



The Gibraltar Public Services

Ombudsman

**'For tomorrow belongs to the people
who prepare for it today'**

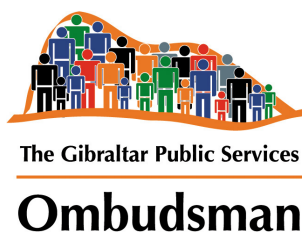
African Proverb.



The Gibraltar Public Services

Ombudsman

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



March 2011

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

Dear Mr. Caruana,

Annual Report 2010

It is an honour for me to present the Public Services Ombudsman's eleventh Annual Report. This report covers the period 1st January to 31st December 2010.

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

Yours sincerely

Mario M Hook
Ombudsman



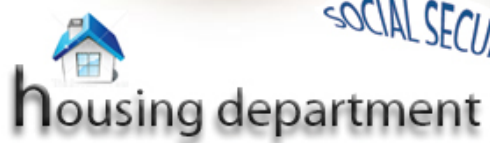
EDUCATION & TRAINING



magistrate's court



SOCIAL SECURITY



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1

Introduction

The Ombudsman's eleventh 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



During the year 2010, we dealt with a total of 132 Enquiries and 399 Complaints. This compares with 127 Enquiries and 356 Complaints from 2009. I am pleased to note that our services are being used by those who feel that a public service provider has not acted correctly and consequently wish to complain about such an action. It is not unusual for a complainant to feel powerless to pursue a complaint against a public body, and so decides to seek the services of the Ombudsman.

We use our best endeavours to assist both the complainant and the entity being complained about. Our aim is always to seek out the true events of whatever action is the subject of the complaint. If, upon investigation, we are of the opinion that there was indeed an act of maladministration we offer advice, either as we progress in our investigation or by way of a Recommendation in our final report.

The following review illustrates some positive examples of the after effects of our investigations.

REVIEW

Gibraltar Court Services

The Chief Executive of the Gibraltar Court Services attended our presentation on the Principles of Good Administration (see page 21 for an explanation of our presentations to all those under our jurisdiction). Later we were informed by the Chief Executive that he had listed the Principles of Good Administration in his Business Plan for 2011/12.

Ministry of Enterprise, Development, Technology & Transport

The Ministry of Enterprise, Development, Technology & Transport responded to a complaint in the most efficient and proactive manner. I believe that they have set a new standard which is for others to emulate.

Not only did they deal with the complaint itself but as a result of it they decided to set up an internal complaints procedure.

This complaints policy covers all complaints made about the Trade Licensing, Finance & Administration Offices and sets out the different stages a complaint is to go through, the timescales involved and who should be involved in handling the complaint.

A complaint, for the purpose of this policy, is defined as: “An expression of dissatisfaction, however made, about the standard of service, actions or lack of action by the above mentioned offices”.

The procedure seeks to create a positive approach to complaints. Complaints are indirectly valued as one of the ways in which the above offices can gather feedback to review and improve the services offered.

INTRODUCTION

The Trade Licensing, Finance & Administration Offices will offer assistance and support when requested to those that are unsure on how to go about making a complaint, or how best to put their case. (The Ministry provides a Complaint Form)

Gibraltar Port Authority Complaint

We were recently informed by the Chief Secretary that further to our investigation of a complaint against the Gibraltar Port Authority (CS/822, Page 75, Annual Report 2009), it became apparent that there was a need for a properly documented complaints procedure for use in the Port Authority.

The Authority has addressed this issue. In addition to an electronic log, recording complaints using a traffic lights system, there is now a written complaints procedure.

The procedure should allow complaints to be properly handled by the Authority and will alert senior management if there are any Port Authority procedures that require amending or that need to be put in place.

Ministry for Housing

We received a complaint from a government housing tenant who was in receipt of Social Assistance, to the effect that the Ministry for Housing's Reporting Office had refused to take a report in respect of repairs which she had requested. The repairs pertained to matters which, as stipulated in the Tenancy Agreement, were for the tenant to repair and not for the Ministry for Housing. The Ombudsman was aware that the Ministry had a policy of assisting those on Social Assistance with such repairs. In the course of enquiries, it was established that there was no set procedure for the Reporting Office to deal with such requests. Representations were made to the Principal Housing Officer who promptly set up a new procedure for those on social assistance to be able to lodge reports in the Reporting Office in relation to defects that are for the tenant to repair.

Environmental Agency

I have chosen to include a letter that the Environment Agency sent a complainant by way of apology. I believe that public bodies should be open and ready to offer an apology whenever one is required. The Environmental Agency's letter provides a perfect example of a good and clear apology. It read:

"I note your complaint in respect of the treatment you experienced in your dealing with this Agency. I have sought explanations from both the reception staff and the district officer and offer my apology for the inadequate attention you received"

DATA PROTECTION POLICY

We carried out a review of our storage policy relating to the information we hold pertaining to Enquiries and Complaints. It was decided to implement a clear policy that would comply with our obligations under the Data Protection Act. As such we decided that as a matter of policy we shall destroy all such information that is three years or older.

We have already destroyed, by way of shredding by commercial operators, almost all the hard files in our possession. We intend to complete this first phase soon. After this we shall purge our computers of all information. Of course we shall keep the records of all the reports into our investigations.

In future we aim to implement our policy in the first three months of every year.

OMBUDSMAN STAFF ACHIEVE PROFESSIONAL RECOGNITION

I am pleased to announce that two members of my staff successfully completed a Professional Award & Certificate in Ombudsman and Complaint Handling Practice.

This professionally validated course is the first of its kind in the Ombudsman field. It was delivered by Queen Margaret University (Edinburgh, Scotland) in association with the British and Irish Ombudsman Association (BIOA). Gibraltar was officially invited to form part of the pilot scheme intake and Investigating Officer Karen Calamaro and Public Relations Office Nadine Pardo-Zammit attended and successfully passed.

The Award took place in October 2009 at Queen Margaret University over a period of four days. It culminated in an assessment case study of 3,000 words. The Certificate took place in February 2010 ending with a 3000 word piece of work using a combination of the learning experiences from the Certificate and personal work experience.

The Award and Certificate training has proved a great learning experience for Karen and Nadine and will no doubt enhance their skills which will undoubtedly improve the service delivery of the Office, both to those who come seeking our assistance and to the entities under our jurisdiction.

EXTENSION OF TENURE

It is a tremendous honour for me to serve as Ombudsman and feel humbled at the opportunity that I have to be of service to my fellow citizens. I would like to thank the Chief Minister for having agreed to my request to extend my tenure for a further three years. This was done in accordance with the provisions of the Public Services Act.

Equally, I would like to thank the people of Gibraltar for their continued use of our office. At the same time I wish to encourage the continued use of our services. This office is publicly financed and our services are completely free.

Parliament has vested the Ombudsman with all the statutory authority it needs to be able to conduct in-depth investigations into alleged act of maladministration by public authorities and those providers of services to the Government of Gibraltar and the general public. We endeavour to use this authority with the utmost care and sensibility but always with the aim of providing a worthy service to those who seek our assistance. Resulting from our investigations we are also able to offer advice to the entity which was the source of the complaint. This helps the public service to improve their performance and thus offer an enhanced service to the public.

Finally I would like to thank my staff for their assistance, support and encouragement in preparing this report.



Mario M Hook
Ombudsman





2

Ombudsman's Review 2010



International Ombudsman Institute European Regional Conference in Barcelona



OMBUDSMAN'S REVIEW 2010

2.1 Conferences, Meetings and Seminars

2.1.1 International Ombudsman Institute European Regional Conference

The Office of the Gibraltar Public Services Ombudsman was represented by its Senior Investigating Officer and legal Adviser, Mark Zammit, at the International Ombudsman Institute European Regional Conference which was held in Barcelona, Spain for its General Assembly.

The theme of the conference was “Europe, an open society?” and the emphasis of the workshops focused on the issues of immigration across the European Union (“the EU”). The Conference discussed how the current economic crisis was affecting the issue of immigration, and, the Ombudsman generally. The conference had the benefit of the participation of the Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, and the European Ombudsman, Nikiforos Diamandouros.

There was consensus amongst the delegates that governments should consider very carefully indeed any proposals to cut the budgets of Ombudsman and exercise extreme caution in that regard. To do otherwise would be rather ironic, given that it is precisely at a time as the one we face currently, that citizens potentially place greater reliance on the Ombudsman. It was also highlighted that any cuts on social policies were of adverse effect to those most vulnerable in society.

The workshops offered two main forums; one discussing the topic of Rights of Political Participation and a second dealing with the topic of Integration or Assimilation.

Praise and gratitude are in order to the Sindic of Catalunya who hosted the conference and which proved to be an immense success. The organisation of the event was commendable and the venues selected for the different events were lavish and impressive. A total of 110 delegates were registered from the different members. These included delegates from, Andorra, Netherlands, Portugal, Poland, Malta, Norway, Ukraine, Austria, Albania, Cyprus, United Kingdom, Israel and different regions of Spain.

On the topics under discussion the following factors were considered and debated by the delegates:

- Integration in the context of political participation and the right to vote.
- Distinguishing between “we” and “them” which equated to closing a society rather than an open society.
- Family reunification.
- “Permanent Residence” or the new preferred term of “long stay resident”.
- Naturalization in its key relation with integration and political rights.
- Citizenship and national identity.
- Equal rights to housing, etc but exclusion to political rights under Article 16.
- Migrant Integration Population Index

Fundamental Rights were said to be applicable to anybody regardless of their immigration status and those rights in essence promote diversity, or, limit diversity where those rights are restricted. The Ombudsmen were reminded therefore that any systemic injustice should be taken up by them on behalf of those persons affected by such an injustice at the hand of the public administrations. A note of caution was thrown in at this point by the Irish Ombudsman who highlighted that the intervention of Ombudsmen in those fields were not always welcome by governments.



International Ombudsman Institute European Regional Conference in Barcelona

As a final reflection the attendees were addressed on the need for Member States to assume immigration and to accept the fact that immigrants are 'here to stay'. They should embrace what they may bring to the society as a whole. Public services should ensure that they can cope and if necessary adapt to any increase. The Conference concluded with the general assembly and a vote to appoint additional members to the board of the IOI European. A short moratorium was also agreed for proposals from any member wishing to host the next regional conference.

In the context of the Gibraltar Public Services Ombudsman attendance at the Conference was important for the usual networking benefits it brings to the office as well as the relevance of the issues which were debated. The Ombudsman also had the opportunity to extend his personal congratulations to Judge Mats Melin, *Chief Parliamentary Ombudsman of Sweden* and until recently European Director of the IOI European Board who has accepted an appointment as President of the Supreme Court (Administrative Jurisdiction) of Sweden.

2.1.2 British & Irish Ombudsman Association's Annual General Meeting

On the 13th and 14th May 2010 the British & Irish Ombudsman Association held their Annual General Meeting in Cardiff, Wales. The Gibraltar Public Services Ombudsman attended and participated in the events, given that Gibraltar is full voting member of the BIOA.

These meetings are attended by a very diverse and broad spectrum of Ombudsmen. By its nature the meetings offer attendees an extremely valuable opportunity to share information and experiences between them. Additionally, BIOA invites guest speakers and also organises workshops to deal with current areas of concern affecting the Ombudsman's role.

At this meeting the Gibraltar Public Services Ombudsman Office was represented by Mark Clive Zammit, the Legal Advisor to the Ombudsman. Mark attended one of the workshops which dealt with research and proposed reforms, by the Law Commission of England & Wales, to the Administrative Law in the context of Ombudsman role.

There were several main points of concern highlighted at the workshop and which were discussed at length by the different Ombudsmen and the representatives of the Law Commission of England & Wales. The points discussed related to:

- The ability for the court to stay legal proceedings to allow a matter to be investigated by the Ombudsman.
- The desirability to focus on systemic failings and the need for the Ombudsman to have the power to undertake ‘*own initiative*’ investigations.
- The possibility to make a reference to a court on a point of law.
- Accountability of the Ombudsman to parliamentary select committees.
- Recommendations made by the Ombudsman being binding.

The first topic related to the increasingly popular legal ability for the courts to stay proceedings in order for complaints to be investigated and appropriately dealt with by the Ombudsman. This ability to stay actions also has the knock on effect of encouraging people to use the services of the Ombudsman without prejudice to their legal rights to revive legal proceedings. It therefore, by the same token, encourages resolution by means other than through litigation. Of course the option of litigation is there should complainants / respondents feel the need to recourse to litigation. This practice of staying proceedings for cases where the court may feel the matter as a whole, or indeed a particular issue, would be more appropriately dealt with by an Ombudsman’s investigation, is not something currently in existence in Gibraltar and the Ombudsman will now consider its suitability and benefits in this jurisdiction.

The second main point of concern which was discussed was that of, the desirability that Ombudsmen should, focus on systemic failings and the need for the Ombudsman to have the statutory power to commence what are referred to as ‘*own initiative*’ investigations. This means the ability of the Ombudsman to investigate potential maladministration without the need to have to wait for a person to come to him with a specific complaint.

It is important to note that the current legal landscape for administrative redress includes the Ombudsman as a pillar of administrative justice. It is recognised that there is often an overlap in the administrative redress and the option of litigation. Similarly, the Ombudsman is very aware of the need to strive for effective public administration and avoid imposing unacceptable burdens on public funds. Any reform should ideally be beneficial to all and should be aimed at reducing the need for complicated, and often expensive, litigation.

2.1.3 Public Services Ombudsman Meeting

The Ombudsman attended two Public Sector Ombudsman (PSO) meetings during the year.

One was held in London, hosted by the Parliamentary and Health Service Ombudsman and the other one was held in Dublin hosted by the Irish Ombudsman. As usual both meetings proved to be very useful and the Ombudsman was able to return to Gibraltar with practical ideas to improve our investigations and the delivery of service.

For the London meeting, the Ombudsman was accompanied by Steffan Sanchez, our Information and Computer Systems Controller. A session of the meeting was dedicated to **Knowledge and Information Management**.

The screenshot shows the 'Search Knowledge Management System' interface. At the top, there is a logo for 'The Gibraltar Public Services Ombudsman' featuring a stylized mountain and people. Below the logo, the title 'Search Knowledge Management System' is centered. A text box prompts the user to 'Enter one or more keywords to search for using the Zoom Search Engine. Note that '*' and '?' wildcards are supported.' Below this is a search input field, a 'Submit' button, and a 'Results per page' dropdown set to '10'. A 'Category' section includes checkboxes for 'All' (checked), 'Adobe Acrobat', 'Microsoft Office', 'Excel Worksheets', 'Text Files', 'Image Files', and 'Web Documents'. A 'Match' section has radio buttons for 'any search words' and 'all search words' (selected). At the bottom, it states 'Search powered by Zoom Search Engine'.

Screenshot of our Knowledge Information Management search engine

Bill Richardson (office of the UK Parliamentary Ombudsman) made a presentation on the background, aims and work of the PHSO Knowledge Information Management (“KIM”) programme. The Group had a roundtable discussion on their different Offices KIM requirements.

Iain Ogilvie (office of the UK Parliamentary Ombudsman) then updated the Group on the PHSO Archive Project. He asked the Group to consider how stakeholders should be engaged and specifically what involvement the PSOs would like to have. Iain explained that he would be contacting the various UK PSOs to discuss this further. He also explained that a decision would need to be made on what to do with records currently held relating to other UK regions. Iain would approach the other UK Ombudsmen to discuss during the next stage of the project.

The Group thanked the PHSO team for their presentation and offered their full support to the Programme.

Upon our return to Gibraltar, we decided to re-enforce our KIM efforts in order to achieve a comprehensive database that will assist in our day-to-day work. We also decided to start work on an Archive Project that will map the history of the Ombudsman in Gibraltar.

2.2 International Relations

2.2.1 The BIOA Secretary Visits Gibraltar

Ian Patterson, Secretary for the British and Irish Ombudsman Association, visited the offices of the Gibraltar Public Services Ombudsman on 21st September 2010.

Mr Patterson was introduced to the Public Services Ombudsman small but efficient Team and was briefed on the kind of complaints received at the Office and explained the workings of the Ombudsman in a small jurisdiction such as Gibraltar.

The afternoon was spent with a VIP tour of The Rock exploring Gibraltar's history, flora, fauna, legends and sites.

The Ombudsman thanked Ian for having taken time to visit the office.



Mr Ian Patterson alongside the Ombudsman

2.2.2 Cayman Islands Complaints Commissioner on the Rock

Nicola Williams, the Cayman Islands Complaints Commissioner came to Gibraltar on a familiarisation visit.



Ms Nicola Williams on the Rock Tour

Ms Williams had the opportunity of meeting our members of staff and familiarise herself with our work and work-methods. Cayman is a small jurisdiction with similar characteristics to Gibraltar, and there is no doubt that we can both gain from each other's experience. It was agreed that we would maintain regular contacts mainly within the PSO group meetings to which we both belong.

We would like to express our gratitude to the Gibraltar Tourist Office providing an excellent Rock Tour for Ms Williams.

Before taking up her post as Complaints Commissioner Ms Williams worked as a barrister for almost 16 years in private practice where she specialised in criminal defence trials, personal injury cases, and civil actions against the police. She was also involved in three successful Commonwealth death penalty appeals before the Privy Council.

A Londoner of Guyanese descent, she has been listed three times as one of the most influential black people in the UK, in 1998, 2007 and 2008 and was winner of the Cosmopolitan Woman of Achievement Award.

2.2.3 European Ombudsman - 15th Anniversary Celebration, Brussels, Belgium

The Ombudsman, Mario Hook, was invited by the European Ombudsman to attend an event in the European Parliament in Brussels to mark the 15th Anniversary of the European Ombudsman.

There were two presentations to mark the anniversary one was by the European Ombudsman Professor Nikiforos Diamandouros and the other was delivered by Rainer Wieland, Vice-President of the European Parliament.

Professor Diamandouros ended his presentation with the following words:



“As we move along this path towards a top class EU administration, I hope that those of you within the institutions continue to see the Ombudsman as an ally, not a foe. I hope that those of you who use our services feel empowered by the experience and satisfied that the problem that you encountered has been dealt with and should not be visited on someone else.”

Professor Diamandouros delivering his presentation

The Gibraltar Public Services Ombudsman echoes these words and trust that they hold true in Gibraltar.

A new visual identity for the European Ombudsman was launched at the event and Philippe Apeloig, creator of the identity, gave an interesting presentation as to how the new identity logo had been created and designed.

After the presentation, the Ombudsman was invited to a dinner hosted by the European Ombudsman for the visiting Ombudsmen.



The new visual identity logo for the European Ombudsman

2.3 Principles of Good Administration



Our PRO delivering the Principles of Good Administration

The Principles of Good Administration are six broad statements of what public bodies within the Ombudsman jurisdiction should do to deliver good administration and customer care. The Principles show the sorts of behaviour we expect and the tests we apply when determining complaints.

It was in our tenth Anniversary, 1st November 2009 that the Ombudsman promoted the Principles of Good Administration and accessed that by being open with public bodies about his expectations of good administration it would help to drive and achieve an overall improvement in the provision of public services.

As from October 2010 senior heads of Departments have been invited to attend a presentation at the Office of the Ombudsman. So far eleven entities have had the opportunity to listen to the power-point presentation and benefit from discussing these issues with the Ombudsman. An open invitation is also then offered to the Head of the entity for his/her Front-Line Staff to hear the presentation and learn about the Principles. Unfortunately to date none of those who have attended have made arrangements for their front-line staff to attend the presentation although it is hoped that this offer will be taken up in the future. Our goal is for all services under the Ombudsman's jurisdiction to be invited to listen to the presentation by the end of this year. The Ombudsman would then consider preparing another presentation under the heading 'Principles of Good Complaint Handling'.

It must be stressed that the Principles of Good Administration are not a checklist by which the Ombudsman will assess and decide individual cases, but it will be used as a broad test of fairness and reasonableness, when taking into account the circumstances of each particular complaint. Basic human rights principles of fairness, respect, quality, dignity and autonomy would also be considered.

These Principles endorse legality, flexibility, transparency, fairness, and accountability; all necessary ingredients of good administration. The Ombudsman hopes that the Principles will be welcomed by public bodies since it promotes a shared understanding of what is meant by good administration, good complaint handling and a useful contribution to improving public service.

Public bodies have to take decisions bearing in mind all the circumstances pertaining to a particular issue, so delivering a good service often means taking a broad and balanced view of all the individuals or organisations that may be affected by decisions, and this in most cases may not be an easy thing to do. It is hoped that the Principles of Good Administration will at the very least provide an insight into the sorts of issues that we should all be considering when we have the 'Customer' as our main focus and the professionalism of our Service as our goal.

The six principles are:



GETTING IT RIGHT

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



BEING CUSTOMER FOCUSED

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



BEING OPEN AND ACCOUNTABLE

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



ACTING FAIRLY AND PROPORTIONATELY

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



PUTTING THINGS RIGHT

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



SEEKING CONTINUOUS IMPROVEMENT

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

2.4 Ombudsman's Website

History

The Office of the Ombudsman came into being in April 1999 following the appointment of Mr Henry Pinna as our first Public Services Ombudsman. In October 1999 the Ombudsman staff was recruited and the office's computer network structure was laid down. Not long after, we put together our first webpage. It was very basic and had the sole purpose of informing members of the public on the work and role of the Ombudsman in Gibraltar.

In 2003 Mr Mario Hook (our current Ombudsman) was appointed Ombudsman and since he took office we have been regularly updating our computer equipment concurrently within the fast-developing world of computer technology. In 2005 the structure of the website was reviewed, and after establishing that it needed a fresh look it was redeveloped, and once again made available to our online users.

Internet

As of 2008, an estimated 21.9% of the world population had access to the internet; then availability is constantly on the increase. In keeping with the ascending growth rate of internet users, the Office of the Ombudsman is committed in providing an interactive and enhanced website to cater for this emergent group of users, consequently re-modernizing our website will no doubt improve our services and create more awareness amongst internet users wanting to make use of them.

New Website

We have commissioned a bespoke website from an appropriate design company. The new website will provide better functionality and interaction with its users. Whereas the 2005 website offered features such as FAQ section, details on how to contact us, report downloads, other useful links and general information about our work, the 2011 will have all the current features from the 2005 website plus new additional features. The new features that the website will include are:

1. ONLINE COMPLAINT FORM
2. E-NEWSLETTERS
3. INFORMATION IN OTHER LANGUAGES
4. WEBSITE FEEDBACK
5. GENERAL SEARCH FACILITY FUNCTION
6. SOCIAL NETWORKS SUPPORT

1. ONLINE COMPLAINT FORM

The website will offer an online complaint form which the individual can complete it in and with the click of a button send the information securely to our office. Since we opened the office back in 2009 we have received complaints through mail, telephone and in person but now the online complaint form will no doubt provide an innovative way for members of the public to submit a complaint.

2. E-NEWSLETTERS

Newsletters have always been a great way of providing information to its intended recipients and although electronic newsletters are not a choice over print newsletters, they are, instead an option; a very viable and useful one that is becoming a trend within organisations. We will be providing free online subscription to our e-newsletters.

3. INFORMATION IN OTHER LANGUAGES

As with other Ombudsman's jurisdictions the office wants to provide language support for those members of the public who are not fluent in English. Adopting a multilingual approach always comes helpful to those that have difficulties with the English language; therefore, our office will also offer information in Spanish and Arabic.

4. WEBSITE FEEDBACK

We want to take a professional attitude towards our work and we should seek feedback. We want to know what's working and what is not and how to improve. For these reasons we have incorporated a feedback form so we can assess our website's quality of information, presentation and ease of use to its users.

5. GENERAL SEARCH FACILITY FUNCTION

A search facility is one of the most important navigational tools on any site as users will turn to search as their primary method of finding information. Therefore having a search facility will be of great benefit to all our users.

6. SOCIAL NETWORKS SUPPORT

Facebook first hit the scene back in 2007 and it has grown to unimaginable proportions which cannot be ignored. We believe social media marketing is a key tool for more success and awareness. There are millions and millions of potential users using *Facebook* and other social networks with the majority communicating several times daily with friends, colleagues and online organisations. Our website will provide support for some of these social networks.



Screenshot preview of our new website (still under construction)



3

Case Reports

The following pages contain a sample of the investigations which have been completed this year. For a complete file of all our completed investigations please log into our website: www.ombudsman.org.gi

Aqua Gib Limited

Case Not Sustained

CS/900

Complaint against AquaGib Limited for sending the Complainant continuous estimated bills in respect of water and electricity consumption.

Complaint

The Complainant, a registered consumer of electricity and water, was aggrieved by the fact that she had repeatedly received estimated bills from AquaGib Limited (“AquaGib”) in respect of the consumption of water and electricity. The Complainant further stated that these estimated bills were subsequently followed by actual bills. The Complainant also stated that AquaGib was repeatedly billing her separately for water and electricity since the beginning of the year.

That practice, the Complainant said, imposed upon her a hefty financial burden because she was forced to subsequently pay excess amounts representing the shortfall in the estimates.

The Complainant was unhappy as a consumer and wrote to AquaGib who replied but the Complainant remained dissatisfied with AquaGib’s reply and made a written complaint to the Ombudsman on the 5th May 2010.

Investigation

The Ombudsman presented the complaint to AquaGib who were asked to put forward their comments in relation to the Complainant’s grievance. A meeting was then scheduled to discuss matters and this took place on the 9th July 2010 with the Managing Director and the Customer Services / Financial Manager being present.

Access to the Meter

The investigation quickly established that the electricity meter was located inside adjacent premises which were usually under lock. This was confirmed by the Complainant’s explanations.

The meter readers in this case would have to have gained access to the electricity meter located in premises adjacent to that of the Complainant. Whilst there is a dispute as to whether the meter readers had gained access to the electricity meter the evidence shows actual readings every month save for two months.

Estimated or Actual Readings

The Ombudsman was afforded data by AquaGib relating to the account history which was considered carefully and contrasted against the information provided by the Complainant. Nevertheless, the Ombudsman saw the need on the 27th September 2010 to undertake a further visit to the offices of AquaGib to investigate this particular issue. With the assistance of the Customer Services / Financial Manager the Ombudsman viewed the computer records which showed only two instances when the readings had been estimated. These were in respect to the 26th March 2008 and 21st January 2009.

The Ombudsman was further made aware that as a general policy AquaGib tries to avoid estimating readings however they do ensure that all accounts which are set up under direct debit payment always have a monthly bill issued.

In this case the Complainant maintained that bills for winter months had been based on estimated readings; however, the records seen by the Ombudsman showed actual readings were taken except for the dates already indicated above.

The investigation shed some light on the procedure used in respect of any bills based on estimated readings. The Ombudsman learned that whilst estimates are recorded as such in printed bills, sent via traditional post, the same is not the case with estimates sent via the online method. The Complainant in this case received her bills via the online method and thus would not have had notice of the bill being based on estimated readings.

During the course of his enquiries the Ombudsman did become aware of one issue relevant to the complaint namely the fact that AquaGib had not always issued collective bills for the consumption of water and electricity.

Meter Reading

In response to this finding the Ombudsman extended his line of enquiry slightly by asking for confirmation on the number of staff conducting meter reading duties. This was said to be four meters readers and a supervisor.

The meters are read by means of an electronic hand held device which automatically uploads readings into AquaGib's billing system.

Conclusions

The Ombudsman cannot sustain the complaint given the evidence before him. The evidence only shows estimated readings for two specific dates. This therefore, in the circumstances, can be considered reasonable particularly bearing in mind that the electricity meter is located in adjacent premises to those of the Complainant.

There seems to be some argument to suggest that there can be some inconvenience caused to the Complainant, and indeed maybe to other consumers, by the fact that AquaGib operates in such a manner as alluded to earlier in this report, that is to say, that in some cases the bills for water and electricity are issued separately. While AquaGib endeavours to avoid such a practice it is said by them to be unavoidable occasionally and the Ombudsman can understand why this would be so. Nevertheless this issue of separate billing would not in itself be tantamount to maladministration particularly if, as in the current case, it is sporadic rather than a persistent occurrence.

The Complainant in this case describes a similar situation to that mentioned above but, it appeared to the Ombudsman, that the sporadic times when the separate billing occurred was due in part to the inability of the meter reader to have read the electricity meter due to this being located inside an adjacent premises. No maladministration is attributable to that.

Classification

The Complaint is not sustained as no hardship has been established vis-à-vis any bills based on estimated readings and no act of maladministration has been established.

Recommendations

AquaGib should, as a matter of priority, introduce a system which notifies those consumers using the online payment method if their bills are based on estimated readings. In fact the Ombudsman has been informed by AquaGib that such a system is being introduced in their new billing programme.

Buildings and Works Department**Case Sustained****CS/871**

Complaint against the Buildings and Works Department for lack of information on procedures to be followed and delay in the processing of a claim against the Government of Gibraltar for damages.

Complaint

The Complainant sustained damage to her personal property caused by persistent water penetration, into her flat, from a defective external duct. On the 4th October 2002 the Complainant reported the problem of water penetration. Moreover, the Complainant's late husband approached the Office of the Chief Minister in March 2004 and brought to their attention the persistent problem of water ingress into their flat.

Initially a plumber from the Department attended followed by a surveyor to who on the 5th March 2004 assessed the cause of the problem.

Due to the delay in repairing the problem the Complainant sustained damage to her kitchen units and living room.

On 11th day of November 2008 the Complainant submitted a Claim to the Department seeking compensation for the damage to her kitchen units. The Complainant wrote to the Department on the 28th October 2009 seeking an update on the status of her claim.

On the 17th November 2009 the Complainant came to the Ombudsman due to the fact that she had not had a reply from the Department to her letter or had any news on the claim she had submitted in 2008.

Investigation

Following receipt of the Complainant's complaint the Ombudsman wrote to the Department's Chief Executive requesting an update on the Complainant's claim. The Department's Chief Executive failed to reply to the Ombudsman who had to write a further letter to him on the 9th December 2009 requesting a reply.

The Department replied on the 21st December 2009 stating that they would be referring the matter the Attorney General Chambers ("AG Chambers) for advice. They explained that this was the first they saw of the Complainant's claim.

On the 10th February 2010 the Ombudsman wrote to the Chief Secretary informing him that the Complainant had been trying to claim for damage sustained to her kitchen since 2002. Furthermore, the Ombudsman pointed out that the Complainant had submitted a claim to the Department on the 11th November 2008 and had not yet heard anything. The Chief Secretary was asked whether his recommendation in a similar previous case for an expedited procedure had been put in place.

As it happens it was established from the correspondence disclosed to the Ombudsman that the De-

partment had only referred the matter to the AG's Chamber's on the 29th January 2010. The Ombudsman noticed that notwithstanding that the Department had indicated that they would be immediately referring the claim to their lawyers the matter was not referred promptly.

It also became apparent that the Department had misplaced the internal claim form when it was submitted by the Complainant back in November 2008. Consequently, the Department confirmed that they only acted on the Complainant's claim when the Ombudsman enclosed a copy of the claim form in one of the letters to them.

On the 9th March 2010 in the interest of fairness and due to its relevance the Ombudsman considered it appropriate to forward a copy of the legal opinion which the Department had obtained to the Chief Secretary. The Ombudsman communicated to the Chief Secretary that he (the Ombudsman) was very concerned by the suggestion that persons, with minor claims, should be made to incur significant legal expense in order to bring about their claims.

The Ombudsman had to write several letters before a substantive reply was forthcoming from the Chief Secretary. The delay according to the Chief Secretary was attributable to the fact that he had been waiting for information on the case from other government departments.

The reply from the Chief Secretary offered little comfort to the concerns of the Ombudsman regarding the suggestion that persons, with minor claims, should be made to incur significant legal expense in order to bring about their claims. The Ombudsman still has no clear information on what expedited procedure is in place to deal with claims which may be minor in nature and in respect of which liability is not a contentious issue.

The Chief Secretary stated that there is a need to seek legal advice; and the Ombudsman in certain cases can agree with that suggestion. However, the Department's administrative failings in this case were more fundamental than the ultimate adverse legal advice. Incidentally the Ombudsman was aware that the legal advice was based on the factual scenario presented by the Department and took no account of the manner the Claim had been handled administratively. This is an issue which cannot be overlooked in this case because of the relevance it had to the Complaint.

It is important to look at how the claim developed. Firstly, it is an undisputed fact that the problem of the water ingress was a persistent and continuous one. Equally, there is no denial of the fact that the problem was first reported by the Complainant on 4th October 2002. The Department did not repair the problem when it was reported and in March 2004 the Complainant's late husband had reason to write to the Chief Minister to outline his grievance. There is therefore a two year delay in rectifying the problem.

It is after that said letter to the Chief Minister that the Department's surveyor is instructed to visit the Complainant's flat to assess the problem. The assessment, which again it has to be said was not disputed, is categorical in its findings. It states:

“the poor design combined with poor setting out during construction is the cause of the dampness. Had the floor slab been finished flush with the walls of the duct the rain would have continued down until it reached the duct floor where it would drain via a weep hole away from the flat.”

There are other observations made by the government's expert in respect of the defects. In the documents examined by the Ombudsman there are sketches appertaining to the flat and duct details which have on one of the sketches a note saying:

“concrete slab protruding forming a barrier slab should have been flash with the wall” and “rain manifesting itself as damp & mould”.

Conclusion

As a result of the investigation, two main points, relevant to the Complainant’s claim are concluded by the Ombudsman. The first being that the investigation by the Ombudsman clearly and categorically shows that there existed a defect which caused rain water to penetrate into the flat. The second point is that the Department, for reasons unbeknown to the Ombudsman or the Complainant, neglected to fix the problem even though they had been alerted to it by the Complainant in 2002 and that this caused damage to the Complainant’s personal property.

Those facts discussed up to this stage, do in themselves, point the lamp of scrutiny onto the Department and not on the Complainant. And the Ombudsman, in scrutinising the acts of the Department, further concludes the following:

- That the Complainant properly alerted the Department of the problem of persistent water ingress and reported the same in 2002.
- That the Department failed to mitigate the situation by neglecting to act on the report received.
- That the Department failed to update the Complainant on the report.
- That the Department failed to notify the Complainant of the correct manner to proceed with a claim.
- That the Department lost/misplaced the Complainant’s claim form when it was filed back in November 2008. (It was only when the Ombudsman provided a copy that they began the process the same).
- That the Department did not process the Claim form much to the detriment of the Complainant.
- That the Department failed to reply to the Complainant’s letters and that there was delay in the Department replying to the Ombudsman’s letters.

Essentially, the Complainant suffered injustice amounting to maladministration on two main fronts; that of the handling of her report and subsequent remedial works and that of the failure to process her claim. If such acts and omissions had not caused enough injustice to the Complainant there is one more significant injustice which came as a result of the Department’s failure to process the Claim. That significant injustice was the Complainant’s loss of ability to seek legal redress to her claim. Such an option would have been open to the Complainant if she had been provided with a reply by the Department within a reasonable time.

This is a simple but significant point to this Complainant because the Department’s legal advisors seek to rely on time limitations to deny the Complainant her compensation. When one analyses the facts of the case up to now it can be said that there existed a defect which caused persistent water ingress which was reported by the Complainant but which was left by the Department to do further damage to the Complainant’s flat. Notwithstanding these dismal facts, the Complainant persevered in her efforts and after contact was made with the Office of the Chief Minister she managed to secure a commitment for the problem to be assessed by a surveyor.

This brought the Ombudsman to consider the legal opinion of the Department’s lawyers which recommended that the Complainant’s claim be rejected on the basis that the limitation period provided for, in law, for issuing a Claim in the courts had expired before the Complainant issued the ‘internal claim’ form.

The Ombudsman takes issue with such a forceful legal approach for several reasons. Firstly, because the undisputed evidence is that the water ingress was no fault of Complainant. The next reason is because the problem as described by the correspondence was a persistent one and not caused by a singular event. In the opinion of the Ombudsman it is therefore too harsh to suggest that the damage was attributable to one particular instance of water penetration. This brings the Ombudsman to the point of the time limitation for issuing legal proceedings. Mindful as he was of the opinion of the Department's legal advisors and their reference to the six year rule the Ombudsman was also mindful of the legal intricacies which attach to such limitations; not least the requirement that the claimant have knowledge of the act which gave rise to the cause of action. In this matter the cause of the problem was not assessed and identified until March 2004 when the government expert, at the behest of the Complainant and the instruction of the Office of the Chief Minister, attended the residence to assess the problem. It could have been said that at the worst it would therefore have been open for the Complainant to argue her case in legal proceedings had she received a reply.

Turning now to the second reason for the Ombudsman having taken issue with such a legalistic approach one has to evaluate the claim form. It has to be made clear that the claim form itself, submitted by the Complainant, and so called 'internal' to distinguish from court proceedings was submitted as soon as she was informed of the existence of the same. There is no evidence to support any suggestion that the Department prior to 2008 (11/11/08) had informed the Complainant of the internal procedure she needed to follow. Quite the contrary it would appear the Department ignored the issue all together.

Therefore, it seems grossly unfair for the Department to have put in place a procedure of considering claims and calling it an 'internal process' which they expect people to rely on *but* which they omit to adhere to themselves. In this case the Ombudsman got involved on the 17th November 2009 and the Department only processed the claim on the 29th January 2010. Some months after the Ombudsman wrote to them and **14 months** after the claim was submitted by the Complainant.

The Ombudsman has little doubt in this case that the Department is morally, if not legally, obliged to positively consider the Complainant's claim. The Department's failure to have dealt with; the water ingress, their failure to process the claim until 2010 and the reasoning behind the limitation bar all warrant that the Department reconsiders its position with regards to the Complainant's claim either in part or on the whole of the sum claimed. The Ombudsman recognises that this case should have moved away from staunch legal positions and instead should have focused on the strong merits for an ex gratia payment.

Internal Claims Procedure v Legal Proceedings

The Ombudsman found it necessary to discuss the aspect of the internal procedure a little further given its implications to this and other similar claims. The Department has in place a procedure for people to use to claim compensation for damage caused to their personal belongings when a claim exists against government. This is regarded as an internal claim whereby a person is required to submit a form to the Department outlining the claim. The Department then processes the claim forms by considering the merits and seeking legal advice on the issue of their liability.

In the past the Chief Secretary made a recommendation that there should be an expedited procedure to deal with small claims. The Ombudsman agreed with such a proposition because in his view it was imperative for claimants to have at their disposal a fair and accessible system to bring claims against government, especially so in the case of relatively minor claims.

However, from the investigation conducted into this case it has become apparent that no such expedited system has been applied. The Department as a matter of course refers all internal claims to their

lawyers who then consider the merits and liability in each case. This is not only time consuming but also puts the proportionality of the procedure into question.

The above point is also true when one considers that the Department has steered and encouraged people away from the courts and into the so called ‘internal claims procedure’. The Ombudsman has also made clear in this complaint that the Department’s failure to consider the claim may have actually barred the Complainant from relying on the courts for redress.

If the ‘internal claims procedure’ is to exist, (and the Ombudsman thinks that it should), there ought to be a clear time frame within which the Department should process the claim and reply to the claimant. The time frame should be strict and short so that no prejudice is caused to the claimant’s right to seek alternative legal redress from the courts. The nature of the claims being of a minor one, the Ombudsman would venture to say, that the claimants should be provided with a reply in no more than a couple of months from the date on which the claimant submits the claim.

It is right and proper for the Department to have an alternative procedure to avoid court proceedings because to expect the claimants to resort to legal proceedings is unreasonable and disproportionate particularly given the minor nature of the claims. However, there cannot exist a situation where the reliance by a claimant on such an internal procedure prejudices his / her legal right to issue court proceedings.

Update

The Department informed the Ombudsman that they attributed the cause of the dampness to the rain ingress as well as the different pipe leaks which had exacerbated the Complainant’s problem. For this reason they said, that it would be unfair to say that the Complainant’s problem had persisted since 2002, and it would therefore not be entirely correct to say that the problem had persisted since 2002. The Department considered that the problems of dampness caused by water penetration or pipe leaks within the ducts, are common within the Complainant’s Estate because of the design. They further stated that as a result of the many roof and duct leaks the Government had replaced the roofs of all blocks at the Estate. The works included the water proofing of the duct vents located at the lower ends of the roof above the eaves.

Classification

The Complaint is sustained for all the reasons discussed above.

Recommendation

The Department should have an information pack to give out whenever a person informs them of the possibility of a claim for damages suffered to personal property.

The Department should process all claims in a maximum period of two months from the date the claim is submitted and should always inform people of their alternative right to issue legal proceedings.

Case Sustained

CS/877

Complaint against the Buildings and Works Department in respect of delay in windows being repaired.

Complaint

The Complainant an 89 year old gentleman who lived on his own was aggrieved by the fact that he had been waiting since 2006 for his windows to be replaced. The Complainant stated that three years ago an Estimator had visited his flat and identified defects with the windows which entailed them having to be replaced.

For ease of reference the defects can be outlined as follows:

- The bedroom window – one of the sliding window panes did not lock.
- The Living room windows – There was a crack in the plaster below the window through which water was seeping into the flat.
- The kitchen windows – the original locking mechanism was causing problems for the Complainant to open and shut the window.

Investigation

On the 19th November 2009 the Ombudsman wrote to the Department outlining the Complainant's grievance and invited the Department to comment on this case.

The Department failed to acknowledge or reply to the Ombudsman's letter. On the 7th December 2009 the Ombudsman sent a letter to the Department 'chasing' them for a reply. The Ombudsman had to send a further letter via fax seeking an acknowledgement and reply.

On the 18th December 2009 the Department replied to the Ombudsman letters. In their reply the Department explained that the repairs in so far as the bedroom windows were concerned had been ordered on the 16th December 2009. The reply went on to explain that the festive season was forthcoming and considering that the average time for the manufacture and fix windows was approximately 10 to 18 weeks the Department had ordered the repairs to the window.

In respect of the kitchen windows the Department stated that these were reported on the 1st April 2009 and the Complainant was 630th on the list. The reply referred to documentation attached.

Significantly, such documentation provided to the Ombudsman showed that the first report was back on the 15th September 2003 and another report was recorded on the 1st April 2009.

On the 18th January 2010 the Ombudsman visited the Complainant's residence and examined the defects. In addition to the works complained of it was noted that the front door jammed and did not open properly.

In essence the Ombudsman's observations of the remedial works required at the Complainant's residence, were as follows:

- Living Room: cracked plaster below window – needs re-plastering.
- Bedroom: part of the sliding window does not lock – replace mechanism of window pane.
- Kitchen: the Complainant, who as stated above is an elderly person, was unable to open the window due to the locking mechanism – fitting a new lock on window to eliminate the current one.
- Front door: wooden door jammed and did not open properly. – needed adjusting.

On the 8th January 2010 at a meeting with the Department's Chief Executive the Ombudsman brought up the matter of the defects. It was agreed that the Department would again inspect the Complainant's residence to assess the nature of the works.

On the 8th February 2010 the Department informed the Ombudsman that the repairs to the windows and the main door were now complete. The crack below the living room window was to be sealed with mastic until scaffolding could be erected to provide access to the façade of the building for more extensive repairs. The Department also said that they had been informed by the Complainant of a further defect which they would be tackling shortly.

Subsequently, the Complainant contacted the Ombudsman confirmed the above and expressed his surprise at the fact that the repairs had not taken more than half a day to be done.

Conclusion

Failure / delay in replying to letters

In this complaint, as is the case with many others against this department, there is a pattern of the Complainants not receiving a reply from the Department which then causes the Complainants to move to the Ombudsman. The Ombudsman then writes to the Department informing them of their failure to reply to the Complainant and seeks to obtain an update from them. The Ombudsman is aware also that in this case and in many others the lack of acknowledgement or of a reply is further exacerbated by the fact that the Department has not acknowledged or indeed replied to the letters from the Ombudsman, who in turn, has had to send additional letters to the Department before a reply has been forthcoming.

The Department on repeated occasions has recognised this failure and offered apologies for the delay. Moreover, the Department has attributed the delays in replying to letters to procedural mishaps or misplacing of correspondence. It is not clear to the Ombudsman how the correspondence is handled and processed by the Department but it is apparent from the persistent pattern and from the explanations afforded by the Department that, whatever this procedure may be, it is inadequate. The system allows for letters to be regularly misplaced or even lost and at the very least allows for letters to remain unanswered for months on end.

The Principles of Good Administration and The Principles of Good Complaint Handling ("the Principles") recommend having clear and simple procedures. The Principles also recommend that the public bodies should deal with complaints promptly and sensitively. The evidence before the Ombudsman is that these core recommendations are not being followed by the Department. The Department appears to be struggling to deliver a good complaint handling process and this even extends to handling letters from the Ombudsman.

Inadequate procedures for assessing the works

The next administrative problem encountered in this case seems to arise from the manner and system used by the Department for assessing reports and the necessary remedial works.

The quality of the initial assessment is a crucial factor in the administrative structure. Certainly, in this complaint it has been shown to the Ombudsman that there was no impending reason to have the works assessed as requiring new windows in order to remedy the Complainant's grievance. In fact the replacement of locks, did in fact, eliminate the defects in so far as the windows were concerned. The Complainant thus waited unnecessarily for a considerable period of *years* for the defects to be remedied in a matter of hours.

The delay in undertaking remedial works

Quite apart from the delay caused by the inadequate assessment of the works at the initial stage, in the Ombudsman's view, there is a further contributing factor namely that of the prioritization of works.

The investigation to some of the Complaints has established that the Department categorizes the works under the priorities of Emergency, Very Urgent, Urgent and Routine. There is then in addition a 'window replacement list'. Upon all these lists there exist further lists in relation to pensioners and people with medical needs.

In this case the Complainant was said to be 630th on the list appertaining to replacement of windows. The Department has made it clear that given the high number of ongoing jobs (*approximately 4000 in Jan '10*) they are unable to constantly check the priority lists to accurately determine which report they should deal with first. The situation is further compounded by the fact that at times the Department will 're-prioritise' works if they find that the defect has worsened. This means in effect that the lists are ever evolving and of limited reference in terms of gauging the time scale for its completion.

The Ombudsman's attention has also been drawn to the fine distinctions between the categories. Leaving aside the emergency works, where one can see the logic and unequivocal approach to deal with these first, the other categories are an administrative misnomer. The Department cannot adhere or guarantee the priority amongst the categories. The classification is therefore of limited application and misleading. The evidence as it has developed, in this and other related complaints, depicts a situation of uncertainty and chaos when it comes to determining priority of works. So numerous are the lists and the circumstances applied by the Department in their determination of which job can be done next that the Ombudsman can only but describe the situation as being that of a recipe for disaster which leaves people such as the Complainant in a state of vacuum, on occasions for years, before a concrete date or estimate is given for the repairs to commence.

Classification

In light of the above facts the Ombudsman has sustained this complaint not only with regards to the time the Complainant had been waiting for the repairs but also in respect of the delay in replying to letters.

Recommendations

The Ombudsman urges the Department to put in place a system and procedure to secure that letters sent to them either by complainants or the Ombudsman are dealt with promptly and properly. In the event that an acknowledgement letter is sent in response a substantive reply should follow within a reasonable time.

Furthermore, the Ombudsman strongly recommends that the methods of classification and the assessment of works be reviewed.

Case Partly Sustained

CS/884

Complaint against the Buildings & Works Department due to not having replaced the windows in the Complainant's Government rented flat despite having been waitlisted for seven years; and also dissatisfied with the reply received from the Department's Chief Executive

Complaint

The Complainant was aggrieved because the windows in his Government rented flat ("the Flat") needed to be replaced and despite what he claimed had been a seven year wait on the Windows Replacement List ("the List") at the time of lodging the Complaint, the works had not been undertaken. Furthermore, he had written to the Chief Executive ("the CE") of the Buildings & Works Department ("the Department") on the subject and felt very dissatisfied with the reply received.

Background

The Complainant explained that due to the bad state of the windows in the Flat which allowed rain and wind through, he was waitlisted in 2003 for these to be replaced. In addition to the bad condition of the windows, the Complainant stated that further grievance was caused by the fact that the windows were large and heavy which hampered the opening/closing action and the removal of these for cleaning purposes, moreso because both he and his wife were elderly and suffered from medical conditions.

In June 2004, due to other works that needed to be carried out in the Flat, an estimator from the Department inspected the premises and concluded that the windows were in good condition and did not need to be replaced. The Complainant on being informed of this development pursued the matter and in August 2004, subsequent to the visit of another estimator who determined that the windows did in fact need to be replaced, was included back in the List. In November 2004 upon enquiring, he was informed that he was in position 261.

Throughout the years, the Complainant contacted the Department to remind them of his and his wife's personal situations vis-à-vis the urgent need to have the windows replaced and at the same time requested information with regards his position on the List.

In February 2010, the Complainant wrote to the CE. In the letter he explained the hardship that he and his wife were being forced to endure due to the bad state of the windows and their inability, due to the size and weight of these to open/close them or to remove them for the purpose of cleaning.

The Complainant advised that he was now in position 28/29 on the said List but stated that he had been waiting since 2003 and wanted an explanation as to why it had taken so long for the replacement to be undertaken.

The CE immediately acknowledged receipt of the letter and stated the following:

'I have to add that if the information you are providing is correct then I see no reason why the windows shouldn't be replaced before the end of the year.'

(Ombudsman's note: The above is the totality of the letter)

Dissatisfied with the reply from the CE, the Complainant brought his Complaints to the Ombudsman in March 2010.

Investigation

Upon inquiry from the Ombudsman, the Department's reply confirmed that the Complainant's windows would be replaced during the forthcoming financial year, 2010/2011. It explained that the present waiting time for replacement of windows was seven years, due to the high number of reports, 730 as at March 2010 which equated to a total of 4,380 windows, shutters and doors for replacement. The annual replacements that could be undertaken would be dependent on availability of resources and the first cases to be tackled would be the ones scheduled for the previous financial year which they had been unable to deal with along with some new additions from the List and emergencies. A list of jobs to be undertaken in the current financial year was compiled by the Department but due to many 'unforeseen' cases, it had to be periodically updated. The factors responsible for the unforeseen cases were emergencies, refurbishment of vacant flats, Government priorities, increase at source of procurement costs and availability of contractors supplying the windows.

The Department ended by recommending that if the Complainant needed information in future with regards his position on the List, he could either telephone or call at the Department's offices in Town Range and request to speak to the Head Estimator or Estimator responsible for window replacements. The Department provided the Ombudsman with a copy of the List where it was noted that the Complainant's surname was listed in position 28. Beside the number in brackets there was another surname (see Section entitled 'Matter Arising as a Result of the Investigation').

The Ombudsman enquired if the Department had also provided the Complainant with the relevant information. The Department stated that they had written to the Complainant, informed him of his position on the List and confirmed that the windows would be replaced during the current financial year. They commented that every letter the Complainant had sent to the Department in the past had been replied to and enclosed copies of the correspondence.

Matter Arising as a Result of the Investigation

On perusing the correspondence provided by the Department, the Ombudsman noted that the Department referred to the person whose surname was shown in brackets besides the Complainant's name in the List as having reported the problem with the windows on the 21st May 2003. The Department's comments appeared to indicate that the matter had been reported by previous tenants of the Flat and stated that the Complainant would benefit from this as the date taken into account would be the 2003 one rather than the August 2004 (date on which the Complainant was finally waitlisted). The Ombudsman discussed the matter with the Complainant and the latter informed him that he and his family had been the only tenants in the Flat for the last thirty years and he had no idea who the person whose surname was shown in brackets was. The information was corroborated by a letter from the Housing Department which stated that the Complainant had signed the tenancy agreement for the Flat in 1976.

From a copy of the works report, the Ombudsman was able to obtain the other person's telephone number. This was then checked against the local telephone directory. It was ascertained that a person by that surname resided within the same estate as the Complainant, same flat number but in a different building. From the information obtained it could be deduced that two different reports had been combined into one; the other person's name and telephone number with the Complainant's address. The result was that the other person's report had been removed as it could not be found in the List.

The information was forwarded to the Department who checked and concurred with the Ombudsman's findings. It appeared that the person who raised the other person's original order made a mistake with the address, the permanent factor taken into account when a report is made as the tenants

may move to other premises. The Department stated that staff had been instructed to correct their records as per the findings of the Ombudsman's office and gave an undertaking that the Complainant's position on the List would not be affected.

Conclusions

(i) Not having replaced the windows in his Government rented flat despite having been wait-listed for seven years;

Based on the investigation, the Ombudsman decided not to sustain the first Complaint regarding the seven year wait for the replacement of windows. It must be pointed out that the Ombudsman investigates complaints of maladministration. In respect of window replacements there is a procedure in place, by way of the List, which is followed and although a slow process due to the number of reports, financial constraints and unforeseen cases, no maladministration was found.

(ii) Dissatisfied with the reply received from the Department's CE

On the second Complaint with regards the unsatisfactory reply, the Ombudsman decided to sustain the Complaint.

At the time of the Complaint, the Complainant had been patiently waiting for seven years for the replacement of windows in the Flat. The Complainant and his wife are senior citizens with medical problems. From an original 261st place in the List they had slowly gone up and were now seeking information as to when the windows would be replaced. They informed the CE that they had been on the List since 2003 and wished to know why it was taking so long for the replacement to be carried out.

In providing a reply, the CE should have in the first instance checked his records instead of advising the Complainant that 'if' the information he was providing was correct then the windows would be replaced before the end of the year. He should have also noted previous correspondence, both from the Complainant to them and vice versa, and perhaps displayed a degree of empathy with this elderly couple who had already been waiting for the replacement of the windows for seven years. The Ombudsman was of the opinion that such a reply would have been in keeping with good administrative practice.

In the circumstances, the CE's letter was:

- (i) Not customer focused – the letter even appears to be dismissive and clearly displays a lack of factual knowledge of the case.;
- (ii) Was not open and accountable– the letter is devoid of any detail that would at least allay the concerns expressed by the Complainant in his letters to the CE.

Classification

(i) Not having replaced the windows in his Government rented flat despite having been waitlisted for seven years;

Not Sustained

(ii) Dissatisfied with the reply received from the Department's CE;

Sustained

By way of general information the Ombudsman wished to highlight that his office conducts very thorough and detailed investigations. It is only after lengthy perusal of records and in-house discussions on each investigation that he produces a report.

Our reports aim to provide an account, and our comments, of the manner in which public services in Gibraltar conduct their administrative affairs.

Case Sustained

CS/909

Complaint against the Buildings & Works Department, for the delay in undertaking repairs to a fresh water leak.

Complaint

The Complainant was aggrieved because of the delay on the part of the Buildings & Works Department (“the B&W”) in undertaking repairs to a fresh water leak located outside her Government rented flat (“the Flat”).

Background

The Complainant explained that circa the 4th August 2010 she reported at the Ministry for Housing’s Reporting Office (“the Office”) a leak located outside her Flat. She claimed that at the time, the leak was a small spray of water but stated that this intensified during the next few days. The Complainant claimed that she contacted the Office on a second occasion on the afternoon of Saturday 7th August 2010 to again report the matter. She stated that at that point, some of the water had filtered through her living room wall which made her very concerned that damage would be caused to the wooden floor in the Flat.

Later that evening a plumber attended and the Complainant claimed that upon carrying out the inspection informed her that:

- *He did not have the necessary materials to carry out the repairs;*
- *She would have to wait until Tuesday 10th August 2010 for the repair to be undertaken as he would have to buy the materials on Monday 9th August 2010.*

The Complainant explained that at she questioned the plumber as to what the point was for B&W to have an ‘Emergency Section’ when there were no materials to carry out emergency repairs, but stated that the plumber did not comment.

Throughout the next few days, the Complainant stated that she made numerous calls to both the Office and B&W workshop without success. Feeling frustrated and desperate she contacted the Ombudsman on Tuesday 10th August 2010. The latter contacted the Project Manager at B&W to inform him of the situation and was advised that the matter would be investigated.

The leak continued until the following day, Wednesday 11th August 2010, at which point it was repaired by B&W staff. The Complainant explained that they told her they could not guarantee the leak would not recur. The reason given that the plumbing in the entire estate was very old and they did not have the materials required. Dissatisfied with the way the situation had been handled throughout, the Complainant lodged the Complaint with the Ombudsman.

Investigation

The Ombudsman presented the Complaint to B&W on the 17th August 2010 and requested their comments on the matter. They explained that the Office was closed on Saturdays and that the only record of a phone call by the tenant to B&W was to the after hours emergency number which took place at 20.30 hours on Saturday 7th August 2010. An inspection by the duty officer and plumber took place that same evening, after which a B&W store man was contacted in order to provide spares from B&W stores.

Given that the estate's fresh and salt water systems were the original copper/nickel pipes in imperial sizes (dated back approximately sixty years) spares were not available and made the repair tasks more difficult than in similar cases in other estates. They added this was the recurring problem B&W were faced with when a leak appeared in one of the original service pipes in the estate. Ultimately, the leak was sealed by using a rubber grommet and clips tightly fitted around the pipe. The answer to reducing the response time in similar cases would be for the installation of new pipes throughout the entire estate but that this was not within B&W's competence.

The Ombudsman was told that the leak was located beneath the Complainant's water meter and she would not be billed for the water which had emanated from the leak. Based on the information received, the Ombudsman reverted to the Complainant to determine if she had contacted the Emergency Section on the 7th August 2010 and not the Office. The Complainant confirmed that she had in fact contacted the former but reiterated that she had made a report at the Office a few days earlier. The Ombudsman contacted the Office and requested copies of reports made by the Complainant in August 2010. One report was received in relation to the leak and was dated 3rd August 2010. It was prioritised as an emergency and was estimated on the 4th August 2010.

Conclusions

The investigation concluded that the Complainant made a report to the Office on the 3rd August 2010, four days before the date stated by B&W. In all, B&W took eight days to repair the leak. The delay in addressing the repair resulted in:

- *Water penetration to the Flat;*
- *Loss of fresh water;*
- *Frustration to the Complainant at the way in which the situation was handled by B&W;*
- *Bringing to the forefront the problems faced in the estate due to the non-availability of spares for the original plumbing system.*

As advised by B&W (as shown underlined above) this has not been an isolated incident. The Department should therefore consider putting interim measures in place to prevent the recurrence of similar situations until a new plumbing installation is in place.

Classification

Sustained - Delay in undertaking repairs to a fresh water leak

Update

Two months after the leak occurred, the damage to the Flat had not been repaired. The Ombudsman referred the matter to B&W and stressed that had it not been for the extended period of time that the leak was allowed to continue, no damage would have been caused to the Flat. Repairs were finally completed on the 12th November 2010.

Civil Status and Registration Office

Case Sustained

CS/892

Complaint against the Civil Status and Registration Office for the delay in processing the Complainant's application for naturalisation pursuant to Section 12(2) of the Immigration, Asylum and Refugee Act.

Background

The Complainant informed the Ombudsman that in October 2007 he submitted an application to the Civil Status and Registration Office ("the CSRO") pursuant to section 12 (2) of the Immigration, Asylum & Refugee Act ("the Act").

Notwithstanding the significant passage of time and the repeated requests by the Complainant through his lawyers the application remained undetermined in 2010. On the 24th February 2010 the Complainant made a complaint to the Ombudsman in respect of the delay.

Investigation

The Ombudsman noted the fact that the Complainant had not received a decision to his application, since he had submitted his second application, on the 26th October 2007. Consequently, upon receipt of the complaint on the 10th March 2010 the Ombudsman wrote to the CSRO and requested an update on the Complainant's application.

The CSRO replied saying that the Complainant's application had been initially considered but that no final decision had yet been taken. They further stated that they would inform the Complainant of the outcome of his application as soon as they were in a position to do so.

The Ombudsman not being satisfied with the rather shallow reply from the CSRO requested that they afford further explanations. The Ombudsman enquired as to the date on which the Complainant's application had been initially considered and asked for the reasons as to why there could not be a final decision in respect of the application.

After a brief interlude the Head of the CSRO called the Ombudsman to discuss the case. This was followed by a letter from the CSRO to the Ombudsman where he set out the following:

"All applications for naturalisation are referred by this Department to the Chief Secretary. They are then considered by the Minister for Personal Status individually other than in those cases where statutory requirements are clearly not satisfied. Once the Minister for Personal Status has considered the applications they are then referred to the Governor. In those cases where statutory requirements are clearly not satisfied, the Chief Secretary normally refers them to the Governor direct."

Application

The purpose of the application made by the Complainant was for the Governor's exemption from Immigration restrictions imposed by section 12 (1) of the Act.

Subsection (2) of section 12 of the Act states:

“Where the Governor is satisfied that any person who would, but for his inability to comply with the requirements of paragraphs 5(2)(c) or 7(c) of Schedule 1 to the British Nationality Act 1981, be otherwise eligible to apply for naturalisation as a British Overseas Territories citizen under the provisions of section 18 of the British Nationality Act 1981 the Governor may, in his absolute discretion, by order exempt any such person from compliance with the requirements of subsection (1) of this section:”

Simply put the law requires PERSONS OF CERTAIN NATIONALITY to have certain permits to enter or remain in Gibraltar. These permits being:

- (a) a valid entry permit;
- (b) a valid permit of residence ; or
- (c) a valid certificate.

Therefore, where the Governor is satisfied that the applicant may be eligible to apply for naturalisation as a British Overseas Territories citizen under the provisions of section 18 of the British Nationality Act 1981 he may, by order, exempt any such person from compliance with the legal requirements for non Gibraltarians to have certain permits to enter or remain in Gibraltar.

It was initially an issue for this particular Complainant that there existed a further requirement for applicants to have knowledge of the English language to be eligible for naturalisation under the provisions of the British Nationality Act mentioned above. However, there was an exemption to that rule when the applicant attained the age of 65 years of age and consequently this was not an issue in this the Complainant’s second application submitted in October 2007.

Conclusions

Moving onto the delay in the processing of the Complainant’s application the Ombudsman considered the factual matrix disclosed by both the Complainant and the CSRO.

The investigation showed that the Complainant’s application had been sent in November 2009 by the CSRO to the Government of Gibraltar in order for it to be considered. The fact that it took the CSRO two years to submit the application to the Government is unreasonable and unacceptable in the absence of cogent reasons for such a delay. As it happens the CSRO gave no reasons for the delay and the Ombudsman considers that the absence of reasons this delay of over two years, was an evident act of maladministration causing injustice in itself.

The European Code of Good Administrative Behaviour confers a right to good administration as a fundamental right and the Principles of Good Administration confirm this principle, in that, every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by institutions. In this case the CSRO failed to adhere to the said principles not having processed the Complainant’s application within a reasonable time.

Moreover, the principles of natural justice also demand of public bodies, that they, provide reasons for their decisions and that they act in a reasonable manner. A failure or an unreasonable delay falls foul of these established legal principles and gives grounds of the delay or the failure to be reviewed.

There is little doubt therefore in the mind of the Ombudsman that the delay / failure by the CSRO to submit the Complainant's application was an act of maladministration and of a nature that it was one which could potentially be reviewed judicially.

Classification

The Ombudsman sustains the complaint for the reasons discussed above.

Recommendations

The Ombudsman applying the principles of natural justice and the Principle of Goods Administration considers that an applicant should receive a decision within a reasonable period of submitting his application. A delay such as in this case is unreasonable.

Gibraltar Electricity Authority**Case Partly Sustained****CS/875****Complaint against the Gibraltar Electricity Authority for its failure to make due enquiry and for not considering a reasonable deposit and transfer of accounts.****Complaint**

The Complainant through its solicitors made a complaint to the Ombudsman on the 16th November 2009. The complaint as explained to the Ombudsman consisted of four aspects namely that the Gibraltar Electricity Authority (“the Authority”) had failed in its duty of care to the Complainant by failing to:

1. Act promptly upon evidence brought to its attention.
2. Make due enquiry as the authority of a given person to represent the Complainant
3. To consider the best interests of the Complainant generally when performance of its [the Authority’s] duties.
4. Consider a reasonable deposit and transfer of accounts in order to settle the matter.

After considering section 14 of the Public Services Ombudsman Act 1998 the Ombudsman concluded that he was able to investigate the following administrative aspects to the complaint namely:

1. Make due enquiry as the authority of a given person to represent the Complainant;
2. Consider a reasonable deposit and transfer of accounts in order to settle the matter

The Complainant informed the Ombudsman that they were the lease holders of commercial premises in Gibraltar (“the Premises”) and that they had contracted with the Authority for the connection and supply of electricity. On the 1st May 2008 the Complainant had granted a tenancy to another Company (“the Other Company”). Pursuant to the terms of the Tenancy Agreement the Other Company would be responsible for all outgoings in respect of the Premises.

The Complainant alleged that on or about completion of the Tenancy Agreement (“Tenancy Agreement”) disconnection forms, signed on behalf of the Complainant, were sent to the Other Company to allow for the accounts to be transferred into the Other Company’s name. Additionally the Complainant forwarded to the Other Company a cheque payable to AquaGib in settlement for the sum outstanding until the last meter reading prior to the Tenancy Agreement. The Other Company subsequently delivered a receipt from AquaGib to the Complainant confirming payment of all sums outstanding as at 8th May 2008. The disconnection forms were never received by the Authority.

Sometime during August 2009 the Complainant had reason to terminate the tenancy with the Other Company. The Complainant explained that it was at this time that they became aware that the Other Company had failed to transfer the electricity account as they had agreed and that there were outstanding bills to be paid.

Investigation

On the 7th January 2010 the Ombudsman wrote to the Authority informing them of the complaint and invited the authority to comment on the issues being investigated. A reply dated 27th January was

subsequently received by the Ombudsman.

The Authority had sent the Complainant a so called disconnection letter on the 9th January 2009. A person later known to be a representative of the Other Company attended the offices of the Authority with the said disconnection letter. This person was then informed by the Authority that the disconnection would be effected unless the arrears were settled. The person then enquired as to the possibility of payment being made by instalments and the Authority acknowledged that they were willing to enter into an agreement for the repayment of the arrears provided that the current bills were paid.

The Other Company's representative then returned to the Authority and provided them with a receipt from AquaGib which showed that the current bills had been paid. The receipt was issued in the name of the Complainant given that the Other Company had never caused the electricity account to be changed to their name as had been envisaged in the Tenancy Agreement. At the conclusion of this sequence of events the Authority offered an agreement ("The Agreement") to the Other Company's representative to discharge the balance of the arrears.

The Ombudsman's examination of the material disclosed by the Authority, as well as that disclosed by the Complainant, shows that the Agreement was purported to be made between, and in the names, of the Authority and the Complainant. It was also established that on or around the 20th January 2009 a representative of the Other Company attended the offices of the Authority. The Authority and the Other Company's representative signed and executed the Agreement by signing the last page of the document. The Authority signed through an individual on behalf of the Chief Executive of the Authority and the Other Company's representative signed under a signature heading labelled "Debtor" – it has to be emphasised that legally the Debtor was still the Complainant. As already explained above, the Other Company had not caused the account to be transferred to their name but rather allowed it to remain in the Complainant's name.

The Complainant argued, and their argument was accepted by the Authority, that the Other Company's representative lacked legal capacity to sign on the Complainant's behalf. In their reply the Authority explained that they accepted that no further checks had been carried out on the capacity of the Other Company's representative to bind / sign on behalf of the Complainant.

Conclusion

In respect of the first limb of the complaint there are two issues to consider arising out of the above mentioned facts: whether the format of the Agreement was appropriate and whether reasonable steps were taken by the Authority to ensure they were dealing with the correct entity who would be authorised to sign the Agreement., i.e. the Complainant.

The Ombudsman took the view that, to some extent, the circumstances leading to the signing of the agreement were such that he could understand how the mistake could have arisen as to who the Other Company's representative was acting for. Whilst there can be some sympathy for the Authority's mistake (who the Ombudsman had no doubt had acted in good faith all along) the risk of error and or confusion could have been minimized, if not eliminated, if the Authority had had in place some basic safeguards to their administrative procedures.

In relation to the Agreement and the setting up of accounts the Ombudsman is of the view that it is necessary to establish the identity and legal capacity of the person who is making any application. This is more poignant in the instance where a person is purporting to be representing or acting on behalf of a company or other legal entity.

In this complaint the lack of adequate procedure led the Authority to form a mistaken but honest belief that the individual they were dealing with was vested with the authority to execute the Agree-

ment. The fact that the mistake may have been a plausible one, committed in good faith, does not exonerate the Authority.

It is important to note that the Other Company's representative arrived at the Authority's offices with a receipt from AquaGib which was issued in the name of the Complainant. This appears to have played a part in the assumption made by the Authority of who the bearer of the receipt was acting for. Equally, on this point it is also the case that the Complainant did not inform the Authority that they were no longer the registered consumer albeit (but of no consequence to the GEA) that they state that they did fill in the requisite form for the Other Company to deal with the disconnection and reconnection of the supply.

Notwithstanding the fact of whether the Complainant did or did not inform the Authority that they were to cease being the registered consumer the Ombudsman is of the opinion that the crucial and fatal factor in this complaint was the erroneous assumption made by the Authority when they were approached by the Other Company's representative bearing the receipts. It appears from the information collated by the Ombudsman that the above circumstances had a consequential and 'domino like' effect on events thereafter vis-à-vis the mistaken identification of who the contracting party was and on whose authority this person was acting.

Regarding the issue of the Agreement subject of this investigation, it is necessary to consider how the document was drafted so as to be able to understand how the initial mistaken identity was then carried through the process.

In order to comprehend the peculiarities of this agreement, it must be borne in mind that the Agreement was executed between the Authority and a Limited Company which brings into play legal requirements at the time of entering into contractual arrangements.

The Agreement was drafted by the Authority. In the first paragraph the Agreement's recital clauses defined, as is a common feature in legal documents, the parties to the Agreement. The Authority specifically names the Complainant and defines them as "the Debtor". The document then goes on to use the defined reference throughout the remainder of the document except at the final page. It is at this final page where the document makes reference to the Authority in its full name *but*, by contrast, goes on to refer to the other party to the Agreement as the Debtor and not by its full name. Moreover, when the Other Company's representative signs this page of the document she does so using her personal signature and prints her name; not that of the Complainant. The Ombudsman considers that the Authority at this stage had another opportunity to rectify the mistaken identity but they failed to do so. Moreover the Authority could not and should not have accepted an agreement to be signed on behalf of a Limited Company by the mere signature of an individual without requiring that the contract be properly executed under the seal of the Company, i.e. the Complainant's seal.

In the initial stage leading to the signing of the Agreement there would have been an opportunity to verbally enquire, rather than to have assumed, who the Other Company's representative was acting for. There was another opportunity to spot a discrepancy during the exchange of e-mail correspondence between the Other Company's representative and the Authority. Such e-mails identified the Other Company as the party making the enquiries as to the arrears and not the Complainant who was after all the registered consumer. A further missed opportunity arose at the execution of the Agreement. The Authority at that stage failed to ascertain on what capacity the person signing the agreement was acting and more significantly the Authority failed to spot the discrepancy between the signature and the named party to the Agreement. If the Authority had taken the due care when they were executing the document they would have realised the discrepancy and this could have identified the mistake. The Authority has now recognised the mistake and the fact that the document is void as against the Complainant.

The other limb to this complaint is that appertaining to the transfer of the deposit. What the Complainant was seeking from the GEA was basically for the GEA to accept a reduced deposit from the Other Company in respect of the unpaid electricity consumption and the rest to be paid under an agreement between the GEA and the Other Company. The reason afforded by the Authority for not doing so was that this would undermine their chance to recover the outstanding arrears from the Complainant, who the Authority maintained, were liable as registered consumers for the supply. It seems, from the evidence before the Ombudsman, that the Authority's reasons for not acceding to the request are reasonable. As far as can be seen the registered consumer was the Complainant and not the Other Company and therefore no administrative basis justifies the transfer of deposits or accounts other than in the prescribed manner.

Although it was not the subject of this investigation the Ombudsman wished to highlight that there was an apparent breach of the terms of the Agreement. However, the Authority do not appear to have attempted to enforce the Agreement notwithstanding that there was a default on the repayments to be made under the Agreement. Amongst the default clauses contained in the Agreement there was a provision which read as follows:

“and the Authority will without further notice disconnect the supply of electricity to the Debtor.”

The Ombudsman therefore felt that the Authority had reasonable grounds to have acted upon the default although he does not lose sight of the need to proceed with caution when disconnecting the supply to commercial premises.

Classification

There is no doubt that the GEA acted in good faith throughout this affair. However, the Ombudsman had to note the lack of form in relation to legal entities which entered into agreements with the GEA. It is this point of the complaint, and only this point, that the Ombudsman classed as maladministration.

The second part relating to the transfer of the deposit monies is not sustained by the Ombudsman as there is no evidence of maladministration on the decision not to transfer the monies.

Recommendations

The Ombudsman wishes to stress that this situation could easily have been avoided by a proper adherence by the Authority to a good administrative procedure. To that end a more stringent approach ought to be taken by those processing any application. In particular the Ombudsman would like to highlight the importance of requesting identification of persons making applications as well as seeking clarification as to the capacity of persons who are making the application.

The Authority should also consider applying the same approach as suggested above to any agreements that they may wish to enter into for the payment of arrears. In the case where the consumer is a company, club, association or similar body, then the agreement should conform to a format which leaves no doubt that the debtor is a specific entity. Consequently, only persons with capacity to act for that entity should sign the agreement taking into account the requirements for certain entities to execute any agreement.

Case Sustained

CS/901

Complaint against the Gibraltar Electricity Authority for the non reply to the Complainant's letter and in respect of their failure to issue bills based on actual readings.

Background

The Complainant was the president of a local youth club occupying premises ("the Premises") supplied with electricity by the Gibraltar Electricity Authority ("the Authority"). The club had been so supplied since 1996 and the Complainant was aggrieved that no actual readings of the electrical meter had been taken by the Authority during that time.

Instead at the Complainant's request in 2009 their meter was read by the Authority's agents ("AquaGib") and a bill was sent by these agents to the Complainant in respect of an outstanding balance of £4524.29. This was followed by a "Disconnection Notice" which was sent by the Authority to the Complainant. The Complainant was aggrieved by the fact that the Authority was seeking to recover from them the total amount of £4524.29 and the Complainant considered that this was unfair given that the meter should have been read at regular intervals over the preceding years, plus the fact that he had always paid the bills (albeit estimated bills) that AquaGib had sent him.

Consequently, the Complainant wrote to the Authority expressing his grievance and sought to have the amount owed reduced based on the fact that it was not their fault that the meter had not been read throughout the preceding years. Moreover, the Complainant pointed out that they had diligently settled every bill they had received.

There being no reply from the Authority the Complainant put his complaint to the Ombudsman on the terms set out above.

Investigation

It became apparent to the Ombudsman that the Authority had replied on the 16th March 2010 to the Complainant and that in their reply they had accepted the fact that the Complainant's meter had not been read. However, they stressed that the figure obtained once it was read in April 2009 represented a true consumption for which the Authority could not waive the amount due. The Authority suggested the Complainant may wish to make arrangements to enter into an agreement for the repayment of the said amount. The Authority further stated that any discrepancy on the estimated bills which the Complainant was receiving was an issue to be taken up with AquaGib.

The Authority's Duties

Amidst other responsibilities the Authority has the following statutory obligations imposed by virtue of section 12 (4) & (5) of the Gibraltar Electricity Authority Act:

"The Authority shall ensure that consumers are accurately billed for any electricity consumed by each consumer and shall state on the face of such bills how such charges as may have been levied are related to the tariffs.

Consumption shall be registered by an appropriate meter, except in those cases where there is insufficient space for a meter or where the

Authority with the agreement of the consumer determines that the consumption may be accurately determined by other means”

Furthermore, section 18 of the Gibraltar Electricity Authority Act states that:

“Except where otherwise expressly provided by agreement between the Authority and the consumer, electricity supplied under this Act shall be measured by meter in accordance with Regulations made from time to time pursuant to the provisions of section 10 and the register of the meter shall be prima facie evidence of the quantity of electricity consumed.”

Ombudsman’s decision on allocation of the Complaint

In all cases where a complaint is presented to the Ombudsman he has to determine several preliminary requirements. One of these requirements is to establish that there is a possible act or omission capable of constituting maladministration but also the Ombudsman has to attribute the complaint to one of the entities falling under his jurisdiction.

In this case the Ombudsman considered that the nature of the complaint was, at first instance and in the main, attributable to issues related to billing and not supply of electricity. However, that was not exhaustive, in the sense that, the Authority would also fall under the Ombudsman’s lamp of scrutiny given that some aspects to the complaint may be directly attributable to them and not to AquaGib as their agents. In a scenario such as the one in this complaint: where the principal (i.e. The Authority) discharges some of its duties via an agent, (e.g. in this case by way of the billing side of things), it is not uncommon for the Ombudsman to attribute the complaint to one entity but for more than one entity to be subjected to the Ombudsman’s scrutiny and investigation. This is simply because there could be aspects of responsibility falling squarely on the domain of the agent and others which may fall upon the exclusive domain of the principal entity. In fact that issue, in itself, may be a point to be determined by the Ombudsman and which could only be done by scrutinising all the entities involved.

Therefore, having carefully considered the developments of the case, the Ombudsman, wrote to AquaGib and put the complaint relating to the bills and the estimated readings to them. Furthermore, the Ombudsman called for a meeting to discuss this case. In furtherance of the excellent cooperation which characterizes AquaGib and indeed the Authority whenever the Ombudsman calls upon them, on the 9th July 2010, AquaGib’s Managing Director and Customer Services / Financial Manager met with the Ombudsman to discuss the case. In addition subsequent to the meeting the Ombudsman requested a written reply on some of the issues that had arisen during the course of the meeting.

The findings from the Ombudsman’s enquiries at that stage could be summarised as follows:

- It was a fact that no actual readings had been obtained for the Complainant’s meter.
- That a number of estimated readings had been relied upon to issue bills and that two bills were issued in April 2008 and April 2009 for £636.56 and £798.65 respectively.
- That the meter was located in adjacent premises not under the occupation or control of the Complainant.
- That AquaGib had encountered historical difficulties in gaining access to the Meter.
- That the Authority had been on notice of the problems with accessibility to the meter as far

back as February 2007 and maybe earlier.

- A further unregistered meter was found in the adjacent premises.
- That the Complainant's club had in 2007 informed AquaGib that club's usage of the premises had diminished very considerably and requested bills be based on actual readings.

Whilst the Ombudsman's investigation was ongoing the Authority informed the Complainant that they had apportioned arrears and then applied the correct tariffs. This in effect meant that they had reduced the debt to £2981.33.

The Ombudsman not being entirely satisfied with the explanations and evidence he had obtained up to that stage, wrote to the Authority to clarify certain matters. The following questions were put forward:

1. The date on which the Authority became aware of the difficulties with the meter in question in relation to this compliant.
2. The reasons for the said meter being located in another premises other than those occupied by the Complainant.
3. The reasons why there was another meter unregistered at the location.
4. The reasons why the meters are not cross referenced with those held on accounts with their agents AquaGib Limited.

The Authority replied that they had been aware of the difficulties for a long time and that in this instant the building including the wiring was transferred from the MoD and meters were only fitted in the present location. In respect of the unregistered meter mentioned at 4 above the Authority stated they were aware of this and who the consumer was and an instruction had now been issued for AquaGib to read the meter for billing purposes. It was said that reconciliation of electrical meters occurred at intervals but the exercise was limited to checking numbers not locations.

Comments and Considerations

The evidence showed that AquaGib, as agents for the Authority, did not have control over the installation / location of meters generally. The law as set out earlier in this report bestows such a responsibility on the Authority. There was also an irrefutable fact that AquaGib wrote to Authority putting them on notice of the problems that they were encountering with the accessibility to the meter.

The Complainant quite rightly points out that they had no fault in the accessibility to the meter. The problem was one unrelated to the Complainant because the meter was located in adjacent premises whose occupier was, it appears, not readily allowing AquaGib access to the meter. To the point that, in order to obtain the reading in 2009, AquaGib warned this occupier that they would, if necessary, seek to involve the police to obtain access to the meter. It was then that AquaGib got access and were able to take an actual reading from the meter.

The Ombudsman had no doubt that the Authority was legally responsible for the installation and location of electrical meters. The Ombudsman is also clear that it was for the Authority to instruct their agents AquaGib as to the existence and location of meters as well as registered consumer details. In this case, and in other similar scenarios, the Ombudsman has a categorical approach, in that there cannot be, a complete derogation of responsibilities onto agents. It was the duty of the Authority to

undertake all those responsibilities which are necessary for AquaGib to then properly discharge its own duties.

The Authority in this case failed to adequately instruct AquaGib to enable them to access the meter. This is evidenced by the fact that they were on notice of the problem but no action was taken to resolve the problem. Certainly, the Ombudsman would have expected some action to have resulted at least back in 2007 when AquaGib informed the Authority of the problem.

The failure is further compounded by the fact that AquaGib continued to issue bills based on estimated readings for years on end and, only issued a bill based on actual readings, when the Complainant insisted on having one in 2009. The Ombudsman does not disapprove in principle of bills based on estimated readings on an occasional basis. However, to issue estimated bills as a matter of practice for years and in this case as many as 14 years is simply not good administrative practice or in keeping with section 18 of the Act (see above) and the Ombudsman does not condone such a practice.

Arrangements should have been made by the Authority to remedy the situation. AquaGib was correct to bring the problem to the Authority even though they continued to issue the estimated bills. If AquaGib had not done so they too would be at fault but as it happens they went back to those with responsibility to try and seek a solution. If a meter is inaccessible then logic dictates that it should be relocated if that is the only means to get the required access.

Moreover, quite apart from the option of relocation of the meter the Authority should have pursued the other options at their disposal pursuant to the Act. The Ombudsman's attention was drawn to paragraph 6 of Schedule 3 to the Act which confers Rights of Entry to the Authority on the following terms:

The Authority may at all reasonable times through an officer authorised by the Authority enter any premises for any of the purposes following—

a).....

b) inspecting or working on meters, fittings, electric lines, and other apparatus and works belonging to the Authority;

(c) ascertaining the quantity of electricity consumed or supplied;

(d)

The power of entry herein conferred may be exercised between the hours of nine in the morning and four in the evening, after twenty-four hours' notice in writing, under the hand of an authorised officer of the Authority, has been served on the occupier of the relevant premises or, if unoccupied, then on the owner or lessee, or the agent of the owner or lessee thereof.

If the Authority has reasonable cause to believe that any right of entry of an authorised officer herein conferred may be or has been hindered by any person the Authority may apply to the Magistrates' Court for a warrant to enter the premises, if need be by force.

Therefore, when the argument was put forward that obtaining access was a problem the Ombudsman could not accept it as the Authority could, and indeed should, have acted either by exercising their right of entry through their own Authorised Officer and if necessary by making an application to the Magistrates Court for a warrant to enter if need be by force.

A strict view has to be taken of this duty because ample provisions were made by Parliament to precisely enable the Authority to deal *effectively* with this sort of problems. To the extent that there are even possible offences related to the hindering of the Authority's Authorised Officer.

A person who wilfully hinders an officer authorised by the Authority from entering any premises pursuant to the provisions of paragraph 6 of Schedule 3 is guilty of an offence, and liable on summary conviction to imprisonment and to a fine at level 2 on the standard scale.

Collection of monies in respect of consumption

The investigation further uncovered another aspect of maladministration appertaining to the monies owed on account of consumption. The Authority initially established, through the bill based on actual readings, that there had been a consumption amounting to some £4,524.29. This debt was however apportioned by the Authority to take off the Complainant's challenge which incidentally was not founded on a disputed consumption but rather for other arguments put forward by the Complainant. The result was that the new amount claimed was £2,981.33 a significantly lower sum than that supplied by the meter.

The above may have been equitable and fair given the failings of the Authority but it is worrying that the 'public purse' should lose out on such an amount on account of administrative failings. That is to say, that the Ombudsman has to consider the administrative failings which resulted in only £2,981.33 being recovered by the Authority instead of the consumed amount of £4,524.29.

Be that as it may, faced with these facts it is difficult to see how the Authority can have strong moral grounds to take a rigid and forceful approach in respect of recovering monies for all those years. Less so, in this case, where the Ombudsman considers that the Complainant was the proactive party and certainly was not seeking to avoid paying for his consumption but who instead settled on his accounts diligently. In so far as the apportioned debt is concerned, notwithstanding the comments made above in respect of maladministration, the Authority should give every possible opportunity and offer all possible facilities at their disposal for the Complainant to make any repayment of the amount due in manner which does not impose undue hardship on the club's financial resources.

Conclusion

The Ombudsman sustained the complaint regarding the failure to read the meter and further found maladministration in respect of the apportionment of the monies. This latter finding does not detract from the fact that it may have been reasonable *in the resultant circumstances* to reduce the monies owed but the Ombudsman considers such a loss to the public purse was avoidable and should not have occurred had the meter been read at the relevant times.

Update

At the conclusion of the report the Authority informed the Ombudsman that the apportionment of the debt referred to a reduction of the monies owed to them. Such a reduction was based on the fact that part of the debt was statute barred because it dated back more than six years and would not be recoverable in a court of law given that it had not been billed during that period.

Housing Department

Case Sustained

CS/854

Complaint against the Ministry for Housing for having overlooked the Complainant's position in the Hostels Waiting List when rooms were allocated.

Complaint

The Complainant was aggrieved because he claimed his position in the Hostels Waiting List ("the List") had been overlooked when rooms at Devil's Tower Hostel ("DTH") were allocated by the Ministry for Housing ("the Ministry") to persons who were in lower positions in the List.

Background

In October 2007, the Complainant had lodged a Complaint with the Ombudsman against the Hostels Section ("the Hostels"), which at the time came under the Ministry of Family, Youth & Community Affairs. The Complaint was to the effect that over three years had passed since he had first applied for a room at the Hostels and he had not yet been allocated a room.

The Complainant lived in private, shared accommodation in extremely overcrowded conditions and in 2004 resolved to apply for a room at the Hostels. At that time there were no vacant rooms but he was informed by a member of staff at the Hostels that his name had been included in the List. In 2006, the Complainant received a letter from the Hostels Manager ("the Manager") which informed him that the current List was being updated and he was asked to complete a form which had been enclosed, if the accommodation was still required. The form would expire one year from the date of completion and applicants would therefore need to renew the application on an annual basis if they wished to remain in the List. Amongst other details, applicants were asked to state preference for the hostel of their choice.

The Complainant ticked DTH as his preferred choice and also ticked the space provided for a choice of either of the Hostels.

On renewing the application the following year, on the 22nd June 2007, the Complainant ticked BVH as the preferred choice.

By October 2007 after having been in the List for three years, the Complainant wrote to the Manager to find out his position in the List and enquire how much longer he would have to wait before being allocated a room. The Complainant was concerned because he claimed to have found out that others who had been on the List for less time than him had already been given a room. The Manager replied by letter and informed him that the contents of his letter had been noted and that if he required further information a meeting could be arranged.

A meeting took place at which the Complainant claimed he was told that matters were in order and he had to wait his turn on the List.

For the purpose of a brief description, there are two Government Hostels; one known as DTH and the other as Buena Vista Hostel ("BVH"). Accommodation at DTH consists of individual rooms with communal kitchens whereas accommodation at BVH is comparable to a dormitory which has been divided into cubicles by way of plasterboard partitions. The kitchen facilities at BVH are shared. Regarding location, DTH is situated in Gibraltar's north district and is a short fifteen minute walk to the town centre and other amenities whereas BVH is located in the south district and is about a forty five minute walk from the centre of town (regular bus services link both the north and south districts with the centre of town).

In the course of the Ombudsman's investigation, it transpired from a letter sent to him by the Principal Secretary ("the Principal") on 9th January 2008, that the Complainant had asked to be placed in the List for BVH (in his June 2007 application) because he had a better chance of being offered accommodation there than at DTH and in any event could at a later date request a transfer to DTH once a room became available. The Principal stated that the Complainant had been in fifth position on the List for DTH and was now first for allocation at BVH which meant he could be allocated a room within the next few days. In respect of DTH, the Principal explained that over a long period of time, very few rooms became available there and it would be in the Complainant's interest, if he had a pressing need for alternative accommodation, to move to BVH when a bed became available. The Principal stated:

'Preference for rooms at DTH is first given to residents at BVH, so he stands a better chance of being allocated a room at DTH in a much shorter period of time once he is already a resident at BVH. The Hostels Manager will shortly be contacting Mr..... with an offer of accommodation at BVH'.

In February 2008, further to the above information, the Ombudsman requested information from the Principal as to whether the offer of accommodation at BVH had in fact materialised. The Principal replied that further to the offer being communicated to the Complainant by way of registered letter, a meeting took place between the Complainant and the Manager.

The Complainant informed the Manager that he did not like the type of accommodation and environment at BVH. Furthermore, as he had no means of transport, he was not interested in taking up the offer of allocation at BVH.

In relation to the List and the Complainant's concerns, one of the recommendations made by the Ombudsman to the Ministry was that:-

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

In June 2008, the Complainant received a letter from the Manager in which he was informed that his name had been deleted from BVH List and that it was in his interest to renew his application if he still wished to be considered for a room at DTH, his initial application. He was also informed that if he did not reply by 31st July 2008, his name would be permanently deleted from their records. An application form was enclosed. This was duly completed and returned by the Complainant with the preference stated as being DTH.

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A year later, in June 2009, the Complainant claimed to have found out that rooms had become available at DTH and had been allocated to persons who were in lower positions in the List. In order to obtain information at source, the Complainant wrote to the Manager at the Ministry. In his letter he explained that he lived in extremely overcrowded conditions. He requested an update with regards his position in the List and enquired as to how much longer he would have to wait before a room became available at DTH. No reply was received and the Complainant therefore took his grievance to the Ombudsman in order that the matter could be investigated.

Investigation

The Ombudsman arranged a meeting with the Manager to discuss the Complainant's case and was requested to bring in the latest available List.

At the meeting, the Manager proceeded to provide background information in respect of the List but it was noted that he did not bring the latest one available as had been requested (reference had to be made to a copy of the List dated 27th October 2008 held by the Ombudsman). He explained that the List had originally been drawn up at the request of the Office of the Chief Minister as part of an internal administrative process and was divided into three categories as follows:

- (i) *Persons in Private Accommodation Waiting for Allocation at DTH;*
- (ii) *Persons in Private Accommodation Waiting for Allocation at Buena Vista Hostel ("BVH");*
- (iii) *Persons in BVH Waiting to be Transferred to DTH.*

The Ombudsman commented that the List should be updated on a monthly basis and made available to persons included in it to enable them to check their position as and when required. Furthermore, the Ombudsman directed the Manager to the recommendation made in Report CS 773 as stated above. The Manager explained that due to the Hostels being short staffed, the List had not been updated for the last two months.

The Manager provided the Ombudsman with information with regards the application process for accommodation at the hostels. He explained that applicants had to complete an application form which expired on an annual basis and had to be renewed if applicants wanted to remain on the List.

If the applicant was allocated a room at BVH and then requested a transfer to DTH, the Manager explained the date which would be taken into account in the List would be the date on which the transfer was requested and not the original date of application for accommodation.

Prior to the meeting, the Ombudsman had inspected a copy of the application form which had been brought in by the Complainant. Applicants had to provide their contact details, Identity Card Number, Taxpayer Number, Employer details and state a preference for one of the hostels (if that was the case). The form then had to be duly signed and dated and handed in at the Ministry. The Ombudsman made three observations in respect of the form:

- (i) *He noted that there was no distinguishing feature between the original application form and the form used for renewal of the application.*
- (ii) *There was no section included in the form which requested applicants to inform the Department of change of circumstances.*
- (iii) *In the section pertaining to Employer Details, the Complainant had stated 'Plumber (self employed)'.*

After applying, the person was included in the List until such time as a room became available or

until the accommodation was no longer required. The Manager explained that although the List was adhered to, there had been instances when due to instructions from higher authority, persons who were not included in the List had been accommodated.

The Manager informed the Ombudsman that it had been his practice to leave five or six rooms vacant at DTH in case of emergencies. DTH was chosen for this purpose due to its location; situated near the hospital and town centre. In April 2009 and due to having received instructions from higher authority to provide accommodation to an individual, the Manager took the opportunity of allocating all the vacant rooms at DTH and making alternative provision for emergencies at BVH. He explained that the reason for doing this was due to the demand for rooms at DTH.

The Manager stated that the rooms were allocated to persons in position four, five and six and possibly seven in the List. The Complainant, who at that time was in position two, was classified as being unemployed and was therefore not eligible for a room at the hostel. The Manager believed that this could be the reason why the Complainant was not contacted but would have to check his files in this respect. He did state that in the past he had contacted applicants by phone when their turn for allocation had been attained even though they were listed as unemployed. The Manager stated he did that in order to give applicants the opportunity in case their circumstances had changed and they had been able to obtain employment.

The Ombudsman pointed out to the Manager that the Complainant's application form stated his employment as being a plumber on self-employed basis. The Manager once again replied he would have to peruse the relevant files.

Regarding the persons in first and third position in the List, the Manager explained the former had not renewed his application and the latter no longer wanted a room.

The day after the meeting, the Manager contacted the Ombudsman and informed him that he had checked the pertinent files. He had noted that there was no copy of the Complainant's July 2008 application renewal on file but there was a note made by a former employee at the Hostels Section dated March 2009 which stated that the application had been renewed. The Manager was informed by the Ombudsman that he had a copy of the renewal form which had been brought in by the Complainant. In order to amend their records, the Manager informed the Ombudsman that the Complainant would need to provide proof of current employment by way of a letter from his employer in which should be stated the commencement date. In respect of the period in which he was self-employed, the Complainant should request records of social insurance and P.A.Y.E. (Pay As You Earn) payments made by him for that period as proof of that status.

The Complainant was informed of the above request and he duly provided a letter from his current employer in which it was stated that he had commenced employment with the company on 27th October 2008. No information was provided at that stage as proof of his self employed status but the Complainant strongly denied that he had ever been unemployed.

The Ombudsman wrote to the Manager on the 11th June 2009 enclosing a copy of the aforesaid letter, and informed him that due to an error in their records and after having waited for five years for accommodation at DTH, the Complainant's position in the List had been overlooked. The Ombudsman stated that there was no doubt that the error had caused suffering and stress to the Complainant and requested that the Manager provide his comments as to how he intended to resolve the matter. Monthly Lists were requested by the Ombudsman until the matter was resolved.

After two reminders dated 29th June and 7th July 2009, a reply dated 8th July 2009 was finally received on the 15th July 2009, and the List to 31st March 2009 enclosed. In the latter, the Complainant was in first position.

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The Manager apologised for the delay in replying which he stated was due to having had to make enquiries to various departments and await their reply.

He stated that since 2001, the Complainant had changed employment on six occasions. When he renewed his application with the Hostels in July 2008, he had stated that he was self-employed. This information was checked with the corresponding department and it was found that there was no official record that he was employed at that present time and no record of him having ever registered as self-employed.

The Manager explained that a former employee with the Hostels was unable to contact the Complainant to bring the matter to his attention and pointed the Ombudsman to the fact that when the Complainant's employment status changed and he was employed on 27th October 2008, he did not inform the Hostels.

The Manager continued by stating that the Complainant was on the List and would be offered a room as soon as one became available. He reminded the Ombudsman that rooms normally became vacant on the death of a tenant, as when they retired they held on to accommodation to be eligible to receive Community Care payments. The Manager explained that there had been a large increase in demand for Hostels facilities since persons had become aware that when they retired they registered as unemployed and became entitled to free accommodation until they reached the age when they were entitled to Community Care. In private accommodation, rent would have to be paid regardless of whether the persons were unemployed. The Manager stated:

'The Complainant's track record would enable him to enjoy large proportion of free accommodation as any other long established residents of retirement age are enjoying at present because of their current unemployed status.'

The only fault that the Manager found with the present system was that at the time of having a room available, the Hostels employee was unable to contact the Complainant. He also mentioned the fact that the Complainant's record of being self-employed could not be verified by the corresponding department and stated that to date he did not appear to have registered as self-employed.

The Manager contacted the Ombudsman by phone and referred to another case which was also being investigated but was relevant to the matter at hand. The Manager pointed out that for application purposes, the date taken into account for the List was the original date of application. The Manager was told that this data contradicted the information he had provided at the meeting with the Ombudsman. He was told that procedures needed to be put in place. These would enable staff to follow and implement procedures accordingly and would result in everyone being treated fairly. The Manager admitted that he would have to meet with the PHO to review current procedures.

In the meantime, a week after the above conversation, the Complainant came to the Office of the Ombudsman because he was astonished at the treatment he had received from the Manager when he went to collect an application form. The Hostels had recently moved into offices at the City Hall. Whereas before they used to have offices which were readily available for access by the public, the new offices were inside the City Hall which is guarded by Security Guards and where access is restricted. When the Complainant attended, he informed the Security Guard of what he required. The Guard in turn contacted the Manager, who proceeded to poke his head out of the veranda on the second floor of the building and dropped the application form. The Complainant was aggrieved at this situation; the unprofessional service he had received and the fact that whereas before he would have been able to freely enter the Hostels Office it now appeared that he would not be able to speak to anyone at the office.

The PHO and the Ombudsman convened a meeting for the 20th August 2009 to discuss the Complainant's situation; this had to be deferred to the 4th September 2009 due to unforeseen circumstances.

At the meeting, the Ombudsman voiced his dissatisfaction with the way the Hostels was being run. He stated he could not pinpoint whether the Hostels was lacking in procedures, cohesion or infrastructure. The PHO agreed in part to the statement and felt that improvements were needed.

The Ombudsman voiced the Complainant's concern with the fact that the new offices did not allow easy access and also mentioned the unprofessional service the Complainant claimed had been provided by the Manager. The PHO explained that at the present time, the Hostels was running at fifty per cent of its capacity; from a complement of thirty one persons there were presently fifteen. Allocating or sharing a counter between the Housing Department and the Hostels could be a possibility which could be looked into. The PHO advised that until a solution could be found with regards access to the Manager, the latter visited the Hostels in the mornings and if the Complainant required seeing him, could probably avail himself of this opportunity. It was pointed out to the PHO that the Complainant worked, as did other residents at the Hostels, and this could prove to be a hit and miss exercise in that when the Complainant was in DTH the Manager could be at BVH and vice versa. The matter would be discussed between the PHO and the Manager for a solution to be found.

The matter of the room not being allocated to the Complainant even though he was next in the List was also discussed with the PHO. It was explained that when the Complainant had submitted his application form he had stated that he was self-employed. The Hostels checked this information with the corresponding department and found that there was no official record that he was employed at that present time and no record of him having ever registered as self-employed. Therefore, according to the Manager, they tried to contact him by phone to make him aware of their findings and to inform him that they would be changing his status in the List to show him as being unemployed, but were unsuccessful. It was pointed out to the PHO that in line with good administrative procedures, the Hostels should have immediately written to the Complainant with the information obtained and requested an explanation with regards what appeared to be the erroneous information he had provided in the form.

The PHO agreed that procedures needed to be put in place and requested that the Ombudsman proceed to write to him with all the issues so that he could meet and discuss these with the Minister.

On the 11th September 2009, the Ombudsman sent the requested letter to the PHO. After several reminders, a reply was finally sent by the PHO on 13th November 2009 apologising for the delay due to other pressing priorities. The reply stated as follows:

'Current procedure (for allocation purposes) whereby applicants cannot be contacted by telephone will be extended to include your suggestion which is to issue a written follow up letter. In the event that no reply is received within fourteen days, the Manager will consider the next applicant on the List.

In addition, the form will be amended to include a section highlighting to the applicant that Hostels Section is to be notified of any change in circumstances, i.e. employment status, contact address and contact telephone number.

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The Complainant's alleged comment that he is unable to speak to staff at the Department is in my opinion unfounded as he is fully aware that staff may be contacted by phone. Face to face meetings can be arranged by appointment. Nevertheless, I do fully understand the lack of professionalism shown in the action of dropping the application form though I am sure that this is not a regular occurrence.

A room at BVH has been offered to the Complainant and I am informed that this was refused. I will make arrangements for the applicant to be offered a room at DTH as soon as this becomes available.'

Conclusions

The Complainant was caused unnecessary hardship due to the manner in which the Hostels handled his application renewal for a room at DTH. After a wait of approximately five years, and having attained the position in the List which entitled him to the allocation of a room, he was denied this because of the lack of administrative procedures in place in the Hostels. Although the Complainant appeared to have provided erroneous information in his application with regards his employment status, there should have been a course of action in place which the Hostels should have followed in order to contact the Complainant. Principles of Good Administration state that public bodies should be open and accountable and information should be handled properly and appropriately and adequate records kept. The Principles also state that public bodies should be customer focused. In this case the Hostels failed on two occasions to provide these services:

- (i) By not having written to the Complainant to inform him of their findings with regards his employment status and the fact that he was going to be classified as being unemployed on the List. As a result this made him ineligible for the allocation of a room.
- (ii) The fact that the Hostels was unable to contact the Complainant by phone and failed to correspond with him at the time when his position on the List entitled him to a room at DTH if he was in employment. As a result, rooms available at DTH were allocated to persons in lower positions in the List.

Classification

Sustained

Recommendations

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

Case Sustained

CS/869

Complaint against the Housing Department for approving an exchange of flats and subsequently not allowing the exchange.

Complaint

The Complainant was aggrieved by the fact that on the 25th November 2008 he and another government tenant ("the Other Tenant") submitted an application to exchange tenancies which was approved by the Housing Department ("the Department"). However, this exchange was later refused by the Department on account that the new requisite tenancy agreement had not been signed by the Other Tenant.

On the 3rd December 2008 the Department approved the applications made by both tenants subject to settlement of arrears of rent by the Complainant. Such arrears were settled by the 5th December 2008.

The Complainant informed the Ombudsman that the exchange was refused by the Department on account that the Other Tenant with whom the Complainant was going to exchange tenancies had passed away on 13th March 2009 before the new tenancy agreements had been signed.

The Other Tenant had been having some health problems and it is said by his son that he was hospitalised on three occasions from December 2008 to March 2009.

The Complainant's reasons for moving were stated as being in order to live more comfortable in the future. The Complainant declared in his application that his wife was pregnant at the time. The other tenant stated his reason for moving to be to move into a smaller 3RKB flat.

On the 24th March 2009 the Complainant and the son of the Other Tenant attended an interview with the Minister for Housing. The Complainant was informed by the Minister that the last record on file prior to the death of the Other Tenant was his [the Other Tenant's] refusal to exchange as it was alleged he was not aware of the exchange request. Furthermore, the Minister informed the Complainant that the applications were "no longer classed as an exchange as this was now an 'allocation'". The Complainant was referred to the Housing Allocation Committee ("HAC").

On the 1st April 2009 the Complainant and the son of the Other Tenant wrote under separate cover to the HAC requesting that the Complainant be allocated the Other Tenant's flat. The HAC replied to the Complainant on the 14th May 2009 informing him that the HAC was unable to consider the request for an exchange.

The reasons given to the Complainant in that letter dated 14th May 2009 were:

"The Committee was unable to consider your request for an exchange... Exchanges are agreed between tenants who currently reside within the properties with the final approval granted by the Housing Department. Due to recent bereavement...no longer has a living tenant and is therefore due to be returned to the Housing Department. The Flat will then become part of the Housing Stock and dealt with accordingly."

On the 3rd June 2009 the Complainant wrote to the Ombudsman informing him on the 18th May 2009 he had appealed the decision of the Housing Department / HAC to the Housing Tribunal ("HT") and that the HT had not acknowledged or replied to this letter of appeal.

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Investigation

The Ombudsman wrote to the Principal Housing Officer on the 5th June 2009 and received a substantive reply from the Housing Manager on the 2nd July 2009.

Given that the matter had been referred to the Housing Tribunal ("HT") on the 18th May 2009 the Ombudsman decided to await the outcome of that referral.

On the 16th November 2009 there being no decision from the Housing Tribunal on the issue the Ombudsman wrote to the Housing Manager seeking an update as to the decision of the HT on this matter. The Housing Manager by letter dated 4th December 2009 informed the Ombudsman that the HT had not yet ruled on this case.

Pursuant to section 14(1) Public Services Ombudsman Act, the Ombudsman took the decision to investigate this matter and wrote to the Housing Manager on the 6th January 2010, informing her that the matter was now being recorded as a formal Investigation.

On the 12th January 2010 the Ombudsman met the Housing Manager and examined the following:

- (i) The file appertaining to the Complainant's application for allocation of a tenancy.
- (ii) The file appertaining to the flat currently being occupied by the Complainant
- (iii) The file in respect of the flat previously occupied by the Other Tenant (Deceased).

The letter from the Housing Manager dated 2 July 2009 to the Ombudsman sets out the factual background in this case. It is alleged therein that arrangements were made to visit the Other Tenant at the hospital with a view of signing the new tenancy but that this person refused to sign. A handwritten note dated 5/12/08 to this effect is found at the bottom of a form within both files referred to at 1 and 2 above.

From the investigation conducted it was also confirmed that the Complainant had a meeting with the Housing Manager and the Minister for Housing on the 24th March 2009. The minutes of the meeting clearly refers to the procedure for exchange between government tenants. The procedure is said to be as follows:

"First both tenants have to submit an Exchange Form; Once this is approved Tenancy Agreements are prepared by the department for the interested parties to sign."

The said minutes of the meeting also confirm that on the 5th December 2008 the Housing Inspectors went to visit the Other Tenant in hospital in order for him to sign the new tenancy agreement. It is alleged that the Other Tenant stated that he was unaware of any application for an exchange and that he did not wish to exchange his flat.

Conclusions

It is an undisputed fact that the Application made by both tenants was accepted and approved by the Housing Department subject to payment of arrears by the Complainant. The arrears were indeed settled by the Complainant. Consequently, the Housing Department proceeded to draft the new tenancy agreements for the Complainant and the Other Tenant to sign in relation to the new flats.

The Ombudsman is thus concerned to note that the Housing Department were on the 5/12/08 informed that the Other Tenant had allegedly denied knowledge of the Exchange Application. The evidence is that on the 25th November 2008 the Other Tenant had signed and submitted an application for Exchange of Accommodation (“the Application”) which was accepted and approved by the Housing Department. To date there is no suggestion of any issue having been taken with the Application.

Therefore, it is fair to say that the Complainant upon settlement of his arrears of rent had a genuine expectation that he would exchange flats. In fact the expectation it appears was the same on the Housing Department because they actually drafted the new agreements.

On being made aware of the discrepancy between the Application and the comments allegedly made by the Other Tenant whilst he was visited by the Housing Inspectors in hospital one would have expected the Housing department to have made further enquiries. However, given that no issue is taken with the Application and that this was approved by the Housing Department the Ombudsman can understand the high and genuine expectation created on the Complainant. This view may be different if allegations had been made as to the Application but that is not the case.

At this juncture it is appropriate for the Ombudsman to consider the reasons given to the Complainant by the HAC on the 14th May 2009. The Ombudsman is of the view that there appears to be a conflict between affording the said reasons to the Complainant and the undisputed facts. The first part of that reasoning stated that a need for exchanges having to be agreed by tenants who currently reside within the properties with approval granted by the Housing Department. That does not sit comfortably with the facts in this case and such a purported requirement is actually complied with in so far as the evidence which has been brought to the Ombudsman’s attention. The latter part of the reasoning which says that due to the bereavement the flat no longer has a living tenant and is therefore due to be returned to the housing stock also appears perverse.

The Ombudsman has to take note that the living tenants made an application for an exchange whilst both were alive and in occupation of their respective flats and that these applications were approved as previously explained. The reasoning of the HAC is therefore, in the view of the Ombudsman misconceived, at least, to the extent outlined above.

Moving on to the issue of post approval procedures, the Ombudsman, is clear in that the next requirement was purely one of the tenants signing their new respective tenancies. That is to say, that as far as the Housing Department was concerned; their approval meant that the tenants had been offered each other’s flats.

It is also interesting to note that had the Other Tenant died prior to having been visited by the Housing Inspector the same situation would have arisen, in the sense that, one would be left with an approved exchange but with one of the tenants who is unable to sign his/her new tenancy. However, because in this case the allegation is one of a change of mind by one of the tenants, the Ombudsman is of the view, that greater scrutiny and diligence is demanded of the Housing exchange procedure itself.

It is inconceivable that in light of such a remarkable discrepancy no further investigation or enquiries were made by the Housing Department. The Other Tenant did not die until 13th March 2009 but he was not contacted or asked about, his application dated 25th November 2008, and his alleged lack of knowledge on the 5th December 2008. The discrepancy is left at that and the process stalled.

Moreover, it is submitted that a proper, reasonable and just exchange procedure would require to have in place alternative avenues to be followed in cases where discrepancies arise or where a tenant later changes his/her mind. More so when in this case the Application is already approved, subject only, to the arrears of rent being settled. Of course it is understood and it is logical that the culminating feature is for the tenants to have to sign new tenancies for the new flats but that is a consequence of the approved transaction and not a determining factor for the approval.

Visit to hospital by Housing Inspectors

The issue of the housing inspectors visiting tenants at the hospital wards has been mentioned by both the Complainant and the Housing Department. The Ombudsman feels that for the purposes of the Complaint itself, the visit by the inspectors to the Other Tenant at his hospital bed, is of limited effect. The substantive nature of the complaint is unaffected by this.

However, it seems that such visits should be restricted only to cases where it is absolutely necessary. In this case it seems there was no sense of urgency to necessitate such a visit in hospital. Notwithstanding the above comment it is noteworthy to learn that the inspectors will go through the hospital staff and request permission before visiting any tenant in their official capacity.

Housing Tribunal

The Complainant has informed the Ombudsman that on the 18th May 2009 he had appealed the decision of the Housing Department / HAC to the Housing Tribunal ("HT") however, the HT has been unable to deal with this sort of appeal. It is imperative that any appeal procedure put in place by public bodies should confer upon those people, with reason to avail themselves of it, a quick and fair forum to consider their appeals.

In this case the appeal to the HT was made on the 18th May 2009 and even as late as January 2010 the HT had not yet considered the appeal. This delay is not acceptable and a decision should have been made available to the Complainant within a reasonable and expedient time frame which one would expect to be at least within 3 months of the appeal being lodged. The Department should have had some other mechanism in place that would be able to deal with the Complainant's grievance. The absence of legislation to enable the HT to consider and decide cases such as this one should be of no consequence to the Complainant and he should not have been made to wait since 18th May 2009 for an answer.

Classification:- Sustained

Recommendations

There should be no further delay in the Complainant being allowed to get what the parties (including the Department who had given their approval) had agreed to, that is, the exchange.

The expectation created on the Complainant has been so great that the Housing Department should feel morally obliged to see through that which they approved. Seeing through the exchange is in the present circumstance the most equitable solution to the situation. Significantly in this case the new flat remains vacant, since the Other Tenant's bereavement, and has not been allocated. The just and fair outcome would therefore be for the Complainant to be allocated that particular flat.

Furthermore, the Department ought to ensure that the procedure for Exchange of Accommodation has sufficient and reasonable safeguards in place to cater for instances when one of the tenants is unable to sign the new tenancy or refuses to do so.

Case Sustained**CS/882**

Complaint against the Housing Department for refusing to accept the Complainant's application.

Complaint

The Complainant submitted an application form ("the Form") for inclusion in the Housing Waiting List on the 6th February 2008 which the Housing Department refused to accept. The Department's reasons for refusing the Form were that the Complainant had not submitted proof of residence and that she needed to produce the Form complete with a stamp from the Immigration Authorities.

The Complainant was aggrieved by this refusal and argued that given her personal status, the Form did not require a stamp from the Civil Status & Registration Office ("CSRO"). Furthermore, the Complainant was aggrieved by the Department's lack of reply to her letters.

Investigation

It is the Ombudsman's opinion that this complaint highlights the importance of having good administrative practices within the public service generally, as well as, in the Department in question. At the heart of good administration lies the objective of fair and efficient treatment of individuals regardless of their background or status. In the context of those principles the Ombudsman considered the facts of this case and wrote to the Department to clarify matters.

Conclusion**Non Reply to Letters.**

The Complainant alleged that she wrote several times to the Department regarding the application and informed the Ombudsman that on one occasion she delivered a letter by hand to the Department. The Ombudsman obtained evidence to the effect that in November 2009 the Complainant wrote to the Department to take issue with the refusal of her application and with the fact that she had only been informed months later that the application had been refused.

There being no reply to her letters the Complainant presented her complaint to the Ombudsman. The Ombudsman ascertained from the Department that they had no record of the Complainant's letters including the November 2009 letter.

For that reason the Ombudsman gave credence to the Complainant's assertion that she wrote several times to the Department and that the latter failed to answer her letters. Clearly, the evidence showed that they did so in reply to the November 2009 letter.

Rejection of the Complainant's application.

At the time of her birth the Complainant was of Moroccan nationality. Having been born in Gibraltar, after the age of ten she acquired British Nationality pursuant to the provisions of the British Nationality Act 1981.

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The Complainant attended the Department's customer service counter to submit the Form. It was not until months later that the Department verbally informed the Complainant of the need for her application to contain a stamp from the CSRO.

The Complainant sought to have this stamp included and to that end she visited the CSRO. This latter department, quite rightly, informed the Complainant that they could not stamp the application given that her personal status was not one which required them to stamp the Form. This was so because the Complainant was not a Registered Gibraltarian.

The Ombudsman could only conclude that the Department must have wrongly assumed at that early stage that the Complainant was a person requiring a stamp attesting to the fact that such a person was a Registered Gibraltarian.

Quite how the Department arrived at that erroneous conclusion is to some extent immaterial. What is fundamental is that no proper inquiries were made at the time by the clerk to establish whether or not the Complainant's application required a stamp from the CSRO. A diligent enquiry would have established that she did not require such a stamp.

Eligibility for government housing is governed by section 4 of the Housing Allocation Scheme (Revised 1994) which states that persons who are eligible must be either:

1. Registered in the Register of Gibraltarians.
2. Persons who at the time of the application have a right of permanent residence.
3. British citizens who have resided in Gibraltar permanently and continuously for a period exceeding ten years (subject to approval by the Housing Allocation Committee.)

The Complainant therefore should have been required to prove only that she had resided in Gibraltar permanently and continuously for a period exceeding ten years. She did not require the stamp from the CSRO.

The Ombudsman accepts that sometimes applicants can fail to communicate the information fully or precisely; however, ultimately it is the Department through their clerks who should ensure that they enquire the take diligent steps to establish the status of applicants.

Classification

The Compliant is sustained in both ambits, that is to say, it is sustained in so far as the Department wrongly rejected the first application and in relation to the Department's failure to reply to the Complainant's letter.

Recommendation

The Ombudsman recommended that the Housing Application Form should be amended to include reference to the requirements appertaining to each category of applicant. In this way a person would know whether she needed to have a stamp or whether she needed to provide proof of residency.

The Principal Housing Officer should ensure that counter clerks are conversant with the Ministry for Housing Allocation Rules, in particular, as to which categories of applicants are eligible to apply for housing and which of those require the stamp from CSRO.

Income Tax Office**Case Partly Sustained****CS/856**

Complaint against the Income Tax Office for not having approved the Complainant's application for credits of Social Insurance Contributions; and non-reply to letters.

Complaint

The Complainant was aggrieved because the Contributions Section ("the Section") of the Income Tax Office ("the Department") had not approved his application for credits ("the Credits") of Social Insurance Contributions ("the Contributions"). Furthermore, he also complained that various letters he had written to the Section in which he sought clarification as to the reasons for the refusal, had not been answered.

Background

In May 2008, upon attaining the age of 60, the Complainant applied for Credits. If the application was successful, it would enable the Complainant, who suffered from a heart condition, to leave his employment, safe in the knowledge that until he reached the pensionable age of 65, Contributions would be credited to his account and the final assessment of his pension would therefore not be affected due to having stopped working five years earlier. He would also be able to register with Community Care Gibraltar Limited ("CCGL") as a community officer and qualify for a monthly payment from them if he was in receipt of a letter from the Section, stating that he was entitled to the aforementioned credits. Payments would be monthly until he attained the pensionable age at which point they would be paid quarterly.

On the 3rd June 2008 by way of letter, the Complainant was informed by the Section that his application had not been approved due to not meeting the criteria required under *Regulation 11A, sub-regulation (2)(a) of the Social Security Insurance Contributions Regulations*. In summary, this meant that to qualify for credits, a person should have paid or been credited with no less than 104 Contributions during the five years preceding the year when he attained the age of 60.

The Complainant explained that he was at a complete loss to understand how there could not be enough Contributions recorded, and in order to present proof of payment, proceeded to look over documentation in his possession in relation to pay slips, employers letters, etc. In December 2008, he wrote to the Section to complain that he did not feel their decision was fair and listed past employers, mentioning payslips from which the relevant Contributions had been deducted, etc.

A week after sending the letter, the Complainant stated he received a phone call from an officer ("the Officer") at the Section in which he was informed that his claim for CCGL payments had been allowed. The Complainant requested that the information be provided to him in writing in order that he could claim for payments on which he had lost out due to the fact that he had previously been told he was not entitled to, and had been left with no option but to continue in employment. He also wanted to know the reasons for the change in the decision.

Shortly after, the Complainant attended a meeting with the Section and claimed that, contrary to what he had been told earlier, he was informed that he could not obtain CCGL payments because he was not of pensionable age. Once again he requested that the decision be put in writing.

In May 2009, and due to not having received the written reply, the Complainant wrote to the Ombudsman and explained his grievances. In his letter he also mentioned that for the past year he had been waiting for information which the Section claimed they had requested from the Department of Social Security in United Kingdom (“the DSS UK”) with regards Contributions made by him in that country, but explained that to date he had no evidence that the request had been made.

The Complainant informed the Ombudsman that he had stopped working and was presently in receipt of unemployment benefit but stated that he wanted an explanation from the Section on the benefits he was entitled to and information on when they had requested the details from the DSS UK with regards the Contributions he had made there.

Investigation

On the 4th June 2009 the Ombudsman wrote to the Department of Social Security (“the DSS”) to enquire when a reply would be sent to the Complainant. A reply was received informing the Ombudsman that the matter was being dealt with by the Contributions Section of the Department (the Income Tax Office). It must be noted at this stage that the Contributions Section which had previously been part of the DSS was now part of the Department (Income Tax Office).

Approximately one month later, the Ombudsman contacted the Complainant to enquire if he had received any news from the Section. The Complainant informed him that on calling at their offices recently to enquire if there had been any developments, he was handed a letter dated 2nd June 2009. The letter stated that on the 7th July 2008, almost one year earlier, the Section had requested Form E104 from DSS UK in relation to Contributions he had made there but explained that to date no reply had been received.

On the 29th July 2009, the Ombudsman wrote to the DSS for information on whether the Section had completed their enquiries with regards Contributions made by the Complainant and also requested an update in respect of their enquiries in relation to Form E104.

The DSS contacted the Ombudsman and informed him that the Contributions Section was now part of the Department, i.e. the Income Tax Department, and correspondence should be addressed to them.

In order not to delay the matter further, the Ombudsman sought a meeting with the Section which was held on the 25th August 2009. At the meeting, the officer explained that for persons to be eligible for Credits between the age of 60 to 65 they have to meet the following criteria under *Regulation 11A, sub-regulation (2)(a) & (b) of the Social Security Insurance Contributions Regulations*:

Credits for persons aged 60 or over or having attained statutory retirement age.

11A.(1) This Regulation applies to any person who—

(a) has attained the age of 60 years but not the pensionable age, or

(b) has retired at age 55 by operation of law,

(c) is not entitled in respect of the same week to a credit under any other provision of these regulations.

(2) Subject to sub-regulation (3), a person to whom this regulation applies shall be credited with a contribution as an employed person for any week in respect of which he is not liable to pay contributions under the principle Act, if–

(a) he has paid or been credited with not less than 104 contributions during the five contribution years immediately preceding the year he attains the age of 60 years, and

(b) he has paid or been credited with sufficient number of contributions to qualify for an old age pension at the minimum rate under the Act.

(3) A person who is absent from Gibraltar for more than 182 days in a contribution year shall not be entitled to any credit for any of the weeks in that year.

The officer continued by stating that the Complainant had attained the age of 60 in May 2008 which meant that the commencement date of the five year period in which the Complainant would have had to make 104 Contributions was May 2003. On checking the Department's records they showed 118 Contributions throughout that period. The Ombudsman referred the officer to her letter of the 3rd June 2008 in which they had informed the Complainant that his application for credits had been refused because he did not have sufficient Contributions.

The officer explained that some time after the letter was sent, the Complainant's employer paid further Contributions. The officer claimed she contacted the Complainant by phone to inform him of this development and told him that he now had sufficient Contributions. She also claimed to have informed him that he would need to contact the Pensions Section of the DSS ("Pensions") with regards his local pension entitlement, the other requisite in order to qualify for Credits. Notwithstanding, the Officer explained that in July 2008 and in order to assist the Complainant, she had sent Form E104 to the DSS UK requesting details of the Complainant's employment details and Contributions whilst in the UK. In relation to the Complainant's statement in his letter of the 20th February 2009, in which he mentioned he had been contacted by the Section and informed that his claim for payments CCGL had been allowed, the Officer stated that CCGL is not a Government entity; it is a private charitable trust, and it was therefore impossible that the Section could have provided him with that information. Nevertheless, the Officer stated that to be eligible for CCGL payments, the Complainant would have to either present a letter from the Section confirming that he was in receipt of Credits (over 60) or a letter from Pensions stating that he would be entitled to a pension upon attaining the age of 65.

The Officer explained that whilst looking through the Complainant's records to be able to determine the number of Contributions made, she had checked the records held by the former Department of Labour & Social Security dating back from 1973 up to 1990 (as from that date the records are kept by the Employment Service) and had not found him to have been registered with any of the companies which he had mentioned in his letters of the 10th December 2008 and 20th February 2009. The Officer stated that the Complainant would have to produce payslips for that period to prove that Contributions had been deducted by his employers.

The Ombudsman met with the Complainant on the 28th August 2009 to update him on the findings of the meeting with the Officer and to provide him with an opportunity to comment.

The Complainant voiced his discontent on two issues:

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- (i) The fact that even though the Officer had informed him verbally, after receiving his letter in December 2008, that he had sufficient Contributions, he had to date not received the information in writing to supersede their letter of 3rd June 2008 in which he was told that he did not have enough Contributions;
- (ii) When he met the Officer in June/July 2009, she mentioned that for his benefit, in order to ascertain whether he would qualify for a pension in future, he should begin to apply to the UK for details of Contributions he had made there. The Complainant was therefore under the impression that Form E104 had been sent to DSS UK by the Officer for that purpose. He claimed that at no time was he informed by the Officer that the second requisite to meet the criteria to qualify for Credits was that he had to be entitled to a local pension upon attaining the age of 65.

On the matter of Contributions made in Gibraltar (for the purposes of whether he was entitled to a pension), the Complainant explained he had arrived in Gibraltar around 1973/1974 and had been in regular employment throughout, apart from certain periods in which he had returned to the UK and worked over there. For that reason he was quite shocked to learn that the Officer had not been able to find official records of his employment details. In relation to payslips as proof that Contributions had been deducted from his wages, the Complainant stated he only had in his possession the ones pertaining to the last two years from his last employer.

Regarding the information required from the DSS UK in respect of Contributions made there, the Ombudsman advised the Complainant to arrange a meeting with Pensions to pursue the matter. The Complainant visited Pensions on the same day and explained to them what had transpired to date. He was advised that they would proceed to write to the DSS UK offices requesting the information.

The Ombudsman wrote to Pensions and requested that they update him accordingly once the relevant information was received.

In the meantime, the Complainant wrote to the PAYE (Pay As You Earn) Section of the Department to request that they provide him with all records they held under his name. He believed that the information would prove that he had been officially employed by the companies he had worked for and had duly paid PAYE throughout those periods and as far as he had been aware, also Contributions. He hoped to produce these records to the Section, as proof that he had made Contributions which had not been recorded by the DSS. The Ombudsman explained to the Complainant that regardless of the fact that an employer had paid PAYE, it could well be the case that Contributions had not been paid and that the exercise might prove to be futile.

The Department provided the Complainant with information which they had on their computerised records dating back to 1991 in respect of employers, dates and PAYE payments made but informed him that records prior to 1991 had been destroyed. The Complainant was taken aback by the comment and informed the Ombudsman who wrote to the Commissioner of the Department (“the Commissioner”) for clarification on the statement.

The Commissioner replied and explained that regular ‘weeding’ was carried out on PAYE files; *‘tax forms older than seven years are removed from the file and disposed of in compliance with Chapter 11.1 of the Government’s Accounting Instructions.’* Notwithstanding, the Commissioner confirmed that the Department does keep records of taxpayers gross income and tax deducted (Employer’s Statement Declaration and Certificates – Form P8) for more than seven years. He explained that with the employment history provided by the Complainant, they would look through their records and subsequently give the Complainant a report on their findings.

As advised, the Department concluded their investigation and informed the Complainant that they had searched through their records for the period 1981 to 1991 looking through the different companies listed in the employment history he had given them and were only able to find one record for the period 1981/1982 in which he had been registered as having worked for one of the companies and the PAYE duly paid.

By the 21st October 2009, the Complainant had still not received a letter from the Section to supersede the one dated 3rd June 2008 (in which they had informed him that his application for Credits had not been approved) so the Ombudsman wrote to the Department to that effect. It must be mentioned at this stage that the Complainant now met one of the two requirements to be able to obtain Credits. The Ombudsman also made enquiries with regards any information received from the UK in relation to Form E104 sent in July 2008 and requested a copy of the aforesaid form.

Approximately three weeks later, the Ombudsman received from the Officer a copy of Form E104 and of the letter they had sent to the Complainant dated 10th November 2009. In it, they referred the Complainant to his various letters. They informed him that after investigating the matter it came to their notice that there were a few discrepancies on some of his dates of employment. Those were amended and as a result it was noted that he did have sufficient contributions to satisfy one of the conditions to qualify for Credits. The Officer explained that was the reason why she had contacted him by phone without realising that he did not satisfy the second condition. The Officer continued by stating that a request was therefore sent to UK to establish the number of Contributions made by him whilst in employment in UK and determine if he was entitled to an EEC Pension; if he did he would meet the relevant conditions and would be awarded the Credits.

The Ombudsman also contacted Pensions to enquire if they had received news from the DSS UK with regards Contributions made by the Complainant in the UK and asked that if this had not been received that they provide a date by which they expected to receive the information.

Pensions replied explaining that to date they had not received any news from DSS UK and were unable to provide an indication as to when a reply could be expected as the matter was beyond their control. Nevertheless, they advised that a reminder had been sent to DSS UK.

The Complainant sent a registered letter to DSS UK on the 6th November 2009 requesting that they furnish him with the information he required referring them to Form E104 sent by the Department and the subsequent request from Pensions that DSS UK furnish them with Form E205. Further to this request he also emailed DSS UK.

On the 23rd November 2009 Pensions sent a letter to CCGL, with a copy to the Complainant, informing them that upon having received the relevant information from DSS UK, it had been determined that under current legislation, the Complainant would be entitled to an EEC Pro-rata Pension. On the 24th November 2009, the Complainant received by way of email, the information from DSS UK with regards the Contributions made there.

Conclusions

Non-Reply To Letters

The Ombudsman was of the opinion that there had been a delay of approximately one year in providing the Complainant with a written record of the new information obtained by the Department, whereby the Complainant satisfied one of the two conditions required to meet the criteria to qualify for Credits. This delay could only be classed as maladministration.

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A timely reply would have also clarified the misinterpretation on the part of the Complainant of the verbal information provided by the Officer through which he believed that he could claim CCGL payments. Principles of Good Administration advocate that public bodies should provide people with information that is clear, accurate, complete, relevant and timely.

There was also a failure on the part of the Department not to have provided the Complainant with clear and concise written information in respect of the criteria required to be able to qualify for Credits. In their letter to the Complainant, the Department should have informed him of the requirement to meet a second condition. In line with Principles of Good Administration, policies and procedures of public bodies should be clear and accurate.

Not Having Approved His Application For Credits Of Social Insurance Contributions

Regarding the matter of not having approved the application for Credits, the Ombudsman could not sustain the Complaint given that at the time of application the Complainant did not qualify according to the Section's records. However, there was maladministration in the ensuing events.

The Department did not chase the information requested in Form E104 to DSS UK; the Ombudsman determined that there had been maladministration. The Form was sent in July 2008 and the Complainant felt confident that the Section was actively pursuing the matter when that was not the case. It was not until the Complainant requested the information from Pensions on the 28th August 2009 that a result was achieved by 23rd November 2009 (three months); therefore, an undue delay which caused hardship to the Complainant could have been avoided if the Section had either:

- (i) Chased the information requested in Form E104 or
- (ii) Directed the Complainant to Pensions in the first instance.

Mention must be made of the Complainant's determination and perseverance, without which the outcome could have proven to be quite different.

Classification

Not Sustained - Not having approved his application for credits of Social Insurance Contributions – subject to comments above.

Sustained - Non-reply to letters

Recommendations

None made

Update

When the report is in draft format, both the Complainant and the Department are given an opportunity to read it through and make comments. In this case, the Complainant was not satisfied with the decision taken by the Ombudsman not to sustain his Complaint with regards the Department not having approved his application for Credits. He believed that the required contributions had been received by the Department shortly after having submitted his application and he had not been informed.

The Ombudsman arranged a meeting with the Section to find out the date on which the contributions were declared by the employer. A copy of the Employer's Annual Statement for the period 2007/2008 (Form P8) was provided and it was noted that the date on which this had been received by the Department was the 25th November 2008. The Complainant had made his application in May 2008 and the Section had taken the decision in June 2008, based on the contributions held at that time.

The Ombudsman enquired as to whether there could have been another way through which the Complainant could have obtained the information related to the current year's contributions from his employer. The Officer explained that there is a form in place (DSS-08) that is used when a person applies for benefits, but that there is no form in place with respect to information for current year contributions when a person applies for Credits.

The Commissioner of Income Tax, providing comments on the draft report, stated that the Department was at fault, (a) by not providing the Complainant with written information regarding the two conditions required to meet the criteria to qualify for social insurance credits and (b) for not pursuing the information requested in Form E104 from DSS UK.

The Commissioner further informed the Ombudsman that he had reviewed the systems in place and had carried out certain changes that should, in the future, prevent a repetition of this problem.

Department of Social Security

Case Sustained

CS/880

Complaint against the Department of Social Security for the delay in convening a Medical Appeals Tribunal

Complaint

The Complainant was aggrieved because of the delay on the part of the Department of Social Security ("the DSS") in convening a Medical Appeals Tribunal ("MAT").

Background

In 1985 the Complainant, who had been a teacher throughout her entire working life (approximately thirty four years - full service would have been thirty three and a third years), retired from service on medical grounds. The Complainant claimed that at the time, she attended the offices of the DSS and was informed that upon reaching the age of 60 (in 1993) she would receive her old age pension. When the time came to claim her pension, the Complainant once again attended the DSS. She was informed of the amount that would be payable to her and told that she would not receive the full pension due to not having continued to contribute toward social insurance after having retired on medical grounds. The Complainant claimed that no mention had been made of this at the 1985 meeting with the DSS nor had she received any notification from the Human Resources Department in that respect. The Complainant suggested paying for the shortfall in order to obtain the full pension but was told that this was no longer possible as she had already attained pensionable age.

On numerous occasions throughout the coming years, the Complainant approached the DSS with a view to finding a solution and receiving the full pension but none materialised. Then in June 2008 upon her enquiry, she received an application form ("the Form") for Invalidity Credits ("the Credits"). The Form was composed of two parts. The Complainant completed the first part in which she provided the personal information requested. The second part was completed by her doctor who certified that the Complainant had been suffering from chronic leukaemia and had been incapable of working since 1985 and was expected to remain so permanently. The form was handed back to the DSS in July 2008. A month later, the Complainant received an acknowledgement from the DSS and was informed that a reply would be sent to her as soon as possible. In the meantime, the Complainant wrote to the Minister for Justice ("the Minister") about her predicament and enclosed copies of documentation, amongst which was the letter from the Personnel Manager of the Human Resources Department, in which the Complainant was informed that the Deputy Governor had approved her retirement from the Service on medical grounds, effective 30th April 1985. A meeting was convened between the Complainant and the Minister but no solution found.

Not having received any news from the DSS by October 2008, the Complainant wrote requesting an update on the progress of her application, enclosing copies of the above-mentioned documentation.

An immediate reply was received in which the DSS informed the Complainant that they were waiting for her case to be heard by a Medical Board ("the Board") which they envisaged would take place in the coming weeks.

The Board heard the case on the 26th January 2009. In March 2009, the DSS informed the Complainant that the Board that examined her had been unable to determine if she was totally and permanently incapable of working during the period May 1985 (date on which she was medically boarded) to September 1993 (date on which she attained the age of 60) due to the lapse in time and delay in submitting the application for Credits. The application was therefore disallowed.

The DSS informed the Complainant that if she was dissatisfied with the decision she could appeal to MAT within twenty one days of the date of the letter, briefly stating the grounds on which the appeal was based; the Complainant appealed.

The Complainant was informed that her case had been placed in a waiting list with other cases pending MAT's review.

Seven months elapsed without any news so the Complainant sought an explanation. The DSS informed her that the matter was receiving attention and a reply would follow in due course. This did not materialise and in January 2010, feeling that she had exhausted all avenues with the DSS the Complainant brought the matter to the Ombudsman.

Investigation

The DSS provided an explanation to the Ombudsman on 'Invalidity Credits' and the requisites that need to be satisfied by the applicant to qualify.. It also referred to the decision taken by the Board, that due to the delay in submitting the application, twenty three years, it was not possible for them to determine if she had been totally and permanently incapable of working as from 1985. The DSS explained that there are many instances when a person is medically boarded from their regular employment which does not necessarily mean that they are totally and permanently incapable of doing some other type of work.

DSS stated that further to the Complainant's letter of appeal of the 23rd March 2009, against the decision taken by the Board, the application was referred to MAT on the 27th April 2009. MAT's chairman concurred with the decision taken by the Board and resolved that it was up to the Department's Principal Secretary (PS) to make the decision on whether Credits should be awarded for the period in question. The PS felt it was impossible for him to take a decision as it was a medical matter which required the recommendation of MAT where two of the members were senior medical consultants. DSS stated that they had now been able to confirm with MAT's Chairman that the Complainant's case would be heard at the next meeting which was in the process of being arranged. DSS would keep the Ombudsman informed of any developments and notified the Complainant accordingly about the meeting arrangements.

Three months later, in April 2010, the Complainant contacted the Ombudsman to inform him that her case had still not been heard. The Ombudsman wrote to the PS on the 27th April 2010 to request an update on the situation and sent two subsequent reminders before a reply was received on the 25th May 2010.

In the letter, the PS explained that the DSS had been unable to proceed with arranging a meeting of MAT because the Director of Public Health ("the DPH") had experienced much difficulty in appointing another doctor to MAT. The PS referred to Section 35(2) of the Social Security (Employment Injuries Insurance) Act which requires a Chairman and two medical practitioners to constitute MAT.

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The PS advised that he would immediately write to the DPH, insisting that there was an urgent requirement to appoint the other member to MAT in order that the case could be heard. Failing that, as a last resort, the PS proposed to contact the Minister for Family, Youth & Community Affairs in order that he would appoint a private medical practitioner to MAT to fulfil the statutory requirement of having three members as part of MAT. In the meantime, the PS advised that at the Complainant's request they had arranged a meeting to discuss her situation at which he would avail himself of the opportunity to update her on the case.

The Ombudsman convened a meeting with the PS to discuss the Complaint. The latter explained that he had met with the Complainant and assured the Ombudsman that he was pressing the DPH on the matter of the appointment of a third member to MAT and would meet with him on the 9th June 2010. The PS explained that the main problem with this particular case was the fact that due to the time elapsed, doctors did not feel they could determine that during the period 1985 to 1993 the Complainant had been totally and incapable of working. At that point, the Ombudsman pointed the PS to the second part of the Form (Invalidity Credits form) completed by the Complainant's doctor whereby he certified that the Complainant had been suffering from chronic leukaemia and had been incapable of working since 1985 and was expected to remain so permanently. The PS stated that this was a matter for MAT and he would strive to achieve that a panel be urgently put in place to avoid further delay.

MAT heard the case on the 22nd June 2010 and after having carefully weighed all the arguments, unanimously decided in favour of the Complainant.

Conclusions

Considering the developments of the case, it is a fact that MAT was set-up after the intervention of the Ombudsman. Notwithstanding the Ombudsman's involvement, it still took a year and two months for MAT to be set-up for the purposes of hearing the appeal submitted by the Complainant.

The reasons for the delay appear to centre on the difficulties to appoint members to the Panel, although no specific reasons as to the nature of these difficulties have been provided. It is imperative for the relevant authorities to consider why the difficulties arose and, if need be, review the statutory requirements for appointments to the Medical Appeals Panel in order to ensure that the delays experienced by the Complainant and undoubtedly others, do not occur again.

The events leading to the Complaint were triggered when the Complainant received the form for Invalidity Credits in 2008. This beggars the question as to why the DSS did not provide the Complainant with this form (or its equivalent) at an earlier date, e.g. when she retired in 1985, in 1993 when they informed her that she would not be getting a full pension and she enquired as to how to remedy the situation or on any of the subsequent occasions (prior to 2008) when the Complainant approached the DSS with her plight.

It goes without say that the lack of information from the DSS towards the Complainant, when she retired under medical grounds in 1985, was the root cause of this Complaint. It was also the lack of communication from DSS with the Complainant with regards the delay in the hearing of the appeal, which caused further grievance to the Complainant.

Principles of Good Administration advocate that public bodies should be open and accountable and should be customer focused.

Update

When the draft report is completed, both the Complainant and the Department are provided with a copy in order to provide their comments, if any. Upon having read the draft, the PS informed the Ombudsman that the onus to request Credits is on the claimant.

Classification

Sustained

Recommendations

The Ombudsman recommended that in cases where persons retire prior to having attained pensionable age, the DSS should meet with them to assess their entitlement and eligibility to a future pension. At that meeting, the DSS should provide the person with information in respect of the contributions they are entitled to make, if any, until reaching pensionable age and the methods by which he/she can do this, e.g. in cases where the person has retired on medical grounds, by applying for Invalidity Credits.

As the present situation stands, placing the onus on the claimant to request Invalidity Credits when they may not even be aware of its existence cannot be the correct stance; it inevitably results in a loss of benefits/assistance as has been proven by this case.

Case Partly Sustained

CS/889

Complaint against the Department of Social Security over the failure to provide the Complainant with a written reply and over the Department's refusal to refund payments made by the complainant in respect of social insurance contributions

Complaint

The Complainant was aggrieved by the fact that the Department for Social Security ("the Department") had not provided her with a written reply to her letter of complaint dated 20th January 2010.

Furthermore, the Complainant was aggrieved by the Department's decision not to refund some of the payments made by the Complainant by way of Social Insurance Contributions.

Preliminary Points

The Complaint arises in the context of the social insurance provisions for married and divorced women.

Reduced Rate Social Insurance Contributions.

Married women could elect to pay a reduced rate of social insurance contributions hereinafter referred to as the "Reduced Rate" contributions. However these contributions were not valid for pension entitlement purposes as they would only in effect contribute to Employment Injuries Insurance and the Group Practice Medical Scheme.

Divorced Women

Up until 2003 a divorced woman was not entitled to an old age pension based on her former husband's social insurance contributions.

In 2007 the law changed to allow divorced women to elect to pay full contributions and to claim a share from the former husband's contributions as if these were her own contributions. This latter benefit was only in respect of those contributions made during the course of the marriage and made only up to the date of the dissolution of the marriage.

The practical effect of the above was that a woman who had been contributing on a Reduced Rate or not contributing at all would not be denied the possibility of being entitled to an old age pension upon divorcing her spouse.

Investigation

The Ombudsman considered the issues raised by the Complainant and in particular the Complainant's letter to the Department dated the 20th January 2009.

In her letter the Complainant explained that she had met the Department's Contributions Manager to discuss changes in her personal marital circumstances vis-à-vis social insurance contributions. At this meeting the Complainant elected to increase her contributions to pay the full rate as opposed to the Married Women's rate (Reduced Rate) which she had been paying until then.

Additionally, the Complainant in her letter recounted how in 2008 she had been to see the Department's Principal Secretary. Allegedly, it was at this meeting that she was advised on the new social security provisions. The Complainant then stated that she became aware at that time of the fact that she had continued to pay the full rate contributions since 2003 notwithstanding that she could have relied upon her husband's contributions.

It is relevant to this case that the Complainant divorced in 2005 because she is aggrieved by the fact that she made full rate contributions until 2008 at which time she was made aware of the change in the law as described above.

On the 22nd June 2010 following a request from the Ombudsman the Department's Principal Secretary and the Ombudsman met. The Ombudsman discussed the issues at length and also analysed the records held on file. The Department's Principal Secretary was candid in the exposition of the events leading up to the complaint and was in fact very helpful to the Ombudsman in establishing the principles at stake.

Precise figures were also made available by the Department which were useful but which the Ombudsman finds unnecessary to publish for the purposes of this investigation.

Conclusion

The Department's failure to reply

In relation to the Complainant's grievance that the Department had not replied to her letter of the 20th January 2009, the Ombudsman, having considered the evidence available can only conclude that the grievance in this regard was an undeniable fact due to the Department's failure to reply.

The reason put forward by the Department for not having replied to the Complainant was that they had verbally offered her an appointment to discuss the issue and that they believed this was sufficient.

The Ombudsman recognizes that the verbal offer for an appointment may have mitigated the failure to reply and he welcomes the fact that the Department sought to engage face to face with the Complainant. That offer to meet face to face is always a desirable course of action for public bodies to take. However, that does not in itself exonerate the Department from not having replied to the Complainant's letter. Where a written communication is received one should as a matter of good practice always send a written reply or, at least, an acknowledgement. Notwithstanding that principle, the Department, may additionally wish to offer that person a face to face meeting.

Moreover, the Ombudsman would suggest that it may even be useful for the Department to write to the person after having had any meeting, so as to have a record of the meeting and in order to ensure, that the issues have been fully comprehended. That did not happen in this case. The Department's presumption that the Complainant was satisfied with the meeting was therefore misconceived. The same was true of the Department's assumption that the issues had been tackled satisfactorily. The Ombudsman is of the view that a written reply by the Department could have highlighted these problems at that early stage.

Refund of Contributions

On the issue regarding the refund of contributions the Ombudsman found that there were a number of issues presented to him which required clarification. It was only when these were carefully considered that the issue of the refund of monies paid by the Complainant became apparent.

Firstly, the Ombudsman considered the development in the social security legislation in the context of married / divorced women as set out above in this report as a preliminary point. The Complainant had paid full contributions after the meeting she had in 2003 with the Department's Contributions Manager. The logical explanation for doing that appears to be that she did so in order to be entitled to a pension upon the dissolution of her marriage given that by that stage the Complainant had separated from her husband.

In 2007 the Department contacted and met with the Complainant, to appraise her of a new development in the social security legislation which would enable her to claim on her share of the former husband's contributions but this was restricted up to the date on which the marriage had been dissolved by virtue of her divorce. In effect as a result of that the Complainant claimed on the husband's contributions up to 2005. This meant that she had theoretically made full rate contributions for the years 2003, 2004 and 2005 when she could have paid at the Reduced Rate. However, the Ombudsman found that this in the circumstances was unavoidable given the election made by the Complainant and the subsequent legislative developments. These two factors clearly became intrinsically linked in the factual matrix of the case.

The above is the case because, presumably if, after the meeting with the Department's Contributions Manager, the Complainant had not elected to pay the full contributions the '*duplication*' of contributions as the Complainant put it would not have arisen. Similarly, if the legislative developments had not taken place in 2007 the '*duplication*' would have not occurred. The Complainant faced with such a scenario prior to those changes, and by her own admission, would have been content to carry on paying her full contributions to reap the benefit at a later stage of her life.

Should the Department have refunded the payments?

The Complainant requested that she be refunded or credited with the contributions made for the period 2003, 2004 and 2005. The Department requested that she submit an Application for Refund of Contributions which was signed on the 20th January 2009.

The Department subsequently refused the application replying on the provisions set out in regulation 10 (a) of the Social Security Employment Injuries (Contributions) Regulations. The Regulation reads:

- (1) A person desiring to apply for the return of any contribution paid under such erroneous belief shall make the application in such form and in such manner as the Director may from time to time determine and—
 - (a) **if the contribution was paid at the due date, within two years from the date on which that contribution was paid;** or
 - (b) if the contribution was paid at a later date than the due date, within two years from the due date or within twelve months from the date of actual payment of the contribution, whichever period ends later.

The Ombudsman took note that the refund sought was being claimed outside the two years stipulated by the regulations. Those contributions were made in 2003 and 2004, should have been sought at the latest in 2005 and 2006 respectively. However, the Complainant would naturally only be in a position to have applied for a refund when the new legislation was introduced in 2007 by which time the limitation period of two years would have expired.

In any event, in respect of any claim for a refund within the two year rule, the Ombudsman was concerned to learn that the Department was relying on the provisions of regulation 10 in order to consider such a refund. The said regulations relate to payments made in error. That is to say, that the payment was made in the erroneous belief that the contributions were payable when in fact they were not. As far as the evidence before the Ombudsman was concerned that was not the case in this complaint. There was no error on the Complainant's part or indeed on the part of the Department and consequently no grounds to seek a refund on that basis.

Therefore, the Department was wrong to suggest a claim under those provisions and was wrong to have considered an application under those provisions. It also follows that the time limit imposed by the regulations, was to that extent, immaterial as far as the case is concerned.

Classification

The complaint in respect of the Department's lack of reply to the Complainant's letter is sustained. The complaint regarding the refund is not sustained for the reasons discussed above.

The Ombudsman is of the view that whilst there were no grounds to seek a refund of those contributions through regulation 10 there ought to have been an alternative method of crediting the Complainant (or any other woman) in a similar situation as that encountered by the Complainant. In the existing framework there is no scope to recover anything other than payments made in error and whilst it is difficult to see how any other scenario giving grounds to a claim may arise, it is evident that a need for further scope to refund did arise with the introduction of new legislation.

Department of Transport

Case Not Sustained

CS/905

Complaint against the Department for Transport for having informed the Complainant that her Spanish Driving Licence was not recognised for the purposes of driving a light motorcycle.

Complaint

The Complainant a Spanish national made a complaint to the Ombudsman because she had been informed that she could not drive a motorcycle in Gibraltar even though her Spanish driving licence entitled her to do so.

Background

The Complainant who was a Spanish national working in Gibraltar was the holder of a European Union ("EU") driving licence issued in Spain. The said driving licence was duly endorsed so as to show that the Complainant was entitled to drive class B motor vehicles namely cars. However, the Complainant categorically stated that the issuing authorities had informed her that, any holder of a class B driving licence, could in addition drive a motorcycle with an engine capacity under 125cc. regardless of whether they had previously passed a test for motorcycles.

The Gibraltar Department of Transport accepted that in Spain any person having a licence endorsed with a class B could also drive a motorcycle with an engine capacity under 125cc.

Investigation

The Ombudsman examined the document in question namely the Complainant's driving licence issued in Spain. It was established that the document complied with the European standards and that it was clearly visible that there was only one endorsement at the class B entitlement area. There were no further notes or explanations on the document in relation to any additional entitlements.

The Ombudsman wrote on several occasions to the Department of Transport and he received feedback to the queries raised from the Chief Examiner. The general ethos of the Ombudsman's enquiry related to the principle of mutual recognition of Member States' driving licences and all entitlements therein. The general feedback transmitted by the Department of Transport was that, whilst they accepted that in Spain one could drive a motorcycle based on an endorsement for a class B, that entitlement was not one which could be recognised in Gibraltar.

Several propositions were put forward by the Chief Examiner including the fact that any entitlement would have to be endorsed on the actual driving licence.

Conclusions

The Ombudsman considered a number of European Directives regarding the mutual recognition of driving licences within the European Union including Directive 91/439 ("the Directive"). Under the provisions of the Directive the Ombudsman was able to find Article 5 (3) (b) which read as follows:

*“For driving **on their territory**, Member States may grant the following equivalences:*

(a) power-driven tricycles and quadricycles under a licence for category A or A1;

(b) light motorcycles under a licence for category B. “

The Ombudsman formed the opinion that the Complainant’s entitlement to drive a motorcycle under her class B endorsement was a national equivalence only valid for the purposes of driving in Spain. Having considered the facts it can be said that the equivalence was one issued by Spain for the purposes of driving *in their territory* and therefore the Complainant was wrong to assume that such equivalence could be extended to be valid to any territory outside Spain.

The Ombudsman is aware that there are a significant number of Spanish workers in Gibraltar who are relying on the national equivalence and driving motorcycles in Gibraltar on the premise that they can do so on their class B entitlement. This is most unfortunate given that such persons may be committing an offence contrary to section 21 of the Traffic Act and risk prosecution.

Additionally, local employers should be aware that section 21 of the Traffic Act states that no person shall “employ any other person to drive a motor vehicle of any category upon a road unless that person is the holder of such a driving licence.”

Classification

The Ombudsman does not sustain the complaint for the reasons outlined in this report.





4

Statistical Information

4.1 VOLUME

Complaints received, completed and current by month – 2009 & 2010

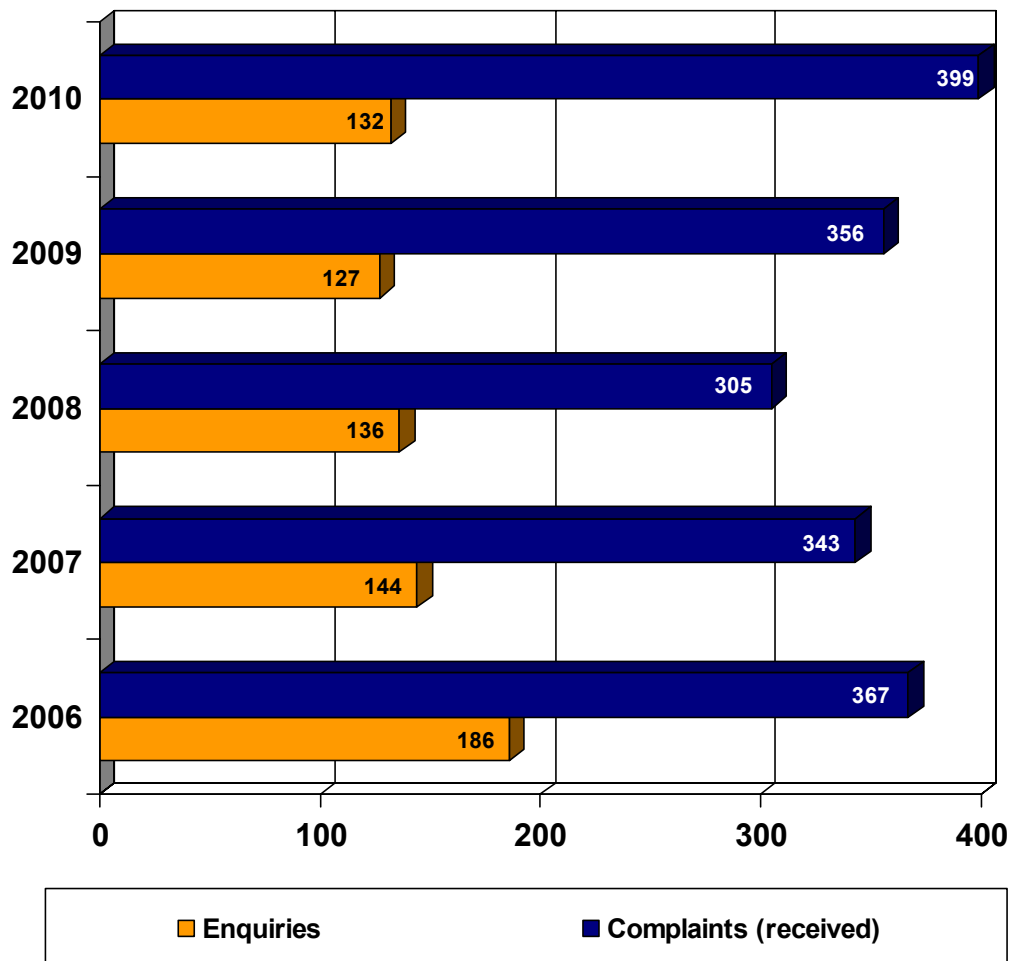
<u>Table 1</u>	2009			2010		
	Received	Completed	Current	Received	Completed	Current
			49			63
January	23	23	49	40	36	67
February	38	35	52	37	35	69
March	36	29	59	37	43	63
April	18	21	56	28	25	66
May	33	35	54	47	50	63
June	42	43	53	34	33	64
July	21	22	52	33	31	66
August	18	25	45	27	26	67
September	30	25	50	29	30	66
October	37	27	60	25	27	64
November	35	28	67	29	38	55
December	25	29	63	33	45	43
TOTAL	356	342		399	419	
Enquiries		127		132		

This year, we received 399 Complaints in our office, an increase of 43 Complaints compared to 2009, where we received 356 Complaints. Taking into account the open complaints brought over from the previous year, a total of 419 Complaints were completed by the end of this year which left 43 Complaints open by the end of 2010.

This year we recorded 132 Enquiries, an increase of 5 Enquiries compared to 2009, when we dealt with 127.

4.1 (CONT)....

Chart 1 - Breakdown of Complaints and Enquiries received from 2006 to 2010



This year we have received 399 Complaints and 132 Enquiries.

From the 399 Complaints we received, 55 were against private organisations that fall outside the Ombudsman's jurisdiction. This left a total of **344** Complaints received against government departments, agencies and other entities which fall under our jurisdiction. (See Table 2 Page 88- *Complaints/Enquiries received in respect of Government Departments/Agencies/Others in 2010*).

4.2 GOVERNMENT DEPARTMENTS AND ENTITIES

The trend of Complaints has continued along the same lines as in previous years. The Housing Department (91), Buildings and Works Department (80), Civil Status and Registration Office (28), the Gibraltar Health Authority (22) and the Department of Social Security (13) again top the list attracting the highest number of Complaints.

Table 2

Complaints/Enquiries received in respect of Government Departments/Agencies/Others in 2010

Dept/Agency	Enquiry	Complaint	Dept/Agency	Enquiry	Complaint
Aqua Gib	1	6	Housing Department	55	91
Buildings and Works	5	80	Human Resources	1	2
Care Agency	4	2	Income Tax Office	5	12
Civil Status & Registration	14	28	Land Property Services Ltd	1	4
Coroners Court	-	2	Magistrate's Court	1	5
CTS (Gib) Ltd	-	1	Office of the Chief Minister	1	5
Development & Planning C	2	4	Royal Gibraltar Police	7	9
Education & Training	2	8	Prison	-	2
Employment Services	1	5	Reporting Office	-	2
Enterprise & Development	1	3	Social Security	10	13
Environment	-	4	Social Services	1	4
Environmental Agency	1	3	Sports and Leisure Auth	1	1
Gibraltar Car Parks Ltd	-	1	Technical Services	1	2
Gibraltar Electrical Auth	5	8	Town Planning	1	1
Gibraltar Health Authority	11	22	Traffic Commission	-	1
Gibraltar Police Authority	-	1	Transport & Licensing	-	5
Gibtelecom	-	2	Transport Commission	-	1
GRP Investments Ltd	-	3	Treasury	-	1
TOTAL :				132	344

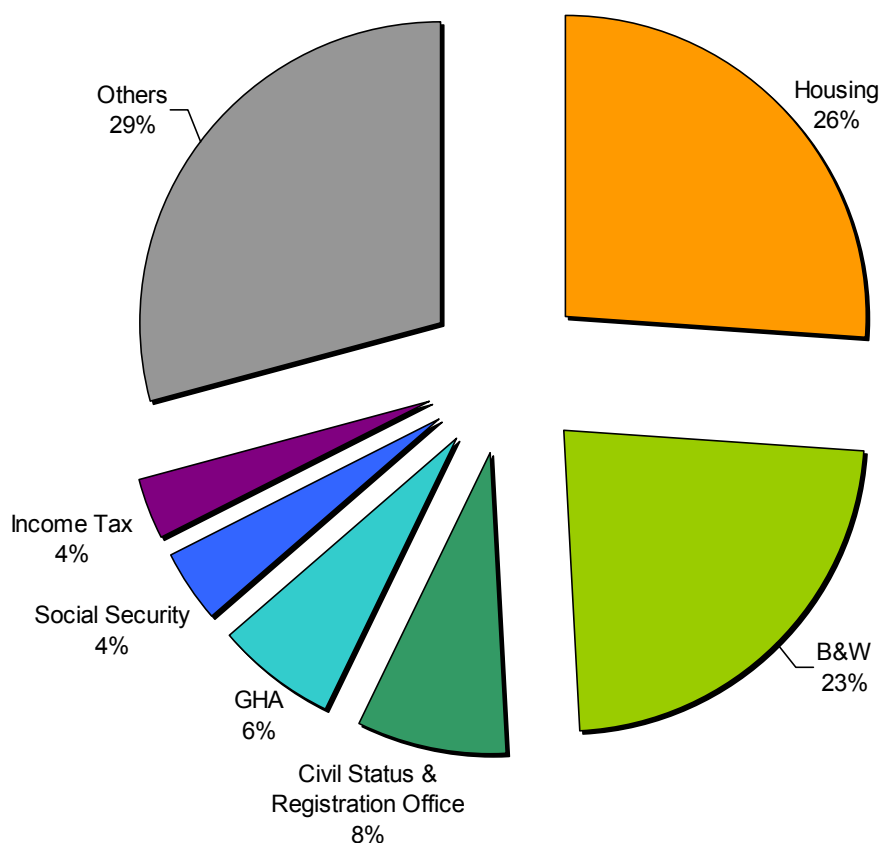
Although complaints against the Housing Department have increased from 73 of last year to 91 in 2010, the most significant highlight of this year is definitely the Department of Buildings and Works, a Department where it seems their users have lost faith as complaints against them continue to rise.

Complaints received against the Buildings and Works Department has been increasing on an annual basis, in 2007 we received 28 complaints whilst in 2008 it increased by 46% to 41 complaints. In 2009 it again increased to 56 which resulted in a 37% increase, and then in 2010 it again increased by 43% to 80 complaints.

4.2 (CONT)....

This year the two departments of the Ministry for Housing, i.e. the Housing Department and the Buildings and Works Department attracted the most complaints. The two attracted nearly half of all the complaints received (49%); Housing 26% and Buildings and Works 23%. Complaints against Buildings and Works have increased from 56 Complaints to 80. In relation to all the complaints we have received, complaints against the Civil Status and Registration Office, the Gibraltar Health Authority, the Department of Social Security have slightly decreased this year.

Chart 2 - Complaints received in respect of Government Departments/Agencies/Others in 2010

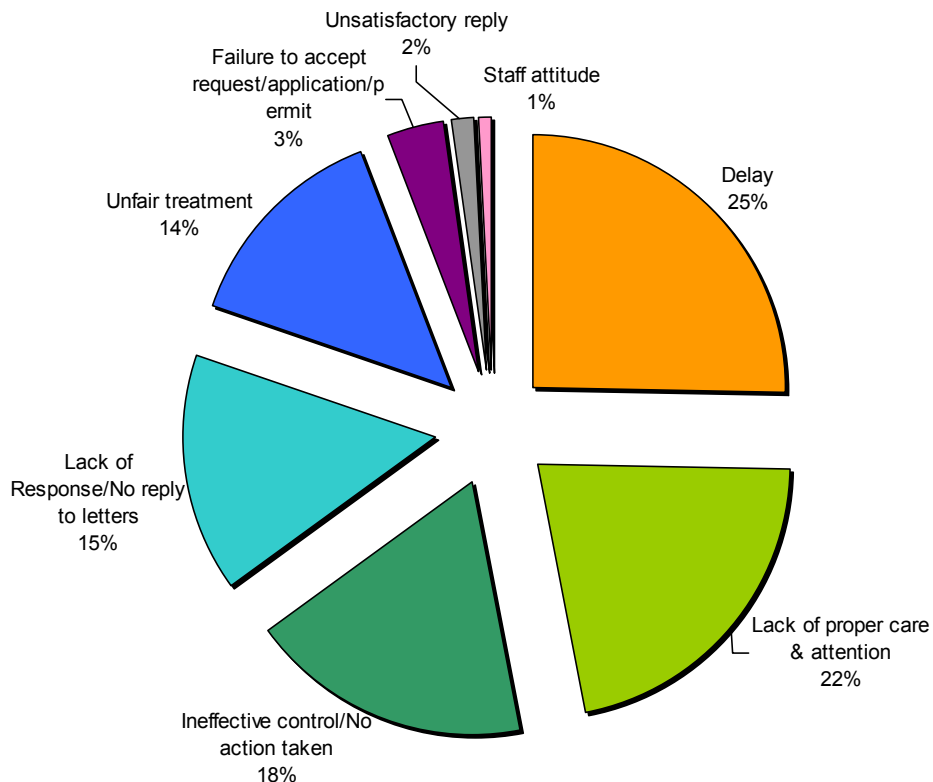


Noteworthy are the 12 Complaints received against the Income Tax Office. The Complaints were in respect of the way in which recuperation of long-standing tax arrears was carried out to the discontent of the public, delays in receiving tax rebates and the non-replies of letters to members of the public. To their credit, all complaints were resolved in a timely manner. It will be interesting to analyze the trend of complaints against the Income Tax Office in the next few years as the new Income Act came into existence as from 1 January 2011.

4.3 NATURE OF COMPLAINTS

Complaints received in respect of Government Departments/Agencies/Others in 2010

Chart 3 - Nature of Complaints



One quarter of the complaints are of delay (25%). The most common types of delay are of excessive waiting time in having repair works carried out by the Buildings and Works Department and delay in having naturalisation applications processed by the Civil Status & Registration Office.

Fifteen percent of the Complaints received this year are over the lack of response to members of the public by way of not answering letters; it is interesting to note that in 2007 in relation to the different nature of complaints received, 7% of the Complaints were of this nature, whilst in 2008, it increased to 11% and in 2009, it again increased to 13%; this year it has increased once again to 15%. This is a worrying trend which the Ombudsman intends to deal with vigorously.

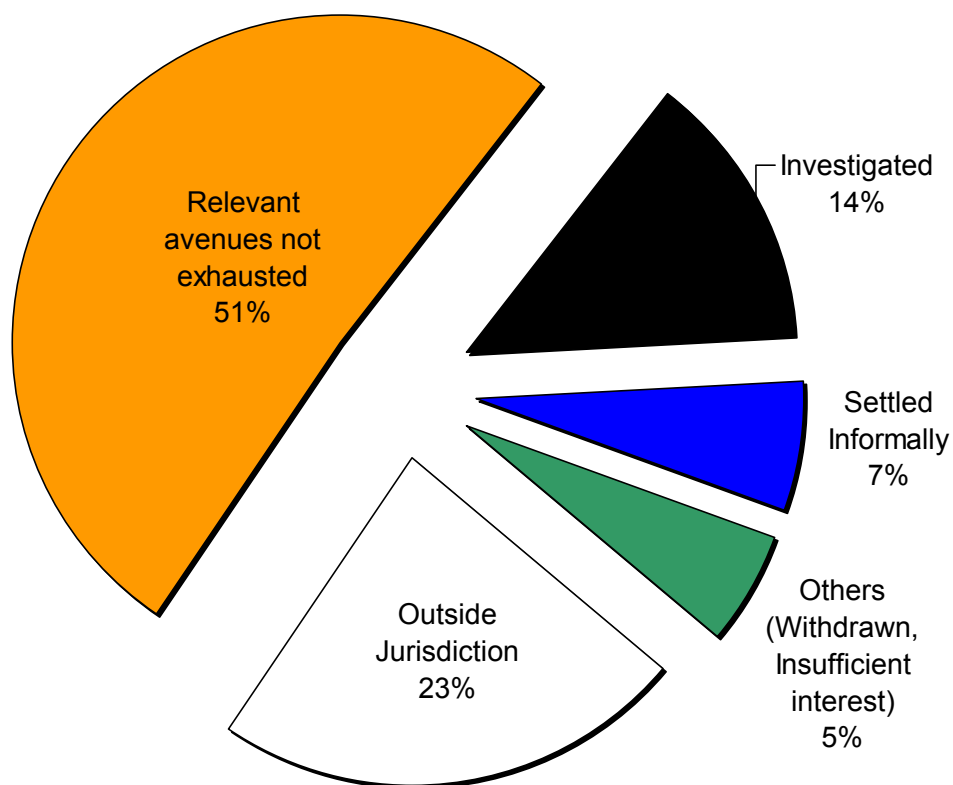
4.4 PROCESSING DATA

There were 419 Complaints classified this year out of which, 98 (23%) were deemed to be outside our jurisdiction, hence they could not be investigated by the Ombudsman. 214 (51%) were closed as 'Relevant Avenues Not Exhausted' (RANE). In such cases, although we do not investigate the substance of the complaint, we give advice to the Complainant as to how to proceed with his complaint and request that they keep us updated so that we may monitor progress and further assist if the need arises. We also provide assistance in letter writing to some Complainants who may have difficulty or be unable to do themselves.

Seven percent of the Complaints were settled informally as they were resolved by assisting the Complainant without the need to investigate the complaint. A further 23 (5%) were classified as 'Others', they were either withdrawn at a preliminary stage or after our initial inquiries into the complaint there was insufficient personal interest shown by the Complainant.

57 Investigations (14%) were concluded by the end of the year. Out of the 57 (36 Sustained, 28 Not sustained) investigations completed by the end of the year, 23 of them were resolved through informal action, whilst the other 34 warranted an extensive report. Out of these 34, 22 were sustained, 5 were not sustained whilst 7 were partly sustained. When we classify something as 'partly sustained' it means that there were two different allegations to investigate where one will be sustained whilst the other not, hence the 64 classifications recorded for the 57 Investigations completed.

Chart 4 - Classification of Concluded Complaints (%)



4.5 RECOMMENDATIONS

Whenever the Ombudsman completes an investigation, we consider whether the results of the complaint warrant recommendations.

This year we completed a total of 34 investigations requiring a written report. These reports contained 16 Recommendations.

There was a recommendation in respect of estimated meter readings contained in a case against Aquagib which I am pleased to note was being introduced in their new billing programme.

We made a recommendation relating to the Gibraltar Electricity Authority, in respect of a complaint where it emerged that the Authority had failed to make due enquiry when entering into an arrears repayment agreement with a business concern. We recommended that when the consumer is a company, club, association or similar body, then the agreement should conform to a format which leaves no doubt that the debtor is a specific entity and only persons with capacity to act for that entity should sign the agreement. Also account has to be taken of the requirements for certain entities to execute any agreement.

Our reports also contain five recommendations relating to the Housing Department. Some of the recommendations were specific to the particular complaints, whilst two were of a general nature.

Housing applicants who are Registered Gibraltarians are required to have their Housing Application Forms stamped by the Civil Status and Registration office. It is not unusual for prospective housing applicants who are not registered Gibraltarians to seek our assistance as how this requirement can apply to them. To this effect, we recommended that the Housing Application Form should be amended to include a reference to the requirements as to whether the Application Form needs to be stamped or otherwise. I am pleased to note that the Housing Department amended the Application Form which now includes a reference whereby British nationals who are unable to obtain the Gibraltar status stamp must provide proof of 10 years continuous residency in Gibraltar.

The Ministry for Housing is responsible for the running of the workers' hostels. Pursuant to a complaint the Ombudsman was concerned at what appeared to be a very loose system of administration at the hostels. The Ombudsman will continue to meet with the Principal Housing Officer to ensure that an adequate administrative system is in place for the allocation of accommodation at the hostels.

We made six recommendations in respect of Buildings and Works Department. Complaints against this Department are on the increase given that it suffers from various aspects of poor administration which badly reverberates onto operational areas.

In respect of claims made by persons claiming to have suffered loss or damage to personal property due to some action or inaction of this Department, we recommended that they should have an information pack to give out whenever a person informs them of a claim for damages, as opposed of the single sheet Claim Form that they currently provide.

4.5 (CONT)....

We also added that the Department should process all claims in a maximum period of two months from the date the claim is submitted and should always inform those making a claim of their alternative right to issue legal proceedings.

Other recommendations are of a general administrative nature urging the Department to improve their performance through good administrative procedures. It is hoped that these matters will be addressed in the near future. As is well known, the Government of Gibraltar recently announced a comprehensive review of this Department ending in the creation of a new statutory body to be known as the Housing Works Agency.

The Ombudsman recommended that in cases where persons retire prior to having attained pensionable age, the Department of Social Security should meet with them to assess their entitlement and eligibility to a future pension. At that meeting, the DSS should provide the person with information in respect of the contributions they are entitled to make, if any, until reaching pensionable age and the methods by which they can do this, e.g. in cases where the person has retired on medical grounds, by applying for Invalidity Credits.

As the present situation stands, placing the onus on the claimant to request Invalidity Credits when they may not even be aware of its existence cannot be the correct stance; it inevitably results in a loss of benefits/assistance as has been proven by this case.

The Chief Secretary informed us that this recommendation could not be accepted. He explained that if accepted, the recommendation would be onerous on the Department and would create an undesirable obligation. If such a system were to be put in place and the individual were to lose out financially and then pursue the matter through the courts because of that individual's legitimate expectation that he would be advised of his entitlement and eligibility, the Government would unnecessarily be exposed to potentially expensive claims.

Instead, the Chief Secretary informed the Ombudsman that the furthest that the Department could go was to place a poster in the public area of their counters inviting affected persons to seek an interview with staff who will explain their entitlement to eligibility for a future pension.

By way of a general recommendation, which was included in a Buildings and Works report, we stated that in the case of letters from the Ombudsman in relation to investigations pursuant to the provisions of the Public Services Ombudsman Act the replies by [those under our jurisdiction] should be provided within a reasonable time frame. Such practice will ensure that the Complainant is not subjected to further delay particularly when, in some cases, delay is at the heart of the complaint itself.

The Ombudsman wished to highlight that the "Principles of Good Administration" by public bodies should include 'dealing with people *helpfully, promptly and sensitively*, bearing in mind their individual circumstances.'

4.6 QUALITY OF SERVICE

One hundred and forty Complaint Satisfaction Surveys were sent by post to members of the public who had visited our offices during the year.

Out of these 140, 31 were returned, (22%)

The following is a summary of the questions contained in the survey.

Getting it Right

Did you find our staff competent and helpful?

Yes	31	100%
No	0	0%

Being Customer Focused

Were we able to deal with your complaint in a professional and sensitive manner?

Yes	30	97%
No	1	3%

Being Open and Accountable

Do you think we were clear, accurate, and complete when dealing with your complaint?

Yes	30	97%
No	1	3%

Acting Fairly and Proportionally

Did you feel at ease when dealing with us?

Yes	30	97%
No	1	3%

Do you think we were fair and objective dealing with your complaint?

Yes	30	97%
No	1	3%

Putting Things Right

In your opinion, were we clear and timely when updating you on the status of your complaint?

Yes	31	100%
No	0	0%

4.6 (CONT)...



Distribution of annual report and surveys

As previously explained earlier in this Report the Ombudsman is currently promoting the 'Principles of Good Administration' and inviting all those entities under our jurisdiction for a presentation on the sort of behaviour we expect and the tests we apply when determining complaints. It is in this respect that we also decided to look inwards and consider if we were abiding by these principles and delivering good customer care.

To assist us in meeting our goals we prepared a question under each category of the Principles; 'Getting in Right', 'Being Customer Focused', 'Being Open and Accountable', 'Acting Fairly and Proportionally', and 'Putting Things Right'.

The results were positive and inline with previous surveys sent out over the years. They show that a high percentage (97% to 100%) of those who use our services are quite pleased with the overall service they receive from our staff and that we are indeed customer focused. This is also reflected in the general comments received by those who

kindly took the time to fill in the survey with remarks such as 'Excellent service all round' and 'first class service'. Perhaps the level of service we offer can be summarised with the following comment we received 'I think the Office of the Ombudsman is doing a great job for the community. Well done!'

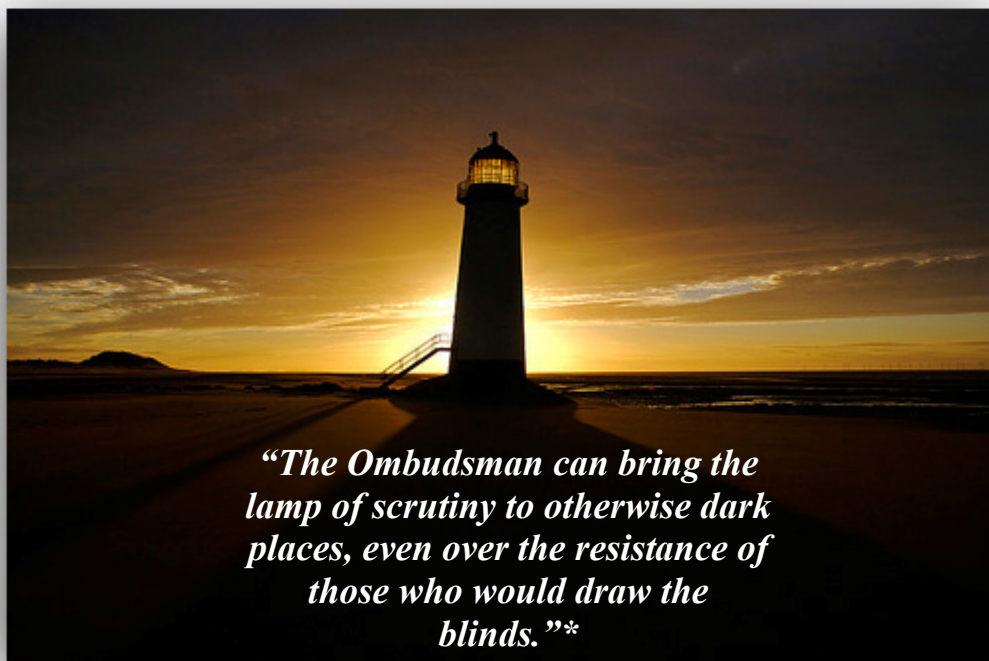
This kind of feedback reinforces the ethos of the Ombudsman, and the importance of providing a professional, customer friendly service for the benefit of the community. It is equally important to also practice what you preach and in this respect we hope that we lead by example and that our Principles of Good Administration will be put into practice by all under our jurisdiction.

Table 3 - Breakdown of classification of complaints received by Government Departments and other entities in 2010

Dept/Agency	Avenues not exhausted	Out of Jurisdiction	Withdrawn/PI, Trivial, Others	Formal Investigation		Resolved through informal action		Settled Informally	Open	Total
				Sustained	N/Sustained	Sustained	N/Sustained			
Aqua Gib Ltd	3	-	-	-	1	-	1	1	-	6
Buildings & Works	47	-	4	3	2	1	3	5	15	80
Care Agency	1	1	-	-	-	-	-	-	-	2
Civil Status & Registration Office	16	4	-	1	-	-	2	2	3	28
CTS (Gib) Ltd	-	1	-	-	-	-	-	-	-	1
Coroners Court	1	-	-	-	-	-	1	-	-	2
Development Planning Commission	3	1	-	-	-	-	-	-	-	4
Education	4	1	-	-	-	-	2	-	1	8
Employment Services	2	-	-	-	-	1	1	1	-	5
Enterprise & Development	2	1	-	-	-	-	-	-	-	3
Environment	2	-	1	-	-	-	-	-	1	4
Environmental Agency	2	-	1	-	-	-	-	-	-	3
Gibraltar Car Parks Ltd	1	-	-	-	-	-	-	-	-	1
Gib Elec Ltd	4	-	-	3	-	-	-	1	-	8
Gibraltar Health Authority	15	6	-	-	-	-	-	1	-	22
Gibtelecom	1	-	-	-	-	-	-	-	1	2
GRP Investments Ltd	2	-	-	-	-	-	-	1	-	3

Table 4 - Breakdown of classification of complaints received by Government Departments and other entities in 2010

Dept/Agency	Avenues not exhausted	Out of Jurisdiction	Withdrawn/PI, Trivial, Others	Formal Investigation		Resolved through informal action		Settled Informally	Open	Total
				Sustained	N/Sustained	Sustained	N/Sustained			
Housing	64	-	4	5	1	-	3	7	7	91
Human Resources	-	2	-	-	-	-	-	-	-	2
Income Tax	8	-	1	-	-	1	-	1	1	12
LPS	2	2	-	-	-	-	-	-	-	4
Magistrates	-	1	1	-	-	1	-	-	2	5
Office of the CM	2	1	-	-	-	-	-	1	1	5
Police Authority	-	1	-	-	-	-	-	-	-	1
RGP	5	3	-	-	-	1	-	-	-	9
Prison	1	1	-	-	-	-	-	-	-	2
Reporting Office	1	-	-	-	-	-	-	1	-	2
Social Security	11	-	-	-	-	-	-	1	1	13
Social Services Ag	2	2	-	-	-	-	-	-	-	4
Sports Auth	1	-	-	-	-	-	-	-	-	1
Technical Serv	1	-	-	-	-	1	-	-	-	2
Town Planning	1	-	-	-	-	-	-	-	-	1
Traffic Commission	1	-	-	-	-	-	-	-	-	1
Transport	3	-	-	-	1	-	-	-	1	5
Transport Commission	1	-	-	-	-	-	-	-	-	1
Treasury	-	-	-	-	-	-	-	-	1	1



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

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