Gibraltar Public Services

Ombudsman

Annual Report 2015

Strength and growth come only through continuous effort and struggle

‘Strength and growth come only through continuous effort and struggle’

Napoleon Hill

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

May 2016

The Hon Fabian Picardo QC, MP
Chief Minister
Office of the Chief Minister
No. 6 Convent Place
Gibraltar

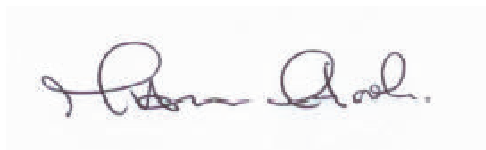
Dear Chief Minister,

Annual Report 2015

It is an honour for me to present the Public Services Ombudsman's sixteenth Annual Report. This report covers the period 1st January to 31st December 2015.

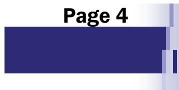
This report has been prepared in accordance with the Public Services Ombudsman Act 1998. It contains summaries of investigations undertaken and completed during this period together with reviews and comments of the most salient issues of this last year.

Yours sincerely



Mario M Hook
Ombudsman

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



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PUBLIC SERVICES OMBUDSMAN

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1
Introduction

The Ombudsman's Sixteenth 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

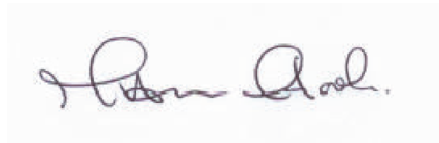
He is doing us a favour by giving us an opportunity to do so.

Mahatma Ghandi

INTRODUCTION

Preparing this annual report has not been a simple task. I say this because over the past twelve months my office has truly been a beehive of activity. As from April 2015 we were given jurisdiction over the Gibraltar Health Authority (GHA) and for the purposes of providing a front-line service to the public we created the Complaints Handling Scheme (Health). The GHA is Gibraltar's largest public service provider and the vast majority of their services entail direct face-to-face contact with service-users. Consequently, it generates a considerable amount of complaints in respect of a very wide spectrum of issues. Coming to grips with this situation has proved to be quite a challenge. I am pleased to state that in general the GHA has been very supportive of our new task and I have to thank its entire workforce for their cordial assistance. I have to thank their Chief Executive for his support and collaboration in our new role.

I have to thank the Members of Parliament for their high regard of my office. It is very important for us to know that we enjoy such level of support. As Ombudsman I am always very careful not to tread into the political arena as that ambit is wholly outside the functions of the Ombudsman, additionally I must maintain the independence of my office. Notwithstanding the foregoing, I have to thank the Minister for Health for his unfailing support, encouragement and time when we have dealt with complaints which may have also required delving into policy areas where Ministerial input was required or advisable. His pro-active availability and willingness to listen to proposals and/or provide advice is genuinely appreciated.



Mario M Hook
Ombudsman

Public Services Ombudsman Group attending meeting in Malta

2

Ombudsman's Review

2015

2.1 Ombudsman Review

Housing Authority

In my review for the year 2014 as contained in my last Annual Report I stated that, "Judging by present trends, we could for the first time see housing issues being removed from the top of the complaints league". This has not happened yet (to the exception of the GHA, which we are accounting for separately) but again this year I am pleased to report a further reduction in Complaints and Enquiries. The reduction has been minimal but it is encouraging to see that the downward trend continues. However there are a number of issues relating to the Housing Authority ("HA") which I feel I must include in this report.

Gibraltar General Construction Company Limited

Notwithstanding that there has been a further reduction of complaints we continue to face difficulties when seeking information related to works which have been passed by the HA on to the Gibraltar General Construction Company Limited (GGCC) the entity tasked with repairs to Government rental housing stock. From the information provided by both the HA and Housing Works Agency (HWA) when a government tenant makes a report at the Reporting Office, the report then makes its way to the HWA who in turn costs the works required and, unless it is an emergency, the report is then passed on to GGCC. When the works will be undertaken or, indeed, who will carry out the works, is not information available to the Ombudsman directly from GGCC. For the receipt of any information of this nature the Ombudsman has to make a request to the HA or HWA. This is so because the Ombudsman does not enjoy jurisdiction over GGCC and neither the HA nor HWA are privy to any information regarding GGCC other than what they (GGCC) wish to disclose. It is very often a very tedious and difficult exercise to obtain information via the Housing Manager who in turn also finds it difficult to obtain information or indeed even replies from GGCC. The above situation prevents the Ombudsman from providing a good, efficient service to those who have lodged a complaint, which in general are in respect of delays as to when works will be undertaken.

Allocation of Flats to those on the Waiting Lists

I have to express concern at the manner in which allocations are currently being made.

The HA recently confirmed that all offers of reallocation made to applicants on the waiting list have been made in keeping with Government's manifesto commitment of 2011 which stated: 'Everyone on the housing waiting list and on the pre-list on the 9th December (2011) who has not received a letter allocating them a flat will also be re-housed before the next election, eliminating the existing waiting list and pre-list…'

The Housing Allocation Scheme ("Scheme") is not a statutory scheme and has been set in the social policy of successive governments for many decades. The waiting lists created for the management of the scheme have been its backbone and the barometer by which those awaiting the allocation of a flat have been able to check their position in the lists and gauge approximate waiting time.

This appears to have been almost suspended during the last few years with the exception of the Social and Medical lists. Of course, HA is perfectly entitled to take such action but, in my opinion, they should have made an unequivocal public announcement that until such a time as the manifesto commitment was fulfilled, the allocation of properties via the waiting lists as we know them would be subject to their policy requirement.

Review of Social Housing in Gibraltar

Throughout the years we have heard and dealt with all sorts of complaints relating to housing issues in Gibraltar. The exposure that my office has had to housing issues is possibly second-to-none and sets us in a good position to be able to comment on issues of concern.

In my opinion there is a need to undertake a comprehensive review of the social housing situation in Gibraltar.

What do I mean by the term Social Rental Housing? This term applies to all residential properties owned by the Government of Gibraltar and which is allocated to applicants in the housing waiting lists on a weekly/monthly rental. The HA carry out an excellent work within the Scheme's policies and practices which they have been operating for a very long time, however this present model has (in my opinion) now outlived its shelf life and a review of the Scheme would be in order.

There could be detailed study of the various aspects of present and future requirements of social rental housing in Gibraltar. This could include (non-exhaustive) level of rent charged; provision for periodical review of rental charges; consideration given as to whether the allocation of a property and level of rent should be means-tested; home insurance to cover such things as flooding or other similar loss in order to avoid the taxpayer footing such bills should be mandatory; security services; the return of estate wardens; these are matters which have been brought to our attention through complaints or enquiries.

Gibraltar Health Authority

Adding an extra body into jurisdiction is always exciting news for an Ombudsman. After a long wait and many meetings it was finally agreed that as from the 1st April 2015, the Public Services Ombudsman would formally take jurisdiction for GHA related complaints. Since then, my team located within St Bernard's Hospital has been very busy dealing with complaints and enquiries from service-users. This task has proved to be quite challenging with a very steep learning curve which we have had to quickly surmount in order to provide to all sides concerned the very best possible complaints handling service and to the highest standards within the Ombudsman world at large. Our aim is to meet the expectations of the service-user whilst never forgetting the GHA staff itself who, in the vast majority of instances, provide an excellent service and standard of care. I take this opportunity to congratulate my team for their commitment to service-users and GHA staff; a difficult balancing act which they have carried out in an admirable manner.

The statistical information covering the period from 1 April to 31 December 2015 shows a significant number of Complaints and Enquiries. The total number was 243 of which 164 were recorded as Complaints and 79 as Enquiries.

Topping the list of Complaints & Enquiries was the Primary Care Centre with a total of 33 followed by the Orthopaedics Department with 29 and the Surgical Unit with 23. It is important to mention that not all complaints result in 'sustained' outcomes. The important issue being that when a service-user is aggrieved, there should be an avenue of complaint which will consider the complaint and be able to produce an outcome in a timely manner. The outcome will provide an explanation to the person aggrieved irrespective of whether the complaint is upheld or otherwise.

Alternative Dispute Resolution

As from June 2015 the Consumer (Alternative Dispute Resolution) Regulations 2015 came into force in which the Public Services Ombudsman was named as the Competent and Reporting Authority for Gibraltar. Again, this addition to the responsibilities of the Ombudsman has attracted an increased workload with which this office can hardly cope on its present staff complement. It is expected that additional staff will be made available to assist with this task.

Alternative Dispute Resolution ('ADR') is a means by which a consumer may wish to resolve a dispute with a trader or service-provider. These provisions are aimed at consumers and have no effect in disputes between traders. A "consumer" is defined as a natural person who is acting for purposes which are outside his trade, business, craft or profession.

It will soon be possible to resolve consumer/trader disputes via the Alternative Dispute Resolution (ADR) route. The Regulations apply to procedures for the out-of-court resolution of domestic and cross-border disputes. The relevant disputes are contractual obligations stemming from sales contracts or service contracts between a trader (established in the European Union) and a consumer resident in the European Union. Disputes referred to an ADR entity shall be resolved by proposing or imposing a solution or by bringing the parties together with the aim of facilitating an amicable solution.

ADR entities wishing to offer their services will have to register with the Public Services Ombudsman

Continued Development Programme

Ever since we first became operational in Gibraltar this office has always aimed to deliver the best possible service to those who seek our assistance. To this effect members of my staff and I continue to travel to ombudsman meetings, conferences and seminars on a regular basis in order to keep abreast of the developments in the ombudsman world. Our aim is to consistently make our office a beacon of not only good administration but also of excellence in the delivery of service to the people of Gibraltar. As in previous years, during the last twelve months we have attended conferences, seminars and meetings of the different organisations to which we belong.

I attended Public Sector Ombudsmen meetings in Dublin, Malta and Cardiff. All three meetings were thought provoking resulting in many ideas for improvement of service and work methods of our office. One of the improvements has been the introduction of a Systems Improvement Officer ('SIO'). I have designated a member of my staff to undertake the responsibilities of SIO, which will include amongst others, ensuring that our recommendations have been put into effect and actioned. Other aspects of this role may be undertaking a review of our own office's work methods and procedures. I am always conscious that we owe a duty of service to those who seek our assistance and am therefore keen to review if our service-delivery is on target or whether it needs improving. Without doubt, the community which we serve is entitled to nothing less than the very best which we can offer.

The Ombudsman pictured with Investigating Officer, Ms Bonello beside a photograph of Gibraltar which he presented to her on his first visit to the office in Malta in 1999.

The Ombudsman visited the newly refurbished Offices of the Ombudsman in Malta. On the occasion of the visit, he presented the Ombudsman of Malta a book about Gibraltar entitled 'A Mighty Fortress set in the Silver Sea'.

In other meetings, our Public Relations Officer attended the First Contact Interest Group and our Legal Adviser/Senior Officer attended the Legal Interest Group. Both these meetings are held under the auspices of the Ombudsman Association of which we are voting members.

Our Annual Reports

I have always advocated that the annual reports should be instruments of encouragement to the public service providers in Gibraltar. We have explained our work during the year and through the publishing of our reports into individual cases we have explained to the public the manner in which their public service providers operate. Of course many of these reports highlighted different failures in various sectors of the public administration and the purpose of this was to provide a yardstick against which to measure the service that people receive after the events portrayed in our reports in the expectation that the service will have improved.

From left to right: Nicholas Caetano. Senior Investigating Officer; Sarah de Jesus, Complaints Handling Scheme (Health) Assistant Coordinator; Steffan Sanchez, IT Administrator; Mario Hook, Ombudsman; Andrew Medlock, Assistant Director of Customer Services at the Parliamentary and Health Service Ombudsman, UK.; Nadine Pardo-Zammit, Public Relations Officer; Karen Calamaro, Investigating Officer; Daniel Romero, Complaints Handling Scheme (Health) Coordinator and Aaron Soleci, Surveys

2.2 Distribution of Ombudsman's Annual Report 2014

The Ombudsman team distributed copies of the Ombudsman's 15th Annual Report in Main Street, pertaining to the year 2014 on the 11th June 2015. This year the Ombudsman invited Mr Andrew Medlock, Assistant Director of Customer Services at the Parliamentary and Health Service Ombudsman ("PHSO"). Andrew, like our Public Relations Officer, Nadine Pardo-Zammit, forms part of the Ombudsman Association, First Contact Interest Group. As Assistant Director in Customer Services, Andrew's role focuses on the customer experience PHSO delivers. Andrew is leading his Customer Experience Strategy work, which is looking at defining what service users want to see and experience from the PHSO service, and using the information to map the service journey and define what their 'service promises' so service users are clear about what to expect from them. Parallel to the distribution of the Annual Report the Ombudsman also conducted a public survey on the Gibraltar Public Services Ombudsman Office.

Ombudsman's Awareness Day —Distributing copies of our 15th Annual Report

The Ombudsman Association Legal Interest Group meeting held in Gibraltar House, London on the 23rd October 2015 was chaired by **Marie Andersen** (presently Northern Ireland Ombudsman) The Gibraltar office was represented by Nicholas Caetano, Senior Investigating Officer.

Dr. **Kirkham** delivering presentation relating to UK Ombudsman case law and it's effects on the wok of the Ombudsman at the Ombudsman Association Legal Interest Group.

2.3 Ombudsman Survey

Parallel to the distribution of the 15th Annual Report outside Parliament House on 11th June 2015 the Ombudsman conducted a public survey on the Gibraltar Public Services Ombudsman Office. 100 people were randomly chosen for the survey. Ninety three percent of the people who took the survey were aware of the existence of an Ombudsman in Gibraltar and 86% knew what his role was. As Gibraltar is quite small in land area most people who took the survey knew the location of our office (87%) and hence word of mouth is always the best way to find about the Ombudsman (49%). Nearly half who took the survey first came across the Ombudsman by another person telling them by word of mouth about its existence. More than third of the people (35%) who took the survey have used our service before which generally speaking shows that 1 in 3 people in Gibraltar have visited our office since it opened its doors to the public in 1999. From those who have previously used our office, 74% were satisfied with the service provided, Unfortunately we do not have feedback on those who were not satisfied with the service but it is highly likely that those who were not satisfied, were people whose complaint did not have a favourable outcome in respect of their grievance – not our service. We will ensure in our next survey to extract more detailed information so we can provide more accurate results. It was very likely that if the need arose most members of the public (94%) would make use of the Ombudsman's services.

Ombudsman Survey - 11th June 2015

1 Are you aware that Gibraltar has an Ombudsman?

Yes **93%**
No **7%**

2 Do you know what the role of the Ombudsman is?

Yes **86%**
No **14%**

3 Are you aware of the location of our office?

Yes **87%**
No **14%**

4 How do you know about the Ombudsman?

Word of mouth **49%**
Local Radio/TV **15%**
Internet **7%**
Other **29%**

5 Have you ever made use of the Ombudsman's services?

Yes **35%**
No **65%**

6 If so, were you satisfied with the service given?

Yes **74%**
No **26%**

7 If the need arises would you make use of the Ombudsman's services?

Very likely **94%**
Not likely at all **1%**
Don't know **5%**

2.4 Complaints Handling Scheme Office (GHA)

Complaints against the Gibraltar Health Authority ("GHA") are received and investigated by the Complaints Handling Scheme (Health) which operates under the auspices of the Gibraltar Public Services Ombudsman.

The Scheme

The Government of Gibraltar in its 2011 election manifesto stated that all complaints against the GHA would be dealt with directly by the Ombudsman. Whilst the Ombudsman welcomed this as a vote of confidence in the Ombudsman and its work, he also made known to the newly elected Government that it would not be commensurate with ombudsman philosophy to be directly involved ab initio with complaints against any public body under its jurisdiction. The Government of Gibraltar accepted the Ombudsman's proposals and consequently the Complaints Handling Scheme ("CHS") (pursuant to an arms-length agreement) became the complaints portal for all complaints against the GHA as from 1st April 2015.

The CHS is currently manned by a Complaints Coordinator and an Assistant Complaints Coordinator and together we provide a service to all the health service users in Gibraltar. Our mission is to address all complaints (informal/formal) resulting from administrative actions of the GHA and attempt to resolve patients' and citizens' grievances.

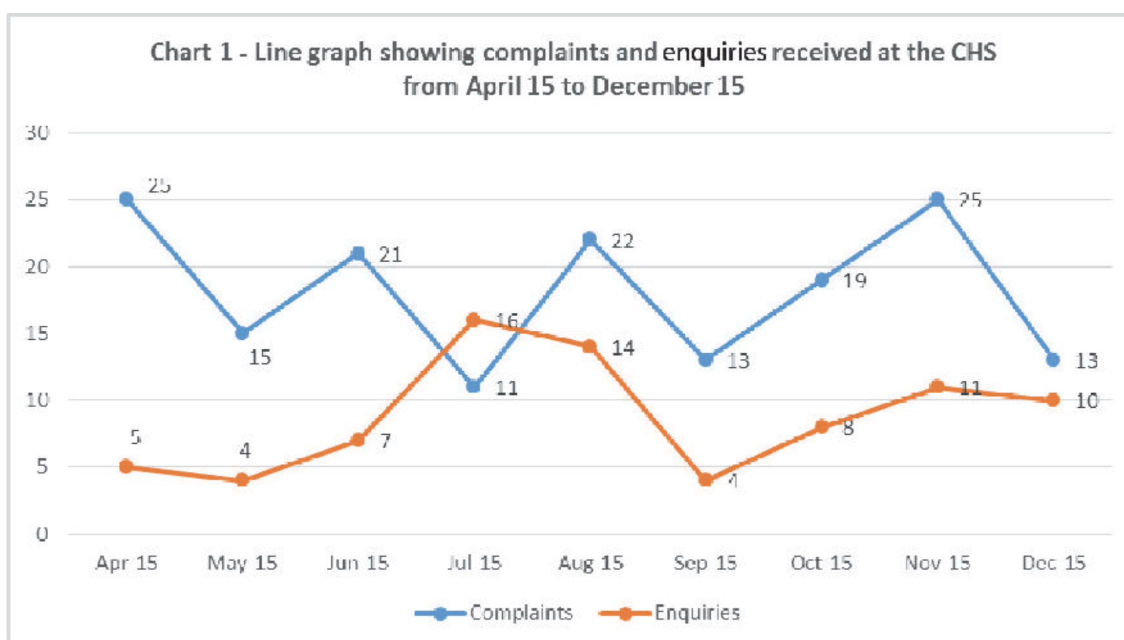
The CHS's role is to:

- Provide a dynamic, sensitive and responsive complaints handling service
- Address all complaints from service users
- Responsible for gathering all relevant facts pertaining to a complaint
- Concluding the fact finding exercise and (where appropriate) making relevant recommendations to avoid repetitions of actions leading to specific grievances
- Log all complaints and compliments
- Implement a follow up procedure

The Complaints Handling Scheme – Health Office has received 164 complaints and 79 enquiries since it opened its doors to the public (1st April 2015 to 31st December 2015). The busiest months were April 2015 (when the office opened) and November 2015. The average number of complaints received per month for 2015 is 18.

Table 1 – GHA Complaints and Enquiries received by month (1st April 15 to 31st December 15)

MONTH	COMPLAINTS	ENQUIRIES	ITEMS (TOTAL)
April 2015	25	5	30
May 2015	15	4	19
June 2015	21	7	28
July 2015	11	16	27
August 2015	22	14	36
September 2015	13	4	17
October 2015	19	8	27
November 2015	25	11	36
December 2015	13	10	23
TOTAL:	**164**	**79**	**243**



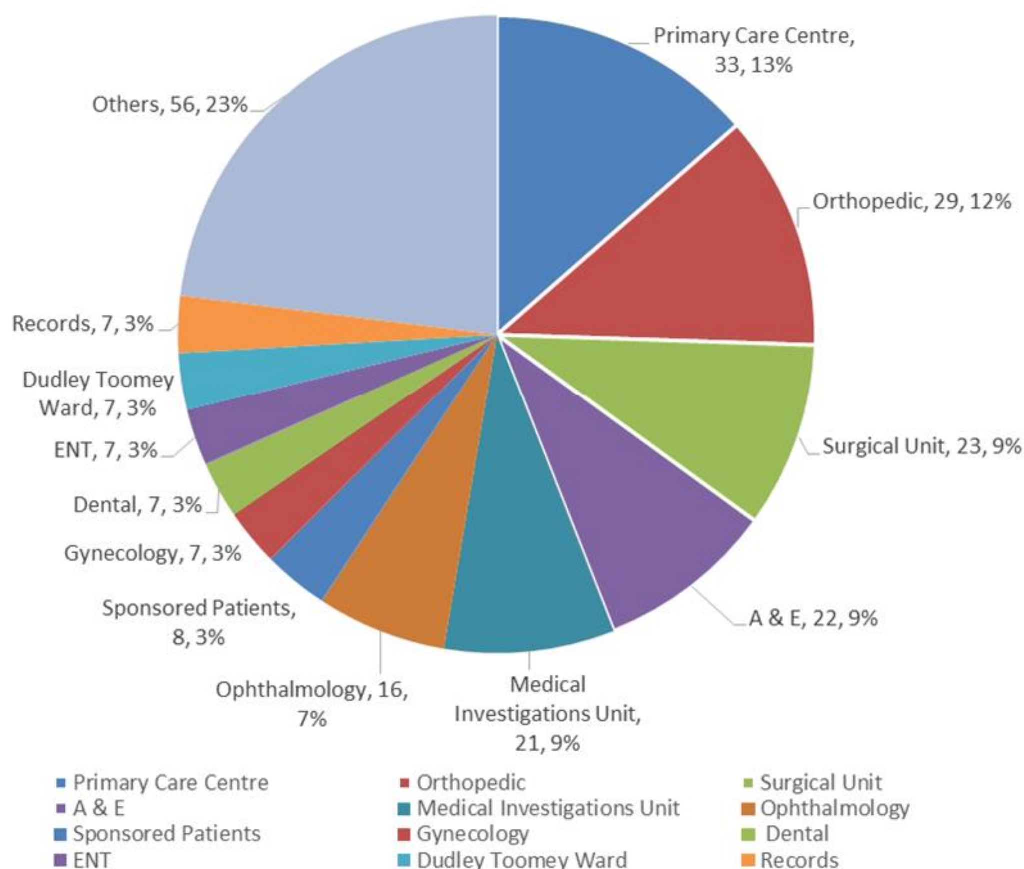


Table 2 – Complaints/Enquiries received against GHA Departments in 2015 (April 15 – December 15)

DEPARTMENT	COMPLAINTS/ ENQUIRIES	DEPARTMENT	COMPLAINTS/ ENQUIRIES
Primary Care Centre	33	Radiology	6
Orthopedic	29	Maternity Ward	5
Surgical Unit	23	ICU	4
A & E	22	Rainbow Ward	4
Medical Investigations Unit	21	John Mac Ward	4
Ophthalmology	16	Diabetic Clinic	3
Sponsored Patients	8	CEO	3
Gynecology	7	Paediatrics	2
Dental	7	Spinal Clinic	2
ENT	7	Facilities	2
Dudley Toomey Ward	7	Pain Clinic	2
Records	7	Others	13
Outpatients	6	TOTAL:	243

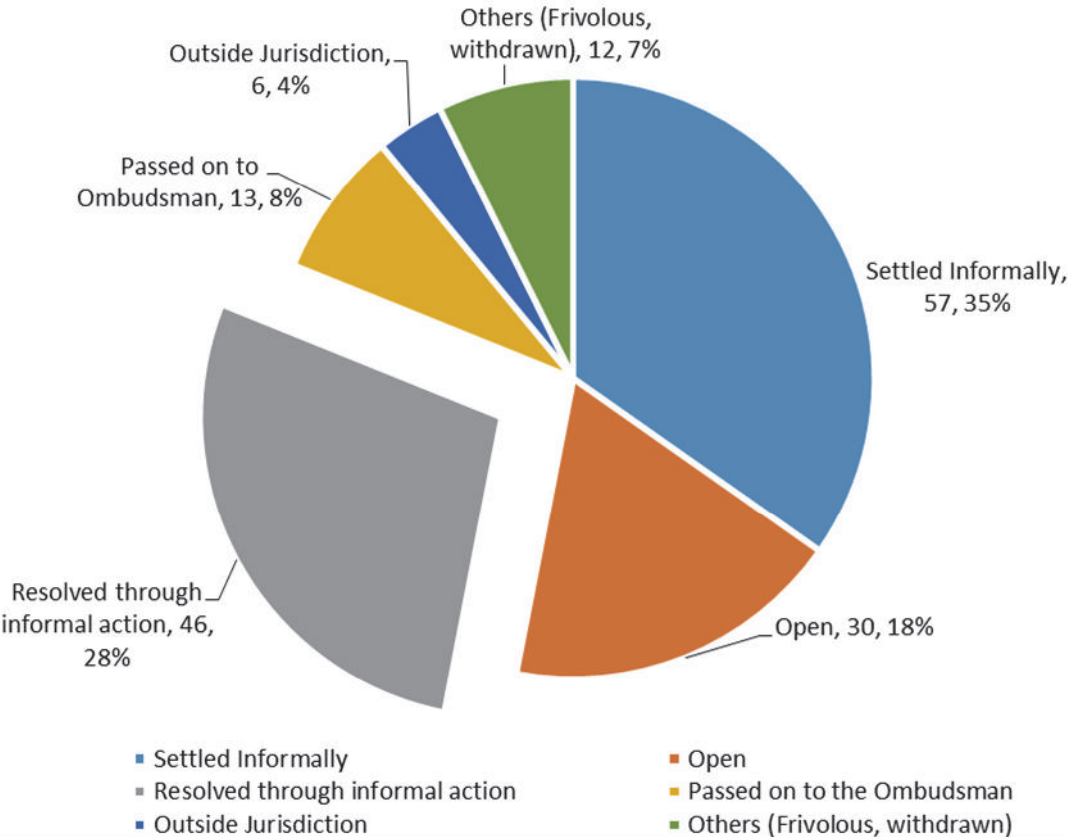


Chart 3 - Classification of Complaints
Others (Frivolous, withdrawn), 12, 7%
Outside Jurisdiction, 6, 4%
Passed on to Ombudsman, 13, 8%
Settled Informally, 57, 35%
Resolved through informal action, 46, 28%
Open, 30, 18%
Settled Informally
Open
Resolved through informal action
Passed on to the Ombudsman
Outside Jurisdiction
Others (Frivolous, withdrawn)

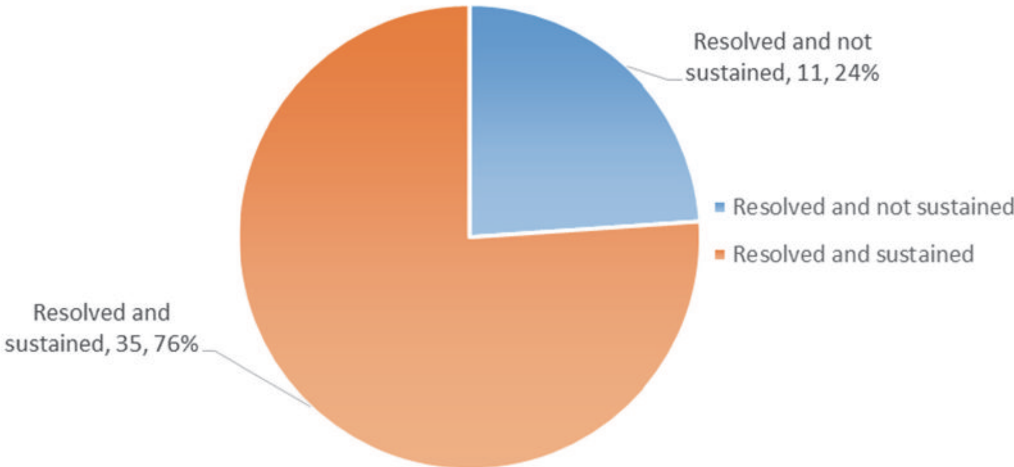


Chart 4 - Resolved through informal action
Resolved and not sustained, 11, 24%
Resolved and not sustained
Resolved and sustained
Resolved and sustained, 35, 76%

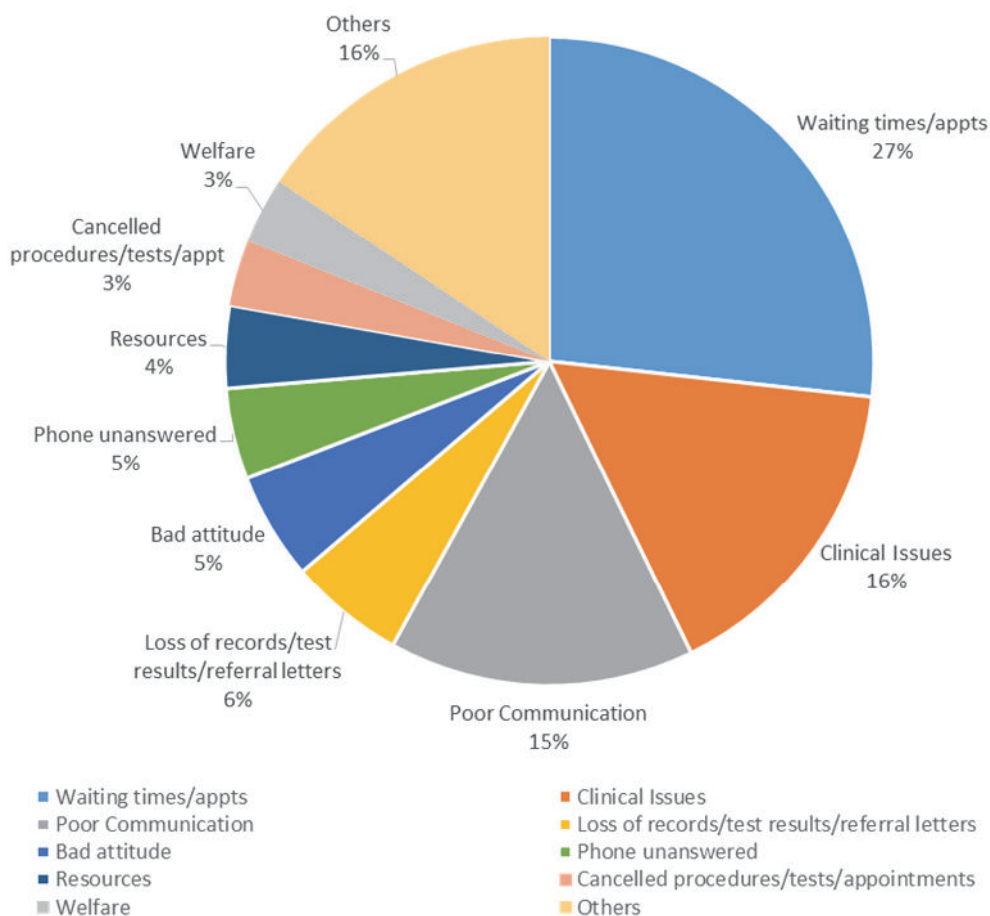
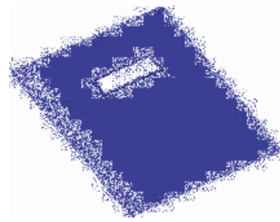


Table 3—Nature of Complaints/Enquiries received in 2015

Nature of Complaints		Nature of Complaints	
Waiting times/appointments	65	Loss of property	4
Clinical Issues	39	Transfers	3
Poor communication	37	Services	3
Loss of records/test results/referrals	14	Poor coordination	3
Bad attitude	13	Reimbursement request	3
Phone unanswered	11	Poor service	3
Resources	10	Policy Issues	2
Cancelled procedures/tests/appts	8	Compensation request	2
Welfare	8	Others	9
Refusal to attend call	6	TOTAL:	243



3
Case Reports

The Principles of Good Administration

GETTING IT RIGHT

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

BEING CUSTOMER FOCUSED

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

BEING OPEN AND ACCOUNTABLE

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

ACTING FAIRLY AND PROPORTIONATELY

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

PUTTING THINGS RIGHT

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

SEEKING CONTINUOUS IMPROVEMENT

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

AQUAGIB LTD

Case Sustained

CS/1092

Complaint against AquaGib ("AquaGib") in relation to the lack of official notice of water connection and subsequent billing to the Complainant's property by Aquagib Ltd.

Complaint

The Complainant was aggrieved because he did not consider it reasonable that AquaGib charge his household for the consumption of potable water when he had never been notified with an official notice of water connection. The Complainant's complaint was twofold:

That Aquagib did not notify him as to the exact date from which he was going to be charged for water usage;

That it took Aquagib a period of four months to provide the Complainant with an official notice of water connection and billing. The Complainant was therefore unaware that he would be charged for water consumption from August to November 2014 until he received his first bill in November 2014.

Background [Ombudsman Note: The background is mainly based on the version of events provided by the Complainant, including supporting documentation, at the time of lodging the Complaint with the Ombudsman]

The Complainant complained that AquaGib started to record his household water consumption in August 2014 without formally advising him of that fact. Prior to that time, his property had been connected to an unmetered water supply via the Ministry of Defence ("MOD") which meant that his water consumption did not cost him any money whatsoever.

The Complainant explained to the Ombudsman that he was invoiced in November 2014 for all water which had been consumed since August 2014. He found this to be most unfair. He was of the view that AquaGib should have alerted him to the change of events much sooner, particularly since his water consumption during the period in question was much higher than would have been expected, as a result of frequent salt water shortages/failures.

The Complainant stated that it was only after AquaGib employees visited his property in November 2014 in order to install and check his water meter, that it would have been reasonable to assume that he would be charged for consumption from that date. He was therefore surprised and annoyed to discover when the first bill arrived, that he had been charged for a connection fee and for all water usage as far back as August 2014 (four months prior to the visit by AquaGib personnel to the Complainant's property and of receipt of any correspondence from AquaGib).

The Complainant complained to AquaGib directly via email, stating that he was unwilling to pay the connection fee as he had never requested that his previous meter be moved or replaced. He also sought a recalculation of the invoiced amount for consumption, commencing from the date upon which he was connected to the AquaGib supply (25th November 2014).

In reply, AquaGib stated that his application for water connection was dated August 2013 and that he was aware that pending works in connecting the Complainant's property to AquaGib's network via a metered supply were in the process of being completed by Gibraltar Joinery Building Services ("GJBS"). The letter explained how the GJBS works for transfer of the water supply were completed in August 2014 when the AquaGib meters were installed, (as acknowledged by the Complainant after the first bill had been produced). The appointment which AquaGib employees attended in November 2014 at the Complainant's property was to verify the meter and pipe work. The letter went on to explain how there had only been one meter installed in August 2014; that any subsequent relocation related to the same meter and that no further charges would have been expended by the Complainant. The December bill therefore, was for consumption from August to December 2014. The water consumption reading registered on his meter had, according to AquaGib, been consumed by the Complainant's household and had therefore been billed accordingly.

A further exchange of correspondence ensued between the Complainant and AquaGib.

AquaGib apologised for the inconvenience caused by the disruption in potable and salt water supplies which they explained were necessary in order to transfer from the MOD's to their network. Again, AquaGib repeated the fact that the Complainant had been billed for the amount he had consumed.

The Complainant agreed to settle the £90 disconnection fee and the water bill as it stood (to avoid disconnection). However, he informed AquaGib that as a result of the state of affairs with which he remained dissatisfied, he would be lodging a complaint with the Office of the Ombudsman.

The Complainant was received on the 26th February 2015.

Investigation

The Ombudsman presented the Complaint to AquaGib setting out the Complainant's grievance in full and requesting their comments.

A holding letter from AquaGib was received by the Ombudsman shortly afterwards. Approximately one month later (pursuant to an investigation conducted by AquaGib), a substantive reply providing a comprehensive account of the history and sequence of events surrounding the Complaint followed.
AquaGib explained that the ex-MOD properties where the Complainant resided were placed on the market by HM Government of Gibraltar through their agents, Land Property Services Limited ("LPS"), with their water supplies fed from the existing MOD network in the area. That network was known to have been in a poor condition and the individual properties were also known to have unmetered potable water supplies. Due to the latter, that resulted in low levels of service and subsequent complaints from the new homeowners until such time as AquaGib could establish their own mains supply to the area and replace the MOD supply to all ex MOD properties. According to AquaGib the task was no mean feat given that the proprietors were already in occupation of the properties. The task proved difficult and challenging to complete.

They explained that they had advised LPS that the network be extended prior to homeowners moving in, as would ordinarily be the case. However that advice was not followed and the homebuyers moved into their properties with unmetered MOD water supplies. Buyers were advised by LPS to contact AquaGib to formalise their individual meters.

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AquaGib subsequently undertook preparations to replace the MOD potable and salt water supplies throughout the entire housing estate (by then populated). Additionally, GJBS under the direction of the Chief Technical Officer's Department, laid new service pipes for each home to a designated meter box location, in readiness for the future transition work to migrate customers to the new metered supply from the new AquaGib network. AquaGib explained to the Ombudsman that the work conducted by GJBS was essential as there was no way that properties could be individually metered as they had common supply pipes, only suitable for an unmetered supply. AquaGib further stated that they liaised on what became a complicated project with all the key players involved namely, LPS, GJBS and Government's Chief Technical Officer's Department. Their collective aim was to provide all customers in the estate with a smooth a transition as possible from the MOD to the AquaGib supply.

The letter went on to explain how the majority of homeowners attended AquaGib offices during August 2013 upon completion of their purchases to apply for a water supply (as was the Complainant's case who attended on the 12th August 2013). All applicants were informed at the application stage that given that AquaGib had no readily available water supplies within the estate, the applications could not be processed immediately. The homeowners therefore continued to receive potable water from the MOD mains, which had provided the water to the properties, when these belonged to the MOD and which, to AquaGib's knowledge, the MOD had made no attempts to charge the individual properties for consumption.

The AquaGib water mains and the transition work to supply the individual houses with their supply was completed by August 2014. At that point, the MOD disconnected their supply to the individual properties and the AquaGib supply was activated with the new domestic meters having their outlet connected to the Complainants (and remaining properties) via the new pipes installed by GJBS.

AquaGib was of the view that each customer would have been aware of the transition work, since it was their understanding that GJBS had contacted the customers to inform them of the supply cut off and the subsequent interruption to their supply, to allow the transition work to be completed. (The Ombudsman was unable to verify this supposition).

The AquaGib meters were connected in August 2014. As part of the standard application process, they telephoned customers to arrange appointments in order to check that the works GJBS had conducted were in order, thus ensuring (i) that the new meters supplied the correct properties and (ii) to enable them to enter the meters into AquaGib's billing system. The appointments were arranged at individual customers' convenience. Customers were meant to have been informed that the supplies since the end of August 2014 were now metered and that they would receive bills as from that date. AquaGib was unable to produce a written record that customers were indeed notified, although the Ombudsman was assured that staff did pass that information to customers. The Complainant maintained that he was never informed.

In their letter to the Ombudsman, AquaGib also stressed that they did their very best in order to solve the complex transition works and to ensure customers enjoyed a continued water supply. With that in mind, they took the decision not to take the alternative action of disconnecting the MOD supply and then, in the customers' presence, connecting to their new network. That would have resulted in customers' not having had a potable water supply for over 24 hours, In view of that fact, AquaGib decided against that method which they considered disruptive. They did state however that only that course of action would have ensured customer knowledge of the change.

Consequently, AquaGib did accept that they may have failed in informing the Complainant of the exact date that the supply would be metered and billed.

In the final paragraph of their letter to the Ombudsman, AquaGib explained the reason why it took from August to November 2014 to issue a bill. They stated it was due to the fact that the Complainant had a scheduled appointment for the required site visit on the 12th November 2014. That was the date when the metering plumber finalised the procedure for the Complainant's account to be opened on the AquaGib billing system.

Conclusions

From the findings of his investigation the Ombudsman thought it just to conclude that the Complainant was not notified of the date from which he would be billed for water consumption (the first complaint). The Ombudsman formed his view on the argument that it could be reasonably assumed, on the balance of probabilities, that the Complainant was not informed given the allegation made by him, together with AquaGib's partial assertion that the non-notification may have occurred.

In relation to the second complaint, AquaGib did not dispute the fact that a period of four months had elapsed from the connection of the water meter to the date of receipt of the Complainant's first water bill. (Although AquaGib did explain that the reason for the delay was because the meter inspection had been agreed with the Complainant to take place on 12th November 2014).

In light of the above, despite the complex task faced by AquaGib in setting up its own water supply for numerous properties within the estate (which was completed successfully), the Ombudsman was of the view that AquaGib should have provided facilities to have made matters known to the Complainant at an earlier stage and kept the Complainant informed of developments affecting his water consumption. This would have been the ideal scenario. Conversely, the Complainant was aware that works were substantial and ongoing and he could have also enquired how matters were progressing. The Ombudsman therefore found that although AquaGib's behaviour in that regard was not exemplary, it could not be described as malpractice from an administrative perspective. Despite this, the Ombudsman has sustained the complaints, since strictly, AquaGib failed the Complainant based on the nature of the complaints lodged by the Complainant with the Ombudsman.

Classification

That AquaGib did not notify the Complainant of the exact date from which he was going to be charged for water usage- Sustained (on the basis that a consumer has the right to know the date from which he is incurring liability for a good or service obtained).

That it took AquaGib a period of four months to provide the Complainant with an official notice of water connection and billing-Sustained (on a factual basis).

Considerations

The Ombudsman does not enjoy the statutory power to make an Order or recommendation for reimbursement by AquaGib to the Complainant. However, in any event, despite the findings on the Complaints investigated, the Ombudsman would not have made such a financial recommendation in this instance for the following reasons:

The Ombudsman has reviewed the Public Health Act 1950, Part III of which, governs "Water supply".

Section 134(1) states that "where the Government supply water under this Act by meter, the register of the meter shall be prima facie evidence of the quantity of water consumed."

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Section 105 of the same Act allows Government to cut off water supply given by them to any premises "(a) if the consumer makes default for paying for potable water already supplied or in paying the salt water rate……. and they may recover summarily as a civil debt the expenses reasonably incurred by them in so doing."

It is not a disputed fact that the Complainant's household was, prior to the introduction of the AquaGib metered water supply, receiving potable and seawater via an unmetered MOD supply for which the Complainant (and no other resident of the estate) was being charged. Once the properties were transferred to the Government of Gibraltar and subsequently sold to individual buyers, all new owners were aware of the change in the water source which was in process. This is evident, insofar as the Complainant is concerned, from his application for water connection from AquaGib dated August 2013.

Despite the Complainant not being informed by AquaGib of the meter connection date, that fact does not, pursuant to law, absolve him of his legal obligation to pay for water consumed. [Public Health Act, Section 134(1) ante]: "the register of the meter shall be prima facie evidence of the quantity of water consumed." The Complainant and any other user has the legal obligation to provide consideration (payment) for the water he or she had consumed as evidenced by the meter, irrespective of lack of knowledge of when said meter had been activated.

In regard to the issue of the £90 connection fee, AquaGib also enjoyed the legal right to said charge under the provisions of the Public Health Act.

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BORDERS AND COASTGUARDS AGENCY

Case Not Sustained

CS/1080

Complaint against the Borders and Coastguards Agency ("BCA") for allegedly making representations to the Spanish border authorities that the Complainant's identification ("ID") card was a falsified document when in fact it was valid.

Complaint

The Complainant was aggrieved because when the validity of his ID card was questioned by the Spanish border authorities at the land frontier pedestrian crossing, the Borders and Coastguards Agency ("BCA") failed to verify the authenticity of his document.

Background [Ombudsman Note: The background is mainly based on the version of events provided by the Complainant, including supporting documentation, at the time of lodging the Complaint with the Ombudsman].

The Complainant explained how on the 8th of December 2014 at approximately 10pm, he was making his way back to Gibraltar through the pedestrian land crossing after having previously walked over to la Linea for the purpose of purchasing some food there. He had, prior to that, been allegedly driving round Gibraltar with a friend who then dropped him off at the Gibraltarian side of the frontier in order for him to cross over into Spain.

Upon his return, the Spanish Guardia Civil ("Guard") asked the Complainant for his identification document. The Complainant handed over his Gibraltar ID card and respectfully asked whether there was an issue. The Guard replied that it was a routine frontier check.

The Complainant admitted to the Ombudsman (and the Ombudsman was able to verify after examination), that the ID card was "very flimsy". The plastic lamination was quite delicate and not as robust as would ordinarily have been the case. The state of the ID card caught the Guard's attention and consequently, he asked why it was so flimsy. The Complainant explained that he always carried it in his back trouser pocket and not in a wallet, thereby contributing to its deterioration. The Guard then dealt with other pedestrians and informed the Complainant that he was going to approach the Spanish National Police ("SNP") (also stationed at the frontier), in an attempt to confirm the ID's validity. The Complainant informed the Ombudsman that at that point, he overheard the SNP state that the condition of the card was "normal" for Gibraltar registered ID cards. Another SNP officer also agreed with this view, but added that any doubt could be eliminated by simply confirming the position with the BCA.

The SNP called over a Gibraltarian BCA Officer ("the Officer") (positioned at his post a short distance away), and asked whether he could check the Complainant's ID card. The Officer did so and allegedly told the SNP that its flimsy nature was not normal. According to the Complainant, he tried to explain to the Officer that he was local and Gibraltarian, but was ignored and was "pushed" to one side.

The Officer then stated that he would take possession of the ID card in order to verify its authenticity and took it to the Gibraltar side whilst the Complainant remained in the care and control of the Spanish authorities. The Complainant stated that he was required to wait "a good twenty minutes," for the Officer to return. According to the Complainant, the Guard informed him that if the document turned out to be false, he would spend the night in cells pending a court appearance in Spain the following morning.

Whilst the Complainant waited, the Officer shouted to the Complainant from a distance asking where he was going before he had been stopped. As the Complainant answered, he was ordered by the Spanish authorities to "shut up". After a further period of five minutes, the Officer returned with his supervisor. The supervisor (whilst holding the ID card) allegedly informed the SNP that the document was false. The Officer showed the Spanish authorities his own ID card which was in a very good condition and physically compared both documents. The Complainant admitted to the Ombudsman that his ID card was significantly more flimsy than the Officer's but he did try and explain the reason for it. Again he was apparently ignored. The Complainant explained to the Ombudsman that based upon the assumption and subsequent communication by BCA that the ID card had been falsified, the SNP agreed that that must have been the case. The Complainant was apparently told by the BCA that since the document was not valid, he would have to accompany them.

The Complainant then explained to the Ombudsman that although at that stage he was close to a panic, he asked whether he could call his friend (who according to the Complainant was still waiting for him in the car). He called and requested that his passport be brought down to the frontier for the purpose of identifying him and to enable his safe passage through the frontier into Gibraltar. His friend subsequently complied and presented the passport to BCA, approximately ten/fifteen minutes later.

When the Complainants friend (who coincidentally also happened to be an off duty BCA employee), delivered the passport, the Complainant alleged that the BCA became much more cooperative. He explained to the Ombudsman how they then stated that the passport was evidence of the fact that the ID card was in fact valid. The BCA then proceeded to show the passport to the SNP who subsequently apologised to the Complainant and let him through the Spanish side of the border.

Consequently, the Complainant informed the Ombudsman that his documents were returned to him by BCA and that he was allowed to leave.

Dissatisfied with the BCA's apparent lack of cooperation and unhelpful attitude, the Complainant lodged his complaint with the office of the Ombudsman.

Investigation

The Ombudsman wrote to BCA setting out the Complaint, requesting any available CCTV footage and inviting their comments. A reply was received soon afterwards confirming that there was CCTV available for the Ombudsman to view and that it had been requested from the Officers present on the night in question, that they prepare witness statements and an incident report. Once drafted, comments on the Ombudsman's letter would be provided in full.

Within a few days the witness statements were made available to the Ombudsman followed by a separate email. In that email, the BCA stated that they had in no way obstructed the Complainant or refused his entry into Gibraltar. It was, according to them, the Spanish authorities that had refused him leave to exit Spain.

The correspondence continued to set out BCA procedures. It was stated that in regard to protocols to ascertain the validity of an ID card, basic visual checks aided by UV lights were performed. Enquiries were also made by BCA to the Civil Status and Registration Office ("CSRO") if required and appropriate. BCA explained that, in practical terms, they did what they could to expedite and facilitate the process and that they usually accepted other forms of identification documentation from travellers such as a Gibraltar Health Authority Card or a Driving Licence to satisfy them that the person was indeed from Gibraltar. In cases where no other form of identification was available, the traveller would be invited to contact a relative or friend with the aim of the latter producing a suitable alternative document or vouch from him/her by other means.

BCA further stated in their email that because they had found themselves in similar circumstances in the past, on the night in question they informed the Spanish authorities that they could not confirm or deny whether the ID card was a fake (in direct rebuttal to the Complainant's version of what had been said). According to BCA, they otherwise suggested as per standard practice, that the Complainant contact a known person for the purpose of producing alternative identification on his behalf. (This was also at odds with the Complainant's claim that he had requested to call his friend for that purpose).

Subsequent to the correspondence received from BCA, a meeting was arranged between the Ombudsman, his Senior Investigating Officer ("SIO") and the Head of BCA at BCA Headquarters. At that meeting, the Ombudsman and SIO were able to peruse the CCTV footage. Their collective opinion from the visual documentary evidence provided was that there did not appear to be any act of maladministration performed by BCA.

However, not satisfied with their initial impressions, two subsequent Ombudsman visits were arranged in order to formally interview the BCA staff which had been involved/present on the night in question. All relevant officers were examined on their statements. After close consideration of the evidence provided, the Ombudsman accepted the respective officers' versions as fact and did not find any indication or proof of maladministration or mala fides on BCA's part in relation to either the specific complaint or against the Complainant personally.

At the Ombudsman's request (for the purpose of grasping the different validation procedures for locally administered ID cards), the Ombudsman indicated he would have appreciated the opportunity of inspecting the BCA's land frontier post to examine the validation equipment in situ. The request was immediately acceded to.

A subsequent "tour" of the facility followed, together with a demonstration of procedures available for validating ID cards and passports. It became apparent, to the Ombudsman's surprise, that the format and manner in which local ID cards were currently being produced significantly curtailed the BCA in the task of attempting to prove their authenticity when the need arose. The only ways of testing local ID cards for validity were a naked eye visual test and a UV light test, which by current standards were now both hugely outdated. Conversely, international ID cards and passports could be verified via a database with results revealed immediately.

Conclusions

The Ombudsman was sympathetic with the Complainant's predicament and the threat to his free movement which he was subjected to on the night in question, particularly since he was attempting to return home. The Ombudsman further understood that the experience must have been an unsavoury one. Despite this, after a thorough investigation, examination and various on-site meetings at both BCA Headquarters and their land frontier post, the Ombudsman found no evidence whatsoever that BCA had confirmed to the Spanish Authorities (as alleged), that the Complainant's ID Card had been falsified. The Ombudsman was also satisfied, from his consideration of the evidence, that the Complainant was not treated in a manner which was obstructive or disrespectful by BCA. It is important to highlight that the Complainant was stopped at the Spanish side of the frontier and that the BCA were attempting to comply with a request for assistance from them.

Classification

Not sustained

Recommendations

Following from the Ombudsman's inspection of the BCA facilities, it appeared to him to be ironic, nonsensical and unsatisfactory, that BCA could test international identification documentation but did not have the resources to verify locally issued ID Cards.

The Ombudsman therefore recommended that BCA be granted access to CSRO facilities for the purpose of identifying holders of Gibraltar registered ID cards.

Update

The Ombudsman was informed that resulting from the above recommendation, the BCA was granted access to the local ID database.

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CARE AGENCY

Case Sustained

CS/1082

Complaint against the Care Agency ("The Agency") in relation to the delay in providing the Complainant with her disabled son's files after they had been formally requested by her.

Complaint

The Complainant was aggrieved because she had repeatedly requested her son's files from the Agency but to the date of drafting this report they had not been made available to her. The Complainant further complained that third parties had viewed her son's files without her explicit consent.

Background

Whilst under the care of the Agency, the Complainant's son had suffered a serious accident and broke his neck. Despite requesting her son's files from the Agency on the 18th August 2014 and allegedly receiving assurances at ministerial level that they would be provided, copies had still not been made available by February 2015. From the initial request in August 2014, to November 2014, the Complainant and/or other members of her family had made numerous requests and sent chasers on the subject by email. According to the Complainant, the Agency had stated that the delay in providing the files was due to data protection issues. The material contained within them would have to be reviewed to ensure that the Data Protection Act was complied with before the files' contents were released to the Complainant. The Complainant was further distressed by the fact that third parties had been privy to the files without having received her consent to do so. The Complainant was of the view that a waiting time in excess of five months was disproportionate and unreasonable in the circumstances hence why she filed her complaint with the Office of the Ombudsman in December 2014.

Investigation

The Ombudsman presented the Agency with the Complaint in writing, setting out the matters over which the Complainant was aggrieved, and requested the Agency's comments. The Care Agency promptly replied to the Ombudsman's letter, firstly clarifying that the request for the files was not made to the Care Agency but to the Ministry for Equality, Social Services and the Elderly ("the Ministry"). It was explained to the Ombudsman that although it had been the Ministry's intention to promptly provide copies as requested, it was later realised that many of the documents contained within the files contained information relating to other service users. Advice had been sought by the Ministry on the matter and acting upon that advice, the Ministry proceeded to black out the information pertaining to other individuals. The Care Agency also stated that they were not aware of what had occurred after that exercise but that they would be making enquiries.

In relation to the grievance that her son's files had been disclosed to others without the Complainants express consent, the Agency clarified that the Complainant had been aware that the only reason why documents had been disclosed was in order to carry out assessments for her son's care placement within the United Kingdom. According to the Agency, a care facility had to be made aware of the son's needs in order to appropriately assess and provide the adequate care.

Approximately one month elapsed and the Ombudsman again wrote to the Agency expressing his discontent at the time it was taking for either the Agency to release the files to the Complainant or alternatively, to advise her of the decision not to disclose them, if that was indeed the case. The Ombudsman received no reply.

On the 20th January 2015, given the sensitivity of the issues coupled with the fact that matters appeared to remain stagnant, the Ombudsman saw fit to write to the Agency yet again. The Ombudsman sought an immediate reply from the Agency on the content of his previous letter. It was with great disappointment that the Ombudsman noted a further lack of reply.

The Ombudsman submitted a final letter on the 2nd February 2015. He stated that if he did not hear from the Agency as a matter of urgency, he would be obliged to interpret the non replies as a blatant disregard to his requests and as an obstruction to his investigation. The Ombudsman informed the Agency that if such an instance were to materialise, he would, albeit with regret, feel compelled to take the appropriate steps necessary to ensure the Agency's compliance to his enquiries.

That communication from the Ombudsman prompted a reply from the Agency to the effect that the Ministry had instructed the Agency to provide the Complainant with the documents. Final arrangements were being made after which, the Complainant would be contacted with a view to her collecting the files from the Agency's offices.

Conclusions

The Ombudsman was perfectly aware of the fact that there may have existed sensitive data protection issues which necessitated review and consideration by the Ministry and/or Agency.

Despite this, given that the Complainant had been informed in August 2014 that the files would be made available to her and, that by February 2015, they had still not been provided, the Ombudsman was of the view that this was tantamount to administrative malpractice. The same view applied for the lack of replies to the Complainant's numerous emails and for the failure to update her on the position.

It appeared to the Ombudsman that there had been a miscommunication between the Ministry and the Agency and, but for the intervention of his office, it was highly likely that matters would not have progressed.

Classification

Sustained in relation to the delay in providing the Complainant with her son's files. Neither sustained or dismissed in relation to the disclosure of the files to third parties without consent.

Although the Ombudsman accepted the Agency's explanations and rationale behind the disclosure of material to third parties in the United Kingdom, he was of the view that he could neither sustain or dismiss that limb of the Complainant without having himself been privy to the protected information and without having been provided with first-hand knowledge of the specific material which had been disclosed.

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CIVIL STATUS AND REGISTRATION OFFICE

Case Not Sustained

CS/1070

Complaint against the Civil Status and Registration Office ("CSRO") as a result of the Complainant expressing the view that he had been failed by the system as he had been in Gibraltar for almost five years and had not been granted residence or identity documents.

Complaint

The Complainant complained that he felt he had been failed by the system since he had been in Gibraltar for a period of approximately five years. He had been unable to obtain any residence or identity documents. He was also homeless and without an income.

Background [Ombudsman Note: the background is mainly based on the version of events provided by the Complainant, including supporting documentation, at the time of lodging the Complaint with the Ombudsman].

The Complainant who was twenty seven years old, complained to the Ombudsman that although he had been in Gibraltar since August 2010, he believed that he had been ill served by the system. He remained homeless and without an income or documentation. He alleged that no attempts had been made to regularise his immigration status.

The Complainant informed the Ombudsman that he was rescued by the Royal Gibraltar Police Marine Section when he was found swimming towards the rock, after allegedly having made his way from Algeria in a small boat in 2010. Since he did not possess any documentation on him at the time, the authorities held him in custody at HM Prison. He spent a period of ten months in prison only to be released without charge but also, with nowhere to stay, no documentation and no support or assistance from the Government whatsoever.

The Complainant had written to CSRO on the 28th May 2014 explaining his circumstances and asking for his position in Gibraltar to be regularised but had not received a written reply. He had been verbally informed that he could not be assisted unless he could provide CSRO with identification documents. The Complainant alleged that this was not possible as his parents were both dead and as a result of being born out of wedlock, he was never accepted by his own family. The Complainant also claimed to have been homeless since the age of twelve, having had to fend for himself on the streets of Algeria since then.

The Complainant informed the Ombudsman that after having been released from prison he had been represented by a multitude of lawyers. These had been unable to resolve the Complainant's issues.

Frustrated with the state of affairs and the lack of progress on his matters, the Complainant filed his complaint with the Office of the Ombudsman in July 2014.

Investigation

The Ombudsman wrote to CSRO on the 15th August 2014, setting out the complaint and requesting their comments.

A reply followed approximately two weeks later stating that during the first week of June 2014 and in response to the Complainant's letter of 28th May 2014, the Complainant had been interviewed by CSRO (with an interpreter present). At that interview, CSRO, from the information provided to them by the Complainant, were able to establish facts on the Complainant's family background, personal circumstances and how he came to be in Gibraltar. Information was also provided to CSRO of how, since his release from prison, the Complainant had been living in a small room adjacent to the Line Wall Road mosque and that he survived from donations made to him by members of the Moroccan community.

CSRO further explained to the Ombudsman that three weeks after the initial interview they further attended upon the Complainant but that no new information was provided by him at that meeting. They stated that in the Complainant's letter of 28th May 2014 and on both occasions where they interviewed him, the Complainant asked to be "regularised" and "provided with some form of shelter". In response, he had been informed that before CSRO could consider regularising his immigration status, he would need to provide some official identification (e.g., a passport or some other internationally recognised document).

It was explained to the Ombudsman that although CSRO appreciated that obtaining such documentation may not have been easy for the Complainant, they were unable to assist him until such a time as he did so. Accordingly, they suggested to the Complainant that he should approach his nearest embassy for assistance on obtaining said documents. CSRO had been unable to establish whether the Complainant was in fact an Algerian or Iraqi national, but did inform him, that in either case, there were embassies for both countries in Morocco.

In the conclusion to their letter to the Ombudsman, CSRO confirmed that they were not the relevant department from which to seek assistance in respect of shelter or income and redirected the Ombudsman to the Ministry for Social Services.

As a result, the Ombudsman established immediate contact with the Social Services Agency ("Social Services").He was pleased to receive a reply from Social Services that very same day.

Social Services explained that when a person arrived in Gibraltar claiming asylum and had no accommodation or income, Government was bound to provide basic shelter and financial assistance. The Director of Social Services confirmed that in those cases and in the latter respect, he was duly authorised to award social assistance while the person remained in Gibraltar regularising his or her position. However, in the case of the Complainant, he was classed as an "illegal immigrant" and as such, did not satisfy the criteria for social assistance. Consequently, the Ombudsman was informed that although Social Services fully empathised with the Complainant's situation there was nothing that could be done from a social security perspective. As a point of reference, Social Services expressed the view that when CSRO was referring to "Social Services", what they could have meant was "the care agency" and consequently, the Ombudsman should contact them if he saw fit.

In pursuit of Social Services' suggestion, the Ombudsman wrote to the care agency ("the Care Agency") on the 5th September 2014. The Ombudsman set out the Complainant's background and requested their advice and assistance.

After some weeks, the Care Agency replied to the Ombudsman stating that they could not assist the Complainant given his unidentifiable status. The Ombudsman was dissatisfied with the fact that as a result of the Complainant being unable to fulfil the identification requirement, there was no entity or organisation within our jurisdiction which was willing or able to assist him. As a result he was living in substandard conditions in all respects.

A further significant email exchange followed between the Ombudsman and CSRO in October 2014. In it, CSRO made information available to the Ombudsman which had been gathered by the Royal Gibraltar Police ("RGP"). The crux of it was that uncertainties were raised as to the Complainants account of his provenance. It was also made known that there existed a deportation order ("the Order") against the Complainant (issued on the 7th September 2010), after he had pleaded guilty in court to a count of being " a non- Gibraltarian attempting to unlawfully land in Gibraltar without holding a valid permit or certificate". Although the Ombudsman did note the facts presented to him, he was solely concerned with the unsatisfactory scenario that the Complainant remained in exactly the same position he had been in when he first arrived in Gibraltar. In essence, the Complainant was unable to regularise his position and as a result, could not work and sustain a basic living standard.

Conclusions

The Ombudsman expressed concern at the fact that the Complainant appeared to be a victim of "bureaucracy".

The Ombudsman had no difficulty in accepting that the Complainant had to meet established criteria in order to regularise his position. He did express gross dissatisfaction however at the reality that since the Complainant had been unable to do so (for reasons apparently beyond his control), he had become entangled within the system and did not receive any support when he was in most need of it.

The Ombudsman expressed further deep concern that the Complainant had been remanded in custody for a not insignificant period of ten months with no charge and coupled to that, that during the time that he was incarcerated, no attempt was made by the authorities to either seek assistance for him, or to deport him to his country of origin. Instead, the Complainant was deprived of almost one year of liberty and the status quo ante remained, even after his release.

It was also unsatisfactory, given that the Order had been obtained in 2010, that to the date of drafting this report it has still not been executed (for reasons unknown to the Ombudsman). The Ombudsman did recognise however that there may well have been valid legal, administrative or other logistical reasons as to why the Order had not been executed. He did express the firm view that until such deportation occurred, there was at a very least, a moral obligation on the state to provide the Complainant with a basic living standard.

Classification

Not sustained as against the CSRO- It was the Ombudsman's opinion that CSRO was not empowered (either statutorily or in accordance with Government policy), to regularise the Complainant's position. However, the Ombudsman did concur with the nature of the complaint and agreed that the "system" had failed the Complainant.

Recommendations

On the basis that the Complainant had been failed by the system in that his position had not been regularised, the Ombudsman recommended that the Complainant be provided with the basic human needs of shelter and a minimum income, until either the Order was executed or in the alternative, until such time as the Complainant was given the opportunity to seek employment and sustain himself.

Given there was no entity to which this complaint and very sad state of affairs could be directed, the Ombudsman decided to submit this report to HM Government of Gibraltar's Chief Secretary, in the hope that he would be able to provide some form of assistance to the Complainant.

CUSTOMS HM

Case Not Sustained

CS/1100

Complaint against HM Customs in relation to delay experienced in receiving written feedback requested by the Complainant on his examination and selection day process for the post of customs officer.

Complaint

The Complainant was aggrieved because he had requested written feedback from the Collector of Customs ("the Collector") on his performance in an examination and selection day process for the post of customs officer. However, a year had elapsed and the feedback had not been forthcoming.

Background [Ombudsman Note: The background is mainly based on the version of events provided by the Complainant, including supporting documentation, at the time of lodging the Complaint with the Ombudsman]

The Complainant had sat a written examination on the 12th September 2014 which he successfully completed and as a result, along with other candidates, was shortlisted and invited by HM Customs ("Customs") to attend a selection day programme on the 25th September 2014. A month later, HM Government of Gibraltar's Human Resources Department ("HR") wrote to the Complainant informing him that he had not been successful in the selection process and thanked him for his interest.

On the 31st October 2014, the Complainant wrote to HR requesting that he be provided with the following;-

1. "Specific feedback/data to the exam I undertook and [my] results."
2. "Specific feedback/data and [my] results regarding the selection day."
3. "The parameters which have been used to ascertain those who have been successful from those who haven't? What was the pass rate expected to be successful to go to the interview stage?"

Further to various emails sent to HR by the Complainant, coupled with the fact that five other candidates had also requested feedback, feedback sessions were arranged for the 18th December 2014. The Complainant did not attend.

On the 7th January 2015, the Complainant wrote to HR excusing himself for his non-appearance to the feedback session stating that he had been unable to attend due to work commitments. The Complainant concluded his e-mail by requesting "physical evidence of [his] results and feedback through email." HR replied to him stating that he would have to be patient as Customs was undergoing the training of new recruits as well as organising internal vacancies. He was informed that he would be given another date for feedback at Customs earliest opportunity.

At the beginning of March 2015, HR wrote to Customs requesting feedback which they would then make available to the Complainant. Customs replied by stating that they had not received a direct request for feedback from the Complainant but that they would of course provide it. The Complainant's contact details were made available from HR to Customs for the latter to contact the Complainant directly.

On the 13th April 2015, a Customs Senior Officer ("the Senior Officer") called the Complainant on the telephone and given there was no reply, left him a voicemail message asking that his call be returned. They spoke later that day and agreed, at the Complainant's request, that the Complainant would contact Customs any time between 5pm and 7pm on Wednesday the 15th April in order to discuss a suitable date and time to arrange to meet and discuss the Complainant's feedback since, the Complainant had indicated, that he would be unable to meet Customs before then. The Senior Officer also informed the Complainant that although Customs' finished their working day at 3:30pm, they were in the office most days until well after 5pm due to training and administration duties. The Complainant was therefore invited to telephone "any afternoon after 5pm" in order to agree the feedback arrangements.

From the email correspondence between Customs and HR (which the Ombudsman has seen), when, during the conversation of the 13th April the Senior Officer asked the Complainant why he had missed the 18th December feedback session, the Complainant …"became evasive in his replies." It also appeared that the Complainant did not contact Customs on the 15th April as had been agreed.

Pursuant to an email sent by Customs to the Complainant on the 18th April 2015, referring to the telephone conversation of the 13th April in which it was agreed that the Complainant would call Customs, the Complainant replied some days later stating that he had been unwell and added that although he appreciated Customs email, he sought "written confirmation that Customs would be able to provide him with written feedback". Once he was in receipt of the same, he would then call them to arrange a feedback meeting. Given the request, the Senior Officer wrote to HR stating that he believed the matter was out of Customs' hands and a HR issue.

Since the Complainant received no reply to his mail, he sent Customs another email on the 29th April 2015, requesting their confirmation that they were "unable to provide him with written feedback". No reply was received to that mail either.

On the 4th May 2015, the Complainant emailed Customs and HR requesting to hear from them in order to finalize matters. Again, he sought explicit confirmation that he would be provided with written feedback. The Customs Senior Officer replied to the Complainant stating that his request had been passed to the Head of Department (Collector) who would deal with the matter. Some days later, HR replied to the Complainant stating that they had "spoken to the Collector of Customs and it had been agreed that HM Customs [will] be providing you with written feedback on [your] application for Customs Officer."

By the beginning of August 2015 the written feedback had not been provided to the Complainant. Given the state of affairs with which the Complainant remained dissatisfied, he proceeded to lodge his complaint with the Office of the Gibraltar Public Services Ombudsman.

Investigation

The Ombudsman issued a letter dated 11th August 2015 to Customs (with copy sent to HR), setting out the complaint and requesting their comments. (By the time that the letter was sent, the Ombudsman had reviewed all the email exchanges referred to above, which had been made available to him by the Complainant).

As a result of the Ombudsman's letter, HR replied by stating that the matter was one for the Collector of Customs. Customs also replied by requesting a meeting with the Ombudsman in order to discuss the issues and apprise him on the selection procedure adopted and applied.

A meeting was held on the 9th September 2015.

At the meeting, Customs addressed the Ombudsman on the entire chronology of events (which were in keeping with the Complainant's version). They particularly stressed the fact that they had never denied the Complainant the opportunity to receive feedback. The first feedback session which the Complainant missed had been arranged by HR for the 18th December 2014. Subsequent to that, the Complainant had held telephone conversations with Customs where the Complainant had been asked to state a date and time whereby the feedback meeting could be held. The conversations were held in April since before then, Customs had been engaged in training the new recruits. It appeared to the Ombudsman from reviewing the emails, that the Complainant did not want to accept the offer of a verbal feedback session and that he would only do so once he had received feedback in writing. It was indeed, his prerogative and a matter for him as to why he was so insistent to be granted feedback in written form.

Customs explained to the Ombudsman how, when the vacancy for the post the Complainant had applied for arose, there had been 258 applications by individual candidates and how this initial number had been reduced via the written examination and selection day to 151. Those selected would be interviewed with the number of candidates further reduced post interview. From the 151 applicants interviewed, the numbers were reduced to 66 and from then, to 20. It was as a result of his performance at the selection day that the Complainant was deemed not to be a suitable candidate for interview. (The Ombudsman did review the selection day individual tests and the Complainant's results with examiners marks/comments attached).

It was also made clear to the Ombudsman by Customs that the selection process employed was fully transparent and fair for all. There were 18 Customs Officers involved throughout the stages of the selection and the varying assessments were marked by any number of Officers (between 3 and 6). Candidates were also allocated identity numbers in order to anonymise them thereby eliminating any possibilities of bias or favouritism. They would carry out the tasks either individually or in random pairs chosen for a specific test.

What did appear to the Ombudsman to confuse matters insofar as the Complainant's feedback request was concerned, was HR's letter to the Complainant dated 13th May 2015 where it was stated that "the Collector had agreed to provide written feedback". Once the meeting was concluded, Customs wrote to the Ombudsman by way of formal reply to the Ombudsman's letter presenting complaint dated 11th August 2015.

Customs' letter referred to the background of the selection process which had been discussed with the Ombudsman at the recently held meeting. The letter reiterated Custom's view on the transparency of the whole process which involved 18 Officers and 3 HR employees, running a total of 4 scenarios and an examination. The letter went on to state "… Unfortunately, as was shown to you [the Ombudsman] in the report sheets, [the Complainant] was not in the final list for interview. He was thereafter repeatedly given ample opportunity to meet the Training Team to discuss feedback and proposed areas for improvement which he either failed to attend or was uncontactable (a number of applicants requested this feedback and did attend on the date arranged)."

The letter also confirmed that although HR did indeed inform the Complainant that Customs would be providing written feedback, the nature of the conversation held between the Head of HR and the Collector, which led HR to write to the Complainant, assuring him that the written feedback would be given, was misinterpreted by HR. According to the Collector it was "not the policy of HM Customs to provide written feedback on any application."

However, the Collector did repeat Customs' open offer for a feedback meeting to be held, even at this late stage.

Conclusions

It was the Ombudsman's view that if indeed it was not the policy of HM Customs to provide written feedback on any applications (as confirmed by the Collector) then consequently, Customs was under no obligation to provide such feedback (irrespective of the alleged misunderstanding between HR and Customs in that regard, and despite the assertion to the Complainant by HR that written feedback would be provided).

The Ombudsman also opined that Customs had been accommodating with the Complainant's requests for feedback (albeit in verbal form). The Complainant had been afforded the opportunity to receive feedback, initially on the 18th December 2014. The Senior Officer had subsequently telephoned the Complainant on more than one occasion in April 2015 to arrange feedback and Customs had shown flexibility by leaving an "open door" for the Complainant to contact them for the purpose of receiving feedback, at his convenience.

Classification

That delay had been experienced by the Complainant in receiving written feedback on his examination and selection day performance- Not Sustained

(There was no policy driving force or rule in place obliging Customs to provide the written feedback the Complainant had requested).

Considerations

Upon the Ombudsman's review of all material facts and documentation in relation to this complaint, together with Customs' confirmation that it was not their policy to provide written feedback (as had been requested by the Complainant), it was not possible for the Ombudsman to sustain the complaint.

However, despite Customs' repeated offers to meet with the Complainant to verbally discuss the issues causing him concern, (which invitations the Complainant could not adhere to or chose not to accept), the Ombudsman did not consider it good practice for Customs (or for HR), not to have expressed to the Complainant, in clear and unequivocal terms and at an earlier stage, that his request for written feedback would not be met or entertained. Such a declaration would have saved Customs, HR and the Complainant the trouble of having engaged in prolonged exchanges of correspondence and telephone calls which to the Complainant's mind, did not yield results. Had this approach been adopted, the Complainant may have also been given the opportunity to review matters and abandoned his desire for the feedback. Conversely, he may have sought an alternative route in an attempt to obtain the same by petitioning for a change in policy.

The fact that HR inadvertently gave the Complainant a false expectation that written feedback would be provided (as a result of misinterpretation), did not alleviate matters.

DRIVER AND LICENSING DEPARTMENT

Case Not Sustained

CS/1102

Complaint against the Driver & Vehicle Licensing Department ("Department") as the Complainant was of the opinion that the double fee being charged by the Department was unfair; and the non-reply to letters dated 3rd June 2015 and 26th June 2015 sent to the Head of the Driver and Vehicle Licensing Department ("Head").

Complaint

The Complainant felt aggrieved by the fact that his daughter would have to pay twice for the same personalised registration number for her car. Further, the Complainant was aggrieved because he had not received replies to two letters he had written to the Department on this matter.

Background

[Ombudsman Note: the background is mainly based on the version of events provided by the Complainant, including supporting documentation, at the time of lodging the Complaint with the Ombudsman]

The Complainant was aggrieved because he had written two letters to the Head and as at the date of lodging his complaint he had not received acknowledgement or reply. The Complainant stated that the first letter was sent by post but the second letter was delivered in person on 26th June 2015.

In his letters, the Complainant expressed his dissatisfaction as a citizen regarding the alleged mal-practice of the Department when issuing a personalised number to anyone who had their car financed by a private car dealership company. He highlighted that the person purchasing the personalised number had not been properly informed by the Department that even though she was paying £200 for the said license, because the car at that point belonged to the car dealership, they would have to pay a further £200 when they eventually paid off their loan and tried to regularise the vehicle log book. The Complainant felt it was an excessive amount and service users should be made aware of the situation at the very start. He further feltvery strongly that the Department should consider amending the procedure so that in cases such as these, the owner of the personalised number should only have to pay a minimum transfer fee of £10/£20 as per the normal fee for change of ownership when cars are sold on to a new owner. The Complainant pointed out that if for financial reasons the individual was unable to pay the extra £200 it was the car dealership company who would end up with the customised number free of charge.

The Complainant's daughter experienced that problem and decided not to pay the £200 to transfer the personalised number to her name as she could not afford it and felt that it was unfair. She took the finance company to the Supreme Court through the small claims tribunal and the judgement (dismissing the claim) stated in the last paragraph that:

> *'It does seem unfair that where the registration in the name of the loan company is effected simply as security the purchaser has to pay twice for the same personalised number plate on the same vehicle. However, that is neither a matter for the Defendant or the Court. It is a matter for the licensing Department and Government'.*

Dissatisfied at the lack of progress with the Department, the Complainant lodged his complaint with the Ombudsman

Investigation

Non Reply to Letters

The Ombudsman inquired from the Department as to the reasons why the Complainant's letters had received no replies.

In the first instance, the Department replied that in order to assist the Complainant, the Head of Department had casually met the Complainant and the Head explained matters to him; this event happened on a weekend (outside working hours) whilst the Complainant was walking his dog. Coincidentally, at the time of this complaint, the Ombudsman received a similar complaint from another member of the public to the effect that he had written two letters to the Department and had not received a reply.

The Ombudsman was concerned that two complaints about the same subject matter had been lodged at almost the same time. An Investigating Officer met with the Head and the Department's Higher Executive Officer ("HEO") in the Department's offices, in order find out the procedure for receipt and distribution of mail within the Department.

In respect of the complaint at hand, the Investigating Officer was informed that the incoming mail, via post (which was the case with Complainant's first letter) was stamped as received and taken to the desk or given to the person the letter was addressed to. The same applied with mail delivered by hand.

According to the Head, the first letter was never received and in the case of the second letter, the Head did not recall ever seeing it. The Head explained he had been away from the office on annual leave and during that period (over the course of a weekend) there had been a substantial water leak into his office as a result of which, a number of documents on his desk were destroyed. The Head believed that the second (hand-delivered) letter might have been amongst the destroyed documents which would explain why he had not seen it.

Notwithstanding, the Head stated that he and the Complainant had a lengthy chat about the issue raised in his letter at their chance meeting (when the Complainant had been walking his dog) The HEO further added that she had spoken over the phone with the Complainant's wife on the issue and also explained the Department's position vis-à-vis the transfer of personalised number..

Change of ownership - Personalised Number Plates

The Complainant was also aggrieved at the fact that his daughter had been asked to pay for personalised number on two different occasions for the same car. He was of the opinion that the double fee being charged by the Department was unfair.

The Head explained that the personalised number belonged to the person registered with the Licensing Authority as the person who owned the vehicle to which the personalised number related to (Traffic (Licensing and Registration) (Personalised Numbers) Regulations, 1985) (appended to this Report).

In the Complainant's case it was the finance company that was named on the vehicle's Certificate of Registration (log book) as being the owner, and thus the owner of the personalised number, irrespective of who paid for it.

By way of an overview of some of the entities offering finance for the purchase of cars, the Head explained that one of the banks in Gibraltar who offer finance give a personal loan so the log book is not in the bank name but in the name of a person; in this case this issue would not have arisen. The Head recalled another bank that did not put the log book in their name either, but to safeguard their position in the event of payment default, the persons requesting the finance would be asked to sign a transfer of ownership form which would be handed to the Department if the person defaulted in payments.

So far as the Department knew, there were only two car dealers who offered finance for their cars. One was very restrictive as to whom to allow finance for cars with personalised number plates; in the main, established clients. Only one car dealer (where the complainant's daughter financed her car) required to have the car registered in their name until the loan was settled. It follows that the finance company owned the personalised number (irrespective of who paid for it). The receipt at the time of purchase of the personalised number was made out to the car dealer financing the purchase as the car was to be registered in the dealer's name. It must be noted that the receipt issued to the complainant's daughter was made out to the car dealer and handed to her upon payment of the prescribed fee.

Conclusion

Non-reply to letters.

The principal reason provided by the Department as to the non-reply to the Complainant's letters was that the first letter was never received and in respect of the second hand-delivered letter the Head was away on leave and additionally there was a substantial flooding in his office during a weekend. The Ombudsman was able to see a pile of files which had almost been destroyed as a consequence of the flooding.

Regardless of the possible reasons for non-receipt of the letters, the fact remains that the Complainant never received a written reply to his two letters. The Ombudsman had to take into account the Department's explanations as to the first letter not having been received and, in respect of the second letter, that it may have been destroyed by water damage. However the Ombudsman was mindful that the Complainant had received a verbal explanation as to the 'double' payment during the casual meeting between the Complainant and the Head.

On the facts before the Ombudsman, he did not sustain this complaint.

Payment for the same personalised number on two occasions.

The Complainant's daughter decided to purchase a car on hire purchase terms. She also decided that she wanted to have personalised number plates for her car.

The law in Gibraltar allows for cars to have personalised number plates and the statutory provisions for such an event are set out in the appended regulations Traffic (Licensing and Registration) (Personalised Numbers) Regulations, 1985.

The finance company with which the Daughter entered into an agreement for the purchase of the car, registered the car(the subject of the hire purchase agreement)in their company name until such a time as the loan was fully paid. Upon settlement, the finance company, as a gesture of good will, then paid for the registration of the car into the purchaser's name. They do not do so when the registration number is for a personalised number. This is a commercial decision which the finance company is perfectly entitled to take.

The Daughter, wishing to have a personalised number, attended at the Department's public counter and paid the required amount to have the car registered with the numbers of her choice. Of course, as the car was owned and registered in the owner's name, i.e. the finance company, the receipt was issued under that name and not that of the Daughter. In the excitement of acquiring a new car and with personalised registration number, the Daughter did not notice (or perhaps considered it normal) that the receipt was issued to the registered owner of the car and not to her name hence she did not raise any queries at that time.

Once the Daughter had settled the loan to the finance company, she sought to register the car in her name and was then told that if she wanted to retain the personalised number she would have to purchase it again (this time in her name as the owner of the car). At face value, this appears to be an outrage, however the Department was following the statutory provisions for these events. The relevant provisions are to be found at 6(3) of the above cited Regulations.

(3) If the buyer disposes of the personalized number with the vehicle to which it relates, the person acquiring from the buyer such vehicle with the said personalized number must pay to the Licensing Authority a fee equivalent to the full sum stipulated to be the reserve price prevailing on the date specified in the previous subsection.

It follows that the Department acted as per the legal provisions in force at the time.

The Ombudsman could not sustain this complaint.

Suggestion

Although the Department acted correctly in seeking payment for the personalised number upon the registration of the car to the name of the Daughter, it seems to be a wholly unfair situation.

Given that there is only one car finance company that requires cars to be registered to their names until fully paid for, the occurrence of events such as contained in this report must be miniscule in relation to the number of cars registered in Gibraltar annually.

The Ombudsman would therefore be making written representations to the relevant Minister (making a copy of this Report available) suggesting a change in the legislation or the introduction of adequate policy. This suggestion would be reinforced by the judgement of the Registrar of the Supreme Court sitting in the Small Claims Court.

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EMPLOYMENT SERVICE

Case Partly Sustained

CS/1056 & CS/1061

Complaint 1

Complaint against the Employment Service ("ES") as follows:

(i) Delay in processing claim from the Insolvency Fund ("the Fund");

(ii) Unprofessional manner of the Labour Inspector who was allocated her claim for allegedly "continually overpromising and woefully underperforming";

(iii) Non-reply to emails sent to the Labour Inspector, Director of Employment, Minister for Employment and the Minister's PA.

Complaint 2

Complaints ("the Second Complainants") against the ES as follows:

(i) Delay in evaluating their respective claims from the Fund;

(ii) Lack of information and updates;

(iii) The unprofessional service provided.

Complaint

The First and Second Complainants felt aggrieved because of the delay on the part of the Ministry in evaluating their respective claims from the Fund, the lack of information as well as the unprofessional service provided.

The First Complainant also felt aggrieved because emails she had sent to the Labour Inspector, Director of Employment, Minister for Employment and the Minister's PA had not been replied to.

Background [Ombudsman Note: The background is mainly based on the version of events provided by the Complainant, including supporting documentation, at the time of lodging the complaint with the Ombudsman].

Complaint 1

The First Complainant explained that on 24th January 2013 she discovered that the company she was working for ("the Company") was going into liquidation. Consequently, on that same day, her employment was terminated. On 6th February 2013 she formally submitted a claim to the ES relying on the provisions of the Fund under the Gibraltar Development Corporation (Employer's Insolvency Fund) Regulations, 1991 ("Regulations") (which set out how claims from the Fund would be handled).

At that stage, the Complainant requested a breakdown of the assessment of the claim once that became available. According to the Complainant she was told that she would need to wait between three to four months for the claim to be processed.

Four months later and not having received any news, the First Complainant telephoned the Labour Inspectorate and was allegedly informed that there was nobody presently employed to deal with claims to the Fund and, accordingly, no claims were being progressed. The First Complainant resolved to telephone the Labour Inspectorate every three weeks for updates. The information repeatedly provided to her was that nobody had yet been identified to fill that position within the ES.

In November 2013 the First Complainant again contacted the Labour Inspectorate and was informed that a Labour Inspector with responsibility for claims from the Fund had been appointed. The First Complainant stated that in her initial dealings with him, the Labour Inspector was polite and helpful but it soon transpired that no progress was being made in respect of her claim. In January 2014, the First Complainant contacted the Company's liquidators in order to request assistance. The liquidators communicated with the ES but some confusion arose when the Labour Inspector informed the liquidators that there had been amendments made to the Regulations resulting in the First Complainant no longer being entitled to claim monies from the Fund. This was queried by said liquidators as a result of which the Labour Inspector met with the Fund Administrator ("Administrator") to clarify the issue. Further to that meeting, the Labour Inspector informed the liquidators that the Administrator had asked him to process the Claim and arrange for payment as soon as possible; it had been established that Complainant 1 was entitled to claim from the Fund.

The First Complainant also maintained that despite receiving verbal and written assurances that she would be provided with updates, she was never contacted directly by the Ministry. Updates were only given when she contacted the ES. Additionally, assurances which were apparently given by the Labour Inspector regarding her claim subsequently turned out to be incorrect. In particular, the First Complainant was allegedly told that payment of her claim would take place within a particular timeframe and was already being processed - but those assurances never materialised. The First Complainant felt that as a result of her initial regular requests for updates, the good relationship with the Labour Inspector soon broke down.

The First Complainant alleged that she continued to write to the Labour Inspector, the Director of Employment ("the Director") and others, but never received an acknowledgement or reply. Frustrated with the state of affairs, the First Complainant lodged her Complaint with the office of the Ombudsman in February 2014.

Complaint 2

The Second Complainants were employed in the same company (different to that of the First Complainant). On 9th October 2012 their contracts were terminated and the reason cited was 'liquidation'. According to their recollection, they all made respective claims from the Fund approximately one month after having their employment terminated, i.e. November 2012.

The Second Complainants informed the Ombudsman that they had made numerous attempts to contact the ES for progress updates in respect of their claims. Although they rarely managed to make contact, when they did, they claimed the labour inspector (former one) would provide them with assurances which never materialised. Nineteen months after submitting their claims, the Second Complainants had still not received confirmation as to how much they would be paid or, indeed, if they would be paid at all.

Investigation

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

The First Complainant

The Ombudsman presented the First Complainant's complaint to the Director by way of letter dated 6th March 2014. The letter set out the grievances in full and requested their comments.

The Director responded on the 21st March 2014 and stated that he had been making attempts to modernise and streamline procedures within the ES which included a restructure of the Labour Inspectorate where a completely new team had taken over and were in the process of clearing the backlog of cases inherited form the previous inspectors who had been transferred out of the ES. The Director stated that despite having been appointed Administrator in July 2013 he had not been made aware of the Claim until early December 2013 when the new Labour Inspector took over. The Director pointed out that what was unacceptable was that no action had been taken by those responsible for the processing of claims, in the months preceding the new Labour Inspector's appointment. The Director stated he had now written to the First Complainant explaining the aforementioned and apologising on behalf of the ES for the manner in which her case had been handled. A copy of said email was provided by the Director to the Ombudsman who noted that the letter made reference to settlement of the Claim to be made by the 31st March 2014 and attached a breakdown of the payment to be made. [Ombudsman Note: In April 2014 the Complainant confirmed she had received payment].

In an earlier investigation undertaken by the Ombudsman into a complaint against the ES and the delay in the processing of a claim from the Fund, the Director had provided similar information to the above as to the reasons for the delay in processing of claims. As part of that investigation, the previous labour inspector had also been approached to provide the reasons for the delays. According to him, the Director refused to take any decisions on claims until being appointed Administrator in July 2013 (as per the requirements of the Regulations as otherwise the Director would have been acting without legal authority) and further informed the Ombudsman that the Director only took an interest in claims from the Fund once he (the labour inspector) left the ES in December 2013. (The Ombudsman will comment on the above in his conclusions).

As to the First Complainant's allegations about the manner in which the new Labour Inspector dealt with the Claim, the Director did not feel the Labour Inspector had failed the First Complainant in any way and explained that he had looked through the string of email correspondence between the First Complainant and the Labour Inspector and did not find evidence that he was 'continually overpromising'. The Director pointed out that whilst processing the Claim there had been a need to contact the liquidator for further information which was received on the 27th February 2014.

Regarding the non-reply to emails, the Director stated that neither he nor the Minister had seen the Complainant's emails and had only been brought to his attention when he received the Ombudsman's letter.

Regarding the Labour Inspector having informed the liquidators that the First Complainant was no longer entitled to claim monies from the Fund, and the change of heart from the Labour Inspector after the liquidators queried that decision, the Director stated that the Labour Inspector had got the case confused with another where the claim was refused and highlighted this was due to the backlog of cases the Labour Inspector had inherited.

The Second Complainants

The Second Complainants' complaints were presented by the Ombudsman to the ES in May 2014.

The reasons for the delays in settlement of the Claims are as set out above, but as a result of the Ombudsman's investigation an issue of a thirty day limitation period under the Regulations in respect of submission of claims arose, and was a contributing factor in these cases. For ease of reference, Section 10 (1) of the Regulations read as follows:

Application for payment

10.(1) An application for payment of any amount under regulation 7 or to have any monies paid into an occupational pension scheme under regulation 8 shall be in writing, in such form, if any, as may be prescribed by the Administrator, and shall be made as soon as practicable and in any case not more than thirty days after the employee becomes aware of the insolvency of the employer:

Provided that the Administrator may, in his absolute discretion, extend the time for making an application, either before or after the expiration of such thirty days.

The ES referred to the above and stated that their records showed the Second Complainants had submitted their claims on 5th December 2012, stating on those claims that they had become aware of the employer's insolvency on the 4th October 2012 thereby exceeding the thirty day period.

The ES explained that they had requested a legal opinion from the Attorney General's Chambers ("the AG") to clarify matters regarding the application of the thirty days as per section 10 (1) of the Regulations and that had now (29th May 2014) been received and a policy decision was being awaited.

On the 26th June 2014, the Ombudsman received a letter from the Director in which he explained that he had recently taken over the position (a new Director in place of the one appointed in November 2012) and would need to go through a learning curve but that was not to say that claimants should endure long delays. The Director stated that a decision in the case of these claimants was long overdue and that he would raise the matter as a priority with the Chairman ("Chairman") of the Gibraltar Development Corporation ("GDC") to progress the matter and provide a decision. The following day, the Director emailed the Ombudsman and informed him that he had met with the Chairman and a formal decision would be reached and communicated to the Second Complainants during the coming month.

On the 16th July 2014 the Director informed the Ombudsman that he had agreed to the Claims and the Complainants would be notified by letter which would include the amount due. The Director stated that the delays that had occurred had been unacceptable irrespective of the numerous internal resource changes occurred.

Conclusions

In relation to the joint issues affecting the First and Second Complainants it has been established that there were two main reasons which affected the delay in the Claims being processed:

(a) According to the Director, the inefficiency of the labour inspectors in post during 2013 which resulted in a backlog, as not one claim was laid before him until December 2013 (despite his appointment as Administrator in July 2013) when a new labour inspector joined the labour inspectorate;

(b) According to the former labour inspector, the Director's refusal to take any decisions on claims until being appointed Administrator in July 2013 and even then, only took an interest in claims from the Fund once he (former labour inspector) left the ES in December 2013.

From the disparate versions offered by the Director and the former labour inspector, it is clear to the Ombudsman that their relationship affected the smooth running of the service throughout 2013 which inevitably contributed to delays in the processing of the Claims until December 2013, when the new Labour Inspector was appointed. Needless to state that the loser in this situation was the end-user, i.e. anyone having made a claim as a result of having been left jobless from one day to the next, precisely the class of persons for whom the Fund was set up for in the first place. The Director's position was inexcusable and he himself agrees that it was unacceptable, although pointing the finger of blame at the previous labour inspector for the inaction in the processing of the claims. Although in the earlier part of 2013 the Director had not been appointed as Administrator, this materialised in July 2013. Aware of what the role of Administrator entailed and considering that no one had been dealing with the claims because of the void, the Director should have actively pursued the claims immediately upon appointment. Not having done so resulted in a complete disregard for the afflicted persons.

During 2013, no claims were processed and as such no progress made on the part of the ES. The Ombudsman finds maladministration and service failure causing injustice on the part of the ES in this Complaint.

Regarding the new Labour Inspector, he found a substantial backlog of claims to deal with and in the Complainants' specific cases had to handle the claims process from the beginning. In both cases, there was a tendency for the claims to be denied when this Labour Inspector initially dealt with them; i.e. when he first had sight of the claims and began processing them despite those claims having been submitted nearly a year earlier in the First Complainant's case and well over a year in the Second Complainants' case, and those issues not having been raised during that time. In the First Complainant's case, the reason for refusing the Claims was based on erroneous information, which had it not been for the liquidators being well versed with the Regulations, would have resulted in the Claim being wrongfully denied. Regarding the Second Complainants', the issue of the thirty day limitation period arose and it was only as a result of the Ombudsman's investigation that the Director took a specific interest and expedited the case. The Ombudsman was critical of the Labour Inspector's stance in relaying erroneous information to the Complainants but did not point the finger of blame solely at him as he was aware that the Labour Inspector had not been in post long enough to have arrived at those outcomes of his own accord.

Although it goes without say that the Ombudsman was grateful for the new Director's actions, the ES dismally failed the end users, i.e. the First Complainant and the Second Complainants throughout the time elapsed since initially submitting their Claims, something which the Director duly admitted to. This Complaint is one of clear gross maladministration.

In the course of the investigation into the complaint of 'unprofessional manner of the labour inspector and the ES for allegedly continually overpromising and woefully underperforming', the Ombudsman cannot sustain this complaint.

It is clear from the findings that the ES did not deal with the claim in a timely or professional manner (this has been dealt with in Complaint 1) as would have been expected but in relation to this specific allegation, the Ombudsman has not come across evidence to substantiate the precise claim of overpromising and underperforming. There is no evidence of failed 'promises' as a result of which the Complainant claims the ES and the labour inspector 'underperformed'. Regarding the labour inspector it is clear that he inevitably suffered the brunt of the long delay experienced by the First Complainant and as such, the Ombudsman would find it unfair to solely target him as the focus of the mishandling. The Ombudsman takes on board the fact raised by the Director that the Labour Inspector had a large backlog of claims.

As to the non-reply to emails sent by the First Complainant to the Labour Inspector, the Director, the Minister for Employment and the Minister's PA, the Director in his response to the Ombudsman, only refers to himself and the Minister as not having seen said emails. The obvious lack of any information on the part of the Director as to the non-response by the Labour Inspector, clearly affirms that the emails were not responded to and no reason provided. The Ombudsman sustains this Complaint.

Classification

First Complainant

(i) Delay in processing her Claim from the Fund – Sustained

The Ombudsman sustained this part of the complaint as a delay of over a year to process a valid claim against the Fund was indeed inordinate and unjust.

(ii) The lack of information and progress updates provided – Sustained

Given that the First Complainant was entitled to updates in respect of her claim and that despite repeated requests for these they were not forthcoming, the Ombudsman identified that this constituted an act of maladministration and also sustained this part of the complaint.

(iii) Unprofessional manner of the Labour Inspector who was allocated her claim for allegedly "continually overpromising and woefully underperforming" – Not Sustained

There is no evidence of failed 'promises' as a result of which the Complainant claims the ES a nd the labour inspector 'underperformed'.

Second Complainants

(i) Delay in evaluating their respective claims from the Fund - Sustained

The Ombudsman sustained this part of the complaint as a delay of over a year and a half was experienced before the Claims were accepted and settled.

(ii) The lack of information and progress updates provided – Sustained

Given that the Second Complainants were entitled to updates in respect of their Claims and t hat despite repeated requests for these they were not forthcoming, the Ombudsman identified that this constituted an act of maladministration and also sustained this part of the complaint.

(iii) The unprofessional service provided – Sustained

In light of the above, as well as erroneous information being provided to the Second Complainants, the Ombudsman was satisfied that this aspect of the complaint should be sustained.

Recommendations

The Ombudsman recommended that the Ministry of Employment instigate a set of new measures for claims relating to the Fund and suggested as follows:

That a proper monitoring system be set up for claims being presented. This would include immediate receipts of acknowledgement for letters or claims and a commitment to process all claims within a reasonable timeframe of about one month.

Persons requesting meetings in person with the Labour Inspector should be seen to as soon as reasonably practicable.

Individuals presenting claims should be sent regular updates (monthly, at the very least) providing as much information as possible.

The Ombudsman also recommended that breakdowns for claims should also be provided to claimants prior to payment of monies – this would allow any queries to be dealt with before monies were paid out from the Fund.

As per his recommendation in case number 1041, the Ombudsman committed himself to liaising with the Director to oversee the implementation of these recommendations.

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Case Sustained

CS/1063

Complaint against the Employment Service ("ES") for failure to inform the Complainant of her rights and for not taking any action against her employer who terminated her employment without prior notice contrary to the ES's Notice of Terms of Engagement ("Terms of Engagement")

Complaint

The Complainant was aggrieved because her employer had terminated her employment without prior notice, contrary to the Terms of Engagement dated 9th of April 2013 and the ES had not properly informed her of her rights or took any action.

Background [Ombudsman Note: The background is mainly based on the version of events provided by the Complainant, including supporting documentation, at the time of lodging the Complaint with the Ombudsman]

The Complainant explained that in April 2013 she commenced employment with a Gibraltar based company ("the Employer"). The Terms of Engagement stipulated that the Complainant had been engaged on a "supply" basis and the hours of work were "as and when required". The Terms of Engagement further stipulated one month's notice was required in the event of termination of employment, such period of notice being applicable to both the employee and the Employer.

The Complainant stated that despite having been hired on a supply basis, she worked full time from the commencement of her employment for a period of approximately ten months. In January 2014, upon her return from one week's leave, the Employer notified her that her services would no longer be required with immediate effect. The Complainant explained to the Ombudsman that the Employer had offered to remunerate her for the week's holiday, in full and final settlement of her termination. She refused to accept payment on that basis as she had not been given due notice of termination nor had she been offered payment for the one month's notice period, to which the Complainant believed she was rightfully entitled. The Complainant claimed to have contacted the labour inspectorate at the ES with her grievance but alleged that after looking into her case, she was told that the Employer had submitted a copy of the termination letter and there was nothing they could do since according to them, the Employer had acted within the law. She was also advised that had she been in employment for over a year, she could have initiated proceedings in the Industrial Tribunal against the employer if she felt she had been wronged. However, as the length of her employment fell short of this time requirement, no legal redress was available to her. Frustrated with ES's response, the Complainant lodged her complaint with the Office of the Ombudsman.

Investigation

The Ombudsman made initial enquiries with the ES and was informed, in writing that the Complainant had been employed on an "as and when required" basis and as such, the Employer was "under no contractual obligation to guarantee a fixed amount of work in any given month". [Ombudsman Note: Despite this assertion, the Complainant claimed that she had worked full time (seven days a week), yet the Employment Service appeared not to have checked the Employer's records or made the pertinent enquiries at to verify the veracity of this].

Insofar as the Employer's termination letter was concerned, ES also stated in correspondence that one month notice had been given in said letter and that consequently, they had followed the correct procedures by not effecting further payments. According to ES, since the Complainant was employed on a supply basis, "no further protection was afforded." The Ombudsman did not find ES's explanations to be unreasonable but pointed out that under the circumstances, when employers submitted contracts for employment on supply bases, he was of the view that length of notice in the Terms of Engagement should be either left blank or marked as Non Applicable (N/A).

The Ombudsman had difficulty in reconciling undefined hours of work with a specific determinable length of notice period contained within the same Terms of Engagement. In his view, how could a notice period be defined without being able to calculate it by using the number of hours worked as a benchmark, when at the time of drafting Terms of Engagement an employer would not be in a position to predict the amount of hours that would be completed by an employee.

The Ombudsman was of the view that the ES's arguments and explanations provided to him albeit in good faith, appeared to be based on "opinion" rather than on statutory provision or indeed legal precedent. In consequence therefore, given the seriousness of the issues that were being considered and investigated, the Ombudsman privately engaged the services of legal counsel with speciality in employment law issues, to provide him with a legal opinion. The Ombudsman specifically sought clarity on the legal application of a notice period to a contract for employment, where the employee had worked on a supply basis.

In the intervening period between the instruction for the legal opinion and its receipt from counsel, the Ombudsman received a telephone call from the Complainant on the 17th of November 2014. She confirmed that she had received an offer to settle on a "take it or leave it basis" from the Employer which she had rejected given the amount offered. She stated that said offer had been made to her via telephone, on behalf of the Employer, by the labour inspectorate (ES). The Ombudsman was surprised that an offer had been made (given the ES's assertions that the Employer had acted within the law and that no further protection was afforded) but more so, by the allegation that it had been made via the ES.

The Ombudsman immediately wrote seeking verification of whether the offer had indeed been made. If made by them on the Employer's behalf, the Ombudsman sought details of the communications between the ES and the Employer which led to said offer being communicated.

A reply was received on the 27th November 2014 confirming that full payment had been made to the Complainant by way of cheque, on the 26th November 2014 and, since "the complaint had been concluded to her satisfaction, no further action [was] required". The Ombudsman immediately replied expressing his satisfaction at the fact that the Complainant had received payment but stating that he was more concerned with the administrative aspect of the complaint. The Ombudsman again requested details of the communications between ES and Employer and an explanation behind the then apparent fact that if indeed the Complainant had been entitled to full payment, why had ES seen fit to have previously made a reduced offer on the Employer's behalf ? The Ombudsman's view was that if the Complainant had been entitled to payment all along, surely she must have been entitled to a specified sum in accordance to legal provision and not, a reduced or negotiable figure.

The written reply which followed stated that the reduced offer had been made by the Employer on a without prejudice basis, that it was not conveyed in a "take it or leave it" manner and that, ES was duty bound to put the offer to the Complainant. The letter continued, explaining that the offer had been rejected and, consequently, "the Employer in an act of good faith acquiesced to her full disputed annual leave days and paid her in full."

A final letter was received from ES by the Ombudsman dated 9th January 2015, explaining the position more substantively. In it, ES confirmed that their original assessment of the case had been based on the information which the Complainant had supplied and that at the time, it had been limited to a copy of the Terms of Engagement and the Termination. It was, according to ES, only at a later date that the Complainant had produced evidence supporting the fact that she may have worked a regular pattern of work for a continuous period of time. A subsequent investigation by ES revealed, according to them, that despite the "supply" based terms, the Complainant's pattern of work was that "akin to being employed on a full time basis". Therefore, the ES concluded, based upon that fact, the claimant was "covered under the Employment Act part IV". Furthermore, the ES stated, the Complainant made an additional request (at a later date) that the labour inspectorate investigate her accrued annual leave that had also not been paid at the time of termination. Due to "uncertainty on the part of the [Complainant] and poor record keeping on the part of the Employer, the amount of accrued annual leave days were disputed…. Nevertheless, the Employer paid the full claimed amount in good faith".

A breakdown of figures was provided.

Conclusions

Despite the ES's explanations towards the end of this investigation (in their January 2015 letter to the Ombudsman), which the Ombudsman had no doubt were made in good faith, the Ombudsman could unfortunately only describe the polarisation of ES's stance, interpretation and communication of the Complainant's rights and their "knowledge" of the law surrounding entitlements on supply contracts as shambolic.

Based on the findings of this investigation, not least the legal opinion obtained by the Ombudsman (which will be provided to the Employment Service for future informed reference), the legal position, rights and duties on "supply" contracts and notice periods was clear. Indeed the concept of "supply" contracts does not exist in legal terms. Contracts/Terms of Engagement are either "fixed term" or "casual" and in both instances, the law provides protection. The element of protection should have been explained to the Complainant by the entity which dealt specifically with employment matters i.e., the ES.

In the Complainant's case, the expectations created as a result of the one month's notice being stipulated in the Terms led her to refuse payment of monies owed to her (one weeks leave), in full and final settlement. This expectation was created in the belief that she had to be paid one month's notice upon termination of employment; not least because the Complainant had worked on a full time basis throughout her employment and did not consider she was working on a supply basis, although for the purpose of the employment contract that had always apparently been the case. Despite this, ES did recognise in their January 2015 letter that "her pattern of work was akin to being employed on a full time basis". To the Ombudsman's mind, the ES failed to properly investigate matters when it should have, instead entrenching their position based upon the "written letter" of the Terms of Engagement solely, and then attributing their rectification on the lack of information provided by the Complainant on the one hand and the Employers poor record keeping on the other. Additionally, the initial advice the ES provided the Complainant that she had no remedy available against the Employer, the reason being that she had not satisfied the requirement of continuous employment for a period of one year was also partly erroneous and misconstrued.

It is the correct position that in order to initiate proceedings against an employer in the Industrial Tribunal for Gibraltar for unfair dismissal, an employee must have worked for a period of at least one year. However, there is no requirement for an employee to have worked for any period of time in order to file a claim for wrongful dismissal (breach of contractual or statutory entitlement). The Employment Service never gave the Complainant the option of considering whether to embark upon that route.

Based upon the legal advice the Ombudsman received, there also exists a requirement to give notice under a contract of service for an indefinite time (to be calculated depending on length of service and manner of payment) and in the absence of such notice, there is an obligation to make payment in lieu of notice. The position adopted by the ES that the Employer had acted within the law and was "correct in issuing the Notice to Terminate without further payments" was therefore also bad advice.

Classification Sustained: There appeared to be a lack of knowledge of the legal provisions surrounding this case and/or a lack of interest in providing a service to the end-user.

Recommendations

The Complainant had been employed on a supply basis, which meant that she would work 'as and when required'. Notwithstanding, the ES's Terms of Engagement stipulated that one month's notice was required in the event of termination of employment applicable to both the employee and the employer. During her employment, the Complainant worked full time and as such, when the employer notified her that her employment would terminate, the Complainant, basing herself on the Terms of Engagement, expected that she would either work and be paid the one month's notice or terminate employment immediately but be paid the month's notice.

Based on the fact that the contract was on a supply basis and the Complainant would only work as and when needed, the Ombudsman recommended that no length of notice could be stipulated on terms of engagement for supply basis contracts.

Case Sustained

CS/1071

Complaint against the Employment Service

(i) Complainant does not understand how a person diagnosed with a long term illness could remain registered on the 'live' Employment Register at the Employment Service;

(ii) Failure to respond fully or in a timely manner to the Complainant's letters dated 25th March and 24th June 2014;

(iii) No advice or guidance in relation to how the Complainant's illness affected other services such as the Complainant's entitlement to the health services.

Complaint

The Complainant was aggrieved because she did not understand how a person diagnosed with a long term illness could remain registered on the 'live' Employment Register ("Register") at the Employment Service (ES)

She was further aggrieved because the ES also failed to respond fully or in a timely manner to her letters dated 25th March and 24th June 2014 and no advice or guidance was given by the ES in relation to how her illness affected other services such as her entitlement to the health service.

Background [Ombudsman Note: The background is mainly based on the version of events provided by the Complainant, including supporting documentation, at the time of lodging the Complaint with the Ombudsman]

The Complainant explained that in 2008 she had been made redundant from her employment and took that opportunity to attempt to retrain as a gardener. According to the Complainant, in May 2012 she felt ready to go back into the job market so she registered with the ES as unemployed and was placed in the Register to be considered for forthcoming vacancies [Ombudsman

Note: The Ombudsman asked the Complainant what medical cover she had during the 2008 to May 2012 period and the Complainant stated that she had retained her 'Employed' GHA Card which expired in May 2012]. According to the Complainant, to remain in the Register, the ES required that she regularly attend their offices to check the vacancies and confirm her unemployed status.

In July 2012, as a result of a routine mammogram, the Complainant was diagnosed with breast cancer and had to undergo a long process of treatment and aftercare which to date, December 2014, does not allow her to return to work.

The Complainant was aggrieved because for the duration of her treatment and after-care she had to attend the regular appointments at the ES in order to remain registered as unemployed and more crucially for the Complainant, to continue to be registered for health services. According to the Complainant, in order to maintain her Gibraltar Health Authority ("GHA") Registration Card ("Card") she either had to be employed or registered as unemployed.

During the treatment period, the Complainant felt very distressed that she had to continuously notify different officers at the ES about her medical situation, in instances when she was unable to attend the ES appointments and when they called her to attend job interviews and apply for vacant posts, and claimed that although she had made enquiries to be placed in another register until her medical condition improved, she was never offered an alternative

The situation continued as described by the Complainant, until in March 2014 she wrote to the Head of the Employment Service stating that she was still undergoing treatment for her condition and had a medical certificate until the 30th September 2014 and was not fit for work, and enquiring if she could be placed on a separate register in order to maintain her 'unemployed' status and continue to be medically covered by her GHA Card. Further to a chaser sent in April 2014, the Complainant received a response by email in which the Employment Service conveyed their apologies for not having become aware of her situation at an earlier stage and informed her that arrangements had been made so that she did not have to attend the ES offices until her medical certificate expired. The Complainant emailed the ES and thanked them for their response.

In June 2014 the Complainant once again wrote to the ES requesting that they provide a full response to her letter of the 25th March 2014 and included further enquiries amongst which were:

(i) She had been advised at the ES that it was important to maintain the regular attendances so that old age pension entitlements would not be affected;

(ii) In the absence of a medical certificate or a letter from her doctor, the Complainant would have to attend the appointments at the ES to remain in the Register;

(iii) Reiterated that she failed to understand how persons diagnosed with a long term illness could remain in the live Register and believed that there must be another register in which she could be placed to be guaranteed access to the medical scheme.

The Complainant asked the ES to consider as a formal complaint, their failure to respond fully to the letter she had sent to them in March 2014.

The ES' response in July 2014 confirmed that in the Complainant's situation, unemployed and due to her medical condition unable to look for work, the ES required a medical certificate or letter from a doctor to cover the pertinent period.

Unable to clarify the issues raised, the Complainant put her complaints to the Ombudsman.

Investigation

The Ombudsman put the complaint to the ES and this was replied to by the Senior Executive Officer ("SEO") who explained that he had been transferred back to the department in late February 2014 and in early April 2014 made arrangements for the Complainant not to have to attend the ES offices on a regular basis. The SEO stated that the Complainant was verbally informed of the arrangement and subsequently confirmed via email.

The SEO stated that all issues in the Complainant's letter had been dealt with by the fact that the pertinent arrangements had been made for her not to have to attend the ES offices during her treatment and after-care period up to the 30th September 2014 (the period covered by the medical certificate).

Regarding the Complainant's June letter in which she requested information on how her illness affected her entitlement to other services, the SEO stated that he had telephoned the Complainant and explained that most of the issues raised concerned other departments; according to the SEO the Complainant was satisfied with that response.

As to the Complainant having stated that persons in her situation should not be placed in the Register, the SEO strongly agreed that the service should not be used as a back door to other services, especially those of the GHA and explained that the reason for the ES's existence was to assist persons to find employment and not a justification for free Government services. The SEO stated that if the Complainant did not wish to remain in the Register she should notify them or not attend her next appointment and she would be removed from the Register. The SEO highlighted that it had been the Complainant who had asked to be included in the Register and not the ES who had insisted. The ES stated their records showed the Complainant's last employment terminated in November 2008 and that the Complainant only registered as unemployed in May 2012. Based on those dates, the SEO raised the question on whether what could have triggered the Complainant's sudden request to be registered as unemployed could have been the need for free medical care which she would otherwise not have been entitled to [Ombudsman Note: The Complainant claimed, as is recorded in the 'Background Section' of this report, that it was as a result of a routine mammogram in July 2012 that the breast cancer was detected, and that at the time of registering with the ES' Employment Register did so with the purpose of finding a job. Notwithstanding, the Complainant's entitlement to medical cover was in this case not linked to being registered as unemployed with the ES and on the Register].

In order to establish whether the Complainant's assumption that she had to be registered as unemployed with the ES to have medical cover was in fact correct, the Ombudsman directed his enquiries to the GHA's Primary Care Centre Manager ("Manager") to establish if that was in fact the case. After extensive communication the following was established:

To be eligible for 'free' medical cover if unemployed, the first requirement the person needs to meet is that they are in Gibraltar with a residence permit. The Manager referred to the Medical (Group Practice Medical Scheme) Act, Part 1 Interpretation Section 2C and the Civilians Registration Regulations 1993, Section 3:

Medical (Group Practice Scheme) Act

Part 1 Section 2C

2. In this Act, unless the context otherwise requires,-

"dependant" means and include-

(a) the spouse of a registered person; and
(b) the children of a registered person who are either under the age of 18 years and are not required to be registered under section 4(1) or who are over the age of 18 and undergoing full-time education;
(c) any other person as the Minister for Medical and Health Services may, in his discretion, accept as being dependent on a registered person:

Provided that in the case of a registered person residing in Gibraltar under a permit of residence or a residence permit granted under the provisions of the Immigration Control Act, his dependants shall not be dependants for the purposes of this Act unless they reside in Gibraltar under a permit of residence or a residence permit;

Civilians Registration Regulations 1993

Section 3
Issue of card

3.(1) The Registration Officer on receiving a completed application for registration in respect of a person required to be registered shall, upon receipt of the registration fee of £5, I ssue to that person an identity card or a civilian registration card as the case may be.
(2) The identity card or civilian registration card issued in accordance with sub-regulation (1), shall contain the information entered in the register in respect of the holder of that card and shall be in the form specified by the Registration Officer. Provided that where the holder of the card is under the age of 15 years at the date of issue of the card, the signature on the card shall be that of his parent or guardian.

In the Complainant's particular case, she was a British Citizen resident in Gibraltar and registered as unemployed. A status which would ordinarily be reviewed because the GHA need to keep tabs on the status, which is deemed to be temporary, and also because unemployed persons do not pay for medicines. The reviews would in most cases be between six months or a year as the board saw appropriate and the decisions made on a case by case basis. The Manager advised that there was no need to be included in the Register to qualify as unemployed for the purpose of maintaining medical cover, if the person did not intend to seek employment due to health reasons or early retirement.

In the Complainant's case, to register as unemployed with the GHA she would have had to apply for unemployed status. The first step would have been an interview at the Primary Care Centre to ascertain the person's circumstances based on which a decision would be taken on whether the person qualified for non-contributory medical cover. The Minister has discretionary powers to make the decision. The document required by the GHA as proof of unemployment was the last P7 (Certificate of Pay, Tax Deducted & Social Insurance Contributions) from the Income Tax Office.

Conclusions

Complaint (i)

<u>Does not understand how a person diagnosed with a long term illness could remain registered on the 'live' Employment Register at the Employment Service</u>

The Ombudsman's investigation found that in order to continue to be medically covered by the Group Practice Medical Scheme, there was no need for the Complainant to have continued to register regularly as unemployed with the ES (due to her medical condition) and the Complainant should have under the circumstances approached the Primary Care Centre.

Neither the Complainant nor the ES were aware of this information and as such the ES could not direct the Complainant to the appropriate entity when she wrote to them on the 25th March 2014.

In the Ombudsman's opinion, Government departments from which persons derive benefits which are linked to other Government departments, like in the Complainant's case (unemployed status would entitle the person to medical cover) should be conversant with pertinent basic procedures like the one explained by the Primary Care Centre Manager. Had the ES been aware that the Complainant could be registered as unemployed at the Primary Care Centre for the purpose of being medically covered, the Complainant would have been spared the hardship and anxiety whilst undergoing treatment for her condition.

The Ombudsman finds maladministration in this Complaint.

Complaint (ii)

Failure to respond fully or in a timely manner to the Complainant's letters dated 25th March and 24th June 2014

Regarding the former letter, the ES' response to the Complainant was four months late and only offered the Complainant that she produce a medical certificate to be covered for periods of illness when she could not attend the ES offices to continue in the Register. The Complainant's main issue was not identified by the ES which was how to retain medical cover without having to continue in the live Register which was for persons who were fit for work. Again, had the ES had basic knowledge of the procedures in place at the Primary Care Centre for that purpose, the Complainant would have been spared the extra suffering.

Regarding the Complainant's 24th June 2014 letter in which the Complainant placed a formal complaint and raised further issues, the ES' position was that all the issues had been dealt with by the fact that arrangements had been made for the Complainant not to have to attend the ES offices if covered by a medical certificate and they had explained over the phone to the Complainant that most of the issues raised concerned other departments.

The Ombudsman cannot agree with the ES. Although the issues raised by the Complainant related to other Government departments, the ES should have provided a written answer addressing all the issues and again pointing her to the relevant departments to which she should put her enquiries to; in this case the Department of Social Security, the Contributions Section of the Income Tax Office and the Primary Care Centre.

The Ombudsman sustains this complaint.

Complaint (iii)

No advice or guidance in relation to how the Complainant's illness affected other services such as the Complainant's entitlement to the health services

Based on the findings of the Ombudsman's investigation, it is clear that the ES are not conversant with pertinent basic procedures in place in other Government departments which are linked to theirs due to benefits derived by persons. In this case the unemployed status would entitle the person to medical cover.

The Ombudsman sustains this Complaint.

Classification

Complaint (i) - Sustained

Complaint (ii) - Sustained

Complaint (iii) - Sustained

Case Partly Sustained

CS/1078

Complaint against the Employment Service for not addressing or responding to the issues raised in a written complaint submitted by the Complainant to the labour inspectors on the 15th September 2014 and for the subsequent letters to the Director of Employment which were not answered substantively.

Complaint

The Complainant was aggrieved because a written complaint she had submitted to the labour inspectors (against her employer) dated 15th September 2014, had not been addressed or responded to.

The Complainant was further aggrieved because subsequent letters to the Director of Employment ("Director") had not been answered substantively.

Background [Ombudsman Note: The background is mainly based on the version of events provided by the Complainant, including supporting documentation, at the time of lodging the Complaint with the Ombudsman]

The Complainant's initial grievance when she visited the Office of the Ombudsman towards the end of September 2014 (prior to lodging the complaints) was that she had a work contract which expired at the end of January 2015. The Complainant had been diagnosed with cancer earlier that year and as a result had been unable to continue working; albeit the contract termination date remained in place. Under the circumstances, the Complainant had exhausted the period of paid sick leave and had no alternative source of income. The Complainant had asked her employer ("Employer") to dismiss her and terminate the contract to allow her to claim unemployment benefit but according to the Complainant the Employer refused [Ombudsman Note: The Complainant claimed that she would not be eligible for unemployment benefit if she left employment voluntarily].

The Complainant explained to the Ombudsman that she subsequently visited the Employment Service's ("ES") offices to lodge a complaint (against her Employer) setting out a number of issues denouncing what she claimed had been the dire working conditions she had been subjected to. Parallel to that action, the Complainant requested that the ES assist her by approaching her Employer about the cancellation of her contract but claims the ES told her they could not force the Employer to dismiss her.

Notwithstanding, the Complainant claimed to have spoken to the Minister for Employment a few days later and been told that he would contact the ES for them to approach the Employer on the matter. According to the Complainant, she was told to attend the ES' offices a couple of days later when they would have available the documentation she required from the company for dismissal. The Complainant visited ES' offices for an update and met with the officer dealing with the issue. According to the Complainant she was told that the Employer would submit the documents the following morning. The Complainant returned to the ES' offices the following day and claimed that despite having waited all day the Employer did not submit the required documentation. As a result, the Complainant lodged a formal complaint with the Director (by way of letter) in which she set out what had occurred and specifically complained against two ES officers involved in the 'negotiation' because her complaint had not been attended to and she felt unprotected.

Further to a chaser letter the Complainant sent to the Director, he responded and stated that he was aware that she had been attended to by staff at the ES on numerous occasions and that they had tried their best to assist her. No reference was made in the Director's response about the complaint she had lodged against the Employer via the labour inspectors.

On the 26th October 2014, the Complainant brought her complaints to the Ombudsman, providing a copy of the statement of complaint she had made to the labour inspectors at the ES. The statement had been duly stamped by the labour inspectorate on the date of receipt, 15th September 2014.

Investigation

The Ombudsman presented the Complaints to the ES in early November 2014.

The ES' response stated that the Complainant's complaint to the ES had always been that she was ill and wanted to be dismissed by the Employer in order to claim unemployment benefit in Spain (her country of residence). The ES adamantly stated that the Complainant had not registered any other complaint with the ES but advised that she could contact the labour inspectors to officially lodge her complaint and enable the labour inspectors to investigate the allegations. The Ombudsman was dismayed at the ES' response. The copy of the complaint (stamped by the labour inspectorate) the Complainant presented to the Ombudsman proved that the ES' assertion was wrong and highlighted the chaotic state of administrative affairs at the ES in relation to this case.

In his response to the ES in early December 2014, the Ombudsman informed them that he was in possession of the copy of the complaint to the labour inspectors and proceeded to set out the nature of the complaints against the Employer. The ES' response made no reference to the substantive issue but rather, advised that the Complainant should contact the labour inspectors to make a statement in relation to the bank holidays she had worked during her time in employment and which she claimed she had not been adequately remunerated for (amongst other issues).

Shortly after the ES' response, as a result of a ministerial reshuffle, a new Director of Employment was to be appointed and the Ombudsman was informed of this by the outgoing Director who advised that 'unfortunate delays could be experienced as a result [Ombudsman Note: Between 2012 and 2015 three different persons have carried out the functions of Director of Employment and there will shortly be a fourth. The Ombudsman will comment on this issue at the conclusion of this report].

Whilst the Ombudsman did not receive a substantial written response from the ES (albeit no explanation as to the whereabouts of the Complainant's complaint to the labour inspectors) until five months after the December 2014 letter, the Complainant desperately continued to pursue a solution to resolve the dire financial situation she had to endure. In January 2015 her contract finally expired and the wheels were set in motion at the ES to enable her to claim unemployment benefit in Spain (her country of residence). Parallel to this exercise, the labour inspectors had addressed the issues raised by the Complainant against her Employer in respect of underpayment of bank holidays and annual leave and these were resolved in favour of the Complainant. During this time, the Ombudsman was kept abreast of developments by both the labour inspectors and the Complainant.

Regarding part of the second Complaint in which the Complainant had complained about two ES officers who had initially assisted her, the Ombudsman wishes to clarify that there was no requirement for the ES' intervention on this issue as this was an employer/employee matter and no laws had been broken with regards the Employer not dismissing the Employee. It was via ministerial discretion that instructions were issued for an ES officer to discuss the Complainant's situation with the Employer with the object of assisting her. This information was verbally confirmed by the ES to the Ombudsman.

The ES stated that they had asked the Employer to consider (for the purpose of the Employee's dismissal) Section 65 of the Employment Act (Onus on Employer) but advised that the Employer had resolved not to dismiss the Complainant. It was as a result of this outcome that the Complainant wrote to the Director of Employment on two issues. On the one hand she referred to the complaint she had lodged with the ES against her Employer (to which the Director of Employment in his response made no reference to) and on the other she complained against two ES officers who she claimed had liaised with her Employer and had informed her everything had been sorted when it had not been. On the latter, and aware that the actions had been carried out via ministerial discretion, the Director of Employment's response to the Complainant stated that staff at the ES had attended to her on numerous occasions and done their utmost to assist her. This made reference to the latter's discussions with the Employer with a view to dismissing the Complainant.

Conclusions

Complaint (i)

Submitted a written complaint to the labour inspectors on the 15th September 2014 against her Employer but the issues raised in that complaint had not been addressed or responded to

It is clear from the findings of the Ombudsman's investigation that the Complainant's complaint to the labour inspectors submitted and duly stamped by the ES on the 15th September 2014 was lost or misplaced by the ES. Proof of the document having been handed in by the Complainant at the ES was provided via the copy of the document kept by the Complainant which clearly denoted the labour inspectorate date stamp.

The initial response provided by the ES further to the Complaint being presented was to deny that the Complainant had registered such a complaint and advise for her to contact the labour inspectors and lodge an official complaint. In the course of the investigation, the ES chose to ignore the issue of the 'lost or misplaced' document.

The Ombudsman concludes that there was gross maladministration in this case which did not stop with the Complainant but continued throughout the Ombudsman's investigation. Lengthy delays were experienced by the Ombudsman in obtaining information from the ES and on this specific Complaint, no information was provided as to the whereabouts of the document lodged by the Complainant with the ES in September 2014.

The Ombudsman takes this opportunity of reminding Government departments and public services that not providing the Ombudsman with timely and concise information requested when undertaking investigations is an offence of obstruction under Section 25 (1) of the Public Services Ombudsman Act 1998:

> *Offence of obstruction*
>
> *25.(1) Any person who, without lawful excuse, obstructs the Ombudsman or any member of his staff in the performance of their duties under this Act, or is guilty of any act or omission in relation to any investigation under this Act which, if that investigation were a proceeding in a court of law, would constitute contempt of court, shall be guilty of an offence.*

Complaint (ii)

Subsequent letters to the Director of Employment not answered substantively

The main issue in the letter sent by the Complainant to the Director of Employment was her complaint against two ES officers who she claimed had liaised with her Employer and wrongly informed her that the Employer had agreed to terminate her contract prior to its expiry.

The above was a ministerial decision and as such the Ombudsman cannot delve into the merits of a political decision. Notwithstanding, it is the Ombudsman's opinion that the action was undertaken in good faith in order to assist the Complainant but that ultimately, the representation from the ES officers to the Employer, on behalf of the Complainant, failed to achieve the desired result and brought on the Complainant's grievance.

The Ombudsman does not find maladministration in this Complaint based on the fact that the instruction for intervention was made at a ministerial level and not a departmental level. As such, the Director of Employment provided an adequate response albeit could have directed the Complainant to the pertinent Minister for explanations.

Ombudsman Note:

From his part in the investigation into these complaints, the Ombudsman notes that the ES lost sight of the Complainant's complaint against her Employer due to the Complainant's plight for her contract to be terminated early in order that she could claim unemployment benefit and alleviate her dire financial situation which would assist towards her medical condition. The Complainant notified the Ombudsman at an early stage of her plight due to the desperate situation she claimed to be in and in the hope that he could assist her but that was not possible at that premature stage. It was at a later date that the Complainant filed a complaint against her Employer which formed the basis of her complaints to the Ombudsman.

Reference must be made to the fact that between 2012 and now (July 2015), i.e. a three and a half year period, three different persons have held the appointment of Director of Employment and a fourth is in the pipeline. The changes have inevitably been detrimental to the ES' delivery of service especially to service users and to the Ombudsman's investigations into complaints against the ES. The role of Director of Employment requires that the person familiarises him/herself with the workings of the entire ES in order to undertake the functions of the role appropriately. Learning requires time and that has had a substantial impact in the timeframes adhered to by the Ombudsman for the completion of investigations and resulted in lengthy delays in obtaining information and getting to the root of the complaints.

Classification

Sustained - Complaint (i): Submitted a written complaint to the labour inspectors on the 15th September 2014 against her Employer but the issues raised in that complaint had not been addressed or responded to.

Not Sustained - Complaint (ii): Subsequent letters to the Director of Employment not answered substantively

Case Sustained

CS/1081/1099

Complaints against the Employment Service ("ES") due to non-reply to letters sent requesting compensation for personal belongings destroyed in a fire.

Complaint

The Complainants were aggrieved because they had not received replies to letters sent to the Employment Service ("ES") in which they claimed compensation for personal belongings which had been destroyed as a result of a fire in one of the rooms in Devil's Tower Hostel ("DTH").

Background [Ombudsman Note: The background is mainly based on the version of events provided by the Complainant, including supporting documentation, at the time of lodging the Complaint with the Ombudsman]

[Due to the similarities in the complaints, the Ombudsman resolved to amalgamate the three complaints in one report].

On the 1st July 2014, a fire broke out in one of the rooms at DTH which affected the rooms of several residents and destroyed substantial personal belongings. The Complainants, upon advice of the Hostels Manager, wrote to the ES in July and August 2014, informing them of the losses they had sustained and requesting compensation, but no written response was received. The Complainants claimed they regularly asked the Hostels Manager for updates on the matter but stated they were never given any concrete information.

The approximate amounts being claimed were:

Complainant 1 £7,900-;
Complainant 2 £200-;
Complainant 3 £1,606-.

In September 2014, not having received a written response to their letters, Complainant 1 and 2 lodged their complaints with the Ombudsman. Complainant 3 lodged his complaint in March 2015.

Investigation

The Ombudsman presented the complaint to the Director of Employment ("Director") on the 7th October 2014 and a reply was received from the ES on the 13th October 2014. In relation to Complainants 1, 2 and 3, the ES stated that the Hostels Manager had asked them to submit a list of personal items lost in the fire and confirmed they had been given verbal updates (Ombudsman Note: No information provided as to what they were told). Legal advice had been sought to establish whether Government was liable for compensation and if so, to what extent. In the absence of liability, a decision had to be made by Government on whether an ex-gratia payment would be made to those persons who had lost personal belongings in the fire and on whether the amount would be capped. The ES were presently waiting for the legal advice to be provided.

Regarding Complainant 1, the ES highlighted a number of issues arisen vis a vis his claim.

1. He had not been given permission to change the standard fittings in the room (Ombudsman Note: complainant was claiming for bedroom furniture) and had he asked this would have been refused;

2. After the fire, residents of DTH were temporarily relocated to Queen's Hotel. Once repairs at DTH were completed, the Complainant was asked by way of letter from the Hostels Department to vacate the temporary accommodation and return to DTH but he refused to do so and in effect occupied two rooms.

3. Although in employment, the Complainant was 42 weeks in arrears of rent in October 2014 and as such, the ES raised the question whether an employed person who refused to pay his rent was entitled to compensation in this case.

On the 4th November 2014 further to a request for information, the Ombudsman was advised by the ES that they were still awaiting legal advice.

On the 25th November 2014 and 21st January 2015, the Ombudsman again requested updates but none were forthcoming. In January 2015, a new officer was appointed Director, and the Ombudsman wrote to him to brief him on the complaints.

Subsequently, chasers were sent to the Director on the 13th February, 25th March, and a deadline for information to be provided by the 31st March 2015 was also issued, failing which, the Ombudsman was minded to invoke his statutory powers and issue proceedings against the Director on the grounds of obstruction and seek an Order from the Supreme Court, compelling the Director and the ES to comply with the Ombudsman's requests.

The Director responded on the 1st April 2015 stating that he would provide the information required but this failed to materialise. Further chasers were sent on the 24th April and 4th May 2015 which resulted in a telephone call from the ES in which some verbal information was provided on this and other outstanding complaints. According to the ES, the claims were with the Minister for Economic Development & Telecommunications ("Minister") who had requested that the Complainants submit receipts in respect of the items being claimed but they had failed to provide these. Furthermore, the ES stated that until the receipts were presented no legal opinion could be sought. The Ombudsman contacted the Complainants to enquire about this issue and was advised that they did not have receipts because these too had been destroyed in the fire. Complainant 2 further explained that he had not been allowed into his room until completion of the clean up exercise undertaken after the fire, by which point there was nothing left of his belongings.

The Ombudsman suggested to the Complainants that they could attempt to obtain duplicate receipts (clearly stating to the ES that they were duplicates) in order to provide these to the ES. The Complainants confirmed they would pursue that suggestion. In the course of the telephone conversation between the ES and the Ombudsman, the ES advised that responsibility for the DTH no longer fell under the ES but under the Ministry for Economic Development ("Ministry") and as such the person who previously held the role of Director was now responsible for the DTH. The Ombudsman was frustrated at the fact that he had been liaising with the ES for eight months only to be informed at an unacceptable late stage, that they were not responsible for the DTH. The Ombudsman's view on the delay which he made clear to the ES was that had the ES made this known at an earlier stage, the investigation would have progressed at a considerable rate rather than the unnecessary delays experienced . The Ombudsman requested an explanation from the Director as to the reasons for the delay in providing that information but this was never received.

The Ombudsman contacted the Director for Economic Development who explained that further to a ministerial reshuffle in December 2014 he was asked by the Minister to join him in the Ministry and that in February 2015 it was decided that the DTH should come under the Ministry. The Ombudsman presented copies of documentation related to the complaints to the Director for Economic Development. The latter responded promptly and advised that he had been unaware that the Ombudsman had only recently been advised by officials at the ES that responsibility for the DTH had been transferred to the Ministry as a result of which, the Ombudsman's investigation had suffered substantial delay.

The Director for Economic Development informed the Ombudsman that he had contacted the ES officer charged with collecting the claims and he had been provided with some background information. Legal advice had been received on the 13th November 2014 which in essence stated that Government was not liable for claims submitted by tenants in respect of damage to property. Notwithstanding, it appears that the Minister wanted to assist the Complainants (possibly by way of an ex-gratia payment) and as a result of that willingness, the ES requested that Complainants provide receipts for the items being claimed. The Director of Economic Development had sought clarification on Government policy and was informed that no such compensation would be considered unless evidence produced by the complainants by way of receipts. As no receipts were forthcoming, the level of compensation could not be considered.

The Ombudsman enquired if the Director of Economic Development had notified the Complainants of the position in writing. The Director of Economic Development responded that he would issue the replies to the complainants explaining the situation. Copies of those letters dated 26th June 2015 were provided to the Ombudsman. The letter offered an apology for the delay, stating that said delay was exacerbated by the fact that responsibility for the DTH had transferred from the ES to the Economic Development. Compensation could only be considered by the Department if receipts for the damaged goods were submitted.

Conclusions

To summarise, on the 1st July 2014, three residents at DTH lost their personal belongings as a result of a fire in one of the rooms. Shortly after, the Complainants submitted claims to the ES, as advised by the Hostels Manager. Not having received a reply from the ES by September 2014, Complainants 1 and 2 lodged complaints with the Ombudsman (Complainant 3 in March 2015). It took nearly a year from the date of the fire, for the Complainants to receive a written reply to their claims, issued on the 26th June 2015, and only as a result of the Ombudsman's involvement in the cases.

Despite the responsibility for DTH having been transferred between ministries, the previous Director of Employment (now Director for Economic Development with responsibility for DTH) was in post at the time when Complainants 1 and 2 originally lodged their complaints with both the ES and subsequently the Ombudsman. As such he was in post when:

1. The fire occurred – 1st July 2014;
2. The claims were submitted – August 2014 (in the case of Complainants 1 & 2);
3. Complaints lodged with the Ombudsman – September 2014;
4. The legal advice was provided – 13th November 2014.

It was in the Ombudsman's view fair to state that a senior officer at the ES had from the initial submission of the claims dealt with the issue and had been the person who requested the legal advice and to whom the advice was sent. Notwithstanding, the senior officer was directly answerable to the Director of Employment who would make the ultimate decision on issues of this nature. As such, once the legal advice was received, the Director of Employment should have written to the Complainants informing them of his Department's position.

A new Director was appointed and whilst he settled into the post, a few months elapsed during which the Ombudsman issued a number of chaser letters. These culminated in a final demand for a reply to his unanswered inquiries failing which the Ombudsman's statutory powers would have been invoked. This produced a response to other complaints but left this one pending until early May 2015 when the Ombudsman received news from the ES that jurisdiction for DTH had moved to the Ministry.

When the Ombudsman met with the Director of Economic Development it was established that he had responsibility for DTH since February 2015. The Ombudsman did not receive information from the ES as to why they had not informed the Ombudsman of the transfer at an earlier stage. Notwithstanding, the Ombudsman considered it would have been reasonable to assume that all outstanding issues would have been identified and appropriately dealt with by the Director of Economic Development at the handover stage from the ES to the Ministry. Furthermore, he was cognisant with the history of the claims

To conclude, the ES appears to the Ombudsman to be in disarray and this confusion has been experienced firsthand by the Complainants and the Ombudsman. It would appear to be an act of gross maladministration that responsibility for DTH encompassing a building, staff and residents, all paid for by the public purse, could be taken over so lightly without adequate consideration having been given to all issues as was the case with the Complaints.

The Ombudsman would be making strong representations to the Chief Secretary requesting that he seek information as to why this situation had been allowed to develop.

The Ombudsman sustains this Complaint against the ES and the Ministry and suggests that an adequate procedure for handover of information within departments is put in place.

Classification

Sustained

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GIBRALTAR HEALTH AUTHORITY

Case Not Sustained

CS/1088

Complaint against the Gibraltar Health Authority's ("GHA") Primary Care Centre ("PCC) for failure to renew E111 health cards because they had run out of printer ribbons (ink cartridges) ("Ribbons") for the printers and no indication was given as to when the ribbons would be available and no alternative, interim solution was offered by the PCC to service users, by way of a temporary certificate, to prove entitlement to healthcare when travelling abroad.

Complaint

The Complainant was aggrieved because (i) the PCC had been unable to renew his wife's E111 health card (the holder of the E111 card is entitled to medical treatment during a temporary stay in another EEC country) due to having run out of Ribbons for the printers used for the production of the E111 cards. The Complainant was further aggrieved because (ii) the PCC had given no indication as to when the Ribbons would be available and (iii) the PCC did not provide healthcare users with an interim alternative solution (by way of temporary certificate) to prove entitlement to international healthcare entities.

Background [Ombudsman Note: The background is mainly based on the version of events provided by the Complainant, including supporting documentation, at the time of lodging the Complaint with the Ombudsman].

The Complainant explained that on the 3rd March 2015 he went to the PCC to collect his wife's E111 health card only to be informed that it was not available because they had ran out of Ribbons for the printer required to print the E111 cards. The Complainant claimed to have been told by PCC staff that the Ribbons had been ordered but delivery dates were unknown and it could take up to three weeks or more. The Complainant highlighted that even more worrying was the fact that the PCC had not offered an alternative solution by way of a temporary certificate for service users to produce if so required when travelling within the EU. The Complainant stated he had suggested this option to the PCC but claimed to have been advised that was not possible.

Frustrated by the situation, the Complainant put his complaint to the Ombudsman. Nonetheless both he and his wife had to travel without the E111 card.

Investigation

The Ombudsman presented the Complaint to the PCC. Their initial response stated they had experienced a three week delay in renewal of cards due to a combination of factors:

- A surge in demand of card renewals;
- A printer awaiting repairs ("Printer 1") had led to an increased demand on the surviving printer ("Printer 2") for which Ribbons ran out. Printer 1 & 2 used different Ribbons. There was an ample supply of Ribbons for Printer 1.
- Delays experienced by the supplier caused a further setback in the delivery of the Ribbons for Printer 2.

The PCC stated they relied on the GHA's Information & Technology Department (IT) to order the Ribbons but no officer at the PCC had been assigned to monitor stock levels and notify IT when those stocks fell low.

The PCC highlighted they would normally have resorted to Printer 1 for which there was ample stock of Ribbons but that had broken down some time ago and a report lodged with IT for repairs. At the time of PCC's response to the Ombudsman, 10th March 2015, no repairs had been undertaken but PCC advised that they had asked their staff for greater urgency in resolving the matter.

On the 15th March 2015 (five days later) the PCC informed the Ombudsman that they had discussed the issue with the IT Department and they had been able to repair and install another old card printer ("Printer 3") which allowed the PCC to continue to provide the service.

The PCC explained that it was impossible to pre-empt exactly how many E111 cards would be printed on a monthly basis but stated that because the bulk of cards was issued in 2005, renewable in five year cycles, it should have been anticipated that there would be an influx of renewal of E111 cards throughout 2015.

Regarding the Complainant's suggestions of a temporary certificate to be issued by the PCC, the latter stated that would have no legal standing in other EU jurisdictions and as such there was no obligation for any European authority to honour such a document. When asked by the Ombudsman what would have happened in the Complainant's wife's case if whilst abroad she had required medical assistance, the PCC stated that she would have had to settle the medical bill and then claimed reimbursement at the PCC's Registration Department. According to PCC, many EU countries bill the person directly (not the GHA) despite being in possession of a valid E111 card.

The PCC informed the Ombudsman that as a result of this Complaint they had implemented the following:

1. An officer at the PCC had been given responsibility for stock of stationery and printer cartridges;

2. A minimum number of cartridges and cards would be kept in stock at all times;

3. New printers which had been held back by budgetary constraints had been ordered.

For completeness of records and due to the IT's involvement in this complaint, the Ombudsman met with the IT Director. He explained that Printer 1 had been the main printer used by PCC for the printing of E111 cards. This was a relatively new purchase but had proven to be problematic. It had during the past year (2014) broken down on numerous occasions and repairs undertaken by a local company until around January 2015, at which point the local company decided that because Printer 1 was still covered by the two year warranty, the best option would be for it to be sent back to the UK supplier for repairs.

The IT Director explained that making the necessary arrangements for Printer 1 to be sent to UK had taken some time and that at present (July 2015) was still in UK undergoing repairs. In the meantime, the IT Director pointed out that the PCC had two other printers (Printer 2 & 3) that could be used for printing the E111 health cards. Printers 2 & 3 used the same Ribbons whereas the ones used for Printer 1 were different.

The IT Director highlighted that whilst visiting the PCC in relation to Printer 1, he noted only one other printer, Printer 2, was visible and brought to the attention of PCC that there was a third one, Printer 3, identical to Printer 2. The IT Director was informed that Printer 3 had broken down. The IT Director stated that they had not received a report for Printer 3. Subsequent to the IT Director's visit, Printer 3 was taken for repairs to a local company but once repaired no printing could take place because there were no Ribbons.

In respect of reordering Ribbons, the IT Director explained they had handed over to the PCC the last box of Ribbons held by IT (containing around 25, enough for two or three months) and at that time, verbally handed over to the PCC responsibility for maintaining the stock of Ribbons and of notifying IT when they were low in stock so that IT would place an order with one of the local companies who would in turn purchase from a UK supplier. IT Director stated that PCC contacted IT on the 13th February 2015 to place an order for Ribbons at which time they had one week's worth of stock. In keeping with established procedure, the IT Director obtained three quotes and ordered the Ribbons on Monday 16th February 2015. Those were delivered to the PCC on the 6th March 2015; a week longer than usual due to delays on the part of the UK supplier.

The total down time in respect of the printing of E111 cards was approximately three weeks, from the week commencing 16th February to 6th March 2015.

Conclusions

Complaint ((i)

Sustained: Unable to renew E111 health cards because the PCC had run out of printer ribbons (ink cartridges) ("Ribbons") for the printers

This Complaint denotes the consequences and effects of an organisation not having adequate systems in place to ensure they have the necessary tools to deliver essential services. The main failure on the part of the PCC was that on being handed-over responsibility for maintaining the stock of Ribbons, no staff was assigned the task of monitoring those stocks and contacting IT to order supplies when stocks fell beneath a certain threshold. As a result of these Complaints, the PCC have now put in place the necessary measures to prevent a recurrence of this situation. An officer has been given responsibility for stock of stationery and printer cartridges (Ribbons) and a minimum number of both cards and Ribbons would be kept in stock at all times. Furthermore, new printers had been ordered.

Further to the above and as advised by the PCC, because renewal of E111 cards occurred every five years and the bulk of these had been issued in 2005, it should have been anticipated that there would be an influx of renewal of E111 cards throughout 2015. The PCC should therefore have ensured that they had the requirements in place to undertake the task.

On the basis of his findings, the Ombudsman sustains this Complaint.

Complaint (ii)

Not Sustained: No indication given by PCC as to when the Ribbons would be available

This Complaint arises as a result of Complaint (i). It was due to the lack of measures in place on the part of the PCC that they put themselves in a situation where the printing of E111 cards was paralysed and caused users unnecessary stress and worry.

Notwithstanding, the Ombudsman cannot sustain this Complaint as providing a date on which a third party would be delivering Ribbons is not something that the PCC could provide.

Complaint (iii)

Not Sustained: No alternative, interim solution offered by PCC to service users, by way of a temporary certificate, to prove entitlement to healthcare when travelling abroad

As in Complaint (ii), this Complaint would not have arisen had it not been for Complaint (i).

The PCC's response to this Complaint was that temporary certificates would have no legal standing in other EU jurisdictions and as such there was no obligation for any European authority to honour such a document. In essence, only E111 cards were acceptable.

Again the Ombudsman cannot sustain this Complaint as there is no maladministration in not having offered a temporary certificate as none would be accepted by other EU jurisdictions but it does not cease to be the case that the Complainant and his wife, amongst others, suffered unnecessary distress. Regardless of whether on occasions, as advised by the PCC, some medical organisations bill the service user and not the entity, the Complainant and his wife were on this occasion left in a vulnerable position due to not being able to produce their E111 cards, through no fault of theirs, should medical attention have been required.

Classification

Not Sustained

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Case Not Sustained

CSHLTH/2015-2

Complaint against the Gibraltar Health Authority ("GHA") for failure to address post-surgery dental damage caused during surgery.

Complaint

The Complainant was aggrieved because dental damage caused to her five year old daughter during surgery was not addressed post surgery.

Background [Ombudsman Note: The background is mainly based on the version of events provided by the Complainant, including supporting documentation, at the time of lodging the Complaint with the Ombudsman]

The Complainant explained that her daughter ("Patient") underwent a scheduled tonsillectomy (surgical removal of tonsils) on the 13th April 2015. Shortly before the procedure they met with the anaesthetist ("Anaesthetist") who during the course of routine questions was informed by the Complainant that the Patient's lower right incisor (milk tooth) was a little loose but all other teeth were fine.

Once the procedure was over, the Complainant explained that the Patient was moved into a recovery room to which she was escorted to accompany the Patient as she regained consciousness. The Complainant was informed by one of the nurses that the Patient had lost a tooth during surgery which the Complainant assumed was the loose tooth. As the Complainant approached the Patient she noted that the top lip was very swollen, cut and bleeding. When the Patient opened her mouth, the Complainant stated she observed the top left front tooth (milk tooth) was missing and the top right front tooth (milk tooth) had been pushed towards the centre of the gum and was sticking out towards the torn and swollen lip. The top gum was swollen and bleeding and a piece of broken tooth appeared to have remained in the gum.

According to the Complainant, a while after the operation, the surgeon ("Surgeon") visited the Patient and informed the Complainant that the tonsillectomy had been straightforward and that the adenoids had also been removed. Upon enquiry of what had happened to the top teeth, the Complainant claims the Surgeon stated the teeth must have been wobbly. The Complainant said she insisted they were not loose prior to the surgery but that the Surgeon smiled and stated that milk teeth often pop out due to the breathing tube resting against them during surgery.

According to the Complainant, the Patient was in agony due to the trauma to the teeth but had no pain from the tonsillectomy and adenoids removal. The Complainant stated that throughout the time in hospital, the Patient had been administered medication and pain relief.

The Complainant claimed the Surgeon visited the Patient the following day to check on the operation but did not mention the swollen gum and lip or the tooth pushed to the centre of the gum. The Surgeon appeared to be satisfied with the healing process of the procedure but advised he would ask the paediatrician ("Paediatrician") to check on the Patient before being discharged due to the nurses being concerned about the Patient's cough, possibly resulted from the anaesthesia or from blood having been swallowed during surgery.

According to the Complainant, the Paediatrician visited the Patient shortly after and checked her chest and lungs and prescribed antibiotics. It appears the Paediatrician made no mention of the state of the lip and gum. The Patient was discharged later that day and the Complainant advised that the Patient would have to remain at home for two weeks to minimise the risk of infection.

The Complainant explained that the Patient spent the following ten days crying due to pain from the swollen gum and broken tooth, and frustration at not being able to eat or drink properly until on the tenth day the tooth fell out of its own accord. By that point the Complainant claimed that the Patient was so upset by the whole experience that the mention of a doctor or a dentist made her hysterical. Under the circumstances, once the critical two week period expired, the Complainant felt that there was not much a dentist could do for the Patient as the tooth had now fallen off.

On the 16th April 2015, the Complainant wrote to the GHA's Chief Executive ("CE") with her grievances, and complained about the agony and suffering the Patient was enduring due to the trauma caused to the teeth and gum, something which in her view should not have happened. Furthermore, the Complainant believed the trauma must have been caused due to the negligence and brutality of one of the surgical team who must have applied intense pressure to the Patient's mouth.

The Complaint was passed to the Ombudsman for investigation. The Complainant provided photos of the Patient before and after the surgery. The latter photo showed a cut and bloody lip, swollen gum and a front tooth which appeared twisted.

Investigation

The Ombudsman met with the Complainant to make further enquiries and found that in the interim, the Patient had visited the dentist; this was a scheduled appointment approximately three months after the surgery. She continued with regular visits to the dentist so that the adult teeth in the process of coming through could be monitored in case of damage having been caused by the trauma in the procedure. The Complainant added that three weeks after the surgery, the Patient had attended a check up with the Surgeon but again no attention was paid by him to the swollen gum.

The Ombudsman met with the GHA's Medical Director ("MD") in relation to the issues raised by the Complainant. The MD was of the opinion that in situations similar to that of the Patient, persons should be referred to the GHA's dental department ("Dental Department").

The Ombudsman requested information from the Surgeon, Paediatrician, Anaesthetist & Ward Staff Nurse.

<u>Surgeon</u>

The Surgeon confirmed that the left front tooth fell out during surgery and stated that the occurrence was a result of the 'Davis Boyle mouth gag' [Davis mouth gag is a frame that serves to hold the mouth open and the Boyle tongue depressor to hold the tongue down during an operation] which presses on the tongue and rests against the upper frontal teeth, and that had caused a loose milk tooth to fall out. The Surgeon stated he had explained this to the Complainant [Ombudsman Note: The Patient notes by the Surgeon denoted that the left front tooth came out during surgery]. He added that the gag exerted quite a bit of pressure against the milk teeth.

He stated he did not observe swelling or fresh bleeding on the upper frontal gum or lip as stated by the Complainant and believed that the blood depicted on the photo (provided by the Complainant) was old blood from the surgery. Referring to the Complainant's allegation, the Surgeon emphasised he did not use brute force on the child.

As to not having made a referral to the Dental Department, the Surgeon stated that the Patient was not in pain when he visited her in the ward and referred the Ombudsman to the post operation notes made by nursing staff where the pain score was 0 out of 10, 0 being the lowest.

Paediatrician

The Paediatrician explained that he had seen the Patient following a request from the Surgeon (via the ward) for him to assess the Patient's cough. He did not recall being asked about the broken tooth or bleeding gum post surgery or discussing those issues with the Complainant. Had that been the case, the Paediatrician stated he would have asked the Complainant to discuss any concerns with the Surgeon.

Anaesthetist

The Anaesthetist examined the Patient's notes (in respect of anaesthetics) and did not find any comments of relevance other than that the right lower tooth was loose (pointed out by the Complainant). The Anaesthetist highlighted that the Complainant had been warned at the Pre-Anaesthetic consultation that teeth could 'come out' during surgery.

He confirmed that the Surgeon had correctly documented (in the Patient's operation notes) that the left front tooth had come out during the surgery.

The Anaesthetist did not recall any post-operative discussion of the tooth nor was there any record of this in the Patient's post operative notes or progress reports to the time of discharge.

The Anaesthetist advised there was a post operative dental damage policy ("Policy") (documents provided) in place but as a service improvement, this would be amended to include that all dental damage (to include milk teeth) would be referred to the on-call dentist. The Dental Department had been advised of this. The amended Policy would be circulated to GHA staff and a copy (standard practice) would be kept in the recovery area of the main operating theatres.

Dentist

The Ombudsman met with the Dental Department and with the dentist treating the Patient. He stated that subsequent to the surgery (13th April 2015) he had first seen the Patient on the 15th July 2015 (three months after the operation) when she attended a scheduled routine appointment. At that visit, the dentist enquired as to what had happened and was informed by the Complainant of the damage caused to the teeth during surgery.

The dentist explained to the Ombudsman that in cases where teeth were damaged as a result of surgery, patients were referred to the Dental Department for attention and that should have been done in the Patient's case. The Ombudsman was referred to the Policy held at their clinic.

By way of information, the dentist highlighted that there are daily emergency clinics for children at the Dental Department at 9:00am.

As to the Complainant's concern about possible damage to the Patient's adult teeth which had not yet appeared, the dentist believed there had been no damage caused but this would be monitored at the check-up appointments.

Ward Staff Nurse

The Ward Staff Nurse recalled that the Complainant had raised the issue of the missing tooth and swollen lip and gum with herself and the Surgeon, so they were both aware that the Complainant was upset. The Ward Staff Nurse advised that the Complainant had been told that this sometimes happens. The Ward Staff Nurse further advised that the Complainant had prior to the procedure also been informed of the possibility of that occurring during the procedure.

The Ward Staff Nurse had checked the Patient's notes prior to the meeting with the Ombudsman and noted that the Patient had a 0 out of 10 pain score and that the Patient had managed to eat some solid food (cereals and fishcake). The Ward Staff Nurse stated that no one foresaw that the situation would give rise to a complaint.

The Ombudsman enquired as to what advice would have been given by the ward nurses to the Complainant if, as she states, the Patient had been in agony during her stay in hospital. The Ward Staff Nurse replied that they would possibly have advised her to contact the Dental Department but highlighted that was not deemed to have been warranted in the Patient's case.

As to whether subsequent to the Patient being discharged the Complainant at some point contacted the ward for advice on where to seek medical attention for the Patient's grievance, the Ward Staff Nurse stated that there was no record of this but assured the Ombudsman that if that had been the case, the Complainant would have been advised to visit the Dental Department.

Conclusions

The Patient went into hospital for a tonsillectomy and the removal of adenoids. Unfortunately during the surgery and due to the 'Davis Boyle mouth gag', one of the front teeth fell out and the other was displaced and pushed to the side, out of its socket. The Surgeon recorded in the Patient notes that a tooth had fallen out but other than that gave no importance to the matter. The Surgeon's record was supported by the Ward Staff Nurse and by the fact that the Patient's notes for the duration of the Patient's stay in hospital provided written confirmation of a 0 out of 10 pain score. Although the Ombudsman does not favour one version of events over the other, the documented evidence reviewed conflicted with the Complainant's statement which claimed that the Patient had been in agony during the stay in hospital.

The Dental Service, MD and Anaesthetist all concurred that the Patient should have been referred to the Dental Service albeit at the time when the events occurred, milk teeth were not included in the post operative dental damage policy (Policy). As a result of this complaint, milk teeth have now been included in the Policy.

Based on the fact that there is a Policy in place on the procedure to follow in cases where dental trauma occurs whilst the patient is under anaesthesia, it was a given that these incidents can happen during surgery. The Anaesthetist confirmed that the Complainant had been warned of that risk, albeit, the concern was in relation to the Patient's loose tooth which after the procedure remained unaffected.

It was indisputable that a tooth fell out during surgery and another tooth was displaced, and the nature of the complaint is that the Surgeon did not address the dental damage post surgery. As stated above, neither the Surgeon nor the Ward Staff Nurse noted that the Patient's situation was of concern. Consequently, no attention was given to the post surgical issues causing the Complainant's grievance, and the Patient was discharged. It was therefore the Complainant charged with the Patient's care who lived through the ten days of suffering until the tooth fell off.

Based upon the findings of this investigation and the accounts from different GHA medical staff concerned, the Ombudsman was satisfied that despite the possibility that the Patient suffered post operative pain, there was no evidence of it having been recorded at the time of the event as claimed. Given that the Patient had been examined by the Surgeon and Paediatrician with no detrimental observations made or recorded, and that additionally the GHA amended its post operative dental policy to include milk teeth, the Ombudsman did not sustain this Complaint.

Classification

Not Sustained

Case Not Sustained

CSHLTH/2105-3

Complaint against the Gibraltar Health Authority ("GHA") in relation to delays by the GHA in fitting orthodontic braces at the Primary Care Centre ("PCC").

Complaint

The First Complainant complained that he had been waiting for over three years for a dental brace to be fitted at the PCC.

The Second Complainant was aggrieved because despite having being initially informed at the PCC that her daughter would have to wait three years to have dental braces fitted, she was subsequently advised that the waiting time had increased to five years.

Both Complainants found the waiting times unreasonable and disproportionate.

Background

[Ombudsman Note: the background is mainly based on the version of events provided by the Complainant, including supporting documentation, at the time of lodging the Complaint with the Ombudsman].

The First Complainant

The First Complainant complained that he had been on a waiting list for dental braces to be fitted for over three years which he considered unreasonable.

He first visited the dental clinic in June 2012 and was told by the dental surgeon that he required dental braces. He was informed that he was going to be placed on the dental braces waiting list and that he would be called in for the procedure. The First Complainant was satisfied with the decision taken by the dental surgeon.

A year elapsed (July 2013) and the First Complainant had not been contacted for the procedure to be undertaken. He telephoned the dental clinic at the PCC for an update. He was allegedly informed by a nurse he spoke to that he was on thirteenth position on the list. The First Complainant asked whether he could be given a specific date for his appointment but no answer was provided.

Another fifteen months elapsed (October 2014) and the First Complainant had still not been contacted for the procedure to be undertaken. He again proceeded to telephone the PCC to make an enquiry and was advised that his position on the list had not changed. When the challenged the fact that how could it have been possible that in fifteen months his position had not progressed, he was informed that the PCC dental clinic had admitted numerous urgent cases, hence the reason why his position had not advanced.

Frustrated with the state of affairs and dissatisfied with the excessive waiting time and lack of duty of care received, the First Complainant filed his complaint with the Complaints Handling Scheme ("CHS") located at St Bernard's Hospital, on the 28th May 2015.

The Second Complainant

The Second Complainant complained to the CHS that the PCC had initially informed her daughter that she would have to wait three years for dental braces to be fitted, only to be subsequently advised that the waiting time had increased to five years. The Second Complainant was aggrieved and could not understand the reason why the waiting time had changed and why it took such a prolonged period of time to have dental braces fitted in Gibraltar. Her daughter was a sixteen year old teenager who was self-conscious by the appearance of her teeth, at a difficult age.

The Second Complainant filed her complaint with the CHS on the 24th June 2015.

Ombudsman note: [The CHS was established in April 2015 as an independent complaints mechanism for the sole purpose of accepting, investigating and resolving complaints lodged by service users against the GHA. The CHS enjoys an arms-length agreement with the Office of the Gibraltar Public Services Ombudsman whereby in the event that complaints cannot be resolved at first instance, the Ombudsman has a discretionary power in law to accept the transfer of a specific complaint, with the complainant's prior consent in writing].

CHS Investigation

The First Complainant

The CHS presented the complaint to the PCC Unit General Manager by letter dated 3rd June 2015. The CHS set out the nature of the First Complainant's complaint and requested the PCC's comments in accordance with the standard complaints procedure in place.

Since no reply was received to the letter presenting the complaint, the CHS proceeded to write to the GHA Chief Executive ("Chief Executive") as per agreed practice, on the 23rd June 2015. The CHS referred the Chief Executive to the agreed deadlines by which the CHS expected replies from GHA departments in order to investigate complaints expeditiously.

That same day, a full and frank reply was received from the PCC. The letter stated that the First Complainant had been initially examined by a dentist in February 2010 (not 2012) and that he had been placed on the orthodontic waiting list. The letter explained that there existed a 1-5 point grading system for orthodontics, with those patients placed on grade 1 requiring little or no treatment whilst those on grade 5, necessitating the greatest need. It was further explained that Grade 1's received no treatment, Grades 2-4 would be placed on waiting lists and Grade 5's would be allocated for immediate treatment.

It was explicitly confirmed that the waiting list was "more than five years long" and that orthodontics represented the largest volume of patients under the care of the PCC. Coupled with follow up appointment dates for patients which stood at twelve weeks, the length of the waiting list was, according to the PCC, evidence that "the dental department cannot cope with the waiting list nor its current volume of patients."

The letter concluded by stating that if and when the department received more staffing resources, the issue with the volume of current patients would be addressed.

Given the nature of the reply received from the PCC, the CHS took the view that the matter would best be brought to the Ombudsman's attention for investigation and subsequent reporting and offered the First Complainant the option of so doing. The suggestion was accepted with the appropriate written consent and waiver forms signed. The complaint was subsequently transferred to the Office of the Ombudsman.

The Second Complainant

Further to lodging her complaint with the CHS, the Second Complainant emailed the CHS to inform them that she had made enquiries at the PCC and it had been confirmed to her, that her daughter was in position 215th on the dental braces waiting list.

The CHS promptly replied to the Complainant and advised her that another complaint (the First Complaint) had been transferred to the Ombudsman. Since the Ombudsman was about to launch an investigation into that complaint and given the similarity between complaints, The CHS suggested that the Second Complainant could also consider the possibility of the Ombudsman investigating her grievance.

The Second Complainant immediately accepted the suggestion. The Procedural transfer requirements (consent and waiver forms) were subsequently completed and the complaint was duly transferred and accepted by the Ombudsman.

Ombudsman Investigation

As a result of the similarities between the complaints received, the Ombudsman decided to finalise the investigation and report on both matters jointly.

The Ombudsman wrote to the Chief Executive explaining that both complaints had been transferred by the CHS for the Ombudsman to investigate and report on. The nature of the complaints, (that they related to orthodontic waiting times), were set out, as was the chronology of correspondence, culminating in the PCC's letter to the Ombudsman dated 23rd June 2015. The Ombudsman invited comments from the Chief Executive relating to the PCC's confirmation that the waiting list was "more than five years long" and "if/when the department receives more resources in terms of staffing then we would be able to address the volume."

The reply received from the Chief Executive stated that the PCC was indeed correct in confirming that the waiting time for those patients on the list was excessive and, that waiting times were allocated by priority ie, from routine to urgent depending whether the treatment required (if any) related to a clinical or cosmetic issue (Grades 1-5). The Chief Executive confirmed that the GHA were looking at ways of increasing the sessions to reduce the list but that at present, there was no immediate solution to the problem.

Conclusions

Although the Ombudsman noted the Chief Executive's comments and the fact that the GHA were exploring ways to alleviate waiting times, he remained dissatisfied with the position as it stood. It was the Ombudsman's view that basic dental care insofar as orthodontic services were concerned, was not being provided to the service user (and tax payer). Service users were entitled to a good standard of healthcare delivered within a reasonable timeframe. Despite the difficulties faced by the GHA insofar as the dental clinic was concerned, the Ombudsman found that the basic standard of dental care and the duty of care which was intrinsic to it, was not being met by the GHA, at the very least, from an administrative standpoint. It appeared that service users would have to accept the excessive waiting times as a fait accompli and wait their turn. This, the Ombudsman found, was administratively unsatisfactory.

Despite this, the Ombudsman was grateful to the GHA for the frankness of its replies and explanations received. There clearly existed a grave issue with the excessive waiting times, which, on the GHA's own admission, they were acutely aware of and were exploring ways to alleviate. The Ombudsman opined however that it was necessary to find a solution as a matter of GHA priority in the interest of patients.

On the basis of the Ombudsman's "what happened and what should have happened" principle as the yardstick of good administrative practice, the Ombudsman could only find that despite the First Complainant and Second Complainant not requiring emergency treatment, the amount of time expected of them (and invariably of many other service users) to wait, was unreasonable and fell short of good administrative practice.

The Ombudsman was well aware of the numerous pressures to which the GHA was subject, however with a view to attempting to somehow resolve the very serious issue, he would be recommending that the orthodontic clinic within the PCC be supported with extra resources and staff (budgetary constraints allowing).

Classification

First Complainant- not sustained.

Second Complainant- not sustained.

The Complaints are not sustained on the basis that GHA staff were unable (given the limited resources and explanations received) to decrease the First and Second Complainants waiting times.

Given the public interest aspect to these complaints, the Ombudsman would be making recommendations to the CEO and Minister for Health in order to improve the current service.

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Case Not Sustained

CSHLTH/2015-4

Complaint against the Gibraltar Health Authority ("GHA") due to the fact that the General Practitioner ("GP") (providing medical care to residents at the Care Agency's Elderly Persons Residence ("Home") where the Complainant's mother ("Mother") resided) refused to refer her to the GHA's Ophthalmic Unit

Complaint

The Complainant was aggrieved because the GP providing medical care to residents at the Home had refused to refer her Mother to the GHA's Ophthalmic Unit.

Background [Ombudsman Note: The background is mainly based on the version of events provided by the Complainant, including supporting documentation, at the time of lodging the Complaint with the Ombudsman

The Complainant explained that her Mother had been admitted to the Home in June 2013. By way of background, the Complainant stated that after a few months she noted her Mother's behaviour had made a turn for the worse and when she asked the Team Manager at the Home was told that the GP had removed and changed some of the medication. The Complainant blamed the change in the Mother's behaviour to the changes in the medication and especially on the removal of a particular drug which her Mother had taken for the past thirty years to help with anxiety problems.

The Complainant explained that the Mother had suffered trauma as a child (during World War II whilst living in London during the evacuation of Gibraltarians) and subsequently suffered from anxiety for the rest of her life. In order to alleviate the Mother's situation, the Complainant made representations to a senior GHA doctor and his team for the reinstatement of the medication and claims that when this was done the Mother's behaviour improved. [Although this is not the basis of the Complaint this incident seemed to sow the seed of mistrust between the Complainant and the GP].

The nature of the Complaint is that the GP refused to refer the Mother to the GHA's Ophthalmic Unit. The Complainant stated that her Mother had for years suffered from double vision and had used glasses to correct the condition. The Complainant explained that the frame of the Mother's glasses had broken and that these were sent for repair (by staff at the Home). When these were returned, the Home was advised by the optometrist that the glasses were old and frail and would continue to break and as such it would be advisable for the Mother to get new glasses. The Complainant contacted the GHA Records Department in order to obtain the Mother's last prescription in order to purchase new glasses but was told she needed written authority from her Mother. The Complainant stated that her Mother suffered from advanced Alzheimer's and was no longer able to produce a signature. The Complainant was advised to obtain a referral from the GP for the Mother to have an eye test.

The Complainant asked staff at the Home to contact the GP to obtain the referral but on enquiring a few days later was informed that the GP would not refer the Mother; no reason for the refusal was given.

The Complainant was very concerned at the decision as she felt this could be a money saving practice due to the Mother's age or due to the fact that the Mother was no longer walking by herself, reading or watching television.

Although the Complainant, via representations made to staff at the Minister for Health's Office, finally obtained an appointment for her Mother to be seen at the Ophthalmic Unit, she remained very aggrieved at the GP's decision.

The Complainant brought the complaint to the Ombudsman in order to find out the basis on which the GP had made the decision not to make the referral. Furthermore, due to the fact that this was the second occasion on which the Complainant had gone against the GP's decision she felt it was appropriate to lodge an official complaint which would clarify what had happened.

Investigation

The Ombudsman wrote to the Medical Director ("Director") presenting the Complaint and requesting his comments.

A response was received from the GP via the Director. The GP provided background information on the Mother's medical condition and stated that the Mother was at the end stage of dementia. The GP explained she was having problems swallowing which affected her eating, drinking and taking medication and, as the Complainant had stated, did not even recognize her daughter. [Ombudsman Note: The Complainant disputed this and stated that her mother ate and drank perfectly albeit spat out medication].

Regarding the decision not to refer the Mother for an appointment with the Ophthalmic Unit, the GP stated that the staff nurse at the Home had approached her with the request and she had carried out an assessment. The GP found the following:

(i) The Mother spent most of the day sitting (in the shared living room) albeit very often trying to stand up thus needing constant supervision due to the risk of falls;

(ii) She was unable to answer questions and lacked capacity to make decisions;

(iii) She needed the assistance of two carers to be able to walk;

(iv) She needed to be fed;

(v) She could not read or watch television;

(vi) Did not recognize anyone in her family;

(vii) Took a lot of medication to calm her down.

On evaluating the above, the GP did not consider it necessary or appropriate for the Mother to have an eye check and new glasses. Furthermore, the GP felt that due to the Mother's high level of restlessness, taking her out of from the everyday environment (the Ophthalmic Unit was located in the local hospital, about a ten minute drive from the Home) could be detrimental. Although he agreed with the GP from a clinical point of view, the Medical Director felt that the GP's response could come across as being somewhat tactless.

For completeness of records, the Ombudsman met with the Orthoptist at the Ophthalmic Unit to determine whether despite the Mother's condition they were still able to carry out the eye test required to prescribe glasses and whether the glasses helped the Mother to see better.

The Orthoptist explained that the Mother had double vision and blurred vision. The Optometrist undertook the examination for the latter condition, whilst the Orthoptist carried out the tests for the double vision. The glasses that were finally prescribed were the result of both consultations and it was the Optometrist who issued the glasses.

The double vision test required that different lenses be placed and adjusted in front of the eyes and throughout the testing, the patient would tell the Orthoptist what they could see. The Mother was unable to give feedback to the Orthoptist due to her condition so the maximum prescription for the glasses was issued, based on the prescription she was given in 2011 at which time she could still provide feedback during the examination.

The Orthoptist's view was that although there was no objective response from the Mother to state that her double vision and blurred vision had been completely resolved with the new glasses, it was hoped that there would at least be some improvement with the glasses. Regarding the Optometrist's examination, she found a significant change to the spectacle prescription and as such expected that would result in an improvement of vision, despite the fact that they were unable to get a subjective measure of her vision level. The Optometrist advised that the improvement would be dependent on the presence of 'media opacities' (e.g. cataracts) and/or other existing ocular disease/s but explained that they were unable to check this as the Mother's family did not want to cause her distress by having to undergo further tests. So in conclusion, the Optometrist stated they lacked information to be able to predict a significant improvement to the Mother's vision with the new glasses, since although this would be expected from the level of prescription found, the improvement could be masked by cataracts or retinal aging/disease which could be detected by checking the retinas.

The Optometrist advised that if the family wanted them to carry out those checks they were willing to see the Mother again. [Ombudsman Note: The Complainant does not want to put her Mother through an operation].

Conclusions

The Complaint brought to the Ombudsman was that the GP had refused to refer the Mother to the Ophthalmic Unit and not provided reasons for the refusal.

The Ombudsman's investigation found that the GP had refused the referral because she did not consider it necessary or appropriate for the Mother to have an eye check and new glasses and because due to the Mother's high level of restlessness, taking her out of the Home to the Ophthalmic Unit could be detrimental.

The GP's refusal led the Complainant to believe that:

(i) The Mother might be a victim of ageism;

(ii) The GP was retaliating due to the Complainant having gone against the GP's decision on the first occasion.

Notwithstanding the non-referral, the Complainant, via the Minister's Office was able to arrange an appointment for the Mother to be examined at the Ophthalmic Unit. The information provided by the Ophthalmic Unit concludes that the spectacles prescribed after the examination (for blurred vision) should improve the Mother's vision but add that the improvement could be masked by cataracts or retinal aging/disease. Regarding the double vision, the Ophthalmic Unit had issued the maximum prescription based on what she was given in 2011 at which time she could still provide feedback during the examination but because the Mother could not express herself it could not be determined if the problem had been resolved with the new glasses but it was hoped there would be some improvement.

Due to the Mother's late stage Alzheimer's and not being able to express herself, the Ophthalmic Unit were only able to do the best they could with what they had. This to some degree is what the families of persons afflicted by Alzheimer's do on a daily basis; they need to second guess the needs of the patient; whether the person is cold or hot, hungry or thirsty, comfortable or not, and this task falls on family members, especially on those who have been closest to them and know them so well. That is the case with the Complainant. She is her Mother's carer and all she can do is try and keep her Mother comfortable and have her dignity to the end. The Mother had always had glasses and because she has Alzheimer's does not mean that the Complainant was going to give up on her having the best quality of life she could help to provide. If there was a slight possibility that the Mother could see better with the glasses, the Complainant had to achieve that.

The GP's decision not to refer the Mother to the Ophthalmic Unit for replacement of the glasses was in all probability technically correct, however the investigation shows that no reason was given to the Complainant for this decision and additionally, there appeared to have been a lack of sensitivity (or tact) at the time of taking the decision. Quite apart from any medical considerations, this was a social matter affecting the Mother's perceived well-being by her daughter, the Complainant, and the rest of the family. This lady had always worn glasses because she suffered from double vision.

When carrying out an investigation, the Ombudsman must limit himself to factual information. In this instance, that fact was that the GP's diagnosis was in all probability correct. However, it is also a fact that the Mother (allegedly after the intervention of the staff at the Minster for Health's office) finally obtained an appointment for her Mother to be seen at the Ophthalmic Unit. Additionally, the comments provided by the Ophthalmic Unit showed that it was highly probable that it was not a futile exercise. The Ombudsman cannot sustain this complaint as, notwithstanding other considerations, the GP's diagnosis is in all probability correct.

There is no doubt in the Ombudsman's mind that the elderly of the community are very well cared for in the different facilities available for them, however he urged those entrusted with the care of the elderly of our community (including the close relatives of those in care), who at times can be very vulnerable for a myriad of reasons, to be always alert and conscious of their needs and to take account of the social fabric of our society.

Classification: Not Sustained

Case Sustained

CSHLTH/2015-9

Complaint against the Gibraltar Health Authority ("GHA"), in relation to the medical treatment afforded to the Patient during her admission at St Bernard's Hospital Gibraltar.

Complaint

The Complainant was aggrieved by the way the Patient (his wife), who was fifty six years old, was treated during her stay at St Bernard's Intensive Care Unit ("ICU") and lodged a complaint to that effect. The Complainant had requested an explanation of the medical decisions taken during the Patient's first six days at the ICU. His complaint was twofold:

That there was a lack of review/alleged lack of interest by the consultant ("the Consultant") concerned, and the Complainant was aggrieved with the decisions taken during the Patient's care;
The failure to provide intravenous fluids for six consecutive days.

Background [Ombudsman Note: The background is mainly based on the version of events provided by the Complainant, including supporting documentation, at the time of lodging the Complaint with the Ombudsman]

The Complainant explained that on the 13th November 2014, the Patient was referred to Accident and Emergency ("A&E") by her General Practitioner ("GP") due to her symptoms. A&E staff informed the family that it was likely that the Patient would require a pacemaker. She was subsequently admitted to the ICU where she was placed on an external pacemaker to alleviate her problems. The Complainant further explained that at around 1pm the following day, the Patient had a CT scan where the Consultant assigned to the Patients care together with a separate doctor, informed the family that the scan had revealed a massive tumour in the left lung which was infiltrating the bottom part of the heart. The Complainant further claimed that the Consultant informed him and his daughter, that the prognosis was very poor and that the Patient only had "a matter of hours" to live. The Complainant also alleged that the Consultant explained that surgery would be impossible due to the location of the tumour, and the possibility of a biopsy would only serve to provide accurate medical information, with no bearing on the consequences which would inevitably follow.

On the 15th November 2014, the Complainant claimed that the Consultant instigated "end of life" care without any further investigation into the Patients case. The Complainant again repeated the Consultants assertion that the Patient would die soon and commented that he had stated that there was no need to administer IV saline fluids, so as not to prolong suffering. It was in the Consultant's opinion, best to let nature take its course.

Given that three days elapsed and the Patient was still alive, the Complainant and his family requested that the CT scan be sent over to the Royal Marsden Hospital in London for a second opinion as they believed that the Consultant had "given up too soon".

Six days after having instigated end of life care, the Patient was still alive. The family demanded that IV saline fluids be administered as soon as possible. The Complainant explained that as soon as fluids were reinstated and the painkillers and sedatives wore off, the Patient slowly regained consciousness and began to respond to verbal stimulus. The Complainant claimed that within twenty four hours her condition improved.

Since the Consultant had allegedly taken no interest in the Patient's condition and had given up on her recovery, the Complainant requested that another doctor be assigned to her care. At the time of lodging his complaint (April 2015) (five months after the administering of end of life care), the Patient was still alive and in receipt of treatment for her tumour which had, since then, reduced considerably in size.

The Complainant lodged his complaint with the Complaints Handling Scheme ("CHS") on the 29th of April 2015. He was of the view that his family should not have gone through the ordeal of having to say goodbye to a loved one without medical staff having been sure of her prognosis, and without having exhausted all possible avenues of treatment/recovery.

Ombudsman note: [The CHS was established in April 2015 as an independent complaints mechanism for the sole purpose of accepting, investigating and resolving complaints filed by service users against the GHA. The CHS enjoys an arms- length agreement with the Office of the Gibraltar Public Services Ombudsman whereby in the event that complaints cannot be resolved at first instance, the Ombudsman has a discretionary power in law to accept the transfer of a specific complaint, with the Complainant's prior consent in writing].

Investigation

<u>CHS investigation/review</u>

The CHS presented the complaint to the GHA on the 8th May 2015 setting out the facts as alleged by the Complainant and requesting their comments.

The information received in reply (a statement from the Consultant dated 19th June 2015), explained the chronology of events, the Patients medical circumstances and the action taken. The letter refuted the Complainant's allegation that fluids were not administered for six consecutive days in intensive care, although there was an admission that the documentation in existence did not reflect that fact. In relation to his clinical decisions taken at the time, with which the Complainant was also aggrieved, the Consultant stated that the decisions were "the best possible at that stage" and that care from his point of view was "optimum". The Consultant also expressed his disappointment at the fact that the Complainant's family had requested that her care be transferred to another consultant at a time when the Patients "had improved and her condition diagnosed."

Given the complex issue involved and the Consultant's statement, the CHS took the view that they could not resolve the issue at first instance. As a result, they suggested that the Complainant transfer his complaint to the Office of the Ombudsman for investigation. The Complainant agreed. Once all the relevant consent and waiver of confidentiality forms had been executed, the Ombudsman took custody of the Complainants file and initiated his own investigation.

Ombudsman Investigation

The Ombudsman reviewed all the correspondence, medical notes and documentary evidence contained within the GHA files. Given that the matters being complained against were clinical in nature, the Ombudsman prepared a case file and dispatched it, together with a request for independent expert advice, to the United Kingdom. Given the initial (detrimental) view reached by the specialist adviser assigned to this complaint, a second medical opinion over matters raised was suggested. The Ombudsman agreed with that suggestion and a further opinion was sought.

The questions presented to the experts by the Ombudsman, and the responses received (summarised for the purposes of this report) were:

1. On the basis of the symptoms the patient presented, were the appropriate medical tests conducted and if so, were the results properly interpreted by the Consultant?

Partly. The Patient was correctly admitted and diagnosed although the dosage of treatment given was far too low a dose.

2. Is the adviser able to ascertain whether IV Saline fluids were not administered during the end of life care, as alleged by the Complainant?

The advisers concurred in being unable to determine the answer to the question because there were few fluid charts for their review. They did both state however that in the fluid charts that had been made available there was no evidence of significant amounts of fluids administered (unless the hospital was able to provide documented evidence to the contrary). The second adviser also stated that in his view, the provision of fluids was "inadequate".

3. Is the adviser of the opinion that in consequence of the test results and the Patient's condition, the decisions taken by the Consultant and the treatment which ensued were right, proper and/or reasonable in the circumstances (as stated by him) and in accordance with standard/established practice or guidelines?

Both advisers firmly opined that the Consultants decisions were not right/proper/reasonable.

The first adviser commented that *"whilst it is always difficult to diagnose death and dying, it is not at all clear that [the Patient] approached this state. There are no observation charts in the notes which suggest she was critically unwell and a point shortly before palliative care drugs were started her observations and blood results were entirely reasonable (save for a slow heart rate).She had an immediately reversible condition which, had in all likelihood, not been properly treated."*

The expert suggested that the patient should have been involved in decisions affecting her treatment. "*Decisions are then made without her consent or knowledge to essentially stop her treatment and give drugs to stupefy her."* This, the expert stated, contravened a number of medical standards.

"Good Medical Practice, March 2013, GMC states;

"Work in partnership with patients. Listen to, and respond to, their concerns and preferences. Give patients the information they want or need in a way they can understand. Respect patients' right to reach decisions with you about their treatment and care".

According to the expert…"*there is little evidence that this took place at any point in the admission."*

It also states that doctors must "*provide a good standard of practice and care. Keep your professional knowledge and skills up to date. Recognise and work within the limits of your competence."*

The expert questioned the Consultants expertise to interpret the scan results and its consequences. *"The fact the patient survived after surgery and underwent successful palliative chemotherapy suggests he did not."*

The expert also stated that "*whilst we can all make mistakes, failing to recognise and reflect on such mistakes when they are pointed out is concerning. In the UK it would be standard practice for such findings to be discussed within a multidisciplinary team consisting of the pooled expertise of respiratory consultants, oncologists, radiologists and palliative care specialists before reaching definitive conclusions to minimise the chance of this sort of mistake.*"

The expert further stated that care in this case *"centres on the decision that death here was rapidly inevitable from the point that the tumour was discovered, and that care should be given to ensure that it was as comfortable as possible. That principle is absolutely fine assuming the initial decision is correct, however in this case, it was not. The Consultant should have consulted early on with experts more used to dealing with such cases before reaching this conclusion. There is no evidence of discussion."*

Decisions made should, according to the experts, also have been discussed with the Patient especially as she was mentally competent. There is even an English Supreme Court judgement *"which is contravened"* by the failure to have communicated decisions to the Patient.

The second expert concurred with the first expert's views in relation to the third question which had been posed by the Ombudsman. He agreed that the decisions taken by the Consultant and the treatment which ensued were not proper or reasonable.

"The summary decision made on the basis of the x-rays to commence end of life care was hasty and rash. No attempt was made to assess the extent of the tumour, nor was a referral made to the specialists in this area, namely a Respiratory Physician or an Oncologist (which would have been the right thing to do). It was inappropriate for a General Physician to make such a life-terminating decision without due consideration of all available options. Palliative care was instituted, with increasing doses of sedation. Fortunately, thanks to the family's insistence, the patient was taken off sedation, made a quick recovery and went on to successfully have chemotherapy, to which the cancer responded."

"The impact of the medical failings was the considerable anxiety and suffering experienced by the Patient and the family. However, the ultimate outcome would not have been affected (even if prompt referral had resulted in chemotherapy being started two weeks earlier), given that the Patient made a good recovery."

Conclusions

Both medical experts arrived at the same conclusion after their analysis of the medical facts leading to this complaint.

One expert commented… *"there is no documented discussion with the Patient anywhere in the notes. No attempt is made to ascertain her wishes or to inform her of her diagnosis or the decisions being made about her. This is completely unacceptable care."…."the failure to involve the Patient in those decisions was concerning beyond all measure."*

"Fortunately, the family insisted on stopping sedation and seeking a second opinion, which happily led to a good outcome." [The Patient did receive successful chemotherapy treatment and survived for approximately one year thereafter].

The remaining expert stated that "*the decision to label the [Complainant] as a dying patient, secondary to terminal cancer, and instituting end of life care within a day of admission, without exploring treatment options and without consulting the appropriate specialists, was unacceptable and indefensible…"*

Deep concern was also expressed by the lack of reflection from the Consultant who, in the experts' view, "surely cannot believe, given the actual outcome for the patient, that with hindsight he made the correct decision in this case?"

Based upon the expert advice received the Ombudsman had no difficulty in sustaining both limbs of the complaint.

1. That there was a lack of review/alleged lack of interest by the doctor concerned and the Complainant was aggrieved with the decisions taken during the Patients care- **Sustained**

2. Failure to provide intravenous fluids for six consecutive days- **Sustained**

Recommendations

Given the seriousness of the complaint, the experts deemed it appropriate to make the following recommendations. Said recommendations were adopted by the Ombudsman and would be formally submitted to the Minister for Health for his review and action:

1. That a significant audit of end of life care within this department at St Bernard's Hospital is undertaken by an external agency and that the Ombudsman report and that audit, are shared with the relevant regulatory bodies with oversight for healthcare in Gibraltar.

2. That the findings of the experts' reports be highlighted to the responsible officer for the doctors involved in this complaint- irrespective of where they may work now- and that this feeds into their appraisal process. The Consultant in particular, should reflect on the contents of his letter (19th June 2015) - the fact that he can see nothing wrong with the decisions and treatment concerning this lady's care, and his indignation at the involvement of another clinician at the family's request. Blaming the Patient's family for violating his trust in the circumstances is nothing short of disgraceful and shows a breath taking lack of insight and empathy. There was also concern at the apparent ease with which large doses of sedatives were administered by junior staff and specialist nurses without a clear indication for such a treatment.

Update

After having made the experts' reports and recommendations available to the GHA Chief Executive, the Chief Executive confirmed to the Ombudsman that a meeting had been scheduled between the Medical Director ("MD"), Medical Lead ("ML") and himself to share the report and findings.

Additionally, he made the following comments with which the Ombudsman was satisfied:

1. The complaint was to be shared and discussed at the GHA Clinical Governance Group, especially under the agenda of morbidity and mortality.

2. MD and ML to share the case with physicians for the purpose of establishing learning outcomes and encourage best practice.

3. MD and ML to meet with the named Consultant referred to in this complaint in order to highlight the findings and recommendations with a view to encourage learning and reflective practice.

4. A copy of the Ombudsman's report will be provided to the Chairman of the Gibraltar Medical Registration Board. The Board will take a view of reporting the case to the General Medical Council ("GMC"). At present the GMC is not the regulatory body for doctors practicing in Gibraltar (although this will change in the very near future).

5. Both the Responsible Officer and the Consultant's Appraiser will be informed so that this complaint forms part of the Consultant's next appraisal.

6. MD to undertake a review of how junior medical staff are administering sedatives. (The Ombudsman further requested that progress/feedback or any policy decisions made on this point be made available to him).

7. Encourage good medical practice/implement policy with respect to patients placed on DDNR or on a Palliative care Pathway. This needs prior discussion and consent from the patient/next of kin/family.

Proposal to increase the number of palliative Care Nurses has already been submitted and will be done again for the present financial year.

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ROYAL GIBRALTAR POST OFFICE

Case Partly Sustained

CS/1084

Complaint against the Royal Gibraltar Post Office ("RGPO") for failure to reply to the Complainant's letter of complaint and for the lack of feedback and continuous delays in providing information regarding whereabouts of mailed package. Furthermore, insurance for mailed package allegedly mis-sold by RGPO.

Complaint

The Complainant was aggrieved due to various complaints arising against the RGPO:

(i) Non-Reply to his letter of complaint to the RGPO dated 11th December 2014;
(ii) Lack of feedback & continuous delays in providing information regarding whereabouts of mailed package;
(iii) Insurance for mailed package mis-sold by RGPO.

Background [Ombudsman Note: The background is mainly based on the version of events provided by the Complainant, including supporting documentation, at the time of lodging the Complaint with the Ombudsman]

The Complainant stated that on the 14th March 2014 he sent via the RGPO, a mobile telephone ("Phone") back to the manufacturer in Hong Kong but it never reached its destination.

The Complainant explained that at the time of mailing the item he requested the RGPO's tracking service due to the high value of the item. He claims that the RGPO officer who attended to him advised that the tracking postage system would be sufficient as the item could be tracked all the way. The Complainant added that at no point was there any discussion regarding the value of the item and the compensation (or lack of) in the event that the item got lost. The tracking system provided a tracking code which enabled the sender to monitor the location of the item via the RGPO website.

According to the Complainant, weeks after mailing the package and not having arrived at its destination, his wife visited the RGPO offices to report the matter and was advised that the RGPO would enquire and revert back to her. The Complainant stated that did not happen and it was they who had to chase the RGPO for information.

In June 2014 the Complainant emailed the RGPO and informed them that the item had not been received. He requested a 'comprehensive update' on the whereabouts of the package as the tracking system showed its status as 'In Transit'.

The RGPO informed the Complainant that they had contacted Royal Mail who had no information, other than that the item had arrived in the United Kingdom ("UK") on the 17th March 2014. Royal Mail had advised the RGPO that the Complainant should complete a claim form accompanied by a copy of the certificate of posting (which contained the tracking number details) and a copy of the claim form was duly forwarded by the RGPO to the Complainant. The latter complied with the instruction and was informed that the claim form would be forwarded to the 'Line Manager'. The Complainant requested updates on developments and/or timescales and was informed by the RGPO that claims took time and that until Royal Mail responded to the Line Manager there would be no updates. Notwithstanding, between June and October 2014, the Complainant regularly emailed the RGPO office for information but was advised on each occasion that they had no information, until on the 15th October 2014 (further to an email from the Complainant) the RGPO officer advised that Royal Mail had informed the Line Manager that they had never received the item although the system revealed the contrary. The Line Manager would await further information from Royal Mail and a response from Hong Kong Postal Services.

On the 10th December2014, no further information having been provided by the RGPO, the Complainant made a formal complaint to RGPO's Customer Services about:

(i) Their lack of feedback and continuous delays in providing information on the lost item;

(ii) Insurance for the posted item having been mis-sold as the compensation on offer was poor and unacceptable to him.

Not having received a reply by the 20th January 2015, the Complainant lodged his Complaints with the Ombudsman and included a complaint of non-reply.

Investigation

In the course of his investigation, the Ombudsman both corresponded and met with RGPO and perused copies of emails between the two parties. Regarding the tracking system, the RGPO explained that only around forty countries worldwide offer this service parallel to the registered mail service. The process beginning when the item of mail is collected from the RGPO counter and leaves Gibraltar and ending with a signature on delivery.

In reference to the Complainant's case, the Ombudsman enquired as to why the RGPO's tracking system in relation to the Complainant's item of mail still showed as 'In Transit' (over a year after having been mailed) and was described as being a letter/document. RGPO explained that unless the item reached its destination the status would not change.

Subsequent to the Complainant having contacted RGPO by email on the 4th June 2014, in relation to the mail item not having arrived at its destination, the RGPO requested that the Complainant complete a claim form which he submitted that same day. The procedure followed by the RGPO from then on was as follows:

06.06.14 RGPO informed Royal Mail that the item of mail had not been received.

06.06.14 Royal Mail advised that RGPO contact Hong Kong to identify if they had received the item but enquired about the exact description of the contents, particularly on the batteries for the device, i.e. whether the battery was in the Phone, separate from the Phone or not in the package at all.

From then on there was a six month time lapse whilst the RGPO awaited information from Hong Kong. On the 16th December 2014 Hong Kong finally confirmed that the item had not been received. RGPO passed the information on to Royal Mail and the item was declared lost. Notwithstanding, because RGPO did not respond to Royal Mail's enquiries in relation to the Phone battery, Royal Mail refused liability. [Ombudsman Note: During the 'waiting period' the Complainant made numerous requests for updates but none were available. The RGPO should have availed themselves of the opportunity to ask the Complainant about the Phone battery]. The RGPO informed the Ombudsman that lithium batteries (Phone battery) were a prohibited import in many countries. In March 2014 (the time when the Complainant mailed the Phone and battery) the RGPO's Postal Counter instructions on lithium batteries was that they could be mailed, when in fact the reverse was the case. RGPO management were not aware of this and the Phone and battery were mailed out. RGPO believes that under those circumstances, Royal Mail in all probability disposed of the Phone which was by then classed as 'dangerous goods'. RGPO added that sometimes, Royal Mail would write before disposing of an item but on many occasions that did not materialise due to the high volume of items being disposed of.

(i) Non-Reply to his Letter of Complaint to the Royal Gibraltar Post Office ("RGPO") Dated 11th December 2014

The RGPO did not address the issues raised in the Complainant's letter of Complaint. Their response was to send compensation payment of £21- (the amount stipulated by the RGPO's insurance scheme and what applied to items of mail weighing between 0 and 2 kg). The Complainant returned the payment as he disagreed with the amount of compensation and how the entire matter had been dealt with by the RGPO.

It was on the 28th April 2015 that the RGPO emailed the Complainant apologising for the late reply and advising him that the matter was being dealt with directly with the Ombudsman's Office.

(ii) Lack of Feedback & Continuous Delays in Providing Information Regarding Whereabouts of Mailed Package

The issues regarding the lack of feedback and the delays in providing information to the Complainant have been dealt with in the investigation above. Notwithstanding, on inspection of the email trail between the RGPO and the Complainant, the RGPO appear to have reacted and made enquiries only after being pressed by the Complainant.

The RGPO do not seem to have a follow up system at their end with regards pursuing responses from countries who are outside the tracking system scheme which Hong Kong appears not to be a part of.

(iii) Insurance for Mailed Package Mis-sold by RGPO

The RGPO explained that the compensation values were displayed on a notice board in the RGPO public lobby. The compensation rates (at the time of writing this report) being as follows in respect of items sent by registered mail:

Documents 0 to 2 KG £21-
Parcels 0 to 5 KG £26-

The RGPO stated that it was the customer's responsibility to ensure that the item being mailed was not restricted or prohibited in the country of destination. It was also in their view, the customer's responsibility to check compensation levels before sending an item. Notwithstanding, RGPO staff inform and advise customers of prohibited goods and compensation levels before sending an item.

Regarding insuring the item, the RGPO believed no insurance company would have insured the Phone being mailed by the Complainant.

Notwithstanding, taking in good faith that the CN22 (customs document completed by the Complainant containing description and value of item) was completed appropriately, the RGPO offered to pay £299.53 to the Complainant being the value of the Phone plus £9.54 postage charge. This was accepted by the Complainant.

Conclusions

(i) Non-Reply to his Letter of Complaint to the Royal Gibraltar Post Office ("RGPO") Dated 11th December 2014

The Ombudsman found maladministration in the manner in which the RGPO dealt with this issue. The RGPO upon receipt of the letter of Complaint should have adequately responded to his grievances. Instead, the action taken by the RGPO was to send a payment of £21- for compensation of the loss of the item which was worth approximately £300-.

(ii) Lack of Feedback & Continuous Delays in Providing Information Regarding Whereabouts of Mailed Package

The RGPO failed in not having responded to Royal Mail's enquiry regarding the Phone battery. RGPO should have contacted the Complainant and obtained the pertinent information on this issue. Furthermore, by the RGPO's own admission, they were unaware at the time when the Phone was mailed, that the Phone battery was a prohibited import in many countries, including the United Kingdom (transit point) where in the RGPO's view, the Phone and the Phone battery must have been destroyed. Should the RGPO have obtained the information on the Phone battery from the Complainant, Royal Mail would have informed RGPO of how the packet would have been dealt with, i.e. confirm that it had been disposed of.

The information from Hong Kong Mail not having been received until six months after the initial enquiry contributed to the delay but as mentioned above, it was the RGPO's failure to provide the information on the Phone battery that held the key to an early resolution.

The Ombudsman therefore finds maladministration on the part of the RGPO in this Complaint.

(iii) Insurance for Mailed Package Mis-sold by RGPO

The Complainant believed that the tracking system was very reliable and as such did not give consideration to the compensation issue in the event that the Phone was lost. He believed that the item would be tracked at all times and as such had no doubt that it would arrive at its destination. As explained above, the issue of the Phone battery which both the RGPO and the Complainant were unaware of at the time of mailing the item, arose, and the Phone never arrived in Hong Kong.

The reason given by the RGPO for the high compensation offered to the Complainant states that this was done on the premise that the Complainant appropriately completed the CN22. The Ombudsman was satisfied that the Complainant had been duly compensated for his loss, however he has to highlight that the compensation offered is above the RGPO's own compensation scheme.

The Ombudsman does not find maladministration in this Complaint. He does not believe that the Complainant was mis-sold insurance for the Phone but rather that the Complainant was negligent in not having informed himself on the compensation levels offered by the RGPO in the event of the item being lost.

Classification

Non-Reply to his Letter of Complaint to the Royal Gibraltar Post Office ("RGPO") Dated 11th December 2014 – Sustained

Lack of Feedback & Continuous Delays in Providing Information Regarding Whereabouts of Mailed Package – Sustained

Insurance for Mailed Package Mis-sold by RGPO – Not Sustained

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HOUSING AUTHORITY

Case Partly Sustained

CS/1066

Complaint against the Housing Authority

1 **Complainant unhappy that the Complainant had been unable to exchange her Government rented f lat due to the Housing Authority not assisting in allocating a separate flat to the son of the other tenant involved in the exchange;**

2 **Alleged that the Housing Authority recently reallocated a tenant with her family to a larger Government rented flat but allowed the tenant's eldest son to remain in the original flat**

Complaint

The Complainant was aggrieved because she had been unable to exchange her Government rented flat due to the Housing Authority not assisting in allocating a separate flat to the son of the other tenant involved in the exchange.

The Complainant was further aggrieved because she was aware that the Housing Authority had recently reallocated a tenant with her family to a larger property but on that occasion allowed the tenant's eldest son to remain in the original flat. This further compounded the grievance because that same criteria had not been applied to the Complainant's request for an exchange.

Background [Ombudsman Note: The background is mainly based on the version of events provided by the Complainant, including supporting documentation, at the time of lodging the Complaint with the Ombudsman]

The Complainant explained that she and her husband lived in a 3RKB flat (two bedrooms, living room, kitchen and bathroom) with their three daughters and that their living conditions were very cramped. The Complainant stated that she was in the Housing Authority's Waiting List for a 4RKB (their entitlement) and in the Housing Authority's Approved Exchange List ("Exchange List"). The Complainant claimed she had identified a 4RKB property whose tenant was willing to downsize, on the condition that the Housing Authority allocated an individual flat to her 36 year old Son (entitled to a 1RKB) who presently lived with her.

The Complainant approached the Housing Authority with the request but that was refused and so the exchange fell through.

The Complainant was very frustrated that the Housing Authority would not assist her especially because she was aware that they had recently allowed the eldest son of another tenant to remain in the family home whilst the family was reallocated to a larger Government rented flat.

In May 2014, the Complainant wrote to the Minister for Housing to enquire why the Housing Authority were unwilling to assist her to resolve her overcrowding issues when they had in effect allocated a flat to the eldest son of another tenant who in her knowledge was not eligible for the said flat. The flat in question was a 3RKB and the son was only entitled to a 1RKB. The mother and the rest of the family moved to a 4RKB whilst the son remained in the family home, a 3RKB.

Not having received a response to the above, the Complainant lodged her complaints with the Ombudsman.

Investigation

The Ombudsman met with the Housing Authority in relation to both complaints.

Complaint (i)

Unhappy that she had been unable to exchange her Government rented flat due to the Housing Authority not assisting in allocating a separate flat to the son of the other tenant involved in the exchange

The Housing Authority informed the Ombudsman that in December 2013 after including her youngest daughter in the tenancy, the Complainant was placed on the 4RKB Government Housing Waiting Pre-List where she would remain for one year before entering the Government Housing Waiting List and become eligible for the larger allocation [Ombudsman Note: When a tenant's entitlement changes and they apply for larger accommodation, their application is treated as a new application].

Regarding the exchange and the Complainant's assertion that the Housing Authority had not assisted in allocating a flat to the other tenant's son, the Housing Authority raised the following issues:

1. The person willing to exchange with the Complainant would only be entitled to a 3RKB if she and her son continued to reside together. If the Complainant and her son were not housed together they would in their own right be entitled to a 1RKB/2RKB;

2. The son of the tenant willing to exchange was around 300th in the Government Housing Waiting List and was therefore not eligible for an allocation.

The Housing Authority's position was that due to the circumstances set out above, they were unable to assist the Complainant.

Complaint (ii)

Alleged that the Housing Authority recently reallocated a tenant with her family to a larger Government rented flat but allowed the tenant's eldest son to remain in the original flat

The grievance brought to the attention of the Ombudsman was that a family that was entitled to a 5RKB flat was instead allocated a 4RKB and the eldest son of that family (single with no children) allowed to remain in the up-to-then family home.

In their initial response, the Housing Authority confirmed the facts of the aforementioned case and informed the Ombudsman that the Housing Authority had agreed for the son to remain in the family home. The Housing Authority explained that Mrs A had remarried and become an applicant for a 5RKB. Mrs A's son's circumstances were such that he requested the Housing Authority to allow him to remain in the flat after the mother was reallocated and the Housing Authority agreed to the request.

The Ombudsman enquired as to what criteria had been applied by the Housing Authority to reach the decision to allow Mrs A's son (a single person) to remain in a 3RKB (his entitlement was to a 1RKB or 2RKB). The Housing Authority informed the Ombudsman that Mrs A's son had presented a very good case to the Housing Authority and to the Minister for Housing as to why he should not be made to leave the family home and that due to exceptional social circumstances (Mrs A's son does not get along with his stepfather) he was allowed to remain in the 3RKB flat which had been his home for the past twenty years and Mrs A allocated a 4RKB.

The Ombudsman put the following to the Housing Authority:

Q What was Mrs A's son's position on the Government Housing Waiting List at the time of being allocated the tenancy of the family home?

A 92nd.

Q. Was Mrs A's son in the Social List?

A. No.

Q. Why was Mrs A's son not offered a flat commensurate with his entitlement as a single person?

A. It was not considered.

Q. Was the decision to allocate the flat put to the Housing Allocation Committee?

A. No.

Conclusions

<u>Complaint (i)</u>

<u>Unhappy that she had been unable to exchange her Government rented flat due to the Housing Authority not assisting in allocating a separate flat to the son of the other tenant involved in the exchange</u>

The Ombudsman did not find maladministration in this Complaint. The Housing Authority could not accede to the Complainant's request because it went against the current eligibility criteria.

The tenant the Complainant wanted to exchange with was entitled to a 3RKB on the basis that her son moved in with her. In order that the son could become a tenant in his own right (other than by waiting for his turn on the Government Housing Waiting List in which he was in position 300) the tenant had the option of putting her case to the Housing Authority to hand in her 3RKB in exchange for their individual entitlement, two 1RKB or 2RKBs.

<u>Complaint (ii)</u>

<u>Alleged that the Housing Authority recently reallocated a tenant with her family to a larger Government rented flat but allowed the tenant's eldest son to remain in the original flat</u>

The Ombudsman has set out below what should have happened in Mrs A's son's case.

Social List

When an applicant for Government Housing feels that his/her situation is such that it would warrant being placed in the Government Housing Social List, they would have to put their case across to the Housing Authority who would then put it to the Housing Allocation Committee and a decision made. The object of the Social List is to expedite allocations to persons in dire and difficult situations such as homelessness, overcrowded conditions, etc. and as such the circumstances of each case are analysed in depth. Allocations via the Social List are made in chronological order as the difficult circumstances of the applicants on said list are considered equal.

If Mrs A's son's circumstances were so dire, the Housing Authority should have put his case to the Housing Allocation Committee for consideration of his inclusion in the Social List.
Eligibility

The public housing stock is limited and as such has to be managed correctly. Mrs A's eldest son was entitled to a 1RKB or 2RKB (a bedsitter or a one bedroom flat) and instead found himself as a single person with an allocation of a two bedroom flat to which he was not entitled. The result of this allocation was that the 3RKB flat was not returned to housing stock for allocation to the next eligible applicant on the 3RKB Government Housing Waiting List.

From past experiences with the Housing Authority the Ombudsman can attest to the fact that they are very thorough in the scrutiny of cases and it is almost unheard of that an applicant to Government Housing who does not meet the allocation criteria is allocated a property.

It would be very difficult for the Ombudsman to find an example of the Housing Authority having allocated a property to an applicant which was above their entitlement as was done in this case, where the system appears to have failed. This happened because the Housing Authority did not put this case before the Housing Allocation Committee as happens with all cases pursuant to the established procedure. The effect is that applicants to Government Housing who have a rightful entitlement to a 3RKB have been denied the opportunity of being allocated a flat, as have persons in the Social List.

Based on the criteria set out in Complaint (i) vis a vis entitlement in respect of allocations of Government accommodation, the Ombudsman finds gross maladministration in this Complaint. The Housing Authority have a criteria set out in relation to entitlement which in this particular case was not followed.

Classification

Complaint (i) – Not Sustained

Unhappy that she had been unable to exchange her Government rented flat due to the Housing Authority not assisting in allocating a separate flat to the son of the other tenant involved in the exchange.

Complaint (ii) - Sustained

Alleged that the Housing Authority recently reallocated a tenant with her family to a larger Government rented flat but allowed the tenant's eldest son to remain in the original flat.

Case Sustained

CS/1067

Complaint against the Housing Authority ('HA') as the Complainant was aggrieved because she noted that a single man had kept a two bedroom flat when his mother was reallocated to a larger government property. She felt this was very unfair as she was on the waiting list for a two bedroom herself and she was much further up the waiting list in comparison to this other applicant.

Complaint

The Complainant was aggrieved that a neighbour of hers ('the Neighbour') who had recently moved to a larger flat within a government estate, had left her previous government flat, which consisted of 3 rooms, kitchen and bathroom ('3RKB') to her son who was single.

Background [Ombudsman Note]: The background is mainly based on the version of events provided by the Complainant, including supporting documentation, at the time of lodging the complaint with the Ombudsman.

The Complainant felt this was very unfair because she was on the list waiting for a two bedroom flat of her own and she did not see why the neighbour's son should keep this two bedroom when he did not have any children of his own and was well down on the government waiting list in relation to her.

The Complainant wrote to the Housing Authority over this matter. She explained her grievance and asked for clarification if this indeed had happened, especially in light of the fact that she was on the waiting list for a two bedroom herself. The reply she received stated that due to the Data Protection Act the Housing Authority ('HA') were unable to provide her with details in relation to this case.

The Complainant thus felt frustrated and annoyed and for this reason she came to the Ombudsman with a complaint.

The Complainant had come to the Ombudsman Office previously for advice as she had social/ housing problems of her own. She explained that she lived with her mother, two sisters and her own daughter in her mother's 3RKB and that the overcrowding and her mother's 'interference' with her daughter's upbringing was causing a lot of stress in the house-hold. At the time of her first visit the Complainant was told that as long as she was on the waiting list and her housing application points reflected her overcrowding situation, she had to wait in-line with everyone else on the list. She was assured that the HA procedure was that allocations were made in order of points-position on the list. She was also explained the working of the Medical and Social lists which work on date order.

The Complainant, at the time, was around 30th on the list and considering that her waiting time should not be that lengthy, she accepted the Ombudsman's explanations and agreed that there was no malpractice with her case, she just needed to be patient and wait her turn.

However it was a couple of months later that the Complainant returned to our Office very annoyed and frustrated with the fact that she had found out that a neighbor of hers had been allocated a 3RKB for himself without having any children of his own and according to the Complainant on a much lower position to her on the waiting list.

The Complainant was further aggrieved with the HA because when she wrote to the them on 10th June 2014 complaining about this allocation she was informed that 'Regrettably due to the nature of the Data Protection Act 2004 (they were) unable to provide (her) with details on another case'. This she felt was very frustrating as her suspicions were neither confirmed nor denied and she was not given an indication that the matter would be investigated internally.

Investigation

All investigations undertaken by the Ombudsman begin with a letter presenting the Complaint and asking for the Department's own comments. It must be stated that in the same way the Complainant has had an opportunity to be listened-to, the Ombudsman gives the Department equal opportunity to comment as stated in the Gibraltar Public Service Ombudsman Act (1998).

The Ombudsman wrote to the Principal Housing Office ('PHO') on 1st July 2014. The Complaint was set out as a two-fold complaint:

1. The alleged allocation of a flat to someone who was not near the top of the waiting l ist and that this allocation was for a flat bigger than his entitlement.

2. The Complainants frustration on getting no information on whether this was indeed so, because the HA stated that under the Data Protection Act 2004 they were unable to provide her with details on another case.

The written reply received on 18th July 2014 did not provide comments on the Data Protection issue. It did, however, confirm that the Neighbour had been allocated a larger government flat for herself her partner and her younger children and her oldest son (from a previous marriage), had remained in the 3RKB flat that she had vacated. The Complainant's suspicions had thus been confirmed by the Ombudsman. The letter went on to state that the decision had been agreed by the HA.

It is prudent to point out that most decisions similar in nature to this complaint are normally taken by the Housing Allocation Committee ('HAC'), a Committee set up to consider and advise the HA on all matters relating to housing allocations. In this instance a decision was taken directly by the HA.

The Ombudsman's next step was thus to ask for the reasons for this decision. Further enquiries from the HA unveiled the fact that the Neighbour's son had in fact been 92nd on the 1RKB waiting list for a bedsitter. This confirmed the Complainant's grievance that he was below her on the waiting list (as she was 26th on the list) and that he was not entitled to a 3RKB (two bedroom).

The Ombudsman was further informed that the decision had been taken on account of the son of the Neighbour presenting his 'extraordinary circumstances' to the Minister for Housing, these being that he did not get on with his step-father and the flat in question had been his family home for all his life. It was therefore made apparent that the decision had been made by the Minister for Housing and not the HAC as per norm.

Conclusion

The fact is that the tenant was 92nd on the waiting list and entitled to a bedsitter. To date the Complainant, who is currently 27th on the 3RKB waiting list has still not had a flat allocated to her.

The HA and its committee 'HAC' meet once a month to consider the special circumstance s of each individual case and there are cases that are given special merit and consideration. The powers of HAC are extensive in that they are able to award discretionary points to applicants based on the exceptional circumstances of each case. This means that the applicant's position in the list is boosted so that they are positioned closer to the top. HAC may on occasion decide to allocate a larger flat to a tenant for special circumstances, however in 15 years of operation, the Ombudsman Office has never heard of such a situation arising as careful consideration and management of the government housing stock is of supreme importance. In any case the decision was taken by the Housing Authority. This case did not go through the normal administrative procedure.

It would be very difficult for the Ombudsman to find an example of the Housing Authority having allocated a property to an applicant which was above their entitlement as was done in this case, where the system appears to have failed. This happened because the Housing Authority did not put this case before the Housing Allocation Committee as happens with all cases pursuant to the established procedure. The effect is that applicants to Government Housing who have a rightful entitlement to a 3RKB have been denied the opportunity of being allocated a flat as have persons in the Social List.

Under the Principals of Good Administration 'Getting it Right' is about the Department always following their own policy and procedural guidance, whether published or internal. In their decision making, public bodies should take account of all relevant considerations, and balance the evidence appropriately with other like cases.

It would be better administrative practise or perhaps more just to those other applicants on the waiting list, for the single man who remained in the flat to have instead been reallocated to either his mother's flat along with the rest of the family (the flat in fact been of suitable composition to house the son), or, if the Complainant was near the top of the waiting list, allocate him a 1/2RKB flat of his own.

Regarding the Data Protection issue, public bodies should always be minded to remain 'customer/ client focused' at all times, even in their letter writing. They should try their utmost to deal with people helpfully and sensitively and in this respect the HA should work on a reply that is more comforting to the client even if the Data Protection Act comes into play. The answer given was not entirely appropriate but instead heightened the client's frustration or annoyance. A letter stating 'to rest assured that the matter will be looked into and Departmental policy and guidelines are assured' would be more comforting and facilitate better closure on the matter.

Classification

Sustained on both accounts.

Recommendation

Letter regarding Data Protection is reviewed.

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Case Not Sustained

CS/1075

Complaint against the Housing Authority for not equally applying a policy to all tenants.

Complaint

The Complainant complained that one of the Housing Authority's ("HA") policies was not equally applied to all tenants. The policy related to tenants who had exchanged their Government rented accommodation (agreed between the two parties and accepted by the HA) for another on an 'as is basis', and as such, refurbishment works could not be requested from the HA during the first year following the exchange.

Background [Ombudsman Note: The background is mainly based on the version of events provided by the Complainant, including supporting documentation, at the time of lodging the Complaint with the Ombudsman]

The Complainant explained that in early 2014 she exchanged her Government rented flat ("Flat A") for another flat ("Flat B"). In April 2014, shortly after she and her family moved into Flat B, the Complainant stated that due to works being undertaken on the public road adjacent to Flat B and the construction of a Government residential block of flats ("Building") opposite, their living conditions were badly affected due to the loud noises resulted from the works. The increase in noise levels coupled with the fact that the road was a busy thoroughfare for both pedestrians and cars led the Complainant to contact the HA to request that they fit double glazed windows in the bedroom (which faced the road) in order to reduce the noise. The Complainant highlighted the ongoing window refurbishment programme of works in other estates and felt that her request could be included within that programme. According to the Complainant, the HA refused the request but advised her to write to the Minister for Housing ("Minister"). She duly complied, but the Minister' response, although empathising with her, refused her request informing her that the ongoing works on the road were shortly due for completion, along with the piling works for the Building, and as such, the noise levels would be alleviated. The Minister added that Government had instructed that works commence at 10.00am on Saturdays to give two more hours 'quiet time'. Regarding the window refurbishment programme in other Government estates, the Minister advised that the Complainant's estate was not part of the programme, as the windows in that estate were relatively new and in good condition. The Minister reminded the Complainant that when an exchange took place, the property was accepted on an 'as is basis'. Notwithstanding, the Minister asked a housing inspector to visit Flat B to inspect the windows and the inspection determined that the windows were not faulty.

The Complainant decided to pay for the fitting of new double glazed windows but felt aggrieved with the Minister's statement that when an exchange took place, the property was accepted on an 'as is basis' and pointed out to him, two instances where the policy had not been applied:

Whilst she still lived in Flat A, a new neighbour moved into the flat opposite ("Flat C") also via an exchange (i.e. on an 'as is basis') and five months later (early 2013) had the windows changed and blinds installed by the HA, despite the fact that the refurbishment programme was due to commence shortly and all windows would be replaced. [Ombudsman Note: According to the Complainant she had water ingress through some windows when she moved into Flat A in late 2010 and despite reporting the issue, claims to have been told by the HA that those would be replaced under the estate refurbishment project].

Shortly after she moved out of Flat A, the HA installed a new bath and w.c. and a new handrail for the stairs (the property was a duplex).

In his subsequent response, the Minister reiterated his decision and advised that she take up her grievance with whichever channel she saw fit.

The Complainant brought her Complaint to the Ombudsman.

Investigation

The Ombudsman presented the Complaint to the HA who immediately confirmed that when tenants undertook an exchange arranged between each other, they agreed to the exchange on an 'as is basis' and if works were required to refurbish said properties, those were undertaken by the tenants unless the works/repairs fell under an emergency or health and safety category; no timeframe was stipulated by the HA regarding the undertaking of repairs or refurbishments, in contrast to the Complainant having stated one year.

HA stated they had checked reports for Flat A and Flat C and confirmed the works undertaken fell under those categories.

In December 2014 the Ombudsman requested copies of:

(i) all works orders for Flat A and Flat C for the past five years;

(ii) information on completion dates for a number of reports related to the Complainant's allegations;

(iii) the date of the tenancy exchanges for both flats;

(iv) information on whether new windows had been fitted in Flat A and Flat C outside the estates refurbishment project.

Copies of the reports (i) were provided immediately but the information requested in relation to (ii) and (iii) above took the HA over two months to produce, thereby delaying the Ombudsman's investigation.

Regarding (iv) above, the HA informed the Ombudsman that they had contacted the Housing Works Agency ("HWA") and been informed that they had no historical electronic record of window installations as the person who previously managed the 'Window & Shutter Replacement/Repair Programme' (now retired) ("Retiree") deleted entries once reports were completed, i.e. when new windows were installed. The HA explained that the officer ("Officer") who had taken over the position had advised that he would obtain the information required by sieving through hard copy records but pointed out that would take some time. The Officer further added that since taking on this role he kept a spreadsheet to electronically record all window installations.

The HA sought a meeting with the Retiree as they recalled having seen electronic records kept by him in relation to window installations. At that meeting the Retiree confirmed that he did keep those records and showed the HA their location within the HA's network. The HA referred the Officer to those records and requested that the new spreadsheet be amalgamated with the old spreadsheet.

Further to the events related above, hard copies of invoices in respect of the window installations in Flat A and Flat C were presented to the Ombudsman in March 2015, three months after the Ombudsman's original request. The Ombudsman requested a meeting with the Officer due to the copy of the invoice in respect of the living room windows having been changed in Flat A being dated May 2011 (the Complainant claimed that during the time she resided in Flat A (December 2010 to March 2014) no windows had been changed, furthermore she stated that when she moved in, the coating on the frame was peeling off in various sections which in her opinion was a sign that the windows were quite dated). The Officer was unable to provide an explanation in this respect. The Ombudsman had noted an order number on the windows invoice and asked the Officer to check their records. The Officer provided a copy of the said works order dated March 2009 (date on which report was made by the tenant) which related to windows for inspection in Flat A. The Ombudsman toyed with the possibility that the invoice date could be erroneous and should have read 2009 rather than 2011, but considering that at that time there was an eight year wait for window and shutter replacements (via the Buildings & Works waiting list) the Ombudsman doubted that was a possibility. This coupled with the Complainant's statement that the paint on the window frames was peeling off (had new windows been installed in 2009 that would not have been the case) made the Ombudsman concerned about the whole issue and he resolved to copy the pertinent documentation to the Principal Auditor for his consideration. There was an invoice and works order but the goods do not appear to have been delivered in this case.

Regarding the manner in which the Retiree managed the electronic records, the Officer maintained that once works were undertaken in respect of individual reports, the Retiree deleted the record from the spreadsheet with the object that the spreadsheet would only contain pending reports.

As to the two spreadsheets having been amalgamated, the Officer stated that had not been necessary as for the past two years Gibraltar General Construction Company Limited ("GGCCL") had been tasked with undertaking the window repairs/installations. Since then, the HWA's role had been to record reports made in respect of windows or shutters, carry out an inspection to identify the works required and then passing on the information to GGCCL. The Officer highlighted that GGCCL did not provide HWA with any details of the works they carried out at their end. The date of the tenancy exchanges was established as being June 2012 for Flat B and March 2014 for Flat C.

The Ombudsman inspected the reports that related to the other issues raised by the Complainant. Regarding the installation of windows and blinds in Flat B, the report in relation to windows had been made in September 2011 (when the previous tenant still resided there) and stated that the lounge window frame had come adrift from the wall. The completion date for the report was January 2013 (the new tenant moved in June 2012).

The issues raised by the Complainant in relation to Flat A were that the HA had installed a new bath and w.c. and had fitted a new handrail for the internal staircase. On perusal of the pertinent reports, the Ombudsman identified that a handrail had been installed as a result of a report made in May 2014. The Complainant had informed the Ombudsman that she had removed the original handrail so it could only be concluded that the HA installed a handrail to replace the original one; not having one was a health and safety issue and concurs with what was stated by the HA in relation to repairs in cases where exchanges between tenants take place.

In March and May 2014 there were two reports. The former was in relation to a leak in the bathroom severely affecting the kitchen walls and the latter was related to a leak in the bath. The HA were initially unable to provide the details of the works undertaken but via the Officer it was possible to establish that a new bath and w.c. were fitted in Flat B around June 2014 to replace the existing faulty fibreglass bath and the w.c.

Conclusions

As a result of not having had her request for double glazed windows to be fitted in Flat B, the Complainant denounced two instances in which in her view, the HA's policy regarding not undertaking any refurbishments during the first year of an exchange (directly arranged between tenants of Government residential properties) did not equally apply to all.

Based on the findings of this investigation, the Ombudsman was of the view that there was no maladministration in respect of the Complaint brought to him. The Complainant's case was unrelated to the application of the HA's policy.

From the information provided by the HA in their reports, the Ombudsman noted that the works undertaken by HA in both Flat A and Flat B had come about because they were categorised as an emergency in the case of the w.c. and bath, and a health and safety issue in relation to the fitting of the staircase handrail. Regarding the latter, the Ombudsman was critical of what appeared to be a lack of either inspections and/or enforcement of basic tenancy rules on the part of the HA. Prior to exchanges taking place, the HA should undertake inspections which in this instance would have identified the removal of the handrail and rather than passed the cost of the replacement to the tax payer would have placed the onus on the tenant to reimburse the cost of reinstalling the essential fitting.

Regarding the window replacement in Flat B, the Ombudsman noted from the wording in the report that the 'lounge window had come adrift from the wall'. The report was made in August 2011 and the works completed in January 2013. Needless to say that during the year and a half that elapsed up to completion, the original problem must have inevitably worsened. Again, under those circumstances, the health and safety aspect kicks in and the window had to be replaced despite the impending estate refurbishment. The Ombudsman was appalled by the state of the HA's method of electronic record keeping regarding window installations/repairs during the time when the Retiree handled the issue which caused an extensive delay in providing the Ombudsman with the information required due to the Officer having to sieve through hard copies of invoices.

As stated in our investigation above, on the matter of the purported installation of windows in Flat A in 2011, the Ombudsman would be passing the matter on to the Principal Auditor for his consideration. As to the Complainant's plight regarding the Minister's refusal to install double glazed windows in her bedroom (Flat C), the Ombudsman understood that this decision was based on the findings of the inspection (windows were found to be satisfactory) and as such was an informed decision. Furthermore, had windows been fitted in Flat C, the same would have had to be applied to all nearby properties who were also experiencing the same problems as the Complainant. In the same way that Gibraltar's small size has its advantages it can also have negative aspects, one of which is that when construction works are carried out, disruption to nearby residents is inevitable. The HA cannot take it upon themselves to resolve or even alleviate the unavoidable consequences to all persons residing or working in an area where construction works are being undertaken, especially as those are of a temporary nature.

Classification: Not sustained

Update

As a result of the findings in the Ombudsman's report, the Housing Authority informed the Ombudsman that they had addressed the issue of lack of electronic record keeping of window installations with the Housing Works Agency.

Case Not Sustained

CS/1089

Complaint against the Housing Authority ("HA") due to the fact that as a result of the HA's repossession of the Complainant's mother's flat, the Complainant was left homeless.

Complaint

The Complainant was aggrieved because she claimed that as a result of HA's actions in repossessing her mother's Government rented flat, ("the Flat"), she was rendered homeless since she also resided within that property.

Background [Ombudsman Note: The background is mainly based on the version of events provided by the Complainant, including supporting documentation, at the time of lodging the Complaint with the Ombudsman]

The Complainant was of the view that the action taken by HA was inappropriate particularly since she was under short term mother and baby residential care with the Care Agency at the time and accordingly, HA should have taken her circumstances into account before having proceeded with the repossession.

The Complainant stated that although she had been in contact with the HA ever since she had become homeless in April 2014, all she had been told was that she was not allowed to reside at the Flat and that she needed to find alternative housing. The Complainant was nineteen years old at the time.

The Complainant informed the Ombudsman that despite being a tenant of the Flat, she was well known by Social Services as a result of having been under their care when she was a child. Additionally, she found it difficult to apply for housing herself when she became homeless because she was informed that since she was not a Gibraltarian national, she would have to prove that she had resided in Gibraltar for a continuous period of ten years. On the 3rd December 2014, she wrote HA a letter complaining about this but allegedly never received a reply.

On the 6th March 2015, after having sent the HA two further letters explaining her case, she finally received correspondence from HA stating that on the 26th January 2015, her housing application had been accepted and that it had been decided that she be classified as a "Social A" case, as of February 2015.

The Complainant could not understand why it had taken the HA so long to accept her application and why she had only been classed as a Social case as from February 2015, when the HA knew that she had been homeless since April 2014. Indeed, it was the HA who had been paying for the Complainant's stay at the Cannon Hotel.

As a result of the state of affairs together with the Complainant's view that the family home should not have been repossessed, the Complainant lodged her complaint with the Office of the Ombudsman

The Ombudsman presented the Complaint to the HA by letter dated 15th April 2015, setting out the circumstances and requesting their comments.

Investigation

A substantive reply was received from HA on the 15th May 2015.

The letter stated that in the Complainant's mothers' application for housing dated 14th March 2012, although the Complainant had been included in the family composition of the applicant, there was no mention of her residing with her mother.

According to HA, that position was later confirmed in a Social Inquiry Report prepared by the Department of Social Services in September 2012. In that report, there was no mention of the Complainant residing with her mother. It was at that point that the tenancy record was updated to remove the Complainant from the tenancy.

HA's letter to the Ombudsman further explained that on the 25th March 2013, the Complainant's mother signed the yearly review letter associated with her application for housing, declaring that the information contained therein was correct. In essence, she confirmed that the Complainant was not a tenant of the Flat. Also in March 2013, the HA received notification from Social Services stating that the Complainant's mother had left Gibraltar with her remaining children (the Complainant was already residing in the United Kingdom by then), and that they would all reside there. The Complainant's mother obtained council housing in England and the Complainant and her sibling were enrolled in school there. Under section 6(1) Housing Act 2007, a tenant is required to be "in personal occupation of the public housing for not less than 270 days in the aggregate in every year"; in order to remain in legal occupation of said public housing.

HA informed the Ombudsman that there was no other registered tenant/household member to whom the Flat could be transferred. As a result, the Flat was continuously monitored and on the 14th January 2014, HA's legal representative was instructed to initiate legal action for the repossession of the Flat. The action was finalised on the 21st February 2014, after the expiration of the required notice to the registered tenant as stipulated under the Housing Act.

In a letter from the Care Agency to the HA dated 10th July 2014, the Care Agency confirmed that "[the Complainant] understands that the tenancy was in her mother's name and that legally she had no entitlement to the house."

The information provided by HA to the Ombudsman concurred with the Complainant's version of events in that when the Complainant approached HA in order to submit an application for housing in her own right, she was informed that as a British Citizen she was required to provide proof of ten years continuous residency in Gibraltar. The Complainant was unable to meet this criteria since she had been residing in the United Kingdom.

The Complainant provided HA with a letter dated 3rd December 2014 setting out her family history and personal circumstances (which letter the Ombudsman has examined). HA confirmed that they referred that correspondence to the Housing Allocation Committee ("HAC") for consideration at their next meeting which had been scheduled for 15th December 2014. According to HA (which the Ombudsman has no reason to disbelieve), an acknowledgment from HAC for the Complainant's letter and a further communication from HAC dated 18th December 2014 (stating that HAC was still considering her case and that a further communication would be sent to HA), were left at the Allocation Counter for the Complainant's collection. This is standard practice for applicants claiming homelessness.

On the 19th January 2015, an in-depth report was compiled by the Care Agency. It was received by HA and subsequently made available to the Ministry for Housing ("MfH") for their consideration. From the information contained therein, MfH "exceptionally agreed" to accept the Complainant's application for housing. Once the application had been accepted by MfH, HAC could then consider the social aspects of the case. At a subsequent meeting held on 16th February 2015, the Complainant was awarded a Social "A" category classification and placed on the 3rkb social waiting list.

A previous letter dated 5th February 2015 from the Complainant was acknowledged and replied to by HA on 6th March 2015. The reply was addressed to her at the Cannon Hotel which incidentally, was being paid for by the Care Agency, not the HA as alleged by the Complainant.

In their substantive letter to the Ombudsman, the HA also confirmed that their departmental register of mail had been checked to determine whether any of the Complainant's mail remained unanswered. HA stated that the only correspondence they had received relating to her case were those letters which they had referred to in their reply to the Ombudsman.

HA concluded by informing the Ombudsman that the Complainant was offered a flat on the 7th March 2015, which she accepted.

Conclusions

The Complainant's complaint centred round the fact that as a result of HA's instruction for their legal representative to initiate action for the repossession of the Flat, she became homeless.

From the results of his investigations and review of the pertinent legislation, the Ombudsman was satisfied that HA acted within its powers in relation to the repossession and in a manner which was neither unreasonable nor tantamount to poor administrative malpractice.

Additionally, it appeared to the Ombudsman that all of the Complainant's letters to the HA were replied to within an acceptable time frame.

Given the Complainant's background, the Ombudsman was pleased by the fact that the responsible entities exceptionally agreed to accept her application for housing with the added benefit that she was offered a Government flat soon afterwards

Classification: Not Sustained

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Case Sustained

CS/1090

Complaint against the Housing Authority due to the fact that (1) despite the Complainant being in third position on the housing waiting list in July 2014 he was still awaiting an allocation in August 2015. (2) The Complainant was of the view that he was being discriminated against and superseded by other applicants.

The Complainant was aggrieved because he alleged that during the period January to April 2015, the Housing Authority ("the Authority") had awarded thirteen allocations on the 3RKB housing waiting list ("the List"). The Complainant (who claimed to have been on the List since July 2014), could not understand why he had not been made an offer of accommodation since he was in third position at the time of the alleged allocations. He felt he was being discriminated against by the Authority and superseded by other applicants.

Background [Ombudsman Note: The background is mainly based on the version of events provided by the Complainant, including supporting documentation, at the time of lodging the Complaint with the Ombudsman]

The Complainant complained that he was in desperate need of a Government flat for himself and his family. He explained that he was unemployed and lived with his wife and twelve year old son in a small bedsitter which they were renting privately. The Complainant's wife was in employment but due to their rent being high, they were finding it difficult to make ends meet. To worsen matters, the Complainant's wife suffered from acute depression whereas he was epileptic and suffered from bad eyesight. Their son was having to sleep at friends' houses due to the lack of space within their dwelling. The situation was also having an adverse effect on the Complainant's son's studies and on family life generally.

The Complainant provided the Ombudsman with the respective positions held by him as applicant for a 3RKB property:

1. July 2014- 3rd
2. August 2014 - 6th
3. September 2014- 7th
4. October 2014- 8th
5. November 2014 onwards- 5th.

As a result of the fluctuation of his position on the List, coupled with the allegation that the Authority had awarded numerous 3RKB flats, the Complainant wrote to the Authority seeking immediate allocation. He also sought assistance and support from "Action for Housing". However despite this, the Complainant's position on the List did not seem to progress and no offer of accommodation was made. As a result, the Complainant proceeded to lodge his complaint with the Office of the Ombudsman.

Investigation

The Ombudsman presented the Complaint to the Authority by letter dated 3rd June 2015 setting out the Complainant's circumstances and the nature of his complaint. The Ombudsman sought their comments in reply.

A substantive reply was received on the 16th June 2015. The Authority confirmed that nine Government flats had been allocated to applicants on the waiting lists who were entitled to 3RKB flats since the 26th February 2015. The breakdown provided stipulated that: two flats had been allocated via the approved exchange list; one had been allocated via the decanting list (as the Government flat that tenant had occupied at the time was not fit for habitation); four flats were allocated via the social list; one was awarded to a tenant on the medical list and the remaining property was a "priority" allocation.

In relation to the Complainant and his wife's health issues, The Authority stated that the Complainant was welcome to submit medical letters in support and that once available, they would be passed to the Housing Allocation Committee ("HAC") for their consideration and subsequent recommendation. Finally, the Authority confirmed the respective positions that the Complainant had previously held on the List. According to the Authority, the Complainant had provided the Ombudsman with the correct information save for his position in July 2014 since, they stated, the Complainant had been on the "pre-list" on that date and not on the List per se.

On the 15th July 2015, the Complainant wrote to the Authority yet again setting out his circumstances. He stressed his need for urgent housing and submitted medical evidence on the conditions affecting the family, as per the Authority's suggestion that medical letters be provided. The Complainant argued that according to his review of the lists, he calculated that there had been forty two allocations of 3RKB flats since July 2014 and that he could not understand how, given his relatively high position on the List, an offer of accommodation had not yet been made. He requested that his case be forwarded for consideration by HAC in their July monthly meeting.

Consequently, the Authority wrote to the Complainant on the 22nd July 2015 confirming that HAC had met on the 20th July. The letter stated that the Housing Authority, based on HAC's recommendation, had considered but denied the Complainant's request for priority allocation as there were "applicants on a higher position on the 3RKB waiting list and allocations of flats [were] made via the positions on that list." The letter went on to state that although HAC sympathised with the Complainant's "current predicament", the List worked solely on a points system and no offer of accommodation could be made until the applicant reached the top.

Insofar as the Ombudsman's exchange of correspondence with the Authority was concerned, the Ombudsman issued a reply to their letter of the 16th June 2015, on the 21st July 2015. The Ombudsman queried the "priority" allocation that they had previously disclosed and requested more specific information in relation to it. It was also confirmed to the Authority that the Complainant had submitted medical information in support of his application for emergency housing. Finally, information was sought as to the Complainant's position on the List, specifically his position at the time of entry and his current position.

A subsequent letter was issued by the Ombudsman together with a further request to the Authority that statistics be provided on the number of 3RKB flats that had been allocated since July 2014 on the "standard" waiting list (the List) i.e, excluding the "social", "medical" and "decanting" lists. The object of the exercise was to determine whether there was any merit in the Complainant's argument that he was being bypassed and discriminated against in the allocation of a suitable flat, given that he was already in a high position on the List. Ordinarily, allocations were made in a chronological manner and the Ombudsman was seeking confirmation that the Housing Authority was acting on that basis.

The Authority replied to the Ombudsman on the 2nd September 2015. The letter stated that the "priority" allocation was a decision taken by the Authority at the time as a result of that applicant's circumstances and at the time of the allocation, that family were 9th on the List. It was also confirmed that at the time of writing, the Complainant's position on the list was 7th.

Insofar as the breakdown of flats awarded for the preceding year (July 2014-July 2015) from the 3RKB normal waiting list was concerned, it was established that 11 flats had been allocated to applicants chronologically (that figure did not include other allocations made as a result of evictions, anti-social behaviour and other strenuous circumstances).

The Complainant, of his own accord, continued to write to the Authority setting out his desperate situation. He also submitted a letter to them expressing his concerns (drafted by the Care Agency at the Complainant's request). It was made clear by the Care Agency however that since the matter was not an "open case" held within their files they were not confirming the position, merely putting across the Complainant's point of view. In the interim, the Complainant also continued to rely on the support of Action for Housing who argued on the Complainant's behalf on the basis that the time he had been waiting for an offer of accommodation was not commensurate with his elevated position on the waiting list.

Conclusions

The Ombudsman, who attended upon the Complainant on numerous occasions and was fully aware of his family's circumstances, was sympathetic with the Complainant's plight and with his frustration in not having been awarded a Government flat when he had held such a high position on the List for over one year.

Although the Ombudsman saw no evidence of "discrimination" against the Complainant, based upon the Authority's letter of 2nd September where the figures of the number of 3RKB flats allocated over the previous year were disclosed to him, he could not reconcile the amount of flats granted (11) with the position that the Complainant held on the list throughout that period (which taken at its lowest, was 8th). Consequently, the Ombudsman formed the view that the Complainant, for reasons unknown to him, had indeed been by-passed and that numerically, he should have been awarded a property.

Classification

Despite being in third position on the housing waiting list in July 2014 [the Complainant] was still awaiting an allocation in August 2015.

Although according to the Authority the Complainant was on the pre-list in July 2014, the fact that an allocation had not been made (to the date of drafting this report) was not disputed – Sustained.

The Complainant was of the view that he was being discriminated against and superseded by other applicants

The Ombudsman was unable to state that the Complainant had been "discriminated" against. However, he found that his position on the list had been by-passed by the Authority- Sustained

Update

Subsequent to the drafting of this report, The Ombudsman received an email from the Authority dated 18th September stating that that they were unable to provide the statistical information of the properties allocated as had been requested, but that once the figures were available they would be provided to the Ombudsman.

The correspondence received therefore, centred round the Ombudsman's query as to why the Complainant had not received an offer of a flat when the number of flats allocated exceeded the Complainant's position on the list at any given time. It was stated that although it may have been natural to assume that given his position, the Complainant would have been allocated a flat, his standing on the list had been "deteriorated" by other applicants entering from the pre-list holding higher points than him, thereby slotting in ahead of the Complainant.

Additionally, the Complainant received a letter stating that HAC had agreed to place him on the Social "A" list. The Complainant remained hopeful that he would be allocated a flat in the near future.

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INCOME TAX OFFICE

Case Partly Sustained

CS/1094

Complaint against the Income Tax Office

The Complainant claims that the Income Tax Office mishandled his tax assessments;

1. **Despite being taxed under the Gross Income Based System he has received tax bills for the years 2011/2012 and 2012/2013;**

2. **Appears not to have existed in the Income Tax Office records between 2007 and 2011**

Complaint

The Complainant claimed the Income Tax Office ("ITO") had mishandled his tax assessments. He further claimed that despite being taxed under the Gross Income Based System ("GIBS") he had outstanding tax bills for the years 2011/2012 and 2012/2013 and appeared not to have existed in the ITO's records between 2007 and 2011.

Background [Ombudsman Note: The background is mainly based on the version of events provided by the Complainant, including supporting documentation, at the time of lodging the Complaint with the Ombudsman].

In February 2014, the Complainant received tax assessments from the ITO for the tax years 2008/2009 (£0.00), 2009/2010 (£767.22 payable) and 2010/2011 (£1,393.78 payable). The Complainant (who had retired in April 2013) immediately wrote to the ITO on the matter. He felt very aggrieved that despite submitting annual tax returns and having immediately notified the ITO of changes to his circumstances so that tax allowances he was claiming for could be adjusted, he had been presented with a hefty tax demand. The Complainant explained that in October 2011 he had called at the ITO counter to notify them that he had paid off his mortgage and cashed in an endowment policy and requested that his tax allowances be duly adjusted. According to the Complainant, the counter clerk who attended to him checked the ITO's records and noted that there were two hard copy files in his name and advised him that she would be amalgamating both records [Ombudsman Note: The Complainant was not cognisant of whether the counter clerk informed senior staff at the ITO of this issue. When the Ombudsman met with the ITO he enquired on whether they had any information on this occurrence but the ITO stated that they did not]. According to the Complainant, in October 2011 his tax code changed as a result of the two records being merged.

The Complainant referred the ITO to the 2008/2009 assessment and pointed out that they had not included the spouse tax allowance for that year. He had called at the ITO to advise them of this and the assessment was rectified.

The Complainant felt that the ITO had on more than one occasion failed to make proper use of the facts he had provided to them and thus allowed tax arrears to build up over three successive tax years by failing to make proper and timely use of information they had been given.

Subsequent to the Complainant's letter, the ITO had a number of meetings with the Complainant which culminated in a letter to him in March 2015 setting out in writing the explanations they had provided verbally. They explained that when he changed jobs in 2007, the new employer on non-submission of a tax code from the ITO used the tax code stated on the P7A (from his last employer) which included mortgage interest and home purchase allowance. The new employer continued to use that tax code in the successive years without ever requesting a code from the ITO.

Notwithstanding, the ITO confirmed that they had not issued a new tax code until October 2011 when the Complainant notified them of the change in his circumstances, even though he had submitted annual tax returns and mortgage interest letters which showed the mortgage interest was decreasing. The ITO accepted that because he was not in possession of a tax code during those years he was unable to check whether the allowances were correct and under the circumstances agreed to honour the mortgage interest allowance as allowed on the tax code being applied by the employer. The amended assessments were enclosed with the letter. The amount payable for the years 2008/2009, 2009/2010 and 2010/2011 was now £0.00 but the assessments for the years 2011/2012 and 2012/2013 showed a total payable of £545.06. The Complainant felt frustrated with the ITO and brought his complaint to the Ombudsman.

Investigation

The Ombudsman presented the Complaints to the ITO and subsequently met with them to discuss the issues raised by the Complainant.

The ITO explained that when a person changes employment, the old and new employers have to immediately notify the ITO via the P7A form. Part 1 of the P7A (comprised of three parts) has to be completed by the employer for the employee leaving employment and immediately sent to the ITO. Part 2 which is a carbon copy of Part 1 is kept by the employee for his/her records and Part 3 which is partly a carbon copy of Part 1 in relation to the employee details but comprises a second section which has to be completed by the new employer (new PAYE reference number, commencement date of employment, declaration by employer) should also be immediately sent to the ITO together with a copy of the employee's notice of terms of engagement.

The ITO stated that neither Part 1 nor Part 3 were ever received by the ITO so they were not aware that the Complainant had changed jobs and as such did not issue a new tax code. This resulted in the employer applying the old tax code for the ensuing years which no longer reflected the actual tax allowances being claimed by the Complainant in his tax returns (the mortgage interest having decreased during those years). The only explanation offered by the ITO as to why no new tax codes were issued for the Complainant was that when the bulk of tax returns are received there could be anything between 25,000 to 30,000 and due to the volume there was an oversight at the time of inputting the Complainant's returns into the system and the change in employer was not identified.

The ITO explained that although they had been at fault so had the old and new employers for not having submitted the P7A form and the new employer for not having contacted the ITO when they had not received the annual tax code usually generated in July for PAYE employees, after the Government's budget session when there are usually changes in allowances.

The ITO were aware that the Complainant had fully complied with his responsibilities regarding the submission of annual tax returns and timely notification of changes of circumstances. Due to the oversights and errors having been completely out of the Complainant's control the ITO, by way of redress, resolved to honour the higher tax code with the higher mortgage interest allowance. The ITO therefore amended the assessments for the pertinent years 2007 ending June 2011 accordingly and informed the Complainant of this [the ITO's action had been undertaken prior to the Complainant lodging his complaint with the Ombudsman].

The Complainant had provided copies of the assessments and reassessments raised by the ITO as follows:

Ref	Tax Year	Assessment Date	Reassessment Date
1	2008/2009	11.02.14	19.02.14; 03.04.14; 18.03.15;
2	2009/2010	11.02.14	19.02.14; 03.04.14; 16.02.15; 18.03.15
3	2010/2011	11.02.14	19.02.14; 03.04.14; 16.02.15; 18.03.15
4	2011/2012	18.03.15	
5	2012/2013	18.03.15	

The ITO explained that the assessments numbered 1, 2 and 3 above were originally issued on the 11.02.14. Assessment 1 was incorrect (spouse allowance had been omitted and in a letter to ITO, Complainant had pointed this out) and ITO amended it and at the same time reissued assessments 2 and 3 to reduce the liabilities (the ITO had allocated the Home Purchase Allowance and the Home Purchase Allowance (Special Deduction) to 2 and 3 as the Complainant's income was higher in those years and therefore more beneficial as the PAYE liability was reduced). In April 2014, the Complainant wrote querying the assessments and those were amended and reissued on the 03.04.14. Further to various meetings with the Complainant (at which the ITO resolved to honour the higher mortgage interest allowance for the given years) the ITO reissued assessments on the 18.03.15 and this time included assessments 4 and 5. Regarding the tax amount payable for the tax years 2011/2012 and 2012/2013, the ITO stated that in those tax years the Complainant was being taxed under the GIBS system and that the only explanation that they could provide regarding the tax payable by the Complainant was that the employer had made a mistake at the time of making PAYE deductions from his salary. The ITO confirmed that the assessments for those years had been checked and were correct.

Conclusions

(i) <u>Claims that the ITO mishandled his tax assessments</u>

In relation to this Complaint, the Ombudsman found that there was maladministration. The oversight/ error by the ITO in identifying the Complainant's change of employment at the time of inputting the Complainant's tax returns occurred during four consecutive years (2007/2008, 2008/2009, 2009/2010 and 2010/2011) and it was not until the Complainant called at the ITO in October 2011 to inform them of his change of circumstances that a new tax code was issued. The Complainant was transferred to the GIBS which the ITO had advised was more beneficial at that stage, considering he no longer had the mortgage interest or endowment to claim tax allowances on. The change in tax code came as a result of this new situation and not as stated by the Complainant, the two files having been merged.

Regarding the ITO holding two records for the Complainant, when asked by the Ombudsman the ITO responded they did not have information to that effect and denied that had been the case. The Ombudsman did not have any physical proof to the contrary but did not doubt the Complainant. On probing into the matter further, the Complainant pointed out that the clerk at the counter had joined the two files without notifying a senior officer and that would explain the ITO's ignorance on that topic. The ITO could not offer an explanation as to why no new tax code was generated for the Complainant between 2007 and 2011 after entering the tax returns in the system. Notwithstanding, the ITO also apportion part of the blame at the old and new employers for not having handed in the P7A form informing the ITO of the Complainant's change of employment and for not having contacted the ITO when no new annual tax code (generated in July each year after the Government's budget session) was received for the Complainant. The Ombudsman notes that the ITO's second check which was the P8 (annual statement submitted by employers at the end of the tax year listing all employees and PAYE deducted) had also failed, at a timely stage, to identify the change in the Complainant's employment. Notwithstanding the above, the Ombudsman commends the ITO for having provided redress to the Complainant due to their part in the error by honouring the higher mortgage interest allowance for the given years in order not to cause further hardship to the Complainant.

(ii) Despite being taxed under the Gross Income Based System has received tax bills for the years 2011/2012 and 2012/2013

The Ombudsman does not find maladministration in this instance.

Although not stated by the ITO, the Ombudsman believes that the tax demand for the year 2011/2012 resulted due to the Complainant having commenced the year by being taxed under the Allowances Based System and as a result of having changed over to the GIBS been assessed under the latter (the assessment is based on the entire tax year under one of the tax systems). For the first three months of that tax year the Complainant still had the higher tax code until he notified the ITO of the mortgage having been paid off and the endowment cashed in. The ITO when undertaking the assessment for that given year identified that the GIBS was more favourable for the Complainant than the Allowances Based System. As to the year 2012/2013, the Ombudsman is satisfied that the ITO have no involvement in the employer having under deducted PAYE from the Complainant for that given year, considering that he was being taxed under the GIBS.

(iii) Appears not to have existed in the ITO records between 2007 and 2011

The Ombudsman finds maladministration in this complaint. Despite the ITO claiming that they processed the Complainant's tax returns, during a four year period no tax code was generated for the Complainant, not even in July of each tax year which is standard practice as this is automatically generated by the computer system upon input of the tax returns. Furthermore, the ITO also failed to identify in the annual P8 form submitted by the employer, the fact that the Complainant had changed employment and that the ITO had not issued amended tax codes for him. Had it not been for the Complainant having called at the ITO's it appears that the ITO would not have been alerted to his existence.

Classification

(i) Claims that the ITO mishandled his tax assessments – Sustained

(ii) Despite being taxed under the GIBS has received tax bills for the years 2011/2012 and 2012/2013 – Not Sustained

(iii) Appears not to have existed in the ITO records between 2007 and 2011 – Sustained

Case Partly Sustained

CS/1095

Complaint against the Income Tax Office

(i) **Incorrect amount of tax being deducted and no communication or correspondence from the Income Tax Office throughout an extensive period of time. Complainant feels it is unfair that he has received a substantial tax demand to cover the Income Tax Office's mistake;**

(ii) **The Income Tax Office made monthly deductions from his salary for the purpose of settlement of a tax demand (upon instruction to the Complainant's employer) without prior notification to the Complainant and without having provided a breakdown of the deductions**

Complaint

The Complainant was aggrieved because he claimed not to have received any communication or correspondence from the Income Tax Office ("ITO") throughout an extensive period of time and he felt it was unfair that he had received a substantial tax demand to cover the ITO's mistake.

The Complainant was further aggrieved because the ITO had made monthly deductions from his salary for the purpose of settlement of a tax demand (upon instruction to the Complainant's employer) without prior notification to the Complainant and without having provided a breakdown of the deductions.

Background [Ombudsman Note: The background is mainly based on the version of events provided by the Complainant, including supporting documentation, at the time of lodging the Complaint with the Ombudsman].

The Complainant explained that for an extensive period of time he had his tax deducted directly from his salary by his employer under the Pay As You Earn scheme ("PAYE"). Under that set-up, the Complainant believed the amount of tax being deducted was correct and as such did not find it odd not to have received any communication from the ITO throughout that period.

The Complainant did not recall if he had submitted annual tax returns to the ITO in the past, but remembers meeting with the ITO in 2011 and on that occasion signing tax returns for past years. The Complainant stated he had had the same tax code for eleven years which reflected a mortgage interest allowance which the ITO now claimed was erroneous due to the mortgage interest having decreased throughout that period [Ombudsman Note: The Complainant did not notify the ITO of the decrease in the mortgage interest payments]. Due to not having had any contact with the ITO during those years, the Complainant believed that the PAYE deductions from his salary were correct. It therefore came as a shock that the ITO presented him with a large tax bill. The Complainant asked the ITO for explanations and information on the tax demand but not satisfied with the responses provided by the ITO resolved to lodge a complaint with the Ombudsman. The Complainant lodged a second complaint because he claimed that the ITO had instructed his employer to make monthly deductions for PAYE arrears from his salary without having notified him beforehand or provided a breakdown of the monies owed.

Investigation

The Ombudsman presented the Complaints to the ITO and sought a meeting to discuss the issues raised by the Complainant. The ITO informed the Ombudsman that contrary to what the Complainant had stated, the ITO had in fact sent annual tax returns which had not been completed and returned by the Complainant. The ITO provided the Ombudsman with the dates on which they had raised assessments, dating back to the tax year 2000/2001 as per table below:

TAX YEAR	TAX ASSESSMENT DATE
2000/2001	14.02.03
2001/2002	10.11.05
2002/2003	17.11.05
2003/2004	10.10.06
2004/2005	10.10.06
2005/2006	10.02.11
2006/2007	10.02.11
2007/2008	10.02.11
2008/2009	05.11.12
2009/2010	06.05.14
2010/2011	06.05.14

The ITO advised that in June 2010 because the Complainant had not submitted tax returns they had contacted him via email to request that he provide mortgage interest letters for the period 2005 to 2008. The Complainant duly complied. Stemming from that contact, the Complainant met with staff of the ITO in early 2011 to discuss his tax situation and at that meeting completed and submitted a number of tax returns.

The ITO explained that the mortgage interest allowance was first allowed in the Complainant's tax code in September 2000 and amounted to £6,199-. Although the interest had decreased in the ensuing years, because the Complainant had not advised the ITO of subsequent reductions nor submitted tax returns supported by the pertinent mortgage interest letters, the mortgage interest allowance remained at £6,199-; by December 2011 this had gone down to £1,182-. In effect this meant that the Complainant had been underpaying PAYE and resulted in a tax demand.

The Ombudsman enquired as to why the ITO had allowed the Complainant to keep the higher tax code when he had neither submitted tax returns nor mortgage interest letters; the Ombudsman believed that the ITO's modus operandi was to immediately remove allowances from taxpayers who did not submit the annual tax return supported by pertinent documentation. The ITO explained that it was up to the taxpayer to notify the ITO of any changes in their allowances and referred the Ombudsman to the PAYE Allowance certificate (Form P3) which states:

> ***Please check that the details of this certificate are correct. Any change in your personal circumstances should be notified immediately to this office.***

Notwithstanding, at the time of raising a tax assessment, the ITO require supporting documentation in relation to the tax allowances being claimed. Failure to produce those would result in allowances not being applied and as a consequence, a tax demand as in the Complainant's case.

The ITO added that the procedure implemented in the past few years, in relation to recording tax returns was for the information to be entered in the ITO's computer system. If a discrepancy between the last tax code issued and the information on the tax return was identified (i.e. a difference in the claim for allowances) the ITO would amend the tax code to match the tax return. This action would in all probability result in the taxpayer contacting the ITO for the amendment to be rectified and errors corrected. Once all tax returns are logged in the system, the ITO request a report in respect of persons who have not submitted the tax returns and those individuals are penalised by having all the allowances except the personal allowance removed. That action again normally triggers that the taxpayer complies with the requisites of the ITO of submitting the returns and supporting documentation for allowances being claimed.

[Ombudsman Note: In 2014 the Ombudsman undertook an investigation into a complaint against the ITO in relation to the Complainant having had allowances removed CS1076 which reaffirms the ITO's present procedure in respect of discrepancies between tax returns and last issued tax code].

Prior to the new procedure, the ITO stated they did not have the means, other than by manually sieving through each file, to identify the non-remittal of tax returns as the ones received were not recorded and it was only at assessment time, say around four years after the return was due, that the missing returns were identified.

Regarding the monies being deducted from the Complainant's salary without prior notification or breakdown of deductions, the ITO explained that was not the case. The events preceding that action were as follows (in relation to a tax demand):

(i) Tax assessment issued and sent to the taxpayer;

(ii) In the event of non-settlement of the above, a penalty being added on to the original tax demand and the relevant document sent to the taxpayer;

(iii) In the event of non-settlement of the above, a surcharge incurred on the above and the relevant document sent to the taxpayer;

(iv) Failure to settle would result in the ITO contacting the taxpayer's employer for salary deductions (as was done in the Complainant's case).

The ITO furnished the Ombudsman with copies of the 2009/10 and 2010/2011 letters sent to the Complainant being surcharges on late payments of 10% and 20% for each of the aforementioned tax years.

Conclusions

<u>Complaint (i)</u>

(a) Incorrect amount of tax being deducted and no communication or correspondence from the Income Tax Office throughout an extensive period of time – Sustained

(b) Complainant feels it is unfair that he has received a substantial tax demand to cover the Income Tax Office's mistake – Not Sustained

In 2010 the ITO, upon identifying that the Complainant had not submitted the tax returns and supporting documents, met with the Complainant to rectify the situation, as a result of which it transpired that the Complainant owed PAYE.

The ITO failed to contact the Complainant at an earlier stage but once the anomalies were detected, arranged a meeting with the Complainant in order to resolve the tax issues.

Although the Complainant failed in his duty to submit tax returns on an annual basis, the ITO failed to identify this at a timely stage. By the time the ITO contacted the Complainant to bring to his attention that he had not handed in annual tax returns, the Complainant's tax bill was substantial; the Complainant was claiming for allowances which no longer reflected the present status and was therefore being undercharged for PAYE.

This would not have been the case if the ITO had cancelled all the Complainant's allowances at an early stage, upon non submission of the first tax return and no supporting documentation. The result of that action would have undoubtedly triggered that the Complainant contact the ITO and the situation would have been resolved at a very early stage and monies due to the ITO settled promptly. The ITO's role is to ensure that taxpayers comply with their obligations but puts the onus on them to monitor this adequately. Due to not having being equipped with the adequate tools and systems at the time when the events affecting the Complainant occurred, the ITO did not know that the Complainant had not submitted tax returns until years later and it was at that point when they contacted the Complainant and rectified the situation.

The Ombudsman notes the ITO's statement that the onus was on the Complainant to have notified the ITO that the mortgage interest had reduced in order for his tax allowances to be amended accordingly but as stated above, does not exculpate the ITO of their duty.

The Ombudsman found that there was maladministration in part (a) of this Complaint due to the ITO's failure to identify that the Complainant had not submitted tax returns throughout a number of years. Although the Ombudsman understands that during the period related to this Complaint the ITO did not have the present setup in place to pursue persons who had not submitted their tax returns, there should have been a method, albeit primitive, for recording the tax returns submitted. This would have allowed the ITO to carry out its functions efficiently and identified those persons who had not handed their tax returns in. It would have enabled the ITO to keep accurate and timely records to prevent situations similar to those of this Complainant.

Notwithstanding the above, the Ombudsman is satisfied that once the anomaly in the Complainant's case was identified by the ITO they addressed the matter correctly and assisted the Complainant with his queries.

Regarding part (b) of the Complaint, the Ombudsman does not find maladministration on the part of the ITO. Although the Complainant believes that he received a substantial tax demand due to the Income Tax Office's error in effect he would have paid the same amount of PAYE. Furthermore, it was as a result of not having submitted tax returns that he partly found himself in this situation.

Complaint (ii)

The Income Tax Office made monthly deductions from the Complainant's salary for the purpose of settlement of a tax demand (upon instruction to the Complainant's employer) without prior notification and without having provided a breakdown of the deductions - **Not Sustained**

Regarding the second Complaint, the Ombudsman is satisfied that the Complainant received a tax demand and four letters (two each for the years 2009/10 and 2010/11 being surcharges for late payment of tax demands) and as such was quite aware of the monies owed. The Ombudsman does not find maladministration in the manner in which the ITO proceeded to recover the PAYE amount owed by the Complainant via direct deductions by the employer from the Complainant's salary, being so empowered by Section 62 of the Income Tax Act 2010. Notwithstanding, the Ombudsman recommends that the ITO include one last echelon in their procedure when doing so. Parallel to the request being sent to the employer for the deduction of monies from the taxpayer's salary, the ITO should send a letter to the taxpayer informing him/her of the action and stating the total amount owed and the monthly deductions.

Classification

Complaint (ia) – Sustained

Complaint (iib) – Not Sustained

Complaint (ii) – Not Sustained

Recommendations

In Complaint (ii) of Case 1095 the Complainant was aggrieved because the Income Tax Office had made monthly deductions from his salary towards settlement of a tax demand (upon instruction to the Complainant's employer) without having afforded him prior notification or provided a breakdown of the deductions.

The Ombudsman's investigation found that the Income Tax Office followed a procedure prior to undertaking that action and as such, the Ombudsman did not find maladministration in the manner in which the Income Tax Office proceeded to recover the Pay As You Earn ("PAYE") amount owed by the Complainant. Furthermore, the Income Tax Office, under Section 62 of the Income Tax Act 2010 is so empowered.

Notwithstanding, the Ombudsman found that the Income Tax Office should include one last echelon in their procedure. Parallel to the request being sent to the employer for the deduction of monies from the taxpayer's salary, the Income Tax Office should remit a letter to the taxpayer to include information on the action they will be taking, the total tax amount owed, the monthly deductions to be made and the date on which the final deduction will be made.

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DEPARTMENT OF SOCIAL SECURITY

Case Not Sustained

CS/1069

Complaint against the Department of Social Security ("DSS") as a result of the fact that the Complainant applied for a Minimum Income Guarantee ("MIG") and after a lapse of two months she had still not received a reply as to whether she was entitled to receive such payment

Complaint

The Complainant complained that she had applied for the MIG in May 2014 and that by July 2014 she was still awaiting a reply from DSS as to whether she was eligible for the payment.

Background [Ombudsman Note: the background is mainly based on the version of events provided by the Complainant, including supporting documentation, at the time of lodging the Complaint with the Ombudsman].

The Complainant was a British National and a senior citizen with a minimum income. She was wheelchair bound. She informed the Ombudsman that when she submitted her application for the MIG she was asked to provide the DSS with her Moroccan passport so that the DSS could verify that her principal residence was Gibraltar. After two weeks, the Complainant was able to obtain her passport from Morocco and provided them with it in June 2014. On the 23rd June she was interviewed by a clerk from the DSS. To the date of filing her complaint with the Ombudsman on the 31st July 2014, the Complainant had not received any information as to the delay in processing her application. On enquiry at the counter she was simply informed that "these things take time."

The Complainant was in desperate need of the additional financial support she was seeking and felt that the DSS was taking too long to reply to her, given her circumstances.

Investigation

The Ombudsman wrote to the DSS on the 1st August 2014 setting out the complaint and requesting their comments. Shortly afterwards, the Ombudsman received an email reply from DSS. The letter set out the chronology of events relating to the Complainant's application. DSS confirmed that the Complainant had applied for the MIG on 21st May 2014 and that on the 29th May 2014 she was sent a letter inviting her to attend DSS offices for an interview in relation to her application. The interview was conducted on the 23rd June 2014. They further explained that on the 10th July 2014, a Ministerial query questioned the eligibility criteria being applied by DSS in the areas of social assistance, disability allowance and "residency criteria", the latter specifically in relation to MIG's. As a result of such query, DSS informed the Ombudsman that the Complainant's case had been put on hold until a decision was taken on all matters. DSS's letter concluded by stating that once they received a definitive Ministerial response on the policy to be adopted and/or applied, they would revert to the Ombudsman substantively.

On the 18th August 2014 the Ombudsman sent DSS a chaser letter requesting any available information by way of update on the Complainant's application. A reply followed some ten days later stating that a meeting between the relevant Minister and the DSS had still not been scheduled due to diary constraints. However, the Ombudsman was assured that DSS would continue to press for a meeting and that they would keep the Office of the Ombudsman appraised of developments.

At the beginning of October 2014, the Ombudsman received an email from DSS stating that given the amount of time it was taking to discuss the matter of the eligibility criteria in terms of residency and subsequently reach a decision on the Complainant's application, DSS had decided to approve the Complainant's claim for MIG until such time as a "definite decision" was reached at Ministerial level. The decision had been reached by DSS having taken the view that previous criteria used in determining similar applications received from other applicants, would be applied to the Complainant.

The Ombudsman was satisfied with the decision taken (even though it may be reversed in future pursuant to Government policy or decision), and informed the Complainant accordingly.

Conclusions

The Ombudsman was satisfied with the decision taken by DSS to temporarily approve the Complainant's application for a MIG, until such time as the Government of Gibraltar confirmed the established position or criteria which would be adopted in these type of cases.

Given the fact that the DSS's "hands were tied" in relation to the Complainant since, they had received a direct Ministerial query on the nature of it, the Ombudsman opined that the DSS had followed a pragmatic approach in addressing the impasse, within a not unreasonable time frame.

Classification

Not Sustained

Ombudsman Note

Given that the DSS granted the Complainant an interview shortly after she had made her application and that they were in effect, unable to make a firm decision on whether or not to grant the Complainant the MIG payment sought based upon the uncertainty surrounding the eligibility criteria raised at Government Ministerial level, the Ombudsman was unable to sustain the complaint made against the DSS.

The Ombudsman would be writing to the Government Chief Secretary as head of the Government's administration, to inform him that until such a time as the DSS was armed with set parameters in which to grant or dismiss applications for MIG's, he would not be accepting any further complaints from citizens against the DSS relating to MIG's.

A similar approach had also been recently adopted by the Ombudsman in relation to complaints relating to disability benefit.

Recommendation

The Ombudsman was of the firm view that whenever the Government made a decision on the eligibility criteria it should, following the principles of fairness, equity and good administrative practice, not apply the decision to applicants retrospectively if indeed, restrictive guidelines were established.

The Ombudsman opined that it would be unfair to users of the social security system to be stripped of previously approved applications under "current" criteria, if indeed, any "new" rules imposed happened to be more stringent or restrictive.

Case Not Sustained

CS/1087

Complaint against the Department of Social Security ("DSS") as a result of an assessment made by the Medical Board the findings of which the Complainant claims were not commensurate with the severity of his condition.

Complaint

The Complainant was aggrieved because he did not understand how despite the findings of the medical board convened by the DSS, which determined that the Complainant was incapable of work, his loss of faculty had not been assessed at 100%.

Background [Ombudsman Note: The background is mainly based on the version of events provided by the Complainant, including supporting documentation, at the time of lodging the Complaint with the Ombudsman]

The Complainant explained that as a result of injuries sustained from an industrial accident, he was examined by a medical board ("the Board") convened by DSS on the 20th November 2014. He complained to the Ombudsman that despite the Board's medical findings which included a statement which read "incapable of work at present", his disability was only assessed as being "50% for twenty months". The Complainant was unable to understand how, given the severity of his condition and the finding of the Board, his loss of faculty was not assessed at a full 100%.

Dissatisfied with the position, the Complainant lodged his complaint with the Office of the Ombudsman on the 18th March 2015.

Investigation

The Ombudsman presented the complaint to the DSS on the 30th March 2015 and requested their comments.

By then, the Ombudsman had reviewed DSS's letter to the Complainant (dated 2nd December 2014) by which the Board's findings were communicated. The letter stated that "…Following [the Complainant's] examination by the [Board] on the 20th November 2014, the loss of faculty that resulted from the industrial accident you sustained on 1st April 2013 has been assessed at 50% for 20 months. You must attend for re-assessment at a later date which will be communicated to you in due course."

The medical findings were as follows:

"Persistent severe pain on neck and lumbar spine; reduced range of movement; unable to walk far; incapable of work at present; needs further intervention by his General Practitioner: pain clinic referral-physiotherapy-psychologist/psychiatric treatment- may need a neurological opinion."

In addition, the letter stated that from the 30th September 2013 the Complainant had been entitled to a disablement pension of £273.14 per month and that the first payment to the Complainant would constitute payment in arrears for the period 30th September 2013 to 31st December 2014, amounting to £4,106.20. Given that the Ombudsman had not received a reply from DSS to his letter presenting complaint, a chaser letter was issued on 14th April 2015.

A reply was received on 19th April 2015.

DSS explained that when the occupational doctors assessed the Complainant on the 20th November 2014, they determined that he was "incapable of work at present" and the loss of faculty assessed in accordance with the Employment Injuries (Benefits) Regulations was 50%. DSS further stated that because a person is "incapable of work" at a given time does not necessarily equate to a 100% loss of faculty as the Complainant, according to DSS, believed. The reply went on to state that the degree of loss of faculty was established on the basis of the aforementioned employment injuries legislation and is not determined by the occupational doctors' opinion that the Complainant was incapable of working at the time of the assessment.

As an addendum, the DSS concluded their letter by stating that "in comparison with other persons who have suffered similar back injuries the Complainant has been awarded a higher loss of faculty than any others".

Conclusions

The Ombudsman reviewed the pertinent legislation particularly the Social Security (Employment Injuries Insurance) Act- Employment Injuries (Benefits) Regulations 1952.

Schedule 1 of the Regulations sets out the prescribed degrees of disablement in tabular form. The descriptions of particular injuries correspond to a degree of disablement entitlement in percentage terms. For example "absolute deafness" is awarded 100% degree of disablement whereas a "loss of all toes to both feet" carries 20-40% disablement depending on the exact physical point of the loss.

Schedule 2 on the other hand, established the weekly rates of benefit payable depending on the affected persons degree of disablement and whether or not they have attained full age.

In effect, the DSS did award the Complainant the degree of disablement (%) that corresponded to his injuries and consequently, the appropriate monetary benefit payable.

Nonetheless, the Ombudsman was not satisfied with the fact that the breakdown and mode of assessment was not put to the Complainant in writing in order to satisfy his concerns. Had this been the case, it is highly unlikely that the Ombudsman would have investigated this complaint.

Classification

Not Sustained (on the basis of the legislation in force).

Considerations

The Ombudsman noted and opined that the injuries listed, amounts of percentage awarded and subsequent payments stipulated were outdated and in his respectful opinion, irrelevant in parts, insofar as contemporary society's potential ailments and conditions which could constitute a disability were concerned. Additionally, the level of financial benefit/s awarded could be perceived in some cases to fall below that which one would expect to receive in order to sustain a basic standard of living in modern times. The Ombudsman would therefore be making recommendations to HM Government of Gibraltar's Chief Secretary in this regard.

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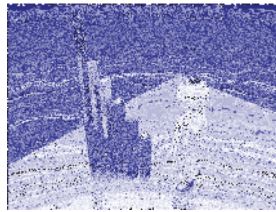


4
Statistical Information

4.1 VOLUME

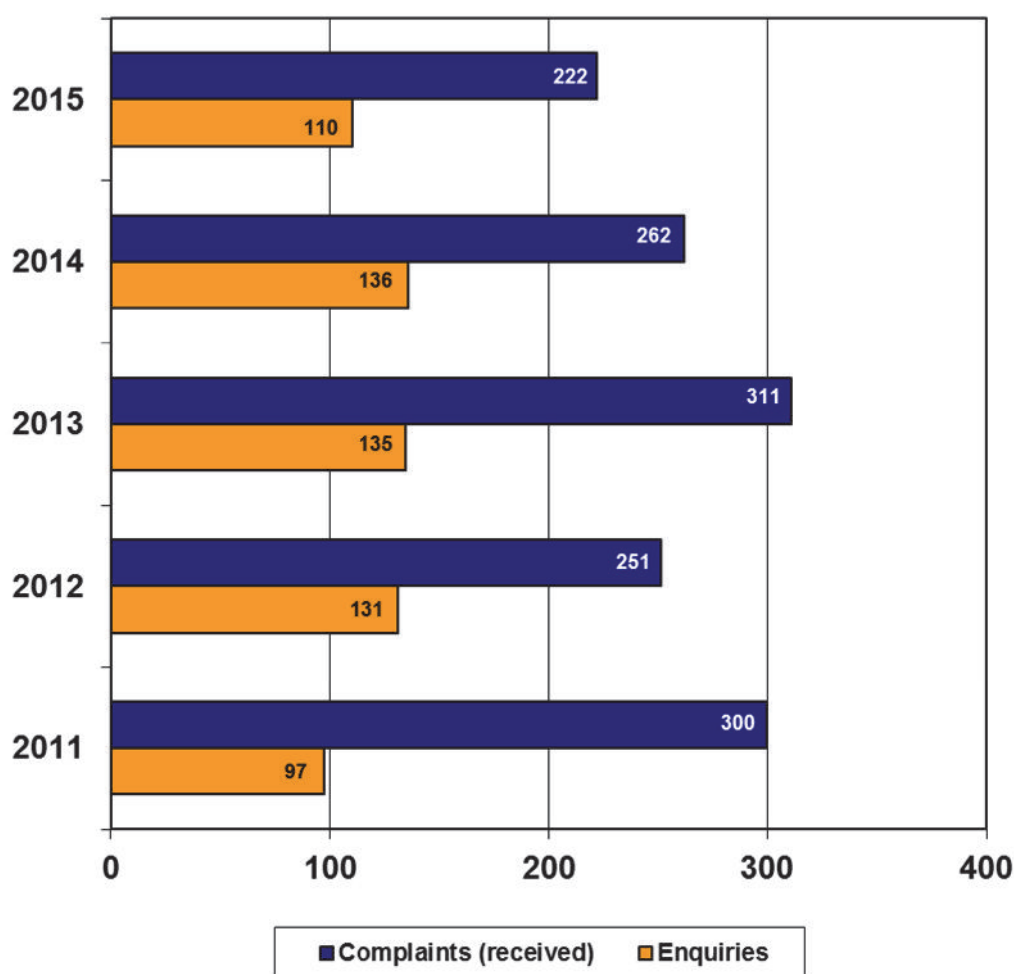
Complaints received, completed and current by month – 2014 & 2015

Table 1	2014			2015		
	Received	**Completed**	**Current**	**Received**	**Completed**	**Current**
			72			60
January	19	15	80	12	11	61
February	31	28	83	28	25	64
March	30	29	84	24	18	70
April	26	28	82	16	11	75
May	17	16	83	12	18	69
June	20	18	85	24	21	72
July	19	27	77	24	22	74
August	30	28	79	13	18	69
September	19	19	79	18	15	72
October	26	32	73	22	21	73
November	15	20	68	14	12	75
December	10	18	60	15	25	65
TOTAL	262	278		222	217	
Enquiries		135		110		

This year, we received 222 Complaints in our office, a decrease of 40 Complaints compared to 2014, where we received 262 Complaints. Taking into account the active complaints brought over from the previous year, a total of 217 Complaints were completed by the end of this year which left 65 Complaints open by the end of 2015. This year we recorded 110 Enquiries, a decrease of 25 compared to 2014, when we received 135.

4.1 (CONT)….

Chart 1 - Breakdown of Complaints and Enquiries received for last five years



This year we have received 222 Complaints and 110 Enquiries.

From the 222 Complaints we received 63 were against private organisations that fell outside the Ombudsman's jurisdiction. This left a total of 159 Complaints received against government departments, agencies and other entities which were within our jurisdiction. (*See Table 2 Page 132- **Complaints/Enquiries received by departments/entities in 2015***).

4.2 GOVERNMENT DEPARTMENTS AND OTHER ENTITIES

The trend of Complaints has continued similar to previous years. The Housing Authority (61), the Gibraltar Health Authority (19) the Civil Status and Registration Office (12) the Employment Service (9), the Department of Social Security (9) and the Royal Gibraltar Police (7) top the list attracting the highest number of Complaints.

Table 2- Complaints/Enquiries received against departments/entities in 2015

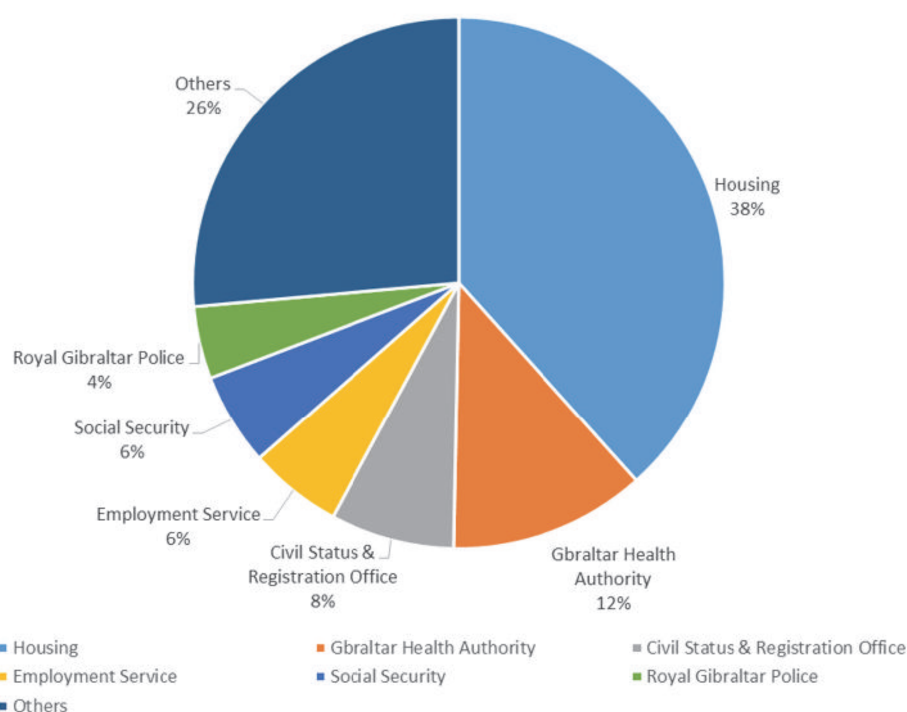
Dept/Agency	Enquiry	Complaint	Dept/Agency	Enquiry	Complaint
AquaGib	3	4	**Housing Works Agency**	-	1
Business Licensing Authority	1	1	**Human Resources**	1	-
Care Agency	3	4	**Income Tax Office**	4	4
Civil Status & Registration	20	12	**Land Property Services**	2	3
Customs	-	2	**Magistrate's Court**	-	3
Education & Training	3	3	**Ministry of Finance**	-	1
Employment Service	4	9	**Office of the Chief Minister**	-	1
Environment	-	2	**Office of the Chief Secretary**	-	1
Environmental Agency	-	1	**Prison Service**	-	2
Gibraltar Electricity Authority	2	3	**Reporting Office**	-	1
Gibraltar Health Authority	6	19	**Royal Gibraltar Police**	3	7
Gibraltar Post Office	-	1	**Social Security**	4	9
Gibraltar Tourist Board	1	-	**Traffic Commission**	1	-
Housing Authority	46	61	**Transport & Licensing**	1	4
			TOTAL :	**105**	**159**

As in previous years complaints relating to housing matters (Housing 38%) continue to be the most prevalent form of complaint lodged in our office, since they amount to more than a third of the load of complaints that the Ombudsman investigates. The nature of complaints are wide-ranging but mainly deal with applicants experiencing long delays in being allocated government housing flats.

The Ombudsman highlighted in his last annual report that once the new Government Housing Schemes were completed they would significantly reduce the volume of housing complaints that are lodged in our office; some of these housing schemes are now being completed and the Ombudsman strongly believes that complaints of this nature will decrease significantly in the not so distant future and would probably start having an impact in the next annual statistical information contained in the Ombudsman's Annual Report for 2016.

4.2 (CONT)….

This year there has been 19 complaints against the Gibraltar Health Authority, 9 complaints more than in 2014, this has been due to the Ombudsman now being able to investigate clinical health complaints which the Complaints Handling Scheme Office at the Gibraltar Health Authority occasionally hands over to the Ombudsman at the Complainant's request. The nature of these complaints are normally complex and usually require medical advice from independent professionals to be able to investigate them properly and efficiently.



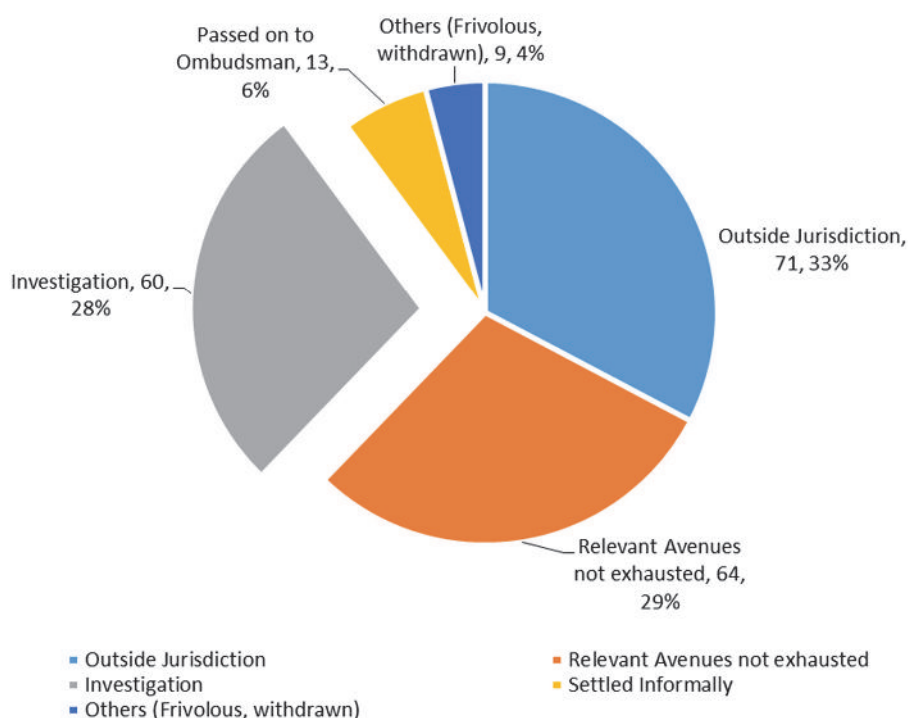
This year we also received 12 complaints against the Civil Status and Registration Office, 10 complaints less than in 2014 but yet they are third in the order of the most complaints received against. Delays in having applications for naturalisation processed and in obtaining residency continue to be the most common complaints that we receive against this government department.

We also have to highlight complaints against the Employment Service which although continues to remain as the fourth's government department most complained against, complaints against this department have significantly decreased from 20 to 9. Nine complaints were also received against the Social Security compared with last year's sixteen. Notwithstanding the significant decrease of complaints in the above-mentioned departments, the Ombudsman continues to encourage all government services to be more proactive when dealing with the public.

4.3 PROCESSING DATA

There were 217 Complaints classified this year out of which, 71 (33%) were classified as outside jurisdiction, hence they could not be investigated by the Ombudsman. Our office usually receives a high number of complaints which are outside jurisdiction (such as labour related and legal matters, private housing rent and repairs and gambling complaints) as members of the public are not sure which entity could look up their grievance. We always try to be of assistance and signpost them to the appropriate entity who could maybe can help them out.

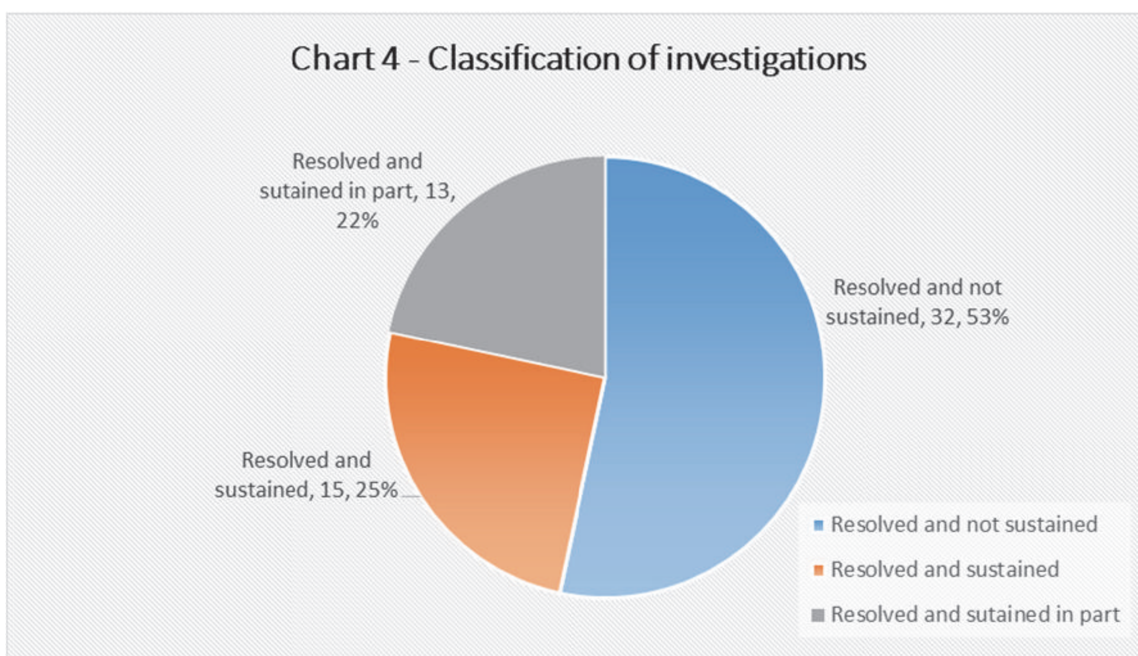
64 (29%) were closed as 'Relevant Avenues Not Exhausted' (RANE). These type of complaints are lodged in our office without the Complainant formally submitting them first to the relevant government department/entity hence we advise the Complainant to lodge their complaint first with the entity concerned so that they have the opportunity to deal with the matter before reaching our office. Some of the complaints are addressed by the government department/entity but unfortunately other Complainants return to our office not satisfied with the replies received and in some cases without any sort of reply, the ones that return are investigated by our office. This classification also takes up nearly about another third of the total of complaints we receive.



Thirteen (6%) of the Complaints were settled informally as they were resolved by assisting the Complainant without the need to initiate an investigation. A further 9 (4%) were classified as 'Others', they were either withdrawn or after our initial inquiries into the complaint there was insufficient personal interest shown by the Complainant or were time-barred.

4.3 (CONT)….

Sixty Investigations (28%) were concluded by the end of the year which makes out about the last third of the total of complaints we receive. Out of the 60 (15 sustained, 13 partly sustained and 32 not sustained), 28 of the Complaints were resolved through informal action, whilst the other 32 warranted an extensive report. (17 brought forward from 2014 and 15 from 2015) From those 32 that warranted an extensive report 3 of them were investigations over clinical health complaints passed on to the Ombudsman by the Complaints Handling Scheme Office at the GHA. Out of these 32, 8 were sustained, 13 were partly sustained and 11 not sustained.



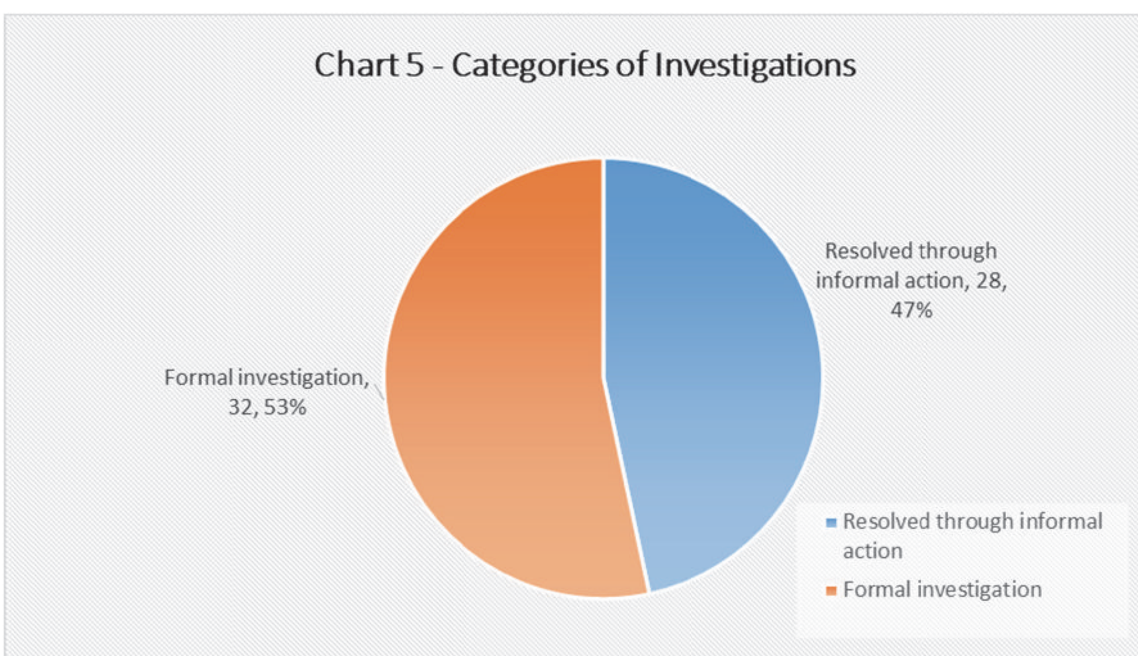
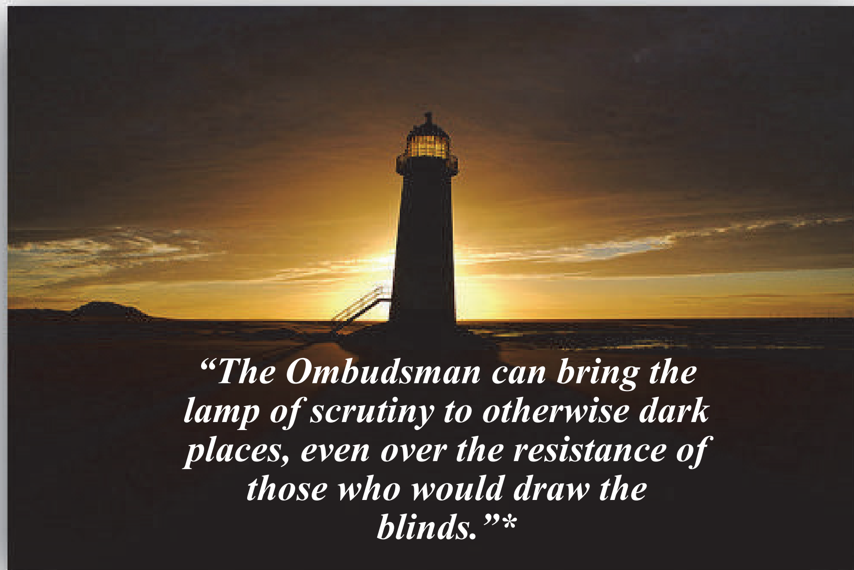


Table 3 - Breakdown of classification of complaints received by departments / entities in 2015

Dept/Agency	Avenues not ex-hausted	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			
AquaGib Ltd	1	-	-	1	-	2	-	-	-	**4**
Business Licensing Auth	1	-	--	-	-	-	-	-	-	**1**
Care Agency	-	-	1	1	-	-	2	-	-	**4**
Civil Status & Registration	6	-	1	-	-	2	1	-	2	**12**
Customs	-	1	-	-	1	-	-	-	-	**2**
Education & Training	1	-	-	-	-	-	-	2	-	**3**
Employment Service	3	3	1	1	-	-	-	-	1	**9**
Environment	1	-	-	-	-	1	-	-	-	**2**
Environmental Agency	1	-	-	-	-	-	-	-	-	**1**
Gibraltar Electricity Auth	1	-	-	-	-	-	-	2	-	**3**
Gibraltar Health Authority	3	-	-	1	4	-	1	1	9	**19**
Gibraltar Post Office	-	-	-	1	-	-	-	-	-	**1**
Gibraltar Tourist Board	-	-	-	-	-	-	-	-	-	**0**
Housing Authority	30	-	5	1	1	-	12	1	11	**61**

Table 4- Breakdown of classification of complaints received by departments / entities in 2015

Dept/Agency	Avenues not ex-hausted	Out of Juris-diction	With-drawn/IPI, Trivial, Others	Formal Investigation		Resolved through informal action		Settled Informally	Open	Total
				Sustained	N/Sustained	Sustained	N/Sustained			
Housing Works Agency	1	-	-	-	-	-	-	-	-	**1**
Human Resources	-	-	-	-	-	-	-	-	-	**0**
Income Tax Office	-			1	1	-	-	-	2	**4**
Land Property Services	1	-	-	-	-	-	1	-	1	**3**
Magistrate's Court	1	1	-	-	-	-	1	-	-	**3**
Ministry of Finance	-	-	1	-	-	-	-	-	-	**1**
Office of the Chief Minister	-	1	-	-	-	-	-	-	-	**1**
Office of Chief Secretary	-	-	-	-	-	1	-	-	-	**1**
Prison Service	2	-	-	-	-	-	-	-	-	**2**
Reporting Office	-	-	-	-	-	-	-	1	-	**1**
Royal Gibraltar Police	4	2	-	-	-	1	-	-	-	**7**
Social Security	4	-	-	-	1	-	2	1	1	**9**
Traffic Commission	-	-	-	-	-	-	-	-	-	**0**
Transport & Licensing	2	-	-	-	1	-	1	-	-	**4**
TOTAL:	**63**	**8**	**9**	**6**	**9**	**7**	**21**	**8**	**28**	**159**



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

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The Gibraltar Public Services

Ombudsman

Gibraltar Public Services

Ombudsman

Address: 10 Governor's Lane, Gibraltar
Telephone: +350 20046001
Fax: +350 20046002
Website: www.ombudsman.org.gi
Email: ombudsman@gibraltar.gi
Skype™ ID is: gibraltar.ombudsman