

Between a Dock and a Hard Place

An Investigation into Marine and Ports'
Failure to Implement a Planning Condition
for a Mooring Registration



SPECIAL REPORT

Michael A. DeSilva, Ombudsman for Bermuda

JULY 2025



OMBUDSMAN FOR BERMUDA

14th July 2025

The Hon. Dennis Lister, JP, MP
The Speaker of the House of Assembly
Sessions House,
21 Parliament Street
Hamilton HM 12

Dear Honourable Speaker,

I have the honour of presenting a Special Report entitled, ***Between a Dock and a Hard Place: An Investigation into Marine and Ports' Failure to Implement a Planning Condition for a Mooring Registration.*** This Special Report follows the conclusion of an investigation into a complaint made against the Department of Marine and Ports Services.

The report is submitted in accordance with sections 24(2) and 24(3) of the Ombudsman Act 2004 which provide:

Annual and Special Reports

24(2) Where –

(a) any administrative action that is under investigation is in the opinion of the Ombudsman of public interest; or

(b) the Ombudsman has made a recommendation under section 15(3) and within the period specified no, or in his opinion no adequate, action has been taken by the authority to remedy the administrative action complained against,

then the Ombudsman may prepare a special report on the investigation.

24(3) The Ombudsman shall address and deliver his annual report and any special report made under this section to the Speaker of the House of Assembly and send a copy of the report to the Governor and the President of the Senate.

Sincerely,

Michael A. DeSilva
Ombudsman for Bermuda



LEAD INVESTIGATORS

Junior Watts, Deputy Ombudsman

Aquilah Fleming, Investigations Officer

INVESTIGATIVE SUPPORT

Kristen Augustus, Investigations Officer

DISCLAIMER: The moorings depicted in photographs throughout this report, including the cover, are for illustrative purposes only and do not represent any subject matter of this investigation.

INTRODUCTION

This Special Report is submitted to Parliament pursuant to section 24(2)(b) of the Ombudsman Act 2004 (“the Act”). Under this provision, the Ombudsman may prepare a special report where he has made recommendations to an authority under section 15(3) of the Act and, within the specified period, no action or inadequate action has been taken by the authority to remedy the administrative action complained against. The Special Report has been anonymised from the Final Investigation Report to protect the privacy of the people involved.

On 9th August 2024, I submitted my Final Investigation Report concerning a complaint against the Department of Marine and Ports Services (“the Department”). The complaint was made by the children of a local fisherman who will be referred to as Mr. Fisher throughout this report. Mr. Fisher had moored his boat in a local cove for over six decades. The complaint concerned the Department’s handling of a long-standing dispute over mooring rights and the registration of mooring piles.

The Department has a statutory obligation under section 16(1) of the Act to notify me of the actions it has taken or proposes to take to implement the recommendations. Where it proposes to take no action, the Department must provide reasons. I have carefully considered the response received from the Attorney General’s Chambers (“the AGC”) on behalf of the Department. I have determined that the response constitutes inadequate action to remedy the maladministration identified in my investigation. Therefore, with no alternative remaining to effect an adequate and appropriate resolution to the complaint, I have taken the decision to exercise my discretion and submit this Special Report to Parliament.

SUMMARY OF THE DISPUTE

BACKGROUND

The earliest documentation of the Fisher's longstanding mooring presence in the cove appears in a 1957 certificate from the local Corporation granting permission to another resident to install a mooring near the Fisher family's dock.

In 1999, the situation changed dramatically when a local company ("the Company"), which had acquired nearby property, constructed a floating dock that obstructed Mr. Fisher's registered mooring. After initial objections from Mr. Fisher and multiple regulatory bodies, including the Development Applications Board ("the DAB") and the Transport Authority, the Company's application for retroactive approval of the dock was rejected by the Planning Department.

The Company submitted a revised application in 2000. Following negotiations, Mr. Fisher withdrew his objection in January 2001 based on the Company's commitment to install three mooring piles to accommodate his vessel. The piles would provide a physical barrier between the floating dock and Mr. Fisher's boat. The Transport Director subsequently approved this arrangement on two express conditions: (1) the piles

would be installed at the Company's expense, and (2) the piles would be registered at the Department to Mr. Fisher.

The DAB granted retroactive approval for the floating dock and the mooring piles in May 2001, instructing specifically that, "the mooring piles as approved must be registered in the name of the person who will be using the piles." This wording was slightly different than that of the Transport Director, but at the time the context would have indisputably meant that the mooring should be registered in Mr. Fisher's name. Mr. Fisher was the person using the mooring at the time, and he had done so for more than 40 years.

Despite the clear directive from the DAB for the Department to register the piles to Mr. Fisher, this was never done. Instead, the piles were incorrectly registered to the Company and the mooring was registered to Mr. Fisher who used the piles as part of his mooring. The error remained unchanged, and perhaps unnoticed, for nearly 20 years. In each of those years, the piles were registered by the Company, and the mooring was registered by Mr. Fisher.

Bermuda moorings map
SOURCE: www.roccbermuda.bm/moorings



DID YOU KNOW?

Buoys, piles, and moorings are all essential components for securing vessels in the water.

Buoys, often brightly coloured and marked, float on the surface and are connected to the seabed, acting as markers and securing points.

Piles are poles driven into the seabed, often in clusters, to provide a sturdy structure for tying up boats.

Moorings refer to the entire system used to secure a boat, including the anchor, chains, ropes, and the buoy or piles.

SUMMARY OF THE DISPUTE

TRANSFER REQUEST AND SUBSEQUENT DISPUTE

In 2013, Mr. Fisher granted Power of Attorney to his three children. In 2017, as Mr. Fisher's health declined, his children contacted the Department to transfer the registration of his moorings to their names. In their email communications with the Department, the children made clear that they wanted to transfer the mooring registration outright. This transfer would have included the mooring as well as the piles that should have been registered to Mr. Fisher in 2001.

Following the Department's instructions, they submitted a formal written request and attached the Power of Attorney documentation as evidence of their legal power to make the transfer application. The Department added the three children's names to the mooring account and removed their father's name. The siblings continued to register the mooring in their names until 2020, when they discontinued payments amid the escalation of this dispute with the Department.

In April 2020, the siblings contacted the Department and reported that an unauthorised boat had been placed on their mooring during a Covid shelter-in-place period. They later discovered that the floating buoys for their mooring had been cut away and unlawfully removed. Despite providing the Department with copies of the DAB's 2001 decision clearly showing that the piles should have been registered to Mr. Fisher, the Department did not take enforcement action concerning the unauthorised boat and the unlawful removal of their mooring buoys.

Sadly, in September 2020, Mr. Fisher passed away.

In March 2021, after months of back-and-forth correspondence between Mr. Fisher's children ("the Complainants") and the Department, the Department advised the Complainants that it had decided to implement the original 2001 DAB decision. The Department informed the Company that, going forward from the start of the next registration period, the piles would be registered in Mr. Fisher's name.

However, the following month, upon learning of Mr. Fisher's death the previous autumn, the Department reversed its position. The reason given by the Department was that the power of attorney expired

on Mr. Fisher's death and, therefore, the Complainants' names would be removed from the mooring registration. The Department proposed instead that, while the mooring would remain in Mr. Fisher's name and could be transferred to his children per departmental policy, the piles would remain registered to the Company. The Department had a long-standing courtesy policy that gave the surviving spouse of a registered mooring owner – or alternatively the owner's children – the option of transferring registration of the mooring to their name(s).

The Complainants objected to this reversal and insisted that the piles should be registered to their family as per the original DAB requirement in 2001. Adding to their frustration, the family discovered they could no longer access the online registration portal, and Department staff informed them that their father was still listed as the registered owner, despite the 2017 transfer of the mooring into their names.

The Department advised that the 2017 request from the Complainants had been processed as a Power of Attorney arrangement for paying registration fees, not as a transfer of registered owners.

DID YOU KNOW?

The Department of Marine and Ports Services, through the Minister of Tourism, Transport, Culture and Sport, is responsible for licensing moorings in Bermuda. Its duties and powers are found in the [Marine and Ports Services Act 2021](#) and the [Marine Board \(Moorings\) Regulations 2000](#).

Section 2 of the Regulations defines a "mooring" as a device which is used to secure a boat or ship in a fixed location and includes a mooring pile and a floating dock.

FINDINGS OF MALADMINISTRATION

My investigation identified five instances of maladministration:

1. Failure to implement the Development Application Board's condition: The Department failed to ensure that the mooring piles were registered to Mr. Fisher as explicitly required by the DAB's 2001 decision. This fundamental error was the root cause of all subsequent issues.

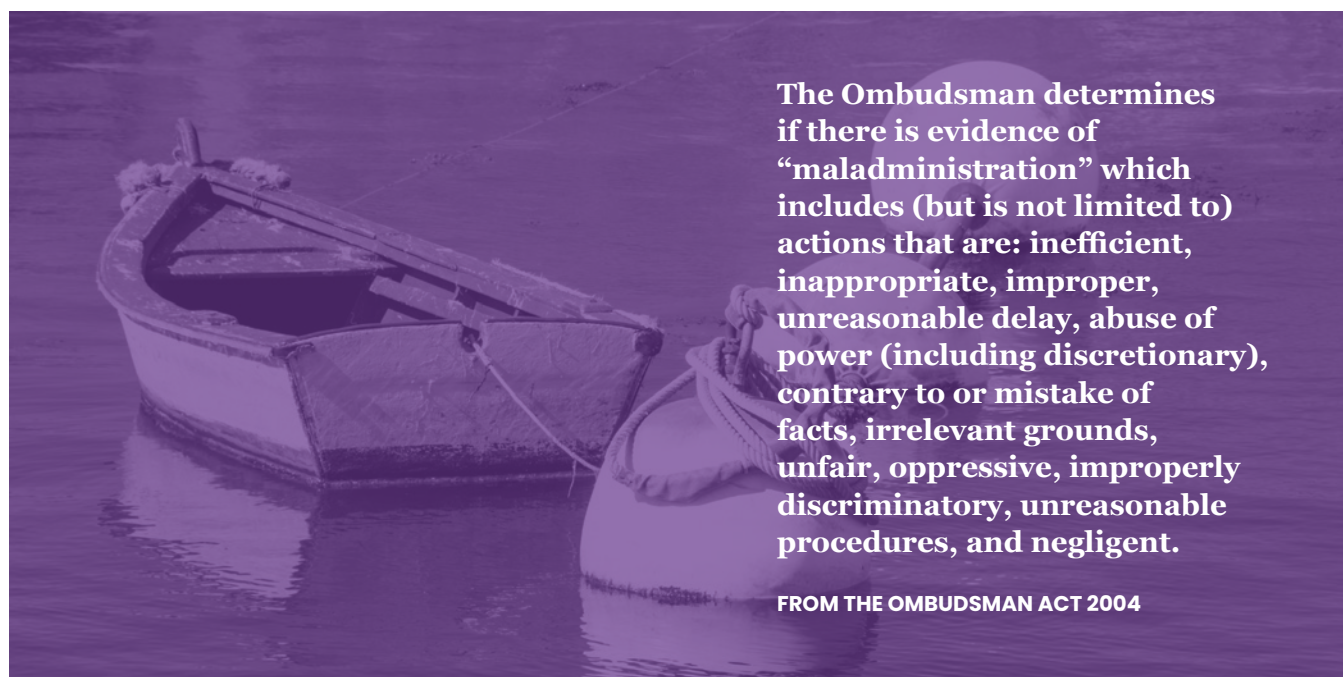
2. Failure to resolve registration issues when notified: The Department failed to adequately and appropriately resolve the registration of the piles after the Complainants brought the issue to their attention in April 2020.

3. Communication failures during transfer request: The Department failed to clearly understand the Complainants' transfer request and to clearly communicate the transfer of mooring process to them.

4. Failure to use proper complaint procedures: The

Department failed to refer the Complainants to the Department's existing Dispute Form when they raised their complaints. Subsequently, the Department's documentation of its handling of the complaints was not organised. There were gaps in records of communication between the Department and the Complainants which often occurred in person or over the phone.

5. Inconsistent application of policies: The Department initially processed the transfer of mooring registration to Mr. Fisher's children in 2017 based on their Power of Attorney but later reversed this position after Mr. Fisher's death. The Department's later position is inconsistent with its records. The request had been processed as a transfer at the time, as indicated by removing Mr. Fisher's name and supplanting the Complainants' names on the registration record.



The Ombudsman determines if there is evidence of “maladministration” which includes (but is not limited to) actions that are: inefficient, inappropriate, improper, unreasonable delay, abuse of power (including discretionary), contrary to or mistake of facts, irrelevant grounds, unfair, oppressive, improperly discriminatory, unreasonable procedures, and negligent.

FROM THE OMBUDSMAN ACT 2004

OMBUDSMAN'S RECOMMENDATIONS AND THE DEPARTMENT'S RESPONSES

My Final Investigation Report made the following specific recommendations (the numbers refer to the corresponding paragraph), to which the Department responded in October 2024:

ISSUE 1:

Registration of the Piles

Recommendation 104: That the Department registers the piles as part and parcel of the mooring to satisfy the 2001 conditions set by the DAB and to clarify that the piles are intended to be used in conjunction with the mooring.

Recommendation 105: That the Department takes the necessary actions to ensure the DAB, Planning Department, and the Ports Authority Board copy the Department – specifically the Boats and Moorings Section – in all reports and memorandums related to its functions.

Recommendation 106: That the Department uses the flagging feature on its electronic system to record the connection between the mooring and the piles and provide evidence this has occurred.

Recommendation 107: That the Department provides written confirmation to the Company and the Fisher's that it will assign the space between the piles for use in conjunction with the mooring, and copy the Ombudsman's Office.

Recommendation 108: If the Department fails to implement recommendation 107, then it registers the piles as part and parcel of the mooring to satisfy the DAB's 2001 condition, and to clarify that the piles are intended to be used in conjunction with the mooring.

Department's Response: The Department stated it is "unable to do anything about the recommendations expressed in paragraphs 104, 106, 107, and 108" as they "all refer to issues which might have concerned Mr. Fisher but cannot concern the complainants." Regarding recommendation 105, the Department stated it is "being considered" but made no firm commitment to implementation.

ISSUE 2:

Transfer of the Mooring

Recommendation 116: That the Department records the transfer of Mr. Fisher's mooring to the Complainants as if it occurred on 2nd April 2017, per the Complainants' original request.

Recommendation 117: That the Department incorporates the practice of confirming and documenting the outcomes that service users expect when making applications or complaints in the course of its work.

Recommendation 118: That the Department implements a policy that requires all decisions regarding applications to be documented and communicated in writing to the applicant.

Department's Response: The Department stated that recommendation 116 "cannot be actioned" for the same reasons as the earlier recommendations. Regarding recommendations 117 and 118, the Department described them as "unobjectionable" and indicated they "will be implemented," though it asserted that it "already has a policy" and only needs to consider putting it in writing.

ISSUE 3:

Failure to Record the Complaints

Recommendation 124: That the Department implements a dispute policy that requires all relevant persons to be referred to use its Dispute Form as and when disputes arise.

Department's Response: The Department described this recommendation as "unobjectionable" and stated it "will continue to follow it," suggesting it believes it is already in compliance despite my finding to the contrary.

ANALYSIS OF THE DEPARTMENT'S RESPONSE

The Department's response was not provided by the Department directly, but by Crown Counsel acting as legal representative for the Department.

The response challenged the jurisdiction of the Ombudsman to investigate the complaint on the grounds that:

1. The complaint was made more than one year after the alleged maladministration occurred.
2. Mr. Fisher's death meant his rights "fell away".
3. The "root cause" of the issues occurred 24 years ago.

While acknowledging there were "unfortunate decisions" made in the past, the Department rejected most of

my findings of maladministration and declined to implement my key recommendations. Specifically, the Department stated it was "unable to do anything about the recommendations expressed at paragraphs 104, 106, 107, and 108" as they "all refer to issues which might have concerned Mr. Fisher but cannot concern the Complainants."

The Department also indicated that it had discontinued its courtesy policy of allowing family members of deceased mooring licence holders to inherit those rights, effectively changing its policy retroactively.

Having carefully considered the Department's response against the findings and recommendations in my Final Investigation Report, I find the Department's response to be inadequate for the following reasons:

- 1. Mischaracterisation of the Ombudsman's jurisdiction:** The Department's challenge to my jurisdiction in this case misconstrues the nature of the complaint. Although the original instruction from the DAB was not followed as early as 2001, the Department's maladministration continued through 2020 and 2021. The Department failed to properly address the unauthorised use of the Fisher family's mooring and reversed its decision to register the piles in accordance with the original DAB requirement. The Complainants approached the Ombudsman in 2021 when they felt they had no further recourse with the Department. Accordingly, the complaint with our Office is well within time.
- 2. Failure to address the core issue:** The Department has not addressed the fundamental issue that the mooring piles should have been registered to Mr. Fisher as explicitly required by the DAB in 2001. This administrative failure continued for over two decades and directly led to the current dispute.
- 3. Legalistic rather than remedial approach:** The response focuses on technical legal arguments rather than seeking to remedy the unfairness caused by the Department's own administrative failures. This approach runs contrary to the spirit and intent of the Ombudsman Act.
- 4. Inappropriate delegation of response:** Having the statutory response delivered by legal counsel rather than the Department itself suggests that the Department may view this as an adversarial legal matter rather than an opportunity to address identified maladministration. This approach undermines the purpose of the Ombudsman process.
- 5. Retroactive policy change:** The Department's decision to discontinue its courtesy policy for families of deceased mooring licence holders appears to be a retroactive justification for its handling of this specific case. This decision has further disadvantaged the Fisher family.

CONCLUSION

The purpose of the Ombudsman's recommendations following an investigation into a complaint is twofold. Firstly, the recommendations aim to address the issues that form the basis of the complaint. Secondly, where appropriate, the recommendations seek to assist the authority to improve its administrative practices and procedures and prevent recurrence of the issues.

The Ombudsman aims to return the Complainant to the position they would have been in if the maladministration had not occurred. This is the cornerstone of the Ombudsman's work. It is intended to be an informal dispute resolution process that is free from the legal constraints of the Court, not an extension of it.

It seems straightforward that, had the Department registered the piles to Mr. Fisher in 2001, it would have subsequently transferred the registration to his family when the time came, per their long-standing family courtesy policy. It follows that, when the family asked for a transfer of registration in 2017 – a request that was ostensibly granted according to the records – the matter had a second chance of being resolved properly. Finally, having not implemented the DAB instruction in 2001, and not catching it in 2017, it seems reasonable to expect that the Department would have corrected this mistake when it was formally brought to its attention in the 2020 complaint. This was, in fact, the position the Department took in 2021. However, it then reversed this decision for reasons which are not clear to our Office.

To return the Complainants to the position they would have been in before the maladministration occurred is

to register the mooring in their names, and to clarify that the nearby piles are for exclusive use with the mooring. There is no other reasonable and fair way to interpret this case.

The Department's failure to adequately address the maladministration identified in my investigation perpetuates the unfairness experienced by the Fisher family. The core issue remains unresolved: the Department failed to implement the clear condition set by the DAB in 2001 that the mooring piles should be registered to Mr. Fisher, and it has not taken appropriate steps to remedy this longstanding administrative error.

The adversarial and legalistic response provided by the AGC on behalf of the Department represents a missed opportunity to address a clear instance of maladministration and to restore public confidence in the Department's administrative processes. This approach is particularly confounding because the Department does not dispute the fundamental facts underlying the complaint – namely, that the mooring was not registered in accordance with the 2001 DAB requirement, which constitutes the administrative failure at the heart of this matter.

“To return the Complainants to the position they would have been in before the maladministration occurred is to register the mooring in their names, and to clarify that the nearby piles are for exclusive use with the mooring. There is no other reasonable and fair way to interpret this case.”

RECOMMENDATIONS

I maintain the recommendations made in my Final Investigation Report and specifically highlight the following:

1. The Department should recognise that the piles should have been registered to Mr. Fisher as per DAB's 2001 decision and should now be registered to his family in accordance with the Department's established policies regarding the transfer of mooring rights.
2. The Department should develop and publish clear written policies regarding mooring registrations, transfers, and dispute resolution procedures to ensure transparency and consistency in its administrative actions.
3. The Department should establish proper communication channels with the DAB to ensure that conditions attached to planning approvals related to moorings are properly implemented and recorded.
4. The Department should review its approach to handling complaints and disputes to ensure that it addresses the substance of issues raised rather than relying on technical or procedural grounds to avoid addressing legitimate grievances.
5. The Department should ensure that its responses to Ombudsman investigations are provided directly by them rather than through legal representatives, in keeping with the remedial and non-adversarial nature of the Ombudsman process. This recommendation has full regard for an authority's right to take legal advice on any matter that affects them.

This Special Report invites Members of Parliament to consider the implications of this case for good public administration and confidence in government services, and to further consider taking appropriate action to address the maladministration identified in this complaint.

Respectfully submitted,



Michael A. DeSilva
Ombudsman for Bermuda

“The core issue remains unresolved: the Department failed to implement the clear condition set by the DAB in 2001 that the mooring piles should be registered to Mr. Fisher, and it has not taken appropriate steps to remedy this longstanding administrative error.”

To learn more about the work the Bermuda Ombudsman does, please view our 2024 Annual Report available on our website at www.ombudsman.bm/publications



*For the Good
of the Public*



*and Those Who
Serve the Public*

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