noted some areas required maintenance e.g. painting and re-plastering.

The grievances brought by the Complainant were addressed in the Hostels Manager's report but the latter's stance on the painting and re-plastering have to be reconsidered. Although there is no doubt that the painting of the high vaults would be a difficult logistical exercise those works can be considered to be essential for the upkeep of any building, moreso one that houses so many persons. Notwithstanding, the Ombudsman noted the Government's aim of building a new hostel although no timeframe has been provided for this.

The Ombudsman was critical that despite ten months having gone by since the Complainant's original complaint to the PHO (which the Hostels Manager had been made aware of) the shower curtains (communal) had not been changed. Furthermore, although there was no obligation on the part of the Hostels management to replace blankets, the Hostels Manager in his report proposed that the Complainant could exchange his blanket for one in the Hostels store. Again this has not materialised.

As to the Hostels Manager's concerns that the Complainant may have sought retaliation by placing a complaint with the Ombudsman, the latter referred him to the Public Services Ombudsman Act which provides for the Ombudsman to investigate a complaint made by a member of the public who claims to have sustained injustice in consequence of maladministration.

Classification

Sustained:

Although the Ombudsman was of the opinion that the Hostel was in a habitable state, there had been manifest lack of action in that ten months had elapsed without the Hostels Manager having taken action to meet or notify the Complainant.

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Case Sustained

CS/951

Complaint against the Housing Authority for having made the Complainant to wait for three months for the replacement of the cracked bath in the Government rented flat he resided in.

Complaint

The Complainant was aggrieved because he had been waiting for three months for the replacement of the cracked bath in the Government rented flat ("Flat") he resided in.

Background

The Complainant explained that he had made a report to the Housing Authority's Reporting Office in June 2011, seeking a replacement for the cracked bath in his Flat. During the ensuing three months, he and his wife, both elderly, had been unable to bath/shower as that would have resulted in water ingress to the neighbour below.

Given that no works had been done, the Complainant resorted to lodge his Complaint with the Ombudsman.

Investigation

The Ombudsman put the Complaint to the Housing Authority for their comments and referred them to information circulated after the abolishment of the Buildings & Works Department and the establishment of the Housing Works Agency ("the Agency") that repairs would be completed within a maximum of three months (twelve weeks) from the date reports were made.

The Housing Authority informed the Ombudsman that the works had already been completed. They explained that they had gone to the Flat on the 28th September 2011 to replace the cracked bath, and that works were completed on 12th October 2011. They explained that the Agency was prioritising works/repairs on the backlog of jobs.

The Complainant reported the cracked bath on the 1st July 2011 and the twelve week period allowed for repairs to be completed would have meant that the repairs should have been completed by the 23rd September 2011.

As far as the three month period for completion of works, this was not managed by the Housing Authority; reports were directed to the Agency and targets monitored by No. 6 Convent Place (Chief Minister's Offices) so the Housing Authority were therefore unable to comment on the time frame not having been met in this case.

The Ombudsman made further enquiries as to whether there was an agreement in place whereby the Agency had to complete works within a stipulated period of time. The Housing Authority explained that works issued to the Agency had to be completed within a time frame set by Government, twelve weeks from date of receipt by the Agency, for operators to qualify for a bonus. Notwithstanding, the Agency stated that it was envisaged that the commitment would be implemented as from the second quarter of 2012.

Conclusion

Since having reported the cracked bath on the 1st July 2011 the Complainant and his wife, an elderly couple, were unable to bath or shower in the Flat for a period of over fourteen weeks, in order to prevent water ingress to the flat below. They were therefore unnecessarily deprived of basic facilities and endured hardship throughout that period of time, with no attempt made for remedial works to be undertaken in the interim and without being offered any explanations.

From the information provided by the Housing Authority it was noted that they had established that their role in this case was solely that of taking the initial report and directing it to the Agency. From that point on it was the Housing Authority's understanding that the onus lay with the Agency in prioritising and undertaking the works and with No. 6 Convent Place to monitor targets; albeit that the twelve week time frame would not be implemented until the second quarter of 2012.

The Housing Authority is the landlord, thus it is entrusted with the responsibility of the management of repairs and maintenance of the public housing stock. The statutory provisions for this proposition are to be found in Section 3 of the Housing Act 2007 which states as follows:

> 3.(1) The general management and supervision, registration and control of public housing and of all buildings comprising public housing shall be vested in and shall be exercised by the Housing Authority.

The Housing Authority cannot therefore abnegate or divest itself of its authority and point the finger at the Agency whose role is that of contractor for the Housing Authority.

The evidence before the Ombudsman in this particular case was that the Complainant reported the cracked bath to the Housing Authority's Reporting Office who in turn passed it on to the Agency for action. Thereafter, the evidence shows that it was left to the Agency to decide when to carry out the repairs. It is the responsibility of the Housing Authority as landlord to determine the order in which works have to be prioritised and not that of the contractor, in this case the Agency.

[Ombudsman Note: For the purpose of clarification, there is a Government policy in place whereby it is the responsibility of tenants to replace certain fittings, including baths. In the case of pensioners and elderly persons, as is this case, Government waives this responsibility.]

Classification

Sustained

The Ombudsman decided to sustain this case as one of maladministration causing hardship to the Complainant. Had the Housing Authority been monitoring the reports coming in through the Reporting Office they would have identified this as an urgent case and dealt with it accordingly.

Recommendations

Although the Ombudsman was of the opinion that this case warranted a recommendation to be made so as to seek to improve the service delivery by the Housing Authority, he did not wish to make any recommendation at this point thus allowing the Housing Authority to consider its role as landlord.

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Case Sustained

CS/952

Complaint against the Housing Authority in relation to their failure to carry out repairs and the attitude of a worker which attended to the works

Complaint

The Complainant was the tenant of a flat owned by the Government of Gibraltar ("the Flat") and happened to be aggrieved by the fact that she had reported problems of water ingress to the Housing Authority ("Housing") and Housing had failed to take action with regards to her report. She also complained about the attitude of a worker which attended to the works

Background

The Complainant had been experiencing problems with water ingress at the Flat for the last twelve years and even though some repairs had been carried out the problem prevailed. The most recent report dated back to January 2010 when the Complainant reported that the situation regarding dampness and water ingress was recurring.

During the best part of the first quarter of 2010 the Complainant engaged in correspondence with the then Building & Works Department in order to appraise them of the worsening of the situation. The Department did in fact carry out some repairs but only a few months later it became apparent that these had not been sufficient as the problem returned to the extent that the Department decided to generate a new works order to carry out "effective repairs".

In May 2011 those works had not been carried out and the Complainant was advised to direct her concerns to the Principal Housing Officer ('PHO') at the Ministry for Housing. At this point the Complainant presented her complaint to the Ombudsman.

Investigation

The Ombudsman, in the first instant, attempted to analyse the failure of Housing to deal effectively with the problem the Complainant had reported because it was clear that this issue was the one giving rise to the main substance of the grievance.

In a letter to the PHO the Ombudsman detailed the aspects of the complaint which he felt required some degree of clarification culminating with the apparent lack of proper remedial works.

The response from the PHO was prompt and conceded that the Flat had a problem with water ingress, which although had been tackled in the past, it had not been resolved.

The PHO stated that a job of an external nature had been logged as outstanding in their records. The other outstanding repairs were of an internal nature and the PHO explained that he would be checking with the Housing Works Agency ('the Agency') on the progress of these. In relation to the external ones the PHO informed the Ombudsman that he could comment no further as the jobs were managed through the Chief Technical Officer.

At this point the Ombudsman thought it important to investigate the reasons why the Agency had not completed the internal works within the designated three months and investigate why there was no cogent information on the status of the external works.

To that end a letter was sent to the Agency wherein the Ombudsman pointed out his perception of what should be the administrative responsibilities of the public entities concerned. This was followed with a meeting with management of the Agency.

In a letter dated 11th November the Agency explained amongst other points the fact that the complaint against the worker who attended the Complainant's house preceded the coming into being of the Agency.

Commentary / Conclusions

Due to the feedback he was receiving the Ombudsman found it necessary to explain to the Agency his perception of what should be the administrative responsibilities of the two main public entities concerned in this matter.

In so far as the Agency was concerned, the Ombudsman, made it clear that, his interpretation of the law was that, by virtue of section 25 of the Housing Works Agency Act the Agency came within the jurisdiction of the Ombudsman in all its administrative dealings and functions. Therefore, the Ombudsman also made it clear that he could not accept any dismissive attitude towards complaints or any automatic deferrals by the Agency to investigations or Ombudsman's queries.

Moreover, the Ombudsman pointed out that the current set up of the Agency was not that of a private contractor primarily because it was a cooperate body created by law and consequently there were responsibilities and duties imposed upon it by law. It would follow that for that reason any failing to adhere to those duties could be tantamount to a breach of a statutory duty a wholly different concept to those facing private contractors.

However, one point was accepted by the Ombudsman in respect of the Agency's role vis-à-vis Housing, namely the fact that the initial relationship of any tenant with reference to any report made would be between Housing and the tenant. The Ombudsman accepts this on the basis that the complainant would necessarily have to go through the Reporting Office of Housing who are the landlords and legally responsible for the maintenance and supervision of public housing stock. However, what the Ombudsman does not accept is any argument that would suggest that the Ombudsman cannot thereafter investigate issues relating to how the Agency has conducted its affairs with regards to a complaint arising from the initial report.

Similarly, the Ombudsman would not be in a position to accept any argument that would suggest that he is unable or precluded from investigating the work methods of the Agency as they relate to the service the Agency are required to provide.

A clear example of what the Ombudsman interprets and outlines above is found in this particular case where the Complainant made a report of defects to her landlord. Subsequently, the landlord passed the report to the Agency for their action. Arising from which two complaints arose;

i) one in respect of the water ingress defects and

ii) another in relation to the attitude of a worker who attended the Flat.

In respect of those two issues the Ombudsman found that there had been maladministration on the following terms:

i) That Housing had failed to deal effectively with the Complainant's grievance and in particular had failed in discharging their duty of ensuring proper and adequate remedial works.

ii) In the manner the Agency handled the complaint in relation to its employee. This does not mean that the Ombudsman found any inadequate conduct on the part of the worker it simply means that the Agency failed to properly investigate and handle the complaint at its early stages.

The abolishing of the Building & Works Department and the fact that the complaint pre-dated the creation of the Agency meant the Ombudsman could not direct his enquiries as he would have done, nevertheless the Ombudsman maintains his views on how the Agency handled the Complainant's grievance given that at the very least they could have made those facts known to the Complainant at the outset.

There would have been one additional issue of maladministration in relation to the Agency's failure to complete the works within the 12 week period. However, given that the Ombudsman has been informed that the appointed target has been hampered by the backlog of jobs and a new commencement date of April 2012 had been established: the Ombudsman decided to leave this possible delay in abeyance for the time being.

The Ombudsman also took good note that the repairs undertaken to the Flat were of an internal nature only. That is important because it means that the external works had not been carried out. In respect of this issue the Ombudsman is uncomfortable with the reply given by the Principal Housing Officer which seems to suggest that Housing has discharged its duties by the mere fact that he has passed the report to the Chief Technical Officer. In that regard the Ombudsman expects Housing to rigorously pursue pending jobs not least because the management and supervision of public housing stock falls squarely within its statutory duties under the Housing Act. It follows that such a duty is a continuing duty upon Housing and not one which ceases by passing of a report.

Housing should actively monitor pending works, have records and figures about what stage the works are at and where necessary actively pursue for such works to be undertaken. That should have the objective of avoiding further detriment to public Housing stock and to prevent incurring further expenses for more extensive works that may be required as a result of the delay in undertaking repairs.

Classification

Sustained

Recommendations

The Ombudsman would have made recommendations, however given the circumstances of this case and the fact that the whole matter of the external repairs was being actively considered, the Ombudsman was of the opinion that it was prudent not to make any recommendations at this stage.

UPDATE:

TO DATE THE INTERNAL AS WELL AS THE EXTERNAL WORKS TO THE FLAT REMAIN PENDING.

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Case Partly Sustained

CS/953

Complaint against the Housing Authority, due to the length of time being taken to find a solution to resolve problems of anti-social behaviour; and the replies provided were devoid of practical information

Complaint

The Complainant was aggrieved because of the length of time being taken by the Housing Authority, to find a solution to resolve problems of anti-social behaviour from one of the residents in the block of flats ("Building") the Complainant resided in. He was further aggrieved because replies received from the Housing Authority in relation to representations made to them on the matter, were devoid of practical information.

Background

The Complainant explained that he had lived in the Building since 1976 and stated that residents in the Building had always had good neighbourly relationships. Around June 2010, the Complainant explained that the flat adjoining his was allocated to a new tenant and that ever since, he and other residents had suffered the brunt of anti-social behaviour from this new resident ("Neighbour").

The Complainant stated that the Neighbour suffered mental problems and had been a patient at the local mental hospital. The Complainant was of the opinion that despite the Neighbour having been discharged from hospital and allocated the flat, her behaviour was not that of a rational person.. He claimed the behaviour was aggravated by her drinking habits and the erratic manner in which she had her medication.

The Complainant stated that continuous incidents provoked by the Neighbour had resulted in the Police having to be frequently called to the Building. According to the Complainant, on a number of occasions the Police had taken the Neighbour away only to return a number of hours later after having been examined by Mental Welfare Officers. The Complainant pointed out that he was the resident who suffered the consequences of the Neighbour's action more than others because his flat was adjoined to her flat. The Complainant explained that he himself had suffered from depression in the past, for which he had received treatment, and stated that because of the suffering he was enduring amongst which was disrupted sleep, he feared a relapse. Furthermore, the Complainant felt that as time elapsed the situation became more serious as did the Complainant's actions.

Examples of the incidents provoked by the Neighbour were given by the Complainant:

- Persistent knocking on the doors of residents in order to use their phones, and if door was not opened knocking became more aggressive and intense;
- Banging on the Neighbour's walls which divided the two flats (Complainant's and Neighbour's) loud noises and shouting at any time of day or night;
- Threatening Complainant with a bat outside his door;
- Lying on the communal corridor and refusing to move;
- Neighbour and her boyfriend entering Complainant's flat and assaulting him;
- Threatening to kill Complainant.

The Complainant claimed to have in the first instance, verbally put his concerns to the Housing Authority and on the 1st January 2011 sent the first letter to them signed by thirty four residents setting down the problems being suffered because of the Neighbour's action. The letter resulted in a meeting in April 2011 between the Housing Manager, the Complainant and other residents of the Building at which the Housing Manager advised that the matter would be actively pursued by the Housing Authority.

By June 2011 the anti-social behaviour continued despite the Housing Authority's assurances of a prompt resolution. Desperate, the Complainant brought the matter to the Ombudsman.

Investigation

The Ombudsman put the initial Complaints to the Housing Manager who explained that a solution to the case was not an easy one and that they were liaising with the Gibraltar Health Authority ("GHA") and the Police on the matter.

In relation to the Complaint that the replies from the Housing Authority were devoid of practical information, the Housing Manager stated that for a period, the Complainant telephoned the Housing Authority on a daily basis and was provided with updates.

The Ombudsman sought a meeting with the Housing Manager. She explained that the Neighbour had been admitted to the mental hospital and had been allocated the flat via the Medical Housing Waiting List. The Housing Manager stressed that at no time did the GHA advise that the Neighbour's behaviour would require special consideration. .

As to comments made by the Complainant to the Ombudsman that the Neighbour had been allocated other flats in Government Estates from where there had also been complaints about her behaviour, the Housing Manager confirmed that was not the case. The Neighbour's flat was the first Government rented accommodation allocated to her. Prior to her admission into hospital the Neighbour had lived with her husband and children in a privately owned property. The couple had separated and the husband remained in the matrimonial home with the children.

The Housing Manager stated that together with other entities, the Housing Authority was presently pursuing the decanting of the Neighbour from her current dwelling but emphasised that it was not easy to locate a property to re-house her, in the knowledge of the anti-social behaviour. Consequently, no date could be given as to when the move would be effected.

Further, the Housing Manager informed the Ombudsman that they had been faced with cases of anti-social behaviour in the past. In some cases they had mediated between the parties and been successful, in other cases when tenants had sought assistance to be re-housed because of anti-social behaviour, the matter had been put to the Housing Allocation Committee for the approval of an exchange based on evidence of police reports.

Regarding policy in relation to anti-social behaviour and procedures for dealing with the problem, the Housing Manager stated that the Principal Housing Officer had informed her that the new Justice Bill included a specific section on anti-social behaviour which would introduce a range of new measures to deal with the problem. At the time of writing this report, and as a result of further incidents in the Building and Police intervention, the Housing Manager advised that the Minister for Housing had requested that the Police provide a report on the case.

Conclusion

The Complainant had lived in a tranquil environment in the same flat for over thirty five years, and all of a sudden his life and that of other residents in the Building was turned upside down because of the Neighbour's anti-social behaviour.

The allocation was made by the Housing Authority via the Medical Housing List because the Neighbour had been discharged from hospital and was homeless. The Housing Authority maintained that at no time did the GHA advise them that the Neighbour's behaviour required special consideration and the Neighbour was allocated a flat in the Building.

It is clear that the GHA diagnosed the Neighbour as being of sound mind and able to live on her own without medical supervision, therefore based on the incidents that have occurred since the allocation, the Ombudsman can only conclude that the Neighbour is a severe, recurring case of anti-social behaviour not linked to a medical condition. In order to be empowered with the necessary tools to tackle issues of anti-social behaviour, the Housing Authority have to prepare a policy and procedures to deal with these cases.

The Housing Act 2007 which commenced on the 1st June 2008 states under Section 79 (1) the following:

'The Housing Authority shall have as one of its functions the preparation of a policy in relation to anti -social behaviour and procedures for dealing with occurrences on anti-social behaviour and for the reduction of such behaviour'.

and under Section 80 (1) empowers the Minister to make regulations in relation to anti-social behaviour, including the imposition of sanctions and remedial measures.

Irrespective of the Principal Housing Officer's information to the Housing Manager, the Ombudsman concludes that three and a half years have passed since the commencement of the Housing Act, ample time for the regulations, policy and procedures to have been put in place. It may well be that a new Justice Bill will include specific provisions on anti- social behaviour, but the fact remains that for the past three and a half years nothing has been done by the Housing Authority to implement the anti social behaviour provisions which are at their disposal in the present Housing Act.

Failing the lack of a system, the Housing Authority have to re-invent a procedure on a case by case basis. Examples of these are given by the Housing Manager when she states that in some cases the Housing Authority have mediated and in others have approved exchanges for the 'victims' of anti-social behaviour. This manner of dealing with issues inevitably leads to delays in decisions being taken and executed as has been the case with this Complaint. The sad reality is that throughout that time, approximately eighteen months, the Complainant and residents of the Building have suffered on a daily basis and continue to do so without a viable solution being anywhere in sight. The situation has been allowed to fester and has consequently aggravated to the extent that the Complainant has now reached a desperate point where he fears a relapse of his depression. As to the Neighbour, she has allegedly displayed violent behaviour which requires that the Housing Authority find an urgent solution. After considering the matter at length, the Ombudsman was of the opinion that the Housing Authority could have been more proactive when dealing with this case. One issue that came to the notice of the Ombudsman was that the Housing Authority had not made any attempts to contact the Neighbour so as to better asses the situation and hear her side of events.

The Ombudsman had to make adverse comment of the fact that the Housing Act came into effect in June 2008 and as yet no Regulations had been made by the Minister for Housing to put into effect the anti social behaviour provisions of the Housing Act. In the absence of anti social behaviour regulations, the Housing Authority was almost powerless to remove the Neighbour.

The Ombudsman had to sustain the complaint because irrespective of any other consideration, the fact was that no solution had been found to the Complainant's grievance. Regarding the Complaint that the Housing Authority's replies are devoid of practical information, the Ombudsman cannot sustain this part of the Complaint. The information being provided by the Housing Authority to the Complainant was fact; that they were actively pursuing the matter in order to find a solution.

Case Not Sustained

CS/955

Complaint against the Housing Authority due to the Complainant not having been treated fairly with regards his relocation.

Complaint

The Complainant was aggrieved because he claimed the Housing Authority had not treated him fairly in relation to his relocation from the Government rented flat he resided in ("Flat 1") to a similar property.

Background

The Complainant, a pensioner with a medical problem, explained that he, his wife and adult son lived in Flat 1 which was a two bedroom property. In 2007, due to his medical condition, the Housing Authority offered to relocate him and his family to a two bedroom flat in a new Government Housing Estate ("Estate") which at that time was under construction.

The Estate was completed in 2011 and the flats allocated through a ballot system. The Complainant explained that he went through the process and after the ballot visited the flat ("Flat 2") which had been allocated to him. At that viewing, the Complainant became very concerned by the small size of the property and stated he made known to Housing Authority officials that under the circumstances, Flat 2 was inadequate to house him, his wife, son and the son's common law partner. Furthermore, the Complainant explained that because his medical condition caused great stress to the family, his son could not continue to live with them. Nonetheless, the Complainant stated that Housing Authority officials asked him to sign the licence agreement ("Licence") and then put his concerns to the Ministry for Housing. [By way of information, the Complainant stated that his son had been an applicant on the Government Housing List for ten years. He explained that his son was in the Medical Housing List because of his (the Complainant's) condition].

The Complainant explained that he signed the Licence and subsequently met with the Minister for Housing ("Minister") to discuss his problems. The Complainant claimed that the outcome of the meeting was an offer of a one bedroom flat for him and his wife at the new Estate, on the understanding that his son would be made a separate allocation but when he viewed the said flat he rejected it. Feeling that due to his condition he had not been treated fairly by the Housing Authority the Complainant lodged his complaint with the Ombudsman on the 31st August 2011.

Investigation

The Ombudsman wrote to the Housing Authority to establish their facts. and the sequence of events in this case.

The Housing Authority confirmed that the offer of a two bedroom flat at the Estate was made to the Complainant in 2007 via the Medical Housing List. The Complainant, his wife and their son were all tenants of Flat 1 and their entitlement was for a two bedroom flat (the son's common law partner was not a tenant at Flat 1). At the time of writing this report, the Housing Authority advised that the son was in 111th position in the one room/kitchen/bathroom list and was not categorised in the Medical List.

The Housing Authority provided the following dates:

- 28th March 2011 the Complainant attended the ballot;
- 5th May 2011 he viewed Flat 2;
- 12th May 2011 signed the termination for the tenancy of Flat 1 and signed the Licence for Flat 2. (Licence issued for the purpose of decorating the property prior to moving in and was for an initial period of three weeks).
- 8th June 2011 the Complainant met with the Minister;
- 15th June 2011 offer of a one bedroom flat at the Estate was verbally refused.

The Complainant moved into Flat 2 whilst his son remained in Flat 1, despite having signed the termination form for the tenancy of Flat 1. For that reason, the Housing Authority, further to extensions on the Licence and a letter to the Complainant on the 20th September 2011 in which he was warned of legal action if the keys to Flat 1 were not returned, instructed a lawyer to pursue the matter.

On 17th October 2011 the lawyer wrote to the Complainant to inform him that the right to enter Flat 2 had terminated under the terms of the Licence and that if by the 20th October 2011 the keys to Flat 1 had not been returned, proceedings would be issued in Court for the repossession of Flat 2. By the 23rd December 2011 the Complainant continued to reside at Flat 2 whilst keys to Flat 1 had still not been returned to the Housing Authority therefore legal action was being pursued.

Conclusions

The Complaint brought to the Ombudsman was that the Housing Authority had not treated the Complainant fairly with regards to his relocation. On analysis of the investigation, the Ombudsman noted various issues which stemmed from it.

Relocation

As a result of his medical condition, the Complainant was included in the Government's Medical Housing List and was offered a flat in the Estate along with his wife and son. When he viewed the two bedroom flat the Complainant did not consider it adequate for his requirements. The Complainant did not feel that the son could continue to reside under the same roof as he and his wife because of the medical condition he suffered and because the Complainant believed that the son had been in the housing waiting list long enough to be allocated a flat in his own right. Despite efforts from the Minister to accommodate the Complainant's needs by allocating a smaller flat to the Complainant and his wife (their entitlement) and the son a separate flat, the Complainant did not find the alternative suitable and refused. Nonetheless he and his wife moved into Flat 2 and the son remained in Flat 1 despite the Complainant having signed the termination of the tenancy at that property.

The Ombudsman cannot sustain this Complaint. From the outcome of the investigation it is clear that since 2007 when the Complainant was first made the offer of a flat at the Estate, he had full knowledge that the offer of a two bedroom flat was made on the basis that it would accommodate him, his wife and the son. It would have been at that point that the Complainant should have requested a meeting with Housing to discuss his needs and in that way enabled Housing to have had ample time to study the case.

Instead, when Flat 2 was allocated to the Complainant four years later, he signed the Licence for Flat 2 and the termination of the tenancy at Flat 1, knowing that Flat 2 did not meet his requirements. The fact that the Minister made attempts to relocate the Complainant and the son in separate flats further substantiates that the Complainant was in fact treated very fairly by the Housing Authority in the case of his relocation.

Repossession of Flat 2

The Complainant signed the Licence for Flat 2 on the 5th May 2011. The benefit of the Licence with respect to the Complainant was that it allowed him to enter the property for a number of weeks to enable him to decorate the property prior to moving in. On the part of the Housing Authority the purpose of the Licence was twofold:

No tenant would have two tenancies running simultaneously during the overlap period of reallocation;
A Licence does not carry rights, as opposed to a tenancy, and can be revoked at any time. The Licence would therefore facilitate the recovery of the property under licence if the need arose as appears to be the case with the Complainant.

The Housing Authority states that they were not aware that the Complainant had concerns about the allocation. The Complainant states that the Housing Authority were fully aware that he had issues with the allocation but nonetheless told him to sign for Flat 2 and subsequently put his concerns in writing. Although it is difficult to determine which of those facts is correct there is no disputing the fact that the Complainant:

- Had the choice not to sign the Licence;
- Asked and was given extensions on the Licence;
- When he lodged his Complaint with the Ombudsman gave the address of Flat 2 as his address;
- Remains in Flat 2;
- Son remains in Flat 1.

As a result, the Housing Authority has had to engage a lawyer, initially to pursue the return of the keys to Flat 1 and subsequently, as that has failed, is now in the process of issuing proceedings at the Supreme Court seeking an order of possession for Flat 2. Undoubtedly, this process will now generate legal fees which the Ombudsman hopes are not passed on to the taxpayer.

Classification: Not sustained

UPDATE

1 THE COMPLAINANT HAS BEEN ALLOWED TO RETAIN HIS ALLOCATION AT THE MID HARBOUR ESTATE.

2 THE COMPLAINANT'S SON HAS BEEN ALLOWED TO BECOME THE TENANT OF FLAT 1.

3 THE DECISION FOR THE ABOVE WAS EXCEPTIONALLY AGREED TO BY GOVERNMENT.

4 THE COSTS OF LEGAL FEES FOR THIS CASE WILL BE INCURRED BY THE MINISTRY FOR HOUSING.

Case Sustained

CS/958

Complaint against the Housing Authority for a delay in carrying out repair works at the Complainant's Government flat ("Flat").

Complaint

The Complainant, a senior citizen was aggrieved because she had been waiting for her old windows to be replaced for three years as well as the entire roof of the building of her Flat which was causing significant water ingress during the winter.

Background

The Complainant, an elderly lady, residing with her elderly husband, was aggrieved because she claimed that the Housing Authority had failed to replace two old windows in her Government flat ("Flat") and the entire roof of her building which was causing severe water ingress and consequently having a negative effect on her everyday life and that of her husband's.

The Complainant started reporting the need for repairs to the now abolished Buildings and Works Department ("B&W") (entity tasked with maintenance and repairs to public housing). B&W sent estimators to the Flat a number of times, yet no repairs were carried out.

In May 2011 when three years had elapsed, the Complainant wrote a letter to the Principal Housing Officer ("PHO") and explained the distress this long wait was causing her and her husband. She explained that the windows had deteriorated to the point that they could no longer be shut and how this was a major problem as it meant that they had to take baths with their bathroom window open during the winter as well as they had to endure the noise these windows caused when blown by the wind. The Complainant also explained in her letter the problems she was suffering as a result of not having the external works to the roof of her building carried out and urged for a speedy remedy.

In June 2011, a month after her letter to the PHO, the Complainant received an acknowledgement stating that her concerns had been noted and that those responsible for window replacement and external repairs had been informed.

However, a further two months had gone by and the Housing Authority had not taken any action regarding the Complainant's grievance. Concerned by the fact that winter was approaching, the Complainant lost faith in the Housing Authority and therefore lodged a complaint with the Ombudsman on the 15th August 2011.

Investigation

The Ombudsman initiated his investigation by letter dated 6th September 2011 requesting an update on the status and an approximate start date of the pending job specifically in relation to the windows. Bearing in mind that external works had not commenced yet, the Ombudsman believed that should the Housing Authority promptly fix the Complainant's windows then this would help alleviate part of the Complainant's grievance.

It was not until the 25th October 2011 (nearly two months later and after two chaser letters) that the Ombudsman received a reply from the PHO stating that the Window Contractor had claimed that he had tried on numerous occasions to gain access to the Complainant's property but their calls were never answered; additionally, they had left calling cards. The letter also stated that the windows were ready to be installed as soon as the Window Contractor was able to gain access.

By contrast, after having spoken to the Complainant, the Ombudsman was able to explain the following to the PHO:

The Complainant had been waiting for the windows to be fixed or otherwise replaced for three years.

He also noted that the Complainant had written to the PHO on 18th May 2011 and that there was no reply to this letter.

The Ombudsman went on to explain that on the 16th August 2011, the Complainant received a telephone call from the Window Contractor to inform her that they would be calling at her Flat on that same day; once again, the windows were measured.

Yet it was not until 14th October 2011 that the Window Contractors gave her another call to say they would install the windows on the 17th October. However, this did not materialise and the Complainant assured the Ombudsman that no one had attended at her Flat nor were any calling cards left behind either. (The Ombudsman was able to ascertain that the calling cards had been left at a different address) In light of such events, The Ombudsman requested the PHO to undertake a complete and thorough investigation of this particular case and provide him with a report.

The Ombudsman only received an acknowledgment from the Project Manager ("PM") on the 16th January 2012 after having to chase for a reply. On his acknowledgment letter, the PM stated that he had requested information from the Housing Authority's representative responsible of the repairs and replacement of windows and that he would revert as soon as said information was available.

By the time that the Ombudsman had received a reply, the Complainant had already informed the Ombudsman that on the 2nd December 2011, the Window Contractor had replaced the two broken windows in her Flat. For the record, the time lapse was three years and eight months since the Complainant's first reports, eight months since the Complainant's written correspondence to the PHO and three months since the Ombudsman's intervention.

Conclusion

The Complaint brought to the Ombudsman was against the Housing Authority for their delay in carrying out vital repair works to prevent water ingress to the Complainant's Flat.

It is important to note that at the time this investigation was carried out, the Ombudsman decided to focus on the immediate problem which were the Complainant's broken windows and leave the matter of the external works aside as this was being looked at in an Ombudsman's systemic investigation Case 950 available at http://www.ombudsman.org.gi/investigations-1/report-on-case-no-950-new

At the date in which this report was compiled (13th August 2012), the external works had not yet been carried out to the Complainant's roof and the Complainant was still pursuing the matter with the Housing Authority considering that a section responsible for external works had already been put in place.

In regards to the window replacement issue, the Ombudsman noted that what could have been a simple matter of window replacement turned into a long winded complaint which in the Ombudsman's opinion did not merit such an ordeal.

The Ombudsman could not understand why there had been a need to send workmen from the former B&W Department, the HA and the Window Contractors to visit the Flat in a span of three years to assess the works required. Surely, the works could have been assessed once to avoid wasting tax payer money on unnecessary visits. The PHO should ensure that the necessary steps are taken not only to account for the time of his staff, but also to achieve compliance with the basic Principles of Good Administration. It is frustrating to see that situations such as the one experienced in this case, could have been avoided if the HA had adequately dealt with the Complainants issue at the outset. Instead, a simple matter of window replacement festered into a complaint of maladministration.

The fact that the HA assumed that since the window job was completed, correspondence with the Ombudsman was no longer necessary does not apply. The Ombudsman's investigations tackle underlying issues which relate to the complaint lodged. Possibly the most important role of the Ombudsman's investigations is to ensure that instances of maladministration are corrected not only for the particular complaint being investigated but also for future users of the service.

The Ombudsman had to proceed with the writing of this report without the report he had requested from the PHO on the 4th November 2011 as no reply had been received and (at the time of writing this report) the PHO had been seconded to a different Ministry. The Ombudsman took the view that he would not receive a reply and was not prepared to re-start the process. However, it was evident from the facts presented to the Ombudsman that the HA was merely making excuses for their failure to address the Ombudsman's request.

In order to establish maladministration, the Ombudsman will generally compare what actually happened with what should have happened. In this case the Complainants were an elderly couple aged 74 and 77. The fact was that it took three years to replace two damaged windows that they were not able to be shut. Consequently the elderly couple had to take showers with their bathroom window open regardless of the weather conditions. In the Ombudsman's opinion this was an indictment of the service the HA provided its tenants. What should have happened is that such a simple job should have been tackled within a reasonable period – three years was certainly not such a reasonable period.

Classification: Sustained

UPDATE

THE HA EXPLAINED THAT THE PREVIOUS ADMINISTRATION CONTROLLED ALL OUTSTANDING EXTERNAL WORKS FROM NO.6 CONVENT PLACE AS OF FEBRUARY 2010 INCLUDING THAT OF THE CASE IN QUESTION AND THAT NO EXTERNAL REPAIRS WERE CARRIED OUT BETWEEN FEBRUARY AND OCTOBER 2010.

SIMILARLY, AT THE TIME THE COMPLAINANT REPORTED THE DEFECTIVE WINDOWS, THE WAITING PERIOD WAS OF 5 YEARS. THEREFORE BECAUSE OF THE EXTRAORDINARY LENGTH OF TIME IT WAS TAKING TO REPLACE A WINDOW FROM THE DAY IT WAS REPORTED BY THE TENANT, IT HAS BEEN POLICY TO RE-INSPECT. IN A HIGH NUMBER OF OCCASION THE HA HAVE FOUND THAT ORIGINAL DEFECTS HAD DETERIORATED EVEN MORE THAN ORIGINALLY REPORTED. THIS EXPLAINED THE NUMBER OF INSPECTION/ESTIMATOR VISITS NEEDED.

Case Sustained

CS/960

Complaint against the Housing Authority due to the Complainants not able to contact the Reporting Office, to report the breakdown of the lift in the block of flats they resided in

Complaint

The Complainants were aggrieved because they were unable to contact by telephone the Housing Authority's Reporting Office to report the breakdown of the lift in the block of flats ("Building") they resided in.

Background

The Complainants explained that they were an elderly couple who resided in a flat ("Flat") located on the eighth floor of the Building and that the lift was therefore indispensable for them. The Building is serviced by two lifts but the Complainants explained that one of them had been out of order for a long period of time. When the remaining lift broke down it was as a matter of urgency that the Complainants telephoned the Reporting Office. Despite numerous insistent attempts, their call was not answered.

The Complainants stated that because of the frequency in the breakdown of the lifts there had been many occasions when they had telephoned the Reporting Office. Each time they had to make various attempts before the phone was finally answered and the report taken. Thereafter it still took a couple of days for the lift to be repaired.

Investigation

The initial reply from the Housing Authority to the Ombudsman's inquiries put examples of various scenarios, e.g. that officers at the Reporting Office may have been attending to tenants at the counter, which would not have allowed them to answer the telephone. In the same letter the Housing Authority provided two telephone numbers for the Reporting Office and an after hours number.

The Ombudsman was dissatisfied with the information provided as he felt it stated the obvious. It did not address the root of the Complaint; i.e. staff shortages at the Reporting Office and information as to notification of the after hours number to residents of the Building. It took the Principal Housing Officer over five months from the date of the Ombudsman's initial letter to produce a substantial reply and this only after the Ombudsman persistently pursued the matter.

The Principal Housing Officer stated that there had been problems with resources at the Reporting Office which needed to be addressed. He explained that they only had two customer services support officers and that when one was on annual or sick leave the response to calls dropped accordingly.

Regarding the issue of the lifts at the Building, the Principal Housing Officer stated that the matter of the unacceptable level of breakdowns had been brought to their attention by the Estate Tenants Association. He explained that the lifts were maintained by the Gibraltar Electricity Authority and that in order to maintain consistency and ensure breakdowns were kept to a minimum it had been decided to transfer the maintenance of the lifts over to a private company.

[Ombudsman's Note: During the investigation of this case the Ombudsman attempted to contact the Reporting Office by telephone on various occasions (19th & 20th December 2011, 3rd January 2012) and was not successful].

Conclusions

In the opinion of the Ombudsman, there is no doubt that the Reporting Office in its present set-up is not fit-for-purpose. Certainly, the service that it offers leaves much to be desired and is not commensurate with the expectations of a modern society.

Government tenants can make reports for repairs via telephone or personally at the counter. It is clear from the Ombudsman's findings that under the present set-up, the telephone service is being sidelined because of the very set-up of the office and also because of staff shortages. The Housing Authority has made no apparent attempt to actively pursue a solution.

Since the abolishment of the Buildings & Works Department, the help desk which that department managed ceased to exist. The role of that help desk was to update persons on the status of reports made and indeed provided a good service. At present there is a void in the system which urgently needs to be addressed. Currently, after tenants make reports, there is simply no system in place to provide them with updated information as to when the repairs will be undertaken or on any other related matter.

The Reporting Office needs to be revamped to the extent where it will be the focal point for those tenants who wish to report requests for repairs to their flats and who may subsequently require information on any matter pertaining to the said report.
The Reporting Office needs to be able to provide adequate and timely information and ensure that the service given to Government tenants is of a high and useful standard.

Classification

Sustained

Recommendations

1. As a result of a private contractor now undertaking the lift maintenance, the Ombudsman recommends that the Housing Authority notify all tenants of the new contact numbers to which to report faults. The contact number should also be displayed in each block of flats.

2. The Housing Authority should, as a matter of priority, address problems of resourcing at the Reporting Office in order to ensure that the Reporting Office is the focal point for all aspects of reports by Government tenants, and provide the level of service expected by a modern society.

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Case Sustained

CS/962

Complaint against the Housing Authority ("HA") for their failure to reallocate the Complainant from his Government rented flat ("Flat") even though his flat had become uninhabitable

Complaint

The Complainant was aggrieved because he claimed that the HA had failed to reallocate him from the Flat which had become uninhabitable as a result of the deterioration after a nine year wait for repairs.

Background

The Complainant explained that he was aggrieved because he had been waiting for the HA to carry out repairs to his Flat since 2003. As at January 2012, i.e. nine years later, nothing had been done.

The Complainant claimed that he had informed the HA back in 2003, of the defects regarding the windows in his corridor and urged them for repairs to be carried out. The HA assessed the damages at the time but failed to make the necessary repairs.

Frustrated by the lack of action on the part of the HA the Complainant brought his first complaint to the Ombudsman in 2009. The Ombudsman investigated the complaint (Report 874). The Ombudsman firmly sustained the first complaint and stated that the delays encountered by the Complainant were unreasonable and attributable to poor administration. It is important to highlight at this juncture that the first complaint was made against the now abolished Buildings and Works Department ("B&W") (entity tasked with maintenance and repairs to public housing). B&W completely ignored the Ombudsman's report and no repairs were carried out to the Flat.

In September 2011, the Flat having further deteriorated, the Complainant wrote to the HA and requested to be reallocated to the Glacis Housing Estate and requested a meeting to explain the reasons behind his request but was informed in writing that the HA did not entertain requests for specific addresses and was not given the opportunity to meet up with the Housing Manager.

On the 21st September 2011, having lost faith in the HA, the Complainant once again lodged his Complaint with the Ombudsman

Investigation

The Ombudsman wrote to the HA explaining the Complainant's circumstances and requested their comments. The HA's reply explained that on the 19th September 2011, the Housing Allocation Committee had recommended that the Complainant be included on the approved Exchange List on a 'medical B' categorisation. The HA confirmed that the Complainant had been placed on the Social 'A' Waiting List on the 8th November 2010 and was presently in fifth position for a 4RKB and would be offered accommodation as soon as it became available.

When the Ombudsman updated the Complainant on the HA's reply, the Complainant explained that his circumstances had changed and he now no longer required a 4RKB but rather a 3RKB. He informed the Ombudsman that by letter dated 22nd September 2011 he had notified the HA of his change in circumstances. These had come about due to problems in the relationship between himself, his grandson and his troublesome daughter who were originally going to reside with him. Not having received an acknowledgment or reply to that letter, a month later the Complainant once again wrote to the HA. No apology was offered by the HA for this oversight.

On the 10th November 2011, the Ombudsman was informed that a flat had been earmarked for the Complainant. By the 5th January 2012, the Complainant was offered a flat on a third floor which he had to refuse on recommendation of the Senior Occupational Therapist who viewed the flat and deemed it unsuitable for the Complainant's wife. A new offer was made on the 20th January 2012 in the New Mid Harbour Estate which the Complainant had to refuse as he could not afford the rent being charged for this flat.

On the 14th February 2012, the HA was able to offer the Complainant a flat in the Laguna Estate which needed extensive repairs, but was affordable to the Complainant. The Complainant accepted the flat and on 28th March 2012, the Housing Manager informed the Ombudsman that works were being carried out through private contractors to speed up the process and not cause any further delay for the Complainant.

Conclusion

Back in 2003, the Complainant had reported to the HA/B&W that his windows were in a very bad state and needed to be repaired or replaced. Despite the time elapsed and the Ombudsman's investigation in 2009, B&W completely disregarded the Ombudsman's first report and failed to repair the Complainant's windows. This resulted in severe water ingress which caused so much damage to the Flat that it made it practically uninhabitable.

B&W claimed that the repairs had not been undertaken due to excessive workload. The Ombudsman did not accept this reason for allowing the disrepair to continue and believed that had the Complainant's windows been fixed at the appropriate time, the Flat would have not disintegrated to such an extent. In the long run, the inaction in relation to repairs has resulted in a high increase in costs to the public purse which would have been averted had repairs been undertaken in a timely manner. More so, the grief, anxiety and stress caused to the Complainant and his family during a period of over nine years.

<u>Delay and lack of updates</u>

Failures in this case were not limited to the lack of repairs during a nine year period. Although the Complainant's letter to HA informing them of his change in circumstances appears not to have been received, upon receipt of his second letter, HA should have acknowledged said letter and provided the Complainant with an explanation. The Ombudsman was also critical on the lack of updates to the Complainant in respect of his present positions on both the medical and social waiting lists.

<u>First Offer</u>

Despite the Complainant having presented letters from the Occupational Therapist and a GP attesting to his wife's ill health and inability to climb stairs, the HA made its first offer of re-allocation in January 2012 to a flat located on the third floor of a building (no lift). This not only delayed the process of re-allocation but pointed to maladministration in that the Complainant's wife's medical condition had been ignored.

Second Offer

Considering the first offer was unsuitable for the Complainant's needs, the Ombudsman wished to highlight the fact that the HA acted promptly in making a second offer two weeks later. The Complainant however was unsure of whether or not he would be able to afford the rent and decided to decline this second offer due to his financial position.

Third Offer

The Complainant was finally offered a flat within his requirements and needs on 14th February 2012.

Although the flat needed extensive repairs, the Housing Manager (further to Government having authorised the use of private contractors to help in the refurbishment of flats to clear the backlog) in order to assist as much as possible in the speedy reallocation of the Complainant and his family, made arrangements for a private contractor to swiftly carry out the necessary repairs.

Classification

Sustained on the grounds that the Ombudsman's report, CS 874 with recommendations to replace windows was never carried out and on the grounds that the Complainant's letter updating the HA on the family composition and circumstances was not acted upon thereby causing additional delay to the allocation.

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Case Sustained

CS/966

Complaint against the Housing Authority for the Complainant having been waiting since 2004 for blinds to be replaced and delay in obtaining a decision to his claim for compensation

Complaint

The Complainant who resided in a Government rented flat ("Flat") stated he had been waiting since 2004 for the replacement of two blinds.

On a separate complaint, in December 2009 and January 2010 the Flat sustained damage as a result of water ingress. In January 2010 the Complainant submitted a claim for damages to the Buildings & Works Department ("B&W") but by October 2011 had still not received a decision on the matter

Background

The Complainant explained that in 2004 one of two external blinds in one of the bedrooms in the Flat broke and fell onto the road. The Complainant reported the matter to B&W who attended to the call and as a result also removed a second blind which although still in situ was in a bad condition and also threatening to fall. Subsequent to the removal, the Complainant claimed that he contacted B&W on numerous occasions to enquire about the replacement of the blinds and was informed that the report had been included in the 'Shutters & Windows Replacement Waiting List' ("List"). The Complainant claimed that the removal of the blinds had allowed rainwater to ingress and resulted in dampness problems in the bedroom.

On the 11th May 2011, the blinds not yet having been replaced, the Complainant wrote to the Housing Authority's Principal Housing Officer ("PHO") to complain about the delay but by October 2011 had not received a reply.

Regarding the second Complaint, the Complainant explained that between Christmas Day 2009 and January 2010 the Flat, located on the top floor of a block of flats, experienced severe water ingress originating from the roof. Once again the Complainant reported the matter to B&W. According to the Complainant B&W immediately attended to the report but upon inspection informed him that because the roof was flat it could not be secured at that time. The following day the Flat suffered further water penetration which affected the electrics in the Flat, and this time both B&W and the Gibraltar Electricity Authority ("Gibelec") attended to the Complainant's emergency call. The Complainant stated that Gibelec isolated the affected electrical system and B&W informed him that nothing further could be done until after the Christmas/New Year holidays. As a result, the Complainant and his family lived in a wet, damp and dark Flat for the duration of the vacation, twelve days. The Complainant stated that on the 7th January 2010 they experienced a most severe water ingress episode which resulted in damage to most of the contents in the bedroom and affected the lounge and hallway. Once again contacting B&W the Complainant explained that on that occasion, they began to erect scaffolding and over a six month period undertook works to secure the roof. The Complainant explained that in January 2010 he submitted a claim form (provided by B&W) for the damages. Five months later he received a letter from B&W acknowledging the claim and informing him that the matter was under investigation and he would be advised of developments. In February 2011 he was informed that the matter had been passed to Government solicitors but upon enquiries at a later stage, the Complainant claimed that no one seemed to know who was dealing with the matter.

On the 11th May 2011 the Complainant wrote to the PHO with his grievances. Not having received a reply to his letter by October 2011 and desperate to resolve the stalemate situation, the Complainant contacted the Ombudsman.

Investigation

The investigation into this Complaint was plagued with unnecessary delays. It took two months for the Ombudsman to receive a reply to his initial letter, and a further two months for subsequent information requested by the Ombudsman (a copy of the List and copies of the reports of the removal of the blinds).

Upon inspection of the reports the Ombudsman found an emergency works order had been generated on the 22nd January 2003 for the removal of a blind which was in bad condition and in danger of falling. Description of the works to be undertaken stated:

'Fix missing shutter and one shutter hinge in bedroom. Repair window in bedroom and shutters in living room which do not open properly.'

The actual emergency works undertaken as a result of the works order was the removal of the blind. The works stated above were cancelled. The Ombudsman requested information from the Housing Authority in this regard and was informed that the blinds had been made safe and the works therefore cancelled. The Housing Authority continued by stating that the Complainant did not make further reports about the blinds until the 23rd April 2009 as a result of which an inspection was carried out and the repair of the shutter included in the List. In May 2012 the report was in 586th position on the List.

The Ombudsman drew the Housing Authority's attention to the fact that the removal of the blind had taken place in January 2003 and as such should have been included in the List as of that date and not six years later. The Housing Authority reviewed their records and found that when the blinds were removed in 2003, no follow up order had been raised by B&W. As reports from 2005 on the List were the ones being carried out at that time, the Housing Authority in order to rectify the error issued instructions for the replacement of the Complainant's blinds and would notify the Ombudsman once the works were carried out.

Regarding the claim for compensation, the Complainant presented a claim for £670- damages in January 2010. Five months later he received an acknowledgement from B&W and was advised that the matter was under investigation and he would be informed of developments. In February 2011 B&W referred the claim to the Attorney General's Chambers ("AG") who shortly after requested information from B&W with regards technical issues. It took four months for the Housing Authority to reply. By March 2012 the Housing Authority stated they were still awaiting a decision from the AG. The Housing Authority pointed out that there were two clear periods during which no action on the case had been taken by anyone and that was as a result of a transition period in early 2011 when B&W was abolished and the Housing Works Agency established to carry out building maintenance and repair works to government rental housing. As a result the Housing Authority took over responsibility for claims. On the 13th April 2012, the Complainant was notified by the Housing Authority that his claim had been denied.

Conclusions

It beggars belief that the emergency response unit of B&W were unable to offer assistance to prevent further water ingress to the Flat which originated from the roof, and that the Housing Authority did not have a contingency procedure in place to deal with such emergencies out of normal working hours. Had a tarpaulin or similar method of securing the roof been put in place, the stress, grief and hardship endured by the Complainant and his family throughout the holiday period would have been minimised. The inaction in that case left the roof exposed to the elements which inevitably resulted in further episodes of water ingress to the Flat which culminated in the Complainant's property being badly damaged.

As a result of the above, £670 worth of personal belongings was damaged and the Complainant completed and submitted the claim form provided by B&W. Two years later and after having pursued the matter with B&W, the Housing Authority, the PHO and the Ombudsman, the Complainant was informed that a decision had been reached and his claim had been denied. In 2011 the Ombudsman undertook a number of investigations related to claims, specifically on delays on the part of B&W in processing claims for compensation. As a result of those investigations (cases 885, 895 and 904) 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.

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.

The Housing Authority 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.

The Ombudsman found maladministration in the way that the matter of the claim had been handled. This was aggravated by the fact that after a two year wait, the Complainant was not even provided with the reasons as to why his claim had not been accepted.

Regarding the complaint of delay in the replacement of the blinds, the investigation found that there had been continuous maladministration. At the outset B&W made no follow up report for the replacement of the blinds and then further to enquiries from the Complainant he was informed that the report was in the system and had been included in the List when in effect that was not the case. The report was not included in the List until 2009, five years after the removal.

It took the Ombudsman's investigation for the Housing Authority to revisit this case, identify errors and rectify them.

Regarding the issue of non-reply on the part of the PHO to the Complainant, although this did not form part of the investigation, the Ombudsman based on the tardy replies offered to him by the Housing Authority and not having been provided with any copies of letters from the PHO to the Complainant could only conclude that the PHO had not replied to the Complainant's letter.

Classification

Sustained

Recommendations

The Housing Authority should have a system in place whereby a response team will be available out of normal working hours and during holidays, to attend to emergency situations and put in place measures to minimise damage until scheduled works can be undertaken.

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Case Sustained

CS/968

Complaint against the Housing Authority in respect of their delay in acknowledging and processing the Complainant's claim for compensation

Complaint

The Complainant was aggrieved because nine months had elapsed from the date upon which she made a claim for compensation to the Housing Authority ("HA"), relating to damage to personal goods as a result of a burst salt water pipe at her Government owned flat. Up to the date of filing her Complaint with the Ombudsman, she had not received an acknowledgment or reply as to whether the claim had been accepted or rejected. The Complainant further complained that she had left countless messages for the Principal Housing Officer ("PHO") but her calls were never returned.

Background

The Complainant lodged two reports with the Housing Authority ("HA") relating to damage to a salt water main leading to the Complainants Government owned flat. Following a period of inaction by HA which resulted in the Complainant's flat suffering water damage as a result of the burst salt water pipe, the Complainant submitted a claim form seeking compensation for damaged goods.

The Complainant first reported the damaged pipe on 3rd November 2010 and again on the 16th February 2011. In the second "Tenant's Report & Works Order Transaction Form" the details of the report are stated as "Pipework for inspection-leaking badly due to its rotten state- treat as urgent". The works were not carried out and as a result, in March 2011, the pipe burst and the Complainant's flat and numerous household items suffered damage. Neither an acknowledgment of her claim or a reply were received by the Complainant. As a result she telephoned HA on many occasions and left numerous messages which remained unanswered.

Investigation

On the 7th December 2011 the Ombudsman presented the complaint to the PHO and requested comments on the issue of the failure to provide an acknowledgment/substantive reply to the Complainant's claim. HA replied to the Ombudsman stating that further to the Complainant raising the damage report in March 2011, they requested a report from the works supervisor responsible and subsequently sought legal advice from the Attorney General's Chambers ("AG") on the issue of HA's liability for the damage caused. The reply also stated that once the reply/advice from the AG had been received, this would be made available to the Complainant.

During the investigation it was noted from correspondence held on file that three months after the advice was sought, AG requested, by way of letter to HA, additional information on the circumstances leading to the claim filed by the Complainant in order to properly advise HA. A copy of this letter was made available to the Ombudsman on the 27th February 2012 (over 7 months after it was originally received by the Authority). The Ombudsman considers it unacceptable that by February 2012, the information requested by AG in order to properly advise, had still not been collated and made available to them.

Given the overall delay in dealing with the Complainant's and other disassociated claims, the Ombudsman wrote to HA on the 1st March 2012, insisting on the general need for receipt of "timely and accurate information". As a direct consequence, the information previously requested by the AG relating to this Complaint was made available. In their cover letter to AG enclosing said information, HA apologised "most sincerely" for the delay in responding to the initial request for the information, on the basis that the original letter of request had been "misplaced."

Subsequently, HA sent the Complainant a holding reply apologising for the delay in confirming receipt of the Complainant's original letter of 7 November 2011 followed by a final letter on the 2nd May 2012, stating that on the basis of legal advice received by the AG, the Complainant's claim had been denied and consequently, on that basis, the Authority considered "the case closed".

Conclusions

It is unfortunate that delay has been the overriding consideration surrounding this complaint from its inception. The Ombudsman is aware of the fact that HA is ordinarily required to investigate claims and on occasion seek legal advice. Despite this, the lack of an acknowledgment to the Complainant's claim and the failure to return her calls, can only be described as unreasonable.

Following from the reply to the Ombudsman's initial letter of complaint it appears that steps had indeed been taken by HA in that a report of works from the works supervisor responsible was requested and legal advice was sought. It is at this stage where the Ombudsman is of the view that the HA should have issued the Complainant with a letter of acknowledgment. Instead, the Complainant remained uninformed and as a result, suffered distress and uncertainty for a period of eight months (this being the period that ran from submitting the claim to the filing of the complaint with the Ombudsman). The Complainant was left in the dark as to progress (if any) of her claim and as to whether or not it had been processed at all.

The fact that on its own admission the HA had misplaced the AG's letter where further information had been requested in order to provide the legal advice sought, added to the delay and can also only be described as unfortunate. It is not acceptable that despite the loss of the letter, HA only corresponded with AG in consequence of the Ombudsman's direct intervention, thereby ending a period of inaction spanning a further eight months from the date upon which the AG had requested the further information, to the date upon which it was actually provided. Arguably, this claim would have suffered further delay but for the Ombudsman's intervention referred to above. As a result, the matter was closed with the HA's final letter to the Complainant dismissing the claim.

In conclusion and in consequence of the procedure adopted in this case, coupled with the lack of acknowledgment to the Complainant and the unjustified and repeated delays, the Ombudsman finds that the administrative process adopted in this case, failed.

Classification

Sustained

Recommendations

Given the allegation of delay in HA's acknowledgment of the Complainant's claim, an allegation on which the Ombudsman has reported on various occasions, the Ombudsman recommends that HA should acknowledge claims in writing within a reasonable time frame, this being a period of no more than 7 days from the date of receipt of claims.

Since many complaints have been made in relation to claims taking a significant amount of time to be addressed, the Ombudsman recommends that HA should ensure that the progress of claims be periodically reviewed to ensure that claimants do not suffer unacceptable delays

Addendum

Whenever a tenant of a government owned property suffers loss as a result of damage from an incident such as a burst water pipe or electrical failure, it cannot be automatically assumed that the public purse should be responsible for the loss and subsequently make financial compensation. At times the tenant who has suffered loss is left without redress.

The Ombudsman has made representations to the Housing Authority on this matter and has been informed by the Minster for Housing that the Housing Department "will be advising new Government tenants, as a matter of procedure, at the signing of tenancy agreements, that they should independently seek private insurance to cover against damage to personal belongings/ property."

Case Sustained

CS/969

Complaint against the Housing Authority ("HA") in respect of delay in reallocating the Complainant to suitable alternative accommodation

Complaint

The Complainant was aggrieved because despite the offer of a Government flat ("the Flat") which was meant to have been formally offered to the Complainant within "the next few weeks," as communicated to her by way of letter ("the Letter") from the Office of the Minister for Housing dated the 23rd September 2010, a year had elapsed between the date of the Letter and the filing of this complaint and the Flat had not been allocated.

Background

The Complainant explained that she and her partner ("Partner") met the Minister for Housing ("Minister") in July 2010 to seek assistance to be relocated from their present accommodation 4RKB (Rooms/Kitchen/Bathroom) due to the appalling condition of the property. The Complainant provided photos of the property which suffered severe cockroach infestation, gutter back flow problems and dampness.

Two months after the meeting, the Minister wrote the Letter to the Complainant and her Partner and informed them that as a result of the release of flats by tenants moving to a new estate (especially equipped for senior citizens), and following his direct intervention, a flat ("Flat 2") had been identified for them. The Minister added that he would be in a position to make a formal offer once the property became available which he was assured should be within the next few weeks.

A year later, the Complainant and her Partner remained in the same predicament; Flat 2 identified for them had not yet been made available. The Partner wrote to the Minister on the 27th September 2011 to that effect and also pointed out that neither he nor the Complainant had ever asked to be relocated to a particular estate but had asked the HA about the possibility of being allocated a 4RKB in a low crime rate estate, considering that both he and the Complainant were police officers. The Minister's subsequent reply on 3rd October 2011 informed the Partner that he, the Minister, had met with the Housing Manager ("HM") to discuss their case and been advised by HM that there were no other 4RKB available but that Flat 2, earmarked for them some time ago, would become available in the next few days.

The Partner was aware of the location and knew the specific address of Flat 2 and visited said property. As a result of that visit he claimed Flat 2 was in shambles due to the refurbishment works to the building and roof and alleged to have been told by the contractor and foreman that the only reason the contractor possessed the key to Flat 2 was to enable the labourers on site to utilise its toilet facilities. The Partner further stated that the contractor had told him they would not be undertaking internal works to Flat 2. The Partner felt that contrary to the HM's belief, Flat 2 would not be ready for allocation for another two months.

Frustrated and disappointed, the Complainant brought the matter to the Ombudsman.

Investigation

The Ombudsman wrote to the HA requesting their comments; the HA replied by way of two letters. In the first letter, HA amongst other things, confirmed that the flat "earmarked was and still is…." Flat 2. The allegation that "The Complainant's complaint to your offices that the Ministry was not honest with her with the time frame provided" was met with the admission "I have to say that the time frame that she was informed in the letter dated 23rd September 2010 has indeed not materialised…". In the second letter (October 2011), HA stated that despite the delay, the position was that the Complainant and the Housing Infrastructure Manager had agreed on certain works required to Flat 2 and that Flat 2 "…should be ready within the next two months."

On the 1st February 2012 the Ombudsman wrote to the HA inviting comments, given that three months had elapsed from the date Flat 2 should have been completed as stated in HA's letter, and one year and three months had gone by since the Complainant was assured in writing that she and her Partner would be relocated. On the 14th February, in reply to the specific issues raised by the Ombudsman, the HA stated that:

- The case was not noted as an emergency;
- Although Flat 2 was earmarked, the previous tenant did not vacate until 30th May 2011 and the Complainant was made aware of this verbally via the Ministers office;
- It was confirmed that the building in which Flat 2 was located was undergoing external refurbishment and it was denied that the keys to Flat 2 were made available to the contractors so they could use it's toilet facilities;
- HA was unable to identify the date upon which the Housing Works Agency was tasked with the internal refurbishment works;
- The Housing Agency had not considered making an alternative offer of allocation for numerous reasons, amongst which were that a 4RKB flat was required and the Complainant was not willing to be re-housed in certain areas.
- The letter concluded by stating that the Complainant had requested certain works to Flat 2 and that whilst these were being carried out, the Complainant had access to Flat 2.

On the 27th March 2012, a final letter was sent by the Ombudsman to HA questioning the eight month delay, from the time frame given by the HA to the Complainant to the date the property was actually vacated by the previous tenant. In reply, HA explained that the delay had been caused by the late handing over of other flats to the Government Housing Stock and the added delay caused by the illness of the tenant moving out of Flat 2 and being relocated herself. It was stated that the Complainant was kept verbally updated. The letter enclosed a copy of the "formal offer of allocation" from HA to the Complainant dated 20 February 2012 and confirmed that the Complainant and Partner had signed the Licence Agreement for Flat 2.

Conclusions

This complaint stems from the Letter (23rd September 2010) of the Housing Minister to the Complainant where it stated that the Complainant and her Partner would be re-housed within "the next few weeks". A whole year elapsed before the Partner wrote to the Minister on the 27th September 2011 querying the delay. This was met (as explained above) by numerous exchanges in correspondence with a further promise (by letter on 3rd October 2011) of the allocation being made in the "next few days". The "formal offer of allocation" was not in fact made to the Complainant until February 2012, one year and five months after the Letter was issued. The Ombudsman finds the HA's delay unacceptable in the circumstances. The Complainant found herself living with her Partner in accommodation which the Ombudsman considers "unfit" for human habitation. Cockroach ridden, suffering from severe dampness and gutter back flow problems of a most unpleasant nature.

The Ombudsman recognises that HA may have suffered delays as explained in HA's final letter to the Ombudsman dated 2nd April 2012. However, the Ombudsman is of the view that tenants should not be given expectations of being imminently re-housed, more so in writing, if in practice, the HA is unable to fulfil its assertions. It is also incomprehensible to the Ombudsman how this case was not classed as an emergency given the state of the property as explained above, and why the Complainant was not offered an alternative choice (even if the Complainant had shown a preference for a 4RKB within a "low crime" estate). The above, in the Ombudsman's view, is a clear case of maladministration on the part of the HA which has caused distress to the Complainant, the Partner and their children.

Whilst it is good practice to keep tenants verbally appraised of developments, it is equally good practice to follow verbal updates with written confirmation of the information provided.

The Ombudsman wished to suggest to the HA that they should not give tenants notice of imminent allocation if it is unable to comply within a reasonable time frame.

Classification

Sustained

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Case Not Sustained

CS/972

Complaint against the Housing Authority for their inaction to the Complainant's reports of a squatter in a Government owned property

Complaint

The Complainant was aggrieved because of the Housing Authority's inaction to her reports of a squatter in a vacant Government owned flat ("Flat").

Background

The Complainant alleged that on 13th September 2011 she phoned the Housing Authority and reported that there was a squatter in the Flat. She explained to the clerk ("Clerk") who answered the call that the squatter was a nuisance to her and the rest of the neighbours in the building and that there was even water and electricity connected in the Flat. The Complainant claimed that the Clerk promised the matter would be looked into. According to the Complainant, one of her neighbours (name provided) also phoned the Housing Authority that day on the same issue.

The Complainant stated that by December 2011 the squatter was still in the Flat and was in fact undertaking works in the property and moving in furniture. Concerned that after three months no action had yet been taken by the Housing Authority, the Complainant requested a meeting with the Housing Manager ("HM") (meeting in fact held with the Housing Allocation Officer) which was held on the 14th December 2011. At the meeting, the Complainant claimed she was told that the Housing Authority would now get their lawyer to write to the squatter. The Complainant pointed out that she had reported the matter three months ago and had been told the same thing. She allegedly questioned if anything had been done since her call in September and claimed to have been told by the Housing Allocation Officer that she could not say as she had been on annual leave on that day. The Complainant found the reply very weak but agreed to allow the Housing Authority a bit more time to look into the matter.

A few weeks later and no action having been taken by the Housing Authority to evict the squatter, the Complainant lodged her complaint with the Ombudsman.

Investigation

On the 12th January 2012 the Ombudsman put the Complaint to the Housing Authority and requested their comments.

The HM wrote to the Ombudsman and clarified that at the meeting in December 2011, the Complainant had in fact met with the Housing Allocation Officer as a result of which the Complainant's concerns were relayed to their lawyer to pursue the necessary action. The HM explained that a few days after the meeting, the squatter was given notice that the Flat had to be vacated within the next five days, failing which legal action would be taken to evict him.

The HM stated that the squatter did not vacate the property within the given time frame and the case was now pending a Court date in order to continue with the eviction process.

For the purpose of further clarification on the steps taken in this case, the Ombudsman requested a meeting with the HM and a summary of the findings have been noted below.

<u>Telephone Records</u>

The Ombudsman requested information as to what had been done during the first three months when the Complainant first alerted the Housing Authority through a phone call, and for the avoidance of any doubt as to the call and the conversation which transpired enquired if calls at the Housing Authority's offices were recorded. The HM stated that calls on the 'hotline', used for persons to report empty flats, etc. were recorded, as were calls to the Reporting Office, Allocation Unit and Rent Collection Section. In the Complainant's case she would have spoken to a clerk so there would not be a recording of that call.

Vacant Flat Security

The Ombudsman enquired as to the procedure in place (if any) to secure vacant flats to prevent squatters from gaining entry to Government owned properties. The HM explained that the aim of the Housing Authority was to allocate vacant flats as soon as possible. When keys to a flat were handed in, a housing inspector assessed the property to determine whether any works were required or whether the property was in a good state of repair. If the latter was the case, the allocation process could be completed in a short space of time as the property would just have to be cleaned and cleared for the next tenant to move in. If works were required, then the property was passed to the Housing Works Agency to attend to repairs and it was at that stage that delays could occur during which time a squatter could gain access.

Procedure for Dealing with Squatters

- The HM explained that when the Housing Authority received notice of squatters the following procedure would be applied:

- A notice from the Housing Authority would be affixed to the door of the property in which the squatter would be given a deadline by which he/she had to leave the property;

- Failing the above, the matter would be passed on to the Housing Authority's legal representative in order to pursue an eviction order from the Court.

At the date of this report being prepared (April 2012), the Housing Authority was faced with delays in obtaining a Court date which further contributed to the delay in the eviction of the squatter. The Principal Housing Officer was presently in the process of contacting the Justice Minister to make him aware of the situation and to seek his assistance for possible proposals on how to accelerate this part of the action.

Conclusions

On analysis of the findings of the investigation, the Ombudsman noted a possible issue of maladministration due to the three month delay on the part of the Housing Authority in addressing the Complainant's grievance (from the alleged call reporting the squatter (September 2011) to the meeting with the Housing Allocation Officer in December 2011). Furthermore, this resulted in the Complainant having lost faith in the Housing Authority's ability to action her report, to the extent that she brought the matter to the Ombudsman.

As there is no recording of the alleged call by the Complainant and because the latter does not have call records dating back to September 2011, there is no hard proof which establishes that this took place. Nevertheless the following are facts:

The squatter was a nuisance to the Complainant and other neighbours and the end result required by them was for the Housing Authority to evict him from the Flat.

In December 2011 the Complainant contacted the Housing Authority to arrange a meeting to discuss the situation. At that meeting the phone call alleged to have been made by the Complainant in September 2011 did not appear to be put into doubt by the Housing Authority. The reply provided by the Housing Allocation Officer was that she was on leave at the time of the alleged call; no offer made to investigate who had taken the call, etc.

Three weeks after the meeting with the Housing Allocation Officer, noting that the squatter remained in the Flat and that she had not received any notification from the Housing Authority that action to evict the squatter had commenced, on the 3rd January 2012, the Complainant brought her grievance to the Ombudsman.

On the balance of probabilities, the Ombudsman is of the opinion that the Complainant would have made the initial call to the Housing Authority. It would have been the first reaction and simplest of practices for an aggrieved person to initially contact the Housing Authority by phone to report the matter for it to be urgently resolved. Nonetheless there is no record of the call or of any action having been taken as a result of said call. It appears from the findings of this investigation that there is no single established procedure for the specific purpose of reporting squatters. The Complainant's course of action was therefore appropriate albeit did not achieve results. In order to prevent similar situations in future, the Housing Authority could review and establish a procedure to deal with initial reports of squatters to either be put in writing or direct calls made to the 'hotline' or a line which has a recording device where calls can be traced and recorded, and reports actioned accordingly. Notwithstanding, the Ombudsman could not sustain the Complaint because it could not be proved that the Complainant had telephoned the Housing Authority in September 2011.

Regarding no action taken as a result of the meeting with the Housing Allocation Officer, the Ombudsman did not sustain the Complaint given that action to evict the squatter had commenced as a result. Nonetheless, the Ombudsman is of the opinion that had the Housing Authority contacted the Complainant to notify her that action to evict the squatter had commenced, she would have been reassured and the complaint to the Ombudsman would not have arisen. Principles of Good Administration advocate that public bodies should deal with people helpfully, promptly and within reasonable timescales as well as inform them if things take longer than people can reasonably expect them to take.

As at the time of writing the report, the squatter continued to reside at the property as legal action was still being pursued.

Classification

Not sustained

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Case Sustained

CS/976

Complaint against the Housing Authority for a delay in not getting his flat repaired given that his request for re-allocation was rejected

Complaint

The Complainant was aggrieved because he claimed that the Housing Authority ("HA") had failed to carry out the necessary works to his Government flat ("Flat") affected by severe dampness, this having a negative effect on his medical condition.

Background

The Complainant, a middle aged man suffering from chronic bronchitis and severe back pain from a degenerated intervertebral disc, explained that he was aggrieved as he had applied to be included in the Medical Waiting List for a re-allocation due to his health problems and his request was rejected on 7th July 2010. However he was told that repairs would be carried out to his Flat to alleviate the problems of severe dampness. Two years later, the necessary repairs had not materialised.

The Complainant was given an opportunity to appeal to the Housing Tribunal which he did on 14th July 2010 as he felt that the HA had not taken seriously the fact that his health problems were being aggravated by the state of his Flat.

Meanwhile, the Principal Housing Officer ("PHO") had made arrangements for the Environmental Agency to perform an independent assessment of the Flat's condition. This assessment once completed, suggested that there was very little air movement, compromising ventilation and creating conditions for condensation and dampness, affecting the whole of the premises and consequently affecting the health of the Complainant.

The Housing Tribunal took a total of ten months (31st May 2011) to provide the Complainant with an outcome basing its delay on the fact that the HA had not been prompt in furnishing the Tribunal with the reports required for the consideration of the Complainant's case. The Complainant was informed that in the Housing Tribunal's opinion, it was not in a position to contest the HA's decision considering that the HA had based its decision upon professional opinion obtained from medically qualified representatives.

The Complainant formed the view that the Housing Authority had not taken any action to assist his situation. As a result, the Complainant lodged his complaint with the Ombudsman on the 12th January 2012.

Investigation

The Ombudsman initiated his investigation by letter dated 9th November 2011 requesting from the PHO an update on the status of the pending job to carry out the necessary repairs to the Flat which had been outlined in the PHO's letter addressed to the Complainant on 11th November 2010. It was not until the 20th January 2012 (nearly two and half months later) that the Ombudsman received a reply stating that during a site visit by the Housing Works Agency ("HWA"), the Complainant had informed them that he did not want the works to be carried out as he wished to be re-allocated, but if the works had to take place, then he would need to be decanted throughout the duration of the works.

The Ombudsman had a meeting with the PHO On 7th March 2012 where he enquired if anything had been done since the PHO's letter to the Complainant on 11th November 2011 (i.e. four months earlier). The PHO confirmed that nothing had happened since there had been other cases that needed prioritising. It was also explained that once the HWA or a private contractor were commissioned to carry out the works, the Complainant would be temporarily decanted. Later that day, the PHO sent a copy of the letter addressed to the HWA urging them to proceed with the decanting of the Complainant and the commencement of the necessary repairs. Following this, HWA requested a meeting with the Ombudsman where it was explained that HWA had been to the Complainant's Flat several times during the last two months and the Complainant had informed them that he wanted to be re-allocated and refused the works unless he was temporarily decanted. The HWA had in fact previously agreed that it was necessary to decant the tenant for the duration of the works in their letter dated 18th January 2012.

Eventually the Complainant firmly decided that he would not allow the works to be undertaken but instead wanted to be permanently decanted. The Ombudsman informed him that if he wished to pursue this avenue, he should now write to the HA expressing his wish and therefore the works to the Flat were subsequently cancelled.

Conclusions

The Complaint brought to the Ombudsman was that the HA had not acted promptly with regards to works and alterations to the Flat once the Complainant's request for re-allocation was rejected.

The PHO wrote to the Complainant on the 11th November 2010 stating that layout drawings had been completed by the technical team and forwarded to the HWA for their attention in order for the works to proceed. However, it was not until January 2012, a year and two months later, that the HWA visited the Complainant for an inspection of the proposed works.

On analysis of the investigation, the Ombudsman noted that although it may seem that the Complainant may have hindered the necessary works from taking place, in actual fact this only happened in the latter stages of the Ombudsman's investigation when not only the Complainant's health had aggravated but also he was by that time convinced that the works proposed would have not dealt with the problem entirely and therefore what he wanted was to be decanted permanently.

The Ombudsman thus sustained the complaint with regards to the delay in carrying out the necessary works to make the Complainants Flat habitable.

Classification

Sustained

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Case Sustained

CS/982

Complaint against the Housing Authority for their delay in investigating increased water meter readings and their failure to settle an AquaGib debt which the Complainant had accrued as a result of the cause of the readings

Complaint

The Complainant, an elderly citizen of 81 years of age was aggrieved because three months elapsed before the Housing Authority ("HA") identified a water leak that had been suffered in the Complainant's Government owned flat and two years elapsed before HA had denied his claim for the settlement of a debt which he had accrued with Aqua Gib (the Gibraltar water provider), as a result of the excessive meter readings.

Background

The Complainant explained that in June 2009 he received his first high water bill and immediately alerted the then Building and Works Department ('B&Ws'), (now Housing Works Agency). The bill showed that the Complainant had incurred a water charge of £116.11, well over his average water bill of approximately £10 a month. He was extremely concerned as there were no traces of any water spillage and allegedly explained these concerns to the relevant authorities. The meter was inspected by B&W and found to have a leak at the connector and repairs were subsequently effected. Nonetheless, the high water meter readings continued.

In July 2009 the meter reading again showed a charge of £373.85. The Complainant alleged that he once again immediately reported the problem to the "Customer Compliance Office" at B&Ws and gave them a copy of his second high bill and asked for the matter to be looked into.

In August 2009 the bill received for water consumption was for £751.78, and the Ministry was once again alerted of the probability of a water leak outside the flat and provided with a photocopy of the bill.

It was not until September 2009 that B&Ws located a leak to a burst pipe in the bathroom after digging a hole outside the complainants flat behind his kitchen. It was noted that a pipe had substantial damage and the leak was repaired.

According to B&W, this leak was a "second" leak since the first had, according to them, been repaired in June. The bill amounted to £101.16 on this occasion and subsequently, to a normal consumption reading of £7.58 on the following month, once the leak was fixed.

The Complainant then completed a claims form with the HA for the bills to be settled by the HA with Aqua Gib, on the ground of the readings being attributable to the HA's negligence, as a result of them not taking prompt action in identifying and repairing the leak.

Two years elapsed before the Complainant was informed that, on the basis of legal advice, his claim had been denied.

After receiving this news the Complainant wrote to the Principal Housing Officer ("PHO") for an explanation but did not get a reply. He followed up his letter with a telephone call and after explaining his complaint he was allegedly informed by a clerk that the matter would in effect not be revisited. As a result, the Complainant brought his grievance to the Ombudsman on the 19th July 2011.

Investigation

The Ombudsman put the Complaint to the PHO on the 5th August 2011. A reply was received and correspondence was supplied by the Project Manager.

The correspondence supplied included letters from the Claim's Officer in relation to the request for legal advice to Crown Counsel on the claim, and further correspondence between the parties about issues regarding the matter generally. The PHO, in his reply, also apologised to the Ombudsman for the delay of two months in replying to the Complainants letter of the 1st June 2011 and assured the Ombudsman that this would be rectified by issuing the Complainant with a reply. As a result, on the 17th August, the Complainant received a letter from the PHO confirming that the decision not to settle the Complainant's claim stood, on the basis of legal advice received.

The Ombudsman then wrote to the Customer Services and Financial Director ("CSFD") of Aqua Gib outlining the complaint and asking for their comments. CSFD replied by stating that in the past, similar cases had been considered by the HA and that the excess (the amount above the consumer's normal average consumption) had been paid by the HA. He further stated that an attempt would be made to arrange a meeting between CSFD and PHO, in an effort to resolve the matter. Further correspondence ensued between the Ombudsman and CSFD at the conclusion of which, CSFD confirmed that no payment had been received from the HA in settlement of the disputed amount and expressed his concern that "the matter is causing great inconvenience for consumers".

Conclusion

In the conclusion to this report, the Ombudsman will base his findings on the first limb of this complaint, i.e, whether there was delay by the HA in investigating the increased water meter readings. The Ombudsman is not in a position to report on the second limb, i.e., HA's failure to settle the Complainant's debt, since the non settlement of the debt is based upon legal advice received by HA from the Attorney General's Chambers. The Ombudsman is thus unable to attribute the classification of maladministration or otherwise to this limb of the Complaint.

Delay has unfortunately been the overriding factor in the handling of this claim from its inception to its conclusion.

The Complainant received his first high water bill in June 2009 with subsequent receipt of disproportionately high bills in relation to the Complainant's consumption, in July and August 2009. The Complainant immediately notified B&W in June and again in July and August since despite repairs being effected, the high bills continued. The Complainant also made copies of the bills available to B&W. It was not until August that B&W identified the source of the leak and repaired it. The Complainants September bill showed a normal consumption reading as previously stated.

The Complainant was never advised to cut off his water supply. Despite this, the Complainant has informed us that every time he left the flat, he would cut off the water and by doing so, in the Ombudsman's view, mitigated his loss.

The issue which concerns the Ombudsman is that despite the Complainant making complaints to B&W on numerous occasions over the course of three months, the leak was not identified and the issue remained unresolved. This caused the elderly Complainant and his wife distress.

The Complainant subsequently submitted his claim for the amount of the increased readings on 22nd June 2009 and despite various chasers, a period of almost two years elapsed (causing the Complainant further anguish), before the Complainant is informed by letter from HA, on 1st June 2012, that on the basis of legal advice received, his claim is denied and the matter considered closed. A further two months pass by before HA, as a result of direct intervention by the Ombudsman, reply to the Complainants June 2011 letter and confirm that HA's position in relation to the claim, stands.

The Ombudsman is of the view that the period over which this Complaint runs (from June 2009 being the time when the first high water reading was communicated by the Complainant to August 2011, when HA confirm that they will not settle the claim), is an inordinately long period which the Complainant should not have been subjected to endure. For this reason the Ombudsman considers that the delay caused was unreasonable in the circumstances and tantamount to maladministration.

Classification

Sustained

Recommendations

Given the delay in initiating the repairs with the adverse consequences this brings, not least the potential negligence which may be attributed to the HWA in its handling of the Complaint, The Ombudsman recommends that the HWA revisit and reconsider the outcome of this claim, under the new policy of the Government of Gibraltar, which authorises the HWA to consider claims, such as this one, relating to high water consumption.

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Case Partly Sustained

CS/983

Complaint against the Housing Authority & Aquagib after the Complainant having attempted to report a leak which originated from the water meter of his Government rented flat, he was caught at the centre of a difference of opinions between the Housing Authority & Aquagib as to who bore responsibility for repairs

Complaint

The Complainant was aggrieved because when he attempted to report a leak which had originated from the water meter ("Meter") of his Government rented flat ("Flat") he was caught at the centre of a difference of opinions between the Housing Authority and Aquagib as to who bore responsibility for repairs.

Background

The Complainant explained that on Saturday 26th May 2012, Aquagib, as part of their water meter replacement programme, replaced the Meter of the Flat. According to the Complainant, on the 28th May 2012 he noticed a leak which originated from the Meter and telephoned Aquagib's Emergency Section who inspected and informed him that they were not responsible for repairs beyond the outlet side of the meter; that was the responsibility of the Housing Authority. On two consecutive days the Complainant contacted the Emergency Response number of the Housing Works Agency ("HWA") (the entity responsible for carrying out maintenance and repair works to Government rental housing stock and providing an emergency service) and on both occasions was told that HWA could not touch the Meter as that was Aquagib's responsibility and directed him to once again contact that entity. The Complainant contacted Aquagib and was told that it was the Housing Authority's responsibility. At a loss on how to proceed, the Complainant decided to leave the matter in abeyance in the hope that the leak would be addressed by one of the two entities.

No repairs having been carried out by the 14th June 2012, the Complainant brought the matter to the Ombudsman.

Investigation

The Ombudsman sought comments from both the Housing Authority and Aquagib as to how the matter had been handled and requested their opinion on who they believed was the entity responsible for repairs in this case.

The HWA replied on behalf of the Housing Authority. They confirmed that as far as the HWA was aware, Aquagib had replaced the Meter and left a leak which originated from the connector which had also been replaced as part of the programme of works.

HWA stated that regardless of Aquagib's and the Housing Authority's separate lines of responsibility when it came to the provision of fresh water, in this case it was Aquagib who should have dealt with the problem. Aquagib's response was to report the matter to HWA who undertook the repairs on the 27th June 2012.

Aquagib confirmed that the Meter had been changed as part of their water meter replacement programme. Aquagib's response stated that the Complainant reported a leak on the 1st June 2012 which was inspected by a plumber who found that the minor leak was past the meter. The Complainant was then advised to contact the Housing Authority as Aquagib was only responsible for the connection up to and including the meter.

The second report to Aquagib later the same day resulted in the Meter Superintendent (Acting) inspecting the Meter and confirming what the plumber had ascertained in the first visit. Aquagib reported the incident to the Housing Authority.

Conclusion

Aquagib and the Housing Authority have clearly defined boundaries on areas of responsibility in relation to water meters. In Aquagib's General Conditions and Regulations for the supply of water, Section 11 reads as follows:

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.

[In the case of tenants of Government rented property, responsibility for repairs as listed above lies with the Housing Authority, the landlord].

In this case, Aquagib decided to apply the above conditions which resulted in a leak being allowed to continue for one month. This despite:

- The leak having been identified by the Complainant less than 48 hours after Aquagib had replaced the Meter. Although not conclusive, in all probability the leak resulted from the works carried out by Aquagib and it would be immaterial on which side of the meter the leak was;

- A plumber and Meter Superintendent (Acting) from Aquagib having visited the site on two occasions and having had the opportunity of undertaking the repair at a very early stage.

Irrespective of area of responsibility and given that repairs had just been carried out, common sense should have prevailed on the part of Aquagib in this case and repairs should have been carried out by them; at the very least, they should have insisted on HWA attending as a matter of priority. Not having done so resulted in grievance being caused to the Complainant due to being sent from pillar to post to report the leak without success and an increased water bill for the month of June 2012 due to the leak having been allowed to flow for one month. Principles of Good Administration should have been applied at an early stage by putting the customer's interests first.

Recommendations

Upon discovering a leak emanating from his water meter, the Complainant was sent from pillar to post trying to ascertain who was responsible for the repairs. Given that in such or similar situations the person aggrieved will almost always be a Government tenant, the Ombudsman recommends that the Housing Authority ensure that there is a procedure in place in order to provide an efficient and effective service to the tenant.

Aquagib to reimburse the Complainant with the sum of £28.94, the difference between the average water bills of the previous four months and the amount billed in June 2012 during which the leak was left to flow.

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Case Sustained

CS/993

Complaint against the Housing Authority ("HA") for their delay in processing and settling a claim for increased water readings ("Claim") due to a leak suffered outside the Complainants flat

Complaint

The Complainant was aggrieved because two years had elapsed before the HA settled a claim in relation to a water leak that had occurred outside his Government rented flat. The inaction of the HA in dealing with his claim resulted in the Complainant accruing eight months of arrears with AquaGib.

Background

The Complainants water bills had always amounted to approximately ten or eleven pounds monthly but in August 2010 his bill started to increase significantly. By October 2010 his water bill had risen to £67.44 almost seven times his usual consumption. The Complainant immediately alerted AquaGib (The Gibraltar water supplier) and was advised to inform the then Buildings & Works Department ("B&W"), currently the Housing Works Agency. The Complainant acted on the advice given and approached B&W who kept a copy of his October bill and informed him that they would look into the matter.

In December 2010, having had no contact from B&W the Complainant returned for an update regarding his excessive water bills. This time he was directed to the B&W depot as he was told that they were dealing with his case. Upon arriving, the Complainant was advised that they were on "working to rule" and they would not be able to address his queries. Subsequently, the Complainant received a letter from B&W acknowledging receipt of his claim and advising him that the matter was under investigation. The Complainant replied providing more detail and urging the department for urgent consideration as the leak had not been stopped and the Complainant's water bills were still increasing. Not having heard from B&W and considering the urgency of the matter, the Complainant approached the Ombudsman for assistance.

Investigation

Failure to repair water leak

The Ombudsman presented the complaint of the pressing issue of the leak to the Principal Housing Officer on the 7th January 2011 and within a week the leak was stopped. At this instance the Complainant was verbally informed that the leak suffered was outside his flat and therefore the HA would be responsible for the costs incurred. The Complainant was satisfied with the Ombudsman's intervention and the case was closed and classified as "Settled informally".

The Claim

Background

Once he was verbally informed that the HA would take full responsibility of the costs accrued as a direct result of the leak suffered outside his Flat, the Complainant had no further information or contact from the HA or B&W. He therefore wrote to the HA on the 19th January 2011 highlighting the urgency of the matter and informing them that his outstanding water balance with AquaGib was of £232, 72. Simultaneously, the Complainant also wrote to AquaGib providing them with reasons as to why his water bills for the months of December 2010 and January 2011 remained unpaid. The Complainant then attended a meeting with the Director of AquaGib where he was advised that since B&W had still not addressed his Claim, he would only pay his electricity consumption and AquaGib would make a Claim to B&W on the Complainant's behalf.

By May 2012, given the lack of progress, the Complainant again wrote to AquaGib to urge them to treat this matter with urgency. AquaGib informed the Complainant that they had in fact submitted a claim for £481.49 to the newly established HWA and they were awaiting a reply. As a direct consequence, the Complainant decided to resume payments as from the month of June 2011 to avoid his debt from increasing further.

Another seven months elapsed whereby the Complainant's Claim had still not been settled by HWA. The Complainant received a letter dated 5th January 2012 from AquaGib, demanding an immediate payment of arrears before the 19th January 2012. The Complainant was informed that failure to settle the arrears would result in his water supply being disconnected.

Aggrieved by the failure on the part of the HA to settle his outstanding bills, and having lost faith in the HA, the Complainant once again brought his grievance to the Ombudsman.

Investigation

The Ombudsman wrote to AquaGib on the 10th January 2012, asking for their comments as to why the Complainant had been issued with a demand note, considering that they had previously agreed to wait for the Complainant's Claim to be settled by the HA.

In their reply to the Ombudsman, AquaGib stated, that because the water consumption was recorded via the Complainant's meter, the Complainant was liable for it regardless of whether or not there was an ongoing dispute between the Complainant and the landlord. AquaGib stressed that in this case, they could only assist the Complainant and the HA in resolving this matter, but ultimately the debt would have to be settled. The Ombudsman found no maladministration in the way in which AquaGib had dealt with the Complainant and thus informed the Complainant that he would not be taking any further action in relation to AquaGib.

Policy Decisions- Claims relating to excessive water consumption

Prior to this particular claim, the Ombudsman had made representations to Government on the issue of claims for loss of personal property and claims in respect of water leaks. In March 2012 the Ombudsman sought an update on whether a policy decision had been reached by Government and he was informed that two policy decisions had been made on the basis of his recommendations in past cases regarding claims made by government tenants to the HA:

New government tenants would be advised as a matter of procedure when signing tenancy agreements, that they should independently seek private insurance to cover against damage to personal belonging / property.

The HA would introduce new measures to assist government tenants claiming against excessive water consumption due to leaks upon presentation of their invoice to the Housing Works Agency. The difference above their normal average water consumption would be paid directly by the HA to AquaGib.

In an attempt to expedite matters, the Ombudsman arranged a meeting with the HWA to discuss the new measures and procedures being adopted in relation to high water consumption bills caused by leaks not instigated by tenants. During the meeting the Ombudsman was informed that the HA would set up a committee who would discuss excessive water consumption claims on a case by case basis and that the decision to bear the costs would be reached depending on the facts surrounding the case.

By September 2012, the Complainant's debt with AquaGib had still not been settled by the HWA despite the Ombudsman having been verbally informed that the Committee had taken a decision back in May 2012 for the HWA to settle. According to the Claims section at the HWA, they had passed on their decision to the Financial Secretary who had requested more information surrounding the decision. The information was forwarded in July 2012, chased in August 2012 and again in October 2012.

The Complainant's debt was finally settled on the 15th October 2012 where the amount of £481.49 was paid directly by the HWA to AquaGib.

Conclusions

Delay was unfortunately the overriding factor in the handling of this claim from its inception to its conclusion.

The Complainant received his first high water bill in September 2010 and continued to receive disproportionately high bills in relation to his consumption up until mid January 2011. The Complainant immediately notified B&W in September 2011 and again in October and December and consequently approached the Ombudsman in January 2011 since repairs had not been carried out to stop the leak and therefore the high bills continued. The Complainant also kept AquaGib updated so as to avoid a cut off to his water supply for non-payment.

The Ombudsman was very concerned that despite the Complainant making complaints to the different departments of the HA on numerous occasions over the course of four months, the leak was only repaired upon his involvement.

The Complainant submitted his claim for the amount of the increased readings in October 2010 and despite various chasers, a period of one year had elapsed before the Complainant was informed by letter from AquaGib that his water supply would be cut off if the debt accrued was not settled. Another year would elapse before the HA would put in place a committee to deal with excessive water consumptions occurring as a result of leaks.

The Ombudsman was of the view that the period over which the Complainant had to wait for what initially appeared to be a straightforward claim to be settled, (from October 2010 to October 2012) was a disproportionately long period. For this reason the Ombudsman considers that the delay caused was unreasonable in the circumstances and constituted maladministration.

Classification

Sustained

- -

Housing Works Agency

Case Sustained

CS/992

Complaint against the Housing Works Agency ("HWA") due to the fact that the Complainant had suffered very low fresh water supply to her council flat ("the Flat") since February 2012 and that despite reporting the problem on numerous occasions no action had been taken by HWA and/or the relevant authorities

Complaint

The Complainant was aggrieved because since February 2012 up to the date of filing this complaint, the 26th of June 2012, no action had been taken by the HWA to remedy the extremely low fresh water supply servicing the Flat. According to the Complainant, various reports made by her to the HWA which led to attendances on the Flat to make inspections, did not remedy the problem.

Background

The Complainant explained that the Flat had flooded on three separate occasions in 2012 and that in her modest opinion the low water supply was directly connected to a fault with the water pipes servicing the Flat. The Complainant complained that she made numerous telephone calls to HWA to inform them of the continuing state of affairs, to no avail. She further informed the Ombudsman that in or around the middle of June 2012, a HWA employee attended to make an inspection but, like on previous attendances, the problem was only estimated and no action was taken to solve the issue.

The Complainants water bills showed consumption readings ranging from twenty five pence to one pound per month, which is clear evidence of an extremely low supply. The Complainant complained that it was very frustrating for her when she needed to bathe or shower, and that she was unable to operate her washing machine for the same reason. Fortunately, the Complainant was able to count on the support of her neighbours who would allow her to make use of their utilities. The Complainant, quite rightly, could not understand how it could take HWA five months to repair such a major fault and restore an acceptable water supply to the Flat.

Investigation

The Ombudsman put the complaint to the HWA on the 12th July. In reply, HWA stated that after investigating the issue of low pressure on the fresh water system to the Flat, HWA did visit the Complainant in order to carry out an inspection. The letter stated that as a result of the inspection, HWA's plumber had found that AquaGib Limited ("AquaGib") had apparently cut off the fresh water supply to the Flat at the meter due to non payment of water bills. It was explained that in such circumstances, AquaGib places a tag label on the meter itself and that when HWA comes across such label in an inspection, they do not work on the system. In conclusion, it was stated that the Complainant's fresh water pipe system from the meter itself and within her flat was in a good condition and that it was AquaGibs' restrictor which was, according to HWA, causing the low pressure.

As a result, the contents of HWA's letter were communicated to AquaGib by the Ombudsman, for their comments.

In response, an AquaGib plumber was dispatched to the Flat to investigate and in their subsequent written reply to the Ombudsman, Aquagib stated that the water pressure servicing the Complainant's flat was good "up to the meter", clearly indicating, in AquaGib's view, that the problem must have emanated from the outlet connection, this being the responsibility of HWA. Indeed, it is the established and accepted position by both HWA and AquaGib that AquaGib's responsibility lies "up to the meter".

Correspondence between the Ombudsman and HWA followed. HWA reiterated its position previously communicated, i.e., that the issue was not one of low pressure but rather, that the water supply had been cut off by AquaGib at the meter. Copies of the AquaGib labels previously referred to which had been placed on the meter, were made available by HWA to the Ombudsman. In a further attempt to assist, HWA informed the Ombudsman that they had written to AquaGib in order to determine why the supply had been cut off, but that they had received no reply. All this time, the Complainant continued to suffer unacceptable low fresh water supply to the Flat. In an attempt to progress and resolve matters, the Ombudsman scheduled a joint onsite meeting between investigators of his office, and representatives of both HWA and AquaGib. Coincidentally, at the time of the inspection neither party displayed any knowledge of having cut off the Complainant's water supply. Even more surprisingly, the Complainant informed the Ombudsman at the meeting, in the presence of all parties, that pursuant to a telephone call she had received the previous day to the visit, an unidentified caller asked the Complainant to turn on her taps and when the Complainant followed the instruction, full water supply was "miraculously" restored. To the Ombudsman's dismay, neither HWA or AquaGib claimed responsibility for having restored the water supply. A position which the Ombudsman found himself unable to reconcile.

Conclusions

As stated above, the Ombudsman is at a loss as to which entity (HWA or AquaGib) was responsible for the poor water supply and for its subsequent restoration and, expresses disappointment at the fact that neither had been forthcoming with explanations as to the cause of the inadequate supply. The Ombudsman is pleased to note however, that the Complainant's water problem was resolved, despite it being so as a direct consequence of the Ombudsman's decision and request for the onsite meeting with the parties concerned. For the reasons given, there was clearly an act/acts of maladministration committed although in this instance, it was not possible for the Ombudsman to determine the entity responsible for it. The Ombudsman sustained the Complaint although he was unable to direct his finding against any specific body, for the reasons explained above.

Recommendations

The procedure adopted by AquaGib is that when works are conducted on a meter or when water supply is cut off at the meter, a tag is placed on the same, identifying this.

The Ombudsman recommends that AquaGib replace the existing format of its current "tag" labels placed on meters, which can easily be tampered with, removed or transferred between meters by third parties and that these be replaced by "stick on" labels which should be placed directly on meters. The Ombudsman was of the view that said labels should be signed and dated by the person placing it to avoid future confusion.

AquaGib accepted the recommendation with the caveat/proposal to initially continue with the use of its current tags, with the improvement that these will be marked with the meter number and date of disconnection. This will allow AquaGib to identify tags that have been removed and placed on other meters by unknown persons. AquaGib also communicated to the Ombudsman that they will assess the type of tags used, so that once removed, they cannot be re-used.

Income Tax Office

Case Partly Sustained

CS/903

Complaint against the Income Tax Office ("the Department") on the following grounds:

The Complainant feels he had been treated shabbily with scant regard being paid to the points raised in his letters to the Department

Monies had been deducted from the Complainant's pension without his prior agreement or knowledge and the Complainant questioned whether the Commissioner of Income Tax ("the Commissioner") had the power to implement said deduction

The Complainant has destroyed personal tax files relating to taxes paid seven years ago and therefore felt that he was being unfairly chased for arrears relating to this period.

Background

The Complainant was a tax payer under the Pay As You Earn ("PAYE") system. In or around October 2009 he received notice of tax assessments for the tax years 2003 and 2004 from the Commissioner. By letter dated 13th October 2009 to the Commissioner the Complainant queried the reason why these had been sent explaining that he had already received assessments for the tax years 2005 and 2006. The Complainant further explained that he had since retired from his former employment and was now only in receipt of a pension.

The Complainant attended a meeting at the Department to discuss the assessments. The Department shortly after issued the Complainant with a letter, referring to the meeting and to the Complainants letter of 13th October. The letter stated that allowances had been erroneously entered in the Complainants assessments and that additionally, the assessments were incorrect. The letter further addressed the Complainants query as to why the 2005/2006 and 2006/2007 assessments had been issued before the 2003/2004 and 2004/2005 assessments. It was established that all assessments were processed at the same time and the Department had not realised that the older assessments had not been issued.

The Complainant also received revised assessments in May in respect to the tax years 2005 and 2006 claiming a lesser amount than had originally been demanded. The Complainant took issue with these demands and wrote to the Commissioner seeking an explanation in December 2009 and February 2010. No reply was received.

In March 2010, whilst a meeting date was being arranged between the Complainant and the Commissioner, the Complainant received a demand note from the Department to the effect that payment of assessments for the years 2003-2008 (with penalties) were outstanding and that as a result of failure to settle the amounts the Commissioner was invoking section 88 of the Income Tax Act and withholding the monthly sum of £250 per month from the Complainants pension, until the debt of £7380.37 was settled.

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

Investigation

The Ombudsman received, throughout his investigation, the valuable assistance from the Commissioner. The Commissioner attended to the Ombudsman's enquiries by way of letters and meetings.

The Ombudsman notes the Commissioner's letter to the Complainant (issued prior to the date of the Ombudsman receiving the Complainant's complaint) where the Commissioner states that none of the Complainants letters had been ignored by the Department, further highlighting the fact that the Complainant had attended a meeting at the Department in May and that a further meeting in December had to be rearranged due to the Complainants unfortunate family commitments at that time. The Commissioner, in his letter, invited the Complainant to a further meeting at a mutually convenient date and time. Further, the Commissioner apologised to the Complainant for any distress caused by the Department, in relation to the application of s88 Income Tax Act ("the Act"). He stated in no uncertain terms, that he had given instructions to the Accountant General to cancel the deductions with immediate effect, further requesting that any monies withheld be returned to the Complainant. Despite the Commissioner retracting from his decision to invoke s88, as a result of distress caused to the Complainant or otherwise, the Ombudsman has reviewed the pertinent legislation and from his interpretation of it, the Commissioner was in any event, entitled to act as he did and request the deduction. The Ombudsman also notes the existence of s72 of the Act which imposes an obligation on the Commissioner to assess taxpayers "as soon as may be after the 30th September of that year of assessment". Further, s74 provides that the Commissioner may, within the year of assessment or within six years after the expiration thereof, upwardly assess persons who have not been assessed or been assessed at a lesser amount.

On the 25th June, the Commissioner wrote to the Complainant, and again stated as he had done previously, that none of the Complainants letters had been ignored but that the delay in reply was due to him taking longer than anticipated to review matters and find answers to some of the queries raised by the Complainant. The Commissioners letter was in the Ombudsman's view substantive and detailed, in addressing the points on which the Complainant sought clarification.

Conclusions

The Ombudsman cannot lose sight of the fact that the Complainant received assessments in 2009 for the tax years 2005 and 2006 followed by assessments for the years 2003 and 2004, particularly given the existence of the mandatory requirements that the Commissioner issue assessments as soon as possible after 30th September of that year and the power to issue assessments even where the individual has failed to submit tax returns. However, the Commissioner is entitled in law to issue assessments within a period of six years from the date of receipt. For the purposes of this complaint, it may be that the Complainant did not provide the Commissioner with all the necessary information to allow the Commissioner to issue timely assessments or it may also have been that matters were delayed by the tax office in respect of this taxpayer. In any event, the Commissioner did not act beyond his powers in making said assessments.

The Ombudsman is of the view that to issue assessments in a non chronological fashion and after such a considerable lapse of time from the year assessed to the issue date is not in keeping with the principles of good administration but, as mentioned in the preceding paragraph, it may have been the case that the Commissioner issued assessments on the given years as and when the information was made available to him. The income tax office has assured the Ombudsman that when taxpayers provide their completed assessment forms chronologically, assessments are issued in the same order.

Although we are informed by the Complainant that the Commissioner requested receipts spanning back seven years, we are also informed that these related to home improvements which the complainant later sought to claim. It is unfairly onerous to expect taxpayers to hold receipts for tax deductions, seven years after an initial assessment has been made and an amount previously paid. However, it is not unreasonable to request these when further deductions are sought by tax payers on previously assessed income. In the interest of good administration, the Commissioner will have to base any reductions of assessments on documentary evidence.

Reverting to the specific limbs of this complaint, the Ombudsman finds as follows: In relation to:

(1) "That the Complainant feels that he was treated shabbily with scant regard being paid to the points raised in his letters":-

Although there were delays by the Commissioner in replying to some of the Complainants letters, written reasons for this were given to the Complainant as was the Complainant assured that none of his correspondence was being ignored. The Ombudsman has reviewed a number of substantive letters addressed both to the Complainant and to the Ombudsman's office and there is also evidence of meetings held with the Complainant at the Department and one invitation to attend a further meeting (as stated in the Commissioners letter of 6th May 2010) in an attempt to "resolve the matter".

(2) "Monies have been deducted from the Complainants pension without his prior agreement or knowledge and the Complainant questioned whether the Commissioner had power to implement said deduction":-

The deductions made to the Complainants income at source by the Commissioner invoking his powers under s88 of the Act were in the Ombudsman's view, an unfortunate decision to have taken because it added to the Complainants sense of grievance. However, the Ombudsman highlights the prompt action the Commissioner took in reversing his decision although as referred to above, he was perfectly entitled to seek payment from the Complainant by requesting said deductions. It is also noted that the Commissioner gave instructions for the deductions made from the Complainant's pension, to be returned.

(3) "The Complainant had destroyed personal tax files relating to taxes paid seven years ago and therefore felt that he was being unfairly chased for arrears relating to this period"

As mentioned above, the Complainant received a demand note at the beginning of 2010, in relation to unpaid taxes for the years 2003-2008. One of the demands made in the amount of £1278.19 plus interest related to the period 2003/2004. It is in the Ombudsman's view, not unreasonable for taxpayers not to keep records after a period of seven years especially if tax contributions have already been made for this period. The Ombudsman was further informed that the Complainant sought to lower the assessed amount for this period by claiming a home improvements allowance but when asked by the Commissioner to produce receipts, the Complainant had already disposed of them given the amount of time that had elapsed. Although it was not incumbent on the Complainant to keep records for such a long time, especially if tax contributions had already been made for the period, a valid complaint cannot be made in the Ombudsman's view, on the basis that an assessed amount was not lowered because the Complainant failed to provide receipts or other documentary evidence in order to justify the reduction. In any event, in relation to arrears owed and demanded by the Commissioner for the period 2003, the Ombudsman finds it was not reasonable to expect that the Complainant be in possession of records seven years later. However, we have seen how under s74 of the Act additional amounts may be demanded from a contributor by the Commissioner within a period of six years from the expiration of any given year of assessment. On this basis, it may even be desirable that taxpayers keep records of receipts/expenses for such length of time.

Classification

(1) Not sustained
(2) Not sustained
(3) Sustained

Recommendations

The Ombudsman would, in the ordinary course of events have made recommendations in this case. However, given that the Act referred to has since been repealed and replaced with new legislation, the Ombudsman made no recommendations.

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Case Partly Sustained

CS/975

Complaints against the Income Tax Office for:

Not having received Tax Assessments since 2007;

Not satisfied with the replies received ;

Not having received a written reply to an email dated 17th February 2012;

Led by the Income Tax Office to believe that she would receive a tax rebate of £680 whereas now recently informed that it would be approximately £100

Complaint

The Complainant was aggrieved because:

She had not received tax assessments since 2007;
She was not satisfied with the replies received from the Income Tax Office ("ITO");
She had not received a written reply from the ITO to an email dated 17th February 2012;
She had been led by the ITO to believe that she would receive a tax rebate of £680- and now recently informed that it would be approximately £100-.

Background

The Complainant, a cross frontier worker (resided in Spain and worked in Gibraltar) explained that in 2010 she was made redundant from her job and believed that as a result of not having completed the tax year in employment would be entitled to a large tax rebate for the period. The Complainant explained that she had a young daughter who suffered a chronic medical condition and that the rebate would assist towards settlement of doctors' bills. During the ensuing year, the Complainant made verbal enquiries at the ITO as to when she could expect to receive the rebate and claimed that on each occasion she was told she would have to wait.

By October 2011 the Complainant stated that a clerk at the ITO had helped her to calculate the rebate she would be entitled to which amounted to £680- if the assessment was calculated under the 'Gross Income Based System' rather than the 'Allowances Based System' [Ombudsman Note: The Gibraltar tax system enables PAYE (Pay As You Earn) taxpayers to choose between the system most beneficial to them out of the two aforementioned]. The Complainant emailed the ITO and requested confirmation that the calculation of £680- was correct and a date by which she could expect settlement. The ITO's email reply a few days later informed the Complainant that 2006-2007 had been the last assessments to have been sent out and that they were presently updating everyone's assessments up to 2009-2010 which was a lengthy process and could not give an indication as to when further assessments would be issued.

On 3rd February 2012 the Complainant once again emailed the ITO with her enquiry about when she could expect to receive the rebate as all she had been told in the past was that she would have to wait, and again asked for her calculation of £680 to be confirmed as the amount owed to her. She claimed that the ITO contacted her by phone on the 7th February 2012 and explained that the rebate would be around £100- and that she would have to wait until all assessments were issued for that period. The Complainant disputed the amount quoted by the ITO and requested in an email a written explanation as to the difference between her calculation and theirs. The ITO telephoned the Complainant and provided further explanation which the Complainant alleged she did not fully comprehend. The Complainant stated that the ITO informed her that under the Income Tax Act, non-resident workers were assessed differently to resident workers. The Complainant was confused with the information provided and later that same day (7th February 2012) requested in an email, clarification in writing from the ITO.

(i) She requested that the ITO quote the Section of the Income Tax Act which applied to non-resident workers;

(ii) Highlighted that the 'On-Line Income Tax Calculator' (found in the Government's website) did not make reference to the above mentioned;

(iii) Had reservations that the ITO had used both methods of assessment which would have resulted in the most beneficial one to the Complainant being applied.

To substantiate her position, the Complainant attached to the email a snapshot of the calculation on the 'On-Line Income Tax Calculator' which showed the £680- outcome.

Not having received a reply by the 17th February 2012, the Complainant sent a chaser email to the ITO and an email to the Commissioner of the ITO ("Commissioner") in which she complained that she had not received explanations or answers to her tax enquiries despite having pursued those for a year and requested the Commissioner's assistance.

No reply forthcoming, in early March 2012 the Complainant brought her Complaints to the Ombudsman.

Investigation

The Ombudsman put the Complaints to the Commissioner in a letter dated 5th March 2012 and a comprehensive reply was received on the 23rd March 2012. On the same day the ITO also wrote to the Complainant and notified her that up to date assessments had been issued and two cheques remitted.

(i) Not having received Tax Assessments since 2007

The Commissioner informed the Ombudsman that the ITO was currently assessing all PAYE taxpayers up to and including the tax year 2009/10 and issuing assessments for the year 2007/2008, and stated that departmental established practice was to issue assessments on a year by year order.

Due to the exceptional circumstances of the Complainant's case, the Commissioner informed the Ombudsman that he had agreed to release the following assessments out of turn: 2007/08, 2008/09, 2009/10, 2010/11 totalling £102.63. Two cheques had been sent by post to the Complainant's home address.

Conclusion

At the time of writing this report, tax assessments were three years in arrears.

Section 34 (1) of the Income Tax Act 2010 empowers the Commissioner as follows:

> *"... the Commissioner may within the year of assessment or end of accounting period or within six years after the expiration thereof, assess such person at such amount or additional amount as according to his judgment ought to have been charged..."*

The Ombudsman therefore concludes that there is no maladministration in this issue as the law allows for assessments to be raised by the Commissioner within six years of returns being made by individuals. It is also this Section that empowers the Commissioner to exercise discretion in individual cases and was duly exercised in this case due to its exceptional circumstances.

This Complaint is therefore not sustained.

(ii) Not satisfied with the replies received & (iii) Not having received a written reply to an email dated 17th February 2012

In relation to this Complaint, the Commissioner provided a copy of the email sent to the Complainant in October 2011 in which she was informed that it was not possible to inform her of when assessments would be ready for issue. Copies of two subsequent emails sent by the ITO to the Complainant were also provided. The first email dated 6th February 2012 requested that the Complainant contact the ITO by phone and the second email dated 17th February 2012 set out Rule 2 (2) and 3 (2) of the Rates of Tax Rules 1989, to corroborate the earlier verbal information given to the Complainant in relation to tax assessments for non-resident workers. In said email and with regard to the difference in the calculations, the ITO made reference to the possibility that the person who had advised the Complainant had not been aware of the Tax Rules referred to.

The Commissioner explained that during that conversation the Complainant was informed that because she did not reside in Gibraltar there was a legal requirement to apportion allowances and tax bandings to the number of months that she had been working in Gibraltar.

In relation to not having replied to the email which the Complainant sent to the Commissioner on the 17th February 2012, the Commissioner stated that it was because he was informed by the officer who had been dealing with the Complainant's enquiries that she had already addressed the matter and explained to the Complainant why her assessment had been apportioned.

The Commissioner's letter to the Complainant dated 23rd March 2012 informed the Complainant that given the special circumstances of her case he had issued instructions to exceptionally issue her assessments out of turn and advised that two cheques totalling £102.63 were enclosed. The letter explained the following:

(i) The Complainant had been assessed under the Allowances Based System which was the more beneficial to her;

(ii) Confirmed that the assessments had been correctly raised;

(iii) A brief explanation was provided regarding the Tax Rules that applied to her case because she ceased employment on the 31st March 2010 and was not resident in Gibraltar, i.e. allowances apportioned by one twelfth for each complete calendar month that the individual claiming the deduction did not reside in Gibraltar;

(iv) Advised the Complainant that the 'On-Line Income Tax Calculator' was designed to help taxpayers decide which of the two systems were more beneficial to them. It was not designed as an assessment calculator given that it does not cater for apportionment of rates and deductions.

Conclusion

(ii) Not satisfied with the replies received

Not having understood the verbal explanations provided by the ITO, the Complainant sought written clarification to her enquiries and in response received an email from the ITO which quoted the two tax rules referred to in a telephone conversation with the Complainant. The Complainant's other queries (see Background (ii) and (iii) above) were not addressed until the Ombudsman wrote to the Commissioner presenting the Complaint which triggered the investigation by the Commissioner and the review of the Complainant's case and resulted in the issuing of assessments out of turn due to the exceptional circumstances of the case.

Principles of Good Administration advocate that public bodies should be open and accountable and advice provided should be clear, accurate and complete. The ITO should have provided a comprehensive reply to the Complainant sooner rather than later, and not as a result of the Ombudsman's investigation.

This Complaint is sustained.

(iii) Not having received written replies to an email dated 17th February 2012

The Complainant wrote to the ITO and to the Commissioner on the 17th February 2012, the latter explained the reason for the failure to reply, i.e. the officer having informed him that she had dealt with the matter. The Complainant's email to the Commissioner was twofold; to complain about the unsatisfactory outcome of her enquiries and to seek clarification from the highest authority within the ITO. Not receiving a reply or acknowledgement to her email to the Commissioner prompted the Complainant to lodge her Complaint with the Ombudsman. Regardless of the information provided by the officer, the Commissioner should have nonetheless acknowledged the Complainant's letter and advised that he was aware that the matter had been resolved. The Complainant would have reacted and made the Commissioner aware of her situation. The Ombudsman therefore sustains this Complaint.

The ITO attempted to put things right by providing a comprehensive reply to the Complainant. The Ombudsman felt that a meeting between the two parties would have gone a long way into clarifying the Complainant's doubts and in fact, because after she received the letter the Complainant still had queries, the Commissioner of his own accord offered a meeting. The Complainant refused the meeting on the grounds that due to past experience with the ITO she had resolved to obtain all information from them in writing.

This Complaint is sustained.

Led by the Income Tax Office to believe that she would receive a tax rebate of £680 whereas now recently informed that it would be approximately £100

The Commissioner informed the Ombudsman that he had spoken to the officer ("Officer") who attended to the Complainant in her initial enquiry and explained that although very capable, the Officer had little experience on how the PAYE system operated. The Officer confirmed that he had made that clear to the Complainant and therefore advised her to take the matter up with the PAYE Section of the ITO. The Commissioner concluded that the initial contact led the Complainant to believe that calculating her tax assessment on the 'On-Line Income Tax Calculator' would be accurate. The Commissioner explained that in actual fact, the 'On-Line Income Tax Calculator' was designed to help taxpayers decide which of the two taxation systems (Allowance Based or Gross Income Based) was more beneficial to them and was not designed as an assessment calculator, given that the system did not cater for apportionment of rates and deductions which applied to the Complainant who was a non-resident worker. Noting that the 'On-Line Income Tax Calculator' did not warn persons about this, the Commissioner stated he had issued instructions for a warning note to be included.

Conclusion

Regardless of the information provided by the Officer to the Complainant in the initial stages, it is clear from an email the Complainant sent to the ITO in October 2011 that the Officer had nonetheless directed the Complainant to the PAYE Section. Said email also serves to substantiate the Officer's statement to the Commissioner that he had little experience on how the PAYE system operated.

The determining factor in sowing doubts in the Complainant as to the veracity of the information provided by the ITO with regards the rebate she was due was the disparity between the outcome of the calculation on the 'On-Line Income Tax Calculator' £680, and the one given by the ITO, around £100. The verbal and written information provided by the ITO to the Complainant with regards the rules applicable to non-resident workers who had not completed the tax year in employment clarified the reason for the difference in the amounts. The Complainant rightfully noted that there was no reference on the ITO website that different rules applied in the case of non-resident workers who had not completed the full tax year in employment. The Commissioner also rightfully pointed out that the purpose of the 'On-Line Income Tax Calculator' was for taxpayers to compare their liabilities under the two tax assessment systems available in Gibraltar. Nonetheless, to prevent the recurrence of a similar case in future, the Commissioner instructed that a note be included in the 'On-Line Income Tax Calculator' website page to warn taxpayers against using it to work out an assessment. At the time of closing this report the Ombudsman checked the 'On-Line Income Tax Calculator' but to that date no warning note had as yet been put in place.

Based on the findings of his investigation the Ombudsman did not sustain this Complaint. The Officer, despite providing initial information to the Complainant and directing her to the 'On-Line Income Tax Calculator' made it clear that the ultimate authority to deal with her case was the PAYE Section. In relation to the 'On-Line Income Tax Calculator' the Ombudsman noted the Commissioner's explanation as to the original purpose of the webpage and noted, as can be seen from the caption in Appendix 1, that this was stated in the webpage. Nevertheless, the Ombudsman agreed that a warning note was required to alert persons.

This Complaint is not sustained.

UPDATE

FURTHER TO HAVING RECEIVED THE EXPLANATORY LETTER FROM THE ITO AND UP TO DATE ASSESSMENTS, THE COMPLAINANT WAS NOT SATISFIED WITH THE REBATE CALCULATION AND WAS ADVISED BY THE OMBUDSMAN'S OFFICE TO APPEAL TO THE ITO. THE COMMISSIONER OFFERED THE COMPLAINANT A MEETING TO FURTHER CLARIFY ANY QUERIES AND PROVIDE ALL THE EXPLANATIONS SOUGHT BY HER. THE COMPLAINANT REFUSED THE OFFER AND INSISTED THAT SHE WOULD ONLY ACCEPT WRITTEN INFORMATION FROM THE ITO.

ALTHOUGH THE OMBUDSMAN CAN EMPATHISE WITH THE COMPLAINANT HE IS OF THE OPINION THAT SHE SHOULD HAVE ATTENDED THE MEETING, WHICH SHOULD PERHAPS HAVE BEEN OFFERED AT AN EARLIER STAGE. AT THE CONCLUSION OF SAID MEETING THE COMPLAINANT COULD HAVE REQUESTED RELEVANT INFORMATION IN WRITING.

REGARDING THE CHEQUES ENCLOSED WITH THE LETTER, THE COMPLAINANT INFORMED THE ITO THAT ONLY ONE CHEQUE HAD IN FACT BEEN RECEIVED. THE ITO PLACED A STOP ORDER ON THE MISSING CHEQUE, ISSUED A REPLACEMENT ONE AND MAILED IT TO THE COMPLAINANT.

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Land Property Services

Case Partly Sustained

CS/956

Complaint against Land Property Services Limited for non-reply to letter of the 21st June 2011 and the attitude of senior staff whom did not inspire confidence or care

Complaint

The Complainant was aggrieved against Land Property Services Limited ("LPS") because they had not replied to the letter he had sent to them three months earlier. On telephoning LPS to make enquiries he was further aggrieved because the attitude of senior staff did not inspire confidence or care.

Background

In June 2011 the Complainant acting on behalf of his mother ("Mother"), a senior citizen, wrote to LPS to enquire about the conditions to enable the purchase of the Government rented flat ("Flat") she had resided in for over thirty years.

The Complainant informed LPS that the only way the Flat could be bought was through a mortgage and that because both he and his Mother were retired and would be unable to obtain a mortgage, it would be the Complainant's son ("Son") who would get the mortgage. The Complainant explained that the Son had a view to living in the Flat in future. By way of further information, the Complainant stated that the Son was presently unemployed but was hopeful of being employed soon.

The Complainant explained to LPS that the letter was a preliminary enquiry to test the possibility of the project, and if all terms were agreed they would proceed as circumstances permitted.

Two months after the letter to LPS, the Mother was admitted to the local elderly people's home and notified that she would have a three month grace period (end of November 2011) in which to decide if she wanted to make that her permanent home. If that was the case she would be required to hand back vacant possession of the Flat to the Housing Authority.

Not having received an acknowledgement or reply to his letter after three months, the Complainant telephoned LPS and spoke to a senior member of staff tasked with the sale of Government pre-war properties. According to the Complainant, LPS informed him that they had been very busy and not had the time to reply. The Complainant asked if the Flat could be lost by the end of November if they did not receive a valuation before, and alleged that he was told that they had other sales to carry out and the Complainant would have to wait his turn, even if it was after the November deadline. The Complainant claimed to have told LPS that by then they might have lost the Flat but was told that they could do nothing about it. From the conversation, the Complainant concluded that LPS did not appear to care and was not helpful.

At the end of September 2011 the Complainant lodged his Complaint with the Ombudsman.

Investigation

The Ombudsman requested LPS' comments on the matter. The reply received from LPS enclosed a copy of a letter from the Housing Authority dated 6th October 2011 in which consent to the request had not been granted because the Son was not a tenant of the Flat, and also enclosed a copy of the letter dated 12th October 2011, sent to the Complainant to notify him of the decision.

LPS explained that their role tasked them with dealing with sales of pre-war properties to tenants in the Government housing scheme as well as other Government residential sales. They stated that resources were limited and sales of this type fraught with complexity, and that the very nature of the sales (people who already have accommodation) was such that it could not carry the same degree of urgency and priority as sales to those aspiring to have their own homes. Furthermore, the Complainant's enquiry came at a time when staff resources had been diverted to complete the sales of a number of vacant dwellings and completion of other sales to tenants who had already committed to the purchase. LPS explained that when the Complainant called they apologised, confirmed receipt of the letter and advised that it had not been processed because it was deemed to be low priority in relation to work in hand at that time. LPS stated that it was as a result of the additional information provided by the Complainant during the telephone call that they referred the matter to the Housing Authority on the 29th September 2011 and a decision received on the 6th October 2011.

LPS updated the Ombudsman to the fact that the Complainant had questioned the reason for the refusal given by the Housing Authority (that the Son was not a tenant). The Complainant had stated that the Mother was the purchaser, regardless of the fact that the Son would obtain the mortgage to purchase the Flat and asked that LPS and the Housing Authority reconsider the matter. LPS advised that the request was put to the Housing Authority on the 27th October 2011 and the reply on the 16th November 2011 noted that the Mother was eligible to purchase. LPS was awaiting a response from No. 6 Convent Place (Chief Minister's Office) in order to be able to make an offer of the Flat to the Mother.

By way of background information regarding the issue of 'time lapse', LPS informed the Ombudsman that in July 2006 the Mother expressed an interest in purchasing the Flat and that two years later, in June 2008, a formal offer was made by Government. The offer remained unanswered until the Complainant's letter of the 21st June 2011.

Conclusion

Non-reply to letter of the 21st June 2011

The investigation has determined that LPS did not issue an acknowledgement or reply to the Complainant's letter. The reasons given by LPS were stated as being due to:

- Limited resources to deal with sales of this type which are fraught with complexity;
- The nature of the sales (people who already had accommodation) was such that it could not carry the same degree of urgency and priority as sales to those aspiring to have their own homes.

- The Complainant's enquiry came at a time when staff resources had been diverted to complete sales of vacant dwellings and those of tenants who had already committed to the purchase.

The Ombudsman concludes that despite LPS not having deemed that the Complainant's letter required an urgent reply, they should have nonetheless acknowledged the letter and given the Complainant a tentative date by which he could expect to receive the information.

The Ombudsman sustained this part of the Complaint.

Attitude of senior staff did not inspire confidence or care

The Complainant claimed to have experienced a lack of confidence and care in the telephone conversation with LPS. It was this event that triggered his complaints to the Ombudsman.

The investigation found that the Complainant and LPS concurred that in the course of the conversation, LPS had informed the Complainant of the reasons for the delay in processing the letter but differed with respect to an apology having been made. Both versions point to LPS not having informed the Complainant of the course of action they would take as a result of the additional information provided by the Complainant which now classified the matter as urgent.

Based on the facts that the telephone conversation occurred on the 26th September 2011, LPS wrote to the Housing Authority on the 29th September and received the reply on the 6th October 2011, it can be determined that LPS reacted to the Complainant's request, albeit did not communicate to him in the course of the conversation, the action that would follow. This resulted in the Complainant losing confidence in LPS and being left with the feeling that LPS did not care about the urgency of the case.

The Ombudsman did not sustain this part of the Complaint because in order to do so he would have had to put himself in the shoes of both the Complainant and LPS at the time of the telephone conversation; this was an impossible task.

Notwithstanding the above and in order to encourage LPS (as well as all other entities under jurisdiction) to strengthen their customer relations, the Ombudsman encouraged LPS to refer to the Principles of Good Administration which advocate that public services should be customer focused.

Classification

Non-reply to letter of the 21st June 2011: Sustained.

The Ombudsman sustained this Complaint because despite LPS not having deemed the Complainant's letter as urgent, LPS should have nonetheless acknowledged said letter and provided a tentative date by which he could have expected to receive the information required.

Attitude of senior staff did not inspire confidence or care: Not Sustained.

The Ombudsman did not sustain this part of the Complaint because in order to do so he would have had to put himself in the shoes of both the Complainant and LPS at the time of the telephone conversation; this was an impossible task.

Case Sustained

CS/963

Complaints against Land Property Services Limited ("LPS")

(i) The Complainant applied for a parking bay in 1997 and had only just recently been informed by LPS that the system had changed;

(ii) Non-reply to Complainant's letter

Complaint

The Complainant was aggrieved because he had applied to LPS for a Government owned parking bay ("Parking") in 1997, and had only just recently (September 2011) been informed that the allocation system had changed. As a result, the Complainant claimed he had been moved to a lower position on the waiting list ("List").

In a letter dated 19th September 2011 to LPS, the Complainant requested a written explanation regarding the information received but did not obtain a reply.

Background

The Complainant explained that in October 1996 he was allocated a Government rented flat ("Flat") located in a building in which the ground floor level comprised a number of Parkings. The Complainant stated that he contacted LPS (managing agents for properties owned by the Government of Gibraltar) for information on how to obtain one of those Parkings and was told that the allocation system was by application to LPS. The Complainant applied and received an acknowledgment from LPS, by way of letter dated 27th February 1997, which stated that his application had been noted and would be considered when a Parking became available.

The Complainant was aware at the time of application that all Parkings were allocated and that it would be a considerable period of time before his turn came up. In November 2005, October 2006 and November 2008 he contacted LPS for updates on his position and claimed to have been told he was 8th, 8th and 3rd on the List respectively. The Complainant claimed he was shown the List and was able to note the names of applicants above him on the List. In September 2011 when he made enquiries with LPS he was informed that the allocation system had changed and had resulted in his name being moved to a lower position on the List.

The Complainant verbally complained to LPS about the unfairness of the situation and also wrote requesting a written explanation as to the reasons for the change. Furthermore he listed the names of the four persons at the top of the List which he claimed to have had sight of (he was in fourth place) and enquired as to why 'a line had been drawn' under the name of the third applicant and a new system implemented from then on.

One month having passed and not having received a reply, the Complainant brought his Complaints to the Ombudsman.

Investigation

The Ombudsman requested comments from LPS. Regarding the non-reply to the letter, LPS just stated that they would write to the Complainant '…as soon as work commitments allow'. In fact the letter did not materialise until January 2012 (four months after the Complainant's original letter to them) and then only due to the Ombudsman's ongoing inquiries during November 2011 and January 2012. The reason given by LPS to the Complainant for not having replied was that the letter had inadvertently been filed.

Regarding the allocation system for Parkings, LPS informed the Ombudsman that since taking over the management of the waiting lists (refers to various estates around Gibraltar) formerly managed by the Housing Department and Crown Lands (LPS had by now been managing the lists for approximately the last twenty years), there had always been problems. LPS would occasionally receive enquiries from residents of the area who claimed to have applied twenty or thirty years earlier but whose applications were not recorded on the List. Those claims highlighted problems with the waiting lists being used which were based on the date of application (as was the case with the Complainant) and LPS stated that as from November 1996 it was agreed to stop adding further applicants to said waiting lists. Applications after that date were only acknowledged and residents informed that the application would be considered when a Parking became available. LPS advised that the letter did not specify the manner in which the allocation was to be made.

LPS stated that it was in 2006, as a result of a complaint by a resident to the Housing Authority, that they were instructed to amend the order of the List to reflect the resident's length of tenancy.

On the basis of the above instructions, LPS amended the List and stated that two Parkings had been allocated since, as to date there had been no further vacant Parkings. Therefore, Government policy (applied by LPS in their capacity as Government agents) for allocation had since 2006 been to allocate Parkings to residents who had lived in the area the longest, subject to their having a valid driving licence and being the registered owner of a motor vehicle. LPS commented that they continued to receive complaints from long standing residents who were not included in the List, as a result of which said List had to be updated and amended accordingly.

LPS noted the Complainant's concerns that he might not obtain a Parking as soon as he had anticipated but explained that the allocation process implemented was the method deemed by the Housing Authority to be the fairest.

LPS could not recall if the present policy had been explained to the Complainant during one of his enquiries but stated that this had been explained to all applicants when there was an enquiry. For the purpose of further clarification with regards the List, LPS explained that this was a register of applicants and did not carry any priority for the purpose of allocations.

Since the decision to stop adding new applicants to the List (1996) until the implementation of the new allocation procedure (2006) ten years had elapsed. The Ombudsman inquired if there had been allocations during that period and if so, requested information on the system of allocation used.

LPS advised that during that time there were two Parkings allocated from the List.

Conclusion

The Complainant applied for a parking bay in 1997 and had only just recently been informed that the system had changed

The List had been used by LPS up to November 1996 for the purpose of allocating Parkings in chronological order of application. LPS informed the Ombudsman that by the time the Complainant applied, the List was just a register and substantiate this by referring to the acknowledgement letter sent to the Complainant which did not specify the manner in which the allocation was to be made.

However, irrespective of LPS' assertions, it is evident that in the course of his enquiries to LPS the Complainant was shown the List as he had noted down names and positions. Nonetheless, LPS maintain that since 2006 the List was just a register. There is no written notification from LPS to the Complainant which would show that the Complainant had been informed about the change in the allocation system. LPS should have provided this vital information to the Complainant and for that reason the Ombudsman sustains this Complaint. The result of the non-notification was that the Complainant was led into thinking that what had in 2006 become a register was in fact the List and raised his expectations of an imminent allocation.

From the findings of the investigation the Ombudsman was able to identify a period of ten years, 1996 to 2006, during which there was no defined criteria for the allocation of Parkings which would possibly explain the reason why the manner of allocation was not specified in the acknowledgement letter. The reason why such a long period of time could be sustained without a defined policy was that vacant Parkings were a very rare occurrence.

To date, the register remains incomplete as claims regarding applications dating back to 1968, the time when flats were allocated, from longstanding residents could still be received by LPS.

The Ombudsman is conscious that this matter might not be a major issue in the wide context of the management of the housing stock and other assets in Gibraltar however he would be presenting this report to the Minister for Housing for his consideration. This action was necessary because in practice, following the policy in place, there could not be a waiting list because allocations were being made on the basis of length of tenancy if and when such a tenant applied upon knowledge of a vacant Parking.

Non-Reply to Letter

The Ombudsman decided to sustain the Complaint of non-reply.

Four months is an unreasonable time lapse for an entity to provide a reply to someone who has expressed a grievance (or indeed made an enquiry). The general public should receive a service which is commensurate with modern service delivery and expectations. In this particular instance, the Ombudsman would have expected a more proactive approach towards the Complainant.

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Magistrate's Court

Case Not Sustained

CS/967

Complaint against the Magistrates Court for sending the Complainant a fine with a time scale for payment which was impossible to meet, and which carried a threat of imprisonment upon non payment

Complaint

The Complainant complains that he received a fine from the Magistrates' Court with a time scale for payment which was impossible to meet, and which carried a threat of imprisonment upon non-payment.

Background

The Complainant explained that he received a fine dated 8th September 2011 on 15th September 2011, which was the date when the fine was due. When he complained of the delay in receiving the letter he was informed by the clerk at the counter that he need not worry as they normally gave a month to pay.

The Complainant pointed out to the clerk that the letter received threatened imprisonment and should not be taken lightly. He felt that this amounted to administrative malpractice and proceeded to lodge a complaint with the Ombudsman.

Investigation

The Ombudsman wrote to the Chief Executive of the Gibraltar Courts Service seeking his comments on the complaint and especially on the notification process, which appeared to carry a short period of time between the date of conviction and the date when payment was required.

The Chief Executive explained that the seven day period between sentencing and fine payment derives from S.200(1) of the Criminal Procedures Act 1960. Defendants appearing in court are obviously told of the fine and the payment period at that point, they also have the opportunity to discuss how long they will take to pay the fine. Defendants fined in their absence will only learn of this when they receive the court notice and may have the minimum payment period set by the court, as they did not appear to discuss their ability to pay with the court.

Following receipt of the Ombudsman's letter, the Chief Executive explained that he had reviewed samples of the notices of fines issued by the Magistrates' Court. He had seen extended periods of time to pay on some of those notices well in excess of the seven days minimum required by the Criminal Procedure Act, which are obviously due to agreements made in court. It appears that the Complainant did not attend court for his hearing and, in the absence of any representation about his ability to pay, the minimum payment period was set for the fine.

Even if the minimum payment period is attached to a notice of fine, the court accepts that it sometimes takes a few days for the notice of the fine to reach a defendant. As a result, a 'common sense' time allowance is used by the staff at the public counter in monitoring fine payments. In practice, a balance needs to be achieved between the need for speedy payment of the fine and the need to take account of the circumstances of different individuals, i.e. when their next pay date might be. The Chief Executive stated that it appeared to him that the public counter staff did their best to explain the situation to the Complainant and reassure him that he had time to pay.

The notice used by the court to advice defendants of their fine and the payment dates does refer to the additional custodial penalty for non-payment. There is a requirement to make it clear to people that there are further legal consequences if the fine is not paid. The wording is not intended to be threatening; it is there to make it clear to people that they should make a serious effort to pay the fine as promptly as possible.

However, having reviewed the wording of the notices of fines, the Chief Executive appreciated how the wording could worry someone who did not attend the court in person when the fine was set and had, as a result, received a minimum period to pay. For that reason, the Chief Executive had asked the Clerk to the Magistrates' Court and the HEO of the Magistrates' Court to produce a revised form of words that explained the legal consequences of non-payment, emphasised the importance of quick payment but did not inadvertently appear threatening.

In a subsequent letter the Chief Executive explained that the Stipendiary Magistrate had advised Magistrates to use a l4-day minimum payment period for a fine when a defendant does not appear in court. Also, wording on the notice for fines had been changed from:

'FAILURE TO PAY ON OR BEFORE THE APPOINTED DAY WILL RENDER YOU LIABLE TO IMPRISONMENT (as shown above), arrest or your money and goods liable to distraint without further notice, unless you have applied for, and have been granted before that day, further time for payment.'

to:

"It is important that the court fine(s) listed above are paid promptly. FAILURE TO PAY on or before the appointed day will render you liable to arrest; seizure of your money or goods without further notice; or imprisonment. Application may be made to the court for further time to pay but must be made, and granted, before the appointed day for payment."

Although the potential for imprisonment must be notified to defendants, hopefully the revised wording would make the options available to the defendant clearer. Obviously, it is always best for defendants to attend the court hearing, as this would make this explanation unnecessary. The Ombudsman wished to commend the Chief Executive for his proactive approach to this complaint and also thanked the Stipendiary Magistrate for his initiative to advise Magistrates to use a minimum payment period of 14 days for a fine when a defendant exercises his option not to appear in court.

Classification: Not sustained.

The Ombudsman did not sustain this complaint because he found no act of maladministration on the part of the Gibraltar Court Service and indeed as soon as the matter was brought to their attention improvements were made to the system and even the Stipendiary Magistrates took steps to assist in the process.

Case Sustained

CS/984

Complaint against the Gibraltar Courts Service (Magistrate's Court) for:

(i) The Complainant's arrest for non payment of a fine when the time allocated to pay had not expired;

(ii) The lack of an apology or thorough investigation after the Complainant complained to the entity in question;

(iii) The amount by which the fine was reduced as a result of the Complainant spending a night in cells

Complaint

The Complainant was aggrieved because on the 24th March 2012 he was arrested for non payment of a fine, as a result of a warrant of arrest being issued by the court, even though he had until the 31st July 2012 to pay the fine in full. When he complained verbally to the Clerk to the Justices at the Magistrate's Court no apology was given and no thorough investigation was seemingly carried out. He was told by the Clerk that his fine would be reduced by only £26 for the night he had spent in cells. The Complainant was therefore dissatisfied at the treatment received by the Gibraltar Courts Service.

Background

The Complainant was originally convicted for a tobacco related offence on the 20th April 2011 and by way of sentence, was ordered to pay a fine in the amount of £4000. A part payment of the fine, namely £1700, was paid on the 20th of July 2011. The Complainant made a formal request for additional time to pay and the court granted him the extension sought. This was recorded on the court register. However, due to a problem with the Magistrates' Court computer system (as confirmed by the Gibraltar Courts Chief Executive), the extension of time granted was entered in the system but not saved. This resulted in the arrest warrant of the 1st November 2011.

Investigation

The Ombudsman wrote to the Chief Executive of the Gibraltar Courts Service on the 26th April 2012, presenting the complaint and requesting his comments. In the absence of a substantive reply, letters of reminder were sent by the Ombudsman to the Chief Executive at the end of May and again in the middle of June. No replies were received. The Ombudsman, in order to enable himself to progress this Complaint and to properly exercise his public duty, wrote to the Chief Secretary of the Government of Gibraltar for his direct intervention in obtaining a reply from the Gibraltar Courts Service to a matter which by then, had been classed by this office as being subjected to inordinate delay. A substantive reply was finally received on July 4th 2012.

In his reply, the Chief Executive stated that the arrest of the Complainant was due to "an unforeseen computer error". He alluded to the fact that the courts were experiencing "major difficulties" with the system then in place, since software was running on very old desktops and an antiquated server. The Office of the Ombudsman was informed that the system would often "freeze", resulting in staff not being able to carry on with their work and data entered on to the system sometimes being lost.

Conclusions

The content of the Chief Executives letter highlighted a deficient and totally unacceptable working standard. More so when such errors emanated from a department whose very existence was and is, to administer justice and ensure that the rights and freedoms of our citizens remain protected. In this case, the Complainant's fundamental right of freedom was breached by the Gibraltar Courts Service in his unjustified arrest.

To add insult to injury, the Complainant was not offered an apology nor was the matter investigated, simply being slotted under the "major difficulties" category as a result of the then substandard computer system referred to by the Chief Executive. The Office of the Ombudsman noted his comments that the system has improved slightly since the Gibraltar Courts Service progressed to new computers earlier this year and that attempts are being made to modernise the service the Courts provide. The Ombudsman has also expressed his satisfaction at the Chief Executive's comment that in response to the Complainants complaint, the Clerk to the Justices has now implemented a separate log file to be kept for all variations of time to pay on fines, in order to minimise the risk of this type of incident reoccurring in future. However, the Ombudsman can only express his grave concern that "the whole software and database structure is still an area of high operational risk", despite taking heed of the fact that "it is being prioritised for replacement". The Ombudsman can only expect the highest safeguards and standards particularly when, as previously stated, the liberty of individuals depends on, amongst other things, updated, efficient and secure working systems and infrastructure. In this case, the system clearly failed the Complainant.

Additionally, no explanation was given to the Complainant for the standard rate of £26 being reduced from his fine, such an amount being wholly disproportionate, in the Complainant's rightful view, to the loss of his liberty. It is only in the Chief Executive's reply to the Ombudsman where he states that the £26 reduction is a standard one, imposed by H.M.Prison which the courts have no power to vary. The Ombudsman is of the view that this explanation should have been given to the Complainant directly.

From an administrative perspective, the Ombudsman was disappointed and concerned at the delay and difficulty in receiving a substantive reply to his letter presenting the Complaint, in contravention of the Principles of Good Administration. The Ombudsman was informed by the Chief Executive that delays in the service provided are in part due to the elevated individual case matters the Courts Service deals with an on annual basis, together with staff shortages. Nonetheless, the delay of almost 13 weeks in reply is unreasonable in the circumstances and contributed to further subjecting the Complainant to distress.

Recommendations

1. The Courts Service should ensure that modern practices and updated computer systems are in place to ensure that such grave errors, leading to loss of liberty, do not reoccur in future.

2. The Government of Gibraltar should review staff numbers employed within the Courts Service and employ the necessary administrative staff in order to facilitate the Courts Service's role within our community.

3. In accordance with the Principles of Good Administration and Working Practices, the Courts Service should ensure that requests for comments/information are dealt with expeditiously.

Ministry for Finance

Case Not Sustained

CS/964

Complaint made against the Ministry for Finance over the failure to credit the Complainant with two years of Social Insurance contributions.

Complaint

The Complainant was aggrieved because he claimed that two years of his social insurance during the period 1996/1997 remained outstanding even though it was allegedly agreed in writing that Government would pay for it.

Background

The Complainant and his wife were the sole directors and shareholders of a private limited company. It was through this company ('the Company') that that the Complainant provided his services as business adviser to the Small Business Bureau. These services were provided between 1996 to 31st December 1998. With effect from 1st January 1999 the Complainant became an employee of the Government of Gibraltar under the Gibraltar Development Corporation ('GDC')

Investigation

Ombudsman's Note

Prior to setting out the findings of the investigation, it is necessary to point out that at the time when the complaint arose, the entity involved would have been the Department of Social Security. Resulting from Government's restructure of the collection of social security payments, responsibility for the collection and allied matters of social security contributions now falls within the Commissioner of Income Tax, thus the complaint was put to him for his comments.

The Ombudsman wrote to the Commissioner of Income Tax ('the Commissioner') on 26th September 2011 outlining the complaint and asking for the Commissioners comments. After a lengthy investigation, the Commissioner provided the Ombudsman with a comprehensive reply on 21st December 2011 supported by the appropriate documentation.

The records went back to the tax year 1990/91. From the Complainant's tax and social insurance files it was established that his sole income from 1 July 1990 to 31 December 1998 was that of director's fees derived from the Company. The Company was incorporated in November 1989 and both the Complainant and his wife were registered directors and shareholders.

In the early nineties the Complainant commenced providing consultancy services as a business adviser to the Government's Small Business Bureau through the Company. So far as was determined, the arrangement put in place at the time was for the Complainant's fees to be paid without deduction of tax and social insurance to the Company through which the Complainant then derived his income.

The Commissioner provided evidence showing that in October 1996 the Complainant registered as a self employed individual with the Ministry of Employment and with the Department of Social Security. During that time and up to 31 December 1998, his fees continued to be paid without deduction of tax and social insurance to the Company.

On 28 August 1998 the Complainant was offered employment with the GDC as a business adviser at the Business Advisory Unit within the Department of Trade and lndustry. The Ombudsman was provided with a copy of the offer letter and was referred to a note from the Accountant General where he instructs his staff to stop payment to the Company. On 1 January 1999, the Complainant commenced fulltime employment with the GDC.

There is no doubt from the evidence available to the Ombudsman that the Complainant took up employment with the GDC on 1 January 1999 and that previous to this date he was providing consultancy services through the Company.

The Commissioner informed the Ombudsman that he found no evidence to suggest that the Complainant was an employee of the GDC before 1 January 1999. It was also established that his fees continued to be paid without deduction of tax and social insurance right up to 31 December 1998.

The Commissioner therefore formed the view that the GDC was not responsible for the payment of social insurance contributions for the period up to 31 December 1998, as claimed by the Complainant. The Ombudsman concurred with these findings.

Letter in support of the Complainant's claim.

The Complainant provided the Ombudsman with a copy of a letter from an ex Government Minister in support of his claim that social insurance contributions for the years 1996/1997 should be credited to his record.

The ex-Minister confirmed his understanding, during such time as he was Minister for Trade, lndustry and Development, that the Complainant's change of circumstances (i.e. from self-employed to GDC's employee) should take effect as from the date of the election of the new Government in May 1996.

The ex-Minister's recollection was to the effect that, upon coming into office, Government was keen to restructure the basis upon which the Complainant provided his services to Government. This took some time to put into effect but the intention was that the arrangements should be regarded as commencing from May 1996.

After considering the ex-Minister's letter, the Ombudsman concluded that indeed there had been an understanding/intention on the part of the ex-Minister to consider the Complainant as an employee rather than as a self-employed adviser as from May 1996. However, there is no evidence to suggest that this intention was ever set in motion even after the time when the Complainant was employed by the GDC as from 1st December 1999.

Conclusion

There is no doubt that the Commissioner's finding that no liability arises for GDC to credit the Complainant's Social Insurance records with the contributions being claimed is correct.

There is a large possibility that a legitimate expectation was created and that the Complainant believed that his social insurance record would be updated to reflect the contributions being claimed. However the relevant factor in considering this matter is that the Complainant continued to be paid though his private company for services rendered to the Government without deduction of Tax or Social Insurance Contributions. It is also of utmost importance to note that whilst there was an intention to employ him this did not materialise until later on, i.e. 1st January 1999 and therefore the Complainant should have made his social insurance contributions as a self employed person given that he registered as such as from October 1996.

The ex-Minister's intention never materialised. There is no evidence that instructions were issued even after the Complainant became an employee of GDC. Additionally, the Complainant does not contend that instructions were issued and not followed. Simply put, the understanding/ intention remained as such and was never progressed.

Based on the evidence before the Ombudsman, the complaint is not sustained.

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Royal Gibraltar Police

Case Sustained

CS/970

Complaint against the Royal Gibraltar Police ("RGP") for failure to reply to the Complainant's letter

Complaint

The Complainant was aggrieved because the RGP had failed to reply to her letter dated 28th October 2011 in relation to a matter she had reported at the RGP Headquarters on the 22nd August 2011.

Background

The Complainant explained that she was aggrieved by the RGP's failure to furnish her with a reply concerning a report she had made personally at the RGP Headquarters the 22nd August 2011. On the 28th October 2011 the Complainant wrote to the RGP on the subject matter but did not receive a reply.

Investigation

On the 22nd December 2011 the Ombudsman spoke to the Police Commissioner ("Commissioner") on an informal basis presenting the complaint and asked for reasons to be given for their failure to reply to the Complainant's letter. The Ombudsman provided a copy of the Complainant's original letter ("Original Letter") dated 28th October 2011 for ease of reference.

On the 20th January 2012, not having received the information requested, the Ombudsman contacted the Commissioner's Personal Assistant and once again forwarded the Original Letter.

By the 3rd February 2012 no information having been forthcoming, the Ombudsman decided to initiate a formal complaint against the RGP for their failure to reply to the Complainant's letter addressed to the Commissioner.

On the 21st February 2012, the Ombudsman met with an RGP Detective Inspector ("Inspector") and Sergeant ("Sergeant") who explained that there had been a breakdown in communications on the part of the RGP due to changes in the organisation, and the matter of the letter sent to the Commissioner had been put to one side, however the Ombudsman was assured the matter would be looked into expeditiously.

The Inspector highlighted that the Complainant had reported a similar matter in 2008 and that the RGP's conclusion at the end of the investigation was that the matter was a civil one. The Ombudsman enquired as to why the RGP had not delivered the outcome of the investigation to the Complainant.

The Sergeant then referred the Ombudsman to a witness statement made by the Complainant on the 23rd August 2011 in which she had requested that any information obtained by the RGP should be passed on to either of two relatives who resided in Gibraltar, for onward transmission to her as she did not reside in Gibraltar. The Sergeant stated that this was done by the officer ("Officer") investigating the report made to the RGP by the Complainant and the date on which this was done was stated as being end of November/early December 2011. The Officer had not made a written record of the call in his notebook and provided the information from memory. The Officer claimed to have telephoned and spoken to one of the relatives the Complainant had nominated in her statement. He was informed that there was no evidence of a criminal offence with regards the complaint made by the Complainant and asked the relative to pass the news onto the Complainant. An extensive report dated 6th February 2012 was provided by the Officer as a result of the Ombudsman's enquiry (by way of letter to the Commissioner on the 3rd February 2012).

The Sergeant stated that if the Complainant had wanted a written explanation she should have requested this in writing. The Ombudsman highlighted that the Complainant's letter addressed to the Commissioner requested information regarding the report..

The meeting was concluded with an assurance from the inspector that the RGP would draft a reply to the Ombudsman and would also write to the Complainant. The Ombudsman requested that a copy of the letter to the Complainant be forwarded to him.

On 29th February 2012, the Inspector wrote to the Ombudsman on behalf of the Commissioner apologising for the delay in replying to his email of the 22nd December 2011 and follow up letter of the 20th January 2012. RGP advised that a copy of the letter to the Complainant would follow.

On 13th March 2012, the Ombudsman, not having received a copy of the letter to the Complainant, wrote to the Inspector and a copy was forwarded the following day.

Conclusions

The Ombudsman was of the initial view that this complaint did not necessarily warrant a formal investigation because the issue of delay seemed to him to be one which could have been surmountable. Given that perception, the Ombudsman first sought a reply in December 2011. By February 2012 it had become evident that the delay warranted a formal investigation to determine the reasons for the time taken by the RGP to provide a reply.

The predominant reason put forward by the RGP for the delay was said to have been attributable to the change in the organisation and the fact that the letter was sent to the Commissioner. However, the chronology of the subsequent facts was such that the Ombudsman could see that there was further need to clarify the extent and manner of how the RGP had handled the initial enquiry by the Complainant and the Ombudsman's own requests.

Working on the basis that the RGP had informed the Complainant in November 2011 that they had considered the matter and had decided it was a civil one, the Ombudsman found it odd that the matter was not resolved promptly and amicably when it was revisited at his intervention.

A striking feature to this case was the maladministration found in the RGP's handling of the communications with the Complainant prior to the Ombudsman's intervention, as well as, communications with the Ombudsman. The RGP's way of communicating the outcome of the investigation to one of the nominated relative's of the Complainant was poor and somewhat delayed. The Officer claimed to have spoken to the Complainant's relative and informed him of the outcome of their investigation yet there was no written correspondence to formalise such dealings to the point that there was no record of this in the Officer's notebook.

In relation to the Ombudsman's meeting with the RGP, and with reference to the Sergeant's statement that had the Complainant required a written reply she should have written directly to them, the Ombudsman found this to be very haphazard as it is common for people to write to the heads of department. The RGP should then filter those letters to be passed on to the relevant officers, something that in this case was not done.

The method of the RGPs handling of its responses in this case is further aggravated by the fact that the Ombudsman's initial letter merely sought an explanation for the non reply to the Complainant's Original Letter and therefore had the Ombudsman's initial query been appropriately dealt with at the time it was made, the Complaint could have been resolved by the RGP in November 2011 as they had assured the Complainant that that would be the case.

The Ombudsman cannot find justification as to why precisely the RGP's explanation could not have been communicated to the Complainant within a reasonable time after the Original Letter was sent or later on in reply to the Ombudsman's initial query. The non replies by the RGP to the Complainant and the Ombudsman respectively, have unnecessarily delayed a matter which on the face of it was not cumbersome in nature and could have been resolved through informal action.

Classification

Sustained – The Ombudsman sustains the Complaint given that the Complainant was not given a reply to the original letter as well as the intentional disregard of the Ombudsman's request.

- -

Case Sustained

CS/974

Complaint against the Royal Gibraltar Police for failure to reply to Complainant's letter

Complaint

The Complainant was aggrieved at the Royal Gibraltar Police ("RGP") because they had not replied to his letter of the 23rd May 2011 in which he had requested an update in respect of an investigation the RGP were undertaking into a report he had made

Background

The Complainant explained that he had resided with his daughter ("Daughter") in her Government rented flat ("Flat"). In mid 2008 whilst he served a short prison sentence, his Daughter passed away. According to the Complainant, a couple of weeks after his Daughter's death, her two children ("Grandchildren") (in their late teens) who had for the past eight or nine years resided in the United Kingdom, returned to Gibraltar and laid claim to the Flat. In December 2008, six weeks before his release from prison, the Complainant stated that one of the Grandchildren visited him and informed him that unless he removed his property from the Flat during the next two weeks the items would be disposed of. Considering his situation at that time, the Complainant found the request unreasonable and was unable to comply. The Complainant explained that after his release he was homeless for a period of approximately two years during which time he relied on assistance from friends, and therefore had no place in which to store his property. It was in December 2010 when the Complainant was allocated a Government flat that he attempted to retrieve his belongings. The substantive complaint originates from the Grandchildren's refusal to allow the retrieval of the property. As a result, on the 6th January 2011 the Complainant reported the matter to the RGP by way of letter to the RGP Commissioner and was contacted shortly after by a police officer ("RGP Officer 1"). According to the Complainant, RGP Officer 1 phoned him on three occasions to advise him he was on the case and in the last communication requested that he submit an inventory of the property. The Complainant claimed to have hand delivered a letter and the inventory to the Central Police Station ("CPS") on the 10th February 2011.

By 23rd May 2011 and because he had not been contacted by the RGP, the Complainant wrote directly to RGP Officer 1 to request that they contact him with their findings as he felt they had had sufficient time to conduct enquiries. The Complainant stated that he enclosed a further copy of the inventory and once again hand delivered the documents to CPS.

Three months later and not having received a reply to his letter, the Complainant brought his complaint to the Ombudsman.

The Complainant informed the Ombudsman that apart from personal belongings, the property was comprised of furniture, electrical appliances, soft furnishings and tools, all of which he desperately needed when he was allocated the new flat, especially due to his financial situation. The Complainant pointed out that he had kitted out most of the Flat as his Daughter had been away in the United Kingdom around that time, undergoing treatment for her condition.

Investigation

In September 2011, the Ombudsman put the Complaint to the RGP whose initial reply stated that RGP Officer 1 was on long term sick leave and they were trying to contact him to be able to provide the information.

A month later and no information having been forthcoming, the Ombudsman again wrote to the RGP and informed them that although he was aware of RGP Officer 1's absence there should be an administrative procedure to cater for those events.

An immediate reply was received from the RGP to the effect that information on the case had been obtained from RGP Officer 1's colleague ("RGP Officer 2"). The investigation was in its final stages and information on the specifics of the case could not be provided other than that RGP Officer 2 would shortly seek advice from the Attorney General's Chambers ("AG"). RGP advised that once the advice was received they would be in a position to provide the Ombudsman with further information.

By the 13th January 2012, a year after he initially reported the matter to the RGP, the Complainant had still not been contacted by them. The Ombudsman wrote to the RGP and requested that they write to the Complainant explaining the reasons for the delay in replying. A week later the RGP wrote to the Ombudsman to notify him that they had received the AG's advice on the 19th January 2012 which had concluded that the matter was a civil one and stated that they would write to the Complainant and inform him of the outcome.

On the 7th February 2012 the Ombudsman contacted the RGP for an update and was informed that they had written to the Complainant (letter dated 7th February 2012) and notified him that the investigation was being discontinued, based on the AG's advice that the matter was a civil one. Regarding the complaint, the RGP advised the Ombudsman that they would shortly be writing to the Complainant.

On the 9th February 2012 the RGP wrote to the Complainant addressing the reasons for the delays in replying. The RGP referred to the Complainant's first letter on the 6th January 2011 in which the action taken was that RGP Officer 1 contacted the Complainant and requested an inventory of the property. According to the RGP this was followed a few weeks later by a second telephone call from RGP Officer 1 to once again request that the inventory be provided and during which the Complainant stated he had been otherwise engaged but would provide the document.

The RGP denied having received the 10th February 2011 letter the Complainant claimed to have hand delivered to the CPS and stated that the inventory was not received until early May 2011. RGP stated that in the interim, despite the delay in providing the inventory which was crucial to the investigation, the investigation continued; other avenues were explored. Upon completion of the investigation the 'substantive findings' were submitted on the 1st November 2011 to the AG for advice and this was provided in mid-January 2012.

Regarding the Complainant's claim that the RGP did not update him on progress following receipt of his May 2011 letter, RGP stated that whilst it would have been desirable for officers to have updated on progress, the reality was that for most of the time, other than in those instances in which the RGP required information from the Complainant, there was no update to provide.

The RGP reassured the Complainant that an exhaustive investigation had been undertaken into what was a complex matter over which legal advice was sought. They further stated, that although officers could have updated the Complainant further between May 2011 and February 2012, they wrote to him as soon as they were in possession of said legal advice.

The Ombudsman was concerned about the RGP's statement that the February 2011 letter which the Complainant claimed to have hand delivered had not been received and enquired about the system in place to log those letters, by way of letter to the Commissioner of Police dated 29th February 2011.

The RGP's reply dated 1st March 2012, stated that on a daily basis, save for weekends (which in any event did not apply in this case), all hand delivered mail was collected by a designated administrative/police officer who handed the correspondence over to the Administration Department at which point, they were logged and distributed accordingly. The RGP confirmed that they had checked the General Correspondence Book (which included all mail received by the RGP) and the RGP Commissioner's Suite Correspondence Book for the 10th February 2011, and three days succeeding and preceding that date, and there was no record of the Complainant's 10th February letter.

Conclusion

The Ombudsman investigates complaints of maladministration against Government departments and public services and is therefore unable to comment on the merits of the decision taken by the RGP in this case.

Regarding the Complaint of non-reply, the Ombudsman has found that there is maladministration. Further to the Complainant's letter to the RGP in May 2011, the RGP should have acknowledged receipt of said letter within a reasonable time frame. Notwithstanding the RGP's statement that whilst it would have been desirable for officers to have updated the Complainant on progress, but that they did not contact him because in their view there was nothing to update him on, the RGP should have, whilst acknowledging receipt of the 23rd May letter as stated above, additionally reassured him that the investigation was ongoing.

The initial response by the RGP to the Ombudsman that RGP Officer 1 was on long term sick leave and would be contacted for information on the case was also in the Ombudsman's view, short on substance. Although it stands to reason and is even desirable that the absent officer would have been contacted for a work in progress report/update, the letter should also have stipulated that despite RGP Officer 1's absence, the investigation had not been set aside until his return but instead, was very much on-going.

The conflicting information provided by the RGP and the Complainant in regard to the letter and inventory which the Complainant claimed to have hand delivered in February 2011 to Central RGP Station is a matter which also needs to be addressed. As stated above in this report, the RGP has a procedure to record all incoming mail, However, were this procedure to be strengthened, factual inconsistencies such as the one under consideration, namely, whether a document has or has not been lodged, could be resolved by simply referring to an effective mail document receipt/logging system The RGP could for instance, adopt the Ministry for Housing's proven successful mail logging structure by acknowledging receipt of hand delivered mail at the point of entry and subsequently issuing an acknowledgement slip on the spot. This effective yet simple system firmly establishes whether or not documents have been deposited and received, thereby avoiding any element of doubt which may otherwise arise, as occurred here.

Classification

Sustained – The RGP should have acknowledged the Complainant's letter of the 23rd May 2011 and reassured him that the investigation was ongoing.

Recommendations

The RGP should reinforce the procedure currently in place to record all incoming mail, in order to establish a record for hand delivered mail at the point of entry by issuing an acknowledgement slip on the spot, at the time of receipt.

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4
Statistical Information

4.1 VOLUME

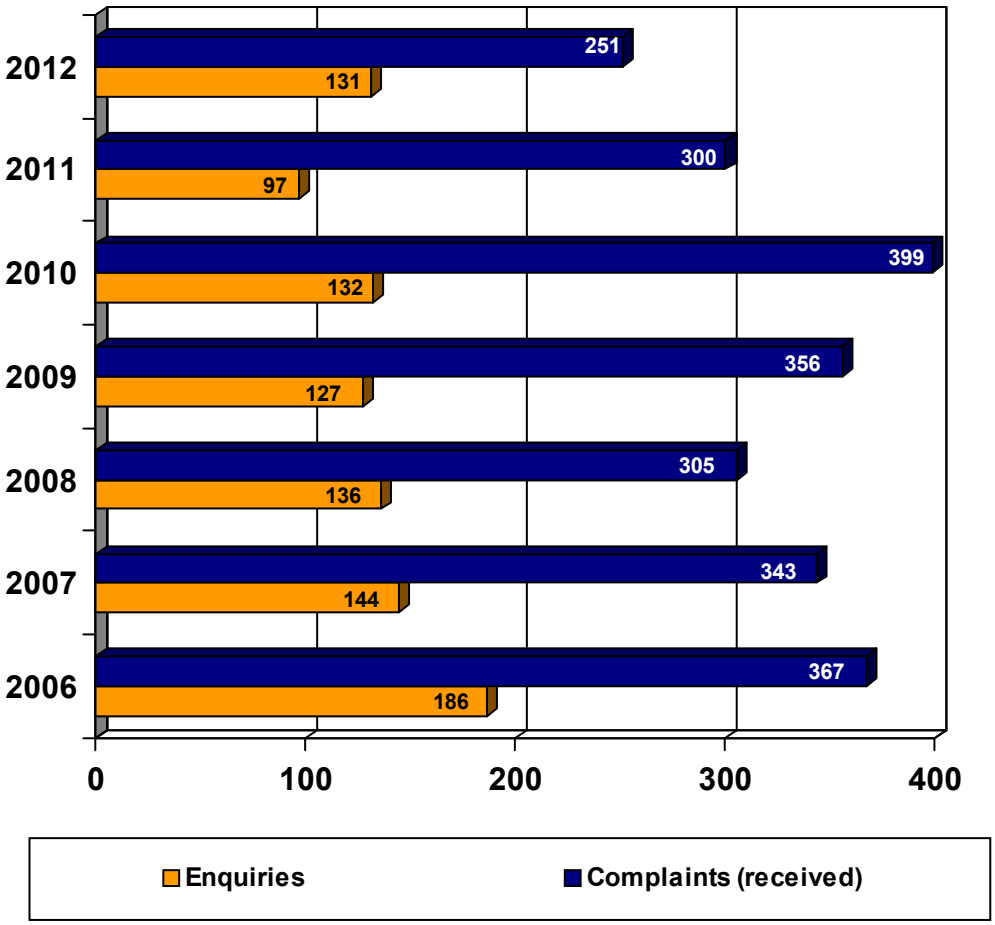
Complaints received, completed and current by month – 2011 & 2012

Table 1	2011			2012		
	Received	Completed	Current	Received	Completed	Current
			43			80
January	35	31	47	10	13	77
February	33	27	53	18	23	72
March	41	19	75	15	17	70
April	17	26	66	19	17	72
May	23	22	67	29	20	81
June	16	8	75	22	21	82
July	25	12	88	20	14	88
August	23	24	87	19	24	83
September	31	20	98	27	21	89
October	23	27	94	29	38	80
November	26	26	94	31	29	82
December	7	21	80	12	22	72
TOTAL	300	263		251	259	
Enquiries		97			131	

This year, we received 251 Complaints in our office, a decrease of 49 Complaints compared to 2011, where we received 300 Complaints. Taking into account the active complaints brought over from the previous year, a total of 259 Complaints were completed by the end of this year which left 72 Complaints open by the end of 2012. This year we recorded 131 Enquiries, an increase of 34 compared to 2011, when we received 97.

4.1 (CONT)….

Chart 1 - Breakdown of Complaints and Enquiries received from 2006 to 2012



This year we have received 251 Complaints and 131 Enquiries.

From the 251 Complaints we received, 65 were against private organisations that fall outside the Ombudsman's jurisdiction. This left a total of ***186*** Complaints received against government departments, agencies and other entities which fall under our jurisdiction. (*See Table 2 Page 128-* ***Complaints/Enquiries received by departments/entities in 2012***).

4.2 GOVERNMENT DEPARTMENTS AND OTHER ENTITIES

The trend of Complaints has continued similar to previous years with the Housing Department (91), Civil Status and Registration Office (17), the Housing Works Agency (13) (this Agency substituting what was formerly known as Buildings and Works Department) the Department of Social Security (12) and the Royal Gibraltar Police (10) attracting the highest number of Complaints.

Table 2 - Complaints/Enquiries received by departments/entities in 2012

Dept/Agency	Enquiry	Complaint	Dept/Agency	Enquiry	Complaint
Aqua Gib	2	2	Human Resources	0	3
Care Agency	-	2	Income Tax Office	0	6
Civil Status & Registration	17	17	Land Property Services Ltd	1	4
Customs	0	3	Magistrate's Court	1	5
Development & Planning Com	1	1	Ministry for Enterprise, Training Employment	1	0
Elderly Care Agency	0	1	Office of the Chief Minister	0	1
Employment	6	4	Port Authority	0	1
Environment	2	2	Royal Gibraltar Police	4	10
GBC	0	1	Social Security	11	12
Gibraltar Electricity Auth	2	2	Supreme Court	0	1
Gibraltar Health Auth	7	2	Transport & Licensing	1	1
Gibraltar Post Office	0	1	Trade Licensing	1	0
Gibtelecom	1	0	Traffic Commission	1	0
Housing Authority	60	91	Treasury	1	0
Housing Works Agency	1	13	TOTAL :	121	186

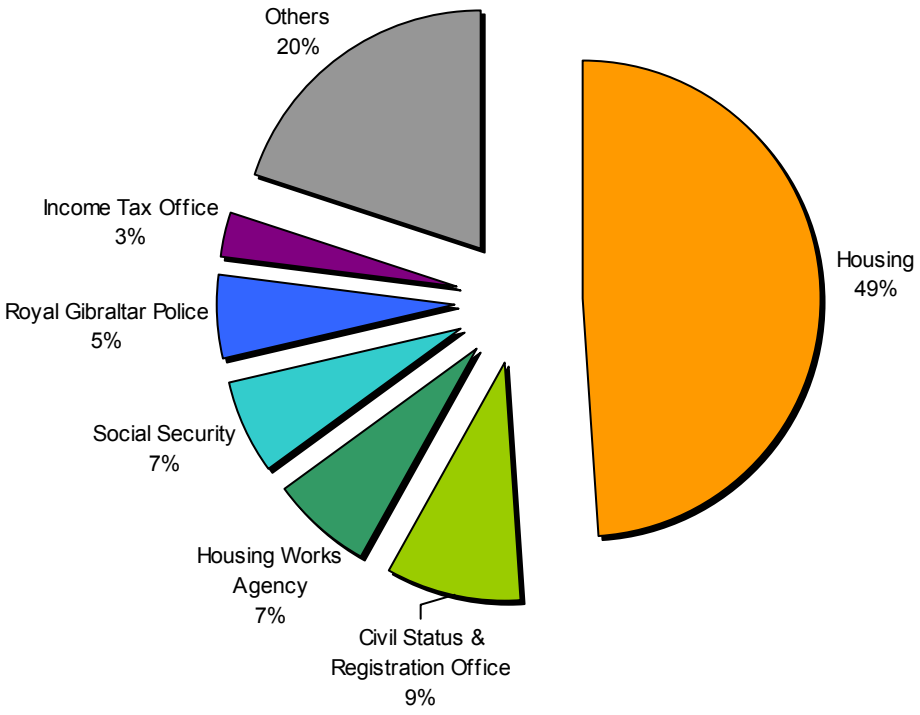
Complaints against the Housing Authority have decreased this year from 119 to 91, but one must note that it still takes up 49% of all the complaints that we have received this year. Complaints received against the Department of Social Security and the Royal Gibraltar Police have increased this year with 4 more complaints each respectively than in 2011.

On a more positive note this year we have had no complaints against the Department of Education and Training, this has never occurred since the Gibraltar Public Services Ombudsman came into existence.

4.2 (CONT)….

This year the Housing Authority attracted 49% of all the complaints received. The Civil Status and Registration Office followed with 9%, the Housing Works Agency and the Department of Social Security with 7% each, the Royal Gibraltar Police with 5% and the Income Tax Office with 3% of all the complaints received. All the other departments/entities made up for the rest of the complaints. (20%)

Chart 2 - Complaints received by departments/entities in 2012



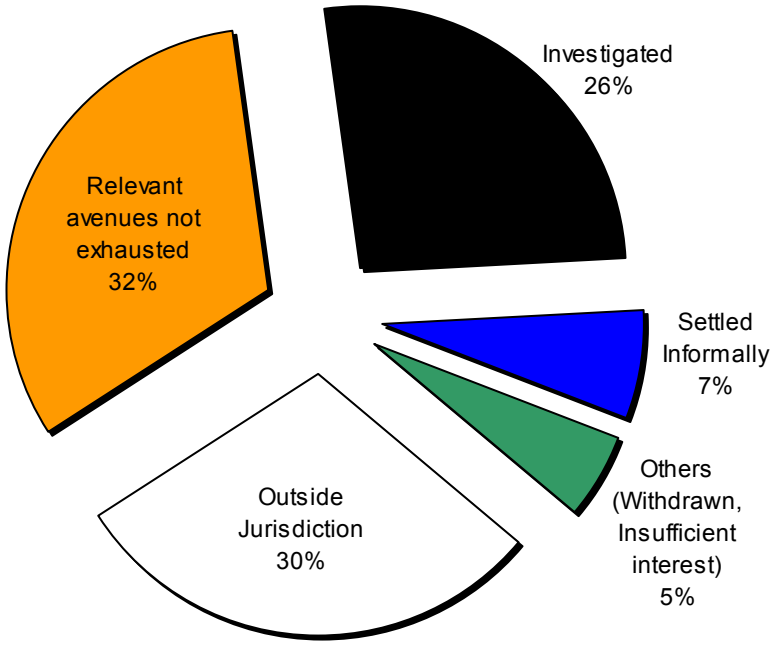
Although the Department of Social Security (DSS) was the department with the third most complaints received against, one must highlight the fact that from those 12 complaints received against the DSS, there was not a single complaint that was sustained against them. 5 were classified as relevant avenues not exhausted, 1 was settled informally, 1 was still being looked into and thus remained open at the time of completing this annual report and the other five were resolved through informal action and classified as not sustained.

4.3 PROCESSING DATA

There were 259 Complaints classified this year out of which, 77 (30%) were classified as outside jurisdiction, hence they could not be investigated by the Ombudsman. 83 (32%) were closed as 'Relevant Avenues Not Exhausted' (RANE).

17 (7%) of the Complaints were settled informally as they were resolved by assisting the Complainant without the need to initiate an investigation. A further 14 (5%) 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 (%)



68 Investigations (26%) were concluded by the end of the year. Out of the 68 (30 sustained, 31 not sustained and 7 partly sustained) investigations completed by the end of the year, 32 of them were resolved through informal action, whilst the other 36 warranted an extensive report (26 brought forward from 2011 and 10 from 2012) Out of these 36, 23 were sustained, 6 were not sustained and 7 were partly sustained.

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 21 recommendations on 12 cases that we have investigated and completed in 2012. 13 of these recommendations have been accepted and implemented although two of them have been modified by the department to suit their best administrative interest. In such circumstances the Ombudsman reviews the modified recommendation and then makes a decision as to whether the modified one will provide an administrative improvement of equal or similar value to the original recommendation made by the Ombudsman. 4 other recommendations have been accepted but are pending verification by the Ombudsman of its implementation and another 4 recommendations from 2012 are still being considered by the relevant departments/entities. 3 other recommendations from three investigations carried out last year in 2011 were also accepted and implemented in 2012.

Table 3 - Breakdown of classification of complaints received by departments / entities in 2012

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	-	-	-	1	-	-	-	-	1	**2**
Care Agency	-	2	-	-	-	-	-	-	-	**2**
Civil Status & Registration	8	1	2	-	-	1	-	1	4	**17**
Customs	2	-	-	-	-	-	-	-	1	**3**
Development& Plannning Commission	-	-	-	-	-	-	1	-	-	**1**
Elderly Care	1	-	-	-	-	-	-	-	-	**1**
Employment Service	1	1	1	-	-	-	1	-	-	**4**
Environment	1	-	-	-	-	-	-	1	-	**2**
GBC	-	1	-	-	-	-	-	-	-	**1**
Gibraltar Electricity Auth	2	-	-	-	-	-	-	-	-	**2**
Gibraltar Health Authority	1	1	-	-	-	-	-	-	-	**2**
Gibraltar Post Office	-	-	-	-	-	-	-	1	-	**1**
Gibtelecom	-	-	-	-	-	-	-	-	-	**0**
Housing Authority	44	-	4	3	1	4	11	8	16	**91**
Housing Works Agency	6	-	-	-	-	1	1	-	5	**13**

Table 4 - Breakdown of classification of complaints received by departments / entities in 2012

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			
Human Resources	2	-	1	-	-	-	-	-	-	**3**
Income Tax Office	3	-	1	*1		-	-	-	1	**6**
Land Property Services	1	2	-	-	-	-	-	-	1	**4**
Magistrate's Court	1	1	-	2	-	-	-	-	1	**5**
Min for Enterpirse, Train-ing & Development	-	-	-	-	-	-	-	-	-	**0**
Office of the Chief Minister	-	1	-	-	-	-	-	-	-	**1**
Port Authority	1	-	-	-	-	-	-	-	-	**1**
Royal Gibraltar Police	5	1	-	1	-	-	-	-	3	**10**
Social Security	5	-	-	-	-	-	5	1	1	**12**
Supreme Court	-	1	-	-	-	-	-	-	-	**1**
Transport & Licensing	-	-	1	-	-	-	-	-	-	**1**
Trade Licensing	-	-	-	-	-	-	-	-	-	**0**
Traffic Commission	-	-	-	-	-	-	-	-	-	**0**
Treasury	-	-	-	-	-	-	-	-	-	**0**

Gibraltar Public Services

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