The Gibraltar Public Services

Ombudsman

'I'll go anywhere as long as it's forward'

David Livingstone

The Gibraltar Public Services

Ombudsman

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

The Gibraltar Public Services
Ombudsman

March 2012

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

Dear Mr. Picardo,

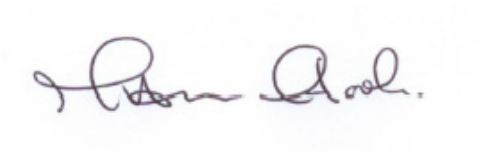
Annual Report 2011

It is an honour for me to present the Public Services Ombudsman's twelfth Annual Report. This report covers the period 1st January to 31st December 2011.

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

A small number of reports of completed investigations are contained in an Annex which can be found at http://www.ombudsman.org.gi/publications/annual-reports.htm

Yours sincerely



Mario M Hook
Ombudsman


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

TABLE OF CONTENTS

INDEX OF STATISTICS

TABLES

CHARTS

1
Introduction

The Ombudsman's twelfth 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

This year has been marked by the administrative disorder which ensued after the Buildings and Works Department was dissolved by the Government of Gibraltar and the new Housing Works Agency created. This is the subject of comment on my Review (see page 13).

Reports

There was a general consensus in our office that our reports were perhaps too long and often not reader-friendly. After researching other jurisdictions and considering our resources, we decided to change the style of our reports. Our aim has always been to include in the reports as much detail as possible including delays in receiving replies to our inquiries, the idea being to make the public aware of the work of the public administration. We shall still continue to provide all the relevant information albeit in a better and more fluent manner which, hopefully, will make our reports more amenable to the reader.

Principles of Good Administration

We have continued to promote the Principles of Good Administration to all those under our jurisdiction. The Principles have proved to be an excellent tool in our work and we now regularly measure the circumstances leading to complaints against the Principles. Basically, we try to establish what actually happened against what should have happened and whether the Principles have been applied.

Positive Results

There is no doubt that since the Ombudsman was established in Gibraltar, there has been a very positive development in the manner in which service is delivered to the public. During the course of investigations the entity being complained about has the opportunity to review its actions and to discuss the circumstances of the complaint with us. This exercise in itself proves to be a useful review of their procedures and deficiencies (where they exist) are identified. Thus it is my belief that complaints are useful tools which should be welcomed as instruments for the promotion of good governance.

As an example of the above, stemming from a recent investigation, we were recently informed by the Gibraltar Electricity Authority that instructions had been issued to ensure that they do not connect or reconnect a non-registered consumer. Thus any reconnection or connection after hours has to be checked against the records of the registered consumer on the next working day and instructions have been issued that if the record card is not found, then a proper investigation should take place in order to establish if the occupier of the property is eligible to be the registered consumer. This action can only be described as good governance.

INTRODUCTION

Outgoing Senior Investigating Officer/Legal Adviser

Our Senior Investigating Officer and Legal Adviser to the Ombudsman, Mark Zammit, resigned from our employment at the end of the year; he has now joined the Attorney General's Chambers. Mark performed his tasks to a high standard and carried out some complex investigations. He also represented the Office at various international events. The vacant position will be filled in the early months of 2012.

Website

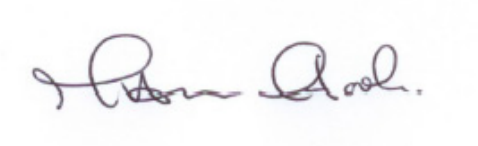
In last year's Annual Report we provided information regarding our plans for a new website. I am pleased to report that the website was launched in September 2011 and is proving to be a useful tool for our office. Please see page 25 for additional information. Anyone wishing to lodge a complaint with us can avail themselves of our online complaint form.

Conferences, Seminars & Meetings

Attending events organised by Ombudsman organisations is of vital importance for the development of our office. This allows us to keep our modus operandi under constant review which in turn allows us to implement better and more efficient procedures in order to provide those seeking our assistance with the best possible service.

During 2011 we attended a number of overseas engagements. Importantly we hosted a Public Sector Ombudsman meeting at the Gibraltar London House. This was a memorable event as it also marked the retirement of the United Kingdom's Parliamentary and Health Services Ombudsman.

I trust that you will find this report informative. If you wish any further information I invite you to call our offices (Tel. 20046001) and arrange for a meeting. We shall endeavour to assist you to the best of our ability.



Mario M Hook
Ombudsman

2

Ombudsman's Review 2011

Our Investigating Officer, Karen Calamaro with participants from other institutions who attended the 'Sharpening your Teeth' training course held in Vienna from 5th June to 8th June 2011

Public Sector Ombudsman Group - June 2011
Malta

OMBUDSMAN'S REVIEW 2011

As from the 1st April 2011, the Housing Works Agency ("the Agency") became operational. The Agency was created by virtue of the Housing Works Agency Act 2011, which received its Assent on 22nd March 2011. The remit of the Agency was to carry out building maintenance and repair works to Government rental housing and for matters connected thereto.

At the time of the demise of the Buildings and Works Department and the creation of the Agency, the management of repairs deemed to be of an external nature was transferred to No. 6 Convent Place. In early 2011 (just before the creation of the Housing Works Agency) the Principal Housing Officer informed the Ombudsman that in order to deal with the backlog of works created by the Buildings & Works Department, Government was going to put in place a system of Measured Term Contracts whereby repairs classified as of an external nature would be undertaken by private and in-house contractors

Nearly one year later no such scheme had yet been put in place and the Measured Term Contracts had not seen the light of day. Only a small number of external jobs were carried out albeit using a system of direct allocation to building contractors.

The Ombudsman could only conclude the obvious, i.e. that the intended scheme had, as at the end of 2011, not materialised and that the Housing Authority was therefore at the same point it was in early 2011 in relation to external repairs. In the meantime, those who had brought complaints to the Ombudsman relating to repairs of an external nature were left with little joy other than the good luck that we have had an extremely mild winter with hardly any rain at all, thus hugely minimising the effects of water ingress and dampness.

The Office of the Ombudsman had considerable difficulty in obtaining information as to who was responsible for managing works of an external nature and who would be preparing the Measured Term Contracts. Eventually, after writing directly to the Minster for Housing, the Ombudsman was informed that the works were being managed centrally through No.6 Convent Place and that the Ministry for Housing was not directly involved in the preparation of the Measured Term Contracts, which were being prepared via the Office of the Chief Technical Officer.

2.1 Conferences, meetings and seminars

2.1.1 'First Contact' Interest Group

The Gibraltar Public Services Ombudsman took part in the 8th meeting of the 'First Contact' Interest Group held at the Office of the Local Government Ombudsman ('LGO') in Coventry on the 15th April 2011. The Gibraltar Office was represented by our Public Relations Office, Ms Nadine Pardo-Zammit.

There were 24 members present at the meeting including the British & Irish Ombudsman Secretary, Mr Ian Patterson. The Gibraltar Ombudsman Office was the only Overseas Office represented at the meeting. The different jurisdictions represented at the meeting ranged from The Adjudicator's Office, to the Pensions Ombudsman, and from the LGO to the Parliamentary & Health Service Ombudsman. The Northern Ireland Ombudsman and Scottish Public Service Ombudsman ('SPSO') were also represented at the meeting. The Meeting was chaired by Ms Carol Neill, Advise & Outreach Team Leader of the SPSO.

The meeting proved a valuable source of information for the Gibraltar Ombudsman and an important networking tool for the development of the Public Services Ombudsman scheme in Gibraltar. The presentation on the 'LGO Advice Team' given by Ms Michelle Cammish, Customer Services Manager of the LGO, was of special interest. It gave us a lot of food for thought. It highlighted the normal process of a complaint and the internal workings of the LGO's first contact team. The most salient issues to note were:

1 Premature complaints: are not sent back to the Complainant but are forwarded to the respective Public Body by the LGO team. This procedure differs substantially from our current practise in Gibraltar where the Complainant is advised to contact the Public Body themselves.

2 Letter writing: The LGO First Contact Team Rep will on occasion also take statements over the phone from a complainant who is unable to write and then forward it on to the Public Body after having typed it out or saved the conversation onto a CD. The Gibraltar office used to, on occasion, help those Complainants who were unable to write the letter themselves. This practice has now been discontinued and the Complainant is advised that the Citizens' Advice Bureau (housed within the same building) provides this service.

3 Website: Interesting to note was that the LGO's complaints more than trebled when they started to receive complaints via their website three years ago. The Gibraltar Ombudsman launched it's website on the 14th September 2011 and provides an online complaint form for anyone who wants to submit a complaint through the internet.

4 Use of Email facility: Contact is always made by the LGO with the Public Service via email as it is considered to be a communication tool that heightens efficiency, reduces costs and helps the environment. What was important to note was that professionalism and formality is still maintained as the Ombudsman's letter is attached to the email. Following from this information we have already contacted all Public Services under the Gibraltar Ombudsman's jurisdiction informing them that (where possible) this will be the new mode of communication used by our office as from the end of May 2011.

5 Appropriate Remedy: Monetary compensation for malpractice is an issue which is brought up by complainants using Ombudsman services in UK. What is important to understand is that compensation is a term used in court proceedings and this is not what the Ombudsman is about but rather assessing what the value of the distress is and about trying to put the complainant back in the position that they were prior to the malpractice. Appropriate remedies in UK can therefore range from asking the Public Service to give an apology or a payout of a sum of money. The Ombudsman scheme in Gibraltar has never recommended that money be paid out to a complainant as a form of appropriate remedy but apologies have on occasion been requested from the Public Service.

6 Free Service: The SPSO takes the idea of the Ombudsman being a 'free service' to a new level not heard of in the Ombudsman scheme in Gibraltar. In Scotland all calls to the Ombudsman Office is free of charge and Complainants visiting the office in person can ask for their bus/taxi fee to be reimbursed. The Gibraltar Office had already set in motion a freepost service for all those people wishing to write to the Ombudsman, prior to this meeting; the Ombudsman is now investigating the feasibility of setting up a free-phone service for all those people wishing to phone the Ombudsman Office.

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Our Public Relations Officer distributing copies of our 11th Annual Report outside Parliament House

2.1.2 Biannual BIOA Conference

The Gibraltar Public Services Ombudsman was represented in the Biannual BIOA conference held at the Burleigh Court Conference Centre in Loughborough. As usual the annual meeting was followed by a conference which was composed of plenary and workshop sessions. Under the main theme of "Ombudsmen in a climate of change" a number of topics where considered.

The main topics at the conference this year were 'Challenges to Decisions' and 'Better public accountability / Administrative Justice'. Other related topics were discussed amongst the attendees including the following:

- Better public accountability
- Managing confidentiality in investigations
- Maintaining objectivity in casework
- Communications and new media
- How to be an Ombudsman in a new climate
- Ombudsmen: leaders or followers

It must be said that these BIOA meetings are intended in order to maintain contact and create a forum where Ombudsmen, of both the private and public sector, can share their experiences and acquired knowledge. This year there was the added background of budget cuts facing many Ombudsmen as well as the increase in complaints being handled by many of our UK counterparts due to the economic crisis in their countries.

The UK Parliamentary and Health Ombudsman, Ann Abraham, announced her intention to retire at the end of the year. Ann, a good friend of the Gibraltar Ombudsman, has always offered her assistance to fellow Ombudsmen and has an exemplary track record in the work that she has done at her Office.

Challenges to Decisions / Respect for the Ombudsman

Emily O'Reilly the Ombudsman for Ireland and Ann Abraham both spoke of the need to uphold Public Bodies to account and of the need for Ombudsmen to avoid acting in a manner which watered down their respective baselines. In the context of public sector Ombudsmen, both at local and national levels, it was said that Governments should not "*get cro*ss" with decisions or findings by the Ombudsman but rather should take account of what those decisions say.

Emphasis was made, by the speakers, on the need *not* to negotiate with Government / Public Bodies and not to be seen to be compromising, as such conduct, potentially undermined the essence of the Office of the Ombudsman. Where the Ombudsman encountered a rejection of their recommendations or decisions both speakers agreed that there would be a need to move to a public debate on the issues. Similarly, during the address it was highlighted that Ombudsmen should ensure that, their crucial tool, of good communication is prevalent throughout their duties; particularly where important decisions or findings are concerned.

The UK Financial Services Ombudsman addressed the audience and took the opportunity to remind everyone of certain crucial objectives. Amongst these was the importance of sharing data, the need to help departments to get better at complaints handling and she took the opportunity of reminding Ombudsmen of the fundamental requirement to properly handle their own complaints, if they arise.

In keeping with the previous addresses the Financial Services Ombudsman mentioned that on some occasions Ombudsmen were required to stick their head above the parapet to fulfil their duties and argued that it was part of the role in ensuring proper accountability.

Internal Matters

Two matters generated vigorous debate amongst the members. The first concerned the possible delay within Ombudsmen organisations when processing complaints and the second was in relation to the point made under the slogan ‘”Don’t be Safe”. This latter point alluded to the view expressed by many that the Ombudsman had to be proactive and eager to speak out publically against maladministration. As it was eloquently put by a guest speaker the job of Ombudsmen carries an inherent duty ‘”to speak truth to power regardless of the circumstances”.

Performance management is vital for Ombudsmen to run their offices. However, the majority of attendees agreed that it was not enough to say ‘we do a good job’. Instead everyone was encouraged to have a robust statistical turnover rate, hopefully supported by unequivocal public perception, that indeed the Ombudsman does perform a good job. It was left to be determined whether the point of good performance by the Ombudsman could be proved by high productivity rates or whether this could more adequately be proven by the standard of the quality of the findings produced by the Ombudsmen. No definite preference was announced but a majority of those attending highlighted the importance of having a high standard in the quality of the findings.

Moreover, some attendees described how they have had to react in order to guarantee a successful performance within the constraints imposed on them by the changes the faced. Primarily, their reaction has been in the form of changing internal processes and systems to be able to maintain an effective and timely turnover of decisions.

Whilst not suffering the same degree of problems as other Ombudsmen present at the conference the Gibraltar Ombudsman had, in any case, at the end of 2010 revised its procedures to ensure that it continues to be an efficient office. As it happens it became apparent from the discussion that the revised procedures in Gibraltar are not dissimilar to those now being introduced elsewhere.

Reaching out

Towards the conclusion of the conference an extremely important point was debated. There was consensus that there is an urgent need to focus on the problems affecting younger generations. It was agreed that the availability of new forms of media needed to be explored by Ombudsmen both as a means to communicate with the young people and as a means to facilitate the presentation of complaints by young people.

The impact of recommendations was also debated with a clear understanding that it is this aspect of the Ombudsman's function which most complainants and members of the public look out for. In Gibraltar there has not been a system where the Ombudsman has recommended monetary compensation however this is standard practice in many of the other Ombudsmen schemes. In the same context of the discussion on recommendations other Ombudsmen also spoke of the advantages of having parliamentary select committees examining their decisions and recommendations. This concept is not available in the current parliamentary system in Gibraltar but it was useful to learn how it worked elsewhere particularly because of the impact on recommendations and of the level of accountability that it imposed upon the system and to any challenges to decisions.

The Gibraltar Public Services Ombudsman will now review the information obtained during the course of the discussions and assess what, if anything, needs to be adopted in this jurisdiction.

2.1.3 Public Sector Ombudsman Group, Malta

As part of his regular contact with Ombudsmen from other jurisdictions, under the auspices of the Public Sector Ombudsman Group, to which Gibraltar belongs, the Ombudsman recently visited Malta where the Maltese Ombudsman hosted the meeting of the Group which also marked the occasion of the Maltese Ombudsman's 15th Anniversary.

Those attending the meeting were the United Kingdom's Parliamentary and Health Service Ombudsman, the Public Sector Ombudsmen for England, Wales and Northern Ireland; the Housing Ombudsman for England also attended.

To mark the occasion, the Speaker of the Maltese Parliament, the Hon Michael Frendo, MP hosted a round-table debate on the relationship between Parliament and the Ombudsman. The Government Whip and an elected member of the Opposition also took part in the debate.

The Maltese Ombudsman, Mr Joseph Said Pullicino opened the debate highlighting the good relationship which he has with Parliament. He gave an account of his proposals for legislation in Malta whereby, based on the experiences that had been gained, the Ombudsman felt the need to propose institutional changes in the law aimed at achieving a measure of convergence between the Office of the parliamentary Ombudsman and that of other autonomous institutions set up by law, with a role analogous to that of the Parliamentary Ombudsman but only in respect of specific sectors. These institutions included the Audit Officer of the Malta Environment and Planning Authority and the University Ombudsman.

The Ombudsman's proposals were accepted by Government and approved by Parliament thus amending the Ombudsman Act of 1995. As a result, when the amendments are brought into force, the law will provide for the appointment of sectoral Commissioners. In the very near future, a Commissioner for the Environment and Planning, that of a Commissioner for Tertiary Education (in lieu of the Office of the University Ombudsman) and for the first time, a Commissioner for Health are expected to be appointed. These Commissioners will have complete autonomy and independence in determining complaints submitted to them within their functions. They would have *mutatis mutandis*, the same powers and duties as the Parliamentary Ombudsman, the same guarantees of security of tenure while applying the same procedures in the exercise of their functions.

The Office of the Ombudsman would provide these Commissioners with the necessary administrative and investigative support. The Parliamentary Ombudsman would retain a right of review on the Final Opinions of these Commissioners only in cases where there are issues relating to the breach of the rules of natural justice, manifest error of law or of determining material error of fact.

The Speaker highlighted the good relationship that exists between Parliament and the Ombudsman in Malta. He stressed the importance of the Ombudsman within a democratic society.

The importance of the Ombudsman carrying out his 'Own Motion' investigations, i.e. investigations without the need for a complaint and the use of the media by the Ombudsman was also debated. The Gibraltar Ombudsman spoke of the very high degree of independence that the Ombudsman enjoys in Gibraltar, the good working relations with all those under his jurisdiction and explained how we relate to the media to create awareness of the Ombudsman.

The following day the group held its usual meeting within the Parliament building by courtesy of the Speaker.

Public Sector Meeting Group hosted by the Maltese Ombudsman which also marked the occasion of the Maltese Ombudsman's 15th Anniversary

2.1.4 'Sharpening your Teeth', Vienna

The International Ombudsman Institute (IOI) is a worldwide organization established in 1978 for the purpose of cooperation between the institutions and to develop common understanding of Ombudsman. The IOI's current membership stands at over 150 from 80 countries. Since its inception, the IOI's headquarters were based in Edmonton, Canada but in 2009, the IOI members decided unanimously to relocate it to Vienna, Austria. It was there that our investigating officer Karen Calamaro attended a course hosted by the IOI and delivered by the Ombudsman of Ontario André Marin and his deputy Barbara Finlay. The course was held between the 5th and 8th June 2011 and named 'Sharpening Your Teeth' the brainchild of Mr Marin resulted from his experience in conducting systemic administrative investigations. Because Ombudsmen do not have executive powers only powers of persuasion for the implementation of their recommendations, they are at times compared to toothless tigers, hence the title given to the course, Sharpening Your Teeth.

37 participants from 23 countries amongst which were Indonesia, Papua New Guinea, Australia, Netherlands, Cyprus, Romania, Uganda, Serbia, Slovenia, Ireland, etc. attended. The diversity of institutions represented in the course provided the opportunity for views and practices to be discussed and new contacts to be made.

I.O.I Secretary General and Chair of the Austrian Ombudsman Board, Peter Kostelka addressing the participants in the 'Sharpening your Teeth' course

The content of the course dealt with conducting effective and efficient systemic investigations. The first step is to identify when an issue is systemic, i.e. that it has the potential to affect large numbers of people and is not easily resolved. A template has been designed to assist in the process of identification. Once this has been carried out, the Ontario Ombudsman's course of action is to get together a Special Ombudsman Response Team (SORT), a dedicated team dealing solely with the systemic complaint which operates with a sense of urgency and aims to complete an investigation as quickly as possible. Insight into how SORT operates was provided. The way they approach the complaint, their evidence based assessments and methodical approach.

A number of case studies were reviewed during the course, high profile systemic investigations which the Ontario Ombudsman's office had conducted and which fascinated the majority of the participants. To mention just two of the cases, one was a complaint against the Ministry of Health and the investigation undertaken with regards to the long term care decision making concerning the funding of 'Avastin' for colorectal cancer patients. The other was an investigation into the decision taken by the Ontario Government to expand police powers during the meeting of G20 dignitaries.

Topics covered during the course were effective interviewing, retrieving of relevant documentation, dealing with whistleblowers, assessing evidence and report writing. In this regard, the Ontario Ombudsman has developed a mechanism in which the report is divided into four parts:

Issue: A statement setting out the complaint/issue.

Rule: An introduction of the rule or criteria for decision making.

Analysis: Narration of the findings of the investigation in relation to how the rule fits the material facts.

Conclusion: Ombudsman's decision based on the analysis.

The aim of the report being to write simply, clearly and using precise language in order to communicate effectively with the reader.

All in all, a valuable experience which will undoubtedly benefit members of the public who seek assistance at the Gibraltar Public Services Ombudsman's Office.

Our Investigating Officer, Karen Calamaro together with other participants at the training course

2.1.5 Public Sector Ombudsman Group, Gibraltar London Office

The Gibraltar Ombudsman forms part of a group of Ombudsmen that meet three times a year. This rather unique group is comprised of the United Kingdom's Parliamentary and Health Service Ombudsman, the Public Sector Ombudsmen for England (2), Wales, Scotland and Northern Ireland as well as the Ombudsman for Ireland, Malta, the Cayman Islands and Bermuda; the UK Housing Ombudsman also forms part of this group.

The Gibraltar Ombudsman at the Public Sector Ombudsman Group Meeting in the Gibraltar London House, London

The venue for our meetings rotate from office to office and it is customary for the Ombudsman hosting the meeting to also host a dinner the evening prior to the meeting. In real terms, the dinners are an integral part of our meetings given the amount of information exchanges and business matters that are dealt with during the dinners.

The Gibraltar Public Services Ombudsman hosted the last meeting of 2011. This was also the last PSO group meeting of the United Kingdom's Parliamentary and Health Ombudsman before her retirement at the end of December 2011.

Ann Abraham, United Kingdom's Parliamentary and Health Ombudsman in her last PSO Group Meeting before her retirement at the end of December 2011

Given the splendid facilities which Gibraltar enjoys at the Gibraltar London House in London, we decided to host our event there. We received very positive comments from those attending the dinner and meeting on our choice of venue. The location was great, the offices superb, the service excellent and the assistance received from Mr Peter Canessa and his team was magnificent.

All in all another worthy get-together where ideas were discussed and information and learning's shared.

Public Sector Ombudsman Group dinner hosted by Gibraltar's Ombudsman

2nd day of the Public Sector Ombudsman Group Meeting held at the Gibraltar London House

2.2 Presentation talk to the Gibraltar College of Further Education

The John Mackintosh Hall gymnasium was the venue for a presentation by the Office of the Ombudsman to students of the Gibraltar College of Further Education on the 14th December 2011.

Approximately eighty students attended the talk about a brief history of the Ombudsman and his role in our society.

Our Investigating Officer, Karen Calamaro taking about the role of the Ombudsman to students of the Gibraltar College of Further Education

Students found out about the origin and meaning of the word Ombudsman – a word of Scandinavian origin which means 'representative'. They also found out that the roots of the modern Ombudsman dated back over two hundred years and was traced back to Sweden in 1809 when the Swedish Parliament appointed an Ombudsman.

The role of the Ombudsman was explained to the students. The Ombudsman is a public official appointed by the legislature to receive and investigate complaints from members of the public of maladministration by public services.

Students realised the importance of the Ombudsman's role when it was highlighted to them that we are all users of public services, be it the Department of Education, the Civil Status & Registration Office, the Gibraltar Health Authority, etc. and that someday the Ombudsman's services might be required by them.

Details of the Ombudsman's website were provided to the students, www.ombudsman.org.gi where they could obtain more information about our services and if so required enable them to contact us.

2.3 Ombudsman's Website

Screenshot of the Gibraltar Ombudsman Website

In line with the ascending growth rate of internet users, the new Gibraltar Public Services Ombudsman Website was officially launched on Wednesday 14th September 2011. The Ombudsman pointed out that he was committed in delivering the best possible service to those who seek his assistance and he encourages people to browse through the new website. The website will no doubt improve our services to the general public as it is easy to use and importantly, allows complaints to be submitted electronically through an online complaint form. It is hoped that a wider section of our community will now be able to avail themselves of the service offered by the Ombudsman. Up to now those who wished to lodge a complaint with the Ombudsman had to either come to our offices personally or write to us. Of course, whilst these methods of lodging a complaint will still be available, it will now also be possible to lodge a complaint online by simply logging onto our website and filling up the online complaint form.

13 Complaints have been received through our Online Complaints Form webpage: http://www.ombudsman.org.gi/complaint/complaint-form.htm since we launched our new webpage in September 2011.

Website Statistical Information

We have registered 4305 web visits since we officially launched our new website on the 14th September 2011; a monthly average of more than 1000 web visits. On another note we have had 8516 web page views within our website which confirms that many users have been browsing through the contents and information made available from the list of different categories within our webpage, and not only as a random visit to our homepage which could be sometimes the case.

Table showing Web visits and webpage views of the Gibraltar Public Services Ombudsman Website

2011	*Web Visits*	*Web Page Views*
September	1070	2306
October	1038	2284
November	1238	2158
December	959	1768
TOTAL:	4305	8516

2.4 Principles of Good Administration

It was in 2010 that the Ombudsman embarked in his campaign to promote the Principles of Good Administration. In October 2010 we began a series of presentations to senior staff members of the different entities under the Ombudsman's jurisdiction. The presentation outlined the six broad statements of what public bodies should do to deliver good administration and customer care. 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.

In 2011 the Ombudsman invited the new Head of the Civil Status and Registration Office along with his senior staff to his office and through the PowerPoint presentation explained in detail what the six broad statements meant and how they could be implemented so as to show good customer care. The presentation included photographs showing the lack of maintenance and attention at the reception area of the ID card section and the lack of forward planning of the ramp at the entrance lobby to the marriage registry hall.

Before

Reception area of ID card section showing lack of maintenance

Ramp with cumbersome entrance to the marriage registry hall

The photos provoked a good debate on customer care and resulted in works being carried out later in the year with the ramp properly rectified and the ID card lobby refurbished for the benefit of customer use, thus adhering to the second Principle of 'Being Customer Focused'.

After

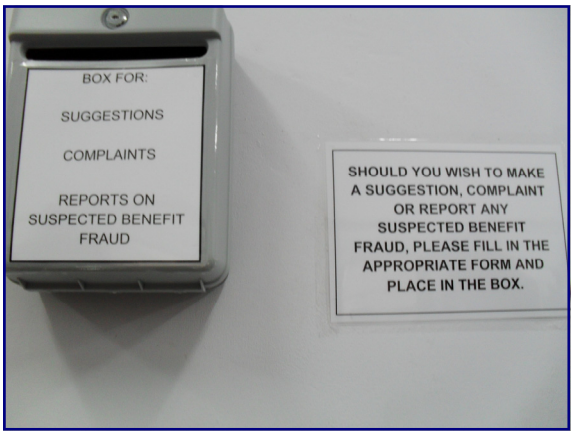
Surrounding area of ID card section clean & tidy after renovation

Ramp extended and entrance is now much more user-friendly

The Department of Social Security (DSS) was one of the only Government Departments who, after watching the Principles presentation, took the Ombudsman up on his offer to show the PowerPoint presentation to his office administrative staff. The Ombudsman is very grateful for this kind gesture.

The Ombudsman together with his Public Relations Officer giving the presentation 'Principles of Good Administration' to the front-line staff of the DSS

The Head of the Department of Social Security also took the initiative to place a suggestions/ complaints box in the lobby of his counter area thus embracing the sixth Principle of 'Seeking Continuous Improvement' which highlights the importance of accepting and promoting complaints and enquiries as a golden opportunity for reform.



Enquiries/complaints box in the lobby of the DSS counter

3
Case Reports

Buildings and Works Department

Case Sustained

CS/885

Complaint against the Building & Works Department for the delay in processing the Complainant's claim for compensation

Complaint

On the 23rd June 2008 the Complainant a tenant of a Government owned flat submitted an Internal Claim Form for compensation to the Building & Works Department ("the Department"). The claim arose as a result of flooding from the WC pan overflow and the Claimant's personal property being affected by sewage. The amount claimed was £3,387.

The Complainant was repeatedly told by the Department that they were looking into the matter and would revert to her. However, nearly two years on there was still no progress on the matter and the Complainant wrote to the Ombudsman on the 11th March 2010.

Investigation

The Ombudsman wrote to the Department on the 17th March 2010 putting forward the Complainant's grievance. Much to the Ombudsman's surprise the Department's reply showed that they had only proceeded to seek legal advice on the issue on the 22nd March 2010 some five days after the Ombudsman's intervention.

No reasons were given for the extraordinary and unreasonable delay in progressing the Internal Claim.

The Ombudsman's enquiries showed that the Complainant's claim was based on damage caused to her personal property by the overflowing of the Flat's WC. The causes of the overflow having been the blockage of the soil and vent pipe outside the Flat.

To make the delay worse the Department omitted to deal with a request for further information from their lawyers in May 2010 and which became apparent when the Department checked the file in order to update the Ombudsman. For the purposes of the investigation it is unnecessary to dwell into the nature of the information being sought primarily because the Ombudsman cannot concern himself with challenging a decision in itself but was investigating the delay and any maladministration surrounding the a decision. Significantly, on the 27th October 2010 he still had reason to write to the Department to request an update as to the Internal Claim and whether a decision had been made on the same.

Conclusion

In respect to the delay 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 in 17th March 2010 and the Department only processed the claim on the 22nd March 2010. That was nearly two years after the claim was submitted by the Complainant.

Internal Claims Procedure v Legal Proceedings

As with other similar complaints which have come before him recently, 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 and other cases it has become apparent that no such expedited system had 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 the duty to make clear that the Department's failure to consider the claim could eventually 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. That would allow the claimant's time to consider whether they want to pursue the matter outside the internal process. That said, the Ombudsman can understand that 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 or which exposes her to unreasonable delay such as in this case.

The evidence in this case, as well as other related cases has shown that the claimants have developed an expectation with regards to their internal claims. The Ombudsman discovered that for no apparent reason the Department has subjected the Internal Claim to unreasonable delay before processing them. Moreover, the cumbersome features of the process come into play at the stage where the Department does indeed act on the form because their procedure is to refer the same to their lawyers.

In so doing the Ombudsman finds that the Department undermines the very essence of the merits of having an internal process. It has to be borne in mind that the claims are often minor in substance. Resorting to legal advice will incur costs; which may be disproportionate in the context of the value of the claim. Additionally, the Ombudsman took account that, such a practice by the Department, inevitably inflicted delay on the determination of the claim because of the transmission of the papers to the lawyers, consideration of them by the advisors, and the subsequent written advice being produced by the lawyers to the Department.

Historical Connotations

In the 'historical' development of events, in respect of these types of claims, the Ombudsman recalled the input by the Chief Secretary in another case. The Chief Secretary on the 11th December 2008 wrote to the Principal Housing Officer ("the PHO") instructing him to put in place the following revised procedure when handling an internal claim for compensation:

a. The claim needs to be considered internally by the Housing Ministry / Department.

b. If there appears to be possible merit in the claim and / or legal advice is required, the claim should be referred to the Attorney General's Chambers.

c. If the advice of the Attorney General's Chambers ("AG") is that the Government should consider making an ex gratia payment or paying compensation, and the amount involved is not large, the case should be referred to the Minister for Justice for Government's policy instructions and decision. If the Minister determines that a particular case requires broader consideration by Government, he will refer it directly to the Office of the Chief Minister.

The Chief Secretary made further comments as to what should be supplied to the AG Chambers to avoid undue delay. Notwithstanding those instructions the fact was that the Department was in reality referring every Internal Claim to their lawyers. Furthermore, not only was this referral a problem in itself but also the situation was exacerbated by the fact that the Department failed to process the claim for months on end. Significantly, the Chief Secretary also alluded to the time required to obtain the legal advice and he pointed to the commitments and workload of the lawyers at the AG Chambers. However, the fact is that the most worrying aspect of the overall delay was not the time taken by the AG to provide the advice but rather the time the Department took to pass on the papers to the AG and the time taken to make a decision on the Complainant's Internal Claim.

The Ombudsman finds that such a timescale represents an unreasonable and precarious state of affairs. Not only is the length of time taken to make a decision too prolonged but such a delay also considerably erodes into the Complainant's right to issue legal proceedings. The Ombudsman is conscious that such a legal right is restricted by time limitations imposed by laws. The Ombudsman is further aware that generally speaking claimants often put reliance on the Internal Claim instead of pursuing their legal rights and are confused by the nature of what the former really is. It is also noteworthy that the claimants will not embark on using legal advice whilst perusing the Internal Claim whereas the Department did use legal advice in this and all other Internal Claims.

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.

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Case Sustained

CS/904

Complaint against the Buildings and Works Department for the delay in processing the Complainant's claim for compensation

Background

The Complainant was aggrieved by the fact that he had submitted an Internal Claim Form on behalf of his mother-in-law to the Building & Works Department ("the Department") for compensation in relation to damage sustained to personal property.

The Complainant's elderly mother-in-law resided in one of the flats within a building the property of the Government of Gibraltar. On the 15th June 2009 water from the upstairs flat penetrated her flat and caused damage to personal property within such as a bedroom carpet, a hallway runner and fridge. Additionally, as a consequence of the water penetration the electrical fuse box became flooded and the supply had to be temporarily disconnected. It was established that the water had emanated from a burst water pipe in the upstairs flat also the property of the Government of Gibraltar.

The day after the incident the Complainant helped his mother-in-law complete an internal claim form which was submitted to the Department to the value of £235. The Department failed to respond to the Complainant and the latter complained to the Ombudsman on the 11th June 2010. The Ombudsman wrote to the Department urging them to comment on the delay to which the internal claim form had been subjected to.

The Department's reply dated the 6th July 2010 was very succinct merely saying that they had not yet received a reply from their legal advisors at the Attorney General's Chambers and that they had sent them a reminder last week. However, somewhat contrary to the Department's reply it was established from the correspondence that the legal advice was dated the 1st July 2010 and had been received by the Department the day before their reply to the Ombudsman. Moreover, on that same day (i.e. The 6th July 2010) the Department wrote to the Complainant's mother-in-law informing her that the claim had been duly considered and that liability was denied. Apart from the said odd sequence of events, no doubt attributable to an oversight, there was one other crucial piece of evidence to be elicited from the correspondence and that was the fact that the internal claim form had only been referred to the Attorney General Chambers on the 3 March 2010.

Investigation

The Ombudsman must stress that whilst the parties repeatedly refer to this as the Claim or as the Claim Form the status of the process is merely an internal procedure. In other words it is not a claim in the context of legal proceedings and that is why the Ombudsman considers it appropriate to refer to the process as the Internal Claim; thereby drawing an important distinction. This is particularly relevant due to the impact that the internal process can have on the right to issue legal proceedings.

The Ombudsman has now come across this type of complaints on several occasions and they all bear the same modus operandi by the Department. That being the fact that the Department unreasonably and without justification 'drags its feet' in processing the form. There is a gap of as much as a year in this case before the Department acts on the form by sending it to their legal advisors.

There are other criticisms to be levied at the poor administrative handling of these internal claims such as the disproportionate costs and time involved. To think that in this case, which essentially involved a claim worth £235, a department required months to decide and resorted to legal advice which is in itself costly is unreasonable.

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 and similar ones in the recent past it has become apparent that no such expedited system has been applied. It appears that 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'.

Conclusion

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 or subjects her to unreasonable delay.

Delay

In the 'historical' development of events, in respect of these types of claims, the Ombudsman recalled the input by the Chief Secretary in another case. The Chief Secretary on the 11th December 2008 wrote to the Principal Housing Officer ("the PHO") instructing him to put in place the following revised procedure when handling an internal claim for compensation:

a. The claim needs to be considered internally by the Housing Ministry / Department.

b. If there appears to be possible merit in the claim and / or legal advice is required, the claim should be referred to the Attorney General's Chambers.

c. If the advice of the Attorney General's Chambers ("AG") is that the Government should consider making an ex gratia payment or paying compensation, and the amount involved is not large, the case should be referred to the Minister for Justice for Government's policy instructions and decision. If the Minister determines that a particular case requires broader consideration by Government, he will refer it directly to the Office of the Chief Minister.

The Chief Secretary made further comments as to what should be supplied to the AG Chambers to avoid undue delay. Notwithstanding these instructions the fact was that the Department was in reality referring every Internal Claim to their lawyers and this particular internal claim was so treated. Furthermore, not only was this referral a problem in itself but also the situation was exacerbated by the fact that the Department failed to process the claims for months on end. The Department referred the claim to the AG on the 3rd March 2010. On the 1st July 2010 the legal advisors wrote back to the Department outlining their legal advice on the Internal Claim. The Ombudsman was not concerned with the decision itself but the time and manner of the decision making process. The Ombudsman finds that a timescale such as the one taken by the Department in this case represents an unreasonable and precarious state of affairs. Not only is the length of time taken to make a decision too prolonged but such a delay also considerably erodes into the Complainant's right to issue legal proceedings. The Ombudsman is conscious that such a legal right is restricted by time limitations imposed by laws and that is why a serious view is taken on any delay to which the internal claim is subjected. The Ombudsman is further aware that generally speaking claimants often put reliance on the Internal Claim instead of pursuing their legal rights and are confused by the nature of what the former really is. It is also noteworthy that the claimants will not embark on using legal advice whilst perusing the Internal Claim whereas the Department did use legal advice in this and all other Internal Claims.

The Ombudsman would signal out that the referrals are in some cases such as this disproportional and should be discouraged more so if that referral also had the consequence of adding to the delay. That was true in this case too given that the evidence shows that the matter was referred in March and a reply from the legal advisors was not obtained until July. That is not necessarily a criticism on the legal advisors because it is a well known fact that the Attorney General Chambers have a heavy workload with a natural emphasis on criminal prosecution issues. Rather the above comment is made in the context that the Department should have been aware of this fact and pursued other options (eg. *instructing other lawyers*) or should even have opted to adhere to an expedited procedure which did not require legal advice.

Classification

The Ombudsman finds compelling reasons to sustain the complaint in relation to the unreasonable delay in processing the Complainant's Internal Claim. The Ombudsman has also found that the Chief Secretary had failed to ensure that the Department adopted the recommendations he [the Chief Secretary] made of having an expedited procedure for these minor claims. Instead we continue to have a referral of all claims in the same manner.

Recommendation

The Ombudsman strongly recommends that the current approach taken by the Department in relation to the Internal Claims be stopped. The current approach is not feasible to claimants and in fact the approach is misleading in that it creates a high expectation on persons relying on it.

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Case Sustained

CS/911

Complaint against the Buildings & Works Department due to the delay in completing works required to adapt a Government flat to accommodate the Complainant's son who has a disability

Complaint

The Complainant was aggrieved because of the delay on the part of the Buildings & Works Department ("B&W") in completing works necessary to adapt the Government rented flat ("the Flat") to suit the needs of the Complainant's son ("Son") who had a disability.

Background

In October 2009, the Complainant received from the Housing Department ("the Department") an offer of allocation of the Flat on a self-repair basis. Given the Son's condition the Complainant requested that the Department undertake the works required and this was agreed. The Flat had to be adapted so as to accommodate the needs of a person who would in all probability require a wheelchair in future, and would need various pieces of equipment and a hoist to assist in transfers within the Flat. The Complainant was informed that an Occupational Therapist ("the OT") from the Gibraltar Health Authority ("the GHA") would have to carry out an assessment of the Flat to decide if it was adequate for the Son's needs, and that this would take approximately two months.

By August 2010, the Complainant and his family had still not been able to move into the Flat due to the works not having been completed. The Complainant claimed to have been told that B&W had only recently been given access to the Flat and this left the Complainant at a loss as to the reasons for such a delay, considering the urgency of their situation. Unable to obtain answers from B&W as to the reasons for the delay, the Complainant brought his grievance to the Ombudsman.

Investigation

Delay in Obtaining the Assessment Report

The Ombudsman's inquiries at B&W found that the assessment report compiled by the OT had been received by fax in March 2010 and had taken four months instead of the estimated two months to be compiled. On inquiring at source (OT) the Ombudsman was informed that the report had been completed by the end December 2009, beginning January 2010 and had been mailed to B&W. The OT explained that around February/March 2010 the Complainant's wife contacted him to let him know B&W had not received the report and the OT faxed it with a request that the case be categorised as urgent, especially due to the fact that there had already been a delay. The OT explained that he was not a paediatric OT and that his involvement in the case stemmed from his work with the Medical Advisory Board ("the MAB"). As a result of a request from the Complainant and his family to be re-housed, the OT was assigned by MAB to assess the situation, following which they were duly categorised. The OT explained that the Complainant subsequently contacted him to inform him they had been offered the Flat but was distressed at the fact that it would be on a self-repair basis.

The OT advised that the basis of the offer was inconsistent with policy by which flats are adapted if requested by an OT and proceeded to correct the situation. The report took longer than it would have under normal circumstances because there was no OT to cover 'Paediatrics' at that time and the role had to be absorbed by other OT staff. The OT who treated the Son on a day to day basis would have been the person who would have drawn up the report but she had left employment.

The OT stated that the works requested were the basic minimum required to allow for the Son's needs.

Delay in Undertaking Works

B&W advised that the works had been prioritised as 'Normal/Routine' and included in position forty three of 'OT Cases' but instructions had been given for the works to be carried out immediately.

B&W provided a sequence of events regarding the works programme in the Flat which stated that the original works had commenced on the 26th June 2010 and were completed by early September 2010. The cause of the delay was deemed to have been as a result of additional works requested by the OT and the Complainant, amongst which were the manufacture of a timber fitted cupboard (commenced 23rd September 2010) and the installation of overhead rails (received by B&W on 14th October 2010).

Regarding the reasons for the delay in the commencement of the works, B&W stated that this was due to:

(i) Unavailability of materials in storage;

(ii) Electrical works having to be undertaken prior to the commencement of the works by B&W.

(iii) The reasons for the delay for the completion of the works was due to:

(iv) The small group of employees in the section of B&W who are capable of undertaking the works specified by the OT;

(v) The person the project was assigned to had to absent himself from the Flat for short periods when he underwent medical treatment in UK, took annual leave and had to attend to several jobs in other locations as a result of emergencies which arose;

The Ombudsman made inquires to B&W regarding the fitted cupboard having been categorised as additional works as he had noted that this had been included in the OT's original report. The reply from B&W stated that the cupboard had been part of the original report but that after most of the repairs were completed, the Complainant and the OT had requested that this be built in the master bedroom instead of the second bedroom which had been the original request. According to B&W it was as a result of having altered the original request that the cupboard installation was categorised as 'additional works'.

The Ombudsman sought information from the OT regarding the alterations made by him to the original assessment. He explained that he had been contacted by the Complainant and his wife on various occasions due to problems they had encountered with B&W and explained that as a result some aspects of the plan had been altered.

B&W Communication with Complainant

There is a record of three letters from B&W to the Complainant:

1. A standard one sent in April 2010 advising the Complainant that the works had been included in their programme of works and would be carried out at the earliest available opportunity;

2. One in September apologising and providing several reasons for the delay in completing the works;

3. One last one in late October 2010 advising the Complainant that although there were two outstanding items pending, namely the replacement of the front door of the Flat and the installation of overhead rails, it was possible for him to move in as the nature of the works did not require that the Flat be unoccupied.

Conclusion

Delay in Obtaining the Assessment Report

The fact that the report was mailed by the OT in January 2010 but was never received by B&W caused an unnecessary two month delay. This could have been avoided if the document had either been emailed or faxed. Through one of those methods, delivery would have been immediate and proof of receipt could have been requested. Regarding the OT Department not having a full staff complement, the Ombudsman was of the opinion that this did not affect the original estimated two month period for the compilation of the report.

Delay in Undertaking Works

It took a year from the time when the Complainant was offered the Flat in October 2009 until the works were completed. During that time, the Complainant and his family continued to live in premises inadequate for the needs of the Son. B&W received the faxed report in March 2010 (five months after their allocation) but the works did not commence until three months later. The reasons for the delay in commencing the works was stated by B&W as being due to the materials required having to be ordered and electrical works having to be undertaken. In the Ombudsman's opinion, the three month period was excessive under the urgent circumstances of the case. In the course of the investigation it was determined that access to the Flat by B&W was not a cause for the delay in beginning the works. One of the major contributory factors to the delay once the works had started was stated by B&W as having been due to the fact that when the person undertaking the works in the Flat had to absent himself, there was no one available to continue with the works. Although this problem could be categorised mainly as a logistical one, there is some degree of maladministration in not having in place personnel cover for urgent cases. A further cause for delay to the works was given by B&W as having being due to the installation of the fitted cupboard in another bedroom. The Ombudsman does not agree with B&W's assertion that the original location of the cupboard as per the OT's report had been changed. The OT's report had requested that the cupboard be built in the second bedroom, the Son's room, and that was its final location, not the master bedroom as stated by B&W.

B&W Communication with Complainant

On the matter of B&W's communication with the Complainant, the Ombudsman pointed out that apart from the standard letter sent by B&W in April 2010, the two others were sent by B&W only after the Ombudsman had presented the Complaint. There is no record of correspondence during a five month period (April through September).

The Ombudsman decided to sustain this Complaint because in his opinion, part of the delays would have been avoidable had matters been correctly administered. The two month delay in B&W having received the report was unnecessary; furthermore, it was the Complainant's wife who had to pursue the matter and informed the OT that B&W had not received the report. The OT had not made any provision to follow up receipt of the report and the works required.

Avenues by which staff cover could have been provided should have been explored by B&W.

In light of the unfortunate delays, B&W should have updated the Complainant accordingly but this did not occur until the Ombudsman's intervention.

Recommendations

For the avoidance of a recurrence of delay in the receipt of key documents, the Ombudsman recommends that these should be faxed, emailed or failing those methods, hand delivered to the relevant entity. The Ombudsman would be following this matter with the Chief Secretary to ensure that an adequate procedure is put in place.

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Case Sustained

CS/914

Complaint against the Buildings & Works Department for not having undertaken repairs to stop water ingress into the Government rented flat the Complainant resided in

Complaint

The Complainant was aggrieved because in July 2006 she had reported problems of water ingress into the Government rented flat ("the Flat") she resided in and over four years later, the Buildings & Works Department ("B&W") had not carried out repairs.

Background

The Complainant explained that the property in which the Flat is located consists of two flats. The Flat is situated at ground level and the other sits above. Access to the top floor flat is by way of a stairway adjacent to the Flat and along a wooden corridor ("Corridor") part of which rests over the Flat's bathroom.

The Complainant explained that she and her husband had lived in the Flat for over thirty years and recalled that early into the tenancy they suffered some water ingress into the bathroom (located adjacent to the stairway).

At that time the property was privately owned and the Complainant and her husband liaised with the estate agent who managed the property. To prevent rainwater penetration as much as possible, the Complainant's husband fitted a thick impermeable material along the length and height of the Corridor over the area of the bathroom, and a corrugated sheet roof over the stairway section. According to the Complainant, no further problems were experienced until 2006 at which time the persons residing in the flat above ("Neighbours") removed both the plastic covering from the landing and the roof above the stairway, claiming this was unsightly, leaving the areas exposed to rainwater.

The fact that neighbourly relations had broken down by that stage, coupled with an iron gate with a lock ("the Gate") which the Neighbours had installed at the foot of the stairway, prevented the Complainant from undertaking the works herself. Therefore, in July 2006 the Complainant made a report of water ingress at the Reporting Office. During the ensuing years and because no repairs were carried out, the Complainant contacted the Reporting Office on numerous occasions and in November 2009 met the Chief Executive ("CE") of B&W to discuss her situation. At the meeting, the Complainant claimed the CE had informed her he would do his utmost for repairs to the Flat to be prioritised.

In March 2010 the Complainant claimed she was contacted by B&W and arrangements made for an employee to commence repairs. The Complainant claimed to have stressed at that stage that she did not want any works undertaken in the interior of the Flat until the problems in the exterior had been addressed. On the convened date, the Complainant took leave from work to be at the Flat whilst works were being undertaken, but the B&W employee failed to turn up. The Complainant claimed that B&W did not contact her to explain what had happened. It was left to her to contact B&W, which she attempted to do by phoning various numbers, but was unsuccessful. In the end she was able to get through to B&W's Help Desk who were only able to assist her by providing her with contact numbers (the same ones she had dialled earlier). The Complainant explained that it was not until a couple of days later that she was able to speak to a foreman at B&W. The foreman informed her that the employee who had to undertake the works had reported sick and that she had not been contacted because:

(i) The foreman was not aware on the day that the employee had reported sick;

(ii) B&W do not have a customer services section for cancellations.

A week later, B&W contacted the Complainant and arranged another date for the repairs. B&W workers arrived at the Flat to carry out internal repairs to the bathroom. As no repairs had as yet been carried out to the exterior of the property, the Complainant requested that no works be carried out inside the Flat as that would be a waste of effort and taxpayers monies; water would continue to filter in and again cause damage. The problems continued and the Complainant explained that in April 2010 she suffered a bad fall in the bathroom when she slipped on a wet patch; allegedly a consequence of water ingress through the bathroom ceiling. The Emergency Section of B&W attended to her call and after undertaking an inspection and speaking to the Neighbours, the cause of the water ingress was found to be as a result of the Neighbours having watered plants on the Corridor.

Desperate about the situation, the Complainant wrote to the CE with her grievances. In his reply the CE informed the Complainant that he had instructed one of B&W's foremen to carry out the works at the earliest possible opportunity. Regarding problems of access which could arise when undertaking repairs as a result of the Gate installed by the Neighbours, the CE stated that he would contact the Housing Department on the issue who were the entity responsible for such matters. In September 2010, due to no repairs having been undertaken and no information having been received from B&W, the Complainant lodged a Complaint with the Ombudsman.

Investigation

Reports made by Complainant and position of the report on the list of reports awaiting repairs

The original report (**Works Order 79089**) made by the Complainant in July 2006 was estimated in February 2008, nineteen months later. The works required were as follows:

External works

(i) The replacement of a number of quarry tiles which covered the stairway leading to the flat above;

(ii) the removal of flower pots on the stairway area;

(iii) removal of loose plaster and paint from the stairway parapet wall;

(iv) re-plastering and painting of parapet wall.

Internal works

(i) Removal of damaged plaster on arch above the bath;

(ii) Re-plastering and painting.

There were four other reports lodged in relation to the water ingress problem, out of which Works Order 92459 had been completed but had been used for other repairs in the Flat unrelated to water ingress; two reports had been cancelled due to being duplicates and the fourth report had been lodged in November 2010 as an Emergency Works Order.

Regarding the Complainant's position on the list for repairs, in December 2010 B&W informed the Ombudsman that when the report was lodged by the Complainant in 2006 it had been included in a general list of repairs. Resulting from the Complainant's letter to the CE in April 2010, approximately four years after the original report was made, this was passed to a 'Priority List'.

No date as to when the repairs would be undertaken could be provided by B&W, '*... due to unforeseen emergencies and the fact that our resources are not infinite.'*

Access to the area impeded by the Gate

During the course of the investigation, the Complainant once again had to contact the Emergency Section of B&W because of water ingress into the bathroom. Although B&W personnel attended to the call that same evening they were unable to inspect the area above the Flat because the Gate was locked. The Complainant was advised by B&W personnel to contact the Reporting Office the following morning to report the matter.

Regarding the Gate, B&W wrote to the Principal Housing Officer ("PHO") at the Ministry for Housing on the matter. The PHO confirmed that no permission had been granted for the installation of the Gate. Therefore, PHO requested B&W to write to the Neighbours and request that the Gate be removed, failing which, the Housing Department would issue a notice under Section 19 of the Housing Act in the event that access was not granted.

Site visit by B&W and Ombudsman

Resulting from the investigation, a site visit to the Flat by B&W and the Ombudsman was arranged. B&W noted the locked Gate which impeded the inspection of the stairway.

The damage in the bathroom due to the water ingress was noted and photographs taken of this. At the conclusion of the inspection, B&W resolved to write to the Ministry for Housing to request that a survey be undertaken to identify and provide a solution to the water ingress problems.

Conclusions

What should have been a straightforward process of lodging a report of water ingress and repairs being undertaken became a prolonged ordeal for the Complainant. At the time of writing this report, February 2011, four years and seven months had passed since the original report was lodged and included in B&W's general repair list. It was only as a result of the Complainant having met and subsequently written a letter to the CE that in April 2010 the report was moved to a priority list, but to date no repairs have been undertaken apart from the attempted internal repairs which the Complainant refused. Furthermore, it was only as a result of the Ombudsman's involvement that B&W suggested a site visit and requested a survey from the Ministry for Housing.

The Ombudsman sustained this Complaint. The reasons provided by B&W as to why repairs had not been undertaken to date *'... unforeseen emergencies and the fact that B&W's resources are not infinite,'* clearly emphasise a lack of good management. The prolonged period of time throughout which water penetration to the Flat had been allowed to continue resulted in extended damage to the Flat, (Government housing stock for which B&W have a duty of care) and caused much stress, worry and discomfort to the Complainant and her family. Furthermore, the only repairs offered by B&W during that time had been to patch up the inside of the Flat before addressing repairs at the source of the water penetration.

The reasons given by B&W as having been the cause for the delay in carrying out the repairs are unacceptable. It goes without say that emergencies will occur, but with good management of resources, a contingency plan will be in place to handle these whereby the list of general repairs will not be so acutely affected to the point of standstill.

Ombudsman Note

At the time of writing this report, a new Housing Works Agency had been established by the Government and was about to commence its operations, thus replacing the Buildings and Works Department. The Ombudsman wished to express his profound discontent with the manner in which Buildings & Works had been run, which could only be classified as chaotic. This view has been reflected in the Ombudsman's many reports in respect of investigations of complaints lodged against Buildings & Works. It is to be hoped that the new Agency will work effectively and meet its proposed targets thus offering the long suffering tenants an efficient service, commensurate with modern day expectations.

Case Sustained

CS/923

Complaint against the Buildings & Works Department for their failure to resolve dampness problems in the Government rented flat the Complainants resided in

Complaint

The Complainants were aggrieved at the Buildings & Works Department's ("B&W") failure to resolve dampness problems in the Government rented flat ("Flat") they resided in.

Background

In 2007 and 2008 the Complainants reported water ingress and dampness problems to the Flat but despite some works undertaken by B&W in early 2008, dampness problems persisted.

The Complainants alleged that when the Flat was inspected by B&W in 2008 they were told that the Flat was in a bad state and repairs were required to the façade of the building. As time passed and the problems were not addressed, the Complainants pursued the matter with the Housing Authority who in turn referred the case to B&W.

In October 2010 the Complainants met with the Minister for Housing and the Chief Executive of B&W and stated that they were promised that scaffolding would be put up within two weeks for the facade of the Flat to be waterproofed and for an inspection of the roof to be made. The Complainants alleged that this did not materialise. Instead a further inspection of the Flat was undertaken at which the Complainants were allegedly told that the dampness problems were the result of condensation. According to the Complainants the inspectors identified vents which had been sealed off as the cause of the mould on the Flat's walls.

The Complainants informed the inspectors that when they had moved into the Flat four years earlier the vents were already sealed. The Complainants claimed the inspectors' advice to them was to repaint the Flat and to wipe off with water and bleach the mould when dampness problems resurfaced.

Desperate about their situation, the Complainants lodged their Complaint with the Ombudsman in January 2011.

Investigation

The Ombudsman put the information provided by the Complainants to B&W for their comments, and requested details on the nature of the intended works and a commencement date for said works. As to the Complaint, B&W stated that they had checked their data and found no record which confirmed the comments made by the Complainant in relation to the lack of ventilation. B&W explained that the only information available was that the required scaffolding was on order.

B&W's reply did not provide the information requested so a further letter had to be sent by the Ombudsman. B&W's reply stated that due to the restructure of B&W they required an extension of time in which to provide the information required. As a result of the on-going restructure of B&W, the Ombudsman decided to put in place a moratorium on investigations for a period of one month (mid-March to mid- April 2011) by which time he envisaged that the new Housing Works Agency ("Agency") would be fully operational. The Ombudsman resumed the investigation in mid-April but in view of the restructure now directed his queries to the Housing Authority, the landlord.

The Ombudsman brought to their attention information he had received from the Complainants in the interim period; a painter from the Agency had been to the Flat to undertake internal repairs which consisted of applying a paint that was designed to eliminate dampness in the interior of the Flat; one room was painted. The Complainants stated that when they returned that evening the smell was so strong that it was impossible to remain in the Flat for fear of being intoxicated. The following day the Complainants refused access to the painter until such time as arrangements were made for temporary accommodation to house them for the duration of the works. The Ombudsman requested the Housing Authority's comments on the issues and information on the paint used.

The Housing Authority confirmed that the Agency had began painting works in the Flat in an effort to reduce the prospect of future dampness but the Complainants now refused entry because of the strong smell of the paint. The Housing Authority advised that the Complainants should allow the works to continue and that for the duration of the works all windows in the Flat should be opened to allow adequate ventilation. Regarding temporary accommodation, the Housing Authority stated they were unable to provide accommodation for that purpose.

The request for information on the paint was passed to the Agency. They explained that it was an alkaline based paint which would prevent further mould growth and would immediately alleviate the condition of the affected walls. Regarding its application, no special protection was required for the tenants. In view of the fact that external repairs were imminent the Agency stated that there was no longer a need to apply that paint but in order to reduce the effects of condensation an anti mould paint (water based) would be used. Scaffolding had been ordered in mid-April and would be erected in mid-June 2011.

As to the reasons for the delays in undertaking the repairs, the Agency put these as having been due to:

(i) B&W's backlog;

(ii) Uncertainty by the inspectors as to the extent of the repairs required;

(iii) Whether the cause of dampness was due to condensation;

(iv) Limited supply of scaffolding locally.

The Agency informed the Ombudsman that both they and B&W had put several solutions to the Complainants in order to eliminate the problems with the mould but stated that the Complainants cooperation had not always been forthcoming.

Conclusion

The Flat experienced dampness problems since 2008 but these were not addressed until 2011 and then only after the Complainants had pursued the matter with the Housing Authority, Housing Minister and the Ombudsman.

The initial repairs undertaken in 2011 were by way of internal painting with a product which "... *would prevent further mould growth and would immediately alleviate the condition of the affected walls*". This was the statement made by the Agency and in the Ombudsman's opinion should have been the action undertaken at the early stages of the report having been made by the Complainants. This action would have possibly contained the dampness problems until scaffolding had been available to inspect the external section of the Flat.

In relation to the Complainants concerns regarding the strong smell of the paint, it would have been desirable for the Agency to have contacted the Complainants and provided information on the product being used - especially that the product was not toxic and that it just happened to emit a strong smell.

Regarding the reasons given by the Agency for the three year delay, the Ombudsman is critical of the long period of time that the problem was left to fester. B&W's backlog had for many years been a recurrent reason for delays in repairs to Government owned properties. Limited supply of scaffolding locally, further hampered the repairs in this case and has also been the cause of delays in numerous cases brought to the Ombudsman in the past. .

The undeniable fact in this Complaint is that the Complainants were made to endure a three year wait for repairs to be carried out and that throughout that time the Flat was subjected to water ingress and dampness. For those reasons the Complaint is sustained.

Ombudsman's Note

At the time of writing this report, the Agency had been operational for a few short months.

The Ombudsman wished to express his profound discontent with the manner in which B&W had been run, which could only be classified as chaotic. This view has been reflected in the Ombudsman's many reports in respect of investigations of complaints lodged against B&W. It is to be hoped that the new Agency will work effectively and meet its proposed targets thus offering those who require their assistance an efficient service, commensurate with modern day expectations.

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Court Services

Case Sustained

CS/916

Complaint against the Courts Service for the failure to notify the Complainant of an outstanding summons and for the issue of a warrant for her arrest for the non-appearance at a hearing of which she was not served with

Complaint

The Complainant was the registered owner of a motor vehicle which had been issued with a Fixed Penalty Notice. The Complainant had not been informed of the existence of this Notice and subsequently came to learn of this when she was informed that a warrant for her arrest had been issued by the Magistrate's Court.

The Complainant was arrested, bailed out and appeared in court to answer for the fixed penalty and for the previous non-appearance in court.

It was upon the collection of a registered letter from the Royal Gibraltar Post Office ("RGPO") that the Complainant first came to be aware of a problem with an outstanding Fixed Penalty Notice. In the envelope collected by the Complainant there was a court summons informing her of an earlier non appearance at court and giving a hearing date which had already passed by the time she collected this letter.

The Complainant attended the RGPO again to complain and was told the matter was not a complaint for them but for the court.

Investigation

It was necessary for the Ombudsman to commence by reminding himself of the administrative procedures surrounding the processing of fixed penalty notices commonly referred to as 'Parking Tickets'. The procedure was such that it comprised of the involvement of several government departments. These were identified by the Ombudsman to have been: the Courts Service, the Royal Gibraltar Post Office and the Royal Gibraltar Police (not a government department).

Similarly, it was important for the Ombudsman to bear in mind the different stages appertaining to the parking fines.

In the first instance a traffic warden or police officer will issue a vehicle infringing the provisions of the laws a Fixed Penalty Notice. This being a paper counterfoil setting out the registration, make, model of vehicle and time & date when the Notice was issued. The officer will then highlight the category of infringement which he/she alleges to have been committed and will then sign and print his/her number on the counterfoil.

For the purposes of this report a distinction should be drawn at this early stage between the Fixed Penalty Notice (the Parking Ticket) and the Summons which follows the Notice if this is not paid. The Summons is the court document outlining the offence and setting the matter down for a court hearing.

The Royal Gibraltar Police

In light of those facts the Ombudsman began his enquiries with the Royal Gibraltar Police ("the RGP"). The Ombudsman asked the RGP to confirm their involvement with regards to the Summons which was signed and laid before the Court by one of their officers. The Ombudsman sought clarification on the officer and method of service as well as the reasons as to why the summons had not been laid before the court until 3rd July 2009 when the date of the offence had been 22nd February 2009. A further issue required an explanation namely the allocation of a court date which was shown in the Summons to be the 3rd May 2010.

The reply confirmed that a Notice had been issued to a motor car registered to the Complainant. That such Penalty Notice had remained unpaid and therefore the Ministry of Transport had sent the Complainant a reminder letter on the 28th May 2009 stating that the Penalty Notice remained unpaid.

Moreover, it was further said that the outstanding penalty was found to be unpaid on or around the 3rd July 2009 and the RGP subsequently received a pack of summonses from the Ministry of Transport for these to be laid before the court which included one in respect of the Complainant's unpaid penalty. The allocated court date was the 3rd May 2010 and that, it was said by the RGP, had been allocated by the courts.

A significant statement was then made to the effect that the summonses are signed by the RGP and sent down to the Court to be signed by the Stipendiary Magistrate / Justice of the Peace. However, even once signed these summonses are then kept by the court until the Court's Process Server sends them to the recipients via the RGPO by ordinary post and by registered mail. The Ombudsman was also made aware that upon receipt of such an initial summons the Complainant could have pleaded guilty by letter by returning a slip and a fine would be sent to her.

The Royal Gibraltar Post Office

The Ombudsman then directed his enquiries to the RGPO and by letter questioned the postmarks found on the envelope and he invited the Chief Executive to comment on the time it had taken to process the envelope and deliver it to the Complainant. The Ombudsman also welcomed an outline of the general procedure for the delivery of registered mail.

The Chief Executive replied by letter and stated that the procedure was as follows:

1. Registered Items are brought to the Sorting Office by a Court messenger and signed over.

2. Depending on the quantity issued (as for Income Tax) it may or may not all be prepared ready for the Walk the next day. Invariably it should not take more than 48 hours.

3. A photocopy of the item is then issued to the Walk as the "NOCC" to deliver. *(the abbreviation NOCC refers to a Notice of Counter Collection*).

4. The item is then sent to the Collection Office, in this case, Main Counters at Main Street.

5. At the 21-day point, if not collected, the item is issued a final notice from the counter, which in this case is a NOCC card proper.

The RGPO clarified that the '19 OCT 2010' postmark is the date the letter was first processed at the Mail Centre. It is possible for a day or two delay between processing and delivery; this however seems irrelevant in this case. The first notification is merely a paper copy of the envelope and there is a propensity for the NOCC to be lost or even to be inadvertently thrown away by customers.

The '16 NOV 2010' postmark stamped, on the envelope collected by the Complainant, was established to be the date on which the second NOCC was processed by the Main Counter clerk. This would have been delivered again within two days maximum and as mentioned above it is a proper card not a photocopy.

In fact not only did the Chief Executive reply to the Ombudsman's questions in addition he conducted an internal check on what had happened with regards to the Complainant's mail. The Ombudsman commends such an attitude as a good application of the Principles of Good Administration.

Notwithstanding the above explanations the Ombudsman considered it useful to request a site inspection to enable him to better comprehend the work methods and systems. To that end under the helpful guidance of the RGPO's Operations Director he visited the postal installations paying particular attention to the systems which the Complainant's letter had been put through.

The Courts Service

The Ombudsman approached the recently appointed Chief Executive of the Courts Service in order to determine and clarify their role in this whole saga. By letter dated the 5th January 2011 the Ombudsman asked of the Chief Executive the following:

1. i).What is the procedure for the issuing of summonses on account of unpaid fixed penalty notices? ii).What was the volume of summonses at the time of this complaint?

2. Was the Complainant warned of the outstanding fixed penalty notice? If so how and when.

3. How did the court become aware of the fact that this particular fixed penalty No. D101880 remained unpaid?

4. Why was this case adjourned from its first hearing date 3rd May 2010 to the 11th June 2010 and then again adjourned to the 1st November 2010?

5. i). What are the reasons for the Summons not having been served until the 14th April 2010? ii).Could service not have been effected earlier given that the Summons was signed by the Stipendiary Magistrate on or around the 4th July 2009.ii).What happens to the Summonses during those months prior to service?

6. i).How are summonses served? ii).If these are served by ordinary post could that not be done by someone other than the Process Server (eg. Messenger, etc). iii).Is it the case that all mail is posted by the Process Server?

7. Why was the Summons stamped with a Justice of the Peace stamp, if in fact, the information was laid before the Stipendiary Magistrate who signed the document?

8. Why was the "Notice of Failure to Appear" dated the 11th June 2010 not sent to the RGPO until the 19th October 2010.

The Ombudsman pointed out to the Court's Chief Executive that given the adverse effect that this matter may have had on the Complainant's fundamental Constitutional Rights, in the sense that, she was arrested as a consequence of the events; the Ombudsman would appreciate his earliest possible assistance. Notwithstanding the Ombudsman's request and his efforts to highlight the importance of this investigation the Ombudsman was disappointed by the extraordinary protracted time taken by the Chief Executive to provide a substantive reply.

In his initial acknowledgement letter the Chief Executive pointed out that he needed to confer with some of his staff but stated that he expected to have a substantive reply by the end of January. On the 8th February 2011 not having had a reply the Ombudsman sent a reminder to the Court's Chief Executive.

The Ombudsman did not receive an acknowledgement or reply to this reminder and on the 14th February 2011 he called the Chief Executive's offices and left a message. On the 15th February 2011 still not having heard from the Chief Executive the Ombudsman sent an email requesting a reply and as an alternative asked him, at least, to return the call.

Three days later the Chief Executive contacted the Ombudsman apologising for being 'out of touch' and indicated that he expected to have a substantive reply by early next week. The Chief Executive alluded to a loss of email facility at the Supreme Court due to ongoing construction works at that location.

Regrettably, on the 22nd March 2011 the Ombudsman desperate to progress this matter called the Chief Executive and urged a reply to the question put to him on the 5th January 2011. Notwithstanding this call the Ombudsman did not receive the reply until the 28th March 2011.

The Ministry for Transport

There was one other entity involved in the administration of the Complainant's Fixed Penalty Notice that being the Traffic Management Division of the Ministry for Transport ("the Traffic Wardens"). The Ombudsman ascertained that the Traffic Wardens were responsible for the issuing of summonses and reminder letters. That is to say, whenever a Fixed Penalty Notice remains unpaid they would send the registered owner of the vehicle in question a letter reminding them of the outstanding penalty. Once that had been done they would, after a period of time which could amount to months, the Traffic Management Division would process the summons.

However, in order to be in an administrative position to process the summons as against the Fixed Penalty Notice they had to physically visit the Court's Ledgers and check that no payment had been received in respect of the Fixed Penalty Notice. This was described as a cumbersome and tedious task which imposed a burden on already precarious structure and workforce.

The Traffic Management Division alluded to the fact that there were many days in which he did not have enough workers to attend to the courts to check outstanding fines and to attend to the summonses. In addition to this check the Traffic Management Division had to draft and present the stacks of summonses to the RGP who would sign and in turn present the same to the Magistrates Court. Once the Justice of the Peace or the Stipendiary Magistrate signed the summons was issued to the registered owner.

On the 21st February 2011 the Ombudsman wrote to the Traffic Management Division of the Ministry for Transport and requested a copy of the letter they had allegedly sent the Complainant on the 28th May 2009. The Ombudsman was surprised by the unusual way that he received a reply. The reply came by way of a Traffic Warden delivering a copy of a letter allegedly sent to the Complainant and returning the Ombudsman's letter. There was no envelope or cover letter accompanying these papers. The Ombudsman wrote requesting a convenient date to visit their offices with a view of verifying the work methods and administrative processes involved in relation to the Fixed Penalty Notices.

The Traffic Management Division completely failed to reply to the Ombudsman and so on the 22nd March 2011 the Ombudsman enquired from the Ministry for Transport the reasons for this failure. A suitable date for the visit was then communicated to the Ombudsman by the Ministry.

Conclusion

As can be seen from the above narrative of the Investigation Stage of this case and from other previous reports undertaken by the Ombudsman on the same problem the complaint stems from a melee of circumstances within what is perhaps the most precarious administrative processes in place in Gibraltar at the time of writing this report. Albeit that an overhaul of the law and system has been announced by Government.

The system to process Fixed Penalty Notices in place at the time of the complaint was on the whole an administrative process and which for defaults or disputed Notices had, as its conclusion, a judicial procedure.

The set up consisted of an unsafe and complicated multifaceted operation from the time the Fixed Penalty Notice was issued to the judicial sanction, if applicable. Even for those Notices which went undisputed the system was insecure as it involved too many different agents and was reliant on cumbersome manual data input.

Breach of Fundamental Rights

The Ombudsman is clear in his mind that the administrate failings in this case had the consequential effect of the most serious nature possible: namely, the breach of someone's fundamental rights. In this case the loss of the right to liberty because the Complainant came to be arrested and later bailed out to appear in court. If, in this case, it was legally possible and permissible to have such a drastic judicial sanction within a public administrative process then the hurdles in respect of the necessary safeguards to the process would have to be at the highest end in the scale of safeguards. Whenever there is a risk to fundamental rights the Ombudsman can only demand the highest of safeguards and that was found to be evidently lacking in this system as a whole.

Furthermore, to exonerate individual departments in this process was not easy because they were inevitably interwoven. However, the Ombudsman in this investigation could depict two specific departments (the Courts Service & the Ministry for Transport) with the most contribution to the unfortunate circumstances which led to the complainant's loss of liberty.

The Process

The first department to contribute, implicitly more than explicitly, to the problem was the Traffic Management Division; and it is not surprising given the unacceptable state of affairs at that end of the process.

The Ombudsman saw for himself the poor infrastructure in place at the time to deal with the Fixed Penalty Notices. This was both in terms of the physical capabilities and the human resources to administer the proper administration of Notices. The offices at which the Traffic Management Division was housed were filthy and had a feeling to the user of more primitive times. Summonses and Notices were piled in boxes, stored in cupboards and stacked on the floors around the office. The Ombudsman was taken aback by the manual input required in the administrative process including the manual data input and manual checks needed to be done at other venues such as the Magistrates' Court records. Added to those issues were instances in which there was not sufficient manpower to do those duties, as the management explained, they had to prioritize the school traffic point duties over the administrative responsibilities.

If that in itself was not precarious enough, the Ombudsman had to add, the lack of direct communication and exchange of data from the Courts to the Traffic Management Division. Therefore, even at this early stage, the Ombudsman felt that the system was a recipe for disaster, in that there were too many aspects that made the system vulnerable and *at serious risk* of something going wrong.

In the context of this particular Complainant, the Ombudsman, was unable to conclusively prove that a reminder letter was sent on the 28th May 2010 as suggested to him by the RGP and Traffic Wardens. The copy of the letter provided to the Ombudsman bore a different date, in fact the date was that of when it was last printed to be produced to the Ombudsman. There was no record or register that could be checked to verify if and when a reminder letter was sent. Even within the limitations of the office these were basic systems which the Ministry for Transport should have put in place within the administrative system.

Working on the premise that no reminder letter had been sent to the Complainant the Ombudsman focused his enquiries on the rest of the procedure. The next stage, relevant to the Complainant, would have been the notification or warning of the existence of a court summons. Here again the system was interwoven and lacking adequate safeguards.

Once the Fixed Penalty Notice had been found to be outstanding the Traffic Management Division sent the draft summons to the RGP who in turn signed and presented the same to the Courts. In due course this was signed by the Justices. To create a summons the Traffic Management Division had to go to the courts check the payment was outstanding and if necessary (ie. penalty not paid) then check who the registered owner of the vehicle was, draft the summons, and present it to the RGP. The RGP had to check and sign the summons and convey it to court. The court then signed and was responsible to serve on the Complainant. At this stage the other most significant failing took place.

Instead of the Courts Service ensuring that they served the summons promptly they took the decision to hold on to the summons. In fact they did so from June 2009 till about the 28th October 2010. The method of service was not personal service but rather through registered post. This is done by simply labelling letters with a registration label (*bar coded*) and then depositing them at the Post Office.

The Royal Gibraltar Post Office

The process thus brought in yet another government department, that of the Royal Gibraltar Post Office. It has to be said that the Royal Gibraltar Post Office set out an exemplary manner of cooperating with the Ombudsman. Some information was almost instantly provided to the Ombudsman by email and other documentation was promptly produced subsequently. In addition to those aspects the Post Office designated a representative to assist the Ombudsman and facilitate an onsite inspection of their own internal administration.

The Ombudsman took careful note of the methods used by the postal service and of the infrastructure. In essence, bar for some minor concerns, with the limited physical space and the limited technology available to them the Ombudsman was satisfied that the administrative service operated at the Post Office operated very well indeed. The Ombudsman was able to trace the route which the Complainant's summons would have gone through.

The Courts Service

The Ombudsman was disappointed, at the manner and time taken, by the Chief Executive of the Courts Service to assist this investigation; this not only considerably delayed the investigation of this very serious complaint but also had the consequential effect of subjecting the Complainant to unreasonable delay.

The Ombudsman wishes to highlight this part of events as an example of what should **not** happen in cases being investigated by the Ombudsman.

Similarly, he would highlight that generally speaking the Principles of Good Administration show a need to acknowledge and reply promptly. The delay experienced in the Ombudsman getting a substantive reply of nearly 12 weeks is simply unacceptable. Some of the reasons given by the Chief Executive for the delay were not sufficient to excuse the extraordinary failure to reply or even acknowledge the Ombudsman's communications. Moreover, the reasons of logistics and disruption caused by the construction works are not entirely pertinent because the enquiries related to the Magistrates' Court which had been settled in their new address since last year. For avoidance of doubt, that does not mean, that the Ombudsman does not recognise that the Chief Executive himself may have been subjected to some disruption due to the ongoing works. However, in the opinion of the Ombudsman, the Chief Executive had considerable time and expertise to have improved on the time taken to reply.

The Court's service of the summons also left a lot to be desired. For the Chief Executive to say, and to accept, that service of letters / summonses is purposely withheld until a couple of weeks before the court date is simply a poor administrative procedure. The Ombudsman would expect service to occur, as prompt as possible, particularly because of the very serious nature of the potential consequences to the recipient.

With regards to service, the Courts, are well aware of the volumes and risks involved and therefore the intentional delay of the letter was not reasonable or an acceptable practice. As it happened by the time the Complainant got the registered mail, the scheduled hearing date, had elapsed. The Courts Service held on to the letter from the 11th June 2009 to 18th October 2009 when it was posted at the Royal Gibraltar Post Office as registered mail. Moreover, in the first instance, the Courts Service, held on to the summons from the 3rd July 2009 to the 14th April 2010 when it was allegedly sent by normal post and never received by the Complainant.

Lack of Information

Another important issue affecting this Complainant was the fact that the Court Service was unable to explain why there was, on the face of the documents examined by the Ombudsman, a further adjournment to the 11th June 2010. It is therefore not even clear, whether the Complainant, had been informed or served with that adjournment date. There was no information on this. In so far as the laying of the summonses is concerned the Ombudsman is of the view that the administrative process should clearly show, by means of an adequate audit trial, the date when the information was signed and accepted by the Court. At the moment all that can be established is the date on which the summons was signed by the RGP but not when the summons was sent to the Courts Service or when this was accepted by them.

Service of Letters / Summonses

One other mention has to be made of the reasons and statistics presented by the Courts Service regarding service of summonses.

The figures were presented collectively reflecting all the types of summons handled by the Process Server and therefore, it can be seen that by implication, that they show that a minority of service actually involves personal service. The majority of service of summonses / documents including that affecting this Complainant is undertaken by ordinary letter followed by registered post. If the volume of work is deemed by the Chief Executive to be too high for the Process Server then the Ombudsman would suggest that the processing of mail (*not necessarily requiring the input of a Process Serve*r) could maybe be facilitated by other grades or with the help of a messenger. For example the high number of letters being delivered by the standard post delivery and /or the registered post could be processed separately to personal service letters requiring the Process Server.

The RGP

There was only one minor point to mention affecting the RGP's involvement and that was the task of presenting of the summons. If the practice is going to continue to be that they merely send the signed and dated summons to court to be later accepted and signed by the Justices / Magistrate then there has to be a system which offers an audit trial and which on inspection can show the dates the process has been completed. The importance of this being that the summons has to be laid before the Justice / Magistrate within six months of the alleged offence and with the current system it is not possible to audit when the Summons was finally signed by the Justice / Magistrate. If the procedure of 'laying' the summons was 'in court' or simultaneous then this would not arise but as matters stand the two staged process where the RGP date and sign and then pass to Court) should to have an audit trial.

Recommendations

1. The Courts Service should issue an apology to the Complainant for the delay in the service of the letters / summons. Additionally, the Courts Service should post letters as soon as they can be served and they must avoid holding back on service.

2. The Ombudsman is of the view that the Courts Service should refund any monies which the Complainant paid by way of the penalty for the Fixed Penalty Notice.

3. The Ombudsman considers that it would be appropriate and good administrative practice for the Court Service to stamp, or show by to other means, the date upon which the summons was signed by the Justice / Magistrate thereby confirming it has been properly laid before the relevant authority.

4. The Ministry for Transport should also issue a letter of apology to the Complainant for the consequences that the cumbersome procedure of Fixed Penalty Notices had on the Complainant which was compounded by their own lack of management of the Traffic Management Division.

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Employment Service

Case Sustained

CS/930

Complaint against the Employment Service, due to the three year delay in issuing the Complainant a certificate of award in respect of a National Vocational Qualification undertaken in Plumbing Studies

Complaint

The Complainant was aggrieved because three years had passed since he completed a National Vocational Qualification ("NVQ") in Plumbing Studies ("Course"), and to date he had not received the certificate of award ("Certificate").

Background

In December 2005 the Complainant began a two year Course which he completed in February 2008. Upon completion, the Gibraltar Training Centre ("GTC") Manager ("Manager") informed the Complainant that it would take approximately ten weeks for the Certificate to be processed as an examiner (known as External Verifier ("Verifier")) had to come over to Gibraltar from the UK to examine the coursework. In the meantime, the Manager provided the Complainant with a letter which could be presented to current/prospective employers until such a time as he received the Certificate, which acknowledged that he had successfully completed all units of competence of an NVQ.

Despite having actively pursued the matter, three years later the Complainant had still not been presented with the Certificate. The Complainant was very concerned at the period of time elapsed for a number of reasons:

- He was worried that if by chance, the work he had produced and which was held at the GTC was destroyed, there would be no work to examine;
- His current employer would leave Gibraltar in 2012 and proving his qualifications to a new employer without the Certificate would in all probability pose a problem;
- Requirements with respect to the Course could have changed.

In February 2011 the Complainant sought a meeting with the Chief Minister. Whilst waiting for a date for the said meeting, the Complainant lodged his Complaint with the Ombudsman.

Investigation

The Ombudsman directed his enquiries to the Director for Employment ("Director"). A detailed report ("Report") compiled by the Manager was received via the Director along with the latter's views on the issue. The Manager explained that the appointment of Verifiers is made directly by the Awarding Body. He stressed that it was therefore the Awarding Body's responsibility to ensure that contractual agreements were met and should not impose any inconveniences on trainees who rightfully sought recognition for their achievements, and evidence of qualifications to prospective or current employers.

As the number of trainees for the Course was small compared to other construction related courses, the Manager explained that the Verifier visited the GTC once a year whereas two visits from Verifiers took place for other courses.

It was noted from the dates provided by the Manager that for the period 2001 to 2005 inclusive, the Verifier visited every two years. Upon further enquiry on this issue, the Manager explained that this had been due to the number of trainees completing the Course which was as follows:

Enrolments	Completions
2001	2
2002	1
2003	3
2004	0
2005	0

There were no visits from Verifiers in 2006 or 2007.

In the Report, the Manager stated that it was in December 2007, when the Complainant completed the Course that he realised that the GTC had been overlooked on the matter of external verification. The Manager stated this was due to the Verifier having discontinued his services in January 2007 and not having notified the GTC therefore leaving the GTC stranded without a successor. It was at that time that the Manager claimed he made immediate representation to the Awarding Body to request the appointment of another Verifier. The Manager further stated in his Report:

"It was clearly evident that my sheer determination and perseverance through intense exchanges of correspondence had convinced the awarding body to appoint Mr… as the new External Verifier in February 2007."

The Manager explained that the Verifier made contact with the GTC and proposed to visit in July/ August 2008. The visit never took place due to the Verifiers workload and the Manager stated that after that communication links were lost.

The Ombudsman queried the date of the new Verifier's appointment, February 2007, as this did not tally with other dates provided by the Manager. The Manager confirmed the date was correct and provided a copy of the letter received from the Awarding Body dated February 2007 which informed the Manager that a new Verifier had been allocated to the GTC; the relevant contact details for the Verifier were provided. Further to the information on the Report, the Manager stated that arrangements had also been made for the new Verifier to visit in July/August 2007 but that this did not take place.

The Manager stated that he alerted the Awarding Body and another Verifier was appointed in June 2009. Again, no visit took place although some infrastructure in relation to changes in the registration procedure for the Course was put in place. The Verifier retired in January 2010 and a new one appointed the following month. Proposed dates for a visit in April, May, July, August and October 2010, all proved to be futile for a variety of reasons ranging from a volcanic ash incident which grounded aeroplanes for a number of weeks, through to the Verifier's work constraints.. The Manager stated that he expressed his concerns with the Awarding Body and requested that the situation be resolved without further delays. A date in March 2011 was finally agreed for the Verifier's visit.

Director's Views

In a letter to the Ombudsman, the Director concluded that a series of diverse and unfortunate circumstances had prevented the visit of a Verifier. Although the Director appreciated the difficulties encountered and the efforts made by the Manager to resolve the issue, he was of the opinion that the matter had dragged on for too long and that it had only been due to the Complainant's insistence, persistence and representations made to the GTC, the Department of Education and Training, the Employment Service, No. 6 Convent Place (the Office of the Chief Minister) and not least to the Ombudsman, that a visit by the Verifier had been confirmed and would take place on the 24th and 25th March 2011.

The Director conveyed his apologies to the Complainant on behalf of the GTC for the long and unacceptable delay, and assured him that the Certificate would finally be issued after the Course programme verification had been undertaken. For completion of records, the Director enclosed a copy of the letter of apology sent by the Manager to the Complainant.

Conclusion

The Complainant enrolled on a two year Course at the completion of which, if successful, he would obtain a Certificate as proof of his achievement. Although the Complainant was successful in his studies, three years later he was still waiting for the Certificate. After having exhausted all avenues with the GTC he lodged a Complaint against the Employment Service, the body responsible for the GTC.

The Manager's Report blamed the difficulties experienced with regards the appointment of Verifiers and arrangements for their visits to take place for the delay in the issue of the Certificate. The Manager stated that it was the Awarding Body who was responsible for both the appointment of Verifiers and meeting contractual agreements which he stated were not being met. Although the GTC looked at the Awarding Body to comply with their side of the bargain, in turn, the trainees and the Complainant could only look at the GTC.

From the information and documentation provided by the Manager to the Ombudsman, it can be ascertained that the Manager had been notified by the Awarding Body in February 2007 that a new Verifier had been appointed. Therefore the statement made by the Manager that the GTC had been overlooked on the matter of an appointment of a Verifier as a result of the previous one having discontinued his services and not notified the GTC cannot be accepted by the Ombudsman. It is the Ombudsman's opinion that it would have been at that early stage (February 2007) that discussions of arrangements for a visit should have commenced. Although in subsequent information provided by the Manager he states that arrangements were also made for July/August 2007 for the Verifier's visit which did not materialise, this further emphasises that the Manager did not adequately pursue the matter given that he was complacent for another visit to be arranged a whole year later.

The Ombudsman was somewhat puzzled at the Manager's statement that it was his *'sheer determination and perseverance'* that convinced the Awarding Body to appoint a Verifier. In the Report the Manager had stated that he had not become aware that the GTC's situation had been overlooked in that respect (no Verifier) until December 2007; ten months after the new appointment. The Ombudsman concluded by the explanations provided by the Manager that he allowed the stagnation of the situation by not escalating the issue. At the very least, the Director should have been made aware of the Complainant's situation and his advice/assistance sought.

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Gibtelecom

Case Sustained

CS/907

Complaint against Gibtelecom Limited for having refused the Complainant's application for the connection of landline and internet services

Complaint

The Complainant was aggrieved because Gibtelecom ("the Company") had refused his application for landline and internet services.

Background

On the 26th of June 2010, using the relevant application forms, the Complainant applied for landline and internet connections at the Company's offices. Having submitted the aforementioned forms, the Complainant was informed by a Customer Services representative in Gibtelecom's shop that his application would be denied as the address at which the Complainant resided had unpaid telephone bills in arrears. The Complainant explained to the representative that he had recently moved into the premises and any arrears were not attributable to him. The Company's representative insisted that the arrears had to be settled before the Company could install the landline or internet connection.

On 30th of June 2010, the Complainant lodged a formal complaint with the Ombudsman.

Investigation

Replying to the Ombudsman's inquiry, the Company informed him that they were investigating the Complainant's allegation. The Company wrote to the Ombudsman on 6 August 2010 and explained that they had reached the conclusion that the Complainant was erroneously related with a bad debt attached to his residence which had nothing to do with him and the Complainant's application for landline and internet services should not have been denied.

The Company explained that when they receive a new application a series of checks are carried out to ascertain if the applicant or the applicant's address have any arrears outstanding.

The Company's policy of checking debts against a residential address was implemented a number of years ago to minimise unscrupulous actions taken by customers who were disconnected for non-payment yet subsequently had services reconnected when a new application was made by a relative living in the same residence. For example, some disconnected customers had reapplied under their wife's name or maiden name.

The Company acknowledged the fact that it would be unfair to deny services to a customer with no prior bad debt history, as a result of any debts left outstanding by a prior or unrelated tenant. The Company went on to state that they were reviewing its procedures and policies to minimise any negative effects of bad debts on legitimate customers.

After the Company learnt that there were no arrears attributable to the Complainant, the Company contacted the Ombudsman and the Complainant to arrange the connection of the required services. The Complainant's landline and internet were connected about a month after his initial application.

The Company informed the Ombudsman that as a direct consequence of the Complaint, the Company had decided to keep a documentary record of all customers who do not have their application for service processed, together with reasons for the rejection of their application. Any cases of an application for a new account resulting in services being denied would also be subject to review within 24 hours by Customer Services management. The Company expressed the view that this particular course of action would facilitate a more expedient method of handling and investigating complaints of this nature.

Conclusions

On the occasion of the tenth Anniversary of the opening of the office of the Ombudsman in Gibraltar, the Ombudsman reminded those entities under his jurisdiction that 'COMPLAINTS ARE VALUABLE LEARNING TOOLS'.

The Ombudsman said that anyone involved in the provision of public service can receive a complaint at any one time. It is these Complaints that can be positive aspects of our work if used as learning tools.

A complaint is an act which enshrines a person's right – and it is a right - to voice discontent against a service provider who, to that person's mind at least, has failed to provide that service which he/she is entitled to receive and gives the service provider the opportunity to address the alleged grievance caused.

If it transpires that there was an action that led to maladministration, then that entity has the golden opportunity to put it right, provide an explanation and if needs be an apology. Also equally important is the fact that it also offers that entity the opportunity to review and improve the service which they provide. This is precisely what the Company did on this occasion although that does not in itself extinguish the initial failing which left the Complainant without the services he applied for and was entitled to receive.

The Ombudsman was of the opinion that the Complaint should be sustained and reminded entities under his jurisdiction, of the constant need to have adequately trained and informed front-line staff.

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UPDATE

GIBTELECOM INFORMED THE OMBUDSMAN THAT THEY DID NOT AGREE WITH THE CLASSIFICATION OF THIS REPORT AND ADDED:

> '*GIBTELECOM PRIDES ITSELF ON THE EXTENSIVE TRAINING PROGRAMME IT UNDERTAKES AND IS CONTINUOUSLY TRAINING BOTH NEW AND EXISTING EMPLOYEES. ON THIS NOTE WE REITERATE THAT WE STRONGLY BELIEVE THAT THE MISTAKE THAT WAS MADE BY OUR CUSTOMER SERVICES REPRESENTATIVE WAS AN ISOLATED INCIDENT AND NOT EQUATE TO AN INFERENCE OF SYSTEMATIC 'INADEQUATE TRAINING'. WHAT WE ACKNOWLEDGE NEEDED IMPROVING IS THE NEED FOR MANAGEMENT REVIEW OF ALL CUSTOMER FACING STAFF DECISION TO DENY SUCH ESSENTIAL SERVICE TO A CUSTOMER*.'

Housing Authority

Case Sustained

CS/861

Complaint against the Housing Department in respect of damage caused to the flat occupied by the Complainant

Complaints

The Complainant was aggrieved by the fact that the Government flat he occupied had suffered considerable damage due to works being carried out in the premises below.

The Complainant occupied the first floor of a building in the upper town ("the Flat"). The ground floor of that building had, in former years, been used as a bar. This ground level part of the building had been disused for many years before it was put out for tender by the Government.

The building was 150 years old and built of traditional random rubble load bearing walls with suspended timber floors internally. A similar property adjoins this building to the north. The external walls are all load bearing and finished with a lime based render and painted masonry finish.

The tender was awarded to a 'consortium' of three bidders who lived in the area in question, for the purposes of conversion into garages subject to the approval of the Development and Planning Commission ("DPC").

Investigation

There was a lengthy 'lead up' to the Complaint which entailed the Complainant writing and reporting matters relating to the damage his Flat had sustained. However, as result of these reports not being tackled promptly, effectively and the damage remaining, the Complainant made a Complaint to the Ombudsman.

The Complaint presented an unusual scenario in terms of the investigation; in the sense that a number of entities had had some involvement and the Ombudsman would therefore have to look at the role played by each vis-à-vis the damage sustained in the Flat.

The Ombudsman decided to formally investigate the Complaint on the 9th September 2009 and requested access to the files held by the Housing Department. An inspection of the files appertaining to the ground floor premises was undertaken by the Ombudsman on the 24th September 2009. Additionally the Ombudsman directed his attention to the DPC and the Building Control Unit ("the BCU"). The Ombudsman attended the offices of the latter where he was briefed very extensively on the works and planning stages. The Ombudsman retrieved a significant volume of evidence from the files made available to him but particularly valuable were the explanations given to him by the BCU officer.

Once the Ombudsman had collated the information from both of the above mentioned sources the Ombudsman saw the need to call upon Land Property Services Limited ("LPS"). The reason for this was that certain issues had arisen in connection with the tender stage of the process, which in the view of the Ombudsman, required further consideration as part of the investigation.

For the purposes of the investigation the Ombudsman focused on three broad issues:

1. The inter-departmental / agency coordination.
2. The conversion works and its monitoring.
3. The tender process.

The main reason for focusing on those issues was that they each impinged on the administrative side of the conversion works. There were of course, as would be expected in any construction works, considerable volumes of technical information and formulas available to the Ombudsman. Those were taken at face value by the Ombudsman and contrasted with any expert reports found during the course of the investigation but only to the extent that they might have been relevant in the context of maladministration. In other words the Ombudsman did not focus on putting into question the technical data because he does not consider that particular aspect to be part of his investigation pursuant to the Public Services Ombudsman Act.

The works

In every case involving 'conversion type' construction works, such as this case, it is a well known principle that all the necessary safeguards have to be put in place to ensure that there is no risk to the safety of other tenants or road users. Generally speaking, the safeguards come in the form of health & safety management strategies, design & planning, adequate and qualified workforce and suitable equipment. In particular, the demolition stages of any construction works, demand suitable risk assessments, supervision and clear method statements.

Against that background, the Ombudsman became aware that there had been, by necessity, a multi party involvement in the works. In fact from the purely public service / administrative side of things there had been: two ministries, three departments and one agency involved in the works. This was quite apart from the private contractors, engineers and architects.

Inter departmental / agency coordination.

The Ministry for Housing ("Ministry") was involved by way of their responsibilities to the Complainant as their landlords. The Ministry had reason to call upon the Minister himself, the Principal Housing Officer, Technical Division and their Civil Engineer. The Ministry further called upon the Building & Works Department because of the damage the Flat sustained during the works.

The other ministry involved in this matter was the Ministry for Enterprise and Development, Technology and Transport. They had reason to call upon the Town Planner, the Building Control Officer ("the BCO") and their Structural Engineer ("the SE") who were all involved actively throughout the works and the prelude.

Each person mentioned above had a role and responsibility to fulfil in this case. All of them combined provided a pool of people guaranteeing safe and adequate working practices for the necessary construction works. It was therefore imperative that all of those persons contributed and worked in the best possible manner and within the highest standards of good administrative practices.

In this context the Ombudsman wishes to highlight the apparent and disappointing evidence showing an unsatisfactory working practice between the ministries and between the departments.

The exchange of correspondence between the BCO and the Principal Housing Officer involved terminology such as:

> " …I find them insulting… you are blaming this department…your accusations…it is discourteous…".

Those comments are not satisfactory language to be expected of public bodies when dealing with a complaint or situation, and the Ombudsman would suggest that they detract from the objective of addressing the complaint efficiently. There was a staunch defensive position adopted by the BCO which was most undesirable and which contravened the core principles of Good Administration.

The Ombudsman would have expected the departments to have coordinated their efforts to secure the proper assessment and to identify the cause of the damage to the Flat as soon as they became aware of the Complaint. The Housing Department expressed its concerns as to the modus operandi of the works. They mentioned they had doubts as to whether the contractor had taken all the necessary precautionary measures during the initial stages of the works. This was mainly because a neighbour had assured them that the wall was fully opened up for the insertion of steel beams (with no apparent regard for the stability of those temporary works) rather than the wall being opened 'half & half' as is standard practice. The Housing Department also drew the attention of the BCO to the use of timber wedges / packing pieces which had been inserted and that the disturbed areas had not been made good at the time. In addition it was noted that no needles or props had been used, as would have been the customary procedure, prior to those types of works commencing.

The Department of Enterprise and Development for their part, through their Structural Engineer replied to the Housing Department's concerns saying that there was always a risk associated with the carrying out of refurbishment works in old properties especially if, as was the case in this instant, large openings were involved. The Structural Engineer was also of the view that in this case the design had been checked and carried out by experienced chartered structural engineers and that there was no reason to question the compliance of the structural design with the relevant standards.

However, in his next paragraph the SE crucially refers to the need for close communication between the designers and the contractor on the methodology to be adopted in carrying out the works. He then went on to allude to another crucial issue in this case; namely, that of, the capability of the inspectors to monitor all the works under their responsibility. The SE highlighted the fact that the inspectors were called upon to inspect all private sector projects as well as now having to carry out inspections of ongoing government projects.

Moreover, at this stage the SE confirmed that he had written to the supervising engineer regarding the proposed extra precautionary measures to be adopted by the contractor and also with regards to possible design changes.

The internal memo was followed by a letter from the Principal Housing Officer to the BCO which in turn alluded to the fact that the Complainant was aggrieved by the "major disruption and anxiety" the works had caused him. This however, it has to be said, is not the nature of the Complaint. The Complaint relates to the damage caused to the Flat occupied by the Complainant and such damage was accepted by all to be a consequence of the works carried out on the ground floor. It is in such a context that the Ombudsman viewed the inter-departmental exchange.

The investigation showed that the issue of the damage caused to the Flat then received the attention of the Building & Works Department. The department suggested that the Complainant be decanted to other accommodation throughout the duration of the works. The suggestion was declined by the Housing Department on the basis that it would be to the detriment of applicants on the Waiting List. The Ombudsman notes that the basis of the Housing Department's decision was purely out of concern for the Waiting Lists and not on the basis that decanting was necessary or otherwise.

The Housing Department further suggested that the Complainant be officially informed that the point of contact be the BCO given that they had issued the works permit and were therefore deemed to be the ones with responsibility. This, irrespective of the fact that the Housing Department was at all times the Landlord.

On the 3rd April 2009 the Contractors informed the BCO that they undertook to monitor the works on a regular basis until all the new supports were completely installed. They confirmed that the beam on the front façade had now been installed and dry packed so no further movement could occur.

The Adjacent Property

Whilst the investigation relates to the damage sustained to the Flat, evidence collated by the Ombudsman, showed that a second property sustained damage as a result of the works. On the 2nd December 2009 the Principal Housing Officer was forced to issue instructions for repairs to be made at this second flat to prevent further water ingress.

Repairs

There was a very extensive and detailed report commissioned on the damage sustained to the Flat but the Ombudsman found it unnecessary to recount the detailed findings. It is however important to highlight the approximate total costs of the repairs to the Flat which were identified to be in the region of £36,000.00.

The above costs are approximate and do not include the removal of any asbestos material which may be found while undertaking the works. Neither does the figure take into account the repairs to the adjacent property.

The Building Inspectors

After a very informative meeting with the BCO the Ombudsman made a request for the following information:

1. How many building permits were granted and were in place at the time the works to the Premises were ongoing.

2. How many sites required inspection during the period that the works to the Premises were ongoing.

3. How was their office / staff alerted to the fact that works at any particular site had commenced.

4. When and how were they made aware of the commencement of the works at the above Premises.

5. How many inspectors were available at the time of the works to the Premises.

The information was given to the Ombudsman in two subsequent communications together with an explanation which enabled the Ombudsman to comprehend the context of the situation.

Conclusion

The Ombudsman having conducted this lengthy investigation concluded that there were administrative failings which contributed to the considerable damage to the Flat and the adjacent property sustained.

1. The Housing Department was wrong to suggest that the point of contact for the Complainant should have been the BCO. In keeping with good administration principles it is that department (Housing) as landlords who are responsible to attend to the Complainant's representations and concerns. The encumbrance should have been on them to liaise and make whatever enquiries were necessary to assist the Complainant. Therefore, the Principal Housing Officer's suggestion that the Complainant should have been formally informed that the BCO was to be their point of contact was simply wrong and the Ombudsman does not find such a proposition administratively acceptable. Similarly, the Principal Housing Officer's assertion that the Complainant was aggrieved by the "major disruption and anxiety" the works had caused him was inaccurate and needed to be qualified. Whilst that may have been the consequential effect of works in the Flat, the grievance was the actual damage the Flat had sustained.

2. In respect of the inter-departmental coordination, the Ombudsman is conclusive in that the Complaint, and the works themselves, warranted the highest degree of cooperation and coordination between departments / ministries. This was however blurred by the defensive attitude taken by the respective Department as evidenced by the tenure of the terminology used in the exchange of correspondence mentioned above. A more factual and less emotional approach should have been taken when answering each others concerns to ensure that any problems were dealt with efficiently. Not least because, by that stage, the damage had already manifested itself and the priority was to contain and rectify the same.

3. There is one salient administrative issue which the Ombudsman found to be significant to the outcome of this case, namely the capability of the BCU to monitor the works.

It is recognised by all concerned that any construction works require safeguards as a guarantee to the safety of other tenants or road users. This was more apparent in this case given the age of the building and the nature of the approved conversion works. This was so confirmed by the Structural Engineer who in his letter stated that there was a need for close communication between the contractor and designers on the methodology to be adopted in carrying out the works. This, the Ombudsman believes, by definition implied a need for close supervision by the BCO.

It is on this issue of supervision and monitoring that another issue of maladministration surfaces to contribute negatively to the damage caused to the Flat and the adjacent property. The BCO confirmed to the Ombudsman that they operate on a notification basis. That is to say that they would have to be notified by the contractor of the commencement of the works in order for them to begin their monitoring. In fact it was established that in this case the BCO were not aware that the works had commenced.

The team available to inspect construction works is limited to three building inspectors. The Ombudsman established that approximately 200 to 250 permits are issued annually and although they do not all result in works commencing at the same time, these accrue to the total which the inspectors need to oversee. Furthermore, the BCU confirmed that a reasonable estimate would be for each of the three inspectors to be responsible for 3 to 4 large scale projects in addition to **300 other sites**.

With this in mind the Ombudsman noted that the frequency of 'onsite' visits depended on the nature of the works of each project. However once again they relied on notification of crucial aspects of the works such as, for example, concentre pours on the different sites to increase supervision accordingly. It is this system of work that puts reliance on others to an extent which rendered the inspector somewhat inactive if he were not informed. This system in the opinion of the Ombudsman is not conducive to good administration. It is not an ideal system of work particularly in cases where supervision is vital.

The Ombudsman was also concerned that the BCO could not in this case confirm the total number of site visits afforded to the works although they did assure the Ombudsman that two or three weekly visits were actually carried out since they had become aware of the commencement of the works. No evidence could be put forward to support this. The burden imposed on the inspectors and the system under which they operate allowed the works in this case to commence without inspections. The methodology of the demolishing of the wall to allow the large openings as well as the support of the structure did not benefit of the best possible supervision. In fact the evidence shows that changes were made once the damage was brought to the attention of the BCO.

Recommendations

The Ombudsman would suggest that the BCU needs to be more proactive in respect of inspections. The practice of inspectors, waiting for notification of commencement of works, or relying on notification of crucial aspects such as concrete pours should be replaced with a more pro-active approach. The Ombudsman recognises that there is already a heavy burden on the 3 inspectors but the system needs to be reviewed to ensure better supervision of works such as these.

UPDATE

ON THE 2ND SEPTEMBER 2010 THE OMBUDSMAN SOUGHT AN UPDATE ON WHETHER THE COMPLAINANT HAD BEEN RE-HOUSED AND WHETHER THE FLAT HAD BEEN REPAIRED. THE PRINCIPAL HOUSING OFFICER REPLIED ON THE 20TH SEPTEMBER 2010 STATING THAT ALTERNATIVE SUITABLE ACCOMMODATION HAD BEEN ALLOCATED TO THE COMPLAINANT. IN RESPECT OF WORKS THE PRINCIPAL HOUSING OFFICER'S EXPLAINED THAT THESE HAD NOT BEEN TACKLED AND WOULD NOT BE UNTIL SUCH TIME AS THE COMPLAINANT VACATED THE FLAT.

THE OMBUDSMAN WOULD LIKE TO CLARIFY THAT HE IS NOT AWARE OF ANY CLAIMS HAVING BEEN MADE BY THE GOVERNMENT AGAINST THE DEVELOPERS OR THE OWNERS OF THE GARAGES.

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Case Sustained

CS/893

Complaint against the Housing Department for not having taken action in respect of the complaint they had made; Non-reply to letter

Complaint

The Complainants were aggrieved because approximately three years had passed since they had first lodged a complaint with the Housing Department ("the Department") and to date no action had been taken.

They were further aggrieved because the Department had not replied to a letter they had sent in February 2010 pursuing the matter.

Background

In August 2007, the Complainants wrote to the Department to complain that tenants ("the Tenants") had enclosed a communal area adjacent to the Government rented flat ("the Flat") they resided in, thereby denying access to other residents.

The Tenants had built a brick barbeque which when in use released unpleasant fumes and had placed plant pots on part of the steps which led to the now enclosed area.

In their letter, the Complainants requested the Department to investigate the situation in order to resolve the issues of access to the communal areas for all residents, before the matter got out of hand.

Apart from an acknowledgement letter to their complaint, the Complainants received no other communication from the Department and the situation remained unchanged.

In May 2009, the Complainants verbally complained to the Department on the same issues and again received a letter of acknowledgement in which they were informed that the matter would be investigated.

The situation continued and in February 2010, the Complainants once again wrote to the Department. They put across their disappointment at the Department's inaction in respect of their complaints and informed them that the situation had exacerbated.

The Tenants had now also without authorisation installed a chimney ("the Chimney") in the Flat with the accompanying extraction system which the Complainants felt was a fire hazard and which had required works to the façade of the Flat.

No reply was received from the Department and so on the 30th March 2010, the Complainants brought the matter to the Ombudsman.

Investigation

The Ombudsman wrote to the Department to enquire when the Complainants could expect a reply. Consequently, the Complainants received a reply on the 9th April 2010.

The Department apologised for the delay and informed them that they were aware of the current dispute but that the solution to the matter was not an easy one and further consideration would be required. Nevertheless, the Complainants were assured that the matter would not be left in abeyance.

On balance of the issues concerned, the Ombudsman decided to formally investigate the case and sought information from the Principal Housing Officer ("the PHO"). In his reply, the PHO informed the Ombudsman as follows:

1.Recovery of Communal Area by the Department

The Department had not been aware that there was a piece of communal land being used exclusively by Tenants who did not permit entry to other residents

2. Rent & Rates Levied for the use of the Communal Area

No rent or rates were charged to the Tenants because the Department was not aware that there was exclusive use of the area.

3.Residents Deprived of the use of the Communal Area

Two residents (the Complainants) were being affected.

4. Procedure for the Acquisition of Communal Areas by Tenants in Government Accommodation?

In accordance with departmental policy, additional land was **not** normally granted to tenants other than in very **exceptional cases**. If a tenant was interested in applying, this would be in writing to the Lands & Works Panel.

The Ombudsman wrote to the PHO and requested clarification as to when he had first become aware of the problem and of when the Department had first known of the issue. The Ombudsman also requested confirmation of the steps taken by the Department to recover the communal land, in view of the fact that the 'additional space' had not been granted to the Tenants.

It took two further reminder letters from the Ombudsman before a reply was received on the 21st July 2010. In his letter, the PHO explained that he needed to consult further with Government on the matter and stated that there were two options available to them:

(a) To regularise the situation through amendments to the respective tenancy agreement;

(b) To issue a legal notice under Section 18/19 of the Housing Act 2007("the Act").

(Section 18 of the Act refers to unauthorised works done by tenants on Government owned housing and makes such actions offences).

No clarification was provided by the PHO as to the date on which he had first become aware of the problem and so on the 3rd August 2010, the Ombudsman once again wrote to the PHO on the matter. It was pointed out to the PHO that regardless of the ongoing consultation with Government on the way forward, the issues raised by the Ombudsman required a reply and for that reason, and considering the matter had already been delayed, a prompt reply was expected. Notwithstanding this, the PHO's reply, was not received until the 13th September 2010, once again an approximate six week delay.

In his reply, the PHO explained that in 2007 the Department was made aware of the problems although he stressed that the Tenants had subsequently been approached about the complaints. The PHO did not expand further on this issue.

The PHO had included with his reply an internal memo from the Systems Project Manager ("the SPM") who had been the person mainly involved in this issue. He explained that he had gotten involved in the matter in 2007 and as a result, housing inspectors had prepared a report.

The SPM explained that the area in question was located in a corner of the estate (dead end) which no one had to use as a thoroughfare, and stated that it was only as a result of bad neighbourly relations that the Complainants were trying to force the issue that they wanted to use the area.

On the matter of the plant pots on the stairway, the SPM stated that the Tenants had been requested to cooperate but they never did. In 2009 the SPM, the PHO, and a housing inspector visited the area but no decision was ever taken on how to proceed.

The Ombudsman visited the Department's offices and inspected several files. The original letter sent by the Complainants in 2007 was on file. A handwritten note from the PHO to the SPM on the said letter dated 13th August 2007 instructed the SPM to investigate the matter and check the Tenants tenancy agreement.

The PHO gave instructions to the effect that if the Tenants were found to be encroaching, they were to be informed that the actions were unauthorised and would be subject to legal proceedings if they refused to cooperate. An internal memo from the SPM to the PHO communicated the findings subsequent to the inspection undertaken and requested instructions on how to proceed. The SPM informed the PHO that the Tenants were using the area next to their flat as a patio and had placed a little gate (without a lock) to make the area more private. The SPM's conclusion was:

(i) that the Tenants had beautified both the communal area and the staircase leading to this;

(ii) that the Complainants did not have to use the communal area as a thoroughfare as it was located in a dead end;

(iii) that the Department had to be careful not to be dragged into a conflicting situation because it appeared that many tenants in the estate had taken over parts of communal patios and staircases.

A handwritten note from the PHO on the internal memo in September 2007 showed that the PHO agreed with the SPM that forceful action directed at the Tenants would open the flood gates on other unauthorised encroachments in the area.

The PHO therefore concluded that as long as the Tenants used the area for embellishment with plants, etc. then he did not see any reason to intervene, especially as there was no need for other tenants to pass through the area. Notwithstanding, the PHO requested that the Tenants be informed that other tenants could enter the common area for leisure purposes.

On the same note of 2007, the PHO informed the SPM that he had been made aware that the Tenants had installed a chimney flue ("the Chimney") and he did not recall having authorised this.

PHO requested the SPM to check out this information and if verified, requested that he contact the Building Control Section or the Town Planner for corrective action. The next record on file from the SPM on the above matters was an internal memo to the PHO in June 2010 stemming from the Ombudsman's investigation as follows:

Communal area

The SPM stated that although he was aware there had been a dispute dating back to 2007, his information was that the gate leading to the communal area was always open.

Plant pots on communal areas

On the matter of the plant pots on the staircase, the SPM stated that the Tenants had been requested to cooperate by removing them but it appeared that they never did, claiming at the time that other tenants also had these in communal areas.

Chimney

On the matter of the Chimney, the SPM stated that he could not recall the issue having been brought to the Department's attention.

Due to the discrepancy between the information provided by the SPM with regards the Chimney and the Ombudsman's findings, the latter requested that the PHO inform him on what steps would be taken on this issue. It again took several letters from the Ombudsman for a substantive reply to be received. The PHO apologised for the delay in replying and confirmed that no permission had been granted to the Tenants for the installation of that structure. The Department had raised the issue with the SPM who inspected the area in August 2010 and reported that no Chimney was visible. The SPM's assertion was that the Tenants must have had the structure removed. It took a further site visit, on this occasion by the PHO, to determine that the Chimney was in situ, located to the rear of the Flat. As a result of this confirmation, the Department informed the Ombudsman that a notice would be issued for the Tenants to remove the unauthorised structure.

Conclusion

Non-Reply to Letter

In relation to the non-reply to the Complainants letter, the Ombudsman decided to sustain the Complaint. Prior to bringing their grievance to the Ombudsman, forty six days had passed since the letter was sent to the Department. In the Ombudsman's opinion, that was ample time by which the Department should have at least acknowledged the letter. It was only as a result of the Ombudsman's intervention that the Complainants received a reply.

The Department did not afford any substantive replies to the Complainants' letters of 2007 and 2010, even though it is quite clear from the Ombudsman's investigation that the PHO had taken a decision in September 2007; not to take action with regards the Tenants encroachment on the communal area nor with regards the plant pots on the staircase.

Mention must be made of the delays on the part of the Department in replying to the Ombudsman in this case which the Ombudsman takes very seriously, not least because this impacts directly on the Complainants who had already endured delay. The reasons given by the PHO '… the workload bestowed to the post of PHO is particularly wide and complex, stemming across three difficult departmental services namely, Housing, Buildings and Works and Workers Hostels,' cannot justify the delay.

Not Having Taken Action in Respect of the Complaint Made

Communal Area

The Ombudsman sustained the Complaint. The outcome of the investigation clearly shows that although a site inspection was undertaken in 2007, the Department never informed the Complainants of any intentions or action taken.

Throughout those years, the Complainants and any other person in the vicinity had therefore unnecessarily and unjustifiably been deprived of making use of the communal area which had been taken over by the Tenants.

The Ombudsman was further concerned by the fact that the Tenants had benefited gratuitously from the communal area to the exclusion of other neighbours without the matter having been through the due process and in clear breach of Clause 4.4.(2) of the Tenancy Agreement which states:

The Tenant agrees with the Landlord;
"not to allow for any cause any box, parcel, flowerpot, refuse, rubbish or any obstacle whatsoever to be left in the passage or on any landing outside the premises".

Naturally, the related administrative issues of additional rent and rates also arose in this case. The Ombudsman's reference to the area having been taken over stems from his visit to the area and from having had the benefit of the photographic evidence produced to him. The Ombudsman is clear that the area had been transformed to a recreational patio and adapted and decorated for the benefit of the Tenants to the exclusion of others.

Furthermore, it took the Complainants three years and the intervention of the Ombudsman for the Department to finally act, whereas the Department should have acted promptly and decisively in the early stages to prevent the problem from festering and for the situation to have been regularised in the Tenancy.

Reference must be made to the fact that prompt and decisive action is imperative in these type of situations because such matters raise expectations on tenants and could send a wrong message to other occupiers of Government rented housing who may be contemplating encroaching onto communal areas, altering the established boundaries, or undertaking unauthorised works.

The Principles of Good Administration advocate that public bodies should be open and accountable, and in this matter this has clearly not been the case.

Chimney

As far back as 2007, the SPM had instructions from the PHO on how to proceed with regards the removal of the Chimney. However, the SPM evidently failed to undertake his duties in that regard, in fact, in 2010 he made a statement to the effect that he could not recall the issue of a fireplace/ chimney and instead indicated that he was confused by an earlier reference to a portable barbeque in the communal area. The Ombudsman finds the handwritten note by the PHO in 2007 clearly refers to a chimney flue and not a portable barbeque.

In any event, when the Complainants raised the issue again in 2009 the Department failed initially to locate and to deal with the chimney flue.

Plant pots in communal areas

Regarding the removal of plant pots from the steps situated in communal areas, in cases such as this one where there may have been a genuine cause for complaint, the PHO has the discretion to enforce the terms of the Tenancy Agreement. This sort of activity is contemplated within the restrictions contained in the general provisions of the Tenancy Agreement which tenants sign when allocated Government owned flats.

Information provided by SPM for the purpose of the investigation

The Ombudsman took issue in erroneous information provided to him by the SPM as follows:

(i) Not recalling the matter of the Chimney;

(ii) Having stated that the Tenants had been requested to remove the plant pots on the staircase but it appeared they never did, claiming at the time that other tenants also had these in communal areas.

The Ombudsman was of the view that the SPM should have checked the Department's records prior to providing the incorrect information from memory.

The Ombudsman made several recommendations. In respect of this case in particular, the Department ought to:

1. Ensure that the property is restored to its original state and any works relating to repairing the unauthorised works, such as the reformations done by the Tenants for chimney flue, should be done and paid for by the Tenants.

2. The matter of the communal area should be regularised if the Tenants applied within the 21 days or alternatively should be restored to being a communal area with the removal of all private property such as barbeques and other decorative recreational items from thereon.

Arising from this case, but in general terms, the Department should as a matter of practice assess, by means of regular housing inspections, the state of the Government properties and wherever any encroachment or unauthorised works are discovered these ought to be dealt with effectively and promptly.

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Case Sustained

CS/913

Complaint against the Ministry for Housing for their failure to clear rubbish in a derelict building located near the property the Complainant resides in.

Background

On the 12th August 2010 the Complainant wrote to the Principal Housing Officer ("PHO") in relation to an accumulation of rubbish in a derelict building located near the property she resides in. The Complainant was informed by the PHO that the matter would be referred to the Building & Works Department ("B&W") for them to undertake the appropriate action.

The problem persisted and on the 1st October 2010 the Complainant hand delivered a letter to the Chief Executive of B&W in the hope that the situation could be remedied without further delay.

Given that the Chief Executive had not afforded the Complainant the courtesy of an acknowledgement or reply, and as no action had been taken to abate the problem, the Complainant made a complaint to the Ombudsman on the 19th October 2010.

Investigation

The Ombudsman wrote to the Chief Executive of B&W outlining the Complainant's grievance. B&W then replied to the Complainant on the 28th October 2010.

In their reply they apologised for the delay and also committed themselves to dealing with the problem albeit they were unable to provide a commencement date or an indication of when this was likely to happen.

Rather interestingly B&W's reply to the Ombudsman explained that they had no data in their system regarding the problem highlighted by the Complainant and had therefore 'raised a works request...to start off the process'.

The Ombudsman considered the 'Works Requisition Form' raised by B&W. This alluded to the derelict building being used as a rubbish dump and the possibility that vermin may move into the property if nothing was done to remedy the situation. The necessary works were said to be the blocking up of the property.

In light of those facts the Ombudsman decided to conduct a Formal Investigation into the matter and so informed the Ministry for Housing ("Ministry"), who reverted to the Ombudsman's additional queries on the matter.

Conclusion

From the Ministry's reply, the Ombudsman concluded that, there had been a misunderstanding as to the derelict property's identity in the sense that the Complainant had made reference to a specific address but that was in reality not the address attributed to the property by the Ministry.

To that extent and that extent alone the Ombudsman does not attach any maladministration. That could be a genuine mistake and nothing more sinister than that. However, having looked a little more in depth to the administrative process resulting from the Complaint the Ombudsman finds the following:

- That although B&W may have been confused with the issue of the address and the nature of the problem; they acted reasonably in raising a works requisition to instigate the process.

- Whilst the B&W did the above positively the Ombudsman is disappointed to note that they failed initially to offer the Complainant an acknowledgment to her letter. This was unacceptable in the circumstances.

- It was evident that there was a discrepancy with the report made by the Complainant and the records held by the Ministry. The Ombudsman finds that the Ministry ought to have handled this point more effectively. There was no apparent justification for the discrepancy not to have been identified earlier on. Instead the matter was left in abeyance and the discrepancy was indentified only at the behest of the Ombudsman's investigation.

- The other significant finding made by the Ombudsman is that, notwithstanding the discrepancy with the address, no remedial action was taken until circa the 23rd November 2010. The reports on record relating to the problem of accumulation of rubbish for the correct address predate that date and the Ombudsman has had no evidence that would justify the B&W's inaction.

With those points in mind, the Ombudsman finds that there was maladministration by the Ministry on how the report made by the Complainant was handled. In addition and perhaps of a more serious nature was the fact that there was maladministration on the part of the B&W on their failure to offer an acknowledgment or timely reply to the Complainant as well as a failure to undertake the recorded works which had been pending for at least four months.

UPDATE

ON THE 26TH JANUARY 2011 THE B&W INFORMED THE OMBUDSMAN THAT IN THE CONTEXT OF THE FAILURE TO ADEQUATELY DEAL WITH THE COMPLAINANT'S CORRESPONDENCE THEY HAD COMMISSIONED A REPORT ON THE CIRCUMSTANCES SURROUNDING THIS CASE AND HAD MADE RECOMMENDATIONS FOR PROCEDURAL MODIFICATIONS TO AVERT A FUTURE REOCCURRENCE. THE B&W HAD DECIDED TO INCLUDE THE ACCOUNTS EXECUTIVE OFFICER INTO THE PROCEDURE TO STRENGTHEN CONTROLS ON ACKNOWLEDGEMENT OF LETTERS.

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Case Partly Sustained

CS/918

Complaint against the Housing Authority ("the Authority") for their refusal to authorise the Complainant residence in the government owned flat in which her aunt lived and for the Authority's refusal to house her.

Complaint

The Complainant was at the time going through family proceedings as a result of the separation from her partner with whom she lived in a government owned flat ("the Flat"). The Complainant had a child of the relationship.

On the 6th October 2010 the Complainant through her lawyer presented a complaint to the Ombudsman to the effect that the Authority had refused to authorise her to reside in her aunt's flat, this being, a government flat ("the Aunt's Flat") and inter alia complained that the Authority had failed to house her.

Investigation

The Complaint was of a rather factual nature and initially the Ombudsman therefore had minimum investigative involvement other than to confirm, clarify and contrast the facts alleged by the Complainant. However, the facts once established raised issues which required considerable analysis by the Ombudsman for their implications and consequences. In order to achieve his objectives, a couple of requests for information and documents, were made to the Authority, which through its Housing Manager ("HM"), assisted the Ombudsman in his enquiries.

The Ombudsman was first and foremost interested to establish whether there had been a refusal to include the Complainant in any tenancy and secondly whether there had been a failure to house the Complainant. Therefore, clarification was sought on the status of the Complainant vis-à-vis any applications for housing.

The Authority confirmed that the Complainant and her child were occupiers of a government flat in which her partner was the registered tenant. This was not a joint tenancy but rather, the Authority stated, that the Complainant and her child were merely authorised to reside at the flat.

Moreover, the Authority informed the Ombudsman that no application had been made either verbally or in the required form by the Complainant to be included in the Aunt's Flat. In any event the Authority was categorical that they would have declined any such request because inclusions into tenancies of an aunt are denied as a matter of course.

In light of the facts surrounding the fundamental issue (ie. *the alleged failure to be housed*) the Ombudsman requested to know whether the tenancy holder could ask for the removal of any person authorised to reside and in particular, in this case, whether the Complainant could be removed from the property. The Ombudsman requested copies of any applications made by the tenant leading up to the allocation of the Flat to the Complainant's partner and also copies of any applications made to include / or allow any persons to live at the said premises.

In reply to the Ombudsman's enquiries the Authority produced a copy of the Application for Re-accommodation made by the Complainant's partner in 2nd November 2009. An explanation was also put forward by the Authority in response to the Ombudsman's question on the potential removal of the Complainant by her partner. The Authority informed the Ombudsman that a tenancy holder can request the exclusion of any person who has been authorised to reside in the household.

The Authority confirmed that they had become aware via the Complainant's lawyers of there being a dispute as to the tenancy to the Flat. It was, they said, the Complainant's lawyer who wanted the Complainant's partner to be removed from the Flat and the tenancy to be transferred to the Complainant. As a result, the Housing Allocation Committee had informed the Complainant that they would have to resolve that dispute through the courts and the Authority made a note for the Complainant and her child not to be removed from the Flat pending the court's decision.

Conclusions

The Ombudsman was surprised to learn of the distinctions made in this tenancy by the Authority in the selective use of terminology and their categorisation of the occupants who after all were allocated the Flat as a family.

The evidence showed that the Complainant's partner had applied for re-accommodation to the Flat on the basis that the Complainant and her child were part of the applicant's (ie. the Complainant's partner's) family composition. It was on that basis that the applicant must have been considered for the allocation of the 3RKB flat to the Complainant on the 16th June 2010.

That said, it was therefore odd to see that the Authority were now distinguishing the adult members of the household and granting greater rights to one than to both who had formed part of the initial application.

Significantly, no application was ever made by the tenancy holder to include the Complainant and /or her child although the Ombudsman notes that their names appeared on the tenancy document under the Schedule dealing with "Persons permitted to reside on the premises". There again, the tenancy holder himself appeared on this same schedule which made no more than a list of persons in occupation of the premises at the time of the signing of the tenancy agreement.

An unacceptable contradiction in that same regard arose on the Authority's statement suggesting that they would not remove the Complainant or anyone else pending court proceedings. That made little sense given the circumstances and in the view of the Ombudsman, undermined what the Authority were saying; that the tenant was the Complainant's partner and the Complainant was *only* permitted to reside there. It also contradicted the assertion that a tenant can request the exclusion of persons permitted to live therein.

The Authority's decision also bore little basis in law, because the Ombudsman does not understand on what basis they (the Authority) thought they would be bound in any private legal proceedings between the Complainant and her partner more so when orders for the transfer of the tenancy would not be available. The Authority's own argument was that the Complainant did not hold the tenancy on a joint basis and this would in itself have set off alarm bells to signal to them that their reasoning was flawed. A decision to postpone the exclusion of an authorised person would also implicitly have given such person (the person authorised to reside) more or indeed the same rights as the tenant and that would be difficult to reconcile with the Authority's overriding argument that the tenancy was a sole tenancy to which the Complainant had no rights. Any such decision to postpone the exclusion would not be reasonable if one were to accept the distinction between the tenant and the authorised persons.

It seems to the Ombudsman that the Authority already by that stage had failed to follow their own ethos when granting tenancies, and the Ombudsman reminded himself of the circumstances prevailing in the Complainant's household and the manner in which the Authority had processed similar situations.

Infringement of Basic Rights

The Ministry through its Principal Housing Officer has said in the past that

> "there are cases where applications are made for joint tenancies either at or after the allocation stage" and that these applications "are generally approved if the application is made by a married partner, parent, adult child or common law partner of the tenant. The protection of the family and in particular children is considered of prime importance.".

It was further said by the Principal Housing Officer that:

> *"in the case of common law partners with children in common, approval is only granted if the common law partner of the tenant and the tenant have at least one minor child in common living with them. ...The reasons for granting joint tenancies to common law partners with children in common is to protect the interests of the children by providing each of the parents with equal tenancy rights and in the spirit of protection of the family. The principle that unmarried persons with children may be treated more favourably than unmarried persons without children is reflected in section 5(b)(i)(bb) of the Housing Allocation Scheme."*

The Gibraltar Constitution Order 2006 protects the fundamental rights as to basic human rights including the right of the individual to the enjoyment of property, privacy of home and other property. There is also a protection from being treated in a discriminatory manner by any person acting in the performance of any public function conferred by any law or otherwise in the performance of the functions of any public office or any public authority.

With the benefit of all the above facts and circumstances, the Ombudsman believes that the Authority breached the basic rights of the Complainant and at the very least failed to process this tenancy in a manner which would be in keeping with the established practice.

The Ombudsman would have expected the Complainant, who formed part of an unmarried couple with a child in common, to have acquired the same rights to the tenancy as the Complainant's partner did, either at the outset, when the application was processed, or thereafter. The Department's failure in that respect could be said to have had the consequential effect that the rights of the Complainant and her child were also undermined. As has been explained by the PHO, the very essence of granting joint tenancies to unmarried couples with a child in common and for treating such families more favourably than others is done to protect the interests of the children by providing each of the parents with equal tenancy rights. In this case, by the Authority's own arguments and from the documentary evidence, it is clear that the Complainant was not in the same footing as her partner with regards to tenancy rights. It follows therefore that strictly speaking and applying the principles invoked by the Authority that the Complainant and her child were, amongst other issues, exposed to the vulnerability of actually being excluded from the tenancy by her former partner as the sole tenancy holder.

The Ombudsman does not require to protract his conclusions any further other than to say that he has not seen evidence to suggest that any application was made by the Complainant to be included in the Aunt's Flat and neither has he seen any application from the Complainant asking to be housed. However, notwithstanding the absence of those applications there was a recognisable need to have considered the Complainant's housing needs and those of her child at the outset or even when matters of the separation arose. The Authority failed to do so and instead they postponed matters indefinitely alluding to the possible legal proceedings which the Ombudsman thinks would not have assisted matters in any case.

Classification

The Complaint is not sustained in relation to the inclusion in the Complainant's aunt's tenancy but the Complaint is sustained with regards the Housing Authority's failure to house the Complainant and her child.

Recommendations

In light of the infringements in respect of the Complainant's basic rights and the vulnerable position that the Complainant and her child have been left in, the Ombudsman recommends that the Housing Authority re-issues or issue (as the case may be) tenancies as joint tenancies whenever the family composition is one of unmarried couple with children in common.

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Case Sustained

CS/924

Complaint made against the Housing Authority, for taking too long with a reallocation from a Government rented flat ("Flat") which had previously been recommended as a priority case

Complaint

The Complainant was aggrieved because she had been waiting too long to be reallocated from the Government rented flat ("Flat") she resided in, after having been recommended as a priority case.

Background

In 1995 the Complainant was allocated a Flat which consisted of one bedroom, kitchen and bathroom. By 2010 the Complainant's circumstances had changed; she was married with two children but remained in the Flat. Notwithstanding the overcrowded conditions, the Complainant claimed that the situation was aggravated further because of the dilapidated state of the building and the dampness conditions in the Flat which affected her children's health.

In March 2010 the Complainant wrote to the Housing Authority with her concerns and also visited the Housing Authority's public counter ("Counter"). It was there that she was informed that her case had been granted 'priority for allocation'. In light of this information the Complainant sought a meeting with the Housing Allocation Officer ("Officer") which took place in June 2010. According to the Complainant, the Officer explained that due to the seriousness of the situation a study of her case had been made and it had been decided to recommend her case as a 'priority' in the Government Housing List and as soon as a 4RKB property became available it would be allocated to her and her family.

Two months later the Complainant sought an update at the Counter where she claimed she was verbally informed she had been allocated a 4RKB at a new Government Estate ("New Estate") (at the time under construction) but advised that if a property of similar characteristics became available prior to the completion of the New Estate this would be allocated to her. Notwithstanding, the Complainant stated that the clerk at the Counter requested that she return within a few weeks in order that the information could be verified.

When the Complainant returned she claimed she was told by another clerk that her file had been checked and she had been allocated a 3RKB at the New Estate. The Complainant was disconcerted and confused with the discrepant information received and the clerk therefore advised that she put her concerns in a letter and the matter would be discussed with the Officer. The Complainant duly complied and in the said letter also requested a meeting with the Officer for the situation to be clarified.

The Complainant sent two chaser letters, in January and February 2011 but stated no replies were received. Feeling that she would be unable to progress her case with the Housing Authority the Complainant lodged a Complaint with the Ombudsman.

Investigation

A meeting was convened between the Ombudsman and the Housing Manager in March 2011 to investigate the Complaint and issues arisen from it.

Non-Reply to Letters

The Complainant claimed not to have received replies to her letters to the Housing Authority.

In October 2010 the Complainant requested a meeting which was arranged for the 1st December 2010 but the Complainant did not attend. The Housing Manager explained that standard practice in those cases was for the Housing Authority to mail a calling card to the person and stated that was done in this case. Regarding the February 2011 letter from the Complainant which enclosed a doctor's letter in relation to one of her children's health problems, the Housing Manager produced a copy of the reply sent to the Complainant on the 3rd March 2011 in which they informed her that the case would be submitted to the Housing Allocation Committee ("HAC") for their consideration.

In light of the above information the Ombudsman contacted the Complainant to enquire if she had experienced problems with the delivery of mail to the Flat and the Complainant confirmed that was the case.

Complainant's Entitlement to accommodation

In relation to the Complainant's entitlement for accommodation, the Housing Manager explained that in August 2007, the Complainant and her husband (no children at the time) were offered a 2RKB flat in the New Estate. In September 2007 the Complainant gave birth to a daughter who was included in the tenancy a month later. Two years later, October 2009, the Complainant gave birth to a son but did not notify the Housing Authority until May 2010. In the interim, January 2010, the Housing Authority sent out a review letter to the Complainant so that she could verify the records held by the Housing Authority of the persons included in the tenancy. Not having been notified at that stage of the birth of the son, the records only showed the Complainant, her husband and only one child (daughter). The Complainant erroneously agreed with the records held by the Housing Authority.

The Complainant was later informed that further to the offer of accommodation made in 2007, (a 2RKB flat), they could now confirm that due to the birth of a daughter they were able to offer her a 3RKB in the New Estate. The Housing Authority requested that she bear in mind that if her circumstances changed prior to the completion of the New Estate they could not guarantee that they would be able to offer her accommodation there. Unbeknown to the Housing Authority the Complainant's circumstances had in fact already changed.

Priority Allocation

The Housing Manager explained that a decision can be taken by the HAC upon consideration of an individual case, to recommend a 'priority' within the General Housing List ("List") but stressed that this is done very rarely. The effect of the recommendation would be that an element of priority would be given to the case by way of the application being flagged to be kept in mind when allocations were made.

The Complainant's case was put to HAC subsequent to a meeting with the Officer in which the Complainant put her concerns across. The Housing Manager stated that the priority was recommended by HAC because the case was not deemed as one that should go into either the Medical or Social Lists. The decision was taken because of the dilapidated state of the building, the dampness in the flat and the fact that the Complainant was due to have her first child which would increase her entitlement to a 3RKB flat.

The priority was recommended in October 2007 and a letter sent to the Complainant advising her accordingly. The Complainant did not receive the letter and it was over two years later (when she visited the Counter in March 2010) that she found out of the decision taken by HAC and given a copy of the letter. Upon receipt of the copy, the Complainant complied with HAC's request to rescind the offer of the 2RKB flat in the New Estate in favour of a priority allocation of a 3RKB.

The Housing Manager was unable to provide information on the impact of the priority on the Complainant's position on the List because their database system did not store historical positions.

The Ombudsman therefore sought information as to how many 3RKB flats had been allocated from the date on which the Complainant was granted the priority until May 2010 (date on which the Complainant's entitlement changed to a 4RKB due to the birth of her second child, and allocations of 4RKB flats from May 2010 until the Complainant was actually allocated a flat (March 2011)). In relation to the 3RKB flats, fifty one flats were allocated to applicants on the List throughout the period in question, and eleven 4RKB flats.

Conclusion

Non-Reply to Letters

Based on the copies of the replies held on file by the Housing Authority and the confirmation from the Complainant that she had experienced problems with the delivery of mail, the Ombudsman was satisfied that there was no maladministration.

Complainant's Entitlement to Accommodation

The Ombudsman advocates that rights convey responsibilities. In the case of the Complainant, she had the responsibility of informing the Housing Authority of the birth of the son for records to be updated. Failure to have done so at an early stage resulted in the Housing Authority being unaware of the change of circumstances and resulting in an offer in February 2010, four months after the son was born, of a 3RKB flat in the New Estate.

Priority Allocation

When the Complainant brought the Complaint to the Ombudsman (March 2011) a year had passed since she had become aware of her priority status; the priority had in fact been awarded three years and four months earlier. Although the Complainant's position on the 3RKB and 4RKB lists is not known (at the time of her case having been given priority) because the Housing Authority do not keep records of the lists in their files, a total of sixty six flats were allocated to applicants on the List throughout that time until the final allocation to the Complainant. From the information provided by the Housing Authority none of the allocations during the period had a priority that had merited an allocation before the Complainant. Based on this information the Ombudsman concludes that the priority afforded to the Complainant served no practical purpose. It did however have the negative effect of raising the Complainant's expectations especially with regards to the choice of words contained in the letter; 'priority', 'urgent' and 'immediately' which led the Complainant to believe that an allocation was imminent.

Considering the evidence, the Ombudsman found maladministration in the manner in which the Complainant's allocation had been handled. It is clear that the priority awarded by HAC ultimately served no purpose.

Recommendations

Arising from this investigation the Ombudsman made two recommendations as follows:

1. The Housing Authority set out clear criteria on how to apply the concept of 'priority allocations' in the context of a General Housing Waiting List.

2. Historical records of the Housing Authority's waiting lists should be held in either hard copy or electronic format. This would serve as a snapshot of said lists at given intervals, the regularity of which should be determined by the Housing Authority based on average movement within the lists.

UPDATE

AS A RESULT OF AN EXERCISE UNDERTAKEN PRIOR TO THE ALLOCATION OF FLATS IN THE NEW ESTATE, THE HOUSING AUTHORITY WERE ABLE TO ACCOMMODATE THE COMPLAINANT IN A 4RKB FLAT.

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Case Not Sustained

CS/937

Complaint against the Housing Authority, for the Complainant having been one month in the same position in the Social A List

Complaint

The Complainant was aggrieved because for one month he had remained in the same position in the Social A List despite allocations having been made by the Housing Authority.

In September 2007 the Complainant submitted his housing application (Government rented housing) and was included in a pre-list in which he would remain for a two year period, after which he would enter the General Housing Waiting List for a 1RKB (one room, kitchen and bathroom). Towards the end of 2008 the Complainant requested that his case be considered by the Housing Allocation Committee ("HAC") because he had become homeless. The relationship with his partner (mother of his son) ended and he had to leave the flat they shared. In September 2009 HAC informed the Complainant that he had been categorised as a Social A case and would therefore be placed in the Social A List in which cases deemed to be urgent were included.

The Complainant explained that in August 2010, after having had to rely on the hospitality of friends and relatives, he finally found an affordable rental but in late December 2010 the building ("Building") in which the flat was located was evacuated by Government under the Civil Contingency Plan due to it being in danger of partial collapse. The Complainant along with other residents of the Building were temporarily accommodated at a local hotel.

In January 2011 the Complainant wrote to the Housing Authority to enquire about his position on the Social A List and informed them of the deadline by which he had to vacate the temporary accommodation. The Housing Authority informed the Complainant that although the position on the Social A List was not publicised, the Minister for Housing had given permission for the information to be given; he was in **eleventh position**.

As a parallel to the Complainant pursuing an allocation via the Social A List it must be mentioned that pursuant to a Government policy decision as a result of the evacuation, residents of the Building including the Complainant were offered Government housing. The Complainant refused four offers of accommodation citing the bad state of some of the flats and the inadequacy of the location of said flats which he felt provided an unsafe environment for both himself and his son.

The Complainant therefore pursued an allocation via the Social A List. He went to a housing estate and identified a number of vacant flats which met his entitlement i.e. 1RKB, and were located in an area which he deemed safe. He listed eight flats and passed the information on to the Housing Authority who informed him that those properties had already been identified and earmarked for other applicants. Dissatisfied because despite allocations having been made by the Housing Authority he had remained in the same position on the Social A List for the past month, the Complainant brought his case to the Ombudsman.

Investigation

The information obtained from the Housing Authority stated that the Complainant's allegations were unfounded as no allocations of 1RKB flats had been made via the Social A List and stated that the Complainant's current position was **tenth**.

The Ombudsman sought further information as follows:

(Q) The number of allocations of 1RKB flats in the past year and how many of those allocated to applicants on Social A.

(R) Housing Authority advised that 133 1RKB and 2RKB had been allocated since September 2009 out of which 35 had gone to applicants on the Social A List.

(Q) Whether the Housing Authority had received or expected to receive housing stock which could be made available on a self repair basis to the Complainant.

(R) As a result of Government policy, the self repair basis scheme was stopped on the 31st March 2011 during the time that the new Housing Works Agency was formed.

(Q) Circumstances if any, under which discretion could be exercised in respect of allocations to applicants on Social A List.

(R) Offers made via the Social A List are based on chronological order of entry into the List but there have been exceptions when priority allocations have been made.

(Q) The Complainant's current position on the Social A List.

*(R) The Housing Authority advised that the Complainant's position was **ninth**, however a priority allocation was instructed and the Complainant had been offered a flat which he accepted.*

The Ombudsman made further enquiries into the stoppage of the self repair basis allocations and in particular wanted to ascertain how this action had affected the time taken for flats to be refurbished prior to being reallocated. The Housing Authority explained that under the self repair basis, allocation of flats took around three weeks from the time the keys were handed in to the Housing Authority by the outgoing tenant to being handed over to the new tenant. The Housing Authority was unable to provide information on the average time that it was currently taking for flats to be reallocated but stated that at that point in time, 75 flats were awaiting refurbishment by the Housing Works Agency.

The Ombudsman expressed concerns to both the Housing Manager and the Principal Housing Officer about the number of flats awaiting refurbishment, given that the self-repair policy had been removed. There was a positive response to his concerns and the number of flats held by the Housing Works Agency for refurbishment was substantially reduced.

Conclusion

In January 2011 the Complainant had been in eleventh position on the Social A List and in the course of the ensuing six months moved up two positions to ninth. This meant that during that period two flats were allocated to applicants on that particular list. The information obtained from the Housing Authority stated that chronological order was followed when allocating flats to persons on the said list but stated exceptions were made in cases where priority allocation was awarded as was ultimately done in the Complainant's case because of his desperate circumstances. The Complaint brought to the Ombudsman was that he had not moved from his position on the Social A List during the month of February 2011 despite allocations having been made.

Based on the outcome of the investigation, the Ombudsman concluded that there had been no maladministration in this case. Apart from the Social A List there are a number of other waiting lists - Decanting List, Medical List, General Waiting List, Pensioners List - the efficient and fair management of which falls on the Housing Authority. Although the Ombudsman has no doubt that there had been allocations made during that month, amongst which were those made pursuant to a Government policy decision as a result of the Civil Contingency plan, the Ombudsman is satisfied that no flats which fitted the Complainant's criteria were allocated in the Social A List category.

The Ombudsman wished to draw attention to the fact that pursuant to the Public Services Ombudsman Act 1998, he is not authorised or required to question the merits of Government policy.

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Case Sustained

CS/938

Complaint against the Housing Authority for having removed the Complainant from the Social Housing Waiting List without reasonable justification

Complaint

The Complainant was aggrieved because the Housing Authority ("Housing") had removed him from the Social A Housing Waiting List ("Social List") without reasonable justification.

Background

In 2006 the Complainant became an applicant on the Government Housing Waiting List ("List"). The Complainant resided in his mother's flat ("Flat") but as a result of problems with a family member, the Complainant had to leave. As a consequence of leaving, in May 2009 he became homeless. The Complainant informed Housing of his situation which resulted in his case being put to the Housing Allocation Committee ("HAC") to be considered for inclusion in the Social List, with the hope that an allocation could be made sooner because of the circumstances (HAC is a Committee formed under the Housing Act 2007 (Schedule 2) whose role is to advise Housing on specific issues, allocation of Government rented accommodation being one of its functions). Whilst homeless, the Complainant claimed that he slept rough and endured health and psychological problems. It was due to those reasons that in September 2009 the Complainant moved back into the Flat, a two bedroom property in which a total of six persons, including two children, already resided, and wrote to Housing to update them. In July 2010 he wrote to them again and highlighted the overcrowding in the Flat and the fact that he had a medical condition which was aggravated by the conditions he was living in.

In September 2010 Housing replied and referred him to the fact that he had been categorised on the Social List in September 2009 and that he would not be awarded any overcrowding points because he was categorised as homeless. Regarding his medical case he was asked to provide an updated medical letter for HAC to consider his case for a possible medical categorisation. Not having received any information from Housing for the ensuing six months, in March 2011 the Complainant visited the Housing counter to enquire about his position on the Social List.

It was at that point that the Complainant was informed that he had been removed from the said list because he had not signed the 'Social Book'. The Complainant complained to the clerk and was told that he should write to HAC. The Complainant stated that he was not confident at letter writing and asked the clerk for assistance or for another way of looking into the complaint but the clerk allegedly simply stated that was the procedure. Feeling very aggrieved, the Complainant brought his Complaint to the Ombudsman who after some preliminary enquiries found that the Complainant had not exhausted all avenues. He was urged to write to HAC to explain the facts. The Complainant sought assistance to write the letter and handed it in at the Housing counter. At the time of handing in the letter he explained to the clerk that if he had had prior knowledge of having to sign the Social Book he would have complied; he was homeless and it was in his interest.

On hearing that he was homeless, the clerk informed him that letters for homeless applicants were kept by Housing as there was no address to post them to. The clerk proceeded to look through a batch of letters held in the counter area and handed three letters to the Complainant as follows:

(i) A letter (dated September 2009) informing the Complainant that he had been placed on the Social List;

(ii) an anniversary letter (dated September 2010) sent annually by Housing to applicants to verify details they hold of persons residing at the same address;

(iii) a letter (dated February 2011) informing him that he had been removed from the Social List.

In light of this development, the Complainant contacted the Ombudsman.

Investigation

In his preliminary enquiries the Ombudsman was informed by Housing that the Complainant had been placed on the Social List on the 28th September 2009 and advised of this in writing (this is the letter referred to at (i) above). In that same letter he was also notified that in order to maintain his application active he was required to visit the Housing counter on a monthly basis to declare that his situation had not changed. It was at those visits that he had to sign the Social Book. Housing continued that as a result of an exercise undertaken by HAC to ensure that persons were complying with signing the Social Book, the Complainant was informed in writing on the 21st February 2011 that because he had failed to sign, his social categorisation had been cancelled and that he could appeal the decision via the Housing Tribunal (this is the letter referred to at (iii) above).

At that stage it became obvious to the Ombudsman that none of the letters referred to by Housing had had been delivered to or been seen by the Complainant.

The Ombudsman convened a meeting with Housing in order to familiarise himself with the procedure in place when dealing with applicants for Government housing who are homeless at the time of application.

- When an applicant registers as being homeless, he/she is given what is called a 'Social Interview' at the Housing counter. The applicant is asked for his/her details and the reasons why he/she has become homeless. Relevant notes are taken and the person verbally informed that due to their circumstances, communication will be via the Housing counter.

- The homeless person is given a form for the purposes of keeping a daily record of where he/she sleeps throughout a period of one month.

- When the form is completed, it is handed in at the Housing counter and then put to HAC accompanied by the notes taken at the Social Interview. HAC consider the case and if necessary, requested a social worker's report.

- Once the necessary documentation has been considered by HAC and they are satisfied of the veracity of the situation, the applicant is categorised as being homeless and a letter drawn up to inform him/her. It is also in this letter that the person is informed they have to visit the Housing counter on a monthly basis to declare no change in their situation. If they do not comply, their case will be deemed not to be urgent for the purpose of allocation and will be put to HAC with a view to suspending the file indefinitely.

Correspondence from Housing to the applicants is kept in the Housing counter area to be handed over when:

(i) the applicant visits the counter and enquires if there are any letters for him/her;

(ii) the clerk at the counter recalls that that there is a letter for the applicant when he/ she calls at the counter.

The Social Book which has to be signed on a monthly basis by those persons claiming to be homeless is not referred to in any stage in the above procedure which Housing explained to the Ombudsman. However, it was explained that each applicant has a dedicated page on the book which is to be signed by the homeless applicants on their monthly visits.

Regarding the clerk not having assisted the Complainant with writing the letter to HAC, Housing stated that the clerk had directed him to the Citizens Advice Bureau for assistance.

The Ombudsman referred Housing to the Complainant's change of circumstance when he returned to live in the Flat and enquired as to whether that had an effect on his inclusion in the Social List. Housing explained that although HAC had categorised him as homeless and that was the reason for inclusion in the Social List, it was the fact that there was an underlying social issue (problems with family member) which had triggered the situation. As the issue remained, his inclusion in the Social List was unaffected.

Nonetheless, although Housing had been informed by the Complainant that he had moved back to the Flat, Housing failed to send the correspondence they held to the Complainant's address.

Conclusion

In September 2009 HAC categorised the Complainant as homeless and he was included in the Social List. The letter from Housing informing the Complainant of the categorisation was never received by the Complainant. Due to being homeless there was no address it could be sent to and was therefore kept by Housing for collection by the Complainant. It was in July 2010, when the Complainant wrote to Housing to enquire about overcrowding points and medical categorisation (by which point he had returned to live in the Flat) that he found out he had been included in the Social List. Not being aware that he had to sign the Social Book on a monthly basis in order to maintain his application active on the said list, it was not until March 2011 when he went to the Housing counter to enquire about his position on the Social List that he was informed that he had been removed from the said list because he had not signed the Social Book on a monthly basis.

The chain of events in this Complaint clearly points to a flaw at the outset of the procedure. At the applicant's first visit to the Housing counter he was verbally informed that all communication would have to be via the Housing counter. The verbal instruction in this case carries the possibility that the counter clerk could have forgotten to inform the Complainant on that occasion or conversely that the Complainant could have forgotten the instruction. Principles of Good Administration advocate that public bodies should be open and accountable ensuring that information provided is clear, accurate and complete. It is obvious that in this case Housing, by not giving the Complainant written information about the procedures to follow in the event of social categorisation, failed to provide clear and complete information.

In relation to the letters being kept by Housing in respect of applicants who are homeless and therefore have no address where these can be sent to, it goes without say that the system in place at the present time is not fit for the purpose. Unaware of Housing's procedure, the Complainant never asked if there was a letter for collection and although he had visited the counter on a number of occasions since the initial letter was written in September 2009, it was not until May 2011 (twenty months later) that on mentioning he was homeless, a clerk checked a batch of letters amongst which were his. By that time he had been removed from the Social List and advised of this by letter, also in the batch held at the counter area.

Two salient issues on this are that the batch does not appear to be checked on a regular basis judging by the time the Complainant's letter was held and that the current system solely relies on the memory of clerks or on applicants enquiring, if they are aware of how the procedure operates. Again, Principles of Good Administration promote seeking continuous improvement and this should undoubtedly happen in this case.

The Ombudsman wanted to draw Housing's attention to the fact that they had kept the letters to the Complainant dated September 2009, September 2010 and February 2011 despite the fact that in September 2009 and July 2010 the Complainant had notified Housing that he had moved back into the Flat. Again, the situation could have been avoided if proper and appropriate records had been kept by Housing in updating the Complainant's records which would have resulted in the Complainant receiving the letters.

Recommendations

The Ombudsman found it necessary to make recommendations in this case, in order to avoid possible injustice to those categorised as homeless. He was of the opinion that pursuant to the Principles of Good Administration, there was an urgent need for Housing to consider reviewing the system currently in place for the delivery of letters to those categorised as homeless. As such, the Ombudsman recommended that:

1. When an applicant first registers as being homeless, he should be provided by Housing with a leaflet/letter in which he should be informed that due to his/her circumstances, communication has to be via the Housing counter. The opportunity can be taken for Housing to include other information which they consider necessary such as the requirement to sign the Social Book on a monthly basis in the event of being categorised. The applicant should be asked to sign a mail book in acknowledgement of receipt of the said leaflet/letter. The mail book will serve as an audit trail.

2. Letters for homeless applicants should be kept in a designated area which all clerks at the Housing counter should be aware of. When an applicant has a letter for collection, the relevant page on the Social Book which the person signs on a monthly basis should be flagged to make the clerk aware that there is a letter for collection. A book which keeps a record of the letters should be introduced and a section made available for applicants to sign acknowledgement of receipt of the letter, again to keep an audit trail.

3. Initial letter to the applicant should specify that the applicant has to sign the Social Book on a monthly basis rather than just state they have to visit the Housing counter.

4. Letters held at the counter should be checked once a month to ascertain if the circumstances of the persons the letters are directed to have changed. In the case of the Complainant, although he had moved back into the Flat the letters remained at the counter.

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Case Sustained

CS942

Complaint against the Housing Authority for not having provided the Complainant with vouchers to replace the ones that had been lost

Complaint

The Complainant was aggrieved because the Housing Authority had not provided her with vouchers ("Vouchers") to replace the ones that had been lost.

Background

In November 2010 the Complainant was offered a reallocation from her Government rented flat to another flat ("Flat") which she accepted. Some works were required in the Flat before the Complainant could move in and she opted for allocation on a self-repair basis. (Note: When a property is allocated on a self-repair basis, the Housing Authority issue vouchers to the tenant to enable him/her to purchase the materials required to carry out repairs. The tenant then makes the necessary arrangements to contract out or undertake the labour required for the repairs). The other option available to the Complainant was for the repairs to have been carried out by the Housing Authority but no completion date for the works could be given to the Complainant. The Complainant was provided with Vouchers but in February 2011, when she realised the extent of the repairs which she would be unable to afford as she was only in receipt of a small pension, she wrote to the Housing Manager to request that they undertake the repairs.

The Complainant claimed that she handed in the said letter, enclosing the Vouchers, at one of the Housing Authority's counters. A week later not having received a reply she made enquiries on the matter and alleged she was verbally informed that the Housing Authority would not undertake the repairs as the Flat had been allocated on a self-repair basis. The Complainant therefore requested that the Vouchers be returned but was informed that neither the letter nor the Vouchers could be found. During the ensuing two weeks, the Complainant claimed she visited the Housing Counter nearly everyday and claims that on each occasion she was told the same thing; the Vouchers could not be found. Under the circumstances, the Complainant requested that new ones be issued. The Housing Authority informed her that this would not be possible until the other Vouchers were found.

Unable to progress the matter further, the Complainant lodged a Complaint with the Ombudsman.

Investigation

In the Ombudsman's preliminary enquiries with the Housing Authority, the latter requested details as to the date on which the Complainant handed in the letter with the Vouchers and the counter that these were handed into, in order to review CCTV footage of the day to determine whether the Vouchers were indeed in possession of the Housing Authority.

The Complainant was unable to provide the details and so in mid-March 2011, the Housing Authority embarked on an exercise to review CCTV footage around the time of the date of the Complainant's letter (copy held by Complainant) to them. Delays occurred on the part of the Housing Authority in providing the Ombudsman with the outcome of the exercise. The reason given for the delay was the extra workload generated by the allocations in the newly completed Government rental estate.

The information was finally received by way of letter dated the 19th May 2011 and the Ombudsman was informed that CCTV recordings of the Housing counters had been checked and no footage found of the Complainant handing in a letter and Vouchers. The Housing Authority's letter further stated that the matter of the Vouchers had been brought to the attention of the Principal Housing Officer ("PHO") and he had given instructions to the Housing Works Agency ("HWA") to issue replacement vouchers to the Complainant.

The Ombudsman sought information on how the procedure of vouchers operated.

The Housing Authority explained that the vouchers were in effect 'Local Purchase Orders' issued from a book held by the Buildings & Works Department ("B&W") which the Housing Authority's inspectors were authorised to sign. As a result of the abolishment of B&W in March 2011, responsibility for the vouchers was bestowed on the HWA and the facility for Housing Authority inspectors to sign for the issuing of vouchers was removed. Each voucher has its unique identification number which can be traced and which expires six months from the date of issue. The vouchers are issued at the same time that the keys to the property are handed to the tenant; in this case November 2010.

The Ombudsman made enquiries as to whether a similar situation had occurred in the past. The Housing Manager was not aware of other instances in which vouchers had been lost; she was aware that there had been cases in which tenants had misplaced vouchers but those had subsequently been found.

On the matter of the letter being delivered at the counter by the Complainant, the Ombudsman requested information on the Housing Authority's procedures to record receipt of letters left at the counter and track delivery to the ultimate recipient. The Housing Manager explained that persons who hand in letters at the Housing counter are provided with a receipt. The letter is then passed to the Housing Officer in charge of recording and acknowledging mail and finally distributed accordingly.

The Ombudsman contacted the Complainant to enquire if she was in possession of a receipt in respect of the letter she claimed to have delivered but she did not have one.

Conclusion

Given that the Housing Authority had refused the Complainant's request for the Authority to undertake the repairs to the Flat and had not replaced the Vouchers, the Complainant was in a worse off situation than she had been prior to embarking on her request. During the ensuing months the Complainant's family assisted in some minor repairs to the Flat which enabled the Complainant to finally move in May 2011.

The decision to review the CCTV footage was to establish whether the Housing Authority had in fact misplaced/lost the Vouchers. The Housing Manager reviewed CCTV recordings and could not find footage showing the Complainant handing in a letter although she did appear in some of the recordings. This coupled with the Complainant not having a receipt for the letter would tilt the balance in favour of the Housing Authority not having lost the Vouchers. However, in terms of the replacement vouchers, those should have been issued as soon as the Housing Authority had checked their records and were satisfied that the Vouchers had not been used.

On the matter of the reason given by the Housing Authority for the delay in providing the Ombudsman with the outcome of the CCTV footage, the Ombudsman takes this opportunity to remind public bodies that timely replies are expected. Further delays at a stage where a Complaint has been lodged can only result in further hardship and anxiety caused to the Complainant. A resolution has to be reached, whether in favour of any given complainant or otherwise. The important issue is that of providing an efficient and timely service to the end user. Principles of Good Administration advocate that public bodies should aim to put mistakes right quickly and effectively. This Principle was clearly not applied in this case. Whilst the Housing Manager was not aware of other instances of vouchers having been lost, there can always be a first time. The Ombudsman was minded to have made a recommendation with regards the implementation of a procedure for lost or misplaced vouchers, had it not been the case that during the course of the investigation into a separate complaint it came to his attention that as from the 31st March 2011, the self-repair basis scheme had been discontinued, therefore complaints of a similar nature were unlikely to be made in the future.

The most salient point in this Complaint is the fact that the PHO issued instructions for the replacement vouchers to be issued on 19 May 2011 (by which time the Vouchers had expired) and as from that date and up to the time of writing this report, September 2011, the said replacement vouchers had still not been issued despite numerous assurances and promises from the PHO to both the Ombudsman and the Complainant. The Ombudsman can only conclude that the PHO's office needs to improve its performance and show a willingness to assist in a proactive manner those whom the office is meant to provide a service to, i.e. the end user.

The Ombudsman contacted the Complainant on the 30th September 2011 and was informed that two weeks earlier she had finally been given the replacement vouchers.

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Case Sustained

CS/945

Complaint against the Housing Authority for their failure to reply to the Complainants' letters and against the Building & Works Department for their failure to process an internal claim for compensation

Complaint

The Complainants were tenants of Government rented accommodation and had made a claim for compensation to the Housing Authority for damages they had suffered to personal property due to a burst water pipe at the premises they were occupying. The Complainants were aggrieved by the lack of reply to their letters of complaint questioning the awarding of points under the Housing Allocation Scheme.

Investigation

Claim for compensation

In relation to the Complaint relating to the claim for compensation, the Ombudsman, after examining the correspondence found that the matter had not been processed by the Housing Authority.

Furthermore, the Ombudsman became aware that the Complainants had on a number of occasions brought the issue of the claim to the attention of the Housing Authority albeit that the Complainants had not submitted an Internal Claim Form (provided by the Housing Authority) or proceeded to make a claim via the jurisdiction of the courts.

The first evidence that the Ombudsman came across relating to the claim for compensation having been dealt with by the Housing Authority was in the form of a letter dated 20th May 2011 sent to the Complainants by the Housing Manager. The letter only stated that such claims did not fall within the remit of the Housing Manager. A second letter on the issue informed the Complainants that the internal claims procedure had previously been dealt with by the Building & Works Department but were now dealt with by the Housing Authority who reassured the Complainants that as soon as they had the relevant information to their claim they would "immediately inform" them.

On 8th June 2011 the Housing Authority wrote to the Complainants and told them that they had no records of their internal claim.

Allocation of Points

The grievance in this aspect arose from an apparent failure to include points for mixing of sexes in the Complainants' application for government rented accommodation.

The evidence before the Ombudsman was essentially to the effect that the Complainants had written to the Housing Authority to bring to their attention the fact that they believed there were points missing. The Complainants wrote again to the Principal Housing Officer and the Housing Manager on this issue but got no reply. Thereafter the Complainants put their complaint on this to the Ombudsman.

The Ombudsman wrote twice before a reply was received on the 18th August 2011 accepting that the points in question had been overlooked but had now been included in the Complainants' application.

Conclusions

The failure to respond in a timely manner, or at all, appears to be endemic in many of the complaints coming to the Ombudsman against the Housing Authority. In this specific instant there was an obvious failing to respond to the Complainants' questions.

The Principal Housing Officer has to ensure that he implements whatever work methods are necessary to achieve compliance with the basic Principles of Good Administration. It is frustrating to see that situations such as the one experienced in this case could have been avoided, by the Housing Authority having adequately dealt with the Complainants letters at the outset. Instead the unanswered questions festered into a complaint of maladministration.

The Ombudsman condemns, as sheer maladministration on the part of the Housing Authority, the fact that the matter went without an answer from 1st April 2011 to the 18th August 2011 made worse by the fact that the application was being processed on the basis of family composition with mixed sex children. Furthermore, the whole point of the Housing Authority sending such a 'points update letter' as the one giving rise to the Complaint was in order to give the applicants an opportunity to verify the details and the progress of the application. Therefore, administratively speaking, it is devastating to see that when the Complainants attempted to query the points allocated to their application, the Housing Authority failed to pay attention. The issue was promptly and easily resolved as soon as attention was paid to the question and the relevant points were added onto the application.

The Complainants' claim for compensation offers a number of difficulties. In the first place the Ombudsman has gone to lengths on previous cases of a similar nature to denounce the use by the Housing Authority of the so called Internal Claims Procedure. The essence of its undesirability was the inaction, the lack of an expedited process, and the misconception created on the users. Fortunately it has to be said that the Ombudsman has been informed that such a concept of the so called Internal Claims mechanism which lacked the expedited format advocated by the Ombudsman will be eradicated. This means that any person wishing to make a claim for monetary compensation would have to do so by the usual means of writing to the Housing Authority in the first place and thereafter if they are not satisfied they would have to consider issuing a claim with the courts. In this way the claimants will at least have certainty of the progress of the claim and will not be subjected to an otherwise prejudicial, unfair and protracted process.

It is worth pointing out that whilst the Complainants may not have filled in the correct form for the Internal Claims they had nevertheless written and submitted what in substance was a claim for compensation. At that stage, when the letters were received, the Ministry for Housing should have informed the Complainants of the need to have submitted the correct form. Alternatively, the Ministry for Housing should have processed the claim as presented. The failure to do either of those was substandard service to the Complainants and fell foul of the Principles of Good Administration.

To add to the Complainants' grievance and the obvious maladministration, after having corresponded with the Complainants regarding their claim, on 8th June 2011 the Ministry wrote to the Complainants and told them that they had no records of their internal claim. There is unequivocal evidence showing that the Complainants informed the Housing Authority of the claim both by letters and emails dating back to 13th November 2006 and 3rd September 2007.

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Case Sustained

CS/950

Complaint against the Housing Authority for the delay in undertaking repairs of an external nature. This report is in respect of 15 individual complaints, which are all of the same nature.

Complaint

These Complaints arose out of a grievance by tenants of government owned accommodation and the failure of the Housing Authority to undertake repairs of an external nature. Most of the complaints in fact related to problems of water ingress or dampness.

Some of the complaints stemmed from problems which had been brought to the Housing Authority's attention as far back 2003, 2005 and 2007.

The Complainants (who all lived at different locations throughout Gibraltar) individually reported defects to the Housing Authority as the defects affected their government rented accommodation and the said reports were not acted upon. Given that the Housing Authority did not react to the reports the Complainants presented complaints to the Ombudsman.

The Ombudsman decided to write a combined report as the subject matter of the complaints were all of the same nature, i.e. failure to undertake the required repairs (which were deemed to be "External Works") to address the problems of water ingress and/or dampness.

Investigation

In the course of conducting his investigation into these cases the Ombudsman had to endure several setbacks in the form of; the delay in getting a response from the Principal Housing Officer ("PHO"), the Government's decision to abolish the former Building & Works Department and finally there was the lack of information.

As far as the Ombudsman was concerned the initial reports presented by the Complainants fell properly upon the responsibility of the Housing Authority who ultimately is the body with the statutory duty to maintain and control government owned housing stock.

Section 3 of the Housing Act 2007 states:

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

In light of the above facts and legal provisions the Ombudsman presented the various individual complaints to the PHO for his comments.

In the meantime it was announced that Ministry for Housing would be abolishing the Building & Works Department and a new agency would be created as soon as legislation was passed through Parliament. Due to this the Ombudsman agreed exceptionally to a moratorium to allow the PHO sufficient time to retrieve the files appertaining to the complaints and for him to familiarise himself with whatever was going to be a way forward in these type of works.

An agency was created by means of the Housing Works Agency Act. The functions and duties of the Agency are contained in section 7 which says:

The functions and duties of the Agency are, in so far as it is mandated to do so by Government and the Government provides sufficient resources
therefore−

(a) to carry out maintenance and repair works to Government rental housing stock and to provide an emergency service in respect thereof;

(b) to administer its financial, technical and human resources and other affairs;

(c) to carry out such other functions and duties as the Minister may from time to time direct.

Notwithstanding the Ombudsman's moratorium the PHO did not furnish a reply and so the Ombudsman had to write to him to request a prompt reply.

Further correspondence was sent to the PHO and on the 8th June 2011 the Ombudsman was appraised that a representative from the Ministry for Housing had been appointed to assist the PHO with the information the Ombudsman had requested from the latter.

Much to the Ombudsman's disappointment there was no progress and so on the 27th June 2011 the Ombudsman saw little alternative but to bring his concerns to the Minister for Housing. The Ombudsman explained that he had consistently been referred to the Ministry's objective that external works would be undertaken by contractors via Measured Term Contracts ("MTC") however, no start date could yet be identified. Moreover, the information provided to the Ombudsman was not satisfactory due to its poor quality. Consequently, the Ombudsman asked for clarification as to who was responsible for the implementation of the MTC and also asked when it would be envisaged that the works would commence.

In his reply the Minister confirmed that the MTC had not yet been set up by Government and that they were currently being prepared. Furthermore, he confirmed that the MTCs were being prepared via the Office of the Chief Technical Officer.

In light of the Minister's reply and the stalemate the complainants were facing the Ombudsman directed his investigation to the Chief Technical Officer and asked:

1. When was your office tasked with the preparation of the MTCs;

2. Has this task been completed; if not when will it be completed;

3. Have any contracts been awarded; if not when is it envisaged that the contracts will be awarded;

4. Have any works commenced pursuant to the MTCs;

5. Who will be responsible for monitoring performance.

The reply from the Chief Technical Officer was along the lines that:

1. His office had received instructions to prepare MTCs type contract in late February 2011.

2. Tenders were invited with a return date of 3rd May 2011.

3. No works have yet been awarded under the MTC scheme or through the Government's in-house contractors.

4. Only works of an emergency nature and which would have fallen under the MTC remit have been undertaken by the Housing Works Agency.

5. Responsibility for monitoring the performance of the proposed contract will lie both with the Housing Ministry and staff at No 6 Convent Place.

On the 16th August 2011 the Ombudsman requested the Chief Technical Officer to confirm how the works would proceed and whether they would do so either chronologically on a case by case basis, or categorised by areas / housing estates, or otherwise. The Office of the Chief Technical Officer acknowledged the Ombudsman's letter on the 22nd August 2011 and informed the Ombudsman that the Chief Technical Officer was unable to see the said letter until his return to work from annual leave. On the 14th September 2011 the Ombudsman again wrote to the Chief Technical Officer and pointed out that he had not yet received a reply to his request dated 16th August 2011.

The Ombudsman waited until the 20th September 2011 for a reply but decided not to delay his report and proceeded in the absence of the Chief Technical Officer's reply to these questions.

Conclusions

The Ombudsman is of the view that the current state of affairs with regards to the number of complainants waiting for external works is very worrying. This is so, not only because of the time they have been made to wait and endure the problem, but also because of the repercussions that such delay may occasion on the future needs of other tenants and because of the effect it may have on the properties themselves. It is not the first time that there are adverse consequences to properties themselves when maintenance and repairs have not been tackled in good time; not to mention the increased risk of tenants suffering damage to personal property therein due to the persistent water penetration. Generally speaking there are compelling reasons for works to be tackled within reasonable time.

The Ombudsman considered the legal duties imposed on the Housing Authority and the Housing Works Agency in relation to public housing stock. There was little doubt that the Housing Authority had as its aim the management and control of public housing. The Housing Authority is responsible therefore for discharging a duty of care towards the properties and its occupants. Any report of defects or deterioration would have had to be investigated / assessed in a diligent manner and action taken to suppress or mitigate the adverse effect on the public asset, be it in a particular house or a building.

How that duty was to be fulfilled was a matter that became relevant in this investigation due to the allegation against the Housing Authority of delay or inaction. The first point to make in this regard is that the Ombudsman concedes that there was an inevitable delay given that the government department was abolished whilst most of these complaints still remained pending. Indeed the Ombudsman departed from his strict time frames to allow time for the Ministry for Housing to adapt and retrieve the information. The Ombudsman is of the opinion that it is not right for the works to have been kept pending for so long and especially that no arrangements have been finalised almost a year later.

The Housing Authority was to discharge its duty to maintain public housing through the newly created Housing Works Agency who has a statutory duty to carry out maintenance and repair works to Government rental housing stock and to provide an emergency service in so far as it is mandated to do so by Government and the Government provides sufficient resources.

However, given the large number of outstanding works, the Government, made a decision that, "as an interim arrangement" the Housing Works Agency would concentrate on internal works with an alternative arrangement to use appointed MTC for external works. The Ombudsman was informed that the Housing Works Agency would, if so required, take on external works once the backlog of works cleared.

Having placed the emphasis on clearing the backlog of outstanding works and on contractors carrying out the external works by means of the MTC the Ombudsman turned his attention to the administration of this latter concept.

It was evident from the little information available to the Ombudsman that the MTC had not taken off the ground. The administrative process in that regard appeared to have failed and even at this time of day no works had yet been allocated or commenced. The Ombudsman found this situation unacceptable. He was of the view that sufficient planning and resources ought to have been put in place to ensure that there was a reasonable process of allocating the works. Instead and judging from the response received from the Technical Officer the Ombudsman had doubts that the backlog of works would even be processed effectively given that no indication had been given on the proposed plan of action. This left the current works with no foreseeable start date and put into jeopardy the future works which may arise as can be foreseeable in this type of matters. In other words the failure to commence or even allocate the works which these complainants were waiting for could compound the problem in its global context.

The Ombudsman was disappointed with the attitude of the Housing Authority who did not respond as fully as the Ombudsman would have expected. Given that the reports are made, quite rightly, to the Housing Authority the Ombudsman expected the PHO to have been aware and in control of all the facts and figures affecting the problems. Alternatively, at the very least the PHO should have taken all reasonable steps to appraise himself of matters so as to be able to respond to the Ombudsman's request particularly, when the matters at hand, were of such a nature that they impeached on possible breaches of a statutory duty against the Housing Authority.

It is ironic that the set up of the Housing Works Agency was intended to some extend to expedite the time tenants of government housing were made to wait for maintenance and repair works and yet the Ombudsman has found that in these specific cases such a set up has in fact delayed matters in that works have not yet been allocated let alone commenced, and administratively speaking, there now exists an ambiguous stalemate as to how works will eventually be allocated. The Ombudsman would have expected a clear system of distribution to be available to indicate whether works would be progressed chronologically or by areas / housing estate or indeed otherwise.

Maladministration cannot be attributed to the Housing Works Agency for the works not having been done because of the fact that the decision was made not to refer the works to them and the law quite clearly states that their duty to carry out maintenance and repair works to Government rental housing stock is only in so far as it is *mandated to do so by Government*. The Ombudsman would say different if the works had been passed to the Agency but that is not the case at the moment and he wishes to clarify that point to avoid any misconceptions.

Classification

All the complaints in this report are sustained as in all of them, the period of time from the tenant reporting the problem to date amounts to an unreasonable period of time to be waiting for repairs.

Recommendations

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

UPDATES

OFFICE OF THE CHIEF TECHNICAL OFFICER

A REPLY FROM THE CHIEF TECHNICAL OFFICER WAS RECEIVED ON THE 28TH SEPTEMBER 2011 ONCE THE REPORT HAD BEEN DRAFTED. THE SUBSTANCE OF THE REPLY WAS TO THE EFFECT THAT SOME PACKAGES OF WORKS HAD BEEN AWARDED AND OTHERS REMAINED READY FOR ALLOCATION. THE CHIEF TECHNICAL OFFICER ALSO INFORMED THE OMBUDSMAN THAT THERE HAD BEEN A POOR RESPONSE FROM CONTRACTORS FOR PARTICIPATION IN THE MCTS.

MOREOVER, IT WAS STATED THAT THE PACKAGES WERE BEING PREPARED IN SUCH A MANNER THAT THEY COLLATED WORK REQUISITIONS FOR A PARTICULAR AREA AND/ OR BUILDING.

MINISTRY FOR HOUSING

ON READING THE DRAFT REPORT, THE PHO EXPRESSED HIS CONCERN ON THE MANNER IN WHICH THE REPORT LEANS TOWARDS ISSUING BLAME ON THE HOUSING AUTHORITY. HE EXPLAINED THAT THE DECISION TO RESTRUCTURE BUILDINGS AND WORKS INTO A HOUSING WORKS AGENCY WAS NOT DETERMINED NOR DESIGNED BY THE HOUSING AUTHORITY. THIS WAS THE RESULT OF GOVERNMENT POLICY IN THE PUBLIC INTEREST. HE WAS, THEREFORE, UNABLE TO COMMENT ON THE DELAYS ENCOUNTERED TOWARDS INITIATING CONTRACTUAL ARRANGEMENTS FOR THE PRIVATE SECTOR TO UNDERTAKE EXTERNAL WORKS AS IT WAS FELT THAT THIS SHOULD BE LEFT TO NO. 6 CONVENT PLACE TO EXPLAIN WHO, ULTIMATELY, WOULD BE TASKED IN MANAGING THIS PROCESS AS PER GOVERNMENT PROCESS.

THE PHO SAID THAT THE CURRENT DELAYS BEING EXPERIENCED BY TENANTS HAD NOT BEEN DUE TO THE HOUSING AUTHORITY'S INACTION BUT RATHER THE RESULT OF A MAJOR STRUCTURAL STEP CHANGE THAT WAS ONGOING. SUCH TRANSITION WOULD INEVITABLY BRING ABOUT SOME DELAY OVER ITS TRANSITIONAL PROCESS.

THE PHO DISAGREED WITH THE REPORT IN THAT IT IMPLIED THAT THE HOUSING AUTHORITY HAD NOT BEEN PROACTIVE ENOUGH IN PURSING WORKS. HE REITERATED THAT REPAIRS GENERATED BY GOVERNMENT TENANTS WERE DIRECTED ACCORDINGLY FOR COMPLETION.

Ombudsman's Note

As stated in the main body of the report the Ombudsman was aware that after the closure of the Buildings and Works Department the Government had implemented a policy whereby all works that were of an external nature would be managed from No.6 Convent Place, however he had to highlight two very important points in respect of the PHO's observation; (a) The PHO was unable to provide any information to the Ombudsman in relation to those works which were deemed to be of an external nature. (b) as at the time of writing this report, to the best of the Ombudsman knowledge, no MTC's had been awarded and most importantly, only a meagre handful of External works had been carried out in a period of almost one year. This could only be classed as unacceptable state of affairs.

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Income Tax Office

Case Not Sustained

CS/949

Complaints against the Income Tax Office as follows:

1. **Informed by Income Tax Office that it was not possible to give the Complainant the tax rebate cheque in Gibraltar as this had to be sent to his forwarding address outside Gibraltar;**

2. **Having lost the Complainant's personal details thereby causing further delay in obtaining the tax rebate;**

3. **Not having received the tax rebate cheque in Poland;**

4. **Clerk at the Counter was rude and dismissive and questioned the Complainant as to why he was still in Gibraltar when he was no longer working here**

5. **Complainant not allowed to be accompanied by a friend to assist him, due to the language barrier, in communicating with clerks at the Counter**

Complaint

The Complainant, a Polish national, had worked in Gibraltar from July 2008 to February 2010. In April 2011 because he was returning to Poland he went to the Income Tax Office ("ITO") to make a claim for a final assessment. The exercise of processing the claim resulted in the Complainant feeling aggrieved with the ITO, as per the Complaints listed above.

Background

When the Complainant went to the ITO on the 8th April 2011 he was asked to complete a form which was specific for the purpose of requesting a final assessment when leaving the jurisdiction. The Complainant duly complied and requested that any monies due be paid to him whilst still in Gibraltar. According to the Complainant he was informed that was not possible and a cheque would be sent to the forwarding address (in Poland) which he had provided.

Five weeks later, the Complainant visited the ITO and explained that the cheque had not as yet been received in Poland. According to the Complainant, the clerk at the Counter confirmed that no cheque had been sent and informed him that his details had been lost. The Complainant stated that he was asked to complete another form.

Four weeks later, because the cheque had still not been received, the Complainant once again visited the ITO. Allegedly, the clerk who attended to him on that occasion was unhelpful and dismissive. She provided no information about the cheque and asked him why he was still in Gibraltar if he was no longer in employment. The Complainant stated that the clerk then waved him away and motioned for the next person in line to approach the Counter.

Frustrated by the situation the Complainant brought his Complaints to the Ombudsman.

Investigation

The Ombudsman put the Complaints to the Commissioner of the ITO ("Commissioner").

Complaint (i)

Informed by Income Tax Office that it was not possible to give him the tax rebate cheque in Gibraltar as this had to be sent to his forwarding address outside Gibraltar;

By way of background information the Commissioner stated that the practice adopted by the ITO of raising up to date assessments when an individual left the jurisdiction was an extra statutory concession granted by the Commissioner. He referred the Ombudsman to Section 34 of the Income Tax Act 2010 which allowed him to exercise his discretion on this issue.

Up to date assessments were only raised and issued when an individual signed a declaration confirming that he/she was leaving the jurisdiction and the Commissioner was satisfied that this was the case. Once the assessment was raised and issued it was mailed to the forwarding address provided.

[Ombudsman's Note: when reading this report, note must be taken of the fact that at the time of writing, tax assessments were for a variety of reasons an average of four years in arrears.]

Conclusion (i)

In April 2011, the Complainant handed in a form at the ITO to request a final tax assessment because he was leaving Gibraltar. The tax periods related to the tax years July 2008 to June 2009 and July 2009 to June 2010. Therefore the explanation provided by the Commissioner with regards running the risk of paying a tax rebate only to find that the individual had continued in employment in Gibraltar for the remainder of the tax year did not apply vis-à-vis this complaint; the tax year had ended ten months earlier.

According to Section 33 of the Income Tax Act 2010, these assessments could have been raised at any time after the 30th November of the relevant tax year; i.e. 30th November 2009 and 30th November 2010.

There appeared to have been some confusion in the handling of this application. This was not an application where the Complainant sought a tax assessment in the middle of the current tax year. This was an application for an assessment for past tax years prior to leaving the jurisdiction.

One of the requisites for a final assessment to be processed by the ITO in the case of an individual leaving the jurisdiction was a forwarding address where the assessment could be remitted to once it had been issued. Under these circumstances the Ombudsman could not sustain this Complaint.

Complaint (ii)

Having lost his personal details thereby causing further delay in obtaining the tax rebate;

The Commissioner stated that the allegation that the Complainant's details had been lost by the ITO and resulted in further delay were totally unfounded. The Commissioner enclosed copies of the two forms (claim for final assessment for persons leaving Gibraltar) completed by the Complainant. The forms were identical with the following exceptions:

(i) Completion dates of the said forms;

(ii) the date stated as leaving Gibraltar was February 2010 in the first form and May 2011 on the second form.

The Ombudsman noted that the February 2010 was the date on which the Complainant had terminated his employment and had in all probability been mistakenly inserted as the date on which he was leaving Gibraltar.

The Commissioner explained that he was informed by the officer who had investigated the Complaint that there had been a delay in the processing of the original form which explained why the original document had not been filed at the time of the Complainant's second visit to the ITO (May 2011). The Commissioner explained that the Complainant was informed at that second visit that the form had not been lost but was pending processing. The Commissioner blamed the language barrier as the probable cause of another form having been completed and the Complainant's probable insistence of completing a second form to ensure that this was processed by the ITO.

Complaint (iii)

Not having received the tax rebate cheque in Poland

The Commissioner stated that the cheque had been processed on the 23rd June 2011 and sent to the forwarding address. A print out of the assessment transaction was provided to substantiate the information. It was noted that the assessment had been completed on the 17th June 2011; approximately ten weeks from the date on which the Complainant first submitted the form.

The Ombudsman enquired as to the average time taken to process assessments of similar cases and was told that it took between two and four weeks if all documentation required was in place and all PAYE payments had been settled by the employer.

In the case of the Complainant, the Commissioner stated that all documentation was in place but explained that discretion had been exercised to withhold payment for a few weeks, until such time as the ITO was satisfied that the Complainant was leaving the jurisdiction.

The Commissioner explained that the ITO had identified a particular sector of taxpayers who were taking advantage of the concession to raise up to date assessments when persons were leaving the jurisdiction. The Complainant was identified as a possible 'offender'.

Conclusion (ii) & (iii)

Copies of the two forms completed by the Complainant were provided to the Ombudsman which substantiated the Commissioner's explanation that the form had not been lost. Nevertheless the processing of the form took longer than average because the ITO exercised their discretion and purposefully delayed the issuing of the assessment until they were satisfied that the Complainant was in fact leaving the jurisdiction. This resulted in the delay in remitting the pertinent cheque to Poland.

The Ombudsman was minded to sustain this part of the Complaint, however he took account of the need for the ITO to exercise a certain degree of discretion in order to ascertain facts before proceeding with assessment/payment so as to avoid abuse. The Ombudsman would write to the Commissioner recommending that persons requesting up to date assessments because they are leaving the jurisdiction should be given a leaflet detailing the procedures followed by the ITO so as to avoid repetition of this incident.

Complaint (iv)

Clerk at the Counter was rude and dismissive and questioned him as to why he was still in Gibraltar when he was no longer working here

The Commissioner explained that clerks at the Counters of the ITO deal with numerous individuals on a daily basis and strive to provide professional and polite service and he was therefore surprised at the allegations that one of the officers was rude and dismissive. He explained that the clerk's enquiry to the Complainant in June 2011 was triggered because on the first form, the departure date from Gibraltar was stated as being February 2010, the date on which his last employment in Gibraltar had terminated. It was the Commissioner's view that the clerk had simply pointed out that more than a year had passed since the Complainant's supposed departure and had enquired as to how he was still in Gibraltar. (The second declaration stated he was leaving Gibraltar in May 2011). He explained that because of the requirements to claim a final assessment, there is a need for the clerks at the Counters to make those enquiries.

The Ombudsman was referred to cases in which individuals had been found to remain in local employment after having made a declaration that they were leaving the jurisdiction. Under those circumstances, in cases where a tax rebate had been made (based on income of part of the tax year) this would have to be repaid to the ITO as the assessment would not have reflected the individual's true liability for the full tax year. There was however the risk that continued employment was not brought to the attention of the ITO and the monies were never recovered. The Commissioner stated that an increased level of abuse in this respect had been identified recently amongst a particular sector. This concession was also being used by said sector for tax assessments to be fast tracked and in that way be at the front of the backlog of assessments waiting to be processed.

On a final note, the Commissioner stated that if the enquiries and procedures adopted to safeguard the ITO from potential abuse in this particular area were not sufficient, then he would have to reconsider the extra statutory concession that was currently being granted and would have to strictly adhere to the letter of the Income Tax Act 2010.

Conclusion (iv)

The Commissioner explained that the clerk at the Counter was fulfilling her duties when she asked the Complainant why he remained in Gibraltar, after the date stated on the forms. Regarding the clerk being rude and dismissive the Ombudsman does not discard this possibility but cannot determine whether that was indeed the case.

Notwithstanding, the Ombudsman did not sustain this Complaint as the Commissioner had confirmed that the clerk was only following instructions when she made the relevant enquiries.

Complaint v

Not allowed to be accompanied by a friend to assist him, due to the language barrier, in communicating with clerks at the Counter

Regarding the Complainant not being allowed to take a friend with him to assist in communicating with the clerks at the Counter, the Commissioner stated that it was customary for clerks to deal with persons whose preferred language was not English. In those circumstances, any such individuals were allowed and even encouraged to use a translator as that made the communication process more efficient and allowed full comprehension between the ITO and the person concerned.

Conclusion (v)

Based on the Commissioner's explanation, the Ombudsman was satisfied that there would have been no circumstances whereby the Complainant would have been denied the assistance of a friend for the purpose of communicating effectively with the ITO. The Ombudsman did not sustain this Complaint.

Recommendations

Those persons who are leaving the jurisdiction and request up to date assessments from the Income Tax Office should be provided with an information leaflet detailing the procedures followed by the Income Tax Office in these cases.

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Land Property Services

Case Sustained

CS/921

Complaint against Land Property Services Limited, for having refused to grant the Complainant consent to purchase a property categorised under 'Low Cost Home Ownership'

Complaint

The Complainant was aggrieved because Land Property Services Limited ("LPS") had refused to grant him consent to purchase a property categorised within the 'Low Cost Home Ownership Scheme' ("LCHOS").

Background

The Complainant, a European Union national, had worked and resided in Gibraltar with his wife and son since September 2006. In 2010, through an estate agent ("Estate Agent"), the Complainant negotiated the purchase of a property ("the Property") which was categorised within LCHOS. This scheme encompassed a number of restrictions with regards who could purchase the Property, as a result of which a purchaser had to meet certain criteria. Acting on the information provided by LPS to the Estate Agent, that the Complainant would be eligible to purchase under the LCHOS, the Complainant proceeded with the arrangements to purchase and then sought consent for the purchase from LPS on behalf of the Government of Gibraltar ("GoG"). However, formal consent was refused by LPS on the basis that the Complainant and his wife did not meet the criteria.

The Complainant was aggrieved at the refusal for two reasons:

(i) From information the Estate Agent had received from LPS in 2009, the criteria EU nationals had to meet to purchase property within LCHOS was that they should have resided in Gibraltar for a period of three years: and

(ii) based on the above information, the Complainant had made arrangements for a mortgage and engaged the services of a legal representative; both the services had incurred fees which the Complainant was liable for.

The Complainant's lawyer at the time wrote to the Minister for Housing on the issue of the reasons for the refusal by LPS, but the decision remained unchanged.

The Complainant contacted the Ombudsman with his grievance.

Investigation

The Ombudsman presented the Complaint to LPS in January 2011 requesting LPS' comments on the matter and the reasons for the refusal to consent to the purchase.

Information from LPS

LPS stated that Clause 11 (ii) of the Second Schedule of the Headlease obliged the Headlessee not to grant underleases other than in the form annexed to the Headlease. Sub clause 3 (d) of the Seventh Schedule of the underlease obliged the underlessee not to assign the property other than to a person or persons who satisfied the provisions of paragraph 2 (i) of the said Schedule which read as follows:

> *"The Lessee shall be a person who satisfies the provisions of the Housing Allocation Scheme (Revised 1987) issued under the Housing (Special Powers) Ordinance."*

LPS stated that the above requisite was a decision for the Ministry for Housing ("Housing") because it referred to a person's/s entitlement to be on the GoG Housing Waiting List. The Complainant's request was therefore passed to Housing and it was they who informed LPS that the Complainant did not meet the requirements as laid under the Seventh Schedule.

Information from Housing

The Ombudsman met with the Housing Manager. He referred the Housing Manager to the information originally provided by LPS to the Estate Agent (engaged by the Complainant) with regards eligibility for the purchase of property within a LCHOS which was as follows:

EU Nationals	Three year restriction and proof of residency;
Non EU Nationals	Not eligible although consent can be sought if the person has a contract with Government and has lived in Gibraltar for more than three years;
Gibraltarians	Proof of residency – in the case of Gibraltarians returning to Gibraltar after certain number of years, then proof of work permit.

Housing informed the Ombudsman that the criteria for eligibility to purchase property within the LCHOS was as follows:

EU Nationals	Do not qualify for the purchase of property within LCHOS;
UK Nationals	Proof of three years residency;
Gibraltarians	Proof of one year's residency.

Housing explained that EU nationals did not meet eligibility requirements under the Housing Allocation Scheme (Revised 1987) ("HAS"), Section 4 detailed as follows:

> "The following persons are eligible to apply for Government Housing –
>
> (a) Persons who are registered in the Register of Gibraltarians;

(b) Persons who are not registered Gibraltarians but who at the time of application have a right of permanent residence;

(c) Persons who are British Dependent Territories Citizens by virtue of a connection with Gibraltar as defined by the British Nationality Act 1991."

Housing explained that in the context of the eligibility requirements Government applied a three year relaxed policy for UK nationals wishing to purchase, and a ten year residency requirement for those UK nationals who wished to become applicants for Government Housing.

Housing informed the Ombudsman that they would write to LPS enclosing relevant documentation and informing them that they had been providing erroneous information to estate agents with regards eligibility for EU nationals to purchase property within a LCHOS.

The Ombudsman referred Housing to the fact that the Attorney General had in the past directed Housing to *Article 9 of EU Regulation 1612/68* on freedom of movement for workers within EU which states:

"1. A worker who is a national of a Member State and who is employed in the territory of another Member State shall enjoy all the rights and benefits accorded to national workers in matters of housing, including ownership of the housing he needs.

Such worker may, with the same right as nationals, put his name down on the housing lists in the region in which he is employed, where such lists exist; he shall enjoy the resultant benefits and priorities.

If his family has remained in the country whence he came, they shall be considered for this purpose as residing in the said region, where national workers benefit from a similar presumption."

Housing sought advise on the matter and informed the Ombudsman that Government was fully of the view that LPS had acted properly and in full accordance with the relevant applicable legislation and rules.

Conclusion

The initial information provided by LPS to the Estate Agent was that to be eligible to purchase a property within the LCHOS, an EU national would have had to reside in Gibraltar for a period of three years (criteria which the Complainant met at the time). It was upon this that the Complainant acted to progress the purchase.

Notwithstanding that, the end result was that LPS later refused consent to the purchase stating that the Complainant did not satisfy the criteria required under *" ... the provisions of the Housing Allocation Scheme (Revised 1987) issued under the Housing (Special Powers) Ordinance."*

Based on the results of the investigation it was the Ombudsman's opinion that both sets of information were misconceived in relation to the Complainant.

Permanent Residence

The Ombudsman noted that whilst Housing considered EEA nationals were ineligible, Section 4 (b) of HAS clearly allowed for persons with a right of permanent residence to be eligible to apply for Government housing and therefore such applicants could fit the eligibility criteria to purchase a property within a LCHOS.

Section 55N(1)(a) of the Immigration, Asylum and Refugee Act makes provision for entitlement to the right of permanent residence, amongst others, for EEA nationals who under the said Act are deemed to be "qualified persons" (Section 55E(1)) by virtue of being in Gibraltar under one of the following categories: job-seekers, workers, self-employed persons, self-sufficient persons or students and having resided in Gibraltar for a continuous period of five years.

Evidently, with the above in mind, neither the three year residence requirement (information provided by LPS to the Estate Agent) nor the complete refusal by Housing, based on the fact that the Complainant was an EU national, were appropriate in the circumstances.

Regulation (EEC) No. 1612/68 – Article 9

Moreover, in respect of the criteria being applied to UK nationals wishing to purchase a property within the LCHOS, the Ombudsman focused his attention on the above-mentioned regulation which is directly applicable to Gibraltar. In relation to the Complainant's application for consent the Ombudsman was of the opinion that no distinction could be made for the purposes of housing, between nationals of a Member State and those employed in the territory of another Member State. Therefore, the three year residency requirement applicable to UK nationals with regards to the purchase of a property within LCHOS should also be applicable to EU nationals employed and residing in Gibraltar for at least that period of time. As the Complainant had been working and residing in Gibraltar for that time, consent should not have been refused.

The Ombudsman decided to sustain this Complaint as the results of the investigation concluded that LPS had given out misguided information and erroneously refused to consent to the purchase of the property. Apart from not being able to purchase the property, further consequences to the Complainant were the financial loss incurred due to the disbursements he made for the mortgage fee and legal advice provided, and the stress and uncertainty suffered by him and his family.

The Ombudsman sustained this complaint for the following reasons:

(i) the information provided by Land Property Services Limited/ the Ministry for Housing was misguided;

(ii) the Ministry for Housing was wrong to exclude the Complainant's application merely because he was an EU national given that the Housing Allocation Scheme allows for persons with permanent residence in Gibraltar to become applicants. Under the provisions of the Immigration Asylum and Refugee Act an EU national may acquire permanent residence in Gibraltar after five years of living and working in Gibraltar;

(iii) The Ministry for Housing failed to apply the principle of EU regulation 1612/68 to the Complainant which, if applied, would have made him eligible to become a housing applicant and thus also eligible to purchase under the Low Cost Home Ownership Scheme.

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Case Sustained (Ministry for Culture)

CS/947

Complaint against Land Property Services Limited (later amended to Ministry for Culture) for not having resolved problems of water ingress being experienced in premises which the Complainant rented from the Government of Gibraltar and for not having replied or acknowledged three emails

Complaint

The Complainant was aggrieved because for approximately two years, premises ("Premises") which he rented from the Government of Gibraltar had experienced water ingress. Despite having put his complaint to Land Property Services Limited ("LPS"), the problem remained unresolved.

The Complainant was further aggrieved because he had sent three emails to LPS which had not been acknowledged or answered.

Background

The Complainant explained that the Premises were rented for cultural purposes and were used as a dance/drama studio. Around March 2009 the Premises started to show signs of water ingress and the Complainant reported the matter to LPS (the entity to which he paid rent). Resulting from his Complaint, the Complainant stated that circa March 2010 LPS undertook an on site inspection of the Premises and informed him that they would contact a local contractor. Nine months later no repairs had been carried out and the problem escalated. Increased water ingress when it rained caused substantial damage to the Premises and its contents. The Complainant emailed LPS with his grievance and requested that they address the matter of repairs now long overdue. No reply was received to the emails and so the Complainant left a voice mail message on LPS' answering machine. The call was returned by LPS and the Complainant claimed that in the course of the conversation LPS confirmed receipt of emails. A month later not having received a written reply to his emails and no repairs having been undertaken, the Complainant once again put his concerns in an email and this time requested that the monthly rental fee for the premises be waived until the problems were resolved. As no reply had been received by March 2011, the Complainant brought his Complaints to the Ombudsman.

Investigation

Land Property Services Limited

The Ombudsman put the Complaints to LPS for their comments and enclosed copies of the three emails. On the matter of non-reply, the explanation offered by LPS was that the emails had been sent to an incorrect address and therefore not received. Nevertheless, LPS confirmed that further to a telephone message left by the Complainant in December 2010, LPS had contacted him and informed him of proposed temporary works to cover the roof of the building ("Building") arranged by the Gibraltar Sports & Leisure Authority ("GSLA").

The Ombudsman is of the view that although there was verbal communication between the Complainant and LPS, they (LPS) should have provided a written reply to the Complainant addressing his concerns.

Regarding the water ingress, LPS explained that in early December 2010 another licensee in the Building reported damage within her premises as a result of heavy rains (she also explained that this was being experienced by other licensees) and was informed that the matter would be reported to the Gibraltar Sports & Leisure Authority ("GSLA") for their action. LPS stated that this was duly done on the same day of the report. Upon enquiry from LPS, the GSLA informed them that they had approached a local contractor and were waiting for them to provide a temporary cover to the roof. Four months elapsed during which no works were undertaken, however, LPS continued with their efforts to get the repairs done and explained that they had been liaising with the GSLA for an inspection to be arranged but despite reminders to both GSLA and the contractor this had not materialised. LPS stated that they had contacted the Complainant in April to update him and then in June to notify him that he would need to be available to allow access to the contractor for the inspection. LPS also explained that other work commitments had prevented the contractor from undertaking the inspection. In late July and early August LPS again contacted the contractor and a date for the inspection was finally set for the 9th August 2011.

LPS advised that it was not within their remit to have contacted the contractor but did so at the request of GSLA in an attempt to expedite matters. LPS explained that premises in the Building had been allocated through instructions from the Ministry of Culture, Heritage, Sport & Leisure and LPS issued and managed the licences on behalf of Government. Their contract tasked them to deal with routine management enquiries from licensees but in the case of a property wholly controlled by a Government department or ministry as was the case with the Building, any works required were carried out and funded by the corresponding entity [*Ombudsman's note: in this case it was the Ministry for Culture*]. LPS stated they are not responsible for obtaining estimates, project management or supervision of works but stated that they do try to assist as much as possible in order to facilitate matters. LPS explained that this had resulted in the assumption that it was LPS' responsibility to provide the service.

Gibraltar Sports & Leisure Authority

Based on information provided by LPS, the Ombudsman directed inquiries to GSLA. In their reply, GSLA informed the Ombudsman that they were not the entity directly responsible for dealing with problems encountered by tenants of those premises but that on occasions, in order to avoid minor problems, they had reacted to direct reports. Copies of emails sent by GSLA to the local contractor in March 2011 and August 2011 pursuing the repairs were provided.

GSLA stated that the licences were issued by LPS and that any problems should be directed to them. They highlighted that the premises had been allocated by the Department for Culture ("Culture") and not Sport. He advised that the Complainant should put his grievance to Culture. In turn they would contact LPS who would liaise with contractors to establish the required works and obtain quotes. The quotes would be passed to GSLA for the official works order to be issued and subsequent payment made upon completion of works normally supervised by LPS. GSLA stated that funds for repairs to the Building had been provided by Government through the GSLA.

The Ombudsman met with the GSLA to further his inquiries. GSLA explained that the GSLA's Chief Executive was a member of Ministry for Culture's internal committee known as the Premises Allocation Committee. This committee was tasked with allocating premises to cultural and sports clubs/ association, etc. The said Chief Executive informed the Ombudsman that the committee had not met for a long time but he still continued, through GSLA, to hold the funds for repairs. He was the person tasked with managing the funds for repairs to properties rented out to sports and cultural entities.

According to GSLA the contractor undertook works to the roof of the Building approximately six years ago. The works carried a guarantee and for that reason the GSLA was reluctant to engage a different contractor on this occasion because they would loose the guarantee on the works carried out to the roof.

Regarding damage caused to the Premises, GSLA stated they had verbally agreed with the Complainant that once the Building was repaired, the damage to the Premises would be assessed and an adequate rent free period would be agreed to cover any loss suffered by the Complainant. GSLA stated that they were actively pursuing the repairs.

Conclusion

The Complainant paid his rent to LPS, therefore when he had a need for assistance he reported the matter to them. It is as from this point that a whole process of actions driven by the goodwill to be of assistance is set in motion. From the information before him, the Ombudsman concluded that LPS went beyond their contracted remit to assist the Complainant. Eventually, GSLA in a similar display of goodwill also got involved in the matter. Yet as at the date of writing this report the works were still outstanding.

The Ombudsman was of the opinion that although the original Complaint for not having resolved problems of water ingress had been made against LPS, the entity at fault in this instance was the Ministry for Culture and the Complaint would be changed to reflect this finding.

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

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

The Ministry for Culture had allocated the Premises and others via an internal committee, the Premises Allocation Committee, and thereafter there was no appropriate mechanism to report faults and, most importantly, to get such faults repaired. The Ombudsman's investigation showed that repairs had been carried out mainly through the goodwill of both LPS and GSLA. Although it was the GSLA who held the funding for repairs, there was no established mechanism for the Complainant to follow or indeed for LPS or GSLA once they received notification of a fault in premises allocated by the Ministry for Culture.

The Ombudsman sustained the Complaint against the Ministry for Culture for not having established a procedure to ensure that repairs are carried out when holders of cultural or sporting premises report defects and requests for repairs. Resulting from his investigation, the Ombudsman was able to ascertain that repairs to sporting and cultural premises were carried out as a result of large amounts of goodwill from the GSLA and from LPS who often went beyond their contracted remits in order to provide assistance to licensees. There was a need for the Ministry for Culture to set up a procedure with clear instructions as to responsibilities and detailing the path to follow when licensees of premises used for sporting or cultural purposes report faults and requirements for repairs. Therefore the Ombudsman recommends that:

> The Ministry for Culture implement without delay the procedure to be followed when licensees of premises allocated for sports and cultural purposes lodge reports concerning faults to the premises.
>
> The procedure should culminate with the completion of the works required to the satisfaction of the Ministry for Culture.

Magistrate's Court

Case Not Sustained

CS934

Complaint against the Magistrates Court ("Court") because two years after having purchased a property ("Property"), summonses in respect of traffic offences ("Summonses") directed to the former residents were still being remitted to the Property, and no action had been taken by the Magistrates Court to resolve the matter

Complaint

The Complainant was aggrieved because two years after having purchased the Property, Summonses directed to the former residents were still being remitted to the Property, and no action had been taken by the Court to resolve the matter.

Background

The Complainant explained that since he purchased the Property in January 2009 he regularly received Summonses addressed to the former residents of the Property. The Complainant stated that he had tirelessly returned the Summonses to the Court and had both verbally and in writing informed the clerks at the counter that those persons no longer resided at that address. Despite his efforts, the situation persisted and the Complainant lodged his Complaint with the Ombudsman. Enclosed with his letter of Complaint were the last six Summonses received.

Investigation

The Ombudsman handed the Summonses to the Registrar. An initial meeting to put the Complaint to the Court took place between the Ombudsman and the Courts Chief Executive ("CE") in January 2011. Further to looking into the issue and reverting with the findings, the Ombudsman enquired as to whether at that present time, the Court was processing any other summonses for the former residents addressed to the Property. The CE would undertake an investigation and reply to the Ombudsman.

After a two month delay, on the 22nd March 2011 the CE provided the Ombudsman with his findings.

Apologies were provided with regards the delay which had been due to the unprecedented period of disruption due to construction works being undertaken in the building which housed the Courts. Furthermore, the CE stated that he had had to find staff time, over and above the day to day Court operation, to manually search through thousands of pending summonses that the Court was processing. Notwithstanding, he confirmed that at that present time there were no summonses entered in the Court's database issued to the former residents addressed to the Property.

The CE explained that summonses in respect of parking tickets are prepared by the Royal Gibraltar Police ("RGP"). RGP obtain ownership and address details of vehicles registration from the Licensing Authority. The summonses are then forwarded to the Court to be endorsed by the Stipendiary Magistrate or Justices of the Peace and then passed to the Process Server for dispatch.

Regarding the Complaint, the CE stated that the address the Summonses were sent to was the address held in the Licensing Authority's records, the Complainant's Property. The former residents had not informed the Licensing Authority of their new address details.

As a result of non-appearance in Court as set out in the Summonses, the former residents were arrested on the strength of warrants. The explanation provided by the former residents for the non-appearance was that they had not received the Summonses because they now resided at a different address.

The CE explained that it was as a result of the former residents appearance in Court that the latter were able to amend the address on their database in respect of the particular summonses they were arrested for. Furthermore, the CE had been informed that the RGP had advised the former residents to update their vehicle records with the Licensing Authority to avoid a recurrence of any future summonses being sent to the Property.

The Court explained that neither the RGP nor the Court have the power to amend vehicle records. The responsibility lies with the owner. In the case of the former residents, if they continued to fail in their obligation, any future summonses in respect of traffic offences would be sent to the Property.

Conclusion

From the information obtained in the investigation, the Ombudsman decided that the Complaint against the Court could not be sustained. First and foremost the Court did not have the power to amend vehicle records, responsibility of this lay solely with the owner of the said vehicle. Secondly, the Summonses were prepared by the RGP and therefore the Court's involvement was for the purposes of the Summonses to be endorsed and then passed to the Process Server for delivery.

It is clear that neither of the entities, RGP or Court, could be held responsible for the problem affecting the Complainant. The core of the problem lay in the failure of the former residents in updating their address details with the Licensing Authority. This resulted in grave consequences to both the Complainant, because of having to deal with the Summonses, and the former residents who ended up being arrested.

The Ombudsman perused the Traffic (Licensing and Registration) Regulations but was unable to find provision having been made for a requirement for vehicle owners to inform the Licensing Authority whenever there is a change in their address details. The onus therefore lies entirely on the vehicle owner complying with his/her civic duty.

The Complainant was unable to open or interfere with the mail as any attempt to do otherwise could constitute a criminal offence. The only option available to him was to return the same to sender.

Regarding the matter of delay in the Court's reply, the Ombudsman was quite concerned at the fact that staff had to manually search through thousands of summonses to undertake the check required. In order to simplify and expedite this process, a database should be put in place in which a record of all summonses being processed by the Court would be kept.

The Ombudsman suggested that there should be a legal requirement included in the Traffic (Licensing and Registration) Regulations for vehicle owners to inform the Licensing Authority of any changes to their address details.

- -

4
Statistical Information

4.1 VOLUME

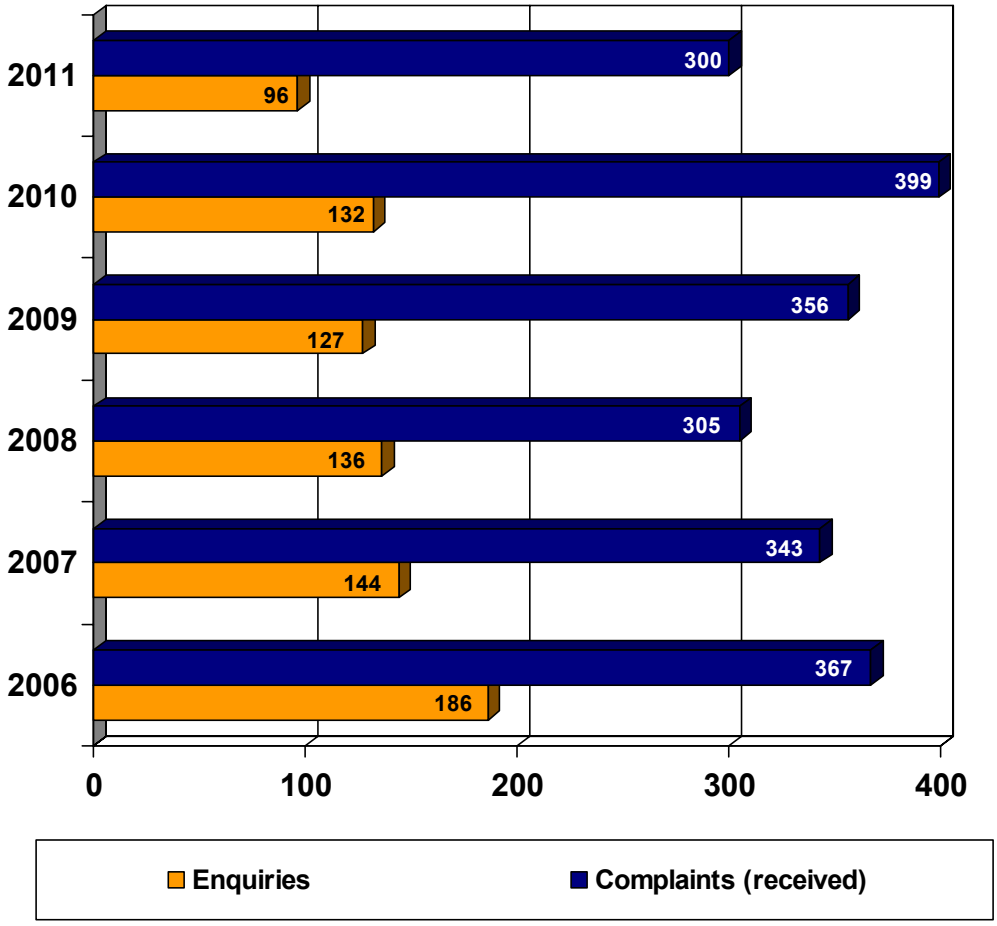
Complaints received, completed and current by month – 2010 & 2011

Table 1	2010			2011		
	Received	Completed	Current	Received	Completed	Current
			63			43
January	40	36	67	35	31	47
February	37	35	69	33	27	53
March	37	43	63	41	19	75
April	28	25	66	17	26	66
May	47	50	63	23	22	67
June	34	33	64	16	8	75
July	33	31	66	25	12	88
August	27	26	67	23	24	87
September	29	30	66	31	20	98
October	25	27	64	23	27	94
November	29	38	55	26	26	94
December	33	45	43	7	21	80
TOTAL	399	419		300	263	
Enquiries	132				97	

This year, we received 300 Complaints in our office, a decrease of 99 Complaints compared to 2010, where we received 399 Complaints. Taking into account the active complaints brought over from the previous year, a total of 263 Complaints were completed by the end of this year which left 80 Complaints open by the end of 2011. This year we recorded 97 Enquiries, a decrease of 35 compared to 2010, when we received 132.

4.1 (CONT)….

Chart 1 - Breakdown of Complaints and Enquiries received from 2006 to 2011



This year we have received 300 Complaints and 96 Enquiries.

From the 300 Complaints we received, 34 were against private organisations that fall outside the Ombudsman's jurisdiction. This left a total of ***266*** Complaints received against government departments, agencies and other entities which fall under our jurisdiction. (*See Table 2 Page 116* - ***Complaints/Enquiries received by departments/entities in 2011***).

4.2 GOVERNMENT DEPARTMENTS AND OTHER ENTITIES

The trend of Complaints has continued similar to previous years with the Housing Department (119), Buildings and Works Department (44), Civil Status and Registration Office (20), the Gibraltar Health Authority (8) the Department of Social Security (8) and the Employment Service (8) attracting the highest number of Complaints.

Table 2 - Complaints/Enquiries received by departments/entities in 2011

Dept/Agency	Enquiry	Complaint	Dept/Agency	Enquiry	Complaint
Aqua Gib	-	1	**GRP Investments**	2	3
Buildings and Works	2	44	**Housing Department**	50	119
Care Agency	3	2	**Housing Works Agency**	1	2
Civil Status & Registration	11	20	**Human Resources**	-	2
Culture Office	-	1	**Income Tax Office**	2	3
Education & Training	1	3	**Land Property Services Ltd**	-	7
Elderly Care Agency	-	3	**Magistrate's Court**	-	6
Enterprise & Development	-	2	**Office of the Chief Minister**	1	2
Employment Service	4	8	**Royal Gibraltar Police**	1	6
Environment	-	1	**Social Security**	11	8
Environmental Agency	1	4	**Technical Services**	-	1
Gibraltar Electricity Auth	1	2	**Treasury**	1	-
Gibraltar Health Auth	3	8	**Others**	2	7
Gibtelecom	-	1	**TOTAL :**	**97**	**266**

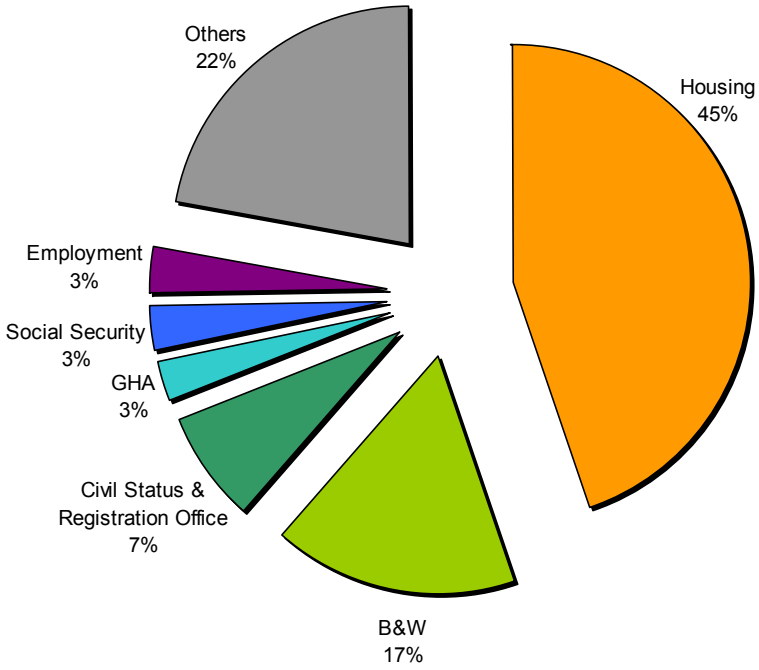
Complaints against the Housing Department have increased again from 91 to 119 in 2011, that takes up 45% of all the complaints that we have received this year. Complaints received against the Buildings and Works Department have decreased this year from 80 to 44 and that was due to the department being abolished as from 1st April 2011 and a new agency was established (Housing Works Agency). On a more positive note this year we have had less complaints against the Civil Status and Registration Office, decreasing from 28 to 20.

Mention must be made of the improvement in service being provided by the Civil Status and Registration Office. The new Head of Department is keen on a modern service delivery and consequently the Department's public counters and lobby areas now present a smart and fresh appearance which the service users will much appreciate. There has also been a substantial improvement in the service delivery which would account for the reduction in complaints.

4.2 (CONT)….

This year the two departments of the Ministry for Housing attracted 62% of all the complaints received; Housing 45% and Buildings and Works 17%. The Civil Status and Registration Office, the Gibraltar Health Authority and the Department of Social Security once again get into the 'Top 5' departments and/or agencies we receive most complaints against.

Chart 2 - Complaints received by departments/entities in 2011



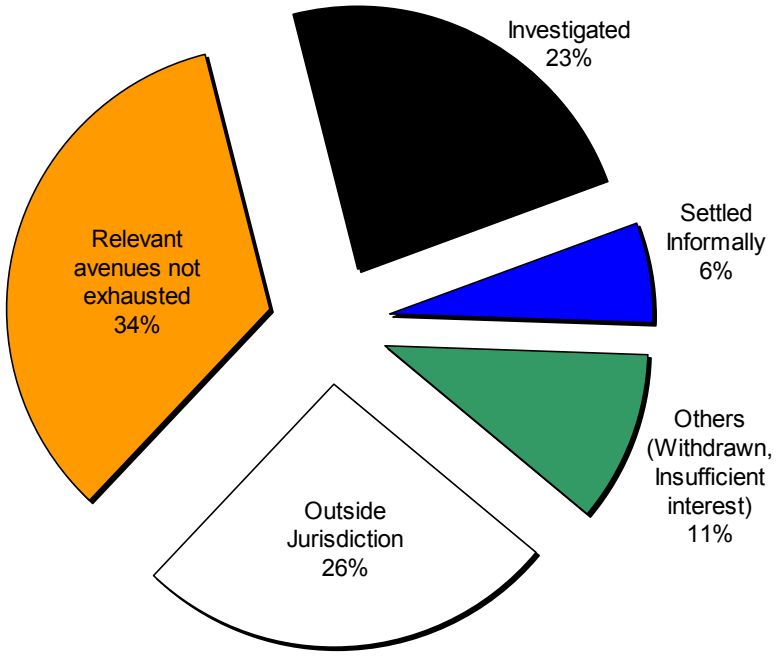
Noteworthy are the 8 Complaints received against the Employment Service. Half of the complaints received against the Employment Service were in relation to sheltered employment and apprenticeship schemes but the most notable complaint was the delay by the department in awarding the Complainant his certificate of award after having completed his NVQ in plumbing studies almost three years ago. See Page 55 for full report.

4.3 PROCESSING DATA

There were 263 Complaints classified this year out of which, 68 (26%) were classified as outside jurisdiction, hence they could not be investigated by the Ombudsman. 90 (34%) were closed as 'Relevant Avenues Not Exhausted' (RANE).

Six percent of the Complaints were settled informally as they were resolved by assisting the Complainant without the need to initiate an investigation. A further 28 (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.

Chart 3 - Classification of Concluded Complaints (%)



61 Investigations (23%) were concluded by the end of the year. Out of the 61 (24 Sustained, 37 Not sustained) investigations completed by the end of the year, 34 of them were resolved through informal action, whilst the other 27 warranted an extensive report. Out of these 27, 22 were sustained, 5 were not sustained.

4.4 RECOMMENDATIONS

Identifying where there is a need for improvement in the administrative machinery is a major function of any Ombudsman. An Ombudsman's worth within a community may be measured against the quality of recommendations and whether these recommendations are accepted and subsequently implemented.

The Gibraltar Ombudsman has throughout its existence made recommendation which in the main have been accepted and implemented. We have now produced an electronic data base to strengthen our monitoring of the recommendations which we make.

Screenshot of our Recommendation Database

In future, all new complaints will initially be perused against our data base in order to identify whether we have in the past made a recommendation which if implemented would not have given rise to this new complaint. If indeed such a recommendation has been made and accepted, then our fist inquiries will be directed at identifying why the recommendation has not been implemented.

Over the last twelve months we have made a total of 19 recommendations, of which

11 Accepted

2 Recommendations cannot be considered due to abolishment of Buildings and Works Department.

2 Open – Still being considered.

4 Unable to proceed as recommendations not feasible to implement.

4.5 WEBSITE

Table 3

Top webpage visits and page views by origin of country of web user

September 11 to December 11

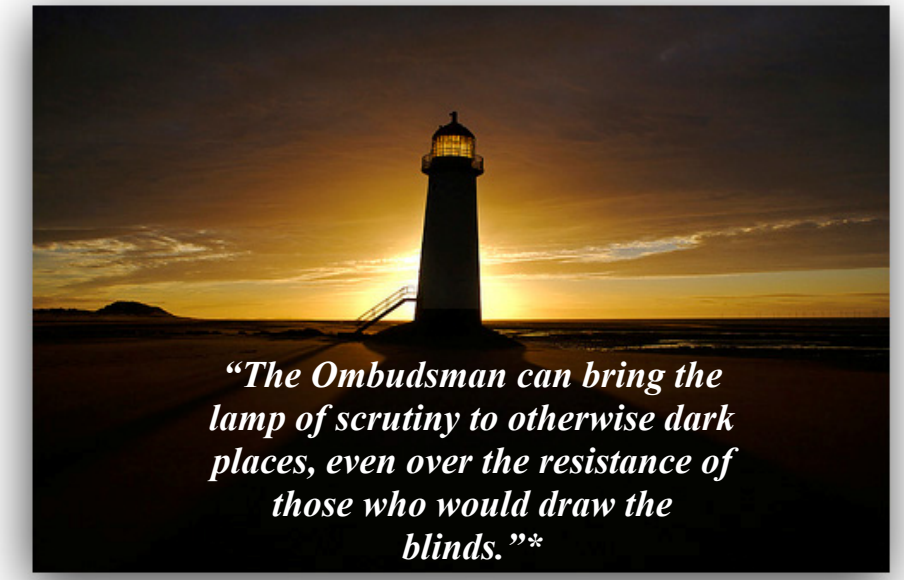
Country	*Web Visits*	*Page Views*
Gibraltar	656	2209
United Kingdom	445	938
USA	757	803
Germany	229	441
China	381	410
Russia	117	408
Spain	156	354
Netherlands	114	320
Australia	161	271
Ukraine	75	225
Canada	76	195
Sweden	59	88
Poland	17	88
France	35	80
Denmark	37	72
Belgium	38	59
Israel	17	44
Malta	21	42

Table 4 - Breakdown of classification of complaints received by departments / entities in 2011

Dept/Agency	Avenues not exhausted	Out of Jurisdiction	Withdrawn/IPI, Trivial, Others	Formal Investigation		Resolved through informal action		Settled Informally	Open	Total
				Sustained	N/Sustained	Sustained	N/Sustained			
Aqua Gib	1	-	-	-	-	-	-	-	-	**1**
Buildings and Works	13	2	6	1	-	-	-	4	18	**44**
Care Agency	2	-	-	-	-	-	-	-	-	**2**
Civil Status & Registration	8	2	2	-	-	-	4	-	4	**20**
Culture Office	1	-	-	-	-	-	-	-	-	**1**
Education & Training	-	-	-	-	-	-	2	-	1	**3**
Elderly Care Agency	-	2	-	-	-	-	1	-	-	**3**
Enterprise & Development	1	-	-	-	-	-	1	-	-	**2**
Employment Service	-	1	2	1	-	-	2	1	1	**8**
Environment	1	-	-	-	-	—	-	-	-	**1**
Environmental Agency	1	1	-	-	-	-	-	1	1	**4**
Gibraltar Electricity Auth	2	-	-	-	-	-	-	-	-	**2**
Gibraltar Health Authority	4	3	-	-	-	-	-	-	1	**8**
Gibtelecom	-	-	-	-	-	-	-	-	1	**1**

Table 5 - Breakdown of classification of complaints received by departments / entities in 2011

Dept/Agency	Avenues not exhausted	Out of Juris-diction	With-drawn/IPI, Trivial, Others	Formal Investigation		Resolved through informal action		Settled Informally	Open	Total
				Sustained	N/Sustained	Sustained	N/Sustained			
GRP Investments	-	3	-	-	-	-	-	-	-	**3**
Housing Department	44	6	12	4	1	2	16	8	26	**119**
Housing Works Agency	-	-	-	-	-	-	-	-	2	**2**
Human Resources	-	-	-	1	-	-	-	-	1	**2**
Income Tax Office	1	-	-	-	1	-	1	-	-	**3**
Land Property Ser-vices Ltd	3	-	-	2	-	-	-	-	2	**7**
Magistrate's Court	-	3	-	-	-	-	-	1	2	**6**
Office of the Chief Minister	1	1	-	-	-	-	-	-	-	**2**
Royal Gibraltar Police	2	3	-	-	-	-	-	-	1	**6**
Social Security	4	-	1	-	-	-	3	-	-	**8**
Technical Services	-	-	-	-	-	-	-	1	-	**1**
Treasury	-	-	-	-	-	-	-	-	-	-
Others	1	5	1	-	-	-	-	-	-	**7**



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

Title: Public Services Ombudsman Annual Report 2011

Published by: Office of the Ombudsman, Gibraltar

Compiled by: Information Controller, Mr. S. Sanchez

Printed by: The Gibraltar Chronicle Printing Ltd

Front Cover Photo by: Mr. A. Pinna

Print run: 300 copies

The Gibraltar Public Services

Ombudsman